UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THE ESTATE OF TAYLOR LOWERY BY AND THROUGH SPECIAL ADMINISTRATOR DA'MABRIUS DUNCAN AND L.L. THROUGH NEXT OF FRIEND DA'MABRIUS DUNCAN,

Plaintiffs,

v.

CITY OF TOPEKA, KANSAS,
Serve at: City Clerk, Brenda Younger
215 SE 7th St. Rm. 166
Topeka, KS 66603

OFFICER MALCOLM GILLUM,
Serve at: 215 Kansas Avenue
Alma, KS 66401

OFFICER JUSTIN GOOD,
Serve at: 320 S. Kansas Avenue
Suite 100, Topeka, KS 66603

OFFICER BRADLEY NETHERTON,
Serve at: 320 S. Kansas Avenue
Suite 100, Topeka, KS 66603

SERGEANT SCOTT MCENTIRE,
Serve at: 320 S. Kansas Avenue
Suite 100 Topeka, KS 66603

DETECTIVE ALEX WALL
Serve at: 320 S. Kansas Avenue
Suite 100 Topeka, KS 66603

SERGEANT SHAWN P. DOIRON
Serve at: 320 S. Kansas Avenue
Suite 100 Topeka, KS 66603

Defendants.

Case No. 2:25-CV-02700-DDC-ADM

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

COMES NOW, Plaintiffs Da'Mabrius Duncan, as the Special Administrator of the ESTATE OF TAYLOR LOWERY, and L.L., a minor, by and through her next friend Da'Mabrius Duncan, and for their causes of action against Defendants Justin Good, Bradley Netherton, Malcolm Gillum, Sergeant Scott McEntire, Detective Alex Wall, Sergeant Shawn Doiron and the City of Topeka and state and allege as follows:

INTRODUCTION

1. This civil rights action seeks compensatory and punitive/exemplary damages from Defendants for violating various rights under the United States Constitution and the laws of the State of Kansas in connection with the fatal police shooting of Taylor Lowery ("Lowery"), who was unreasonably shot over 34 times during an arrest on October 13, 2022.

PROCEDURAL HISTORY

2. This is a successor case to 24-CV-2336, filed in this Court by attorney William Denning of DENNING LAW LLC. The initial filing was dismissed without penalty or prejudice by agreement of the Parties. Prior counsel on both sides have withdrawn. Substitute counsel on both sides have only recently entered appearances.

PARTIES

3. At all relevant times, Taylor Lowery ("Lowery") was an individual residing in Topeka, Shawnee County, Kansas.

4. Plaintiff Da'Mabrius Duncan has been appointed as the Special Administrator of the ESTATE OF TAYLOR LOWERY in Case No. SN-2023-PR-000481, District Court of Shawnee County, Kansas and at all relevant times, Da'Mabrius Duncan is an individual over the age of 18

and is a resident of Shawnee County, Kansas. Da'Mabrius Duncan sues in a representative capacity for the ESTATE OF TAYLOR LOWERY for Economic and Noneconomic damages, punitive/exemplary damages, and attorneys' fees and costs under federal and state law.

5. Plaintiff L.L. is the surviving minor daughter of Taylor Lowery and is an heir at law to Taylor Lowery, entitled to bring an action on behalf of Taylor Lowery's heirs pursuant to K.S.A. §60-1902 and K.S.A. §59-506. L.L. is a resident of the State of Kansas. Da'Mabrius Duncan is the mother of L.L. and has been appointed as the next friend of L.L. for purposes of prosecuting this action. Plaintiff L.L. sues in her individual capacity as the daughter of Lowery and in a representative capacity as a successor-in interest to Lowery. L.L. seeks both survival and wrongful death damages under federal and state law.

6. Plaintiffs Da'Mabrius Duncan and L.L. are collectively referred to as "Plaintiffs".

7. At all relevant times, Defendant City of Topeka (herein after the "City" or "City Defendants") is and was a duly organized public entity existing under the laws of the State of Kansas. At all relevant times, the City is and was the employer of and provided supervision to and oversight of the Topeka Police Department, the City Manager, the Chief of Police, the Assistant Chief of Police, the Assistant Chief of Police Support Bureau and the Topeka Police Academy, all elected and non-elected officials, and all persons who serve in the Topeka Police Department including but not limited to City of Topeka Police Officers Justin Good, Bradley Netherton, Malcolm Gillum, Sergeant Scott McEntire, Sergeant Shawn Doiron, and Detective Alex Wall (collectively the "Officer Defendants").

8. At all relevant times each and every Defendant was the agent of each and every other Defendant, who had the legal duty to train, oversee and supervise the hiring, firing, conduct

and employment of each and every elected and non-elected official and employee. The City's elected and non-elected officials and supervisory employees had the full responsibility and oversight of managing the Topeka Police Department and more specifically, the hiring, promoting, training, supervising, disciplining, and firing of employees of the Topeka Police Department including the City Manager, the Chief of Police, the Assistant Chiefs of Police, all employees of the Topeka Police Department and the Officer Defendants, in their actions and failure to act as hereinafter described.

9. At all relevant times, Defendant Topeka Police Officer Justin Good (hereinafter "Officer Good") is and was an individual over the age of 18 and a resident of Shawnee County Kansas, a duly appointed/hired officer and/or employee and agent of the City acting under the color of law within the course and scope of his duties as a City of Topeka police officer, and acting with the complete authority and ratification of their principal, Defendant City. At all relevant times, Officer Good directly and personally participated in the acts or inactions upon which the complaint is based .

10. At all relevant times, Defendant Topeka Police Officer Bradley Netherton (hereinafter "Officer Netherton") is and was an individual over the age of 18 and a resident of Shawnee County Kansas, a duly appointed/hired officer and/or employee and agent of the City acting under the color of law within the course and scope of his duties as a City of Topeka police officer, and acting with the complete authority and ratification of his principal, Defendant City. At all relevant times, Officer Netherton directly and personally participated in the acts or inactions upon which the complaint is based.

11. At all relevant times, Defendant Topeka Police Officer Malcum Gillum (hereinafter

"Officer Gillum") is and was an individual over the age of 18 and a resident of Shawnee County Kansas, a duly appointed/hired officer and/or employee and agent of the City acting under the color of law within the course and scope of his duties as a City of Topeka police officer, and acting with the complete authority and ratification of their principal, Defendant City. At all relevant times, Officer Netherton directly and personally participated in the acts or inactions upon which the complaint is based.

12. At all relevant times, Defendant Topeka Police Sergeant Scott McEntire (hereinafter "Sergeant McEntire") is and was an individual over the age of 18 and a resident of Shawnee County Kansas, a duly appointed/hired officer and/or employee and agent of the City acting under the color of law within the course and scope of his duties as a City of Topeka police officer, and acting with the complete authority and ratification of their principal, Defendant City. At all relevant times Sergeant McEntire acted in his individual capacity and in his supervisory capacity as the senior officer on the scene before, during and shortly after the First Volley Shootings and the Second Volley Shootings. At all relevant times, Sergeant McEntire directly and personally participated in the acts or inactions upon which the complaint is based.

13. At all relevant times, Defendant Topeka Detective Alexander Wall (hereinafter "Detective Wall") is and was an individual over the age of 18 and a resident of Shawnee County Kansas, a duly appointed/hired officer and/or employee and agent of the City acting under the color of law within the course and scope of his duties as a City of Topeka Detective, and acting with the complete authority and ratification of their principal, Defendant City. At all relevant times, Sergeant McEntire directly and personally participated in the acts or inactions upon which the complaint is based.

14. At all relevant times, Defendant Topeka Police Sergeant Shawn P. Doiron (hereinafter "Sergeant Doiron") is and was an individual over the age of 18 and a resident of Shawnee County Kansas, a duly appointed/hired officer and/or employee and agent of the City acting under the color of law within the course and scope of his duties as a City of Topeka police officer, and acting with the complete authority and ratification of their principal, Defendant City. At all relevant times Sergeant Doiron acted in his individual capacity and in his supervisory capacity as the senior officer on the scene shortly after the First Volley Shootings and the Second Volley Shootings. At all relevant times, Sergeant Doiron directly and personally participated in the acts or inactions upon which the complaint is based.

15. In doing the acts, in failing to act, and in omitting to act as hereinafter described, the Officer Defendants were acting on the implied and actual permission and consent of the City and conforming with the policies and customs established by the City.

JURSIDICTION AND VENUE

16. This civil action is brought for the redress of alleged deprivations of constitutional rights as protected under 42 U.S.C. §§ 1983, 1985, 1986 and 1988, the Amendments to the United States Constitution as well as similar provisions of the State of Kansas Constitution and state law.

17. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 and 1367, which provide original jurisdiction of this Court for any civil action to redress the deprivation under color of state law, statute or ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens and to recover damages under any Act of Congress providing for protection of civil rights. Plaintiffs' actions for damages are authorized by 42 U.S.C. §§ 1983, the Fourth Amendment and

the Fourteenth Amendment to the United States Constitution.

18. Plaintiffs hereby request supplemental jurisdiction of their state law claims pursuant to 28 U.S.C. §1367 as Plaintiffs' state law claims are so related to the claims giving rise to original jurisdiction in this Court that they form part of the same case or controversy under Article III of the United States Constitution.

19. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because all Defendants reside in, and all incidents, events, actions, failures to act, omissions and occurrences giving rise to this action occurred in Shawnee County, Kansas.

20. In compliance with the Kansas Tort Claims Act, (K.S.A § 75-6101 and K.S.A § 12-105b(d)) Plaintiffs provided notice to the City of Topeka about their claims and received no response from the City. The City confirmed receipt of Plaintiffs' claim on November 20, 2023. Plaintiffs' 120-day period set forth by the statue expired on March 15, 2024.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

21. On or about 12:30 a.m. on October 13, 2022, Topeka police officers were dispatched to a residence located at 4842 S. Topeka Blvd. #6, Topeka, Kansas following a 911 call reporting a domestic disturbance at the residence. The caller was Lowery's sister ("Sister") who indicated that her brother (Lowery) may have "been on a bad drug" and was acting strangely, adding that she wanted her brother out of her house. When dispatch asked the Caller what Lowery was doing, the Caller replied that Lowery was "out there by [her] door" and that he was trying to get into the room by opening the door. (Audio of 911 call, Bates # TPD 2561 2022 10 13)

22. Upon information and belief, the Sister did not mention any threats or violence

towards herself or those at the house, and she did not mention any damage to property. The Sister only stated that she wanted Lowrey out of her house because she believed that he was under the influence of a "bad drug." During the phone conversation with the 911 dispatcher, the dispatcher asked questions about weapons on the premises. The Sister initially responded, "I wouldn't want to tell you all that he has a weapon because you all will come in and try and kill him," to which the dispatcher replied, "we wouldn't do that." (Audio of 911 call, Bates # TPD 2561 2022 10 13)

23. Upon information and belief, reluctantly, the Sister divulged that her brother (Lowery) was using a knife to try to pick a lock to her room in the residence . At no time did the Sister report that Lowery was being violent towards or threatening anyone with the knife. (Audio of 911 call, Bates # TPD 2561 2022 10 13)

24. Upon information and belief, this call was designated on or about 12:30 a.m. as a "Domestic Disturbance" in progress, high priority, involving brother and sister.

25. Upon information and belief, at all relevant times the Topeka Police Department promulgated a publicly available TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL did not have an adequate policy in place regarding interactions with individuals in a "Domestic Disturbance".

26. Upon information and belief, at all relevant times the Topeka Police Department promulgated a publicly available TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL did not have an adequate policy in place regarding interaction with individuals under the influence.

27. Upon information and belief, at all relevant times the Topeka Police Department promulgated a publicly available TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

which included a policy for its officers to use de-escalation techniques and tactics, specifically mandating that "officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to: 1. Medical conditions; 2. Mental impairment; 3. Physical Limitation… 6. Drug interaction; and/or 7. Behavioral crisis." See TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL 4.2 Use of Force 4.2.5 D 1-7. (Bates #COT00250-251)

28. Upon information and belief, at all relevant times the Topeka Police Department promulgated a publicly available TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL which included a policy for its officers to use de-escalation techniques and tactics (Section 4.2.5), specifically mandating that "officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to . . . .Drug Interaction…." (Bates # COT 00250-00251) Section H of 4.2.5 further states that "[t]he number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used." (Bates # COT 00250-00251)

29. Upon information and belief, at all relevant times the Topeka Police Department promulgated a publicly available TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL which controls the use of force section 4.2, generally. The specific sections in 4.2 includes but is not limited to:

> Section 4.2.2 "Policy": "It is the policy of the Topeka Police Department that officers use only the amount of force reasonably necessary to accomplish lawful objectives. This authorization to use physical force ends when the resistance encountered from the subject ceases and/or the officer has accomplished the purpose necessitating the use of force….
> [and]
> All members of the Department shall abide by the following general requirements:

a. Officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to physical force;

b. Physical force shall be de-escalated as resistance from the subject decreases;

Officer shall allow subjects time to submit to arrest or comply with orders before physical force is used wherever possible.
(Bates # TPD 0629 – TPD 0630)

Section 4.2.6 "Use of Force" provides in part:

A. General considerations

1. When and to the extent reasonably possible, officers shall attempt to use communication skills in a genuine attempt at verbal persuasion before resorting to physical control methods.
2. Officers shall not carry Department authorized weapons unless they have received Department training in the use of such weapons and demonstrated required levels of proficiency with them.
3. Only Department authorized weapons and tactical equipment may be carried and used in exercising police powers. See policy on authorized Weapons

B. Officers may use reasonable force to:

4. Protect themselves from injury;
5. Protect others from injury;
6. Effect a lawful detention or arrest; or
7. Conduct a lawful search.

B. Additional factors to be considered in determining the objective reasonableness of force include, but are not limited to:

1. Immediacy and severity of the threat to officers or others;
2. The conduct of the individual being confronted, as reasonably perceived by the officer at the time;
3. Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects);
4. The effects of drugs or alcohol;
5. Individual's mental state or capacity;
6. Proximity of weapons or dangerous improvised devices;
7. The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained;

8. The availability of other options and their possible effectiveness;
9. Seriousness of the suspected offense or reason for contact with the individual;
10. Training and experience of the officer;
11. Potential for injury to officers, suspects and others;
12. Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the officer;
13. The risk and reasonably foreseeable consequences of escape;
14. The apparent need for immediate control of the individual or a prompt resolution of the situation;
15. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others;
16. Prior contacts with the individual or awareness of any propensity for violence; and
17. Any other exigent circumstances.

(Bates # TPD 0633)

30. Upon information and belief, at all relevant times the Topeka Police Department promulgated a publicly available TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL which controls the use of firearms, Section 4.2,.9 and Medical Assistance under 4.2.10. The specific sections in 4.2.9 and 4.2.10 includes but is not limited to:

> 4.2.9 F. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create an objectively reasonable belief that a situation may escalate to the point at which deadly force would be authorized. Once an officer determines that the potential for deadly force has passed, the officer shall re-holster the weapon. (Bates # COT00254)
>
> 4.2.10 MEDICAL ASSISTANCE
>
> B. Emergency medical services shall be contacted if a subject is reasonably perceived to:
> 1. Exhibit signs of medical distress;
> 2. Lose consciousness or become unresponsive;
> 3. Suffer an obvious injury;
> 4. Complain of pain;
> 5. Not appear to recover properly and promptly after force-involved incident; or
> 6. Exhibit signs of extreme uncontrolled agitation or hyperactivity prior

> to the use of force.
> *****
>
> D. After contacting medical aid, officers will take appropriate measures as they are trained, equipped, and certified to take. These actions may include:
> 1. Increased observation of the subject for obvious changes in condition.
> 2. Apply first aid as they are trained, equipped, and certified to apply; and
> 3. Secure the scene to reasonably protect the subject from further injury.
> (Bates # TPD 0629-683)

31. Upon information and belief, at all relevant times the Topeka Police Department promulgated a publicly available TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL which controls the duty to intervene, Section 4.2,.13. which includes but is not limited to:

> A. Officers are expected to use independent articulable objectively reasonable force when making decisions regarding the need and appropriateness of the force to be used.
> B. Any officer present and observing another officer using force that is illegal or clearly beyond that which is objectively reasonable under the circumstances shall safely intercede to prevent the use of such force.
> (Bates # TPD 0629-683)

32. Upon information and belief, at all relevant times the City of Topeka through the Topeka Police Department had a Training Program utilizing some portions of the Kansas Law Enforcement Training Center (University of Kansas) materials, including Topeka Police Department generated manuals that did involve tactical considerations for encounters with suspects under the influence of alcohol or substances, including de-escalation techniques and Intervention Policies to minimize harm in an emergency situation.

33. Upon information and belief, at all relevant times the City of Topeka through the Topeka Police Department had a Training Program utilizing select portions the Kansas Law Enforcement Training Center (University of Kansas) materials, including Topeka Police Department generated manuals that did involve training for request for medical assistance.

34. Upon information and belief, Topeka Police Department Officers Good and Chiles were dispatched for a "domestic disturbance." Upon arrival at the residence, Lowery was inside. Before entering in the house, Officer Good called in a "Signal 13", significantly escalating the situation. This is an elevated signal meaning that an officer is in danger and needs emergency assistance. Such call is given the highest priority. Officer Good later testified that he was not sure why he called in that code, he could have used a different one. He stated that neither officer was in trouble or threatened; however, he thought perhaps Lowery may become a danger to himself or law enforcement. (Deposition of Justin Good p. 72)

35. Upon information and belief, upon sighting Taylor at the residence, both officers pulled out their firearms and took aim at Lowery, despite being equipped with Tasers and batons. Both Officers Good and Chiles observed that Lowery was holding a knife, later described as a "kitchen knife". (Deposition of Justin Good page 181) Both Officers Good and Chiles knew or should have known from their observations that Lowery was in a disoriented and incoherent state, which is consistent with the probable intoxication and/or consumption of controlled substances as described in the 911 call.

36. Upon information and belief, Lowery then escaped out the back door, with Officers Chiles and Good chasing him via different routes.

37. Upon sighting Taylor at the residence, both officers pulled out their firearms and took aim it at Lowery, despite being equipped with Tasers and batons. Both Officers Good and Chiles observed that Lowery was holding a knife, later described as a "kitchen knife". (Bates # TPD 0159 and Deposition of George Chiles p. 94) Both Officers Good and Chiles knew or should have known from their observations that Lowery was in a disoriented and incoherent state, which

is consistent with the probable intoxication and/or consumption of controlled substances as described in the 911 call and his observable demeanor shown on the body camera footage.

38. Upon information and belief, when Lowery was outside of the home standing he was carrying a kitchen knife and walking around slowly, appearing disoriented. At this point, the Officers were at least 15 feet away from Lowery and there were no other individuals in the immediate vicinity. Upon information and belief, Officers Chiles and Good only used their firearms, pointing the lethal weapons at Lowery with instructions to "drop the knife".

39. Upon information and belief, upon hearing the Signal 13 call indicating officer distress, Sergeant McEntire and Detective Wall (collectively "First Volley Shooters") drove to the residential area. They subsequently observed the vehicle leaving the neighborhood and followed Lowery in an unmarked vehicle from the entrance of the residential area to a Kwik Shop located at 4500 SW Topeka Blvd, Topeka, Kansas (the "Kwik Shop").

40. Upon information and belief, Lowery drove to the Kwik Shop and got out of the car. Upon his exit of the vehicle, Lowery moved in the direction of the occupied Kwik Shop convenience store. Instead of going into the Kwik Shop, Lowery opened the car door of a parked and occupied blue vehicle and allegedly unsuccessfully attempted to remove the driver from the driver seat. Detective Wall radioed that he believed Lowery was committing a carjacking and Sergeant McEntire pulled in behind the vehicle to block Lowery in between the two parked vehicles and the occupied Kwik Shop.

41. Upon information and belief, the First Volley Shooters blocked in the blue occupied driver's car to intercede in an in-progress "carjacking" and jumped out with their firearms drawn. Upon information and belief, Lowery, who was bent over the driver, returned to an upright

position. Upon information and belief, Lowery had two options—he could either turn towards the occupied building, a dead end, or he could escape by going towards the back of the car.

42. Upon information and belief, Lowery appeared to be under the influence of drugs as indicated by his red eyes and a wild look. (Deposition of Brenda Crocker page 18)

43. Upon information and belief, as Lowery turned to escape towards the back of the car, the First Volley Shooters saw the knife in Lowery's hands and saw that Lowery's chosen escape route was towards First Volley Shooter Sergeant McEntire.

44. Upon information and belief, Sergeant McEntire blocked Lowery's path to freedom. Both officers simultaneously shot Lowery: Sergent McEntire shot Lowery three (3) times "center mass", and upon information an belief, Detective Wall estimated that he shot somewhere between five (5) to eight (8) shots, although not all at that time. (Deposition of Sergeant McEntire, p. 86)

45. Upon information and belief, neither of the First Volley Shooters had a body camara. Upon information and belief, the First Volley Shooters shot Lowery from the front (Sergeant McEntire) and from the side (Detective Wall) at 12:44.16 a.m. and approximately seven (7) shots were fired at this time. The picture below shows Lowery's chosen escape route between the two cars.



46. Upon information and belief, the First Volley Shooters shot Lowery at least 5 times, who fell to the ground, dropping the knife as well as a silver-colored wrench. Upon information and belief, First Volley Shooter Sergeant McEntire approached Lowery, who was prone on the ground, and physically bumped Lowery, kicking the knife away from Lowery, who was in the process of getting up after being grievously injured. During the physical bump made by Sergeant McEntire, Lowery picked up a silver-colored wrench, visually dissimilar to the knife kicked to the side.

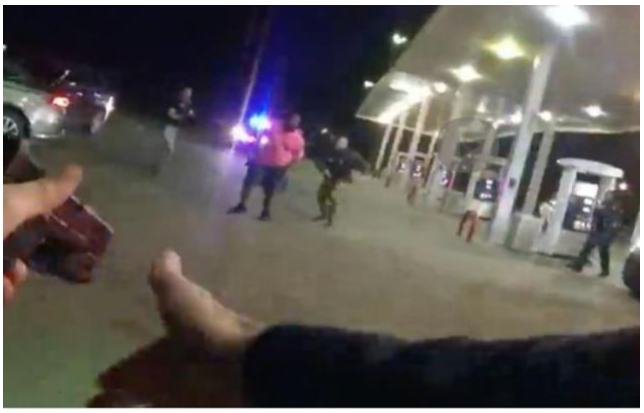
47. Upon information and belief, as Lowery rose partially from the first volley of shots, he was unsteady on his feet and had a confused look on his face. He was moving backwards from the First Volley Shooters, ultimately ending up in front of the glass doors to the occupied Kwik Shop, surrounded by a semi-circle host of armed law enforcement pointing their guns at him.

48. Upon information and belief, Lowery was visibly hemorrhaging from 2 or more bullet wounds inflicted by the First Volley Shooters, shown via the body camera of Second Volley Shooter Officer Netherland. Lowery had a wrench in his hand, but no knife.

49. Upon information and belief, the knife is visible on the ground at the feet of Officers Gillum and Netherton. According to statements released or provided by the Topeka Police Department and/or District Attorney Michael Kagay to news outlets after this incident, the Officer

Defendants successfully disarmed Lowery of the knife in the Kwik Shop parking lot prior to the Second Volley Shooting.

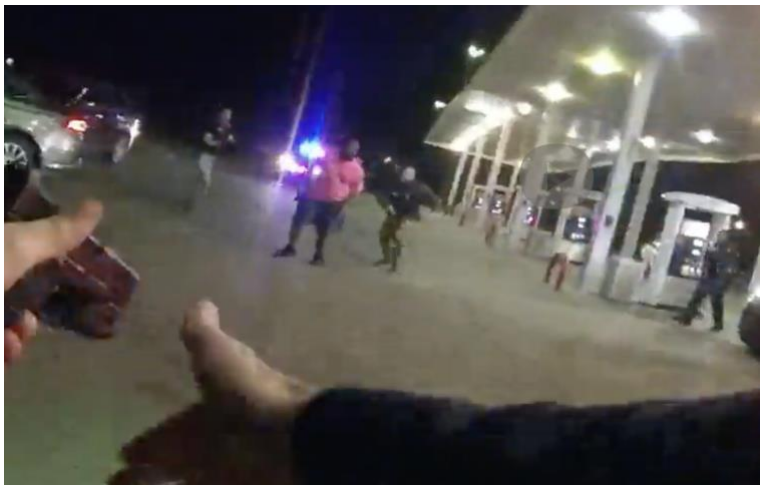
50. Upon information and belief, the First Volley Shooters may have contacted dispatch at 12:44:24 a.m. to report shots fired and suspect down. (Call Log Bates # TPD 0260) Topeka Police Officer Netherton's body camara places his arrival at the scene at 12:44:15 a.m., at which time the body cam audio records the sounds of seven shots from the First Volley Shooters beginning at 12:44:16 a.m.



51. Upon information and belief, there was no call for medical services at this time for Lowery despite the First Volley Shooters shooting him, him falling to the ground, and visible blood seeping from the bullet holes in his body after he rose.

52. Officer Netherton arrives at the Kwik Shop at 12:44:15 a.m. (Netherton Body Cam, Bates # TPD 0100) and immediately opens his patrol vehicle door armed and is primed with his lethal weapon pointed at Lowery, who is visibly bleeding from the First Volley Shooting at 12:44:16 a.m. Officer Netherton is seen approaching the area between the pumps and the First Shooter's vehicle, where he can see Sergeant McEntire "body checking" Lowery. Lowery gets upright and turns away (12:44:23 a.m.) from the officers immediately surrounding him with a

socket wrench in his hands. The picture below, taken from Officer Netherton's camera shows Lowery walking away from the immediately surrounding officers. Two seconds later, Lowery is mercilessly mowed down with a Second Volley of shots.



(Netherton Body Cam, Bates # TPD 0100)

53. As Lowery is facing away from the officers, as pictured above, officers are heard shouting at Lowery to "drop the weapon" (a socket wrench) at 12:44:25 a.m.. Officer Netherton joins in verbally instructing Lowery to "get on the ground right now". As shown by the picture above, at that time Lowery was surrounded by Officers on the scene. It is now 9 seconds after the First Volley Shooters struck. (Netherton Body Cam, Bates # TPD 0100)

54. At 12:44:27 a.m., two (2) seconds after Officer Netherton's instructions for Lowery to "get on the ground", Detective Wall along with Officers Netherton, Gillum and Good shoot Lowery again with a Second Volley of shots (collectively, the "Second Volley Shooters"). (Netherton Body Cam, Bates # TPD 0100)

55. Upon information and belief, all but one the Officer Defendants used their

department issued firearms during the First Volley Shooting and during the Second Volley Shooting. Upon further information and belief, Officer Netherton was using a modified personal weapon similar to the department-issued firearm (Glock Streamlight) upon which was engraved an emblem of a skull. This firearm was not authorized by the Topeka Police Department due to modifications. Upon information and belief, all Defendant Officers were carrying less than lethal weapons, including but not limited to Taser electronic control devices, knives and batons.

56. Upon information and belief, as Lowery is falling to the ground and even after his full body is on the ground, Officer Netherton's body camera shows that the Second Volley Shooters continue to shoot Lowery. (Netherton Body Cam, Bates # TPD 0100) Upon information and belief, Lowery was shot 34 times, although many other shots missed him as evidenced by the dozens of shell casings and spent rounds recovered from the scene, all of which were discharged from the same five (5) guns used by the First Volley Shooters and the Second Volley Shooters.

57. Lowery, now riddled with bullets and holding a socket wrench, was lying face down on the pavement in a pool of his own blood, obviously in clear medical distress and logically unable to raise his arms due to the cumulative effects of being shot 34 times.

58. Tragically, there was no call for medical help after the First Volley Shooters shoot a trapped and cornered Lowery at or near 12:44:15-16 a.m. (Netherton Body Cam, Bates # TPD 0100)

59. Tragically, there was no call for medical help after the Second Volley Shooters at 12:44:23 a.m. (Netherton Body Cam, Bates # TPD 0100)

60. Upon information and belief, the dispatch records show an entry of "shots fired"

and "suspect down" at 12:44:38 a.m. Upon information and belief, as indicated by the call logs, this narrative was added into the log well after the fact, around 2:30 a.m. on October 13, 2022. (Bates TPD 0260 and TPD 0270) Upon information and belief, the same person made an entry regarding a call for AMS at 12:45:00 a.m. but then recorded that call as **cancelled** at 12:45:07 a.m. (Bates # TPD 0260 and TPD 0270)

61. The seconds roll by and more officers arrive on the scene. Upon information and belief, the next significant Dispatch call is at time stamp 12:45:58 a.m. showing a call for "Bean bag and K9". There was no request for medical help and no attempt to administer emergency medical assistance.

62. Yet Defendant Officers continue to point their lethal weapons at them. Upon information and belief, at 12:45:45 a.m., one of the officers on the scene yells out "we got the numbers, he's got a wrench". (Netherton Body Cam, time stamp 12:45:45, Bates # 0100)

63. Upon information and belief, More time goes by as Lowery struggles to breathe.

64. Upon information and belief, dispatch records show that the media called into dispatch at time stamp 12:47:11 a.m. Yet there was no call for medical assistance and no attempt to administer emergency aid for Lowery at this time. (Call Log, Bates # TPD 0259 to 0260)

65. Upon information and belief, the First Volley Shooters and the Second Volley Shooters, along with the surrounding officers, simply watched Lowery struggling to breathe and bleeding profusely for the next 3 to 4 minutes, yet there was no call for medical help and no attempt to administer emergency aid for Lowery.

66. As seen on the body camera footage of Officer Netherton, after Taylor's last breath,

City of Topeka Police Department Officers, led by Sergeant Doiron, approach Lowery and immediately handcuff him with his arms behind his lifeless body at approximately 12:48:20 a.m. Detective Wall testified that by the time the officers went to "arrest" Lowery, Lowery had visibly stopped breathing. (Netherton Body Cam, Bates # 0100) It was not until this time, after handcuffing Lowery post-death, that shouts go out for "AMR" and the Officers offer emergency medical aid. (Netherton Body Cam, Time Stamp 12:48:20 (Bates # 0100) Upon information and belief, this was the first call for medical assistance and the first offer of emergency medical aid.

67. It was not until around the "arrest" (12:48:20 a.m.) that Dispatch contacted AMS. An ambulance was dispatched and arrived at 12:54:36 a.m., approximately 10 minutes and 20 seconds after the First Volley Shooters shoot Lowery down the first time. (Dispatch and Unit Logs, Bates # TPD 0258)

68. Upon information and belief, Topeka Police Department Officers on the scene simply waited for Lowery to die, watching him suffer and struggle for almost 4 minutes before calling for medical help.

69. Upon information and belief, the first officer on the scene has command of the scene. Upon further information and belief, Sergeant McEntire, a First Volley Shooter, was the first officer on the scene from when he arrived until after the Second Volley of Shots. (TPD Training, Bates # 5846) The second supervisor on the scene, Sergeant Doiron, did not arrive until after the Second Volley of shots at 12:45:43. (Dispatch and Unit Logs, Bates # 260 and 266) Upon information and belief, Sergeant McEntire had the duty to assess the scene, convey that information to dispatch and was responsible for other officers coming into the area. (TPD Training, Bates # 5846)

70. Upon information and belief, the combined First Volley Shooters and the Second Volley Shooters had the responsibility to relay observations and intelligence information to other officers and the dispatcher, and to watch for crossfire. (TPD Training, Bates # 584) Upon information and belief, the combined First Volley Shooters and the Second Volley Shooters had the responsibility to relay their observations and intelligence information to other officers and the dispatcher, and to watch for crossfire. (TPD Training, Bates # 584)

The City of Topeka's Police Department's Policy, Custom and Practice of Using Excessive Force on Individuals in Crisis and Railing to Provide Emergency Medical Aid

71. Upon information and belief, the City of Topeka developed a custom, policy and practice of using excessive forces on individuals in crisis, in failing to adequately train or supervise in failing to provide emergency medical aid and/or by ratification of the same by their actions or inactions

72. Upon information and belief, 2022 was a tragic year for at least three City of Topeka families whose son or father died as a direct result of officer-involved shootings with the Topeka Police Department. In 2022, the City of Topeka's Police Department had a run of three (3) officer-involved shootings resulting in the death of a civilian over the short span of six months. Each of these three separate tragic interactions with the Topeka Police Department ended in the violent death of the men under horrifying circumstances. The City of Topeka did little in response, other than refuse to allow family members access to the body cameras of the officers involved, and exonerate them.

73. Upon information and belief, the first victim was Christopher Kelley, a former

Marine. Kelley suffered from mental health issues and had been turned away from the Veterans Hospital. He was acting erratically, and a citizen called 911 to report a "colored person" acting strangely in the area. The Topeka Police responded to the scene, being aware that Kelley was suffering from a mental health crisis. The Topeka Police did call for specially trained assistance in this matter but were turned down as the two individuals who handled such cases were not available. The Topeka Police department then called in a multi-disciplinary team, including a SWAT team. Officers from several jurisdictions now surrounded Kelley, a former Marine suffering from a mental health crisis. Their solution was to pelt Kelley with beanbags. Kelley was a veteran with mental health issues and was mercilessly pelted with bean bags for hours. This Marine, Kelley, in the throes of a mental health crisis finally saw a narrow break between the wall of officers. He took his chance, and as a result is he was shot multiple times from a distance of at least 15 feet by the surrounding officers. At least one officer continued to shoot Kelley after he fell to the ground. The ensuing investigation exonerated all the shooters without revealing their names. The manner of death was listed as homicide.

74. Upon information and belief, the second victim was a young man named Dylan Walstrom. Walstrom was asleep in a car in December of 2022. That car was reported to be stolen. A single officer approached the car and tried to awaken Walstrom, finding him difficult to wake up. This Topeka Police Department Officer then went around to the driver's side and opened the door with Walstrom in the front driver's seat. Walstrom appeared to be disoriented, having just awakened. Walstrom grabbed his gun which his grandfather rigorously trained him to use and care for. Walstrom was holding the gun down, with his hand off the trigger as he was trained to do, and the officer simply shot him in the head twice, after which the officer shot him many more times for no apparent reason. This unidentified officer was also exonerated by the City of Topeka.

The manner of death was listed as homicide.

75. Upon information and belief, the third victim of a tragic Topeka Police Department officer-involved shooting in 2022 was Taylor Lowery, the decedent in the instant civil action.

COUNT 1

42 U.S.C § 1983—Excessive Force
In Violation of the Fourth and Fourteenth Amendments of the US Constitution
Against the "First Volley Shooters"
(Sergeant McEntire, Detective Wall)

76. Plaintiffs hereby incorporate by reference all prior allegations in the preceding paragraphs as if fully as if fully restated.

77. At all times described herein, the "First Volley Shooters" (as defined at ¶ 35) bore the badge and/or uniform of the Topeka Police Department and were acting under color of state law within the course and scope of duties as a law enforcement officer for said agency.

78. Lowery did not pose significant threat of death or serious personal injury to the "First Volley Shooters", other officers, or the public.

79. Instead of taking appropriate measures to assess the situation, the "First Volley Shooters" shot Lowery multiple times without just cause or provocation and with the intent to cause serious bodily harm or death.

80. Such conduct resulted in the assault, battery and death of Lowery.

81. The conduct of the "First Volley Shooters" as described above constitutes actions that shock the conscious under the Fourth and Fourteenth Amendments of the US Constitution and

violated clearly established constitutional and statutory rights.

82. Every reasonable officer would have known that using deadly force on Lowery constitutes excessive use of force in violation of the US Constitution

83. Further, every reasonable officer would have known that failure to render emergency aid to someone who poses no threat of harm and upon whom the officer used lethal force violates the US Constitution.

84. Such conduct was objectively unreasonable, reckless and callous

85. As a direct and proximate result of the First Volley Shooters' excessive and unjustified use of force, Lowery experienced severe pre-mortem pain and suffering and emotional distress. Lowery's unnecessary death was the result.

86. As a direct and proximate result of these wrongful acts and omissions, Lowery's next of kin have suffered pecuniary loss, including medical and funeral expenses, loss of kinship, aid counsel, guidance, advice, assistance, and protection and support.

87. The acts and omissions of the "First Volley Shooters" were intentional, wanton, malicious, reckless, oppressive, and/or showed callous indifference to the federally protected rights of Lowery and an award of punitive/exemplary damages is necessary to punish the Officer Defendants and to deter others from the same or similar transgressions in the future.

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the ESTATE OF TAYLOR LOWERY, deceased, demands judgment against the "First Volley Shooters" for compensatory and punitive/exemplary damages, costs, disbursements, attorney's

fees, interest and for any other relief that the Court deems fair and just.

COUNT 2

42 U.S.C § 1983—Excessive Force
In Violation of the Fourth and Fourteenth Amendments of the US Constitution
Against the "Second Volley Shooters"
(Sergeant McEntire, Detective Wall, Officer Netherton, Officer Gillum, Officer Good)

88. Plaintiffs hereby incorporate by reference all prior allegations in the preceding paragraphs as if fully restated.

89. At all times described herein, the "Second Volley Shooters" (as defined at ¶ 53) bore the badge and/or uniform of the Topeka Police Department and were acting under color of state law within the course and scope of duties as a law enforcement officer for said agency.

90. Lowery did not pose significant threat of death or serious personal injury to the "Second Volley Shooters", other officers, or the public.

91. Instead of taking appropriate measures to assess and deescalate the situation, the "Second Volley Shooters" again re-fired and shot Lowery multiple times as he fell to the pavement, without just cause or provocation and with the intent to cause serious bodily harm or death.

92. Such conduct resulted in the assault, battery and death of Lowery.

93. The conduct of the "Second Volley Shooters" as described above constitutes actions that shock the conscious under the Fourth and Fourteenth Amendments of the US Constitution and violated clearly established constitutional and statutory rights.

94. Every reasonable officer would have known that using deadly force on Lowery

constitutes excessive use of force in violation of the US Constitution

95. Further, every reasonable officer would have known that failure to render emergency aid to someone who poses no threat of harm and upon whom the officer used lethal force violates the US Constitution.

96. Such conduct was objectively unreasonable, reckless and callous

97. As a direct and proximate result of Second Volley Shooters' excessive and unjustified use of force, Lowery experienced severe pain and suffering and emotional distress. Lowery's unnecessary death was the result.

98. As a direct and proximate result of these wrongful acts and omissions, Lowery's next of kin have suffered pecuniary loss, including medical and funeral expenses, loss of kinship, aid counsel, guidance, advice, assistance, and protection and support.

99. The acts and omissions of the "Second Volley Shooters" were intentional, wanton, malicious, reckless, oppressive, and/or showed callous indifference to the federally protected rights of Lowery and an award of punitive/exemplary damages is necessary to punish the Officer Defendants and to deter others from the same or similar transgressions in the future.

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the ESTATE OF TAYLOR LOWERY, deceased, demands judgment against the "Second Volley Shooters" for compensatory and punitive/exemplary damages, costs, disbursements, attorney's fees, interest and for any other relief that the Court deems fair and just.

COUNT 3

42 U.S.C § 1983—Failure to Intervene (De-escalate and Medical Assistance)
In Violation of the Fourth and Fourteenth Amendments of the US Constitution
(Against Sergeant Doiron, Sergeant McEntire, Detective Wall, Officer Netherton, Officer Gillum and Officer Good)

100. Plaintiffs hereby incorporate by reference all prior allegations in the preceding paragraphs as if fully restated.

101. At all times described herein, the above-referenced officers bore the badge and/or uniform of the Topeka Police Department and were acting under color of state law within the course and scope of duties as a law enforcement officer for said agency.

102. The conduct of these officers violated the US Constitution. Every reasonable officer would have known that failing to intervene with respect to his fellow officer's use of deadly force violates the US Constitution.

103. The officers recognized that the force threatened and being used by his fellow officers in subduing a suspect under the influence holding a wrench was excessive and unreasonable under the circumstances.

104. These officers observed and were in a position to intervene to stop their fellow officers' use of excessive and unreasonable deadly force against Lowery.

105. From the time Lowery was shot, first by the First Volley Shooters and then by the Second Volley Shooters until after Lowery took his last breath, there was no call for medical assistance.

106. Further, every reasonable officer would have known that failing to intervene to de-

escalate render timely emergency aid to someone who poses no threat of harm and on whom a fellow officer had used lethal force violates the US Constitution.

107. For these reasons, the conduct was objectively unreasonable.

108. As a result, Lowery suffered severe pain and suffering and emotional distress and died.

109. As a direct and proximate result of these wrongful acts and omissions, Lowery's next of kin have suffered pecuniary loss, including medical and funeral expenses, loss of kinship, aid, counsel, guidance, advice, assistance, and protection and support.

110. The acts and omissions of these officers were intentional, wanton, malicious, reckless, oppressive, and/or showed callous indifference to the Plaintiff's federally protected rights.

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the ESTATE OF TAYLOR LOWERY, deceased, demands judgment against these officers for compensatory and punitive damages, costs, disbursements, attorney's fees, interest and for any other relief that the Court deems fair and just.

COUNT 4

42 U.S.C § 1983—Deliberate Indifference Due to Municipal Policy & Custom
In Violation of the Fourth and Fourteenth Amendments of the US Constitution
(Against City of Topeka)(Excessive Force) (Monell)

111. Plaintiffs hereby incorporate by reference all prior allegations as if fully restated.

112. The City of Topeka has a long history of its police officers unreasonably using lethal force, including two officer-involved shootings in the months immediately preceding

Lowery's fatal shooting, which put the City on notice of the need to adequately train and supervise regarding the use of lethal force.

113. The City of Topeka, through the Topeka Police Department, in violation of Lowery's constitutional rights, implemented, enforced, encouraged, and sanctioned policies, practices and/or a custom of excessive and lethal force on Lowery.

114. The City of Topeka acted under the color of state law to deprive Lowery of his rights under the U.S. Constitution as described above. Accordingly, the City of Topeka has violated 42 U.S.C. § 1983. These actions, omissions, policies, practices, procedures, patterns, decisions, orders and customs of the City were the cause of constitutional and other violations described in this Complaint. These interrelated policies, practices, and customs, separately and together, were implemented intentionally to deprive individuals including Lowery of their constitutional rights or, at the very least, were implemented with recklessness or deliberate indifference to the rights of individuals and were a direct and proximate cause of the constitutional violations as set forth in this Complaint.

115. The City ratified and implemented, before and during the relevant period, each of the policies, practices, patterns of conduct and customs described herein. The City's custom/practice was so well settled as to constitute custom or usage with force of law, authorizing the use of deadly force was a moving force of the shooting, injuries, and death of Lowery.

116. At the time of the events described in this Complaint, Lowery had a clearly established constitutional right under the Fourth Amendment to be free from unreasonable search and seizure and his right to be free from excessive force by law enforcement guaranteed to him under the Fourteenth Amendment to the U.S. Constitution.

117. Defendants knew that Lowery had a clearly established right to be secure in his person against unreasonable seizures under the Fourth Amendment of the United State Constitution and his right to not be deprived of life and that by shooting Lowery when he was unarmed they were depriving him of those rights.

118. As a direct result of the Defendants' conduct, Plaintiff is entitled to monetary relief for damages.

119. The City of Topeka's policies, practices, patterns of conduct and customs in these respects constituted a deliberate indifference to the constitutional rights of citizens like Lowery. This is particularly so as a result of the City of Topeka's policies, practices, patterns of conduct and customs, Lowery suffered severe pain and suffering and emotional distress and died.

120. As a direct and proximate result, Lowery's next of kin have suffered pecuniary loss, including medical and funeral expenses, loss of kinship, aid, counsel, guidance, advice, assistance, and protection and support.

121. The City of Topeka acted under the color of state law to deprive Lowery of his rights under the U.S. Constitution. Therefore, it has violated 42 U.S.C § 1983.

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the ESTATE OF TAYLOR LOWERY, deceased, demands judgment against City of Topeka for compensatory and punitive damages, costs, disbursements, attorney's fees, interest and for any other relief that the Court deems fair and just.

COUNT 5

42 U.S.C § 1983
Deliberate Indifference Due to Failure to Train, Supervise, and/or Discipline
In Violation of the Fourth and Fourteenth Amendments
of the US Constitution
(Against City of Topeka)(Excessive Force) (Monell)

122. Plaintiffs hereby incorporate by reference all prior allegations as if fully restated.

123. The City of Topeka inadequately trained, supervised, and/or disciplined its Topeka Police Department employees and agents such that they were utterly incapable of performing their jobs on October 13, 2022, including failure to de-escalate the situation during the original call at the residence and the subsequent scene at Kwik Shop, by failing to address the underlying substance use issues with less than lethal force and, rather than de-escalating, escalated the call creating a false sense of urgency and danger, resulting in the ultimately shooting Lowery over 3 dozen times and watching Lowery take his last breath before seeking medical assistance.

124. The City of Topeka further inadequately trained, supervised, and/or disciplined its employees and agents such that not one of them intervened while Lowery, armed only with a socket wrench, was killed in front of them.

125. The City of Topeka has a policy, pattern, and practice of inadequately preparing its employees to perform the job, including by inadequately training, supervising, and/or disciplining them on proper use of force, de-escalation techniques, and identification and management of suspects under the influence of drugs and in providing medical interventions in a timely manner.

126. The City of Topeka engaged in unlawful and unconstitutional policies, practices, and customs, including but not limited to, the following violations and deprivations of

constitutional rights as set forth in this Complaint:

a. Inadequate training and instruction of employees on the proper use of police power, proper seizure, proper searches, use of deadly force and investigation of alleged crime in the State of Kansas;
b. Failing to supervise and monitor officers in the field;
c. Inadequate supervision of employees as to the proper use of police power, proper seizures, proper searches, use of deadly force and investigation of crime in the State of Kansas;
d. Inadequate discipline of employees as to the proper use of police power, proper seizures, proper searches, use of deadly force and investigation of crime in the State of Kansas;
e. Inadequate supervision, training, and retention with resulting poor personnel decisions as to employees regarding the proper use of police power, proper seizure, proper searches, use of deadly force and investigation of alleged crime in the State of Kansas;
f. Failure to take significant steps to prevent known risk of excessive use of force and improper seizure;
g. Failure to properly train officers to de-escalate instead of escalating situations;
h. Deliberate indifference to and conscious disregard for the high risk that law enforcement officers would improperly use their influence as law enforcement officers and/or fail to protect against such improper influence in violation of Taylor Lowery's rights; and,
i. Failure to take significant steps to prevent a known risk of the wrongful use of deadly force.

127. These actions , omissions, policies, practices, procedures, patterns, decisions, orders and customs of the City were the cause of constitutional and other violations described in this Complaint. These interrelated policies, practices, and customs, separately and together, were implemented intentionally to deprive individuals including Lowery of their constitutional rights or, at the very least, were implemented with recklessness or deliberate indifference to the rights of individuals and were a direct and proximate cause of the constitutional violations as set forth in this Complaint.

128. The City ratified and implemented, before and during the relevant period, each of the policies, practices, patterns of conduct and customs described herein. The City's custom/practice was so well settled as to constitute custom or usage with force of law, authorizing

the use of deadly force was a moving force of the shooting, injuries, and death of Lowery.

129. At the time of the events described in this Complaint, Lowery had a clearly established constitutional right under the Fourth Amendment to be free from unreasonable search and seizure and his right to be free from excessive force by law enforcement guaranteed to him under the Fourteenth Amendment to the United States Constitution.

130. Defendants knew that Lowery had a clearly established right to be secure in his person against unreasonable seizures under the Fourth Amendment of the United State Constitution and his right to not be deprived of life and that by shooting Lowery they were depriving him of those rights.

131. Lowery was injured and died as a direct and proximate result of the above policies, practices, and/or customs.

132. As a direct result of the Defendants' conduct, Plaintiffs are entitled to monetary relief for damages.

133. The City of Topeka failure to adequately train in these respects constituted a deliberate indifference to the constitutional rights of citizens like Lowery. This is particularly so as a result of the City of Topeka's failure to adequately train in these respects, Lowery suffered severe pain and suffering and emotional distress and died.

134. As a direct and proximate result, Lowery's next of kin have suffered pecuniary loss, including medical and funeral expenses, loss of kinship, aid, counsel, guidance, advice, assistance, and protection and support.

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the ESTATE OF TAYLOR LOWERY, deceased, demands judgment against the City of Topeka for compensatory and punitive damages, costs, disbursements, attorney's fees, interest and for any other relief that the Court deems fair and just.

COUNT 6

42 U.S.C § 1983
Deliberate Indifference Due to Failure to Supervise
In Violation of the Fourth and Fourteenth Amendments of the US Constitution
(Against City of Topeka)(Monell)

135. Plaintiffs hereby incorporate by reference all prior allegations as if fully restated.

136. The City of Topeka inadequately supervised its Topeka Police Department employees and agents such that they were utterly incapable of performing their jobs on October 13, 2022, including failure to de-escalate the situation during the original call at the residence and the subsequent scene at Kwik Shop, by failing to address the underlying substance use issues with less than lethal force and, rather than de-escalating, escalated the call creating a false sense of urgency and danger, resulting in the ultimately shooting Taylor Lowery over 3 dozen times and watching Lowery take his last breath before seeking medical assistance.

137. The City of Topeka further inadequately supervised its employees and agents such that not one of them intervened while Lowery, armed only with a socket wrench, was killed in front of them.

138. The City of Topeka has a policy, pattern, and practice of inadequately training its employees to perform the job, including by inadequately supervising them on proper use of force, de-escalation techniques, and identification and management of suspects under the influence of

drugs and in providing medical interventions in a timely manner.

139. The City of Topeka engaged in unlawful and unconstitutional policies, practices, and customs, including but not limited to, the following violations and deprivations of constitutional rights as set forth in this Complaint;

a. Inadequate training and instruction of employees on the proper use of police power, proper seizure, proper searches, use of deadly force and investigation of alleged crime in the State of Kansas;
b. Failing to supervise and monitor officers in the field;
c. Inadequate supervision of employees as to the proper use of police power, proper seizures, proper searches, use of deadly force and investigation of crime in the State of Kansas;
d. Inadequate discipline of employees as to the proper use of police power, proper seizures, proper searches, use of deadly force and investigation of crime in the State of Kansas;
e. Inadequate supervision, training, and retention with resulting poor personnel decisions as to employees regarding the proper use of police power, proper seizure, proper searches, use of deadly force and investigation of alleged crime in the State of Kansas;
f. Failure to take significant steps to prevent known risk of excessive use of force and improper seizure;
g. Failure to properly train officers to de-escalate instead of escalating situations;
h. Failure to adopt and properly implement policies regarding the de-escalation;
i. Failure to adopt and properly implement policies regarding suspects under the influence of drugs;
j. Deliberate indifference to and conscious disregard for the high risk that law enforcement officers would improperly use their influence as law enforcement officers and/or fail to protect against such improper influence in violation of Taylor Lowery's rights; and,
k. Failure to take significant steps to prevent a known risk of the wrongful use of deadly force.

140. These actions, omissions, policies, practices, procedures, patterns, decisions, orders and customs of the City were the cause of constitutional and other violations described in this Complaint. These interrelated policies, practices, and customs, separately and together, were implemented intentionally to deprive individuals including Lowery of their constitutional rights

or, at the very least, were implemented with recklessness or deliberate indifference to the rights of individuals and were a direct and proximate cause of the constitutional violations as set forth in this Complaint.

141. The City ratified and implemented, before and during the relevant period, each of the policies, practices, patterns of conduct and customs described herein. The City's custom/practice was so well settled as to constitute custom or usage with force of law, authorizing the use of deadly force was a moving force of the shooting, injuries, and death of Lowery.

142. At the time of the events described in this Complaint, Lowery had a clearly established constitutional right under the Fourth Amendment to be free from unreasonable search and seizure and his right to be free from excessive force by law enforcement guaranteed to him under the Fourteenth Amendment to the United States Constitution.

143. Defendants knew that Lowery had a clearly established right to be secure in his person against unreasonable seizures under the Fourth Amendment of the United State Constitution and his right to not be deprived of life and that by shooting Mr. Lowery they were depriving him of those rights.

144. Lowery was injured and died as a direct and proximate result of the above policies, practices, and/or customs.

145. As a direct result of the Defendants' conduct, Plaintiffs are entitled to monetary relief for damages.

146. The City of Topeka's failure to adequately train in these respects constituted a deliberate indifference to the constitutional rights of citizens like Lowery. This is particularly so

as a result of the City of Topeka's failure to adequately train in these respects, Lowery suffered severe pain and suffering and emotional distress and died.

147. As a direct and proximate result, Lowery's next of kin have suffered pecuniary loss, including medical and funeral expenses, loss of kinship, aid, counsel, guidance, advice, assistance, and protection and support.

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the ESTATE OF TAYLOR LOWERY, deceased, demands judgment against the Defendants for compensatory and punitive damages, costs, disbursements, attorney's fees, interest and for any other relief that the Court deems fair and just

COUNT 7

42 U.S.C § 1983—Deliberate Indifference to Serious Medical Need

(Against City of Topeka, Officer Gillum, Officer Good, Officer Netherton, Sergeant McEntire, Detective Wall and Sergeant Doiron)

148. Plaintiffs hereby incorporate by reference all prior allegations as if fully restated.

149. It is well established that being shot and falling to the ground therefrom indicates a serious need for emergency medical treatment.

150. Defendant Officers and Sergeant Doiron failed in their duty to immediately alert and notify emergency medical services of a serious medical need from the time of the First Volley of Shots. Defendant Officers and Sergeant Doiran did not comply with clear policy and procedures and did not comply with their training.

151. Lowery suffered from not one, but two volleys of shots. After the First Volley of Shots at 12:44:16, Lowery fell to the pavement initially and came back up. When he arose, he was

visibly bleeding from the shots. After the Second Volley of Shots at 12: 44:23, Lowery fell face-down and never regained an upright position. At this point, Lowery is face down, struggling, blood is pooling around him and his breathing becomes labored.

152. Despite the actual knowledge that Lowery had been shot more than once from their lethal weapons and that Lowery was bleeding profusely from not only the wounds caused by the First Volley Shooters but also from the wounds caused by the Second Volley Shooters, the Defendant Officers and Sergeant Doiron willfully, intentionally and maliciously failed to call for medical assistance, neglecting the serious medical needs of Lowery for almost 4 minutes.

153. Call records demonstrate that there was no request for medical until 12:48:11 a.m. The ambulance did not arrive on the scene until 12:54:36 a.m.. Call records show that there a request for less lethal weapons and a K-9 at 12:45:58 a.m. At 12:47:18 a.m., the records show that the media was calling. Body-cam footage confirms that requests for "AMR" and gauze at or near the same time as the call records.

154. The Officers were aware of the obvious need for emergency medical treatment because they offered to "get him some help" if he would put his arms up while in his prone face-down position, bleeding profusely.

155. After almost 4 minutes, when Lowery stopped visibly breathing the Unknown Officers approached him and proceeded to "arrest" him. That was the first time that any officer at the scene the Defendant Officers and/or Sergeant Doiron called out for "AMS" and for "gauze" to stem the flow of blood that had accumulated over the previous 4 minutes.

156. Defendants Sargeant Doiron and Sargeant McEntire each had supervisory

responsibilities over one or more of the City of Topeka Police Department Officers who participated in Lowery's death.

157. Sergeants Doiron and McEntire participated in violating Plaintiff's rights, by their actions and inactions directed others to violate those rights, or, as the person in charge, had knowledge of and acquiesced in his or her subordinates' violations.

158. Lowery's constitutional rights were violated as a direct and proximate result and Plaintiff suffered damages.

159. The Officer Defendants knew of and disregarded an excessive risk of serious injury or death to Lowery, were deliberately indifferent to Lowery's health and safety, and violated Lowery's rights under the US Constitution.

160. As a result, Lowery suffered personal injury, severe pain and suffering, emotional distress, and ultimately died.

161. The acts and omissions of Defendants were intentional, wanton, malicious, and oppressive.

162. Defendants acted under the color of state law to deprive Lowery of his rights under the US Constitution.

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the ESTATE OF TAYLOR LOWERY, deceased, demands judgment against the Defendants for compensatory and punitive damages, costs, disbursements, attorney's fees, interest and for any other relief that the Court deems fair and just.

COUNT 8
Assault & Battery
(Sargeant McEntire, Detective Wall, Officer Netherton, Officer Gillum, Officer Good)

163. Plaintiffs hereby incorporate by reference all prior allegations as if fully restated.

164. Defendants Officer Good, Officer Gillum, Officer Netherton, Detective Wall, and Sergeant McEntire purposely and intentionally shot at Lowery.

165. The Officer Defendants were acting in concert when they shot Lowery.

166. The Officer Defendants made offensive bodily contact with Lowery when they shot and killed him.

167. The Officer Defendants' offensive bodily contact caused injury to Lowery including but not limited to his death.

168. The Officer Defendants' conduct was intentional and demonstrated a deliberate indifference and/or conscious disregard to Lowery's safety and wellbeing.

169. The Officer Defendants acted with malice in that they intentionally, deliberately and/or wantonly shot Lowery when he did not pose a threat to the Officer Defendants or the public.

170. The conduct of the Officer Defendants was reckless, malicious, wanton, willful and an award of punitive damages is necessary to punish the Officer Defendants and to deter others from the same or similar transgression in the future.

WHEREFORE, Plaintiffs request judgment for general, special, and punitive damages in a sum that this Court may deem just and reasonable, for costs of the suit and attorneys' fees, and for such other relief as the Court may deem just and equitable.

COUNT 9

Wrongful Death

(Sargeant McEntire, Detective Wall, Officer Netherton, Officer Gillum, Officer Good)

171. Plaintiffs hereby incorporate by reference all prior allegations as if fully restated.

172. Plaintiff L.L., by and through her next friend, maintains this action for wrongful death pursuant to K.S.A. §60-1901 *et. seq.* on behalf of all the heirs at law of Lowery who have sustained loss by reason of his death.

173. The Officer Defendants intentionally discharged their firearms without justification causing an unreasonable apprehension of harm and death to Lowery.

174. The Officer Defendants fired their weapons at Lowery without justification, intentionally and wrongfully causing the death of Lowery.

175. The Officer Defendants caused an offensive bodily contact with Lowery by shooting and killing him.

176. The Officer Defendants were not acting in lawful self-defense.

177. In drawing their firearms and shooting Lowery, the Officer Defendants used more force than was reasonably necessary.

178. The use of force by the Officer Defendants was unjustified in that they failed to make any attempt to use non-lethal means to resolve the situation.

179. As a direct result of this intentional tort by the Officer Defendants, Plaintiffs have sustained damage including but not limited to loss of financial support to L.L. and funeral expenses for the Lowery.

180. Lowery also endured pain and suffering between the time of the first bullet

penetrating his body and the time of his death.

181. The Officer Defendants actions were willful, wanton, or malicious and constituted gross misconduct, and demonstrated a conscious and reckless disregard for the rights of Plaintiffs and Lowery and an award of punitive damages is necessary to punish the Officer Defendants and to deter others from the same or similar transgression in the future.

WHEREFORE, Plaintiffs request judgment for general, special, and punitive damages in a sum that this Court may deem just and reasonable, for costs of the suit and attorneys' fees, and for such other relief as the Court may deem just and equitable.

STATEMENT OF DAMAGES

182. Plaintiffs respectfully request damages as follows:

a. **Compensatory Damages**. compensatory, general, and special damages, treble damages, civil penalties, nominal damages in an amount according to proof at trial;

b. **Punitive/Exemplary Damages.** Punitive/exemplary damages are recoverable at tort and 42 USC §1983 when the acts are motivated by evil intent, or when the acts involve reckless or callous indifference to federally protected rights. Herein, the violence, cruelty and brutally of the circumstance were demonstrably callous, reckless and of evil intent. Punitive award is respectfully requested to deter such conduct in the future in in an amount to be proven at trial.

c. **Injunctive Relief.** Plaintiffs seek injunctive relief to affect change to policy/custom and supervision/training of law enforcement to prevent such tragedy from reoccurring.

d. **Attorney Costs and Fees.** Plaintiffs seek attorney's fees and litigation costs pursuant 42 USC § 1988.

183. In addition to the aforementioned stated damages, Plaintiffs seek interest, at rate of accrual determined at statutory rate, and such other and further relief to which Plaintiff may be entitled at law and/or equity.

184. Plaintiff reserves the right to plead and prove damages at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Da'Mabruis Duncan, as Next Friend and Personal Representative of the Estate of Taylor Lower, deceased, demands judgment at described above against the named Defendants for compensatory and punitive damages, costs, attorney's fees, injunctive relief, interest and for any other relief that the Court deems fair and just.

PLAINTIFFS HEREBY DEMAND TRIAL BYJURY ON ALL ISSUES SO TRIABLE

Dated this 12th day of May, 2026.

Respectfully submitted,

FOR THE PLAINTIFFS

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