

capacity,)
)
 and)
)
 MAYOR KAY BARNES,)
 in her official capacity as a member)
 of the Board of Police Commissioners of)
 Kansas City, Missouri, and in her individual)
 capacity,)
)
 and)
)
 JAYSON A. CHERRY,)
 11802 E. 59th Terrace)
 Kansas City, Missouri 64133-4305)
)
 and)
)
 KANSAS CITY POLICE CHIEF)
 RICHARD D. EASLEY, in his official)
 capacity as a police officer of the Kansas City)
 Missouri Police Department, and in his)
 individual capacity,)
 Serve at: 1125 Locust)
 Kansas City, Missouri 64106)
)
 and)
)
 NICK NICHOLS, in his official capacity as)
 Manager, Department of Human Resources,)
 Kansas City, Missouri Police Department,)
 and in his individual capacity,)
 Serve at: 1125 Locust)
 Kansas City, Missouri 64106)
)
 Defendants.)

PROPOSED SECOND AMENDED COMPLAINT

COMES NOW Plaintiff Damone L. Harris (“Harris”), by his undersigned counsel, and
 for his causes of action against Defendants, the Board of Police Commissioners of Kansas

City, Missouri through its members Angela Wasson-Hunt, Javier M. Perez, Jr., Dr. Stacey Daniels-Young, Karl Zobrist, Mayor Kay Barnes, Jayson Cherry, Kansas City Police Chief Richard D. Easley, and Nick Nichols, Manager, Department of Human Resources, Kansas City, Missouri Police Department, states and alleges as follows:

PARTIES

1. Plaintiff Damone L. Harris is a resident of Kansas City, Jackson County, Missouri.
2. The Board of Police Commissioners of Kansas City, Missouri (“the Board”) is a state agency that can be sued by serving and naming the individual members of the Board of Police Commissioners in their official capacity. The Board is an agency created and existing in accordance with the laws of the State of Missouri, specifically, MO. REV. STAT. § 84.350. The Board is charged by statute with the duty and responsibility of preserving the public peace; preventing crime and arresting offenders; protecting the rights of persons and property; guarding the public health; preserving order at every public election, public meetings and places, and on all public occasions; preventing and removing nuisances; providing a proper police force at fires; protecting transients; seeing that all laws relating to elections, and other matters are enforced; suppressing gambling and other offenses; and enforcing all laws and ordinances passed by the City Council of the City of Kansas City. MO. REV. STAT. § 84.420. The Board is also statutorily empowered to determine police policy and to that end is required to, *inter alia*, adopt rules and regulations governing the conduct of the Kansas City, Missouri Police Department; appoint a chief of police who is responsible to the Board for proper execution of the policies, duties, and responsibilities established for the administration of the police department; act as board of review in personnel disciplinary cases; appoint a secretary

to the Board to conduct its affairs; provide for a business manager; and, provide for medical assistance for care and health of policemen, officers, and employees. The Board is also empowered to provide and contract for liability insurance coverage for officers and employees insuring liabilities incurred during the performance of duty and in the scope of employment for the police department. *Id.* The Board is comprised of four members appointed by the Governor of the State of Missouri and the Mayor of the City of Kansas City.

3. The Board has exclusive management and control of its policies and practices regarding the method and manner of response to calls for officer assistance, and is responsible for insuring that members of the Kansas City, Missouri Police Department conduct themselves in a lawful manner in undertaking their duties.

4. Angela Wasson-Hunt is sued in her capacity as a member of the Board of Police Commissioners of Kansas City, Missouri. On information and belief, she is a resident of Kansas City, Missouri.

5. Javier M. Perez, Jr. is sued in his capacity as a member of the Board of Police Commissioners of Kansas City, Missouri. On information and belief, he is a resident of Kansas City, Jackson County, Missouri.

6. Dr. Stacey Daniels-Young is sued in her capacity as a member of the Board of Police Commissioners of Kansas City, Missouri. On information and belief, she is a resident of Kansas City, Missouri.

7. Karl Zobrist is sued in his capacity as a member of the Board of Police Commissioners of Kansas City, Missouri. On information and belief, he is a resident of Kansas City, Missouri.

8. Mayor Kay Barnes is sued in her capacity as a member of the Board of Police Commissioners of Kansas City, Missouri. On information and belief, Mayor Barnes is a resident of Kansas City, Missouri.

9. Defendants Wasson-Hunt, Perez, Daniels-Young, Zobrist, and Barnes may be referred to collectively herein as the Board.

10. Defendant Jayson A. Cherry (a/k/a Jason A. Cherry) was, at all times relevant hereto, a member of the Kansas City, Missouri Police Department. On information and belief, he is a resident of Kansas City, Jackson County, Missouri. On information and belief, on the night of June 6-7, 2000, Cherry was assigned to the East Patrol Division. Jayson Cherry resigned from the Kansas City, Missouri Police Department on June 20, 2000, effective June 21, 2000, for “personal reasons”. He had been a member of the Police Department for approximately two years.

11. Defendant Richard D. Easley is the Chief of Police for the Kansas City, Missouri Police Department. On information and belief, he is a resident of Kansas City, Missouri. By statute, the Chief of Police for the Kansas City, Missouri Police Department is the chief executive officer of the police department. MO. REV. STAT. § 84.500. He is responsible to the Board of Police Commissioners for proper administration of police affairs and the execution of policy pertaining to police affairs as determined by the Board of Police Commissioners. *Id.* The Chief has the power to appoint, subject to approval of the Board, and he has the power to promote, discipline, and suspend all police officers and policemen. *Id.*

12. Defendant Nick Nichols is the Manager of the Human Resources Department of

the Kansas City, Missouri Police Department. On information and belief, he is a resident of Kansas City, Missouri.

13. The acts and omissions of all Defendants herein which give rise to Plaintiff's claims were committed by them while acting under color of state law and the regulations, practices, customs, and usages of the Kansas City, Missouri Police Department.

JURISDICTION AND VENUE

14. This Court has jurisdiction of Harris' due process claim under 42 U.S.C. § 1983, 28 U.S.C. § 1331, and 28 U.S.C. § 1343. This Court has jurisdiction of Harris' state law claims under 28 U.S.C. § 1367.

15. Venue is proper in this Court because all of the acts and omissions giving rise to Plaintiff's causes of action occurred in Kansas City, Missouri. Plaintiff and all of the individual defendants are residents of Kansas City, Missouri. All of the counties into which Kansas City, Missouri extends lie within the Western Division of the Western District of Missouri.

GENERAL ALLEGATIONS

16. On June 7, 2000, at approximately 1:15 a.m., Plaintiff Damone L. Harris left his sister's house near 36th and College in Kansas City, Missouri, in his brown Chevrolet Camaro and headed for his grandmother's home, where he was then living, at 3725 South Benton, Kansas City, Missouri. The houses were only a few blocks apart.

17. Initially, Harris was followed by his sister and others in a second car. He headed west on 37th Street, then turned south on Bellefontaine, then, because police had 37th and Agnes to South Benton blocked off, he turned left at the corner of 38th and Bellefontaine.

Harris proceeded to South Benton, turned onto South Benton, and stopped in front of his grandmother's house. As Harris pulled over to park, he noticed a police vehicle, and not his sister's vehicle, had pulled up behind him. Harris got out of his car and started walking to the rear of his vehicle. The officer, on information and belief, Officer Jayson A. Cherry # 4588, got out of his car and started toward Harris with his gun drawn. At first, Cherry told Harris to get back in the car, but then changed his directions to Harris, telling Harris to put his hands up. Harris dropped his keys and placed his hands in the air.

18. Harris asked several times what he had done, but got no response. As other officers began arriving, Cherry grabbed Harris by the wrist and started taking Harris to the ground. Harris heard someone say, "He is fighting," and the next thing he knew, Harris was tackled by a second officer, believed on information to have been either Officer Randy Webb #4185 and/or Officer Chris Smith #4672, and went to the ground, striking his head.

Additional officers arrived.

19. Harris recalls being choked and struck in the face and gasping for air. He recalls losing consciousness, coming to and being banged against pavement, then losing consciousness again.

20. Meanwhile, Harris' brother, Sean, who had been down the street and had seen the police car stop behind his brother's vehicle, approached the scene to see what was happening. Others on their porches or in their homes began to take notice.

21. Someone yelled, "he's got a gun."

22. Sergeant Gary Cooley reviewed the reports filed by various officers involved and his initial assessment was that the incident was handled correctly. His superior, Captain Rick

Lockhart initially concurred. However, on further reflection, Cooley began to become concerned with who had yelled, “he’s got a gun.”

23. Sergeant Cooley prepared a memorandum on June 7, 2000, in which he discussed his concerns about the incident and stated that he thought Cherry was lying in his verbal and written accounts of the incident. This memorandum was given to Captain Rick Lockhart. Captain Lockhart prepared a memorandum regarding the incident on June 8, 2000, attached Cooley’s memorandum to it, and forwarded both to Major Donna Saunders, East Patrol Division Commander.

24. Cooley’s memorandum of June 7, 2000, revealed, *inter alia*, that on June 7, 2000:

a. Cherry was under investigation for an O.C.C. (Office of Citizen Complaints) complaint alleging excessive force in which it was possible that Cherry had been dishonest when providing his statement and would be recommended for polygraph;

b. Cherry had been served with a letter from the Chief requiring a polygraph on June 22, 2000, regarding calling in for a sick day when his request for a day off had been denied, and he was found to be insubordinate and believed to be dishonest;

c. On May 26, 2000, Cherry had pulled a prisoner (who was refusing to exit) from a wagon by the shackles on his ankles to the ground causing injury. He was believed to have been dishonest in the written reporting of that incident.

Cooley stated that he had “serious concern for the safety of individuals in the general public who may come into contact” with Officer Cherry. Cooley also feared for the safety of other officers working with or around Cherry. He further stated that he believed that the Harris incident was escalated by Cherry. Cooley expressed a serious concern with Cherry’s

integrity and ability to give an honest and factual account when asked to do so, citing the fact that in each incident, Cherry's dishonesty was noted.

25. Cooley also noted that Cherry was already under investigation for three other incidents of alleged unnecessary force and he now recommended suspension.

26. Cooley's and Lockhart's memoranda also reveal, *inter alia*, Cooley's concern with who had yelled, "he's got a gun," his efforts to further understand what had happened to Harris, and Lockhart's assessment based on Cooley's findings.

27. Two of the officers who responded were Officer Bonita Cannon #4585 and an Officer Curley (believed to be Officer Michael Curley, either #4353 or #4631). On the night of June 6-7, Cannon and Curley were assigned to Vehicle # 334 and Radio #323.

28. Because someone had mentioned that it might have been a female voice that shouted, "He's got a gun," Cooley thought that it might have been Officer Cannon and he asked her if she had done so.

29. Officer Cannon denied having shouted, "He's got a gun," and stated that it was a male voice, not a female voice. Officer Curley agreed that the voice was male.

30. Officer Curley specifically observed that when Harris was being handcuffed, he saw Cannon alone with the suspect who was lying motionless, face down with bleeding from facial area. Harris appeared to be unconscious due to the application of a lateral vascular neck restraint (LVNR) having been applied. Concerned, either Cannon or Curley checked for and found a pulse. Curley and Cannon put Harris on his left side and struck him in the small of the back so he would regain consciousness and he did.

31. Officer Cannon said she was concerned with the crowd growing and got up and

looked; she saw Officer S. Henderson trying to calm someone. She turned back and saw Cherry punching Harris in the groin area with both fists, shouting “M-F” at Harris, and she yelled for Cherry to cut it out, pushed him away to get him to stop striking Harris, and finished cuffing Harris. Cherry was striking Harris while he was not in handcuffs. Lockhart wrote, “I fail to understand how striking the subject in the groin would assist P.O. Cherry in handcuffing the suspect.”

32. Officer Curley confirmed that Officer Cannon was very upset and that Cherry was punching Harris in the groin and yelling at him while Cannon was trying to handcuff Harris.

33. Because Cannon said it was a male voice that said, “He’s got a gun,” Cooley got the air tape. Cooley discovered it was Cherry that made the statement. After listening to the air tape, Captain Lockhart concurred that the voice was Cherry’s.

34. Lockhart believed the fact that Cherry made the statement was noteworthy, especially because Cherry also said he drew his weapon to protect others at the scene after hearing “someone has a gun,” but there was no indication from other officers that there was a gun or anything mistakable for a gun.

35. This inconsistency was significant to Lockhart given Cherry’s history. Earlier that year, he had been in a struggle and his weapon discharged. The suspect was later shot by another officer. Cherry had also been involved in “incidents detailed by Cooley” since the shooting. Lockhart was concerned as to why Cherry thought the suspect had a gun.

36. There was an additional inconsistency in that Cherry told the officer making the report (Officer Eric Anderson, #4725), that the suspect was smiling but refusing to comply with commands. But elsewhere, Cherry said that Harris approached Cherry’s vehicle in an

aggressive manner and does not mention smiling. He mentions Harris smiling as he is frisking Harris.

37. An additional concern was raised because Officer Webb said he did not initially respond because the suspect appeared to be cooperative and had his hands in the air. This conflicted with Cherry's characterization of Harris as uncooperative.

38. Lockhart expressed concern for Cherry's ability to function as a police officer. He attached a memorandum outlining a meeting with Cherry on June 5, 2000 (just two days before the Harris incident), regarding an incident in which Cherry was pulling a prisoner from a wagon. Lockhart told Cherry he might be suspended if a similar incident should occur. Lockhart believed that this incident was similar to others in recent months. Lockhart now recommended:

- a. That Cherry be suspended pending the outcome "of these matters." Since Cherry was on extended vacation until June 20, 2000, Lockhart suggested that Cherry be contacted upon his return to notify him if the suspension was approved.
- b. That if Cherry was not to be suspended, Lockhart would recommend a second fitness for duty evaluation by a KCPD psychologist. He had already submitted to one and had been declared fit, but Lockhart recommended redoing it. If not suspended, Cherry should be on desk duty until the fitness for duty evaluation was finished.
- c. That the matter be forwarded to the Chief for consideration of a miscellaneous investigation with consideration given to expediting the investigation. Even though the work load in internal affairs was heavy, the serious nature of the allegations warranted a resolution.

39. Prior to being hired by the Kansas City, Missouri Police Department, like all recruits, Cherry submitted to a psychological evaluation in May, 1998. Dr. Roy C. Davis, C.P., raised several red flags, including a tendency toward “fake-good” responses to testing items, that suggested Cherry had credibility problems and observed that Cherry was extremely competitive and venturesome. Dr. Davis warned that Cherry would need to be cautioned about his tendency to take unnecessary risks during his training and closely supervised in his early career to assure that he did not put himself or others in danger. Dr. Davis recommended hiring Cherry only if Cherry could be adequately cautioned and supervised and on acceptance of Cherry despite his doubtful test results.

40. On information and belief, while assigned to the South Patrol, Cherry was treated the same as other rookie patrol officers; was not singled out in any way for different treatment or supervision, from his perspective; and, was provided the same level of supervision and support other rookie officers were provided. On information and belief, there were no changes in Cherry’s treatment or supervision while assigned to the South Patrol. On information and belief, Cherry did not feel at any time while assigned to the South Patrol that he was being more closely watched or supervised than others.

41. On information and belief, after his requested transfer to East Patrol, Cherry was treated the same as other patrol officers. He was not singled out for different or special treatment by sergeants or other officers and he was not subjected to tighter control or supervision than other officers.

42. As a result of the incident referred to in paragraph 40, Cherry was referred to Dr. George A. Harris, Ph.D., for another psychological evaluation for fitness for duty. In his

February 22, 2000, report, Dr. Harris also noted credibility concerns and stated, “I never felt sure that I had an accurate image of the series of events.” Dr. Harris observed that Cherry scored high for aggressiveness, antisocial behaviors, and stimulus seeking tendencies. Harris acknowledged that many police officers score high on these scales, but expressed concern that such individuals have a greater than average tendency to abuse of force problems and may have a tendency to tell something less than the complete truth if the truth is inconvenient. He concluded that a pattern was developing that was troublesome and that intervention might be wise to avert future problems. He expressed concerns about Cherry’s overall truthfulness, his willingness to comply with rules and regulations, and that he may be too aggressive at times. He urged careful management of Cherry.

43. On information and belief, after the incident referred to in paragraph 40 and the psychological evaluation, Cherry was not talked to or counseled by his superiors regarding the incident. On information and belief, there were no changes in his supervisor or assignment, nor did he receive any additional supervision or training.

44. The reports of the pre-hiring psychological evaluations of entrant officer candidates including the one prepared for Jayson Cherry as alleged in ¶ 41 are submitted directly to and reviewed by only the Human Resources Department manager, Defendant Nick Nichols. These evaluations only take place after the qualifications of the entrant officer candidate are reviewed and approved by the sergeant, captain, and bureau commander assigned to the employment division of the Administration Bureau.

45. The psychologist who performs the pre-hiring evaluation does not make the hiring decision.

46. The human resources manager, Defendant Nichols, has no written criteria by which he conducts reviews of the reports of pre-hiring psychological evaluations. The human resources manager reads the report for content; if he has questions, he can call the evaluating psychologist for clarification. Based on what the report says, the human resources manager makes the decision on whether or not to extend a job offer. Unless the human resources manager feels the need to consult with the Administration Bureau commander, whether or not an entrant officer candidate has successfully cleared the psychological examination is left to the civilian human resources manager. No line officers see the report of the examination.

47. If there was a consultation between the human resources manager and the Administration Bureau commander over the contents of the report, it would not be reflected in any written form in any file. It would be strictly a verbal communication and there would not generally be a written record of the verbal consultation.

48. The human resources manager is guided by the report and the file. If there is evidence from the file that there is a recurring problem, that would be taken into consideration. The human resources manager should be aware of anything that the psychologist notes. The human resources manager's decision making process is based primarily on his experience. On information and belief, the human resources manager has no special training in psychology or in reading and interpreting psychological evaluation reports. The manager relies on the psychologist.

49. If the psychologist's pre-hiring psychological evaluation report is explicit in recommending against hiring, there would be no job offer and the decision would not be reviewed by the Administration Bureau commander.

50. If a pre-hiring psychological evaluation report has neither an explicit recommendation for nor an explicit recommendation against employment, the human resources manager would base his decision on knowing what the psychologist meant when making the recommendation and his knowledge of the training process which the entrant officer candidate undergoes before becoming a police officer. In such situations, the human resources manager does not typically consult with anyone in making the decision, but makes those decisions based on his own best judgment.

51. The pre-hiring psychological evaluation report goes into a specific separate file from the personnel file on that individual. Each individual has two files, both of which are maintained by the human resources manager. Access to both types of files is limited to some extent. The pre-hiring psychological evaluation report goes into what is known as the medical file.

52. When an entrant officer candidate arrives at the academy for training, none of the instructors has access to his/her medical file. If a pre-hiring psychological evaluation report has any warning or prescription to the department as to how a particular applicant is to be handled, the human resources manager is the only person who would learn of or know that. If the report has explicit qualifications on hiring, such as, if you offer a position to this applicant, you should be aware of potential issues, the information is used solely for deciding whether to extend a job offer.

53. There is no Kansas City, Missouri Police Department system that allows the evaluating psychologist's information or recommendations about how a candidate, if employed, should be handled or supervised to be passed through for use by instructors or

superior officers. Indeed, the existing system prevents this from happening. If a pre-hiring psychological evaluation report says that if the police department hires the applicant, he should be given close supervision, because of the system keeping those records separate, only the human resources manager would know of the psychologist's caveat on hiring that individual. There is no subsequent point at which any of the candidate's supervising officers would have learned of the psychologist's recommendation for how a candidate should be supervised or handled.

54. A recommendation for close supervision in a pre-hiring psychological evaluation report would be filed away in the candidate's medical file and the candidate would start the academy. The psychologist's recommendation for close supervision is not passed on to anyone who instructs or supervises the candidate and is thereafter disregarded.

55. The chief of police must approve the decision to have an officer submit to a psychological fitness for duty examination. The chief directs the human resources manager to schedule the psychological fitness for duty examination and the officer is instructed to respond. The psychological fitness for duty examination results in a report which is sent to the human resources manager.

56. The human resources manager forwards the psychological fitness for duty examination report to the chief. The chief makes a yes-or-no determination from the report if the officer is deemed fit for duty. If the chief decides that the officer should be relieved of his/her duties, that decision is sent to the Board.

57. If the chief determines after the fitness for duty examination that the officer should not be terminated, the chief has determined that the officer will continue as a patrol officer.

On occasion, officers may be required to attend and successfully complete treatment before returning to duty.

58. If the psychological fitness for duty examination report comes back, is reviewed by the chief and the officer is not terminated, but the report contains recommendations as to how the officer should be handled if retained, the report with its recommendations is returned to the human resources department, specifically the employee benefits section, and is filed in the officer's medical file. Typically, no one else in the police department other than the human resources manager and his clerical support staff, and the chief and his support staff would see the psychological fitness for duty examination report.

59. There is no Kansas City, Missouri Police Department policy as to how it would act on a recommendation from a psychologist after a psychological fitness for duty examination report recommends the officer be found fit for duty, but qualifies that recommendation by saying that the department should engage in careful management or close supervision of the officer.

60. The patrol bureau chief would not typically see the report on a psychological fitness for duty examination nor would the patrol major, captain, or the sergeant who initiated the request. The superiors in the individual's chain of command would be told only that the officer is fit to return to duty. These superior officers would not be given any more information regarding the results of the psychological fitness for duty examination. No one in the officer's chain of command would be told of the recommendation for careful management or close supervision.

61. No one outside the chief's office and the human resources office would be made

aware of the recommendation of the psychologist for careful management or close supervision.

62. In a circumstance, such as here, in which one psychologist did a pre-employment psychological evaluation and recommended the candidate for employment, but with close supervision, and a subsequent psychological fitness for duty examination was performed by a different psychologist whose conclusion was that the officer was fit for duty, but qualified that conclusion with a recommendation for careful management, no one would typically compare those results for that officer.

63. The individual who receives the psychological fitness for duty examination reports back from the chief's office puts the report in the medical file where the pre-employment evaluation report is filed, but would not be expected to compare those two psychological reports.

64. On information and belief, there is no policy, procedure, or practice of the Kansas City, Missouri Police Department requiring that individual or anyone to compare those psychological reports.

65. "Close supervision" and "careful management" are terms which have meaning and are used within the Kansas City, Missouri Police Department. There are instances in which those in the chain of command request or order close supervision for patrol officers. The manner in which a given officer is closely supervised and/or carefully managed may vary depending upon the circumstances and could include, but not be limited to, such strategies as monitoring communications, making calls with the officer to observe interactions with citizens and other officers, or records reviews.

66. As a result of Cherry's actions, and the actions he caused Officers Smith and Webb to take, Harris sustained injuries. He suffered facial contusions, closed head trauma, and abrasions to the face, elbows, knees, and other extremities, and swelling of the face, head, and neck. More specifically, his left eye was cut and swollen, his right cheek and forehead were bruised, his forehead and the right side of his face were scratched and bruised. His ankle and wrist were twisted. After treatment at Truman Medical Center's emergency room, he was seen by his family doctor and a specialist. In addition to the pain and suffering which accompanied these injuries, Harris has incurred medical expenses related to treatment for them.

67. After treatment at Truman Medical Center, Harris was transported to police headquarters and was booked. He suffered inconvenience, insult, mental distress, embarrassment, humiliation, anxiety, and emotional pain and suffering. In addition to sustaining these damages and the physical injuries, Harris' car was towed (even though he had parked it on the street in front of his grandmother's house where he was residing) and he was issued two traffic tickets by Defendant Cherry. One was for careless driving by speeding and weaving in traffic and failing to stop for stop signs while making a right turn, and the second was for willfully failing to stop for a pursuing police vehicle when given visual and audible signals to stop. These tickets were dismissed. Harris was also charged with intentionally inflicting bodily injury upon Defendant Cherry. On information and belief, this charge was also dismissed. Harris incurred attorney fees in connection with his defense in municipal court and suffered damages in the form of other expenses related to the towing of his vehicle. Harris suffered further damages in the form of lost wages related to his arrest and

appearance in municipal court.

COUNT I
SUMMARY PUNISHMENT AND DENIAL OF DUE PROCESS AGAINST CHERRY

68. Plaintiff hereby incorporates by reference paragraphs 1 through 67 as if fully set forth.

69. The conduct of Defendant Cherry, and, at his instance, the conduct of Officers Webb and Smith, as hereinabove alleged, particularly the summary punishment of Harris imposed when Cherry repeatedly punched Harris in the groin and the slamming of Harris' face into the pavement, deprived Harris of the following rights:

a. The right of Harris not to be deprived of life, liberty or property without due process of law under the Fifth and Fourteenth Amendments to the Constitution of the United States;

b. The right of Harris not to be subjected to excessive force under the Fourth and Fourteenth Amendments to the Constitution of the United States.

70. The acts, conduct and behavior of Cherry was under color of state law.

71. Defendant Cherry knew or should have known that the summary punishment of Harris alleged above violated Harris' constitutional right to due process of law.

72. The acts, conduct and behavior of Defendant Cherry caused Plaintiff Harris to suffer actual damage as above set forth, including, but not limited to:

- a. physical pain and suffering;
- b. medical expenses;
- c. lost wages;
- d. attorney fees and other expenses of defense in municipal court;
- e. tow charges and related expenses;
- f. inconvenience;

- g. insult;
- h. mental distress;
- i. embarrassment;
- j. humiliation;
- k. anxiety; and,
- l. emotional pain and suffering.

73. The acts, conduct and behavior of Defendant Cherry was willful, wanton, malicious, and outrageous, showed disregard of Harris' rights, and were performed knowingly, intentionally and maliciously, by reason of which Harris is entitled to an award of punitive damages in an amount to be proved at trial.

74. Plaintiff is entitled to recover from the defendant reasonable attorneys' fees and expenses, as provided by 42 U.S.C. § 1988.

COUNT II
EXCESSIVE FORCE BY CHERRY IN VIOLATION OF THE
FOURTH AMENDMENT COGNIZABLE UNDER 42 U.S.C. § 1983

75. Plaintiff hereby incorporates by reference paragraphs 1 through 67 as if fully set forth.

76. The degree of force used by Defendant Cherry or caused to be used by Officers Webb and Smith as a result of Cherry's actions was excessive because it was not reasonably necessary to use such force to arrest Harris or to take him into custody.

77. A reasonable officer on the scene would not have used such force against Harris under similar circumstances.

78. The use of excessive force by Officer Cherry or caused by him to be used by Officers Webb and Smith deprived Harris of the Fourth Amendment right to be free from an unreasonable seizure and from excessive use of force.

79. Defendant Cherry knew or should have known that the excessive use of force as alleged above violated Harris' Fourth Amendment right, applicable through the Fourteenth Amendment, to be free of excessive force.

80. The conduct of Defendant Cherry as herein described has caused Harris actual damages as above set forth, including, but not limited to:

- a. physical pain and suffering;
- b. medical expenses;
- c. lost wages;
- d. attorney fees and other expenses of defense in municipal court;
- e. tow charges and related expenses;
- f. inconvenience;
- g. insult;
- h. mental distress;
- i. embarrassment;
- j. humiliation;
- k. anxiety; and,
- l. emotional pain and suffering.

81. Defendant Cherry's actions were willful, wanton, reckless, and malicious, and further show a complete and deliberate indifference to, and conscious disregard for the rights of Harris. Therefore, Harris is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Cherry or to deter Cherry and others similarly situated from like conduct in the future.

82. Plaintiff is entitled to recover from Defendant Cherry reasonable attorneys' fees and expenses, as provided by 42 U.S.C. § 1988.

**COUNT III
BATTERY AGAINST CHERRY**

83. Plaintiff hereby incorporates by reference paragraphs 1 through 67 as though fully set forth herein.

84. On June 7, 2000, while acting within the course and scope of his employment, Defendant Cherry, with intent to cause Plaintiff Harris serious bodily harm and without just cause or provocation, battered Plaintiff in that he repeatedly and intentionally had unauthorized contact with Harris when he twisted Harris' arm behind his back, applied or assisted in applying a lateral vascular neck restraint, kneeled on him, slammed or caused his face to be slammed into the pavement, and punched him repeatedly in the groin, thereby causing Harris bodily harm.

85. On June 7, 2000, while acting within the course and scope of his employment, Defendant Cherry, with intent to cause Plaintiff Harris serious bodily harm and without just cause or provocation, caused Officer Randy Webb to batter Plaintiff Harris when he tackled Harris, applied or assisted in applying a lateral vascular neck restraint, and kneeled on him, thereby causing Harris bodily harm.

86. On June 7, 2000, while acting within the course and scope of his employment, Defendant Cherry, with intent to cause Plaintiff Harris serious bodily harm and without just cause or provocation, caused Officer Chris Smith to batter Plaintiff in that he had unauthorized contact with Harris when he tackled Harris, applied or assisted in applying a lateral vascular neck restraint, and kneeled on him, thereby causing Harris bodily harm.

87. The contact by or caused by Cherry was offensive to Harris.

88. In battering or causing battery to Plaintiff Harris, Defendant Cherry has no privilege, qualified immunity, or official immunity because he acted in bad faith and with malice with an actual intent to cause injury.

89. Cherry used or caused the use of more force than was reasonably necessary under

the circumstances.

90. The force used or caused to be used by Cherry was not reasonably necessary force to preserve the peace and maintain order or to overcome any resistance by Harris.

91. The conduct of Cherry as described herein caused Harris damages, including, but not limited to physical pain and suffering, medical expenses, lost wages, anxiety, and emotional pain and suffering.

92. The conduct of Cherry as herein described was outrageous because of their evil motive or reckless indifference to Harris' rights and accordingly, Harris is entitled to an award of punitive damages.

**COUNT IV
FALSE ARREST AGAINST CHERRY**

93. Plaintiff hereby adopts, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 67 above.

94. Defendant Cherry caused Harris to be arrested without probable cause.

95. Harris has been damaged as a direct and proximate result of the defendant's actions. In particular, he has suffered injuries including but not limited to:

- (a) inconvenience;
- (b) insult;
- (c) mental distress;
- (d) embarrassment;
- (e) humiliation;
- (f) anxiety;
- (g) emotional pain and suffering, and
- (h) legal expenses incurred in defending the municipal court charges.

96. Defendant's actions were outrageous because of his evil motive or reckless indifference to Harris' rights and accordingly, Harris is entitled to an award of punitive

damages.

COUNT V
NEGLIGENT TRAINING/FAILURE TO TRAIN/INADEQUATE TRAINING
UNDER 42 U.S.C. § 1983 AGAINST
WASSON-HUNT, PEREZ, DANIELS-YOUNG, ZOBRIST, BARNES, AND EASLEY

97. Plaintiff hereby adopts, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 67 above.

98. Defendants Eckhold, Perez, Daniels-Young, Zobrist, and Barnes, as the Board, and Defendant Easley had the authority to train, supervise, discipline, and otherwise control the officers of the Kansas City, Missouri Police Department, including Defendant Cherry.

99. Defendants Eckhold, Perez, Daniels-Young, Zobrist, Barnes, and Easley had a duty to train police under their supervision, including Defendant Cherry.

100. Defendants Easley and the Board had a duty to provide reasonable training to prevent the police officers under their supervision from summarily punishing, applying excessive force to, battering, and falsely arresting Harris.

101. Defendants Easley and the Board negligently failed to train the police officers under their supervision in a manner that reasonable police commissioners and police chiefs would have under the circumstances.

102. In addition to warnings of the psychological evaluations that there was a likelihood that Cherry would use excessive force, that he had given “fake-good” responses to testing and had been dishonest, Defendants Easley and the Board had notice of a pattern of unconstitutional acts committed by their subordinate, Cherry, given the three prior incidents in which Cherry had used excessive force.

103. By not providing additional or different training in the face of the cautions to do so and earlier uses of excessive force Defendants Easley and the Board demonstrated deliberate indifference to or tacit authorization of the offensive acts.

104. By not providing additional or different training in the face of the cautions to do so and earlier uses of excessive force Defendants Easley and the Board failed to take sufficient remedial action.

105. The failure of Defendants Easley and the Board to take sufficient remedial action proximately caused injury to Harris.

106. Plaintiff Harris has been damaged as a direct and proximate result of the defendants' actions. In particular, he has suffered injuries including but not limited to:

- a. physical pain and suffering;
- b. medical expenses;
- c. lost wages;
- d. attorney fees and other expenses of defense in municipal court;
- e. tow charges and related expenses;
- f. inconvenience;
- g. insult;
- h. mental distress;
- i. embarrassment;
- j. humiliation;
- k. anxiety; and,
- l. emotional pain and suffering.

107. Defendants' failure to exercise reasonable care in training the police officers under their supervision was willful, wanton, reckless, and malicious, and further shows a complete and deliberate indifference to, and conscious disregard for, the rights of Harris. Therefore, Harris is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or to deter Defendants and others from like conduct in the

future.

108. Plaintiff is entitled to recover from the defendants reasonable attorneys' fees and expenses, as provided by 42 U.S.C. § 1988.

COUNT VI
NEGLIGENT SUPERVISION/FAILURE TO SUPERVISE/INADEQUATE SUPERVISION
UNDER 42 U.S.C. § 1983 AGAINST
WASSON-HUNT, PEREZ, DANIELS-YOUNG, ZOBRIST, BARNES, AND EASLEY

109. Plaintiff hereby adopts, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 67 above.

110. Defendants Eckhold, Perez, Daniels-Young, Zobrist, and Barnes, as the Board, and Defendant Easley had the authority to train, supervise, discipline, and otherwise control the officers of the Kansas City, Missouri Police Department, including Defendant Cherry.

111. Defendants Easley and the Board had a duty to control, direct, and supervise the conduct of Defendant Cherry.

112. Defendants had a duty to exercise reasonable care to prevent the officers under their supervision from summarily punishing, using excessive force, battering, and falsely arresting Harris.

113. Defendants Easley and the Board negligently failed to exercise the proper degree of control and supervision of the officers under their supervision that reasonable police commissioners and police chiefs would have exercised under the circumstances, including failing to act in a manner calculated to remedy deviance within the KCPD and failing to act in the face of information about Defendant Cherry which of Defendants knew or should have known.

114. In addition to warnings of the psychological evaluations that there was a likelihood that Cherry would use excessive force, that he had given “fake-good” responses to testing and had been dishonest, Defendants Easley and the Board had notice of a pattern of unconstitutional acts committed by their subordinate, Cherry, given the three prior incidents in which Cherry had used excessive force.

115. By not providing additional or different supervision in the face of the cautions to do so and Cherry’s earlier uses of excessive force, Defendants Easley and the Board demonstrated deliberate indifference to or tacit authorization of the offensive acts.

116. By not providing additional or different supervision in the face of the cautions to do so and Cherry’s earlier uses of excessive force, Defendants Easley and the Board failed to take sufficient remedial action.

117. The failure of Defendants Easley and the Board to take sufficient remedial action by providing additional or different supervision proximately caused injury to Harris.

118. As stated, Harris has been damaged as a direct and proximate result of the defendants’ actions. In particular, he has suffered injuries including but not limited to:

- a. physical pain and suffering;
- b. medical expenses;
- c. lost wages;
- d. attorney fees and other expenses of defense in municipal court;
- e. tow charges and related expenses;
- f. inconvenience;
- g. insult;
- h. mental distress;
- i. embarrassment;
- j. humiliation;
- k. anxiety; and,
- l. emotional pain and suffering.

119. Defendants' failure to exercise reasonable care in supervising the police officers under their supervision was willful, wanton, reckless, and malicious, and further shows a complete and deliberate indifference to, and conscious disregard for, rights of Harris. Defendants Easley and the Board intentionally disregarded known facts and were deliberately indifferent to the risk of a constitutional violation. Therefore, Harris is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or to deter Defendants and others from like conduct in the future.

120. Plaintiff is entitled to recover from the defendants reasonable attorneys' fees and expenses, as provided by 42 U.S.C. § 1988.

COUNT VII
NEGLIGENT RETENTION UNDER 42 U.S.C. § 1983
AGAINST WASSON-HUNT, PEREZ, DANIELS-YOUNG, ZOBRIST, BARNES, EASLEY, AND
NICHOLS

121. Plaintiff hereby adopts, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 67 above.

122. Defendants Wasson-Hunt, Perez, Daniels-Young, Zobrist, Barnes, Easley, and Nichols had a duty to control the police officers under their supervision and assure that police officers were not a danger to civilians or other officers.

123. Defendants Easley, Nichols, and the Board had a duty to protect the rights of persons and property and to assure that proper execution of policies be observed by the officers under their supervision.

124. Defendants Easley, Nichols, and the Board also had the duty to assure the proper administration of justice and to discipline, suspend, and discharge police officers.

125. Despite three prior incidents in which it had been charged that Cherry had used excessive force and despite his known propensity for dishonesty in reporting, Defendants Easley, Nichols, and the Board negligently failed to recognize that Cherry posed a danger to the rights of persons and negligently failed to take action to remove the threat that Cherry posed to the rights of persons and to public safety that reasonable police commissioners, police chiefs, and other supervisory personnel would have under the circumstances.

126. Despite being warned before Cherry was hired that he would require close supervision to avoid being a danger to himself and others and despite a second warning that Cherry required careful management, Cherry did not receive any closer supervision than any other officer. *See supra* at ¶¶ 39-43.

127. Defendants Easley, Nichols, and the Board were possessed of sufficient information, given the warnings of the psychological evaluations, the three prior incidents in which Cherry had used excessive force, Cherry's known propensity for dishonesty in reporting, and his "fake-good" responses to testing, to conclude that the plainly obvious consequence of their decisions not to provide additional training and closer supervision of Cherry and their decision to allow him to remain an active patrol officer would be the deprivation of Harris' federally protected right not to be the victim of excessive force.

128. Defendants were possessed of sufficient information, given the warnings of the psychological evaluations, the three prior incidents in which Cherry had used excessive force, Cherry's known propensity for dishonesty in reporting, and his "fake-good" responses to testing, to find that Cherry was highly likely to inflict excessive force as was suffered by Harris.

129. Cherry's background, as known to Defendants Easley, Nichols, and the Board, given the warnings of the psychological evaluations, the three prior incidents in which Cherry had used excessive force, Cherry's known propensity for dishonesty in reporting, and his "fake-good" responses to testing, made his use of excessive force in making an arrest a plainly obvious consequence of Defendants' decisions not to provide additional training and closer supervision of Cherry and their decision to allow him to remain an active patrol officer.

130. Defendants' decisions not to provide Cherry with additional training and closer supervision and their decision to allow him to remain an active patrol officer, given the warnings of the psychological evaluations, the three prior incidents in which Cherry had used excessive force, Cherry's known propensity for dishonesty in reporting, and his "fake-good" responses to testing, such that a reasonable policy maker would conclude that the plainly obvious consequence of these decisions would be the deprivation of a third-party's federally protected right to be free from the use of excessive force, constitute deliberate indifference.

131. Plaintiff Harris has been damaged as a direct and proximate result of the defendants' actions and failures. In particular, he has suffered injuries including but not limited to:

- a. physical pain and suffering;
- b. medical expenses;
- c. lost wages;
- d. attorney fees and other expenses of defense in municipal court;
- e. tow charges and related expenses;
- f. inconvenience;
- g. insult;
- h. mental distress;
- i. embarrassment;
- j. humiliation;
- k. anxiety; and,

1. emotional pain and suffering.

132. Defendants' failure to exercise reasonable care in retaining Cherry was willful, wanton, reckless, and malicious, and further shows a complete and deliberate indifference to, and conscious disregard for, the rights of Harris. Therefore, Harris is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or to deter Defendants and others from like conduct in the future.

133. Plaintiff is entitled to recover from the defendants reasonable attorneys' fees and expenses, as provided by 42 U.S.C. § 1988.

COUNT VIII
POLICIES, PROCEDURES, AND PRACTICES UNDER 42 U.S.C. § 1983 AGAINST WASSON-HUNT, PEREZ, DANIELS-YOUNG, ZOBRIST, BARNES, AND EASLEY

134. By this reference, Plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 67 of this Complaint as though fully set forth herein.

135. There exists within the Kansas City, Missouri Police Department employee hiring and retention policies, procedures, practices, and usages and policies, procedures, practices, or usages relating to the retention and use of psychological evaluation reports on entrant officer candidates and active officers that are so pervasive that they constitute the policy of the department and were the moving force behind and thereby caused the constitutional deprivations suffered by Plaintiff Harris as herein alleged; alternatively, there has been a failure to adopt employee hiring and retention policies, practices, and procedures and policies, procedures, practices, or usages relating to the retention and use of psychological evaluation reports on entrant officer candidates and active officers which caused the constitutional deprivations suffered by Plaintiff as herein alleged.

136. More specifically, the Board and Easley have promulgated or failed to promulgate, administered or failed to administer hiring and retention policies, procedures, practices, and usages which caused the constitutional deprivations suffered by Harris as follows:

a. Although entrant officer candidates are required to submit to a pre-hiring psychological evaluation, the reports of those evaluations are seen only by the Human Resources Department manager, Defendant Nick Nichols.

b. The human resources manager, Defendant Nichols, has no written criteria by which he conducts reviews of the reports of pre-hiring psychological evaluations. He reads the report for content and may call the evaluating psychologist for clarification. Based on what the report says, the human resources manager makes the decision on whether or not to extend a job offer. Whether or not an entrant officer candidate has successfully cleared the psychological examination is left to the civilian human resources manager.

c. The human resources manager is guided by the report and the file. If there is evidence from the file that the individual has a recurring problem, that would be taken into consideration. The human resources manager's decision making process is based primarily on his experience. On information and belief, the human resources manager has no special training in psychology or in reading or interpreting reports of psychological evaluations.

d. If the psychologist's pre-hiring psychological evaluation report is neither an explicit recommendation for nor an explicit recommendation against employment, the

human resources manager would base his decision on knowing what the psychologist meant when making the recommendation and his knowledge of the training a candidate would receive before becoming a police officer; the human resources manager does not typically consult with anyone in making the decision, but relies on his own best judgment.

e. The pre-hiring psychological evaluation report is kept in a separate “medical file.”

f. When an entrant officer candidate arrives at the academy for training, none of the instructors has access to his/her medical file. If a pre-hiring psychological evaluation report has any warning or prescription to the department as to how an applicant is to be handled, the human resources manager is the only person who would learn or know that. Any explicit qualifications on hiring contained in the report are used solely for deciding whether to extend a job offer.

g. There is no Kansas City, Missouri Police Department system that allows the psychologist’s information or recommendations about how a candidate, if employed, should be handled or supervised to be passed through to be used by instructors or superior officers. Indeed, the system prevents this from happening. If a psychological evaluation report says that if the applicant is hired, he should be given close supervision, because of the system keeping those records separate, only the human resources manager would know of the psychologist’s caveat on hiring that individual. There is no subsequent point at which any of the candidate’s instructors or supervising officers would have learned of the psychologist’s recommendation for how a candidate

should be supervised or handled. The report, with its information and recommendations, is filed away and is thereafter disregarded.

137. Also more specifically, the Board and Easley have promulgated or failed to promulgate, administered or failed to administer officer retention policies, procedures, practices, and usages which caused the constitutional deprivations suffered by Harris as follows:

a. When the chief of police approves the determination that an officer must submit to a psychological fitness for duty examination, that examination results in a report which is sent directly to the human resources manager.

b. The human resources manager forwards the psychological fitness for duty examination report to the chief. The chief makes a yes-or-no determination from the report whether the officer is fit for duty.

c. If, as in the case of Cherry, the psychological fitness for duty examination comes back, is reviewed by the chief and the officer is not terminated, but the report contains recommendations as to how the officer should be handled if retained, the report with its recommendations is returned to the human resources department, specifically, the employee benefits section, and is filed in the officer's medical file. Typically, no one else in the police department other than the human resources manager and his clerical support staff, and the chief and his support staff, would see the psychological fitness for duty examination report.

d. There is no Kansas City, Missouri Police Department policy as to how it would act on a recommendation from a psychologist after a psychological fitness for

duty examination report recommends the officer be found fit for duty, but qualifies that recommendation by saying that the department should engage in careful management or close supervision of that officer.

e. The patrol bureau chief would not typically see a report on a psychological fitness for duty examination nor would the patrol major, captain, or the sergeant who initiated the request. The superiors in the officer's chain of command would be told only that the officer is fit to return to duty. These superior officers would not be given any more information regarding the results of the psychological fitness for duty examination. The officer's sergeant would not be told of the recommendation for careful management or close supervision.

f. In a circumstance, like Cherry's, in which one psychologist did a pre-employment psychological evaluation and recommended the candidate for employment, but with close supervision, and a subsequent psychological fitness for duty examination was performed by a different psychologist whose conclusion was that the officer was fit for duty, but qualified that conclusion with a recommendation for careful management, no one would typically compare those reports for that officer.

g. The individual who receives the psychological fitness for duty examination reports back from the chief's office places the report in the medical file where the pre-employment psychological evaluation report is filed, but would not be expected to compare those two psychological reports.

h. On information and belief, there is no policy, procedure, or practice of the Kansas City, Missouri Police Department requiring her or anyone to compare those

psychological reports.

138. Even though the terms “close supervision” and “careful management” are terms which have meaning and are used within the Kansas City, Missouri Police Department, and may entail the use of varied strategies in the case of any given officer to address performance issues perceived by supervising officers, when either pre-employment psychological evaluations reports or psychological fitness for duty examinations reports contain recommendations that a given entrant officer candidate or active officer receive either close supervision or careful management, those recommendations are not communicated to instructors or supervising officers.

139. The Board is vested with the authority to establish employee hiring and retention policies, procedures, practices, and usages of the Kansas City, Missouri Police Department. Defendant Easley is vested with the authority to recommend to the Board such hiring and retention policies, procedures, practices, and usages for the Kansas City, Missouri Police Department as are required for the lawful and effective administration of the Department and the protection of citizens and fellow officers. Defendant Easley and the Board have failed to establish and administer hiring and retention policies, procedures, practices, and usages in a manner calculated to assure that the Department’s officers do not present a risk or unnecessarily increase the risk of constitutional violations of the rights of citizens or harm to fellow officers.

140. Defendant Easley and the Board were aware of the hiring and retention policies, procedures, practices and usages of the Kansas City, Missouri Police Department and knew or should have known that the hiring and retention policies, procedures, practices, and usages for

the Kansas City, Missouri Police Department, or the absence of same, presented a risk and/or unnecessarily increased the risk of constitutional violations of the rights of citizens and harm to fellow officers.

141. As the lawfully designated policy making body for the Kansas City, Missouri Police Department, Defendant Board has the power and responsibility to prevent the existence of policies, procedures, practices, and usages which result in constitutional violations of the rights of citizens and, conversely, to establish policies, procedures, practices, and usages which prevent constitutional violations such as that suffered by Harris.

142. Defendant Easley is in a position to establish informal policies, procedures, practices, and usages and to recommend to the Board formal policies, procedures, practices, and usages which prevent constitutional violations such as that suffered by Harris.

143. Defendant Board is the official policy maker for the Kansas City, Missouri Police Department and the failure of the Defendant Board to affirmatively act in the face of policies, procedures, practices, and usages which resulted in constitutionally violative conduct establishes a policy to condone and otherwise tolerate constitutionally violative conduct in general and specifically, the constitutionally violative conduct alleged herein. Had the Board or Easley or both of them affirmatively acted to establish hiring and retention policies, procedures, practices, or usages which were reasonably calculated to account for circumstances in which the pre-hiring psychological evaluation report or the psychological fitness for duty examination report qualifies a recommendation to hire or to declare fit for duty with a recommendation for close supervision or careful management, the constitutional deprivation suffered by Harris would not have occurred.

144. In their failures as described, Defendants Easley and the Board intentionally disregarded known facts or, alternatively, were deliberately indifferent to a risk of the constitutional violation of which they knew or should have known and their culpability caused the constitutional violations suffered by Harris.

145. As a direct and proximate result of the policies, procedures, practices, and usages of the Kansas City, Missouri Police Department as established by Defendant Board, or the absence of same, Harris suffered severe injuries and damages including but not limited to:

- a. physical pain and suffering;
- b. medical expenses;
- c. lost wages;
- d. attorney fees and other expenses of defense in municipal court;
- e. tow charges and related expenses;
- f. inconvenience;
- g. insult;
- h. mental distress;
- i. embarrassment;
- j. humiliation;
- k. anxiety; and,
- l. emotional pain and suffering.

146. Defendants' promulgation or failure to promulgate, administration of or failure to administer hiring and retention policies, practices, and usages which caused the constitutional deprivations suffered by Harris, was willful, wanton, reckless, and malicious, and further shows a complete and deliberate indifference to, and conscious disregard for, the rights of Harris. Therefore, Harris is entitled to an award of punitive or exemplary damages in an amount sufficient to punish Defendants or to deter Defendants and others from like conduct in the future.

147. Plaintiff is entitled to recover from the defendants reasonable attorneys' fees and

expenses, as provided by 42 U.S.C. § 1988.

JURY TRIAL DEMAND

148. Harris hereby demands a trial by jury on all counts herein raised.

WHEREFORE, plaintiff Damone L. Harris requests that this Court, after a trial by jury of his claims, enter judgment against Defendants for his actual damages, nominal damages, and punitive or exemplary damages as are proven at trial, for attorney fees and expenses pursuant to § 1988, for costs incurred herein, and for any such further legal and equitable relief as this Court deems appropriate.

Respectfully submitted,

ARTHUR BENSON & ASSOCIATES

By s/Jamie Kathryn Lansford
Arthur A. Benson II #21107
Jamie Kathryn Lansford #31133
4006 Central Avenue (Courier Zip: 64111)
P.O. Box 119007
Kansas City, Missouri 64171-9007
(816) 531-6565
(816) 531-6688 (telefacsimile)
abenson@bensonlaw.com
jlansford@bensonlaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via the Court's electronic filing system, or on those persons identified below by an asterisk (*), was served by depositing same in first class mail, postage prepaid this 2nd day of June, 2003, on:

Dale H. Close

Attorney at Law
14315 East 97th Terrace
Kansas City, Missouri 64139
816-674-6311
816-554-2864 (telefacsimile)
dclosecoplaw@aol.com

Mr. Jayson A. Cherry *
11802 East 59th Terrace
Kansas City, Missouri 64133-4305

/s/ Jamie Kathryn Lansford
Attorney for Plaintiff