

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DOUGLAS WINSTON, as Administrator	)	1:14-CV- 02670
of the Estate of TAMIR RICE, Deceased;	)	
C/O Walter Madison, Esquire	)	JUDGE SOLOMON OLIVER, JR.
209 South Main Street, Ste. 201	)	
Akron, Ohio 44308	)	
	)	
Benjamin Crump, Esquire	)	
CIVIL ACTION NO.: 1:14-cv-02670-SO	)	FIRST AMENDED COMPLAINT
Daryl D. Parks, Esquire	)	
Jasmine Rand, Esquire	)	
Judge Solomon Oliver, Jr.	)	JURY DEMAND ENDORSED
PARKS & CRUMP, L.L.C.	)	
240 North Magnolia Drive	)	
FIRST AMENDED COMPLAINT	)	
Tallahassee, Florida 32301	)	
	)	
JURY DEMAND ENDORSED	)	
SAMARIA RICE, Individually	)	
as the Natural Mother of TAMIR RICE;	)	
LEONARD WARNER, Individually as	)	
the Natural Father of TAMIR RICE; and,	)	
	)	
T.R., Individually, A Minor, by	)	
and Through Her Natural Mother and	)	
Legal Guardian Samaria Rice,	)	
	)	
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	
	)	
	)	
TIMOTHY LOEHMANN, Individually	)	
and In His Official Capacity as an	)	
Employee of the City of Cleveland, Ohio;	)	
8102 Sierra Oval	)	
Parma, Ohio 44130	)	
	)	

FRANK GARMBACK, Individually and  
In His Official Capacity as an  
Employee of the City of Cleveland, Ohio;  
15755 Paulding Blvd.  
Brook Park, Ohio 44142

CITY OF CLEVELAND, Ohio; and,  
DOES 1-100, Unknown City of Cleveland  
911 Operators and Other Employees

Defendants.

**COME NOW**, Plaintiffs DOUGLAS WINSTON, as Administrator of the Estate of TAMIR RICE, Deceased; SAMARIA RICE, Individually as the Natural Mother of TAMIR RICE; LEONARD WARNER, Individually as the Natural Father of TAMIR RICE; and, T.R., Individually, A Minor, by and through her Natural Mother and Legal Guardian Samaria Rice, by and through their undersigned counsel, and hereby files this First Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(1)(B) against the above-named CITY OF CLEVELAND, Ohio, a Ohio municipality; TIMOTHY LOEHMANN, Individually and In His Official Capacity as an Employee of the City of Cleveland, Ohio; and FRANK GARMBACK, Individually and In His Official Capacity as Employee of the City of Cleveland, Ohio, and UNKNOWN 911 Operators DOES 1-100. Plaintiffs DOUGLAS WINSTON, as Administrator of the Estate of TAMIR RICE, Deceased; SAMARIA RICE, Individually as the Natural Mother of TAMIR RICE; LEONARD WARNER, Individually as the Natural Father of TAMIR RICE; and, T.R., Individually, A Minor, by and through her Natural Mother and Legal Guardian Samaria Rice, bring the instant action against Defendants for causing permanent injuries and damages, including the death of twelve year-old TAMIR RICE, stemming from an incident that

occurred on or about November 22, 2014, for which Plaintiffs now seek damages, and in support thereof allege as follows:

**JURISDICTION AND PARTIES**

1. This action is brought pursuant to Ohio statutes, and United States Constitution Amendments IV and XIV, 42 U.S.C. § 1983 and § 1988, respectively.

2. Defendant CITY OF CLEVELAND, Ohio, is a Ohio corporation or political subdivision of the state of Ohio, organized and existing under the laws of the state of Ohio, and operating and conducting business in Cuyahoga County, Ohio. Cleveland Police Department is a subdivision of Defendant CITY OF CLEVELAND, Ohio, and Cleveland Police Department officers. Upon information and belief, Defendant CITY OF CLEVELAND, Ohio Police Department officers are being sued in their individual capacities; to wit, Defendant FRANK GARMBACK and Defendant DOUGLAS WINSTON, were residents of Cuyahoga County at the time of the incident.

3. Plaintiffs DOUGLAS WINSTON, as Administrator of the Estate of TAMIR RICE, Deceased; SAMARIA RICE, Individually as the Natural Mother of TAMIR RICE; LEONARD WARNER, Individually as the Natural Father of TAMIR RICE; and, T.R., Individually, A Minor, by and through her Natural Mother and Legal Guardian Samaria Rice, were all residents of Cuyahoga County, Ohio, at all times material to the subject incident.

4. Defendant DOES 1 through 100, upon information and belief, are unnamed City of Cleveland 911 Operators and Employees and/or City of Cleveland Police Department officers and/or employees, that caused and/or contributed to the injuries and damages sustained by Plaintiffs. As Defendants are withholding substantial evidence and information alleging that the

underlying criminal investigation is open and ongoing, Plaintiffs cannot properly identify the identity of all individuals responsible for causing injuries and damages to Plaintiffs.

5. All of the events or omissions giving rise to this action occurred in Cuyahoga County, Ohio.

6. This is an action seeking damages in excess of seventy-five thousand dollars (\$75,000.00), exclusive of costs, interest, and attorney's fees.

### **FACTUAL ALLEGATIONS**

7. On November 22, 2014, at approximately 3:30 p.m. twelve year-old Tamir Rice, an African-American child was playing at the Cudell Recreation Park in the afternoon with a toy gun, making snowballs, and sitting on the swings. Unknown to Tamir, a person in the park called 911 and reported to a dispatcher that someone who was "probably a juvenile" was pointing a gun that was "probably fake." When the 911 dispatcher radioed the call into local police officers, the dispatcher failed to convey the information that the person was probably a child and the gun likely a toy. Upon information and belief 911 dispatchers Beth Mandl and Constance Hollinger both had involvement in processing the 911 call and dispatching officers to the scene. At approximately 3:30 p.m. Tamir was still playing in the park alone, not endangering anyone, not behaving in a violent manner, not threatening or endangering himself or any other person, nor pointing his toy gun at anyone, and did not have the gun in his hand.

8. At that time Defendant City of Cleveland, Ohio police officers Defendant Garmback and Defendant Loehmann drove at a high speed onto the scene in a police cruiser. Defendant Garmback the supervising officer recklessly drove the cruiser almost directly to the table where twelve year-old Tamir was seated, within only a few feet of his person. Despite the opportunity to approach the scene in a manner to provide himself and officer Loehmann cover he

drove directly up to where twelve-year old Tamir was seated providing little to no cover. Defendant Loehmann immediately opened his car door and began firing shots at Tamir in the stomach within 1-2 seconds of the vehicle rolling to a stop and before officer Loehmann was even fully out of the vehicle. Twelve year-old Tamir Rice's body fell to the cold snow covered ground where his body lay. Tamir was still alive, shot in the stomach, and bleeding to death.

9. As Tamir suffered in excruciating pain and still alive on the ground, Defendant officers Garmback and Loehmann do not provide him with any care or attempt any form of first aide or resuscitative measure. Plaintiff T.R., Tamir's fourteen year-old sister, was in the restroom at the time Tamir was shot. Within one minute of the shooting, T.R. approached the scene and ran toward Tamir bleeding to death on the ground screaming, "my baby brother, they killed my baby brother," as the adult police officers stood idly by not even attempting to help the twelve year-old child bleeding to death at their feet or render any form of first aide or resuscitative measure. As T.R. ran toward her little brother to save him, officers tackled her to the ground. The officers proceeded to handcuff fourteen year-old T.R., and put her in the back of the police car only a few feet from where her baby brother lay bleeding to death on the ground, providing her with a window view from the back seat where she could watch twelve year-old Tamir dying, but handcuffed and helpless to try to save him.

10. As Tamir struggled to live, officers Garmback and Loehmann stood around and did not appear concerned about the twelve year-old little boy they just shot in the stomach, or his fourteen year-old sister they tackled, handcuffed, and threw in a car to watch her brother die. An eye witness that captured the incident on a cell phone camera stated that Tamir was still moving on the ground. Finally, after nearly four minutes, a Federal Bureau of Investigations agent who

was in the area arrived on the scene and immediately walked over to check on Tamir and began administering first aide and resuscitative measures.

11. Samaria Rice, Tamir Rice's mother arrived on the scene shortly after T.R., after children in the neighborhood informed her that her son was shot. Samaria arrived to a scene to see her twelve year-old son Tamir shot by police bleeding to death on the ground, and her fourteen year-old daughter handcuffed in the back of the police cruiser. Samaria demanded the release of her daughter T.R. Cleveland police officers gave Samaria a choice no mother should ever face: Samaria could go to the hospital with her dying twelve year-old son Tamir or stay with her fourteen year-old daughter handcuffed and detained in the back of the police cruiser. Samaria chose to go to the hospital with Tamir, and was forced to leave her fourteen year-old daughter T.R. in the custody of the same police officers that just shot her twelve year-old son. The entire incident was captured on video and by cell phones of independent citizens.

12. Twelve year-old Tamir Rice struggled for his life until the next day when he ultimately succumbed to the gun-shot wound in his stomach and died on November 23, 2014 at the Metro Health Medical Center in Cleveland, Ohio.

13. The City of Cleveland failing to conduct a fair and proper investigation, including statements made by the Chief of Police that the officer Timothy Loehmann issued sufficient verbal commands to Tamir Rice stating, "put your hands in the air and drop your weapon." Upon review of the video recordings and audio recordings that captured said incident, the assertion that Defendant Timothy Loehmann issued verbal commands prior to firing shots at twelve-year old Tamir Rice is apparently untrue as only 1-2 seconds transpired between when the officer arrived and when he fired shots, indicating that officers on the scene made false statements regarding

what transpired during the incident and/or supervisors and/or the Chief of Police made false statements regarding the incident.

14. The City of Cleveland police department had a pattern and practice and/or custom and policy of using excessive force against citizens, including depriving citizens of their constitutionally deprived right to life by unjustified police shootings.

15. More specifically, the City of Cleveland had actual knowledge and/or had constructive knowledge and/or failed to conduct a proper investigation into the employment background of Defendant Officer Loehmann which would have revealed his unsuitability for employment as a law enforcement officer. Prior to his employment with Defendant City of Cleveland's police department, Defendant Officer Loehmann's actions and inactions demonstrated that he was not suitable for employment or competent as a law enforcement officer.

16. In particular, while employed with Independence Police Department, Sergeant Greg Tinnirello, officer Loehmann's supervising/training officer reported in his employment file that he exhibited emotional instability, he was not mentally prepared to do firearm training and his handgun performance was dismal, he did not exhibit clear thoughts and was distracted and weepy during a state range qualification course, he demonstrated a lack of maturity and failure to follow instructions, he lied about not securing his firearm over night, he lied to supervisors on the job, and was otherwise professionally incompetent. On November 28, 2012, during his gun range examination on the State of Ohio gun qualifications he began crying, was distracted, and not following instructions, and the supervising officer was forced to remove officer Loehmann's gun belt taking possession of his gun and securing it in a safe location. When the supervising/training officer attempted to discuss the situation with officer Loehmann, officer

Loehmann told his supervisor “what I want is for you to just shut up.” Officer Loehmann’s employment file further noted that, “It just appears that he is not mature enough in his accepting of responsibility or his understanding in the severity of his loss of control on the range.” As such, his Independence Police Department supervisors ultimately recommended his termination documenting that due to his dangerous loss of composure during live range training and his inability to manage personal stress in his employ, that officer Loehmann did not have the maturity to work in their employment. Deputy Chief of Police for the City of Independence Jim Polak found, “I do not believe time, nor training, will be able to change or correct these deficiencies,” and began the disciplinary process of separation informing officer Loehmann of his intention to terminate his employment at which point officer Loehmann resigned. Cleveland Police Department admitted that they did not review officer Loehmann’s record at Independence Police Department or the recommendations and findings of his prior supervisors and training officers.

17. Upon information and belief, prior to his employment with Cleveland Police Department, Defendant Loehmann applied to work in police departments in Akron, Euclid, and Parma Heights, all of which refused to hire him. In September 2013, Defendant Loehmann failed the Cuyahoga County Sheriff Department’s written entrance exam earning only 46 points out of 100, on an exam with a passage requirement of a minimum of 70 points. Defendant City of Cleveland failed to conduct a proper investigation into officer Loehmann’s past employment history or properly examine his fitness for employ as a law enforcement officer. An adequate investigation would have showed his unsuitability for employment.

18. Defendant City of Cleveland had knowledge of the 911 dispatcher Constance Hollinger’s unsuitability for employment as a dispatcher and improperly retained her and/or



failed to properly train her as an employee and/or failed to properly supervise her. In February 2014, Constance Hollinger was issued a letter of re-instruction on call taking procedures.

19. The City of Cleveland police department had a pattern and practice and/or custom and policy of negligently hiring officers not suitable for the position, of failing to properly train and supervise officers, and of retaining officers unfit for said position. The City of Cleveland had unconstitutional pattern and practices and/or customs and policies in effect at the time of the incident that contributed to the death of twelve year-old Tamir Rice. In 2002 the Cleveland Police Department came under the review of the United States Department of Justice Civil Rights Division (USDOJ) for issues concerning excessive use of force. In 2004, the USDOJ made recommendations to the Cleveland Police Department to correct its use of force policy and to establish new review mechanisms for officer involved shootings. In 2014, the USDOJ found that the City of Cleveland did not implement the policy and practice reforms and/or the requisite reforms were not fully maintained over time.

20. Analysis of Cleveland Police Department documents revealed that between 2009 through 2011 six officers had used excessive force on thirty-nine suspects; only one of which was armed, and that out of the cases investigated the CDP found all of the uses of force justified. The six officers that had been using excessive force were all hired since 2008. One officer in particular, Kevin Smith had been involved in over half of the excessive force incidents, as he reported using force on 22 suspects. In particular on December 4, 2014 the United States Department of Justice Civil Rights Division found that there is reasonable cause to believe that the City of Cleveland, Cleveland Police Department engages in a pattern or practice of using unreasonable and unnecessary force in violation of the Fourth Amendment of the United States Constitution that denies citizens of their guaranteed rights, privileges or immunities.

21. The USDOJ found a custom and/or policy and pattern or practice of the use of unnecessary and excessive use of deadly force, including shootings and head strikes with impact weapons; and that Cleveland Police Department officers fired guns at people who did not pose an immediate threat of death or serious bodily injury to officers or others, and that officers used guns in a careless and dangerous manner including hitting people on the head with a gun when lethal force is not justified. The USDOJ Civil Rights Division noted two cases in which officers engaged suspects physically while holding a gun in their hand and the gun inadvertently discharged in the midst of a physical struggle. The USDOJ Civil Rights Division found the following uses of force unreasonable in violation of the Fourth Amendment.

22. On November 29, 2012, over 100 Cleveland Police Department officers conducted a high speed police chase in violation of City policy and fatally shot Timothy Russell and Malissa Williams, two unarmed African American civilians. Officers initiated the chase when the car drove by a building and backfired which some officers mistook for gun fire. During the chase there was confusing and contradictory radio traffic that incorrectly indicated that the occupants of the car may be armed and firing from the car. None of the supervisors asserted control over the chase and some participated. The chase ended in a school yard where thirteen different officers fired over 137 shots at the car. Unarmed Timothy Russell and Malissa Williams were both shot over twenty times by Cleveland Police Department officers. The officers fired so many shots that officers assumed the occupants of the car were returning fire, but evidence later showed that the only shots fired were from fellow officers. The Ohio Bureau of Criminal Investigation and Identification conducted an investigation into the incident and issued a report that, “raised serious questions about CDP’s policies, training, supervision, communication, and technology.” Ohio Attorney General, Mike DeWine stated that, “Command

failed. Communications failed. The System failed. Policy, training, communications, and command have to be so strong and so ingrained to prevent subjective judgment from spiraling out of control. The system has to take over and put on the brakes. On November 29, 2012, the system failed everyone.” Nearly, two years later on November 22, 2014, the system failed everyone again as innocent twelve year-old Tamir Rice lay bleeding to death in the cold Cleveland snow; what remained of his life staining the freshly fallen snow red.

23. On December 27, 2012 Cleveland’s mayor requested that the USDOJ Civil Rights Department review the department’s use of force policies. Six officers were indicted as a result of the shooting deaths of Timothy Russell and Malissa Williams. Ohio Attorney General Mike Dewine stated that in the aforementioned case Cleveland Police Department’s radio transmission network contributes to communication failures and the failure to properly relay information. The failure to communicate critical information including that the car may have backfired causing a sound like a gunshot; that officers fired shots; and the absence of commands from supervisors to avoid crossfire or spontaneous shooting and their failure to communicate details to sector supervisors, all contributed to the fatal shooting incident of Timothy Russell and Malissa Williams. The Cleveland Police Department had a pattern and practice or custom and policy, of failing to properly dispatch and/or to properly communicate critical information regarding incidents that contributed to violating citizen’s constitutional rights. In the fatal shooting of Tamir Rice, the City of Cleveland employees DOES 1-100 failed to communicate that the “suspect” was likely a child with a toy gun.

24. In 2012 another officer shot a man that was lawfully armed carrying an open container of beer and appeared to be cooperating with officers’ commands. When an officer asked him to stop he refused and walked to a porch and sat down his can of beer. He turned

toward the officers' vehicle and walked forward to speak with them, the first officer saw a gun in his waistband and yelled "gun" pointing his weapon at him. The victim raised his hands above his head, and then lowered them a bit to ear level and the first officers shot and struck him in the abdomen. The USDOJ found the officers use of force unreasonable and excessive.

25. In 2013 a Cleveland Police Department Sargent shot at a victim as he ran from a house where he was being held against his will by armed assailants. Prior to responding to the call, officers received information that a man was being held against his will in his house by two armed men. The victim eventually escaped the two armed men holding him against his will and as he ran from the house in his boxers an officer ordered him to stop. He continued to run toward the officers seeking safety and refuge, and the sergeant on the scene shot at him twice. The UDSOJ found the use of force unreasonable and excessive.

26. In 2010 an officer shot a man that was fleeing a scene after he threatened a woman. The man was seated in a car with the engine running, and the officer pointed a gun at him and told him to turn the car off. The man sped away brushing against the officer with the side of the car as he fled the scene. The officer shot at him from behind as he left the scene hitting him in the shoulder. The USDOJ deemed the use of force unreasonable as the threat diminished when the suspect was past the officer.

27. There were several incidents in which officers fired at fleeing vehicles in which the suspect's flights did not pose a threat of serious bodily injury or death to the officers or others. The USDOJ stated that firing at or from a moving vehicle is rarely effective and presents extreme danger to innocent persons, as it is difficult to shoot at or from a moving car with accuracy. In 2013 the Police Executive Research Forum recommended that the Cleveland Police Department's policy be changed to prohibit the discharge of firearms at or from a moving

vehicle unless deadly physical force is being used against the officer or another person present, and the Cleveland Police Department adopted said policy in August 2014.

28. The USDOJ 2014 report further found that Cleveland Police Department had a pattern and practice and/or custom and police of the use of unnecessary, excessive or retaliatory use of less lethal force including tasers, chemical spray and fists, head and body strikes, and a failure to use less lethal force in proportion to the resistance encountered; including punching people in handcuffs who were already subdued, and the use of force as punishment for the person's earlier verbal or physical resistance to a command but not based on the current threat posed by that person.

29. In January 2011 officers apprehended Edward Henderson a mentally-ill African-American after he fled from police in a vehicle. Eventually Mr. Henderson surrendered and lay prone on ground while being handcuffed. After Mr. Henderson was restrained officer Smith and officer Lentz began kicking him and striking him breaking his orbital bone, breaking his nose, and detaching his retina. A helicopter camera captured the entire incident; however, the officers never filed a use of force report despite the obvious use of force and the severity of his injuries. Both officers were charged with assault and the USDOJ 2014 report found the use of force unreasonable and excessive.

30. There are several incidents in which the USDOJ found that the City of Cleveland police department used unreasonable and excessive force on minor children. In another incident, an officer punched a handcuffed 13 year-old boy in the face several times after arresting him for shoplifting. Officers placed the minor in the back of the police cruiser. While still restrained the 13 year-old began kicking the door and kicked an officer in the leg. The officer sat on the 13 year-old's legs and punched him in the face 3-4 times until he was dazed and had a bloody nose.

The USDOJ found the use of force unreasonable and excessive. In another incident, an officer used a taser on a juvenile twice as two other officers held him to the ground. Officers alleged that he matched a description for someone that had been seen stealing from a store. The USDOJ found the use of a taser on a child otherwise restrained unreasonable. The USDOJ also found that Cleveland Police Department officers use excessive force against persons who are mentally ill or in crisis, including instances in which an individual is not suspected of having committed a crime at all. The USDOJ further cited in the 2014 report that officers subject individuals to stops, frisks, and full searches without the requisite level of suspicion in violation of the Fourth Amendment; and individuals were detained on suspicion of having committed a crime with no record of an articulable reason for the detention. The USDOJ 2014 report also stated that there was a systemic failure to file use of force reports and to comply with departmental policies and protocols of investigating uses of force which contributed to a pattern and practice and/or custom and/or policy of the use of excessive and unreasonable force in violation of citizen's constitutionally guaranteed rights.

31. The USDOJ found that the Cleveland Police Department fails to institute proper systems and policies to provide the supervision necessary for sufficient oversight of officers' use of force, fails to provide consistent and clear policies and/or enforce existing policies on when and how to use and report force, fails to implement systems to ensure the use of force is consistently reported and investigated thoroughly and fairly to determine whether the department needs policy, training, tactical, or changes in equipment for officer and civilian safety, fails to address emerging problems through the use of aggregate data to determine patterns and trends and institute corrective measures for unlawful and dangerous behavior that place citizens at risk,

and fails to ensure that officers receive proper use of force training, which all amount to an environment that causes systemic deprivation of citizens' constitutional rights.

32. The USDOJ found a custom and policy and/or pattern and practice that supervisors tolerated and sometimes promoted and participated in the use of excessive force, conducted improper and biased investigations into the use of excessive force, failed to implement constitutional policies regarding excessive force and/or failed to uphold policies in existence, failed to maintain the proper data regarding individual officers' and departmental uses of force, and failed to take corrective measures when identifying excessive use of force by individuals. The USDOJ found that in general there is a lack of experienced, well-supported, well-trained supervisors, and that supervisors tolerate the use of unreasonable and excessive force and other improper and unlawful practices, and in some cases endorse it. Supervisors and the department officials and employees failed to conduct proper and objective investigations officers' use of force, identify and respond to patterns of at-risk behavior, and/or provide officers with the support, training, supervision, and equipment to perform job functions safely and effectively. The USDOJ determined that several of the Cleveland Police Department's systems for investigating and holding officers accountable for the use of excessive force are flawed, including Internal Affairs, the Use of Deadly Force Investigation Team, and the Tactical Review Committee. Oftentimes, the investigations were conducted with the intent to justify the officers' actions instead of discerning truth. In fact, numerous investigators admitted to the USDOJ that the quality of the investigations is compromised by investigators' apparent bias in favor of clearing the officer instead of objectively pursuing all of the available facts. Some investigating officers responsible for reviewing officers' use of deadly force admitted that they investigate with the goal of casting the officer in the best light possible and most officers applied the

improper “beyond a reasonable doubt” evidentiary standard when determining whether the officer used excessive and/or unreasonable force. The USDOJ report elaborated that, “It is almost as if the goal of the chain of command in many incidents is not to create a complete record of the incident that can be subjected to internal and external review.”

33. The Cleveland Police Department also fails to adequately investigate civilian complaints of use of excessive force, although they are required to conduct a full and complete investigation of each civilian complaint per the Charter of the City of Cleveland. The USDOJ found that the City failed in its duty created within the charter which contributes to a pattern and practice of the use of excessive force. The failure to conduct proper investigations was first found in a 2004 USDOJ review; the 2014 USDOJ finding stated that the issue has worsened not progressed. In tolerating supervisors’ failure to investigate uses of force the police department misses the opportunity to correct dangerous behavior, and instead sends the message that there is little oversight or concern about officers’ use of force. The admittedly biased investigations that apply improper evidentiary standards were found to be deeply rooted and cutting at the heart of the City of Cleveland Police Department’s accountability and, “emblematic of the type of practice that justifies a finding under Section 14141,” of the Violent Crime and Law Enforce Act of 1994. Over a three and a half year period the USDOJ concluded that out of the 1,500 officers only 51 were disciplined in any fashion related to use of force, most of the charges were for procedural issues such as failing to file a report, charges were deemed unfounded or dismissed and a finding of excessive force was “exceedingly rare.” A Cleveland Police Department Office of Professional Standards employee stated that a deadly force incident had not been reviewed since 2012. Officers were only suspended on six occasions for use of force. USDOJ found that the Cleveland Police Department does not implement appropriate corrective measures to



discipline officers or to develop training aimed to correct improper and unconstitutional practices, and some supervisors actively discouraged officers from reporting uses of force and instructed them not to complete use of force documents in instances when one was required. The Cleveland Police Department also failed to examine and analyze use of force reports that were generated to detect common patterns and trends. The USDOJ found that the Cleveland Police Department's failures are such that it cannot timely, properly, and effectively determine how much force its officers are using, and under what circumstances, whether the force was reasonable and if not, what discipline, change in policy, training, or other action is appropriate. The Cleveland Police Department does not use an adequate early intervention system to help identify risky and problematic trends in officer behavior before a pattern of misconduct arises; such as, the pattern or practice of excessive use of force. Instead of serving the local community and adopting and enforcing appropriate policies to implement effective community policing, the USDOJ found that the Cleveland Police Department has instead fostered an "us versus them" mentality and created an occupying force in the city as evidenced by the war zone sign hanging Cleveland Police Department vehicle bay that reads: "Forward Operating Base."

34. The USDOJ found that the Cleveland Police Department has a custom and policy and/or pattern and practice of failing to properly train officers on appropriate use of force, and that officers' lack basic support, skills, and knowledge required to safely and effectively respond to situations that commonly arise in law enforcement encounters. The Cleveland Police Department has a duty to ensure its officers are properly trained, that training is reinforced through ongoing instruction; and that officers are consistently held accountable for failing to abide by their training. The failure to do so has contributed to the pattern and practice of excessive force identified within the Cleveland Police Department that places the community in

danger. The Cleveland Police Department does not devote enough time to training on use of force, and fails to analyze use of force reports to determine what training is necessary to bring the department into compliance. In particular, officers draw and point firearms at citizens too often, and do not appear to know how to safely handle firearms and lack confidence in their ability to control situations accidentally discharging weapons or shooting the wrong individual. Officers do not know how to effectively de-escalate situations before resorting to use of force, and officers informed investigators that they do not receive enough training, especially scenario based training, and training on how to control subjects. Officers too often escalate incidents instead of using accepted tactics to de-escalate tension, and Cleveland Police Department officers commit tactical errors that endanger the Cleveland community and themselves. The employment of poor and dangerous tactics place officers in dangerous situations or create dangerous situations, where use of force becomes inevitable placing officers and civilians at unnecessary risk. The tactical errors may result in use of additional force and cause constitutional violations, such as firing weapons in a manner that place bystanders in danger, sometimes accidentally firing and hitting nothing, or shooting people and seriously injuring them. For example, officers respond to scenes unsupervised and group together with little or no cover. As a result of these improper tactics, officers place themselves in harms' way and increase the likelihood of needing to fire shots. The USDOJ found that Cleveland Police Department has no idea how often its officers point guns at civilians, and when officers point their guns with such frequency at community members those members can come to feel as though they are under siege. The questionable tactics utilized by the Cleveland Police Department as identified by the USDOJ parallel the same tactical errors made by the officers in the instant matter who drove the police cruiser at a relatively high rate of speed directly up to the

table where twelve year-old Tamir Rice was seated giving the officers little or no cover and placing citizens including Tamir Rice in danger and creating a dangerous situation.

35. Defendants actions and omissions actually and proximately caused the injuries and damages sustained by Plaintiffs DOUGLAS WINSTON, as Administrator of the Estate of TAMIR RICE, Deceased; SAMARIA RICE, Individually as the Natural Mother of TAMIR RICE; LEONARD WARNER, Individually as the Natural Father of TAMIR RICE; and, T.R., Individually, A Minor, by and through her Natural Mother and Legal Guardian Samaria Rice; and as such, Plaintiffs are entitled to damages pursuant to the laws of the State of Ohio and the United States Constitution § 1983.

### **COUNT I**

#### **NEGLIGENCE- CITY OF CLEVELAND**

36. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

37. This is an action brought against Defendant City of Cleveland based upon its own negligence, and for the negligence of Cleveland Police Department officers, including Defendant DOES 1 through 100, Unknown City of Cleveland 911 Operators and Other Employees under the doctrine of respondeat superior.

38. At all times material hereto, Cleveland Police Department officers were employees and/or agents of Defendant City of Cleveland, and acting within the course and scope of their employment with same, in furtherance of the interest of City of Cleveland, and with City of Cleveland's consent, including Defendant DOES 1 through 100. Defendant City of Cleveland by and through Chief of Police of City of Cleveland Police Department and Mayor of City of Cleveland, acted as final policy maker and final authority for City of Cleveland Police Department.

39. As such, Defendant City of Cleveland is liable for all of its employees and/or agents actions and omissions that gave rise to this action, including Defendant DOES 1 through 100.

40. Defendant City of Cleveland by and through its employees and agents, owed a duty to Plaintiffs, to act in a prudent and reasonable manner with regard to their health and safety. City of Cleveland Police Department and/or its officers, including Defendant DOES 1 through 100, breached the duty owed to Plaintiffs by the following actions and omissions:

- A) failing to properly dispatch 911 calls and communicate critical information, including the fact that Tamir Rice was likely a child with a toy gun,
- B) failing to properly train City of Cleveland Police Department officers, including but not limited to, how to use appropriate levels of force; how to properly assess levels of threat; how to properly issue verbal commands; how to properly identify oneself as an officer; and on how to respond to emergency medical needs of injured citizens and/or administration of first aide;
- C) failing to make an appropriate investigation of Defendant City of Cleveland Police Department officers prior to employing them and/or hired Defendant City of Cleveland Police Department officers and dispatchers in spite of known unsuitability for the duties to be performed, or for employment in general; and/or improperly retained said employees when Defendant City of Cleveland became aware of said employees' unsuitability for employment;
- D) failing to properly supervise City of Cleveland Police Department officers, as Defendant City of Cleveland was aware of problems with employees' use of excessive force, and as employer City of Cleveland failed to investigate said

behavior, and failed to discharge said officers for their misbehavior thereby ratifying such conduct, and the City of Cleveland Police Department's failure to take corrective action was unreasonable;

- E) failing to terminate Defendant City of Cleveland Police Department officers employment when they became aware of the officers' incompetence and/or unsuitability for employment in general; City of Cleveland was placed on notice of the officers' harmful propensity to use excessive force;
- F) failing to properly apprise themselves of the situation to which they were responding and failing to use the proper level of force, the manner in which the officers approached the scene of the incident, the fact that an officer fired shots before the car fully stopped, failed to issue any verbal commands, and instead opened fire on a 12 year-old boy;
- G) failing to conduct a fair and proper investigation, including statements made by the Chief of Police that the officer Timothy Loehmann issued verbal commands to Tamir Rice and stated, "put your hands in the air and drop your weapon." Upon review of the video recordings and audio recordings that captured said incident, the assertion that Defendant Timothy Loehmann issued sufficient verbal commands prior to firing shots at twelve-year old Tamir Rice is apparently untrue as he arrived on the scene and fired shots within 1-2 seconds of arrival, indicating that officers on the scene made false statements regarding what transpired during the incident and/or supervisors and/or the Chief of Police made false statements regarding the incident.
- H) and failing to summons immediate emergency medical care for Plaintiff Tamir Rice as he lay bleeding to death in the snow;

- I) failing to promulgate reasonable policies and procedures and/or promulgating unreasonable policies and procedures, and/or promulgating and/or ratifying unreasonable customs and practices, as it relates to: use of appropriate levels of force; how to properly assess levels of threat; how to properly issue verbal commands; how to properly identify oneself as an officer; how to respond to emergency medical needs of injured citizens including administration of first aide; and how to conduct a fair and impartial investigation.

41. Defendant City of Cleveland knew or should have known of the dangers posed by failing to properly dispatch 911 calls and communicate critical information, failing to train and supervise its officers, negligently hiring and retaining its officers, by the officers' improper issue of verbal commands and inappropriate evaluation of threat and use of force, and failure to respond appropriately to Plaintiff Tamir Rice's emergency medical needs; and by promulgating and/or ratifying unreasonable policies and procedures and/or policies and customs.

42. Defendant City of Cleveland, City of Cleveland Police Department officers, and, DOES 1 through 100's, actions and omissions were unreasonable, and actually and proximately caused the permanent and ongoing injuries and damages sustained by Plaintiffs.

43. Plaintiff Estate of Tamir Rice has permanent damages; namely, death as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Conscious pain and suffering;
- (b) Loss of earnings and net accumulations;
- (c) Compensatory Damages;
- (d) Punitive Damages;
- (e) Past medical bills and expenses;

- (f) Attorneys costs and fees;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

## **COUNT II**

### **NEGLIGENCE- TIMOTHY LOEHMANN**

44. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

45. This is an action brought against Defendant Timothy Loehmann based upon his own negligence.

46. Defendant Timothy Loehmann owed a duty to Plaintiff Tamir Rice to act in a prudent and reasonable manner with regard to his health and safety. Defendant Timothy Loehmann breached the duty owed to Plaintiff Tamir Rice by the following actions and omissions:

- A) failing to properly apprise himself of the scene and scenario upon arriving to the incident, failing to use appropriate levels of force; failure to properly assess levels of threat; failure to properly issue verbal commands; failure to properly identify oneself as an officer; for opening fire on twelve year-old Tamir Rice before the car even came to a full stop;
- B) failing to summons immediate emergency medical care for Plaintiff Tamir Rice as he lay bleeding to death in the snow, and failure to respond to emergency medical needs of Tamir Rice and/or administer resuscitative measures and/or administer first aide;

47. Defendant Timothy Loehmann knew or should have known of the dangers posed by his aforementioned unreasonable actions and inactions; his failure to behave in a reasonable and prudent manner breached the duty owed to Tamir Rice.

48. Defendant Timothy Loehmann's, actions and omissions were unreasonable, and actually and proximately caused the permanent and ongoing injuries and damages sustained by Plaintiff Tamir Rice.

49. Plaintiff Estate of Tamir Rice has permanent damages; namely, death as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Conscious pain and suffering;
- (b) Loss of earnings and net accumulations;
- (c) Compensatory Damages;
- (d) Punitive Damages;
- (e) Past medical bills and expenses;
- (f) Attorneys costs and fees;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

### **COUNT III**

#### **NEGLIGENCE- FRANK GARMBACK**

50. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

51. This is an action brought against Defendant Frank Garmback based upon his own negligence.



52. Defendant Frank Garmback owed a duty to Plaintiff Tamir Rice to act in a prudent and reasonable manner with regard to his health and safety. Defendant Frank Garmback breached the duty owed to Plaintiff Tamir Rice by the following actions and omissions:

- A) failing to properly apprise himself of the scene and scenario upon arriving to the incident, driving directly to the area in which Tamir Rice was seated without positioning the vehicle and officers in an area which provided cover to properly assess and handle the situation; failing to use appropriate levels of force; failure to properly assess levels of threat; failure to properly issue verbal commands; failure to properly identify oneself as an officer; failure to properly supervise Defendant Timothy Loemann including failure to intervene;
- B) failing to summons immediate emergency medical care for Plaintiff Tamir Rice as he lay bleeding to death in the snow, and failure to respond to emergency medical needs of Tamir Rice and/or administer resuscitative measures and/or administer first aide;

53. Defendant Frank Garmback knew or should have known of the dangers posed by his aforementioned unreasonable actions and inactions; his failure to behave in a reasonable and prudent manner breached the duty owed to Tamir Rice.

54. Defendant Frank Garmback's, actions and omissions were unreasonable, and actually and proximately caused the permanent and ongoing injuries and damages sustained by Plaintiff Tamir Rice.

55. Plaintiff Estate of Tamir Rice has permanent damages; namely, death as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Conscious pain and suffering;

- (b) Loss of earnings and net accumulations;
- (c) Compensatory Damages;
- (d) Punitive Damages;
- (e) Past medical bills and expenses;
- (f) Attorneys costs and fees;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

#### COUNT IV

#### **NEGLIGENCE- DOES 1-100, UNKNOWN CITY OF CLEVELAND 911 OPERATORS AND EMPLOYEES**

56. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

57. This is an action brought against Defendant DOES 1-100, Unknown City of Cleveland 911 Operators and Employees, based upon negligence.

58. Defendant DOES 1-100, Unknown City of Cleveland 911 Operators and Employees, owed a duty to Plaintiff Tamir Rice to act in a prudent and reasonable manner with regard to his health and safety. Defendant DOES 1-100, Unknown City of Cleveland 911 Operators and Employees, breached the duty owed to Plaintiff Tamir Rice by the following actions and omissions:

- A) failing to properly dispatch 911 calls and communicate critical information, including the fact that Tamir Rice was likely a child with a toy gun;
- B) failing to summons immediate emergency medical care for Plaintiff Tamir Rice as he lay bleeding to death in the snow, and failure to respond to emergency medical

needs of Tamir Rice and/or administer resuscitative measures and/or administer first aide.

59. Defendant DOES 1-100, Unknown City of Cleveland 911 Operators and Employees knew or should have known of the dangers posed by their aforementioned unreasonable actions and inactions; their failure to behave in a reasonable and prudent manner breached the duty owed to Tamir Rice.

60. Defendant DOES 1-100, Unknown City of Cleveland 911 Operators and Employees' actions and omissions were unreasonable, and actually and proximately caused the permanent and ongoing injuries and damages sustained by Plaintiff Tamir Rice.

61. Plaintiff Estate of Tamir Rice has permanent damages; namely, death as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Conscious pain and suffering;
- (b) Loss of earnings and net accumulations;
- (c) Compensatory Damages;
- (d) Punitive Damages;
- (e) Past medical bills and expenses;
- (f) Attorneys costs and fees;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT V**  
**INTENTIONAL TORT BATTERY- INDIVIDUAL OFFICER TIMOTHY LOEHMANN**  
**FOR BATTERY OF TAMIR RICE**

62. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

63. This is an action brought against Defendant City of Cleveland officer Defendant Timothy Loehmann in his individual capacity based upon the intentional tort of battery.

64. At all times material hereto, Cleveland Police Department officer Defendant Timothy Loehmann was an employee and/or agent of Defendant City of Cleveland, acting within the course and scope of his employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

65. Cleveland Police Department officer Defendant Timothy Loehmann acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, intending to cause harmful or offensive bodily contact, when he discharged his fire arm, and shot twelve year-old Tamir Rice in the stomach.

66. Defendant Cleveland Police Department officer Defendant Timothy Loehmann's actions actually and proximately caused the intentional, harmful and offensive touching of Plaintiff Tamir Rice's body without his consent, resulting in great bodily injury and permanent and ongoing damages; namely, said officer(s) discharged bullets that caused the death of twelve year-old Tamir Rice.

67. Plaintiff Estate of Tamir Rice has permanent damages; namely, death as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Conscious pain and suffering;
- (b) Loss of earnings and net accumulations;
- (c) Compensatory Damages;
- (d) Punitive Damages;
- (e) Past medical bills and expenses;

- (f) Attorneys costs and fees;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT VI**  
**INTENTIONAL TORT BATTERY- INDIVIDUAL OFFICER TIMOTHY LOEHMANN AND DOES 1-100, UNKNOWN CITY OF CLEVELAND EMPLOYEES FOR BATTERY OF T.R., A Minor**

68. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

69. This is an action brought against Defendant City of Cleveland officer Defendant Timothy Loehmann in his individual capacity and against Does 1-100, Unknown City of Cleveland Employees, based upon the intentional tort of battery.

70. At all times material hereto, Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees were employees and/or agents of Defendant City of Cleveland, acting within the course and scope of their employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

71. Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, intending to cause harmful or offensive bodily contact, when they tackled fourteen year-old girl T.R. to the ground, wrestled with her and placed her in handcuffs, while she was attempting to render aide to her twelve year-old brother who had been shot moments before and was bleeding to death on the ground.

72. Defendant Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees's actions actually and proximately caused the intentional, harmful and offensive touching of Plaintiff T.R.'s body without her consent, resulting in physical damages and permanent and ongoing psychological damages.

73. Plaintiff T.R., a minor, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Punitive damages;
- (d) Attorneys costs and fees;
- (e) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff T.R. demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT VII**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
TIMOTHY LOEHMANN AND DOES 1-100, UNKNOWN CITY OF CLEVELAND 911  
OPERATORS, FOR EMOTIONAL DISTRESS OF T.R., A Minor**

74. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

75. This is an action brought against Defendant City of Cleveland officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees in their individual capacities based upon the intentional infliction of emotional distress.

76. At all times material hereto, Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees were an employees and/or agents of Defendant City of Cleveland, acting within the course and scope of their

employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

77. Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, owed a duty to Plaintiff T.R., a minor, to act in a reasonable and prudent manner. Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, breached said duty by engaging in extreme, outrageous, and/or, reckless conduct, when he shot Tamir Rice, a twelve year-old with a toy gun in a Cleveland park, and then tackled his fourteen year-old sister T.R. to the ground when she arrived to the scene approximately one minute later. Said officers wrestled her to the ground and placed her in handcuffs. Defendant Timothy Loehmann Does 1-100, Unknown City of Cleveland Employees breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct when they placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay bleeding to death on the ground before her eyes. Fourteen year-old T.R. was in the back of the police cruiser, hand-cuffed, caged behind glass, to watch her little brother die. Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, knew or should have known that intentionally shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing her in a police cruiser feet away from her dying brother and in full view of his body, would cause severe physical and psychological damages.

78. Defendant Cleveland Police Department officer Defendant Timothy Loehmann's outrageous, extreme, and reckless actions and inactions, actually and proximately caused T.R. to witness a dangerous scene and exposed Plaintiff T.R. to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

79. Plaintiff T.R., a minor, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff T.R. demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT VIII**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
FRANK GARMBACK FOR EMOTIONAL DISTRESS OF T.R., A Minor**

80. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

81. This is an action brought against Defendant City of Cleveland officer Defendant Frank Garmback in his individual capacity based upon the intentional infliction of emotional distress.

82. At all times material hereto, Cleveland Police Department officer Defendant Frank Garmback was an employee and/or agent of Defendant City of Cleveland, acting within the course and scope of his employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

83. Cleveland Police Department officer Defendant Frank Garmback owed a duty to Plaintiff T.R., a minor, to act in a reasonable and prudent manner. Defendant Frank Garmback breached said duty by engaging in extreme, outrageous, and/or, reckless conduct, when he tackled fourteen year-old T.R. to the ground as she arrived to the scene approximately one minute after her fourteen year-old brother was shot by Officer Timothy Loehmann. Defendant Frank Garmback wrestled her to the ground and placed her in handcuffs, and/or for failing to



prevent officer Timothy Loehmann and/or John Does 1-100 from tackling T.R. to the ground and placing her in handcuffs. Defendant Frank Garmback breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct when he and/or other officers placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay dying on the ground before her eyes. Fourteen year-old T.R. was in the back of the police cruiser, hand-cuffed, caged behind glass, to watch her little brother die. Defendant Frank Garmback knew or should have known that intentionally shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing her in a police cruiser feet away from her dying brother and in full view of his body, would cause severe physical and psychological damages.

84. Defendant Cleveland Police Department officer Defendant Frank Garmback's outrageous, extreme, and reckless actions and inactions, actually and proximately caused T.R. to witness a dangerous scene and exposed Plaintiff T.R. to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

85. Plaintiff T.R., a minor, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff T.R. demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT IX**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
TIMOTHY LOEHMANN AND DOES 1-100, UNKNOWN CITY OF CLEVELAND 911  
EMPLOYEES, FOR EMOTIONAL DISTRESS OF SAMARIA RICE**

86. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

87. This is an action brought against Defendant City of Cleveland officer Defendant Timothy Loehmann in his individual capacity, and Does 1-100, Unknown City of Cleveland Employees, based upon the intentional infliction of emotional distress.

88. At all times material hereto, Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, were employees and/or agents of Defendant City of Cleveland, acting within the course and scope of their employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

89. Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees owed a duty to Plaintiff Samaria Rice, to act in a reasonable and prudent manner. Defendant Timothy Loehmann breached said duty by engaging in extreme, outrageous, and/or, reckless conduct, when he shot Tamir Rice, a twelve year-old with a toy gun in a Cleveland park, and then tackled his fourteen year-old sister T.R. to the ground when she arrived to the scene approximately one minute later, wrestling her to the ground and placing her in handcuffs. Defendant Timothy Loehmann breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct he placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay dying on the ground before her eyes. Fourteen year-old T.R. was in the back of the police cruiser, handcuffed, caged behind glass, to watch her little brother die. When Samaria Rice, mother of Tamir Rice and T.R. arrived on the scene she found her twelve year-old son shot by police officers and bleeding to death and her fourteen year-old daughter, T.R., handcuffed and in the back of a police cruiser in the custody of the officers that shot her son. On the scene, Defendant Timothy

Loehmann refused to release fourteen year-old T.R. despite Samaria Rice's pleas, and gave her the inhumane and unjust choice to accompany her twelve year-old dying son to the hospital or to stay with her fourteen year-old daughter, still alive, but handcuffed and in the custody of the same officers that shot her son. Defendant Timothy Loehmann knew or should have known that intentionally shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing her in a police cruiser feet away from her dying brother and in full view of his body, and refusing to release her to her mother, would cause severe physical and psychological damages to Samaria Rice.

90. Defendant Cleveland Police Department officer Defendant Timothy Loehmann's outrageous, extreme, and reckless actions and inactions, actually and proximately caused Samaria Rice to witness a dangerous scene and exposed Plaintiff Samaria Rice to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

91. Plaintiff Samaria Rice, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Samaria Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT X**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
FRANK GARMBACK FOR EMOTIONAL DISTRESS OF SAMARIA RICE**

92. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

93. This is an action brought against Defendant City of Cleveland officer Defendant Frank Garmback in his individual capacity based upon the intentional infliction of emotional distress.

94. At all times material hereto, Cleveland Police Department officer Defendant Frank Garmback was an employee and/or agent of Defendant City of Cleveland, acting within the course and scope of his employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

95. Cleveland Police Department officer Defendant Frank Garmback owed a duty to Plaintiff Samaria Rice, to act in a reasonable and prudent manner. Defendant Frank Garmback breached said duty by engaging in extreme, outrageous, and/or, reckless conduct, when officers tackled his fourteen year-old sister T.R. to the ground when she arrived to the scene approximately one minute later, wrestling her to the ground and placing her in handcuffs. Defendant Frank Garmback breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct he placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay dying on the ground before her eyes and/or failed to prevent Defendant Timothy Loehmann for doing so. Fourteen year-old T.R. was in the back of the police cruiser, hand-cuffed, caged behind glass, to watch her little brother die. When Samaria Rice, mother of Tamir Rice and T.R. arrived on the scene she found her twelve year-old son shot by police officers and bleeding to death and her fourteen year-old daughter, T.R., handcuffed and in the back of a police cruiser in the custody of the officers that shot her son. On the scene, Defendant Frank Garmback refused to release fourteen year-old T.R. despite Samaria Rice's pleas, and gave her the inhumane and unjust choice to accompany her twelve year-old

dying son to the hospital or to stay with her fourteen year-old daughter, still alive, but handcuffed and in the custody of the same officers that shot her son. Defendant Frank Garmback knew or should have known that shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing her in a police cruiser feet away from her dying brother and in full view of his body, and refusing to release her to her mother, would cause severe physical and psychological damages to Samaria Rice.

96. Defendant Cleveland Police Department officer Defendant Frank Garmback's outrageous, extreme, and reckless actions and inactions, actually and proximately caused Samaria Rice to witness a dangerous scene and exposed Plaintiff Samaria Rice to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

97. Plaintiff Samaria Rice, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Samaria Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XI**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
TIMOTHY LOEHMANN AND DOES 1-100, UNKNOWN CITY OF CLEVELAND  
EMPLOYEES, FOR EMOTIONAL DISTRESS OF T.R., A Minor**

98. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

99. This is an action brought against Defendant City of Cleveland officer Defendant Timothy Loehmann in his individual capacity and Does 1-100, Unknown City of Cleveland Employees, based upon the intentional infliction of emotional distress.

100. At all times material hereto, Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees were employees and/or agents of Defendant City of Cleveland, acting within the course and scope of their employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

101. Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, owed a duty to Plaintiff T.R., a minor, to act in a reasonable and prudent manner. Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, breached said duty by engaging in extreme, outrageous, and/or, reckless conduct. Defendant Timothy Loehmann shot Tamir Rice, a twelve year-old with a toy gun in a Cleveland park, and then tackled his fourteen year-old sister T.R. to the ground when she arrived to the scene approximately one minute later and placed her in handcuffs. Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct he placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay dying on the ground before her eyes. Fourteen year-old T.R. was in the back of the police cruiser, hand-cuffed, caged behind glass, to watch her little brother die. Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, knew or should have known that intentionally shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing

her in a police cruiser feet away from her dying brother and in full view of his body, would cause severe physical and psychological damages.

102. Defendant Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees' outrageous, extreme, and reckless actions and inactions, actually and proximately caused T.R. to witness a dangerous scene and exposed Plaintiff T.R. to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

103. Plaintiff T.R., a minor, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff T.R. demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XII**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
FRANK GARMBACK FOR EMOTIONAL DISTRESS OF T.R., A Minor**

104. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

105. This is an action brought against Defendant City of Cleveland officer Defendant Frank Garmback in his individual capacity based upon the intentional infliction of emotional distress.

106. At all times material hereto, Cleveland Police Department officer Defendant Frank Garmback was an employee and/or agent of Defendant City of Cleveland, acting within

the course and scope of his employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

107. Cleveland Police Department officer Defendant Frank Garmback owed a duty to Plaintiff T.R., a minor, to act in a reasonable and prudent manner. Defendant Frank Garmback breached said duty by engaging in extreme, outrageous, and/or, reckless conduct, when he tackled fourteen year-old T.R. to the ground as she arrived to the scene approximately one minute after her fourteen year-old brother was shot by Officer Timothy Loehmann, to see him bleeding to death on the ground and officers tackled her, wrestled her to the ground, and/or failed to prevent officer Timothy Loehmann and/or Does 1-100 from tackling T.R. to the ground and placing her in handcuffs. Defendant Frank Garmback breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct when officers placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay dying on the ground before her eyes. Fourteen year-old T.R. was in the back of the police cruiser, handcuffed, caged behind glass, to watch her little brother die. Defendant Frank Garmback knew or should have known that intentionally shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing her in a police cruiser feet away from her dying brother and in full view of his body, would cause severe physical and psychological damages.

108. Defendant Cleveland Police Department officer Defendant Frank Garmback's outrageous, extreme, and reckless actions and inactions, actually and proximately caused T.R. to witness a dangerous scene and exposed Plaintiff T.R. to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.



109. Plaintiff T.R., a minor, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff T.R. demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XIII**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
TIMOTHY LOEHMANN AND DOES 1-100, UNKNOWN CITY OF CLEVELAND  
EMPLOYEES, FOR EMOTIONAL DISTRESS OF SAMARIA RICE**

110. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

111. This is an action brought against Defendant City of Cleveland officer Defendant Timothy Loehmann, and Does 1-100, Unknown City of Cleveland Employees, in their individual capacities based upon the intentional infliction of emotional distress.

112. At all times material hereto, Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees were employees and/or agents of Defendant City of Cleveland, acting within the course and scope of their employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

113. Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, owed a duty to Plaintiff Samaria Rice, to act in a reasonable and prudent manner. Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, breached said duty by engaging in extreme, outrageous, and/or, reckless conduct. Defendant Timothy Loehmann shot Tamir Rice, a twelve year-old with a toy

gun in a Cleveland park, and then tackled his fourteen year-old sister T.R. to the ground when she arrived to the scene approximately one minute later and placed her in handcuffs. Defendant Timothy Loehmann, and Does 1-100, Unknown City of Cleveland Employees, breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct he placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay dying on the ground before her eyes. Fourteen year-old T.R. was in the back of the police cruiser, hand-cuffed, caged behind glass, to watch her little brother die. When Samaria Rice, mother of Tamir Rice and T.R. arrived on the scene she found her twelve year-old son shot by police officers and bleeding to death and her fourteen year-old daughter, T.R., handcuffed and in the back of a police cruiser in the custody of the officers that shot her son. On the scene, Defendant Timothy Loehmann , and Does 1-100, Unknown City of Cleveland Employees, refused to release fourteen year-old T.R. despite Samaria Rice's pleas, and gave her the inhumane and unjust choice to accompany her twelve year-old dying son to the hospital or to stay with her fourteen year-old daughter, still alive, but handcuffed and in the custody of the same officers that shot her son. Defendant Timothy Loehmann, and Does 1-100, Unknown City of Cleveland Employees, knew or should have known that intentionally shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing her in a police cruiser feet away from her dying brother and in full view of his body, and refusing to release her to her mother, would cause severe physical and psychological damages to Samaria Rice.

114. Defendant Cleveland Police Department officer Defendant Timothy Loehmann, and Does 1-100, Unknown City of Cleveland Employees' outrageous, extreme, and reckless actions and inactions, actually and proximately caused Samaria Rice to witness a dangerous

scene and exposed Plaintiff Samaria Rice to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

115. Plaintiff Samaria Rice has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate..

WHEREFORE, Plaintiff Samaria Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XIV**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS- INDIVIDUAL OFFICER  
FRANK GARMBACK FOR EMOTIONAL DISTRESS OF SAMARIA RICE**

116. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

117. This is an action brought against Defendant City of Cleveland officer Defendant Frank Garmback in his individual capacity based upon the intentional infliction of emotional distress.

118. At all times material hereto, Cleveland Police Department officer Defendant Frank Garmback was an employee and/or agent of Defendant City of Cleveland, acting within the course and scope of his employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

119. Cleveland Police Department officer Defendant Frank Garmback owed a duty to Plaintiff Samaria Rice, to act in a reasonable and prudent manner. Defendant Frank Garmback breached said duty by engaging in extreme, outrageous, and/or, reckless conduct, when officers

tackled his fourteen year-old sister T.R. to the ground when she arrived to the scene approximately one minute later, wrestling her to the ground and placing her in handcuffs. Defendant Frank Garmback breached said duty by engaging in further extreme, outrageous, and/or, reckless conduct he placed fourteen year-old T.R. in the back of the police cruiser only feet away from where her twelve year-old brother lay dying on the ground before her eyes and/or failed to prevent Defendant Timothy Loehmann and/or Does 1-100 from doing so. Fourteen year-old T.R. was in the back of the police cruiser, hand-cuffed, caged behind glass, to watch her little brother die. When Samaria Rice, mother of Tamir Rice and T.R. arrived on the scene she found her twelve year-old son shot by police officers and bleeding to death and her fourteen year-old daughter, T.R., handcuffed and in the back of a police cruiser in the custody of the officers that shot her son. On the scene, Defendant Frank Garmback refused to release fourteen year-old T.R. despite Samaria Rice's pleas, and gave her the inhumane and unjust choice to accompany her twelve year-old dying son to the hospital or to stay with her fourteen year-old daughter, still alive, but handcuffed and in the custody of the same officers that shot her son. Defendant Frank Garmback knew or should have known that shooting a twelve year-old in a park and leaving him to bleed to death on the ground and then tackling his fourteen year-old sister, handcuffing her, and placing her in a police cruiser feet away from her dying brother and in full view of his body, and refusing to release her to her mother, would cause severe physical and psychological damages to Samaria Rice.

120. Defendant Cleveland Police Department officer Defendant Frank Garmback's outrageous, extreme, and reckless actions and inactions, actually and proximately caused Samaria Rice to witness a dangerous scene and exposed Plaintiff Samaria Rice to real physical

peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

121. Plaintiff Samaria Rice has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Samaria Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XV**

**FALSE IMPRISONMENT- INDIVIDUAL OFFICER TIMOTHY LOEHMANN AND DOES 1-100, UNKNOWN CITY OF CLEVELAND EMPLOYEES, FOR FALSE IMPRISONMENT OF T.R., A Minor**

122. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

123. This is an action brought against Defendant City of Cleveland officer Defendant Timothy Loehmann, and Does 1-100, Unknown City of Cleveland Employees, in their individual capacities based upon the intentional tort of false imprisonment.

124. At all times material hereto, Cleveland Police Department officer Defendant Timothy Loehmann and Does 1-100, Unknown City of Cleveland Employees, were employees and/or agents of Defendant City of Cleveland, acting within the course and scope of their employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

125. Cleveland Police Department officer Defendant Timothy Loehmann and/or Does 1-100 restrained Plaintiff T.R. against her will in a bounded area, handcuffed her using physical

force to restrain her tackling her to the ground, and placed her within the physical barrier of the police vehicle, failed to release her, and was acting without justification and with not lawful authority to imprison and/or arrest, Plaintiff T.R., a minor.

126. Defendant Cleveland Police Department officer Defendant Timothy Loehmann and/or Does 1-100's actions actually and proximately caused the false imprisonment of Plaintiff T.R. without her consent and against her will, resulting in physical damages and permanent and ongoing psychological damages.

127. Plaintiff T.R., a minor, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff T.R. demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XVI**  
**FALSE IMPRISONMENT- INDIVIDUAL OFFICER FRANK GARMBACK FOR  
FALSE IMPRISONMENT OF T.R., A Minor**

128. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

129. This is an action brought against Defendant City of Cleveland officer Defendant Frank Garmback in his individual capacity based upon the intentional tort of false imprisonment.

130. At all times material hereto, Cleveland Police Department officer Defendant Frank Garmback was an employee and/or agent of Defendant City of Cleveland, acting within the course and scope of his employment with same, and in furtherance of the interest of Defendant City of Cleveland, and with Defendant City of Cleveland's consent.

131. Cleveland Police Department officer Defendant Frank Garmback restrained Plaintiff T.R. against her will in a bounded area, handcuffed her using physical force to restrain her tackling her to the ground, and placed her within the physical barrier of the police vehicle, failed to release her, and was acting without justification and with not lawful authority to imprison and/or arrest, Plaintiff T.R., a minor.

132. Defendant Cleveland Police Department officer Defendant Frank Garmback's actions actually and proximately caused the false imprisonment of Plaintiff T.R. without her consent and against her will, resulting in physical damages and permanent and ongoing psychological damages.

133. Plaintiff T.R., a minor, has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff T.R. demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XVII**  
**EXCESSIVE FORCE- OFFICER TIMOTHY LOEHMANN**  
**EXCESSIVE FORCE IN VIOLATION OF**  
**42 U.S.C. § 1983 AMENDMENTS IV AND XIV**

134. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

135. This is an action brought against Defendant City of Cleveland Police Department officer Defendant Timothy Loehmann in his individual capacity, pursuant to the United States Constitution Amendments IV and XIV, in violation of 42 U.S.C. § 1983 and § 1988.

136. At all times material hereto, Defendant Timothy Loehmann was an employee and/or agent of Defendant City of Cleveland, and acting within the course and scope of his employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

137. Defendant Timothy Loehmann used unnecessary and excessive force, on the person of Plaintiff Tamir Rice, depriving him of bodily integrity, life, liberty, and due process of law.

138. To wit, Defendant Cleveland Police Department officer Defendant Timothy Loehmann discharged his fire arm at Tamir Rice, a twelve year-old boy with a toy gun lawfully playing in a park, without issuing any verbal commands. Defendant Timothy Loehmann fired two shots striking Plaintiff Tamir Rice in the stomach, and ultimately killing him. The use of force exhibited by Defendant officer Timothy Loehmann against Plaintiff Tamir Rice was unreasonable and clearly excessive.

139. As a direct and proximate result of said Defendant Cleveland Police Department officer Timothy Loehmann's acts, omissions, and clear use of excessive force, Defendant deprived Plaintiff Tamir Rice of the right to life and due process of law guaranteed to him by the Fourth and Fourteenth Amendments of the United States Constitution, in particular, shooting Tamir Rice and causing his death.

140. Plaintiff Estate of Tamir Rice has ongoing and continuous permanent damages and injuries including death, and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for severe bodily injury, death;
- (b) Loss of earnings and net accumulations;



- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XVIII**  
**EXCESSIVE FORCE- OFFICER FRANK GARMBACK**  
**EXCESSIVE FORCE IN VIOLATION OF**  
**42 U.S.C. § 1983 AMENDMENTS IV AND XIV**

141. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

142. This is an action brought against Defendant City of Cleveland Police Department officer Defendant Frank Garmback in his individual capacity, pursuant to the United States Constitution Amendments IV and XIV, in violation of 42 U.S.C. § 1983 and § 1988.

143. At all times material hereto, Defendant Frank Garmback was an employee and/or agent of Defendant City of Cleveland, and acting within the course and scope of his employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

144. Defendant Frank Garmback used unnecessary and excessive force, on the person of Plaintiff Tamir Rice, depriving him of bodily integrity, life, liberty, and due process of law.

145. To wit, Defendant Cleveland Police Department officer Defendant Frank Garmback failed to intervene and/or to order Defendant Timothy Loehmann not to discharge his

fire arm at Tamir Rice, a twelve year-old boy with a toy gun lawfully playing in a park, without issuing any verbal commands. Defendant Timothy Loehmann fired two shots striking Plaintiff Tamir Rice in the stomach, and ultimately killing him. The use of force exhibited by Defendant officer Timothy Loehmann against Plaintiff Tamir Rice was unreasonable and clearly excessive.

146. As a direct and proximate result of said Defendant Cleveland Police Department officer Frank Garmback's acts, omissions, and clear use of excessive force, Defendant deprived Plaintiff Tamir Rice of the right to life and due process of law guaranteed to him by the Fourth and Fourteenth Amendments of the United States Constitution, in particular, shooting Tamir Rice and causing his death.

147. Plaintiff Estate of Tamir Rice has ongoing and continuous permanent damages and injuries including death, and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for severe bodily injury, death;
- (b) Loss of earnings and net accumulations;
- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering from the past date of injury through the future;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XIX**  
**CITY OF CLEVELAND'S CUSTOM/POLICY/PATTERN PRACTICE OF USE OF  
EXCESSIVE FORCE IN VIOLATION OF  
42 U.S.C. § 1983 AMENDMENTS IV AND XIV**

148. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

149. This is an action brought against Defendant City of Cleveland pursuant to the United States Constitution Amendments IV and XIV in violation of 42 U.S.C. § 1983 and § 1988.

150. Prior to November 2014, Defendant City of Cleveland developed and maintained policies or customs and/or patterns and practices exhibiting deliberate indifference to the constitutional rights of persons in the community, which caused the violation of Plaintiff Tamir Rice's constitutional rights.

151. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and/or practice of inadequately and improperly investigating citizen complaints of police misconduct and officers' use of excessive force and/or allowing the use of excessive force, failing to properly supervise Cleveland Police Department officers. Defendant City of Cleveland was aware of problems with employees' use of excessive force, and as employer City of Cleveland failed to investigate and/or reprimand said behavior, and failed to discharge said officers for their misconduct, thereby ratifying such conduct. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of failing to properly train Cleveland Police Department officers, including but not limited to, how to use appropriate levels of force; how to properly assess levels of threat; how to properly issue verbal commands; how to

properly identify oneself as an officer; and on how to respond to emergency medical needs of injured citizens. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of failing to conduct fair and impartial investigations into officer misconduct, use of excessive force, and police shootings. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of treating African Americans and citizens differently, including the use of excessive force.

152. The above said acts of misconduct were perpetuated, tolerated and not reprimanded by Defendant City of Cleveland. Thus, Defendant City of Cleveland inadequately discouraged constitutional violations perpetrated by its law enforcement officers and ratified and or perpetuated conduct and use of excessive force and other above-mentioned improper and unconstitutional conduct. As such, Plaintiff Tamir Rice's constitutional rights were violated pursuant to the United States Constitution Amendments IV and XIV, and he was ultimately deprived of his bodily integrity; namely, twelve year-old Tamir Rice was deprived of his life.

153. As a result of the above-mentioned policies and customs and/or pattern and practices, Defendant City of Cleveland officers believed that their inappropriate actions would not be subject to proper monitoring by supervisors, and that misconduct would not be subject to investigation nor sanction, but would instead be tolerated by Defendant City of Cleveland.

154. The above facts denote a deliberate indifference on the part of Defendant City of Cleveland policy makers and custom enforcers, to uphold the constitutional rights of citizens of the City of Cleveland, including visitor Plaintiff Tamir Rice, in particular his right to be free from excessive force, which actually and proximately caused violations of Tamir Rice constitutional rights guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution.

155. Plaintiff Tamir Rice has ongoing and continuous permanent damages and injuries and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for severe bodily injury, death;
- (b) Loss of earnings and net accumulations;
- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XX**  
**DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED**  
**OFFICER TIMOTHY LOEHMANN**  
**IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENT XIV**

156. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

157. This is an action brought against Defendant City of Cleveland Police Department officer Defendant Timothy Loehmann in his individual capacity, pursuant to the United States Constitution Amendment XIV, in violation of 42 U.S.C. § 1983 and § 1988.

158. At all times material hereto, Defendant Timothy Loehmann was an employee and/or agent of Defendant City of Cleveland, and acting within the course and scope of his employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

159. Defendant Timothy Loehmann exhibited deliberate indifference to the serious medical need of Plaintiff Tamir Rice, depriving him of bodily integrity, life, liberty, equal protection and due process of law.

160. To wit, Defendant Cleveland Police Department officer Defendant Timothy Loehmann failed to render any emergency medical care and/or first aide to twelve year-old Tamir Rice after he had been shot in the stomach and lay bleeding to death on the ground but still alive. Furthermore, Defendant Timothy Loehmann failed to immediately summons emergency medical care to the scene.

161. As a direct and proximate result of said Defendant Cleveland Police Department officer Timothy Loehmann's acts, omissions, and deliberate indifference to a serious medical need, Defendant deprived Plaintiff Tamir Rice of the right to life, equal protection, due process of law, and the right to receive medical care for a serious medical need guaranteed to him by Fourteenth Amendment of the United States Constitution.

162. Plaintiff Estate of Tamir Rice has ongoing and continuous permanent damages and injuries including death, and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for severe bodily injury, death;
- (b) Loss of earnings and net accumulations;
- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;

(g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XXI**  
**DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED**  
**OFFICER FRANK GARMBACK**  
**IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENT XIV**

163. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

164. This is an action brought against Defendant City of Cleveland Police Department officer Defendant Frank Garmback in his individual capacity, pursuant to the United States Constitution Amendment XIV, in violation of 42 U.S.C. § 1983 and § 1988.

165. At all times material hereto, Defendant Frank Garmback was an employee and/or agent of Defendant City of Cleveland, and acting within the course and scope of his employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

166. Defendant Frank Garmback exhibited deliberate indifference to the serious medical need of Plaintiff Tamir Rice, depriving him of bodily integrity, life, liberty, equal protection and due process of law.

167. To wit, Defendant Cleveland Police Department officer Defendant Frank Garmback failed to render any emergency medical care and/or first aide to twelve year-old Tamir Rice after he had been shot in the stomach and lay bleeding to death on the ground but still alive. Furthermore, Defendant Frank Garmback failed to immediately summons emergency medical care to the scene.

168. As a direct and proximate result of said Defendant Cleveland Police Department officer Frank Garmback's acts, omissions, and deliberate indifference to a serious medical need, Defendant deprived Plaintiff Tamir Rice of the right to life, equal protection, due process of law, and the right to receive medical care for a serious medical need guaranteed to him by Fourteenth Amendment of the United States Constitution.

169. Plaintiff Estate of Tamir Rice has ongoing and continuous permanent damages and injuries including death, and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for severe bodily injury, death;
- (b) Loss of earnings and net accumulations;
- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XXII**  
**DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED**  
**OFFICER DOES 1-100, CITY OF CLEVELAND EMPLOYEES**  
**IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENT XIV**

170. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.



171. This is an action brought against Defendant City of Cleveland Police Department officers Does 1-100 in their individual capacities, pursuant to the United States Constitution Amendment XIV, in violation of 42 U.S.C. § 1983 and § 1988.

172. At all times material hereto, Defendant Does 1-100 were an employees and/or agents of Defendant City of Cleveland, and acting within the course and scope of their employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

173. Defendant Does 1-100 exhibited deliberate indifference to the serious medical need of Plaintiff Tamir Rice, depriving him of bodily integrity, life, liberty, equal protection and due process of law.

174. To wit, Defendant Cleveland Police Department officers Does 1-100, failed to render any emergency medical care and/or first aide to twelve year-old Tamir Rice after he had been shot in the stomach and lay bleeding to death on the ground but still alive. Furthermore, Defendant Does 1-100 failed to immediately summons emergency medical care to the scene.

175. As a direct and proximate result of said Defendant Cleveland Police Department officer Does 1-100's acts, omissions, and deliberate indifference to a serious medical need, Defendants deprived Plaintiff Tamir Rice of the right to life, equal protection, due process of law, and the right to receive medical care for a serious medical need guaranteed to him by Fourteenth Amendment of the United States Constitution.

176. Plaintiff Estate of Tamir Rice has ongoing and continuous permanent damages and injuries including death, and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for severe bodily injury, death;

- (b) Loss of earnings and net accumulations;
- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XXIII**  
**CITY OF CLEVELAND'S CUSTOM/POLICY/PATTERN PRACTICE OF DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENT XIV**

177. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

178. This is an action brought against Defendant City of Cleveland, pursuant to the United States Constitution Amendment XIV in violation of 42 U.S.C. § 1983 and § 1988.

179. Prior to November 2014, Defendant City of Cleveland developed and maintained policies or customs and/or patterns and practices exhibiting deliberate indifference to the constitutional rights of persons in the community, which caused the violation of Plaintiff Tamir Rice's constitutional rights.

180. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and/or practice of deliberate indifference to serious medical needs of citizens including, inadequately and improperly investigating citizen complaints of police misconduct, failing to properly supervise Cleveland Police Department officers. Defendant City of Cleveland was

aware of problems with employees deliberate indifference to serious medical needs, and as employer City of Cleveland failed to investigate and/or reprimand said behavior, and failed to discharge said officers for their misconduct, thereby ratifying such conduct. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of failing to properly train Cleveland Police Department officers, including but not limited to, how to respond to emergency medical needs of injured citizens, how to properly render first aide, and how to immediately summons emergency medical care. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of failing to conduct fair and impartial investigations into officer misconduct, including officers' deliberate indifference to serious medical needs. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of treating African Americans and citizens differently, including deliberate indifference to serious medical needs.

181. The above said acts of misconduct were perpetuated, tolerated and not reprimanded by Defendant City of Cleveland. Thus, Defendant City of Cleveland inadequately discouraged constitutional violations perpetrated by its law enforcement officers and ratified and or perpetuated conduct including deliberate indifference to serious medical needs, and other above-mentioned improper and unconstitutional conduct. As such, Plaintiff Tamir Rice's constitutional rights were violated pursuant to the United States Constitution Amendment XIV, and he was ultimately deprived of his bodily integrity; namely, twelve year-old Tamir Rice was deprived of his life.

182. As a result of the above-mentioned polices and customs and/or pattern and practices, Defendant City of Cleveland officers believed that their inappropriate actions would

not be subject to proper monitoring by supervisors, and that misconduct would not be subject to investigation nor sanction, but would instead be tolerated by Defendant City of Cleveland.

183. The above facts denote a deliberate indifference on the part of Defendant City of Cleveland policy makers and custom enforcers, to uphold the constitutional rights of citizens of the City of Cleveland, including Plaintiff Tamir Rice, in particular his right to be free from deliberate indifference to a serious medical need, which actually and proximately caused violations of Mr. Perkin's constitutional rights guaranteed by the Fourteenth Amendments of the United States Constitution.

184. Plaintiff Tamir Rice has ongoing and continuous permanent damages and injuries and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for severe bodily injury, death;
- (b) Loss of earnings and net accumulations;
- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts.
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Estate of Tamir Rice demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XXIV**  
**SUBSTANTIVE DUE PROCESS VIOLATION**  
**OFFICER TIMOTHY LOEHMANN**  
**IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENT XIV**

**PLAINTIFFS SAMARIA RICE AND LEONARD WARNER**

185. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

186. This is an action brought against Defendant City of Cleveland Police Department officer Defendant Timothy Loehmann in his individual capacity, pursuant to the United States Constitution Amendments XIV, in violation of 42 U.S.C. § 1983 and § 1988.

187. At all times material hereto, Defendant Timothy Loehmann was an employee and/or agent of Defendant City of Cleveland, and acting within the course and scope of his employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

188. Plaintiffs Samaria Rice and Leonard Warner had a cognizable interest under the due process clause of the Fourteenth Amendment of the United States Constitution in being free from state actions that cause an unwarranted state interference with Plaintiffs Samaria Rice and Leonard Warner right to familial relationship with Decedent, Tamir Rice.

189. Defendant Timothy Loehmann deprived Plaintiffs Samaria Rice and Leonard Warner of her right to her familial relationship with her twelve year-old son Tamir Rice in an act that shocked the conscience when he gunned down the child at a park for playing with a toy gun, and acted with deliberate indifference to a serious medical need failing to immediate summons medical care and failed to even attempt to administer first aide or implement resuscitative measures. In so doing, Defendant Timothy Loehmann acted with deliberate indifference to the constitutional rights of decedent and Plaintiffs Samaria Rice and Leonard Warner, without any legitimate law enforcement objective.

190. As a direct and proximate result of said Defendant Cleveland Police Department officer Timothy Loehmann's acts, omissions, and deliberate indifference to Plaintiffs Samaria

Rice and Leonard Warner's constitutional right to their familial relationship with their twelve year-old son, Plaintiff Samaria Rice has been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of Decedent, and will continue to be so deprived for the remainder of her natural life. Plaintiffs Samaria Rice and Leonard Warner loved decedent, their natural son, and Plaintiffs have suffered extreme and severe mental anguish and pain and has been injured in mind and body. In particular, Plaintiff Samaria Rice arrived on the scene to find her son bleeding to death and stayed with him while he suffered for several hours in the hospital before ultimately succumbing to his injuries.

191. Plaintiffs Samaria Rice and Leonard Warner have ongoing and continuous permanent damages and injuries, and as such is entitled to recovery, including but not limited to the following:

- (a) Loss of love, companionship, affection, care, and society;
- (b) Loss of future support;
- (c) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Compensatory damages, including medical treatment for psychological damages;
- (g) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (h) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiffs Samaria Rice and Leonard Warner demand damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XXV**  
**SUBSTANTIVE DUE PROCESS VIOLATION**  
**OFFICER FRANK GARMBACK**  
**IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENT XIV**  
**PLAINTIFFS SAMARIA RICE AND LEONARD WARNER**

192. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

192. This is an action brought against Defendant City of Cleveland Police Department officer Defendant Frank Garmback in his individual capacity, pursuant to the United States Constitution Amendments XIV, in violation of 42 U.S.C. § 1983 and § 1988.

193. At all times material hereto, Defendant Timothy Frank Garmback was an employee and/or agent of Defendant City of Cleveland, and acting within the course and scope of his employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

194. Plaintiffs Samaria Rice and Leonard Warner had a cognizable interest under the due process clause of the Fourteenth Amendment of the United States Constitution in being free from state actions that cause an unwarranted state interference with Plaintiffs Samaria Rice and Leonard Warner's right to familial relationship with decedent Tamir Rice.

195. Defendant Frank Garmback deprived Plaintiffs Samaria Rice and Leonard Warner of their right to her familial relationship with her twelve year-old son Tamir Rice in an act that shocked the conscience when failed to intervene when Defendant Timothy Loehmann gunned down twelve year-old Tamir Rice at a park for playing with a toy gun, and acted with deliberate indifference to a serious medical need failing to immediate summons medical care and failed to even attempt to administer first aide or implement resuscitative measures. In so doing, Defendant Frank Garmback acted with deliberate indifference to the constitutional rights of

decendent and Plaintiffs Samaria Rice and Leonard Warner, without any legitimate law enforcement objective.

196. As a direct and proximate result of said Defendant Cleveland Police Department officer Frank Garmback's acts, omissions, and deliberate indifference to Plaintiff Samaria Rice and Leonard Warner's constitutional right to their familial relationship with their twelve year-old son, Plaintiffs have been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of Decedent, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs Samaria Rice and Leonard Warner loved decedent, their natural son, and Plaintiffs have suffered extreme and severe mental anguish and pain and have been injured in mind and body. In particular, Plaintiff Samaria Rice arrived on the scene to find her son bleeding to death and stayed with him while he suffered for several hours in the hospital before ultimately succumbing to his injuries.

197. Plaintiffs Samaria Rice and Leonard Warner have ongoing and continuous permanent damages and injuries, and as such is entitled to recovery, including but not limited to the following:

- (a) Loss of love, companionship, affection, care, and society;
- (b) Loss of future support;
- (c) Mental pain, suffering, and emotional distress from the date of injury through the future;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts.
- (g) Any and all other and further relief as this Court may deem appropriate.



WHEREFORE, Plaintiffs Samaria Rice and Leonard Warner demand damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XXVI**  
**SUBSTANTIVE DUE PROCESS VIOLATION**  
**OFFICERS DOES 1-100, CITY OF CLEVELAND EMPLOYEES**  
**IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENT XIV**  
**PLAINTIFFS SAMARIA RICE AND LEONARD WARNER**

198. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

199. This is an action brought against Defendant City of Cleveland Police Department officers Does 1-100 in their individual capacities, pursuant to the United States Constitution Amendment XIV, in violation of 42 U.S.C. § 1983 and § 1988.

200. At all times material hereto, Defendant Does 1-100 were employees and/or agents of Defendant City of Cleveland, and acting within the course and scope of their employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cleveland.

201. Plaintiffs Samaria Rice and Leonard Warner had a cognizable interest under the due process clause of the Fourteenth Amendment of the United States Constitution in being free from state actions that cause an unwarranted state interference with Plaintiffs Samaria Rice and Leonard Warner right to familial relationship with Decedent, Tamir Rice.

202. Defendants Does 1-100 deprived Plaintiffs Samaria Rice and Leonard Warner of their right to her familial relationship with their twelve year-old son Tamir Rice in an act that shocked the conscience when he gunned down the child at a park for playing with a toy gun, and

acted with deliberate indifference to a serious medical need failing to immediately summon medical care and failed to even attempt to administer first aid or implement resuscitative measures. In so doing, Defendant Does 1-100 acted with deliberate indifference to the constitutional rights of decedent and Plaintiffs Samaria Rice and Leonard Warner, without any legitimate law enforcement objective.

203. As a direct and proximate result of said Defendant Cleveland Police Department officer Does 1-100's acts, omissions, and deliberate indifference to Plaintiffs Samaria Rice and Leonard Warner's constitutional right to their familial relationship with their twelve year-old son, Plaintiffs Samaria Rice and Leonard Warner have been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of decedent, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs Samaria Rice and Leonard Warner loved decedent, their natural son, and Plaintiffs have suffered extreme and severe mental anguish and pain and has been injured in mind and body. In particular, Plaintiff Samaria Rice arrived on the scene to find her son bleeding to death and stayed with him while he suffered for several hours in the hospital before ultimately succumbing to his injuries.

204. Plaintiffs Samaria Rice and Leonard Warner have ongoing and continuous permanent damages and injuries, and as such is entitled to recovery, including but not limited to the following:

- (a) Loss of love, companionship, affection, care, and society;
- (b) Loss of future support;
- (c) Conscious pain and suffering;
- (e) Punitive damages;

- (f) Compensatory damages, including medical treatment for psychological damages;
- (g) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (h) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiffs Samaria Rice and Leonard Warner demand damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**COUNT XXVII**  
**CITY OF CLEVELAND'S CUSTOM/POLICY/PATTERN PRACTICE OF**  
**SUBSTANTIVE DUE PROCESS VIOLATIONS**  
**42 U.S.C. § 1983 AMENDMENT XIII**  
**PLAINTIFFS SAMARIA RICE AND LEONARD WARNER**

205. Plaintiffs hereby incorporate paragraphs 1-35 as though fully set forth herein.

206. This is an action brought against Defendant City of Cleveland pursuant to the United States Constitution Amendment XIV in violation of 42 U.S.C. § 1983 and § 1988.

207. Prior to November 2014, Defendant City of Cleveland developed and maintained policies or customs and/or patterns and practices exhibiting deliberate indifference to the constitutional rights of persons in the community, which caused the violation of Plaintiffs Samaria Rice and Leonard Warner's constitutional rights under the due process clause of the Fourteenth Amendment of the United States Constitution, to be free from state actions that cause an unwarranted state interference with Plaintiffs Samaria Rice and Leonard Warner's right to familial relationship with Decedent, Tamir Rice.

201. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and/or practice of excessive force against citizens and deliberate indifference to serious medical

needs of citizens including, inadequately and improperly investigating citizen complaints of police misconduct, failing to properly hire, train, and supervise Cleveland Police Department officers. Defendant City of Cleveland was aware of problems with employees' deliberate indifference to serious medical needs and uses of excessive force, and as employer City of Cleveland failed to investigate and/or reprimand said behavior, and failed to discharge said officers for their misconduct, thereby ratifying such conduct. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of failing to properly train Cleveland Police Department officers, including but not limited to, how to properly respond to situations, how to evaluate threat and appropriate uses of force, how to respond to emergency medical needs of injured citizens, how to properly render first aid, and how to immediately summons emergency medical care. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of failing to conduct fair and impartial investigations into officer misconduct, including officers' use of force and deliberate indifference to serious medical needs. Defendant City of Cleveland maintained a policy and/or custom and/or pattern and practice of treating African Americans and citizens differently, including excessive use of force deliberate indifference to serious medical needs.

202. The above said acts of misconduct were perpetuated, tolerated and not reprimanded by Defendant City of Cleveland. Thus, Defendant City of Cleveland inadequately discouraged constitutional violations perpetrated by its law enforcement officers and ratified and or perpetuated conduct including the use of excessive force and deliberate indifference to serious medical needs, and other above-mentioned improper and unconstitutional conduct. The above facts denote a deliberate indifference on the part of Defendant City of Cleveland policy makers and custom enforcers, to uphold the constitutional rights of citizens of the City of Cleveland,

including Plaintiffs Samaria Rice and Leonard Warner. Defendant City of Cleveland's aforementioned actions and inactions directly and proximately denied Plaintiffs substantive due process and caused the violation of Plaintiffs Samaria Rice and Leonard Warner's right to a familial relationship with their minor son Tamir Rice. As such, Plaintiffs' constitutional rights were violated pursuant to the United States Constitution Amendment XIV.

203. As a result of the above-mentioned policies and customs and/or pattern and practices, Defendant City of Cleveland officers believed that their inappropriate actions would not be subject to proper monitoring by supervisors, and that misconduct would not be subject to investigation nor sanction, but would instead be tolerated by Defendant City of Cleveland.

204. As a direct and proximate result of said Defendant City of Cleveland's acts, omissions, and deliberate indifference to Plaintiffs Samaria Rice and Leonard Warner's constitutional right to their familial relationship with their twelve year-old son, Plaintiffs Samaria Rice and Leonard Warner have been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of decedent, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs Samaria Rice and Leonard Warner loved decedent, their natural son, and Plaintiffs have suffered extreme and severe mental anguish and pain and has been injured in mind and body. In particular, Plaintiff Samaria Rice arrived on the scene to find her son bleeding to death and stayed with him while he suffered for several hours in the hospital before ultimately succumbing to his injuries.

205. Plaintiffs Samaria Rice and Leonard Warner have ongoing and continuous permanent damages and injuries, and as such is entitled to recovery, including but not limited to the following:

- (a) Loss of love, companionship, affection, care, and society;

- (b) Loss of future support;
- (c) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Compensatory damages, including medical treatment for psychological damages;
- (g) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (h) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiffs Samaria Rice and Leonard Warner demand damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs DOUGLAS WINSTON, as Administrator of the Estate of TAMIR RICE, Deceased; SAMARIA RICE, Individually as the Natural Mother of TAMIR RICE; LEONARD WARNER, Individually as the Natural Father of TAMIR RICE; and, T.R., Individually, A Minor, by and through her Natural Mother and Legal Guardian Samaria Rice, respectfully requests that this Court award damages pursuant to Ohio statutes and the United States Constitution, and any and all other and further relief as this Court may deem appropriate.

**TRIAL BY JURY**

WHEREFORE, Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated this 30<sup>th</sup> day of January 2015.

Respectfully submitted,

/s/ Walter T Madison

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*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of January, 2015, a copy of the foregoing Amended Complaint was filed electronically. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully,

/s/ Walter T Madison

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**Walter Madison**  
**Attorney at Law**