J-06

MEMORANDUM

TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Julie Quinlan Dufrane, Assistant City Attorney
DATE: November 21, 2011
SUBJECT: May, as Personal Representative of Jesus Gillard v. Bloomfield Township, Troy, et. al

Enclosed please find a new lawsuit filed against the City of Troy, Bloomfield Township, and individual police officers from each department. This lawsuit has been assigned to the Honorable Robert H. Cleland of the U.S. District Court for the Eastern District of Michigan.

The lawsuit is filed as a 42 U.S.C. Section 1983 claim, and it also alleges state tort claims against the individual officers from each department. The claims arise from a police pursuit that began in Bloomfield Township and ended with a collision in the City of Troy.

Officers from Bloomfield Township attempted to stop Jesus Gillard on November 19, 2009 after receiving numerous citizen reports of erratic driving by Gillard and after he assaulted a citizen at a gas station in Bloomfield Township. After being pursued by Bloomfield Township police officers, Gillard's van collided with an SUV at the intersection of Big Beaver Road and Adams Road which is where Gillard had his first contact with officers from the City of Troy.

Gillard suffered a broken leg and other injuries as a result of the collision, and paramedics were called to the scene. In the meantime, Gillard emerged from his van, and assaulted an officer. Officers at the scene attempted to subdue Gillard and place him in handcuffs, but he resisted the officers. Gillard fought with several officers as they tried to gain control of him. After securing Gillard, an officer noticed that Gillard was not breathing. Gillard was pronounced dead after being transported to a hospital.

In essence, Plaintiff, as personal representative of the Estate of Jesus Gillard, alleges that Gillard's death was wrongful, and it was caused by the Township and the City's respective failure to train their officers. The Complaint alleges further that the officers' individual actions were grossly negligent and also caused the wrongful death of Gillard.

Our office will commence its defense of this litigation by filing an Answer to the Complaint on behalf of the City of Troy and the individual officers. A Motion for Summary Judgment may also be filed, if it is warranted, in an effort to avoid costly and protracted discovery in this matter. A proposed resolution authorizing our legal representation is provided for your consideration.

PROPOSED RESOLUTION:

RESOLVED, that the City Attorney is hereby authorized and directed to represent the City of Troy and the individual Troy defendants named in the matter of Alan A. May, as Personal Representative of the Estate of Jesus Winston Gillard, Deceased, v. Bloomfield Township, *et al.*, United States District Court for the Eastern District of Michigan, Case No. 2:11-cv-14453, against any claims and damages. Furthermore, the City Attorney is authorized to pay necessary costs and expenses and to retain any necessary expert witnesses to adequately represent the City and the Troy defendants.

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

Alan A. May

Plaintiff.

v.

Jim NMI Gallagher, et al

Defendant.

Civil Action No. 11-cv-14453

Hon. Robert H. Cleland

SUMMONS IN A CIVIL ACTION

To: Troy, City of

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Martin T. Shepherd
Fieger, Fieger, Kenney, Giroux
& Danzig, PC
19390 W. Ten Mile Road
Southfield, MI 48075

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. WEAVER, CLERK OF COURT

By: s/EBrown
Signature of Clerk or Deputy Clerk

Date of Issuance: October 17, 2011

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALAN A. MAY, as Personal Representative of the Estate of JESUS WINSTON GILLARD , Deceased,

Plaintiff,

Case No:
Hon

v.

TOWNSHIP OF BLOOMFIELD, OFFICER JIM GALLAGHER, OFFICER SEAN KELLEY, OFFICER SCOTT MONKKONEN, OFFICER JASON MURPHY, OFFICER JAMES SHOEMAKER, OFFICER APRIL SWITALA, CITY OF TROY, OFFICER MICHAEL MEINZINGER, OFFICER SEAN MORSE, OFFICER CHRISTINA GIOVANNI, and OFFICER MICHAEL GIORDANO

Jointly and Severally,

Defendants.

_____/

GEOFFREY N. FIEGER (P30441)
MARTIN T. SHEPHERD (P65331)
Fieger, Fieger, Kenney, Giroux & Danzig, P.C.
Attorney for Plaintiff
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_____/

COMPLAINT AND DEMAND FOR TRIAL BY JURY

There is another no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this complaint that is either pending, or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

/s/ Martin T. Shepherd
Martin T. Shepherd (P65331)

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NOW COMES the Plaintiff, ALAN A. MAY, as Personal Representative of the Estate of JESUS WINSTON GILLARD, Deceased, by and through his attorneys, FIEGER, FIEGER, KENNEY, GIROUX, and DANZIG, P.C., and for his Complaint against the above named Defendants, states as follows:

1. That this action arises under the United States Constitution and under the laws of the United States Constitution, particularly under the provisions of the Fourteenth and Fourth Amendments of the United States Constitution and under the laws of the United States, particularly under the Civil Rights Act, Title 42 of the United States Code, Sections 1983 and 1988.

2. That this court has jurisdiction of this cause under the provisions of Title 28 of the United States Code, sections 1331 and 1343 and pendant jurisdiction over state claims which arise out of the nucleus of operative facts common to Plaintiff's federal claims.

3. That pursuant to Order of the Wayne County Probate Court, Plaintiff Alan A. May is the lawful appointed Personal Representative of the Estate of Jesus Winston Gillard, Deceased.

4. At all times relevant, Decedent JESUS WINSTON GILLARD (hereinafter referred to as "GILLARD") was a resident of the City of Detroit, County of Wayne, State of Michigan.

5. That at all times relevant, Defendant TOWNSHIP OF BLOOMFIELD was and is a municipal corporation, duly organized and carrying on governmental functions, including the formation, organization, and operation of the Bloomfield Township Police Department, in the Township of Bloomfield, County of Oakland, State of Michigan.

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6. That at all times relevant, Defendant CITY OF TROY was and is a municipal corporation, duly organized and carrying on governmental functions, including the formation, organization, and operation of the Troy Police Department, in the City of Troy, County of Oakland, State of Michigan.

7. At all times relevant, Defendant Officer JIM GALLAGHER (hereinafter referred to as "GALLAGHER") was a police officer employed by Defendant TOWNSHIP OF BLOOMFIELD, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

8. At all times relevant, Defendant Officer SEAN KELLEY (hereinafter referred to as "KELLEY") was a police officer employed by Defendant TOWNSHIP OF BLOOMFIELD, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

9. At all times relevant, Defendant Officer SCOTT MONKKONEN (hereinafter referred to as "MONKKONEN") was a police officer employed by Defendant TOWNSHIP OF BLOOMFIELD, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

10. At all times relevant, Defendant Officer JASON MURPHY (hereinafter referred to as "MURPHY") was a police officer employed by Defendant TOWNSHIP OF BLOOMFIELD, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

11. At all times relevant, Defendant Officer JAMES SHOEMAKER (hereinafter referred to as "SHOEMAKER") was a police officer employed by Defendant TOWNSHIP OF BLOOMFIELD, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

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12. At all times relevant, Defendant Officer APRIL SWITALA (hereinafter referred to as "SWITALA") was a police officer employed by Defendant TOWNSHIP OF BLOOMFIELD, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

13. At all times relevant, Defendant Officer MICHAEL MEINZINGER (hereinafter referred to as "MEINZINGER") was a police officer employed by Defendant CITY OF TROY, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

14. At all times relevant, Defendant Officer SEAN MORSE (hereinafter referred to as "MORSE") was a police officer employed by Defendant CITY OF TROY, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

15. At all times relevant, Defendant Officer CHRISTINA GIOVANNI (hereinafter referred to as "GIOVANNI") was a police officer employed by Defendant CITY OF TROY, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

16. At all times relevant, Defendant Officer MICHAEL GIORDANO (hereinafter referred to as "GIORDANO") was a police officer employed by Defendant CITY OF TROY, acting under color of state law as a police officer in the County of Oakland, State of Michigan.

17. That the amount in controversy exceeds the amount of $75,000.00, and pursuant to 28 U.S.C. 1332, this action is otherwise within the jurisdiction of this Court.

18. That on November 19, 2009 at approximately 5:30 pm, GILLARD initiated and led a vehicle chase in which he operated a van that was pursued and stopped by Bloomfield Township Police Department officers.

19. That at the time of the vehicle chase and subsequent attack by police, GILLARD was diagnosed with bipolar disorder and is believed to have suffered temporary psychosis during the vehicle chase and subsequent attack by Defendant officers.

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20. That the vehicle chase ended when the van operated by GILLARD came to a final stopped position at or near the intersection of Adams and Big Beaver Road in Troy, Michigan.

21. That when the van came to a stop, GILLARD exited the driver's side door, hunched over at the waist and his motion was as if he was going to the ground.

22. That after GILLARD exited the van, Defendant officers subjected GILLARD to thirty-one taser deployments from six different tasers.

23. That during the same period of time, Defendant officers subjected GILLARD to numerous and repeated baton strikes, knee bludgeons, and closed fist punches, which struck GILLARD in various parts of his body.

24. That after enduring several minutes of tasing and beating, GILLARD sat on the ground, his legs in front of him and back against one of the police patrol cars.

25. That while he was sitting on the ground, GILLARD'S left leg was visibly broken, with a bone protruding through his skin.

26. That GILLARD was then wrestled to a face-down, prone position on the ground by Defendant officers.

27. That GILLARD offered minimal resistance to those efforts to subdue him.

28. That Defendant officers continued to knee, punch and bludgeon GILLARD and to stun GILLARD using the taser to shock and stun him after he was wrestled into the prone position and posed no threat to the officers or anyone else.

29. That Defendant officers restrained GILLARD on the hard pavement by placing their knees, feet, and other body parts on his back, neck and shoulders to keep him restrained and so that he would remain face down on the ground.

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30. That after subduing GILLARD, Defendant officers placed handcuffs on him with his hands behind his back, and several officers continued to restrain and force GILLARD to the ground face down with his face, chest and abdomen on the pavement.

31. That while GILLARD was being forced to remain in the prone position on the pavement, face down and with his hands cuffed behind his back, he experience compression of his chest so that he was unable to breathe and properly ventilate himself or request help from Defendant officers who were forcing him to remain on the pavement.

32. That throughout the extended period of time while Defendant officers were restraining GILLARD, he gasped for air, struggled to breathe, and slowly lost the fight to maintain life because he was unable to speak or move his body to a position that would allow him to breathe.

33. That while his chest and neck were being restricted against the pavement by several officers, GILLARD lost respiratory function and died.

34. That the Oakland County Medical Examiner later determined that GILLARD's cause of death was positional asphyxia.

35. That GILLARD was subdued and restrained at various times by as many as 14 officers which included Defendants GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI and GIORDANO.

36. That law enforcement officers should be aware that human beings, when restrained by handcuffs behind their back and forced to lie prone on the ground, floor, or hard surface, will have difficulty breathing or be unable to breathe because the person's diaphragm is unable to expand and contract and descend in the abdomen, displacing abdominal contents downward and outward so as to increase the size of the interior lung space so the inhalation can occur, and therefore are at risk of dying, through no fault of their own.

37. GILLARD suffered fatal injuries while being improperly restrained.

COMMON ALLEGATIONS

COUNT I

42 USC 1983 CONSTITUTIONAL DEPRIVATIONS

38. Plaintiff hereby reasserts and realleges Paragraphs 1 thru 37 as if fully stated herein.

39. That the action and omission of acts by all Defendants under 42 USC Section 1983 was unreasonable and performed knowingly, deliberately, intentionally, maliciously, with gross negligence, callousness, and reckless indifference to GILLARD'S well being and in disregard of GILLARD's safety, with wanton intent for GILLARD to suffer the unnecessary and intentional infliction of pain and used unreasonable and unnecessary force, failed to follow promulgated police policies in the use of force and detainment of prisoners, failure to obtain timely medical treatment when many risk factors for positional or restraint asphyxia were present and failure to properly train, supervise, develop and implement policies providing adequate medical and psychiatric treatment to an arrestee when risk factors for the same and for positional or restraint asphyxia were present and by reason of which Plaintiff is entitled to compensatory and punitive damages.

40. That the conduct of GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI and GIORDANO was pursuant to, and in execution and implementation of, officially sanctioned policies, practices, ordinance, regulations, or customs of Defendants TOWNSHIP OF BLOOMFIELD or CITY OF TROY, and each of the named Defendants exhibited a deliberate indifference by intentional acts,

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gross negligence and/or engaging in omissions to breach GILLARD's public safety and causing constitutional deprivation of his individual rights to wit:

a. Failure to properly train police officers and detention officers in the proper use of determining medical emergencies such omitted training was a grossly negligent and reckless act that amounted to a deliberate indifference to, and was in violation of GILLARD's constitutional rights.

b. Failure to hire individuals whose character and personality would not pose a potential danger to the residents and guests of Bloomfield Township and/or City of Troy and GILLARD.

c. Failure of Bloomfield Township and City of Troy to discipline, investigate, and/or discharge any officers involved in the denial of medical care and/or the use of excessive force on arrestees and/or detainees which ratifies and/or condones any officers' unconstitutional conduct.

d. Failure to train to determine the immediate need for medical and/or psychiatric treatment or attention, failure to recognize the danger of positional asphyxia, which was known throughout the police community, and failure to obtain medical attention for a prisoner who had many, if not all positional asphyxia risk factors present and was in need of immediate medical attention early in and throughout the confrontation with Defendants.

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e. Failure to train and inadequate training in the proper amount of force to be utilized for arrestees and/or detainees and particularly the amount of force to be used for the mentally disturbed.

f. Knowingly and recklessly hiring and training as police officers and detention officers individuals who were not able to determine medial and/or psychiatric emergencies that render them unfit to perform the necessary duties of their position.

g. Knowingly and recklessly failing to discipline, instruct, supervise or control officers conduct, thereby encouraging acts or omissions that contributed to the death of GILLARD.

h. Failure to adequately train officers to recognize a medical and/or psychiatric emergency.

i. Failure to render medical and/or psychiatric attention to a person who was inappropriately positioned and beaten severely in contradiction with accepted police policies and was being asphyxiated as a result of the position he was being held and/or secured in.

j. That the individual officers used intentional, grossly negligent, reckless, unreasonable and unnecessary force upon GILLARD by reason of inappropriately positioning and/or hog-tying after he was no longer a threat to anyone's safety.

k. That the individual officers failed to check files and computer information available to them that would have given them additional risk factors for potential positional asphyxia indicating the need for medical attention.

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l. That GILLARD, sitting on the ground against a patrol vehicle with a broken bone protruding through his skin, did not pose a threat to the officers which would necessitate the further and unnecessary restraint tactics that were used by the officers.

m. That all Defendants, including officials, supervisors, and officers individually and as agents for Defendant TOWNSHIP OF BLOOMFIELD or CITY OF TROY, personally participated in the implementation, execution, and omission of the official policies, training, ordinances, regulations, and/or customs referred to above.

n. That all officials, supervisors, and officers had a duty to adequately train and supervise all police officers and detention officers who had a duty to properly care for, obtain medical treatment, supervise and provide care and treatment for GILLARD that was not intentional, grossly negligent or amounted to a reckless or deliberate indifference to life.

41. That as a direct and proximate result of the aforementioned conduct and omissions of Defendants GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI, GIORDANO, TOWNSHIP OF BLOOMFIELD and CITY OF TROY, Plaintiff's Decedent suffered pain, anguish, and ultimately, death.

42. That as a result of the unlawful conduct of the Defendants described above and below, Plaintiff's Decedent, and the heirs-at-law to the Estate of Plaintiff's Decedent, suffered the following damages:

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a. Medical expenses incurred due to Decedent's injuries and death;
b. Funeral and burial expenses;
c. Conscious pain and suffering of Decedent prior to his death;
d. Loss of financial support;
e. Loss of service;
f. Loss of gifts and other valuable gratuities;
g. Loss of comfort, society and companionship;
h. Compensatory and punitive damages; and
i. Any and all other damages otherwise recoverable under USC Section 1983 and Section 1988.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in his favor and against Defendants, jointly and severally, in excess of Seventy-Five Thousand ($75,000.00) Dollars, and award costs, interest, and attorney fees, as well as punitive and/or exemplary damages.

COUNT II

GROSS NEGLIGENCE, INTENTIONAL, WILLFUL, RECKLESS, AND WANTON MISCONDUCT ON THE PART OF ALL DEFENDANTS PURSUANT TO MCL 691.1407

43. Plaintiff hereby reasserts and realleges Paragraphs 1 thru 42 as if fully stated herein.

44. That in placing GILLARD in custody, Defendants GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI, and GIORDANO owed a duty to Plaintiff's Decedent to make reasonable effort to care for him in a reasonable and prudent manner, to exercise due care and caution, and in such operation as the rules of the common law requires and in accordance with the customs, policies, and procedures of Bloomfield Township Police Department and City of Troy Police Department.

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45. That notwithstanding the aforementioned duties, Defendant officers GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI, and GIORDANO arrested Plaintiff's Decedent in an extremely careless, grossly negligent, and reckless, willful, wanton, criminal, malicious and intentional manner, without concern for his safety, failed to obtain medical attention for GILLARD when obvious risk factors for positional or restrain asphyxia were present which were known or should have been known by Defendants, exceeded necessary minimum amount of force needed to take control of GILLARD, committed wanton reckless aggravated assault during the arrest, failed to use only that force which was necessary and the officers actions were objectively unreasonable in light of the existing facts and circumstances when Defendants positioned and/or hog-tied GILLARD in a prone position with numerous Defendant officers positioning their body weight on GILLARD'S head, neck, and back, when simply handcuffing GILLARD and detaining him in a police vehicle would have been the proper procedure, failed to follow effective police policies and procedures including those which prohibit the use of inappropriate positioning and/or hog-tying as a restraint method, and failed to adequately train officers on the dangers of excessive force and positional or restraint asphyxia.

46. That as a further and direct proximate result of conduct of Defendant officers GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI, and GIORDANO, due to their acts and omissions, violated GILLARD'S constitutional rights by directly and proximately causing the death and conscious and unnecessary pain and suffering of GILLARD.

47. That as a direct and proximate result of the aforementioned conduct and omissions of all Defendants, GILLARD , as more fully described herein, Plaintiff's Decedent and the legal heirs-

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at-law of the Estate of Plaintiff's Decedent, suffered the injuries and damages as more specifically described above.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in his favor and against Defendants, jointly and severally, in excess of Seventy-Five Thousand ($75,000.00) Dollars, and award costs, interest, and attorney fees, as well as punitive and/or exemplary damages.

COUNT III

INTENTIONAL AGGRAVATED ASSAULT AND BATTERY

48. Plaintiff hereby reasserts and realleges Paragraphs 1 thru 47 as if fully stated herein.

49. That Defendant officers GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI, and GIORDANO, individually, and as agents of the Township of Bloomfield, Bloomfield Township Police Department, City of Troy and/or Troy Police Department, physically assaulted Plaintiff's decedent by beating him and forcing him face-first to the ground after he was already sufficiently subdued, when minimal force or further restraint was necessary after that point in time, where they forcibly restrained GILLARD by hog-tying him, positioning their body weight on GILLARD's head, neck and back, and continuing to beat him while he lay on the ground inappropriately positioned against all police policies and procedures, which ultimately caused his death.

50. That at all times Defendant officers GALLAGHER, KELLEY, MONKKONEN, MURPHY, SHOEMAKER, SWITALA, MEINZINGER, MORSE, GIOVANNI, and GIORDANO acted intentionally and recklessly and with gross negligence, thereby demonstrating a substantial lack of concern for GILLARD's safety and whether he had been

injured by failing to obtain medical attention before and after the assaults and beating and after it became apparent that they were presented with a psychiatric emergency.

51. That as a direct and proximate result of the aforementioned intentional, grossly negligent, willful, unreasonable, and unlawful conduct of Defendants, as fully described herein, Plaintiff's Decedent and the legal heirs-at-law of the Estate of Plaintiff's Decedent, suffered the injuries and damages as more specifically described above.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in his favor and against Defendants, jointly and severally, in excess of Seventy-Five Thousand ($75,000.00) Dollars, and award costs, interest, and attorney fees, as well as punitive and/or exemplary damages.

Respectfully submitted,

Fieger, Fieger, Kenney, Giroux & Danzig, P.C.

By: ___*/s/ Martin T. Shepherd*_____

GEOFFREY N. FIEGER (P30441)
MARTIN T. SHEPHERD (P65331)
Attorneys for Plaintiff
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Dated: October 11, 2011

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALAN A. MAY, as Personal Representative of the Estate of JESUS WINSTON GILLARD , Deceased,

Plaintiff,

Case No:
Hon

v.

TOWNSHIP OF BLOOMFIELD, OFFICER JIM GALLAGHER, OFFICER SEAN KELLEY, OFFICER SCOTT MONKKONEN, OFFICER JASON MURPHY, OFFICER JAMES SHOEMAKER, OFFICER APRIL SWITALA, CITY OF TROY, OFFICER MICHAEL MEINZINGER, OFFICER SEAN MORSE, OFFICER CHRISTINA GIOVANNI, and OFFICER MICHAEL GIORDANO

Jointly and Severally,

Defendants.

_____/

GEOFFREY N. FIEGER (P30441)
MARTIN T. SHEPHERD (P65331)
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_____/

DEMAND FOR TRIAL BY JURY

NOW COMES the Plaintiff, ALAN A. MAY, as Personal Representative of the Estate of JESUS WINSTON GILLARD, Deceased, by and through his attorneys, FIEGER, FIEGER,

KENNEY, GIROUX, and DANZIG, P.C., who hereby demands a trial by jury in the above entitled case.

Respectfully submitted,

Fieger, Fieger, Kenney, Giroux & Danzig, P.C.

By: ***/s/ Martin T. Shepherd***

GEOFFREY N. FIEGER (P30441)
MARTIN T. SHEPHERD (P65331)
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Dated: October 11, 2011

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