

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

DAYONG YANG,
as parent and next friend of
LE YANG, a minor

PLAINTIFF

VS. CASE NO. _____

CITY OF LITTLE ROCK, ARKANSAS;
STUART THOMAS, individually and in his
official capacity as Chief of Police for the City of Little Rock;
WAYNE BEWLEY, individually and in his official capacity
as Assistant Chief of Police for the City of Little Rock;
LAURA MARTIN, individually and in her official capacity as
Communications Center Manager for the City of Little Rock;
CANDACE MIDDLETON, individually and in her official
capacity as Communications Call Taker for the City of Little Rock;
GREGORY L. SUMMERS, individually and in his
official capacity as Fire Chief for the City of Little Rock;
and FRANK SCOTT and EDDIE RHINE, individually and
in their official capacities as Firefighters for the City of Little Rock **DEFENDANTS**

COMPLAINT

Plaintiff Dayong Yang (“Dayong”), as parent and next friend of Le Yang (“Le”), a minor, for his complaint against the defendants City of Little Rock, Arkansas (“the City of LR”); Stuart Thomas (“Thomas”), individually and in his official capacity as Chief of Police for the City of LR; Wayne Bewley (“Bewley”), individually and in his official capacity as Assistant Chief of Police for the City of LR; Laura Martin (“Martin”), individually and in her official capacity as Communications Center Manager for the City of LR; Candace Middleton (“Middleton”), individually and in her official capacity as Communications Call Taker for the City of LR; Gregory L. Summers (“Summers”), individually and in his official capacity as Fire Chief for the City of LR; and Frank Scott (“Scott”) and Eddie Rhine (“Rhine”), individually and in their official capacities as Firefighters for the City of LR, states the following:

NATURE AND PURPOSE OF THE ACTION

1. Dayong brings this action on behalf of Le, a minor, under 42 U.S.C. § 1983 and under Ark. Code Ann. §§ 16-62-101 and 102 to recover money damages, both compensatory and punitive, for the serious and permanent bodily injuries suffered by Le caused by the defendants as stated herein.

JURISDICTION AND VENUE

2. This complaint alleges civil rights violations actionable under Title 42 U.S.C. § 1983, the Fourteenth Amendments to the United States Constitution and the laws of the State of Arkansas, specifically the Arkansas Civil Rights Act. This complaint alternatively pleads negligence causes of action arising under Arkansas common law. Jurisdiction of this court is based on Ark. Code Ann. § 16-13-201. Dayong has suffered losses and damages in excess of the amount required for federal court diversity jurisdiction.

3. Venue is proper under Ark. Code Ann. § 16-60-102(b) because this complaint alleges causes of actions against public officials regarding events that took place in Pulaski County, Arkansas.

PARTIES

4. Dayong is the natural father parent of Le, a minor. At all times relevant hereto and in all actions described herein, Le, age 5, was a resident of Pulaski County, Arkansas and a citizen of the United States. At all times relevant hereto and in all actions described herein, Dayong was a resident of Pulaski County.

5. The City of LR is a political subdivision of the State of Arkansas and at all relevant times employed Thomas, Bewley, Martin and Middleton. The City of LR is a defendant in its own right on Dayong's claims pursuant to the hiring decisions and unconstitutional

policies, customs and practices of the City of LR and the Little Rock Police Department (“LRPD”) and Little Rock Fire Department (“LRFD”), which policies, customs and practices caused the injuries described herein. Upon Dayong’s information and belief, the Chief of Police, Assistant Chief of Police and Communications Center Manager are policymakers for the City of LR with authority to dictate, among other things, hiring decisions. The hiring decisions of the LRPD and the Chief of Police, Assistant Chief of Police and Communications Center Manager constitute the official policy of the City of LR. Upon Dayong’s information and belief, the Chief of Police and the Fire Chief are policymakers for the City of LR with authority to, among other things, dictate the policy of handling 911 calls and water rescues. The policies of LRPD and LRFD constitute the official policy of the City of LR.

6. At all times relevant hereto, Thomas was the Chief of LRPD and an employee of the City of LR. As such, acting under the color of state law and pursuant to policies, customs and practices of the City of LR and/or the LRPD, he was the commanding officer of Bewley, Martin, and Middleton. Thomas was responsible for the hiring decisions of the LRPD. Thomas was also responsible for enforcing the policies, customs and practices of the LRPD and for ensuring that the personnel of LRPD obeyed the laws and Constitutions of the State of Arkansas and the United States of America. At all times relevant hereto, Thomas was acting in such capacity as the official head of the LRPD and acting under color of state law and pursuant to the policies, customs and practices as described herein.

7. At all times relevant hereto, Bewley was the Assistant Chief of Police and an employee of the City of LR. As such, acting under the color of state law and pursuant to policies, customs and practices, he was a commanding officer of Martin and Middleton. Bewley was responsible for hiring decisions of the LRPD. Bewley was also responsible for enforcing the

policies, customs and practices of the LRPD and for ensuring that the personnel of LRPD obeyed the laws and Constitutions of the State of Arkansas and the United States of America. At all times relevant hereto, Belwey was acting in such capacity as the assistant head of the LRPD and acting under color of state law and pursuant to the policies, customs and practices as described herein.

8. At all times relevant hereto, Martin was the Communications Center Manager and an employee of the City of LR. As such, acting under the color of state law and pursuant to policies, customs and practices, she was a commanding officer of Middleton. Martin was responsible for hiring decisions of the LRPD. Martin was also responsible for enforcing the policies, customs and practices of the LRPD and for ensuring that the personnel of LRPD obeyed the laws and Constitutions of the State of Arkansas and the United States of America. At all times relevant hereto, Martin was acting in such capacity as a manager of the LRPD and acting under color of state law and pursuant to the policies, customs and practices as described herein.

9. At all times relevant hereto, Middleton was a Communications Call Taker employed by the City of LR and was acting under color of state law and pursuant to policies, customs and practices of the City of LR and LRPD.

10. At all times relevant hereto, Summers was the Fire Chief of LRFD and an employee of the City of LR. As such, acting under the color of state law and pursuant to policies, customs and practices of the City of LR and/or the LRFD, he was the commanding officer of Scott and Rhine. Summers was responsible for enforcing the policies, customs and practices of the LRFD and for ensuring that the personnel of LRFD obeyed the laws and Constitutions of the State of Arkansas and the United States of America. At all times relevant

hereto, Summers was acting in such capacity as the official head of the LRFD and acting under color of state law and pursuant to the policies, customs and practices as described herein.

11. At all times relevant hereto, Scott and Rhine were Firefighters employed by the City of LR and were acting under color of state law and pursuant to policies, customs and practices of the City of LR and LRFD.

12. At all times relevant hereto, Thomas, Bewley, Martin and Middleton were police officers and/or employees of the City of LR and as such each was the agent, servant, and employee of the City of LR, and these defendants were at all times acting within the course and scope of said agency and employment with knowledge and consent of said employer and principal.

13. At all times relevant hereto, Summers, Scott and Rhine were firemen of the City of LR and as such each was the agent, servant, and employee of the City of LR, and these defendants were at all times acting within the course and scope of said agency and employment with knowledge and consent of said employer and principal.

STATEMENT OF THE CASE

911 System

14. The State of Arkansas has established a 911 emergency call system. The purpose of this system is to provide the citizens of the state with a single locally operated primary three digit emergency number through which its citizens may seek a full spectrum of emergency services, to include Fire, Police, Disaster, Rescue, and medical emergency services. Under the adopted concept, local jurisdictions are encouraged to establish 911 emergency call centers to be funded by fees charged to the citizens of each locality on their phone bills. *See Ark. Code Ann. § 12-10-302.*

15. Under the statutory scheme each political subdivision determines whether to afford such services but if it does so elect, the law requires that the political subdivision must designate the operating agency, which, “shall be the public safety answering point for the political subdivision...” *See* Ark. Code Ann. § 12-10-304.

16. The City of LR has established and designated the City Office of Emergency Services as the entity charged with the operation of the 911 call center. This center is funded by fees collected from the citizens of the city as noted above. Little Rock City Code § 11-13 (1996).

17. The City of LR has established a city Fire Department, which department is charged with providing emergency rescue services, funded by property taxes and other tax revenues. *See* Ark. Code Ann. § 14-53-101(a) (“The city council shall establish fire departments and provide them with proper engines and such other equipment as shall be necessary to extinguish fires and preserve the property of the city and of the inhabitants from conflagration.”)

18. The City of LR has established an emergency medical response service, MEMS, which provides city wide ambulance and emergency medical services, which is funded by fees charged for such services. Little Rock City Code § 5-58 (1996).

19. As a consequence of these actions there are no private ambulance or rescue services offered within the city limits of the City of LR and the public has been intentionally directed and educated to rely upon and use the 911 emergency call system as the one and only means of obtaining help in the event of the full range of emergency situations, all of which are paid for by fees and taxes levied expressly to provide the noted services.

20. Having overtly and intentionally assumed to itself the role of emergency responder and coordinator through the entire spectrum of emergency response services, the City

of LR has assumed a special relationship with its citizens in regards to such services and has an obvious duty to operate that system and to extend those services in a competent fashion.

Moreover, it is evident and clearly foreseeable that failure to perform the assumed responsibilities with due care can occasion grave consequences involving the unnecessary loss of life and/or property of its citizens who may find themselves from time to time dependent upon those services.

Middleton's Employment with the City of Benton

21. Middleton was hired by the City of Benton, Arkansas as a 911 Dispatcher on August 4, 1999.

22. On December 10, 1999 at 2:23 p.m., Middleton was unable to advise a police unit of the proper location of another police unit. A situation report was authored related to this incident and Middleton was "advised she has to know where officers are (sic) at all times."

23. On August 1, 2001, Middleton received a three day suspension without pay and six months probation for substandard work related to bringing her daughter into the radio room on July 23, 2001 from 12:23 a.m. until 2:05 a.m. in violation of radio room rules. On July 25, 2001, Middleton put two chairs together, lay across the two chairs and pulled a blanket up to her neck for most of the night. Middleton's three day suspension without pay was later reduced to an oral reprimand.

24. On October 15, 2002, Middleton received a verbal warning for substandard work related to her work performance on October 7, 2002 at 11:44 p.m. when she initially did not dispatch a third ambulance crew when the second ambulance crew was already dispatched, she then dispatched the third ambulance crew without checking with another ambulance crew that had already cleared and could have taken the run, she called MEMS who came from a further

location than the available ambulance crew, and she never gave the ambulance crew the location of the run to give them a chance to take it.

25. On January 3, 2003 around 2:00 a.m., a co-employee of Middleton heard Middleton snoring in the dispatch room. The co-employee authored a written complaint of Middleton's actions.

26. On April 24, 2003, Middleton incorrectly advised a co-employee of the location of the ambulances prior to leaving the dispatch room and did not enter the location of the ambulances into the computer. The co-employee authored a written complaint of Middleton's actions.

27. On February 9, 2004 between the hours of 7:10 a.m. and 8:00 a.m., Middleton called two wreckers for a motor vehicle wreck involving two vehicles. Middleton advised the first wrecker company that she had two cars to be pulled. A co-employee advised Middleton that she made it sound like the first wrecker company needed to send two wreckers for both vehicles. The co-employee had to tell Middleton three times to call the first wrecker company back to confirm they only needed to send one wrecker and tow one vehicle. The co-employee authored a written complaint of Middleton's actions.

28. On February 9, 2004 at 12:30 p.m., Middleton took a 911 call requesting an ambulance, laid the dispatch down in front of the fire console, and tended to police traffic without making any attempt to advise her co-employees of the ambulance call and the need for dispatch. Middleton's failure to communicate with her co-employees caused the dispatch of the ambulance to be delayed. The co-employee authored a written complaint of Middleton's actions.

29. On April 23, 2007 at 11:53 p.m., a co-employee of Middleton received a 911 call from a healthcare facility requesting transport of an unresponsive patient to a hospital. The co-

employee advised Middleton of the call and requested Middleton to make the emergency transfer. Middleton did not notice the call until a few minutes later. An ambulance was dispatched seven minutes after the initial call. The ambulance crew arrived twelve minutes after the initial call. The ambulance crew requested the coroner twenty-seven minutes after the initial call. The co-employee authored a report of the event and Middleton's actions.

30. On October 23, 2008, Middleton received a written warning for substandard work related to sleeping while on duty on October 21, 2008 and October 23, 2008. A co-employee of Middleton reported her habit of sleeping on the job and looking at the phone when it rang but not answering the phone. He referenced an incident on the night of October 21, 2008 and early morning hours of October 22, 2008 where a medical call came through and Middleton made no effort to answer the call. The co-employee answered the call and dispatched the call because Middleton was sleeping and couldn't do it.

31. On August 9, 2010, Middleton received a written warning for substandard work related to her handling of a 911 call on August 5, 2010 where "[Middleton] confirmed an out of state warrant on the wrong person, causing the subject to be arrested and transported to jail. [Middleton] refused to take information from [an] anonymous caller that had information in reference to the home invasion robberies that occurred on Silica [Heights]." Middleton received two days off without pay and was placed on ninety days probation as a result of this written warning.

32. On November 3, 2010, Middleton received a written warning for substandard work related to her handling of a 911 call on October 10, 2010 at 10:13 p.m. where "[Middleton] failed to get the description of a subject that had fired shots in the area, causing an officer safety risk." Middleton also incorrectly advised the responding officers that the caller refused to

provide any other information when the caller had actually only said he didn't want to give his name. Middleton received a position demotion and a five percent pay deduction as a result of the written warning.

33. On January 17, 2011, Middleton dispatched a call to a district officer. Another officer responded he would take the call. A different officer responded he would check the scene. Middleton failed to verify that the officer checking the scene was at the incident location. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

34. On January 17, 2011, an officer advised Middleton that he was busy at a parade. Middleton refused to check with the officer on his status before clearing him as back in service. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

35. On January 17, 2011, Middleton received a hang up 911 call from an apartment complex where a disturbance had occurred earlier in the day. Middleton refused to call the hang up caller back. A co-employee took the number, called the caller back, and confirmed the suspect from the earlier disturbance at the apartment complex was back at the apartment complex and causing another disturbance. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

36. On January 26, 2011 at 4:02 p.m., an officer requested Middleton to have the fire department respond to a location with oil dry. Middleton delayed sending the fire department for twenty-one minutes because she claimed she forgot and was busy on the phone. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

37. On January 30, 2011, Middleton refused to answer fire and ambulance calls. Middleton was told to include destinations for the ambulance calls in order to make it easier to keep up with the location of the ambulance units. Middleton stated she didn't have time to input

the destinations. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

38. On February 1, 2011 at 5:15 p.m., Middleton received a non-emergency call regarding a patient transfer. Middleton failed to ask where the patient was to be transferred to. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

39. On February 2, 2011 at 10:04 p.m., Middleton received a call for an emergency transfer for a patient that had fallen and was still on the floor. All ambulances were busy. Middleton failed to ask the appropriate ambulance to do a fast turn around. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

40. On February 8, 2011 at 7:03 p.m., Middleton received a 911 call advising a man was unconscious with a bleeding head in front of Wal-Mart. Middleton did not confirm with the caller whether the injured person was in front of the Benton or Bryant Wal-Mart. Middleton dispatched a rescue team and ambulance to the Benton Wal-Mart. The ambulance arrived at the Benton Wal-Mart and was unable to find the injured man. Middleton then advised the ambulance to go to the Bryant Wal-Mart. The ambulance crew, while transporting the injured man from the Bryant Wal-Mart to the hospital, called Middleton on the radio three times before she answered. Middleton failed to ask the caller the location of the injured man, failed to note that the call came from the Bryant cell tower and failed to see that the call mapped to the Bryant Wal-Mart location. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

41. On February 9, 2011 at 4:12 p.m., Middleton received a 911 call reporting a person injured in a sledding incident. Middleton dispatched an ambulance to the injured person's address. She then asked another employee whether the injured person's address was

within the Benton city limits. The other employee keyed the address into the 911 console and confirmed the injured person's address was within the Benton city limits. Five minutes after dispatching the ambulance, Middleton dispatched a fire engine. Middleton failed to check with Saline County Dispatch, failed to check her Computer Aided Dispatch System ("CAD"), and failed to find the injured person's address on her 911 console to confirm the appropriate fire district. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

42. On February 9, 2011 at 4:13 p.m., Middleton received a 911 call reporting a person having seizures. Middleton dispatched the wrong ambulance to report to the scene. Middleton failed to check the 911 screen for the caller address and failed to check the medical transport book which would have indicated the appropriate ambulance to dispatch based on the caller address. A co-employee emailed a complaint about Middleton's actions to Middleton's supervisor.

43. On February 15, 2011, Middleton received a Memo from Thomas L. Griffin, Communications Center Supervisor for the City of Benton, stating "[w]e regret that it has come to this point, but due to your poor work performance over the past several months, we have no other choice but to terminate your employment with the City of Benton, effective immediately."

44. Middleton received fifteen written complaints by co-employees, one situation report by a supervisor, two verbal warning from a supervisor, and three written warnings from supervisors for substandard work during her employment with the City of Benton.

Middleton's Hiring by the City of Little Rock

45. On December 14, 2011, Middleton completed an online application for a Communications Call Taker position with the City of LR through the website NEOGOV. In her

application, Middleton stated she was previously employed by the City of Benton as a 911 Operator/Dispatcher from August 1999 to February 2011. Middleton stated she was terminated by the City of Benton. Middleton granted permission to the City of LR to contact the City of Benton.

46. On January 10, 2012, Middleton completed and signed the Supplemental Employment Information for Background Investigation by LRPD. In response to the question “[h]ave you ever been discharged or forced to resign from any employment?”, Middleton marked the box for “yes.” (emphasis original). In explaining her “yes” response, Middleton stated she “was terminated from last job at Benton Communications with reason given of substandard work due to [two] mistakes made close together.” Later in her employment history, Middleton stated she was terminated by the City of Benton. Middleton granted permission to the City of LR to contact the City of Benton.

47. On January 23, 2012, Middleton signed an Authorization to Release Information for the City of LR. The authorization read as follows:

I, Candace Middleton, have applied with the City of Little Rock, Arkansas, for the position of Communications Call Taker with the Little Rock Office of Emergency Services. In this position, I will be responsible for the dispatch of Police, Fire, and other Emergency Department equipment as well as doing responsible work to assist the citizens of Little Rock in the protection of their lives and property. I have been made aware that employees in this position are State Statute Sworn Public Safety Officers for the purposes of Public Safety Communications. I have also been advised that employees in this position must meet certain requirements in order to be certified to receive confidential Arkansas Crime Information Center and National Crime Information Center criminal history information for dissemination to law enforcement agencies. This requires a search of my criminal history/conviction information as well as a background check with former and present employers.

I understand the responsibilities of this position, and I am aware of the reason for the release of information of a personal and private nature concerning my employment history, criminal/conviction information and personal references.

I hereby authorize the release of any of the above described information to the City of Little Rock Office of Emergency Services or to any duly authorized representative of that agency.

48. On January 26, 2012, Middleton received a job referral for the Communications Call Taker position according to Middleton's NEOGOV Applicant Master Record.

49. On February 16, 2012, Martin prepared and initialed a Memorandum addressed to Bewley recommending the hiring of Middleton as a Communications Call Taker. Martin stated she had received Middleton's referral information in January 2012 and had interviewed Middleton.

50. On February 16, 2012 at 4:32 p.m., LRPD sent a fax to Benton Human Resources regarding Middleton. The fax included the Authorization to Release Information signed by Middleton and an Employment Reference form.

51. On February 17, 2012, Bewley handwrote on the Memorandum prepared by Martin that he recommended Thomas approve Martin's request to hire Middleton.

52. On February 17, 2012 at 5:15 p.m., Crystal Burton with the LRPD faxed the City of Benton a cover letter signed by Martin accompanied by the Authorization to Release Information requesting the City of Benton to complete the enclosed Employment Reference for Middleton.

53. On February 21, 2012, Kathy Kirk with Benton Police Communications completed and signed the Employment Reference form. Where asked whether Middleton was eligible for rehire with the City of Benton, Kirk checked the line for "no" and wrote "(policy)." Upon Dayong's information and belief, the completed and signed Employment Reference form was returned to Martin.

54. A City of Benton policy in effect at the time the Employment Reference form was completed stated “[f]ormer employees, whose performance while a City of Benton employee was at least satisfactory, are eligible to be considered for re-employment with the City of Benton.”

55. In spite of her grossly substandard and inadequate work performance for the City of Benton in the same or similar position, Middleton was hired by the City of LR on March 12, 2012 as a Communications Call Taker. Thomas signed his approval of Middleton’s hire on March 14, 2012.

Jinglei Yi’s 911 Call

56. Dayong and Jinglei Yi (“Jinglei”) married in Dalian, Liaoning Province, China in August 1998. That same year they moved from China to Los Angeles, California in search of a better life.

57. Le was born September 6, 2007 in Los Angeles, California. In early 2008, Dayong and Jinglei moved to Little Rock, Arkansas where Dayong had found a job at a hospital. Dayong and Jinglei decided it was best for Le to live with Jinglei’s mother and father in China until Dayong and Jinglei had fully established themselves in their new home of Little Rock. Le moved back to China to live with his grandparents when he was six months old.

58. Dayong and Jinglei called Le every night by video phone.

59. Dayong began work as a surgical technician at St. Vincent Medical Center in Sherwood in July 2009. Dayong and Jinglei purchased their first home located at 15306 Hartford Street in Little Rock in March 2010. Jinglei earned a nursing degree at the University of Arkansas at Little Rock in December 2011 and began work as a nurse at Baptist Health Medical Center in Little Rock in May 2012.

60. Five year old Le moved from Shanxi Province, China to Little Rock in 2012 to complete his family. Le was enrolled in daycare at St. James Learning Center. Dayong, Jinglei and Le went to the park every weekend to walk and ride bicycles.

61. On the cold Monday morning of January 14, 2013, Jinglei placed Le in his car seat in the backseat of her 2006 Ford Expedition. Her plan was to take Le to school and then go to work. She backed out of her driveway and headed south on Hartford Street. She stopped at the stop sign and made a left to proceed eastward on Capitol Hill Boulevard. She stopped at the stop sign at the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.

62. As Jinglei proceeded through the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue, she hit a patch of ice and lost control of her vehicle. Jinglei's vehicle continued east approximately 256 feet before going over the southbound curb line, leaving the roadway, striking a small tree, going down a hill and entering a retaining pond on the south side of Capitol Hill Boulevard.

63. Jinglei used her cell phone to call 911 at 7:55:25 a.m.¹

64. Jinglei's cell phone 911 call was answered by Pulaski County 911. Jinglei told the female Pulaski County 911 operator that her vehicle had fallen in the water. She stated that she was in the car with her child. The female Pulaski County 911 operator asked Jinglei if she slid off into the pond and said "I see where you're at." The female Pulaski County 911 operator then told Jinglei that she was going to get her to the correct agency to get its fire department to help Jinglei and Le.

¹ Pulaski County 911 call time stamp. Jinglei's AT&T cell phone records indicate this call was placed at 7:59 a.m.

65. The female Pulaski County 911 operator, with Jinglei on the line, called Little Rock 911 at 7:56:03 a.m.²

66. Middleton answered the call.

67. The female Pulaski County 911 operator told Middleton that Jinglei and Le were in a pond just east of Rushmore Avenue on the south side of the road. The female Pulaski County 911 operator told Jinglei that she was going to let her speak with Little Rock 911.

68. Jinglei told Middleton “I’m falling in a pond and I feel the water in my car right now.” Jinglei told Middleton her location, confirmed that Le was in the car with her and spelled her name.

69. Middleton said “[w]hy is this not taking it, this Cooper Orbit and Rushmore? Okay, ma’am, we’re going to get some help on the way for you, okay?” The time was 7:59:42 a.m.³

70. Middleton called MEMS at 8:01:24 a.m.⁴ Middleton advised Brandi Johnson (“Johnson”), the MEMS operator, that she had “a report of a vehicle off in a pond occupied by a female and a child.” Middleton told Johnson that “[Jinglei’s] still in the car and the water was coming in.” Johnson said “[a]ll right we’ve got them on the way.” Johnson entered the call at 8:04:20 a.m.⁵

² Pulaski County 911 call time stamp. Little Rock 911 call time stamp for this call is 7:57:37 a.m.

³ Little Rock 911 call time stamp.

⁴ *Id.*

⁵ MEMS CAD time stamp.

71. At 8:05 a.m. and 8:06 a.m.,⁶ Jinglei called Dayong and told him that her vehicle was in the water and that she could feel water on her legs. Dayong was scrubbing into surgery at St. Vincent in Sherwood. Dayong left work immediately to come to Jinglei and Le's aid.

72. At 8:06:11 a.m.,⁷ MEMS ambulance unit 227 was enroute from Maumelle Boulevard and Counts Massie Road in Maumelle, Arkansas to aid Jinglei and Le.

73. At 8:07 a.m.,⁸ Johnson called Jinglei's cell phone. Johnson spoke to Jinglei for the next thirteen and a half minutes.⁹ Twenty seconds into the phone conversation, Jinglei told Johnson the water was inside the car but below the seats of the car. Approximately one minute into the conversation, Jinglei told Johnson Le was five years old and "he was crying but he's okay." Johnson advised Jinglei to take Le out of his car seat. Jinglei replied that Le had unlocked himself from the car seat. Jinglei told Johnson she and Le could not swim. Approximately two and half minutes into the conversation, Jinglei said the water had risen to the level of the seats. Johnson asked Jinglei to "try to comfort [Le] and calm him down." Jinglei said she was trying to calm him down. Approximately three and half minutes into the conversation, Johnson asked Jinglei to "talk to her son, try to comfort him." Johnson told Jinglei "tell him to calm (sic) the ambulance is on the way." Le screamed louder. The water was almost above the seats. Approximately five and a half minutes into the conversation, Jinglei told Johnson the water level was to the windows of the car. Johnson asked Jinglei if Le knew how to

⁶ Jinglei's AT&T cell phone records.

⁷ MEMS CAD time stamp.

⁸ MEMS call time stamp and MEMS timeline of events.

⁹ MEMS call time stamp. Jinglei's AT&T cell phone records indicate this call lasted fifteen minutes.

hold his breath. Johnson wanted Jinglei and Le to take a deep breath just before the car filled with water, hold their breath once the car was completely filled with water, open a car door and swim to the surface. Approximately nine minutes into the conversation, Jinglei told Johnson the car was almost filled with water. Le was frantic. Approximately eleven minutes into the conversation, Jinglei told Johnson the water was to her neck. Twelve minutes into the conversation, Johnson told Jinglei “tell your son to take a deep breath when [the water] covers his face.” Approximately twelve and a half minutes into the conversation, a siren was heard. Jinglei told Johnson she could hear the ambulance. Johnson told Jinglei to keep Le calm. Jinglei said he was okay. Johnson told Jinglei to keep Le’s head above water. Thirteen minutes into the conversation, Le’s screams became muffled. Then, Le’s screams could no longer be heard. Johnson asked Jinglei: “Are you there? Hello?” The line was silent. It was 8:21 a.m.¹⁰

74. MEMS ambulance unit 227 arrived at the scene at 8:20:18 a.m.¹¹ At 8:21 a.m.¹², Tarynn Reilly (“Reilly”), a MEMS supervisor, called Little Rock 911. Communications Call Taker Tom Keeler (“Keeler”) answered the call. Reilly asked Keeler if Little Rock was handling the car in the water at Cooper Orbit and Rushmore. Keeler said, “I’m not seeing it.” Reilly replied, “Are you kidding me?” Keeler confirmed that neither a rescue call nor a police call had been placed. Keeler stated, “I’ll get a call put in.” Reilly said: “We just checked on scene and (sic) we’re not going to be able to get them out without help.”

¹⁰ MEMS call time stamp.

¹¹ MEMS CAD time stamp.

¹² MEMS call time stamp and MEMS timeline of events. Little Rock 911 call time stamp for this call is 8:17:28. a.m.

75. Calls for LRPD and LRFD were entered into the CAD at 8:23:02 a.m.¹³

76. LRFD Engine 20 was dispatched at 8:23:31 a.m., was enroute at 8:25:51 a.m., and arrived at the scene at 8:28:45 a.m.¹⁴ Scott was on board LRFD Engine 20.

77. LRFD Battalion Chief 09 was dispatched at 8:23:31 a.m., was enroute at 8:25:08 a.m., and arrived at the scene at 8:35:43 a.m.¹⁵ Rhine was on board LRFD Battalion Chief 09.

78. LRFD Water Rescue 2 was dispatched at 8:24:57 a.m. and was enroute at 8:28:21 a.m.¹⁶

79. LRFD Rescue 2 was dispatched at 8:28:29 a.m. and was enroute at 8:28:36 a.m.¹⁷

80. At 8:25:03 a.m.¹⁸, MEMS Supervisor Sierra Darr (“Darr”) was enroute to the scene. Darr arrived at the scene at 8:33:26 a.m.¹⁹

81. At 8:27:55 a.m.²⁰, MEMS ambulance unit 517 was enroute from Pleasant Valley Living Center to the scene. MEMS ambulance unit 517 arrived at the scene at 8:37:19 a.m.²¹

82. LRPD Units were dispatched at 8:27:50 a.m.²² Officers Steve McGuire (“McGuire”) and Peter Whaley (“Whaley”) arrived on the scene at 8:35:30 a.m.²³ Officer

¹³ Little Rock 911 CAD time stamp.

¹⁴ LRFD event report.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ MEMS CAD time stamp.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² LRPD event report.

Ronnie Carr (“Carr”) arrived at the scene at 8:37:00 a.m.²⁴ Officer James Nellis (“Nellis”) arrived at the scene at 8:37:45 a.m.²⁵ Officers Troy Dillard (“Dillard”) and Anthony Moore (“Moore”) arrived at the scene at 8:39:47 a.m.²⁶

83. McGuire and Whaley secured the scene upon their arrival. Whaley was able to tell that Jinglei’s vehicle was almost on the opposite side of the pond by the location of the air bubbles floating to the surface.

84. Dayong arrived at the scene at 8:37:38 a.m.²⁷ McGuire, Whaley and Carr made contact with Dayong at 8:38:05 a.m.²⁸ At 8:39:34 a.m.²⁹, McGuire, Whaley and Carr confirmed to Dayong that Jinglei’s vehicle remained submerged.

85. Scott briefed Rhine regarding the situation. LRFD Engine 20’s water rescue crew was prepared to enter the water when they heard Rescue 2 approaching the scene. Rhine advised Engine 20’s water rescue crew to stand by to assist Rescue 2 when it arrived. Rhine advised Captain John Hogue (“Hogue”) of Rescue 2 by radio that Jinglei’s submerged vehicle was thirty feet out in the pond and that he could see the top of the vehicle just below the surface. Rescue 2 arrived at the scene at 8:40:34 a.m.³⁰

²³ *Id.*

²⁴ LRPD MVR time stamp.

²⁵ *Id.*

²⁶ LRPD event report.

²⁷ LRPD MVR time stamp.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

86. At 8:42:25 a.m.³¹, Dayong attempted to walk from the sidewalk on Capitol Hill Boulevard to the pond. Dayong intended to enter the water and save Jinglei and Le. He was restrained in his rescue attempt by Rhine and Scott.

87. Hogue and Firefighter Jesse Clark (“Clark”) entered the water to rescue Jinglei and Le. Clark broke out the driver’s side rear window and found Jinglei in the back of the vehicle. Hogue swam Jinglei to shore. Darr saw Hogue pull Jinglei out of the water at 8:48 a.m.³² Clark continued the search for Le. Clark located Le in the back of the vehicle. He pulled Le out of the vehicle and swam him to shore. Clark turned Le’s care over to MEMS. At 9:05:57 a.m.³³, Le was taken by MEMS ambulance unit 227 from the scene enroute to Arkansas Children’s Hospital. He was unconscious.

88. At 8:38 a.m.³⁴, Sharon Martin with Little Rock 911 called MEMS and spoke to Chris. Chris complained to Sharon Martin about rescue’s delayed response time. Sharon Martin explained that calls for LRPD and LRFD were entered at 8:23:02 a.m. Chris responded that MEMS received a call from Little Rock 911 at 8:04 a.m. Sharon Martin stated that she would go back and “check the tapes.” Chris detailed how MEMS ambulance arrived at the scene at 8:20 a.m. which was three minutes before the LRPD and LRFD calls were entered. Chris told Sharon Martin that MEMS units “are not supposed to enter the water.” Sharon Martin agreed that MEMS was not to enter the water.

³¹ *Id.*

³² MEMS timeline of events.

³³ MEMS CAD time stamp.

³⁴ MEMS call time stamp.

89. At 12:30 p.m., the water temperature in the pond was 47 degrees Fahrenheit per measurements by the Arkansas Department of Environmental Quality.

90. Le was treated at Arkansas Children's Hospital for fifty days. Upon Dayong's information and belief, Le has suffered severe injuries and has only limited neurologic functioning. Le currently is at Arkansas Pediatric Hospital. His medical expenses to date are in excess of \$300,000.00.

91. Despite requests from Dayong's legal counsel, the City of Little Rock has not disclosed Middleton's entire personnel file and all documents created by the City of LR from its investigation of Middleton's handling of Jinglei's 911 cell phone call.

COUNT I: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Chief Stuart Thomas, Assistant Chief Wayne Bewley and Laura Martin in the Hiring Decision of Candace Middleton

92. All allegations herein are incorporated in this count.

93. Middleton was hired by the City of LR as Communications Call Taker in the LRPD.

94. Middleton's hiring was recommended by Martin and Bewley and approved by Thomas.

95. Middleton received fifteen written complaints by co-employees, one situation report by a supervisor, two verbal warning from a supervisor and three written warnings from supervisors for substandard work during her employment with the City of Benton.

96. City of LR, LRPD, Thomas, Bewley and Martin owed a duty to the general public to hire capable and qualified individuals as Communications Call Takers and, more specifically, to adequately scrutinize Middleton's employment background given her previous termination by the City of Benton. Even the most cursory review of Middleton's online application,

Supplemental Employment Information for Background Investigation by LRPD, or prior employment history and inquiry into her fitness for such an important and life endangering position would have revealed her complete incompetence. The hiring of Middleton, in light of her record with the approval of Thomas, Bewley and Martin, evidences either a policy of indifference to the qualifications of Communications Call Takers in the relevant departments of the LRPD or a conscious decision on the part of Thomas, Bewley and Martin to execute policy.

97. The plainly obvious consequence of the decision of the City of LR, LRPD, Thomas, Bewley and Martin to hire Middleton, an individual with a woefully inadequate and dangerous work history given the nature of the job, was that eventually and inevitably one or more citizens of Little Rock would be deprived of his or her federally protected right to life and liberty.

98. The actions of the City of LR, LRPD, Thomas, Bewley and Martin to hire Middleton in light of her employment background when they knew or should have known her previous termination for unacceptable work performance constitutes such a deliberate indifference to the safety and welfare of the citizens of the city of LR, Le and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty and property and is actionable by Dayong under 42 U.S.C. § 1983.

99. The deliberate indifference of the City of LR, LRPD, Thomas, Bewley and Martin evidenced in the hiring of Middleton was a proximate cause of Le's loss of liberty and his severe injuries.

COUNT II: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, and Candace Middleton in the Handling of Jinglei Yi's 911 Call

100. All allegations herein are incorporated in this count.

101. Middleton received Jinglei's cell phone 911 call. Forty-three minutes elapsed before LRFD water rescue arrived to assist Jinglei and Le.

102. It was foreseeable that a delayed and inappropriate rescue response would result in serious injuries to Le.

103. The delayed and inappropriate response evidenced a willful disregard of Le's safety by the City of LR and Middleton.

104. Jinglei advised Middleton that Le was in the car with her. As Middleton knew of Le's presence in the vehicle, a special relationship existed between the City of LR, LRPD and Middleton with Jinglei and Le.

105. Middleton told Jinglei, ". . . we're going to get some help on the way for you, okay?" However, upon Dayong's information and belief Middleton did not enter a police or rescue call into the CAD as was the custom and/or policy of the City of LR and LRPD. By promising help was on the way, Middleton exercised authority over Jinglei and Le and left her with a sense of security calculated to foreclose recourse to other potential rescue resources or self help.

106. Having represented that appropriate help was on the way, the conscious failure to then provide such assistance represents an affirmative act leading directly to the injuries sustained by Le for which Middleton is liable under 42 USC § 1983. Moreover, given Middleton's established history of failing to properly respond to emergency calls the City of LR, LRPD, Thomas, Bewley and Martin effectively adopted Middleton's actions as custom and practice for which the City of LR and LRPD Thomas, Bewley and Martin may be held liable under 42 USC § 1983.

COUNT III: Water Rescue Policies, Customs and Regulations of the City of Little Rock, Little Rock Police Department and Little Rock Fire Department Deprived Le Yang of His Liberty Interest

107. All allegations herein are incorporated in this count.

108. Upon Dayong's information and belief, policies, customs and regulations existed for the City of LR, LRPD and LRFD whereby water rescues were only to be conducted by authorized water rescue personnel of the LRFD.

109. The water rescue policies, customs and regulations of the City of LR, LRPD and LRFD created a situation whereby MEMS ambulance unit 227 (arrived at the scene at 8:20:18 a.m.), LRFD Engine 20 and Scott (arrived at 8:28:45 a.m.), Darr (arrived at 8:33:26 a.m.), McGuire and Whaley (arrived at 8:35:30 a.m.), Rhine (arrived at 8:35:43 a.m.), Carr (arrived at 8:37:00 a.m.), MEMS ambulance unit 517 (arrived at 8:37:19 a.m.), Nellis (arrived at 8:37:45 a.m.) and Dillard and Moore (arrived at 8:39:47 a.m.) were not allowed to enter the water for rescue efforts and were forced to await the arrival of LRFD Rescue 2 with Hogue and Clark (arrived at 8:40:34 a.m.).

110. But for the policies, customs and regulations of the City of LR, LRPD and LRFD, Le's bodily injuries would have been prevented or significantly reduced.

111. The City of LR, LRPD and LRFD policies, customs and regulations deprived Le of his liberty in violation of his rights granted by the Fourteenth Amendment to the United States Constitution and said violation is actionable under 42 USC § 1983.

COUNT IV: Scene Security Policies, Customs and Regulations of the City of Little Rock, Little Rock Police Department and Little Rock Fire Department Cut Off Potential Sources of Private Aid and Failed to Provide Adequate Replacement Protection

112. All allegations herein are incorporated in this count.

113. Upon Dayong's information and belief, policies, customs and regulations existed for the City of LR, LRPD, LRFD and MEMS to turn on their sirens and lights and secure the scene.

114. MEMS ambulance unit 227 (arrived at the scene at 8:20:18 a.m.), LRFD Engine 20 and Scott (arrived at 8:28:45 a.m.), Darr (arrived at 8:33:26 a.m.), McGuire and Whaley (arrived at 8:35:30 a.m.), Rhine (arrived at 8:35:43 a.m.), Carr (arrived at 8:37:00 a.m.), MEMS ambulance unit 517 (arrived at 8:37:19 a.m.), Nellis (arrived at 8:37:45 a.m.) and Dillard and Moore (arrived at 8:39:47 a.m.) were at the scene with their sirens and lights on.

115. McGuire and Whaley secured the scene upon their arrival.

116. The multiple vehicles with sirens and lights on and LRPD officers securing the scene indicated to passing motorists and potential sources of private rescue that the rescue effort of Le was being adequately handled by the City of LR, LRPD, LRFD and MEMS. Le was denied potential self help from private citizens from 8:20:18 a.m., the time MEMS ambulance unit 227 arrived until 8:40:34 a.m., the time when the authorized water rescue unit of LRFD Rescue 2 with Hogue and Clark arrived.

117. But for the policies, customs and regulations of the City of LR, LRPD and LRFD to turn on their sirens and lights and secure the scene resulting in a time period of twenty minutes and sixteen seconds where Le's access to self help from private citizens was cut off, Le's bodily injuries would have been prevented or significantly reduced.

118. The City of LR, LRPD and LRFD policies, customs and regulations deprived Le of his liberty in violation of his rights under the Fourteenth Amendment and said violation is actionable under 42 U.S.C. § 1983.

COUNT V: The City of Little Rock, Little Rock Fire Department, Firefighters Frank Scott and Eddie Rhine Arbitrarily Asserted Their Power and Prevented the Self Help Rescue Attempt of Dayong Yang

119. All allegations herein are incorporated in this count.

120. Upon Dayong's information and belief, policies, customs and regulations existed for the City of LR, LRPD and LRFD whereby water rescues were only to be conducted by authorized water rescue personnel of the LRFD.

121. Dayong arrived at the scene at 8:37:38 a.m. At 8:42:25 a.m., a time after the arrival of LRFD Rescue 2 but prior to Hogue and Clark entering the water, Dayong attempted to walk from the sidewalk on Capitol Hill Boulevard to the pond. Dayong intended to enter the water and save Jinglei and Le.

122. Scott and Rhine, in conformity with the policies, customs and regulations of the City of LR, LRPD and LRFD to only allow water rescue attempts to be conducted by authorized water rescue personnel of the LRFD, restrained Dayong and prevented his rescue attempt.

123. By preventing Dayong's self help rescue attempt, Scott and Rhine, state actors carrying out the policies, customs and regulations of the City of LR and LRFD, asserted the state's power and further deprived Le of his liberty interest.

124. But for the policies, customs and regulations of the City of LR, LRPD and LRFD whereby water rescues were only to be conducted by authorized water rescue personnel of the LRFD, Le's bodily injuries would have been significantly reduced.

125. The City of LR, LRPD and LRFD policies, customs and regulations deprived Le of his liberty interest in violation of the Fourteenth Amendment of the United States Constitution and said violation is actionable under 42 U.S.C. § 1983.

COUNT VI: Civil Rights Offenses under the Arkansas Civil Rights Act

126. All allegations herein are incorporated in this count.

127. Each of the defendants is a “person” subject to liability, as that term is used within Ark. Code Ann. §16-123-105.

128. Defendants acted under “color of state law,” as that term is used within Ark. Code Ann. § 16-123-105.

129. Defendants “subjected” Le to a “deprivation” of his Arkansas constitutional rights and resulting damages, as those terms are used within Ark. Code Ann. §16-123-105.

130. Defendants actually and proximately caused Le to suffer a deprivation of his Arkansas constitutional rights and resulting damages.

131. Defendants acted under a custom or policy of the City of LR, LRPD and/or LRFD at all pertinent times.

132. Thomas was a designated decision-maker for the City of LR and/or LRPD and had policy-making authority for the City of LR and/or LRPD at all pertinent times. Bewley was a designated decision-maker for the City of LR and/or LRPD and had policy-making authority for the City of LR and/or LRPD at all pertinent times. Martin was a designated decision-maker for the City of LR and/or LRPD and had policy-making authority for the City of LR and/or LRPD at all pertinent times.

133. Defendants caused Le to suffer an unlawful and unreasonable loss of liberty as protected by the Arkansas Constitution, and without substantive and procedural due process of law, resulting in Le’s significant injuries and his substantial pain and suffering.

134. Under the Arkansas Civil Rights Act, Dayong is entitled to legal and equitable relief, pursuant to Ark. Code Ann. §16-123-105.

135. Under the Arkansas Civil Rights Act, Dayong is entitled to recover compensatory and punitive damages, as well as the costs of litigation and a reasonable attorney's fee.

COUNT VII: Negligent Hiring of Candace Middleton by City of Little Rock, Chief Stuart Thomas, Assistant Chief Wayne Bewley and Laura Martin

136. All allegations herein are incorporated in this count.

137. Pleading in the alternative, if the failure to adequately scrutinize Middleton's employment background does not rise to the level of deliberate indifference, then Dayong alleges the hiring actions of Thomas, Bewley and Martin were negligent.

138. Thomas, Bewley and Martin owed a duty of reasonable care to the general public, with the inclusion of Le, to properly, diligently, and adequately screen Middleton to determine her qualifications and employment history before hiring her as a Communications Call Taker.

139. Thomas, Bewley and Martin breached their duties to the general public and Le by hiring Middleton as an employee for a highly sensitive position despite her record of substandard and dangerous work performance.

140. The grossly negligent acts of Thomas, Bewley and Martin in hiring Middleton were a proximate cause of Le's injuries.

141. At the time of the hiring of Middleton, Thomas, Bewley and Martin were acting within the scope of their employment with the City of LR and LRPD, subject to its control and in furtherance of its interests.

142. As such, under the doctrine of *respondeat superior* and Arkansas law, the City of LR is vicariously liable for the conduct of Thomas, Bewley and Martin and all damages and consequences of their conduct.

COUNT VIII: Middleton's Negligent Performance of Undertaking to Render Rescue Services

143. All allegations herein are incorporated in this count.

144. Pleading in the alternative, if Middleton's failure to timely provide rescue services to Le does not rise to the level of deliberate indifference, then Dayong alleges Middleton's performance of her duties was negligent.

145. Middleton, through her employment with the City of LR, undertook the duty to render rescue services to Jinglei and Le upon Jinglei's request for rescue services.

146. Middleton should have recognized that rescue services were necessary for protection of the lives and liberty of Jinglei and Le.

147. Jinglei, and by extension her son Le, relied upon Middleton's undertaking to provide rescue services.

148. Middleton's failure to exercise reasonable care in securing rescue services increased the risk of harm to Le.

149. Middleton is subject to liability for Le's physical harm resulting from her failure to exercise reasonable care to perform her undertaking to secure rescue services.

150. At the time Middleton received the 911 call from Jinglei, she was acting within the course and scope of her employment with the City of LR, subject to its control and in furtherance of its interests.

151. As such, under the doctrine of *respondeat superior* and Arkansas law, the City of LR is vicariously liable for the conduct of Middleton and all damages and consequences of her conduct.

COUNT IX: Firefighters Frank Scott and Eddie Rhine's Negligent Performance of Undertaking to Render Rescue Services

152. All allegations herein are incorporated in this count.

153. Pleading in the alternative, if the policies, customs and regulations of the City of LR, LRPD and LRFD whereby water rescues were only to be conducted by authorized water rescue personnel of the LRFD do not give rise to a constitutional violation of Le's liberty interest, then Dayong alleges Scott and Rhine's failure to timely provide rescue services to Le was negligent.

154. Scott and Rhine, through their employment with the City of LR and LRFD, undertook the duty to render rescue services to Jinglei and Le upon Jinglei's request for rescue services.

155. Scott arrived at 8:28:45 a.m. Rhine arrived at 8:35:43 a.m. Scott briefed Rhine on the situation. LRFD Engine 20 had water rescue capabilities. Rhine advised LRFD Engine 20's water rescue crew to stand by and assist LRFD Rescue 2 which did not arrive until 8:40:34 a.m. Le was underwater in a submerged vehicle for a critical eleven minutes and forty-nine seconds during the inaction of Scott and Rhine. Scott and Rhine knew that timely rescue services were necessary for the protection of the liberty of Le.

156. Scott and Rhine's failure to exercise reasonable care in performing rescue services increased the risk of harm to Le.

157. Scott and Rhine are subject to liability for Le's physical harm resulting from their failure to exercise reasonable care in performing rescue services.

158. At the time Scott and Rhine were performing rescue services, they were acting within the course and scope of their employment with the City of LR and LRFD, subject to its control and in furtherance of its interests.

159. As such, under the doctrine of *respondeat superior* and Arkansas law, the City of LR is vicariously liable for the conduct of Scott and Rhine and all damages and consequences of their conduct.

Ark. Code Ann. § 21-9-301 is Unconstitutional

160. All allegations herein are incorporated in this count.

161. Pleading in the alternative, Dayong has alleged various negligence counts against defendants.

162. Ark. Code Ann. § 21-9-301(a) states: “It is declared to be the public policy of the State of Arkansas that all . . . political subdivisions of the state . . . shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.”

163. Upon Dayong’s information and belief, the City of LR does not have liability insurance coverage for its negligent acts.

164. Ark. Constitution Article 2 § 13 states: “Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, . . .; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws.”

165. Ark. Constitution Article 5 § 32 provides: “. . . no law shall be enacted limiting the amount to be recovered for . . . injuries to persons . . .,”

166. Ark. Constitution Amendment 80 § 3 provides: “The Supreme Court shall prescribe the rules of pleading, practice & procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution.

167. To the extent Le has suffered a harm for which Ark. Code Ann. § 21-9-301 prevents a remedy, the aforementioned statute is an unconstitutional violation of Ark. Constitution Article 2 § 13, Ark. Constitution Article 5 § 32, and Ark. Constitution Amendment 80 § 3.

DAMAGES

168. As a proximate result of the acts or failure to act by defendants, Le suffered a loss of consciousness and cognitive function.

169. Dayong claims he is entitled to recover for the following elements of damages on behalf of Le, all of which were proximately caused by the actions or failure to act of defendants:

- (a) for the nature, extent, duration and permanency of Le's injuries;
- (b) for the reasonable expense of any necessary medical care, treatment and services received, including transportation expenses necessarily incurred in securing such care, treatment, or services and the present value of such expenses reasonably certain to be required in the future.
- (c) for pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future;
- (d) the present value of any loss of ability to earn in the future;
- (e) the reasonable expense of any necessary help in his home, which has been required as a result of his injury and the present value of such expense reasonably certain to be required in the future.
- (f) Le's inability to attend school; and
- (g) any and all other damages allowed under state and federal law.

PUNITIVE DAMAGES

170. Defendants knew or ought to have known, in the light of the surrounding circumstances, that their conduct described herein would naturally and probably result in injury and damage, and defendants continued such conduct in reckless disregard of the consequences, from which malice may be inferred.

171. Punitive damages should be imposed to punish defendants and to deter defendants and others from similar conduct.

ATTORNEY FEES AND COSTS

172. Dayong seeks an award of costs and attorney fees pursuant to 42 U.S.C. § 1988 and the Arkansas Civil Rights Act.

DEMAND FOR JURY TRIAL

173. Dayong requests a trial by jury.

WHEREFORE, the plaintiff, Dayong Yang on behalf of Le Yang, a minor, prays for compensatory and punitive damages, attorney fees and costs, and for all other relief as he may be entitled, as cited above, against each of the defendants named herein, jointly and severally, and for a ruling that Ark. Code Ann. § 21-9-301 is unconstitutional.

Respectfully submitted,

/s/ Carter C. Stein

Bruce McMath, Ark. Bar #75090

bruce@mcmathlaw.com

Carter C. Stein, Ark. Bar # 2004049

carter@mcmathlaw.com

McMATH WOODS P.A.

711 West Third Street

Little Rock, Arkansas 72201

Telephone: (501) 396-5400

Fax: (501) 374-5118