

“Individual Defendants”), and **JOHN DOES 1 through 10**, in their individual capacities, and sometimes referred to collectively herein as Defendants, and would show the Court as follows:

I.

THE NATURE OF THE ACTION

1. This action arises from the tragic death of an approximately 21-month old child, Matthew Cantrell (“Matthew”).
2. It seeks redress for the unconstitutional conduct of employees and agents of the City of Murphy, whose shocking and deliberate indifference to Matthew’s plight caused his death, and for the actions of a private company, the East Texas Medical Center (“ETMC”), that contributed to Matthew’s death.
3. Matthew accidentally strangled himself in a soccer net located in the family’s backyard. Ave Marie Cantrell (“Ave”), Matthew’s mother, called 911 and asked for instructions about how to help her son, which the 911 operators and ETMC personnel refused to give. When City of Murphy police officers arrived at the Cantrell’s house, allegedly to assist, they forcibly stopped Ave from assisting Matthew, who was not breathing. Instead of giving Matthew CPR, they separated Ave from Matthew and barricaded her and her then four-year old son Creighton Cantrell (“Creighton”) in another room and left Matthew for dead.
4. When paramedics arrived, one of the police officers delayed their access to Matthew, insisting that he was already dead. Eventually, the paramedics were allowed to examine Matthew, who was still alive. The paramedics transported Matthew to a hospital, where he died three days later.
5. After the paramedics left the house with Matthew, the police officers took Ave into their custody and transferred Ave to the police station. A detective then informed her that

Matthew had died (which was not true at the time) and held her at the police station for several hours. She was not permitted to join her family at Matthew's bedside until the next day.

6. The plaintiffs seek redress against the 911 operators and individual officers of the City of Murphy police department, whose decision to withhold life-saving measures and to prevent a mother from attempting to save her son's life placed Matthew in a special relationship with the State, constitutes deliberate indifference to Matthew's constitutional rights, deprived Ave and Creighton of their constitutional right to liberty, and shocks the conscience.

7. The plaintiffs seek redress against the City of Murphy for its deliberate indifference with respect to customs, policies, and practices that permitted, condoned, and preserved an environment lacking in adequate hiring standards, training, supervision, monitoring, and discipline that resulted in Matthew's death.

8. The plaintiffs also seek redress against the ETMC medic who refused to give Ave instructions on administering life-saving measures to her son, and ETMC for its negligence in retaining, training, and supervising its emergency medical services personnel in the proper procedures for providing life-saving pre-arrival instructions to 911 callers seeking medical help.

II.

THE PARTIES

9. Plaintiff Michael Cantrell, the father of Matthew and the administrator of his estate, is and has been at all times relevant hereto a resident of Murphy, Texas. Michael Cantrell seeks relief individually and on behalf of Matthew's estate.

10. Plaintiff Ave Marie Cantrell is the mother of Matthew. At all times relevant hereto she has been a resident of Murphy, Texas.

11. Plaintiff Creighton Cantrell is the brother of Matthew. At all times relevant hereto he has been a resident of Murphy, Texas.

12. Defendant City of Murphy is a home rule municipal corporation, existing and operating by virtue of the laws of the State of Texas. Defendant may be served with process by serving the City Secretary, Aimee Nemer, at 206 N. Murphy Road, Murphy, Texas 75094.

13. Defendant ETMC, was, at all relevant times hereto, a non-profit corporation organized under the laws of Texas and registered to do business in the State of Texas. Defendant may be served with process by serving its registered agent, Elmer G. Ellis at 1000 S. Beckham Ave., Tyler, Texas 75701-1908.

14. Defendant William Myrick, was, at all times relevant hereto, an officer, employee, and agent of the City of Murphy. Defendant may be served with process by serving him at Murphy City Hall located at 206 N. Murphy Road, Murphy, Texas 75094.

15. Defendant Kevin McGee, was, at all times relevant hereto, an officer, employee, and agent of the City of Murphy. Defendant may be served with process by serving him at Murphy City Hall located at 206 N. Murphy Road, Murphy, Texas 75094.

16. Defendant Clayton Dacey, was, at all times relevant hereto, an officer, employee, and agent of the City of Murphy. Defendant may be served with process by serving him at Murphy City Hall located at 206 N. Murphy Road, Murphy, Texas 75094.

17. Defendant Adana Barber, was, at all times relevant hereto, an officer, employee, and agent of the City of Murphy. Defendant may be served with process by serving her at Murphy City Hall located at 206 N. Murphy Road, Murphy, Texas 75094.

18. Defendants John Doe 1 through 10 were, at all times relevant hereto, officers, employees, and agents of the City of Murphy and/or ETMC.

III.

JURISDICTION AND VENUE

19. This action is brought pursuant to 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendments to the United States Constitution and the laws of the State of Texas.

20. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331. Plaintiffs further invoke the supplemental jurisdiction of this Court to adjudicate state law claims pursuant to 28 U.S.C. § 1367.

21. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c).

IV.

FACTS

22. On the evening of October 2, 2007, Matthew, who was approximately 21 months old at the time, accidentally strangled himself in a soccer net that was in the family's backyard.

23. Ave tried to free Matthew's head and neck from the netting. She could not. She called for her older son Creighton to bring her a pair of scissors. Creighton then brought Ave the phone, and she dialed 911.

The 911 Call

24. Ave's 911 call was answered by a 911 operator (the "Murphy Operator"), John Doe No. 1, from the Murphy Fire-Rescue Emergency Medical Services ("Murphy EMS").

25. The call was received by the Murphy Operator at approximately 7:30 pm. When the Murphy Operator answered the phone, Ave began frantically telling the Murphy Operator that Matthew had choked and was not breathing.

26. Ave asked the Murphy Operator what she could do to save her son.

27. The Murphy Operator would not give her instructions on how to do CPR or perform other life-saving measures on Matthew. Instead, the Murphy Operator repeatedly told Ave to “calm down.”

28. Upon information and belief, either the Murphy Operator knew how to administer CPR instructions but failed to provide such instructions to Ave, or the Murphy Operator was not trained to give Ave instructions on administering CPR, and therefore could do nothing to help her to save Matthew’s life.

29. Upon information and belief, there are official or de facto policies, procedures, customs, and/or practices that prevent a City of Murphy 911 operator from giving CPR or other life-saving instructions over the phone.

30. Although the Cantrell’s home address had automatically been transmitted to Murphy EMS when Ave dialed 911 from her home phone, the Murphy Operator asked Ave to confirm the address, which she did.

31. Ave calmed down and repeated the urgency of Matthew’s condition to the Murphy Operator, pleading “He’s not breathing...hurry...what do I need to do?”

32. The Murphy Operator still did not provide her with any instructions or guidance on how to save Matthew’s life, nor did he transfer her to someone who could.

33. Ave repeated herself, pleading, “please tell me what to do...I could do CPR or something...please, God, help me.”

34. The Murphy Operator did nothing. Instead, he told Ave “I need you to calm down so I can transfer you to East Texas Medical Center.”

35. After two minutes and thirty-four seconds on the phone with Ave, two minutes and thirty-four seconds during which Matthew was not breathing and not receiving the CPR he

needed to save his life, the Murphy Operator transferred Ave's call to the East Texas Medical Center Emergency Medical Services Unit ("ETMC EMS").

36. After her call was transferred to ETMC EMS, Ave pleaded with the ETMC Medic, John Doe No. 2, "please help me, he strangled himself."

37. Although Ave had already given her address to the Murphy Operator, instead of giving her instructions on how to do CPR, the ETMC Medic inexplicably asked Ave for her address again.

38. Ave gave her address to the ETMC Medic and pleaded for him to hurry.

39. The ETMC Medic then asked her what city she lived in. The Murphy Operator, who was listening in on the call, then cut into the phone call and informed the ETMC Medic that Murphy Fire-Rescue medics were already en route.

40. The ETMC Medic asked Ave what happened, and Ave told him that Matthew had gotten his neck caught in a soccer net. The ETMC Medic asked if Matthew was still caught up in the net, and Ave told him that she had cut him out.

41. Ave asked the ETMC Medic to help her, because Matthew was dying.

42. The ETMC Medic did not provide Ave with instructions in CPR, basic life support, or anything whatsoever that would have helped Matthew.

43. Upon information and belief, either the ETMC Medic knew how to administer CPR instructions but failed to provide such instructions to Ave, or the ETMC Medic was not properly trained to give Ave instructions on administering CPR, and therefore could do nothing to help her to save Matthew's life.

44. After two minutes on the phone with the ETMC Medic during which Ave pleaded for help and no help was given, the Murphy Operator again cut in to the call and said to the ETMC

Medic: “Sir, I’ve got PD on the scene if you want to go ahead and disconnect with her - she’s not going to listen.”

45. Upon information and belief, either the Murphy Operator or the ETMC Medic then hung up the phone on Ave.

46. Ave was on the phone for at least five minutes with the Murphy Operator and then the ETMC Medic.

47. During those five crucial minutes, Matthew was without oxygen because neither the Murphy Operator nor the ETMC Medic gave Ave instructions about how to do CPR or any other life-saving technique, even though each of them knew that Matthew was not breathing and had been without oxygen for several minutes.

48. The Murphy Operator’s deliberate indifference to Matthew and Ave caused each of them serious injury, and contributed to Matthew’s eventual death.

49. The ETMC Medic’s failure to provide Ave with instructions on life-saving measures contributed to Matthew’s death.

50. Upon information and belief, an individual from the Murphy Police Department (the “Police Dispatcher”) was monitoring the 911 call between Ave and the Murphy Operator and the ETMC Medic.

51. Although Ave had told the Murphy Operator no less than three times during her five-minute 911 call that the cause of Matthew’s asphyxiation was that he got caught in a soccer net, the Police Dispatcher deliberately ignored this germane information.

52. Instead, when the Police Dispatcher contacted the Murphy police cruiser units who picked up the call, he said: “Have a child who is not breathing...blue in the face...supposedly

choked...Mother is extremely upset... unable to give information...either he attempted to strangle himself or someone else did.”

53. This information was patently false, and was given with deliberate indifference to the clear and uncontroverted information that Ave had provided the Murphy Operator at least three times about the cause of Matthew’s injuries – that he had accidentally choked himself in a soccer net.

The Police Department’s Conduct Causes Further Injury to Matthew

54. The first City of Murphy personnel to arrive on the scene were Officer Kevin McGee and Officer Clayton Dacey.

55. When Officers McGee and Dacey arrived at the Cantrell’s residence, Ave had already cut Matthew out of the soccer net with scissors and had moved him from the backyard onto the couch in the living room, where she was attempting to perform CPR.

56. In order to continue to provide life-saving measures to Matthew, Ave had her four-year old son Creighton let Officers McGee and Dacey into the house through the front door.

57. When they entered the house, Officers McGee and Dacey immediately went over to the couch where Ave was trying to help Matthew and pulled Ave away from him.

58. Instead of providing Matthew with CPR or other life-support measures, or letting Ave continue to try to help him, Officer McGee instructed Officer Dacey to remove Ave from Matthew and the vicinity.

59. Officer Dacey placed Ave against her will into the master bedroom with Creighton. He physically blocked the exit to the bedroom and kept his hand placed on his gun.

60. Ave repeatedly asked for an update on Matthew’s medical condition. Her requests were denied.

61. Meanwhile, while Ave and Creighton were imprisoned in the master bedroom by Officer Dacey, Matthew lay dying on the couch without medical attention.

62. Upon information and belief, instead of performing CPR on Matthew during these critical moments for Matthew's survival, Officer McGee called his supervisors, Lieutenant Adana Barber and Murphy Police Chief William Myrick.

63. Upon information and belief, Chief Myrick did not tell Officer McGee to perform CPR or to assist Matthew in any way. Instead, Chief Myrick advised Officer McGee to treat the situation as a crime and to secure the crime scene.

64. There was no evidence whatsoever that a crime had been committed or reason to believe that a crime had been committed.

65. Officer McGee deliberately ignored Matthew, who he presumed was dead, and set about "securing" the scene.

66. By using his authority as a police officer to remove Matthew from Ave's care against her will, Officer McGee placed Matthew in his custody, and thus a special relationship existed therefrom between Matthew and the City of Murphy whereby the City of Murphy assumed responsibility for the care of Matthew.

67. Officers McGee and Dacey were in the Cantrell's residence for at least two minutes before the ambulance unit from Murphy Fire-Rescue services arrived.

68. At this point, at least seven minutes had gone by from the time that Ave had called 911. During these seven minutes, Matthew was without any medical attention except for the CPR that Ave had attempted to give him before she was forcibly stopped by Officers McGee and Dacey.

69. Two paramedics from the ambulance unit, Brendan Ulch (“Ulch”) and Randy Armstrong (“Armstrong”), were the first Murphy Fire-Rescue personnel to arrive at the Cantrell’s house.

70. According to voluntary, contemporaneous, written and sworn statements by Armstrong and Ulch, upon their arrival Officer McGee told Armstrong and Ulch that “the boy was gone,” and the area was now a crime scene.

71. Officer McGee then temporarily blocked and delayed Ulch and Armstrong from entering the house.

72. Upon information and belief, Officer McGee indicated to Armstrong and Ulch that there was no need for them to try to help Matthew because he was already dead, which was not true at the time.

73. Ulch and Armstrong informed Officer McGee that it was their job to assess the patient, and entered the Cantrell’s house.

74. Because they had been told that Matthew was dead, neither Ulch nor Armstrong brought any equipment into the house so that they could immediately begin life support on Matthew.

75. When they entered the Cantrell’s house, Ulch and Armstrong found Matthew just the way that Officer McGee had left him - alone on the couch and not breathing.

76. After Ulch and Armstrong entered the house, Officer McGee permanently blocked another set of paramedics from entering the Cantrell’s house.

77. Ulch and Armstrong checked Matthew’s vital signs and found no pulse. Instead of starting CPR or beginning other life-supporting measures immediately, Armstrong picked up Matthew in his arms and walked him out to the ambulance.

78. Finally, upon information and belief, nearly 10 minutes after Ave called 911 and nearly four minutes after the police first arrived on the scene, Matthew received the CPR and other medical attention he so desperately needed.

79. Matthew was eventually transported by the Murphy Fire-Rescue ambulance to Medical City Dallas, a hospital about 15 miles away.

80. Matthew's heartbeat was restored, however, due to the amount of time Matthew was without oxygen, he died three days later, on October 5, 2007.

Ave and Creighton Cantrell Are Wrongfully Imprisoned

81. While Matthew was being attended to in the ambulance, Ave and Creighton were still imprisoned in the master bedroom of the house against their will. Ave was not aware that medics had come in and removed Matthew from the house because Officer Dacey had blockaded the door to the master bedroom.

82. Ave asked repeatedly for Officer Dacey to check on Matthew, but Officer Dacey claimed he could not.

83. Ave also asked that Creighton be removed from the room, because he was so traumatized that he was lying face down with his head buried in the bed and his hands over his ears. Officer Dacey would not let Creighton out of the room, even though Ave had telephoned a neighbor and other friends, while another neighbor was outside waiting to remove Creighton from the terrible situation.

84. From time to time, Lieutenant Adana Barber entered the room. She told Ave that the paramedics were working on Matthew.

85. While Ave and Matthew were still imprisoned in the master bedroom, Michael arrived at his home. At the time, Michael still did not know the details of what happened.

86. As Michael approached his house, yellow crime scene tape had been placed surrounding his property. As he lifted the tape to get to his family, Lieutenant Barber approached him and forced him off the property, even though Michael told her who he was. Ave and Creighton remained imprisoned in the master bedroom in the custody of Officer Dacey.

87. At some point, Lieutenant Barber brought Creighton outside and handed him to Michael. Michael eventually asked a neighbor who had a son similar in age to Creighton to look after him while Michael attended to Ave and Matthew.

88. Lieutenant Barber returned to the master bedroom and told Ave that she was going to be taken to the police station. Ave informed Lieutenant Barber that she needed to dress and use the bathroom.

89. Against Ave's will, Lieutenant Barber accompanied Ave into the bathroom and squatted down in front of the toilet facing Ave so that she was eye-level with Ave's genitals. Lieutenant Barber then watched Ave urinate.

90. After Ave dressed, Lieutenant Barber and Officer Dacey finally allowed Ave to leave the bedroom.

91. Ave was transported to the Murphy Police Station, where she was detained and asked to provide a statement regarding the incident. Eventually, the next day, she was permitted to see Matthew at the hospital.

Liability of the City of Murphy

92. Upon information and belief, all of the acts by the Individual Defendants and John Doe No. 1 described above were carried out pursuant to policies and practices of the City of Murphy (“City”) which were in existence at the time of the conduct alleged herein and were engaged in with the full knowledge, consent, and cooperation of the supervisory authority of the defendant City and its agencies, the police department, the fire department, and emergency medical services.

93. Upon information and belief, defendant City and the police and fire departments, by their policy-making agents, servants, and employees, authorized, sanctioned, and/or ratified the Individual Defendants’ and John Doe No. 1’s wrongful acts; and/or failed to prevent or stop these acts; and/or encouraged these acts to continue.

94. Upon information and belief, the actions of the Individual Defendants and John Doe No. 1 resulted from and were taken pursuant to de facto policies and/or well-settled and widespread customs and practices of the City, which are implemented by police officers and fire-rescue personnel.

95. Upon information and belief, the existence of such unlawful de facto policies and/or well-settled and widespread customs and practices has been known to supervisory and policy-making officials of the Police and Fire-Rescue Departments and the City, including, without limitation Police Chief William Myrick for a substantial period of time.

96. Upon information and belief, despite knowledge of such de facto policies and practices, these supervisory and policy-making officers and officials of the Police Department and the City and their predecessors in interest did not take steps to terminate these policies and practices, did not discipline individuals who engaged in such practices, or otherwise properly

train police officers with respect to the constitutional limits of their authority, and instead sanctioned and ratified these policies, customs, and practices through their deliberate indifference to the effect of these customs, policies and practices upon the constitutional rights of persons in the City of Murphy.

97. Upon information and belief, the City's policies and practices in existence at the time of the conduct complained of herein, which caused the plaintiffs' injuries include, *inter alia*:

- (a) The failure to properly supervise, train, and instruct 911 operators to give 911 callers instructions on CPR or other basic life-support measures;
- (b) The failure to properly supervise, train, and instruct 911 operators to immediately transfer phone calls with medical emergencies to trained medics;
- (c) The failure to properly supervise, train, instruct, and discipline 911 operators with respect to properly conveying/characterizing the nature of the emergency to the police and/or fire departments;
- (d) The failure to properly supervise, train, instruct, and discipline police officers with respect to providing immediate assistance to persons who are not breathing;
- (e) The failure to properly supervise, train, instruct, and discipline police officers with regard to proper conduct and investigation at and in relation to a crime scene;
- (f) The failure to properly supervise, train, instruct, and discipline police officers with regard to administering life saving measures;

- (g) The failure to properly supervise, train, instruct, and discipline police officers regard to conducting proper searches;
- (h) The failure to properly supervise, train, instruct, and discipline police officers with respect to taking individuals into custody without probable cause;
- (i) The failure to properly supervise, train, instruct, and discipline police officers and firefighters with respect to the proper treatment of minors; and
- (j) The failure to properly supervise, train, instruct, and discipline police officers and firefighters with respect to the need for immediate life-saving measures for victims who have been deprived of oxygen.

98. Moreover, upon information and belief, the City knew that Officer Kevin McGee had a history of using his authority in ways that violated the due process rights of individuals with whom he came into contact in the course of his job duties as a police officer for the City of Murphy.

99. Upon information and belief, the plaintiffs' injuries were a direct and proximate result of the defendants' wrongful policies, practices, customs and/or usages complained of herein and in existence at the time of Matthew's death and of the knowing and repeated failure of the defendant City of Murphy and its Police and Fire-Rescue Department to properly train, supervise, and discipline their 911 operators and police officers.

100. Upon information and belief, defendant City knew or deliberately ignored the fact that the acts alleged herein would deprive plaintiffs of their rights, in violation of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

101. Upon information and belief, defendant City is directly liable and responsible for the acts of the Individual Defendants and John Doe No. 1 because it repeatedly and knowingly failed to enforce the rules and regulations of the Police and Fire-Rescue Departments and to require compliance with the Constitution and laws of the United States.

V.

**FIRST CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 – Individual Defendants and John Doe No. 1)
(All Plaintiffs Except Creighton Cantrell)**

102. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 101 of the Complaint as if set forth in full herein.

103. By reason of the foregoing, the Individual Defendants and John Doe No. 1 violated 42 U.S.C. § 1983 by depriving Matthew Cantrell of his rights under the Fifth and Fourteenth Amendments to the United States Constitution.

104. As a result of the foregoing, Matthew Cantrell suffered grievous bodily harm, substantial physical and emotional pain, and loss of life.

105. As a result of the foregoing, Michael Cantrell and Ave Marie Cantrell suffered emotional injuries and have been deprived of the love, affection and support of their son and have suffered a grave loss to their family relationship.

106. The acts of the Individual Defendants and John Doe No. 1 were reckless, willful, wanton, malicious, and shocking to the conscience, thus entitling plaintiffs to punitive damages.

VI.

**SECOND CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 – City of Murphy)
(All Plaintiffs Except Creighton Cantrell)**

107. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 106 of the Complaint as if set forth in full herein.

108. Defendant City of Murphy developed and maintained customs, policies and practices exhibiting deliberate indifference to the constitutional rights of its citizens, which caused violations of Matthew Cantrell's rights.

109. As a result of the foregoing, Matthew Cantrell suffered grievous bodily harm, substantial physical and emotional pain, and loss of life.

110. As a result of the foregoing, Michael Cantrell and Ave Marie Cantrell suffered emotional injuries and have been deprived of the love, affection and support of their son and have suffered a grave loss to their family relationship.

VII.

**THIRD CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 – Individual Defendants) (Ave Marie Cantrell)**

111. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 110 of the Complaint as if set forth in full herein.

112. By reason of the foregoing, the Individual Defendants violated 42 U.S.C. § 1983 by depriving Ave Marie Cantrell of her rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

113. As a result of the foregoing, Ave Marie Cantrell suffered extreme mental and emotional distress, agony, and anxiety.

114. The acts of the Individual Defendants were reckless, willful, wanton, malicious, and shocking to the conscience, thus entitling Ave Marie Cantrell to punitive damages.

IX.

**FOURTH CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 – City of Murphy) (Ave Marie Cantrell)**

115. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 114 of the Complaint as if set forth in full herein.

116. Defendant City of Murphy developed and maintained customs, policies and practices exhibiting deliberate indifference to the constitutional rights of its citizens, which caused violations of Ave Marie Cantrell's rights.

117. As a result of the foregoing, Ave Marie Cantrell suffered extreme mental and emotional distress, agony, and anxiety.

X.

**FIFTH CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 – Individual Defendants) (Creighton Cantrell)**

118. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 117 of the Complaint as if set forth in full herein.

119. By reason of the foregoing, the Individual Defendants violated 42 U.S.C. § 1983 by depriving Creighton Cantrell of his rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

120. As a result of the foregoing, Creighton Cantrell suffered extreme mental and emotional distress, agony, and anxiety.

121. The acts of the Individual Defendants were reckless, willful, wanton, malicious, and shocking to the conscience, thus entitling Creighton Cantrell to punitive damages.

XI.

**SIXTH CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 – City of Murphy) (Creighton Cantrell)**

122. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 121 of the Complaint as if set forth in full herein.

123. Defendant City of Murphy developed and maintained customs, policies and practices exhibiting deliberate indifference to the constitutional rights of its citizens, which caused violations of Creighton Cantrell's rights.

124. As a result of the foregoing, Creighton Cantrell suffered extreme mental and emotional distress, agony, and anxiety.

XII.

**SEVENTH CLAIM FOR RELIEF
(Pendent Claim of Negligence against City of Murphy, the Individual Defendants
and John Doe No. 1) (All Plaintiffs Except Creighton Cantrell)**

125. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 124 of the Complaint as if set forth in full herein.

126. Defendant City of Murphy has waived sovereign immunity under section 101.021(2) of the Texas Civil Practice & Remedies Code because plaintiffs' injuries were proximately caused by the use of tangible personal and/or real property and the defendants, were they all private persons, would be liable to plaintiffs according to Texas law.

127. At all relevant times, all of the agents, servants and employees of the City of Murphy who were in any way connected with the occurrence forming the basis of this suit were acting within the course and scope of their employment or official duties and in furtherance of their duties of their office or employment.

128. Defendant City of Murphy had actual notice of plaintiffs' claim under section 101.101(c) of the Texas Civil Practice & Remedies Code because it had actual knowledge of plaintiffs' identities and injuries, including, but not limited to, through an investigation conducted by the City, through its Interim City Manager at the time, James Berzina, into allegations that City of Murphy and its employees had acted improperly in the handling of Matthew Cantrell's injuries.

129. Matthew Cantrell suffered grievous bodily harm, substantial physical and emotional pain, and loss of life, all of which was proximately caused by the negligent acts of Defendants.

130. Michael Cantrell and Ave Marie Cantrell suffered emotional injuries and have been deprived of the love, affection and support of their son and have suffered a grave loss to their family relationship, all of which was proximately caused by the negligent acts of Defendants.

XIII.

EIGHTH CLAIM FOR RELIEF (Pendent Claim of Negligence against City of Murphy, the Individual Defendants and John Doe No. 1) (Creighton Cantrell)

131. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 130 of the Complaint as if set forth in full herein.

132. At the time of the incidents described above, Creighton Cantrell was the biological brother of Matthew Cantrell.

133. On October 2, 2007, when Defendants committed the acts of negligence set forth above which directly and proximately caused serious and fatal injuries to Matthew Cantrell, Creighton Cantrell:

- (a) Was located in the immediate vicinity of the scene of the incident involving his brother;

(b) Suffered shock as a result of a direct emotional impact on him from a sensory and contemporaneous observance of the incident; and

(c) Was the brother of Matthew Cantrell.

134. As a direct and proximate cause of Defendants' negligence, Creighton Cantrell has suffered severe mental pain and suffering since the occurrence forming the basis of this suit.

XIV.

NINTH CLAIM FOR RELIEF (Pendent Claim of Negligence against John Doe No. 2, the ETMC Medic) (All Plaintiffs Except Creighton Cantrell)

135. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 134 of the Complaint as if set forth in full herein.

136. Matthew Cantrell suffered grievous bodily harm, substantial physical and emotional pain, and loss of life, all of which was proximately caused by John Doe No. 2's negligence, gross negligence, and wanton and willful disregard of persons who foreseeably might be harmed by his acts and omissions.

137. Michael Cantrell and Ave Marie Cantrell suffered emotional injuries and have been deprived of the love, affection and support of their son and have suffered a grave loss to their family relationship, all of which was proximately caused by John Doe No. 2's negligence, gross negligence, and wanton and willful disregard of persons who foreseeably might be harmed by his acts and omissions.

XV.

**TENTH CLAIM FOR RELIEF
(Pendent Claim of Negligence against ETMC) (All Plaintiffs Except Creighton Cantrell)**

138. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 137 of the Complaint as if set forth in full herein.

139. Defendant ETMC failed to use reasonable care in the retention, training, and supervision of the ETMC Medic, John Doe No. 2.

140. Therefore, Defendant ETMC knew or should have known, in the exercise of reasonable care, the propensities of Defendant John Doe No. 2 to fail to perform his duties in a reasonable and prudent manner.

141. Matthew Cantrell suffered grievous bodily harm, substantial physical and emotional pain, and loss of life, all of which was proximately caused by ETMC's negligence, gross negligence, and wanton and willful disregard of persons who foreseeably might be harmed by its acts and omissions.

142. Michael Cantrell and Ave Marie Cantrell suffered emotional injuries and have been deprived of the love, affection and support of their son and have suffered a grave loss to their family relationship, all of which was proximately caused by ETMC's negligence, gross negligence, and wanton and willful disregard of persons who foreseeably might be harmed by its acts and omissions.

143. As a result of the foregoing, Defendant ETMC is liable to Plaintiffs for the acts of negligence, gross negligence, and willful and wanton disregard for the safety of Matthew Cantrell.

XVI.

DEMAND FOR RELIEF

144. Plaintiffs request the following relief jointly and severally as against all of the defendants:

- (a) Award compensatory damages in an amount to be determined at trial;
- (b) Award punitive damages, except as to the Defendant City of Murphy in an amount to be determined at trial;
- (c) Disbursements, costs, and attorneys' fees; and
- (d) For such other and further relief as the Court deems just and proper.

XVII.

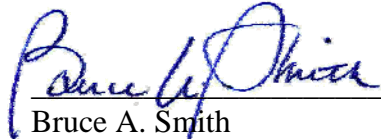
JURY DEMAND

145. Plaintiffs hereby demand a trial by a jury of their peers.

WHEREFORE PREMISES CONSIDERED, Plaintiffs pray that the Defendants be summoned to appear and ask the Court to enter after trial, the highest judgment to which Plaintiffs are entitled to receive under the laws of Texas and/or applicable federal laws for their actual damages, jointly and severally, plus prejudgment interest and post judgment interest at the maximum rates permitted by applicable laws and their costs of court, attorneys' fees and costs.

Dated: May 19, 2009

Respectfully submitted,



Bruce A. Smith
State Bar No. 18542800
E-mail: bsmith@jwfirm.com
T. John Ward, Jr.
State Bar No. 00794818
E-mail: jw@jwfirm.com

Ward & Smith Law Firm
PO Box 1231
Longview, Texas 75606-1231
(903) 757-6400 (telephone)
(903) 757-2323 (facsimile)

Of Counsel:

FRANKFURT KURNIT KLEIN & SELZ, P.C.
488 Madison Avenue
New York, New York 10022
(212) 980-0120

Patrick J. Boyle
Jessie F. Beeber
Lia N. Brooks
Attorneys for Plaintiffs