

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE
CASE NO. _____

MICHELLE MCMILLEN as Administratrix of the)
ESTATE OF GYNNYA MCMILLEN)
-and-)
MICHELLE MCMILLEN, Individually)

Plaintiffs

v.)

COMPLAINT
"Electronically Filed"

REGINALD WINDHAM, Individually and in his)
Official Capacity as Youth Worker Supervisor for the)
Lincoln Village Regional Juvenile Detention Center)
Serve: Reginald Windham)
102 Ridgemont Drive)
Vine Grove, KY 40175)

-and-)

VICTOR HOLT, Individually and in his)
Official Capacity as Youth Worker Supervisor for the)
Lincoln Village Regional Juvenile Detention Center)
Serve: Victor Holt)
2500 South Dixie Boulevard)
Radcliff, KY 40160)

-and-)

BOB HAYTER, Individually and in his)
Official Capacity as Former Commissioner for the)
KY Department of Juvenile Justice)
Serve: Bob Hayter)
1350 Hayner Road)
Bowling Green, KY 42104)

-and-)

MARK COOK, Individually and in his)
Official Capacity As Deputy Commissioner Program)
Operations for the KY Department of Juvenile Justice)
Serve: Mark Cook)
KY Dept. of Juvenile Justice)
1025 Capital Center Drive)
Frankfort, KY 40601)

-and-)

MICHELLE GRADY, Individually and in her)
Official Capacity as Facility Superintendent for the)
Lincoln Village Regional Juvenile Detention Center)

Serve: Michelle Grady)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

MICHAEL PRICE, Individually and in his)
Official Capacity as Assistant Superintendent for the)
Lincoln Village Regional Juvenile Detention Center)

Serve: Michael Price)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

BRENT KIMBLER, Individually and in his)
Official Capacity as Youth Services Program)
Supervisor for the Lincoln Village Regional Juvenile)
Detention Center)

Serve: Brent Kimbler)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

VICKI MULLINS, Individually and in her)
Official Capacity as Counselor for the Lincoln)
Village Regional Juvenile Detention Center)

Serve: Vicki Mullins)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

LASHAE NEWBY, Individually and in her)
Official Capacity as Youth Worker for the Lincoln)
Village Regional Juvenile Detention Center)

Serve: Lashae Newby)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

CHRIS JOHNSON, Individually and in his)
Official Capacity as Youth Worker for the Lincoln)
Village Regional Juvenile Detention Center)

Serve: Chris Johnson)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

KEVIN JOHNSON, Individually and in his)
Official Capacity as Youth Worker Supervisor for the)
Lincoln Village Regional Juvenile Detention Center)

Serve: Kevin Johnson)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

LISA RIVERS, Individually and in her)
Official Capacity as Youth Worker for the Lincoln)
Village Regional Juvenile Detention Center)

Serve: Lisa Rivers)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

-and-)

LORETTA GAUDERN, Individually and in her)
Official Capacity as Youth Worker for the Lincoln)
Village Regional Juvenile Detention Center)

Serve: Loretta Gaudern)
Lincoln Village Juvenile Detention Center))
820 New Glendale Road)
Elizabethtown, KY 42701)

Defendants

*** ***)

Come now the Plaintiffs Michelle McMillen, as Administratrix of the Estate of Gynnya McMillen (hereinafter "Gynnya"), and Michelle McMillen, individually, by counsel, and for their Complaint against the Defendants, Reginald Windham, Victor Holt, Bob Hayter, Mark Cook, Michelle Grady, Michael Price, Brent Kimbler, Vicki Mullins, LaShae Newby, Chris Johnson, Kevin Johnson, Lisa Rivers and Loretta Gaudern state as follows:

JURISDICTION

1. That this action arises under the United States Constitution, particularly under the provisions of the Fourth and Fourteenth Amendments, and under federal law, particularly the Civil Rights Act, Title 42 of the United States Code §1983 to redress violations of Plaintiffs' substantial rights and the wrongful death of Gynnya.

2. That this Court possesses jurisdiction for this case under the provisions of Title 28 of the United States Code, §1331 and §1343 and venue is appropriate in this Court pursuant to 28 USC § 1391.

3. That the amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorney's fees.

4. That this Court possesses pendent, ancillary and/or supplemental jurisdiction under 28 U.S.C. §1367 over Plaintiff's Kentucky common and/or statutory law claims for negligence, gross negligence, negligence per se, negligent hiring, negligent training, negligent supervision, negligent retention, assault, battery, and false imprisonment, all resulting in the wrongful death of Gynnya McMillen.

PARTIES

5. That Plaintiff Michelle McMillen is the Administratrix of the Estate of Gynnya McMillen and a copy of the February 1, 2016 Order from Jefferson County Probate Court appointing Michelle McMillen as Administratrix of her daughter's estate is attached hereto as **Exhibit A**. Plaintiff Michelle McMillen is, and at all times relevant hereto has been, a citizen and resident of Shelbyville, Shelby County, Kentucky living at 1080 Lakeview Drive.

6. That Defendant Reginald Windham was, at all times relevant hereto, an employee of the Kentucky Justice and Public Safety Cabinet (hereinafter "Justice Cabinet") working as a

Youth Worker Supervisor for the Kentucky Department of Juvenile Justice (hereinafter “Juvenile Justice Department”) at Lincoln Village Regional Detention Center (hereinafter “Lincoln Village”) until his criminal indictment and termination for his conduct during Gynnya’s stay at Lincoln Village which ended with her death. Defendant Windham is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Windham is also sued in his individual and official capacities for his actions and inactions as a policymaker which resulted in Lincoln Village’s unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Windham is also sued in his individual capacity for negligence, negligence per se, negligent hiring, negligent training, negligent supervision, negligent retention, and false imprisonment.

7. That Defendant Victor Holt was, at all times relevant hereto, an employee of the Justice Cabinet working as a Youth Worker Supervisor for the Juvenile Justice Department at Lincoln Village until his criminal indictment and termination for his conduct during Gynnya’s stay at Lincoln Village which ended with her death. Defendant Holt is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Holt is also sued in his individual and official capacities for his actions and inactions as a policymaker which resulted in Lincoln Village’s unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate

indifference to the constitutional rights of Gynnya. Defendant Holt is also sued in his individual capacity for negligence, negligence per se, negligent hiring, negligent training, negligent supervision, negligent retention, assault and false imprisonment.

8. That Defendant Bob Hayter was, at all times relevant hereto, an employee of the Justice Cabinet working as the Commissioner for the Juvenile Justice Department until his termination as a result of the circumstances surrounding Gynnya's death at Lincoln Village which ended with her death. Defendant Hayter is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Hayter is also sued in his individual and official capacities for his actions and inactions as a policymaker, which resulted in Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Hayter is also sued in his individual capacity for negligence, negligence per se, negligent hiring, negligent training, negligent supervision, and negligent retention.

9. That Defendant Mark Cook has been, at all times relevant hereto, an employee of the Justice Cabinet working as the Deputy Commissioner Program Director for the Juvenile Justice Department. Defendant Cook is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Cook is also sued in his individual and official capacities for his actions and inactions as a policymaker, which resulted in Lincoln Village's

unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Cook is also sued in his individual capacity for negligence, negligence per se, negligent hiring, negligent training, negligent supervision, and negligent retention.

10. That Defendant Michelle Grady has been, at all times relevant hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as the Facility Superintendent of Lincoln Village. Defendant Grady is sued in her individual and official capacities for her actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Grady is also sued in her individual and official capacities for her actions and inactions as a policymaker, which resulted in Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Grady is also sued in her individual capacity for negligence, negligence per se, negligent hiring, negligent training, negligent supervision, negligent retention, and false imprisonment.

11. That Defendant Michael Price was, at all times relevant hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as the Assistant Superintendent of Lincoln Village. Defendant Price is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Price is also sued in his official capacity for his

actions and inactions as a policymaker, which resulted in Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Price is also sued in his individual capacity for negligence, negligence per se, negligent hiring, negligent training, negligent supervision, negligent retention, and false imprisonment.

12. That Defendant Brent Kimbler was, at all times relevant hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as a Youth Services Program Supervisor at Lincoln Village. Defendant Kimbler is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Kimbler is also sued in his individual and official capacities for his actions and inactions as a policymaker and for Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Kimbler is also sued in his individual capacity for negligence, negligence per se, negligent hiring, negligent training, negligent supervision, negligent retention, and false imprisonment.

13. That Defendant Vicki Mullins has been, at all relevant times hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as a Counselor at Lincoln Village. Defendant Mullins is sued in her individual and official capacities for her actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional

rights of Gynnya. Defendant Mullins is also sued in her individual and official capacities for Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Mullins is also sued in her individual capacity for negligence, and negligence per se.

14. That Defendant Lashae Newby has been, at all relevant times hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as a Youth Worker at Lincoln Village. Defendant Newby is sued in her individual and official capacities for her actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Newby is also sued in her individual and official capacities for Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Newby is also sued in her individual capacity for negligence, and negligence per se.

15. That Defendant Chris Johnson was, at all times relevant hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as a Youth Worker at Lincoln Village until his criminal indictment and termination for his conduct during Gynnya's stay at Lincoln Village which ended with her death. Defendant Johnson is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Johnson is also sued in his individual and official capacities for Lincoln Village's unconstitutional policies, procedures,

or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Johnson is also sued in his individual capacity for negligence, negligence per se, assault, and battery.

16. That Defendant Kevin Johnson has been, at all times relevant hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as a Youth Worker at Lincoln Village. Defendant Johnson is sued in his individual and official capacities for his actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Johnson is also sued in his individual and official capacities capacity for Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Johnson is also sued in his individual capacity for negligence, negligence per se, assault, and battery.

17. That Defendant Lisa Rivers has been, at all times relevant hereto, an employee of the Justice Cabinet working for the Juvenile Justice Department as a Youth Worker at Lincoln Village. Defendant Rivers is sued in her individual and official capacities for her actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Rivers is also sued in her individual and official capacities for Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate

indifference to the constitutional rights of Gynnya. Defendant Rivers is also sued in her individual capacity for negligence, negligence per se, assault, and battery.

18. That Defendant Loretta Gaudern has been, at all relevant times, an employee of the Justice Cabinet working for the Juvenile Justice Department as a Youth Worker at Lincoln Village. Defendant Gaudern is sued in her individual and official capacities for her actions and inactions, which directly caused constitutional deprivations of Gynnya which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Gaudern is also sued in her individual and official capacities for Lincoln Village's unconstitutional policies, procedures, or customs – or a lack of constitutional ones – which were the result of, and represented, objective unreasonableness and/or deliberate indifference to the constitutional rights of Gynnya. Defendant Gaudern is also sued in her individual capacity for negligence, negligence per se, assault, and battery.

FACTS

19. That Lincoln Village is a State Secure Detention Center and houses both male and female detainees from the age of 11 to 19 years of age in a 48 bed facility. Lincoln Village has in place a manual of uniform policies and procedures expressing the Juvenile Justice Department philosophy, goals, and operational procedures, these policies and procedures are applicable to Lincoln Village, and these policies and procedures apply to the use of force on, screening, observation, monitoring of, and providing medical assistance to detainees.

20. That Justice Cabinet policy DJJ 713 is attached hereto as **Exhibit B** and provides that in the context of the physical restraint of a youth, only those skills that are “nonpunitive” in nature should be used.

21. That Justice Cabinet policy DJJ 724 is attached hereto as **Exhibit C** and provides that youths are to “*be screened upon admission and continually monitored thereafter in order to assess the risk for self-harm or suicide and maintain physical safety*” and that “*‘One-to-One Supervision’ means when youth are required to stay within very close proximity to staff to ensure constant supervision and immediate intervention if needed for safety reasons.*”

22. That Justice Cabinet policies DJJ 110, LV SOP 110, LV SOP 709.1, LV SOP 709.12, LV SOP 717 and DJJ 717 are attached hereto as cumulative **Exhibit C** and provide, in part, that room checks are to be made at irregular intervals, but will never exceed 15 minute intervals, and verification that the resident is safe and secured in the room is to be documented on the Unit Room Observation Sheet at least every 15 minutes and are to be accurate as to the time the check is made, and also provide that with a youth in isolation an administrative review shall be conducted by the Youth Worker Supervisor or Youth Counselor at 4 hours and reassessed at each shift change, or at least every 8 hours, thereafter to continue to reassess the youth’s readiness for release.

23. That Defendant Price explained in his statement, that was given in the Justice Cabinet’s investigation into Gynnya’s death, attached hereto as **Exhibit E**, that as Assistant Superintendent:

*...his expectations are for staff to look in and check to see if the resident is in their cell every fifteen minutes. **He stated he is also expecting staff to make sure the resident is breathing.** Mr. Price stated his expectation on the hourly wellness check should be more thoroughly documented. **He was asked if the staff does not notice movement, what staff’s next step should be, if any. Mr. Price stated staff should go in the cell and physically check to see if the resident is alive.**”*

24. That Justice Cabinet policy DJJ 404.7 is attached hereto as **Exhibit F** and provides that “*All Youth Workers shall be...certified in first aid, cardiopulmonary resuscitation (CPR), and Automatic External Defibrillator (AED).*”

25. That the March 1, 2016 “Memorandum of Concern – Gynnya McMillin Death Investigation” prepared by Ed Jewell of the Justice Cabinet’s Internal Investigation Branch, attached hereto as **Exhibit G**, concludes with respect to the investigation into Gynna’s death that systematic falsification of room observation forms led to the staff not noticing Gynnya was in a medically distressed state:

This office believes that placing the priority on form completeness and not verifying the accuracy, has caused staff to become more complacent. This in turn became a systematic practice of some staff falsifying the Room Observation Forms. The systematic breakdown led to staff possibly not noticing Gynnya in a medical distressed state. At the very least staff would have noticed Gynnya was unresponsive earlier than when she was discovered.

26. That Mr. Jewell’s Case Report, attached hereto as **Exhibit H**, substantiates that Gynnya was not provided appropriate supervision, medical care, food, clothing, shelter or education during her stay at Lincoln Village and cites the offenders to be Defendants Windham, Holt, Chris Johnson, and Kimbler, and Youth Workers William Blann and Karen Littlejohn.

27. That on Sunday, January 10, 2016 at approximately 6:07am, Gynnya became a resident at Lincoln Village after being transported to Lincoln Village via the Shelbyville Police Department, which arrested her without a warrant following a dispute with her mother at their home in Shelbyville, Kentucky.

28. That after being contacted by a Court Designated Worker Judge Donna Dutton had ordered that Gynnya be transported to Lincoln Village to be held until Monday for her court date scheduled at 11:00 a.m. Monday morning.

29. That Gynnya was a resident of Lincoln Village from her arrival on Sunday at 6:07am until Monday, January 11, 2016 at 9:55am when her lifeless body was discovered, and during this approximate 28 hour stay Lincoln Village staff falsified sixty-four (64) bed checks

relative to Gynnya whereby the staff did not perform a check but noted they did, and, in addition, inaccurately documented what occurred during other bed checks.

30. That on Sunday from approximately 6:17am to 6:22am, Gynnya was forcibly restrained in the Lincoln Village intake room by Lincoln Village Defendants Chris Johnson, Kevin Johnson, Loretta Gaudern and Lisa Rivers for purportedly refusing to remove her hoodie. These 4 individuals forcibly pinned, held, and contorted Gynnya's body using a form of martial arts known as Aikido Control Techniques after Defendant Holt received approval for the use of force from Defendant Price. These 4 Defendants elected to use this form of martial arts on Gynnya behind a counter, which obscured their conduct from the video cameras as reflected by a screen shot from the video, which is attached hereto as **Exhibit I**

31. That at 6:21am – before Gynnya was taken to her isolation cell 423 – Defendant Gaudern removed the mattress pad from the metal bed in that room, for no apparent reason, as reflected by a screen shot from the video, which is attached hereto as **Exhibit J**.

32. That when they placed Gynnya into her isolation cell Defendants Chris and Kevin Johnson elected at 6:22am to contort Gynnya's arms with more Aikido Control Techniques and forcibly placed her on her knees on the metal bed frame with her hands placed on the wall and directed her to remain in that position as reflected by the screen shots from the video which are attached hereto as **Exhibit K**.

33. That isolation cell 423 is located approximately 15 to 20 feet away from the Lincoln Village intake desk; has a heavy steel door that closes and locks in order to confine the resident; has a small, narrow window allowing Lincoln Village workers to monitor the resident; and is also monitored by a camera within the cell which feeds video, without audio, to a

computer monitor within the Lincoln Village control room. A copy of the screenshot of the location of isolation cell 423 is attached as **Exhibit L**.

34. That on Sunday from approximately 6:22am until 3:44pm Gynnya was left in the isolation cell 423 on a metal bed frame without a mattress pad or blanket while she balled herself up in her sweatshirt in order to stay warm.

35. That on Sunday from approximately 3:44pm to 5:19 pm Gynnya was allowed out of her isolation cell and during this time was provided food, water, a shower, and was formally processed, screened and booked at or about 4:30pm by Defendant Mullins and Youth Worker Littlejohn. That Gynnya responded “no” to all 52 questions on the MAYSI-2 which should have alerted Defendant Mullins to a clear “false-negative” response pattern and reduced confidence in the truthfulness of Gynnya’s responses and prompted consideration of increased precautionary supervision levels including “One-to-One” supervision. That Defendant Mullins should have followed up with inquiries as to the “no” response pattern.

36. That on Sunday at approximately 5:19 p.m. Gynnya was returned to her isolation cell with a mattress pad on the metal bed frame.

37. That from approximately 6:22am to 5:19pm on Sunday Lincoln Village Youth Workers failed to perform and/or falsified twenty-three (23) required bed checks on Gynnya while she was confined in isolation cell 423. A copy of the Justice Cabinet’s Internal Investigation Branch’s “Bed Check Spreadsheet” is attached as **Exhibit M**.

38. That from approximately 5:19pm to 11:39pm on Sunday Lincoln Village Youth Workers failed to perform and/or falsified twelve (12) more required bed checks on Gynnya while she was confined in isolation cell 423.

39. That from 10:35pm to 11:39pm on Sunday Defendant Windham was responsible for failing to perform and/or falsifying four (4) bed checks on Gynnya at 10:35pm, 10:50pm, 11:05pm and 11:20pm.

40. That on Sunday Defendant Windham did manage to do a bed check, at approximately 11:39:00pm, when he heard coughing from Gynnya's cell that caused him *"to check on her to make sure she had not thrown up and was choking or something like that,"* as reflected in his statement attached hereto as **Exhibit N**. That Defendant Windham incorrectly documented he performed this bed check at 11:35pm.

41. That at 11:39:00pm on Sunday – when Defendant Windham heard sounds from Gynnya's cell that led him to believe she may have been choking on her own vomit he walked to her cell to look in the narrow slit in the door and observed her in her cell from which video was fed to the the Lincoln Village control room where Defendant Newby was supposed to be monitoring the video which showed at 11:39:01 that Gynnya's *"...has been moving constantly since rolling onto her right side. Gynnya rolled in what appeared to be an uncontrolled manner from her right side onto her stomach resulting in her left leg hanging off the bed at the knee,"* as reflected by a screen shot from the video, which is attached hereto as **Exhibit O**.

42. That on Sunday at 11:39:10pm Defendant Windham stood outside Gynnya's cell and watched for 18 seconds her last gasps and dying breaths and final uncontrollable movements and seizure which included, at 11:39:24, Gynnya rolling *"back onto her right side"*, a position from which she never moved again. Defendant Windham, however, unreasonably and/or indifferently, did not lift a finger to help her, instead returning to his desk after observing her for approximately 18 seconds as reflected in his attached statement (**Exhibit N**), and as reflected in by the attached screens shots from the video which are attached hereto as **Exhibit P**.

43. That on Sunday between 11:39pm and 11:44pm Gynnya passed away from a sudden cardiac event, called long QT syndrome (LQTS) type 2, for which a prompt resuscitative intervention and emergency call in all likelihood would have saved Gynnya's life according to Plaintiffs' consulting expert, and world renowned long QT syndrome expert, Dr. Peter Schwartz, whose letter and biographical sketch are attached hereto as cumulative **Exhibit Q**.

44. That Gynnya most likely passed away from a sudden cardiac arrhythmogenic death while sleeping with molecular evidence of LQTS according to Kentucky's Office of the Chief Medical Examiner autopsy report and Mayo Clinic laboratory testing which are attached hereto as cumulative **Exhibit R**.

45. That on Sunday at 11:39pm national juvenile justice best practices and generally accepted professional standards required Defendant Windham to enter Gynnya's cell, assess her condition, determine if she was breathing and had a pulse, make an emergency call, and institute prompt resuscitative intervention according to Plaintiffs' consulting expert, Dr. David Roush, the Chief Content Editor – and coauthor of the Foreword – for the Desktop Guide to Quality Practice for Working with Youth in Confinement published by the National Institute of Corrections (NIC) in 2014. Dr. Roush's letter and resume are attached hereto as cumulative **Exhibit S**.

46. That Defendant Windham even admits that, *"...looking back, he sees so many things that could have been done that could have prevented this from happening. He agrees if he had done his bed checks and went into the cell to do the wellness check, he may have detected her condition early enough to have gotten her some medical attention."* (**Exhibit N**)

47. That Gynnya never moved from the last position Defendant Windham saw her in at 11:39:24pm as reflected in the attached screen shot from the video and 2 time lines generated during the Justice Cabinet investigation into Gynnya's death which are attached hereto as

Exhibit T. That the video annotation states that Gynnya never moved from her “right side” after her last movement in front of Defendant Windham, but one of the attached time lines reflects her last movement was to her “left side.”

48. That Defendant Newby was working in the control room of Lincoln Village from Sunday at approximately 9:45 p.m. until approximately 6:30 a.m. Monday morning and had access to a computer monitor in the control room, which provided the video feed from the camera within Gynnya’s cell. That Defendant Newby also failed to take steps to ensure that Gynnya was breathing properly, enter her isolation cell, have another worker enter her isolation cell, and/or take any action at all to ensure the health and safety of Gynnya despite the fact that Gynnya was convulsing around 11:39pm on Sunday and did not move at all after 11:39:24 p.m.

49. That after Gynnya passed away at or about 11:39pm to 11:44pm on Sunday Defendant Windham falsely documented twenty-four (24) times on the bed check form that he performed additional bed checks when he did not, and in each instance he noted she “*appears asleep*” when she was in fact dead.

50. That from 11:39pm on Sunday until her lifeless body was discovered at 9:55am on Monday no one at Lincoln Village took required steps to ensure Gynnya was breathing and alive, and failed to take any action at all to ensure the health and safety of Gynnya.

51. That Youth Worker David Carter looked through the narrow window of Gynnya’s cell at 12:17:25am, but did not note on the bed check form that he even performed a bed check at this time.

52. That Youth Worker Carter looked through the narrow window of Gynnya’s cell at 2:10:27am and 2:28:47am on Monday and noted on the bed check form that he performed these

checks on Gynnya at 2:15:00am and 2:30:00am, and that she “*appears asleep*” when she was in fact dead at those times.

53. That Youth Worker Carter looked through the narrow window of Gynnya’s cell at 4:47:54 a.m. on Monday but did not note on the bed check form that he even performed a bed check on Gynnya who was dead at that time.

54. That Youth Worker Richard Smiley looked through the narrow window of Gynnya’s cell at approximately 4:59:19am on Monday but did not note on the bed check form that he even performed a bed check on Gynnya who was dead at that time.

55. That Youth Worker William Blann falsely documented on the bed check form that he performed an additional bed check on Gynnya at 6:00:00am on Monday but noted on the bed check form that he performed this check on Gynnya and that she “*appears asleep*” when she was in fact dead at that time.

56. That Youth Worker Blann looked through the narrow window of Gynnya’s cell at 6:20:13am on Monday but noted on the bed check form that he performed this check on Gynnya at 6:15:00 a.m., and that she was “*laying in bed*” when she was in fact dead at that time.

57. That Youth Worker Blann opened Gynnya’s cell door at approximately 6:29:09am on Monday while holding a tray containing Gynnya’s breakfast in his left hand, and pounded on the cell door with his right fist to attempt to awaken Gynnya. That without receiving a response from Gynnya Youth Worker Blann closed the cell and callously ate her breakfast about 20 minutes later having falsely noted on the bed check form that he performed this check at 6:30:00am and that she “*declined breakfast – refused to acknowledge staff*” when she was in fact dead.

58. That Youth Worker Blann looked through the narrow window of Gynnya's cell at 6:43:48am on Monday, and noted on the bed check form that he performed this check on Gynnya at 6:45:00am, and that she was "*laying in bed*" when she was in fact dead.

59. That Youth Worker Blann falsely documented on the bed check form that he performed an additional bed check on Gynnya at 7:00:00am on Monday, but noted on the bed check form that he performed this check and that she was "*laying in bed*" when she was in fact dead.

60. That Defendant Holt falsely documented on the bed check form that he performed additional bed checks on Gynnya at 7:15:00am, 7:30:00am, and 7:45:00am on Monday when he noted on the bed check form that he performed these checks on and that she was "*laying in bed appears asleep*" when she was in fact dead.

61. That Youth Worker Michael Porter was working in the control room of Lincoln Village on Monday from approximately 7:30 a.m. until after Gynnya's lifeless body was discovered and therefore had access to a computer monitor which provided the video feed from Gynnya's cell. That Youth Worker Porter did nothing to ensure Gynnya was breathing or alive despite her not moving at all during his entire shift on Monday.

62. That Youth Worker Blann looked through the narrow window of Gynnya's cell at 7:56:27 a.m. on Monday but did not note on the bed check form that he even performed a bed check on Gynnya who was in fact dead.

63. That Defendant Holt opened the cell door of Gynnya's cell at 8:07:38am on Monday and attempted to communicate with Gynnya and without receiving a response closed the door to her cell and noted on the bed check form that he performed this check on Gynnya at 8:00:00am, and that she was "*laying in bed appears asleep*" when she was in fact dead.

64. That Defendant Holt falsely documented on the bed check form that he performed an additional bed check on Gynnya at 8:15:00am, on Monday, and noted on the bed check form that he performed this check on Gynnya and that she was *"laying in bed appears asleep"* when she was in fact dead.

65. That Defendant Gaudern looked through the narrow window of Gynnya's cell at 8:31:43 a.m. and 8:44:00am on Monday, and noted on the bed check form that she performed these checks on Gynnya at 8:30:00am and 8:45:00am and that she was *"laying in bed appears asleep"* when she was in fact dead.

66. That Youth Worker Blann opened the cell door of Gynnya's cell at 8:51:39am on Monday and attempted to communicate with Gynnya. That without receiving a response from Gynnya, Defendant Blann closed the cell door and falsely noted on the bed check form that he performed this check on Gynnya at 8:53:00am, and that she *"declined snack"* when she was in fact dead.

67. That Defendant Gaudern looked through the narrow window of Gynnya's cell at 8:58:12am on Monday and noted on the bed check form that she performed this check on Gynnya at 9:00:00am, and that she was *"laying in bed appears asleep"* when she was in fact dead.

68. That Defendant Holt falsely documented on the bed check form that he performed additional bed checks on Gynnya at 9:15:00am and 9:30:00am on Monday, and noted on the bed check form that he performed these checks on Gynnya and that she was *"laying in bed non-compliant behavior"* when she was in fact dead.

69. That Defendant Holt opened the cell door of Gynnya's cell at 9:36:19am on Monday, entered the cell and picked up a water bottle sitting on the bed. That Defendant Holt

then used the water bottle to push on Gynnya's body and then attempted to shake Gynnya's body. That without receiving a response from Gynnya, Defendant Holt then exited Gynnya's cell at 9:37:16am taking her water bottle with him, returned three minutes later at 9:40am to close her cell door, and noted on the bed check form that he performed this check on Gynnya at 9:35:00am, and falsely and callously reported that the "resident was told to get up and change out for court and ignored staff. Resident has been doing this since her arrival" when Gynnya was in fact dead. These events from 9:36 to 9:40am are reflected in the attached screen shots of the video attached hereto as **Exhibit U**.

70. That a Sheriff's Deputy arrived at Lincoln Village at approximately 9:55:00 a.m. to transport Gynnya to Shelby County District Court for her court appearance.

71. That Defendant Chris Johnson opened Gynnya's cell door at 9:55:43am on Monday and attempted to communicate with Gynnya. That Defendant Chris Johnson entered the cell and at 9:56:08am kicked the bottom of the bed frame. That Defendant Chris Johnson then tapped the bottom of Gynnya's feet at 9:56:42am. That Defendant Holt then entered the cell as Defendant Chris Johnson shook the Gynnya's shoulder at 9:56:47am. That Defendant Holt then shook Gynnya's entire body and he picked up the side of the mattress at 9:57:31am when Gynnya's body was stiff and rigid. That at 9:59:04am Defendant Chris Johnson and Defendant Holt exited Gynnya's cell while she "*...is in the same position she has been in for the past 10 hours.*" These events from 9:55 to 9:59am are reflected in the attached screen shots of the video attached hereto as **Exhibit V**.

72. That at 10:00:41am Lincoln Village Nurse Jennifer Swiney arrived to assess Gynnya and left to get Lincoln Village Nurse Paula Maupin for assistance. That at 10:02:03 RN Swiney returned to Gynnya's cell with RN Maupin who checked for a pulse and lifted what

appeared to be a rigid leg, as reflected on the screenshots of the video attached hereto as **Exhibit W**.

73. That Youth Worker Porter called 911 from the Lincoln Village control room on Monday at approximately 10:03am – eight (8) minutes after Gynnya was found to be nonresponsive – and then transferred the 911 dispatcher to RN Swiney who told the 911 dispatcher that Gynnya was cold, stiff, and without respirations or any vital signs. That RN Swiney also told the 911 dispatcher that CPR had not yet been started, she did not know if they had any CPR protocol at Lincoln Village, and declined the 911 dispatcher's offer to talk someone through CPR.

74. That at 10:05:31am RN Maupin returned to Gynnya's cell with her CPR mask, staff appeared to be milling around discussing what they should do, and at 10:06:25am RN Maupin began performing CPR on Gynnya and RN Swiney arrived to assist, as reflected on the screenshots of the video attached hereto as **Exhibit X**.

75. That at 10:14:23am Emergency Medical Techs entered Gynnya's cell, assessed her condition, and "*No life saving efforts were performed by the paramedics*", as reflected on the attached screenshot of the video attached hereto as **Exhibit Y**.

76. That at 10:45:46am the Hardin County Coroner, William H. Lee Jr., DMD arrived at Gynnya's cell. That at 11:14:38am Coroner Lee and the EMTs placed the body of Gynnya in a body bag. That at 11:31:20am Coroner Lee and the EMTs removed the Gynny's body from her isolation cell.

77. That Defendant Windham has a documented history of misconduct in his employment at Lincoln Village which includes failing to complete medication forms on inmates,

two (2) instances of excessive and/or inappropriate use of force on inmates, failing to follow inmates' medical restrictions, and failing to provide inmates medication.

78. That Defendant Holt has a documented history of misconduct in his employment at Lincoln Village including two (2) instances of excessive and/or inappropriate use of force on inmates.

79. That Defendant Chris Johnson has a documented history of alleged misconduct in his employment at Lincoln Village including failing to supervise inmates, and excessive and/or inappropriate use of force on inmates.

80. That Youth Worker Blann has a documented history of alleged misconduct in his employment at Lincoln Village including failing to issue appropriate discipline to inmates, allegations of inappropriate sexual conduct, theft, drug use, and inappropriate use of force on inmates.

81. That Defendants Windham, Holt and Chris Johnson, and Youth Worker William Blann, and other Lincoln Village employees are required to be, and in fact are, certified in First Aid, CPR, and/or use of an AED, and that Defendant Windham failed to perform CPR and/or use an AED on Gynnya at 11:39pm on January 10th when CPR and/or an AED most likely would have saved her life.

82. That on or about October 18, 2013, Defendant Michael Price held a staff meeting at Lincoln Village wherein he stressed that any staff conducting bed checks must make sure that the youth is breathing as part of the bed check, *"[H]e would not stand behind anyone that failed to do their jobs, referencing bed checks, that it was impossible to have a bed check on several residents with the same time; staff that conducts a bed check should stop at the door of each*

resident and make sure the youth is breathing”, as reflected on the attached October 18, 2013 Staff Meeting memo attached hereto as **Exhibit Z**.

83. That at all relevant times, the Defendants, acted individually and in their official capacities under the color of state law and at all relevant times Defendants acted within the course and scope of their duties as employees and/or as elected officials and/or office holders of the Justice Cabinet doing business as the Juvenile Justice Department doing business as Lincoln Village.

COUNT I
(42 USC §1983 – Excessive Force Under the 4th Amendment)

84. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-80 of this Complaint.

85. That at the time of the events described herein, Gynnya was a juvenile pretrial detainee who had yet to have a probable cause hearing so she was presumed to be innocent and held only to ensure her presence at trial. *Bell v. Wolfish*, 441 U.S. 520, 536 (1979).

86. That the Fourth Amendment protects a pretrial detainee from the excessive use of force during the booking process. *Despain v. City of Louisville*, No. 3:14CV-P602-DJH, 2015 WL 403158, at *5 (W.D. Ky. Jan. 28, 2015) (quoting *Boone v. Spurgess*, 385 F. 3d 923, 934 (6th Cir. 2004)). See also *Bonner-Turner v. City of Ecorse*, 627 F. App'x 400, 412 (6th Cir. 2015) (citing *Aldini v. Johnson*, 609 F.3d 858, 864 (6th Cir.2010)).

87. The aforementioned actions and/or inactions of certain Defendants – including but not limited to the conduct of Defendants Chris Johnson, Kevin Johnson, Gaudern and Rivers – amounts to the unconstitutional deprivation of Gynnya’s constitutional right to be free from unreasonable seizure and punishment as a pretrial detainee. Defendants’ actions and inactions

amounted to the objectively unreasonable use of inappropriate and excessive force upon Gynnya's person in violation of her clearly established rights secured by the 4th Amendment.

88. That Defendants Chris Johnson, Kevin Johnson, Gaudern, and Rivers used excessive force that was objectively unreasonable on Gynnya – after receiving authorization from Defendants Holt and Price to use force – by using martial arts restraints because Gynnya failed to remove her hoodie during the intake process and this conduct further does not comport with juvenile justice best practices and generally accepted professional standards for the care of youth. That the imposition of punishment by way of an “Aikido” martial arts restraint constituted excessive force for which Defendants Chris Johnson, Kevin Johnson, Gaudern, and Rivers are responsible in their individual and official capacities. That there was no reasonable reason to force removal of her hoodie since she had been in a police cruiser for over an hour before she arrived at Lincoln Village and had caused absolutely no problem making the likelihood she had contraband or a weapon on her person extremely low, if nonexistent. She should have been placed in isolation until she was willing to remove her hoodie.

89. That Defendant Price's authorization given to Defendant Holt for the use of force on Gynnya at intake for refusing to remove her hoodie amounted to the unconstitutional deprivation of Gynnya's constitutional right to be free from unreasonable seizure and punishment as a pretrial detainee. Defendant Price's authorization of the use of force to search Gynnya – who had traveled some 60 miles from Shelbyville to Lincoln Village in a police cruiser – was objectively unreasonable in violation of her clearly established rights secured by the 4th Amendment as there is no objectively reasonable likelihood she would have weapons or contraband on her person. That juvenile justice best practices and generally accepted professional standards mandate that a non compliant youth in this situation be placed in isolation

until he or she is compliant for a search, versus forcibly thrown to the ground with mixed martial arts techniques to effectuate an unnecessary search.

90. That based upon information and belief the authorization of the unnecessary use of excessive force by Defendant Price and other supervisory/management employees of the Juvenile Justice Department and Lincoln Village – including Defendants Windham, Holt, Hayter, Cook, Grady, and Kimbler – constitutes a widespread abuse sufficient to notify the supervising officials that it is occurring and it is obvious, flagrant, rampant, and of continued duration, rather than an isolated occurrence.

91. That Defendant Price is liable in his individual and official capacity for his aforementioned authorization of and encouragement of the unnecessary use of excessive force to effectuate a search of Gynnya for refusing to remove her hoodie.

92. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their individual and/or official capacities for their part in promulgating and/or enforcing policies, practices and customs in the Juvenile Justice Department and/or at Lincoln Village which were unconstitutional and objectively unreasonable to the rights of individuals, such as Gynnya, who are regularly restrained with excessive force for non-violent behavior.

93. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their individual and/or official capacities for their role in the Juvenile Justice Department's and Lincoln Village's policy, practice and custom relative to the use of force for non-violent behavior which constitutes the "moving force" behind Gynnya's constitutional deprivation.

94. That as a direct and proximate result of their aforementioned conduct Defendants Windham, Holt, Hayter, Cook, Grady, Price, Kimbler, Chris Johnson, Kevin Johnson, Rivers and

Gaudern are liable in their individual and/or official capacities for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

95. That as a direct and proximate result of the aforementioned conduct – for which Defendants Windham, Holt, Hayter, Cook, Grady, Price, Kimbler, Chris Johnson, Kevin Johnson, Rivers and Gaudern are liable in their official and/or individual capacities – Michelle McMillen has suffered the loss of love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT II
(42 USC §1983 – Medical Needs Under the 4th and/or 14th Amendment(s))

96. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-95 of this Complaint.

97. That the Fourth Amendment also protects a pretrial detainee who has yet to have a probable cause hearing from the “*objectively unreasonable*” denial of medical care. *Despain v. City of Louisville*, No. 3:14CV-P602-DJH, 2015 WL 403158, at *5 (W.D. Ky. Jan. 28, 2015) (quoting *Boone v. Spurgess*, 385 F. 3d 923, 934 (6th Cir. 2004)). *See also Bonner-Turner v. City of Ecorse*, 627 F. App'x 400, 412 (6th Cir. 2015) (citing *Aldini v. Johnson*, 609 F.3d 858, 864 (6th Cir.2010)). *See also Currie v. Chhabra*, 728 F.3d 626, 630-31 (7th Cir. 2013).

98. The aforementioned actions and/or inactions of Defendants Windham, Holt, Hayter, Cook, Grady, Price, Kimbler, Mullins, and Newby amount to the unconstitutional deprivation of Gynnya’s constitutional right to proper medical care as a pretrial detainee who had yet to have a probable cause hearing. These Defendants’ actions and inactions, individually and collectively, amounted to an objectively unreasonable denial of medical care to Gynnya in

violation of her clearly established rights secured by the 4th Amendment as explained in *Despain v. City of Louisville*, No. 3:14CV-P602-DJH, 2015 WL 403158, at *5 (W.D. Ky. Jan. 28, 2015) (quoting *Boone v. Spurgess*, 385 F. 3d 923, 934 (6th Cir. 2004)). See also *Bonner-Turner v. City of Ecorse*, 627 F. App'x 400, 412 (6th Cir. 2015) (citing *Aldini v. Johnson*, 609 F.3d 858, 864 (6th Cir.2010)). See also *Currie v. Chhabra*, 728 F.3d 626, 630-31 (7th Cir. 2013).

99. That in the alternative, if the Fourth Amendment's protections from the “objectively unreasonable” denial of medical care are deemed to not apply to Gynnya, then the Fourteenth Amendment's protections from the “deliberate indifference” to medical needs apply to this matter. *Id.*

100. That Defendant Mullins was required by juvenile justice best practices and generally accepted professional standards to question the “no” response to all 52 questions on the MAYSI-2 as clear “false-negative” responses and increased precautionary supervision levels to “One-to-One” should have been instituted which would have put a Youth Worker with Gynnya at 11:39pm on Sunday when she had her cardiac event from which she would have most likely survived if a Youth Worker had been in her presence to initiate resuscitation efforts. That her conduct in accepting these “no” responses without further inquiry constitutes objective unreasonableness and/or deliberate indifference that caused Gynnya to have an inadequate supervision level when she had her cardiac event.

101. That Lincoln Village Youth Workers were required by law, policy, and/or under the circumstances to be effectively monitoring Gynnya at least every fifteen (15) minutes, if not constantly in a “One-to-One” fashion between Gynnya and a Youth Worker, to ensure she was physically safe, breathing, exhibiting signs of life, and to take immediate life-saving measures as circumstances dictated.

102. That Defendant Windham was deeply entrenched within the systemic practice at Lincoln Village which resulted in sixty-four (64) separate instances of falsifying bed checks on Gynnya and Lincoln Village's systemic practice of falsifying required bed checks on all residents, though Defendant Windham did perform a bed check at 11:39pm on Sunday (**Exhibit M**), at the crucial moment when Gynnya had her cardiac event where Defendant Windham heard and watched her die.

103. That Defendant Windham's is liable in his individual and official capacity for his conduct, as described above, which was objectively unreasonable and/or deliberately indifferent on Sunday at 11:39 pm when he failed to confirm Gynnya was physically safe and failed to provide medical care to Gynnya when he heard through a metal door some 15 or 20 feet away a cough so noisy and troubling that he thought she may have been choking on her own vomit (**Exhibit N, pp. 2-3**) so he left his chair and watched her body seize with uncontrollable movements from Gynnya's isolation cell door (**Exhibit P**), yet he did nothing to aide her. Instead he coldly and callously returned to his desk while her heart went from a salvageable V-tach arrhythmia to a life ending V-fib arrhythmia. Defendant Windham no less admits he could have prevented this from happening by doing his bed checks and going into the cell to do the wellness check which would have allowed him to detect her condition and get her medical attention (**Exhibit N, p. 3**)

104. That Defendant Windham was subjectively aware at 11:39pm on Sunday of a risk to Gynnya's health or safety when he thought she was choking on her own vomit and that fact alone required him to follow generally accepted professional standards and enter her room to directly assess whether she was breathing normally with a normal pulse and by failing to exhibit an ounce of concern whatsoever for her health or safety. His conduct was objectively

unreasonable, deliberately indifferent, and shocks the conscious. The objective unreasonableness and/or deliberate indifference he exhibited is only compounded by the fact when he got out of his chair at the intake desk to observe her at 11:39pm he saw the conclusion of her seizing with uncontrollable body movements from which she did not move until her lifeless body was discovered 10 hours later.

105. That Defendant Windham was objectively aware at 11:39pm on Sunday of a substantial risk of serious harm to Gynnya's health or safety when he thought she was choking on her own vomit and saw her body seizing uncontrollably. That Gynnya's need for medical care, that she did not receive from Defendant Windham, rises to a constitutional violation because the need was so obvious that even a lay person would realize that a person who is potentially choking on his or her own vomit, much less seizing uncontrollably, needs immediate medical attention.

106. That Defendant Newby was subjectively and objectively aware at 11:39pm on Sunday of a substantial risk of serious harm to Gynnya's health or safety and need for medical care by virtue of the fact Gynnya was seizing and moving uncontrollably on the control room cameras which Defendant Newby was monitoring, and Gynnya then laid in the same position from 11:39:24pm until her lifeless body was discovered 10 hours later. That Defendant Newby's conduct in doing nothing in response to what a lay person would view as a person in distress amounts to deliberate indifference and/or objective unreasonableness under constitutional law.

107. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their individual and/or official capacities for their part in authorizing, promulgating and/or enforcing policies, practices and customs in the Juvenile Justice Department and/or at

Lincoln Village which were unconstitutional and objectively unreasonable and/or deliberately indifferent to the rights of individuals, such as Gynnya, when it comes to medical care.

108. That the conduct of Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler rises to a constitutional violation by supervisors/managers – and was objectively unreasonable and deliberately indifferent – in view of the March 1, 2016 “Memorandum of Concern – Gynnya McMillin Death Investigation” prepared by Ed Jewell of the Justice Cabinet’s Internal Investigation Branch which concludes with respect to the investigation into Gynna’s death that:

This office believes that placing the priority on form completeness and not verifying the accuracy, has caused staff to become more complacent. This in turn became a systematic practice of some staff falsifying the Room Observation Forms. The systematic breakdown led to staff possibly not noticing Gynnya in a medical distressed state. At the very least staff would have noticed Gynnya was unresponsive earlier than when she was discovered. (Exhibit G)

That by encouraging form completeness over accuracy these managerial/supervisory Defendants expressly and actively authorized and acquiesced to the offending conduct of violating Gynnya’s clearly established constitutional right to attention to her health and safety, and to receive necessary medical care and appropriate supervision levels, versus the improper and substandard monitoring she received in her detention cell. This conduct thereby constitutes the “moving force” behind Gynnya’s constitutional deprivation and shocks the conscience.

109. That the conduct of Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler rises to a constitutional violation by supervisors/managers – and was objectively unreasonable and/or deliberately indifferent – in view of Mr. Jewell’s Case Report which substantiates that Gynnya was not provided appropriate supervision, medical care, food, clothing, shelter or education during her stay at Lincoln Village and cites the offenders to be Defendants Windham, Holt, Chris Johnson and Kimbler, and Youth Workers Blann and

Littlejohn (**Exhibit H**). That Defendant Windham did not provide necessary medical care to Gynnya at 11:39pm on Sunday due to the aforementioned constitutional violations of these managerial/supervisory Defendants, including himself, and Gynnya was therefore denied proper medical care with improper and substandard monitoring in her detention cell.

110. That the conduct of Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler rises to a constitutional violation by supervisors/managers – and was objectively unreasonable and/or deliberately indifferent – in view of their active roles in authorizing and encouraging falsifying bed checks so that forms are complete, encouraging the unnecessary use of excessive force to address non violent conduct, a systemic failure according to Mr. Jewell’s Memorandum of Concern that caused Defendant Windham and other Youth Workers to not notice Gynnya in a medically distressed state, the unacceptable delay in the health screening of Gynnya by Defendant Mullins, and the inadequate health precautionary screening performed by Defendant Mullins. These systemic failures, authorized by these managers/supervisors, individually and collectively led to the death of Gynnya.

111. That as a direct and proximate result of their aforementioned conduct Defendants Windham, Holt, Hayter, Cook, Grady, Price, Kimbler, Mullins, Chris Johnson, and Newby are liable in their individual and/or official capacities for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

112. That as a direct and proximate result of the aforementioned conduct – for which Defendants Windham, Holt, Hayter, Cook, Grady, Price, Kimbler, Mullins, Chris Johnson and Newby are liable in their official and/or individual capacities – Michelle McMillen has suffered

the loss of love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT III
(42 USC §1983 – Failure to Train/Supervise Under the 4th and/or 14th Amendment(s))

113. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-112 of this Complaint.

114. That the aforementioned actions and/or inactions of Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler amounts to the unconstitutional deprivation of Gynnya's constitutional right to medical care, and to be free from unreasonable seizure and punishment as a pretrial detainee. These Defendants' failure to train and/or supervise themselves and their subordinates to provide proper medical care to Lincoln Village detainees, such as Gynnya, was objectively unreasonable and/or deliberately indifferent and violates the 4th and 14th Amendments. These Defendants' failure to train and/or supervise their employees/agents to prohibit the use of excessive force against Lincoln Village detainees, such as Gynnya, was objectively unreasonable and violates the 4th Amendment.

115. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler failed to employ qualified persons for positions of authority, to properly or conscientiously train and supervise the conduct of such persons in their employment, to promulgate appropriate operating policies and procedures either formally or by custom to protect the constitutional rights of Gynnya, to ensure that proper policies and procedures were followed to safeguard the health and safety of Gynnya.

116. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their official and/or individual capacities for their actions as they explicitly authorized, approved, and/or knowingly acquiesced to the unconstitutional conduct of their subordinates.

117. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their official capacities for their actions and/or inactions as they failed to train and/or supervise their subordinates despite having knowledge of a pattern of similar constitutional violations, and/or the fact that the constitutional violations were patently obvious and a highly predictable consequence of inadequate training and/or supervision.

118. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their individual and/or official capacities because Lincoln Village's policy, practice and custom relative to the inadequate training and/or supervision constitutes the "moving force" behind Gynnya's constitutional deprivation and shocks the conscious.

119. That as a direct and proximate result of their aforementioned conduct Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their individual and/or official capacities for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

120. That as a direct and proximate result of the aforementioned conduct – for which Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler are liable in their official and/or individual capacities – Michelle McMillen has suffered the loss of love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT IV
(Negligence)

121. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-120 of this Complaint.

122. That pursuant to existing Kentucky common law including, but not limited to, Destock v. Logsdon, Ky., 993 S.W.2d 952 (1999), and Grayson Fraternal Order of Eagles v Claywell, Ky. 736 S.W.2d 328 (1987) "*the rule is that every person owes a duty to every other person to exercise ordinary care in his activities to prevent foreseeable injury*" and "*this is an old rule, and a good one.*" That Defendants breached their duty to Gynnya, as described throughout this Complaint, by allowing, in their respective ways, Gynnya to be forcibly restrained with a wholly unnecessary martial arts restraint considering the circumstances, improperly screened for purposes of establishing observation protocols and precautionary supervision levels, and subsequently left in an isolation cell unmonitored and without proper medical care at 11:39pm leading to her foreseeable injury and death.

123. That Defendants in their individual capacities owed a duty of care to prevent the foreseeable injury to Gynnya during the course of their conduct in forcibly restraining Gynnya with an unnecessary martial arts restraint.

124. That Defendants in their individual capacities owed a duty of care to prevent the foreseeable injury and death of Gynnya stemming from their conduct in failing to send her to isolation without using martial arts restraint techniques, properly set observation levels, monitor, observe, and provide medical care to Gynnya while she was detained in isolation at Lincoln Village, including at 11:39pm on Sunday when Defendant Windham, negligently, grossly negligently, and recklessly failed to enter Gynnya's cell to assess and resuscitate her.

125. That Defendants in their individual capacities owed a duty of care to prevent the foreseeable injury and death of Gynnya as these Defendants did not have appropriate policies and procedures in place and/or failed to follow same to properly monitor, observe, screen for purposes of establishing observation protocols, and provide medical care to Gynnya while she was detained in isolation at Lincoln Village.

126. That Plaintiffs further state that after Gynnya was placed in isolation, the conduct of Defendants in their individual capacities was so negligent and careless and was done with such an extreme indifference to the value of human life, that same was arbitrary and shocking to the conscious and community, and that Plaintiffs should be awarded compensatory and punitive damages in a sum sufficient to deter others from this type of conduct in the future.

127. That as a direct and proximate result of the breach of these duties Gynnya unnecessarily suffered and died while in the care and custody of the Defendants at Lincoln Village.

128. That as a direct and proximate result of their aforementioned conduct Defendants are liable in their individual capacities for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

129. That as a direct and proximate result of the aforementioned conduct Defendants are liable in their individual capacities for Michelle McMillen's loss of the love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT V
(Negligence Per Se)

130. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-129 of this Complaint.

131. That Defendants in their individual capacities were obligated to comply with all applicable laws, regulations, rules and orders of every governmental agency having jurisdiction over the Lincoln Village facility, or the activities or uses to be conducted there, including, without limitation, those relating to the use of physical force, isolation, monitoring, and the providing of medical care.

132. That these Defendants failed to comply with all applicable laws, regulations, rules and orders and Plaintiffs were injured by these statutory violations and are therefore entitled to recover their compensatory and punitive damages by virtue of KRS 446.070.

133. That Defendants violated various statutory regulations and same constitutes violations of state and federal law which makes said Defendants, and each of them, also *per se* liable for any and all damages proximately caused by their violations as hereinbefore and hereinafter set out.

134. That as a direct and proximate result of the breach of these duties Gynnya suffered and died while in the care and custody of Lincoln Village.

135. That as a direct and proximate result of their aforementioned conduct Defendants are liable in their individual capacities for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

136. That as a direct and proximate result of the aforementioned conduct Defendants are liable in their individual capacities for Michelle McMillen's loss of the love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT VI
(Negligent Hiring, Training, Supervision, Retention)

137. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-136 of this Complaint.

138. That Defendants Windham, Holt, Hayter, Cook, Grady, Price and Kimbler in their individual capacities had a duty of reasonable care in the hiring, training, supervision and retention of the agents and employees of Lincoln Village.

139. That in view of their disciplinary histories Defendants Windham, Holt, and Blann should not have been retained as employees of Lincoln Village as of January 10, 2016. Defendant Windham therefore should not have been employed and present to watch Gynnya gasp and convulse on her way to death at 11:39pm on Sunday, and if a more caring, properly trained and properly supervised employee had been present he or she would have intervened and most likely saved Gynnya's life. Likewise, Defendant Blann should not have been employed and present, and a properly trained and properly supervised employee would not have eaten a dead girl's breakfast around 6:29am on Monday. Likewise, Defendant Holt should not have been employed and present, and a properly trained and supervised employee would not have pushed Gynnya's lifeless body with a water bottle and shaken her cold corpse at 9:36am on Monday.

140. That if the Defendants had properly interviewed, hired, trained and/or supervised the employees of Lincoln Village to appropriately screen, observe, monitor inmates, and provide medical care to residents such as Gynnya, then Gynnya would most likely be alive today.

141. That as a direct and proximate result of the breach of Defendant's duties Gynnya died while in the care and custody of Defendants.

142. That as a direct and proximate result of their aforementioned conduct Defendants are liable in their individual capacities for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

143. That as a direct and proximate result of the aforementioned conduct Defendants are liable in their individual capacities for Michelle McMillen's loss of the love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT VII
(Assault)

144. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-143 of this Complaint.

145. That Defendants Chris Johnson, Kevin Johnson, Gaudern, Rivers, Holt, and Price in their individual capacities unlawfully directed force towards Gynnya under such circumstances as to create a well-founded fear of immediate peril.

146. That these Defendants more particularly improperly directed force towards Gynnya, and/or improperly authorized use of force, by way of an "Aikido" martial arts restraint during the intake process at Lincoln Village.

147. That as a direct and proximate result of the assault, these Defendants are liable for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

148. That as a direct and proximate result of the aforementioned conduct, Michelle McMillen has suffered the loss of love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT VIII
(Battery)

149. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-148 of this Complaint.

150. That Defendants Chris Johnson, Kevin Johnson, Gaudern, and Rivers, in their individual capacities unlawfully touched the person of Gynnya.

151. That these Defendants more particularly touched the person of Gynnya by way of an “Aikido” martial arts restraint, without legal justification, during the intake process at Lincoln Village.

152. That as a direct and proximate result of the battery, these Defendants are liable for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

153. That as a direct and proximate result of the aforementioned conduct, Michelle McMillen has suffered the loss of love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT IX
(False Imprisonment)

154. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-153 of this Complaint.

155. That Defendants Windham, Holt, Kimbler, Price, and Grady in their individual capacities deprived Gynnya of her liberty when they restrained her in an isolation cell wrongfully, improperly, and without a claim of reasonable justification.

156. That these Defendants more particularly restrained Gynnya to isolation cell 423 for approximately twenty-eight (28) hours in violation of various statutes and regulations including Lincoln Village Standard Operating Procedure 717 and DJJ 717 (**Exhibit D**) which requires the authorization of the Facility Superintendent for any placement of a detainee in isolation beyond four (4) hours. This authorization did not happen and as a result she passed away alone when she should have been with other youths in the general population whereupon her cardiac event would have been readily recognized by other residents and rectified assuming it would have occurred in a less stressful and cruel environment than in which Gynnya was put in her isolation cell without a blanket at anytime, and without a mattress pad for the first 9 or so hours she was in the cell.

157. That as a direct and proximate result of the false imprisonment, these Defendants are liable for all damages sustained by Plaintiffs including nominal damages, funeral and burial expenses, medical expenses, lost wages, destruction of earning capacity, pain and suffering, and punitive damages all in excess of the jurisdictional limits of this Court.

158. That as a direct and proximate result of the aforementioned conduct, Michelle McMillen has suffered the loss of love, affection, and society of her daughter, which alone also constitutes damages in excess of the jurisdictional limits of this Court.

COUNT X
(Punitive Damages)

159. That the Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1-158 of this Complaint.

160. That pursuant to Kentucky common law and KRS 411.184 the conduct, actions and/or inaction of all of the Defendants, as described herein, were so grossly reckless and/or negligent and/or wanton and/or oppressive and/or malicious and/or fraudulent so as to entitle the Plaintiffs to an award of punitive or exemplary damages in an amount far in excess of that amount required to establish the jurisdiction of this Court in order to deter conduct like this in the future at Lincoln Village and any of the other eight (8) juvenile detention centers operated by the Justice Cabinet through the Juvenile Justice Department.

WHEREFORE, the Plaintiffs respectfully demand relief from the Defendants as follows:

1. Judgment against the Defendants in an amount calculated to fairly and reasonably compensate Plaintiffs for the damages sustained by Michelle McMillen individually and by the Estate of Gynnya McMillen as alleged herein;
2. Nominal, compensatory, and punitive damages;
3. Pre-judgment and post-judgment interest;
4. Their costs herein expended, including a reasonable attorneys' fee;
5. Trial by jury on any and all issues so triable; and
6. Any and all other relief to which they may otherwise be properly entitled.

Respectfully Submitted By,

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