

4. Defendant, City of Fort Worth, is a Texas municipal corporation residing within Tarrant, Denton, Parker, Wise, and Johnson counties that may be served with citation, pursuant to Sec. 17.024, Tex. Civ. Prac. & Rem. Code, by serving the Mayor, City Clerk, City Secretary, or the City Treasurer, located at 1000 Throckmorton St., Fort Worth, Texas 76102.
5. Defendant, Richard Hoepfner, is an individual and is believed to still be a member of the Fort Worth Police Department and resident of the State of Texas and may be served with citation at 10064 Chapel Oak Trail, Fort Worth, Texas 76116.
6. Defendant, Benjamin B. Hanlon, is an individual and former member of the Fort Worth Police Department and resident of the State of Texas and may be served with citation at 3789 Regency Cir., Fort Worth, Texas.
7. Defendant, Jeffrey W. Halstead, former Chief of Police for the City of Fort Worth, whose county of residence is unknown, but may be served with citation at the Halstead Group, located 2600 W. Seventh St., Suite 2822, Fort Worth, Texas 76102.
8. Defendant, Merle Green, is an individual believed to be currently employed with the Fort Worth Police Department and who may be served with citation at the Fort Worth Police Headquarters, located at 350 W. Belknap, Fort Worth, Texas 76196.
9. Defendant, Dana Baggott, is a resident of Johnson County, Texas, and may be served at 520 Deerwood Dr., Burleson, Texas 76028.
10. Defendant, B. S. Hardin, is an individual believed to be a current member of the Fort Worth Police Department, whose residency is unknown, but who may be served at the Fort Worth Police Headquarters, located at 350 W. Belknap, Fort Worth, Texas 76196.

11. Defendant, A. Chambers, is an individual believed to be a member of the Fort Worth Police Department, whose residency is unknown, but who may be served at the Fort Worth Police Headquarters, located at 350 W. Belknap, Fort Worth, Texas 76196.

JURISDICTION AND VENUE

12. This case is brought pursuant to Sec. 1, of the *Ku Klux Act* of 1871, Rev. Stat. § 1979, as amended and codified at 42 U.S.C. §§ 1983, 1985, and 1988.

13. The Plaintiffs would show that, at all relevant times, each of the Defendants named herein was acting under the color of statutes, ordinances, regulations, customs or usages of the State of Texas and City of Fort Worth and deprived Jerry Waller and vicariously, the Plaintiffs herein, of rights, privileges, and immunities, guaranteed by the Constitution of the United States and, in particular, the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution.

14. At all relevant times, as alleged herein, the City of Fort Worth was acting by and through its agents and employees, who were acting within the course and scope of their agency and/or employment.

15. At all relevant times, the City of Fort Worth was a municipal corporation organized under the laws of the State of Texas and like any other corporation, was acting by and through its agents and employees who were, at all relevant times alleged herein, acting within the course and scope of their agency and/or employment.

16. At all relevant times, the City of Fort Worth had as its official policy promulgated by municipal policymakers, as alleged herein, all of which were the motivating factor and moving force behind the violation of Plaintiffs' constitutional rights as alleged herein.

17. At all relevant times, the official policy of the City of Fort Worth, as established by its written policy, statements, ordinances, regulations, and widespread practices that are so common or well-settled that they constitute a custom, usage or practice that fairly represents municipal policy, and said policies were to permit, allow, and fail to discipline known violations by Fort Worth police officers of citizens' constitutional rights and, in particular, use of excessive force in violation of the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution.
18. At all relevant times, the policy, custom or usage of the City of Fort Worth as alleged herein resulted from the decision, the acquiescence, deliberate indifference and ratification of the municipal body and of officials with final policymaking authority over the Fort Worth Police Department in violation of the Plaintiffs' constitutional rights as set out herein.
19. At all relevant times as alleged herein, the City of Fort Worth had delegated to its Police Chief, Defendant Jeffrey Halstead, the final policymaking authority over the Fort Worth Police Department.
20. At all relevant times, the policies, customs and usages, as alleged herein, were the motivating force behind the violation of constitutional rights and a direct causal link exists between such policies and the violations that resulted in the tragic death of a Fort Worth citizen, Jerry Waller, at the hands of Fort Worth police.
21. The Plaintiffs would further show that, all relevant times herein, the City of Fort Worth, its police chief, mayor, and city council approved, acquiesced, and therefore, ratified the excessive use of force that resulted in the tragic and untimely death of Jerry Waller.

22. The Plaintiffs would show that the death of Jerry Waller was brought about and ratified by the City of Fort Worth as a result of extremely tragic and intentional acts by Fort Worth police who refused to take personal responsibility for their actions which has shocked the conscience of the community such that it has caused citizens in Fort Worth to lose faith in the ability of their police department to carry out its law enforcement function without seriously endangering the lives of innocent citizens.
23. The jurisdiction of this Court is provided by 42 U.S.C. §§ 1983, 1985, and 1988, pursuant to 28 U.S.C. §§ 1331 and 1343, 28 U.S.C. §§ 2201-02 and Rule 57, Fed. R. Civ. P. The Plaintiffs invoke this Court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), for those claims pertaining to common law and the Texas Constitution, said claims arising out of the same set of facts and allegations which the Plaintiffs claim violated their federal constitutional rights.
24. Venue is proper in the Dallas Division of the Northern District of Texas since one or more of the individual Defendants reside and have their domicile in the Northern District of Texas, the Dallas Division. The City of Fort Worth is located in Tarrant, Wise, Parker, and Johnson counties and is deemed to reside in any judicial district in which it is subject to the Court's personal jurisdiction. 28 U.S.C. § 1391(2). The City of Fort Worth is thus, a resident of each of the above counties where its territory resides and is subject to personal service in each of said counties and in the Northern District of Texas, Dallas Division.
25. The Plaintiffs would show the Court that on or about May 28, 2013, Defendant, Richard Hoepfner, in the course and scope of his employment as a Fort Worth police officer, shot and killed Jerry Waller at a time when Waller was within the confines of

the attached garage to his home and unarmed, presented no danger whatsoever to Defendant Hoepfner and by using such deadly force, did violate Jerry Waller's right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment to the U.S. Constitution.

26. Kathy Waller, as the surviving spouse, and Angie Waller and Chris Waller, as surviving children of Jerry Waller, deceased, bring this action individually and pursuant to the Texas Wrongful Death and Survivor Statutes, §§ 71.001, *et seq.*, and §§ 71.021, *et seq.*, of the Tex. Civ. Prac. & Rem. Code. As further stated herein, Kathy Waller also brings an action against certain Defendants directly for violation of her constitutional rights, as well as rights guaranteed her by the Texas Constitution and common law.

FACTUAL BASIS OF PLAINTIFFS' CLAIMS

27. On Memorial Day, May 27, 2013, Kathy Waller had been married to Jerry Waller for forty-five years, had two adult children, Angie and Chris Waller, and six grandchildren. Jerry and Kathy Waller, longtime Fort Worth residents, had lived at 404 Havenwood Lane North, for over nine years, in the Woodhaven section of Fort Worth, a quiet middle class neighborhood with active and friendly neighbors and little or no crime. Their home adjoined at the rear of the property of the Woodhaven Golf Course. The family had enjoyed a Memorial Day barbeque earlier that evening and Jerry and Kathy Waller retired about 11:00 p.m. Kathy ensured that the garage door was closed and locked since it had remained open during the afternoon of the Memorial Day barbeque on the patio at the rear of the home.

28. Unbeknownst to the Wallers, a little after 1:00 a.m., on May 28, 2013, their neighbor across the street, at 409 Havenwood Lane North, Mrs. Bailey, who had recently been ill and undergone surgery, was showing the caregiver that was assisting her following her medical procedure, how her home security alarm system worked, accidentally setting off her alarm. The two were unable to immediately silence the clearly audible alarm. The alarm took over the telephone system and when the ADT security operator attempted to reach Mrs. Bailey, she only received the answering machine. The ADT operator then called a neighbor who informed the operator that Mrs. Bailey had been ill and the neighbor asked that ADT summon someone to check on Mrs. Bailey. The following then took place when the ADT operator contacted the 911 dispatch operator for the Fort Worth Police Department, in relevant part:

Operator: Fort Worth Police Operator 1420 what's the address you're calling about?

ADT Alarm Co.: 409 Havenwood Lane North.

Operator: 409?

Operator: Is it coming in as burglar or panic?

ADT Alarm Co.: Burglar.

ADT Alarm Co.: I called the house and got voicemail.

Operator: Okay.

ADT Alarm Co.: I did reach a key holder and she told me the owner Mrs. Bailey has been, um...sick. And uh, she would like the police to go check.

Operator: Is it audible or silent?

ADT Alarm Co.: It's audible.

29. At 12:052:01 a.m., police dispatchers sent two probationary Fort Worth police patrol officers, Defendants, Richard Hoepfner and Benjamin Hanlon, to respond to the welfare call and check on Mrs. Bailey at her residence, located 409 Havenwood Lane North.
30. Both officers used the GPS equipment in their patrol cars to locate the street, but neither used the function which would shown the Bailey residence at 409 Havenwood Lane North to which they were dispatched, either because they did not know how to operate the equipment or they had not been properly trained in how to approach and investigate such a call. Both were still on probation, although they were assigned separate squad cars and proceeded, unsupervised, while responding to the call, which was the common practice of the Fort Worth Police Department.
31. At 12:58:52 a.m., Defendants, Hanlon and Hoepfner, arrived at 412 Havenwood Lane North, the residence next door and south to the Waller home residence at 404 Havenwood and across the street from the alarm call to the Bailey residence, at 409 Havenwood Lane North, and observed "412" on the street curb and mailbox.
32. Both Defendants, Hanlon and Hoepfner, believed that homes in that area, which is on their beat, were four numbers a part. Neither had been trained, tested or instructed that odd-numbered street addresses are on one side of the street and even on the other. Nor could Defendant Hanlon perform simple subtraction. In his statement to investigators, Defendant Hanlon stated that the street numbers are four numbers apart so the next residence after 412 would be 409.
33. Both officers carried a Glock 22 .40 semi-automatic handgun; baton; Taser; knife, lapel microphone; and 50 lumen LED flashlight, manufactured by Sterion, issued by

the City of Fort Worth. The flashlights are used to illuminate and locate proper street addresses when investigating nighttime calls.

34. Both Defendants, Hoepfner and Hanlon, are aware of the brightness and focus of these LED flashlights which will blind any person whom they encountered within 10 to 20 yards to prevent that person from being able to see the officer at night, thus, providing an advantage to the police officer during any nighttime encounter.
35. Apparently unaware of how to use the police GPS equipment available to them in each of their squad cars or ignoring this equipment due to lack of training and supervision, both Defendants, Hoepfner and Hanlon, exited their patrol cars, walked within a few feet of the clearly marked street numbers on the curb on the Wallers' residence, indicating "404" Havenwood Lane North, failed to shine their flashlights on the clearly marked mailbox with "409" clearly displayed as it was on the mailbox they parked by at 412 Havenwood Lane North, and not having been trained or supervised to know that even numbers were on one side of the street and the odd on the other, both officers walked together past the entrance of the Waller home and began to prowl in the backyard of the Waller residence, and as such, both were performing contrary to the General Orders of the Fort Worth Police Department and techniques used by all reasonable and prudent police officers responding to such a call, by having one officer observe from the side of the house while the other goes to the front door to summon the homeowner. A high percentage of audible alarm calls are false alarms.

36. Despite being advised that the alarm system call was an audible alarm and apparently attaching no significance to the fact that they heard no audible alarm, neither officer checked the address.
37. Both officers spent approximately five minutes behind the Waller residence shining their lights and prowling around as if they were casing the residence for a burglary.
38. Both officers claimed that the car that was parked in the back of the Waller driveway could have been a “getaway car” of a burglar, despite the fact that it was faced towards the fairway and away from the street.
39. Neither officer bothered to feel the hood of the car in the driveway to see if it was warm from having recently been running nor did they have any training or supervision to allow them to activate their lapel mics to call in the license plate number of the car to see if it belonged to the homeowner, which it did. The car had not been driven all weekend.
40. Leaving Officer Hoepfner at the back of the Waller residence, Officer Hanlon went to the front door of the house and claimed to have knocked on the door. Mrs. Waller states that this did not occur since her small dogs would have run to the front door and barked. Instead, the dogs were barking only at the back door.
41. At 1:06:06 a.m., both officers having been on the scene for better than seven minutes, Officer Hanlon activated his lapel microphone claiming to have seen a light come on in the Waller home and told Officer Hoepfner to come around to the front.
42. At 1:06:46 a.m., forty-four seconds later, Jerry Waller had been shot dead, laying face down in his garage. Defendant Hanlon contacted dispatcher at that time and stated, in

relevant part, “The guy came out with a gun, wouldn’t put the gun down and pointed it Hoepner and Hoepner fired.”

43. Approximately five minutes later, other Fort Worth police officers began to show up, including Defendants, B.S. Hardin and A. Chambers. Defendant Hardin told investigators later that morning that he had experience as an EMS and took his medical kit and went to Jerry Waller’s body lying face down in the garage.

44. Defendants, Hoepner and Hardin, were the only ones there as Defendant Hardin approached Jerry Waller’s body. Defendant Hardin states in his interview that Mr. Waller was lying in a “large pool of blood.” Defendant Hardin checked and found that Mr. Waller was not breathing and had no pulse in his neck or arm, although he does not state which arm. Defendant Hoepner then told Hardin that there was a gun underneath Mr. Waller’s body.

45. As Defendant Hardin was about to check the pulse of the clearly deceased Jerry Waller, Kathy Waller had hurriedly dressed and entered into the garage from the same door that Jerry Waller had used from the kitchen of their home. Seeing her husband lying face down in the garage with blood running down the driveway, she thought he had fallen and cut his head. Knowing that her husband was on prescribed blood thinners and realizing that police officers were in the garage, she stated to them, “get him up, he is on blood thinners!” At that instance, she heard a voice loudly shout, “Get her out of here!” as she attempted to attend to her husband. Two uniformed police officers, one male and the other female, grabbed her by each arm and, against her will, forced her out of the garage and into a squad car parked in front of the Waller home.

46. Defendant Hardin claims after Mrs. Waller was removed from the garage he removed a gun from the pool of blood after he had moved the body some distance and rearranged the deceased's arm and repositioned Waller's body. Hardin claims he placed the gun on the ground a couple of feet away from Mr. Waller's head. Exh. 1.
47. Fort Worth police officers on the scene, including Defendants Hardin and Hoepfner, ignored the requirements of state law that prohibits a body from being moved until the medical examiner arrives to investigate the death. Art. 49.25, Sec. 8, Tex. Code of Crim. P.
48. Defendant Hardin's claim that the gun was under Waller's body in the large pool of blood that he admits was present cannot be true. Photographs taken at the scene make it clear that Jerry Waller's gun was not in a pool of blood under Jerry Waller's body there being no blood on the gun as shown in the crime scene photographs. Exhs. 1 and 2.
49. Once the EMTs arrived, at approximately 1:13 a.m., they were told by Fort Worth police officers that they could not "move the body," even though the Fort Worth police had already moved the body repeatedly, fouled the scene, and stepped in the blood. The EMTs found no pulse and began to leave the scene.
50. Only after Fort Worth police had thoroughly fouled the scene and moved and rearranged Jerry Waller's body, six hours after Jerry Waller had been shot to death in his own garage, did Fort Worth police notify the medical examiner to come to the crime scene and investigate the death. By that time, the neighbors across the fairway had taken photographs of the Fort Worth police personnel standing in the blood of the

uncovered body of Jerry Waller and arrogantly ignoring art. 49.25, Tex. Code of Crim. P.

51. Before Officers Hanlon and Hoepfner prowled for over five minutes in the backyard, the Wallers were asleep in their bedroom. The Wallers' bedroom is on the ground floor of their two-story home in the back, facing the golf course. They were awakened by their dogs barking at the back door. Both saw lights flashing in their backyard. Jerry Waller thought his car alarm had gone off since it was very sensitive and would occasionally go off without provocation. There was no sound from the alarm, but he told Kathy that occasionally the alarm would go off and only the lights would blink. Jerry Waller pulled on a pair of jeans and a pair of socks. He walked through his den to check what was going on in his backyard. Mr. Waller kept a .38 subnose five-shot revolver hidden in a bathroom drawer downstairs and may well have armed himself with the pistol as he went to investigate.

52. The police version of the incident is contrary to the physical evidence as will be described herein. Furthermore, numerous officers were called to the scene, very few of whom were ever interviewed or gave statements. Someone, presumably the police, immediately contacted the attorney for the police officers association and/or CLEAT, who interviewed and discussed what happened with both Defendants, Hanlon and Hoepfner, within a very short time after the shooting. Apparently from the officers' statements, their attorney had access to the crime scene and the Waller home. The "investigation" by Fort Worth Detectives, Green and Baggott, is riddled with leading and suggestive questions, a clear attempt to explain away the number of discrepancies

in the officers' statements and provide a defense to the police shooting of an unarmed innocent man.

53. Kathy Waller remained in their bedroom when Jerry Waller went to investigate what was going on due to the flashing lights in the backyard and the incessant barking of the three small dogs at the back door leading to the patio. Suddenly, Kathy Waller, hearing what she thought was a series of loud bangs on the garage door, went to the garage to investigate. As she walked through her kitchen and into the garage, she saw her husband of forty-five years lying face down in the garage with both hands at his shoulders, as if he had fallen, and blood coming from his head going down the driveway. She thought that Jerry Waller had fallen and hit his head since he was on Coumadin, a blood thinner, and had been warned that if he sustained an injury, he would bleed profusely. Mrs. Waller, vaguely aware of police officers in her garage at 1:15 a.m., started towards her husband saying, "What is happening, what is going on?!" A male voice shouted, "Get her out of here!" Mrs. Waller asked what happened and urged, "Get him up, he is on blood thinners!" Suddenly, she was grabbed by a female police officer, Defendant A. Chambers, against her will and, as she struggled to see her husband, was forcibly removed her from the scene.

54. Kathy Waller was escorted to a police squad car by Defendant Chambers and another officer. Mrs. Waller was placed in the squad car and when she asked what was happening, she was told, "we are looking for the guy who did this." She was then told she was being taken to the police station. She was locked in the squad car with the windows up and was not permitted to talk to any of the neighbors who came up to

her, including one neighbor, a former City Councilwoman and good friend. Nor was she provided any medical attention.

55. Kathy Waller had high blood pressure and other medical problems. It was apparent that she was extremely distraught and in need of medical attention. Defendant Chambers was aware of Mrs. Waller's condition and that EMTs were on the scene, but she did not notify the EMTs of Mrs. Waller's presence or need for medical attention. As the EMTs were preparing to leave, their dispatcher advised them that there was another potential patient. Upon further inquiry, they discovered Mrs. Waller and went to the police squad car to assist her. Initially, Defendant Chambers was not going to allow them to attend to her. Mrs. Waller had been requesting the right to go into her house to get her medication and Defendant Chambers told her that the home was a crime scene and refused to allow her to get her medication. Eventually, the EMTs insisted upon attending Mrs. Waller despite Defendant Chambers' attempt to prevent her from having her medication or medical attention.

56. The EMTs examined Kathy Waller and determined that she was in need of hospitalization. Despite Officer Chambers' warning that, "they could not tell her anything," the EMTs advised Kathy Waller that her husband, of forty-five years, was deceased. The EMTs proceeded to place her in an ambulance and promptly transferred her to Harris Hospital.

57. While Kathy Waller was being treated at Harris Hospital, Fort Worth police promptly dispatched Defendant Dana Baggott, a Fort Worth plainclothes detective, to the hospital who proceeded to secretly tape and question the distraught Kathy Waller in the Harris Hospital emergency room.

58. The police did not attempt to question either Defendant Hoepfner nor Defendant Hanlon until each had thoroughly been interviewed by police association/union attorney or attorneys, who were allowed access to the crime scene. Both officers' statements indicate that their attorney(s) advised that they were at the wrong address.

59. Defendant Hoepfner's story was given in two later statements to Fort Worth police, the first one, nine hours after the event, and the other, a couple of days later. In his statement to Detectives Green and Baggott, **Defendant Hoepfner admits at no time did he ever identify himself as a police officer to Mr. Waller.**

60. At 1:06:50 a.m., on May 28, 2013, Fort Worth probationary patrol officer, Defendant Benjamin Hanlon, radioed to the Fort Worth police dispatcher that, "I don't know who the guy is. The guy came out with a gun, **wouldn't put the gun down**, and pointed at Hoepfner and Hoepfner fired." [Emphasis added.] Shortly after this statement, upon information and belief, Fort Worth police summoned an attorney with the police officers association/union who interviewed both officers and took their statements and informed them that they were at the wrong address. Apparently, their attorney had access to what the police were calling the crime scene, access was denied to Kathy Waller, the homeowner, for the purpose of obtaining her medication. According to police records, thirty-six (36) police officers were dispatched to the scene. Requests by the Plaintiffs, pursuant to the Texas Public Records Act, produced only six (6) officers' statements, with no disclosures or reports about what the other twenty-five (25) or so were doing roaming around the crime scene. Jerry Waller's body was moved far more than admitted to by Defendant Hardin. Exh. 1.

The body was obviously moved numerous other times as indicated by the photographs taken at the scene. Exh. 1.

61. Texas law prohibits any movement of a body from the position in which it was found and without authorization of the medical examiner:

Any death under circumstances set out in Section 6 shall have occurred, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the medical examiner or authorized deputy . . .

Tex. Code of Crim. P., art. 49.25, Sec. 8.

62. The circumstances of Jerry Waller's death, that is, he was killed by gunfire, are covered under Section 6 of art. 49.25.

63. Approximately four and one-half hours after Defendant Hoepfner shot and killed Jerry Waller, during which time both officers remained at the scene with the cast of some thirty-four (34) additional officers, Defendants Hoepfner and Hanlon were taken to the Fort Worth police headquarters where they were interviewed by Defendants, Detectives Green and Baggott. In a rambling, confused, stuttering, and at times incoherent audiotaped interview, Defendant Hoepfner, who is armed with a baton, Taser, Glock 22 .42 caliber city issued semi-automatic pistol, knife, and a Sterion LED flashlight, states that he pointed his flashlight in the eyes of a heavysset older white male who entered into the garage from a door leading from the house with no shirt on and wearing a pairs of jeans and socks. At this point, Defendant Hanlon was in front of the house and had radioed Defendant Hoepfner on his lapel mic to come around the front. Defendant Hoepfner, using terms that are unfamiliar to the police interviewers, such as "punch out," admits that **he never identified himself as a Fort Worth police officer.**

64. In Defendant Hoepner's interview, he admits that the elderly gentleman looked like a homeowner, that he had a snub-nose pistol pointed down and that the only statement Hoepner made to the elderly gentlemen was "put the gun down" which he repeated three times. In the computerized criminal records of Tarrant County, Texas, no one seventy years-old or older has ever been charged with burglary. While Hoepner "thought" the overweight elderly gentleman in jeans and stocking feet "might" have been the homeowner, he was apparently never trained nor sufficiently supervised to tell this elderly man, who was clearly blinded by Hoepner's flashlight, that he was a police officer.

65. In response, Hoepner claims stated that the elderly man proceeded to place the gun on the trunk of the car that was parked inside the garage and then stated, "Get the light out of my eyes, get the light out of my eyes." The elderly man's request was not sufficiently submissive or subservient for patrol officer Hoepner who stated, "the way he talks to me is very standoff attitude. You know . . . you know when he'd say, 'get . . . get the light out of my eyes' it wasn't please sir; get the light of out of my eyes."

66. Hoepner claims that the elderly gentleman walked a few feet away from the car, turned and made a "real quick motion for the car, grabs the gun and turned toward the door leading into the house." According to Hoepner, this 72 year-old overweight man was ". . . just hauling butt, you know, sprint to the door trying to get away from me." At that point, Hoepner states:

BAGOTT: So he was...he was actually running kind of away from you, towards the door and then actually turned back towards you, am I understanding...

HOEPPNER: No, no. He was running this way like...

BAGGOTT: ...like, I'm sorry, the door of the...going into the house?

HOEPPNER: ...see I'm not even sure if he was running either toward like...running towards the door area. He was trying to...see I don't know what he was doing. I mean, all I know is he got here **pointed the gun at me** and I thought...I thought... (Emphasis added.)

Hoeppner statement, 5/28/13, p. 27.

Hoeppner is not sure of anything even whether or not the gun was pointed at him.

67. Hoeppner admits that, "I can understand him [referring to elderly gentleman who had come out into his home into his own garage with Hoeppner's flashlight shining directly in his eyes] not understanding that I was a police officer." He, of course, never stated that he was a police officer. Hoeppner further states that, "... when he said 'get that light out of my eyes' and like at first, you know, like I didn't want to do it because, I mean, I did not want to engage him with a gun."

68. Hoeppner states that the elderly gentleman had the gun in his right hand when he emerged from kitchen into the lit garage and the gun remained in that hand while he put the gun on the back of the trunk of the car on the driver's side. At no time before the elderly gentleman placed the gun on the car did he ever raise the weapon up. When asked whether the elderly gentlemen grabbed the gun with his right or left hand, Hoeppner stated, "It was almost he, like weird, like both, both hands" claiming that he held the gun, "probably stomach . . . like mid-stomach kind of . . ." As will be discussed, this could not have happened since Jerry Waller did not and could not have had the gun in either hand.

69. Probationary officer Hanlon in his statement changed his story from the one he radioed to the dispatcher four and one-half hours earlier. Several months after this shooting, Hanlon was fired from the Fort Worth Police Department according to published accounts because he falsified statements in a police report. Hanlon, like Hoepfner, was a probationary officer. He had been turned down initially when he applied for the Fort Worth Police Academy for failing to disclose requested information in his application. He was then turned down by two other police agencies, including the City of Dallas. He then reapplied for the Fort Worth Police Department and was accepted.

70. Hoepfner also met with an attorney from one of the police associations/union for some period of time before his interview at 4:30 a.m., on May 28, 2013. He apparently had not been properly trained in the use of the police GPS equipment or how to locate addresses and claiming when, as the lead police car, he stopped at 412 Havenwood Lane North, the next house would be four numbers different on the same side of the street, or 409 Havenwood North.

71. After both officers had prowled around in the Wallers' backyard and patio and hearing no audible alarm, Hanlon claims he went around to the front door of the Waller home. When Hanlon radioed Hoepfner to come around front, he heard Hoepfner's voice, but could not understand what he was saying. He then claims to have gone around the back, at which time he witnessed an elderly man placing his handgun on the back of the automobile in the lit garage and, from where he was standing at the corner of the garage, he claims to have seen the elderly man, who was right-handed, grab the gun in his left hand and without taking a step or walking

anywhere, the man turned and pointed it at Hoepner, who was three feet away, whereupon Hoepner opened fire. The autopsy report does not indicate that Hoepner's weapon was fired at that distance. Hoepner himself claims he was no closer than seven yards from the elderly man when he opened fired. That distance is confirmed by the location of shell casings ejected from Hoepner's semi-automatic Glock handgun. Hanlon is never asked nor does he explain why he would tell the dispatcher that the man never would put the gun down and when the man had gone for the gun after putting the gun down, unless, of course, he never witnessed either event. Hanlon, who never fired his weapon, claims that Hoepner was in his line of fire, another claim that simply does not comport with the physical evidence at the scene nor the statement of Hoepner. The totality of the evidence shows that Hanlon simply did not witness this event at all. His claim that the right-handed Jerry Waller picked up the snub-nose .38 handgun in his left hand and pointed it at Hoepner is contrary to the wounds Waller sustained and the crime scene photographs. As set out below, Hanlon's and Hoepner's stories simply cannot be true.

JERRY WALLER WAS UNARMED WHEN HE WAS SHOT IN HIS GARAGE

BLOOD SPATTER

72. The wound to Jerry Waller's left hand entered in the side of the thumb through the index finger and across the back of the second finger. *See*, Exh. 3.
73. Jerry Waller's right-hand has blood spatter across the fingers, none of which are smeared. *See*, Exh. 4. The gun which Defendants Hanlon and Hoepner claim was underneath Jerry Waller's body and which Defendant Hardin stated was in a large pool of blood is shown by crime scene photographs to have no blood on the gun grip

and could not have been underneath Jerry Waller's profuse bleeding chest wounds for the seven to ten minutes before Hardin arrived at the scene and witnessed Jerry Waller lying in a large pool of blood. The crime scene photographs clearly show that Waller's pistol had not been lying in a large pool of blood. *See* Exhs. 1 and 2.

74. Even more telling is the blood spatter on the left side of Jerry Waller's face, clearly evident from the crime scene photographs. *See* Exhs. 5 and 6.

75. The blood spatter on the left-side of Jerry Waller's face could only be caused by the bullet wound to the left thumb and first two fingers from his hands being raised up to his forehead, with the left hand slightly ahead of the right hand, with the hand wound causing the blood spatter of the left side of the head and right hand. *See*, Exhs. 3, 4, 5, and 6.

76. The subsequent wound to the heart through the torso is consistent with Jerry Waller falling as he was standing with his hands position up next to his shoulders as Kathy Waller observed her husband's prone position and with his hands not underneath his body as claimed by Defendant Hardin.

77. Likewise, Jerry Waller's firearm could not have been underneath his body as claimed by Defendants Hanlon, Hoepfner and Hardin since it was not covered in blood as is clear from Defendant Hardin and the reports of the EMTs, as well as the crime scene photographs. Exhs. 1 and 2. The lack of blood on the gun grip, the entrance wound on the side of the left thumb and blood spatter on the fingers and palm on the right hand, are clear evidence that Jerry Waller did not have a gun in his hand, much less one that was aimed at police officers when he was shot. *See*, Exhs. 1-6.

VIOLATIONS OF RICHARD ALEXANDER HOEPPNER

78. At all relevant times, Defendant Hoepfner was acting under color of state law as a uniformed police officer for the City of Fort Worth. His use of deadly force against an unarmed 72 year-old father and grandfather, Jerry Waller, while Waller had both his hands in the air, standing in his own garage, was objectively unreasonable under clearly established law at the time of its occurrence, in violation of Jerry Waller's rights under the Fourth Amendment to the U.S. Constitution and art. I, § 9, of the Texas Constitution.
79. Defendant Hoepfner, by his assault on an unarmed Jerry Waller, trespassed upon the Wallers' property and house, and invaded the privacy of their home, all without a warrant and without probable cause and thus, violated the Fourth Amendment right to be free from unreasonable searches and seizures.
80. Defendant Hoepfner destroyed and/or altered evidence at the scene of the shooting of Jerry Waller so as to make it appear as though Jerry Waller was armed and posing a threat to said officer. Hoepfner also has made statements that were publicized that Waller was "anti-police." Hoepfner's conduct was extreme, outrageous and intentionally undertaken, knowing that it would cause extreme emotional distress to the family of Jerry Waller and thus, Defendant Hoepfner's actions proximately caused intentional infliction of emotional distress upon Kathy Waller, Angie Waller, and Chris Waller.
81. Defendant Hoepfner, on the occasion in question, assaulted an innocent unarmed Jerry Waller, causing his death and therefore, proximately causing injury and death to Jerry Waller and damages to his wife, Kathy Waller, and his children, Angie and Chris Waller, pursuant to the Texas Wrongful Death and Survivor statutes.

82. On the occasion in question, Jerry Waller, his wife, Kathy, were peacefully enjoying their home in the Woodhaven section of east Fort Worth when, without their permission, without any lawful right to enter their property or their home or intrude upon their seclusion and privacy, Defendant Hoepner trespassed and entered upon their property and caused the bodily assault, injury and death to Jerry Waller while he was within the confines of the Wallers' home. Defendant Hoepner violated Jerry Waller's solitude and seclusion, taking his life, conduct that goes without saying, was highly offensive to any reasonable person and as such, caused injury and harm to Kathy Waller, Angie Waller, and Chris Waller, for which they seek damages as a result of these intentional torts, including trespass, invasion of privacy, and intentional infliction of emotional distress and in violation of the right to be free from unreasonable searches or seizures under the Fourth Amendment to the U.S. Constitution and art. I, §§ 9 and 19, of the Texas Constitution.

83. Defendant Hoepner entered upon the property and invaded the home of Jerry and Kathy Waller on the occasion in question and took the life of the unarmed Jerry Waller by excessive force in violation of the rights guaranteed to them by the Fourth Amendment to the U.S. Constitution and art. I, §§ 9 and 19 of the Texas Constitution.

VIOLATIONS OF DEFENDANT HANLON

84. Defendant, Benjamin Hanlon, like Defendant Hoepner, trespassed upon the Waller property, invaded the privacy of their home and violated the Waller family's right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment to the U.S. Constitution and art. I, §§ 9 and 19 of the Texas Constitution.

85. Defendant Hanlon destroyed and/or altered evidence at the scene of the shooting of Jerry Waller to make it appear that Jerry Waller was armed and made statements to the same effect. Hanlon's conduct was extreme, outrageous, and undertaken intentionally so as to cause extreme emotional distress to Kathy Waller and her children, Angie and Chris, and his action did so cause extreme emotional distress to Plaintiffs, which proximately caused emotional injury to each for which they seek damages.

86. Defendant Hanlon was in concert and conspiracy with Defendant Hoeppner in depriving Jerry Waller of his life and right to be free from unreasonable seizures under the Fourth Amendment to the U.S. Constitution, art. I, §§ 9 and 19 of the Texas Constitution, and in violation of 42 U.S.C. § 1985.

VIOLATIONS OF DEFENDANTS GREEN AND BAGGOTT

87. Defendants, Green and Baggott, as detectives of the Fort Worth Police Department, City of Fort Worth, were assigned to investigate the police involved shooting that took Jerry Waller's life. Detectives Green and Baggott were both aware of the compromising of the integrity of the crime scene by one or more police officers, clearly violating art. 49.25, Tex. Code of Crim. P., by moving the body, and failing to immediately notify the Tarrant County Medical Examiner, an obligation which each of them also had. Rather than conducting a fair investigation to discover the truth, both joined: (1) in the violation of the integrity of the crime scene; (2) by their actions and questioning, did everything within their power to excuse Hanlon and Hoeppner; (3) ignored the clearly illegal acts and the physical evidence; (4) suggested answers to these probationary patrol officers in an attempt to hide the truth; and (5) failed to

question or actively directed the compromise of the crime scene and destruction of the physical evidence, especially pertaining to the handgun belonging to Jerry Waller. Defendants, Green and Baggott, failed to have either patrol officer subjected to blood tests, allowed Jerry Waller's handgun to be wiped clean before returning it to Mrs. Waller, thus, destroying any DNA evidence on the handgun, did not test for DNA on the handgun and test Fort Worth officers' DNA on the handgun. Both engaged in other actions taken in an attempt to cover up and disguise clear evidence that Jerry Waller was not holding a handgun at the point in time when he was shot and killed by Officer Hoepfner.

88. Defendants, Baggott and Green, failed to obtain a warrant until after they had rummaged through the Waller residence and collected and confiscated Waller property and then misrepresented to the magistrate the facts necessary to obtain a warrant which was not obtained until well after the crime scene had been thoroughly fouled and evidence destroyed. Both Defendants undertook to alter and affect the testimony of Defendants, Hanlon and Hoepfner, by interviewing each officer with leading and suggestive questions. Defendants, Green and Baggott, trespassed on the Waller property, invaded their privacy, intentionally inflicted emotional distress upon the Waller family by ignoring clear evidence that Jerry Waller was unarmed when he was shot and killed by Defendant Hoepfner. Instead, by their report and investigation, which was published in the media and to the public at large Defendants Green and Baggott claimed Jerry Waller aimed a weapon at Defendant Hoepfner when knowing full well from their investigation of the crime scene that could not be and was not the case.

89. Defendants, Green and Baggott, attended Jerry Waller's autopsy and "added" an "injury section" to the autopsy given to the press misstating facts and statements made during the autopsy and attempting to make this section look like it is a part of the autopsy report, which it is not. Furthermore, neither detective had any right to attend or make a report of the autopsy. They were present at the autopsy and published confidential medical information about Jerry Waller that was in no way related to the Jerry Waller death by gunfire. Both then issued statements to the press that Jerry Waller had colon cancer and a skin cancer and matters that were irrelevant to the cause of death or to the manner in which Jerry Waller was shot and killed by Fort Worth police. Both then broadcast that Jerry Waller's liver had multiple tumors implying that Jerry Waller had committed "suicide by cop," a matter that wholly is unfounded and untrue. Thus, both Green and Baggott invaded the privacy and intentionally inflicted emotional distress on the Waller Plaintiffs.

90. Defendant Baggott secretly and surreptitiously recorded a conversation with Kathy Waller while she was being treated at the Harris Hospital emergency room where Mrs. Waller was taken after the shooting. The Fort Worth Police Department has failed to provide Mrs. Waller with a complete copy of the tape, despite the open records request to do so.

91. The violations and compromise of the integrity of the crime scene and moving and rearranging of Jerry Waller's body in violation of art. 49.25, Tex. Code of Crim. P., all were intentionally undertaken and were extreme and outrageous actions which proximately caused emotional distress to Kathy Waller and the Waller family. These acts as alleged herein intentionally intruded upon the Waller family's solitude,

seclusion, and private lives in a manner offensive to any reasonable person causing severe mental anguish and distress to the Waller Plaintiffs.

92. Both Defendants, Green and Baggott, trespassed upon the Waller property without probable cause and without a warrant so as to compromise the crime scene and violate the rights of Kathy Waller to be free from unreasonable searches and seizures guaranteed by the Fifth Amendment to the U.S. Constitution and art. I, § 9, of the Texas Constitution, and the right to be free of governmental taking and denial of due process guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

VIOLATIONS OF B. S. HARDIN

93. Defendant, B.S. Hardin, was, at all relevant times, a patrol officer with the City of Fort Worth and, on the occasion in question, was riding with a second Fort Worth patrol officer, Defendant A. Chambers. Hardin and Chambers arrived six to ten minutes after Jerry Waller had been shot in the garage attached to his home. In an interview with Fort Worth detectives, Defendant Hardin claimed that he had EMS experience and that upon arriving at the Waller home, he and Defendant Chambers went to the rear of the home and saw an “. . . elderly white male lying face down . . . kind of laying half in the threshold in the garage, a great deal of blood underneath him.” Hardin went to see if there were any “signs of life” when the door from the kitchen into the garage opened and Kathy Waller came through the door into the garage. At that time, Fort Worth police officers, Gonzales and A. Chambers, then took Mrs. Waller, who was attempting to see her husband, into custody despite having no probable cause and imprisoning her in the Fort Worth police squad car. In his interview with Fort Worth detectives, Defendant Hardin claims that he checked

Jerry Waller's body and found no pulse in his neck or arm and that he picked up Waller's gun from the pool of blood under the body and moved it two or three feet away from him. There was no reason to move Waller's lifeless body. Any competent EMS would have checked Waller's carotid artery, the artery that arises directly from the aorta through the side of the neck and provides the principal blood supply to the brain. No pulse in the carotid artery and there is no life. Jerry Waller's neck and carotid artery could have been accessed without any need to move his body.

94. The photographs of the scene show considerably more movement than Defendant Hardin claims in his statement. *See*, Exh. 1. Following the movement of the body, Waller's hands were not repositioned as they had been before Hardin moved the body, but rather, Hardin "arranged" the extremities, attempting to compromise the crime scene. Hardin admitted that there was considerable blood underneath the body, "it was a lot pool underneath him and there was a nice kind of trail of blood that led down the driveway." Defendant Hardin has no explanation for how the gun, which supposedly was between the hands of the deceased, and which Defendant Hardin claims to have found underneath Jerry Waller's body, has no blood on the pistol grip and could clearly not have been sitting in a large pool of blood. *See*, Exhs. 1 and 2.

95. Defendant Hardin, knowingly and intentionally, fouled and moved Jerry Waller's body, contrary to art. 47.25, Tex. Code of Crim. P., and did so knowing that it not only violated the law, but also, destroyed the crime scene, evidence to the location of the snub-nose revolver, thus, violation of the Wallers' rights under the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution.

96. Consequently, Defendant Hardin knowingly and intentionally altered the evidence in an attempt to create a defense or credibility for Officer Hoepfner and intentionally inflicted emotional distress on the family of Jerry Waller. Defendant Hardin's actions deprived the Waller family of evidence necessary to obtain the truth about the murder of Jerry Waller and thus, denied Jerry Waller and his family due process of law as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution and art. I, §§ 9 and 19, of the Texas Constitution.

VIOLATIONS OF A. CHAMBERS

97. Kathy Waller, age 75 years, after hearing what she thought was someone banging on the wall or door of her home, hurriedly dressed and rushed through the house to the kitchen door leading to the garage. When she opened the door, Mrs. Waller was immediately met with a series of flashlights aimed at her eyes. As she stepped into the garage, at her feet was her husband lying face down with his elbows bent with his hands up close to his shoulders and bleeding profusely. Mrs. Waller thought the bleeding was coming from Jerry Waller's head. Jerry Waller was taking prescribed blood thinners. Mrs. Waller, in her shock upon entry into the garage, vaguely aware that others, including the police were there, assumed Jerry Waller had fallen and hit his head. Mrs. Waller told them to, "Get him up, he is on blood thinners!"

98. Suddenly, Mrs. Waller heard a male voice shout, "Get her out of here!" A policewoman, later identified in statements given to police investigators as Officer Chambers, grabbed Mrs. Waller by the right arm and despite her resistance, pulled her out of the garage and told her that they were taking her to the police station. Another male officer grabbed Mrs. Waller on the left side and the two of them

forcibly walked her to the police squad car parked in front of her house and place her in the backseat.

99. Mrs. Waller asked Defendant Chambers what had happened and she responded, “we are looking for the guy who did this.” Defendant Chambers would not allow anyone talk to Kathy Waller while she was imprisoned in the police car, despite the fact that several neighbors, including a former Fort Worth City Councilwoman attempted to do so.

100. When Mrs. Waller asked, “Why, why am I here?” Defendant Chambers replied that, “we had an alarm call at 404 Havenwood.” Kathy Waller told her she did not even have an alarm system and they can check the telephone that she never called the police. Defendant Chambers refused to believe this and also refused to let her go back into her house to obtain her medication because she was feeling lightheaded. telling Kathy Waller that her home “is a crime scene.”

101. After approximately one hour, at 2:10 a.m., the paramedics came to the police car and asked to examine Mrs. Waller. Defendant Chambers refused their request. After a discussion with the paramedics, Chambers finally agreed to let paramedics attend to Mrs. Waller, but told the paramedics “you can’t tell her anything.” The paramedics examined Kathy Waller and found her blood pressure to be 218/110, an extremely high blood pressure and due to her hypertensive blood pressure and overall evaluation of her condition, determined that she should be taken to Harris Hospital for treatment. Despite the intimidation of Defendant Chambers, the paramedics told Kathy Waller that they had done all that they could, but that her husband was deceased. When Kathy Waller asked Defendant Chambers to go into her house to collect her personal

belongings, her cell phone, and her medication before being taken to the hospital, Defendant Chambers again refused. Kathy Waller was taken to Harris Hospital emergency room in downtown Fort Worth for treatment.

102. Defendant Chambers had no probable cause whatsoever to arrest, take into custody and falsely imprison Kathy Waller, denying her the right to see her husband, receive her medication, delaying medical attention, and acting with deliberate indifference to her medical needs and well-being, in violation of the rights guaranteed to her by the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, art. I, §§ 9 and 19, of the Texas Constitution, and Texas common law.

103. Defendant Chambers intentionally misled and inflicted emotional distress upon Kathy Waller, trespassed upon her property, and falsely imprisoned her, in violation of the rights guaranteed her under Texas common law which proximately caused injury and damages to Kathy Waller as set out herein.

VIOLATIONS OF CHIEF OF POLICE JEFFREY HALSTEAD

104. Defendant, Jeffrey Halstead, was, at all relevant times, Chief of Police of the City of Fort Worth, although he has since left that position. At all relevant times, the customs and policies of the Fort Worth Police Department were delegated to Defendant Halstead, as the Chief of Police, such that at all relevant times as pled herein regarding the Fort Worth police force, Halstead was the official policymaker for the City of Fort Worth, Texas.

105. Defendant Halstead oversaw various press releases that were released to the public concerning the death of Jerry Waller. Defendant Halstead was responsible for the press release indicating that Jerry Waller was shot while in his backyard, despite

clear evidence that Jerry Waller never left the confines of the garage attached to his home.

106. Defendant Halstead also indicated in press conferences that the Waller home was poorly lit, implying that the officers were within their right to trespass upon the Waller property when there had been no police call and no summons to the Waller residence, and no probable cause to be on the Wallers' property. Only when a neighbor, with a telephoto lens took photos showing that Jerry Waller's body was entirely in his own garage, and the news media took photographs showing that street number "404" was contained not only on both sides of the Waller driveway, but also on the curb in the front walkway and on the mailbox, that the public was informed that it was not the fault of Jerry Waller that he was shot and killed in his own garage. Jerry Waller's death was the direct result of policy, practice and customs of the Fort Worth Police Department that endanger the lives of Fort Worth citizens denying them their constitutional rights. Fort Worth police officers neglected to check the clearly marked street numbers at the location, as any reasonable police officer would do and further, the officers should have gone to the front door and knocked on the door immediately, as required by their General Orders, as opposed to prowling around in the back yard like criminals casing a place to rob. Nevertheless, Defendant Halstead stated in various contacts and conferences with reporters that these practices, by Hanlon and Hoepfner, were proper police procedure.

107. Defendant Halstead, the policymaker for the Fort Worth Police Department, refused the Waller family access to police reports, autopsy, police statements and

crime scene photographs that were taken at their residence, keeping the family in suspense for over eight (8) months after Jerry Waller's death.

108. Halstead directed that his investigators use "junk science" in the form of references to non-peer-reviewed articles, claiming all police officers have "tunnel vision" so as to explain the numerous discrepancies, and obvious false claims and statements from officers in connection with the investigation of Jerry Waller's death.

109. Eight months after Jerry Waller's death, Defendant Chief Halstead announced in a press conference that the grand jury had correctly "exonerated" Officers Hoepfner and Hanlon by using "science" and that both Hoepfner and Hanlon and the other officers at the scene the morning of Jerry Waller's death, "had performed exactly as we trained them."

110. Defendant Halstead with deliberate indifference to the existence of physical evidence that contradicted Hanlon's and Hoepfner's accounts and based upon his long tenure in law enforcement knows that with the wounds to Jerry Waller's left hand and unsmeared blood spatter on the right hand, and there being no blood on the pistol grip of the gun Jerry Waller allegedly aimed at Officer Hoepfner, that Jerry Waller did not have a gun in either hand and could not have been pointing a gun at the officer when he was shot. Thus, Defendant Halstead acted in concert and conspiracy with the other Defendants to deny Jerry Waller, and vicariously, Kathy Waller and the Waller family, their rights guaranteed by the Fourth Amendment to the U.S. Constitution, art. I, § 9, of the Texas Constitution, and pursuant to 42 U.S.C. §§ 1983, 1985, and 1988.

111. Defendant Chief Halstead conducted a press conference in which he knowingly and falsely stated that Officer Hoepfner had identified himself as a police officer to Jerry Waller, knowing that Hoepfner, himself, denied in two statements to police that he never identified himself as a police officer. Halstead also claimed that Officer Hanlon had identified himself as a police officer, although Hanlon's statement of what happened was so contradictory to the facts, that it lacks credibility, and at the time of the press conference, Halstead himself had terminated Hanlon's employment for falsifying a police report.

112. Halstead's claim to the press that Jerry Waller's wife had heard the Fort Worth police identify themselves as police officers was an outrageous and intentional false statement. Kathy Waller had clearly stated that she never heard anyone say "police" or identify themselves as police even when she entered into her garage. Halstead had Kathy Waller secretly taped while at the Harris Hospital emergency room where she stated that she never heard anyone yell "POLICE." Halstead made this statement with intent to inflict and did inflict severe emotional distress upon Kathy Waller and the Waller family in violation of the rights guaranteed the Waller family by Texas common law.

113. Defendant Halstead, during his tenure, engaged in policy of placing probationary Fort Worth patrol officers on the evening shifts, with little or no supervision, with the knowledge, understanding, and personal experience that such Fort Worth police officers have on numerous occasions, both before and after the death of Jerry Waller, engaged in violation of citizens' constitutional rights by virtue of their inexperience, lack of training, lack of discipline and poor supervision. Halstead had long been

aware and publicly discussed this excessive use of force by probationary officers, and yet, was consciously indifferent to the fact that these officers have repeatedly used excessive force and engaged in violations of the Fourth Amendment to the U.S. Constitution. Halstead was consciously indifferent to this policy and procedure such that unsupervised and undisciplined use of excessive force, including deadly force, is the *de facto* policy and procedure of the City of Fort Worth Police Department. To allow such officers to engage in unconstitutional actions visited upon citizens of Fort Worth, including the unjustifiable use of city issued firearms, in the same manner that was done to Jerry Waller on the occasion in question, is in violation of the Fourth Amendment to the U.S. Constitution and art. I, § 9, of the Texas Constitution.

Violations of the City of Fort Worth and its Chief of Police, Jeffrey Halstead

114. During the early morning of May 28, 2013, Jerry Waller and his wife, Kathy, were asleep in their home in the Woodhaven section of Fort Worth, Texas. Jerry Waller was a veteran who ran a small business in Fort Worth for many years and had no criminal record. There had been no call that night to the Fort Worth police to the Waller residence.

115. Probationary Fort Worth patrol officers had been called for a welfare check to a home at 409 Havenwood North, across the street from the Waller residence, a little before 1:00 o'clock a.m. The street addresses of both residences were well marked on the curbs and mailboxes and were easily viewed with the 50 lumen flashlights that were issued as standard equipment to both probationary patrol officers.

116. Both officers were apparently not properly trained as to how to respond to calls involving audible burglar alarms since neither used their GPS equipment that was

available in their patrol cars and both were unaware and had not been trained that street addresses are odd on one side and even on the other side of the street. Both officers observed the mailbox and the curb street number at 412 Havenwood Lane North. Officer Hanlon told investigators that street numbers were four numbers a part on that street, so the next house would be 409 Havenwood.

117. Ignoring the City of Fort Worth's General Orders, both officers proceeded as a "pack" to the rear of the Waller residence, failing to attempt to contact the homeowner, and shining flashlights across the back of the home, actions which alerted three small house dogs that the Wallers kept as pets and caused them to bark incessantly which was clearly heard by both officers.

118. When the Wallers were awakened by the intensity of their dogs barking, Jerry Waller, age 72, and in socked feet, pulled on a pair of blue jeans and went to investigate. Jerry Waller, like many Texans, owned a handgun, a small snub-nose five-shot .38 caliber revolver, which he may have, on the occasion in question, taken with him as he stepped from his kitchen into his garage. Mr. Waller pressed the button that both turns on the overhead light and raises the garage door. It takes ten seconds for the door to completely rise.

119. Jerry Waller was then confronted with a blinding light from a flashlight issued by the Fort Worth Police Department to probationary officer, Defendant Hoepfner, who was shining the light directly in Mr. Waller's eyes. This flashlight, by design, has such intensity that a person so confronted is not able to make out the form of the officer standing behind the flashlight. Probationary officer Hoepfner had not been properly trained or supervised to announce that he was a police officer, since he

admits in two statements to Fort Worth police detectives, that he never identified himself as a police officer. His only statements made to Mr. Waller were to order that he drop the gun. Mr. Waller, like any other Texan, familiar with firearms of that vintage, knew that dropping the gun on the concrete floor could cause it to discharge. Without ever leaving his garage, Jerry Waller walked over to his wife's car that was parked in the garage, placed the gun on the trunk of the car (according to Officer Hoepfner) and then stepped away from the car, a distance of six or seven feet, at which time, according to Hoepfner, Waller stated something to the effect of "get that light out of my eyes."

120. The physical evidence makes it clear that Jerry Waller had his hands at his forehead above his eyes, obviously attempting to see who it was standing with the flashlight, blinding him, and never identifying himself. Both probationary officers claim that Officer Hanlon appeared on the scene and stated, "Fort Worth PD." Objectively reasonable police officers always announce their presence by loudly stating "POLICE," not PD or in this case, "Fort Worth PD," since in time of stress, the abbreviations of "PD" may be confusing and not clearly heard or interpreted as such. No competent, objectively reasonable police officer would identify himself/herself by any term other than "POLICE." Hanlon's credibility is impeached by the physical evidence and his propensity for being untruthful. Hanlon claimed that Jerry Waller grabbed the handgun off of the trunk of the car and pointed it at Hoepfner when Hoepfner was only three or four feet away from Waller. The autopsy clearly determined that no shot was fired from this distance. Hoepfner states

he was seven yards away and the location of the six shell casings from Hoepner's automatic pistol support Hoepner was 20-21 feet away from Jerry Waller.

121. The wound in Jerry Waller's left thumb and the fact that the gun had no blood on the grip or damage to the gun itself from the projectile which nearly took off the index and number two finger on Jerry Waller's left hand, are clear indications Waller had no gun in his hand.

122. The Fort Worth police were aware of Hanlon's propensity for lying and refused his first application to join the Fort Worth Police Department based on misrepresentations in his application. After being turned down by two other Texas police agencies, Hanlon was hired by Fort Worth Police Department despite his known propensity for falsification and was ultimately fired by Fort Worth Police Chief Halstead three months after Jerry Waller's death for falsifying an offense report. Defendant Hanlon's initial statement to the Fort Worth dispatcher the morning of Jerry Waller's death that, "The guy came out with a gun and would not put the gun down . . . ," is totally at odds with Hoepner's version of events. Hanlon's changed story came after a consultation with the police officers association and/or CLEAT's attorney and detectives.

123. Following the shooting, the Fort Worth police began a sordid campaign to discredit Jerry Waller by putting the blame on the victim and deny the Waller family and the public the physical evidence at the scene that clearly called into question and discredited Hanlon's and Hoepner's versions of what happened. The shell casings from Hoepner's Glock semi-automatic revolver clearly indicated that Hoepner was at least seven *yards* away from Jerry Waller when he was shot. Hoepner himself

insists that is where he was standing despite repeated attempts by Fort Worth detectives to get him to say he was standing closer in an apparent attempt to support Hanlon.

124. Fort Worth police then claimed that poor lighting at the Waller residence prevented the officers from going to the proper address even though each was equipped with flashlights and the numbers were clearly visible on the curbs and mailboxes.

125. The Fort Worth police refused to produce for eight (8) months any of the crime scene photographs or statements made by the officers to the Waller family, claiming the “investigation” was still on-going when, in fact, their investigation had been concluded within a few days after the shooting. The Waller family did not receive documents that are clearly permitted under the Texas Public Information statute until eight months after Jerry Waller’s death.

126. The Fort Worth police knew that the entire confrontation between Hoepfner and Jerry Waller took place between two police radio transmissions. One, in which Hanlon radioed Hoepfner to come around to the front of the Waller home at 1:06:06 a.m., May 28, 2013; the second at 1:06:50 a.m., when Hanlon radioed the police dispatcher that “shots had been fired.”

127. The Fort Worth police had surreptitiously taped Kathy Waller at the Harris Hospital emergency room in which she told them she heard loud talking followed immediately by five or six loud noises which she thought was someone beating on the door of her garage. Given the time that it would take the garage door to rise, approximately ten seconds, and the time it took for Hanlon to run to the back of the

home, another ten seconds, the confrontation between Hoepfner and Jerry Waller could not have taken more than ten to fifteen seconds, including the time it took Hoepfner to fire the six shots that killed Jerry Waller.

128. Despite knowing this information, the Fort Worth police staged a press conference following the grand jury “no bill” in which, although recounting no conversation other than “get the light out of my eyes,” Defendant Hoepfner claimed that Waller was “stand off-ish,” “like he was not submitting to us” and that he had a “very hostile kind of stance.” Hoepfner also claimed that Jerry Waller, “had the attitude of you cannot tell me what to do with my gun in my, you know, in my castle” and this veteran businessman, without a criminal record, according to Hoepfner “was not pro-police at all.”

129. At the press conference, Police Chief Halstead arrogantly applauded Hoepfner’s and Hanlon’s actions in taking Jerry Waller’s life, proclaiming that all actions taken by Officers Hanlon and Hoepfner were proper police procedure and they performed “just like we train them.”

130. The Fort Worth Mayor and City Council endorsed the Police Chief’s approval of the officers’ actions. The police chief, the Mayor, nor the City Council offered any apology to the Waller family.

131. Former Fort Worth Police Chief Halstead has during his tenure stated his awareness of the fact that probationary patrol officers are placed on night duty where they have engaged in deliberate intentional conduct in which they have used excessive force against citizens in the course of their employment.

132. As the policymaker and decision maker for the City of Fort Worth, the Police Chief was aware of customs and policies that deprive citizens of their federal and state constitutionally protected rights which establishes official municipal policy. Chief Halstead was aware of these actions taken by Fort Worth police, in particular, by probationary employees trained and supervised on his watch. His deliberate indifference to these policies and to leaving these policies in effect was a moving force and a cause of the killing of Jerry Waller and the injuries to the Waller family as outlined herein.

133. The knowledge of this use of excessive force constitutes a prevalent recklessness and in the extreme case, the use of a deadly weapon against a man clearly identifiable as the homeowner within the confines of his own home compounded by the extraordinary cover up of the facts are all part of a culture of recklessness and disregard of citizens' constitutional rights so common and well-settled as to constitute a custom that fairly represents municipal policy that is, by itself, a violation of the right to be free of unreasonable searches and seizures and due process of law guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution and art. I, §§ 9 and 19, of the Texas Constitution.

134. The practice of unreasonable searches and seizures and the use of excessive deadly force is so common, outrageous and unconscionable that it has become the expected, accepted practice of the Fort Worth Police Department so much so that it is known as the "Fort Worth Way."

135. The repeated tragedies by Fort Worth police and employees at mistaken addresses is a frequent occurrence with the Fort Worth Police Department and has resulted in

numerous tragic incidents such that it is a known custom and practice of the City of Fort Worth police force. This practice is so widespread that there is currently pending before the Texas legislature a Bill to require City of Fort Worth police and other employees to take specific training and courses in locating street addresses.

136. The City of Fort Worth had for a number of years participated in the cable TV program "Cops" allowing program photographers to ride with police and film their arrests and seizures. Many of these programs (and particularly, the edited outtakes) clearly show the use of excessive force as a regular practice of the Fort Worth police department.

137. Repeated violations of good police practice such that no reasonable police officer would have proceeded as Defendants Hanlon and Hoepfner did on the occasion in question, and the approval of this disregard to human life and safety is so prevalent as to be police policy and custom of the City of Fort Worth.

138. Following the incompetent, tragic and catastrophic events that took the life of Jerry Waller, there were no reprimands, no discharges, no admissions of error, no apologies, and no changes in police policies and procedures such that official policy may be inferred from the conduct of these Defendants on the occasion in question. The lack of change or discipline for violation of public policy and procedure by the Chief of Police as the head policymaker and the ratification by the Mayor and City Council makes it clear that tolerance and approval of this use of excessive force is the custom and policy of the City of Fort Worth. This policy tolerates and by failure to discharge and discipline, encourages the use of excess force and in particular, deadly

force, by its police officers, no matter how outrageous and unconstitutional their conduct.

139. These subsequent acts are proof of a conspiracy and policy to cover up and permit the use of excessive force in violation of the Fourth, Fifth, and Fourteenth Amendments of the U.S. Constitution such that city policy is deliberately indifferent to use of excessive force such that it constitutes the official policy of the City of Fort Worth. The only concern that the City of Fort Worth has about the death of Jerry Waller is to avoid liability at all costs, circle the wagons, then give official approval of the use of excessive force against an unarmed citizen.

140. The acceptance of the lack of training, supervision of probationary employees their lack of common sense and reasonable response to night calls which were applauded by Chief Halstead and Fort Worth police is the official policy of the City of the Fort Worth police force that was approved by the City's policymakers, both before Jerry Waller was killed and after this tragic event.

141. The Plaintiffs would show that actions of Fort Worth police in causing the death of Jerry Waller is contrary to the Fourth Amendment to the U.S. Constitution and art. I, § 9, Texas Constitution, and that the denial of medical attention and false imprisonment of Kathy Waller was in violation of the Fourth Amendment to the U.S. Constitution and art. I, § 9, of the Texas Constitution, as well as the right to due process of law guaranteed by the Fifth Amendment to the U.S. Constitution and art. I, § 19, of the Texas Constitution. On the occasion in question and upon information and belief, the Plaintiffs would show that the actions in holding Kathy Waller against her will and denying her medical attention was at the direction and control of the

Chief of Police, as was the surreptitious tape-recording of a distraught Kathy Waller while undergoing treatment in the emergency room, all of which invaded the privacy of Kathy Waller for which she seeks damages pursuant to Texas common law.

142. The approval by Police Chief, Jeffrey Halstead, and tacit approval of the City of Fort Worth officials, of the shooting death of Jerry Waller in the confines of his own home when Fort Worth police officers were trespassing on the Wallers' property and had no legal right to be there, together with the attempts to discredit Jerry Waller falsely claiming that he was aiming a gun at a police officer, followed by the City's chief policymaker and the city officials affirming the actions of the Fort Worth police officers and commending them on their good work is the type of extreme factual situation the courts have found to permit the theory of ratification to hold a city liable for the actions of its police force. Here, the officers were wholly untrained as to elementary approach to a simple welfare call. A reasonable police officer would investigate a health and welfare/home burglar alarm call by locating the right address and then acting appropriately to go to the front door to ensure that the homeowner's alarm was not accidentally engaged which is required by Fort Worth Police Department General Orders. The actions of Fort Worth police were so far outside the bounds of what a reasonable and prudent patrol officer would do under the same or similar circumstances that the denial of responsibility for these actions by Chief Halstead constitutes ratification and approval of unconstitutional actions that caused the death of Jerry Waller. These actions were the policies and procedures of the City of Fort Worth, by and through the official policymaker for the Police Department,

Chief Jeffrey Halstead, who was consciously indifferent to the constitutional rights of Jerry Waller, the Waller family, and the citizens of Fort Worth.

143. Plaintiffs would show that the Supreme Court decision in *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658 (1978), by refusing to apply to local governments and municipal corporations the common law standard of responsibility of corporations and businesses for the acts of their employees, known by the Latin term, *respondeat superior*, fosters the kind of irresponsibility as is apparent in this litigation. The largest corporate entities in the United States are cities and counties that should, as a matter of the due process and equal protection guaranteed citizens by the Fourteenth Amendment to the U.S. Constitution, hold governments responsible for the acts of its employees in the same way that the smallest of small businesses is held responsible. This is especially so when corporations are now given rights under the Constitution never before recognized. The unfairness of the *Monell* standard is even more apparent from state to state where some states, unlike the State of Texas require a greater degree of responsibility from government for the acts of their employees by applying *respondeat superior* to constitutional violations. Thus, the constitutional rights afforded to citizens of Texas to be free from unreasonable searches and seizures are virtually non-existent under the *Monell* standard whereas in most other states, victims of such constitutional violations do have a remedy. Here, the City of Fort Worth does not insure its police officers counting on the federal courts to protect them from liability for the constitutional wrongs of their employees. The City of Fort Worth, while providing an attorney for its individual employees sued for constitutional violations, refuses to pay judgments obtained against those

employees found individually liable for violations of the Constitution. Thus, Texans subjected to police excessive force, such as the Plaintiffs, are denied equal protection of the law for the same violation of federal constitutional rights that Americans enjoy in other states.

DAMAGES

144. As a direct proximate cause and result of the actions set forth above, Kathy Waller and Jerry Waller's two children, Angie Waller and Chris Waller, have sustained physical pain and mental suffering and anguish as a result of the intentional infliction of the emotional distress as set forth above; invasion of privacy; trespass and other intentional torts alleged pursuant to Texas common law.

145. As a direct proximate cause and result of the acts and omissions as set forth above and the wrongful death of Jerry Waller, Kathy Waller, Angie Waller, and Chris Waller are entitled to recover for their mental anguish and loss of society and companionship with Jerry Waller, both in the past and, in all reasonable probability, in the future. Kathy Waller is entitled to a pecuniary loss resulting from the death of Jerry Waller, pursuant to the Texas Wrongful Death and Survival statutes.

146. The Plaintiffs are also entitled to those damages, both actual and compensatory, as well as statutory attorney's fees as permitted by 42 U.S.C. §§ 1983 and 1988.

147. The Plaintiffs are also entitled to declaratory judgment declaring that Defendants are in violation of the constitutional rights as set out herein.

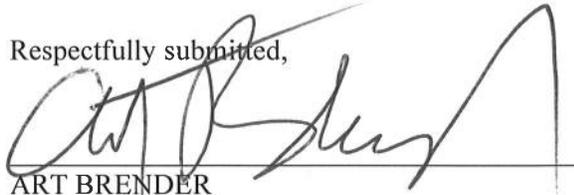
JURY DEMAND

148. The Plaintiffs request a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray for judgment against Defendants for all claims as alleged herein, pursuant to 42 U.S.C. §§ 1983, 1985, and 1988; for violations of their constitutional rights guaranteed to each of them by the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution and art. I, §§ 9 and 19, of the Texas Constitution, as well as by Texas common law; and for all other costs, expenses, expert fees, and attorney's fees incurred herein; appropriate injunctive and declaratory relief; for pre-judgment and post-judgment interest at the legal rate as require by law, including all damages permitted by the Texas Wrongful Death and Survival statutes; for all other relief as the Court deems just and proper.

Respectfully submitted,



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