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James A. Noel
Latoya Grayes

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

DANAN GABALDON,

Plaintiff,

v.

No. D-202-CV-2017-03942

THE CITY OF ALBUQUERQUE,
ALBUQUERQUE POLICE DEPARTMENT
DETECTIVE KEVIN SANCHEZ,
in his individual capacity, and, JOHN DOE,
an unidentified ALBUQUERQUE POLICE DEPARTMENT
OFFICER, in his individual capacity,

Defendants.

**COMPLAINT TO RECOVER DAMAGES FOR NEGLIGENCE RESULTING IN
BATTERY, BATTERY, EXCESSIVE FORCE AND VIOLATIONS OF CIVIL RIGHTS**

INTRODUCTION

Plaintiff Danan Gabaldon, states his Complaint for Damages against Defendants by and through his attorney of record **KENNEDY KENNEDY & IVES**, as follows:

PARTIES

1. Plaintiff Danan Gabaldon is a resident of the City of Albuquerque, County of Bernalillo, State of New Mexico.
2. Defendant City of Albuquerque (hereinafter "City") is a governmental entity as set forth in the New Mexico Tort Claims Act,
3. Defendant John Doe, an unidentified Albuquerque Police Department officer (hereinafter "John Doe") at all material times acted in Bernalillo County as an individual and was a law enforcement officer employed by the City, with the Albuquerque Police Department (hereinafter "APD")

DEFENDANT'S
EXHIBIT
A

4. Defendant APD Detective Kevin Sanchez (hereinafter "Detective Sanchez") is an individual and was a law enforcement officer employed by the City, with APD. At all times material, Detective Sanchez acted under color of state law and within the scope of his duties.

JURISDICTION AND VENUE

5. The occurrence giving rise to this Complaint occurred in Bernalillo County.

6. Jurisdiction and venue are proper in the Second Judicial District Court of the State of New Mexico, pursuant to NMSA 1978, Section 41-4-18 and NMSA 1978, Section 38-3-1.

FACTUAL ALLEGATIONS

7. On June 4, 2015, undercover, plain-clothed APD officers were surveilling a mobile home at 10200 Central Ave. SW in Albuquerque, New Mexico.

8. Mr. Gabaldon exited the surveilled mobile home and entered a car.

9. APD decided to pursue and corner Mr. Gabaldon as he drove away.

10. Pursuing APD officers were all in plain clothing while driving unmarked undercover police cars and trucks.

11. Pursuing APD officers did not announce who they were to Mr. Gabaldon.

12. Pursuing APD officers closely followed Mr. Gabaldon, attempting to surround Mr. Gabaldon's car with their own undercover cars and trucks.

13. During APD's "vehicle blocking maneuver" (VBM) of Mr. Gabaldon's car, APD Detective Adrian Montoya hit APD Detective Bradley Perry's car, causing the airbags in Detective Bradley Perry's car to deploy and forcing Detective Bradley Perry to crawl out of his undercover car.

14. Instead of verbal warnings or the implementation of a tactical plan, unidentified APD officers then used deadly force on Mr. Gabaldon by firing at least two bullets in the direction of his car, while he was still inside of it.
15. APD officers shot bullets which ricocheted off of Mr. Gabaldon's car causing indents in the car on both sides of the hood. Later, a bullet fragment was discovered under the hood of Mr. Gabaldon's car.
16. APD officers violated police department policies by shooting into a moving car.
17. APD Use of Force policy states that, "[o]fficers must not engage in unreasonable actions or tactics that precipitate the use of force, or that unduly jeopardize their own safety or the safety of others." APD Standard Operating Procedures 2-52-3 (A)(6).
18. APD officers' unannounced shooting into Mr. Gabaldon's car confused several officers who erroneously believed the shots came from Mr. Gabaldon.
19. APD officers approached Mr. Gabaldon's car yelling commands at him.
20. APD Detective Eugene Etheredge saw Mr. Gabaldon bleeding from his forehead.
21. APD Detective Dan Porter deployed bean bag shotguns into Mr. Gabaldon's car; one of the bean bags shattered the rear passenger side window.
22. Detective Dan Porter tased Mr. Gabaldon in the torso.
23. Mr. Gabaldon pulled the taser probes and wires out of his body.
24. Detective Dan Porter tased Mr. Gabaldon in the torso a second time.
25. Once more, Mr. Gabaldon pulled the taser probes and wires out of his body.
26. Detective Bradley Perry approached the driver side of Mr. Gabaldon's car, deployed his taser, missed with his taser, and then attempted to reload his taser,

but became unnerved and threw the live cartridge case to the ground, instead of a spent cartridge.

27. Mr. Gabaldon got out of his car and ran south on Camino San Martin.
28. Detective Sanchez, who was in plain clothes and had just arrived on scene, began to pursue Mr. Gabaldon in an unmarked undercover police truck, speeding past other undercover officers who were pursuing Mr. Gabaldon on foot.
29. Detective Sanchez made a hard right turn with his truck, running down and hitting Mr. Gabaldon with his truck from behind.
30. Detective Sanchez drove his truck into Mr. Gabaldon with such force that his truck hopped the curb, knocking down a light post and a tree.
31. Detective Sanchez then got out of his truck, joining a group of APD officers who already had Mr. Gabaldon pinned to the ground.
32. While pinned down by these officers on the sidewalk, Mr. Gabaldon asked numerous times, “[w]hats going on?”
33. Defendant John Doe tased Mr. Gabaldon in the neck as he was pinned face down on the sidewalk. (APD issued lapel body-camera tapes provided of the force blurred out the faces and actions of APD officers using said unlawful force).
34. Defendant John Doe hit Mr. Gabaldon with the butt of his taser in the back of his neck as he was pinned on the ground.
35. Defendant John Doe also elbowed Mr. Gabaldon in the neck.
36. Defendant John Doe inadvertently tased an APD Detective as well.
37. Finally, another unidentified APD officer handcuffed Mr. Gabaldon.

38. APD's Use of Force Policy states that, "[o]fficers are prohibited from using deadly force when pursuing a fleeing suspect to prevent escape unless the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." APD Standard Operating Procedures 2-52-3 (A)(11).
39. As Mr. Gabaldon lay on the ground, he said repeatedly he could not breathe.
40. APD officers responded, "... [y]ou can talk, you can breathe."
41. Mr. Gabaldon continued to insist that he was unable to breathe.
42. APD officers ignored Mr. Gabaldon's constant pleas that he couldn't breathe.
43. During the time that Mr. Gabaldon was pleading that he couldn't breathe, onlookers gathered and some began shouting to officers that Mr. Gabaldon could not breathe. These onlookers also recorded these officers on their cell phones while commenting that the officers' conduct was illegal.

CLAIMS

COUNT 1: NEGLIGENCE RESULTING IN BATTERY

44. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.
45. This was not the first time Defendant Kevin Sanchez used arbitrary and excessive force.
46. On March 29, 2010, at approximately noon, less than an hour after Defendant Kevin Sanchez shot and killed an individual named Mickey Owings, APD Police Chief R. Schultz and his counsel, Kathy Levy, Deputy City Attorney, union attorney John D'Amato, along with eighteen other law enforcement officers, and two Bernalillo County Assistant

District Attorneys, Mark Drebing and Gary Cade, attended a briefing at the scene of the shooting held inside the APD Mobile Command Center.

47. From March 29, 2010, until October 8, 2010, the City engaged in an expeditious investigation into the officer involved shooting death of Mickey Owings before any evidence could be lost or destroyed for the purpose of endorsing the unconstitutional actions of its officers. From the onset of the investigation, Mickey Owings was labeled a “suspect” in the felony crime of “Aggravated Battery on a Police Officer.” Sergeant G. Barboa supervised Detective Andrea L. Ortiz during her investigation in which she interviewed or supervised the interviewing of all material witnesses to the Owings’ officer involved shooting.

48. On March 29, 2010, APD Detective Andrea L. Ortiz obtained a surveillance video of multiple views of the shooting death of Mickey Owings as it occurred in a Wal-Mart parking lot.

49. On March 30, 2010, Detective Andrea Ortiz and New Mexico State Police Agent Isaac Valerio interviewed Defendant Kevin Sanchez, while he was represented by his counsel John D’Amato, concerning his shooting and killing of Mickey Owings. During this interview Defendant Sanchez admitted shooting Mickey Owings once under his arm as Owings was driving away from him while both of Owings’ hands were on the wheel of his car.

50. On August 12, 2010, Detective Andrea L. Ortiz completed her offense report, noting the case was considered “Exceptionally Cleared,” and forwarding her investigation into the shooting death of Mickey Owings to the Bernalillo County’s District Attorney’s Office for review.

51. On September 29, 2011, in a now defunct grand jury proceeding aimed at exonerating City officers involved in fatal shootings of civilians, an investigative grand jury ruled that Defendant Sanchez was justified in shooting and killing Mickey Owings.

52. On April 10, 2014, the United States Department of Justice (Civil Rights Division) (hereinafter "DOJ") issued a letter to report to the Defendant that APD had been endorsing the unconstitutional use of deadly force by City police officers for the last five years.

53. On April 10, 2014, the DOJ placed the Defendant City on notice that it had found that the City's failure to address longstanding deficiencies in the police department to ensure accountability of police officers had "allowed a culture of indifference to constitutional policing and insularity to develop within the department."

54. On April 10, 2014, the DOJ placed the Defendant City on notice that it had found that APD engages in a pattern or practice of using excessive and deadly force in an unconstitutional manner in the use of their firearms. "To illustrate, of the 20 officer-involved shootings resulting in fatalities from 2009 to 2012, we conclude that the majority of these shootings were unconstitutional."

55. On April 10, 2014, the DOJ placed the Defendant City on notice that it had found that one of the unconstitutional, unlawful shootings was that of the decedent Mickey Owings.

56. On April 10, 2014, the DOJ told the Defendant City that it had found "Owings did not pose a threat of death or serious physical injury to the officer or to anyone else; he was driving straight into unoccupied, parked cars when he was shot. This damage to property, as serious as it was, did not justify taking Owings' life."

57. On April 10, 2014, the DOJ told the Defendant City that "the detective who shot Owings very easily could have missed and hit one of the innocent civilians walking through the

parking lot; moreover, after he was shot the probability that he would injure someone with his car increased dramatically.”

58. Defendant City did nothing to discipline, supervise, nor retrain Defendant Detective Kevin Sanchez in response to the DOJ’s written concerns about his reckless taking of a human life.

59. On April 10, 2014, the DOJ placed the Defendant City on notice that it had found that the Mickey Owings’ shooting was an example of officer recklessness leading to unreasonable uses of deadly force.

60. On April 10, 2014, the DOJ placed the Defendant City on notice that it had found that lack of scene control caused the unlawful use of deadly force and as APD officers did not seek authority or obtain approval from commanding officers before using deadly force, and rather acted on their own authority from the moment they arrived on a scene until the use of deadly force, they created chaotic environments that escalated the use of excessive and deadly force.

61. When Defendant Sanchez shot Mr. Owings, he did not pose a threat of immediate death or serious physical injury to the detective or to others.

62. Defendant City’s policy allowed officers to fire at the driver of a moving vehicle only when the car itself posed an immediate threat of death or serious physical injury to the officer or others.

63. A better policy, followed by better police departments, is to prohibit officers from firing their weapons into or at cars altogether.

64. Better police departments limit the circumstances in which officers may shoot at drivers because of the substantial risks involved in shooting at moving vehicles: (1) the

shooting officer may miss and hit an innocent civilian or fellow officer; and (2) the driver, when hit, may become incapacitated, leaving the moving car completely out of their control.

65. Defendant City contributed to Mr. Owings death and to the assaults and batteries suffered by Mr. Gabaldon by negligently hiring, training, retaining, failing to discipline, and failing to supervise its officers such that they engaged in excessive and deadly use of force.

66. Defendant City contributed to Mr. Owings death and the assaults and batteries suffered by Mr. Gabaldon by engaging in a pattern and practice of insufficient oversight, inadequate training, and ineffective policies resulting in the Defendants and APD officers use of excessive force, including deadly force, causing the death of Mickey Owings and the assaults and batteries on Mr. Gabaldon.

67. APD officers did not warn Mr. Gabaldon before they opened fire into the hood of his car.

68. Defendant Sanchez failed to give Mr. Owings a warning that deadly force was about to be utilized prior to shooting into his car and he failed to give Mr. Gabaldon a warning that deadly force was about to be utilized prior to driving his undercover truck into him.

69. The training provided to City police officers on the use of deadly force was not reasonable and was designed to result in the unreasonable use of deadly force. See Findings of Fact and Conclusions of Law, NO. CV 2009-0915 (N.M. 2d Judicial Dist., filed Aug. 19, 2009), ¶¶ 66, 67.

70. Because of the systemic deficiencies in oversight, training, discipline and policies of the Defendant City and of the actions of Defendant Sanchez, the three Owings children lost their father to APD's unreasonable use of deadly force and Defendant Sanchez was

emboldened to drive his undercover truck into Mr. Gabaldon, who was fleeing from him on foot.

71. Battery is defined as “[a]n intentional and offensive touching of another without lawful justification.” Black’s Law Dictionary, 69 (4th Pocket Ed. 2011).

72. Defendant Sanchez’s and Defendant Doe’s use of force in this case was unlawful and constitutes a battery for which immunity is waived under the Tort Claims Act. NMSA 1978, § 41-4-12.

73. Defendant City was negligent in the hiring, training, retention and supervision of the officers who caused the assaults and batteries on Mr. Gabaldon.

74. While negligent hiring, training, retention and supervision are not enumerated torts under the Tort Claims Act, Section 41-4-12, Defendant City may be held liable for the commission of an enumerated tort by an APD officer if its negligence proximately causes the same. McDermitt v. Corr. Corp. of Am., 1991-NMCA-034, ¶ 7, 112 N.M. 247, 814 P.2d 115 (“the Tort Claims Act waives immunity for negligent training and supervision by a law enforcement officer that causes the commission by a subordinate law enforcement officer of a tort listed in Section 41-4-12.”).

75. “[W]hether the hiring or retention of an employee constitutes negligence depends upon the facts and circumstances of each case.” Narney v. Daniels, 1992-NMCA-133, ¶ 45, 115 N.M. 41, 846 P.2d 347. Defendant City’s negligence in causing assaults and batteries against Mr. Gabaldon includes all things stated herein but not limited to:

- a. Inadequate screening, including inadequate mental health screening, of Defendant Detective Kevin Sanchez and of Defendant Officer John Doe;

- b. Inadequate management, training, and enforcement of policies regarding citizen encounters, proper police work, and knowledge of the law related to the use of excessive and deadly force that Officers had been given the privilege to enforce;
- c. Placement and retention of Defendant Sanchez, who shot and killed Mr. Owings in a direct community service and law enforcement position, to recklessly drive his undercover truck into Mr. Gabaldon;
- d. Inadequate supervision and ratification of APD Officers' conduct who used unreasonable deadly force during the subject incident, fostering an aggressive culture; and
- e. Ineffective deployment oversight of Defendant City's use of its tactical deployments contributes to causing shootings that could have been avoided and the excessive force used against Mr. Gabaldon;

76. Defendant City of Albuquerque's above-described negligence caused the assaults and batteries to Mr. Gabaldon.

77. Defendant Sanchez's above-described recklessness, his intentional use of deadly force and his intentional battery of Mr. Gabaldon caused Mr. Gabaldon bodily injuries.

78. Defendant City is directly responsible for the bodily injuries of Mr. Gabaldon under the doctrine of *respondeat superior* for the acts of their employees and agents. See Narney, 1992-NMCA-133, ¶ 34.

79. At all times relevant, all officers mentioned herein, including Detective Sanchez and Officer John Doe, were law enforcement officers employed by APD, acting within the scope of their duties.

80. Upon information and belief, the City of Albuquerque exercised and/or had the right to exercise direct legal and/or de facto control over APD, all APD officers, Officer John Doe and Detective Sanchez at all times material to this Complaint.

81. As police officers, the APD Officers, including John Doe and Detective Sanchez, had a common law duty for the safety of others to exercise care ordinarily exercised by a reasonably prudent and qualified officer in light of the circumstances.

82. By their conduct described above, these APD officers did not act reasonably nor prudently, and they did not meet the standard of care applicable to law enforcement officers, causing bodily injury to Mr. Gabaldon.

COUNT 2: BATTERY & NEGLIGENT OPERATION OF A MOTOR VEHICLE

83. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

84. The above-described actions by Detective Sanchez and Officer John Doe against Mr. Gabaldon constitute batteries within the meaning of Section 41-4-12 of the New Mexico Tort Claims Act.

85. Detective Sanchez negligently operated his undercover police truck by driving it up onto a sidewalk, hitting Mr. Gabaldon's body with his truck and driving the truck into a light pole and a tree in a manner allowing for a waiver of immunity pursuant to Section 41-4-5 of the New Mexico Tort Claims Act.

86. APD's motor vehicles (police units and undercover cars and trucks) are insured.

87. Mr. Gabaldon should be able to recover for bodily injuries cause by the reckless decisions made by Detective Sanchez while he was driving his undercover APD truck.

88. Defendant City's above-described negligence caused batteries to Mr. Gabaldon.

89. Defendant City is directly responsible to Mr. Gabaldon under the

doctrine of *respondeat superior* for the acts of their employees and agents.

90. If a jury determines that the City's agents and employees caused assaults and batteries to Mr. Gabaldon, the City is liable.

COUNT 3: EXCESSIVE FORCE (FOURTH AMENDMENT)

91. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

92. The Fourth Amendment to the United States Constitution protects an individual's right to be free from use of excessive force of their person by law enforcement.

93. APD officers, Detective Sanchez and John Doe, in particular, used an objectively unreasonable amount of force on Mr. Gabaldon in the following manner: (1) after unidentified APD officers shot into his car while he was inside of it, Mr. Gabaldon fled from his car; Detective Sanchez then hit Mr. Gabaldon in an undercover APD police truck; (2) when after being hit by Detective Sanchez's undercover truck, Mr. Gabaldon was repeatedly tased in the neck by Officer John Doe while other unidentified APD officers pinned him down to the sidewalk; and (3) when John Doe hit Mr. Gabaldon on the back of his neck with the butt of an APD taser and then elbowed him in the neck as APD officers continued to hold him down.

COUNT 4: VIOLATIONS OF DANAN GABALDON'S RIGHT TO BODILY INTEGRITY BY DETECTIVE KEVIN SANCHEZ

94. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

95. Detective Sanchez's decision to speed towards and hit Mr. Gabaldon's body with his truck served no legitimate law enforcement objective and constitutes deliberate indifference to the rights of Mr. Gabaldon and other pedestrians.

96. Detective Sanchez's intentional misuse of his undercover police truck and deliberate indifference to the rights of other pedestrians, under the circumstances, constitutes

conscience-shocking behavior as that term is defined in County of Sacramento v. Lewis, 118 S.Ct. 1708, 523 U.S. 833 (1998) and Green v. Post, 574 F.3d 1294 (10th Cir. 2009).

97. Detective Sanchez's speeding and hitting Mr. Gabaldon's person is further reinforcement of the intentional misuse of an undercover police truck and the conscience-shocking nature of his conduct.

98. Detective Sanchez's willful failure to follow traffic laws and APD policies in speeding and hitting persons was a blatantly arbitrary and unjustified misuse of the powers of government.

99. In the absence of an emergency, Detective Sanchez's actions in intentionally speeding and hitting a person in violation of APD policy and state law demonstrated conscious, deliberate indifference to the extreme risk of very serious injury or death to citizens in Mr. Gabaldon's position – pedestrians and the citizens of Albuquerque on the sidewalk.

100. Detective Sanchez's deliberate indifference to the extreme risk of serious injury or death to persons such as Mr. Gabaldon was willful, wanton, egregious, outrageous, shocking to the conscience, and in gross disregard of Mr. Gabaldon's rights as guaranteed by 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

101. Detective Sanchez, in exhibiting deliberate indifference to the extreme risk of very serious injury or death to other pedestrians by ignoring APD policy and state law and with no legitimate law enforcement purpose of any kind, violated the constitutional rights of Mr. Gabaldon under the Fourteenth Amendment when he hit Mr. Gabaldon's person, causing him bodily injury.

102. Nothing prevented Detective Sanchez from adhering to APD policy and state traffic laws.

103. Detective Sanchez exercised his power improperly, irresponsibly, recklessly and utterly without justification.

104. The Constitutional rights of Mr. Gabaldon not to be run over and hurt by a police officer acting under the color of state law, acting willfully and deliberately indifferent to the extreme risk of the harm he did in fact cause by ignoring traffic laws and departmental policies, and driving in an unsafe manner without any justification were clearly established at the time of the incident on June 4, 2015, as recognized by the Supreme Court in County of Sacramento v. Lewis, 118 S.Ct. 1708, 523 U.S. 833 (1998); most recently by the 10th Circuit in Green v. Post, 574 F.3d 1294 (10th Cir. 2009), and as far back as 1996 in Williams v. Denver, City and County of Denver, 99 F.3d 1009 (10th Cir. 1996).

105. Detective Sanchez was on notice based on a number of reported decisions including, but not limited to Green v. Post, Williams v. City and County of Denver, 99 F.3d 1009, and the Supreme Court's decision in County of Sacramento v. Lewis, 118 S.Ct. 1708, 523 U.S. 833 (1998), that his conscious decision to speed and hit Mr. Gabaldon's person in his undercover police truck, in the absence of any legitimate law enforcement or emergency purpose, was not only willfully and deliberately indifferent to the health and safety of the citizens he was paid to protect; but also that his unjustified, reckless and willful behavior violated the constitutional rights of those citizens.

106. Mr. Gabaldon's right to not be hit or injured by a police officer driving in a dangerous and unlawful manner, including deliberately hitting Mr. Gabaldon's person in the absence of an legitimate law enforcement objective whatsoever has been clearly established, and

Detective Sanchez was or should have been on notice of Mr. Gabaldon's rights under the Fourteenth Amendment of the United States Constitution.

107. Detective Sanchez's deliberate and unjustified violation of Mr. Gabaldon's Fourteenth Amendment rights was the direct and proximate cause of a battery of Mr. Gabaldon.

108. The conduct of Detective Sanchez was so extreme and reckless that punitive damages are warranted in an amount to be determined by the trier of fact.

COUNT 5: VIOLATIONS OF DANAN GABALDON'S CIVIL RIGHTS BY THE CITY OF ALBUQUERQUE

109. Plaintiff incorporates the preceding paragraphs as though fully stated herein.

110. Upon information and belief, prior to and including the events of June 4, 2015, wherein Detective Sanchez deliberately hit Mr. Gabaldon's person with his undercover police vehicle despite the absence of any legitimate law enforcement purpose, there have been multiple reported instances of APD issued vehicles being used for improper purposes to inflict harm upon Albuquerque citizens and to needlessly destroy property.

111. Multiple instances of APD officers using their department issued vehicles for improper purposes to inflict harm upon Albuquerque citizens constitutes a widespread practice as that term is legally defined.

112. Upon information and belief, the City has been made aware, prior to June 4, 2015, of a widespread custom and practice of its officers using their department issued vehicles for improper purposes to inflict harm upon Albuquerque citizens, such as speeding and driving their vehicles through red lights, or otherwise driving their vehicles in an unsafe and illegal manner in the absence of any exigency or legitimate law enforcement purpose, then causing crashes.

113. Upon information and belief, the City has failed to take appropriate or sufficient steps to curtail this widespread practice of its officers deliberately using their department issued

vehicles for improper purposes to inflict harm upon Albuquerque citizens or otherwise ignoring traffic laws and the public safety without the justification of a legitimate law enforcement purpose.

114. Upon information and belief, the City has failed to provide its police officers with adequate training sufficient to prevent its officers from engaging in the widespread practice of speeding, ignoring traffic laws, shooting into moving vehicles, crashing police units into civilians and their cars, and ignoring safety devices to the detriment of the safety of the pedestrian public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays as follows:

- A. Actual and compensatory damages sufficient to make Mr. Gabaldon whole;
- B. Punitive damages against Defendants Sanchez and John Doe for their malicious conduct and indifference to Mr. Gabaldon's rights;
- C. Attorneys' fees, litigation expenses, costs, pre- and post-judgment interest as provided by law; and
- D. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,

KENNEDY KENNEDY & IVES

/s/ Shannon L. Kennedy

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