

SALVADOR ANTONIO CHAVEZ; and JESSICA CHAVEZ, PLAINTIFFS (hereinafter collectively, “Plaintiffs”), in the above-styled and above-numbered cause, and file this Plaintiffs’ Original Complaint, complaining of and against OFFICER LUIS ALVARADO; OFFICER BENJAMIN LEBLANC; OFFICER KEVIN NGUYEN; OFFICER OMAR TAPIA; OFFICER PATRICK RUBIO; the HOUSTON POLICE DEPARTMENT; and the CITY OF HOUSTON, DEFENDANTS (hereinafter collectively, “Defendants”), and in support thereof would respectfully show unto the Honorable Court and Jury the following:

I.
SUMMARY OF CASE

1. Historically, the Houston Police Department (“HPD”) has been universally recognized for its heavy-handed, arbitrary, and excessive use of force in responding to disturbance calls and, often, even ordinary traffic stops. HPD has written policies and long-standing practices that the department, itself, shielded from public view until a light was shined on its unconstitutional practices, following a string of deadly confrontations with Houston citizens. Since at least 2015, HPD had a written policy and field procedures that authorized its officers to shoot and kill citizens during botched episodes with tasers, when inoperable tasers ended up in the hands of citizens during a disturbance call. This, despite the absence of any reasonable threat to the safety, health or welfare of those officers. HPD’s unconstitutional policies and procedures culminated in the violent shooting death of

Nicolas Chavez, following a botched taser event on April 21, 2020. On the day in question, HPD officers, responding to a disturbance involving Mr. Chavez, fired twenty-four (24) bullets from their department-issued firearms, striking Chavez multiple times, which resulted in his death.

2. After an investigation, including a thorough review of bodycam video – later publicly released – and immense pressure from the public, HPD determined that the officers involved, Defendants herein, violated HPD’s policies and terminated them from employment at the department. However, HPD and the City of Houston’s claims that the officers involved violated the written policies of the department could not be further from the truth. This Complaint is brought, in part, to shine a light on the very written policies and procedures implemented at HPD that resulted in harshly cruel and unusual punishment, which resulted in the death of Mr. Chavez. Moreover, this Complaint seeks substantial remuneration for the family of Mr. Chavez, intended to recover pecuniary remuneration for their grave loss and, also, to punish and deter HPD from continuing its lawless policies and practices that encourage unconstitutional punishment instead of the de-escalation of disturbances. As grounds for this action, the Plaintiffs show the following:

II.
PARTIES

3. PLAINTIFF, LEANTHA ROSE CHAVEZ, is an individual who resides in Harris County, Texas.

4. PLAINTIFF, JENNIFER RAE THOMSON, as next friend of Nicolas Chavez, Jr. (“N.C.”), a minor child, and as applicant to be dependent administratrix of the ESTATE OF NICOLAS CHAVEZ, DECEASED, is an individual who resides in Harris County, Texas.

5. PLAINTIFF, LEIGHA ROSE-MARIE WISE, as next friend of Alicia Marie Wise (“A.M.W.”) and Adriana Nicole Wise (“A.N.W.”), minor children, is an individual who resides in Arkansas.

6. PLAINTIFF, JOAQUIN SALVADOR ANTONIO CHAVEZ, is an individual who resides in Harris County, Texas.

7. PLAINTIFF, JESSICA CHAVEZ, is an individual who resides in Harris County, Texas.

8. DEFENDANT, OFFICER LUIS ALVARADO, is a Houston Police Department Officer and is being served in his official capacity. This Defendant may be served with process by serving City of Houston Interim City Secretary, Pat Jefferson Daniel, 900 Bagby Street, Rm. P101, Houston, Texas 77002.

9. DEFENDANT, OFFICER BENJAMIN LEBLANC, is a Houston Police Department Officer and is being served in his official capacity. This

Defendant may be served with process by serving City of Houston Interim City Secretary, Pat Jefferson Daniel, 900 Bagby Street, Rm. P101, Houston, Texas 77002.

10. DEFENDANT, OFFICER KEVIN NGUYEN, is a Houston Police Department Officer and is being served in his official capacity. This Defendant may be served with process by serving City of Houston Interim City Secretary, Pat Jefferson Daniel, 900 Bagby Street, Rm. P101, Houston, Texas 77002.

11. DEFENDANT, OFFICER OMAR TAPIA, is a Houston Police Department Officer and is being served in his official capacity. This Defendant may be served with process by serving City of Houston Interim City Secretary, Pat Jefferson Daniel, 900 Bagby Street, Rm. P101, Houston, Texas 77002.

12. DEFENDANT, OFFICER PATRICK RUBIO, is a Houston Police Department Officer and is being served in his official capacity. This Defendant may be served with process by serving City of Houston Interim City Secretary, Pat Jefferson Daniel, 900 Bagby Street, Rm. P101, Houston, Texas 77002.

13. DEFENDANT, HOUSTON POLICE DEPARTMENT, is a governmental unit of the City of Houston and was the employer of Defendants Officer Alvarado, Officer LeBlanc, Officer Nguyen, Officer Tapia, and Officer Rubio. The Houston Police Department may be served with process through the Chief of Police, Chief Art Acevedo, 1200 Travis Street, Houston, Texas 77002.

14. DEFENDANT, CITY OF HOUSTON, is a governmental unit in the State of Texas and was the employer of Defendants Officer Alvarado, Officer LeBlanc, Officer Nguyen, Officer Tapia, and Officer Rubio. The City of Houston may be served with process through its Interim City Secretary, Pat Jefferson Daniel, 900 Bagby Street, Rm. P101, Houston, Texas 77002.

III.
JURISDICTION AND VENUE

15. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C § 1331, because the claims involve a question of federal law under 42 U.S.C. § 1983. This Court further has pendant and ancillary jurisdiction over the related state-law claims pursuant to 28 U.S.C. § 1367(a).

16. Venue is proper in this cause in the Southern District of Texas pursuant to 28 U.S.C. § 1391(a)(2) because all or substantial part of the events which gave rise to this cause of action occurred in the Southern District of Texas.

IV.
FACTS

17. On or about April 21, 2020, Nicolas Chavez was a 27-year-old individual residing in Harris County, Texas.

18. On or about April 21, 2020, Defendants, Officer Alvarado, Officer LeBlanc, Officer Nguyen, Officer Tapia, and Officer Rubio, were acting in their

official capacity, and in the course and scope of their employment and agency for Defendants Houston Police Department and City of Houston.

19. While in their official capacity and under the course and scope of their employment and agency with Defendants Houston Police Department and City of Houston, Defendants shot and killed Decedent Nicolas Chavez without provocation or justification.

20. Defendants took this action pursuant to an official policy of the City of Houston and the Houston Police Department to shoot and kill citizens during botched incidents with tasers.

21. Decedent Nicolas Chavez was shot because he held a nonfunctioning, botched taser.

22. This taser posed no reasonable risk of harm to any Defendants or officers.

23. The Houston Police Department has a written policy that instructs officers such as the Defendants to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

24. Defendants followed this policy to its letter when they shot and killed Decedent Nicolas Chavez.

25. Defendants took this action with negligence, gross negligence, recklessness, willfulness, and to deprive Decedent Nicolas Chavez and minor children N.C., A.W.W., and A.N.W. of their civil and constitutional rights.

26. Defendants specifically with negligence and gross negligence used their tangible personal property, namely bean bag pellets, bean bag projectile guns, tasers, firearms, and bullets, to proximately cause Plaintiffs' injuries, including but not limited to Decedent Nicolas Chavez's conscious pain and suffering and death.

27. At all operative times, N.C., A.M.W., and A.N.W. are the children of Decedent Nicolas Chavez, Plaintiffs Leantha Rose Chavez and Joaquin Salvador Antonio Chavez are the parents of Decedent Nicolas Chavez, and Plaintiff Jessica Chavez is the surviving spouse of Decedent Nicolas Chavez.

V.
CAUSES OF ACTION

A. Against Defendant Officer Luis Alvarado

1. Violations of 42 U.S.C. Section 1983 – Excessive Force in Violation of Nicolas Chavez's Fourth and Fourteenth Amendment Rights.

28. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

29. Officer Alvarado, while acting within the course and scope of his official capacity as a City of Houston Police Officer and acting pursuant to the training and policies of Defendants City of Houston and Houston Police Department,

deprived Nicolas Chavez of clearly established rights secured to him by the Constitution of the United States of America. Officer Alvarado brutally and using excessive force assaulted Nicolas Chavez without adequate provocation from Plaintiff. Officer Alvarado's conduct showed conscious indifference to a right to be free of unreasonable seizures, as guaranteed by the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Alvarado at the time. Plaintiff suffered fatal injuries that were clearly a result of Officer Alvarado's excessive and unreasonable actions.

30. Nicolas Chavez showed no threat to officers or the public when he was unarmed and on his knees. No reasonable officer or person in Officer Alvarado's position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public.

31. Officer Alvarado's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States. His conscious indifference to those rights was the proximate cause of Nicolas Chavez's death, and thus the

Plaintiffs' injuries. The force Officer Alvarado used was greatly in excess of what the situation required, and his actions are shocking to the public.

32. Officer Alvarado's actions were taken pursuant to customs and practices of the Houston Police Department that are so widespread as to have the force of law.

33. Officer Alvarado's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

34. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

2. Violations of 42 U.S.C. Section 1983 – Summary Punishment in Violation of Nicolas Chavez's Fourteenth Amendment Rights.

35. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

36. The Fourteenth Amendment to the Constitution of the United States provides that a State may not deprive *any* person of life, liberty, or property without due process of law. Officer Alvarado deprived Nicolas Chavez both his life and his liberty without any due process. Officer Alvarado's violent, fatal attack upon Nicolas Chavez occurred despite no provocation or danger to either the public or Officer Alvarado himself. Officer Alvarado took it upon himself to fire fatal bullet after fatal bullet at Nicolas Chavez.

37. Officer Alvarado acted under color of state law when he assaulted and killed Nicolas Chavez. Officer Alvarado's actions demonstrate a conscious indifference to Nicolas Chavez's clearly established constitutional right to due process before deprivation of his life or his liberty. Officer Alvarado's actions constituted conscious indifference to Nicolas Chavez's rights under the Fourteenth Amendment to the Constitution of the United States, and his conscious indifference to those rights was the producing and proximate cause of Chavez's death, and thus the Plaintiffs' injuries.

38. Nicolas Chavez posed no threat to the officer or the public when he was brutally attacked and killed. No reasonable officer or person in Officer Alvarado's position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public. Nicolas Chavez was unarmed and on his knees. Moreover, no reasonable officer would have thought it necessary to shoot and kill Nicolas Chavez.

39. Officer Alvarado's actions were taken pursuant to a custom and practice of the Houston Police Department that is so widespread as to have the force of law.

40. Officer Alvarado's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

41. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

3. Violations of 42 U.S.C. Section 1983 – Cruel and Unusual Punishment in violation of Nicolas Chavez's Eighth Amendment Rights.

42. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

43. Officer Alvarado violated Nicolas Chavez's rights to be free of cruel and unusual punishment pursuant to the Eighth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Alvarado at the time. While not every action taken may constitute excessive force or cruel and unusual punishment, the conduct taken by Officer Alvarado was of such a degree as to shock the conscious of the community and the Court. There was no need for Officer Alvarado to shoot Nicolas Chavez. There was no need for Officer Alvarado to kill Nicolas Chavez. There was no need for Officer Alvarado to take any of the excessive force actions as listed, *supra*. Officer Alvarado's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

44. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

45. Officer Alvarado's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

46. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

4. Violations of 42 U.S.C. Section 1983 – Substantive Due Process deprivation and interference with the parent-child relation in violation of N.C.'s, a minor child, Fourteenth Amendment Rights

47. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

48. Officer Alvarado also violated N.C.'s, a minor child, right to maintain his constitutional parent-child relationship with his father, Nicolas Chavez, as guaranteed by the substantive due process of the Fourteenth Amendment to the Constitution of the United States. Officer Alvarado, by shooting and killing Nicolas Chavez, deprived N.C., a minor child, of his constitutional right to a parent-child relationship with his father.

49. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

50. Officer Alvarado's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

5. *Violations of Tex. Civ. Prac. & Rem. Code 71.002 – Wrongful Death*

51. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

52. Officer Alvarado by wrongful act caused the death of Nicolas Chavez when he used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Alvarado to shoot Nicolas Chavez. There was no need for Officer Alvarado to kill Nicolas Chavez. There was no need for Officer Alvarado to take any of the excessive force actions as listed, *supra*. Officer Alvarado's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

53. Plaintiff Leantha Rose Chavez; Plaintiff Jennifer Rae Thomson, as next friend of N.C., a minor child; Plaintiff Leigha Rose-Marie Wise, as next friend of A.M.W. and A.N.W., minor child; Plaintiff Joaquin Antonio Salvador Chavez; and

Plaintiff Jessica Chavez bring this cause of action pursuant to Texas Civil Practice and Remedies Code § 71.004(b).

6. *Violation of Texas common law – Assault*

54. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

55. Officer Alvarado intentionally, knowingly, and recklessly caused bodily injury to Nicolas Chavez, when he, *inter alia*, violently and without adequate provocation repeatedly shot live ammunition into him and killed him. Officer Alvarado used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Alvarado to shoot Nicolas Chavez. There was no need for Officer Alvarado to kill Nicolas Chavez. There was no need for Officer Alvarado to take any of the excessive force actions as listed, *supra*. Officer Alvarado's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

56. Nicolas Chavez's cause of action survives to Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

7. Violation of Texas common law – Gross Negligence

57. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

58. Officer Alvarado's conduct, when viewed objectively from the standpoint of him at the time of the occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Further, Officer Alvarado had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Nicolas Chavez, when he shot and killed Nicolas Chavez. Officer Alvarado used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Alvarado to shoot Nicolas Chavez. There was no need for Officer Alvarado to kill Nicolas Chavez. There was no need for Officer Alvarado to take any of the excessive force actions as listed, *supra*. Officer Alvarado's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

59. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

8. Violation of Texas common law – Negligence

60. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

61. Officer Alvarado's conduct breached his duty of reasonable care due to Nicolas Chavez, specifically when Officer Alvarado used excessive force and shot and killed Nicolas Chavez. Officer Alvarado used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Alvarado to shoot Nicolas Chavez. There was no need for Officer Alvarado to kill Nicolas Chavez. There was no need for Officer Alvarado to take any of the excessive force actions as listed, *supra*. Officer Alvarado's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

62. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

B. Against Defendant Officer Benjamin LeBlanc

1. Violations of 42 U.S.C. Section 1983 – Excessive Force in Violation of Nicolas Chavez’s Fourth and Fourteenth Amendment Rights.

63. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

64. Officer LeBlanc, while acting within the course and scope of his official capacity as a City of Houston Police Officer and acting pursuant to the training and policies of Defendants City of Houston and Houston Police Department, deprived Nicolas Chavez of clearly established rights secured to him by the Constitution of the United States of America. Officer LeBlanc brutally and using excessive force assaulted Nicolas Chavez without adequate provocation from Plaintiff. Officer LeBlanc’s conduct showed conscious indifference to a right to be free of unreasonable seizures, as guaranteed by the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer LeBlanc at the time. Plaintiff suffered fatal injuries that were clearly a result of Officer LeBlanc’s excessive and unreasonable actions.

65. Nicolas Chavez showed no threat to officers or the public when he was unarmed and on his knees. No reasonable officer or person in Officer LeBlanc’s

position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public.

66. Officer LeBlanc's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States. His conscious indifference to those rights was the proximate cause of Nicolas Chavez's death, and thus the Plaintiffs' injuries. The force Officer LeBlanc used was greatly in excess of what the situation required, and his actions are shocking to the public.

67. Officer LeBlanc's actions were taken pursuant to customs and practices of the Houston Police Department that are so widespread as to have the force of law.

68. Officer LeBlanc's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

69. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

2. Violations of 42 U.S.C. Section 1983 – Summary Punishment in Violation of Nicolas Chavez's Fourteenth Amendment Rights.

70. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

71. The Fourteenth Amendment to the Constitution of the United States provides that a State may not deprive *any* person of life, liberty, or property without due process of law. Officer LeBlanc deprived Nicolas Chavez both his life and his liberty without any due process. Officer LeBlanc's violent, fatal attack upon Nicolas Chavez occurred despite no provocation or danger to either the public or Officer LeBlanc himself. Officer LeBlanc took it upon himself to fire fatal bullet after fatal bullet at Nicolas Chavez.

72. Officer LeBlanc acted under color of state law when he assaulted and killed Nicolas Chavez. Officer LeBlanc's actions demonstrate a conscious indifference to Nicolas Chavez's clearly established constitutional right to due process before deprivation of his life or his liberty. Officer LeBlanc's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourteenth Amendment to the Constitution of the United States, and his conscious indifference to those rights was the producing and proximate cause of Chavez's death, and thus the Plaintiffs' injuries.

73. Nicolas Chavez posed no threat to the officer or the public when he was brutally attacked and killed. No reasonable officer or person in Officer LeBlanc's position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public. Nicolas Chavez was unarmed and on his knees.

Moreover, no reasonable officer would have thought it necessary to shoot and kill Nicolas Chavez.

74. Officer LeBlanc's actions were taken pursuant to a custom and practice of the Houston Police Department that is so widespread as to have the force of law.

75. Officer LeBlanc's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

76. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

3. Violations of 42 U.S.C. Section 1983 – Cruel and Unusual Punishment in violation of Nicolas Chavez's Eighth Amendment Rights.

77. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

78. Officer LeBlanc violated Nicolas Chavez's rights to be free of cruel and unusual punishment pursuant to the Eighth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer LeBlanc at the time. While not every action taken may constitute excessive force or cruel and unusual punishment, the conduct taken by Officer LeBlanc was of such a degree as to shock the conscious of the community and the

Court. There was no need for Officer LeBlanc to shoot Nicolas Chavez. There was no need for Officer LeBlanc to kill Nicolas Chavez. There was no need for Officer LeBlanc to take any of the excessive force actions as listed, *supra*. Officer LeBlanc's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

79. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

80. Officer LeBlanc's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

81. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

4. Violations of 42 U.S.C. Section 1983 – Substantive Due Process deprivation and interference with the parent-child relation in violation of N.C.'s, a minor child, Fourteenth Amendment Rights

82. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

83. Officer LeBlanc also violated N.C.'s, a minor child, right to maintain his constitutional parent-child relationship with his father, Nicolas Chavez, as

guaranteed by the substantive due process of the Fourteenth Amendment to the Constitution of the United States. Officer LeBlanc, by shooting and killing Nicolas Chavez, deprived N.C., a minor child, of his constitutional right to a parent-child relationship with his father.

84. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

85. Officer LeBlanc's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

5. Violations of Tex. Civ. Prac. & Rem. Code 71.002 – Wrongful Death

86. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

87. Officer LeBlanc by wrongful act caused the death of Nicolas Chavez when he used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer LeBlanc to shoot Nicolas Chavez. There was no need for Officer LeBlanc to kill Nicolas Chavez. There was no need for Officer LeBlanc to take any of the excessive force actions as listed, *supra*. Officer LeBlanc's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This

conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

88. Plaintiff Leantha Rose Chavez; Plaintiff Jennifer Rae Thomson, as next friend of N.C., a minor child; Plaintiff Leigha Rose-Marie Wise, as next friend of A.M.W. and A.N.W., minor children; Plaintiff Joaquin Antonio Salvador Chavez; and Plaintiff Jessica Chavez, bring this cause of action pursuant to Texas Civil Practice and Remedies Code § 71.004(b).

6. Violation of Texas common law – Assault

89. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

90. Officer LeBlanc intentionally, knowingly, and recklessly caused bodily injury to Nicolas Chavez, when he, *inter alia*, violently and without adequate provocation repeatedly shot live ammunition into him and killed him. Officer LeBlanc used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer LeBlanc to shoot Nicolas Chavez. There was no need for Officer LeBlanc to kill Nicolas Chavez. There was no need for Officer LeBlanc to take any of the excessive force actions as listed, *supra*. Officer LeBlanc's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs.

This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

91. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

7. Violation of Texas common law – Gross Negligence

92. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

93. Officer LeBlanc's conduct, when viewed objectively when the standpoint of him at the time of the occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Further, Officer LeBlanc had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the right, safety, and welfare of Nicolas Chavez, when he shot and killed Nicolas Chavez. Officer LeBlanc used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer LeBlanc to shoot Nicolas Chavez. There was no need for Officer LeBlanc to kill Nicolas Chavez. There was no need for Officer LeBlanc to take any of the excessive force actions as listed, *supra*. Officer LeBlanc's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This

conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

94. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

8. Violation of Texas common law – Negligence

95. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

96. Officer LeBlanc's conduct breached his duty of reasonable care due to Nicolas Chavez, specifically when Officer LeBlanc used excessive force and shot and killed Nicolas Chavez. Officer LeBlanc used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer LeBlanc to shoot Nicolas Chavez. There was no need for Officer LeBlanc to kill Nicolas Chavez. There was no need for Officer LeBlanc to take any of the excessive force actions as listed, *supra*. Officer LeBlanc's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

97. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

C. Against Defendant Officer Kevin Nguyen

1. Violations of 42 U.S.C. Section 1983 – Excessive Force in Violation of Nicolas Chavez’s Fourth and Fourteenth Amendment Rights.

98. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

99. Officer Nguyen, while acting within the course and scope of his official capacity as a City of Houston Police Officer and acting pursuant to the training and policies of Defendants City of Houston and Houston Police Department, deprived Nicolas Chavez of clearly established rights secured to him by the Constitution of the United States of America. Officer Nguyen brutally and using excessive force assaulted Nicolas Chavez without adequate provocation from Plaintiff. Officer Nguyen’s conduct showed conscious indifference to a right to be free of unreasonable seizures, as guaranteed by the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Nguyen at the time. Plaintiff suffered fatal injuries that were clearly a result of Officer Nguyen’s excessive and unreasonable actions.

100. Nicolas Chavez showed no threat to officers or the public when he was unarmed and on his knees. No reasonable officer or person in Officer Nguyen’s position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public.

101. Officer Nguyen's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States. His conscious indifference to those rights was the proximate cause of Nicolas Chavez's death, and thus the Plaintiffs' injuries. The force Officer Nguyen used was greatly in excess of what the situation required, and his actions are shocking to the public.

102. Officer Nguyen's actions were taken pursuant to customs and practices of the Houston Police Department that are so widespread as to have the force of law.

103. Officer Nguyen's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

104. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

2. Violations of 42 U.S.C. Section 1983 – Summary Punishment in Violation of Nicolas Chavez's Fourteenth Amendment Rights.

105. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

106. The Fourteenth Amendment to the Constitution of the United States provides that a State may not deprive *any* person of life, liberty, or property without

due process of law. Officer Nguyen deprived Nicolas Chavez both his life and his liberty without any due process. Officer Nguyen's violent, fatal attack upon Nicolas Chavez occurred despite no provocation or danger to either the public or Officer Nguyen himself. Officer Nguyen took it upon himself to fire fatal bullet after fatal bullet at Nicolas Chavez.

107. Officer Nguyen acted under color of state law when he assaulted and killed Nicolas Chavez. Officer Nguyen's actions demonstrate a conscious indifference to Nicolas Chavez's clearly established constitutional right to due process before deprivation of his life or his liberty. Officer Nguyen's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourteenth Amendment to the Constitution of the United States, and his conscious indifference to those rights was the producing and proximate cause of Chavez's death, and thus the Plaintiffs' injuries.

108. Nicolas Chavez posed no threat to the officer or the public when he was brutally attacked and killed. No reasonable officer or person in Officer Nguyen's position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public. Nicolas Chavez was unarmed and on his knees. Moreover, no reasonable officer would have thought it necessary to shoot and kill Nicolas Chavez.

109. Officer Nguyen's actions were taken pursuant to a custom and practice of the Houston Police Department that is so widespread as to have the force of law.

110. Officer Nguyen's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

111. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

3. Violations of 42 U.S.C. Section 1983 – Cruel and Unusual Punishment in violation of Nicolas Chavez's Eighth Amendment Rights.

112. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

113. Officer Nguyen violated Nicolas Chavez's rights to be free of cruel and unusual punishment pursuant to the Eighth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Nguyen at the time. While not every action taken may constitute excessive force or cruel and unusual punishment, the conduct taken by Officer Nguyen was of such a degree as to shock the conscious of the community and the Court. There was no need for Officer Nguyen to shoot Nicolas Chavez. There was no need for Officer Nguyen to kill Nicolas Chavez. There was no need for Officer

Nguyen to take any of the excessive force actions as listed, *supra*. Officer Nguyen's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

114. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

115. Officer Nguyen's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

116. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

4. Violations of 42 U.S.C. Section 1983 – Substantive Due Process deprivation and interference with the parent-child relation in violation of N.C.'s, a minor child, Fourteenth Amendment Rights

117. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

118. Officer Nguyen also violated N.C.'s, a minor child, right to maintain his constitutional parent-child relationship with his father, Nicolas Chavez, as guaranteed by the substantive due process of the Fourteenth Amendment to the Constitution of the United States. Officer Nguyen, by shooting and killing Nicolas

Chavez, deprived N.C., a minor child, of his constitutional right to a parent-child relationship with his father.

119. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

120. Officer Nguyen's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

5. Violations of Tex. Civ. Prac. & Rem. Code 71.002 – Wrongful Death

121. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

122. Officer Nguyen by wrongful act caused the death of Nicolas Chavez when he used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Nguyen to shoot Nicolas Chavez. There was no need for Officer Nguyen to kill Nicolas Chavez. There was no need for Officer Nguyen to take any of the excessive force actions as listed, *supra*. Officer Nguyen's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

123. Plaintiff Jennifer Rae Thomson, as next friend of N.C., a minor child; Plaintiff Leigha Rose-Marie Wise, as next friend of A.M.W. and A.N.W., minor children; Plaintiff Leantha Rose Chavez; Plaintiff Joaquin Antonio Salvador Chavez; and Plaintiff Jessica Chavez bring this cause of action pursuant to Texas Civil Practice and Remedies Code § 71.004(b).

6. *Violation of Texas common law – Assault*

124. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

125. Officer Nguyen intentionally, knowingly, and recklessly caused bodily injury to Nicolas Chavez, when he, *inter alia*, violently and without adequate provocation repeatedly shot live ammunition into him and killed him. Officer Nguyen used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Nguyen to shoot Nicolas Chavez. There was no need for Officer Nguyen to kill Nicolas Chavez. There was no need for Officer Nguyen to take any of the excessive force actions as listed, *supra*. Officer Nguyen's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

126. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

7. Violation of Texas common law – Gross Negligence

127. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

128. Officer Nguyen's conduct, when viewed objectively when the standpoint of him at the time of the occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Further, Officer Nguyen had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the right, safety, and welfare of Nicolas Chavez, when he shot and killed Nicolas Chavez. Officer Nguyen used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Nguyen to shoot Nicolas Chavez. There was no need for Officer Nguyen to kill Nicolas Chavez. There was no need for Officer Nguyen to take any of the excessive force actions as listed, *supra*. Officer Nguyen's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

129. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

8. Violation of Texas common law – Negligence

130. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

131. Officer Nguyen's conduct breached his duty of reasonable care due to Nicolas Chavez, specifically when Officer Nguyen used excessive force and shot and killed Nicolas Chavez. Officer Nguyen used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Nguyen to shoot Nicolas Chavez. There was no need for Officer Nguyen to kill Nicolas Chavez. There was no need for Officer Nguyen to take any of the excessive force actions as listed, *supra*. Officer Nguyen's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

132. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

D. Against Defendant Officer Patrick Rubio

1. Violations of 42 U.S.C. Section 1983 – Excessive Force in Violation of Nicolas Chavez’s Fourth and Fourteenth Amendment Rights.

133. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

134. Officer Rubio, while acting within the course and scope of his official capacity as a City of Houston Police Officer and acting pursuant to the training and policies of Defendants City of Houston and Houston Police Department, deprived Nicolas Chavez of clearly established rights secured to him by the Constitution of the United States of America. Officer Rubio brutally and using excessive force assaulted Nicolas Chavez without adequate provocation from Plaintiff. Officer Rubio’s conduct showed conscious indifference to a right to be free of unreasonable seizures, as guaranteed by the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Rubio at the time. Plaintiff suffered fatal injuries that were clearly a result of Officer Rubio’s excessive and unreasonable actions.

135. Nicolas Chavez showed no threat to officers or the public when he was unarmed and on his knees. No reasonable officer or person in Officer Rubio’s

position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public.

136. Officer Rubio's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States. His conscious indifference to those rights was the proximate cause of Nicolas Chavez's death, and thus the Plaintiffs' injuries. The force Officer Rubio used was greatly in excess of what the situation required, and his actions are shocking to the public.

137. Officer Rubio's actions were taken pursuant to customs and practices of the Houston Police Department that are so widespread as to have the force of law.

138. Officer Rubio's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

139. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

2. Violations of 42 U.S.C. Section 1983 – Summary Punishment in Violation of Nicolas Chavez's Fourteenth Amendment Rights

140. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

141. The Fourteenth Amendment to the Constitution of the United States provides that a State may not deprive *any* person of life, liberty, or property without due process of law. Officer Rubio deprived Nicolas Chavez both his life and his liberty without any due process. Officer Rubio's violent, fatal attack upon Nicolas Chavez occurred despite no provocation or danger to either the public or Officer Rubio himself. Officer Rubio took it upon himself to fire fatal bullet after fatal bullet at Nicolas Chavez.

142. Officer Rubio acted under color of state law when he assaulted and killed Nicolas Chavez. Officer Rubio's actions demonstrate a conscious indifference to Nicolas Chavez's clearly established constitutional right to due process before deprivation of his life or his liberty. Officer Rubio's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourteenth Amendment to the Constitution of the United States, and his conscious indifference to those rights was the producing and proximate cause of Chavez's death, and thus the Plaintiffs' injuries.

143. Nicolas Chavez posed no threat to the officer or the public when he was brutally attacked and killed. No reasonable officer or person in Officer Rubio's position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public. Nicolas Chavez was unarmed and on his knees.

Moreover, no reasonable officer would have thought it necessary to shoot and kill Nicolas Chavez.

144. Officer Rubio's actions were taken pursuant to a custom and practice of the Houston Police Department that is so widespread as to have the force of law.

145. Officer Rubio's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

146. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

3. Violations of 42 U.S.C. Section 1983 – Cruel and Unusual Punishment in violation of Nicolas Chavez's Eighth Amendment Rights

147. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

148. Officer Rubio violated Nicolas Chavez's rights to be free of cruel and unusual punishment pursuant to the Eighth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Rubio at the time. While not every action taken may constitute excessive force or cruel and unusual punishment, the conduct taken by Officer Rubio was of such a degree as to shock the conscious of the community and the Court.

There was no need for Officer Rubio to shoot Nicolas Chavez. There was no need for Officer Rubio to kill Nicolas Chavez. There was no need for Officer Rubio to take any of the excessive force actions as listed, *supra*. Officer Rubio's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

149. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

150. Officer Rubio's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

151. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

4. Violations of 42 U.S.C. Section 1983 – Substantive Due Process deprivation and interference with the parent-child relation in violation of N.C.'s, a minor child, Fourteenth Amendment Rights

152. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

153. Officer Rubio also violated N.C.'s, a minor child, right to maintain his constitutional parent-child relationship with his father, Nicolas Chavez, as

guaranteed by the substantive due process of the Fourteenth Amendment to the Constitution of the United States. Officer Rubio, by shooting and killing Nicolas Chavez, deprived N.C., a minor child, of his constitutional right to a parent-child relationship with his father.

154. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

155. Officer Rubio's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

5. Violations of Tex. Civ. Prac. & Rem. Code 71.002 – Wrongful Death

156. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

157. Officer Rubio by wrongful act caused the death of Nicolas Chavez when he used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Rubio to shoot Nicolas Chavez. There was no need for Officer Rubio to kill Nicolas Chavez. There was no need for Officer Rubio to take any of the excessive force actions as listed, *supra*. Officer Rubio's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This

conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

158. Plaintiff Jennifer Rae Thomson, as next friend of N.C., a minor child; Plaintiff Leigha Rose-Marie Wise, as next friend of A.M.W. and A.N.W., minor children; Plaintiff Leantha Rose Chavez; Plaintiff Joaquin Antonio Salvador Chavez; and Plaintiff Jessica Chavez bring this cause of action pursuant to Texas Civil Practice and Remedies Code § 71.004(b).

6. Violation of Texas common law – Assault

159. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

160. Officer Rubio intentionally, knowingly, and recklessly caused bodily injury to Nicolas Chavez, when he, *inter alia*, violently and without adequate provocation repeatedly shot live ammunition into him and killed him. Officer Rubio used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Rubio to shoot Nicolas Chavez. There was no need for Officer Rubio to kill Nicolas Chavez. There was no need for Officer Rubio to take any of the excessive force actions as listed, *supra*. Officer Rubio's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very

purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

161. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

7. Violation of Texas common law – Gross Negligence

162. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

163. Officer Rubio's conduct, when viewed objectively when the standpoint of him at the time of the occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Further, Officer Rubio had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the right, safety, and welfare of Nicolas Chavez, when he shot and killed Nicolas Chavez. Officer Rubio used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Rubio to shoot Nicolas Chavez. There was no need for Officer Rubio to kill Nicolas Chavez. There was no need for Officer Rubio to take any of the excessive force actions as listed, *supra*. Officer Rubio's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing

harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

164. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

8. Violation of Texas common law – Negligence

165. Plaintiffs hereby fully incorporate by reference the preceding paragraphs by reference.

166. Officer Rubio's conduct breached his duty of reasonable care due to Nicolas Chavez, specifically when Officer Rubio used excessive force and shot and killed Nicolas Chavez. Officer Rubio used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Rubio to shoot Nicolas Chavez. There was no need for Officer Rubio to kill Nicolas Chavez. There was no need for Officer Rubio to take any of the excessive force actions as listed, *supra*. Officer Rubio's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

167. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

E. Against Defendant Officer Omar Tapia

1. Violations of 42 U.S.C. Section 1983 – Excessive Force in Violation of Nicolas Chavez’s Fourth and Fourteenth Amendment Rights.

168. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

169. Officer Tapia, while acting within the course and scope of his official capacity as a City of Houston Police Officer and acting pursuant to the training and policies of Defendants City of Houston and Houston Police Department, deprived Nicolas Chavez of clearly established rights secured to him by the Constitution of the United States of America. Officer Tapia brutally and using excessive force assaulted Nicolas Chavez without adequate provocation from Plaintiff. Officer Tapia’s conduct showed conscious indifference to a right to be free of unreasonable seizures, as guaranteed by the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Tapia at the time. Plaintiff suffered fatal injuries that were clearly a result of Officer Tapia’s excessive and unreasonable actions.

170. Nicolas Chavez showed no threat to officers or the public when he was unarmed and on his knees. No reasonable officer or person in Officer Tapia’s

position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public.

171. Officer Tapia's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States. His conscious indifference to those rights was the proximate cause of Nicolas Chavez's death, and thus the Plaintiffs' injuries. The force Officer Tapia used was greatly in excess of what the situation required, and his actions are shocking to the public.

172. Officer Tapia's actions were taken pursuant to customs and practices of the Houston Police Department that are so widespread as to have the force of law.

173. Officer Tapia's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

174. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

2. Violations of 42 U.S.C. Section 1983 – Summary Punishment in Violation of Nicolas Chavez's Fourteenth Amendment Rights

175. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

176. The Fourteenth Amendment to the Constitution of the United States provides that a State may not deprive *any* person of life, liberty, or property without due process of law. Officer Tapia deprived Nicolas Chavez both his life and his liberty without any due process. Officer Tapia's violent, fatal attack upon Nicolas Chavez occurred despite no provocation or danger to either the public or Officer Tapia himself. Officer Tapia took it upon himself to fire fatal bullet after fatal bullet at Nicolas Chavez.

177. Officer Tapia acted under color of state law when he assaulted and killed Nicolas Chavez. Officer Tapia's actions demonstrate a conscious indifference to Nicolas Chavez's clearly established constitutional right to due process before deprivation of his life or his liberty. Officer Tapia's actions constitute conscious indifference to Nicolas Chavez's rights under the Fourteenth Amendment to the Constitution of the United States, and his conscious indifference to those rights was the producing and proximate cause of Chavez's death, and thus the Plaintiffs' injuries.

178. Nicolas Chavez posed no threat to the officer or the public when he was brutally attacked and killed. No reasonable officer or person in Officer Tapia's position would have thought the force brought to bear was necessary to prevent imminent harm to him or the public. Nicolas Chavez was unarmed and on his knees.

Moreover, no reasonable officer would have thought it necessary to shoot and kill Nicolas Chavez.

179. Officer Tapia's actions were taken pursuant to a custom and practice of the Houston Police Department that is so widespread as to have the force of law.

180. Officer Tapia's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

181. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

3. Violations of 42 U.S.C. Section 1983 – Cruel and Unusual Punishment in violation of Nicolas Chavez's Eighth Amendment Rights

182. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

183. Officer Tapia violated Nicolas Chavez's rights to be free of cruel and unusual punishment pursuant to the Eighth Amendment to the Constitution of the United States and incorporated against the States and their subdivisions by the Fourteenth Amendment to the Constitution of the United States, which was well-known to Officer Tapia at the time. While not every action taken may constitute excessive force or cruel and unusual punishment, the conduct taken by Officer Tapia was of such a degree as to shock the conscious of the community and the Court.

There was no need for Officer Tapia to shoot Nicolas Chavez. There was no need for Officer Tapia to kill Nicolas Chavez. There was no need for Officer Tapia to take any of the excessive force actions as listed, *supra*. Officer Tapia's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

184. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

185. Officer Tapia's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

186. Nicolas Chavez's causes of action survive to the Estate of Nicolas Chavez, Deceased.

4. Violations of 42 U.S.C. Section 1983 – Substantive Due Process deprivation and interference with the parent-child relation in violation of N.C.'s, a minor child, Fourteenth Amendment Rights

187. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

188. Officer Tapia also violated N.C.'s, a minor child, right to maintain his constitutional parent-child relationship with his father, Nicolas Chavez, as

guaranteed by the substantive due process of the Fourteenth Amendment to the Constitution of the United States. Officer Tapia, by shooting and killing Nicolas Chavez, deprived N.C., a minor child, of his constitutional right to a parent-child relationship with his father.

189. This conduct was done pursuant to a custom and practice of the Houston Police Department that is so widespread to have the force of law.

190. Officer Tapia's actions were also taken pursuant to a written policy of the Houston Police Department that instructs officers to shoot and kill citizens in possession of nonfunctioning (botched) tasers.

5. Violations of Tex. Civ. Prac. & Rem. Code 71.002 – Wrongful Death

191. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

192. Officer Tapia by wrongful act caused the death of Nicolas Chavez when he used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Tapia to shoot Nicolas Chavez. There was no need for Officer Tapia to kill Nicolas Chavez. There was no need for Officer Tapia to take any of the excessive force actions as listed, *supra*. Officer Tapia's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This

conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

193. Plaintiff Jennifer Rae Thomson, as next friend of N.C., a minor child; Plaintiff Leigha Rose-Marie Wise, as next friend of A.M.W. and A.N.W., minor children; Plaintiff Leantha Rose Chavez; Plaintiff Joaquin Antonio Salvador Chavez; and Plaintiff Jessica Chavez bring this cause of action pursuant to Texas Civil Practice and Remedies Code § 71.004(b).

6. Violation of Texas common law – Assault

194. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

195. Officer Tapia intentionally, knowingly, and recklessly caused bodily injury to Nicolas Chavez, when he, *inter alia*, violently and without adequate provocation repeatedly shot live ammunition into him and killed him. Officer Tapia used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Tapia to shoot Nicolas Chavez. There was no need for Officer Tapia to kill Nicolas Chavez. There was no need for Officer Tapia to take any of the excessive force actions as listed, *supra*. Officer Tapia's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very

purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

196. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

7. Violation of Texas common law – Gross Negligence

197. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

198. Officer Tapia's conduct, when viewed objectively from the standpoint of him at the time of the occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others. Further, Officer Tapia had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the right, safety, and welfare of Nicolas Chavez, when he shot and killed Nicolas Chavez. Officer Tapia used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Tapia to shoot Nicolas Chavez. There was no need for Officer Tapia to kill Nicolas Chavez. There was no need for Officer Tapia to take any of the excessive force actions as listed, *supra*. Officer Tapia's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing

harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

199. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

8. Violation of Texas common law – Negligence

200. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

201. Officer Tapia's conduct breached his duty of reasonable care due to Nicolas Chavez, specifically when Officer Tapia used excessive force and shot and killed Nicolas Chavez. Officer Tapia used excessive force and deliberately and with conscious indifference shot and killed Nicolas Chavez is an unjustified, abrupt, malicious act. There was no need for Officer Tapia to shoot Nicolas Chavez. There was no need for Officer Tapia to kill Nicolas Chavez. There was no need for Officer Tapia to take any of the excessive force actions as listed, *supra*. Officer Tapia's conduct was grossly disproportionate to the need under the circumstances and was motivated by malice and for the very purpose of causing harm to Nicolas Chavez, and to Plaintiffs. This conduct was the proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries.

202. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

F. Against Defendants Houston Police Department and the City of Houston

1. Violations of 42 U.S.C. Section 1983 – Policy and Procedures of Excessive Force, Deprivation of Life and Liberty Without Due Process, Cruel and Unusual Punishment, and Interference with the Parent-Child Relationship

203. Plaintiffs hereby incorporate the preceding paragraphs by reference.

204. Defendant Houston Police Department and Defendant City of Houston have a policy of using excessive force, deprivation of life and liberty without due process, and of cruel and unusual punishment; this is clear from the reactions of the other police officers that were present while Defendants Officer Alvarado, Officer LeBlanc, Officer Nguyen, Officer Tapia, and Officer Rubio were assaulting Nicolas Chavez. Not one of the seventy (70) officers present prevents any Defendant from repeatedly shooting Nicolas Chavez, even while he lies motionless on the ground. Although Defendant Houston Police Department and Defendant City of Houston may not have had a written policy authorizing excessive use of force, deprivation of life or liberty without due process, cruel and unusual punishment, or interference with the parent-child relationship, it is apparent that all of the foregoing were standard operating procedures for the Defendants. By tacitly approving of these violations and by its proclivity to “turning a blind eye,” so to speak, to gross violations of clearly established constitutional rights, Defendants created a policy of brutality, of excessive force, of deprivation of life and liberty without due process,

of cruel and unusual punishment, and of interference with the parent-child relationship. This practice is so pervasive as to have the force of law.

205. This policy of brutality, excessive force, deprivation of life and liberty without due process, cruel and unusual punishment, and interference with the parent-child relationship demonstrates a conscious indifference to the clearly established constitutional rights secured to any person under the Fourth, Eighth, and Fourteenth Amendments to the Constitution of the United States. The foregoing policies were the producing and proximate causes of Nicolas Chavez's death, and thereby Plaintiffs' injuries.

206. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased.

2. Violations of 42 U.S.C. Section 1983: Policy and Procedures of Shooting and Killing Citizens Holding Nonfunctioning (Botched) Tasers

207. Plaintiffs hereby incorporate the preceding paragraphs by reference.

208. Defendant Houston Police Department and Defendant City of Houston have a written policy of shooting and killing citizens in possession of nonfunctioning (botched) tasers. Upon information and belief, Plaintiffs note there is such a written policy that instructed officers to shoot and kill Decedent Nicolas Chavez, despite his lack of posing any reasonable risk of harm to any officers.

209. This policy of brutality, excessive force, deprivation of life and liberty without due process, cruel and unusual punishment, and interference with the parent-child relationship demonstrates a conscious indifference to the clearly established constitutional rights secured to any person under the Fourth, Eighth, and Fourteenth Amendments to the Constitution of the United States. The foregoing policies were the producing and proximate causes of Nicolas Chavez's death, and thereby Plaintiffs' injuries.

210. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased.

3. Violations of 42 U.S.C. Section 1983: Policy and Procedures of Failure to Properly Train

211. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

212. Defendant Houston Police Department and Defendant City of Houston failed to adequately train its officers in the following areas:

- a. Proper escalation of force;
- b. the use of excessive force;
- c. the illegality of excessive force;
- d. the constitutional limits of the use of force;
- e. the necessary and proper limits of force in a tense situation;

- f. how to negotiate with an unwell detainee;
- g. use of lethal force;
- h. how to avoid using lethal force;
- i. appropriate de-escalation;
- j. avoiding needless death;
- k. avoiding needless use of a firearm;
- l. avoiding cruel and unusual punishment; and
- m. avoiding interference with the parent-child relationship by avoiding killing fathers of young children.

213. The policy of failing to adequately train its officers shows a conscious indifference to the rights secured by the Fourth, Eighth, and Fourteenth Amendments to the Constitution of the United States to the citizens and people of Harris County, Nicolas Chavez and Plaintiffs in particular. Defendant Houston Police Department's and Defendant City of Houston's failure to properly train its officers is so reckless that misconduct by its officers was inevitable. The policy of inadequate training was a producing and proximate cause of Nicolas Chavez's death, and thus Plaintiffs' injuries, and is so pervasive as to have the force of law.

214. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased.

***4. Violations of the Texas Civil Practice and Remedies Code
§101.021(2) – Texas Tort Claims Act***

215. Plaintiffs hereby fully incorporate the preceding paragraphs by reference.

216. This cause of action is advanced against Defendant Houston Police Department and Defendant City of Houston in the alternative. Defendants' conduct toward Plaintiffs violated the Texas Tort Claims Act. Tex. Civ. Prac. & Rem. Code Sec. 101.001, *et seq.*

217. Defendants Officer Alvarado, Officer LeBlanc, Officer Nguyen, Officer Tapia, and Officer Rubio were acting in the course and scope of their employment for Defendant Houston Police Department and Defendant City of Houston, and thereby the doctrine of *respondeat superior* applies, and vicarious liability of the employer for the employees'/agents' conducts follows.

218. Defendant Houston Police Department and Defendant City of Houston's negligence and gross negligence proximately caused the death of Nicolas Chavez, and thereby Plaintiffs' injuries, when Defendant Houston Police Department and Defendant City of Houston's Agents, Officer Alvarado, Officer LeBlanc, Officer Nguyen, Officer Tapia, and Officer Rubio, *inter alia*, shot and killed Nicolas Chavez by use of excessive force, unnecessary force, and deprivation of Nicolas Chavez's constitutional rights. The Agent Officers caused the personal injury and death of Nicolas Chavez, and thereby the injuries of Plaintiffs, by the

condition and use of tangible personal property of Defendant Houston Police Department and Defendant City of Houston, namely:

- a. bean bag projectile guns;
- b. bean bag projectiles;
- c. Taser guns;
- d. firearms; and
- e. bullets.

219. Defendant Houston Police Department and Defendant City of Houston's Agent Officers caused personal injury and death by condition and use of the aforementioned tangible personal property to the extent that they, were they private persons, would be liable to Plaintiffs according to Texas law.

220. Nicolas Chavez's cause of action survives to the Estate of Nicolas Chavez, Deceased, pursuant to Texas Civil Practice and Remedies Code § 71.021.

VI. **DAMAGES**

***Plaintiff Jennifer Rae Thomson, as applicant to be dependent
administratrix of the Estate of Nicolas Chavez, Deceased***

221. As a result of the occurrence that forms the basis of this lawsuit, as stated above, and as a direct and proximate result of Defendants' wrongful acts, including negligence and gross negligence, the Estate of Nicolas Chavez, Deceased,

suffered serious injuries and death, will likely sustain additional serious damages in the future, and is entitled to recover:

- a. mental anguish;
- b. physical pain;
- c. physical suffering;
- d. mental or emotional pain or anguish;
- e. loss of consortium;
- f. disfigurement;
- g. physical impairment;
- h. loss of companionship;
- i. loss of society;
- j. inconvenience;
- k. loss of enjoyment of life;
- l. injury to reputation;
- m. all other nonpecuniary damages as may be supplemented; past medical bills and expenses incurred as a proximate result of the occurrence made the basis of this suit;
- n. loss of income and wages;
- o. loss of earning potential;
- p. loss of household services;
- q. all other pecuniary damages as may be supplemented;

- r. exemplary damages;
- s. costs of court;
- t. expert fees;
- u. necessary and reasonable attorney's fees;
- v. pre-judgment interest;
- w. post-judgment interest; and
- x. all other miscellaneous damages as may be supplemented.

Plaintiff Jennifer Rae Thomson, as next friend of N.C., a minor child

222. As a result of the occurrence that forms the basis of this lawsuit, as stated above, and as a direct and proximate result of Defendants' wrongful acts, including negligence and gross negligence, Plaintiff Jennifer Rae Thomson, as next friend of N.C., a minor child, suffered serious injuries, will likely sustain additional serious damages in the future, and is entitled to recover:

- a. mental anguish in the past and in all reasonable probability in the future;
- b. physical suffering in the past in all reasonable probability in the future;
- c. mental or emotional pain or anguish in the past and in all reasonable probability in the future;
- d. loss of companionship in the past and in all reasonable probability in the future;
- e. inconvenience in the past and in all reasonable probability in the future;

- f. loss of enjoyment of life in the past and in all reasonable probability in the future;
- g. injury to reputation in the past and in all reasonable probability in the future;
- h. all other nonpecuniary damages as may be supplemented; past medical bills and expenses incurred as a proximate result of the occurrence made the basis of this suit;
- i. loss of household services in the past and in all reasonable probability in the future;
- j. all other pecuniary damages as may be supplemented;
- k. exemplary damages;
- l. costs of court;
- m. expert fees;
- n. necessary and reasonable attorney's fees;
- o. pre-judgment interest;
- p. post-judgment interest; and
- q. all other miscellaneous damages as may be supplemented.

Plaintiff Leigha Marie-Rose Wise, as next friend of A.M.W., a minor child

223. As a result of the occurrence that forms the basis of this lawsuit, as stated above, and as a direct and proximate result of Defendants' wrongful acts, including negligence and gross negligence, Plaintiff Leigha Marie-Rose Wise, as

next friend of A.M.W., a minor child, suffered serious injuries, will likely sustain additional serious damages in the future, and is entitled to recover:

- a. mental anguish in the past and in all reasonable probability in the future;
- b. physical suffering in the past in all reasonable probability in the future;
- c. mental or emotional pain or anguish in the past and in all reasonable probability in the future;
- d. loss of companionship in the past and in all reasonable probability in the future;
- e. inconvenience in the past and in all reasonable probability in the future;
- f. loss of enjoyment of life in the past and in all reasonable probability in the future;
- g. injury to reputation in the past and in all reasonable probability in the future;
- h. all other nonpecuniary damages as may be supplemented; past medical bills and expenses incurred as a proximate result of the occurrence made the basis of this suit;
- i. loss of household services in the past and in all reasonable probability in the future;
- j. all other pecuniary damages as may be supplemented;
- k. exemplary damages;
- l. costs of court;
- m. expert fees;

- n. necessary and reasonable attorney's fees;
- o. pre-judgment interest;
- p. post-judgment interest; and
- q. all other miscellaneous damages as may be supplemented.

Plaintiff Leigha Marie-Rose Wise, as next friend of A.N.W., a minor child

224. As a result of the occurrence that forms the basis of this lawsuit, as stated above, and as a direct and proximate result of Defendants' wrongful acts, including negligence and gross negligence, Plaintiff Leigha Marie-Rose Wise, as next friend of A.N.W., a minor child, suffered serious injuries, will likely sustain additional serious damages in the future, and is entitled to recover:

- a. mental anguish in the past and in all reasonable probability in the future;
- b. physical suffering in the past in all reasonable probability in the future;
- c. mental or emotional pain or anguish in the past and in all reasonable probability in the future;
- d. loss of companionship in the past and in all reasonable probability in the future;
- e. inconvenience in the past and in all reasonable probability in the future;
- f. loss of enjoyment of life in the past and in all reasonable probability in the future;
- g. injury to reputation in the past and in all reasonable probability in the future;

- h. all other nonpecuniary damages as may be supplemented; past medical bills and expenses incurred as a proximate result of the occurrence made the basis of this suit;
- i. loss of household services in the past and in all reasonable probability in the future;
- j. all other pecuniary damages as may be supplemented;
- k. exemplary damages;
- l. costs of court;
- m. expert fees;
- n. necessary and reasonable attorney's fees;
- o. pre-judgment interest;
- p. post-judgment interest; and
- q. all other miscellaneous damages as may be supplemented.

Plaintiff Leantha Rose Chavez

225. As a result of the occurrence that forms the basis of this lawsuit, as stated above, and as a direct and proximate result of Defendants' wrongful acts, including negligence and gross negligence, Plaintiff Leantha Rose Chavez suffered serious injuries, will likely sustain additional serious damages in the future, and is entitled to recover:

- a. mental anguish in the past and in all reasonable probability in the future;

- b. physical suffering in the past in all reasonable probability in the future;
- c. mental or emotional pain or anguish in the past and in all reasonable probability in the future;
- d. loss of companionship in the past and in all reasonable probability in the future;
- e. inconvenience in the past and in all reasonable probability in the future;
- f. loss of enjoyment of life in the past and in all reasonable probability in the future;
- g. injury to reputation in the past and in all reasonable probability in the future;
- h. all other nonpecuniary damages as may be supplemented; past medical bills and expenses incurred as a proximate result of the occurrence made the basis of this suit;
- i. loss of household services in the past and in all reasonable probability in the future;
- j. all other pecuniary damages as may be supplemented;
- k. exemplary damages;
- l. costs of court;
- m. necessary and reasonable attorney's fees;
- n. pre-judgment; and
- o. all other miscellaneous damages as may be supplemented.

Plaintiff Joaquin Antonio Salvador Chavez

226. As a result of the occurrence that forms the basis of this lawsuit, as stated above, and as a direct and proximate result of Defendants' wrongful acts, including negligence and gross negligence, Plaintiff Joaquin Antonio Salvador Chavez suffered serious injuries, will likely sustain additional serious damages in the future, and is entitled to recover:

- a. mental anguish in the past and in all reasonable probability in the future;
- b. physical suffering in the past in all reasonable probability in the future;
- c. mental or emotional pain or anguish in the past and in all reasonable probability in the future;
- d. loss of companionship in the past and in all reasonable probability in the future;
- e. inconvenience in the past and in all reasonable probability in the future;
- f. loss of enjoyment of life in the past and in all reasonable probability in the future;
- g. injury to reputation in the past and in all reasonable probability in the future;
- h. all other nonpecuniary damages as may be supplemented; past medical bills and expenses incurred as a proximate result of the occurrence made the basis of this suit;
- i. loss of household services in the past and in all reasonable probability in the future;

- j. all other pecuniary damages as may be supplemented;
- k. exemplary damages;
- l. costs of court;
- m. necessary and reasonable attorney's fees;
- n. pre-judgment; and
- o. all other miscellaneous damages as may be supplemented.

Plaintiff Jessica Chavez

227. As a result of the occurrence that forms the basis of this lawsuit, as stated above, and as a direct and proximate result of Defendants' wrongful acts, including negligence and gross negligence, Plaintiff Jessica Chavez suffered serious injuries, will likely sustain additional serious damages in the future, and is entitled to recover:

- a. mental anguish in the past and in all reasonable probability in the future;
- b. physical suffering in the past in all reasonable probability in the future;
- c. mental or emotional pain or anguish in the past and in all reasonable probability in the future;
- d. loss of companionship in the past and in all reasonable probability in the future;
- e. inconvenience in the past and in all reasonable probability in the future;

- f. loss of enjoyment of life in the past and in all reasonable probability in the future;
- g. loss of consortium in the past and in all reasonable probability in the future;
- h. injury to reputation in the past and in all reasonable probability in the future;
- i. all other nonpecuniary damages as may be supplemented; past medical bills and expenses incurred as a proximate result of the occurrence made the basis of this suit;
- j. loss of household services in the past and in all reasonable probability in the future;
- k. all other pecuniary damages as may be supplemented;
- l. exemplary damages;
- m. costs of court;
- n. expert fees;
- o. necessary and reasonable attorney's fees;
- p. pre-judgment interest;
- q. post-judgment interest; and
- r. all other miscellaneous damages as may be supplemented.

VII.
EXEMPLARY DAMAGES

228. Plaintiffs hereby fully incorporate the preceding paragraph by reference as if fully stated herein.

229. Plaintiffs would further show that the above-described acts and omissions of Defendants were committed with malice and reckless indifference to the protected rights of Plaintiffs, as that term is defined by the Texas Civil Practice and Remedies Code § 41.003(11). The acts or omissions of Defendants, when viewed objectively from the Defendants' standpoints at the time they occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, including Plaintiffs. Further, Defendants had actual, subjective awareness of the risks involved, but nevertheless disregarded those risks, proceeding with conscious indifference to the rights, safety, and welfare of others. Thus, Plaintiffs plead to the fullest extent allowable under Texas law their right to recover exemplary and punitive damages.

230. Plaintiff Jennifer Rae Thomson, both as applicant to be dependent administratrix of the Estate of Nicolas Chavez, Deceased, and as next friend of N.C., a minor child, would further show that the above-described acts and omissions of Defendants were committed with reckless and callous indifference to the federally protected rights of others, namely Plaintiffs, and was motivated by an evil intent. Thus, Plaintiff pleads to the fullest extent allowable under 42 U.S.C. § 1983 their right to recover exemplary and punitive damages.

VIII.
EXPERT FEES

231. Plaintiff Jennifer Rae Thomson, both as applicant to be dependent administratrix of the Estate of Nicolas Chavez, Deceased, and as next friend of N.C., a minor child, is further entitled to receive expert fees, pursuant to 42 U.S.C. § 1988.

IX.
ATTORNEY'S FEES

232. Plaintiff Jennifer Rae Thomson, both as applicant to be dependent administratrix of the Estate of Nicolas Chavez, Deceased, and as next friend of N.C., a minor child, is further entitled to receive reasonable and necessary attorney's fees, pursuant to 42 U.S.C. § 1988.

X.
JURY DEMAND

233. Plaintiffs hereby demand a trial by jury and the appropriate fees have been tendered.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants answer the allegations herein, and upon trial thereof, Plaintiffs have and recover judgment against Defendants for all damages and injuries suffered and incurred, for pre-judgment interest, for interest on the judgment, for court costs, and for all other such relief, both in law and in equity, to which the Honorable Court establishes Plaintiffs are entitled.

Respectfully submitted,

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WISE, as next friend of A.N.W. and
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