

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)**

EURIE A. STAMPS, JR. and NORMA
BUSHFAN STAMPS, Co-Administrators of the
Estate of Eurie A. Stamps, Sr.,

Plaintiffs,

Civil Action
No.: 1:12-CV-11908-FDS

v.

THE TOWN OF FRAMINGHAM, and
PAUL K. DUNCAN, individually and in his
Capacity as a Police Officer of the
Framingham Police Department

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

On January 5, 2011, Eurie A. Stamps, Sr. was seized, shot, and killed in his home by Paul Duncan, a police officer employed by the Framingham Police Department and assigned to the department's SWAT team. The unlawful shooting of Mr. Stamps occurred during the execution of a search warrant at 26 Fountain Street, Framingham, Massachusetts. Mr. Stamps was not the target of the search warrant, was not suspected of any crime, did not resist the police, and posed no risk of danger to the police. This is an action for compensatory and punitive damages brought by the plaintiffs under 42 U.S.C. § 1983 for the violations of Mr. Stamps' Fourth and Fourteenth

Amendment rights granted under the United States Constitution and for Wrongful Death under Massachusetts law.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1343(1) in that the action arises under the Constitution of the United States. Specifically, the plaintiffs seek damages for the violation of Mr. Stamps' rights secured under the Fourth and Fourteenth Amendments of the Constitution as applied to the States. This Court has pendent jurisdiction over the plaintiffs' State law claim.
2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because the majority of the parties reside therein and the events giving rise to this cause of action occurred in this judicial district.
3. This Court has personal jurisdiction over the defendants because they reside within the Commonwealth of Massachusetts.

THE PARTIES AND ESTATE BENEFICIARIES

4. The plaintiff, Eurie A. Stamps, Jr., a son of Eurie A. Stamps, Sr., is the duly appointed Co-Administrator of the Estate of Eurie A. Stamps, Sr. (Middlesex County Probate No.: MI 11 P 1321) and resides in Woburn, Middlesex County, Massachusetts.
5. The plaintiff, Norma Bushfan Stamps, the surviving wife of Eurie A. Stamps, Sr., is the duly appointed Co-Administrator of the Estate of Eurie A. Stamps, Sr. (Middlesex County Probate No.: MI 11 P 1321) and resides in Arlington, Middlesex County, Massachusetts.
6. Kyon Stamps-Murrell, a son of Eurie A. Stamps, Sr. and a beneficiary of his Estate, resides in Missouri City, Texas.

7. Robin L. Stamps-Jones, a daughter of Eurie A. Stamps, Sr. and a beneficiary of his Estate, resides in Springfield, Massachusetts.
8. Marlon Stamps, a son of Eurie A. Stamps, Sr. and a beneficiary of his Estate, resides in Lynn, Massachusetts.
9. This action is brought by the plaintiffs on behalf of the Estate of Eurie A. Stamps, Sr. and his survivors and next-of-kin.
10. The defendant, Town of Framingham, is a Massachusetts municipality located in Middlesex County and organized under the laws of Massachusetts.
11. The defendant, Paul K. Duncan, is and was at all relevant times a police officer employed by the Town of Framingham, Massachusetts, County of Middlesex, and a resident of Shrewsbury, Massachusetts, Worcester County.
12. In May of 2006, the decedent, Eurie A. Stamps, Sr., retired from the Massachusetts Bay Transportation Authority where he had worked for 20 years as a mechanic. At the time of his death, Mr. Stamps was noticeably handicapped by arthritis and walked with the aid of a cane.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

The Search Warrant and the Planned Execution of the Warrant

13. On January 4, 2011, Detective Dinis Avilia of the Framingham Police Department (FPD) obtained a search warrant for a two-family dwelling located at 26 Fountain Street, Framingham, Massachusetts.
14. The search warrant was issued based on probable cause to believe that two individuals, Joseph Bushfan and Dwayne Barrett, were distributing illegal drugs from the first floor apartment at 26 Fountain Street.

15. The first floor apartment at 26 Fountain Street was leased to Eurie A. Stamps, Sr. and his wife, Norma Bushfan Stamps. (26 Fountain Street will hereinafter be referred to as the “home” or “house”).
16. All FPD officers involved in obtaining the search warrant and executing the warrant, including the FPD SWAT team, knew that Eurie A. Stamps, Sr., his wife, Norma Bushfan Stamps, and her son, Joseph Bushfan (age 20) resided at the home.
17. All FPD officers involved in obtaining the search warrant and executing the warrant, including the FPD SWAT team, knew that Eurie A. Stamps, Sr. was an elderly black man, approximately 68 years of age.
18. The FPD officers involved in obtaining the search warrant and executing the warrant, including the FPD SWAT team, had no information indicating that Eurie A. Stamps, Sr. was involved in any criminal behavior, owned or possessed a firearm, or posed a danger to the police.
19. Joseph Bushfan (Bushfan) and Dwayne Barrett (Barrett) were the targets of the search and the criminal investigation into illegal drug activities. Eurie A. Stamps, Sr. was not a suspect.
20. Deputy Chief Craig Davis decided to utilize the FPD SWAT team to assist in the execution of the search warrant at the home because Bushfan had a history of prior violent criminal offences and Barrett was affiliated with a gang.
21. Members of the SWAT team first became aware of their involvement in the execution of the search warrant when each received an electronic page from the FPD between 9:30 p.m. and 10:30 p.m. on January 4, 2011.

22. At approximately 11:00 p.m., the SWAT team met at FPD Headquarters to plan the execution of the warrant.
23. The FPD has established policies and procedures that require a written Operations Plan for SWAT team missions, which includes details on assignment of responsibilities and coordination of the mission.
24. The FPD Policy on SWAT Team #100-23 provides that:
- “[t]he SWAT team will utilize a written planning process for all operations that are proactive or anticipatory in nature, such as warrant service. The written process will include a format that will document how the operation is to be:
- a. Conducted
 - b. Commanded
 - c. Controlled
 - d. Communication
 - e. Support Required

The SWAT Commander will cause a log of events to be recorded on all SWAT operations, and will also cause all planning or decision making documents to be recorded.”

25. In direct violation of established policies, the FPD and officers planning the execution of the warrant did not prepare a written Operations Plan and failed to record all planning and decision making prior to execution of the search warrant at the Stamps home. Additionally, the SWAT Commander did not record a log of events for the SWAT operation as mandated by FPD policies.

**The Arrest of Joseph Bushfan, the Primary Target of the Warrant,
Prior to the Execution of the Warrant on January 5, 2011**

26. Prior to execution of the search warrant, police Detectives Jeffrey DeRosa and Matthew Gutwill were positioned outside of the Stamps home conducting surveillance that began at 6:30 p.m. on January 4th and continued until execution of the warrant approximately six hours later. During this period of surveillance, the FPD detectives never observed Barrett at or near the house.
27. Prior to execution of the search warrant, the SWAT team arrived in the neighborhood and used the parking lot of the Gulf Station as a “staging area”. The Gulf Station is approximately 150 feet from the home.
28. Before entry into the home was initiated, Detectives DeRosa and Gutwill observed Joseph Bushfan and two females exit the front door and walk south towards Waverly Street and the Gulf Station, where the SWAT team was staged. Detectives DeRosa and Gutwill left their surveillance position and followed Bushfan. They confronted Bushfan over 200 feet from the house near the intersection of Fountain and Waverly Streets, in the general area where the SWAT team was waiting. The detectives searched Bushfan and immediately arrested and detained him.
29. The members of the SWAT team personally observed the arrest of Bushfan. They knew, prior to the execution of the warrant, that Bushfan, the target of the investigation and subject of the warrant known to be in the house, was in police custody and did not pose a threat. They also knew, based on six hours of surveillance, that the other target of the warrant, Barrett, was never seen at the home.

30. Attempts by Detective Gutwill to abort the execution of the warrant because Bushfan was already arrested went unheeded.

Execution of the Warrant and Entry into the House on January 5, 2011

31. A Tactical Emergency Medical Team (TEMS Unit), a medical support group for the members of the SWAT team, accompanied the SWAT team to the staging area.

32. Before execution of the warrant, there were approximately twenty (20) FPD personnel at or near the home, including the SWAT team, the TEMS Unit and the FPD detectives.

33. Sometime after Bushfan was arrested, at least thirteen (13) members of the FPD SWAT team began execution of the search warrant and entry into the home.

34. When the SWAT team approached the home, they encountered Ms. Bushfan Stamps, Eurie A. Stamps, Sr.'s wife, on the steps of the home. She was ordered to lie on the ground, seized and detained, and then taken down the street and guarded by a police officer, all before the SWAT team entered the home.

35. No FPD officer or member of the SWAT team asked Mrs. Bushfan Stamps to identify the individuals remaining in the house.

36. Members of the TEMS unit approached the house with the SWAT team and positioned themselves behind a vehicle parked in front of the home.

37. SWAT team Officers Brian Curtis and Greg Reardon approached the left side of the house with the protection of metal shields. Officer Curtis, armed with an MF4 machine gun and a sidearm pistol, took a position on the left side of the house while officer Reardon, armed with a MP5 machine gun and a sidearm pistol, guarded the rear and right side of the house.

38. Two teams of three SWAT members assembled in two so-called "stacks" at the front door to the house. In a "stack" formation, one officer stands directly behind the officer in front

of him or her. One “stack” consisted of Lieutenant Robert Downing and Officers Michael Sheehan and Timothy O’Toole. The second “stack” consisted of Sergeant David Stuart and Officers Paul Duncan and James Sebastian.

39. The front of the house on Fountain Street faces North. On January 5, 2011 the floor-plan and condition of the house upon entering the front door from outside consisted of: (1) a common hallway with a stairway on the left East side leading to the second floor apartment; (2) a closed door on the right West side of the hallway, which opened into a room used as a bedroom on the West front side of the house; (3) a closed door at the South end of the hallway that led into the kitchen; (4) the kitchen had an open doorway to a laundry room on the South wall, an open doorway on the West side to the dining room, and a door to the cellar stairway on the North side next to the entrance from the common hallway; (5) the dining room and front bedroom were connected by a large open doorway; (6) and the laundry room at the rear of the home had two doors on the West side, one to a bathroom and the southernmost door leading to a rear bedroom.
40. The front door to the house was unlocked. The two “stacks” of officers, totaling six, entered the house through the front door into the common hallway.
41. Officer Chris Illiardi also entered the hallway and positioned himself at the bottom of the stairway leading to the second floor apartment.
42. Sergeant David Stuart then knocked on the closed door on the right side of the hallway leading into a bedroom and announced, “Framingham Police, Search Warrant.” Receiving no response, Sergeant Stuart gave the verbal command to “execute.”
43. Immediately after the execution order was given, Sergeant Robin Siviglio, armed with a long gun and a pistol, immediately broke windows on the front of the house using a long

rake in a “rake and break operation.” After the front windows were broken, Officer Shawn Riley looked into the room and pointed his MP5 machine gun through the window.

44. Simultaneously with the rake and breaking of the front windows, Officers Stephen Casey and Christopher Langmrye broke the kitchen window on the left or East side of the house using a “bang pole” and set off a “flash bang” in the kitchen. The “flash bang” is an explosive device that makes a loud noise and creates smoke, and is intended to function as a diversionary device to shock and distract the people in the house while the officers are making entry.
45. Officer Casey remained outside after deploying the “flash bang” and never entered the house until after Mr. Stamps was shot.
46. After hearing the “flash bang”, Officer Paul Duncan used a battering ram to forcibly open the door to the front bedroom on the right side of the hallway. Officer Duncan was the first man to enter the bedroom followed by the other men in the “stack”, Sergeant Stuart and Officer Sebastian. Duncan’s Colt M4 Commando machine gun was in a semi-automatic mode with the safety “off” when he entered. Officer Duncan scanned the room and did not see any threats.
47. Immediately after hearing the “flash bang” and simultaneously with the other officers’ entry into the front bedroom, the second “stack”, consisting of Lieutenant Downing and Officers Sheehan and O’Toole, entered the illuminated kitchen through the unlocked door at the South end of the hallway.
48. After clearing the front bedroom area, Officers Duncan and Sebastian proceeded through a curtain in a doorway leading to the dining room. Officer Duncan scanned and secured the dining room, observing no threats.

The Seizing of Eurie A. Stamps, Sr. and Arrest of Devon Talbert

49. Upon entering the kitchen, Officers Sheehan and O'Toole observed something at ground level in the laundry room moving toward the bathroom. Officer O'Toole ordered, "Come out with your hands up."
50. Eurie A. Stamps, Sr., who had been in his bedroom in the rear of his home watching television, entered the laundry room and stood at or near the open doorway threshold between the laundry room and kitchen. Officer O'Toole, armed with an M4 machine gun, a 40 caliber Sig Sauer handgun, and a Taser, ordered Mr. Stamps to get down. Mr. Stamps complied and knelt down with his hands up. Officer O'Toole then ordered Mr. Stamps, to "Get all the way down." Mr. Stamps complied by lying on his belly with his hands above his head, as ordered, with his head facing the kitchen at the threshold between the kitchen and laundry room.
51. As a result of the officers' conduct, Mr. Stamps was not free to move and was "seized."
52. After Officers O'Toole and Sheehan entered the kitchen, Officer Christopher Langmyre, who re-deployed to assist in securing the house, entered and observed Officers Sheehan and O'Toole giving orders to Mr. Stamps.
53. After Mr. Stamps was seized, Officers O'Toole and Sheehan stepped over Mr. Stamps and entered the laundry room.
54. Officer Langmyre also stepped over Mr. Stamps and followed Officers Sheehan and O'Toole into the laundry room.
55. As Officers O'Toole, Sheehan and Langmyre were dealing with Mr. Stamps and entering the laundry room, Lieutenant Downing and Officers Sebastian and Riley were also in the kitchen standing near the cellar door.

56. After stepping over Mr. Stamps, Officers Sheehan, O'Toole and Langmyre all had their backs to Mr. Stamps and did not perceive him as a threat.
57. Lieutenant Downing and Officers Sebastian and Riley also had their backs to Mr. Stamps and did not perceive him as a threat.
58. Officers O'Toole and Sheehan heard sounds from the bathroom. They entered the bathroom and, after observing open space behind an interior wall, ordered, "Come out with your hands up." Officer Sheehan contemplated using less than lethal force by using his Taser rather than his firearm. At this point, the officers observed a cat trying to escape through the bathroom window. No person was found in the bathroom.
59. While Officers O'Toole and Sheehan were securing the bathroom, Officer Langmyre entered a rear bedroom off the laundry room where he observed Devon Talbert kneeling on the floor with his hands up. Officer Langmyre seized Devon Talbert by pointing his MP5 machine gun at him. Officer Langmyre waited for assistance from another officer before making physical contact with Talbert and handcuffing him.

**Officer Duncan's Unlawful and Unconstitutional
Shooting and Killing of Eurie A. Stamps, Sr.**

60. While in the dining room, Officer Duncan heard Officer O'Toole in the kitchen ordering someone to get down on the ground. Sergeant Stuart ordered Officer Duncan to enter the kitchen to assist Officer O'Toole.
61. Upon entering the kitchen, Officer Duncan observed Officers O'Toole and Sheehan in the laundry room. He also observed Mr. Stamps lying on his stomach with his hands above his head and his elbows resting on the floor. Mr. Stamps had his head up looking into the kitchen at Officer Duncan.

62. Officer Duncan pointed his M4 machine gun at Mr. Stamps' head with the machine gun on semi-automatic with the safety "off."
63. When Officer Duncan was in the kitchen pointing his machine gun at Mr. Stamps, Lieutenant Downing and Officers Riley and Sebastian remained in the kitchen near the cellar door.
64. At all times while Officer Duncan had his machine gun pointed at Mr. Stamps' head, the machine gun was in a semi-automatic setting with the safety "off."
65. At all times while Officer Duncan had his machine gun pointed at Mr. Stamps' head, Duncan's finger was on the trigger inside the trigger guard.
66. While pointing his machine gun at Mr. Stamps' head, Officer Duncan discharged his machine gun by using his finger to apply force to the trigger.
67. Officer Duncan's machine gun did not discharge due to a malfunction or some force other than pulling the trigger by his finger.
68. The bullet discharged from Officer Duncan's machine gun and struck Mr. Stamps on the left side of his face in a trajectory consistent with Duncan aiming the machine gun from a standing position. The bullet exited through the upper neck and reentered Mr. Stamps' body through his left lower neck/clavicular region, entering the left ventricle of Mr. Stamps' heart and left lung.
69. Officer Duncan did not give any verbal commands to Mr. Stamps or speak to him prior to discharging his machine gun.
70. When Officer Duncan shot Mr. Stamps in the face, Lieutenant Downing and Officers Riley and Sebastian were still in the kitchen.
71. At no time did Officer Duncan seek assistance from any other officer.

72. Realizing that Mr. Stamps had been shot, members of the SWAT team called out, “TEMS up”, the code word for the TEMS Unit to move into the house.
73. Jeffrey Beckwith, David McKay, and Joseph Hicks, members of the TEMS Unit, entered the home and met Lieutenant Downing, who directed them to the rear of the apartment. They observed Mr. Stamps lying on his stomach on the floor bleeding with a pool of blood near him. The paramedics turned Mr. Stamps on his back and began to render medical care. Using a webbing device, the paramedics dragged Mr. Stamps into the kitchen, placed him on a backboard, removed him from the home on a stretcher, and placed him in an ambulance.
74. Mr. Stamps died as a result of the gunshot wound.
75. At all times before and after he was seized, Mr. Stamps was unarmed, defenseless, made no furtive gestures or movements, complied with the officers’ demands, and did not attempt to flee or resist the police.
76. Officer Duncan’s explanation or “story” of what happened is that his machine gun discharged when he lost his balance and fell while he was attempting to secure Mr. Stamps’ hands, without assistance from other officers, and while he was holding his machine gun with the safety “off.”
77. Officer Duncan’s explanation or “story” of what happened is fundamentally inconsistent with the physical evidence and forensic analysis, and contrary to the laws of physics.

The Arrest of Devon Talbert

78. After Mr. Stamps was shot, Officer Sheehan entered the rear bedroom to assist Officer Langmyre in searching and arresting Talbert. Officer Langmyre did not attempt to search

Mr. Talbert or make physical contact with him without the assistance of another officer. Officer Sheehan handcuffed Talbert and searched him for weapons. He was unarmed.

The Outcome of the Searches of Mr. Stamps' Home

79. During the January 5, 2011 search of the home, the FPD found no weapons or firearms.
80. On January 5, 2011, Lieutenant Edward Foster of the Massachusetts State Police obtained a search warrant for the Stamps home for the purpose of obtaining evidence relating to the homicide of Eurie A. Stamps, Sr. During this search, no weapons or firearms were found.

The Inadequate Training and Policies of the Framingham Police Department

81. Prior to the execution of the warrant, the FPD failed to provide adequate training to the members of the SWAT team concerning execution of a search warrant in a private residence including, but not limited to, proper and reasonable procedures to assess whether individuals and non-suspects encountered at the residence pose a danger to the police; the proper procedures relating to the use of the safety on a firearm and the location of an officer's finger outside of the trigger guard when the police encounter individuals and non-suspects that pose no immediate or defined threat; the proper procedures for encountering, handling, securing, and/or searching of individuals and non-suspects for weapons to avoid harm to them, including the use of two officers when physically encountering an individual; the proper procedures for entering and clearing rooms and encountering persons in a room during the execution of a search warrant; the proper procedures for an officer to assess when he or she is "ready to fire" when encountering a person during the execution of a search warrant; the proper procedure for ensuring that a weapon is placed on "off-safe" until an officer is ready to fire; and the proper procedures to make a preliminary assessment

of the risk or danger posed by each known occupant of a residence prior to the execution of a search warrant.

82. The FPD had a policy of not complying with its own established procedures concerning the planning of SWAT operations.
83. The FPD had a policy of not establishing adequate and appropriate protocols, in accordance with widely accepted police practices nationwide, for the use of automatic weapons during SWAT operations.
84. The FPD had a policy of not establishing procedures to address changes in circumstances during SWAT operations.

COUNT I

Claim Against Officer Paul Duncan For Violating Eurie A. Stamps, Sr.'s Fourth Amendment Rights Predicated On The Intentional Use Of Deadly Force During The Course Of A Seizure In Violation Of 28 U.S.C. § 1983

85. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.
86. The Fourth Amendment to the United States Constitution guarantees citizens the right to be secure in their person against the use of excessive and/or deadly force during the seizure of a person.
87. By the means of Officers Duncan's and O'Toole's actions of pointing their weapons at Mr. Stamps, their verbal commands and show of force, and the presence of five other armed officers, Mr. Stamps' freedom of movement and ability to walk away was restrained and prohibited and he was seized within the meaning of the Fourth Amendment.
88. Officer Paul Duncan's shooting of Mr. Stamps, under the color of State law, was intentional. Officer Duncan:
 - a. Placed his machine gun in a semi-automatic setting;

- b. Pointed his machine gun at Mr. Stamps;
- c. Placed his finger inside the trigger guard;
- d. Placed his finger on the trigger;
- e. Discharged his machine gun by intentionally applying force to the trigger; and
- f. Intended to shoot Mr. Stamps and to cause him severe physical injury or death.

89. Officer Duncan's machine gun did not discharge due to a malfunction or some force other than the force applied to the trigger by his finger.

90. At the time of the shooting, Mr. Stamps was defenseless; had not committed a crime; was not a suspect concerning the commission of a crime; was not the target of the search warrant; was not armed; did not resist the police; did not attempt to flee; and posed no immediate or future threat of harm to Officer Duncan, other police officers, or any other person.

91. Officer Duncan's intentional use of deadly force was excessive and unjustified in violation of Mr. Stamps' right to be free from unreasonable seizures of his person secured under the Fourth Amendment.

92. As a direct and proximate cause of Officer Duncan's intentional conduct, Mr. Stamps was subjected to excessive force during the course of a seizure in violation of his Fourth Amendment rights and was killed.

93. Officer Duncan's violation of Eurie A. Stamps, Sr.'s Fourth Amendment right through his intentional use of deadly force was clearly established under existing case law or general Fourth Amendment principles and statements of law such that it was apparent to him that his conduct was unlawful and unconstitutional.

94. Officer Duncan's intentional and excessive use of deadly force was such an obvious and/or apparent violation of the Fourth Amendment general prohibition against unreasonable force that a reasonable officer would not have required prior case law to be on notice that his conduct was unlawful and unconstitutional.

95. A reasonable police officer in Officer Duncan's position should have understood that his conduct violated Mr. Stamps' right to be free from the excessive use of deadly force.

WHEREFORE, the plaintiffs demand judgment against Officer Duncan in an amount that provides full and fair compensation for the violation of Eurie A. Stamps, Sr.'s Fourth Amendment rights, for the costs of this action, for attorney's fees, for interest as allowed by law, and for all other just and proper relief.

COUNT II

**Claim Against Officer Paul Duncan For Violating Eurie A. Stamps, Sr.'s
Fourth Amendment Rights Predicated On The Unintended But
Unreasonable Infliction Of Deadly Force During The Course
Of A Seizure In Violation Of 28 U.S.C. § 1983**

96. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

97. The Fourth Amendment to the United States Constitution guarantees citizens the right to be secure in their person against unreasonable seizures of the person.

98. A Fourth Amendment violation occurs when a police officer's actions resulting in the unintentional discharge of his weapon during a seizure causes injury or death and those actions leading to and culminating in the discharge of his weapon are objectively unreasonable.

99. By the means of Officers Duncan's and O'Toole's actions of pointing their weapons at Mr. Stamps, their verbal commands and show of force, and the presence of five other armed

officers, Mr. Stamps' freedom of movement and ability to walk away was restrained and prohibited and he was seized within the meaning of the Fourth Amendment.

100. Officer Duncan's shooting of Mr. Stamps during the course of a seizure by the police officers constituted the reckless and unreasonable use of excessive force in violation of his rights secured under the Fourth Amendment.

101. At the time of his seizure, Mr. Stamps had not committed a crime, was not a suspect concerning the commission of a crime, and was not the target of the search warrant.

102. At the time of his seizure, Mr. Stamps was unarmed, harmless, and defenseless.

103. Mr. Stamps immediately surrendered to the authority of the police and their show of force by lying down and putting his hands above his head, a position maintained until Officer Duncan shot him, and posed no immediate or future threat to the officers.

104. At all times before the shooting, Mr. Stamps did not resist his seizure or attempt to move or flee.

105. Officer Duncan's act of shooting Mr. Stamps before making physical contact with him or while making physical contact with him in an attempt to physically restrain him was reckless and objectively unreasonable in the following respects:

- a. Officer Duncan lacked probable cause to believe that Mr. Stamps committed a crime;
- b. Officer Duncan lacked articulable reasonable suspicion to believe that Mr. Stamps was armed or dangerous;
- c. Officer Duncan failed to obtain the assistance of other officers who were standing within feet of him and available to assist him in further physically restraining Mr. Stamps;

- d. Officer Duncan held his machine gun and pointed it at Mr. Stamps with the weapon on a semi-automatic setting;
- e. Officer Duncan failed to place his weapon on a “safety” setting to prevent the discharge of the weapon;
- f. Officer Duncan held his machine gun and pointed it at Mr. Stamps while his finger was inside the trigger guard and on the trigger;
- g. Officer Duncan pulled the trigger and shot Mr. Stamps even though Mr. Stamps was not fleeing, was not resisting his seizure, was not making any furtive movements, was not posing any threat to Officer Duncan or any other officer or person, and while he was complying with police commands;
- h. The conduct of Officer Duncan was not performed pursuant to a written operational plan that adequately defined the roles of each officer;
- i. The verbal operational plan was deficient because it failed to provide adequate protocols and procedures for the encountering and seizing of individuals during the execution of the search warrant; and,
- j. The execution of the search warrant should have been aborted once Bushfan was arrested.

106. Officer’s Duncan’s unreasonable conduct and use of excessive force described in the preceding paragraph was contrary to and in violation of established police protocols and standards concerning the seizing of a person; clearly established constitutional rights; FPD’s Policy on Search and Seizure #100, Section 8(b)(i) & (ii); and/or Officer’s Duncan’s training.

107. A reasonable probability existed that Officer Duncan's machine gun would discharge while pointed at Mr. Stamps with the safety "off" and his finger on the trigger.
108. The discharging of the machine gun posed a risk of grievous harm and death to Mr. Stamps.
109. The discharge of the machine gun and the killing of Mr. Stamps would have been avoided through the exercise of reasonable and required precautions that imposed a slight burden on Officer Duncan and would not have exposed him or any other officer to a risk of injury.
110. All of Officer Duncan's actions leading up to and resulting in the shooting of Mr. Stamps were committed under the color of State law.
111. Officer Duncan's objectively unreasonable actions (as described above) committed during the seizure of Mr. Stamps were the direct and proximate cause of the shooting of Mr. Stamps and his resulting death.
112. Officer Duncan's violation of Eurie A. Stamps, Sr.'s Fourth Amendment right through his use of excessive deadly force, even if unintended, was clearly established under existing case law or general Fourth Amendment principles and statements of law such that it was apparent to Officer Duncan that his conduct was unlawful and unconstitutional. Specifically, it was apparent and/or clearly established in this judicial circuit and in other circuits that unintended harm inflicted during the course of an intentional seizure constitutes a violation of the Fourth Amendment where the officer's conduct resulting in the harm was objectively unreasonable.
113. Officer Duncan's use of excessive deadly force, even if unintended, was such an obvious and/or apparent violation of the Fourth Amendment general prohibition against

unreasonable force that a reasonable officer would not have required prior case law to be on notice that his unreasonable conduct was unlawful and unconstitutional.

114. A reasonable police officer in Officer Duncan's position should have understood that his conduct violated Mr. Stamps' right to be free from the excessive use of deadly force.

WHEREFORE, the plaintiffs demand judgment against Officer Duncan in an amount that provides full and fair compensation for the violation of Eurie A. Stamps, Sr.'s Fourth Amendment rights, for the costs of this action, for attorney's fees, for interest as allowed by law, and for all other just and proper relief.

COUNT III

**Claim Against Officer Paul Duncan For Violating Eurie A. Stamps, Sr.'s
Fourth Amendment Rights Predicated On The Unintentional Infliction
Of Greater Force To Restrain Mr. Stamps Than Intended
In Violation Of 28 U.S.C. § 1983**

115. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

116. Prior to the shooting of Mr. Stamps, Officer Duncan did not speak to Mr. Stamps.

117. Officer Duncan pointed his machine gun at Mr. Stamps with the intent of using his machine gun to restrain Mr. Stamps' freedom, control his movement, and seize him.

118. By the means of Officers Duncan's and O'Toole's actions of pointing their weapons at Mr. Stamps, their verbal commands and show of force, and the presence of five other armed officers, Mr. Stamps' freedom of movement and ability to walk away was restrained and prohibited and he was seized within the meaning of the Fourth Amendment

119. Mr. Stamps was seized by the instrumentality (Officer Duncan's machine gun) used by Officer Duncan to achieve that result.

120. Mr. Stamps was meant to be restrained in his freedom of movement by the machine gun being pointed at him and he was so restrained.

121. By unintentionally discharging his machine gun, Officer Duncan used more force to seize Mr. Stamps than intended.
122. Officer Duncan's intentional use of his machine gun, under color of State law, to seize Mr. Stamps, and the unintentional use of his machine gun to cause more harm and physical control than intended was objectively unreasonable and constituted a violation of Mr. Stamps' right under the Fourth Amendment to be free from unreasonable seizures of his person.
123. Officer Duncan's violation of Eurie A. Stamps, Sr.'s Fourth Amendment rights through his unreasonable use of more force than intended to seize was clearly established under existing case law or general Fourth Amendment principles and statements of law such that it was apparent to Officer Duncan that his conduct was unlawful and unconstitutional. Specifically, it was apparent and/or clearly established in this judicial circuit and in other circuits that unintended harm inflicted during the course of an intentional seizure constitutes a violation of the Fourth Amendment where the officer's conduct resulting in the harm was objectively unreasonable.
124. Officer Duncan's unreasonable use of more force than intended to seize Mr. Stamps was such an obvious and/or apparent violation of the Fourth Amendment general prohibition against unreasonable force that a reasonable officer would not have required prior case law to be on notice that his unreasonable conduct was unlawful and unconstitutional.
125. A reasonable police officer in Officer Duncan's position should have understood that his conduct violated Mr. Stamps' right to be free from the excessive use of deadly force.

126. Officer Duncan's objectively unreasonable actions committed to seize Mr. Stamps under the color of State law were the direct and proximate cause of the shooting of Mr. Stamps and his resulting death.

WHEREFORE, the plaintiffs demand judgment against Officer Duncan in an amount that provides full and fair compensation for the violation of Eurie A. Stamps, Sr.'s Fourth Amendment rights, for the costs of this action, for attorney's fees, for interest as allowed by law, and for all other just and proper relief.

COUNT IV

Claim Against Officer Duncan Predicated on the Infliction of Deadly Force During an Unlawful Search Without Probable Cause Or Reasonable Suspicion in Violation of Eurie A. Stamps Sr.'s Fourth Amendment Rights

127. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

128. At all relevant times, Mr. Stamps was defenseless; had not committed a crime; was not a suspect concerning the commission of a crime; was not the target of the search warrant; was not armed; did not resist the police; did not attempt to flee; and posed no immediate or future threat of harm to Officer Duncan, other police officers, or any other person.

129. Officer Duncan lacked probable cause to believe that Mr. Stamps had committed a crime and lacked probable cause to arrest him.

130. At all relevant times, Mr. Stamps was not under arrest.

131. Officer Duncan lacked articulable reasonable suspicion to believe that Mr. Stamps was armed or dangerous.

132. Officer Duncan's touching and/or searching of Mr. Stamps without probable cause to believe he had committed a crime or reasonable suspicions that he was armed and

dangerous constituted a violation of Mr. Stamps' Fourth Amendment right to be free from unreasonable searches.

133. Officer Duncan's shooting of Mr. Stamps during a search without probable cause constituted the unreasonable use of excessive force in violation of the Fourth Amendment.

134. Officer Duncan's unconstitutional actions committed during a search of Mr. Stamps were committed under the color of State law and were the direct and proximate cause of the shooting of Mr. Stamps and his resulting death.

135. Officer Duncan's violation of Eurie A. Stamps, Sr.'s Fourth Amendment rights through his use of excessive force during a search of Mr. Stamps without probable cause or reasonable suspicion was clearly established under existing case law or general Fourth Amendment principles and statements of law such that it was apparent to Officer Duncan that his conduct was unlawful and unconstitutional.

136. Officer Duncan's violation of Mr. Stamps' rights was such an obvious and/or apparent violation of the Fourth Amendment general prohibition against unreasonable force that a reasonable officer would not have required prior case law to be on notice that his conduct was unlawful and unconstitutional.

137. A reasonable police officer in Officer Duncan's position should have understood that his conduct violated Mr. Stamps' right to be free from searches without probable cause or reasonable suspicion and from the excessive use of deadly force.

WHEREFORE, the plaintiffs demand judgment against Officer Duncan in an amount that provides full and fair compensation for the violation of Eurie A. Stamps, Sr.'s Fourth Amendment rights, for the costs of this action, for attorney's fees, for interest as allowed by law, and for all other just and proper relief.

COUNT V

Claims Against Officer Paul Duncan Predicated Upon Reckless Or Callous Indifference To Eurie A. Stamps, Sr.'s Rights Under The Fourteenth Amendment To The United States Constitution In Violation of 42 U.S.C. § 1983

138. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.
139. The Fourteenth Amendment protects citizens from the deprivation of life, liberty, or property without due process of law.
140. Prior to his death on January 5, 2011, Eurie A. Stamps was not a criminal suspect and the Framingham police did not have probable cause to arrest him or to otherwise take him into custody.
141. At the time of his seizure, Mr. Stamps had not committed a crime, was not a suspect concerning the commission of a crime, and was not the target of the search warrant.
142. At the time of his seizure, Mr. Stamps was unarmed and defenseless.
143. Mr. Stamps posed no immediate or future threat to the officers.
144. Mr. Stamps immediately surrendered to the authority of Officers O'Toole and Sheehan and their show of force by lying down and putting his hands above his head.
145. As a result of the actions of Officers Sheehan and O'Toole, Eurie A. Stamps, Sr. was seized within the meaning of the Fourth Amendment and the seizure was completed before Officer Duncan had any involvement or contact with Eurie A. Stamps, Sr.
146. At all times before being shot, Mr. Stamps did not resist his seizure or attempt to move or flee.
147. When Officer Duncan shot Mr. Stamps, he was in Duncan's custody and control.

148. Officer Duncan's acts and omissions, as described above, were committed under the color of State law and reflected a reckless or callous indifference to the clearly established rights of Eurie A. Stamps, Sr. in violation of his Fourteenth Amendment right to life.

149. As a direct and proximate cause of Officer Duncan's reckless or callous indifference, Eurie A. Stamps, Sr. was deprived of his life without due process of law.

150. Officer Duncan's violation of Eurie A. Stamps, Sr.'s Fourteenth Amendment rights through his reckless and callous conduct was clearly established under existing case law or general Fourteenth Amendment principles and statements of law such that it was apparent to Officer Duncan that his conduct was unlawful and unconstitutional.

151. Officer Duncan's violation of Eurie A. Stamps, Sr.'s Fourteenth Amendment rights through his reckless and callous conduct was such an obvious and/or apparent violation of the Fourteenth Amendment general prohibition the deprivation of life without due process of law that a reasonable officer would not have required prior case law to be on notice that his conduct was unlawful and unconstitutional.

152. A reasonable police officer in Officer Duncan's position should have understood that his conduct violated Mr. Stamps' right to life.

WHEREFORE, the plaintiffs demand judgment against Officer Duncan in an amount that provides full and fair compensation for the violation of Eurie A. Stamps, Sr.'s Fourteenth Amendment rights, for the costs of this action, for attorney's fees, for interest as allowed by law, and for all other just and proper relief.

COUNT VI

**Claims Against Paul Duncan For Punitive Damages Under 42 U.S.C. § 1983
Predicated On The Excessive Use Of Deadly Force In Violation
Of The Fourth Amendment And For The Deprivation Of Life Without
Due Process Of Law In Violation Of The Fourteenth Amendment**

153. Plaintiffs incorporate the preceding paragraphs as if fully stated herein.

154. Officer Duncan's actions as expressly set forth above resulting in the death of Mr. Stamps were motivated by evil motive or intent or were committed recklessly or with callous indifference to Mr. Stamps' federally protected rights under the Fourth and Fourteenth Amendments.

WHEREFORE, the plaintiffs demand judgment against Officer Duncan for punitive damages for the violation of Eurie A. Stamps, Sr.'s Fourth and Fourteenth Amendment rights, for the costs of this action, for attorney's fees, and for all other just and proper relief.

COUNT VII

**Claim Against The Town of Framingham For Negligent Training And Supervision
Of Its Police Officers In Violation of 42 U.S.C. § 1983 Predicated Upon Deliberate
Indifference To The Constitutional Rights Of Persons Encountered By Their Officers**

155. Plaintiffs incorporate the preceding paragraphs as if fully stated herein.

156. The Town of Framingham, through its agents, servants, and employees in the Framingham Police Department, had the duty and responsibility for the training and supervision of its police officers regarding the appropriate use of force during a seizure and the appropriate methods and practices to avoid the infliction of deadly force upon a seized person, including those who do not pose an immediate risk of serious harm to others.

157. On or before January 5, 2011, the Town of Framingham's policy makers knew or should have known that their police officers had in the past, and would in the future, be faced with situations similar to the circumstances and facts heretofore alleged wherein the police

officers could inflict deadly force despite the fact the plaintiffs' decedent posed no immediate danger to the police officers or others, and despite the fact that the plaintiffs' decedent had no weapon and was lying face down on the floor when he was shot.

158. The Town of Framingham failed to provide, under the color of State law, adequate training to its officers regarding procedures and methods to avoid the infliction of deadly force, whether intentionally or unintentionally inflicted, on a seized person who submits to the authority of the police, complies with an officer's demand not to move, and poses no apparent or immediate threat of harm, including, but not limited to, the following:

- a. the proper and reasonable procedures for identifying and assessing a scene prior to restraining and making physical contact with a person;
- b. the proper and reasonable procedures for the safe and proper method to restrain an individual without causing him great bodily injury or death;
- c. the proper and reasonable procedures to assess whether individuals or non-suspects encountered at the residence pose a danger to the police;
- d. the proper and reasonable procedures to assess when an officer should or should not be ready to fire his or her weapon;
- e. the proper and reasonable procedures relating to the use of the safety on a firearm, including requiring officers to set their firearms on safety mode until the moment the officer is ready to fire his weapon;
- f. the proper and reasonable procedures concerning the placement of an officer's finger outside of the trigger guard when the police encounter an individual or non-suspect that poses no immediate threat;

- g. the proper and reasonable procedures concerning the placement of a weapon on safety mode when approaching and/or making contact with a person;
- h. the proper and reasonable procedures for encountering, handling, securing, and/or searching an individual or non-suspect for weapons to avoid physical harm, including the use of two officers when physically encountering an individual or non-suspect;
- i. the proper and reasonable procedures for entering and clearing rooms and encountering persons in a room during the execution of a search warrant;
- j. the proper and reasonable procedures for an officer to assess when he or she is “ready to fire” when encountering a person during the execution of a search warrant; and,
- k. the proper and reasonable procedures to make a preliminary assessment of the risk or danger posed by each known occupant of a residence prior to the execution of a search warrant.

159. Prior to January 4, 2011, Officers assigned to the FPD SWAT team expressed concerns to the Framingham Police Chief about inadequacies in the training provided to the SWAT team, the lack of skill and capabilities of members of the team, the inadequacies in the process of selecting team members, and deficiencies in the leadership of the team. Although these complaints were received years before the shooting of Mr. Stamps, they were ignored by Framingham policymakers.

160. Alternative procedures existed which could and should have been implemented that would have prevented the shooting of Mr. Stamps. Officer Duncan should have been trained in those procedures including, but not limited to, requiring officers to set their

firearms on safety mode until the moment the officer is ready to fire his weapon and the use of two officers when physically encountering an individual or non-suspect.

161. The FPD had a policy of not complying with its own established procedures concerning the planning of SWAT operations and of not establishing adequate and appropriate protocols, in accordance with widely accepted police practices nationwide, for the use of automatic weapons during SWAT operations.

162. The FPD had a policy of not establishing procedures to address changes in circumstances during SWAT operations.

163. The death of Eurie A. Stamps, Sr. was caused pursuant to the Town of Framingham's policy or custom for the inadequate training and supervision of its police officers, including Officer Duncan, its failure to provide adequate protocols, and its failure to follow existing protocols.

164. The Town of Framingham's policy or custom of grossly inadequate training and supervision of its police officers and failures relating to protocols demonstrated gross negligence amounting to deliberate indifference to the clearly established constitutional rights of others, including Mr. Stamps, to be free from the deprivation of life without due process of law and to be free from the use of excessive force.

165. The reckless or grossly negligent manner in which the Town of Framingham trained and supervised its officers, failed to provide protocols, and failed to follow existing protocols created a high risk of death to others, including Mr. Stamps.

166. Policymakers for the Town of Framingham know to a moral certainty that their police officers, including Officer Duncan, would be required to encounter and seize individuals, including individuals present at the scene of the execution of a search warrant.

167. The inadequacies of its protocols and the training and supervision provided by the Town of Framingham were so obvious and likely or probable to result in the violation of constitutional rights that the policymakers of the Town acted with deliberate indifference to the need to protect citizens and acquiesced in and implicitly authorized the use of excessive force during a seizure of a person.

168. The Town of Framingham had knowledge of an obvious risk to the constitutional rights of persons that the police would come in contact with and there was a conscious failure to act despite the obvious risk.

169. The above alleged constitutional violations committed by Officer Duncan were proximately caused by the Town of Framingham's deliberate indifference to the training and supervision of Officer Duncan and by the customs, practices, decisions, and policies of the Town of Framingham, through the Framingham Police Department, with respect to the use of force and the proper procedures and methods to avoid deadly force during the seizure of a person.

WHEREFORE, the plaintiffs demand judgment against the Town of Framingham in an amount that provides full and fair compensation for the violation of Eurie A. Stamps, Sr.'s Constitutional rights, for the costs of this action, for attorney's fees, for interest as allowed by law, and for all other just and proper relief.

COUNT VIII

Claim Against Paul Duncan For Wrongful Death Under G.L. c. 229, § 2 Predicted On Intentional Conduct

170. Plaintiffs incorporate the preceding paragraphs as if fully stated herein.

171. Officer Paul Duncan's shooting of Mr. Stamps was intentional in that he intended to pull the trigger and intended to cause physical harm to Mr. Stamps.

172. At the time of the shooting, Mr. Stamps was intentionally seized and/or in the custody of the police and posed no immediate threat of harm to Officer Duncan, other police officers, or any other person.

173. As a direct and proximate cause of Officer Duncan's intentional and unjustified conduct, Mr. Stamps was wrongfully killed.

WHEREFORE, the plaintiffs demand judgment against Officer Duncan in an amount sufficient to fully and fairly compensate the Estate of Eurie A. Stamps, Sr. under G.L. c. 229, § 2, the Massachusetts Wrongful Death Statute, for the costs of this action, for interest as allowed by law, and for all other just and proper relief.

COUNT IX

**Claim Against The Town Of Framingham For Wrongful Death
Under The Massachusetts Torts Claims Act, G.L. c. 258, § 2
Predicted On Negligence Of Officer Paul Duncan**

174. Plaintiffs incorporate the preceding paragraphs as if fully stated herein.

175. The defendant, Town of Framingham, is a public employer within the meaning of the Massachusetts Torts Claims Act, G.L. c. 258, § 2.

176. At all times relevant to the allegations in this First Amended Complaint, Paul Duncan was an employee of the Town of Framingham as a police officer and member of the FPD SWAT Team.

177. At all times relevant to the allegations in this First Amended Complaint, Paul Duncan was acting within the scope of his employment with the Town of Framingham in his capacity as a police officer and member of the FPD SWAT Team.

178. On Monday, January 7, 2013, the plaintiffs, through counsel, timely served on the Town Clerk of the Town of Framingham a presentment letter pursuant to G.L. c. 158, § 4.

179. January 5, 2013, the two year anniversary of the incident resulting in Eurie Stamps, Sr.'s death, was a Saturday in which the Town of Framingham's administrative offices were closed, including the Town's Town Hall and the office of the Town Clerk. The following day, January 6, 2013 was a Sunday in which the Town's administrative offices were closed.
180. After the passage of six months from date of presentment of the plaintiffs' claims, the Town of Framingham failed to either accept or deny the claim in writing and, therefore, finally denied the plaintiffs' claims on or about July 5, 2013 pursuant to G.L. c. 258, § 4.
181. The Town of Framingham, through its employee police officers, had a duty to exercise reasonable care not to injure or kill persons present during the execution of the search warrant at the Stamps home on January 5, 2011 or to use excessive force on any person during the execution of the warrant, particularly persons that were seized and did not pose an immediate threat of harm to the police or others.
182. Officer Duncan's act of shooting Mr. Stamps before making physical contact with him or while making physical contact with him was reckless, grossly negligent, and/or negligent in the following respects:
- a. Officer Duncan lacked probable cause to believe that Mr. Stamps committed a crime;
 - b. Officer Duncan lacked articulable reasonable suspicion to believe that Mr. Stamps was armed or dangerous;
 - c. Officer Duncan violated established and well-recognized proper police procedures by failing to obtain the assistance of other officers, who were standing within feet of him and available to assist him, to cover Mr. Stamps before Officer Duncan

made or attempted to make physical contact with Mr. Stamps to further physically restrain him;

- d. Officer Duncan held his machine gun and pointed it at Mr. Stamps with the weapon on a semi-automatic setting;
- e. Officer Duncan failed to place his weapon on a “safety” setting to prevent the discharge of the weapon;
- f. Officer Duncan held his machine gun and pointed it at Mr. Stamps while his finger was inside the trigger guard and on the trigger;
- g. Officer Duncan pulled the trigger and shot Mr. Stamps even though Mr. Stamps had not committed a crime, was not fleeing, was not resisting his seizure, was not making any furtive movements, was not posing any threat to Officer Duncan or any other officer or person, and while he was complying with police commands;
- h. The conduct of Officer Duncan was not performed pursuant to a written operational plan that adequately defined the roles of each officer;
- i. The verbal operational plan was deficient because it failed to provide adequate protocols and procedures for the encountering and seizing of individuals during the execution of the search warrant; and,
- j. The execution of the search warrant should have been aborted once Bushfan was arrested.

183. Officer’s Duncan’s negligent, grossly negligent, and/or reckless conduct described in the preceding paragraph was contrary to and in violation of established police protocols and standards concerning the seizing of a person; FPD’s Policy on Search and Seizure #100, Section 8(b)(i) & (ii); and/or Officer’s Duncan’s training.

184. Officer's Duncan's negligent, grossly negligent, and/or reckless conduct was a direct and proximate cause of Mr. Stamps' wrongful death.

WHEREFORE, the plaintiffs demand judgment against the Town of Framingham in an amount sufficient to fully and fairly compensate the Estate of Eurie A. Stamps, Sr. under G.L. c. 229, § 2, the Massachusetts Wrongful Death Statute, for the costs of this action, for interest as allowed by law, and for all other just and proper relief.

COUNT X

**Claim Against The Town Of Framingham For Wrongful Death
Under The Massachusetts Torts Claims Act, G.L. c. 258, § 2,
Predicted On The Negligent Training And Supervision
Of Officer Paul Duncan**

185. Plaintiffs incorporate the preceding paragraphs as if fully stated herein.

186. The Framingham Police Department, through its employees, had a duty and responsibility for the training and supervision of its police officers regarding the appropriate use of force during a seizure and the appropriate methods and practices to avoid the infliction of deadly force upon a seized person, including those who do not pose an immediate risk of serious harm to others.

187. The Town of Framingham negligently failed to provide adequate training to its officers regarding procedures and methods to avoid the infliction of deadly force, whether intentionally or unintentionally inflicted, on a seized person who submits to the authority of the police, complies with an officer's demand not to move, and poses no apparent or immediate threat of harm, including, but not limited to, the negligent failures and omissions described in paragraph 158, sub-paragraphs a-k, of this First Amended Complaint.

188. The Town of Framingham's negligent failure to train Officer Duncan's was a direct and proximate cause of Mr. Stamps' wrongful death.

WHEREFORE, the plaintiffs demand judgment against the Town of Framingham in an amount sufficient to fully and fairly compensate the Estate of Eurie A. Stamps, Sr. under G.L. c. 229, § 2, the Massachusetts Wrongful Death Statute, for the costs of this action, for interest as allowed by law, and for all other just and proper relief.

THE PLAINTIFFS DEMAND TRIAL BY JURY ON ALL COUNTS OF THEIR COMPLAINT

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Dated: July 26, 2013

