

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

ROWENA SIMMONS
Individually, and on behalf of the
Estate of Darius Gore
3412 Carlisle Avenue
Baltimore, Maryland 21216

and

GARY TYSON
3406 Carlisle Avenue
Baltimore, Maryland 21216

Plaintiffs

RAYMOND B. HINTON
(Use Plaintiff)
2410 Pennsylvania Avenue
Baltimore, Maryland 21217

v.

BALTIMORE CITY POLICE DEPARTMENT
601 E. Fayette St.
Baltimore, Maryland 21202

Serve on: Michael Harrison
Police Commissioner
Baltimore City Police Department
601 E. Fayette St.
Baltimore, Maryland 21202

Lisa Walden, Esq.
Chief of the Office of Legal Affairs
Baltimore City Police Department
100 N. Holliday St., Suite 101
Baltimore, Maryland 21202

and

OFFICER FELIX TORRES
Individually and in his official capacity
as a Baltimore City Police Officer

Case No. _____

Baltimore City Police Department
601 E. Fayette Street
Baltimore, Maryland 21202

and

OFFICER JOHNTA GRAY
Individually and in his official capacity
as a Baltimore City Police Officer

Baltimore City Police Department
601 E. Fayette Street
Baltimore, Maryland 21202

and

OFFICER ZACHARY A. FRANKS
Individually and in his official capacity
as a Baltimore City Police Officer

Baltimore City Police Department
601 E. Fayette Street
Baltimore, Maryland 21202

Defendants

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Rowena Simmons, individually and on behalf of the Estate of Darius Gore, and Gary Tyson (collectively, “Plaintiffs”), by and through undersigned counsel, hereby sue Defendants Baltimore City Police Department, Officer Felix Torres, Officer Johnta Gray, and Officer Zachary Franks (collectively, “Defendants”), and state as follows:

INTRODUCTION

For years, Defendant Baltimore City Police Department (“BCPD”) has allowed dangerous, high-risk, high-speed pursuits in Baltimore City. It has allowed these pursuits, even though it has defended multiple lawsuits in which innocent bystanders have died following a crash. Mandatory reporting to the Governor and Legislature over the last few years prove that too many innocent victims die because of these pursuits, yet Defendant BCPD has not changed its policy. Instead of

making the policy that governs pursuits more restrictive, the BCPD gives officers broad discretion as to when they can pursue. And even then, the BCPD does not properly supervise its officers during these pursuits.

As a result, on March 21, 2020, Baltimore City Police Officers pursued a car for over 11 miles through the City. The pursuit lasted for over 6 minutes and went by three schools, a hospital, through narrow City streets, and by dozens of City intersections. The pursuit, which took place on a Saturday evening at dusk, took BCPD Officers from the southwestern side of the City all the way to the northwestern side of the City at speeds that, at times, exceeded the posted speed limit by 20 to 30 miles per hour.

The high-speed, high-risk pursuit ended when the car that the Officers were chasing hit Darius Gore's car, killing him, and seriously injuring his passenger, Gary Tyson. Mr. Gore's death and Mr. Tyson's injuries were a direct result of Defendant's express policy of permitting officers to engage in high-risk, high-speed pursuits, a pattern and practice of failing to supervise these pursuits, and failing to terminate them when the risks to innocent bystanders far outweighed the objective.

JURISDICTION AND VENUE

1. This Complaint contains claims arising under the Fourteenth Amendment to the United States Constitution and asserts claims for relief pursuant 42 U.S.C. §1983, the Maryland Constitution, and claims under Maryland State law. It also seeks award of attorneys' fees under 42 U.S.C. § 1988(b).

2. Jurisdiction of this Court arises under 28 U.S.C. § 1343 and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the District of Maryland pursuant to 28 U.S.C. § 1391(b) because the events, acts, and omissions complained of herein all occurred within this District.

4. Plaintiffs provided notice to Baltimore City of the claims herein on June 30, 2020, thereby complying with the Local Government Tort Claims Act.

PARTIES

5. Darius Gore, the decedent (“Gore” or “Decedent Gore”) was a 29-year-old man who was killed after being struck by a vehicle. Plaintiff the Estate of Darius Gore (“Estate”) is represented in this action by Rowenna Simmons, the Personal Representative for the Estate.

6. Rowenna Simmons (“Simmons” or “Plaintiff Simmons”) also brings this action individually on her own behalf, as the mother of Darius Gore. She is an adult who resides in Maryland.

7. Gary Tyson (“Tyson” or “Plaintiff Tyson”) is a 54-year-old man who suffered significant injuries after being struck by a vehicle; he was a passenger in the vehicle that Decedent Gore was driving at the time of the incident. He resides in Maryland.

8. Plaintiffs, the Estate, Ms. Simmons, and Mr. Tyson are collectively referred to herein as Plaintiffs.

9. Raymond B. Hinton (“Hinton” or “Use Plaintiff”) is the biological father of decedent Darius Gore, and he may be entitled by law to claim damages as a result of Decedent Gore’s death as a Use Plaintiff. Undersigned counsel does not represent Hinton. Plaintiffs conducted a good faith and reasonably diligent effort to identify, locate, and name Use Plaintiffs and all individuals who may qualify as Use Plaintiffs.

10. Defendant Baltimore City Police Department (“BCPD”) is a government agency of the State of Maryland, but BCPD officers perform functions typical of a local and municipal, not

state, government police department. The BCPD, through its agents, servants, and employees, hired, supervised, and trained each identified officer named in this Complaint. By virtue of its status as a governmental entity that exercised the power delegated by the State of Maryland, the BCPD acted under the color of state law when it hired, supervised, and retained each officer named in this Complaint. The BCPD is a “person” under 42 U.S.C. §1983 and is not immune under the Eleventh Amendment.

11. Defendant Felix Torres (“Defendant Torres” or “Torres”), at all times relevant to this Complaint, is/was a Baltimore City police officer. As a police officer, he acted as an agent, servant, and/or employee of the BCPD and acted within the scope of his employment and under color of state law. Defendant Torres was also the operator of a police cruiser that pursued the operator of a vehicle that ran a red light and ultimately struck Decedent Gore’s vehicle. Defendant Torres is sued in his individual and official capacities.

12. Defendant Johnta Gray (“Defendant Gray” or “Gray”), at all times relevant to this Complaint, is/was a Baltimore City police officer. As a police officer, he acted as an agent, servant, and/or employee of the BCPD and acted within the scope of his employment and under color of state law. Defendant Gray was also the operator of a police cruiser that pursued the operator of a vehicle that ran a red light and ultimately struck Decedent Gore’s vehicle. Defendant Gray is sued in his individual and official capacities.

13. Defendant Zachary Franks (“Defendant Franks” or “Franks”), at all times relevant to this Complaint, is/was a Baltimore City police officer. As a police officer, he acted as an agent, servant, and/or employee of the BCPD and acted within the scope of his employment and under color of state law. Defendant Franks was also the operator of a police cruiser that chased the

operator of a vehicle that ran a red light and ultimately struck Decedent Gore's vehicle. Defendant Franks is sued in his individual and official capacities.

STATEMENT OF FACTS

A.

The BCPD's History of Innocent Civilian Deaths as a Result of Pursuits

14. In the 80s and 90s, one could turn on the television and watch episodes of "Cops" or "World's Wildest Police Videos," and see video footage of high-speed pursuits by police officers, usually ending in horrendous crashes.¹ As of 2005, some of the policies governing pursuits across the nation had not been updated since the 1970's, which did not serve the 21st century's increased traffic congestion, resulting in an alarming increase in innocent bystanders' deaths.² Accordingly, many police departments were coming to terms with the reality that the killings and severe injuries that resulted from these pursuits were not worth it. This reckoning has led to many police departments modifying their pursuit policies, making them more restrictive than before in an attempt to curb the deaths and injuries that occurred as a result of police pursuits.³

15. In 2017, the U.S. Department of Justice conducted a study ("DOJ Study") that confirmed what most families of the victims already knew: that police pursuits resulted in the death of innocent operators of unrelated vehicles or bystanders at a rate that was too high. The DOJ Study concluded that from 1996 to 2015 an average of 355 people were killed annually in pursuit-

¹ Cpl. Justin Thompson, *Police Pursuits: Are No-Pursuit Polices the Answer?*, 7 Criminal Justice Institute, Session XXVI (Oct. 21, 2005), https://www.cji.edu/site/assets/files/1921/police_pursuits.pdf; see also Mac Demere, *Why High-Speed Police Chases Are Going Away*, Popular Mechanics (May 30, 2013), <https://www.popularmechanics.com/cars/a9096/why-high-speed-police-chases-are-going-away-15532838/>.

² Cpl. Justin Thompson, *supra* note 1, at 7.

³ *Id.*

related crashes (about 1 per day).⁴ During this time, about two thirds of pursuit-related fatalities involved occupants of a vehicle being pursued and about one third of those killed were occupants of a vehicle not involved in the pursuit or were bystanders.⁵

16. The DOJ Study also found that police departments that leave the decision to pursue to the discretion of the officer have the highest pursuit rate (17 pursuits out of 100 officers employed), whereas agencies that discourage or prohibit pursuits have the lowest pursuit rate (2 pursuits per 100 officers).⁶

17. Like much of the rest of the nation, the BCPD had a police pursuit policy, then-called General Order 11-90, which was implemented in 1990 and valid until at least 2012. General Order 11-90 specifically prohibited officers from engaging in high-speed pursuits unless there were “exigent circumstances.” “Exigent circumstances” were limited to circumstances where 1) the officer determined that immediate action was necessary; 2) insufficient time existed to resort to other alternatives; and 3) failure to pursue resulted in grave injury or death. Further, according to the BCPD policy, an officer engaged in a pursuit could not exceed the speed limit if doing so would endanger the life or property of others. If conditions allowed for an officer to exceed the speed limit, that officer was not to exceed 10 miles an hour over the posted limit.

18. General Order 11-90 also explicitly noted that the City is a “highly congested urban area which necessitates driving motor vehicles in a safe manner.” It, therefore, required officers to use their emergency lights and sirens, and they had to come to a complete stop at intersections before proceeding.

⁴ See Brian A. Reaves, Ph.D., *Police Vehicle Pursuits 2012-2013*, 6 (U.S. Dept. of Justice Special Report (May 2017), <https://www.bjs.gov/content/pub/pdf/pvp1213.pdf>).

⁵ *Id.*

⁶ *Id.*

19. Although General Order 11-90 provided strict guidelines regarding high-speed pursuits, sworn testimony from a former Baltimore City Police Officer, Timothy E. Beall, who was sued for killing a motorcyclist during a high-speed pursuit, indicated that there was little training provided for when to engage in vehicular pursuits. He testified that the training he received with the BCPD as it related to high-speed pursuits was as follows: “Basically that you don’t engage in a high-speed chase. There was no particular training when it came to vehicle pursuits to my knowledge.” When pressed, he clarified that the training for emergency vehicle operations consisted of driving at “high speeds” on a closed course at a training facility in Sykesville. The training consisted of “driv[ing] around through driving courses, wet road conditions, things like that.” He also testified that they would chase a vehicle through a grid that had “street signs and stop signs” but he could not remember the speeds reached or how many days the emergency vehicle training lasted.

20. Officer Beall also testified that what was written in General Order 11-90 and what BCPD officers did in reality was “somewhat different.” He testified that regardless of what General Order 11-90 required, supervisors routinely instructed officers to pursue vehicles and continue the pursuit even if such circumstances violated the General Order. That same officer testified that even though General Order 11-90 expressly prohibited officers from exceeding the posted speed limit by more than 10 miles per hour during a pursuit, he would exceed by as much as 20 or 25 miles per hour if he personally felt the pursuit was justified.

21. Sometime after 2012, General Order 11-90 was abandoned and replaced with Policy 1503, the “Emergency Vehicle Operation and Pursuit Policy.” Policy 1503 provides broad discretion to police officers and has none of the express prohibitions that the previous General Order contained.

22. Policy 1503 dictates that officers “shall use sound judgement and discretion” when pursuing vehicles, thereby allowing officers to use their own discretion when deciding to pursue.

23. Officers are permitted to use their discretion to pursue when:

The vehicle contains a felony suspect and failure to immediately apprehend poses an immediate threat of death or serious bodily injury to the [officer] or others; and

Before the pursuit is initiated, there exists probable cause to believe [that] the fleeing suspect committed a felony which resulted, or could have resulted, in death or serious bodily injury.

(Policy 1503)

24. The officer then must consider factors that weigh in favor of or against the pursuit, which include the safety of the public, the officer’s familiarity with the area, the quality of radio communications, whether the identity of the suspect is verified, other individuals involved in the pursuit (such as passengers in the fleeing vehicle), the availability of other resources, and the likelihood of apprehension at a later time.

25. Policy 1503 also requires that officers use “de-escalation” techniques to reduce the level of threat and to gain compliance. Policy 1107, the policy governing de-escalation techniques, requires officers to reduce threats, gain voluntary compliance, and secure the safety of others. These techniques include, *inter alia*, communicating in a calm tone and using calming gestures and expressions when in contact with a suspect, avoiding unnecessary display of weapons force, and avoiding physical confrontation.

26. According to Policy 1503, there are certain limited factors that prohibit an officer from initiating a pursuit, including where the person fleeing is only suspected of a crime against property. Another is when the risk of the pursuit outweighs the need to stop the eluding driver. The risk factors that the officer should consider include traffic conditions, weather and road, the

underlying reason for the pursuit, the speed of the fleeing car, and location density, among others. Shockingly, Policy 1503 does not limit the speeds that the pursuit may reach, and there is no requirement that officers stop at intersections.

27. Policy 1503 requires that pursuits be supervised by a supervisor, and a supervisor has the authority to terminate a pursuit upon command. The primary unit (first car pursuing) is responsible for providing updates about the location, the speed, and the direction of travel of the eluding vehicle; the reason for the pursuit; the weather, traffic, and road conditions, and other information so that a supervisor can determine whether the pursuit needs to be terminated.

28. Furthermore, when a pursuit begins, a helicopter must be summoned to establish visual contact with the fleeing vehicle. The helicopter crew, according to Policy 1503, must report on the progress of the pursuit, road hazards and conditions, and other pertinent information to assist in evaluating whether the pursuit should continue. The helicopter crew also has the authority to recommend terminating a pursuit.

29. Thus, Policy 1503 provides broad discretion to Defendant BCPD officers to pursue, including whether to establish a pursuit and how fast their vehicle will pursue the fleeing vehicle.

30. Policy 1503 gives more discretion to police officers and does not contain the express prohibitions contained in General Order 11-90, contrary to the national (and necessary) trend of implementing stricter policies for pursuits. Additionally, the factors outlined in Policy 1503 regarding whether a pursuit should be terminated are merely considerations that provide no definitive rules regarding whether a pursuit is permitted.

31. Defendant BCPD has been sued multiple times for injuries and deaths arising from police pursuits that ended up killing innocent bystanders, putting it on actual notice of a pattern and practice of officers' use of excessive force in the context of vehicular pursuits, substantive due

process rights violations, and/or other Constitutional violations and/or violating the BCPD's pursuit policies. The following cases are some of the cases that have been filed against the Department within the last 10 years alleging substantive due process rights violations, and/or other Constitutional violations, and/or violation of BCPD's pursuit general order or policies resulting in death. This list is not an exhaustive list, as it does not include matters where only serious injuries occurred.

- a. *Holloway-Johnson v. Beall, et al.*
Case No.: 24-C-11002394, Cir. Ct. for Balt. City
Holloway, a motorcyclist, was killed when he was struck by a police vehicle during a pursuit; the pursuit began in the City and ended in Baltimore County. Judgment in favor of Plaintiff 2012.
- b. *Yolanda Williams, et al. v. Mayor and City Council for Baltimore City*
Case No.: 24-C-15-0000935, Cir. Ct. for Balt. City
Jordasha Rollins was a passenger in a vehicle that was struck by a car that was being pursued by police. Settlement in 2015.
- c. *Ntambo Ciwengo, et al. v. Estate of Terrell Young, et al.*
Case No.: 24-C-15005795, Cir. Ct. for Balt. City
City officers pursued Young for miles, leading him to crash into an SUV at about 100 mph, killing him, a passenger, and another woman in the SUV. Settlement in 2017.
- d. *Shirley Johnson, et al. v. Umar Burley, et al.*
Case No.: 24-C-13002083, Cir. Ct. Balt. City &
Shirley Johnson, et al. v. Baltimore Police Department, et al.
Case No.: SAG-18-2375, D. Md.
Three police officers, some of whom were members of the now defunct Gun Trace Task Force, in unmarked cars chased a vehicle that crashed into Elbert Davis' car. He died hours later from his injuries. Settlement in 2019 (federal court) and 2020 (state court).

32. In addition to the above lawsuits, as of 2015, all local law enforcement agencies are required to provide annual comprehensive reports to the Governor that identify and analyze deaths that occurred as a result of actions or omissions of a police officer, including from pursuits.⁷ Between 2015 and 2019, at least thirty Marylanders have been killed by police pursuits, including seven innocent bystanders. Of the thirty deaths, five of them were a direct a result of pursuits by the Baltimore City Police Department. In 2015 BCPD investigated a high-speed chase by a Baltimore County Police Officer that resulted in a crash within City limits, killing an 18-month-old baby who was in a stroller waiting at a bus stop with his mother and sister.⁸

33. Notably, these annual reports do not include data as to how many innocent bystanders or drivers are seriously injured, as opposed to killed, as a result of police pursuits.

34. Despite these deaths that are a direct result of police pursuits, Defendant BCPD does not have a policy limiting pursuits only to where exigent circumstances exist, nor has it taken steps to ensure that officers are complying with the instructions of Policy 1503.

35. In *Smallwood, et al. v. Off. Joseph Kamberger, et al.*, Cir. Ct. for Balt. City, Case No.: 24-C-17-00532, the action where an 18-month-old baby was killed, Officer Joseph Kamberger, testified under oath that when an officer pursues an eluder, it induces the eluder to drive faster and continue to attempt to flee. The use of force expert hired by the plaintiffs in this case testified similarly: that where an officer breaks off pursuit of an eluder, it encourages the

⁷ See Maryland Statistical Analysis Center, Governor's Office of Crime Control & Prevention, *Reports to the State of Maryland under HB 954 (2015-2019) available at* <http://goccp.maryland.gov/reports-publications/law-enforcement-reports/deaths-involving-law-enforcement/>

⁸ See *Smallwood, et al. v. Off. Joseph Kamberger, et al.*, Cir. Ct. for Balt. City, Case No.: 24-C-17-005327.

eluder, who now believes that he is no longer being chased, to slow down and stop at intersections for cross traffic.

36. Because of the causal link between the officer's conduct as it concerns vehicle pursuits and risks taken by an eluder, at least one city has taken affirmative actions to limit an officer's discretion to initiate a pursuit in order to decrease risks to innocent bystanders. For example, the city of Atlanta explicitly outlawed pursuits in 2020 after several incidents where innocent drivers were killed.⁹ That no-pursuit policy changed only recently, and can be circumvented where an officer has "direct knowledge" that a fleeing suspect has committed or attempted to commit a "forcible felony" **and** that suspect's escape poses an imminent danger to the community.¹⁰ A forcible felony is defined as murder, vehicular homicide, armed robbery, carjacking, aggravated assault, kidnapping, escape, and voluntary and involuntary manslaughter. Pursuits for property offenses, misdemeanors, traffic offenses, or other civil infractions are expressly prohibited. An officer must have direct knowledge of a forcible felony and **imminent** danger to the community for the pursuit to be justified.

37. Defendant BCPD, on the other hand, has implemented an express policy that permits officers to use force that far exceeds what is reasonable, necessary, and proportional to a given threat. Evidenced by a pattern and practice of flagrant violations of the directives of Policy 1503, Defendant BCPD has also failed to train and supervise its officers during these pursuits, thereby manifesting a conscience-shocking deliberate indifference and reckless disregard for the

⁹ Alexis Stevens, *Atlanta Police Chief Halts All Vehicle Chases*, The Atlanta Journal-Constitution (Jan. 4, 2020) <https://www.ajc.com/news/crime--law/breaking-atlanta-police-chief-halts-all-vehicle-chases/Oa9YietoId748P8VdQrh7I/>

¹⁰ Asia Simone-Burns, *Atlanta Police Alter 'No-Chase' Policy*, The Atlanta Journal-Constitution (Jan. 4, 2021) <https://www.ajc.com/news/breaking-atlanta-police-alter-no-chase-policy/ZMGZG5DKCVDSZMTFYUMOGEHAT4/>

rights of citizens. The repeated failure of BCPD officers to comply with Defendant BCPD's Policy 1503 has become so pervasive and widespread that it constitutes a custom or usage with the force of law. As a result, the incident described below was a natural and foreseeable event, and one that was a direct result of the Defendants' actions or omissions.

B.

The Incident

38. On the evening of March 21, 2020, a Saturday, around 7:45 p.m., three Baltimore City Police Officers, Defendants Torres, Gray, and Franks were notified by the Baltimore County Police Department that a GPS device located on a stolen 2014 Ford Fusion indicated that the vehicle was in 2600 block of W. Patapsco, which is located in the Southwestern section of Baltimore City, just to the west of the Cherry Hill neighborhood. The officers were informed of the vehicle's description, license plate number, and that it was not the subject of a carjacking, the owner having left keys inside.

39. The information provided to officers indicated that the Ford Fusion was stopped and had not moved for some time.

40. The police helicopter was summoned to assist in locating the Ford Fusion.

41. Upon Defendant Torres' arrival to 2650 W. Patapsco, he observed a police helicopter flying overhead. He also observed a person in the driver's seat of the 2014 Ford Fusion. That person was Delissa Ann Dello-Stritto ("Dello-Stritto"). The 2014 Ford Fusion was parked, so Torres parked his vehicle behind it, and the other two officers, Gray and Franks, tried to block the other two sides of the vehicle with their police cruisers to prevent it from moving. Despite the officers' efforts, Dello-Stritto backed up, struck Gray's vehicle, and fled westbound on Patapsco Avenue with the helicopter overhead.

42. There is no evidence that any of the officers attempted to or used any de-escalation techniques, either before or during the minutes-long pursuit.

43. All three individual Defendant Officers pursued the 2014 Ford Fusion on a circuitous 11-mile route through Baltimore City.

44. The pursuit lasted for over 6 minutes, and, at times, exceeded 90 miles an hour and went through areas where civilians were located, placing them at high risk. It passed three schools and one hospital along the way. Dello-Stritto made U-turns and blew through at least three stop signs on busy streets. It also went through over 50 intersections and down narrow residential streets.

45. It was also a Saturday evening at dusk, meaning visibility was lower, increasing the risk to other motorists and pedestrians.

46. During the entire pursuit, the helicopter was overhead following the Ford Fusion and communicating with officers regarding its location. At no time did the helicopter crew advise as to the traffic congestion, road hazards, or any other pertinent information that would assist in evaluating termination of the pursuit. At no time did the helicopter crew ever advise as to the excessive speed of the pursuit. At no time did the helicopter crew ever advise that Dello-Stritto had blown through at least three stop signs. And at no time did the helicopter crew ever recommend that the pursuit be terminated.

47. At no time did a supervisor ever recommend that the pursuit be terminated.

48. During this entire pursuit, the GPS device was providing the location of the vehicle. Therefore, even if the officers on the ground had not pursued, the location of the vehicle would have been known to them. Also, as stated above, the helicopter was overhead the entire time, which

means that the eluder's location was known to officers of the BCPD at all times, thus obviating the need for the pursuit.

49. The BCPD created the threat to the citizens when they engaged in the pursuit and continued to pursue, with conscience shocking deliberate indifference and reckless disregard for the rights of innocent citizens.

50. At the intersection of Liberty Heights and Callaway Avenue, the Ford Fusion ran a red light and t-boned Decedent Gore's car on the passenger side, causing it to spin several times and then hit another car that was in the intersection.

51. At least one eyewitness stated that there were at least five other police officers pursuing the Ford Fusion at the time of the collision.

52. Plaintiff Tyson, who was in the passenger side, broke his left tibia and two left ribs; he sustained bruises to his right lung and pooling of blood in the area between the chest wall and the lungs on his right side. He was taken to the hospital for his injuries, which required extensive treatment and subsequent physical therapy.

53. When first responders arrived on the scene, Gore was unresponsive, bleeding from the right ear. He had unequal pupils, with a Glasgow Coma Scale of 3, a score that indicates a devastating brain injury. He also had bruises on the right side of his head; there was a cut on the right jaw and right hand; and there were scratches on the right arm, right ankle, and left knee.¹¹

54. At the hospital he was diagnosed with a fracture of one of the vertebrae in his neck and an acute brain bleed. Later, the blood flow to the brain was obstructed, and he underwent emergency surgery where parts of his skull were removed. Despite the surgery, the lack of blood flow continued and swelling increased, putting pressure on his brain. He remained in a coma,

¹¹ Decedent Gore's dog was in the car as well, and its right leg was broken.

gaining consciousness sporadically. After some minimal improvement however, his condition declined, eventually leading to cardiac arrest. He was pronounced dead on April 17, 2020.

55. Because of the hospital restrictions due to COVID-19, his mother and family were unable to visit him in the hospital, so Decedent Gore died alone, and his mother was unable to say goodbye.

56. As a direct and proximate result of Defendants' actions or omissions, Decedent Gore was killed, and Plaintiff Tyson sustain significant injuries.

57. As a direct and proximate result of Defendants' actions or omissions, Plaintiffs Gore and Tyson had conscious pain and suffering. Decedent Gore's surviving mother has suffered, and will continue to suffer, from mental anguish, emotional pain and suffering, loss of society, loss of comfort, loss of protection, loss of filial care, loss of attention, and loss of services. His surviving mother will also incur medical and legal expenses and other damages.

CLAIMS

COUNT I

42 U.S.C. §1983—Due Process Violations

(Plaintiffs against Defendants Torres, Franks, and Gray)

58. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

59. This Count is brought by Plaintiffs against all Defendants identified herein, jointly and severally.

60. At all relevant times herein, Defendants Torres, Franks, and Gray were state actors and "persons" within the meaning of 42 U.S.C. § 1983 and their conduct was and is subject to 42 U.S.C. § 1983. At all relevant times, they were acting within the scope of the employment.

61. Defendants' conduct deprived Plaintiffs of their constitutional right to life, liberty, and property, and deprived Decedent Gore's mother of the love and affection of her son.

62. Absent Defendants' misconduct, Decedent Gore and Plaintiff Tyson would not have suffered the severe physical and emotional pain and suffering, and Decedent Gore would not have died. Plaintiff Simmons would not have suffered the loss of her son.

63. The conduct of Defendants was without legal justification and was improperly motivated by ill will and actual malice. Defendants, with ample time to deliberate, recklessly and intentionally engaged in a high-speed, high-risk pursuit with the intent to harm, thus causing a vehicle to hit Decedent Gore's vehicle, killing him and severely injuring Plaintiff Tyson.

64. The force used by Defendants was intentional, excessive, unconstitutional, unlawful, objectively unreasonable and absent any lawful justification or excuse.

65. The Defendants' conduct lacked any legal rationale. They knew they were placing the lives of innocent drivers and/or bystanders in danger when they engaged a driver in a high-speed, high-risk pursuit with an emergency vehicle, causing the operator of the Ford Fusion to drive dangerously and recklessly, ultimately leading to Decedent Gore's death and Plaintiff Tyson's injuries.

66. Defendant BCPD is vicariously liable to Plaintiffs for Defendants' violations of Plaintiffs' substantive due process rights under the Fourteenth Amendment to the U.S. Constitution.

67. Defendants' wrongful conduct was conscience shocking and was deliberately indifferent to Decedent Gore and Plaintiff Tyson's due process rights, depriving them of their life, liberty, and property.

68. As a result of these intentional acts, Decedent Gore and Plaintiff Tyson sustained severe physical injuries, including death. Plaintiffs sustained emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses.

69. Defendants' actions and/or omissions as described herein, were intentional, wanton, willful, malicious, manifested blatant and reckless disregard for Plaintiffs' constitutionally protected rights, and, as such, Plaintiffs are entitled to compensatory and punitive damages from Defendants.

70. As a direct and proximate result of Defendants' actions and/or omissions identified herein, Plaintiffs sustained physical, emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses, and in Decedent Gore's case, death. Plaintiffs' life, liberty, and property were deprived without due process of law and in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor, and against the Defendants, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, and any other such relief that this Court deems proper.

COUNT II

**42 U.S.C. §1983
Unconstitutional Express Policy
(*Monell Claim*)**

(Plaintiffs against Defendant BCPD)

71. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

72. At all relevant times herein, Defendant BCPD was a state actor and a “person” within the meaning of 42 U.S.C. § 1983 and its conduct was and is subject to 42 U.S.C. § 1983.

73. At all relevant times herein, Plaintiffs had rights under the Fourteenth Amendments not to be deprived of their constitutional right to life, liberty, and property without due process of law.

74. Defendant, while acting under color of law deprived Plaintiffs of their clearly established and well-settled rights under the Fourteenth Amendment of the U.S. Constitution.

75. Under the Fourteenth Amendments to the United States Constitution, Defendant BCPD is prohibited from creating and implementing policies that allow, enable, and facilitate its officers to engage in a pattern, practice, policy, or custom of violating citizens’ constitutional rights.

76. Defendant BCPD, by express policies, created a policy that was the moving force behind the constitutional violations. Policy 1503 authorizes officers to use force that far exceeds what is reasonable, necessary, and proportional to respond to the threat, and through its implementation and promulgation, consistently and over time, BCPD officers have violated citizens’ due process rights to life, liberty, and property.

77. Policy 1503 does not provide maximum limits on how fast the pursuit can go (especially in a densely populated urban area), it does not provide guidance for the weight to be given to the various factors, and it does not limit pursuits to exigent circumstances or those involving violent felonies that will cause imminent harm to the public.

78. To the contrary, the written policy provides the officers with broad discretion over when to pursue, and although it states that there are factors to be “considered,” there are no defined rules, such as allowable speeds in excess of the posted speed limit.

79. What is worse, BCPD officers, as agents of Defendant BCPD, often fail to follow the fundamental requirements of the Policy, which required, *inter alia*, that officers value and uphold the sanctity of human life over the objectives of the pursuit. Officers routinely violated the requirements of the Policy, as they did here, by pursuing when it was not necessary, and did not provide continual updates regarding location, speed, and roadway conditions as required so that a determination can be made as to whether the pursuit should be terminated. Nor did they engage in any de-escalation techniques to prevent this pursuit from occurring.

80. These violations were of such a duration and frequency that they have continued without any recourse, for years.

81. Separate and apart from the express policy that permitted the excessive and unnecessary use of force and violated citizens' substantive due process rights, Officers of Defendant BCPD engaged in a widespread and persistent pattern of unconstitutional conduct such that supervising BCPD officers either knew or should have known that a persistent and widespread pattern of unlawful police pursuits were occurring, often with an injurious or deadly outcome.

82. Defendant BCPD, and the supervising officers, through their conscience, shocking deliberate indifference and reckless disregard for the safety of citizens, failed to correct and otherwise hold officers of the BCPD accountable for their abuse of their police powers and their unconstitutional conduct. The duration and frequency of the practices became customary among Defendant BCPD's employees such that it became a custom or usage with the force of law.

83. By establishing, executing, implementing, enforcing, directing, supervising and/or controlling policies, customs, practices, usages, and procedures to be used by police officials and officers of the BCPD, as set forth *supra*, Defendant BCPD, and all other individual Defendants,

while acting under color of law, jointly and severally, engaged in a pattern and practice of unconstitutional conduct.

84. Plaintiffs' rights were violated, thus causing Plaintiffs to be deprived of their clearly established and well-settled rights under the Fourteenth Amendments not to be deprived of their life, liberty, and property.

85. Defendant BCPD is liable to Plaintiffs for its violations of Plaintiffs' substantive due process rights under the Fourteenth Amendment to the U.S. Constitution and for its express policy and the pattern and practice of engaging in dangerous high-speed, high-risk pursuits that resulted in violation of Plaintiffs' constitutional rights.

86. Defendant engaged in a pattern, practice, policy, or custom of expressly allowing, enabling, and facilitating BCPD Officers to deprive citizens of their clearly established right to life, liberty, and property when subduing and/or apprehending individuals, including those who were fleeing the police.

87. As a direct and proximate result of Defendants' actions and/or omissions identified herein, Plaintiffs sustained physical, emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses, and in Decedent Gore's case, death. Plaintiffs' life, liberty, and property were deprived without the judgment of their peers or by the law of the land.

88. Defendant BCPD and all other officers identified herein subjected Plaintiffs to the deprivation of these rights, by maliciously and with conscience shocking deliberate indifference as to whether Plaintiffs' rights would be violated by their actions, and such actions were the moving force in having such rights violated and incurring injuries, including death.

89. Defendants' actions or omissions as described herein, were intentional, wanton, willful, malicious, manifested conscience shocking deliberate indifference and reckless disregard for Plaintiffs' constitutionally protected rights, and as such, Plaintiffs are entitled to compensatory and punitive damages from Defendants, jointly and severally.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor, and against Defendants, jointly and severally, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, punitive damages, and any other such relief that this Court deems proper.

COUNT III

42 U.S.C. §1983

**Unconstitutional Custom, Pattern and/or Practice of
Failure to Train and Supervise
(*Monell Claim*)**

(Plaintiffs against Defendant BCPD)

90. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

91. At all relevant times herein, Defendant BCPD was a state actor and a "person" within the meaning of 42 U.S.C. § 1983 and its conduct was and is subject to 42 U.S.C. § 1983.

92. Under the Fourteenth Amendment to the United States Constitution, Defendant BCPD is prohibited from allowing, enabling, and facilitating Defendant BCPD's officers to engage in a pattern, practice, policy, or custom of violating citizens' constitutional rights and is obligated to train in the misuse of police powers and supervise officers for violating constitutional rights, as well as recognizing patterns of systemic perpetuation of same.

93. At all relevant times, Defendant BCPD, directly and through its officers and agents had an obligation to ensure that its officers, employees, and agents, exercised the same degree of care that a reasonable and prudent person would exercise in the same or similar situation with

respect to the training, supervision, and oversight of all employees, agents, and officers under its direction and control.

94. As identified *supra*, the training, supervision, and oversight required by Defendant regarding incidents of misuse of police powers and constitutional rights violations committed by Defendant BCPD's Officers was inadequate, insufficient, and/or nonexistent, and Defendant BCPD, directly and through its employees, agents, and officers, failed to exercise the above requisite degree of care in the supervision of all employees, agents, and officers under its direction and control.

95. As identified *supra*, testimony from at least one former BCPD Officer indicated that BCPD officers were provided little to no training in vehicular, emergency pursuits. Also, as identified *supra*, testimony from that same officer reveals that supervisors routinely instruct officers to pursue regardless of what the BCPD policies required.

96. Defendant BCPD, directly through its agents, supervised the individual Defendants prior to and during the events at issue. The ranking officers and supervisors had actual or constructive knowledge of the pervasive and persistent pattern and practice that its officers were engaged in conduct that violated clearly established rights, and that this conduct posed an unreasonable risk of constitutional injury to Plaintiffs.

97. Defendant BCPD had actual or constructive knowledge that the individual Defendants and other members of the BCPD were engaged in widespread misconduct over a period of years that posed an unreasonable risk of constitutional injury to Plaintiffs and other citizens of Baltimore. The individual Defendants' conduct, in addition to conduct of other BCPD officers, was so persistent and pervasive that it represented a custom or usage with the force of law.

98. In spite of this knowledge, Defendant BCPD took no action to prevent or remedy the misconduct by Defendants Torres, Franks, and Gray. Defendant BCPD was deliberately indifferent to the persistent constitutional violations by its officers, including Officers Torres, Gray, and Franks.

99. Moreover, before and during this pursuit, as it has failed to do many times before, Defendant BCDP failed to properly train and supervise the individual Defendants, and other BCPD officers, and it failed to prohibit its officers from engaging in the violation of its own departmental policies.

100. As alleged herein, Defendant engaged in a pattern, practice, policy, and/or custom of indifference to incidents of Defendant BCPD's officers' violation of citizens' constitutional rights in connection with subduing and/or apprehending individuals and in so doing, failed to properly supervise Defendant officers and employees in the proper handling of police pursuits.

101. It was readily foreseeable and highly predictable that failing to properly supervise Defendant BCPD's officers in the proper handling of police pursuits would, and in fact did, result in the violation of Plaintiffs' constitutional rights as alleged herein and Defendant BCPD was indifferent to same.

102. As alleged herein, the actions by all named Defendants shocked the conscience and were deliberately indifferent, conduct which was a direct result of Defendant BCPD's failure to adequately train, re-train, supervise, oversee, and discipline its employees to deal with pursuits, including termination of pursuits that violated BCPD Policies. Defendant BCPD's failure to properly train, re-train, oversee, supervise, and discipline its employees was tantamount to conscience shocking deliberate indifference to the rights of citizens.

103. As alleged herein, Defendant BCPD has engaged in a pattern, practice, policy, or custom of allowing Defendant BCPD's officers to violate citizens' substantive due process rights when apprehending and subduing suspects during police pursuits.

104. As a direct and proximate result of Defendant's actions or omissions identified herein, Plaintiffs sustained physical, emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses, and in Decedent's Gore's case, death. Plaintiffs' life, liberty, and property were deprived without the judgment of their peers or by the law of the land.

105. Defendant BCPD and all other officers identified herein subjected Plaintiffs to the deprivation of these rights, by maliciously and with conscience shocking deliberate indifference as to whether Plaintiffs' rights would be violated by their actions, and such actions were the moving force in having such rights violated and incurring injuries, including death.

106. Defendants' actions or omissions as described herein, were intentional, wanton, willful, malicious, manifested conscience shocking deliberate indifference and reckless disregard for Plaintiffs' constitutionally protected rights, and as such Plaintiffs are entitled to compensatory and punitive damages from Defendants jointly and severally.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor, and against Defendants, jointly and severally, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, punitive damages, and any other such relief that this Court deems proper.

COUNT IV

Maryland Declaration of Rights Article 24: Deprivation of Life, Liberty, and Property

(Plaintiffs against Defendants Torres, Franks, and Gray)

107. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

108. This Count is brought by Plaintiffs against all Defendants identified herein, jointly and severally.

109. The individual Defendants identified herein are sued in their individual capacities.

110. At all times relevant to this Complaint, Defendants Torres, Franks, and Gray were acting under the color of state law as officers employed by Defendant BCPD.

111. Defendants Torres, Franks, and Gray, BCPD Officers, violated Decedent Gore and Plaintiff Tyson's civil rights and due process as set forth in the Maryland State Constitution and the Declaration of Rights, including Article 24.

112. Defendants Torres, Franks, and Gray acted as Defendant BCPD's agents, servants, and/or employees when they engaged in intentional acts of misconduct which violated Decedent Gore's civil rights and due process such that Decedent Gore died as result of the physical injuries.

113. Defendants Torres, Franks, and Gray acted as Defendant BCPD's agents, servants, and/or employees when they engaged in intentional acts of misconduct which violated Plaintiff Tyson's civil rights and due process such that Plaintiff Tyson suffered significant physical injuries.

114. As a direct result of Defendants' actions or omissions, Decedent Gore and Plaintiff Tyson were deprived of their life, liberty, and property without the judgment of their peers or by the law of the land.

115. The conduct of Defendants was without legal justification and was improperly motivated by ill will and actual malice. Defendants intended harm when they, with ample time to deliberate, recklessly and intentionally engaged in a high-speed, high-risk pursuit, thus causing a vehicle to hit Decedent Gore's vehicle, thereby killing him and severely injuring Plaintiff Tyson.

116. The force used by Defendants when pursuing and apprehending the Ford Fusion was unconstitutional, intentional, excessive, objectively unreasonable, conscience shocking, and absent any lawful justification or excuse.

117. The Defendants' conduct lacked any legal rationale. They knew they were placing the lives of innocent drivers and/or bystanders in danger when they engaged a driver in a high-risk, high-speed chase, caused the operator of the Ford Fusion to drive dangerously, they recklessly operated an emergency vehicle, and caused a vehicle to hit Decedent Gore, thereby killing him and severely injuring Plaintiff Tyson.

118. Defendant BCPD is vicariously liable to Plaintiffs for Defendants' violations of Plaintiffs' rights under Article 24 of the Maryland Declaration of Rights.

119. Defendants' actions or omissions as described herein, were intentional, wanton, willful, malicious, manifested blatant and reckless disregard for Plaintiffs' constitutionally protected rights, and as such Plaintiffs are entitled to compensatory and punitive damages from Defendants, jointly and severally.

120. As a direct and proximate result of Defendants' actions or omissions identified herein, Plaintiffs sustained physical, emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses, and in Decedent Gore's case, death. Plaintiffs' life, liberty, and property were deprived without the judgment of their peers or by the law of the land.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor, and against the Defendants, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, and any other such relief that this Court deems proper.

COUNT V

Negligence

(Plaintiffs against Defendants Torres, Franks, and Gray)

121. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

122. This Count is brought by Plaintiffs against Defendants Torres, Franks, and Gray identified herein, jointly and severally.

123. At all relevant times to this Complaint, Defendants Torres, Franks, and Gray were acting under the color of state law as officers employed by Defendant BCPD.

124. Defendants had a duty to operate their vehicles in a safe and lawful manner, so as not to cause harm to other drivers and/or bystanders. Defendants owed Plaintiffs a duty to not misuse their vehicles and to exercise due care when encountering citizens such as Plaintiffs to avoid causing physical or mental injury.

125. However, Defendants breached their duty by engaging in intentional acts of misconduct that led to the death of Decedent Gore and to significant injuries to Plaintiff Tyson.

126. Defendants breached their duty when they engaged in a high-speed, high-risk pursuit, which caused the driver of the Ford Fusion to drive dangerously and recklessly, and caused the driver to hit Decedent Gore's car, thereby killing him and injuring Plaintiff Tyson.

127. As a result of these acts, Decedent Gore sustained severe physical injuries, including death. As a result of these acts, Plaintiff Tyson sustained severe physical injuries as well.

128. Defendants' acts directly and proximately caused the fatal injuries sustained by Decedent Gore and non-fatal injuries sustained by Plaintiff Tyson. Plaintiffs' injuries were caused solely by the negligence of the Defendants without any wrongdoing on their part.

129. As a result of these acts, Plaintiffs sustained emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses, and in Decedent Gore's case, death.

130. All of Plaintiffs' injuries were caused solely by the negligence of Defendants without any contributory negligence by Plaintiffs.

WHEREFORE, Plaintiffs requests that this Court enter judgment in their favor, and against Defendants, jointly and severally, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, punitive damages, and any other such relief that this Court deems proper.

COUNT VI

Gross Negligence

(Plaintiffs against Defendant Torres, Franks, and Gray)

131. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

132. This Count is brought by Plaintiffs against Defendants Torres, Franks, and Gray, jointly and severally.

133. At all times relevant to this Complaint, Defendants were acting under the color of state law as officers employed by Defendant BCPD.

134. Defendants had a duty to not misuse their vehicles and to operate their vehicles in a safe and lawful manner, so as not to cause harm to other drivers and/or bystanders. However, Defendants breached their duty by engaging in intentional, willful, and wanton misconduct with a reckless disregard for human life that did, in fact, lead to the death of Decedent Gore.

135. Defendants engaged in intentional, willful, and wanton misconduct and with a reckless disregard for human life or the rights of Plaintiffs. Defendants acted with utter and deliberate indifference to Plaintiffs' rights and wellbeing.

136. Defendants, with an utter and deliberate indifference for human life, engaged a driver in a high-speed, high-risk pursuit and caused a vehicle to hit Decedent Gore, thereby killing him, and causing severe injury to Plaintiff Tyson.

137. Defendants' gross negligence proximately caused the injuries that Plaintiffs sustained. All of Plaintiffs' injuries were caused solely by the negligence of Defendants without any contributory negligence by Plaintiffs.

138. Defendants' conduct was without legal justification and was improperly motivated by ill will and actual malice. Defendants intended to harm Plaintiffs when they engaged in a pursuit that dangerously exceeded the speed limits, went through multiple intersections, and traversed through a densely populated city for 11 miles for over 6 minutes.

139. As a result of these acts, Plaintiffs sustained emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses, and in Decedent Gore's case, death.

WHEREFORE, Plaintiffs requests that this Court enter judgment in their favor, and against Defendants, jointly and severally, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, punitive damages, and any other such relief that this Court deems proper.

COUNT VII

Battery

(Plaintiffs against Defendants Torres, Franks, and Gray)

140. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

141. This Count is brought by Plaintiffs against all Defendants identified herein, jointly and severally.

142. At all times relevant to this Complaint, Defendants were acting under the color of state law as officers employed by Defendants City and BCPD.

143. Defendants intentionally chose to pursue the driver of the Ford Fusion in a manner prohibited by the Policies of Defendant BCPD, with actual or constructive knowledge of their contents.

144. Defendants intentionally chose not to break the pursuit and intentionally pursued the driver of the Ford Fusion through the City, including through multiple intersections, for over 6 minutes and for 11 miles at dangerously high speeds, thereby putting in motion forces that would result in the unlawful contact with Plaintiffs Gore and Tyson.

145. Defendants' intentional conduct was substantially certain to result in a motor vehicle crash and unlawful touching of Decedent Gore and Plaintiff Tyson. Defendants set in

motion an event that resulted in the offensive, nonconsensual contact with Defendant Gore's vehicle.

146. Neither Decedent Gore nor Plaintiff Tyson consented to the unlawful contact that ultimately led to Decedent Gore's death and significant injuries to Plaintiff Tyson.

147. Defendants' actions were undertaken deliberately and with actual malice.

148. As a result of Defendants' intentional actions, Decedent Gore sustained severe physical injuries, including death, and Plaintiff Tyson sustained severe physical injuries. Plaintiffs also sustained emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses, and in Decedent Gore's case, death.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor, and against the Defendants, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, and any other such relief that this Court deems proper.

COUNT VIII

Negligent Hiring, Training, and Supervision

(Plaintiffs against Defendant BCPD)

149. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

150. At all times relevant to this Complaint, Defendants Torres, Franks, and Gray were acting under the color of state law as officers employed by Defendant BCPD.

151. Defendant BCPD maintained a duty to use reasonable care in hiring, training, and supervising individuals who were competent and fit to perform the duties of a police officer.

152. Defendant knew or should have known that the identified officers in this Complaint proved unfit for their assigned duties. Defendant BCPD is obligated to train and supervise officers in the recognition and handling of pursuit polices.

153. At all relevant times, Defendant BCPD, directly and through its officers and agents had an obligation to ensure that its officers, employees, and agents, exercised the same degree of care that a reasonable and prudent person would exercise in the same or similar situation with respect to the training, supervision, and oversight of all employees, agents, and officers under its direction and control.

154. As identified *supra*, the training, supervision, and oversight required by Defendant BCPD regarding incidents of misuse of police powers and rights violations committed by Defendant BCPD's officers was inadequate, insufficient, or nonexistent, and Defendant BCPD, directly and through its employees, agents and officers, failed to exercise the above requisite degree of care in the supervision of all employees, agents, and officers under its direction and control.

155. Defendant BCPD, through its agents and employees, supervised Defendants prior to and during the events at issue.

156. BCPD's ranking officers and supervisors had actual or constructive knowledge of the pervasive and persistent pattern and practice of conduct by its officers that violated clearly established rights, and that this conduct posed an unreasonable risk of constitutional injury to Plaintiffs.

157. In spite of this knowledge, Defendant took no action to prevent or remedy the misconduct by Defendants Torres, Franks, Gray, and other BCPD officers. It was deliberately indifferent to the persistent constitutional violations by the individual Defendants and other

officers whom it directly supervised. In breach of its duties, Defendant BCPD routinely failed to supervise the individual Defendants, thus allowing the misconduct to continue and thrive.

158. Defendant BCPD knew or should have known that the identified officers in this Complaint would engage in high-speed and high-risk pursuits. By virtue of Defendant's negligent hiring, training, and supervision, the risk that the identified officers would violate the constitutional rights of Plaintiffs was foreseeable.

159. Defendant failed to properly supervise the individual Defendants identified herein. It was readily foreseeable and highly predictable that failing to properly supervise Defendant BCPD's officers in the proper engagement of pursuits would, and in fact did, result in the violation of Plaintiffs' constitutional rights as alleged herein, and Defendant BCPD was indifferent to same.

160. As a direct and proximate result of Defendants' actions or omissions identified herein, Plaintiffs sustained physical, emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, humiliation, disgrace, loss of dignity, and death. Plaintiffs' life, liberty, and property were deprived of them without the judgment of their peers or by the law of the land.

161. Defendant BCPD and all other officers identified herein subjected Plaintiffs to these deprivations of their rights, maliciously and/or acting with reckless disregard for or with deliberate indifference to whether Plaintiffs' rights would be violated by their actions, and that such actions were the moving force in their having such rights violated and incurring their injuries.

162. Defendant BCPD's actions or omissions as described herein, were intentional, wanton, willful, malicious, manifested blatant and reckless disregard for Plaintiffs' constitutionally protected rights, and as such Plaintiffs are entitled to compensatory and punitive damages from Defendants, jointly and severally.

WHEREFORE, Plaintiffs requests that this Court enter judgment in their favor, and against Defendants, jointly and severally, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, punitive damages, and any other such relief that this Court deems proper.

COUNT IX

Wrongful Death

(Plaintiff Simmons against All Defendants)

163. Plaintiff Simmons incorporates and adopts each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

164. This Count is brought by Plaintiff Simmons against all Defendants identified herein, jointly and severally.

165. At all times relevant to this Complaint, the individual Defendants were acting under the color of state law as officers employed by Defendant BCPD.

166. Each of the Defendants, individually and/or through their agents, servants and/or employees were directly and proximately responsible for the fatal injuries suffered by Decedent Gore. Plaintiff Gore's injuries were caused solely by the actions of the Defendants without any wrongdoing on his part.

167. Plaintiff Simmons has suffered and will continue to suffer from mental anguish, emotional pain and suffering, loss of society, loss of companionship, loss of comfort, loss of protection, loss of filial care, loss of attention, and loss of services and support that Decedent Gore could have and would have provided had he continued to live.

168. As a result, the wrongful death of Decedent Gore, Plaintiff Simmons has sustained emotional, mental, and financial injuries, including, but not limited to, pain and suffering, mental anguish, costs and expenses of medical and legal proceedings, lost wages, and other expenses.

169. This Complaint is timely filed within three (3) years after the death of Decedent Gore pursuant to §3-904(g) of the Courts and Judicial Proceedings Article of Maryland's Annotated Code.

WHEREFORE, Plaintiff Simmons requests that this Court enter judgment in her favor, and against the Defendants, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, and any other such relief that this Court deems proper.

COUNT X

Survival Action

(The Estate of Darius Gore against All Defendants)

170. Plaintiff the Estate incorporates by reference, and adopts, all of the allegations in the preceding and subsequent paragraphs of this Complaint as if they were set forth fully herein.

171. This Count is brought by Plaintiff Simmons, as the Personal Representative of the Estate, against all Defendants identified herein, jointly and severally.

172. Each of the Defendants, individually and/or through their agents, servants and/or employees were directly and proximately responsible for the fatal injuries suffered by Decedent Gore. Decedent Gore's injuries were caused solely by the actions of the Defendants without any wrongdoing on his part.

173. As a result of these acts, Decedent Gore sustained severe physical injuries, including death. Between the time he was hit by the vehicle and the time of his death, Decedent

Gore was conscious and living for some time before succumbing to his injuries, and therefore, experienced conscious pain and suffering before he died.

174. This Complaint is timely filed within three (3) years after the death of Decedent Gore pursuant to §3-904(g) of the Courts and Judicial Proceedings Article of Maryland's Annotated Code.

175. The Defendants' actions and/or omissions directly and proximately caused the conscious pain and suffering sustained by Decedent Gore. Decedent Gore's injuries were caused solely by the actions of Defendants without any wrongdoing on his part. Had Defendants not committed the acts alleged herein, Decedent Gore would not have suffered before his death.

WHEREFORE, the Estate requests that this Court enter judgment in its favor, and against the Defendants, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, and any other such relief that this Court deems proper.

COUNT XI

Injunctive Relief

(Plaintiffs Against Defendant BCPD)

176. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

177. As described herein, Decedent Gore and Tyson's rights to life, liberty, and property were violated, thus causing Plaintiffs to be deprived of their clearly established and well-settled rights under the Fourteenth Amendment to the United States Constitution.

178. As described herein, these rights were violated as a direct and proximate result of Defendant BCPD's Policy that permits members of its police force to violate citizens' substantive due process rights to life, liberty, and property.

179. As described herein, Defendant BCPD officers routinely violated the Policy, of which Defendant BCPD had actual knowledge and, with conscience shocking deliberate indifference to the rights of citizens, it permitted its own officers to violate the Policy.

180. As described herein, Defendant BCPD failed to train and supervise its officers in vehicular pursuits and during the pursuits themselves, thereby manifesting a conscience shocking deliberate indifference to the rights of citizens.

WHEREFORE, Plaintiffs request the following injunctive relief to prevent further irreparable harm:

A. A modification of Policy 1503 to significantly restrict the circumstances that a police officer may pursue a fleeing vehicle, limiting those circumstances that involve a violent felony and an imminent threat to citizens is present;

B. A modification of Policy 1503 to impose maximum pursuit speed limit in the City;

C. Increased training of police officers in pursuits, including in the use of de-escalation techniques;

D. Increased supervisory requirements during a pursuit, mandating that officers who do not provide continual updates to supervisors are not permitted to continue a vehicle pursuit;

E. A modification of Policy 1503 to remove an officer's personal discretion to engage in the pursuit.

COUNT XII

Indemnification

(Against Defendant BCPD)

181. Plaintiffs incorporate and adopt each allegation contained in the preceding and subsequent paragraphs of this Complaint, as if fully set forth herein.

182. Under Maryland law, public entities are directed to pay any tort judgment for which their employees are liable within the scope of their employment.

183. Defendant officers are or were employees of Defendant BCPD who acted within the scope of their employment and in accordance with accepted custom and usage when they committed the misconduct described herein.

184. Accordingly, Defendant BCPD is required to indemnify any and all of the individual Defendants against whom judgments are entered in this case.

WHEREFORE, Plaintiffs requests that this Court enter judgment in their favor, and against Defendants, jointly and severally, in an amount in excess of \$75,000.00 in compensatory damages, plus costs and interest, punitive damages, and any other such relief that this Court deems proper.

RELIEF

WHEREFORE, as to each and every count pled, Plaintiffs respectfully requests that this court award them:

- A. Judgment in favor of Plaintiffs and against Defendants, jointly and severally, finding Defendants liable to Plaintiffs;
- B. Award Plaintiffs compensatory damages in an amount which exceeds \$75,000.00, plus interest and costs in an amount to be determined at trial;

- C. Reimburse Plaintiffs all costs paid by Plaintiffs or on behalf of Plaintiffs in connection with the incident in an amount to be determined at trial;
- D. Award the costs and expenses of this case, including attorneys' fees;
- E. Award pre-judgement and post-judgement interest;
- F. Award punitive damages;
- G. Enter injunctive relief against Defendants as identified herein; and

Award any other such relief that this Court deems just and proper and further relief as the nature of the case may require.

Dated: April 19, 2021

Respectfully submitted,

MURPHY, FALCON & MURPHY

By: /s/ William H. Murphy, Jr.
William H. Murphy, Jr. (Bar # 07985)

/s/ Andrew K. O'Connell
Andrew O'Connell (Bar # 28168)

/s/ Nikoletta S. Mendrinos
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on the issues set forth in this Complaint.

/s/ Nikoletta S. Mendrinos
Nikoletta S. Mendrinos