

**IN THE CIRCUIT COURT OF TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA – LAW/JURY**

VERNIEC FLUKER, as Independent)	
Administrator of the Estate of DAVID S. SMITH,)	
and VERNIEC FLUKER, individually,)	Case No. 20 L 239
)	
Plaintiffs,)	
v.)	
)	
THE CITY OF PEORIA, OFFICER)	
WILLIAM ENGLAND, Star No. PP 1123,)	
OFFICER JOSHUA FEENEY, Star No. PP 1121)	
OFFICER RUTH SANDOVAL, Star No. PP 935,)	TRIAL BY JURY DEMANDED
OFFICER MEGAN HOUGHTON,)	
Star No. PP 1181; ADVANCED MEDICAL)	
TRANSPORT, INC., d/b/a ADVANCED)	
MEDICAL TRANSPORT OF CENTRAL)	
ILLINOIS, a private corporation,)	
DUNCAN BIGGER and ADAM BELSLEY,)	
)	
Defendants.)	

AMENDED COMPLAINT AT LAW

Plaintiff, VERNIEC FLUKER, as Independent Administrator of the Estate of DAVID S. SMITH, by and through her attorneys, THE COCHRAN FIRM CHICAGO, and complaining of the Defendants, The City of Peoria, Officer William England, Star No. PP 1123, Officer Joshua Feeney, Star No. PP 1121, Officer Ruth Sandoval, Star No. PP 935, Officer Megan Houghton, Star No. PP 1181, Advanced Medical Transport, Inc., d/b/a Advanced Medical Transport of Central Illinois, a private corporation, Duncan Bigger and Adam Belsley, states as follows:

INTRODUCTION

David S. Smith was an African-American male victim of police misconduct perpetrated by officers of the City of Peoria Police Department who willfully and wantonly disregarded how David S. Smith was in medical distress, deliberately ignoring the need to immediately transport him to the hospital on October 28, 2019 proximately causing his death.

1. This is a wrongful death action on behalf of the Estate of David S. Smith.

2. On October 28, 2019, David S. Smith, was a 33-year-old African-American man and father of a minor daughter who was in the throes of a dire health crisis when officers of the Peoria Police Department took him into custody.

3. At the time he was taken into custody, Mr. Smith was in such obvious medical distress that he was unable to self-ambulate and was observed being propped up by officers holding both of his arms while he was carried to a nearby Peoria Police Department vehicle.

4. Due to the severity of his health crisis, Mr. Smith was not alert, not coherent and his speech, what little that was uttered, was severely labored and mostly unintelligible.

5. As he was being carried to the police car, Mr. Smith's legs and feet could be observed dragging on the ground.

6. Once placed inside the rear compartment of the police vehicle, Mr. Smith was speaking in an incoherent manner, but able to tell the officers his name and that he needed "oxygen" and heard saying "I can't breathe," which was an obvious sign of his medical distress.

7. One or more officers told Mr. Smith that if he needed oxygen that nearby trees outside the police vehicle could give him oxygen.

8. When emergency medical services arrived at the scene, Mr. Smith told them he "can't breathe." In response to that comment, the paramedics and/or officers can be overheard saying "if you can talk, you can breathe" and "he's fine, I think he is just playing games."

9. In the presence of both officers and paramedics and/or emergency medical technicians, Mr. Smith was asked whether he wanted to go to the hospital, but he never responded. The lack of a viable response was obvious to the Defendants by how the question -- "do you want to go to the hospital?" -- was repeated at least three times, but never answered by Mr. Smith. Mr.

Smith did not answer because he was incoherent, unable to speak, and failing fast before the Defendants' eyes.

10. But the Defendants chose to not recognize the obvious nature of Mr. Smith's medical crisis. Instead, they could be heard saying "he's fine, I think he is just playing games."

11. In the background, multiple defendants were laughing and carrying on casual conversation while one or more of the Defendant officers placed Mr. Smith in handcuffs with the both police and paramedics falsely claiming that Mr. Smith had refused medical assistance when, in fact, they were fully aware that he never did because the state of his physical condition prevented him from doing so.

12. Within hours of those bone-chilling comments about trees supplying Mr. Smith with oxygen and how he was "just playing games," Mr. Smith died due to willful and wanton conduct of police who were deliberately indifferent to the throes of his medical distress.

13. Mr. Smith died one day before his minor daughter's birthday.

14. And the Peoria Police Department did not act alone. Also present were Defendants Duncan Bigger and Adam Belsley, employees and/or agents of Defendant Advanced Medical Transport, Inc., d/b/a Medical Transport of Central Illinois. These defendants were called to render medical care and assistance to David S. Smith. But upon arrival, Defendants Bigger and Belsley rendered a superficial assessment of David S. Smith and knew that Mr. Smith did not refuse medical treatment or say that he did not want to go to the hospital.

15. They knew that Mr. Smith should be taken to the hospital for an evaluation by a physician. Instead, sharing the same prejudice harbored by the Defendant officers, Defendants Bigger and Belsley concluded that Mr. Smith was "just playing games."

16. Moreover, in joint concert with the Defendant Peoria Police Department Officers, Defendants Bigger and/or Belsley created documentation falsely suggesting that David S. Smith refused medical assistance when, in fact, he was incoherent and unable to render a meaningful refusal of medical assistance and/or transport to the hospital for further evaluation or treatment by a physician.

17. Mr. Smith's death on October 29, 2019 was the result of the willful and wanton conduct of all of the Defendants. Plaintiff seeks both compensatory and punitive damages¹ as a result of his death.

JURISDICTION AND VENUE

18. The jurisdiction of this Court is invoked pursuant 735 ILCS 5/2-209 because the facts and circumstances giving rise to the allegations herein are substantially connected with Illinois.

19. Venue is proper in the Circuit Court for the Tenth Judicial Circuit of Illinois pursuant to 735 ILCS 5/2-101 because the events giving rise to the instant cause of action took place in Peoria County.

PARTIES

20. Plaintiff Verniec Fluker was and is a citizen of the United States and a resident of the County of Peoria and State of Illinois. Verniec Fluker was appointed the Independent Administrator of the Estate of David S. Smith, by the Probate Division of the Circuit Court of the Tenth Judicial Circuit of Illinois. At the time of his death, David S. Smith was survived by his minor daughter, DaiViyonn Smith.

¹ Punitive damages are being sought against all defendants *except* the City of Peoria, as punitive damages are not recoverable from municipal entities pursuant to the Tort Immunity Act.

21. Defendant City of Peoria is and was, at all times mentioned herein, an Illinois municipal corporation organized and existing as such under the laws of the State of Illinois. Defendant City of Peoria is liable under the doctrine of *respondeat superior* for all torts committed by its employees and/or agents, including the named individual defendants who, at all times mentioned herein, were employees of the City of Peoria and acting within the scope of their employment.

22. Defendant William England, Star No. PP 1123, is and was, at all times mentioned herein, a citizen of the United States residing within the jurisdiction of this Court. At all times mentioned herein, he was acting within the scope of his employment as a police officer for Defendant City of Peoria. He is being sued in his individual capacity.

23. Defendant Officer Joshua Feeney, Star No. PP 1121, is and was, at all times mentioned herein, a citizen of the United States residing within the jurisdiction of this Court. At all times herein mentioned, he was acting within the scope of his employment as a police officer for Defendant City of Peoria. He is being sued in his individual capacity.

24. Defendant Officer Ruth Sandoval, Star No. PP 935, is and was, at all times mentioned herein, a citizen of the United States residing within the jurisdiction of this Court. At all times mentioned herein, she was acting within the scope of her employment as a police officer for Defendant City of Peoria. She is being sued in her individual capacity.

25. Defendant Megan Houghton, Star No. PP 1181, is and was, at all times mentioned herein, a citizen of the United States residing within the jurisdiction of this Court. At all times mentioned herein, she was acting within the scope of her employment as a police officer for Defendant City of Peoria. She is being sued in her individual capacity.

26. Advanced Medical Transport, Inc., d/b/a Advanced Medical Transport of Central Illinois, is a private corporation organized, existing and doing business under the laws of the State of Illinois, and at all time relevant employed various employees, including but not limited to, Defendants Duncan Bigger and Adam Belsley who responded to call for care and medical assistance in or around the vicinity of 302 S. Saratoga Street in Peoria, Illinois, in the early morning of October 28, 2019.

27. Defendant Duncan Bigger, is and was, at all times mentioned herein, a citizen of the United States residing within the jurisdiction of this Court. At all times mentioned herein, he was acting within the scope of his employment as a paramedic and/or emergency medical technician for Defendant Advanced Medical Transport, Inc., d/b/a Advanced Medical Transport of Central Illinois. He is being sued in his individual capacity.

28. Defendant Adam Belsley, is and was, at all times mentioned herein, a citizen of the United States residing within the jurisdiction of this Court. At all times mentioned herein, he was acting within the scope of his employment as a paramedic and/or emergency medical technician for Defendant Advanced Medical Transport, Inc., d/b/a Advanced Medical Transport of Central Illinois. He is being sued in his individual capacity.

FACTS COMMON TO ALL CLAIMS

Mr. Smith was in the Throes of an Obvious Medical Crisis

29. On October 28, 2019, Mr. Smith, was a 33-year-old an African-American man who was in the throes of a health crisis when officers of the Peoria Police Department took him into custody.

30. Mr. Smith was just outside his home in the vicinity of 302 S. Saratoga Avenue when he was taken into police custody.

31. At the time that Mr. Smith was taken into police custody, he was in throes of an obvious medical crisis as was evident from the fact that: he was unable to self-ambulate; he was not alert; he was not coherent; he had heavy and labored breathing; and, what little speech that he did utter, was mumbling, incoherent and unintelligible, in part, to his labored breathing.

32. On information and belief, Defendants England and Feeney were the officers who placed Mr. Smith into custody, grabbing him by both of his arms and carrying him to a nearby police car with his legs and feet dragging on the ground.

33. While Mr. Smith was being carried to the police car, he could be observed to be breathing heavy and intermittently mumbling in an incoherent manner.

34. On information and belief, it was Defendants England and Feeney who placed Mr. Smith inside the back seat of a Peoria Police Department vehicle with his arms handcuffed behind his back.

The Defendant Officers Told Mr. Smith to Rely on the Trees if He Wanted Oxygen

35. While Mr. Smith was inside the police vehicle, Defendants England and Feeney were joined by Defendants Sandoval and Houghton who had ample opportunity to observe Mr. Smith's dire and deteriorating condition.

36. Defendant Sandoval was observed asking Mr. Smith questions to which he provided incoherent responses due to labored breathing while his eyes would frequently close shut from apparent pain or discomfort while he periodically drifted in and out of consciousness.

37. While in obvious distress, and in the presence of Defendants England, Feeney, Sandoval and Houghton, Mr. Smith said that he could not breathe and begged, in a distressed and labored voice, for oxygen.

38. In direct response to Mr. Smith's plea for oxygen, it was either Defendant England or Feeney who told Mr. Smith that if he needed oxygen that the trees² would supply him with oxygen. The other defendant officers stood by, casually talking, including expressions of opinion about how Mr. Smith was "just playing games," while Mr. Smith was sprawled out in the back of the police vehicle.

39. Defendants Duncan Bigger and Adam Belsley of Advanced Medical Transport, Inc., d/b/a Advanced Medical Transport of Central Illinois arrived at 302 S. Saratoga for the express purpose of rendering medical care and assistance to Mr. Smith.

40. Upon their arrival, Defendant Bigger, upon information and belief, placed a blood pressure cuff on Mr. Smith's arm as he sat in the back seat of the police vehicle, asking him questions about his medical history. During the course of the initial interaction, Mr. Smith, in a weak and feeble voice, begged for water, but either Bigger and/or Belsley responded "I can't give you water."

41. Either Defendant Bigger or Belsley asked Mr. Smith on multiple occasions whether Mr. Smith wanted to go to the hospital. At no time did Mr. Smith ever affirmatively respond to the question. To the contrary, he continued to exhibit labored breathing while periodically drifting in and out of consciousness.

42. Defendants Bigger and Belsley knew that Mr. Smith should be taken to the hospital for an evaluation by a physician. Instead, sharing the same prejudice harbored by the Defendant officers, Defendants Bigger and Belsley concluded that Mr. Smith was "just playing games."

43. In joint concert with the Defendant Officers, Defendants Bigger and Belsley created documentation falsely suggesting that David S. Smith refused medical assistance when, in fact, he

² Clearly referring to the trees located on Saratoga Street.

was incoherent and unable to render a meaningful refusal of medical assistance, and/or to refuse immediate transport to the hospital where Mr. Smith could be evaluated by a physician.

44. Instead of immediately transporting Mr. Smith to the hospital, Defendants Bigger and Belsley, acting in concert with the Defendant City of Peoria officers, stated that Mr. Smith refused medical treatment and willfully and wantonly permitted the Defendant City of Peoria officers to transport Mr. Smith to the City of Peoria Police Department unduly delaying his transport to the hospital without lawful justification.

45. Upon arriving at the police station, detectives and officers employed by the City of Peoria Police Department began performing CPR on Mr. Smith as they attempted to transport him inside the police station.

46. Subsequently, Mr. Smith was transported by ambulance from the City of Peoria Police Department to the hospital.

47. During Mr. Smith's subsequent hospitalization, on information and belief, one or more of the City of Peoria and Advanced Medical Transport, Inc. Defendants related false statements concerning his physical condition and about what, if anything, was related by Mr. Smith while he was still present in the vicinity of 302 S. Saratoga.

48. In particular, it was related to hospital staff that Mr. Smith was previously "alert," "decisional" and had "refused care." Such statements are **demonstrably false and directly contradicted** by video and audio recordings of the October 28, 2019 incident captured by body-worn camera and dash-cam audio in the possession, custody and/or control of the City of Peoria Police Department.

49. On October 29, 2019, David S. Smith died as a result of the willful and wanton conduct of all Defendants; the day before his minor daughter's birthday.

COUNT I
Wrongful Death Claim – Defendant City of Peoria (*Respondent Superior*)

50. Each of the foregoing paragraphs are incorporated as if restated fully herein.

51. As described fully above, at all relevant times, Defendant City of Peoria had an obligation to properly supervise, control and manage its employees and/or agents, including its police officers.

52. At all times relevant herein, it was the duty of Defendant City of Peoria to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in the custody and control of the City of Peoria Police Department.

53. Notwithstanding its duty, Defendant City of Peoria willfully and wantonly breached its duty by failing to provide urgent medical assistance to David S. Smith who was in the custody and control of the City of Peoria Police Department on October 28, 2019, and as a direct and proximate cause thereof its acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death, by and through the acts and misconduct of one or more of its agents, servants and/or employees, including but not limited to, Defendants William England, Joshua Feeney, Ruth Sandoval and Meghan Houghton.

54. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant City of Peoria, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

55. At all times relevant herein, in the State of Illinois there existed a wrongful death statute set forth in 740 ILCS 180/1 *et seq.*

56. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant City of Peoria in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

57. David Smith is survived by his daughter, DaiViyonn Smith, who constitutes his sole heir under Illinois law.

58. David Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting the Defendant City of Peoria to liability pursuant to 740 ILCS 180/1.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against the Defendant City of Peoria, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT II

Survival Claim – Defendant City of Peoria (*Respondent Superior*)

59. Each of the foregoing paragraphs are incorporated as if restated fully herein.

60. At all times relevant herein, Defendant City of Peoria had an obligation to properly supervise, control and manage its employees and/or agents, including its police officers.

61. At all times relevant herein, it was the duty of Defendant City of Peoria to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

62. Notwithstanding its duty, Defendant City of Peoria, through the willful and wanton acts and/or omissions to act by its employees and/or agents, in providing medical assistance to a person in police custody and as a direct and proximate cause thereof, caused David S. Smith to die, by and through the acts and misconduct of one or more of its agents and/or employees, including Defendants William England, Joshua Feeney, Ruth Sandoval and Meghan Houghton.

63. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant City of Peoria, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

64. At all times relevant herein, in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

65. As a direct and proximate cause of Defendant City of Peoria's willful and wanton conduct, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from the Defendant, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against the Defendant City of Peoria, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT III
Wrongful Death Claim – Defendant William England

66. Each of the foregoing paragraphs are incorporated as if restated fully herein.

67. At all times relevant herein, it was the duty of Defendant William England to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in his custody and control after placing them under arrest by virtue of his badge of office as a police officer for the City of Peoria Police Department.

68. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of

his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

69. Notwithstanding his duty, Defendant William England willfully and wantonly breached his duty by failing to provide urgent medical assistance to David S. Smith who was in the custody and control of Defendant William England on October 28, 2019, including but not limited to refusing to transport Mr. Smith to the hospital for further evaluation by a physician when it was readily apparent that Mr. Smith was unable to refuse medical treatment in his condition, and as a direct and proximate cause thereof his acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

70. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant William England, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

71. At all relevant times in the State of Illinois there existed a wrongful death statute set forth in 740 ILCS 180/1 *et seq.*

72. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant William England in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

73. Mr. Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting Defendant William England to liability pursuant to 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant William England, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT IV
Survival Claim – Defendant William England

74. Each of the foregoing paragraphs are incorporated as if restated fully herein.

75. At all times relevant herein, it was the duty of Defendant William England to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

76. Notwithstanding his duty, Defendant William England through his willful and wanton acts and/or omissions to act by in providing medical assistance to a person in custody, including but not limited to refusing to cause the transport of Mr. Smith to the hospital for further evaluation by a physician when it was readily apparent that Mr. Smith was unable to refuse medical treatment in his condition, and as a direct and proximate cause thereof, caused David S. Smith to die.

77. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant William England, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

78. At all times relevant herein, in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

79. As a direct and proximate cause of Defendant William England's willful and wanton conduct, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from the Defendant, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against the Defendant William England, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT V
Wrongful Death Claim – Defendant Joshua Feeney

80. Each of the foregoing paragraphs are incorporated as if restated fully herein.

81. At all times relevant herein, it was the duty of Defendant Joshua Feeney to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in his custody and control after placing them under arrest by virtue of his badge of office as a police officer for the City of Peoria Police Department.

82. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

83. Notwithstanding his duty, Defendant Joshua Feeney willfully and wantonly breached his duty by failing to provide urgent medical assistance to David S. Smith who was in the custody and control of Defendant Joshua Feeney on October 28, 2019, and as a direct and proximate cause thereof his acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

84. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant Joshua Feeney, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

85. At all relevant times in the State of Illinois there existed a wrongful death statute set forth in 740 ILCS 180/1 *et seq.*

86. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant Joshua Feeney in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

87. Mr. Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting Defendant Joshua Feeney to liability pursuant to 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Joshua Feeney, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT VI
Survival Claim – Defendant Joshua Feeney

88. Each of the foregoing paragraphs are incorporated as if restated fully herein.

89. At all times relevant herein, it was the duty of Defendant Joshua Feeney to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

90. Notwithstanding his duty, Defendant Joshua Feeney through his willful and wanton acts and/or omissions to act by in providing medical assistance to a person in custody, including but not limited to refusing to cause Mr. Smith to be transported to the hospital for further evaluation by a physician when it was readily apparent that Mr. Smith was unable to refuse medical treatment in his condition and as a direct and proximate cause thereof, caused David S. Smith to die.

91. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant Joshua Feeney, David S. Smith died on October 29, 2019.

92. At all times relevant herein, in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

93. As a direct and proximate cause of Defendant Joshua Feeney's willful and wanton conduct, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from the Defendant, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against the Defendant Joshua Feeney, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT VII
Wrongful Death Claim – Defendant Ruth Sandoval

94. Each of the foregoing paragraphs are incorporated as if restated fully herein.

95. At all times relevant herein, it was the duty of Defendant Ruth Sandoval to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in her custody and control after placing them under arrest by virtue of her badge of office as a police officer for the City of Peoria Police Department.

96. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of

his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

97. Notwithstanding her duty, Defendant Ruth Sandoval willfully and wantonly breached her duty by failing to provide urgent medical assistance to David S. Smith who was in the custody and control of Defendant Ruth Sandoval on October 28, 2019, including but not limited to refusing to cause the transport of Mr. Smith to the hospital for further evaluation by a physician when it was readily apparent that Mr. Smith was unable to refuse medical treatment in his condition and as a direct and proximate cause thereof her acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

98. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant Ruth Sandoval, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

99. At all relevant times in the State of Illinois there existed a wrongful death statute set forth in 740 ILCS 180/1 *et seq.*

100. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant Ruth Sandoval in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

101. Mr. Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting Defendant Ruth Sandoval to liability pursuant to 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Ruth Sandoval, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT VIII
Survival Claim – Defendant Ruth Sandoval

102. Each of the foregoing paragraphs are incorporated as if restated fully herein.

103. At all times relevant herein, it was the duty of Defendant Ruth Sandoval to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

104. Notwithstanding her duty, Defendant Ruth Sandoval through her willful and wanton acts and/or omissions to act by in providing medical assistance to a person in custody, including but not limited to refusing to transport Mr. Smith to the hospital for further evaluation by a physician when it was readily apparent that Mr. Smith was unable to refuse medical treatment in his condition, and as a direct and proximate cause thereof, caused David S. Smith to die.

105. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant Ruth Sandoval, David S. Smith died on October 29, 2019.

106. At all times relevant herein, in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

107. As a direct and proximate cause of Defendant Ruth Sandoval's willful and wanton conduct, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from the Defendant, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Ruth Sandoval, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT IX
Wrongful Death Claim – Defendant Megan Houghton

108. Each of the foregoing paragraphs are incorporated as if restated fully herein.

109. At all times relevant herein, it was the duty of Defendant Megan Houghton to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in her custody and control after placing them under arrest by virtue of her badge of office as a police officer for the City of Peoria Police Department.

110. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

111. Notwithstanding her duty, Defendant Megan Houghton willfully and wantonly breached her duty by failing to provide urgent medical assistance to David S. Smith who was in the custody and control of Defendant Megan Houghton on October 28, 2019, and as a direct and proximate cause thereof her acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

112. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant Megan Houghton, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

113. At all relevant times in the State of Illinois there existed a wrongful death statute set forth in 740 ILCS 180/1 *et seq.*

114. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant Megan Houghton in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

115. Mr. Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting Defendant Megan Houghton to liability pursuant to 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Megan Houghton, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT X
Survival Claim – Defendant Megan Houghton

116. Each of the foregoing paragraphs are incorporated as if restated fully herein.

117. At all times relevant herein, it was the duty of Defendant Megan Houghton to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

118. Notwithstanding her duty, Defendant Megan Houghton through her willful and wanton acts and/or omissions to act by in providing medical assistance to a person in custody, including but not limited to refusing to transport Mr. Smith to the hospital for further evaluation by a physician when it was readily apparent that Mr. Smith was unable to refuse medical treatment in his condition, and as a direct and proximate cause thereof, caused David S. Smith to die.

119. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant Megan Houghton, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

120. At all times relevant herein, in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

121. As a direct and proximate cause of Defendant Megan Houghton's willful and wanton conduct, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from the Defendant, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Megan Houghton, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT XI

Wrongful Death Claim – Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois (*Respondeat Superior*)

122. Each of the foregoing paragraphs are incorporated as if restated fully herein.

123. As described fully above, at all relevant times, Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois had an obligation to properly supervise, control and manage its employees and/or agents, including its paramedics.

124. At all times relevant herein, it was the duty of Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in the care of the Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois.

125. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

126. Notwithstanding its duty, Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois willfully and wantonly breached its duty by failing to provide urgent medical assistance to David S. Smith who was in the care of Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois on October 28, 2019, including but not limited to refusing to transport Mr. Smith to the hospital for further evaluation by a physician when it was readily apparent that Mr. Smith was unable to refuse medical treatment in his condition, and as a direct and proximate cause thereof its acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death, by and through the acts and misconduct of one or more of its agents, servants and/or employees, including but not limited to, Defendants Duncan Bigger and Adam Belsley.

127. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

128. At all relevant times in the State of Illinois there existed a Wrongful Death statute set forth in 740 ILCS 180/1 *et seq.*

129. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant Advance Medical Transport, d/b/a Advance Medical Transport of

Central Illinois in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

130. David Smith is survived by his daughter, DaiViyonn Smith, who constitutes his sole heir under Illinois law.

131. David Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting the Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois to liability pursuant to 740 ILCS 180/1.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against the Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT XII

Survival Claim – Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois (*Respondent Superior*)

132. Each of the foregoing paragraphs are incorporated as if restated fully herein.

133. At all times relevant, Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois had an obligation to properly supervise, control and manage their employees and/or agents, including its paramedics.

134. At all times relevant, it was the duty of Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

135. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that

he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

136. Notwithstanding its duty, Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois, through the willful and wanton acts and/or omissions to act by its employees and/or agents, in providing medical assistance to a person in custody and as a direct and proximate cause thereof, caused David S. Smith to die, by and through the acts and misconduct of one or more of its agents and/or employees, including Defendants Duncan Bigger and Adam Belsley.

137. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by the Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

138. At all times relevant in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

139. As a direct and proximate cause of the willful and wanton conduct of Defendant Advance Medical Transport, d/b/a Advance Medical Transport of Central Illinois, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from the Defendant, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against the Defendant Advance

Medical Transport, d/b/a Advance Medical Transport of Central Illinois, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT XIII
Wrongful Death Claim – Defendant Duncan Bigger

140. Each of the foregoing paragraphs are incorporated as if restated fully herein.

141. At all times relevant herein, it was the duty of Defendant Duncan Bigger to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in his care and custody as a paramedic and/or emergency medical technician.

142. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

143. Notwithstanding his duty, Defendant Duncan Bigger willfully and wantonly breached his duty by failing to provide urgent medical assistance, including but not limited to, failing to recognize that David Smith was unable to give viable consent to refuse medical treatment and that he required to be immediately transported to the hospital for evaluation by a physician, and as a direct and proximate cause thereof his acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

144. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant Duncan Bigger, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

145. At all relevant times in the State of Illinois there existed a Wrongful Death statute set forth in 740 ILCS 180/1 *et seq.*

146. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant Duncan Bigger in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

147. Mr. Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting Defendant Duncan Bigger to liability pursuant to 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Duncan Bigger, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT XIV
Survival Claim – Defendant Duncan Bigger

148. Each of the foregoing paragraphs are incorporated as if restated fully herein.

149. At all times relevant herein, it was the duty of Defendant Duncan Bigger to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

150. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

151. Notwithstanding his duty, Defendant Duncan Bigger through his willful and wanton acts and/or omissions to act by respondent failing to provide urgent medical assistance, including but not limited to, failing to recognize that David Smith was unable to give viable consent to refuse medical treatment and that he required to be immediately transported to the

hospital for evaluation by a physician, and as a direct and proximate cause thereof his acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

152. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant Duncan Bigger, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

153. At all times relevant herein, in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

154. As a direct and proximate cause of Defendant Duncan Bigger's willful and wanton conduct, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from Defendant Duncan Bigger, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

COUNT XV
Wrongful Death Claim – Defendant Adam Belsley

155. Each of the foregoing paragraphs are incorporated as if restated fully herein.

156. At all times relevant herein, it was the duty of Defendant Adam Belsley to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith, who were in his care and custody as a paramedic and/or emergency medical technician.

157. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

158. Notwithstanding his duty, Defendant Adam Belsley willfully and wantonly breached his duty by failing to provide urgent medical assistance, including but not limited to, failing to recognize that David Smith was unable to give viable consent to refuse medical treatment and that he required to be immediately transported to the hospital for evaluation by a physician, and as a direct and proximate cause thereof his acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

159. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant Adam Belsley, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

160. At all relevant times in the State of Illinois there existed a Wrongful Death statute set forth in 740 ILCS 180/1 *et seq.*

161. The wrongful death of David Smith was proximately caused by the willful and wanton conduct of Defendant Adam Belsley in violation of 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

162. Mr. Smith's next of kin, his minor daughter, have and will continue to suffer a loss of personal and pecuniary nature including loss of society, companionship, as well as grief, sorrow and mental suffering, subjecting Defendant Adam Belsley to liability pursuant to 740 ILCS 180/1 *et seq.* commonly referred to as the Wrongful Death Act.

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Adam Belsley, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

COUNT XVI
Survival Claim – Defendant Adam Belsley

163. Each of the foregoing paragraphs are incorporated as if restated fully herein.

164. At all times relevant herein, it was the duty of Defendant Adam Belsley to exercise ordinary care so as to prevent injury and harm to persons, including David S. Smith.

165. That duty included, but was not limited to, ensuring that Mr. Smith was provided medical assistance once it was reasonably clear that he was in medical distress and to ensure that he was immediately transported to the hospital when he was clearly unable, due to the severity of his physical condition, to refuse to be transported to the hospital for evaluation and/or treatment by a physician.

166. Notwithstanding his duty, Defendant Adam Belsley through his willful and wanton acts and/or omissions to act by respondent failing to provide urgent medical assistance, including but not limited to, failing to recognize that David Smith was unable to give viable consent to refuse medical treatment and that he required to be immediately transported to the hospital for evaluation by a physician, and as a direct and proximate cause thereof his acts and/or omissions to act, caused David S. Smith to sustain injuries resulting in his death.

167. As a direct and proximate cause of the aforementioned willful and wanton acts or omissions to act committed by Defendant Adam Belsley, David S. Smith died on October 29, 2019; the day before his minor daughter's birthday.

168. At all times relevant herein, in the State of Illinois there existed a Survival Act, statutorily set forth at 755 ILCS 5/27-6 *et seq.*

169. As a direct and proximate cause of Defendant Adam Belsley's willful and wanton conduct, David S. Smith suffered injuries of a personal and pecuniary nature including but not limited to, conscious pain and suffering and would have been entitled to receive compensation from Defendant Adam Belsley, and had he survived, he would have been entitled to bring this action for damages pursuant to the provisions of 755 ILCS 5/27-6 *et seq.*

WHEREFORE, Plaintiff Verniec Fluker, as Independent Administrator of the Estate of David S. Smith, deceased, demands and prays for judgment against Defendant Adam Belsley, in an amount in excess of \$10,000,000.00 (TEN MILLION DOLLARS) plus costs of suit.

JURY DEMAND

Plaintiff, VERNIEC FLUKER, as Independent Administrator of the Estate of DAVID S. SMITH, demands a trial by jury on all Counts.

Respectfully submitted,

Plaintiff, VERNIEC FLUKER, as
Independent Administrator of the ESTATE
OF DAVID S. SMITH

/s/ Devlin J. Schoop
One of the Attorneys for the Plaintiff

Dated: October 16, 2020

Devlin Joseph Schoop
THE COCHRAN FIRM CHICAGO
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IN THE CIRCUIT COURT OF TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA - LAW DIVISION

VERNIEC FLUKER, as Independent)	
Administrator of the Estate of DAVID S. SMITH,)	
and VERNIEC FLUKER, individually,)	Case No. 20 L 239
)	
Plaintiffs,)	
v.)	
)	TRIAL BY JURY DEMANDED
THE CITY OF PEORIA, OFFICER)	
WILLIAM ENGLAND, Star No. PP 1123,)	
OFFICER JOSHUA FEENEY, Star No. PP 1121)	
OFFICER RUTH SANDOVAL, Star No. PP 935,)	
OFFICER MEGAN HOUGHTON,)	
Star No. PP 1181; ADVANCED MEDICAL)	
TRANSPORT, INC., d/b/a ADVANCED)	
MEDICAL TRANSPORT OF CENTRAL)	
ILLINOIS, DUNCAN BIGGER, and)	
ADAM BELSLEY,)	
Defendants.)	

AFFIDAVIT

I, Devlin J. Schoop, declare, under penalty of perjury pursuant to Section 1-109 of the Code of Civil Procedure, that if I were called upon to testify, I would do so as follows:

1. I am an attorney licensed to practice law in the State of Illinois.
2. I am an attorney with the law firm of THE COCHRAN FIRM CHICAGO, one of the attorneys of record for the Plaintiff in the above-referenced cause of action familiar with the facts in this matter, and I have reviewed the available information relating to the money damages in this matter.
3. Based upon information available to me at the present time, the total amount of money damages sought in this matter are worth in excess of \$50,000.00.
4. This Affidavit is submitted in compliance with Supreme Court Rule 222.

Further, Affiant sayeth not.

VERIFICATION

Under Section 1-109 of the Illinois Code of Civil Procedure, I, Devlin J. Schoop, declare under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge.

/s/ Devlin J. Schoop
DEVLIN J. SCHOOP
Affiant

Dated: October 16, 2020

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