

**IN THE CUYAHOGA COUNTY COMMON PLEAS COURT  
CLEVELAND, OHIO**

**WILLIAM MCKISSACK**

CASE NO. CV-23-977979

*Plaintiff*

**COMPLAINT  
WITH JURY DEMAND**

*versus*

JUDGE WILLIAM F. B. VODREY

**RYAN JASINSKY / EMPLOYEE & AGENT  
OF WESTLAKE POLICE DEPARTMENT / CITY OF WESTLAKE  
27300 HILLIARD BLVD.  
WESTLAKE, OHIO 44145**

AND

**RYAN JASINSKY, INDIVIDUALLY  
6888 BRADFORD CIRCLE  
INDEPENDENCE, OHIO 44131**

AND

**DENNIS M. CLOUGH / MAYOR OF WESTLAKE, INDIVIDUALLY  
27700 HILLIARD BLVD.  
WESTLAKE, OHIO 44145**

AND

**MICHAEL P. MALONEY / LAW DIRECTOR OF WESTLAKE, INDIVIDUALLY  
27700 HILLIARD BLVD.  
WESTLAKE, OHIO 44145**

AND

**CITY OF WESTLAKE, OHIO  
27700 HILLIARD BLVD.  
WESTLAKE, OHIO 44145**

*Defendants*

**COMPLAINT:**

- **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS: IN TORT**
- **NEGLIGENCE: IN TORT**
- **FALSE ARREST: IN TORT**
- **MALICIOUS PROSECUTION: IN TORT**

- **EXCESSIVE FORCE: IN TORT**
- **ILLEGAL SEARCH & SEIZURE: IN VIOLATION OF U.S. CONSTITUTION 4<sup>TH</sup> AMENDMENT**
- **ILLEGAL EXCESSIVE FORCE: IN VIOLATION OF U.S. CONSTITUTION 4<sup>TH</sup> AND/OR 14<sup>TH</sup> AMENDMENTS**
- **ILLEGAL DENIAL OF INALIENABLE RIGHTS OF OHIO CONSTITUTION ARTICLE I, SECTION 1 & ORC 2921.45(A)**
- **ILLEGAL DENIAL OF RIGHT TO BE SECURE IN PERSON OF OHIO CONSTITUTION ARTICLE I, SECTION 14 & ORC 2921.45(A)**
- **FALSE POLICE REPORT: IN VIOLATION OF ORC 2921.13**
- **INTIMIDATION: IN VIOLATION OF ORC 2921.03**
- **DERELICTION OF DUTY: IN VIOLATION OF 2921.44**

### **PRAYER FOR RELIEF**

1. **CLAIM 1 - TORT CAUSES OF ACTION:** Plaintiff prays for relief against Defendants Jasinsky, Clough, and Maloney, individually, jointly and/or severally, and if the court extends municipal liability for the intentional torts of its employees, against the City of Westlake as well, for judgment in tort for damages for:

- A. psychological issues
- B. lost wages
- C. loss of future earnings
- D. emotional distress and/or trauma
- E. loss of enjoyment of life
- F. medical and/or hospital bills and future medical expenses
- G. scarring on his body
- H. damage to his clothes
- I. immediate and protracted pain and suffering

In the amount of:

1. Compensatory damages in an amount to be determined at trial.
2. Punitive damages in the amount of **Five Million Dollars (\$5,000,000.00)**, trebled as allowed.
3. Attorney fees and costs.

2. **CLAIM 2 - 42 U.S.C. CAUSES OF ACTION:** Plaintiff prays for relief against all Defendants individually, jointly and/or severally for judgment in violation of 42 U.S.C. § 1983 for damages for:

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- A. psychological issues
- B. lost wages
- C. loss of future earnings
- D. emotional distress and/or trauma
- E. loss of enjoyment of life
- F. medical and/or hospital bills and future medical expenses
- G. scarring on his body
- H. damage to his clothes
- I. immediate and protracted pain and suffering

In the amount of:

- Compensatory damages in an amount to be determined at trial.
- Punitive damages in the amount of **Five Million Dollars (\$5,000,000.00)**, trebled as allowed.
- Attorney fees and costs.

**3. CLAIM 3 - OHIO REVISED CODE CAUSES OF ACTION:** Plaintiff prays for relief against Defendants Jasinsky, Clough, and Maloney, individually, jointly and/or severally for judgment in violation of the Ohio Revised Code sections as averred for damages for:

- A. psychological issues
- B. lost wages
- C. loss of future earnings
- D. emotional distress and/or trauma
- E. loss of enjoyment of life
- F. medical and/or hospital bills and future medical expenses
- G. scarring on his body
- H. damage to his clothes
- I. immediate and protracted pain and suffering

In the amount of:

- Compensatory damages in an amount to be determined at trial.
- Punitive damages in the amount of **Five Million Dollars (\$5,000,000.00)**, trebled as allowed.
- Attorney fees and costs

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4. Referral of Jasinsky, Clough, and Maloney to the FBI for criminal prosecution.
5. Referral of Maloney to the Ohio Supreme Court Office of Disciplinary Counsel.
6. A jury trial on all appropriate issues.
7. An award of attorney fees, costs and expenses against all Defendants.
8. Any and all other relief this Court may deem appropriate.

## **STATEMENT OF FACTS**

### **THE STOP**

1. On October 18, 2021 Plaintiff, a young black male, was driving in Westlake with his girlfriend, enroute to a movie theater, when he was stopped by Defendant Jasinsky for alleged illegal tinted windows. Within 13 minutes of being racially profiled and stopped by Jasinsky, Plaintiff was on the street, the back of his head split open, an injury which would require multiple surgical staples to close and has caused Plaintiff continuing complications.
2. Jasinsky's dash cameras (State of Ohio Evidence marked as "tick178593123-tick178597768-video0.mp2 and [. . .] mp4", hereinafter "Dash-Cam") captured the pre-stop and post-stop behavior of Jasinsky, to the front, side and rear of Jasinsky's cruiser. Jasinsky's Dash-Cam video should be required viewing of all Ohio students for definition of what a "modern police state" looks like.
3. Prior to the stop Jasinsky is shown on the Dash-Cam weaving in and out of traffic and passing vehicles in the turning lane, eventually pulling up next to and slightly behind

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Plaintiff's car at a traffic light, which afforded Jasinsky a long, unobstructed view into Plaintiff's side driver's window. When the light turns green Jasinsky cuts over from the turning lane in front of several vehicles to get behind Plaintiff's car. After calling in the Plaintiff's plate, just prior to sounding his siren, Jasinsky can be heard remarking on the Dash-Cam, "This should be interesting."

4. At this point all Jasinsky knows is that the car has tinted windows, and that it is being driven by a black male. What would make the stop "interesting?"
5. Upon stopping the Plaintiff's vehicle Jasinsky, along with a plain-clothed black male, approach the passenger side. Jasinsky asks Plaintiff and his passenger for identification. When the passenger asks Jasinsky why they are being stopped, Jasinsky coyly responds "I'll let you know."
6. Jasinsky then asks what Plaintiff's front window tint is; Plaintiff replies "35%." Jasinsky then states that Ohio law requires 50% light. In fact, Plaintiff believed that his front windshield tint was less than 50%; that it was 35%, admitting 65% light. Jasinsky says "since you admitted to the tint being illegal, I don't even need to check it." Jasinsky then says, "No big deal if that's all you've got going on right?" Jasinsky follows this up with immediately asking the Plaintiff if he can search his car. Why?
7. As inauspicious a start as this is, Jasinsky doubles down. Upon returning to his cruiser Jasinsky asks dispatch for a canine unit. Did Jasinsky smell weed? He hasn't commented that he did; nor has the plain-clothed black male who also apparently re-entered Jasinsky's cruiser articulated a concern about drugs. While Jasinsky awaits an answer as to a canine

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unit he does suddenly remember that he did smell weed “off of the driver, when I approached the driver’s side.” (Dash-Cam at @ 6:10 minutes et seq.)

8. Unfortunately - for Officer Jasinsky and the City of Westlake - up until this point in the Dash-Cam video Jasinsky *has not* approached the driver’s side of the vehicle. *Nor will he ever*. Fortunately for the civil rights of Ohioans, Jasinsky is live streaming his conscience.
9. Not yet happy with his pre-textual articulations, Jasinsky decides to triple down. He follows up his lie about marijuana odor by remarking that he also saw marijuana shake in the Plaintiff’s console. No marijuana shake is ever recovered from the Plaintiff’s console, nor noted in the police report, nor confirmed by the plain-clothed black male or by the second officer who arrives within a few minutes of the stop, and who also conducts a two-minute-prior-to-the-occurrence-of-excessive-force viewing of the interior of the Plaintiff’s vehicle.
10. The illegal tint violation investigation has now been abandoned by Jasinsky. There are no marijuana indications that are true. Plaintiff has no warrants and possesses a valid driver’s license and vehicle registration. Yet Jasinsky plows on.
11. What does Jasinsky say next as he awaits dispatch? “Strangest name. McKissack. I was not expecting that from a McKissack.” Expecting what? What does the word “that” mean in this context? Is he surprised that the name is associated with a black male? Is Officer Jasinsky seeing the world through race-based eyes? Is Officer Jasinsky engaging in racial stereotyping, or racial profiling, at this point?
12. Next, 8:25 minutes into the stop, after being told by dispatch that no canines are available, Jasinsky states that both the Plaintiff and his passenger are “nervous”, so he is “just going

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to go ahead and get them out.” Why? Nervousness is decidedly not a valid basis for an illegal seizure in Ohio.

13. Jasinsky proceeds back to the passenger side of Plaintiff’s car and asks Plaintiff to exit. Jasinsky asserts “law” that he can order Plaintiff out of the vehicle. Plaintiff complies immediately. Jasinsky then walks Plaintiff back to his cruiser and asks for consent to a pat search for weapons, which Plaintiff provides willingly. Finding no weapons Jasinsky directs the Plaintiff to the side of his cruiser, off-camera, to get “some further information.”
14. Ten minutes into the stop Jasinsky, a former Navy Seal and trained mixed martial arts fighter, has failed to find reasonable suspicion of a crime, has abandoned the basis for his police stop, has articulated lies as corroborated by the Dash-Cam video, has convinced Plaintiff to consent to a weapons pat down with no legal basis, and now has the Plaintiff trapped against his cruiser by his own body.
15. The stop continues. While off-camera Jasinsky can be heard on the audio track stating that the reason he asked the Plaintiff to step out of the car and come back to his cruiser to search him was because the Plaintiff was the “most nervous he’s ever seen in thousands of traffic stops.” Not weed shake, not weed odor, not illegal tints, but nervousness. During this entire sequence Jasinsky is essentially bullying the Plaintiff, mocking him, repeating “No doubt, no doubt” to every answer the Plaintiff tries to give to Jasinsky’s barrage of questions, questions which amount to nothing more than thinly disguised inquires as to why the Plaintiff thought he was permitted to be in Westlake to begin with.

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16. Jasinsky then tells the Plaintiff that he “understands [the Plaintiff’s nervousness], I’m a scary dude.” Jasinsky is both intimidating and inciting the Plaintiff.
17. Again, this stop is being prolonged after the Plaintiff’s warrant, driver’s license, and vehicle registration inquiries have all come back clean, the tinted windows investigation has been abandoned, no canine dog is available, and is based upon Jasinsky’s lies about weed and a ridiculous assertion of nervousness.
18. Next, and importantly, Jasinsky states, in response to Plaintiff’s assertion that he isn’t nervous, “You aren’t now!” So, even the nervousness basis of the stop, by Jasinsky’s own admission, has ended. Why is Jasinsky still pinning the Plaintiff against his cruiser?
19. With the Plaintiff trapped against the cruiser, a second officer arrives and slowly approaches the passenger side of Plaintiff’s car and spends a few minutes looking into the windows. The passenger is then seen handing a small container out of the passenger window to the second officer. The second officer holds the container up, immediately turning and yelling to Jasinsky that the container has alcohol in it. The second officer doesn’t smell the bottle or even check the seal. If it’s sealed, it’s not an open container.
20. We are now 12 minutes into the stop. Jasinsky promptly tells the Plaintiff that he now has probable cause to search Plaintiff’s car, based upon “an open container.” Jasinsky continues to pin the Plaintiff, instructing him to turn around to be handcuffed. It is unclear at this point if Jasinsky is effecting an arrest for an open container or is initiating a pre-arrest detention with cuffing for officer safety *because Jasinsky is in fear of an open container.*

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21. Nonetheless, Plaintiff becomes upset, protesting that the container is old. Plaintiff then panics and attempts to get away from Jasinsky, who promptly catches the Plaintiff within a few steps, physically controls Plaintiff - as the other officer, running, closes within reach of both Plaintiff and Jasinsky - and then inexplicably lifts the Plaintiff's body off the ground, tilts Plaintiff into a horizontal position, and then slams the Plaintiff headfirst onto the roadway, cracking the Plaintiff's head open.
22. An open container violation is a minor misdemeanor in Ohio and not an arrestable offense.
23. Jasinsky used deadly and/or excessive force against the Plaintiff.
24. *Even though all criminal charges brought by the City of Westlake against Plaintiff were dismissed by the State of Ohio after the criminal court found that Jasinsky's actions violated Plaintiff's constitutional rights, the City of Westlake did not discipline Jasinsky for the injuries he caused Plaintiff.*

**CITY OF WESTLAKE KNOWN CUSTOMS, POLICIES, PRACTICES, PROCEDURES  
& FAILURE TO TRAIN**

25. Attached as Exhibits and incorporated into all factual allegations and causes of action are the following known customs, policies, practices, procedures and training information of the City of Westlake<sup>1</sup> which establish its **Monell liability** (see discussion *infra* at page 25):
- A. Exhibit A "Make Westlake Safer Today" from Mayor Clough dated 3/19/2020 and signed by Westlake Police Chief Kevin Bielozer and Defendant Jasinsky. In Exhibit A Clough states that police officers will be provided with training to successfully perform *duties consistent with the values outlined in the document*, including in the area of "Policy, law, ethics, and Priority of Life", where Clough

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<sup>1</sup> Material from FOIA responses of the City of Westlake and public material.

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writes that he “expects the officer to decide” and to “do what you believe is right, seek guidance when you need it.” However, no duties are mentioned.

While Clough labels Exhibit A as “values”, these statements by Clough actually reflect *Monell* actionable customs, policy, pattern and practices of the City of Westlake. What Clough has written in Exhibit A is woefully inadequate and a breach of his statutory duty in that it ***provides no policy, legal or ethical guidance whatsoever***. In fact, the policy established by Clough is a precise abrogation, and *dissimulato* attempt, to transfer responsibility from the City of Westlake to each individual police officer to not only acquire “legal and ethical knowledge”, but to also develop, interpret, and implement techniques to apply this knowledge. And, most egregiously, to permit individual police officers to ***self-monitor*** exactly when they need to seek guidance.

- B. Exhibit B “Training Task: Use of Force” outline for Jasinsky dated 4/28/2020 (during Jasinsky’s probationary period). The document has the words “USC – Garner vs. Tennessee” artfully stamped in the heading, and outlines eight (8) categories, with no details, of use of force techniques. None of the categories are about what to do when a suspect flees. The last category is entitled “Deadly Force.” (Tellingly, the Supervisor signature field is not signed.)

The City of Westlake appears to be engaging in duplicitous FOIA technique. While it has provided personnel files that show only 8 police officers as having attended Use of Force Training (see *infra*) (Jasinsky not being one) this probationary “Training Task” appears to be a Use of Force training session. Why is the City of Westlake not claiming these materials as Use of Force training? Why are there no details of the training? Who is the instructor for new cops in Use of Force?

Plaintiff avers that the City of Westlake is not claiming this training as Use of Force training because it is both woefully inadequate and not ORC or OAC compliant. Most significantly, it appears that Westlake’s policy is to ***only*** require this probationary training task to be completed to commission an officer and set him loose on the Ohio citizens that happen into Westlake City.

- C. Exhibit C “Probationary Officer Evaluation Report” for Jasinsky dated 5/8/2020. States that Jasinsky “excels in self-initiated traffic enforcement and criminal interdiction” and has “attained a solid grasp of search and seizure.”

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Also states that Jasinsky “has exceptional instincts and behavior recognition when dealing with people.”

The report provides no basis for these evaluations. The report goes on to state that due to Covid-19 Jasinsky “has had limited exposure to a variety of areas of basic investigation.” The report also scores Jasinsky a “1.8/3.0” in the area of “Criminal laws/ordinances/prosecution”, his second lowest score besides 1.7 in written communication. A score of 2 or less is “inadequate” *per the document*.

This report shows the practice of Westlake to not only make improper and reckless judgment analyses of a police officer’s skills but is an admission that Jasinsky is failing in the most basic area of “criminal law.” ***The document is a further admission that Westlake permits “inadequately” skilled police officers to roam its streets.***

Paradoxically, Jasinsky is praised in this report for his grasp of search and seizure, the very area which was seized upon by a Cuyahoga County Common Pleas Court to dismiss the criminal charges initiated by Jasinsky against Plaintiff because Jasinsky’s behavior was in violation of 4<sup>th</sup> Amendment search and seizure law. Essentially one court has already determined that the City of Westlake doesn’t know what it’s doing when it comes to training and supervising its police officers in Constitutional issues. This document corroborates that determination.

- D. Exhibit D “Training Record” for police officer Joshua Riley for years 1999-2014. In that time Officer Riley completed over one hundred training classes. Exactly one, in 2000, was on use of force.

A review of 50+ Personnel files provided by the City of Westlake for its police officers through 2022 show eight (8) attended a Use of Force training exercise. Jasinsky was not one of them.

Westlake police Captain Gerald Vogel, employed by Westlake since 1999, shows no completed Use of Force training in his entire career - through 2022 - as documented in his provided Personnel file.

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- E. Exhibit E, Page 1 “Notice of Discipline” from Mayor Clough to Officer Jeff Agoston, dated 11/5/2021. Shows that Clough is the ultimate supervisor of Westlake police officer behavior.

Agoston is disciplined for “failing to communicate with a subordinate officer” and “failure to ensure proper review” of the use of force incident that occurred on Agoston’s shift in “October 2021.” Assuming *arguendo* that this use of force incident was the head-splitting of the Plaintiff on October 18, 2021, and that **Agoston is Jasinsky’s supervisor**, this document alarmingly shows that the City of Westlake disciplined Jasinsky’s supervisor for *after-the-fact failures* (see Exhibit H *infra*), but not Jasinsky himself for the actual use of force; Jasinsky’s Discipline sub-folder in his Personnel file is empty.

Page 2 of Exhibit E is the 3<sup>rd</sup> quarter 2021 “Evaluation Report” of Agoston prepared by Captain Vogel. The report states that Agoston’s job performance was below standard in “successfully completes all tasks as defined within job description and policy, absent negative disciplinary action.”

- F. Exhibit F “Westlake Police Department Policies & Procedures” certification page (page 1 of 59 pages provided) of Officer Jeff Agoston dated 12/18/2008, the date of Agoston’s hire by Westlake. The entire provided Westlake Police Department Policies & Procedures document, dated in sub-parts 9/15/1987, 12/14/1987, 12/23/1987, 4/25/1997, shows *no* Use of Force policy in effect as of 12/18/2008.

A review of Agoston’s Personnel file shows dozens of Training Tasks completed by Agoston at hire; *zero* are on the use of force. Agoston’s Personnel file also shows 100+ Training classes completed through 2021; *zero* are in the use of force.

- G. Exhibit G “Evaluation Report” for Jasinsky, 3rd Quarter 2021, dated 9/17/2021. This report states that Jasinsky meets the standard of Measures 24 and 25 “with Distinction.” The Measures are “24 . . . not having sustained Personnel Complaint regarding his conduct with members of the Community” and “25 . . . engaging in a preventive education effort with a member of the community.”

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There are no further Evaluation Reports provided by the City of Westlake for Jasinsky. Plaintiff's head was split open by Jasinsky in the 4<sup>th</sup> quarter, 2021. Per Westlake, Jasinsky has not had a performance evaluation since the head split. (Of course, if Defendant Maloney has directed that these evaluations be redacted from Jasinsky's file that not only adds weight to the dereliction of duty cause of action but portends other problems for Maloney.)

- H. Exhibit H. Internet link for and screenshot of an article entitled "Controversial police training course being held in Westlake this week", dated 4/25/2022. The article describes a use of force training seminar for Westlake police officers that is a "national controversy" because the course focuses on *justifying use of force after the fact*.

That the City of Westlake is training and endorsing this approach to use of force by its officers speaks as loudly as any of the above materials to Westlake's culpable customs, policies, patterns and practices, and failure to train that led directly to Plaintiff's injuries. The article lists no other Cuyahoga County police departments, in fact no other Ohio PDs, utilizing this type of use of force training. (<https://www.ideastream.org/news/government-politics/2022-04-25/controversial-police-training-course-being-held-in-westlake-this-week>.)

- I. Exhibit I "Notice of Discipline" dated 12/8/2020 against Officer JP Toth for violation of Use of Force Policy 300. Westlake "disciplined" Toth by doing absolutely nothing. Toth is one of the only 8/50+ officers who completed Use of Force training, in 2015.
- J. Exhibit J are two pages of records for Jasinsky from the "Policy Acknowledgement Report 2018-2022" provided by the City of Westlake. In Exhibit J Jasinsky 'acknowledges' several dozen policies; Jasinsky does not acknowledge any Use of Force Policy.

In fact, many of the Westlake police officers listed in the entire several hundred-page report have not acknowledged Use of Force.

- K. Exhibit K are pages 53-60 for "Policy 300 Use of Force" of the 2022 Westlake Police Dept. Policy Manuel. The City of Westlake provided no Policy Manuel dated prior to 2022 other than the 1987-1997 Exhibit F; it appears that Exhibit

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F was the official Policy Manual of the Westlake Police on the day that Plaintiff's head was split open in October 2021. Thus, there was no Use of Force Policy in place in 2021.

If "Policy 300" was actually in place in 2021 (see Exhibit I) and Westlake has simply responded with the latest 2022 version, Jasinsky still failed to acknowledge his knowledge of the policy, as well as violated it top to bottom - below are sub-parts 300.3.2(a)-(r) of the Policy entitled "Factors Used to Determine the Reasonableness of Force" [with italic-bold comments added to the policy language]:

- i.* (a) Immediacy and severity of the threat to officers or others. ***Plaintiff posed none.***
- ii.* (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time. ***Plaintiff has taken 3 steps away from Jasinsky.***
- iii.* (c) 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). ***Jasinsky had size advantage, is an ex-Navy Seal and MMA fighter, was not exhausted or fatigued, and had another officer within arm's length.***
- iv.* (d) The effects of suspected drug or alcohol use. ***None.***
- v.* (e) The individual's mental state or capacity. ***Plaintiff was upset by Jasinsky's own conduct.***
- vi.* (f) The individual's ability to understand and comply with officer commands. ***No issuers re: understanding. Full compliance until the end.***
- vii.* (g) Proximity of weapons or dangerous improvised devices. ***None.***
- viii.* (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained. ***Non-sensical.***
- ix.* (i) The availability of other reasonable and feasible options and their possible effectiveness. ***Jasinsky had the Plaintiff under control and then flipped him up and down on his head. Jasinsky had already employed "reasonable and feasible" and then chose to escalate.***
- x.* (j) Seriousness of the suspected offense or reason for contact with the individual. ***All misdemeanors not subject to arrest.***
- xi.* (k) Training and experience of the officer. ***Minimal or none.***

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- xii.* (l) Potential for injury to officers, suspects, and others. ***Substantial to suspect; none to officers or others.***
- xiii.* (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer. ***Once Jasinsky controlled the Plaintiff there was no resisting or attack upon Jasinsky.***
- xiv.* (n) The risk and reasonably foreseeable consequences of escape. ***None.***
- xv.* (o) The apparent need for immediate control of the individual or a prompt resolution of the situation. ***None.***
- xvi.* (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others. ***Plaintiff never posed a threat.***
- xvii.* (q) Prior contacts with the individual or awareness of any propensity for violence. ***None.***
- xviii.* (r) Any other exigent circumstances. ***None.***

L. Exhibit L “FSCC Certificate” for Westlake police officer Richard Lea, dated 5/2/2022. Purports to demonstrate that Lea completed a “Force Science Analyst” course. The certificate lists no hours attended and is violative of the standards of the Ohio Peace Officer Training Commission (“OPOTC”) Continuing Professional Training standards.

Westlake provided this document as responsive to its training of its police officers in Use of Force. The entirety of the response shows only eight (8) officers including Lea completing Use of Force training.

26. In addition to the above, the City of Westlake in its public records response provided “UoF” documentation for the years 2019-2022. Not until 2022 did Westlake train its police officers in “De-escalation”; for the years 2019-2021 the Use of Force training consisted only of Defensive Tactics, Taser and gun training.

27. Finally, upon information and belief, based upon a review of the thousands of pages of materials provided by the City of Westlake in its FOIA responses, many if not most of the training activities of the Westlake Police Department failed to conform to OPOTC

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standards, in *per se* violation of the Ohio Revised and Administrative Codes, in that the training lacked hours attended, is exclusively on-line, was not conducted by a properly credentialed instructor, was not performed per a written formal lesson plan, did not contain the required courses and/or did not meet the minimum hour requirements.

28. All the above facts collectively demonstrate actual customs, policies, patterns and practices of the City of Westlake relating to its police force, as well as a woeful failure to train its police officers, which amounts to deliberate indifference by the City of Westlake, sufficient to find the City of Westlake liable for Plaintiff's injuries under *Monell*.

**JASINSKY VIOLATED A "CLEARLY ESTABLISHED RIGHT"**

29. Once the defendant raises a qualified-immunity defense, the burden shifts to the plaintiff to demonstrate both [1] that the challenged conduct violated a constitutional or statutory right, and [2] that the right was so clearly established at the time of the conduct 'that every reasonable official would have understood that what he [was] doing violate[d] that right.' *T.S. v. Doe*, 742 F.3d 632, 635 (6th Cir. 2014). The Cuyahoga County Common Pleas Court has already determined that Jasinsky violated Plaintiff's 4<sup>th</sup> Amendment constitutional rights during the Stop (see Journal Entry attached as Exhibit M and incorporated herein) regarding probable cause. Jasinsky's use of force also violated Plaintiff's 4<sup>th</sup> Amendment constitutional rights (and 14<sup>th</sup> Amendment if it is found that Plaintiff was under arrest at the time of the use of force) regarding excessive force, as defined under controlling federal case law.

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30. In *Hanson v. Madison Cty. Det. Ctr.*, United States Court of Appeals for the Sixth Circuit, 736 Fed. Appx. 521\*; 2018 FED App. 0246N (2018), the 6<sup>th</sup> Circuit discusses different types of force as being either *de minimis* or crossing “the constitutional line.” *Hanson* at 530: “Not every push or shove . . . violates the Fourth Amendment.” [Also discussed by *Hanson* as being *de minimis*: karate chop to side of neck; throwing plaintiff against van and kneeling him; forearm force to neck.]
31. In contrast, *Hanson* found a choke hold applied - after resisting had ceased - to have crossed the constitutional line: “In addition, assuming Hanson had ‘stopped resisting’, *Rudlaff v. Gillispie*, 791 F.3d 638, 642 (6th Cir. 2015), which a jury could conclude from the video, Deputy Whitaker was on sufficient notice that continuing to choke Hanson violated clearly established law. *See, e.g., Griffith v. Coburn*, 473 F.3d 650, 657, 660 (6th Cir. 2007) ([I]f the jury concludes that [the officer] used the neck restraint without an objectively reasonable belief that [the suspect] posed a threat of serious bodily injury, then it is obvious to us that ‘no reasonable officer could believe that such [use of force] would not violate another's constitutional rights’) (fourth alteration in *Griffith*) (quoting *Brandenburg v. Cureton*, 882 F.2d 211, 216 (6th Cir. 1989)); *Coley v. Lucas Cty.*, 799 F.3d 530, 540-41 (6th Cir. 2015) (citing *Valencia v. Wiggins*, 981 F.2d 1440, 1447 (5th Cir. 1993)) (The use of a chokehold on an unresisting—and even an initially resistant—detainee violates the [\*533] [Constitution].)” *Hanson* at 531.
32. *Hanson* continues: “In light of the Supreme Court's calculation that ‘the extent of the plaintiff's injury’ is relevant to a court's assessment of whether a constitutional violation

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occurred, *see Kingsley*, 135 S. Ct. at 2473, we also note that Hanson has not suggested any of his injuries were caused during this segment—a split-second shove into the wall. It's true that in the Eighth Amendment context, the Supreme Court has affirmed the 'core judicial inquiry' is not 'the extent of the injury', but rather /the nature of the force—specifically, whether it was nontrivial and was applied . . . maliciously and sadistically to cause harm. *Wilkins*, 559 U.S. at 39-40 (internal citation and quotation marks omitted) (alteration in *Wilkins*). Nonetheless, [t]his is not to say that the absence of serious injury is irrelevant to the Eighth Amendment inquiry. *Id.* at 37 (quoting *Hudson*, 503 U.S. at 7). Indeed, 'the extent of the plaintiff's injury' clearly is one factor courts may consider when determining whether the use of force was *objectively* reasonable under the Fourth or Fourteenth Amendments. *Kingsley*.”

33. In this case the Plaintiff ***never*** resisted. Certainly, a head-first slam to the pavement - an injury requiring surgical staples to close - of an unarmed, barely fleeing suspect who posed no risk to Jasinsky's safety is the equivalent of an unconstitutional chokehold.

34. Jasinsky was well aware that his actions in a head-first body slam of the Plaintiff without an objectively reasonable belief that Plaintiff posed a threat of serious bodily injury was an obvious breach of the standard that no reasonable officer could believe that such [use of force] would ***not*** violate another's constitutional rights.

### **PLEADING STANDARD**

35. *Hanson* goes on to discuss what type of pleading averments will fail summary judgment: finding that an averment of *respondeat superior* fails; averment of a lack of prior excessive

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force discipline fails; an averment of no use of force training for a period of time fails; an averment of bad judgment, not lack of training, fails, concluding: "Hanson has still not met his burden to show that a training program, or lack thereof, amounted to a policy of deliberate indifference. It does not suffice to prove that an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct." See *City of Canton v. Harris*, 489 U.S. 378, 389-90, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989).

36. In this case the City of Westlake has produced no documentation that it had any training in place on use of force for the two decades prior to this incident, specifically use of force on a fleeing suspect or de-escalation policies. The only use of force training certifications - if even legally compliant - provided by Westlake for its police officers prior to 2022 focused on weapons, self-defense, and tasers. In addition, even assuming *arguendo* that Westlake had a Use of Force Policy in place prior to the provided 2022 Policy Manual many of the Westlake police officers failed to acknowledge the policy, let alone were trained in it.

37. In summary:

- A. Only 8 out of 50+ Westlake police officers completed a Use of Force training course through the end of 2022.
- B. Much if not all the training that was completed by the 8 officers does not meet OPOTC training standards and is in violation of Ohio law.
- C. Many Westlake officers failed to even acknowledge the Use of Force policy.
- D. Westlake did not begin teaching De-escalation procedures until 2022. Prior to 2022 Westlake taught Defensive Tactics which included training only in Weapons, Tasers, and self-defense.
- E. Westlake conducted no training of any officer on Use of Force on a fleeing suspect.
- F. Westlake conducted no training on the Use of Deadly Force.

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38. Clearly, Westlake has – failingly - met the 6<sup>th</sup> Circuit *Hanson* standard of operating under “a policy of deliberate indifference” in its police officer training regime.

### **CAUSES OF ACTION**

Plaintiff incorporates by reference all the above factual allegations and all the attached Exhibits and asserts the following causes of action against Defendants individually and/or as employee, jointly and/or severally, and/or exclusively, as delineated within each cause of action and Claim Prayer.

#### **1. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN TORT**

Defendant Jasinsky by his actions towards the Plaintiff intentionally inflicted emotional distress upon the Plaintiff. As a direct and proximate result of Jasinsky’s actions Plaintiff suffered and continues to suffer serious physical harm as well psychological issues, lost wages, loss of future earnings, emotional distress and/or trauma, loss of enjoyment of life, medical and/or hospital bills, future medical expense, scarring on his body, damage to his clothes, and protracted pain and suffering.

The City of Westlake should be denied immunity protection because its customs, policies, pattern and practices, as well as its failure to train - in that such failure to train does reflect a deliberate and/or conscious choice by Westlake to disregard the risk to citizens who encounter its police force – violate the law as edified in *Meekins v. City of Oberlin*, Court of Appeals of Ohio, Eighth Appellate District, 2019-Ohio-2825 (Cuyahoga County 2019), applying the law of the United States Supreme Court in *Monell v. New York City Dept. of Social Services*, Supreme Court 436 U.S. 658 (1978). (“**Monell liability.**”)

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The *Meekins* court held:

For purposes of municipal liability under [Section 1983](#), a plaintiff may establish the existence of a municipal policy or custom through evidence of (1) an official policy or enactment; (2) actions taken by officials with final decision-making authority; (3) a policy of inadequate training or supervision or (4) a custom of tolerance of or acquiescence in federal rights violations. [Sutton, 183 Ohio App. 3d 616, 2009-Ohio-4033, 918 N.E.2d 181, at ¶ 21](#), citing [Pembaur, 475 U.S. at 480, 106 S.Ct. 1292, 89 L.Ed.2d 452](#), and [Thomas v. Chattanooga, 398 F.3d 426, 429 \(6th Cir.2005\)](#).

[\[\\*P53\]](#) Meekins does not contend that an express, written policy or procedure was the "moving force" behind the deprivation of his constitutional rights. Rather, he asserts that the city's "inaction," i.e., its failure to provide adequate staffing, training and supervision, amounted to an "official [municipal] policy" that "led to [his] constitutional harm."

[\[\\*P54\]](#) Inadequacy of police training or supervision may serve as the basis for [Section 1983](#) liability only where the failure to train or supervise amounts to "deliberate indifference to the rights of persons with whom the police come into contact." [Canton at 387](#) ("Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under [§ 1983](#).").

[\[\\*P55\]](#) Thus, to succeed on a [Section 1983](#) claim against a municipality based on inadequate police training or supervision, a plaintiff must show that: (1) the training or supervision was inadequate for the tasks performed; (2) the inadequacy was the result of the municipality's deliberate indifference; (3) the inadequacy was closely related to or actually caused the plaintiff's injury and (4) the violated right is clearly established. [Brown, 814 F.3d at 463; Arrington-Bey, 858 F.3d at 994-995](#).

[\[\\*P56\]](#) "[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." [Bd. of Cty. Commrs. of Bryan Cty. v. Brown, 520 U.S. 397, 410, 117 S.Ct. 1382, 137 L.Ed.2d 626 \(1997\); Shadrick v. Hopkins Cty., 805 F.3d 724, 737 \(6th Cir.2015\)](#) (observing that the Supreme Court has described "deliberate indifference" as "'lying somewhere between the poles of negligence at one end and purpose or knowledge at the other'" and that it is "'routinely equated \* \* \* with recklessness'"), quoting [Farmer v. Brennan, 511 U.S. 825, 836, 114 S.Ct. 1970, 128 L.Ed.2d 811 \(1994\)](#).

[\[\\*P57\]](#) Although a "pattern" of similar constitutional violations is "ordinarily necessary" to demonstrate deliberate indifference, "a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger municipal liability." [Bryan](#)

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[Cty. at 409](#); see also [Shadrick, 805 F.3d at 738-739](#). "[O]bvious potential for such a violation' has two elements: It must be obvious that the failure \* \* \* will lead to certain conduct, and it must be obvious (i.e., clearly established) that the conduct will violate constitutional rights." [Arrington-Bey at 995](#). Thus, single-incident liability exists "in a narrow range of circumstances" where a federal rights violation "may be a highly predictable consequence of a failure to equip law enforcement officers with specific tools to handle recurring situations." [Bryan Cty. at 409](#). "The high degree of predictability may also support an inference of causation — that the municipality's indifference led directly to the very consequence that was so predictable." [Bryan Cty. at 409-410](#).

[\*P58] In support of his claim that the city's "policy" of inadequate staffing, training or supervision was the "moving force" behind the violation of his constitutional rights, Meekins points to Officer Sustarsic's testimony that (1) because he was the only patrol officer on duty on March 23, 2016 — as was the case the majority of the time he worked — he was unable to speak with Meekins before requesting an arrest warrant and (2) this "lack of staffing" caused Officer Sustarsic to "cut short" his investigation and prevented him from substantiating George's allegations before seeking a warrant for Meekins' arrest. With respect to the city's alleged inadequate training of officers, Meekins presented evidence that the city lacked specific policies, procedures or training — beyond any field training upon hire — on issues such as: how to take a police report from an individual, how to investigate a criminal complaint, how to handle a domestic violence complaint, how and when to interview potential defendants prior to arrest, "spoofing" or electronic evidence, what to do after taking a criminal complaint and what should be included with a warrant request. Meekins also presented evidence that the city had no policies or procedures with respect to the supervision and oversight of patrol officers when deciding to seek an arrest warrant. Meekins contends that the "appalling lack of [employee] training" that the city "systematically tolerated" made "it all but certain harms would arise" to individuals such as Meekins, and led to the violation of Meekins' [Fourth Amendment](#) rights.

[\*P59] Although "[a] Monell claim that survives summary judgment is exceedingly rare, and rightly so," [Hanson v. Madison Cty. Detention Ctr., 736 Fed.Appx. 521, 542 \(6th Cir.2018\)](#), we believe that this is such a case.

[\*P60] Following a thorough review of the record and construing the evidence in the light most favorable to Meekins, we find that triable issues of fact exist as to (1) whether Officer Sustarsic recklessly made misleading statements or omitted material information when requesting a warrant for Meekins' arrest and (2) whether the municipal court judge would have issued the arrest warrant in the absence of the alleged misleading statements or omissions. We further find, based on the evidence before us, that reasonable jurors could disagree as to whether the alleged inadequacy of the city's staffing, policies, training or supervision was obvious and so likely to result in the violation of the constitutional rights of potential defendants that the city

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could be found to be deliberately indifferent. We further find that reasonable jurors could disagree as to whether the city was a "moving force" behind the alleged violation of Meekins' constitutional rights, i.e., whether but for the city's alleged "policy or custom" of inadequate staffing, training or supervision, Meekins' constitutional rights would not have been violated.

Given that the standard contained in *Monell* is "deliberate indifference" - which as applied to the City of Westlake in this matter amounts to disregard of the risk to citizens who encounter its police force - a good faith basis exists for the expansion of municipality liability to include torts that sound in intent, or "deliberate indifference of the municipality." Deliberate and intentional are after all synonyms.

Thus, the City of Westlake under expanded municipal liability is liable to Plaintiff for the injuries and other losses caused Plaintiff by the City's deliberate indifferent disregard of the risk to citizens of inadequately informed, ill-trained, and unsupervised police officers roaming the streets of Westlake, and thus is liable to Plaintiff for the foreseeable and intentional infliction of emotional distress upon Plaintiff by its employees.

## 2. NEGLIGENCE IN TORT

Defendant Jasinsky negligently stopped, detained, and injured Plaintiff and is liable to Plaintiff in tort for Plaintiff's injury and other losses.

Defendant Clough is liable in negligence to Plaintiff for Plaintiff's injuries and other losses by Clough's negligent actions in the form of his failed supervision of the Westlake Police Department and its training of Westlake Police officers including Jasinsky in the law of reasonable suspicion, probable cause, legal detainment, legal arrest, and the use of force including deadly force against unarmed fleeing suspects.

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### **3. INTIMIDATION IN VIOLATION OF ORC 2921.03**

Defendant Jasinsky by his actions towards the Plaintiff intimidated Plaintiff knowingly and by force, as well as by filing a materially false writing to intimidate, both criminal violations of Ohio Revised Code Section 2921.03, and is liable to Plaintiff for the injury and other losses caused to Plaintiff as a direct result of Jasinsky's actions. While 2921.03 does not provide a private right to a cause of action and remedy, ORC 2307.60 does. Thus, Jasinsky is liable to Plaintiff for the injury and other losses caused to Plaintiff as a direct result of Jasinsky's actions per 2307.60, in that Jasinsky injured the Plaintiff in Jasinsky's commission of a criminal act.

### **4. FALSE ARREST IN TORT; ILLEGAL SEARCH & SEIZURE/ARREST IN VIOLATION OF U.S. CONSTITUTION 4<sup>TH</sup> AMENDMENT**

Defendant Jasinsky by his actions towards the Plaintiff violated Ohio tort law of false arrest and the United States Constitution 4<sup>th</sup> Amendment search and seizure clause, both of which protect the Plaintiff's right to be free from unreasonable search and seizure/arrest and is liable to Plaintiff for all injury and other losses caused to Plaintiff as a direct result of Jasinsky's actions. 42 U.S.C. § 1983 provides a procedural basis for an individual to sue State or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution." The Ohio legislature codified immunity from liability in certain situations for employer/governmental agencies in Ohio Revised Code Section 2744 *et seq.* However, in *Monell v. Department of Social Services of the City of New York*, Supreme Court, 436 U.S. 658 (1978), see fuller discussion *supra*, the Supreme Court held that municipalities will not be immune and will be liable for 1983 claims in certain situations.

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Defendant City of Westlake is liable to Plaintiff for injuries and losses per its **Monell liability** for Jasinsky's constitutional violations towards Plaintiff. If the court expands municipal liability to foreseeable intentional torts of its employees that emanate from a deliberate indifference of a municipality of the risk to citizens of inadequately informed, ill-trained, and unsupervised police officers roaming the streets, Westlake is also liable to Plaintiff for the foreseeable and intentional false arrest tort upon Plaintiff by Jasinsky.

**5. EXCESSIVE FORCE IN TORT; ILLEGAL EXCESSIVE FORCE IN VIOLATION OF U.S. CONSTITUTION 4<sup>TH</sup> AND/OR 14<sup>TH</sup> AMENDMENTS**

Defendant Jasinsky by his actions towards the Plaintiff violated Ohio tort law and the United States Constitution 4<sup>th</sup> and/or 14<sup>th</sup> Amendments protecting the Plaintiff's right to be free from excessive force and is liable to Plaintiff for the injury and other losses caused to Plaintiff as a direct result of Jasinsky's actions. 42 U.S.C. § 1983 provides a procedural basis for an individual to sue State or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution."

A question of fact is unresolved as to whether or not Plaintiff was under arrest at the time of the injuries inflicted by Jasinsky. In *City of Sacramento v. Lewis*, 523 U.S. 833, 842–43 (1998) the Supreme Court has applied substantive due process analysis to excessive force claims brought prior to an arrest and to claims brought by pretrial detainees, who have yet to be convicted of any crime. See *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015) (claim brought by pretrial detainee). In *Lewis*, the Court reiterated that "in a due process challenge to executive action, the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it

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may fairly be said to shock the contemporary conscience.” Lewis, 523 U.S. at 847, n.8. In *Kingsley*, however, the Court held that, at least in the pretrial detainee context, “to prove an excessive force claim [under substantive due process analysis], a pretrial detainee must show... only that the officers’ use of that force was *objectively* unreasonable.” *Kingsley*, 135 S. Ct. at 2470.

Thus, Jasinsky’s excessive force against Plaintiff is a violation of both the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution.

Defendant City of Westlake is liable to Plaintiff for injuries and losses per its *Monell* liability for Jasinsky’s constitutional violations towards Plaintiff. If the court expands municipal liability to foreseeable intentional torts of its employees that emanate from a deliberate indifference of a municipality of the risk to citizens of inadequately informed, ill-trained, and unsupervised police officers roaming the streets, Westlake is liable to Plaintiff for the foreseeable and intentional excessive force used upon Plaintiff by Jasinsky.

## **6. ILLEGAL DENIAL OF INALIENABLE RIGHTS IN VIOLATION OF OHIO CONSTITUTION ARTICLE I, SECTION 1 & ORC 2921.45(A)**

Defendant Jasinsky by his actions towards the Plaintiff violated Plaintiff’s Ohio Constitutional rights contained in Article I, Section 1 by depriving Plaintiff of the enjoyment and liberty of life and by denying Plaintiff happiness and safety, all of which are also in violation of Ohio Revised Code 2921.45(A), which provides that “[n]o public servant, under color of the public servant’s office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right.” While neither the Ohio Constitution nor 2921.45(A) provide a private right cause of action or remedy, ORC 2307.60 does. Thus, Jasinsky is liable to

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Plaintiff for the injury and other losses caused to Plaintiff as a direct result of Jasinsky's actions, including reasonable attorney fees, court costs and other expenses incurred, in violating Plaintiff's Ohio civil rights, per 2307.60, in that Jasinsky injured the Plaintiff in the commission of criminal acts.

Defendant City of Westlake is liable to Plaintiff for injuries and losses per its **Monell liability**. While liability under *Monell* presently only attaches to violations of the U.S. Constitution under 42 U.S.C. 1983, a good faith basis exists for this court to expand municipal liability to violations of the Ohio Constitution, which will make an Ohio municipality - the City of Westlake - liable to Plaintiff for injuries caused by its employees' actions in violating the Ohio civil rights of Ohio citizens.

**7. ILLEGAL DENIAL OF RIGHT TO BE SECURE IN PERSON IN VIOLATION OF OHIO CONSTITUTION ARTICLE I, SECTION 14 & ORC 2921.45(A)**

Defendant Jasinsky by his actions towards the Plaintiff violated Plaintiff's Ohio Constitutional rights contained in Article I, Section 14 by depriving Plaintiff of security in his person and by failing to protect Plaintiff against unreasonable searches and seizures, all of which are also in violation of ORC 2921.45. While neither the Ohio Constitution nor 2921.45(A) present a private right to a cause of action and remedy, ORC 2307.60 does. Thus, Jasinsky is liable to Plaintiff for the injury and other losses caused to Plaintiff as a direct result of Jasinsky's actions, including reasonable attorney fees, court costs and other expenses incurred, in violating Plaintiff's Ohio civil rights, per 2307.60, in that Jasinsky injured the Plaintiff in the commission of criminal acts.

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Defendant City of Westlake is liable to Plaintiff for injuries and losses per its **Monell liability**. While this liability only attaches to violations of the U.S. Constitution under 42 U.S.C. 1983, this court should expand *Monell* liability to violations of the Ohio Constitution, which will make the City of Westlake liable to Plaintiff for injuries caused by its employees' actions in violating the Ohio civil rights of Ohio citizens.

#### **8. FALSE POLICE REPORT IN VIOLATION OF ORC 2921.13**

Defendant Jasinsky by his actions caused a false statement to be made against Plaintiff in violation of Ohio Revised Code Section 2921.13 for use in an official proceeding. As a result of Jasinsky's actions Plaintiff suffered and continues to suffer damages. While 2921.13 does not present a private right to a cause of action and remedy, ORC 2307.60 does. Thus, Jasinsky is liable to Plaintiff for the injury and other losses caused to Plaintiff as a direct result of Jasinsky's actions, including reasonable attorney fees, court costs and other expenses incurred, per 2307.60, in that Jasinsky injured the Plaintiff in the commission of a criminal act.

Defendant Michael P. Maloney participated in causing a false police report to be made against the Plaintiff, a violation of 2921.13, and is liable per 2307.60 for Plaintiff's injuries and other losses in that Plaintiff was injured by Maloney's commission of a criminal act.

#### **9. MALICIOUS PROSECUTION IN TORT**

Defendant Jasinsky by his malicious actions in profiling and arresting Plaintiff - an arrest found by the criminal court to be lacking in probable cause and thus terminated in favor of the Plaintiff - caused a malicious prosecution to be initiated by the State of Ohio against Plaintiff. As a result

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of Jasinsky's actions including influence and participation in the decision to criminally prosecute the Plaintiff without probable cause the Plaintiff was deprived of liberty, including being subjected to false arrest, illegal seizure, excessive force, and intentional infliction of emotional distress.

There is no question that the City of Westlake intentionally prosecuted the Plaintiff with deliberate indifference. It knew, or should have known, that there was no basis for criminal charges. One viewing of Jasinsky's Dash-Cam by a Westlake Police supervisor or law staff clearly shows a pretextual stop, abandonment of the stop's pretext, falsified additional "reasonable" suspicion, unwarranted ordering of the Plaintiff out of his vehicle, an unjustified weapons pat down, illegal detainment/imprisonment/arrest of Plaintiff for a non-arrestable offense, lack of probable cause in any of the foregoing, and unnecessary use of force against an unarmed fleeing suspect. This court must send a message that this type of malicious prosecution will not be tolerated.

Defendant Michael P. Maloney maliciously participated in the criminal prosecution of the Plaintiff and is liable in tort for Plaintiff's injuries and other losses.

Given that the standard contained in *Monell* is "deliberate indifference" - which as applied to the City of Westlake in this matter amounts to disregard of the risk to citizens who encounter its police force and its prosecuting employees - a good faith basis exists for the expansion of municipality liability to include torts that sound in intent, or "deliberate indifference of the municipality", which makes the City of Westlake liable to Plaintiff for injuries caused by the malicious prosecution by its employees against Plaintiff.

#### **10. DERELICTION OF DUTY IN VIOLATION OF 2921.44**

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Defendant Jasinsky by his actions violated Ohio Revised Code Sections 2921.44:

(B) No law enforcement, ministerial, or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.

and

(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office.

Jasinsky negligently failed to perform his lawful duty as a law enforcement officer in a criminal proceeding per 2921.44(B) to *not* violate the Plaintiff's U.S. and Ohio Constitutional rights, to *not* intimidate the Plaintiff, to *not* file a false police report against the Plaintiff, and to *not* further malicious prosecution against the Plaintiff. As a direct result of Jasinsky's failure to perform these lawful law enforcement duties Plaintiff suffered and continues to suffer injuries and other losses.

Additionally, Jasinsky was a public servant who recklessly failed to perform numerous other duties expressly imposed by law per 2921.44(E), as described in detail below. Tellingly, the City of Westlake as of the date of this lawsuit does not publish a police officer code of ethics nor enumerate the duties of a Westlake police officer on its website or on any internet job board. (The City of Westlake does, however, warn its citizens that it must take on personal responsibility for "making Westlake safer." Nowhere does the City of Westlake warn its citizens that driving with tinted windows will result in racial profiling, false allegations, illegal arrest, bullying, and use of deadly force if a citizen runs. <https://www.cityofwestlake.org/250/Personal-Safety-Crime-Prevention>.)

While 2921.44 does not present a private right to a cause of action and remedy, ORC 2307.60 does. Thus, Jasinsky is liable to Plaintiff for the injury and other losses caused to Plaintiff as a

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direct result of Jasinsky's actions per 2307.60, in that Jasinsky injured the Plaintiff in the commission of a criminal act.

Fortunately, while the City of Westlake purposely fails to expressly state the duties and responsibilities of its police force, other Ohio municipalities do expressly impose legal duties on their police officers. For example, Yellow Springs, Ohio, a community with one-tenth the population of Westlake, states:

**Primary Responsibilities of a Police Officer**

A police officer acts as an official representative of government who is required and trusted to work within the law. The officer's powers and duties are conferred by statute. The fundamental duties of a police officer include serving the community; safeguarding lives and property; protecting the innocent; keeping the peace; and ensuring the rights of all to liberty, equality and justice.

**Performance of the Duties of a Police Officer**

A police officer shall perform all duties impartially, without favor of affection or ill will and without regard to status, sex, religion, political belief or aspiration. All citizens will be treated equally with consideration and dignity. Officers will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, officers will strive to obtain maximum cooperation from the public. They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.

**Discretion**

A police officer will use responsibly the discretion vested in the position and exercise it within the law. The principle of reasonableness will guide the officer's determinations and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken.

Consistent and wise use of discretion, based on professional policing competence, will do much more to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember than a timely word of advice, rather than arrest, may be a more effective means of achieving a desired end.

**Use of Force**

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A police officer will never employ unnecessary force or violence, and will, in all circumstances, use only such force in the discharge of duty as is reasonable.

Transposing a Yellow Springs Police Officer's duties to a Westlake police officer renders Jasinsky in breach of failing to perform his duties as related to:

- (i) safeguarding lives
- (ii) protecting the innocent
- (iii) treating all citizens with consideration and dignity
- (iv) principles of reasonableness
- (v) never employing unnecessary force or violence

Defendant Dennis M. Clough has committed a crime under ORC 2921.44 (E) as the result of Clough's reckless failing to perform a public servant duty as follows: the Westlake policy established by Clough in Exhibit A is a breach of his statutory duty in that it *provides no policy, legal or ethical guidance whatsoever*. In fact, the policy established by Clough is a precise abrogation, and *dissimulato* attempt, to transfer responsibility from the City of Westlake to each individual police officer to not only acquire "legal and ethical knowledge", but to also develop, interpret, and implement techniques to apply this knowledge. And, most egregiously, to permit individual police officers to *self-monitor* exactly when they need to seek guidance.

Exhibit A is a reckless choice by Clough to disregard the risk to citizens of inadequately informed, trained, and supervised police officers roaming the streets of Westlake. While 2921.44 does not provide a private right to a cause of action and remedy, ORC 2307.60 does. Thus, Clough is liable to Plaintiff for the injury and other losses caused to Plaintiff as a direct result of Clough's actions per 2307.60, in that Clough injured the Plaintiff in the commission of criminal acts.

Defendant Michael P. Maloney is a public official, not protected by prosecutorial immunity, who was derelict in his duties towards the Plaintiff, in that he recklessly failed to determine if there

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was legal basis for criminal prosecution of the Plaintiff, a violation of 2921.44, and is liable per 2307.60 for Plaintiff's injuries and other losses sustained by Maloney's criminal act.

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