

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

YOLANDA WRIGHT, Individually, :  
and on behalf of her minor son, :  
[REDACTED] :

and :

ROSE RITA BAILEY, Individually, :  
and on behalf of her minor son, :  
[REDACTED] :

Plaintiffs, :

v. :

Civil Action No. :

WHITEHALL TOWNSHIP, :  
MICHAEL MARKS, :  
AARON REED, MICHAEL :  
SLIVKA, KENNETH STEPHENS, :  
TIMOTHY DUGAN, BRIAN :  
CUTH, JEFFREY APGAR, and :  
MATTHEW RESZEK :

JURY TRIAL DEMANDED

Defendants.

**COMPLAINT**

AND NOW, come the Plaintiffs, Yolanda Wright, individually and on behalf of her minor son, [REDACTED] and Rose Rita Bailey, individually and on behalf of her minor son, [REDACTED] by and through their attorneys, Mobilio Wood, and hereby submit the instant Complaint and in support thereof aver as follows:

**INTRODUCTION**

1. Plaintiffs bring the instant action to redress harm caused by Defendants' violations of their rights as secured by 42 U.S.C. § 1983 as well as pursuant to state law.

2. This action arises out of a group of black teenagers simply attempting to enjoy a high school basketball game with their friends.

3. On January 28, 2020, Plaintiffs [REDACTED] and [REDACTED] were attending a basketball game at Whitehall High School, where they both attended school.

4. While Plaintiffs were seated in the bleachers, [REDACTED] a 14-year-old black teen and friend and fellow student of Plaintiffs, allegedly, according to the affidavit of probable cause, "gave . . . attitude" to the school's Athletic Director, Robert Hartman, and thereafter joined Plaintiffs in the bleachers.

5. Mr. Hartman, apparently highly offended by Mr. [REDACTED] "attitude," enlisted the aid of Whitehall Township Police Officer and Defendant, Kenneth Stevens, to remove Mr. [REDACTED] from the public sporting event.

6. Soon thereafter, numerous additional Caucasian Whitehall Township Police Officers arrived at the high school gymnasium, including Officer Jeffrey Apgar, a K-9 officer who brought his K-9 "Mex", a large German Shephard, with him to the heavily populated gymnasium.

7. The disproportionate and unreasonable use of force by the Whitehall Township Police Department that followed resulted in four (4) black teenage boys being charged with felonies, among other crimes; two (2) black teenagers suffering traumatic brain injuries and other physical and emotional harm at the hands of the Whitehall Township Police Department and an officer being bitten by his own K-9 as a result of his reckless handling of the dog – all because of a black teenager’s bad “attitude.”

**PARTIES**

8. Plaintiff, Yolanda Wright (“Plaintiff Wright”) is an adult individual, citizen of the Commonwealth of Pennsylvania and biological mother of Plaintiff [REDACTED]

9. Plaintiff, [REDACTED] (“Plaintiff [REDACTED]”) is a minor child, citizen of the Commonwealth of Pennsylvania and biological son of Plaintiff, Yolanda Wright.

10. Plaintiff, Rose Rita Bailey (“Plaintiff Bailey”) is an adult individual, citizen of the Commonwealth of Pennsylvania and biological mother of Plaintiff [REDACTED]

11. Plaintiff [REDACTED] (“Plaintiff [REDACTED]”) is a minor child, citizen of the Commonwealth of Pennsylvania and biological son of Plaintiff, Rose Rita Bailey.

12. Defendant Whitehall Township (“Defendant Township”) is a Pennsylvania political subdivision and is the legal entity responsible for itself and for the Whitehall Township Police Department. This Defendant is also the employer of the individual law enforcement Defendants and is a proper entity to be sued under 42 U.S.C. § 1983.

13. At all times relevant hereto, Defendants Aaron Reed (“Defendant Reed”), Michael Slivka (“Defendant Slivka”), Kenneth Stephens (“Defendant Stephens”), Timothy Dugan (“Defendant Dugan”), Brian Cuth (“Defendant Cuth”), Jeffrey Apgar (“Defendant Apgar”) and Matthew Reszek (“Defendant Reszek”) were citizens of the United States, residents of the Commonwealth of Pennsylvania and were acting under color of state law in their capacity as law enforcement officers employed by the Defendant Township and/or Whitehall Township Police Department, and are being sued in their individual capacity.

14. At all times relevant hereto, Defendant Michael Marks (“Defendant Marks”) was a citizen of the United States and a resident of the Commonwealth of Pennsylvania. Defendant Marks is sued in his official capacity as the Chief of the Whitehall Township Police Department, employed by the Defendant Township and/or the Whitehall Township Police Department, and was acting under color of state law.

15. As the Chief of the Whitehall Township Police Department, Defendant Marks both exercised and delegated his municipal final decision-making power to his subordinates and others employed by the Whitehall Township Police Department. Upon information and belief, he also trained and supervised individual Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek.

16. Defendants Township and Marks are properly sued directly under 42 U.S.C. § 1983 for their own and their delegated deliberately indifferent unconstitutional decisions, policies, practice, habits, customs, usages, training and derelict supervision, ratification, acquiescence and intentional failures which were moving forces in the complained of constitutional and statutory violations and resulting injuries.

17. Defendant Township is also properly sued under 42 U.S.C. § 1983 for the challenged delegated final decisions of Defendant Marks in his official capacity as the Chief of Police for Whitehall Township Police Department, and for those of any final delegated decision makers, with respect to the hereinafter challenged deliberately indifferent policies, decisions, widespread habits, customs, usages and practices.

### **JURISDICTION AND VENUE**

18. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and is brought

pursuant to 42 U.S.C. §§ 1983 and 1988. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over Plaintiffs' state law claims because they are supplemental to Plaintiff's underlying federal claims and derive from a common nucleus of operative facts pursuant to 28 U.S.C. § 1367.

19. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice.

20. Venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391, as a substantial part of the acts or omissions giving rise to the claims alleged herein occurred within this judicial district, and Defendants are subject to personal jurisdiction in this district.

### **FACTUAL ALLEGATIONS**

21. Plaintiffs ██████ and ██████ are African American minor children who were at all times material hereto high school students enrolled in the Whitehall-Coplay School District and attended Whitehall High School.

22. On January 28, 2020, Plaintiff ██████ then 16 years old, and Plaintiff ██████ then 17 years old, were in attendance at a basketball game at the Whitehall-Coplay High School located in Whitehall, Pennsylvania.

23. Plaintiffs ██████ and ██████ were situated in the top row area of the bleachers surrounding the basketball court along with several other black teenagers.

24. The group of black teens was quietly preparing to enjoy a basketball game when they were approached by one of Whitehall Township's police officers, Defendant Stephens.

25. Defendant Stephens, who is Caucasian, began questioning the group of black teens about ██████ another black teen who had joined their group.

26. According to the affidavit of probable cause supporting Plaintiffs' constitutional deprivations further described herein, Mr. ██████ "reportedly gave [Athletic Director Robert Hartman] attitude," and thereafter joined Plaintiffs in the bleachers.

27. Mr. Hartman somehow determined that Mr. ██████ "attitude" necessitated the intervention of law enforcement to remove him from the premises.

28. Thus, Defendant Stephens demanded of the group that Mr. ██████ "come with him", expressing his intent to execute a Fourth Amendment seizure of Mr. ██████

29. Plaintiffs ██████ and ██████ repeatedly asked Defendant Stephens why he was attempting to execute a seizure of Mr. ██████

30. Defendant Stephens refused to provide a reason for the request other than to state Mr. Hartman wanted Mr. [REDACTED] to leave.

31. Eventually, Defendants Cuth, Reed and Dugan, all of whom are also Caucasian, joined Defendant Stephens in the bleachers.

32. Plaintiffs [REDACTED] and [REDACTED] continued to ask Defendants Stephens, Cuth, Reed and Dugan for the reason for the attempted seizure of Mr. [REDACTED]

33. At no point in time did Plaintiffs threaten, assault, touch, or otherwise give reason for the officers to arrest or detain either of them.

34. In fact, up to this point, neither Defendants Stephens, Cuth, Reed or Dugan advised the Plaintiffs that they were under arrest or were otherwise being detained.

35. Defendant Stephens and/or Cuth and/or Reed and/or Dugan, becoming visibly frustrated with Plaintiffs' exercise of their First Amendment rights of free speech to question the officers' legal basis for attempting a Fourth Amendment seizure of Mr. [REDACTED] grabbed one of the black teens by the shirt and attempted to drag him out of the crowd.

36. In order to reach the black teen, Defendant Stephens and/or Cuth and/or Reed and/or Dugan violently came into contact with several other teens, including Plaintiffs [REDACTED] and [REDACTED] causing Defendant Stephens and/or Cuth and/or Reed and/or Dugan to fall into the crowd of children.

37. This prompted Defendants Stephens and/or Cuth and/or Reed and/or Dugan to further exacerbate the situation by wildly grabbing and flailing at the children.

38. Then, Defendant Apgar, who is also Caucasian, and who had arrived on scene and was standing at the bottom of the bleachers with a large German Shephard K-9 officer named “Mex”, charged up the stairs with “Mex”, who was loudly and violently barking.

39. Upon reaching the group of black teens, Defendant Apgar led the viciously barking dog directly into the group, and “Mex” then began wildly attacking the children.

40. “Mex” was so out of control and not properly restrained that, upon information and belief, at or about this time he bit one of the officers in the head.

41. At the same time as the vicious K-9 was attacking the children, either Defendant Cuth, Reed, Dugan or Stephens, reached out and shoved Defendant [REDACTED] with such force that he was caused to fall down several rows of bleachers, and become injured.

42. Plaintiffs [REDACTED] and [REDACTED] then left the bleacher area and made their way to the floor of the gymnasium.

43. Despite the presence of numerous Whitehall Township Police Officers, not one of them advised Plaintiffs [REDACTED] or [REDACTED] that they were

under arrest, nor did any of the officers attempt to take Plaintiffs [REDACTED] or [REDACTED] into custody or otherwise restrain them.

44. In fact, videotaped evidence of the incident shows Plaintiffs [REDACTED] and [REDACTED] walking about freely on the gymnasium floor for several minutes after the vicious dog attack without any interaction with the numerous police officers then present at the scene.

45. One of the numerous armed police officers on the gymnasium floor was Defendant Apgar and “Mex”.

46. In a clear attempt to intimidate and threaten the children, videotape evidence reveals that Defendant Apgar suddenly and recklessly *lifted “Mex” up off the ground by his harness and began swinging the ferociously barking K-9 at the children*, without regard for whether the K-9 would bite or otherwise injure the children. True and correct copies of still representations of this incident are attached hereto, made a part hereof and marked as Exhibit “A”.



47. At the same time, Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek, having caused a generalized panic due to their reckless conduct, began herding adults and children into the hallways without establishing a protocol for safe evacuation of the gymnasium.

48. Eventually the hallway was full of adults, children and police officers.

49. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek then reversed course, and attempted to herd the adults and children back into the gymnasium by screaming and yelling for people to clear the hallways.

50. At or about this same time, Plaintiff [REDACTED] was stationed in a doorway between the gymnasium and hallways, attempting to gain the attention of

his friend to encourage him to return to the gymnasium just as Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek had demanded.

51. At the same time, Plaintiff [REDACTED] was holding on to Plaintiff [REDACTED] backpack and attempting to pull Plaintiff [REDACTED] back into the gymnasium.

52. Despite Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and/or Reszek loudly screaming at the children, Plaintiffs remained calm as they attempted to assist their friends in returning to the gymnasium per the officers' demands.

53. Suddenly and without warning, Defendants Reed and/or Slivka and/or Stephens and/or Dugan and/or Cuth and/or Apgar and/or Reszek, frustrated with Plaintiffs [REDACTED] and [REDACTED] previous expression of their First Amendment rights to question the legality of Mr. [REDACTED] attempted seizure, grabbed Plaintiff [REDACTED] and drug him several feet out into the hallway.

54. By this point, Plaintiff [REDACTED] was literally surrounded by police officers, in a relatively confined space, was not resisting arrest, and had no possibility of escape.

55. Nevertheless, Defendants Reed and/or Slivka and/or Stephens and/or Dugan and/or Cuth and/or Apgar and/or Reszek executed an unreasonable use of force *by slamming Plaintiff [REDACTED] head into a wall with such force that he*

*suffered a concussion, among other injuries*, and then tackled him to the ground where he again hit his head.

56. Plaintiff ██████ still holding on to Plaintiff ██████ backpack, was caused by the momentum of Plaintiff ██████ being violently drug by Defendants Reed and/or Slivka and/or Stephens and/or Dugan and/or Cuth and/or Apgar and/or Reszek to also be dragged into the hallway.

57. Plaintiff ██████ was then tackled to the ground by several police officers, including, but not limited to, Defendants Reed and/or Slivka and/or Stephens and/or Dugan and/or Cuth and/or Apgar and/or Reszek.

58. Videotaped evidence of Plaintiff ██████ being tackled to the ground clearly shows that Defendants Reed and/or Slivka and/or Stephens and/or Dugan and/or Cuth and/or Apgar and/or Reszek had successfully restrained Plaintiff ██████ that he was lying on the ground with his arms restrained and three police officers on top of him, and that he was not resisting arrest and had no possibility of escape.

59. Nevertheless, videotaped evidence also reveals that Defendants Reed and/or Slivka and/or Stephens and/or Dugan and/or Cuth and/or Apgar and/or Reszek executed an unreasonable use of force by *lifting Plaintiff ██████ off the ground and slamming his head into the floor with such force that Plaintiff ██████ suffered a concussion, among other injuries*. True and correct copies of

still representations of this incident are attached hereto, made a part hereof and marked as Exhibit “B”.



60. Plaintiffs ██████ and ██████ were then taken into custody and brought to the Whitehall Township Police Department.

61. Neither Plaintiff received any medical care while in custody.

62. The two minor children remained in custody for well over an hour before they were permitted to speak with their parents.

63. When Plaintiff ██████ was permitted to see his mother, he was visibly bruised and had clearly suffered personal injuries as a result of the intentional and reckless conduct of Defendants Reed and/or Slivka and/or Stephens and/or Dugan and/or Cuth and/or Apgar and/or Reszek.

64. Plaintiff ██████ mother, Plaintiff Wright, inquired as to whether her son had received any medical treatment.

65. The responding police officer stated that Plaintiff ██████ was, despite his visible injuries, not injured.

66. All of the above-described acts were committed by the Defendants intentionally, knowingly, willfully, wantonly, maliciously and/or recklessly in disregard for Plaintiffs ██████ and ██████ federally protected rights, and were committed pursuant to the preexisting and ongoing deliberately indifferent official custom, practice, decision, policy, training and supervision of the Defendant Township and Defendant Marks, acting under color of state law.

67. With deliberate indifference to the rights of citizens to be free from excessive force by police, the Defendant Township and Defendant Marks have ongoingly encouraged, tolerated, ratified and acquiesced to a dangerous environment of police brutality by:

- a) Failing to conduct sufficient training or supervision with respect to the constitutional limitations on the use of force;
- b) Failing to adequately punish unconstitutional uses of force;
- c) Tolerating the use of unconstitutional force;
- d) Establishing official policies that permit, encourage or direct the use of excessive force; and

e) Establishing and/or acquiescing to customs and practices that permit, encourage and/or direct the use of excessive force.

68. With deliberate indifference to the rights of citizens to be free from retaliation for exercising their First Amendment rights, the Defendant Township and Defendant Marks have ongoingly encouraged, tolerated, ratified, and acquiesced to a dangerous environment of police retaliation to the exercise of such rights by:

a) Failing to conduct sufficient training or supervision with respect to the protected speech rights of citizens to question the actions of police without retaliation;

b) By failing to adequately punish retaliation by police against members of the public who exercise their protected speech rights to object to police conduct;

c) By tolerating the use of retaliation based on protected speech;

d) Establishing official policies that permit, encourage or direct the use of retaliation against citizens who question the actions of police; and

e) Establishing and/or acquiescing to customs and practices that permit, encourage and/or direct the use of retaliation against citizens who question the actions of police.

69. As a result of the aforementioned conduct of the Defendants, Plaintiff [REDACTED] suffered a traumatic brain injury, headache, dizziness, lightheadedness, nausea, diminished balance, focus, concentration and ability to communicate, light sensitivity, deformed cervical posture and wrist and knee pain and continues to suffer from said symptoms.

70. As a result of the aforementioned conduct of the Defendants, Plaintiff [REDACTED] suffered a traumatic brain injury, loss of consciousness, headache, blurred vision, dizziness, lightheadedness, nausea, diminished balance, focus, concentration and ability to communicate, light sensitivity, photophobia, sound sensitivity, phonophobia, neck injury with cervicgia, drowsiness and fatigue and continues to suffer from said symptoms.

71. Plaintiffs [REDACTED] and [REDACTED] also continue to suffer ongoing emotional distress with significant PTSD symptoms including sadness, anxiety, stress, anger, depression, frustration, sleeplessness, nightmares and flashbacks.

72. Plaintiffs [REDACTED] and [REDACTED] are also entitled to punitive damages on all of their claims against the individual Defendants personally to redress their willful, malicious, wanton and reckless conduct.

73. As a result of the aforementioned conduct of the Defendants, Plaintiffs Wright and Bailey were deprived of the companionship, care, custody,

management and integrity of their children, Plaintiffs ██████ and ██████ respectively.

74. Plaintiffs Wright and Bailey also continue to suffer ongoing emotional distress including sadness, anxiety, stress, anger, depression, frustration and sleeplessness as a result of Defendants' violation of their Fourteenth Amendment rights of parents in their relationships with their children.

75. Plaintiffs Wright and Bailey are also entitled to punitive damages on all of their claims against the individual Defendants personally to redress their willful, malicious, wanton and reckless conduct.

## COUNT I

### **42 U.S.C. § 1983**

#### **Excessive Force in violation of the Fourth and Fourteenth Amendments (Plaintiff ██████ v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

70. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

71. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

72. Plaintiffs in this action are citizens of the United States and all of the individual police officer Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

73. All individual Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Whitehall Township police officers, and their acts or omissions were conducted within the scope of their official duties or employment.

74. At the time of the complained of events, Plaintiff ██████ had clearly established constitutional rights under the Fourth Amendment to be secure in his persons from unreasonable seizure through excessive force.

75. Plaintiff ██████ also had the clearly established Constitutional rights under the Fourteenth Amendment to bodily integrity and to be free from excessive force by law enforcement.

76. Any reasonable police officer knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

77. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's actions and use of force, as described herein, were objectively unreasonable in light of the facts and circumstances confronting them, and therefore violated these Fourth Amendment rights of Plaintiffs.

78. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's actions and use of force, as described herein, were also malicious and/or involved reckless, callous, and deliberate indifference to Plaintiff's federally protected rights. The force used by these Defendant officers shocks the conscience and violated these Fourteenth Amendment rights of Plaintiff.

79. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek unlawfully seized Plaintiff by means of objectively unreasonable, excessive and conscience-shocking physical force, thereby unreasonably restraining Plaintiff of his freedom.

80. The force used constituted deadly force in that it could have caused death and did cause serious bodily injury.

81. None of the Defendant officers took reasonable steps to protect Plaintiff from the objectively unreasonable and conscience-shocking excessive force of other Defendant officers or from the excessive force of later responding officers despite being in a position to do so. They are each therefore liable for the injuries and damages resulting from the objectively unreasonable and conscience-shocking force of each other officer.

82. Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Plaintiff's federally protected constitutional rights.

83. They did so with shocking and willful indifference to Plaintiff's rights and their conscious awareness that they would cause Plaintiff severe physical and emotional injuries.

84. The acts or omissions of all individual Defendants were moving forces behind Plaintiff's injuries.

85. These individual Defendants acted in concert and joint action with each other.

86. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional rights and caused him other damages.

87. These individual Defendants are not entitled to qualified immunity for the complained of conduct.

88. The Defendants to this claim at all times relevant hereto were acting pursuant to municipal custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

89. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

90. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue

to incur further medically and other special damages related expenses, in amounts to be established at trial.

91. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his traumatic brain injury, in amounts to be ascertained at trial.

92. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

93. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

## **COUNT II**

### **42 U.S.C. § 1983**

#### **Retaliation in Violation of the First Amendment**

**(Plaintiff ██████ v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

94. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

95. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

96. Plaintiffs in this action are citizens of the United States and all of the individual police officer Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

97. All individual Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Whitehall Township police officers and their acts or omissions were conducted within the scope of their official duties or employment.

98. At the time of the complained of events, Plaintiff had clearly established constitutional rights to be free from retaliation for the exercise of protected speech.

99. Any reasonable police officer knew or should have known of this right at the time of the complained of conduct as it was clearly established at that time.

100. Plaintiff exercised his constitutionally protected rights to question law enforcement and/or engaged in protected speech related to the constitutional rights

of citizens with respect to searches of their property by the police and objectionable police conduct.

101. Retaliatory animus for Plaintiff's exercise of his constitutionally protected right to question Whitehall Township Police Officers regarding why they were attempting a Fourth Amendment seizure of a fellow student was a substantially motivating factor in the excessive force used by the individual Defendants.

102. The excessive force used against Plaintiff in retaliation for his protected conduct would deter a person of ordinary firmness from continuing to engage in the protected conduct.

103. All of these Defendant officers participated in this use of force as a means of retaliation for Plaintiff's protected speech and none of the Defendant officers took reasonable steps to protect Plaintiff from this retaliation for the protected speech. They are each therefore liable for the injuries and damages resulting from the objectively unreasonable and conscience shocking force of each other officer.

104. Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Plaintiff's federally protected constitutional rights.

105. The acts or omissions of all individual Defendants were moving forces behind Plaintiff's injuries.

106. These individual Defendants acted in concert and joint action with each other.

107. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

108. Defendants are not entitled to qualified immunity for the complained of conduct.

109. The Defendants to this claim at all times relevant hereto were acting pursuant to municipal custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

110. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

111. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically and other special damages related expenses, in amounts to be established at trial.

112. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his traumatic brain injury, in amounts to be ascertained in trial.

113. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

114. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

### **COUNT III**

#### **42 U.S.C. § 1983**

#### **Deliberately Indifferent Policies, Practices, Customs, Training, and Supervision in violation of the Fourth, Fourteenth, and First Amendments (Plaintiff ██████ v. Defendants Michael Marks and Whitehall Township)**

115. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

116. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

117. Plaintiffs in this action are citizens of the United States and Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

118. The Defendants to this claim at all times relevant hereto were acting under the color of state law.

119. Plaintiff had the following clearly established rights at the time of the complained of conduct:

- a. the right to be secure in his person from unreasonable seizure through excessive force, under the Fourth Amendment;
- b. the right to bodily integrity and to be free from excessive force by law enforcement under the Fourteenth Amendment; and
- c. the right to exercise his constitutional rights of free speech under the First Amendment without retaliation.

120. Defendant Marks and Defendant Township knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

121. The acts or omissions of these Defendants, as described herein, deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

122. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

123. Defendants are not entitled to qualified immunity for the complained of conduct.

124. Defendants Marks and Township were, at all times relevant, were policymakers for Defendant Township and the Whitehall Township Police Department, and in that capacity established policies, procedures, customs, and/or practices for the same.

125. These Defendants developed and maintained policies, procedures, customs, and/or practices exhibiting deliberate indifference to the constitutional rights of citizens, which were moving forces behind and proximately caused the violations of Plaintiff's constitutional and federal rights as set forth herein and in the other claims, resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

126. Defendants Marks and Township have created and tolerated an atmosphere of lawlessness, and have developed and maintained long-standing, department-wide customs, law enforcement related policies, procedures, customs, practices, and/or failed to properly train and/or supervise their officers in a manner

amounting to deliberate indifference to the constitutional rights of Plaintiff and of the public.

127. In light of the duties and responsibilities of those police officers that participate in arrests and preparation of police reports on alleged crimes, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights such as those described herein, that the failure to provide such specialized training and supervision is deliberately indifferent to those rights.

128. The deliberately indifferent training and supervision provided by Defendants Marks and Township resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendants Marks and Township and were moving forces in the constitutional and federal violation injuries complained of by Plaintiff.

129. As a direct result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

130. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue

to incur further medically or other special damages related expenses, in amounts to be established at trial.

131. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, in amounts to be ascertained in trial.

132. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

#### **COUNT IV**

##### **Assault and Battery**

**(Plaintiff ██████ v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

133. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

134. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek intended to and did attempt by force to injure Plaintiff ██████ as more fully discussed above.

135. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's attempt to injure Plaintiff ██████ was successfully as they did in fact injure Plaintiff ██████

136. As a direct result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

137. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically or other special damages related expenses, in amounts to be established at trial.

138. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, in amounts to be ascertained in trial.

## COUNT V

### **42 U.S.C. § 1983**

#### **Excessive Force in violation of the Fourth and Fourteenth Amendments (Plaintiff ██████ v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

132. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

133. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

134. Plaintiffs in this action are citizens of the United States and all of the individual police officer Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

135. All individual Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Whitehall Township police officers and their acts or omissions were conducted within the scope of their official duties or employment.

136. At the time of the complained of events, Plaintiff ██████ had clearly established constitutional rights under the Fourth Amendment to be secure in his persons from unreasonable seizure through excessive force.

137. Plaintiff ██████ also had the clearly established Constitutional right under the Fourteenth Amendment to bodily integrity and to be free from excessive force by law enforcement.

138. Any reasonable police officer knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

139. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's actions and use of force, as described herein, were objectively unreasonable in

light of the facts and circumstances confronting them and violated these Fourth Amendment rights of Plaintiff.

140. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's actions and use of force, as described herein, were also malicious and/or involved reckless, callous, and deliberate indifference to Plaintiff's federally protected rights. The force used by these Defendant officers shocks the conscience and violated these Fourteenth Amendment rights of Plaintiff.

141. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's unlawfully seized Plaintiff by means of objectively unreasonable, excessive and conscience-shocking physical force, thereby unreasonably restraining Plaintiff of his freedom.

142. The force used constituted deadly force in that it could have caused death and did cause serious bodily injury.

143. None of the Defendant officers took reasonable steps to protect Plaintiff from the objectively unreasonable and conscience-shocking excessive force of other Defendant officers or from the excessive force of later responding officers despite being in a position to do so. They are each therefore liable for the injuries and damages resulting from the objectively unreasonable and conscience-shocking force of each other officer.

144. Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Plaintiff's federally protected constitutional rights.

145. They did so with shocking and willful indifference to Plaintiff's rights and their conscious awareness that they would cause Plaintiff severe physical and emotional injuries.

146. The acts or omissions of all individual Defendants were moving forces behind Plaintiff's injuries.

147. These individual Defendants acted in concert and joint action with each other.

148. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional rights and caused them other damages.

149. These individual Defendants are not entitled to qualified immunity for the complained of conduct.

150. The Defendants to this claim at all times relevant hereto were acting pursuant to municipal custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

151. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as

described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

152. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically and other special damages related expenses, in amounts to be established at trial.

153. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his traumatic brain injury, in amounts to be ascertained at trial.

154. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

155. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

## **COUNT VI**

### **42 U.S.C. § 1983**

### **Retaliation in Violation of the First Amendment**

**(Plaintiff ██████ v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

156. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

157. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

158. Plaintiffs in this action are citizens of the United States and all of the individual police officer Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

159. All individual Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Whitehall Township police officers and their acts or omissions were conducted within the scope of their official duties or employment.

160. At the time of the complained of events, Plaintiff had clearly established constitutional rights to be free from retaliation for the exercise of protected speech.

161. Any reasonable police officer knew or should have known of this right at the time of the complained of conduct as it was clearly established at that time.

162. Plaintiff exercised his constitutionally protected rights to question law enforcement and/or engaged in protected speech related to the constitutional rights of citizens with respect to searches of their property by the police and objectionable police conduct.

163. Retaliatory animus for Plaintiff's exercise of his constitutionally protected right to question Whitehall Township Police Officers regarding why they were attempting a Fourth Amendment seizure of a fellow student was a substantially motivating factor in the excessive force used by the individual Defendants.

164. The excessive force used against Plaintiff in retaliation for his protected conduct would deter a person of ordinary firmness from continuing to engage in the protected conduct.

165. All of these Defendant officers participated in this use of force as a means of retaliation for their protected speech and none of the Defendant officers took reasonable steps to protect Plaintiff from this retaliation for the protected speech. They are each therefore liable for the injuries and damages resulting from the objectively unreasonable and conscience shocking force of each other officer.

166. Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Plaintiff's federally protected constitutional rights.

167. The acts or omissions of all individual Defendants were moving forces behind Plaintiff's injuries.

168. These individual Defendants acted in concert and joint action with each other.

169. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

170. Defendants are not entitled to qualified immunity for the complained of conduct.

171. The Defendants to this claim at all times relevant hereto were acting pursuant to municipal custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

172. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

173. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically and other special damages related expenses, in amounts to be established at trial.

174. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his traumatic brain injury, in amounts to be ascertained in trial.

175. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

176. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

## **COUNT VII**

### **42 U.S.C. § 1983**

**Deliberately Indifferent Policies, Practices, Customs, Training, and Supervision in violation of the Fourth, Fourteenth, and First Amendments (Plaintiff ██████ v. Defendants Michael Marks and Whitehall Township)**

177. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

178. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

179. Plaintiffs in this action are citizens of the United States and Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

180. The Defendants to this claim at all times relevant hereto were acting under the color of state law.

181. Plaintiff had the following clearly established rights at the time of the complained of conduct:

- a. the right to be secure in his person from unreasonable seizure through excessive force, under the Fourth Amendment;
- b. the right to bodily integrity and to be free from excessive force by law enforcement under the Fourteenth Amendment; and
- c. the right to exercise his constitutional rights of free speech under the First Amendment without retaliation.

182. Defendant Marks and Defendant Township knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

183. The acts or omissions of these Defendants, as described herein, deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

184. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

185. Defendants are not entitled to qualified immunity for the complained of conduct.

186. Defendants Marks and Township were, at all times relevant, were policymakers for Defendant Township and the Whitehall Township Police Department, and in that capacity established policies, procedures, customs, and/or practices for the same.

187. These Defendants developed and maintained policies, procedures, customs, and/or practices exhibiting deliberate indifference to the constitutional rights of citizens, which were moving forces behind and proximately caused the violations of Plaintiff's constitutional and federal rights as set forth herein and in

the other claims, resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

188. Defendants Marks and Township have created and tolerated an atmosphere of lawlessness, and have developed and maintained long-standing, department-wide customs, law enforcement related policies, procedures, customs, practices, and/or failed to properly train and/or supervise its officers in a manner amounting to deliberate indifference to the constitutional rights of Plaintiff and of the public.

189. In light of the duties and responsibilities of those police officers that participate in arrests and preparation of police reports on alleged crimes, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights such as those described herein that the failure to provide such specialized training and supervision is deliberately indifferent to those rights.

190. The deliberately indifferent training and supervision provided by Defendants Marks and Township resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendants Marks and Township and were moving forces in the constitutional and federal violation injuries complained of by Plaintiff.

191. As a direct result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

192. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically or other special damages related expenses, in amounts to be established at trial.

193. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, in amounts to be ascertained in trial.

194. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

### **COUNT VIII**

#### **Assault and Battery**

**(Plaintiff ██████ v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

195. Plaintiff ██████ hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

196. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek intended to and did attempt by force to injure Plaintiff [REDACTED] as more fully discussed above.

197. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's attempt to injure Plaintiff [REDACTED] was successfully as they did in fact injure Plaintiff [REDACTED]

198. As a direct result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

199. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically or other special damages related expenses, in amounts to be established at trial.

200. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, in amounts to be ascertained in trial.

### **COUNT IX**

#### **42 U.S.C. § 1983**

#### **Interference with Intimate Association – Violation of Fourteenth Amendment**

**(Plaintiff Wright v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

201. Plaintiff Wright hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

202. Plaintiff Wright has a fundamental, constitutionally-protected liberty interest in the companionship, care, custody and management of her son, Plaintiff

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203. Pursuant to the Fourteenth Amendment, Plaintiff is entitled to the preservation of her intimate and private familial relationship with him, free from unjustified government intrusion. See Roberts v. United States Jaycees, 468 U.S. 609, 617-19 (1984).

204. The Supreme Court has recognized the “interests of parents in the care, custody, and control of their children... is perhaps the oldest fundamental liberty interests.” Troxel v. Granville, 530 U.S. 57, 65 (2000).

205. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek’s conduct deprived Plaintiff Wright of her constitutional rights to familial and intimate association.

206. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek intentionally interfered with Plaintiff Wright’s relationship with her son, Plaintiff

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207. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek's conduct violated clearly established constitutional law in that no reasonable officer would have believed that the excessive force used against Plaintiff [REDACTED] was lawful.

208. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual emotional injuries, and other damages and losses as described herein entitling her to compensatory and special damages, in amounts to be determined at trial.

209. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law.

210. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

## **COUNT X**

### **42 U.S.C. § 1983**

#### **Interference with Intimate Association – Violation of Fourteenth Amendment (Plaintiff Wright v. Defendants Marks and Whitehall Township)**

211. Plaintiff Wright hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

212. Plaintiff Wright has a fundamental, constitutionally-protected liberty interest in the companionship, care, custody and management of her son, Plaintiff



213. Pursuant to the Fourteenth Amendment, Plaintiff is entitled to the preservation of her intimate and private familial relationship with him, free from unjustified government intrusion. See Roberts v. United States Jaycees, 468 U.S. 609, 617-19 (1984).

214. The Supreme Court has recognized the “interests of parents in the care, custody, and control of their children... is perhaps the oldest fundamental liberty interests.” Troxel v. Granville, 530 U.S. 57, 65 (2000).

215. Defendants Marks and Township were, at all times relevant, were policymakers for Defendant Township and the Whitehall Township Police Department, and in that capacity established policies, procedures, customs, and/or practices for the same.

216. These Defendants developed and maintained policies, procedures, customs, and/or practices exhibiting deliberate indifference to the constitutional rights of citizens, which were moving forces behind and proximately caused the violations of Plaintiff’s constitutional and federal rights as set forth herein and in the other claims, resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

217. Defendants Marks and Township have created and tolerated an atmosphere of lawlessness, and have developed and maintained long-standing, department-wide customs, law enforcement related policies, procedures, customs, practices, and/or failed to properly train and/or supervise its officers in a manner amounting to deliberate indifference to the constitutional rights of Plaintiff and of the public.

218. In light of the duties and responsibilities of those police officers that participate in arrests and preparation of police reports on alleged crimes, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights such as those described herein that the failure to provide such specialized training and supervision is deliberately indifferent to those rights.

219. The deliberately indifferent training and supervision provided by Defendants Marks and Township resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendants Marks and Township and were moving forces in the constitutional and federal violation injuries complained of by Plaintiff.

220. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual emotional injuries, and other damages and losses as described

herein entitling her to compensatory and special damages, in amounts to be determined at trial.

221. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

222. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

### **COUNT XI**

#### **42 U.S.C. § 1983**

#### **Interference with Intimate Association – Violation of Fourteenth Amendment (Plaintiff Bailey v. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek)**

223. Plaintiff Bailey hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

224. Plaintiff Bailey has a fundamental, constitutionally-protected liberty interest in the companionship, care, custody and management of her son, Plaintiff

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225. Pursuant to the Fourteenth Amendment, Plaintiff is entitled to the preservation of her intimate and private familial relationship with him, free from

unjustified government intrusion. See Roberts v. United States Jaycees, 468 U.S. 609, 617-19 (1984).

226. The Supreme Court has recognized the “interests of parents in the care, custody, and control of their children... is perhaps the oldest fundamental liberty interests.” Troxel v. Granville, 530 U.S. 57, 65 (2000).

227. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek’s conduct deprived Plaintiff [REDACTED] of her constitutional rights to familial and intimate association.

228. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek intentionally interfered with Plaintiff Bailey’s relationship with her son, Plaintiff [REDACTED]

229. Defendants Reed, Slivka, Stephens, Dugan, Cuth, Apgar and Reszek’s conduct violated clearly established constitutional law in that no reasonable officer would have believed that the excessive force used against Plaintiff [REDACTED] was lawful.

230. As a proximate result of Defendants’ unlawful conduct, Plaintiff has suffered actual emotional injuries, and other damages and losses as described herein entitling her to compensatory and special damages, in amounts to be determined at trial.

231. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law.

232. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

## **COUNT XII**

### **42 U.S.C. § 1983**

#### **Interference with Intimate Association – Violation of Fourteenth Amendment (Plaintiff Wright v. Defendants Marks and Whitehall Township)**

233. Plaintiff Bailey hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

234. Plaintiff Bailey has a fundamental, constitutionally-protected liberty interest in the companionship, care, custody and management of her son, Plaintiff

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235. Pursuant to the Fourteenth Amendment, Plaintiff is entitled to the preservation of her intimate and private familial relationship with him, free from unjustified government intrusion. See Roberts v. United States Jaycees, 468 U.S. 609, 617-19 (1984).

236. The Supreme Court has recognized the “interests of parents in the care, custody, and control of their children... is perhaps the oldest fundamental liberty interests.” Troxel v. Granville, 530 U.S. 57, 65 (2000).

237. Defendants Marks and Township were, at all times relevant, were policymakers for Defendant Township and the Whitehall Township Police Department, and in that capacity established policies, procedures, customs, and/or practices for the same.

238. These Defendants developed and maintained policies, procedures, customs, and/or practices exhibiting deliberate indifference to the constitutional rights of citizens, which were moving forces behind and proximately caused the violations of Plaintiff’s constitutional and federal rights as set forth herein and in the other claims, resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

239. Defendants Marks and Township have created and tolerated an atmosphere of lawlessness, and have developed and maintained long-standing, department-wide customs, law enforcement related policies, procedures, customs, practices, and/or failed to properly train and/or supervise its officers in a manner amounting to deliberate indifference to the constitutional rights of Plaintiff and of the public.

240. In light of the duties and responsibilities of those police officers that participate in arrests and preparation of police reports on alleged crimes, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights such as those described herein that the failure to provide such specialized training and supervision is deliberately indifferent to those rights.

241. The deliberately indifferent training and supervision provided by Defendants Marks and Township resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendants Marks and Township and were moving forces in the constitutional and federal violation injuries complained of by Plaintiff.

242. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual emotional injuries, and other damages and losses as described herein entitling her to compensatory and special damages, in amounts to be determined at trial.

243. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law.

244. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these

individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs prays that this Court enter judgment for the Plaintiffs and against each of the Defendants and grant:

- a. compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- b. economic losses on all claims allowed by law;
- c. special damages in an amount to be determined at trial;
- d. punitive damages on all claims allowed by law against individual Defendants and in an amount to be determined at trial;
- e. attorneys' fees and the costs associated with this action under 42 U.S.C. § 1988 including expert witness fees, on all claims allowed by law;
- f. pre- and post-judgment interest at the lawful rate; and
- g. any further relief that this court deems just and proper, and any other appropriate relief at law and equity.

**JURY DEMAND**

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

Respectfully submitted,

**Mobilio Wood**

Date: 6.5.20

BY: /s/Matthew Mobilio  
Matthew Mobilio, Esq. (I.D. No. 209439)  
609 W. Hamilton St., Suite 301  
Allentown, PA 18101  
Phone: (610) 882-4000  
Fax: (866) 793-7665  
matt@mobiliowood.com

Peter C. Wood, Jr., Esq. (I.D. No. 310145)  
900 Rutter Ave., Box 24  
Forty Fort, PA 18704  
Phone: (570) 234-0442  
Fax: (570) 266-5402  
peter@mobiliowood.com