

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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ATTORNEYS FOR PLAINTIFFS**

**YOLANDA SOTO, individually and as
proposed Administratrix of the ESTATE
OF XAVIER CUEVAS-SOTO, and
ADRIANNA SOTO,**

Plaintiffs,

vs.

**CITY OF PATERSON, POLICE
DIRECTOR JERRY SPEZIALE, in his
personal, individual and official capacities,
CHIEF OF POLICE TROY OSWALD, in
his personal, individual and official
capacities, SARGEANT CHRISTOPHER
D. BENEVENTO, in his personal,
individual and official capacities, OFFICER
ANTHONY DEGIGLIO, in his personal,
individual and official capacities, JOHN
DOE SUPERVISORS 1-5, in their personal,
individual and official capacities, JOHN
DOE TRAINING OFFICERS 1-3, in their
personal, individual and official capacities,
JOHN DOE INTERNAL AFFAIRS
OFFICERS 1-5, in their personal, individual
and official capacities, JAMES DOE 1-5, in
their personal and individual capacities,
and ABC ENTITIES 1-5,**

Defendants.

CIVIL ACTION NO:

**COMPLAINT, JURY DEMAND,
DEMAND TO PRESERVE EVIDENCE
AND DEMAND TO NOTIFY AND
IDENTIFY ANY AND ALL JOHN DOE
DEFENDANTS**

**Plaintiffs, YOLANDA SOTO, individually and as proposed Administratrix of the
ESTATE OF XAVIER CUEVOS-SOTO and ADRIANNA SOTO by way of Complaint**

against defendants, **CITY OF PATERSON**, including but not limited to the **PATERSON POLICE DEPARTMENT**, **POLICE DIRECTOR JERRY SPEZIALE**, in his personal, individual and official capacities, **CHIEF OF POLICE TROY OSWALD**, in his personal, individual and official capacities, **SERGEANT CHRISTOPHER D. BENEVENTO**, in his personal, individual and official capacities, **OFFICER ANTHONY DEGIGLIO**, in his personal, individual and official capacities, **JOHN DOE TRAINING OFFICERS 1-5**, in their personal, individual and official capacities, **JOHN DOE SUPERVISORS 1-5**, in their personal, individual and official capacities, **JAMES DOE 1-5**, in their personal, individual and official capacities and **ABC ENTITIES 1-5**, allege as follows:

PARTIES

1. At all relevant times herein **YOLANDA SOTO (“SOTO”)** was a domiciliary and resident of the City of Clifton, Passaic County, New Jersey, and a witness to the death of her 23 year old son, plaintiff’s decedent **XAVIER CUEVAS-SOTO (“XAVIER”)**.

2. At all relevant times herein and until his death, decedent, **XAVIER** was a domiciliary and resident of the City of Clifton, Passaic County, New Jersey.

3. At all relevant times herein, **ADRIANNA SOTO (ADRIANNA”)** was a domiciliary and resident of the City of Clifton, Passaic County, New Jersey and the sister of **XAVIER**, who witnessed his death.

4. At all relevant times herein defendant, the **CITY OF PATERSON** was and is a public entity organized and existing pursuant to the laws of the State of New Jersey, with a place of business at 155 Market Street, Paterson, Passaic County, NJ, 07505, engaged in the supervision, operation, management and control of the **PATERSON POLICE DEPARTMENT**, the law enforcement division of the **CITY OF PATERSON**.

5. At all relevant times herein defendant **THE PATERSON POLICE DEPARTMENT** (hereinafter, the “**PATERSON PD**”) was and is a public entity and/or an agency or division of **PATERSON**, organized and existing pursuant to the laws of the State of New Jersey, with a place of business at 111 Broadway, Paterson, Passaic County, NJ, 07505, engaged in the hiring, training and supervision of law enforcement officers in its employ. The **PATERSON PD**’s website touts it as the “largest accredited Police Department in the State of New Jersey.”

6. Defendant, **PATERSON**, and the **PATERSON PD** are hereafter collectively referred to “**PATERSON**”.

7. At all relevant times herein defendant **POLICE DIRECTOR JERRY SPEZIALE** (hereinafter “**DIRECTOR SPEZIALE**”) was the Director of the **PATERSON PD**, acting in his official, personal and individual capacities and was responsible for supervision and oversight of the **PATERSON POLICE DEPARTMENT**, including the development, promulgation, and implementation of policies, procedures and standards for the police department and more specifically policies, procedures and standards relating to procedures governing firearms training, crime scene investigations, internal affairs investigations, discipline and overall conduct of police officers.

8. At all relevant times herein **CHIEF OF POLICE TROY OSWALD** (hereinafter “**CHIEF OSWALD**”) was the chief supervisory official of the **PATERSON PD**, acting in his official, personal and individual capacities and was responsible for supervision and oversight of the Department, including the development, promulgation, and implementation of policies, procedures and standards for the police department and more specifically policies, procedures and

standards relating to firearms training, crime scene investigations, internal affairs investigations, discipline and overall conduct of police officers.

9. As of July 4, 2016 Defendant, **SERGEANT CHRISTOPHER D. BENEVENTO** ("**BENEVENTO**") was a police officer employed by **PATERSON** in the Police Radio Room and a resident of Totowa, New Jersey. As an employee of **PATERSON**, **BENEVENTO** acted individually and personally as well as in his official capacity as a police officer under color of law. In November 2017, subsequent to **XAVIER**'s death, **BENEVENTO** was promoted to Sergeant.

10. At all relevant times herein, **JOHN DOE SUPERVISORS 1-5** were responsible for implementing the policies, procedures and standards for the **PATERSON PD** and, acting in their official, personal and individual capacities, ensuring that, on a day-to-day basis, all Paterson Police Officers complied with all policies, procedures and standards relating to firearms training, crime scene investigations, facilitating internal affairs investigations and disciplining or removing Paterson Police Officers charged and found guilty of misconduct. **The Passaic County Prosecutor and Paterson have not yet released their files on this matter and have sole and exclusive possession of the identities of these defendants; demand is made to immediately identify these defendants and to notify them of the pendency of this lawsuit pursuant to F.R.C.P. 15(c).**

11. Defendants, **DIRECTOR SPEZIALE, CHIEF OSWALD,** and **JOHN DOE SUPERVISORS 1-5** are referred to collectively herein as the "**SUPERVISORY DEFENDANTS,**" and may be referred to individually or collectively in this Complaint.

12. At all relevant times herein, **OFFICER ANTHONY DEGIGLIO** ("**DEGIGLIO**"), acting in his official, personal and individual capacities, was the person

responsible for training Paterson Police Officers during semi-annual firearms requalification sessions, including the training of **BENEVENTO** on October 23, 2015, such training included or should have included the proper use, handling and storage of firearms both on and off-duty and ensuring that Paterson Police Officers whom he trained, including **BENEVENTO**, understood and complied with same.

13. At all relevant times herein, **JOHN DOE TRAINING OFFICERS 1-5** (“**TRAINING OFFICER DEFENDANTS**”) were, in addition to **DEGIGLIO**, the persons responsible for training all Paterson Police Officers on the proper use, handling and storage of firearms on and off-duty and, acting in their official, personal and individual capacities, were responsible for the training relating to firearms training, crime scene investigations, and ensuring that all Paterson Police Officers understood and complied with same. **The Passaic County Prosecutor and Paterson have not yet released their files on this matter and have sole and exclusive possession of the identities of these defendants; demand is made to immediately identify these defendants and to notify them of the pendency of this lawsuit pursuant to F.R.C.P. 15(c).**

14. At all relevant times herein, **JOHN DOE INTERNAL AFFAIRS OFFICERS 1-5** (“**INTERNAL AFFAIRS DEFENDANTS**”) were the persons responsible for investigating any and all civilian shootings involving police handguns and, acting in their official, personal and individual capacities, were responsible for following Attorney General Guidelines regarding interviewing witnesses, investigating evidence tampering by the target officer under investigation, determining whether all policies and procedures were followed by the target officer under investigation, including safe storage of weapons while off-duty, investigating evidence tampering, determining whether the target officer under investigation was under the influence of

alcohol at the time of the shooting, writing reports summarizing their findings, and recommending appropriate disciplinary action. **The Passaic County Prosecutor and Paterson have not yet released their files on this matter and have sole and exclusive possession of the identities of these defendants; demand is made to immediately identify these defendants and to notify them of the pendency of this lawsuit pursuant to F.R.C.P. 15(c).**

15. At all relevant times herein, **JAMES DOE 1-5** were Paterson Police Officers who responded to **BENEVENTO's** home on July 4, 2016, following the death of **XAVIER** and acting in their official, personal and individual capacities, who conspired with **BENEVENTO** to make it appear as though **XAVIER** committed suicide or falsely claimed that he did. **JAMES DOE 1-5** were interviewed by investigating personnel, and can reasonably have expected to be named as Defendants in this matter. **The Passaic County Prosecutor and Paterson have not yet released their files on this matter and have sole and exclusive possession of the identities of these defendants; demand is made to immediately identify these defendants and to notify them of the pendency of this lawsuit pursuant to F.R.C.P. 15(c).**

16. At all relevant times herein defendants **ABC ENTITIES 1-5** are as yet unknown and unidentified municipal, county or state officials, supervisors, agents, officers, employees, entities or subdivisions of entities.

JURISDICTION AND VENUE

17. This Court has jurisdiction pursuant to Title 28 of the United States Code, Sections 1331, 1332, 1343 (2), 1343 (3), 1343 (4), and Title 42 of the United States Code, Section 1983, as well as pendent jurisdiction to adjudicate Plaintiffs' causes of action on the state and common law claims.

18. Venue is properly laid in the United States District Court of the District of New

Jersey pursuant to Title 28 United States Code Section 1391 (b) in that all of the acts complained of herein occurred in the district and that the Defendants are citizens of, reside in or are public entities of the State of New Jersey and domiciled within this district.

19. The matter in controversy herein involves, exclusive of interest, an amount in excess of \$75,000.

NOTICES OF CLAIMS

20. On September 26, 2016, Plaintiff served a Notice of Claim for damages in the form prescribed by New Jersey Statutes, Title 59:8-4, that was signed for and served upon the **PATERSON** on September 29, 2016, within the statutorily prescribed period.

21. More than six (6) months have elapsed since service of Plaintiff's Notice of Claim and the claims remain unresolved.

22. This action is commenced within two (2) years from the date of the occurrence.

23. **PATERSON** has had ample opportunity and time to fully investigate and attempt a resolution of the claims.

24. All conditions precedent to filing suit have been met.

NATURE OF ACTION

25. On July 4, 2016, then-Officer **BENEVENTO** hosted a Fourth of July party at his Totowa home for approximately 20 people, including children and **XAVIER, SOTO, ADRIANNA** and **SOTO**'s boyfriend, Tony Rivera.

26. During **BENVENTO**'s Fourth of July party, he consumed alcohol and left his loaded, police-issued hand gun, with the safety lock in the "off" position on a porch railing outside his home. After a child reached for the unsecured handgun, **BENEVENTO** moved it to a

ledge, where **XAVIER** picked it up to examine it. Because the safety lock was off, the gun went off accidentally, mortally wounding **XAVIER** in the presence of his family.

27. Thereafter, in an effort to conceal his wrongful actions, **BENEVENTO** altered the crime scene by removing his gun and then concocted the story that **XAVIER** had committed suicide.

28. **JAMES DOE 1-5** arrived on the scene and conspired with **BENEVENTO** to make it appear that **XAVIER** had committed suicide or to claim he had pulled the trigger of the gun intentionally.

29. On October 23, 2015, **DEGIGLIO** and, at other times, the **TRAINING DEFENDANTS** supplied firearms requalification training to **BENEVENTO**, which included or should have included training on how to handle, secure and store service weapons when off-duty.

30. **BENEVENTO** was improperly trained by **DEGLIGIO**, the **TRAINING DEFENDANTS** and/or ignored his training and instead evidenced a reckless disregard and indifference to the likelihood of severe injury by consuming alcohol while handling and not securing a firearm.

31. The **SUPERVISORY DEFENDANTS, DIRECTOR SPEZIALE** and **CHIEF OSWALD**, individually failed to properly train, supervise and/or discipline **BENEVENTO, DEGIGLIO** and/or the **TRAINING OFFICERS DEFENDANTS** on requirements for use, operation and handling of firearms both on and off duty, firearms safety and crime scene investigations.

32. Thereafter, the **SUPERVISORY DEENDANTS, DIRECTOR SPEZIALE, CHIEF OSWALD** and the **INTERNAL AFFAIRS DEFENDANTS** failed to follow the Attorney General Guidelines by failing to interview all witnesses, ignoring witness statements, disregarding

evidence tampering by **BENEVENTO**, failed to determine whether **BENEVENTO** followed all policies and procedures, including consuming alcohol while handling a firearm, securing his firearm while off-duty, failed to investigate whether **BENEVENTO** was under the influence of alcohol at the time of the shooting, writing reports that ignored their findings, and not recommending any disciplinary action. Instead, these Defendants conspired with **BENEVENTO** and **JAMES DOES 1-5** in an effort to make **XAVIER**'s death appear like a suicide, rather than due to an accidental death caused by the discharge of an unsecured police weapon.

33. **XAVIER** was deprived of his constitutional right to life, and **SOTO** and **ADRIANNA** suffered severe emotional distress, in excess of \$3,500 in medical costs for mental health care treatment, and funeral and burial expenses due to the violations of constitutional rights, intentional or negligent actions of each defendant.

34. Plaintiffs institute this action for compensatory and punitive damages arising out of the unlawful actions and conduct of defendants, **BENEVENTO**, **PATERSON**, the **SUPERVISORY DEFENDANTS** including **DIRECTOR SPEZIALE** and **CHIEF OSWALD**, **DEGIGLIO**, the **TRAINING DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS**, **JAMES DOE 1-5**, and **ABC ENTITIES 1-5**, who, acting under color of state and federal law and under authority, custom and usage of the **PATERSON** violated the civil rights of Plaintiff protected by and secured under the provisions of the Fourth and Fourteenth Amendments to the United States Constitution and under the laws of the United States, particularly under the Civil Rights Act, Title 42 of the United States Code, § 1983, *et seq.*

35. Plaintiffs also seek relief for violation of constitutional rights under the New Jersey Civil Rights Act, 10 N.J.S.A. 6-1, *et seq.*

36. Plaintiffs also institute this action pursuant to the common law and statutory laws of the State of New Jersey for damages arising by reason of negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, civil conspiracy, wrongful death and a “*Portee*” claim and abuse of power.

37. There are six (6) groups of defendants who collectively, by and through each of their actions and their employees actions, all acting under color of and by the authority of state law, deprived **XAVIAR** of his constitutional right to life and liberty and deprived Plaintiffs of their federal and state rights to both substantive and procedural due process by the following affirmative actions and/or omissions:

i) **PATERSON, DIRECTOR SPEZIALE, CHIEF OSWALD**, and the **SUPERVISORY DEFENDANTS**: for failing to properly supervise, monitor, discipline and provide adequate training to **BENEVENTO** on policies and procedures governing the use, possession and security of hand-guns, while on or off-duty;

ii) **PATERSON, DIRECTOR SPEZIALE, CHIEF OSWALD** and the **SUPERVISORY DEFENDANTS** for allowing a culture, pattern and/or practice to exist where officers were poorly or not trained regarding the use, possession, safety and handling of weapons and guns during semi-annual or other in service training, compounded by a failure to discipline non-compliant officers such that officers knew there were no disciplinary consequences for misconduct. The danger arising from the lack of training regarding storage and safety of weapons is so obvious that the failure of these **DEFENDANTS** to ensure that Paterson officers were properly trained was deliberately indifferent to the risk of serious injury or death to members of the public and others;

iii) The **TRAINING OFFICER DEFENDANTS** and **DEGIGLIO**, who failed to properly train **BENEVENTO** on policies and procedures governing the use, safety, storage and security of weapons including safety locks. The danger arising from the lack of training regarding storage and safety of weapons is so obvious that the failure of these **DEFENDANTS** to ensure that Paterson officers were properly trained was deliberately indifferent to the risk of serious injury or death to members of the public and others;

iv) The **INTERNAL AFFAIRS DEFENDANTS**, individually, who failed to follow the Attorney General Guidelines by ignoring witness statements, disregarding evidence tampering by **BENEVENTO**, failing to determine whether **BENEVENTO** followed all policies and procedures, including safe storage of weapons while on or off-duty, failing to investigate whether **BENEVENTO** was under the influence of alcohol at the time of the shooting, writing reports that ignored their findings, and not recommending any disciplinary action; instead, these Defendants conspired with **BENEVENTO**, the **SUPERVISORY DEFENDANTS** and **JAMES DOE 1-5** in an effort to make **XAVIER**'s death appear like a suicide rather than due to an accidental death caused by the discharge of an unsecured police weapon.

v) **BENEVENTO**, the owner of a police-issued G-23 handgun serial # G2V794, a Spring XDS, Serial # S3186405 and a Remington 870, who left one of his service weapons open and unguarded at a party attended by dozens of civilians, including **XAVIER** and **SOTO**, and who thereafter tampered with evidence and conspired with the **SUPERVISORY DEFENDANTS** and/or the **INTERNAL AFFAIRS DEFENDANTS** and/or **JAMES DOE 1-5** to make it appear as though **XAVIER** had committed suicide after **XAVIER** shot himself with the gun; and

vi) **JAMES DOES 1-5**, for conspiring with **BENEVENTO**, the **SUPERVISORY DEFENDANTS** and the **INTERNAL AFFAIRS DEFENDANTS** to cover up numerous violations by **BENEVENTO** of Attorney General Guidelines and other policies and procedures that proximately led to **XAVIER**'s death.

FACTUAL ALLEGATIONS

Basic Training Policies and Procedures for New Jersey Police Officers

38. Pursuant to the *New Jersey Police Training Commission Basic Course for Police Officers*, all police officers in the State of New Jersey, including **BENEVENTO**, are required to undergo training on Attorney General and Paterson's policies and procedures, which include "recogniz[ing] the fundamental duties, obligations, influences and philosophies inherent with the acceptance of a position as a law enforcement officer," and "possessing a working knowledge of the employing agency organization, chain of command, rules and regulations."

39. Training provided to New Jersey police officers on the Attorney General and Paterson's policies and procedures, including **BENEVENTO**, pursuant to the *New Jersey Police Training Commission Basic Course for Police Officers* includes, but is not limited to Professional Development, which includes protection of life; the responsibilities of an off duty law enforcement officer, including carrying a firearm; Fundamentals of New Jersey Law and the Basic Principles of the New Jersey Code of Criminal Justice, Title 2C; Constitutional Rights; Firearms Safety (including "securing all ...on- and off- duty handguns at all times" and holstering agency handguns) and Crime-Scene Investigation. *New Jersey Police Training Commission Basic Course for Police Officers, Unit 1.2.2, Unit 1.8, Units 4.1 and 4.2, Unit 5.1.6, Unit 8.1, Unit 9.1 and Unit 12.*

40. In addition, all police officers in the State of New Jersey, including **BENEVENTO**, are required to semi-annually undergo Firearms Qualification and Requalification, as guided by the *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement* (issued Dec. 1989 and last revised in June 2003) and *Basic Course Firearms Manual*.

41. Under the *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement*, all New Jersey Police Officers, including **BENEVENTO**, must review semi-annually all firearms policies as they relate to, *inter alia*, removal of a firearm from a holster or display of firearms, and carrying of weapons on and off duty; securing all service handguns and off-duty handguns *at all times* and holstering and drawing handguns; and providing remedial instruction to any officer who fails to achieve a passing score on a prescribed qualification course. *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement, Sections 4, 8 and 9 (emphasis added)*.

42. Training provided to New Jersey police officers, including **BENEVENTO**, pursuant to the *Basic Course Firearms Manual* includes, but is not limited to Firearms Safety. The Performance Objectives of the unit on Firearms Safety includes “securing all ...on- and off-duty handguns *at all times*” and “holstering ...authorized agency handguns.” *Basic Course Firearms Manual, Unit 9.1.1 (emphasis added)*.

43. Pursuant to 18 U.S.C. 926(b), officers may carry a concealed firearm in any state, subject to certain limitations which include not being under the influence of alcohol or other intoxicating drug or substance.

44. Pursuant to the New Jersey State Association of Chiefs of Police’s (“NJSACOP”) model policies for accredited police departments, such as the **PATERSON PD**:

- a. Officers shall not carry a firearm while consuming or under the influence of alcoholic beverages to any degree whatsoever;
- b. Off-duty officers of the department may carry an official service firearm (or approved alternate firearm) or an off-duty firearm for which the officer has received prior authorization consistent with the provisions of the NJSACOP model policy, except off-duty officers who *anticipate* consuming alcoholic beverages.
- c. Off-duty officers carrying the official service firearm or an approved off-duty firearm shall do so in a holster approved by the range-master;
- d. Off duty officers shall carry firearms in a concealed manner;
- e. To avoid the possibility of an accidental discharge and prevent unnecessary wear and/or damage to a firearm, no officer shall carry any firearm, on or off duty, unless it is carried in an approved holster;
- f. Under the provisions of N.J.S.A. 2C:58-15, a person who knows or reasonably should know that a minor child is likely to gain access to a loaded firearm at a premises under the person's control commits a disorderly persons offense if a minor gains access to the firearm, unless the person:
 - Stores the firearm in a securely locked box or container;
 - Stores the firearm in a location which a reasonable person would believe to be secure; or
 - Secures the firearm with a trigger lock.
- g. All firearms, whether personal or department issued, shall be stored in a safe and secure condition when not being carried or utilized by the officer to whom it was issued. Expressly prohibited by this written directive is the practice of storing firearms on desktops, in unlocked desk drawers or in any other area that is not securely locked with restricted access.

- h. It is mandatory that Firearms training include a review of departmental firearm's policy relating to carrying weapons on and off duty.

45. Pursuant to the NJSACOP model policies for accredited police departments, such as the **PATERSON PD**, range-masters, including **DEGIGLO** are responsible for enforcement of all provisions of the NJSACOP policies.

46. It was the duty and responsibility of **PATERSON**, the **SUPERVISORY DEFENDANTS**, the **TRAINING DEFENDANTS** and the **INTERNAL AFFAIRS DEFENDANTS, DEGIGLIO** and **ABC ENTITIES 1-5** to ensure that **BENEVENTO** received, understood and complied with all of the foregoing policies and procedures as communicated during training, as well as any more specific General Orders, promulgated by **DIRECTOR SPEZIALE** and/or **CHIEF OSWALD** relating to same.

DeGiglio's Training of Benevento

47. On October 23, 2015, **DEGIGLIO** was the range-master assigned to provide Semi-Annual firearms requalification training to **BENEVENTO**.

48. While **DEGIGLIO** ensured that **BENEVENTO** achieved qualifying scores in connection with hitting targets using his G-23, Spring XDS and Remington 870 firearms, he failed to ensure that **BENEVENTO** received, understood and followed all other provisions of the *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement, Basic Course Firearms Manual*, and NJSACOP policies, including but not limited to training **BENEVENTO** on:

- a. carrying a firearm while consuming or under the influence of alcoholic beverages to any degree whatsoever;

- b. the prohibition on carrying a firearm while off-duty and while consuming or *anticipating* consuming alcoholic beverages.
- c. While off-duty, carrying the official service firearm or an approved off-duty firearm in a holster approved by the range-master;
- d. While off duty, carrying firearms in a concealed manner;
- e. N.J.S.A. 2C:58-15, which makes it a disorderly persons offense for any officer who knows or reasonably should know that a minor child is likely to gain access to a loaded firearm at a premises under the officer's control, to allow a minor to gain access to the firearm, unless the officer stores the firearm in a securely locked box or container, or stores the firearm in a location which a reasonable person would believe to be secure; or secures the firearm with a trigger lock;
- f. not storing firearms in any area that is not securely locked with restricted access;
- g. Allowing and permitting a loaded and unlocked gun to be easily accessible at a party where alcoholic beverages are being served and minors are present, permitting the conditions to exist where the 23 year old **XAVIER** could accidentally cause the gun to go off, shooting and killing himself.

Failure to Train, Supervise and/or Discipline Officers

49. **PATERSON**, the **SUPERVISORY DEFENDANTS**, the **TRAINING DEFENDANTS** and the **INTERNAL AFFAIRS DEFENDANTS** had direct and personal responsibility for ensuring that every officer under their command was trained on and, thus, familiar with the Attorney General Guidelines, *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement*, *Basic Course Firearms Manual*, Police Training Committee guidelines and NJSACOP policies.

50. **PATERSON**, the **SUPERVISORY DEFENDANTS**, the **TRAINING DEFENDANTS** and the **INTERNAL AFFAIRS DEFENDANTS** knew that **DEGIGLIO** was monitoring only officers' ability to shoot properly during semi-annual firearms re-qualification, rather than ensuring that fire-arms safety practices were included in the training.

51. **PATERSON**, the **SUPERVISORY DEFENDANTS**, the **TRAINING DEFENDANTS** and the **INTERNAL AFFAIRS DEFENDANTS** knew that their subordinates were deliberately overlooking violations of the foregoing policies and procedures, violations of statutes, and failing to discipline non-compliant officers, as demonstrated by the fact that misconduct and violations of civil rights were and remain rampant in the **PATERSON PD** and officers are aware that they can escape discipline for misconduct.

52. Examples of lawsuits, claims and actions evidencing misconduct within the **PATERSON PD** are as follows:

- a. In February 2016, Officer Dante Gordon fired his gun outside a 7-11 store while off-duty, resulting in injuries to two civilians from fragments or debris, but failed to report the shooting for 24 hours, and was not arrested until a week later;
- b. A former police officer Manual Avila has spent nine years on paid leave after being accused of forcing a woman in custody to perform oral sex on him and is currently fighting a state board's decision to cut his pension. His supervisor, defendant OSWALD herein, permitted Avila (whose mental health was in question) to remain on duty despite the charges. After the suit was settled Avila was permitted to resign;
- c. Officer Bustios and Ramos remain on paid leave pending resolution of extortion charges;
- d. Officer McAusland remains on paid leave after being arrested in April 2018 for selling drugs including heroin and crack cocaine while in uniform and on-duty.
- e. Deluccia v. City of Paterson, et. als, civil action no.: 2:09-CV-00703 involved claims of excessive force against **PATERSON PD** officers who threw Deluccia against a radiator breaking his hip after he asked why they wanted to enter his home without a warrant; that case settled;

- f. Ruiz v. City of Paterson, et.als., civil action no: 2:12-cv-05442 involved claims of excessive force against **PATERSON PD** officers who broke Ruiz' arm so badly he required open reduction surgery after the police went to check out a noise complaint at a birthday party after RUIZ simply questioned the Officer's intentions; that case settled;
- g. The case of Hassan Hargrove, who alleged that 3 of his ribs were broken in another excessive force case after being stomped on and choked on May 16, 2013; disposition unknown;
- h. The existence of reams of complaints against the **PATERSON PD** by members of the public complaining of a multitude of misconduct, from excessive force to false arrest, malicious prosecution, demeanor, violence, and improper use of guns, such as unholstering them inappropriately and improper shootings resulting in violations of civil rights.¹

53. The deliberate and conscious indifference by **PATERSON**, the **SUPERVISORY DEFENDANTS**, the **TRAINING DEFENDANTS** and the **INTERNAL AFFAIRS DEFENDANTS** to enforcement of policies and procedures, to chronic misconduct, to the lack of training during semi-annual firearms requalification sessions including the handling of guns while not in use, to the failure to follow Attorney General Guidelines, to the failure to discipline or take remedial action in response to misconduct and actual criminal behavior has led to a long-standing pattern or custom, policy and practice of condoning, tolerating and acquiescing in severe misconduct, which in turn led to and is the direct proximate cause of the misconduct and gross violation of police policy causing the death of **XAVIER**.

54. This long-standing pattern, custom, policy and/or practice by the **PATERSON POLICE DEPARTMENT** of enabling officers to disregard the federal and state constitutions, policies and procedures, including the mis-handling of firearms while on or off-duty, and a reckless disregard of their obligations to do so based on the lack of any consequences, culminated

¹These facts have a basis in counsel's own knowledge having handled several claims against the City of Paterson and having been privy to countless internal affairs files and prosecutor summary reports all of which are subject to confidentiality agreements and protective orders.

in and was the proximate cause of the death of **XAVIER** during a Fourth of July party at **BENEVENTO**'s home.

The Attorney General Guidelines Regarding Internal Affairs Investigations

55. The New Jersey Attorney General Guidelines mandate that all incidents involving firearm discharges, whether occurring on or off duty, must be thoroughly investigated and that the involved officer's supervisor should assist the internal affairs investigator as needed.

56. The Attorney General Guidelines mandate that the internal affairs investigator must consider relevant law, and Attorney General or county prosecutor policies and guidelines, and agency rules, regulations and policy to determine if (a) an officer's actions were consistent with department regulations and policy and (b) the relevance and sufficiency of these policies.

57. The Attorney General Guidelines mandate that in a firearm discharge investigation, an investigator must determine if the officer was authorized to possess and carry the weapon at the time of the discharge, and whether the weapon was loaded with authorized ammunition.

58. The Attorney General Guidelines mandate that an internal affairs unit is not limited to narrowly focusing on whether the subject officer engaged in misconduct, but also is obligated to investigate collateral issues.

59. In the case of an off-duty firearms discharge, such collateral issues include whether the off-duty officer consumed alcohol, whether children were present, whether the firearm was secured and, if not, why not.

The Fourth of July Incident

60. During the afternoon of July 4, 2016, officer **BENEVENTO** hosted an outdoor Bar-B-Q at his home in Totowa, New Jersey for approximately 15-20 people, including three (3) children under the age of 18.

61. **BENEVENTO** served alcoholic beverages at the Fourth of July party, and consumed alcoholic beverages himself.

62. **XAVIER, SOTO, ADRIANNA** and **SOTO'S** boyfriend, Tony Rivera, were invited by **BENEVENTO** to the Bar-B-Q and attended.

63. Other attendees included "Mike S;" "Jennifer;" **BENEVENTO'S** girlfriend, Maria; Maria's family including her then-six year old son; and another minor child; and **JAMES DOES 1-5**.

64. The 23 year old **XAVIER** was in good spirits during the party, helping to set up tables and talking and laughing with guests while waiting for the steak to be done cooking.

65. In violation of Attorney General and **PATERSON** policies and procedures, **BENEVENTO** did not holster or lock up his service weapon. Rather, at all times material hereto, **BENEVENTO'S** firearm was out in the open at the party and at one point, he placed his gun on a porch railing.

66. During the party, **ADRIANNA**—who was with a group of people, including **XAVIER**--observed Maria's six-year old son begin to grab **BENEVENTO'S** gun from the porch railing.

67. Upon seeing the six-year old child try to grab the gun from the porch railing, **BENEVENTO** moved the gun to a ledge because he had actual knowledge that the gun posed a danger to his guests, but thereafter, in a gross dereliction of duty and in gross violation of policy, failed to holster it, put it in a lock-box or other secured location and failed to activate the safety latch.

68. **BENEVENTO'S** actions in failing to secure his gun constituted a specific policy violation and did not involve any issue of judgment or discretion.

69. Despite **BENEVENTO**'s actual knowledge that the gun posed a danger to his guests, **BENEVENTO** simply moved his service weapon to a ledge, beyond the child's reach.

70. Shortly afterwards, while talking and laughing with his friends, **XAVIER** picked the gun up off the table to examine it.

71. Because **BENEVENTO** had failed to not only secure his weapon out of the reach of his guests, but failed to secure the gun "safety" latch, while in **XAVIER**'s hands the gun accidentally discharged, killing him. As the bullet entered, **XAVIER** suddenly and immediately realized that the gun was loaded and died in terror.

72. **SOTO** and **ADRIANNA** were approximately six (6) steps away from **XAVIER** when the gun discharged, killing him and had a direct, contemporaneous, sensory observation of **XAVIER**'s death.

73. **BENEVENTO** removed the gun from the scene as soon as the police and ambulance arrived—which was observed by **ADRIANNA**.

74. Both **ADRIANNA** and **SOTO** witnessed this incident, and both were severely and permanently emotionally scarred. In fact, **SOTO** was so emotionally distraught that she fainted at the scene and had to be transported by ambulance to St. Joseph's Hospital in Paterson, where she was kept overnight for treatment.

75. Since the date of the incident, **SOTO** has been under the care of a therapist at Serve Mental Health Clinic. Both **SOTO** and **ADRIANNA** have been unable to enter **XAVIER**'s bedroom due to the severe and intolerable emotional distress they each suffered and continue to suffer as a result of witnessing **XAVIER**'s death.

76. **ADRIANNA** and multiple eye-witnesses were interviewed by the Passaic County Prosecutor's detectives and by **JAMES DOE 1-5**. These witnesses all told investigators that

BENEVENTO's firearm was out in the open, that **XAVIER** was laughing and talking with friends immediately before he accidentally shot himself and was not suicidal, and that **BENEVENTO** moved the handgun after **XAVIER** accidentally shot himself.

77. However, the **INTERNAL AFFAIRS DEFENDANTS** failed to interview **SOTO** and/or Tony Rivera and the **SUPERVISORY DEFENDANTS**, individually responsible to evaluate Internal Affairs ("IA") files and the adequacy of investigations, failed to do so and failed to remediate the problems with the IA investigatory process at the **PATERSON PD**.

78. Notwithstanding the eye-witness testimony, **BENEVENTO**, the **SUPERVISORY DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and/or **JAMES DOE 1-5** falsely alleged that **XAVIER** had committed suicide, and caused the Medical Examiner, Dr. Albert Williams, to so state on **XAVIER**'s death certificate.

79. The false statement contained in the death certificate that **XAVIER** had committed suicide was damaging to **XAVIER**'s and the family's reputation and, further, was so shocking to **ADRIANNA** and **SOTO** that they suffered additional extreme emotional distress. To this day, they cannot discuss this incident and the cover-up that followed without crying.

80. **SOTO** and **ADRIANNA** have incurred in excess of \$3,500 in medical costs in connection with hospitalization and ongoing treatment for her psychological injuries.

81. In violation of Attorney General and **PATERSON** policy and procedures, as communicated in Training Unit 12 of the *New Jersey Police Training Commission Basic Course for Police Officers*, and as **ADRIANNA** observed and reported to the investigating officers, **BENEVENTO** removed the gun from the scene prior to the Totowa police and ambulance arriving.

82. **BENEVENTO** removed the gun from the scene in an effort to alter the physical evidence so that he could allege that **XAVIER**'s death was suicidal and create confusion in the investigation.

83. The **SUPERVISORY DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and/or **JAMES DOES 1-5** conspired with **BENEVENTO** to conceal that **BENEVENTO** consumed alcohol while handling his off-duty weapon with children present, that the safety latch on his gun was off and that **BENEVENTO** had moved his weapon following **XAVIER**'s death to protect **BENEVENTO** from disciplinary and/or criminal charges being brought against him.

84. **BENVENUTO**'s loaded firearm was unsecured and accessible to more than one dozen civilians, including minor children.

85. The **SUPERVISORY DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** violated Attorney General Guidelines by failing to suspend, discipline or remediate **BENEVENTO** for his misconduct. In particular, **DIRECTOR SPEZIALE** and **CHIEF OSWALD**, despite knowledge of the circumstances and that **BENEVENTO** had violated specific policy and procedure regarding basic safety in the handling of a firearm, failed to take action to discipline, suspend or terminate **BENEVENTO**, failed to assure he was retrained; failed to assure that in-service training had included and would in the future include basic safety in the handling of weapons both on and off-duty; failed to review the IA process for adequacy and to impose proper discipline across the force, and by failing to do so, maintained a policy, practice and custom permitting and tacitly approving of misconduct by avoiding appropriate discipline and remediation for misconduct.

86. The **SUPERVISORY DEFENDANTS**, in particular **DIRECTOR SPEZIALE** and **CHIEF OSWALD**, conspired with each other, the **INTERNAL AFFAIRS DEFENDANTS** and others to avoid disciplining **BENEVENTO**, to cover up the facts and create a fiction that **XAVIER** committed suicide.

87. The **SUPERVISORY DEFENDANTS**, **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOE 1-5**, individually and acting under color of state law violated Attorney General Guidelines governing Investigation of Firearm Discharges and Collateral issues, by:

- a. Failing to inquire as to whether **BENEVENTO**'s had consumed alcohol in order to determine whether he had violated policies and procedures prohibiting the carrying of a weapon if an officer even *contemplates* consuming alcohol;
- b. Failing to interview all witnesses and/or record facts communicated by witnesses, including facts gleaned from **ADRIANNA** regarding the hand gun being within arms reach of a child, the fact that **XAVIER** was laughing with his friends just before the gun discharged indicating his death was not a suicide, and that **BENEVENTO** moved the gun just as the police and ambulance arrived;
- c. Failing to charge **BENEVENTO** with a disorderly person's offense under N.J.S.A. 2C:58-15, which makes it a disorderly persons offense for any officer who knows or reasonably should know that a minor child is likely to gain access to a loaded firearm at a premises under the officer's control, to allow a minor to gain access to the firearm;
- d. Failing to discipline **BENEVENTO** in any respect; and
- e. Conspiring amongst themselves, with **JAMES DOE 1-5** and **BENEVENTO** to conceal the foregoing facts.

88. The facts establish such gross violations of policy and procedure as to infer a history, custom, policy and practice of permitting misconduct within the police department.

89. **XAVIER** did not commit suicide, had never expressed any suicidal thoughts to **ADRIANNA, SOTO**, any other family members or to any friends, and was laughing and joking with his friends immediately before the gun discharged.

COUNT I

(42 U.S.C. 1983: Supervisory Liability under *Monell*)

90. Plaintiffs repeat and reallege each and every paragraph contained in this Complaint and incorporates same by reference.

91. At all relevant times herein, the **SUPERVISORY DEFENDANTS, DEGIGLIO**, the **TRAINING DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOE 1-5** were acting within the scope of their authority as employees, agents and/or officers of **PATERSON** and **ABC ENTITIES 1-5**.

92. At all relevant times herein, the **SUPERVISORY DEFENDANTS, DEGIGLIO**, the **TRAINING DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOE 1-5** acted under color of law, under the color of the constitution, statutes, laws, charter, ordinances, rules, regulations, customs, usages and practices of **PATERSON** and **ABC ENTITIES 1-5**.

93. At all relevant times herein **PATERSON**, the **SUPERVISORY DEFENDANTS** and **ABC ENTITIES 1-5** ratified and maintained a practice, official or unofficial custom and/or policy of failing to train, discipline and/or supervise defendants including but not limited to **BENEVENTO, DEGIGLO**, the **TRAINING DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOE 1-5**, in conformity with clearly established constitutional

principles, the Attorney General guidelines, *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement, Basic Course Firearms Manual*, the Police Training Commission guidelines and NJSACOP policies which govern their conduct.

94. At all relevant times herein, **PATERSON, ABC ENTITIES 1-5, THE SUPERVISORY DEFENDANTS, DEGIGLIO, the TRAINING DEFENDANTS, the INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOE 1-5** acted with deliberate and conscious indifference to **XAVIER's** constitutional rights which violations arose out of a pattern, custom, policy and practice by and of defendants in failing to implement and enforce the Attorney General guidelines, General Orders, *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement, Basic Course Firearms Manual*, the Police Training Commission guidelines and NJSACOP policies, police procedures and protocols as well as the failure to properly hire, train and supervise police officers in the use, storage and handling of firearms, evidence tampering and failing to properly discipline officers so as to permit, allow and acquiesce in the improper use, storage and handling of firearms and/or evidence tampering.

95. At all relevant times herein, **PATERSON, ABC ENTITIES 1-5, the SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** were responsible for creating, implementing and/or enforcing the policies and procedures set forth in this Complaint, including all policies and procedures referring to the use, storage and safety of weapons while not in use.

96. The practice, pattern, custom and/or policy of failing to train, discipline, hire, retain and/or supervise defendants in conformity with clearly established constitutional principles of which these defendants would have known, are set forth with particularity in the Factual Allegations above and include:

(a) the failure to take action to prevent the unlawful mis-handling of firearms by off-duty law enforcement officers, including **BENEVENTO**;

(b) the failure to take action to require **DEGIGLIO** and the **TRAINING OFFICER DEFENDANTS** to train Paterson Police Officers during semi-annual firearms requalification sessions on the proper use, storage and safe handling of firearms while on or off-duty, thereby creating a situation where there is a strong likelihood of harm to a third party, including **XAVIER**;

(c) the failure to take action to require the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** to properly investigate, charge and discipline officers who consume alcohol while mis-handling firearms and/or tamper with evidence;

(d) the failure to terminate an officer, such as **BENEVENTO**, who has shown that he is not capable of properly handling his duties as a police officer and whose continued employment created a serious risk of harm to third parties;

(e) the failure to evaluate, review and monitor police investigations by **JAMES DOES 1-5**, internal affairs investigations by the **INTERNAL AFFAIRS DEFENDANTS** to avoid misconduct and conspiracy to cover up police malfeasance prior and subsequent to the acts alleged in this Complaint;

(f) allowing and permitting officers to stay on the force who have exhibited misconduct and misfeasance, thereby creating a custom and practice that emboldened **BENEVENTO** to follow suit;

(g) the failure to follow the AG guidelines, Firearms Qualifications and Requalification Standards for New Jersey Law Enforcement, Basic Course Firearms Manual, the Police Training Commission guidelines and NJSACOP local police

policies and practices regarding procedures governing the handling of firearms while on or off-duty, among other constitutional proscriptions regarding the conduct of the Defendants;

(h) the failure to ensure that policies regarding use and safety of firearms was implemented and enforced.

97. During all relevant times herein the **SUPERVISORY DEEFNDANTS** were responsible for the conduct of **BENEVENTO, DEGIGLIO**, the **TRAINING DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5**, and others as well as for the instruction, supervision and implementation of proper law enforcement procedures and oversight on behalf of the **PATERSON** and **ABC ENTITY 1-5** defendants.

98. In addition to the specific facts alleged with respect to **BENEVENTO**, the failure to properly train and supervise law enforcement officers in their duties and the failure to conduct appropriate and adequate police and internal affairs investigations into mis-handling of firearms by officers while under the influence of alcohol, evidence tampering and conspiracy, and the failure to discipline based on those complaints and problems permits, promotes and condones the misfeasance which led to the failures and actions which were the proximate cause of **XAVIER**'s death.

99. **PATERSON, ABC ENTITIES 1-5**, the **SUPERVISORY DEFENDANTS**, the **TRAINING DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** compounded the failure to train officers on off-duty use, storage and handling of firearms by failing to issue General Orders or Standard Operating Procedures ("SOPs") on the off-duty use, storage and handling of firearms and preservation of evidence, in addition to those set forth by the

AG, the Police Training Commission and the NJSACOP and to provide adequate training in this area.

100. Any reasonable defendant would know or should know that he/she was violating Plaintiff's decedent's constitutional rights as well as police procedure and protocol during all periods alleged in this Complaint.

101. By reason of the failures to train, supervise, monitor, retain and discipline **BENEVENTO, DEGIGLIO**, the **TRAINING DEFENDANTS**, the **INTERNAL AFFAIRS DEFENDANTS**, **JAMES DOES 1-5**, and all law enforcement officers under the control and authority of the **SUPERVISORY DEFENDANTS** and **PATERSON**, the **SUPERVISORY DEFENDANTS** and **PATERSON**, through and by its employees and representatives, willfully, wantonly, and recklessly violated the civil rights of Plaintiff's decedent, **XAVIER, SOTO** and **ADRIANNA**.

102. The foregoing acts and omissions violated Plaintiffs' decedent's liberty rights under the Fourth and Fourteenth Amendment to be free of deprivation of his life, and deprived Plaintiff's decedent of his rights, privileges and immunities secured by the Constitution and laws of the United States.

103. The foregoing acts and omissions violated Plaintiffs' decedent's rights under the Fourth and Fourteenth Amendments to due process, both procedural and substantive and rights of privacy and deprived Plaintiff's decedent of his rights, privileges and immunities secured by the Constitution and laws of the United States and are liable to Plaintiffs pursuant to Title 42 Sections 1983 of the United States Code. The Fourth Amendment violation refers to permitting and allowing a service weapon to be used by a civilian causing deprivation of life, liberty and bodily integrity.

104. All of the defendants responsible for supervision and training as set forth in this Complaint individually and **PATERSON** through its employees and representatives, acted with malice, deliberate and reckless indifference which deprived **XAVIER** of his constitutional rights to life and liberty and the rights, privileges and immunities granted to him under the Fourth and Fourteenth Amendments to the United States Constitution for the aforescribed conduct and as set forth herein.

105. **PATERSON, ABC ENTITIES 1-5, the SUPERVISORY DEFENDANTS, the TRAINING DEFENDANTS, the INTERNAL AFFAIRS DEFENDANTS and JAMES DOES 1-5** acted pursuant to official or unofficial policy and/or custom and to deprive plaintiff's decedent of his constitutional rights.

106. By reason of the foregoing, these Defendants violated the civil rights of **XAVIER**.

107. By reason of the foregoing, and as a direct and proximate result of Defendants' constitutional violations, **XAVIER** was caused to suffer severe, painful and fatal personal injuries, loss of enjoyment of life, and in the moments before his death, severe emotional anguish and great physical pain.

108. The decedent left his surviving mother, **SOTO**, and sister, **ADRIANNA** and other next of kin.

109. As a direct and proximate result of the violation of constitutional rights as aforescribed, Plaintiffs **SOTO** and **ADRIANNA** and other next of kin have been damaged, including being permanently deprived of the services, society, care, companionship, support and guidance and financial support of **XAVIER** for the life expectancy of decedent.

110. By reason of the foregoing pain and suffering and wrongful death of Plaintiff's decedent, Plaintiffs have suffered pecuniary losses and have been compelled to expend and incur various sums of money for funeral and burial expenses.

111. By reason of the foregoing **SOTO and ADRIANNA** have suffered emotional distress so severe that no person should be forced to endure it, pecuniary losses and have been compelled to expend and incur various sums of money for medical expenses.

112. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO and ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, ANTHONY DEGIGLIO, the SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS and JAMES DOES 1-5**(as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT II
(42 U.S.C. 1983: Individual Liability)

113. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs and incorporate same by reference, including all paragraphs referring to color of law, scope of employment, deprivation of constitutional rights, privileges under the Fourth and Fourteenth Amendments and deliberate indifference.

Sgt. Christopher D. Benevento

114. At all relevant times herein **BENEVENTO** was acting under color of law and within the scope of his authority as a police officer in the handling, use, and securing of his police issued service weapon.

115. **BENEVENTO** should have been trained in all the policies and procedures set forth in this Complaint including best police practices in general and should have attended in-service, biannual or other training regarding the use and handling of firearms, including safety, use of force, when and under what circumstances to keep a gun holstered and when one may safely unholster it, where and how it is to be maintained and secured, when and how an unholstered gun should be in plain sight (never) and what precautions must be taken in the event of a party, consumption of alcohol, and during “off - duty” status.

116. Insofar as a police officer is never considered “off-duty” for purposes of taking law enforcement action when and where needed, or for purposes of monitoring and maintaining his service weapons, the use of the term “off-duty” is meant here for periods when an officer is not on an official work related shift or tour of duty; however it does not mean that the officer is not acting in his capacity as a police officer with respect to the specific actions alleged in this Complaint.

117. Issues involving gun safety and use, possession and handling of a service weapon are of utmost and paramount importance in training and for the individual officer in comporting themselves in an appropriate and safe manner at all times.

118. Leaving a gun on a counter during a party with members of the public, their children and involving the use of alcohol requires strict and unforgiving attention to policy and procedure on gun safety. These policies, procedures and standards have been set forth in the Factual Allegations in this Complaint and are incorporated herein.

119. **BENEVENTO** violated every possible policy and procedure regarding gun safety, and grossly violated his duties and obligations as a law enforcement officer. The actions of **BENEVENTO** were clearly reckless and amounted to deliberate indifference to the safety of

others, including **XAVIER**, were substantially certain to result in serious injury or death, presented a clear and overwhelming danger and risk to others, including **XAVIER**, and were shocking in the extreme, shocking the conscience.

120. These violations included: (a) the failure to secure his weapon at all times; (b) carrying or maintaining his weapon while under the influence of alcohol; (c) keeping and maintaining his service weapon open and accessible to the public, unholstered, on a ledge and on steps in front of small children with actual notice of same; (d) the failure to have the weapon secured and hidden from view; (e) the failure to keep the safety lock on the gun secured; (f) the failure to secure the weapon in a securely locked box or container; (g) the failure to secure the weapon with a trigger lock; (g) consuming alcohol while minting the gun in either a holstered or unholstered position and (h) affirmatively moving the gun from one place to another in plain view, without a safety lock and loaded, during the party after a small child first started touching it.

121. Any reasonable officer in **BENEVENTO**'s position would know that these affirmative acts and omissions were grossly inappropriate, not done in good faith and made with deliberate indifference to the potential for harm to persons at the BBQ, including **XAVIER**.

122. **BENEVENTO**'s actions constitute violations of constitutional rights to liberty and bodily integrity protected by the Fourth and Fourteenth Amendments to the United States Constitution, for which **BENEVENTO** is liable pursuant to 42 U.S.C. Sec. 1983.

Director Speziale, Chief Oswald and John Doe Supervisors 1-5

123. **DIRECTOR SPEZIALE, CHIEF OSWALD,** and the **SUPERVISORY DEFENDANTS** individually had access to and reviewed all training materials regarding the use, storage and handling of firearms while on and off-duty, preservation of evidence and alcohol consumption.

124. **DIRECTOR SPEZIALE, CHIEF OSWALD** and the **SUPERVISORY DEFENDANTS** knew or should have known that the policies relating to use and safety of firearms was inadequate and insufficient to properly train their subordinates on these issues, and knew that the inadequacies were likely to and substantially certain to lead to serious harm or death of civilians, knew that during Semi-Annual Firearms requalification sessions and training materials available through the DMS system, that **DEGIGLIO** and the **TRAINING DEFENDANTS** were failing to and/or were inadequately training police officers, including **BENEVENTO**, regarding off-duty consumption of alcohol while handling firearms, use, storage and handling of firearms while on or off-duty and preservation of evidence at a crime scene.

125. **DIRECTOR SPEZIALE, CHIEF OSWALD** and the **SUPERVISORY DEFENDANTS** knew or should have known that the AG guidelines, the NJSACOP guidelines and best practices standards and policies were not being enforced or implemented regarding the off-duty consumption of alcohol while handling firearms, use, storage and handling of firearms while on or off-duty and preservation of evidence at a crime scene.

126. Despite individual knowledge regarding the inadequacy of training and supervision, **DIRECTOR SPEZIALE, CHIEF OSWALD**, and the **SUPERVISORY DEFENDANTS** compounded the failure to train officers on off-duty use, storage and handling of firearms by failing to issue specific General Orders and SOPs on the use, storage and handling of firearms.

127. Further, **DIRECTOR SPEZIALE, CHIEF OSWALD**, and the **SUPERVISORY DEFENDANTS** knew that (a) **BENEVENTO, JAMES DOES 1-5**, and the **INTERNAL AFFAIRS DEFENDANTS** had conspired to cover-up the circumstances of **XAVIER**'s death; had ignored **BENEVENTO**'s off-duty consumption of alcohol and subsequent mishandling of an un-secured firearm and then tampering with evidence; (b) the **INTERNAL AFFAIRS**

DEFENDANTS failed to interview key, non-police eye-witnesses and/or omitted statements from key, non-police eye-witnesses statements in their reports in order to prevent **BENEVENTO** from (i) being charged under N.J.S.A. 2C:58-15 arising from leaving his firearm out in the open where a child attempted to handle it, and (ii) being disciplined for violating police policy.

128. At all relevant times herein **DIRECTOR SPEZIALE, CHIEF OSWALD,** and **the SUPERVISORY DEFENDANTS** were personally and directly involved in the evaluation, enforcement and implementation of all applicable policies referring or relating to the use and handling of service weapons, failed to comport themselves in conformity with clearly established constitutional principles which govern their conduct and which would have been known to any reasonable person in their position by:

- (a) the failure to take action to prevent the unlawful mis-handling of firearms by off-duty law enforcement officers, including **BENEVENTO**;
- (b) the failure to take action to require **DEGIGLIO** and the **TRAINING OFFICER DEFENDANTS** to train Paterson Police Officers during semi-annual firearms requalification sessions on the proper use, storage and safe handling of firearms while on or off-duty, thereby creating a situation where there is a strong likelihood of harm to a third party, including **XAVIER**;
- (c) the failure to take action to require the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** to properly investigate, charge and discipline officers who consume alcohol while mis-handling firearms and/or tamper with evidence;
- (d) allowing and permitting **BENEVENTO** to remain on the force without remediation or discipline, and/or failing to terminate him after the shocking events that led to the death of **XAVIER**, where it was clear that **BENEVENTO** was not

capable of properly handling his duties as a police officer and whose continued employment created a serious risk of harm to third parties;

(e) the failure to evaluate, review and monitor police investigations by **JAMES DOES 1-5**, internal affairs investigations by the **INTERNAL AFFAIRS DEFENDANTS** to avoid misconduct and conspiracy to cover up police malfeasance;

(f) allowing and permitting officers to stay on the force who have exhibited misconduct and misfeasance, thereby creating a custom and practice that emboldened **BENEVENTO** to follow suit;

(g) failing to follow the AG guidelines, Firearms Qualifications and Requalification Standards for New Jersey Law Enforcement, Basic Course Firearms Manual, Police Training Commission guidelines and NJSACOP local police policies and practices regarding procedures governing the handling of firearms while on or off-duty, among other constitutional proscriptions regarding the conduct of the Defendants;

(h) failing to ensure that police regarding use and safety of firearms was implemented and enforced; and

(i) By conspiring amongst themselves and with the **INTERNAL AFFAIRS DEFENDANTS** to cover-up wrongdoing by **BENEVENTO**; and make it appear that **XAVIER** had committed suicide to prevent **BENEVENTO** from being disciplined and/or charged under N.J.S.A. 2C:58-15.

129. These Defendants' own individual actions by personal involvement in these activities and conduct produced and directly caused the death and damages to **XAVIER**.

Internal Affairs and Investigating Officers

130. The **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** failed to adequately investigate the death of **XAVIER** and affirmatively conducted an improper IA investigation by not interviewing all witnesses, including **SOTO** and Tony Rivera, which would have revealed the fact that **BENEVENTO** had his firearm out in plain view and readily accessible to his guests including a minor child who tried to grab the gun, that **BENEVENTO** was consuming alcohol, that **XAVIER** was not acting suicidal, and after **XAVIER**'s shooting, **BENEVENTO** moved the weapon.

131. The **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** then conspired amongst themselves and with the **SUPERVISORY DEFENDANTS** to cover-up wrongdoing by **BENEVENTO**; and make it appear that **XAVIER** had committed suicide to prevent **BENEVENTO** from being disciplined and/or charged under N.J.S.A. 2C:58-15.

132. The **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** acted with full knowledge that their actions violated Attorney General Guidelines.

133. By their actions, the **INTERNAL AFFAIRS DEFENDANTS, JAMES DOES 1-5** and the **SUPERVISORY DEFENDANTS** caused the medical examiner, Dr. Albert Williams, to issue an incorrect death certificate that stated the cause of **XAVIER**'s death as suicide, when these Defendants knew full well that it was not.

134. These actions establish derelictions of such a gross and shocking nature as to give rise to the inference that a pattern and practice, custom and policy existed permitting and allowing abuse and misconduct to occur with impunity throughout the police force with no consequences or remediation. It is the individual actions of these defendants including **DIRECTOR SPEZIALE** and **CHIEF OSWALD** that permitted and allowed these gross abuses and

misconduct to occur and who, together with the **INTERNAL AFFAIRS DEFENDANTS**, failed and refused to discipline their subordinates, permitting and allowing abuse including that committed by **BENEVENTO** to continue.

Training Officers

135. Notwithstanding the Attorney General guidelines, General Orders, *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement*, *Basic Course Firearms Manual*, the Police Commission Training guidelines and NJSACOP policies, police procedures and protocols, **DEGIGLIO** and the **TRAINING DEFENDANTS** failed to train and/or inadequately trained police officers, including **BENEVENTO**, regarding proper use, handling and storage of firearms while on or off-duty and the complete bar to even touching a handgun if an officer even contemplates consuming alcoholic beverages

136. **DEGIGLIO** and the **TRAINING DEFENDANTS** failed to train and/or inadequately trained police officers, including **BENEVENTO**, regarding preservation of evidence and the complete prohibition regarding evidence tampering.

137. By the aforesaid failure to train, **DEGIGLIO** and the **TRAINING DEFENDANTS** deprived **XAVIER** of his rights, privileges, and immunities secured by the Constitution and laws of the United States including violation of his Fourth Amendment right to be free of unreasonable seizures and his Fourteenth Amendment right to substantive and procedural due process and the right to bodily integrity and liberty.

138. **THE SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, JAMES DOES 1-5's**, and **INTERNAL AFFAIRS DEFENDANTS'** own individual actions and/or personal involvement produced and directly caused the death and damages to **XAVIER** and directly caused **SOTO** and **ADRIANNA** to suffer severe and extreme emotional distress.

139. **XAVIER** left **SOTO** and **ADRIANNA**, his surviving next-of-kin and named Plaintiffs herein.

140. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff's decedent **XAVIER** was caused to suffer severe, painful and permanent personal injuries, emotional anguish and great physical pain.

141. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff's decedent **XAVIER** and other next of kin have been damaged and have been permanently deprived of the services, society, care, companionship, support and guidance and financial support of their son and brother for the life expectancy of decedent.

142. By reason of the foregoing pain and suffering and wrongful death of plaintiff's decedent, plaintiffs have been damaged.

143. By reason of the foregoing pain and suffering and wrongful death of plaintiff's decedent, plaintiffs have suffered pecuniary losses, including mental health treatment, and have been compelled to expend and incur various sums of money for funeral and burial expenses.

144. By reason of the foregoing pain and suffering and wrongful death plaintiff's decedent **XAVIER** has suffered loss of enjoyment of life.

145. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO, ANTHONY DEGIGLIO**, the **SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages,

medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT III
(Section 1983 - State Created Danger)

146. Plaintiffs repeat and reallege each and every allegation contained in this Complaint and incorporate same by reference.

147. The Fourth Amendment and Due Process clause of the Fourteenth Amendment to the United States Constitution prohibit deprivation of life, liberty or property without due process of law.

148. Substantive due process under the Fourteenth Amendment requires that a citizen, such as Plaintiff's decedent be protected from state action which deprives the citizen of their life and liberty.

149. The direct and proximate cause of the injuries, damages and death suffered by Plaintiff's decedent and his surviving kin are the result of state action, both by **BENEVENTO** directly and by the other defendants, all acting under color of law, which actions increased the substantial likelihood of harm to **XAVIER** and in fact put him directly in danger that he would not otherwise have been exposed to, but for the state action.

150. By affirmatively hosting a party, then consuming alcohol and keeping his firearm un-holstered and in plain view, allowing both a child to grab it and then **XAVIER** with the tragic results of killing himself in an accidental shooting, **BENEVENTO** acted with a degree of culpability that shocks the conscience.

151. At all relevant times **BENEVENTO** was acting under color of law and his affirmative actions in the use and handling of his weapon constitute state action.

152. The affirmative actions of defendants **DIRECTOR SPEZIALE, CHIEF OSWALD,** the **SUPERVISORY DEFENDANTS, DEGIGLIO,** the **TRAINING DEFENDANTS** and the **INTERNAL AFFAIRS DEFENDANTS** consisted of allowing and permitting **BENEVENTO** to remain on the force without remediation or discipline despite prior Internal Affairs Investigations showing that **BENEVENTO** was not capable of properly handling his duties as a police officer and whose continued employment created a serious risk of harm to third parties (**SPEZIALE, OSWALD, DEGIGLIO** and unidentified defendants); in affirmatively evaluating IA files and choosing not to impose required discipline or remediate misconduct as required; in affirmatively determining not to train on the use and handling of service weapons; in filing false reports concerning the subject event to protect **BENEVENTO (SPEZIALE, OSWALD, BENEVENTO)**; in allowing and permitting officers to stay on the force who have exhibited misconduct and misfeasance and, among other acts, by conspiring amongst themselves to cover-up wrongdoing by **BENEVENTO**; and make it appear that **XAVIER** had committed suicide to prevent **BENEVENTO** from being disciplined and/or charged under N.J.S.A. 2C:58 (**STANZIALE, OSWALD** and unidentified defendants).

153. **BENEVENTO's** actions shock the conscience; they were also deliberately indifferent to the substantial likelihood of serious harm; and increased the risk of harm by specifically putting **XAVIER** in danger.

154. Once **BENEVENTO** created the conditions that put **XAVIER** and others directly in harms' way he had an obligation to provide **XAVIER** and others with protection to avoid the untoward use of his gun.

155. **PATERSON, ABC ENTITIES 1-5, DIRECTOR SPEZIALE, CHIEF OSWALD,** the **SUPERVISORY DEFENDANTS, DEGIGLIO** the **TRAINING**

DEFENDANTS and **THE INTERNAL AFFAIRS DEFENDANTS** owed a duty to protect **XAVIER** from the unlawful actions of **BENEVENTO** separate and independent from any duty owed by **BENEVENTO** to **XAVIER**, as the affirmative actions of these defendants directly led to the violation of constitutional rights caused by the actions of **BENEVENTO** which exposed **XAVIER** to danger as direct and foreseeable result of state action.

156. As a direct and proximate result of these Defendants' constitutional violations, **XAVIER** suffered serious and severe injuries which resulted in his death.

157. **XAVIER** left **SOTO** and **ADRIANNA**, his surviving next-of-kin and named Plaintiffs herein.

158. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff's decedent **XAVIER** was caused to suffer severe, painful and permanent personal injuries, emotional anguish and great physical pain.

159. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff's decedent **XAVIER** and other next of kin have been damaged and have been permanently deprived of the services, society, care, companionship, support and guidance and financial support of their son and brother for the life expectancy of decedent.

160. By reason of the foregoing pain and suffering and wrongful death of plaintiff's decedent, plaintiffs have been damaged.

161. By reason of the foregoing pain and suffering and wrongful death of plaintiff's decedent, plaintiffs have suffered pecuniary losses, including mental health treatment, and have been compelled to expend and incur various sums of money for funeral and burial expenses.

162. By reason of the foregoing pain and suffering and wrongful death plaintiff's decedent **XAVIER** has suffered loss of enjoyment of life.

163. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO, ANTHONY DEGIGLIO**, the **SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT IV
(New Jersey Civil Rights Act)

164. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs and incorporates same by reference.

165. The factual allegations in the Complaint supporting liability under 42 U.S.C. § 1983 as set forth herein also support a cause of action under the New Jersey Civil Rights Act which is co-extensive with 42 U.S.C. § 1983.

166. The Defendants, each and every one, acted pursuant to official or unofficial policy and/or custom and to deprive **XAVIER** of his constitutional rights under Title 10 of the New Jersey Statutes, known as the New Jersey Civil Rights Act.

167. By reason of the foregoing, defendants violated the civil rights of **XAVIER**.

168. As a direct and proximate result of these Defendants' constitutional violations, **XAVIER** suffered severe, painful and permanent personal injuries, emotional anguish and great physical pain.

169. **XAVIER** left **SOTO** and **ADRIANNA**, his surviving next-of-kin and named Plaintiffs herein.

170. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff's decedent **XAVIER** and other next of kin have been damaged and have been permanently deprived of the services, society, care, companionship, support and guidance and financial support of their son and brother for the life expectancy of decedent.

171. By reason of the foregoing pain and suffering and wrongful death of plaintiff's decedent, plaintiffs have suffered pecuniary losses, including mental health treatment, and have been compelled to expend and incur various sums of money for funeral and burial expenses.

172. By reason of the foregoing pain and suffering and wrongful death plaintiff's decedent **XAVIER** has suffered loss of enjoyment of life.

173. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO, ANTHONY DEGIGLIO**, the **SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT V
(negligence)

174. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs and incorporates same by reference.

Benevento

175. As the social host of a Fourth of July party, **BENEVENTO** owed his guests and social invitees a duty to use reasonable care to ensure their safety and well-being, including maintaining his premises in a reasonably safe condition from known or foreseeable dangers and hazards.

176. **BENEVENTO** breached the duty of care he owed to his guests by leaving his loaded firearm out in the open, completely unguarded and unlocked.

177. **BENEVENTO** further breached the duty of care he owed to his guests by consuming alcohol while handling his loaded firearm.

178. After the six-year old son of his girlfriend, Maria, attempted to pick up the loaded, unlocked, unholstered and unguarded firearm, it was highly foreseeable to **BENEVENTO** that if the firearm remained unlocked, unholstered and unguarded, the gun could be used to cause serious harm, including death.

179. As a direct and proximate result of leaving a loaded, unlocked, unholstered and unguarded firearm in the presence of his guests, including **XAVIER**, **XAVIER** accidentally shot himself with said firearm, and thereby suffered damages, including the loss of his life.

Director Speziale, Chief Oswald, John Doe Supervisors 1-5

180. At all relevant times herein **DIRECTOR SPEZIALE**, **CHIEF OSWALD**, and the **SUPERVISORY DEFENDANTS** were under a duty to act reasonably in the performance of their duties as police officers and supervisors, including (a) overseeing training given to all officers including training given to **BENEVENTO**; (b) using reasonable care in the taking of corrective action and/or progressive discipline in making decisions about the off-duty use and possession of a firearm; (b) overseeing **BENEVENTO**'s employment, his training, supervision

and retention, including discipline; (c) ensuring that investigating officers and Internal Affairs conduct proper investigations; (d) and disciplining or terminating officers that tamper with evidence and/or conspire to conceal malfeasance by other officers.

181. With respect to all of these issues, the duties were ministerial and not subject to discretion or immunities in that (1) the duty to provide training regarding off-duty use, handling and storage of weapons was mandated by Attorney General guidelines, General Orders, *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement*, *Basic Course Firearms Manual*, and NJSACOP policies, police procedures and protocols; (2) the failure to use reasonable care in the hiring, training, supervision and retention of **BENEVENTO** is not subject to any immunity under Title 59; (3) the duty to provide training regarding how to conduct investigations was and is mandated by Attorney General guidelines, General Orders, and police procedures and protocols; (4) issuing a citation to **BENEVENTO** for violating N.J.S.A. 2C: 58-15 was mandatory; and (5) taking corrective action and/or imposing progressive discipline was based on specific protocol set by the foregoing policies and procedures and the Collective Bargaining Agreement between Paterson and its police officers.

182. All of the above duties were breached.

183. As a direct and proximate result of failing to (a) oversee training including providing adequate training to **BENEVENTO**; (b) use reasonable care in the taking of corrective action and/or progressive discipline in making decisions about the off-duty use and possession of a firearm; (b) oversee **BENEVENTO**'s employment, his training, supervision and retention, including discipline; (c) ensure that investigating officers and Internal Affairs conduct proper investigations; (d) and discipline or terminate officers that tamper with evidence and/or conspire to conceal malfeasance by other officers, **XAVIER, SOTO** and **ADRIANNE** suffered damages.

DiGiglio and Training Officers 1-5

184. At all relevant times herein **DEGIGLIO** and the **TRAINING DEFENDANTS**, were under a duty to act reasonably in the performance of their duties as training officers in the handling of **BENEVENTO**'s training regarding off-duty use, handling and storage of firearms, particularly when contemplating or actually consuming alcohol, as mandated by Attorney General guidelines, General Orders, *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement, Basic Course Firearms Manual*, and NJSACOP policies, police procedures and protocols.

185. With respect to all of these issues, the duties were ministerial and not subject to discretion or immunities because they were mandated by Attorney General guidelines, General Orders, *Firearms Qualification and Requalification Standards for New Jersey Law Enforcement, Basic Course Firearms Manual*, and NJSACOP policies, police procedures and protocols.

186. **DEGIGLIO** and the **TRAINING DEFENDANTS** breached their duty to train **BENEVENTO** on the proper use, handling and storage of firearms, especially when contemplating using or actually consuming alcohol.

187. As a direct and proximate cause of the breach of their duty to train **BENEVENTO** on the proper use, handling and storage of firearms, especially when contemplating using or actually consuming alcohol injuries, **XAVIER, SOTO** and **ADRIANNE** suffered damages.

John Doe Internal Affairs Officers 1-5 and James Does Officers 1-5

188. At all relevant times herein the **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5**, were under a duty to act reasonably in the performance of their duties as police officers in the handling of investigations, especially those involving fatalities arising from a shooting.

189. With respect to all of these issues, the duties were ministerial and not subject to discretion or immunities because they were mandated by Attorney General guidelines, General Orders, and NJSACOP policies, police procedures and protocols.

190. The **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** breached their duty to investigate **BENEVENTO**'s conduct on July 4, 2016 by failing to interview all witnesses, including **ADRIANNA** and Tony Rivera, thereby creating a false narrative and incorrect death certificate as to the cause of **XAVIER**'s death and preventing **BENEVENTO** from being disciplined or charged with any criminal violation.

191. The **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** also breached their duty of reasonable care in the failure to properly investigate prior complaints regarding **BENEVENTO** and others and take remedial action.

192. As a direct and proximate cause of the breach of their duty to adequately investigate **BENEVENTO**'s conduct on July 4, 2016, **SOTO** and **ADRIANNE** suffered damages, including loss of reputation and severe emotional distress.

193. By reason of the foregoing negligence on the part of each and every Defendant, **XAVIER** suffered the loss of his life, loss of enjoyment of life, and emotional distress and pain and suffering in the moments before he died.

194. By reason of the foregoing negligence on the part of each and every Defendant, **SOTO** and **ADRIANNE** suffered loss of reputation, emotional distress, pecuniary losses, including mental health treatment, and have been compelled to expend and incur various sums of money for funeral and burial expenses.

195. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO**, **YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants

PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO, ANTHONY DEGIGLIO, the SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT VI
(intentional infliction of emotional distress)

196. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs and incorporates same by reference.

197. Defendants collectively and individually, by their agents, servants and their employees and each of them individually engaged in actions which were intended to, and which did, inflict severe emotional trauma upon Plaintiffs.

198. As a direct and proximate cause of intentionally consuming alcohol and then leaving a loaded and unlocked firearm within reach of **XAVIER** which then accidentally discharged and struck **XAVIER**, as well as other actions of **BENEVENTO**, **XAVIER** was subjected to intentional infliction of emotional distress in the moments before his death.

199. As a direct and proximate cause of **DEGIGLIO's, SPEZIALE's, OSWALD's,** the **SUPERVISORY DEFENDANTS,** the **TRAINING DEFENDANTS'** and the **INTERNAL AFFAIRS DEFENDANTS'** intentional failures to train **BENEVENTO** regarding the use, storage and handling of firearms while off-duty and in failing and refusing to conduct proper IA investigations, monitor and supervise **BENEVENTO** and other officers, **XAVIER** was subjected

to an accidental discharge of **BENEVENTO**'s gun and death, causing severe emotional distress and anguish.

200. As a direct and proximate cause of the **SUPERVISORY DEFENDANTS**', the **INTERNAL AFFAIRS DEFENDANTS**' and **BENEVENTO**'s conduct in creating a fiction and false narrative that **XAVIER**'s death was caused by suicide, bringing shame to **SOTO** and **ADRIANNA**, **SOTO** and **ADRIANNA** have suffered severe emotional distress and anguish, reputational damages, and have been caused, along with witnessing **XAVIER**'s death to undergo mental health treatment.

201. The emotional distress suffered by **XAVIER**, **SOTO** and **ADRIANNA** was severe and outrageous.

202. The emotional distress was of such character that no reasonable person could be expected to endure it.

203. By reason of the foregoing each Plaintiff was damaged.

204. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO**, **YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON**, **ABC ENTITIES 1-5**, **DIRECTOR JERRY SPEZIALE**, **CHIEF TROY OSWALD**, **SGT. CHRISTOPHER. D. BENEVENTO**, **ANTHONY DEGIGLIO**, the **SUPERVISORY DEFENDANTS**, **TRAINING DEFENDANTS**, **INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT VII
(Negligent Infliction of Emotional Distress/“Portee Claim”)

205. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs and incorporates same by reference.

206. The facts as cited in this Complaint give rise to a negligent infliction of emotional distress claim as to plaintiffs **SOTO, ADRIANNA** and **XAVIER**.

207. **SOTO** and **ADRIANNA** shared an intimate, familial relationship with **XAVIER** as his mother and sister, respectively.

208. **SOTO** and **ADRIANNA** were approximately six (6) steps away from **XAVIER** and had a sensory and contemporaneous observation of his death at the scene of the 2016 Fourth of July Party at **BENEVENTO’S** Totowa home. **SOTO** and **ADRIANNA** both heard the shots and witnessed seeing their son and brother fall to the ground and lie unresponsive after shooting himself.

209. As a direct and proximate result of this sensory and contemporaneous observation of **XAVIER’S** death brought about by the foregoing Defendants’ negligence, **SOTO** experienced emotional distress that was so severe that she fainted, had to be immediately transported by ambulance to St. Joseph’s Hospital and continues to undergo mental health treatment; **SOTO** cannot enter **XAVIER’S** bedroom as a result of the severe emotional distress it causes.

210. As a direct and proximate result of this sensory and contemporaneous observation of **XAVIER’S** death brought about by the foregoing Defendants’ negligence, **ADRIANNA** experienced emotional distress that was so severe that she has nightmares, finds herself reliving the incident at various times of the day, and is unable to bring herself to enter **XAVIER’S** bedroom due to the severe emotional distress it causes.

211. By reason of the foregoing **SOTO** and **ADRIANNA** have been damaged.

212. In addition, as the gun discharged due to the aforesaid negligence of the above Defendants, **XAVIER** suddenly and immediately apprehended that the gun was loaded and that the safety was off, and that he was going to die, causing him to suffer excruciating emotional distress; in short, **XAVIER** died in terror.

213. All plaintiffs have expended medical and psychological bills in excess of the Title 59 tort threshold and sustained permanent injuries in accordance with that statute.

214. All plaintiffs have suffered manifestations of physical injury connected to witnessing the death of **XAVIER** and by reason of the emotional distress inflicted upon them by the defendants as set forth in this Complaint. These include stomach problems and headaches, shaking and assorted aches and pains.

215. All conditions precedent to Title 59 liability have been met, along with the “Portee” claim.

216. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO, ANTHONY DEGIGLIO, the SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT VIII
(Civil Conspiracy)

217. Plaintiff repeats and realleges each and every allegation contained in the above paragraphs and incorporates same by reference.

218. Defendants, each and every one of them, did conspire, act in concert together, and agree among themselves, to cause injury and damage to and commit unlawful acts against **XAVIER**, namely to create a fiction that **XAVIER** wanted to and did commit suicide instead of being the victim of the negligence and violations of civil rights perpetrated upon him by **BENEVENTO** and all the supervisory and internal affairs defendants as separate and independent torts and constitutional violations.

219. Each of the above mentioned defendants understood the objectives of the conspiracy scheme and accepted them, and agreed, implicitly or explicitly, to each do his part to further them.

220. By reason of the foregoing, and as a direct and proximate result of the conspiracy of, and the actions of the Defendants, Plaintiffs suffered damages, including severe emotional distress and loss of reputation.

221. By reason of the foregoing, Plaintiff has been damaged.

222. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO,** the **SUPERVISORY DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and

severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT VII
(Wrongful Death)

223. Plaintiffs repeat and reallege each and every allegation contained in this Complaint and incorporates same by reference.

224. The actions of the defendants as detailed in this Complaint provide factual support for the cause of action in wrongful death; the actions of the defendants are the direct and proximate cause of the death.

225. All conditions precedent under Title 59 have been met.

226. As a result of the severe mental shock endured by **SOTO** and **ADRIANNA** as a result of **XAVIER**'s death, **SOTO** and **ADRIANNA** suffered hospital costs and costs for mental health treatment well in excess of \$3500.

227. **SOTO** also incurred funeral and burial expenses in connection with **XAVIER**'s death.

228. During his lifetime, **XAVIER** was a source of comfort, guidance, advice, counsel and emotional support for both **SOTO** and **ADRIANNA**, with whom he lived.

229. **XAVIER** also provided daily assistance to both his mother and sister by performing numerous errands, heavy household chores and gardening for them that they were unable to perform.

230. As is customary in the tightly knit **SOTO** family, **SOTO** expected that in her old age, **XAVIER** would also be a source of financial support and further assistance around the house and garden, as she became increasingly physically and financially dependent.

231. As a direct and proximate result of **XAVIER**'s wrongful death, **SOTO** and **ADRIANNA** suffered the loss of **XAVIER**'s comfort, companionship, help and assistance and **SOTO** has suffered the loss of his future physical and financial support.

232. As a direct and proximate result of the wrongful death as aforescribed, Plaintiffs **SOTO** and **ADRIANNA** and other next of kin have been damaged, including being permanently deprived of the services, society, care, companionship, support and guidance and financial support of **XAVIER** for the life expectancy of decedent.

233. By reason of the foregoing wrongful death **SOTO** and **ADRIANNA** have suffered emotional distress, pecuniary losses and have been compelled to expend and incur various sums of money for burial and medical expenses.

234. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO, ANTHONY DEGIGLIO**, the **SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

COUNT VIII
(abuse of power and authority)

235. Plaintiffs repeat and reallege each and every paragraph contained in this Complaint and incorporates same by reference.

236. The actions of Defendant **BENEVENTO** constitute and abuse of power and authority.

237. By reason of the foregoing, Plaintiffs have been damaged.

238. As a direct and proximate result of the abuse of power and authority Plaintiffs **SOTO** and **ADRIANNA** and other next of kin have been damaged, including being permanently deprived of the services, society, care, companionship, support and guidance and financial support of **XAVIER** for the life expectancy of decedent, along with reputational damages and severe emotional pain and anguish.

239. By reason of the foregoing wrongful death **SOTO** and **ADRIANNA** have suffered emotional distress, pecuniary losses and have been compelled to expend and incur various sums of money for burial and medical expenses.

240. **WHEREFORE** Plaintiffs, **THE ESTATE OF XAVIER CUEVAS SOTO, YOLANDA SOTO** and **ADRIANNA SOTO** demand judgment against defendants **PATERSON, ABC ENTITIES 1-5, DIRECTOR JERRY SPEZIALE, CHIEF TROY OSWALD, SGT. CHRISTOPHER. D. BENEVENTO, ANTHONY DEGIGLIO, the SUPERVISORY DEFENDANTS, TRAINING DEFENDANTS, INTERNAL AFFAIRS DEFENDANTS** and **JAMES DOES 1-5** (as yet unknown and unidentified police officers, supervisors, governmental entities) jointly and severally for compensatory and punitive damages, medical and legal bills, together with interest, costs of suit and attorneys fees and such other and further relief as the Court deems just.

SHELLEY L. STANGLER, P.C.
Attorneys for Plaintiff

BY: 

SHELLEY L. STANGLER, ESQ.

Dated: July 2, 2018

DEMAND FOR A “LITIGATION HOLD”

Plaintiffs, the **ESTATE OF XAVIER CUEVAS-SOTO, YOLANDA SOTO AND ADRIANNA SOTO**, demand that each and every Defendant protect and preserve any and all documents and electronic files, including emails and text messages, that refer or relate to (1) XAVIER CUEVAS-SOTO, YOLANDA SOTO, and ADRIANNA SOTO; (2) CHRISTOPHER BENEVENTO’S personnel file and training records; (3) any and all training materials created or used by the Paterson Police Department between 2008 and the present; (4) any and all General Orders promulgated by the Paterson Police Department between June 1, 2008 and the present; (5) any person disciplined or terminated from employment with the Paterson Police Department between June 1, 2008 and the present; (6) all files that refer or relate to Defendants’ investigation into the death of XAVIER CUEVAS-SOTO, including but not limited to witness statements, ballistics tests, gun residue tests, photographs, and the firearm involved in the shooting of XAVIER CUEVAS-SOTO; (7) all internal affairs and/or investigation files that refer or relate to any incidents involving off-duty Paterson police officers; and (8) any and all other matters at issue in this litigation. If there is any policy or procedure to automatically destroy documents or electronic files, including emails, after a specified time period to immediately suspend said policy and procedure until the conclusion of this case.

SHELLEY L. STANGLER, P.C.

Dated: July 2, 2018

BY: 
SHELLEY L. STANGLER, ESQ.

DEMAND TO IDENTIFY ALL “JOHN DOE” and “ABC ETITY” DEFENDANTS

Plaintiffs, the **ESTATE OF XAVIER CUEVAS-SOTO, YOLANDA SOTO AND ADRIANNA SOTO**, demand that, within 15 days of service of this Complaint upon Paterson, that said defendant provide the full name and address of (i) all “**John Doe**” officers who provided any training to **BENEVENTO** regarding the use, handling and storage of

firearms while off-duty and contemplated or actual use of alcohol while off duty and handling a firearm; (ii) all “**James Doe**” officers who responded to **BENEVENTO**’s home on July 4, 2016 in connection with **XAVIER**’s death; (iii) all “**John Doe**” Internal Affairs officers who investigated the death of **XAVIER**; and (iv) all “**John Doe**” supervisors who supervised, hired, disciplined or recommended discipline as to **BENEVENTO**.

SHELLEY L. STANGLER, P.C.
Attorneys for Plaintiff

BY: 
SHELLEY L. STANGLER, ESQ.

Dated: July 2, 2018

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable.

SHELLEY L. STANGLER, P.C.
Attorneys for Plaintiff

BY: 
SHELLEY L. STANGLER, ESQ.

Dated: July 2, 2018

DESIGNATION OF TRIAL COUNSEL

SHELLEY L. STANGLER, ESQ. is hereby designated as trial counsel on behalf of the plaintiff in the within matter.

SHELLEY L. STANGLER, P.C.
Attorneys for Plaintiff

BY: 
SHELLEY L. STANGLER, ESQ.

Dated: July 2, 2018

CERTIFICATION

1. The firm of SHELLEY L. STANGLER, P.C. has been retained to represent Plaintiffs, the **ESTATE OF XAVIER CUEVAS-SOTO, YOLANDA SOTO AND ADRIANNA SOTO**, in connection with the within matter. I am an attorney assigned to the case.

2. The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated by plaintiff.

3. There are no other parties who should be joined in this action.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: July 2, 2018



SHELLEY L. STANGLER, ESQ.