

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

CRYSTAL COOPER, individually, and as Personal Representative of the Estate of Lainat D. Mitchell, deceased, and as Personal Representative of the Estate of Zyaire Mitchell, deceased,

Case No. 22-118014-NO
Hon. B. Chris Christenson

Plaintiff,

-v-

CITY OF FLINT, SERGEANT DANIEL SNIEGOCKI, and FIREFIGHTER MICHAEL ZLOTEK,

Defendants.



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FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

There is 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.

NOW COMES Plaintiff, CRYSTAL COOPER, individually and as Personal Representative of the Estate of Lamar D. Mitchell, deceased, and as Personal Representative of the Estate of Zyaire Mitchell, deceased; by and through her attorneys, TODD F. FLOOD and FLOOD LAW, PLLC as well as ROBERT KENNER, JR. and LAW OFFICES OF ROBERT KENNER, JR., and for her First Amended Complaint against the above-named Defendants states as follows:

INTRODUCTION

On May 28, 2022, two members of the Flint Fire Department blatantly disregarded their oaths and took affirmative actions that tragically affected the lives of two innocent children. Lamar and Zyaire Mitchell would still be alive if Defendants Daniel Sniegocki and Michael Zlotek had conducted a primary search of the second floor of the Pulaski residence, as ordered by commanding officers, and truthfully reported the results to their fellow firefighters. Defendants' deliberate decision to not only disregard orders to conduct a primary search of the second floor of the Pulaski residence but also to intentionally lie about the negative results of their purported search efforts not only resulted in the otherwise preventable failure to timely locate and rescue these entrapped children but also caused the dismissal of what would prove to be necessary emergency life-saving medical personnel.

If Defendants had actually conducted a primary search of the Pulaski residence for entrapped persons, as ordered, they would have immediately discovered Lamar and Zyaire Mitchell fighting for their lives in their second-floor bedroom. If Defendants had not lied about searching the second story with negative results, emergency responders would not have been dismissed and additional emergency responders would not have been called off. If on-scene emergency responders had not been dismissed and additional emergency responders had not been called off from the location, Lamar and Zyaire would have had the necessary and equipped medical personnel available to provide life-saving medical treatment the moments they were ultimately discovered.

The Epitome of Gross Negligence.

As will be demonstrated below, the lives of Plaintiff's decedents, Lamar and Zyaire Mitchell, were taken at the tender ages of 8 and 12, respectively, due to the reckless misconduct of Defendants Sergeant Daniel Sniegocki ("Sniegocki") and Firefighter Michael Zlotek ("Zlotek"), both of whom failed to conduct the primary search of the second floor of the Mitchell residence, and then deliberately misrepresented the findings of their purported searches by affirmatively stating that they had conducted a primary search of the second floor with negative results, thereby demonstrating a quintessential and absolute indifference to the foreseeable harm that would result with respect to any entrapped occupants.

Defendants Knew or Should have Known that the Fire Involved a Possible Entrapment of a Person or Persons.

Defendants (Sniegocki and Zlotek) arrived at the Pulaski residence with the understanding that there was a strong possibility that a person or persons were entrapped inside the burning home. As such, these Defendants knew or should have known that failing to follow orders to conduct a primary search of the residence and then deliberately misrepresenting the findings of their purported searches by affirmatively stating that they had conducted a primary search of the second floor with negative results would cause any entrapped persons in unsearched locations within the residence to needlessly suffer increased harm from smoke inhalation and carbon monoxide poisoning when they would have otherwise been rescued. In other words, it was foreseeable that these Defendants' affirmative lies about conducting a primary search of the second floor of the residence with negative results would not only hinder timely rescue efforts of entrapped persons but would increase the harm faced by those entrapped persons.

The Fire at the Pulaski Residence had been Knocked Down at the Time Defendants Sniegocki and Zlotek were Ordered to Conduct a Primary Search of the Second Floor.

Because the fire at the Pulaski residence had already been knocked down at the time Defendants Sniegocki and Zlotek were ordered to conduct a search of the second floor, the burden on Defendants Sniegocki and Zlotek to actually conduct a primary search was minimal, at best. Moreover, the fact that Defendants Sniegocki and Zlotek were equipped with protective gear and professional search equipment further minimized any burden on these Defendants to adhere to their oath, their orders, and their duties to conduct an undertaking so as not to create an additional hazard or increase an already existing hazard. As demonstrated by the fact that Plaintiff's decedents were ultimately located and rescued within seconds of other firefighters entering their bedroom after Defendants Sniegocki and Zlotek had intentionally reported false search results, this was not a situation where the nature of the risk to Defendants Sniegocki and Zlotek impacted their ability to conduct a primary search.

There was a Special Relationship.

As minors, both of Plaintiff's decedents were completely incapable of protecting themselves from the Pulaski fire. Lamar Mitchell was ultimately discovered gasping for air on the floor of his second-floor bedroom to the immediately left of the bedroom door. His brother, Zyaire Mitchell, was ultimately discovered laying halfway on his bed in that same bedroom. The fact that they were ultimately discovered in positions indicating that they were attempting to escape suggests that they knew of the peril they faced and were desperately seeking rescue from a situation in which they were completely incapable of protecting themselves.

Defendants' Actions were The Proximate Cause of Plaintiff's Decedents' Injuries.

The failure to enter the bedroom and deliberate lies told by Defendants Sniegocki and Zlotek caused commanding officers to cease search and rescue efforts that otherwise would have resulted in the rescue of Lamar and Zyaire Mitchell. This, in turn, both created a new hazard and increased the already existing harm, thereby causing Lamar and Zyaire Mitchell to suffer longer than they should

have in their bedroom and further causing them to wait far longer than they should have for the emergency medical professionals that were dismissed as a result of Defendants Sniegocki's and Zlotek's intentional lies to cover up their negligent failure to check the bedroom.

JURISDICTION AND PARTIES

1. Plaintiff CRYSTAL COOPER is a resident of the City of Flint, County of Genesee, State of Michigan and is the Personal Representative for the Estates of Lamar and Zyaire Mitchell.
2. Defendant CITY OF FLINT is a municipal corporation and governmental subdivision organized and existing under the laws of the State of Michigan.
3. At all times relevant hereto, Defendants SERGEANT DANIEL SNIEGOCKI ("Sgt. Sniegocki") and FIREFIGHTER MICHAEL ZLOTEK ("FF Zlotek") were, upon information and belief, residents of the City of Flint, County of Genesee, State of Michigan.
4. At all times relevant hereto, Defendants Sgt. Sniegocki and FF Zlotek were firefighters employed by and/or assigned to the City of Flint Fire Department ("FFD") and at all times mentioned herein were acting under color of law, in their individual capacities and within their course and scope of their employment.
5. The events that give rise to this cause of action occurred in the City of Flint, County of Genesee, State of Michigan.
6. The amount in controversy exceeds \$25,000.00 and is otherwise within the jurisdiction of this Honorable Court.

COMMON ALLEGATIONS

7. Plaintiff incorporates all previous and subsequent allegations as though fully set forth herein.
8. On May 28, 2022, at some point before 8:59 a.m., an electrical fire broke out on the first floor of 637 W. Pulaski Street, Flint, Michigan 48505 ("the residence") while Plaintiff's decedent

children, twelve-year-old Zyaire Mitchell (“Zyaire”) and eight-year-old Lamar Mitchell (“Lamar”), were asleep in their bedroom, which was one of only two bedrooms located at the end of a seven-foot hallway on the second floor of the residence.



9. At approximately 8:59 a.m., an emergency call was received by the Genesee County 911 reporting a fire at the residence.¹ In response to questions by the dispatcher, the caller frantically explained that he observed a vehicle in the driveway and was knocking on the door in an attempt to alert possible occupants of the danger.

10. At approximately 9:00 a.m., Defendant Sgt. Sniegocki, who was standing outside of Flint Fire Department Station 6 ("FFD Station 6"), located on 716 W. Pierson Rd., Flint, Michigan 48505, was flagged down by a concerned civilian and notified of the Pulaski fire. Defendant Sgt. Sniegocki was able to observe the Pulaski fire from FFD Station 6, which was located approximately one-tenth of a mile from the residence, and could see fire venting from a first-floor window of the residence. In response, Defendant Sgt. Sniegocki and the two firefighters under his command at FFD Station 6 got dressed in full personal protective equipment ("PPE") and responded to the residence in FFD Engine 61 ("Engine 61").

11. At 9:01:23 a.m., three fire trucks (Engine 61, Engine 31, and Engine 51), two squads (Squad 1 and Squad 2), and the Battalion Chief of the FFD were dispatched to the Pulaski fire and advised of the presence of vehicles in the driveway, indicating a possible entrapment at the residence.

12. At this time, Zyaire and Lamar were alive and entrapped inside of their second-floor bedroom at the residence.

13. At 9:02:58 a.m., Defendant Sgt. Sniegocki reported a visible fire contained in one room that was emanating from the first floor of the residence. At this time, Defendant Sgt. Sniegocki also indicated that he would be "stretching" a hose to the "delta side" of the residence.

14. As the highest-ranking member of the FFD on scene at that time, Defendant Sgt. Sniegocki assumed command.

¹ Plaintiff incorporates by reference all recorded calls and/or recorded radio transmissions and/or recorded dispatch calls relating to the fire at the Pulaski residence on May 28, 2002 by any employee, agent, or representative of the City of Flint Fire Department and/or Genesee County Sheriff's Department.

15. According to his written incident report, upon arriving to the residence, Defendant Sgt. Sniegocki noted that the residence "looked occupied" and further noted that there was a "white Hummer [vehicle] in the driveway [which] indicated to me [Defendant Sgt. Sniegocki] that there were people possibly trapped inside of the home."

16. At 9:03:39 a.m., after immediately recognizing that there was a possible entrapment, Defendant Sgt. Sniegocki reported, via radio, (1) his belief of a possible entrapment based on the vehicle in the driveway of the residence and (2) that he would be passing command to the officer of the next-responding unit of the FFD so that he could "get inside and do a quick primary [search]." This was the first time that Defendant Sgt. Sniegocki reported that a "quick primary [search]" of the residence was underway.

17. Defendant Sgt. Sniegocki did not conduct primary search of the residence at 9:03:39 a.m., despite his statement that such a search was underway.

18. At 9:04:27 a.m., Defendant Sgt. Sniegocki again reported, via radio, "We got a car in the driveway. Possible entrapment. We're gonna force our entry, get in there, and do a quick primary [search]." This was the second time that Defendant Sgt. Sniegocki reported that a "quick primary [search]" of the residence was underway.

19. Defendant Sgt. Sniegocki did not conduct primary search of the residence at 9:04:27 a.m., despite his statement that such a search was underway.

20. A primary search of the residence, if conducted at the time Defendant Sgt. Sniegocki indicated that he was conducting a primary search, would have resulted in the discovery and rescue of Zyaire and Lamar, who instead remained entrapped inside of their second-floor bedroom at the residence.

21. At 9:04:40 a.m., while en route to the residence and in response to Defendant Sgt. Sniegocki's reports of possible entrapment at the residence, FFD Interim Battalion Chief Gerald Hunt

("IBC Hunt") upgraded the "event type" of the fire in the FFD Computer Aided Dispatch ("CAD") notes, which provides to firefighters in real time the chronology of a reported fire event, from "STRUCT(RES)" to "STRUCT(ENTRAP)." Upon information and belief, event type "STRUCT(ENTRAP)" indicates a higher priority fire based on the belief that one or more persons are entrapped within a building where a structural fire is occurring. At the time IBC Hunt upgraded the event type, he also requested additional support beyond that which has originally been dispatched.

22. At 9:05:11 a.m., in response to the upgraded event type, FFD dispatched additional support from "Engine 11." On that same call, the FFD dispatcher twice reported a possible entrapment in the burning residence.

23. At 9:05:48 a.m., IBC Hunt contacted FFD Lieutenant James Wright ("Lt. Wright"), who at the time was en route to the residence in Engine 31 along with Defendant FF Zlotek, to confirm that Lt. Wright and his crew on Engine 31 were aware that Defendant Sgt. Sniegocki had passed command.

24. At 9:06:00 a.m., in response to IBC Hunt, Lt. Wright reported, via radio, "yea, I heard it," thereby indicating that he heard Defendant Sgt. Sniegocki's previous reports, via radio, where Defendant Sgt. Sniegocki stated that he was passing command and noted his belief of a possible entrapment in the residence.

25. According to his written incident report, Defendant FF Zlotek, who was traveling with Lt. Wright in Engine 31 at the time IBC Hunt contacted Lt. Wright regarding command, was aware that Defendant Sgt. Sniegocki had reported a possible entrapment in the residence and "knew more than likely that I (Defendant FF Zlotek) would be assisting in search and rescue operations upon our [Engine 31's] arrival."

26. At 9:06:37 a.m., Defendant Sgt. Sniegocki radioed dispatch to advise that the fire had been "knocked down." In other words, the main body of the fire was advised to have been

suppressed or extinguished. On this same call to dispatch, Defendant Sgt. Sniegocki reported, for a third time, that he was commencing a "quick primary [search] of the first floor."

27. At 9:06:48 a.m., Lt. Wright responded to Defendant Sgt. Sniegocki, via radio, and reported that the second-responding members of the FFD, including Defendant FF Zlotek and Lt. Wright, had arrived at the residence in Engine 31. Lt. Wright further advised that he was assuming operational command and that he was sending Defendant FF Zlotek inside to assist Defendant Sgt. Sniegocki.

28. At 9:06:56 a.m., Defendant Sgt. Sniegocki responded to Lt. Wright and requested that Lt. Wright send Defendant FF Zlotek inside to conduct a primary search of the second floor of the residence. On that same call, Defendant Sgt. Sniegocki indicated that he was still in the process of conducting a primary search.

29. In response to Defendant Sgt. Sniegocki's request, Lt. Wright immediately ordered Defendant FF Zlotek—who, at the time, was dressed in full PPE and was equipped with a Thermal Imaging Camera ("TIC"), Self-Contained Breathing Apparatus ("SCBA mask"), and a five-foot New York hook—to conduct a primary search of the second floor of the residence.

30. At some point between 9:06:56 a.m. and 9:08:38 a.m., Defendant FF Zlotek entered the residence with orders to complete the primary search of the second floor of the residence.

31. At approximately 9:08 a.m., Defendant Sgt. Sniegocki reported, via radio, that he had completed the primary search of the first floor for a possible entrapment with negative results.

32. Upon information and belief, neither Defendant Sgt. Sniegocki nor Defendant FF Zlotek had conducted the primary search of the second floor at this point in time.

33. At 9:08:38 a.m., based on the report by Defendant Sgt. Sniegocki indicating that he had completed the primary search of the first floor of the residence with negative results, Lt. Wright reported, via radio, that the primary search of the first floor was complete.

34. Approximately eight seconds later, at 9:08:46 a.m., IBC Hunt arrived on scene at the residence and reported, via radio, that (1) the primary search of the first floor had been completed and was negative and (2) that he would be taking command as incident commander (the officer in charge of overall strategy and identification of tactical goals) and that Lt. Wright would remain operations commander (the officer in charge of implementing operations consistent with the tactical goals).

35. Shortly after, the third-responding members of the FFD, including Lieutenant Frederick Presswood ("Lt. Presswood"), Apparatus Operator Marcus Clemons ("AO Clemons") and Firefighter Lawrence Edwards ("FF Edwards"), arrived at the residence in Engine 51, were assigned to be the Rapid Intervention Team ("R.I.T."). Pursuant to their designation of R.I.T., Lt. Presswood, AO Clemons, and FF Edwards were instructed to standby for rescue or aid, if necessary.

36. At 9:10:24 a.m., Defendants Sgt. Sniegocki and FF Zlotek falsely reported, via radio, that they had completed a primary search of the second floor with negative results.

37. However, an internal investigation led by then-FFD Chief Raymond Barton ("Chief Barton") would later determine that Defendants Sgt. Sniegocki and FF Zlotek failed to follow orders to perform the primary search of the second floor of the residence ~~and, in fact, conducted no search of the second floor of the residence at all.~~

38. At 9:10:52 a.m., unaware that Defendants Sgt. Sniegocki and FF Zlotek had failed to follow orders to conduct a primary search of the second floor of the residence and then knowingly reported the falsehood that they had done so with negative results, IBC Hunt then cancelled his prior request for additional support from Engine 11, which was enroute to the residence carrying four

members of the FFD, as he believed that the residence was at that point cleared for all possible entrapments.

39. At 9:11:02 a.m., the intentionally false reports by Defendants Sgt. Sniegocki and FF Zlotek whereby Defendants knowingly lied about conducting primary searches of the second floor of the residence with negative results was reiterated over radio. Defendants Sgt. Sniegocki and FF Zlotek then called off the secondary search of the residence, despite knowing that they had not conducted any search of the second-floor bedrooms and knowing and/or having reason to know that responding firefighters outside the home on standby would unwittingly yet justifiably rely on their deliberate falsehoods about negative search results.

40. Immediately thereafter, Lt. Wright, relying on intentionally false reports from Defendants Sgt. Sniegocki and FF Zlotek that the residence had been cleared for any possible entrapments, suspended the R.I.T. (the designated crew that serves as a standby rescue team for the immediate search and rescue of any missing, trapped, injured persons), as he believed there was nobody in the residence to rescue, and focused his efforts on fire suppression.

41. At or around 9:11:47 a.m., upon determining that the window air conditioning unit located in the second-floor bedroom on the southwest corner of the residence (the bedroom located directly across the hall from the bedroom where Zyaire and Lamar remained entrapped) needed to be removed in order to prevent a possible fire extension, Lt. Wright placed a call over the radio to see if the interior search team (Defendants Sgt. Sniegocki and FF Zlotek) were still upstairs able to remove the potentially hazardous window air conditioning unit.

42. Upon information and belief, that call went unanswered.

43. Lt. Wright then instructed Lt. Presswood and FF Edwards to enter the residence, remove the window air conditioning unit at issue, and check for possible fire extensions therefrom.

44. At approximately 9:13:12, emergency responders from the Genesee County Sheriff's Department were on scene seeking to determine whether there was an entrapment in the residence.

45. At some point between 9:12 a.m. and 9:15 a.m., Lt. Presswood encountered Defendant FF Zlotek as he (Lt. Presswood) was walking upstairs to remove the hazardous window air conditioning unit and Defendant FF Zlotek was walking downstairs, at which point Defendant FF Zlotek stopped and told Lt. Presswood, "hey, LT, the secondary is good." Lt. Presswood nodded his head at Defendant FF Zlotek in order to show Defendant FF Zlotek that he understood Defendant FF Zlotek to mean that he and Defendant Sgt. Sniegocki had already conducted not only a primary search, but also a secondary search of the second floor with negative results. After nodding, Lt. Presswood continued upstairs towards the target bedroom with FF Edwards, and Defendant FF Zlotek continued walking downstairs.

46. At 9:15:11 a.m., nearly five minutes after Defendants Sgt. Sniegocki and FF Zlotek deliberately lied about conducting a primary search of the second floor of the residence and knowingly and falsely reported the negative result of their purported search, firefighters requested a "secondary" on the second floor. Upon information and belief, a "secondary" is shorthand for a secondary search.

47. Moments later, as Lt. Presswood and FF Edwards approached the target bedroom to remove the potentially hazardous window air conditioning unit, they realized that the potentially hazardous window air conditioning unit had already been removed. Lt. Presswood then proceeded to examine the window for signs of fire while FF Edwards proceeded across the hallway and into the bedroom where Zyaire and Lamar remained entrapped—the same bedroom that Defendants Sgt. Sniegocki and FF Zlotek falsely reported they had searched together before twice declaring negative search results despite never having conducted any search at all, as Chief Barton's internal investigation later revealed.

48. Upon entering the bedroom, FF Edwards cried out to Lt. Presswood, who immediately came from across the hallway, that he (FF Edwards) had discovered upon entry a young boy, later determined to be Lamar, laying on the floor to the immediate left of the doorway gasping for air.

49. At approximately 9:16 a.m., Lt. Presswood told FF Edwards to carry Lamar downstairs while he radioed for help. Lt. Presswood then called Lt. Wright and announced that he and FF Edwards had discovered a victim in one of the bedrooms that had reportedly been swept and cleared and was on the way downstairs with the victim to get him emergency aid.

50. At this point, all other available FFD members on scene were ordered to get dressed and enter the home to begin re-searching on all floors of the home.

51. At 9:16:07 a.m., it was reported that Lamar was being extracted and that EMS was on the way to the residence to provide aid.

52. After extracting Lamar from the residence and getting him into the hands of responding EMS providers, Lt. Presswood and FF Edwards doubled back into the residence to search for other possible entrapped persons.

53. At 9:17:48 a.m., over seven minutes after Defendants Sgt. Sniegocki and FF Zlotek deliberately lied about conducting a primary search of the second floor of the residence and knowingly and falsely reported the negative result of their purported search, Lt. Presswood and FF Edwards returned to the bedroom where Lamar was found and immediately located a second child, later determined to be Zyaire, laying on top of his bed in the adjacent, cojoined room that had allegedly been cleared, FF Edwards pulled Zyaire off of the bed and began pulling him from the second floor of the home towards the stairs while Lt. Presswood reported their discovery to Lt. Wright.

54. Inexplicably, a second paramedic unit was not present on scene nor was a second paramedic unit requested or dispatched to the residence until 9:17:54 a.m.

55. As a result, Zyaire was placed on the pavement in the driveway of the residence, where he laid struggling for his life as various firefighters performed CPR and rescue breathing until EMS arrived at approximately 9:26 a.m.—nearly sixteen minutes after Defendants Sgt. Sniegocki and FF Zlotek deliberately lied about performing the primary search of and clearing the bedroom where the boys were discovered by Lt. Presswood and FF Edwards within seconds of entering.

56. Both children were eventually taken to Hurley Medical Center and subsequently transferred to Children's Hospital of Michigan where they both ultimately died.

57. Both children died as a result of smoke inhalation and carbon monoxide toxicity.

58. Zyaire Mitchell died on June 1, 2022, specifically from thermal injuries and the inhalation of smoke. He had second degree burns on over twenty-five percent of his body. At the time, he had a carboxyhemoglobin level of 47%. Anything over 20% is considered a critical value.

59. Lamar Mitchell died on June 3, 2022, specifically died from anoxic encephalopathy due to smoke and soot inhalation.

FFD Chief Barton's Internal Investigation

60. Within days of the Pulaski fire, it became clear to FFD Chief Raymond Barton that Defendants Sgt. Sniegocki's and FF Zlotek's failure to conduct a primary search of the second floor of the residence violated orders to conduct the primary search in violation of the internal policies and regulations of the FFD.

61. Lt. Presswood, who ultimately located the first victim approximately seven minutes after Defendants Sgt. Sniegocki and FF Zlotek reported negative search results, subsequently opined that “there was no way that [Defendants Sgt. Sniegocki and FF Zlotek] had entered the bedroom where [Lamar and Zyaire Mitchell] were found and missed them.”

62. Chief Barton visited the home on June 3, 2022, and noted that there were “no signs of a search being done in any of the bedrooms in accordance with Flint Fire Department training.”

63. On June 6, 2022, following a meeting among top officials of the Flint Fire Department, the City of Flint City Administrator Clyde Edwards, and the City of Flint Legal Department, the Flint Fire Department was ordered to complete an internal investigation of the West Pulaski fire response. According to Chief Barton's internal investigation report, following the meeting on June 6, 2022, Chief Barton demanded that all members of the Flint Fire Department who responded to the West Pulaski fire were to submit completed incident reports detailing their involvement by no later than 5:00 p.m. that day.

64. After conducting the internal investigation, Chief Barton formally concluded that Defendants Sergeant Sniegocki and Zlotek had knowingly made false reports in their Incident Write-ups.

65. Upon information and belief, no search of the bedroom was done during the primary search as a properly conducted search would have located one of the victims near the immediate left side of the entrance.

66. Upon information and belief, no search of the interior of the bedroom was conducted because a properly conducted search would have located a mattress, which was still intact days after the incident.

67. As a direct and proximate result of the acts and omissions of Defendants Sniegocki and Zlotek, Lamar and Zyaire were not located in a timely fashion due to these Defendants' complete indifference and disregard and, thus, the boys consequently suffered.

68. As a direct and proximate result of the acts and omissions of Defendants Sniegocki and Zlotek, both Lamar and Zyaire were not located for an extraordinary period of time than they would have been had proper protocol and procedure been employed.

69. As a direct and proximate result of the acts and omissions of Defendant Flint Fire Department and Defendants Sniegocki and Zlotek, proper medical personnel were not timely summoned to the location.

70. There is a high degree of medical certainty that both decedents would have survived had they been discovered during a proper and timely primary search of the dwelling.

71. Defendant Sniegocki and Defendant Zlotek were both ultimately terminated as a result of their conduct in this incident.

COUNT I
GROSS NEGLIGENCE

72. "Gross negligence" means a duty and breach of that duty by conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results, causing injury. MCL § 691.1407(2).

73. At all times relevant hereto, Defendants Sgt. Sniegocki and FF Zlotek, having engaged in the performance of conducting the primary search of the second floor of the residence, owed the following duties to Plaintiff's decedents, Lamar and Zyaire Mitchell:

- a. A common law duty to use due care, or to govern his actions as not to unreasonably endanger the person or property of others, including Plaintiff's decedents, Lamar and Zyaire Mitchell; and/or
- b. A common law duty to take reasonable precautions to assure that their performance in conducting the primary search of the second floor of the residence did not harm Plaintiff's decedents, Lamar and Zyaire Mitchell, or make an existing harm more dangerous.

74. In deliberate breach of the duties owed to Plaintiff's decedents, Defendants Sgt. Sniegocki and FF Zlotek failed to conduct a primary search of the bedroom where the boys were entrapped, and then, knowingly lied about conducting a search of the second floor bedroom of the residence and deliberately misrepresented the negative results of their purported search despite having failed to conduct any search at all, thereby increasing the harm in which Plaintiff's decedents were

already exposed to the danger of smoke inhalation and carbon monoxide poisoning, and preventing the timely discovery of Plaintiff's decedents, who were immediately discovered by the very next person to enter the room in which they were entrapped.

75. Defendants Sgt. Sniegocki and FF Zlotek affirmatively declared that they had conducted primary and secondary searches of the second-floor bedrooms of the residence with negative results. They knew they had not conducted any search at all, as confirmed by Chief Barton's internal investigation and corroborated by an utter lack of evidence that they searched the bedroom where Plaintiff's decedents were ultimately discovered. Defendants Sgt. Sniegocki and FF Zlotek caused commanding firefighters to cease search and rescue efforts that otherwise would have resulted in the rescue of Plaintiff's decedents at least seven minutes sooner than when they were ultimately discovered by Lt. Presswood, and caused commanding firefighters to undertake fire suppression efforts that resulted in the increased production of smoke on the second floor of the residence where Plaintiff's decedents were entrapped.

76. Defendants Sgt. Sniegocki's and FF Zlotek's willful dishonesty does not amount to a mere failure to act or protect or provide aid, because had Defendants acted with honesty and reported that they were unable or unwilling to conduct a primary search of second floor of the residence at the time these Defendants chose to deliberately lie about doing so, other responding firefighters that were present could have entered the residence to take their (Defendants Sgt. Sniegocki and FF Zlotek) place and actually conduct a primary search, as the fire had already been extinguished at that point and no longer presented a life-threatening risk to firefighters that would have otherwise precluded rescue efforts.

77. Defendants Sgt. Sniegocki's and FF Zlotek's failed to search the second level of the residence despite having knowledge of a possible entrapment before the primary search of the second floor of the residence was allegedly conducted.

78. But for Defendants Sgt. Sniegocki's and FF Zlotek's willful and wanton disregard of their duties to conduct a primary search of the second floor in a manner that would not increase the harm already faced by Plaintiff's decedents at the time, Plaintiff's decedents would have avoided the extreme level of carbon monoxide poisoning that they endured for at least seven minutes after these Defendants affirmatively declared an "all-clear" (despite never having conducted a search at all) and would have survived.

79. As indicated by Chief Barton's internal investigation, Defendants Sgt. Sniegocki and FF Zlotek would have certainly discovered that Lamar Mitchell was entrapped in the second-floor bedroom had they conducted a proper right- and left-hand search of the room during their primary search.

80. As indicated by Chief Barton's internal investigation, Defendants Sgt. Sniegocki and FF Zlotek would have certainly discovered that Zyaire Mitchell was on top of his bed had they actually gone into the bedroom and felt for and ultimately flipped his mattress as is consistent with Flint Fire Department protocol and training.

81. As indicated by Chief Barton's internal investigation, had Defendant Sgt. Sniegocki and/or Defendant FF Zlotek actually utilized their thermal imaging cameras during a primary search of the second floor, both decedents would have been discovered and removed from the home with enough time to perform life-saving procedures.

82. As indicated by Chief Barton's internal investigation, had Defendants Sgt. Sniegocki and FF Zlotek actually searched the bedroom during the primary search of the second floor, Plaintiff's decedents would have been rescued at least seven minutes faster than they were.

83. At the time they were discovered, Plaintiff's decedents were readily observable to a reasonably prudent firefighter acting in accordance with his or her training and protocol with respect to primary searches.

84. Defendants Sgt. Sniegocki's and FF Zlotek's failure to search the second-floor bedroom, as ordered, and their failure to disclose that they did not conduct said search was the most immediate, efficient, and direct cause of Plaintiff's decedents' injuries, as both died as a result of smoke inhalation and carbon monoxide poisoning.

85. A reasonable and prudent firefighter performing his or her duties as trained would have certainly discovered at least one of the decedents during the primary search and thus would not have caused the Flint Fire Department to call off the secondary search of the second floor of the dwelling.

86. To a medical degree of certainty, both Lamar and Zyaire would have survived if Defendants had followed orders by commanding officers to conduct a primary search of the second floor of the residence.

87. Upon information and belief, there was more than enough time to evacuate both Lamar and Zyaire to safety had these Defendants actually performed a primary search of the second-floor bedroom where they were ultimately found.

88. The mission statement and oath of Defendant CITY OF FLINT's fire department are clear: to protect and save lives. As such, Defendants Sgt. Sniegocki and FF Zlotek owe the individuals in the municipalities in which they serve a duty to perform their jobs in accordance with their training and procedures, which includes the common law duty to perform any undertaking in a manner that would not increase the harm or create a new hazard. In other words, a firefighter owes a duty to conduct a primary search of a dwelling in a manner that will not increase the harm faced by its occupants or create a new hazard where the firefighter has reason to believe that there is a possible entrapment where doing so will not compromise the firefighter's personal safety.

89. Searching the second floor of the residence during the time in which Defendants Sgt. Sniegocki and FF Zlotek lied about conducting a primary search would not have endangered or

compromised their lives or personal safety, as the fire had already been extinguished at the time they intentionally indicated that they had conducted a search of the second floor with negative results.

90. This is evident by the fact that other FFD firefighters were able to safely conduct a secondary search of the dwelling seven minutes after the alleged primary search of the second floor.

91. Plaintiffs' decedents were completely incapable of protecting themselves from the fire because of their young ages.

92. It is and was, at all relevant times, absolutely foreseeable that a person or persons might be entrapped in a house fire where there was notice given to the fire department of a "possible entrapment" prior to the primary search of the dwelling and where there was a vehicle in the driveway of the dwelling at the time of the fire.

93. It is and was, at all relevant times, likewise foreseeable that a person or persons entrapped in a house fire would not be located and rescued where the fire department and the individual members of the fire department, in violation of both direct orders and FFD protocol, do not conduct primary and/or secondary searches of the dwelling where doing so would not compromise their personal safety and then intentionally lie and report that they *had* conducted a search with negative results.

94. Failing to perform a primary search of a dwelling where doing so would not compromise a firefighter's personal safety or endanger the firefighter's life and then affirmatively reporting negative results when no search was actually conducted constitutes the epitome of conduct that is so reckless as to demonstrate a substantial lack of concern for whether an injury results.

95. Defendants Sgt. Sniegocki and FF Zlotek intentionally lied about conducting a search of the second-floor bedroom, which demonstrates that they intentionally and willfully disregarded precautions or measures that would have ensured or enhanced the likelihood that the decedents would have survived.

96. Defendants Sgt. Sniegocki and FF Złotek disregarded the substantial risk of the death of Plaintiff's decedents where they had knowledge of a possible entrapment, failed to conduct a primary search of a room that was clearly and unambiguously determined to be a bedroom, in violation of their training and Flint Fire Department's established search protocols, and deliberately misrepresented the results of their purported search to commanding officers, whom Defendants knew or should have known would rely on their affirmative statements thereafter.

97. Defendants Sgt. Sniegocki and FF Złotek knowingly and intentionally provided false information to command thus causing the secondary search of the residence to be halted and thereby increasing the existing hazard faced by Plaintiff's decedents.

98. Defendants Sgt. Sniegocki's and FF Złotek's conduct constituted gross negligence and was the cause-in-fact of the increased exposure to carbon monoxide poisoning and ultimately the death of both children.

99. As a result of Defendants Sgt. Sniegocki's and FF Złotek's omissions and violations of their training, both children suffered extreme and horrific pain and mental anguish prior to their death.

100. The acts and/or omissions of Defendants Sgt. Sniegocki and FF Złotek were in clear violation of MCLA 691.1407(2). Accordingly, neither Defendant is entitled to governmental immunity.

COUNT II
WRONGFUL DEATH

101. Plaintiff realleges and incorporates by reference the allegations contained in the previous paragraphs.

102. As a direct and proximate result of the gross negligence of the Defendants, their agents, servants and/or employees, as referenced herein, decedents, Zyaire Mitchell and Lamar Mitchell suffered wrongful death on June 1, 2022 and June 3, 2022, respectively.

103. As a direct and proximate result of the gross negligence of Defendants Sgt. Sniegocki and FF Zlotek, Zyaire Mitchell and Lamar Mitchell suffered conscious pain and suffering in the time and dates preceding their wrongful deaths.

104. As a direct and proximate result of the gross negligence of Defendants Sgt. Sniegocki and FF Zlotek, Zyaire Mitchell and Lamar Mitchell suffered a loss of future earnings and earning capacity over what would have been the balance of their expected lifetimes.

105. It was foreseeable that potential survivors would be located inside of a dwelling when there was a vehicle inside of the driveway.

106. It was foreseeable that potential survivors would be located in or around the second floor of a dwelling where the first responders were provided with information regarding a possible entrapment in the dwelling.

107. It was foreseeable that providing false information to other first responders and claiming that a primary search of the second floor had been conducted with negative results, thereby causing the first responders to call off a secondary search, would result in harm to the individuals that were in the unsearched area(s) of the dwelling.

108. As a direct and proximate result of gross negligence of Defendants Sgt. Sniegocki and FF Zlotek providing false information to other members of the FFD, Plaintiff, the mother of the decedents, and other members of the decedents family have suffered severe injuries, including but not limited to emotional, psychiatric, psychological and/or mental health damages and/or diagnosis.

109. As a direct and proximate result of Defendants Sgt. Sniegocki's and FF Zlotek's gross negligence, recklessness, intentional misconduct, and/or wanton disregard, as alleged herein, Plaintiff, Crystal Cooper, has suffered, with the manifestation of physical symptoms, injuries, including, but not limited to:

- a. Sleeplessness;

- b. Increased anxiety;
- c. Headaches;
- d. Crying spells;
- e. Bouts of depression;
- f. Nausea;
- g. Loss of companionship;
- h. Loss of consortium;
- i. Loss of appetite; and
- j. Such other injuries and physical manifestations as may appear during the course of discovery in this matter.

COUNT III
DUE PROCESS VIOLATION

110. Plaintiff realleges and incorporates by reference the allegations contained in the previous paragraphs.

111. Defendants Sgt. Sniegocki and FF Zlotek were notified as early as 9:00 a.m. that there was a possible entrapment in the home.

112. Defendants Sgt. Sniegocki and FF Zlotek were on notice that the home was occupied based on the fact that there was a vehicle located in the driveway.

113. Defendants Sgt. Sniegocki and FF Zlotek were given orders to conduct the primary search of the first and second floor of the dwelling for potential victims.

114. Defendants Sgt. Sniegocki and FF Zlotek were equipped with full PPE and thermal imaging cameras at the time that they were given this order.

115. Defendants Sgt. Sniegocki and FF Zlotek were not in physical danger from the remaining fire remnants in the home at the time of their primary search, as Defendant Sgt. Sniegocki

had previously radioed out that the fire was "knocked down" prior to purportedly conducting any search efforts.

116. Defendants Sgt. Sniegocki and FF Zlotek knowingly and intentionally made false statements regarding the search of the second floor of the dwelling at 9:10:24 a.m.

117. As additional FFD members attempted to come into the home to conduct a secondary search, Defendants Sgt. Sniegocki and FF Zlotek advised them that the second floor was "clear" and that there was no need to do so.

118. This willful, wanton, fraudulent and malicious act that disregarded the possibility of victims being entrapped in the home caused and prevented additional emergency personnel from searching for and rescuing the decedents.

119. This willful, wanton, fraudulent and malicious act likewise resulted in the cancellation of additional fire and medical personnel from arriving timely at the scene.

120. An additional five minutes passed before a request for a secondary search of the second floor was made.

121. At 9:16:07 a.m., Lamar Mitchell was discovered lying on the floor of the second story bedroom.

122. At 9:17:48 a.m., Zyaire Mitchell was discovered laying on top of a bed in the second story bedroom.

123. Both Lamar and Zyaire Mitchell were discovered in a room that Defendants Sgt. Sniegocki and FF Zlotek claimed to have searched and cleared.

124. A minimum of seven minutes had elapsed whereby both Lamar and Zyaire Mitchell were subjected to increased inhalation of toxic smoke and the burning of their flesh from the fire due to Defendants Sgt. Sniegocki's and FF Zlotek's intentional neglect of their oath, duty and orders to search the second floor of the home, and affirmative lies regarding the same.

125. Both children would have been discovered if Defendants had actually searched the room as they falsely claimed to have done.

126. Both decedents were discovered alive.

127. Both decedents ultimately died as a result of inhalation of smoke and the subsequent carbon monoxide poisoning that transpired as a result.

128. The death from smoke inhalation, under the specific facts of this case, would not have resulted had Defendants Sgt. Sniegocki and FF Zlotek actually performed a primary search in accordance with their duties and checked the bedroom at the time they had falsely claimed to have done so.

129. The period of time between the false primary search and the actual secondary search caused the decedents to inhale amounts of smoke, which ultimately caused their untimely and wrongful deaths.

130. The misinformation provided by Defendants Sgt. Sniegocki and FF Zlotek was the sole cause of the deaths of Plaintiff's decedents because of the chain of events that transpired due to their disregard for their duty.

131. Defendants Sgt. Sniegocki's and FF Zlotek's conduct of falsifying and claiming that the room was clear and that there were no victims located violated Plaintiff's due process rights under the State-Created Danger Doctrine.

132. Defendants Sgt. Sniegocki and FF Zlotek's conduct of knowing that there was a potential entrapment and their subsequent and conscious decision not to clear the second floor for victims and then lie about conducting the primary search with negative results satisfies the "shock the conscious" prong of this doctrine.

133. By allowing a dangerous situation to develop and/or continue, and by preventing the intervention of other emergency respondets due to their misrepresentations and direct lies,

Defendants Sgt. Sniegocki and FF Zlotek violated Plaintiffs' decedents' due process rights and prevented their timely rescue, which could have saved their lives.

134. Defendants Sgt. Sniegocki and FF Zlotek affirmatively placed Plaintiff's decedents in a greater position of danger than they otherwise would have faced by falsely claiming to have conducted a primary search of the entire second floor.

135. The acts and conduct of Defendants Sgt. Sniegocki and FF Zlotek were the sole and proximate cause of Plaintiff's decedents' death.

136. In this case, a special relationship exists between Plaintiff's decedents and Defendants Sgt. Sniegocki and FF Zlotek as the duty alleged herein is as to a specific class, that being minor residents of a home, not the general public.

137. This duty is further enforced by virtue of the fact that Plaintiff's decedents were minor children that were completely incapable of protecting themselves from the hazards of fire and further because, under these particular facts, Defendants Sgt. Sniegocki and FF Zlotek were not in a place of grave danger because the fire had been knocked down at the time that they intentionally lied about searching the second floor of the dwelling.

138. Defendants Sgt. Sniegocki and FF Zlotek knew that these residents faced a special danger of smoke inhalation and that the false claim of the search thereby prevented other FFD personnel from conducting a timely secondary search, which resulted in the deaths of the decedents.

139. The affirmative acts of Defendants Sgt. Sniegocki and FF Zlotek of neglecting to search the second-floor bedroom and falsely advising others that the area was clear was an affirmative act that significantly increased the risk of harm to Plaintiff's decedents, and in fact caused their deaths by causing them increased exposure to smoke inhalation and preventing the timely search and rescue by other members of the FFD, thus increasing the existing hazard Plaintiff's decedents faced and making them more vulnerable to the harms caused by the fire.

140. Upon information and belief, there is a high degree of medical certainty that timely intervention that was prevented by Defendants Sgt. Sniegocki's and FF Zlotek's affirmative acts would have saved Plaintiff's decedents lives.

COUNT IV
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS

141. Plaintiff realleges and incorporates by reference the allegations contained in the previous paragraphs.

142. Defendants Sgt. Sniegocki and FF Zlotek knowingly failed to search the second floor of the residence despite undertaking primary search and rescue efforts to locate any entrapped persons.

143. Defendants Sgt. Sniegocki and FF Zlotek knowingly and intentionally lied about the results of their purported searches and thereby caused the unnecessary and ultimately deadly delay of rescue and provision of medical treatment which would have prevented Plaintiff's decedents' deaths.

144. Defendants Sgt. Sniegocki and FF Zlotek intentionally and falsely advised other members of the FED that they had conducted a primary search of the second floor of the residence and that their purported search of the second floor yielded negative results despite knowing, at that time, that they had not, in fact, conducted any search of the second floor.

145. These deliberately false statements caused other members of the FFD to cease efforts to immediately and timely conduct a secondary search.

146. The emotional distress suffered by Plaintiff, Crystal Cooper, has physically manifested itself into symptoms including, but not limited to:

- a. Sleeplessness;
- b. Increased anxiety;
- c. Headaches;
- d. Crying spells;

- e. Bouts of depression;
- f. Nausea;
- g. Loss of companionship;
- h. Loss of consortium;
- i. Loss of appetite; and
- j. Such other injuries and physical manifestations as may appear during the course of discovery in this matter.

WHEREFORE, Plaintiff prays that this Honorable Court grant Judgment against the Defendants in an amount in excess of \$50,000,000.00 which Plaintiff is found to be entitled to for compensatory damages and/or wrongful death damages and/or for any applicable penalties and/or for Plaintiff's actual attorney fees, plus interest and costs.

Respectfully submitted,

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JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

/s/ Robert Kenner, Jr.

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PROOF OF SERVICE

The undersigned hereby certifies that the foregoing instrument was served via electronic mail upon all parties/attorneys in the above cause at their respective addresses disclosed on the pleadings on February 7, 2023.

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Dated: February 7, 2023