

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TRESSA SHERROD, individually)
and as Executrix of the Estate of)
John H. Crawford, III, deceased, Butler)
County, Ohio Probate Case)
No. PE14-08-0771)
48 Ridge Drive, #106)
Fairfield, Ohio 45014)

CASE NO. 3:14-cv-454

and)

Judge

JOHN CRAWFORD, JR.)
497 Wallace Road)
Jackson, Tennessee 38305)

COMPLAINT FOR MONEY
DAMAGES

and)

(jury demand endorsed hereon)

LeeCee JOHNSON, as guardian and next)
friend of **JOHN H. CRAWFORD, IV**,)
a minor)
48 Ridge Drive, #106)
Fairfield, Ohio 45014)

and)

LeeCee JOHNSON, as guardian and next)
friend of **JAYDEN CRAWFORD**,)
a minor)
48 Ridge Drive, #106)
Fairfield, Ohio 45014)

Plaintiffs)

-vs-)

OFFICER SEAN C. WILLIAMS)
c/o City of Beavercreek Police)
Department)
1388 Research Park Drive)
Beavercreek, Ohio 44308)

Individually and in his Official)
Capacity As an Employee of the)
City of Beavercreek)

and)

SGT. DAVID M. DARKOW)
c/o City of Beavercreek Police)
Department)
1388 Research Park Drive)
Beavercreek, Ohio 44308)

Individually and in his Official)
Capacity As an Employee of the)
City of Beavercreek)

and)

CHIEF DENNIS EVERS)
City of Beavercreek Police)
Department)
1388 Research Park Drive)
Beavercreek, Ohio 44308)

Individually and in his Official)
Capacity As an Employee of the)
City of Beavercreek)

and)

THE CITY OF BEAVERCREEK)
c/o Mayor Brian Jarvis)
1368 Research Drive)
Beavercreek, Ohio 44308)

and)

WAL-MART STORES, INC.)
702 S.W. 8th Street)
P.O. Box 1288)
Bentonville, Arkansas 72716)
)
and)
)
WAL-MART STORES EAST, LP)
702 S.W. 8th Street)
Bentonville, Arkansas 72716)
)
and)
)
WALMART STORE #2124)
3360 Pentagon Blvd.)
Beavercreek, Ohio 45431)
)
Defendants)

Now come the Plaintiffs, by and through their attorneys, and for their Complaint states as follows:

INTRODUCTION

1. This is an action for damages based on the wrongful death of John H. Crawford, III, and the activity that led to his shooting.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§1983, and 1988 and the fourth and fourteenth Amendments to the Constitution of the United States as applied to the State of Ohio and its entities, officials, and employees, as well as the statutes and common law of the State of Ohio.

3. Venue is proper in the Southern District of Ohio, Western Division, as all acts complained of occurred in Greene County, Ohio.

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, 1343 and 1391. Plaintiffs also invoke the supplemental jurisdiction of this court to decide any asserted statutory and common law tort claims.

5. Plaintiffs seek compensatory damages, punitive damages, interest and attorneys' fees and costs pursuant to 42 U.S.C. §1988 and/or due to the malicious, intentional and reckless acts of all named Defendants.

PARTIES

6. Plaintiff, Tressa Sherrod is the Executrix of the Estate of John H. Crawford, III, deceased [hereinafter, "Decedent" or "Mr. Crawford" or "John H. Crawford, III"] in Butler County, Ohio Probate Case No. PE14-08-0771.

7. Plaintiff, John Crawford, Jr. is the father of Decedent.

8. Plaintiff, LeeCee Johnson is the mother and legal guardian of John H. Crawford, IV, the son of Decedent who was born on February 2, 2013 and is also the mother and legal guardian of Jayden Crawford, Decedent's second son, born on March 14, 2014

9. Defendant, Police Officer Sean C. Williams [hereinafter, "Williams"], is and was at all times pertinent hereto a police officer with the City of Beavercreek Police Department. Defendant Williams is the police officer involved in the only other fatal police shooting in the history of the Beavercreek Police Department. The acts of Defendant Williams which are the subject of this Complaint were undertaken in the regular course of his employment for Defendant, City of Beavercreek. Defendant Williams is a "person" under 42 U.S.C. § 1983 and at all relevant times acted under color of law. He is sued both individually and in his official capacity. Upon information and belief, Defendant Williams is a resident of the City of Beavercreek, County of Greene.

10. Defendant, Sgt. David M. Darkow [hereinafter, “Darkow”], is and was at all times pertinent hereto a police officer with the City of Beavercreek Police Department. The acts of Defendant Darkow which are the subject of this Complaint, were undertaken in the regular course of his employment for Defendant, City of Beavercreek. Defendant Darkow is a “person” under 42 U.S.C. § 1983 and at all relevant times acted under color of law. He is sued both individually and in his official capacity. Upon information and belief, Defendant Darkow is a resident of the City of Beavercreek, County of Greene.

11. At all times pertinent hereto Defendant, Chief Dennis Evers [hereinafter, “Evers”], was Chief of Police for the City of Beavercreek Police Department. As such, he was the responsible party for supervising the training, instruction, discipline, control and conduct of Defendants Williams and Darkow. He was also charged with promulgating all orders, rules, instructions and regulations of the City of Beavercreek Police Department, including but not limited to those orders, rules, instructions and regulations concerning the use of force and of deadly weapons. He was also charged with promulgating all orders, rules, instructions and regulations of the City of Beavercreek’s Police Department regarding the procedures to be implemented when police officers have interactions with citizens who are the subject of a criminal complaint. Defendant Evers is a “person” under 42 U.S.C. § 1983 and at all relevant times acted under color of law. Defendant Evers is sued both individually and in his official capacity. Upon information and belief, Defendant, Evers is a resident of the City of Beavercreek, County of Greene, Ohio.

12. Defendant, City of Beavercreek (hereafter “Beavercreek”), is a municipal corporation charged with and responsible for appointing and promoting, through the Mayor of Beavercreek, the members of the Beavercreek Police Department and for the supervision,

training, instruction, discipline, control and conduct of the Beavercreek Police Department and its personnel. At all times relevant hereto, Defendant Beavercreek had the power, right and duty to control the manner in which the individual defendants carried out the objectives of their employment and to see that all orders, rules, instructions and regulations promulgated for the Beavercreek Police Department were consistent with the Constitution and the laws of the City of Beavercreek. Defendant Beavercreek is a “person” under 42 U.S.C. § 1983 and at all relevant times acted under color of law.

13. Defendant, Wal-Mart Stores, Inc. is a Delaware corporation with its headquarters in Bentonville, Arkansas. Wal-Mart is in good standing and is doing business in the State of Ohio which owns and operates over 100 Walmart branded stores, Sam’s Clubs, distribution centers and/or locations in Ohio. Service may be made upon said Defendant’s registered agent: CT Corporation System, 1300 E. 9th Street, Cleveland, Ohio 44114.

14. Defendant, Wal-Mart Stores East, LP is a Delaware limited partnership and is in good standing and licensed to do business in the State of Ohio. Defendant Wal-Mart Stores East, LP is a subsidiary of Defendant Wal-Mart Stores, Inc. Service may be made upon said Defendant’s registered agent, CT Corporation System, 1300 E. 9th Street, Cleveland, Ohio 44114.

15. Defendant, Wal-Mart Store # 2124 is a store owned and operated by Defendant, Wal-Mart Stores, Inc. and/or Wal-Mart Stores East, LP, and is located at 3360 Pentagon Blvd., Beavercreek, Ohio 45431 [hereinafter, the “Beavercreek Wal-Mart”].

16. Defendants Williams, Darkow, Evers, and Beavercreek will be referred to collectively as the “Beavercreek Defendants.”

17. Defendants Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, and Wal-Mart Store #2124 will be referred to collectively as the “Wal-Mart Defendants.”

FACTS AS TO THE BEAVERCREEK DEFENDANTS

18. On August 5, 2014, at approximately 8:21 p.m., Defendants Williams and Darkow responded to a 911 caller who claimed that a black man at the Beavercreek Wal-Mart was pointing a gun at customers. Upon their arrival at that location at 8:24 p.m., the officers entered the Beavercreek Wal-Mart and located the individual identified by the 911 caller, later identified as John H. Crawford, III.

19. Mr. Crawford was a customer and business invitee at the Beavercreek Wal-Mart, and he was not doing anything dangerous or illegal while shopping there. In fact, Mr. Crawford was at the store with his friend to buy ingredients to make S’mores at a family cookout and was at the Wal-Mart store for those reasons for which the store is open to the public.

20. While present at the Beavercreek Wal-Mart, John H. Crawford, III had picked up an unloaded MK-177 BB/Pellet Rifle [hereinafter, the “Pellet Rifle”] that was unboxed and lying on one of the store’s shelves.

21. Mr. Crawford never used, loaded, or pointed the Pellet Rifle at anyone, was doing nothing improper or illegal, and never caused any harm or acted in a manner that would cause any reasonable person to believe that he may cause harm.

22. At or about 8:24 P.M., Defendants Williams and Darkow entered the Beavercreek Wal-Mart, and they located John H. Crawford III at or about 8:27 P.M.

23. When Defendants Williams and Darkow located John H. Crawford, III, he was talking on a cell phone held in his right hand, with no other customers in his vicinity, and with

his left side and back visible to the two police officers. Mr. Crawford was holding the Pellet Rifle in his left hand pointed down at the floor.

24. Defendant Williams shot and killed Mr. Crawford approximately one second after Defendant Williams or Darkow first made contact with him.

25. As a result, Mr. Crawford was shot before he even had time to react to the officer's presence, much less to comply with any verbal commands Defendants Williams or Darkow may have made.

26. Williams shot John H. Crawford, III in the back of his left arm and the left side of his torso, further evidencing that John H. Crawford, III was shot before he had time to react to the officers' presence or comply with any commands that may have been made.

27. John H. Crawford, III did not act aggressively or dangerously, or otherwise act in a manner to cause Defendants Williams or Darkow, or anyone else, to believe that he posed a danger to these Defendants or to customers of the Beaver Creek Wal-Mart.

28. The Pellet Rifle Mr. Crawford was holding was not loaded, contrary to a claim in the 911 call that Mr. Crawford was loading a gun,

29. Defendants Williams and/or Darkow failed to take steps to assess whether any of the information provided by the 911 caller or dispatcher was accurate before Williams shot and killed Mr. Crawford, though they had an obligation to do so.

30. All police officers are trained to understand that many 911 callers provide inaccurate or otherwise unsubstantiated information, and are notoriously unreliable eye-witnesses. As such, police officers have a duty that must be exercised reasonably, to assess any situation before interviewing with lethal force. In this case, the Officers Williams and Darkow acted unreasonably, in that they did not properly assess the situation, and simply killed an

unarmed shopper who was not breaking any laws of the State of Ohio or the City of Beavercreek. In this circumstance, there existed no information to suggest that John Crawford, III was a threat to anyone in the store, much less the police officers. In the minutes leading up to his death, several shoppers walked by or near John Crawford, III and exhibited no signs of fear or concern that Mr. Crawford presented a threat to anyone. It was objectively unreasonable for the Officers Williams and Darkow to shoot and kill Mr. Crawford while claiming that their lives, or the lives of others, were in danger.

31. Ohio is an open carry state meaning that it is legal for the citizens of Ohio to carry weapons, including rifles, without permit. Although John H. Crawford, III merely picked up a pellet gun from a store shelf that sold pellet guns, whether the gun was Walmart merchandise or a weapon of his own that he brought into the store, John H. Crawford, III was doing nothing wrong and in violation of no law or ordinance in the moments leading up to his death. Because it is permissible to carry merchandise one desires to purchase, and it is further permissible to carry rifles openly in Ohio, the actions of the Officers Williams and Darkow were particularly unreasonable, arbitrary, and egregious in engaging and shooting a shopper, John H. Crawford, III, who was doing what people do in stores—shop.

FACTS AS TO THE WAL-MART DEFENDANTS

32. The Wal-Mart Defendants have a policy and procedure of placing realistic-looking guns in the stores' toy and/or sporting goods aisles and other locations where it is reasonably foreseeable that customers or others would pick up, carry or otherwise handle the guns.

33. Through its practices, policies and procedures, the Wal-Mart Defendants failed to take steps and precautions, generally, to ensure that such guns are reasonably secured.

34. The Wal-Mart Defendants failed to take reasonable steps to ensure that the Pellet Rifle at issue in this case was reasonably secured, though they knew or should have known that the Pellet Rifle was unpackaged and easily accessible by customers such as John H. Crawford, III.

35. To wit, the Pellet Rifle was out of the package and lying on a store shelf for at least two days before Williams shot and killed John H. Crawford, III.

36. The Wal-Mart Defendants knew or should have known that if invitees and customers such as John H. Crawford, III picked up such guns that were unpackaged that other customers, the police, or others may mistakenly believe that the gun was real, putting such persons in danger of serious bodily injury or death.

37. The Wal-Mart Defendants have numerous employees and numerous cameras all of which are, in part, designed to ensure complete monitoring and surveillance of the activities of its customers.

38. Despite the presence of these employees and cameras, *inter alia*, the Wal-Mart Defendants failed to take reasonable steps to warn Mr. Crawford and obtain the Pellet Rifle from him when it became known to the Wal-Mart Defendants that he was holding the Pellet Rifle, and when the Wal-Mart Defendants were notified that the police were investigating his presence at the Beaver Creek Wal-Mart.

COUNT ONE: Assault and Battery Against Defendants Williams and Darkow

39. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

40. Defendants Darkow and Williams acted jointly in their response to the 911 call as well as their interaction with John H. Crawford, III at the Beaver Creek Wal-Mart.

41. The combined actions of these two Defendants led Defendant Williams, unlawfully and without cause, to shoot and kill Mr. Crawford.

42. As a direct and proximate result of the conduct of Defendants Darkow and Williams, John H. Crawford, III suffered physical injury, pain, emotional and psychological trauma, and eventually died as a result of the assault and battery described above.

43. As a further direct and proximate result of John H. Crawford, III's wrongful death, his survivors, next of kin and/or heirs have suffered permanent damages, including but not limited to grief, depression, and severe emotional distress. They have incurred funeral bills, medical expenses, and other expenses, and will incur additional expenses in the future.

44. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and due to the malicious, intentional and reckless acts of these Defendants.

COUNT TWO: Negligence, Gross Negligence and Recklessness Against Defendants Williams and Darkow

45. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

46. Defendants Williams and Darkow acted negligently, with gross negligence, with recklessness and/or intentionally, under Ohio law, by failing to assess the information provided to them, and by failure to give Mr. Crawford time to comply with their commands, and for other acts and omissions that led to the killing of Mr. Crawford.

47. As a result of the foregoing, Defendants Williams and Darkow have, under color of law, deprived John H. Crawford, III of rights, privileges and immunities secured to him by the Fourth and Fourteenth Amendments to the United States Constitution including the right to be free of seizures without probable cause and to be free of excessive force.

48. As a direct and proximate result of the Defendants' actions that caused or led to the use of excessive and unreasonable force in this shooting, John H. Crawford, III died and suffered other damages, and his survivors, next of kin and/or heirs have suffered damages, all as set forth above.

49. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and due to the malicious, intentional and reckless acts of these Defendants.

COUNT THREE: Negligent Training and Supervision Against Defendants Evers and Beaver creek

50. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

51. Defendant Evers negligently caused the above-described injuries to plaintiff by failing to properly train, supervise and control the conduct of the Defendants Darkow and Williams.

52. Defendant Beaver creek negligently caused the death of John H. Crawford, III by failing to properly train, supervise and control the conduct of the Defendants Darkow and Williams.

53. Defendant Beaver creek, as the employer of Defendants Williams, Darkow and Evers, is liable under the doctrine of respondeat superior for the tortious conduct of the individual defendants.

54. As a result of the foregoing, the Beaver creek Defendants have, under color of law, deprived John H. Crawford, III of rights, privileges and immunities secured to him by the Fourth and Fourteenth Amendments to the United States Constitution including the right to be free of seizures without probable cause and to be free of excessive force.

55. As a direct and proximate result of the Beaver creek Defendants' actions that caused or led to the use of excessive and unreasonable force in this shooting, John H. Crawford, III died and suffered other damages, and his survivors, next of kin and/or heirs have suffered damages, all as set forth above.

56. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and/or due to the malicious, intentional and reckless acts of these Defendants.

COUNT FOUR: Negligence, Gross Negligence and Recklessness Against Defendant Evers and Defendant Beaver creek

57. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

58. The conduct of Defendant, Evers and Defendant, Beaver creek in failing to properly train, supervise and control the conduct of Defendants Darkow and Williams, constitutes negligence, gross negligence, and recklessness under the laws of Ohio.

59. Defendant Beaver creek, as the employer of Defendant Evers, is liable under the doctrine of respondeat superior for the negligent, willful, reckless, and tortious conduct of Defendant Evers.

60. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and/or due to the malicious, intentional and reckless acts of these Defendants.

COUNT FIVE: Unreasonable Use of Excessive Force Against the Beaver creek Defendants

61. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

62. Defendants Darkow and Williams negligently, recklessly and intentionally deprived John H. Crawford, III of his rights under the City of Beavercreek municipal regulations to be free from unreasonable and wanton force during an interaction with the police, and further deprived him of his rights by the malicious use of unreasonable and excessive force in shooting him with a Beavercreek Police Department issued firearm.

63. Defendant Evers negligently, recklessly, and intentionally caused the above-described damages by failing to properly train, supervise and control the conduct of Defendants Darkow and Williams, by failing to train members of the Beavercreek Police Department to enforce the laws in effect in Beavercreek, and by failing to promulgate, issue and enforce appropriate procedures and regulations concerning the use of firearms by members of the Beavercreek Police Department and by failing to promulgate, issue and enforce appropriate procedures to be utilized when confronting a citizen who is a suspect in a complaint.

64. Defendant Beavercreek negligently, recklessly and intentionally caused the above-described damages by failing to properly train, supervise, and control the conduct of Defendants Darkow and Williams; by failing to train members of the Beavercreek Police Department to enforce the laws in effect in Beavercreek, and by failing to promulgate, issue and enforce appropriate procedures and regulations concerning the use of firearms by members of the Beavercreek Police Department and by failing to promulgate, issue and enforce appropriate procedures to be utilized when confronting a citizen who is a suspect in a complaint.

65. As a result of the foregoing, the Beavercreek Defendants have, under color of law, deprived John H. Crawford, III of rights, privileges and immunities secured to him by the Fourth and Fourteenth Amendments to the United States Constitution including the right to be free of seizures without probable cause and to be free of excessive force.

66. As a direct and proximate result of the Beaver creek Defendants' actions that caused or led to the use of excessive and unreasonable force in this shooting, John H. Crawford, III died and suffered other damages, and his survivors, next of kin and/or heirs have suffered damages, all as set forth above.

67. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and/or due to the malicious, intentional and reckless acts of these Defendants.

COUNT SIX: Intentional Infliction of Emotional Distress Against the Beaver creek Defendants

68. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

69. Defendants Darkow and Williams acted in an extreme and outrageous manner, acted intentionally and with reckless disregard for John H. Crawford, III's welfare.

70. Defendants Evers and Beaver creek negligently, recklessly and intentionally caused the above-described intentional infliction of emotional distress by failing to properly train, supervise and control the conduct of Defendants Williams and Darkow.

71. Defendant Beaver creek, as the employer of the Defendants Williams, Darkow, and Evers, is liable under the doctrine of respondeat superior for the tortious conduct of Defendants Williams, Darkow and Evers.

72. As a direct and proximate result of the Beaver creek Defendants' actions John Crawford, III died and his survivors, next of kin and/or heirs have suffered damages, all as set forth above.

73. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and/or due to the malicious, intentional and reckless acts of these Defendants.

**COUNT SEVEN: Negligent Infliction of Emotional Distress Against the
Beavercreek Defendants**

74. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

75. Defendants Darkow and Williams, by shooting John H. Crawford, III, negligently inflicted severe and permanent emotional distress on John H. Crawford, III and his survivors, next of kin and/or heirs.

76. Defendants Evers and Beavercreek negligently, recklessly and intentionally caused the above-described negligent infliction of emotional distress by failing to properly train, supervise and control the conduct of Defendants Darkow and Williams.

77. Defendant Beavercreek, as the employer of the Defendants Williams, Darkow and Evers, is liable under the doctrine of respondeat superior for the tortious conduct of the individual defendants.

78. As a direct and proximate result of the Beavercreek Defendants' actions John H. Crawford, III died and his survivors, next of kin and/or heirs have suffered damages, all as set forth above.

79. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and/or due to the malicious, intentional and reckless acts of these Defendants.

**COUNT EIGHT: Violation of Constitutionally Protected Right To
Be Free From Unreasonable Seizure, Excessive Use of Force and Other Rights Protected by
the Constitutions of Ohio and the United States of America; Claims for Violation of 42
U.S.C. §1983 Against the Beaver creek Defendants**

80. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

81. Consistent with the allegations above and to the extent not already alleged, Defendants Williams and Darkow while acting under the color of law and the authority of Defendant, Beaver creek, intentionally and with complete and deliberate indifference to the rights of John H. Crawford, III, caused the plaintiff to be deprived of his Constitutional rights, including but not limited to those under the Fourth Amendment by:

- A. Using a degree of force that was objectively unreasonable under the circumstances, and in violation of the plaintiff's rights to be free of an unreasonable seizure under the Fourth and Fourteenth Amendments to the United States Constitution;
- B. Subjecting the plaintiff to punishment without the benefit of a trial by jury in violation of his rights under the Sixth and Eighth Amendments;
- C. Depriving the plaintiff of his liberty by subjecting him to unwarranted and unreasonable restraints on his person without due process in violation of his rights under the Fifth Amendment; and
- D. Violating Beaver creek Police Department policies regarding the use of force.

82. Consistent with the allegations above and to the extent not already alleged, Defendant, Evers, acting under color of law, intentionally and with complete and deliberate indifference to the plaintiff's rights, caused the plaintiff to be deprived of his Constitutional rights, including but not limited to the Fourth, Fifth, Sixth, and Eighth Amendments, by the following acts and omissions:

- A. Failing to properly supervise the training and conduct of police officers with City of Beaver creek Police Department, including but not necessarily limited to Defendants Williams and Darkow;

- B. Failing to enforce the laws of the State of Ohio, specifically, but not limited to the Ohio Constitution, Article I, Section 14, and the provisions of the Constitution of the United States concerning the use of force by members of the police force while investigating a complaint;
- C. Tacitly accepting numerous incidents of prior misconduct by police officers; and
- D. Failing to properly train police officers on the constitutional limits on the use of force.

83. Consistent with the allegations above and to the extent not already alleged, Defendant City of Beavercreek, under color of law, intentionally and with complete and deliberate indifference to the rights of John H. Crawford, III, authorized, permitted, and tolerated the custom and practice of the unconstitutional and unreasonable use of excessive force by members of the Beavercreek Police Department and in particular, by Defendants Darkow and Williams, which Defendant Evers was aware of and did nothing to stop, and failed to do the following:

- A. Appoint, promote, train and supervise members of the Beavercreek Police Department who would enforce the laws of the City of Beavercreek and who would protect the Constitutional rights of the people of Beavercreek;
- B. Require Defendant Evers to promulgate procedures and policies for the proper, constitutional, and permissible use of firearms and deadly force by members of the police department when interacting with a citizen who is a potential suspect of a complaint; and
- C. Deter, end, or criticize the Beavercreek Police Department's policy and custom of using unreasonable force against the citizenry, thereby proximately causing the deprivation of plaintiff's rights under the Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution.

84. For a significant period leading up to the shooting, the Beavercreek Defendants have had a persistent and widespread practice of allowing City of Beavercreek Officers to violate the civil rights and constitutional rights of individuals consistent with the practices and procedures as set forth in this Complaint.

85. As a direct, proximate and foreseeable result of the intentional and complete and deliberate indifference to the constitutional rights of John H. Crawford, III by the Beaver creek Defendants named herein, particularly the right to be free from the use of excessive force.

86. As a direct and proximate result of the conduct of Defendants Darkow and Williams, John H. Crawford, III suffered physical injury, pain, emotional and psychological trauma, and eventually died as a result of the assault and battery described above.

87. As a further direct and proximate result of John H. Crawford, III's wrongful death, his survivors, next of kin and/or heirs have suffered permanent damages, including but not limited to grief, depression, and severe emotional distress. They have incurred funeral bills, medical expenses, and other expenses, and will incur additional expenses in the future.

88. Plaintiffs are entitled to compensatory damages, punitive damages, interest and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988, except against Defendant City of Beaver creek.

COUNT NINE: 42 U.S.C. § 1983 Wrongful Death Against the Beaver creek Defendants

89. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

90. To the extent not pled elsewhere in this Complaint, Plaintiffs are entitled to damages under 42 U.S.C. §1983 for the wrongful death of Decedent and for their loss of his services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice, and were forced to incur funeral and burial expenses.

91. Plaintiffs are further entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988, except against Defendant City of Beaver creek.

COUNT TEN: 42 U.S.C. § 1983 Survival Action Against the Beavercreek Defendants

92. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as if fully re-written herein.

93. Decedent was forced to endure great conscious pain and suffering and emotional distress during the course of his encounter with Defendants Williams and Darkow up until the moment he died.

94. Decedent filed no action for this cause during his lifetime, but under the laws of Ohio this action survives and may be asserted by his estate.

95. Thus, to the extent not pled elsewhere in this Complaint, Plaintiffs claim damages under 42 U.S.C. § 1983 for the conscious pain, suffering, and emotional distress incurred by Decedent.

96. Plaintiffs are entitled to compensatory damages, punitive damages, interest, and their costs and attorneys' fees pursuant to 42 U.S.C. § 1988, except against Defendant City of Beavercreek.

COUNT ELEVEN: Negligence Against the Wal-Mart Defendants

97. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

98. Wal-Mart owns and operates hundreds of retail shopping centers across Ohio and the United States, including the Beavercreek Wal-Mart.

99. On August 5, 2014, John H. Crawford, III was lawfully present at the Beavercreek Wal-Mart as a shopper and business invitee, a person who rightfully entered and remained on the premises for a purpose beneficial to the Wal-Mart Defendants.

100. The Wal-Mart Defendants owed a duty to John H. Crawford, III to use ordinary care for his safety and to keep the premises and conditions at the Beavercreek Wal-Mart in a reasonably safe condition.

101. Wal-Mart acted negligently in its policies concerning the placement of guns at its stores and also acted negligently in failing to secure the Pellet Rifle. Both acts of negligence were a proximate cause, alone or in conjunction with the acts of other Defendants, of John H. Crawford's injuries.

102. Wal-Mart knew or should have known that if invitees such as John H. Crawford, III picked up such guns that it would place them in danger from the actions of others who mistakenly believe that the gun was real and mistakenly believe that such person poses a danger to others.

103. As a direct and proximate result of Wal-Mart's policies, actions, procedures, and omissions, numerous individuals believed that John H. Crawford, III posed a danger to others when he picked up the Pellet Rifle.

104. Further, Wal-Mart negligently failed to warn Mr. Crawford and obtain the Pellet Rifle from him when it became known to the Wal-Mart Defendants that he was holding the Pellet Rifle, and when the Wal-Mart Defendants were notified that the police were investigating his presence at the Beavercreek Wal-Mart.

105. As a direct and proximate result of the foregoing, Defendant Williams shot and killed John H. Crawford, III when Officer Williams and Defendant Darkow arrived at the Beavercreek Wal-Mart.

106. As a direct and proximate result of the conduct of the Wal-Mart Defendants and Williams, suffered physical injury, pain, emotional and psychological trauma, and eventually died as a result of the assault and battery described above.

107. As a further direct and proximate result of John H. Crawford, III's wrongful death, his survivors, next of kin and/or heirs have suffered permanent damages, including but not limited to grief, depression, and severe emotional distress. They have incurred funeral bills, medical expenses, and other expenses, and will incur additional expenses in the future.

108. Plaintiffs are further entitled to compensatory damages, punitive damages, interest and their costs and attorneys' fees due to the malicious and reckless acts of these Defendants.

COUNT TWELVE: Premises Liability Against the Wal-Mart Defendants

109. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

110. Wal-Mart knew or should have known that it must take reasonable measures to monitor the individuals present at its stores, including the Beavercreek Wal-Mart.

111. Wal-Mart negligently failed to take reasonable measures and failed to determine that John H. Crawford, III was holding a realistic looking gun.

112. As a direct and proximate result of this negligence, Mr. Crawford suffered physical injury, pain, emotional and psychological trauma, and eventually died as a result of the assault and battery described above.

113. As a further direct and proximate result of John H. Crawford, III's wrongful death, his survivors, next of kin and/or heirs have suffered permanent damages, including but not limited to grief, depression, and severe emotional distress. They have incurred funeral bills, medical expenses, and other expenses, and will incur additional expenses in the future.

114. Plaintiffs are further entitled to compensatory damages, punitive damages, interest and their costs and attorney's fees due to the malicious and reckless acts of the Wal-Mart Defendants.

COUNT THIRTEEN: Survivorship Against All Defendants

115. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

116. Decedent endured great conscious pain and suffering, anxiety and fright as a result of this incident and his shooting death.

117. Decedent filed no action for this matter during his lifetime, but under the laws of Ohio, including R.C. 2305.21, this action survives, including but not limited to the causes of action set forth in this Complaint, and the compensatory and punitive damages and interest requested, and may be asserted by his estate.

COUNT FOURTEEN: Wrongful Death Against All Defendants

118. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

119. As a direct and proximate cause of all Defendants' conduct described above, Plaintiffs claim damages under the Ohio Wrongful Death Statute, R.C. 2125.01, *et seq.*, for the wrongful death of Decedent and for their loss of his services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice; for their grief, depression and severe emotional distress; for the funeral and burial expenses of Decedent; and for other harm suffered by Plaintiffs and for any other applicable damages and claims for relief requested in this Complaint or to which these Plaintiffs may be entitled.

120. Plaintiffs are further entitled to compensatory damages, punitive damages, interest and their costs and attorney's fees due to the malicious and reckless acts of these Defendants.

COUNT FIFTEEN: Plaintiff, John H. Crawford, Jr.'s Loss of Consortium Claim Against Defendants

121. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

122. Plaintiff, John H. Crawford, Jr. claims damages for the permanent loss of the love and affection and support of his son, John H. Crawford, III, who died as a direct and proximate cause of the wrongful acts of Defendants, as set forth herein.

COUNT SIXTEEN: Loss of Consortium Claim Against All Defendants by Plaintiff, LeeCee Johnson, Guardian and Next Friend of John H. Crawford, IV, a Minor

123. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

124. Plaintiff LeeCee Johnson claims damages on behalf of her minor son, John H. Crawford, IV, born on February 2, 2013, for the permanent loss of the love and affection and support of his father, John H. Crawford, III, who died as a direct and proximate cause of the wrongful acts of Defendants, as set forth herein.

COUNT SEVENTEEN: Loss of Consortium Claim Against All Defendants by Plaintiff, LeeCee Johnson, Guardian and Next Friend of Jayden Crawford, a Minor

125. Plaintiffs re-state and re-allege the preceding allegations of the Complaint as though fully rewritten herein.

126. Plaintiff LeeCee Johnson claims damages on behalf of her minor son, Jayden Crawford, born on March 14, 2014 for the permanent loss of the love and affection and support of his father, John H. Crawford, III, who died as a direct and proximate cause of the wrongful acts of Defendants, as set forth herein.

WHEREFORE, as to the Beaver creek Defendants, Plaintiffs pray for judgment against defendants, jointly and severally, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) for compensatory damages and for an award of punitive damages to be determined by the jury against all Beaver creek defendants except the City of Beaver creek, together with all costs incurred herein, reasonable attorney fees, pre-judgment and post-judgment interest, and any other relief the court deems appropriate.

WHEREFORE, as to the Wal-Mart Defendants, Plaintiffs pray for judgment against defendants, jointly and severally, in an amount in excess of **Seventy-Five Thousand Dollars (\$75,000.00)** for compensatory damages and for an award of punitive damages to be determined by the jury together with all costs incurred herein, reasonable attorney fees, pre-judgment and post-judgment interest, and any other relief the court deems appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues herein.

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