

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CORA MITCHELL, on behalf of herself  
individually and as Personal Representative  
of the Estate of ROBERT MITCHELL,

Plaintiff,

Case No.: 09-cv-11480  
Honorable John Corbett O'Meara  
Magistrate Judge Mona Majzoub

vs.

CITY OF WARREN, WILLIAM DWYER,  
Commissioner of Police, in his official and  
individual capacities, POLICE OFFICER  
RAYMOND HENKE, POLICE OFFICER  
JESSE LAPHAM, in their individual  
capacities,

Defendants.

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**FIRST AMENDED COMPLAINT AND JURY DEMAND**

**FIRST AMENDED COMPLAINT AND JURY DEMAND**

NOW COMES Plaintiff, CORA MITCHELL, on behalf of herself individually and as Personal Representative of the Estate of ROBERT MITCHELL, deceased, by and through her attorneys, GOODMAN & HURWITZ, P.C., through William H. Goodman, Julie H. Hurwitz, and Kathryn Bruner James, and CORNELIUS PITTS & ASSOCIATES, through Byron H. Pitts and Marchelle Falconer, and for her Complaint against the above-named Defendants, states as follows:

**PRELIMINARY STATEMENT**

1. This is a civil rights action in which Plaintiff, CORA MITCHELL, seeks relief on behalf of herself and of her decedent's, ROBERT MITCHELL's, Estate, for the Defendants' violation, under color of state law, of their rights, privileges and immunities secured by the Civil Rights Act of 1871, 42 U.S.C. §1983, the Fourth and Fourteenth Amendments to the United States Constitution, and the Constitution and laws of the State of Michigan, including but not limited to the Michigan Wrongful Death Act, MCL 600.2922, on or about April 10, 2009.

2. On or about the aforementioned date the Defendants engaged in conduct that violated the rights of the Plaintiff's decedent and of Plaintiff, as secured by the Fourth and Fourteenth Amendments to the United States Constitution and caused the death of the Plaintiff's minor son, her decedent, as a result of unconstitutional excessive and unreasonable force.

3. At all times herein Plaintiff was the mother of ROBERT MITCHELL (D.O.B.: September 14, 1993) now deceased, whose death on April 10, 2009 was the result of the wrongful and unconstitutional actions of individual Defendants HENKE, LAPHAM, and

DWYER, in his individual capacity, undertaken pursuant to the policies customs and practices of the Defendants CITY OF WARREN and DWYER, in his official capacity, herein.

4. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of attorney fees and costs, and such other and further relief as the Court deems proper.

#### **JURISDICTION**

5. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343 (3) and (4), as this action seeks redress for the violation of Plaintiff's constitutional and civil rights. Plaintiff's claim for declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

#### **VENUE**

6. Venue is proper in the United States District Court for the Eastern District of Michigan, pursuant to 28 U.S.C. § 1391 (b)(2), in that this is the judicial district in which the events giving rise to the claim occurred.

#### **JURY DEMAND**

7. Plaintiff demands a trial by jury in this action on each and every one of her claims.

#### **PARTIES**

8. Plaintiff CORA MITCHELL is the mother of Plaintiff's minor decedent ROBERT MITCHELL, and is the Personal Representative of his Estate, and as so authorized is the proper party to bring this action on behalf of herself and for the benefit of the Estate of ROBERT MITCHELL. She is a resident of the City of Detroit, Wayne County, Michigan, as was her son, ROBERT MITCHELL.

9. Defendant CITY OF WARREN (hereafter "WARREN") is a municipal corporation, so authorized by the laws of the State of Michigan, that operates a Police Department as a part of its responsibilities and services. At all times relevant herein, this Defendant acted under color of regulation, usage, custom and law and pursuant to its policies and practices, as did all the individual Defendants herein.

10. Defendant WILLIAM DWYER (hereafter "DWYER") is and, at all times herein, was the Commissioner and principal policy maker of the Warren Police Department, operated by the Defendant WARREN, and at all times herein acted in both his individual and official capacities, under color of regulation, usage, custom and law and pursuant to the policies and practices of the Defendant WARREN.

11. Defendant POLICE OFFICER RAYMOND HENKE (hereafter "HENKE") is, and at all times herein was, a police officer of Defendant CITY OF WARREN, acting under color of regulation, usage, custom and law, acting within the scope of his authority and employment as a police officer and pursuant to the policies and practices of the Defendant CITY OF WARREN, through its agency the Warren Police Department.

12. Defendant POLICE OFFICER JESSE LAPHAM (hereafter "LAPHAM") is, and at all times herein was, a police officer of Defendant CITY OF WARREN, acting under color of regulation, usage, custom and law, acting within the scope of his authority and employment as a

police officer and pursuant to the policies and practices of the Defendant CITY OF WARREN, through its agency the Warren Police Department.

### **STATEMENT OF FACTS**

13. On April 10, 2009 Defendant HENKE and his partner, Warren Police Officer Mathew Milne, conducted a traffic stop of a motor vehicle with an expired license plate tab in the area of Schoenherr and Eight Mile Road, on the border between the City of Detroit and Defendant CITY OF WARREN. The Plaintiff's minor decedent, ROBERT MITCHELL, age 16, was a passenger in that vehicle.

14. In the course of the aforementioned traffic stop, the Plaintiff's decedent, ROBERT MITCHELL, became frightened, panicked, jumped out of the passenger seat of the stopped car and ran from the scene, even though he and the other passengers of the vehicle had committed no crime and were not wanted for any crime.

15. The Warren Police Officers who conducted the traffic stop, Officer Milne and Defendant HENKE, pursued him on foot.

16. After a short time, Officer Milne returned to his patrol vehicle, which he and his partner, Defendant HENKE, had left vacant behind the car that they had pulled over, with the driver and another passenger still inside the vehicle.

17. Defendant HENKE continued chasing ROBERT MITCHELL on foot, into the City of Detroit, to an abandoned house located at 20536 Pelkey, just south of Eight Mile Road.

18. Within moments, at the aforementioned location, Defendant HENKE was joined by Defendant LAPHAM, Warren Police Officer Scott Taylor, and four Detroit Police Officers Darin Miller, Daniel Burmistrzak, Jason Sloan and Eddie Edwards.

19. Defendant HENKE, and possibly other officers, shouted up the stairs to ROBERT MITCHELL to the second floor, where Mr. MITCHELL had run, and commanded him to come downstairs and to show his hands, to which Mr. MITCHELL complied, first by yelling back from upstairs, that he was coming down.

20. Plaintiff's Decedent Mr. MITCHELL then proceeded to come down the stairs with his hands extended and outstretched in front of him, as ordered. He was obviously unarmed, sweating profusely and breathing very heavily. He appeared to be out of breath, but was otherwise under control.

21. The police officers, all of whom were much larger, faster and in better condition than ROBERT MITCHELL, had him cornered in the small vacant house.

22. As soon as Defendant HENKE saw ROBERT MITCHELL's extended hands, he grabbed onto both of the boy's wrists, immediately gaining custody of him, and started to handcuff him.

23. At one point, Mr. MITCHELL may have pulled away and released his right hand. He first turned toward the front door, but then suddenly turned, or was pulled, back toward Defendant HENKE, all the while still firmly held in HENKE'S grip and under his physical control.

24. At that point, Defendant HENKE was standing directly in front ROBERT MITCHELL, who was surrounded by, and now facing the other Warren and Detroit police officers. His arms were still extended forward and his hands empty.

25. ROBERT MITCHELL, who was short in stature and has a slight build (less than 130 pounds), was visibly unarmed, out of breath and clearly outnumbered by several

substantially larger police officers, standing in front of him, one of whom had hold of his left wrist.

26. At no time did the level of resistance offered by ROBERT MITCHELL, or any of his behavior, expose any of the officers, him or the public to unnecessary danger. He posed no threat to the police officers or anyone else.

27. At no time did ROBERT MITCHELL pose any realistic likelihood or risk of flight.

28. At no time was the means of control being used by Defendant HENKE ineffective or likely to be ineffective.

29. At all times relevant herein, Defendants HENKE and LAPHAM, as well as the other police officers in the room, knew and were aware of the facts alleged in Paragraphs 19 through 28 above.

30. At this point, nonetheless, Defendant LAPHAM visibly, intentionally and deliberately, aimed his electric stun weapon, a "TASER," Model X26, (hereinafter "Taser"), at ROBERT MITCHELL's left chest and instructed the other officers standing directly in front of the boy to move out of the way.

31. At no time did Defendants LAPHAM or HENKE ever give ROBERT MITCHELL any verbal warning or opportunity to comply with their orders before LAPHAM deployed his Taser, despite the fact that MR. MITCHELL had complied with every verbal order that had been given to him up to that point.

32. As the other officers moved out of the way, Defendant LAPHAM, acting in coordination and concert with Defendant HENKE, and in accordance with the unwritten but actual policies of the Defendants CITY OF WARREN and DWYER, and in contradiction to the

written, albeit ignored, flouted and regularly violated, procedures of the Defendants WARREN and DWYER, deployed his Taser from two or three feet away from ROBERT MITCHELL's chest.

33. The Taser was deployed in such a way that the two electronically charged hooks that were projected from the aforementioned weapon penetrated the left side of ROBERT MITCHELL's chest, five and one quarter (5 ¼) inches apart, immediately adjacent to his heart. This unreasonable and unnecessary use of force, through the deployment of the Taser, caused ROBERT MITCHELL to go into immediate cardiac arrhythmia and die.

34. At all times herein, Defendants WARREN and DWYER, acting in his official and individual capacities, knew or were on actual notice of the obvious substantial risk that small thin children face a higher risk of cardiac arrhythmia when shot in or near the chest by a Taser X26, based on the numerous studies known and/or distributed to the law enforcement community in general and to the Defendant CITY OF WARREN in particular, demonstrating such a risk.

35. This paragraph is filed separately under seal, pursuant to the Protective Order (Docket Document 16) previously entered in this matter.

36. The *written* policy/procedure, set forth in Paragraph 35(a) above, was false, inaccurate, incorrect, misguided and highly likely to cause serious injury and/or death in that it failed to acknowledge, warn, train and instruct as follows: a) that the use of Tasers could be lethal under certain circumstances, and therefore was to be used *only* when it was necessary to do so, in order to protect the lives of others; and b) that there was a known increased risk of cardiac arrest in some people, including small framed children like Plaintiff's decedent ROBERT MITCHELL, people with pre-existing conditions, known or unknown, also like Plaintiff's decedent.

37. This paragraph is filed separately under seal, pursuant to the Protective Order (Docket Document 16) previously entered in this matter.

38. The aforementioned written procedures, set forth in Paragraph 37(a),(b), (c) and (d) above, were a sham and were routinely and systematically ignored, flouted, violated and disregarded by individual WARREN police officers, including individual Defendants herein, which was in fact the actual custom, practice and authentic policy of the Defendant CITY OF WARREN, acting through Defendant DWYER, both individually and officially, and the Warren Police Department with regard to the use of force in general and the deployment of Tasers in particular.

39. Defendants WARREN, acting through the Warren Police Department and its supervisory officers and policy making officials, and DWYER, prior to April 10, 2009, knew and or were on actual notice of the potential of the Taser to cause death. Nonetheless, Defendants WARREN and DWYER never took any steps to train, discipline and/or supervise their personnel and officers with regard to this potential lethality.

40. Further, in contrast to the written procedures regarding the use of Tasers, set forth in Paragraphs 35(a) and 37(a),(b),(c) and (d) above, the Defendant WARREN, through its Police Department and Defendant DWYER, individually and officially, maintained customs, policies and practices with regard to the use of Tasers, as well as training, discipline and supervision of their use, that, although unwritten, represented the authentic, true and real policies of the Warren Police Department that were in effect on April 10, 2009, as follows:

- a. Warren police officers had unlimited discretion to use Tasers whenever they chose or wished to do so, for example when he found it easier and more convenient to do so in order to make an arrest than to use other, more reasonable, less dangerous, less potentially life threatening and less violent methods;

- b. Tasers were to be used as if they can never cause death, regardless of that fact that they can, do and have caused death, of which Defendants were aware and on notice;
- c. Whenever one officer decided to deploy a Taser on a subject, that officer's subjective decision has taken precedence over the objective criteria set forth in the Defendants' WARREN and DWYER's written policies and procedures regarding the use of force and deployment of Tasers. In other words, the mere fact that a Warren police officers subjectively *believed* that the deployment of a Taser was necessary and proper, that belief made the use of the Taser justified under the policies of the Warren Police department, regardless of whether it is or was objectively reasonable to do so;
- d. There was no need to give any warning that a Taser is to be used on a subject, regardless of whether it is reasonable to do so; and
- e. When Warren police officers have decided to deploy a Taser, as well as to use other forms of excessive force, they have used the device more frequently, more routinely and with less constraint, against African Americans than against white members of the public.

41. These authentic, true and real, although *unwritten*, policies that were in conflict with the formal written procedure set forth in Paragraph 37(a), (b), (c) and (d) above are and were at all times relevant herein enforced and implemented through the absence of training, discipline and supervision under appropriate and constitutional principles that should attend the use of force, both lethal and non-lethal, and the prohibition of excessive force, in particular the use of Tasers.

42. On the very day of ROBERT MITCHELL's death, April 10, 2009, even before conducting a formal and/or complete internal investigation of the police actions that led to his death, Defendant WARREN, through its supervisory and/or policy-making officials, formally adopted a finding that the aforementioned Taser was "deployed within departmental policy and procedure."

43. This formal finding by Defendants repudiates the written procedures set forth in Paragraph 37(a), (b), (c), and (d) above. It further ratifies the policy set forth in Paragraph 40 above herein.

44. Further, this initial April 10, 2009 finding constitutes:

- a. A rush to judgment even before a “formal” investigation was initiated, let alone concluded, thereby tainting both the process and the result of the investigation and rendering it nothing more than a mere formality; and
- b. The ratification of the *unwritten* and unconstitutional customs and practices, set forth in Paragraph 37, herein above, so permanent and well settled as to constitute a ‘custom or usage’ with the force of law, such that the written procedures, set forth in Paragraph 37(a), (b), (c) and (d) above, were virtually ignored and repudiated so as to officially justify the unreasonable level of force used against ROBERT MITCHELL on April 10, 2009.

45. Between April 10, 2009 and June 12, 2009, Defendant WARREN, acting through its Commissioner of Police, Defendant DWYER and other officers, and in direct coordination with the Macomb County Prosecutors’ Office, conducted an alleged “investigation” of the circumstances surrounding Mr. MITCHELL’s death, whereby the Macomb County Prosecutor’s Office expressly stated that “...the Internal Affairs Department from the Warren Police Department and Investigators from our office are fully investigating this incident.”

46. On or about April 24, 2009, the Wayne County Prosecutor’s Office notified the Defendant, through the Macomb County Prosecutor’s Office, that Detroit Police Officer Burmistrzak generated a handwritten report and verbally told a lieutenant within his precinct that “he felt it wasn’t necessary to taser the kid.”

47. The attorney from the Wayne County Prosecutor’s office advised the Macomb County investigators that they should interview this officer.

48. At no time did anyone from Defendant WARREN interview this police officer about that statement or conduct any further inquiry with any of the supervisory or homicide officers within the Detroit Police Department in regard to the aforementioned information.

49. On or about June 12, 2009, Defendants WARREN, through the Warren Police Department and Defendant DWYER, officially approved of Defendants HENKE's and LAPHAM's conduct, explicitly finding that because Defendant LAPHAM "believed that the deployment of his ... Taser was necessary and proper," it therefore was justified. This conclusion was thus nothing more than a rubber stamp of the original April 10, 2009 finding, set forth in Paragraph 42 above.

### CLAIMS

#### COUNT I - FIRST CLAIM FOR RELIEF 42 U.S.C. § 1983 – EXCESSIVE FORCE

50. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 49 as if fully set forth herein.

51. The acts and conduct, involving the use of force by Defendant LAPHAM, acting individually, jointly and in conspiracy with Defendant HENKE, as fully described above, constituted an objectively unreasonable use of force, and thereby violated the rights of Plaintiff's decedent, ROBERT MITCHELL, to be free from unreasonable and excessive physical force, as secured by the Fourth and Fourteenth Amendments to the United States Constitution, and Article I Section 11 of the Michigan Constitution.

52. Defendant HENKE, knowing that he had, at all times relevant herein, actual control over Plaintiff's minor decedent MITCHELL, and that MR. MITCHELL had at all times complied with his verbal commands, had an affirmative duty to protect, intervene and prevent

Defendant LAPHAM from unreasonably and unconstitutionally using more force than was reasonably necessary by deploying his Taser at MR. MITCHELL's chest, at unreasonably close proximity, and without even warning MITCHELL or otherwise giving him an opportunity to continue to comply with verbal commands.

53. The aforementioned objectively unreasonable physical force and seizure was imposed by the Defendants, acting under color of state law and pursuant to the customs, policies and practices of Defendants WARREN and DWYER, acting in his individual capacity and in his official capacity.

54. As a direct and proximate result of the acts and conduct of the Defendants the Plaintiff herein suffered the following injuries and damages:

- a. As to the estate of ROBERT MITCHELL:
  - i. Physical injury as a result of two electronic prongs that penetrated his chest, directly above his heart, and injected 50,000 volts into his body and resulted in a cardiac arrest and/or arrhythmia, resulting in death;
  - ii. Conscious physical and emotional pain, suffering, anguish, distress and fear;
  - iii. Loss of earning capacity.
- b. As to the survivors, under the Michigan Wrongful Death Act, MCL 600.2922, *et seq.*:
  - i. Loss of love;
  - ii. Emotional distress and anguish;
  - iii. Loss of society and companionship;
  - iv. Loss of services;
  - v. Loss of emotional support; and

vi. Loss of future economic support.

**COUNT II - SECOND CLAIM FOR RELIEF**  
**42 U.S.C. § 1983– DENIAL OF EQUAL PROTECTION AND**  
**42 U.S.C. § 1985 – CONSPIRACY INVIDIOUS RACIAL ANIMUS**

55. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 54 as if fully set forth herein.

56. At all times herein the Defendants violated the Plaintiff's decedent's rights under the Fourteenth Amendment to the United States Constitution, and Article I, Sections 2 and 11 of the Michigan Constitution, because of his race, i.e. because he is an African American, to wit:

- a. At the time of ROBERT MITCHELL's tasing and death, on or about April 10, 2009, Defendant officers HENKE and LAPHAM targeted African American young males along the Eight Mile Road border between the DEFENDANT CITY OF WARREN and the City of Detroit, to disproportionately stop and use force in general, and Tasers in particular, including but not limited to ROBERT MITCHELL and the young African American man who was driving the car in which he was a passenger;
- b. During the time period of ROBERT MITCHELL's tasing and death, in and around April 10, 2009, Defendant CITY OF WARREN, through its Commissioner of Police, Defendant DWYER, and its officers, agents and employees, including but not limited to the individual Defendants in this action, was engaged in a custom, policy and practice of targeting African American males along the Eight Mile Road border between the Defendant CITY OF WARREN and the City of Detroit, for use of force, in general and the use of Tasers in particular to the extent that these mechanisms were used disproportionately on persons of color;
- c. Defendants WARREN and DWYER failed to train, supervise and discipline its officers to respond to African Americans in and around the CITY OF WARREN no differently than they would to white persons with regard to the use of force generally and the use of Tasers, in particular; and
- d. This failure to supervise and discipline was understood by Warren police officers, including but not limited to the Defendants in this case, and constituted the basis for their continued actions in furtherance of their custom and practice of responding to African American suspects differently than they did to white

persons with regard to the use of force generally and the use of Tasers, in particular.

57. As a direct and proximate result of the aforementioned customs and practices within the Warren Police Department in regard to African-American young men, these individual Defendants, individually, jointly and in conspiracy, did target and use unreasonable and excessive force against Plaintiff's minor decedent ROBERT MITCHELL with intentional and invidious racial animus.

58. Warren police officers who exercised invidious racial animus, as set forth herein, understood that the Defendants, including but not limited to Defendant DWYER, would conspire to vindicate and condone their actions in this regard.

59. At all times herein when Defendants engaged in the conduct as described in Paragraph 56 above, they did conspire and agree among themselves and with others, including but not limited to members of the Macomb County Prosecutors office, with racial animus:

- a. To act in concert with racial animus so as to assault the Plaintiff's decedent with a Taser, which assault resulted in the death of ROBERT MITCHELL;
- b. To fail and refuse to intervene and protect the Plaintiff from violations of his rights, as set forth herein above;
- c. To conceal the facts that surrounded the infliction of unlawful, unreasonable and excessive force on the Plaintiff's decedent by conducting an investigation that lacked integrity, as set forth in Paragraphs 42 - 49, herein above;

60. At all times herein the aforementioned conspiracy had among its purposes to violate rights guaranteed to the Plaintiff under the Fourth, Fifth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 11 of the Michigan Constitution, and to deprive him of equal protection of the laws. As a consequence, Defendants are liable to Plaintiff under 42 U.S.C. §§ 1983 and 1985 (2) and (3).

61. As a direct and proximate result of the acts and conduct of the Defendants the Plaintiff herein suffered the following injuries and damages:

- a. As to the estate of ROBERT MITCHELL:
  - i. Physical injury as a result of two electronic prongs that penetrated his chest, directly above his heart, and injected 50,000 volts into his body and resulted in a cardiac arrest and/or arrhythmia, resulting in death;
  - ii. Conscious physical and emotional pain, suffering, anguish, distress and fear;
  - iii. Loss of earning capacity.
- b. As to the survivors, under the Michigan Wrongful Death Act, MCL 600.2922, *et seq.*:
  - i. Loss of love;
  - ii. Emotional distress and anguish;
  - iii. Loss of society and companionship;
  - iv. Loss of services;
  - v. Loss of emotional support; and
  - vi. Loss of future economic support.

**COUNT III - THIRD CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – MONELL CLAIM**  
**DEFENDANTS WARREN AND DWYER,**  
**IN HIS OFFICIAL CAPACITY**

62. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 61 as if fully set forth herein.

63. At all times herein the Defendants WARREN and DWYER, acting in his official and individual capacities, had established, promulgated, implemented and maintained customs, policies and/or practices, with regard to the Defendant WARREN'S Police Department,

including but not limited to those facts set forth in Paragraphs 34 through 43, above.

64. The aforementioned customs, policies and/or practices also include, but are not limited to:

- a. Failure to properly hire, screen, supervise, discipline, transfer, train counsel or otherwise maintain control over police officers, including but not limited to the individually named police officer Defendants herein, who were known or should to have been known to engage in improper use of force;
- b. Implementation and/or tolerance of a police code of silence wherein other officers and supervisors cover up the use of excessive and/or deadly force by fabricating accounts in official police reports and internal affairs investigations to the media all of which are designed to falsely exonerate officers from potential civil and/or criminal liability;
- c. Creation and implementation of procedures that allow for and promote the use of excessive force in unwarranted and under unjustified circumstances; and
- d. Failure to adequately or reasonably train or notify its police officers concerning the potentially lethal dangers and hazards of Tasers, as well as their proper use.

65. These policies and practices with reference to the use of force in general, and the deployment of Tasers in particular, as well as to the internal investigations thereof, were and have been implemented, condoned and ratified by the actions and policies of Defendant WARREN, acting through DWYER, individually and in his capacity as the principle policymaker for police matters, as evidenced by the following:

- a. Their disregard, as the principal policy maker for Defendant WARREN's Police Department, of the disproportionate use of force in general, and Tasers in particular, against African American persons;
- b. Their ratification of the immediate conclusion that the Taser used against ROBERT MITCHELL was "deployed within departmental policy and procedure," guaranteed that the "formal" internal investigation subsequently conducted lacked objectivity and that the outcome of said "formal" investigation was predetermined;
- c. Their institution of a formal internal investigation of the ROBERT MITCHELL tasing and death, and Defendant DWYER's personal overseeing thereof, which was pre-arranged, planned and designed to ignore and disregard the clear evidence, including but not limited to:

- i. The formal statements of the Warren police officers who participated in and witnessed the events leading up to and surrounding the death of ROBERT MITCHELL; and
  - ii. The statements, observations and opinions of at least one Detroit police officer witness, who observed that the use of the Taser in this situation was unnecessary;
- d. Their manipulation of the internal investigation process within the Warren Police Department to whitewash the actions of the Warren Police Officers; and
  - e. Their ensuring in advance that the aforementioned investigation was conducted in such a way that the result would be that Defendants LAPHAM's and HENKE's conduct would be found to have been justified, so as to reiterate, reinforce and strengthen the actual policies of the Warren Police Department, through the customs and practices that constitute that policy, as set forth in Paragraph 40, herein above, including but not limited to the creation of an environment of tolerating, condoning and indeed approving the use of excessive force by the police officers in the Warren Police Department.

66. These policies with reference to the use of Tasers and other excessive and unreasonable force amounted to the ratification of the use of such force and are evidence of the existence of a climate of tolerance and approval of the use of excessive force by its police officers. As such, these policies led directly to and thus proximately caused and were a moving force in the unconstitutional actions of the individual Defendant Police Officers who caused the death of ROBERT MITCHELL on April 10, 2009.

67. The aforementioned actions, policies and customs of Defendants DWYER and WARREN, both leading up to the incident and subsequent thereto, are further evidence of the existence of a policy which was in existence prior to April 10, 2009 and which contributed to or was the moving force behind the individual Defendants' conduct which caused the death of Plaintiff's minor decedent ROBERT MITCHELL.

68. Defendants WARREN and DWYER were on actual notice that each of the aforementioned policies set forth in Paragraphs 34 through 43 above, were highly likely and

probable to proximately cause violations of Constitutional rights of members of the public, including Plaintiff and the Plaintiff's decedent, ROBERT MITCHELL.

69. As a direct and proximate result of the acts and conduct of the Defendants the Plaintiff herein suffered the following injuries and damages:

- a. As to the estate of ROBERT MITCHELL:
  - i. Physical injury as a result of two electronic prongs that penetrated his chest, directly above his heart, and injected 50,000 volts into his body and resulted in a cardiac arrest and/or arrhythmia, resulting in death;
  - ii. Conscious physical and emotional pain, suffering, anguish, distress and fear;
  - iii. Loss of earning capacity.
- b. As to the survivors, under the Michigan Wrongful Death Act, MCL 600.2922, *et seq.*:
  - i. Loss of love;
  - ii. Emotional distress and anguish;
  - iii. Loss of society and companionship;
  - iv. Loss of services;
  - v. Loss of emotional support; and
  - vi. Loss of future economic support.

**COUNT IV - FOURTH CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 AND MICHIGAN CONSTITUTION –**  
**INTERFERENCE WITH FAMILIAL RELATIONS**

70. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 69, as if fully set forth herein.

71. The individual Defendants' acts and conduct at the time of ROBERT

MITCHELL's unlawful and unconstitutional seizure, assault and battery, as fully described above, violated Plaintiff CORA MITCHELL's rights to the familial relations of her son, ROBERT MITCHELL, as secured by the First, Fifth and Fourteenth Amendments to the United States Constitution and Article I Section 17 of the Michigan Constitution, in such a way as to shock the conscience. The aforementioned denials of due process and freedom of association were imposed by the Defendants, acting under color of state law and pursuant to the customs, policies and practices of Defendants WARREN and DWYER acting in his official capacity.

72. As a direct and proximate result of the acts and conduct of the Defendants the Plaintiff CORA MITCHELL herein suffered the following injuries and damages:

- i. Loss of love;
- ii. Emotional distress and anguish;
- iii. Loss of society and companionship;
- iv. Loss of services;
- v. Loss of emotional support; and
- vi. Loss of future economic support.

**COUNT V - FIFTH CLAIM FOR RELIEF**  
**WRONGFUL DEATH**

73. Plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 72 as if fully set forth herein.

74. This action is brought pursuant to the Michigan Wrongful Death Act, MCL 600.2922, *et seq.* and damages are sought on behalf of the Estate of ROBERT MITCHELL and on behalf of those family members who enjoyed a close personal relationship with him and who, due to his death, have been deprived of his love, society, companionship and affection, in

particular his mother and siblings, to wit:

- a. Loss of love;
- b. Emotional distress and anguish;
- c. Loss of society and companionship;
- d. Loss of services;
- e. Loss of emotional support; and
- f. Loss of future economic support.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff demands the following relief, jointly and severally, against all Defendants for the violation of his rights as set forth herein, **First through Fifth Claims for Relief**:

- a. A declaration that Defendants violated the federal and state law rights of Plaintiff;
- b. Whatever amount the jury may determine for compensatory damages for physical, emotional, and economic injuries suffered by Plaintiff's decedent – past, present and future – by reason of Defendants' unlawful, unconstitutional and unjustified conduct, in an amount that is fair, just and reasonable and in conformity with the evidence at trial;
- c. Whatever amount the jury may determine for compensatory damages for the loss of consortium, emotional suffering, loss of society and companionship and loss of services suffered by Plaintiff's decedent's heirs, under the Michigan Wrongful Death Act, MCL §600.2922, *et seq*;
- d. Punitive and exemplary damages against the individual Defendants to the extent allowable by law;
- e. Attorneys fees, as allowed, pursuant to 42 U.S.C. §1988 and MCL 37.1606;
- f. The costs, interest and disbursements of this action; and
- g. Such other and further legal and/or equitable relief as appears just and proper.

Respectfully submitted,

s/Julie H. Hurwitz  
Julie H. Hurwitz (P34720)  
William H. Goodman (P14137)  
Kathryn Bruner James (P71374)  
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Dated: **March 23, 2010**

**DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff, CORA MITCHELL as Personal Representatives of the Estate of ROBERT MITCHELL, deceased, by and through her attorneys, GOODMAN & HURWITZ, P.C. and CORNELIUS PITTS & ASSOCIATES, and hereby demands a trial by jury on all issues of this cause.

Respectfully submitted,

s/Julie H. Hurwitz  
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Dated: **March 23, 2010**

CERTIFICATE OF SERVICE

I hereby certify that on **March 23, 2010**, I electronically filed the foregoing Plaintiff's *First Amended Complaint and Jury Demand* and *Certificate of Service* with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record.

Respectfully submitted,

s/Julie H. Hurwitz  
Julie H. Hurwitz (P34720)  
William H. Goodman (P14137)  
Kathryn Bruner James (P71374)  
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