

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

TAMMY MELLENTIN,)
As Administrator and Personal Representative of)
the Estate of JAMES F. MELLENTIN, deceased)

PLAINTIFF,)

vs.)

THE COUNTY OF MCDONOUGH, a local)
governmental entity, THE)
MCDONOUGH COUNTY SHERIFF’S OFFICE,)
and EVAN C. SCHMALSHOF, individually and)
in his official capacity as)
a deputy of the MCDONOUGH COUNTY)
SHERIFF’S OFFICE, and)
NICHOLAS B. RUGGIO, individually and)
in his official capacity as)
a deputy of the MCDONOUGH COUNTY)
SHERIFF’S OFFICE,)

DEFENDANTS.)

No.

12 PERSON JURY DEMANDED

PLAINTIFF’S COMPLAINT AT LAW AND DEMAND FOR JURY TRIAL

NOW COMES, Plaintiff, TAMMY MELLENTIN, as Administrator and Personal Representative of the Estate of JAMES F. MELLENTIN, deceased, by and through her attorneys, John M. Spesia & Jacob E. Gancarczyk of SPESIA & TAYLOR, and for her Complaint at Law against Defendants THE COUNTY OF MCDONOUGH, THE MCDONOUGH COUNTY SHERIFF’S OFFICE, EVAN C. SCHMALSHOF, and NICHOLAS B. RUGGIO states as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over federal questions raised in Counts I-IV pursuant to 28 U.S.C. §1331, and 42 U.S.C. §§1983, 1988.

2. This Court has supplemental jurisdiction over the state law claims in Counts V-XI pursuant to 28 U.S.C. §1367 because said claims arise from the same case or controversy – the crash that killed James F. Mellenthin – as Plaintiff’s §1983 claims.

3. Venue is proper in this Court under 28 U.S.C. §1391(b) because all incidents, events, and occurrences giving rise to this action occurred in the geographical boundaries of the U.S. District Court for the Central District of Illinois. Moreover, the Defendants reside in this judicial district or resided in this judicial district at the time the events pled herein occurred.

4. Venue is proper in this Court under Central District Local Rule 40.1(c) because all incidents, events, and occurrences giving rise to this action occurred within McDonough County, Illinois.

THE PARTIES

5. At all times relevant hereto and until the time of his death on January 27, 2023, Plaintiff’s decedent, James F. Mellenthin was the owner and driver of a 2006 Pontiac, was a citizen of the United States and a resident of Cottage Hills, Madison County, State of Illinois.

6. Plaintiff TAMMY MELLENTHIN is a resident of Cottage Hills, Madison County, State of Illinois, and is the mother of James F. Mellenthin, deceased.

7. At the time of his death, decedent James F. Mellenthin, was survived by his three minor children.

8. On June 7, 2023, Plaintiff TAMMY MELLENTHIN, was appointed the administrator and personal representative of the Estate of JAMES F. MELLENTHIN.

9. On January 27, 2023, and at all times relevant to the allegations in this Complaint, Defendant THE COUNTY OF MCDONOUGH (hereinafter “County”) is and was a political subdivision of the State of Illinois and maintained, managed, operated, and controlled the

Defendant THE MCDONOUGH COUNTY SHERIFF'S OFFICE (hereinafter "MCSO" or "McDonough Co. Sheriff").

10. At all times material hereto, the sheriff of the MCSO, in his official capacity, is and was a policy maker possessing final decision-making authority with respect to various matters at issue in this Complaint.

11. On and before January 27, 2023, Nicholas Petitgout (hereinafter "Sheriff Petitgout") was the elected and sworn Sheriff of the MCSO.

12. Upon information and belief, Defendant Evan C. Schmalshof (hereinafter "Deputy Schmalshof") is and was at all times material hereto a citizen of the United States and the State of Illinois.

13. Between May 16, 2018 and January 27, 2023, Deputy Schmalshof was employed by the McDonough Co. Sheriff as a "deputy" and was "a sworn law enforcement official as defined by Illinois Statute."

14. At all times on January 27, 2023, while he was operating an authorized police vehicle owned by MCSO, Deputy Schmalshof was acting in his individual capacity and/or under color of state law, and within the scope of his employment and authority as a sworn and commissioned law enforcement officer of the County and MCSO.

15. On January 27, 2023, Defendant Nicholas B. Ruggio (hereinafter "Deputy Ruggio") was employed by the McDonough Co. Sheriff as a "deputy" and was "a sworn law enforcement official as defined by Illinois Statute."

16. At all times on January 27, 2023, while he was operating an authorized police vehicle owned by MCSO, Deputy Ruggio was acting in his individual capacity and/or under color of state

law, and within the scope of his employment and authority as a sworn and commissioned law enforcement officer of the County and MCSO.

17. Upon information and belief, Deputy Ruggio is and was at all times material hereto a citizen of the United States and the State of Illinois.

FACTUAL ALLEGATIONS

18. On January 27, 2023, there was in effect at the MCSO a Policy and Procedures Manual (hereinafter “MCSO Manual”), attached hereto as Exhibit A.

19. Under the MCSO Manual the terms “SHALL/WILL” mean(s) that an “action is mandatory.”

20. Section OPS-101 of the MCSO Manual provides:

When responding to emergency calls, any employee of this Department operating a Department vehicle shall exercise judgment and care with regard to safety of life and property. They shall maintain reasonable control of the vehicle at all times. When crossing intersections where traffic is conflicting, they shall utilize the siren and emergency lights and only enter the intersection when it can be done safely.

A. The MCSO Vehicular Pursuit Policy

21. On January 27, 2023, a policy within the MCSO Manual, “OPS-114,” governed vehicular pursuits by employees and agents of the MCSO (hereinafter “MCSO Vehicular Pursuit Policy”).

22. A true and accurate copy of the MCSO Vehicular Pursuit Policy that was in effect on January 27, 2023. *See* Exhibit A at 20-23.

23. The MCSO Vehicular Pursuit Policy defines a “Pursuit” as “an active effort by a commissioned law enforcement official (sworn deputy) operating in an authorized police vehicle (Sheriff’s Office vehicle) to apprehend the occupant(s) of a fleeing vehicle who is/are resisting apprehension by increasing speed, disobeying traffic laws, and/or attempting to elude the officer.” (hereinafter referring to definition using “Pursuit,” “Pursued” or “Pursue”).

24. A “Deputy” under the MCSO Vehicular Pursuit Policy is defined as “a sworn law enforcement official as defined by Illinois Statute currently employed by a public safety agency.”

25. The MCSO Vehicular Pursuit Policy defines “Forceable Stop” as “[t]he deliberate act of impacting a violator’s vehicle with another vehicle to functionally damage or force the violator’s vehicle to stop.”

26. Under the MCSO Vehicular Pursuit Policy, “Forcible Felony” means:

‘[T]reason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnapping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.’ – 720 ILCS 5/2-8.

27. The MCSO Vehicular Pursuit Policy contains the following provisions:

- 14(A)(1) A deputy shall ... terminate his/her involvement in a pursuit whenever the risks to his/her own safety, or the safety of others outweighs the danger to the community, if the suspect is not apprehended.
- 14(A)(1)(a) Pursuits should not normally be continued through areas of heavy traffic congestion, in residential areas, through school zones, or in other situations where there exists a high expectation of injury or death. McDonough County Sheriff’s Office shall not pursue vehicles within the city limits of the City of Macomb, Illinois without supervisory permission.
- 114(A)(1)(c) Deputies shall not pursue for misdemeanor traffic offenses, property crimes, or non-forcible felonies without supervisory permission.
- 114(A)(2)(e)(3) Deputies who become engaged in a pursuit will notify Central 911 Communications of the ... Most serious crime for which the occupants are wanted.
- 114(A)(2)(f) Deputies, when approaching an intersection where signal lights or stop signs control the flow of traffic, shall:
 - 1) Decelerate and be prepared to apply brakes;
 - 2) Enter the intersection only when safe and at a reduced speed. Make sure all cross vehicles are aware of law enforcement presence.

3) Resume pursuit speed only when safe. When using emergency lights and siren, the deputy is requesting the right of way and DOES NOT have the absolute right to disregard a red traffic light or stop sign.

114(A)(2)(g) Deputies shall not cause deliberate physical contact between their vehicles, nor shall they pull alongside the fleeing vehicle to force it into any obstacle.

114(A)(3) Assisting Units – members of the McDonough County Sheriff’s Office shall refrain from entering an on-going pursuit unless directly assigned to assist in the pursuit by the shift supervisor or at the request of a neighboring county sheriff’s office.

28. On January 27, 2023, Deputy Schmalshof knew or should have known the provisions in the MCSO Vehicular Pursuit Policy, which he was required to comply with.

29. On January 27, 2023, Deputy Ruggio knew or should have known the provisions in the MCSO Vehicular Pursuit Policy, which he was required to comply with.

B. January 27, 2023 – Pursuit Of James F. Mellenthin By MCSO Deputies

30. At approximately 9:13 p.m., Deputy Schmalshof and Deputy Ruggio were on duty and acting in their capacity as Deputies of the MCSO.

31. At approximately 9:13 p.m., Deputy Schmalshof was informed of the following from McDonough County 911 (hereinafter “McDonough 911”): “vehicle not stopping for city units, a blue Grand Am, blue Grand Am, eastbound from Columbia, eastbound from Columbia on Jackson.”

32. Columbia Street and Jackson Street are public roadways within the city limits of the City of Macomb, Illinois.

33. The intersection of Columbia Street and Jackson Street is within the city limits of the City of Macomb, Illinois and is within the jurisdiction of the City of Macomb Police Department (hereinafter “Macomb PD”).

34. At approximately 9:13 p.m., Deputy Schmalshof and Deputy Ruggio were located at 260 Collins Avenue, Macomb, Illinois, which is within the city limits of the City of Macomb, Illinois.

35. On January 27, 2023, Deputy Schmalshof and Deputy Ruggio were operating MCSO police vehicles which were equipped with radios that allowed each Deputy to hear conversations that occurred between Macomb PD officers, and also allowed each Deputy to hear conversations that occurred between Macomb PD officers and McDonough 911.

36. Deputy Ruggio could hear communications between Macomb PD Lieutenant Jim Rowland (hereinafter “the Lieutenant”) and the Macomb PD officers who were following the 2006 Pontiac.

37. At or after 9:13 p.m., and according to the audio recordings, the Lieutenant instructed Macomb PD officers that were following the 2006 Pontiac to “back down” and the Lieutenant stated: “I don’t think we have anything at this point ... just someone saying that it was ... following them.”

38. The Lieutenant’s command to Macomb PD officers to “back down” and that “I don’t think we have anything at this point” was broadcasted in Deputy Ruggio’s vehicle and any MCSO vehicle with an activated in-car video/audio system.

39. At or after 9:14 p.m., the Lieutenant again instructed the Macomb PD officers to “back it down,” which was broadcasted in Deputy Ruggio’s vehicle and any MCSO vehicle with an activated in-car video/audio system.

40. According to the video camera and audio system in Deputy Ruggio’s vehicle, the Lieutenant’s command to Macomb PD officers to “back it down” was broadcasted into Deputy Ruggio’s vehicle and any MCSO vehicle with an activated in-car video/audio system.

41. At or after 9:15 p.m., the Lieutenant gave an order to Macomb PD to “terminate” any effort to pursue the 2006 Pontiac, and the order was broadcasted into Deputy Ruggio’s vehicle and any MCSO vehicle with an activated in-car video/audio system.

42. At approximately 9:13 p.m. on January 27, 2023, Deputy Schmalshof and Deputy Ruggio departed from 260 Collins Avenue, Macomb, Illinois, and activated the emergency lights in each of their MCSO vehicles with the intent to engage in a Pursuit of the 2006 Pontiac.

43. At the time Deputy Schmalshof departed from 260 Collins Avenue, Macomb, Illinois on January 27, 2023, Tyler Mason was a passenger in the front seat of Deputy Schmalshof’s MCSO vehicle.

44. At all times during Deputy Schmalshof’s Pursuit, Tyler Mason was not a MCSO Deputy and was not an employee or agent of the MCSO.

45. At the time Deputy Schmalshof activated his emergency lights with the intent to engage in a Pursuit of the 2006 Pontiac, Deputy Schmalshof was unsure of the reason the 2006 Pontiac was stopped by Macomb PD and did not know the crime for which the occupant(s) of the 2006 Pontiac were wanted.

46. At the time Deputy Ruggio activated his emergency lights with the intent to engage in a Pursuit of the 2006 Pontiac, Deputy Ruggio was unsure of the reason or offense the 2006 Pontiac was stopped by Macomb PD and did not know the crime for which the occupant(s) of the 2006 Pontiac were wanted.

47. Macomb PD did not request assistance from MCSO in the apprehension of the 2006 Pontiac at any time prior to Deputy Schmalshof and Deputy Ruggio departing from 260 Collins Avenue, Macomb, Illinois and activating their emergency lights on January 27, 2023.

48. At no time prior to Deputy Schmalshof and Deputy Ruggio engaging in a vehicular Pursuit of the 2006 Pontiac did Deputy Schmalshof or Deputy Ruggio:

- a. Request permission from any supervisor employed by the MCSO to engage in a vehicular Pursuit of the 2006 Pontiac;
- b. Receive supervisory permission from any supervisor employed by the MCSO to engage in a vehicular Pursuit of the 2006 Pontiac; and/or
- c. Receive direction or assignment to assist in a vehicular Pursuit of the 2006 Pontiac from any supervisor employed by the MCSO.

49. On January 27, 2023, Deputy Schmalshof and Deputy Ruggio began the vehicular Pursuit of the 2006 Pontiac in a location that was within the city limits of the City of Macomb, Illinois.

50. After Deputy Schmalshof activated the emergency lights on his MCSO vehicle on January 27, 2023 and began his vehicular Pursuit of the 2006 Pontiac:

- a. Deputy Schmalshof drove his MCSO vehicle at speeds that exceeded the speed limit on roadways that were within the city limits of the City of Macomb;
- b. The Macomb PD did not request assistance from MCSO in the apprehension of the 2006 Pontiac;
- c. Deputy Schmalshof, at locations within the city limits of the City of Macomb, passed three Macomb PD squad cars, all of which were not in pursuit of the 2006 Pontiac;
- d. Deputy Schmalshof knew or should have known that the Macomb PD had terminated its pursuit of the 2006 Pontiac;
- e. Deputy Schmalshof traveled eastbound on Jackson Street at speeds in excess of the speed limit and passed vehicles in locations where commercial businesses were located;
- f. Deputy Schmalshof traveled in the center turn lane and in the westbound (oncoming) lane of traffic on Jackson Street in locations where commercial businesses were located;
- g. Deputy Schmalshof disregarded traffic safety control devices, including traffic signals and signs, on Jackson Street in locations where commercial businesses were located;
- h. McDonough 911 provided Deputy Schmalshof with the license plate number of the 2006 Pontiac, the owner's name, and the residence of the owner of the vehicle;

- i. Deputy Schmalshof drove through locations where commercial businesses were located at speeds that exceeded the speed limit without having visual contact with the 2006 Pontiac;
- j. Deputy Schmalshof did not, at any time during the Pursuit, notify McDonough 911 of the “[m]ost serious crime for which the [2006 Pontiac] [was] wanted [for].”

51. After Deputy Ruggio activated the emergency lights on his MCSO vehicle on January 27, 2023 and began his vehicular Pursuit of the 2006 Pontiac:

- a. Deputy Ruggio deliberately failed to intervene when he knew that the Pursuit of the 2006 Pontiac by Deputy Schmalshof was being conducted in clear violation of the MCSO Vehicular Pursuit Policy;
- b. Deputy Ruggio failed to intervene when he knew that Deputy Schmalshof’s violation of the MCSO Vehicular Pursuit Policy was likely to cause great bodily harm or death;
- c. Deputy Ruggio knew or should have known that the violation the MCSO Vehicular Pursuit Policy by Deputy Schmalshof created a substantial risk of injury or death to the motoring public and James F. Mellenthin;
- d. Deputy Ruggio drove his MCSO vehicle at speeds that exceeded the speed limit on roadways that were within the city limits of the City of Macomb;
- e. The Macomb PD did not request assistance from MCSO in the apprehension of the 2006 Pontiac;
- f. Deputy Ruggio, at locations within the city limits of the City of Macomb, passed three Macomb PD squad cars, all of which were not in pursuit of the 2006 Pontiac;
- g. Deputy Ruggio knew or should have known that the Macomb PD had terminated its pursuit of the 2006 Pontiac;
- h. Deputy Ruggio traveled eastbound on Jackson Street at speeds in excess of the speed limit and passed vehicles in locations where commercial businesses were located;
- i. Deputy Ruggio traveled in the center turn lane and in the westbound (oncoming) lane of traffic on Jackson Street in locations where commercial businesses were located;
- j. Deputy Ruggio disregarded traffic safety control devices, including traffic signals and signs, on Jackson Street in locations where commercial businesses were located;
- k. McDonough 911 provided Deputy Schmalshof with the license plate number of the 2006 Pontiac, the owner’s name, and the residence of the owner of the vehicle;

- l. Deputy Ruggio drove through locations where commercial businesses were located at speeds that exceeded the speed limit without having visual contact with the 2006 Pontiac; and/or
- m. Deputy Ruggio did not, at any time during the Pursuit, notify McDonough 911 of the “[m]ost serious crime for which the [2006 Pontiac] [was] wanted [for].”

52. At the time Deputy Schmalshof elected to engage in a vehicular Pursuit of the 2006 Pontiac at speeds which exceeded the posted speed limit, Deputy Schmalshof did not have reasonable grounds to believe that the driver of the 2006 Pontiac had committed a “forcible felony” as the term is defined in MCSO’s Vehicular Pursuit Policy OPS-114(c) and (d).

53. At the time Deputy Ruggio elected to engage in a vehicular Pursuit of the 2006 Pontiac at speeds which exceeded the posted speed limit, Deputy Ruggio did not have reasonable grounds to believe that the driver of the 2006 Pontiac had committed a “forcible felony” as the term is defined in MCSO’s Vehicular Pursuit Policy OPS-114(c) and (d).

54. From the time Deputy Schmalshof and Deputy Ruggio departed from 260 Collins Avenue, Macomb, Illinois, in Pursuit of the 2006 Pontiac until the time Deputy Schmalshof turned his vehicle onto Illinois State Route 67 (hereinafter “Route 67”), Deputy Schmalshof did not have visual contact with the 2006 Pontiac.

55. At the time Deputy Schmalshof and Deputy Ruggio departed from 260 Collins Avenue, Macomb, Illinois, in Pursuit of the 2006 Pontiac, Deputy Ruggio did not have visual contact with the 2006 Pontiac until after Deputy Schmalshof collided with it.

56. From the time Deputy Schmalshof departed from 260 Collins Avenue, Macomb, Illinois in Pursuit of the 2006 Pontiac until the time Deputy Schmalshof turned his vehicle onto Route 67, Deputy Schmalshof was unsure of the crime for which the occupant(s) of the 2006 Pontiac were wanted.

57. Deputy Schmalshof first indicated that he had visual contact with the 2006 Pontiac when he informed McDonough 911: “I got him on 67.”

58. Route 67, in a location south of its intersection with Illinois State Route 136 (hereinafter “Route 136”), is a two-lane public highway located in McDonough County, Illinois.

59. While he was engaged in a vehicular Pursuit of the 2006 Pontiac on January 27, 2023, Deputy Schmalshof drove his MCSO vehicle in a southerly direction on Route 67 and in a location south of the intersection of Route 136 and Route 67.

60. In the location between the intersection of Route 67 and Route 136 and N 1050th Road, the posted speed limit on Route 67 is 55 mph.

61. On January 27, 2023, as he traveled south on Route 67 in the location between Route 136 and N 1050th Road, Deputy Schmalshof increased the speed of his MCSO vehicle to 140 mph in Pursuit of the 2006 Pontiac and in an effort to reduce the distance between his MCSO vehicle and the 2006 Pontiac.

62. Deputy Schmalshof informed McDonough 911 that he was “southbound on 67 passing toward 950.”

63. While Deputy Schmalshof had visual contact with the 2006 Pontiac on Route 67 and while traveling at a speed in excess of 100 mph, Deputy Schmalshof did not maintain a safe distance between his MCSO vehicle and the rear bumper of the 2006 Pontiac.

64. While Deputy Schmalshof was traveling in a southerly direction on Route 67, less than one car length from the rear bumper of the 2006 Pontiac, two vehicles traveling northbound (oncoming) on Route 67 passed the 2006 Pontiac and Deputy Schmalshof. *See Exhibit B (Schmalshof MCSO Car Video at 06:08-06:19).*

65. Prior to the second vehicle traveling northbound, Deputy Schmalshof, while traveling in excess of 100 mph and less than one car length from the rear bumper of the 2006 Pontiac, crossed the centerline of Route 67 and narrowly avoided colliding with the second oncoming vehicle.

66. After the two vehicles traveling northbound passed Deputy Schmalshof and the 2006 Pontiac, Deputy Schmalshof increased his speed and steered his MCSO vehicle across the centerline of Route 67 and into a position such that Deputy Schmalshof's MCSO vehicle was entirely within the northbound (oncoming) lane of traffic on Route 67.

67. While his MCSO vehicle was entirely within the northbound lane of traffic on Route 67, Deputy Schmalshof drove into a position where the front bumper of his MCSO vehicle was adjacent to the left-rear quarter panel of the 2006 Pontiac.

68. While Deputy Schmalshof's MCSO vehicle was in a position where the front bumper of his MCSO vehicle was adjacent to the left-rear quarter panel of the 2006 Pontiac, Deputy Schmalshof matched the speed of the 2006 Pontiac.

69. Deputy Schmalshof steered his MCSO vehicle from the northbound lane of traffic on Route 67 across the centerline toward the 2006 Pontiac at a speed exceeding 100 mph with the intent to: (a) execute a Precision Immobilization Technique (hereinafter "PIT maneuver"); (b) cause his MCSO vehicle to make physical contact with the 2006 Pontiac; (c) run the 2006 Pontiac off the road; (d) cause catastrophic damage to the 2006 Pontiac; and/or (e) harm the occupant(s) of the 2006 Pontiac.

70. At the time Deputy Schmalshof steered his MCSO vehicle from the northbound lane of traffic on Route 67 across the centerline toward the 2006 Pontiac, Deputy Schmalshof was traveling at a speed in excess of 100 mph.

71. Tyler Mason, a civilian, was sitting in the front passenger seat of Deputy Schmalshof's MCSO vehicle at the time Deputy Schmalshof steered the front right bumper (passenger side) of his MCSO vehicle across the centerline toward the 2006 Pontiac with the intent to: (a) execute a PIT maneuver; (b) cause his MCSO vehicle to make physical contact with the 2006 Pontiac; (c) run the 2006 Pontiac off the road; (d) cause catastrophic damage to the 2006 Pontiac; and/or (e) harm the occupant(s) of the 2006 Pontiac.

72. From the time Deputy Schmalshof steered his MCSO vehicle into a location fully within the northbound lane of Route 67 until the time the MCSO vehicle came into physical contact with the 2006 Pontiac: (a) Deputy Schmalshof never saw a northbound vehicle; (b) the video captured by a camera in Deputy Schmalshof's MCSO vehicle shows no northbound traffic on Route 67; (c) there were no visible vehicles or obstacles in the northbound lane of traffic; and (d) Deputy Schmalshof never informed his passenger, Tyler Mason, that Deputy Schmalshof saw a northbound vehicle.

73. At the time Deputy Schmalshof steered his MCSO vehicle from the northbound lane of traffic on Route 67 across the centerline toward the 2006 Pontiac, the 2006 Pontiac was between Deputy Schmalshof's MCSO vehicle and the gravel shoulder and ditch adjacent to the southbound lane of traffic on Route 67.

74. Deputy Schmalshof intentionally steered his MCSO vehicle across the centerline on Route 67 such that the "push" bumper on his MCSO vehicle crossed the centerline and came into physical contact with the left-rear quarter panel of the 2006 Pontiac being driven by James F. Mellenthin.

75. As a result of Deputy Schmalshof steering his MCSO vehicle across the centerline of Route 67, his MCSO vehicle came into physical contact with the 2006 Pontiac, the rear end of the 2006

Pontiac moved westward, the 2006 Pontiac crossed the centerline of Route 67, rolled over, and came to rest in a farm field on the east side of Route 67.

76. As a result of the collision caused by Deputy Schmalshof intentionally driving his vehicle across the centerline of Route 67 toward the 2006 Pontiac, James F. Mellenthin suffered significant bodily injuries including blunt force injuries of the head, neck, and trunk, and died.

C. Prior to January 27, 2023, The MCSO And The County Had Notice That MCSO Deputies, Including Deputy Schmalshof, Repeatedly Violated The MCSO Vehicular Pursuit Policy With Impunity

77. On September 3, 2004, MCSO Deputy Thomas Pledge (“hereinafter “Deputy Pledge”) engaged in a high-speed Pursuit of a driver that he suspected of driving while operating under the influence of alcohol or drugs at speeds in excess of 100 mph in a posted 45 mph speed zone.

78. On September 3, 2004, the MCSO “fresh pursuit” policy provided as follows:

It is the policy of this Department the ‘fresh pursuit’ at high speeds is justified only when the officer knows or has reasonable grounds to commit a serious felony. A serious felony is one that involves an actual or threatened attack which the officer has reasonable cause to believe could or has resulted in death or serious bodily injury. (hereinafter “2004 MCSO Fresh Pursuit Policy”).

79. While he was engaged in a “fresh pursuit” at “high speeds” on September 3, 2004, Deputy Pledge crashed into a minivan at the intersection of University Drive and Route 67 and caused the death of a 42-year-old mother and significant injuries to her 16-year-old daughter.

80. Deputy Pledge’s “fresh pursuit” at “high speeds” on September 3, 2004, violated the 2004 MCSO Fresh Pursuit Policy.

81. At all times material hereto, MCSO and the County had notice of Deputy Pledge’s September 3, 2004 high-speed pursuit, violation of the 2004 MCSO Fresh Pursuit Policy, and the resulting death and injury to the victims of Deputy Pledge’s conduct.

82. In 2017, a McDonough County jury found that Deputy Pledge's willful and wanton conduct, including Deputy Pledge's violation of the 2004 MCSO Fresh Pursuit Policy, caused the death of the 42-year-old mother and significant injuries to the daughter and returned a verdict in excess of \$4 million against the MCSO and the County.

83. After the jury's verdict was upheld on appeal in *Dayton v. Pledge*, 2019 IL App (3d) 170698, the County and MCSO paid in excess of \$4 million to resolve 2019 IL App (3d) 170698.

84. At no time did the MCSO discipline and/or reprimand Deputy Pledge for his conduct in connection with the September 3, 2004 vehicular Pursuit.

85. At no time did the MCSO discipline Deputy Pledge for his violation of the 2004 MCSO Fresh Pursuit Policy.

86. Subsequent to Deputy Pledge's "fresh pursuit" at high speeds, on September 3, 2004, the MCSO revised its policy relating to vehicular Pursuits by MCSO employees.

87. The MCSO Vehicular Pursuit Policy, in effect on January 27, 2023, has been in effect since at least November 1, 2017.

88. Between November 1, 2017 and January 27, 2023, the MCSO did not modify or change the provisions in the MCSO Vehicular Pursuit Policy.

89. The MCSO has documents establishing that it conducted a single meeting between November 1, 2017 and January 27, 2023 to discuss the MCSO Vehicular Pursuit Policy with MCSO employees, including MCSO Deputies. *See* Exhibit C.

90. The one (1) documented meeting to discuss the MCSO Vehicular Pursuit Policy occurred on July 13, 2021 (hereinafter "July 13, 2021 Meeting").

91. During the July 13, 2021 Meeting, employees of the MCSO were informed that it was the policy of the MCSO to "not pursu[e] vehicles for misdemeanor traffic offences [sic] only."

92. Deputies of the MCSO, including Deputy Schmalshof, attended the July 13, 2021 Meeting at which there was a discussion of the MCSO policy of “not pursuing vehicles for misdemeanor traffic offences [sic] only.”

93. Subsequent to the July 13, 2021 Meeting, Deputies employed by the MCSO, including Deputy Schmalshof, engaged in vehicular Pursuits in violation of the MCSO’s Vehicular Pursuit Policy, including the following (hereinafter the following are collectively referred to as “Prior Pursuits”):

- a. On August 11, 2021, Deputy Schmalshof engaged in a vehicular Pursuit of a vehicle that was suspected of speeding (traveling 68 mph in a posted 55 mph speed zone), which is a lesser offense than a misdemeanor. Deputy Schmalshof engaged in the Pursuit of the offending vehicle at speeds over 100 mph on dark roadways in locations where the posted speed limit was 55 mph. During the Pursuit, the Pursued vehicle ran off the roadway and into a farm field, causing property damage.
- b. On August 9, 2022, Deputy Schmalshof engaged in a vehicular Pursuit of a vehicle for speeding, a misdemeanor traffic offense. Deputy Schmalshof Pursued the suspected vehicle at speeds more than 100 mph in a zone with a posted 55 mph speed limit and the Pursuit ended when the Pursued vehicle crashed into a fence post and was burning and engulfed with smoke.
- c. On March 3, 2022, Deputy Schmalshof engaged in a vehicular Pursuit of a vehicle on the grounds that its “exhaust system” was making contact with the roadway, a lesser offense than a misdemeanor. Deputy Schmalshof Pursued the suspected offender into Warren County *after* a Warren County Sheriff’s Department (hereinafter “WCSD”) Official informed Deputy Schmalshof that WCSD does not pursue vehicles for minor

traffic offenses. Deputy Schmalshof Pursued at speeds of 75 mph on dark roadways in a zone with a posted 55 mph speed limit and Deputy Schmalshof did not have his emergency lights and sirens activated at all times during the Pursuit. Deputy Schmalshof drove the front bumper of his MCSO vehicle into physical contact with the suspected offender's vehicle left-rear quarter panel during the Pursuit while his emergency lights and sirens were not activated. Deputy Schmalshof then reported that he used a "rolling road block driving maneuver" that caused the suspected offender to drive his vehicle through a ditch and into a collision with a field entrance, causing damage to the Pursued vehicle.

94. Deputy Schmalshof engaged in the Prior Pursuits knowing that the suspected offense(s) were misdemeanors or lesser than a misdemeanor, and without first obtaining authority from a supervisor employed by the MCSO.

95. In the Prior Pursuits, Deputy Schmalshof disregarded and disobeyed posted speed limits.

96. In each of the Prior Pursuits, Deputy Schmalshof's conduct was a violation of the MCSO Vehicular Pursuit Policy.

97. After each of the Prior Pursuits during which Deputy Schmalshof violated the MCSO Vehicular Pursuit Policy:

- a. The MCSO did not conduct and/or document any investigation to evaluate and document whether Deputy Schmalshof's conduct complied with the MCSO Vehicular Pursuit Policy;
- b. Deputy Schmalshof received no additional training on the MCSO Vehicular Pursuit Policy;
- c. Deputy Schmalshof received no written warnings, reprimands, or disciplinary measures;
- d. Deputy Schmalshof received no verbal warnings, reprimands, or disciplinary measures; and/or

- e. Deputy Schmalshof suffered no adverse employment action as a result of his conduct in the Prior Pursuits.

98. In each of the Prior Pursuits, Deputy Schmalshof consciously disregarded the safety of the public and significantly increased the risk of harm to the public.

99. Deputy Schmalshof knew or should have known that his conduct in the Prior Pursuits violated the MCSO Vehicular Pursuit Policy, and that the risks to his own safety or the safety of others outweighed the danger to the community if the occupant(s) of the Pursued vehicles were not apprehended.

100. Upon information and belief, additional instances exist in which Deputies of the MCSO routinely and repeatedly violated the MCSO Vehicular Pursuit Policy with deliberate indifference and/or recklessness for the safety and life of the motoring public.

101. Between September 3, 2004 and July 27, 2023, the MCSO failed to provide adequate training to its employees, including its Deputies, so as to ensure the safety of the motoring public and compliance with the MCSO Vehicular Pursuit Policy.

102. At no time between July 13, 2021 and January 27, 2023, did the MCSO provide any training to its employees, including its Deputies and Deputy Schmalshof, on the MCSO Vehicular Pursuit Policy.

103. Upon information and belief, at no time between 2018 and January 27, 2023, did the MCSO reprimand, discipline, and/or take any adverse employment decision, against any MCSO employee or Deputy, including Deputy Schmalshof, for engaging in conduct that violated the MCSO Vehicular Pursuit Policy or any policy relating to vehicular Pursuits.

104. Prior to January 27, 2023, Deputies and/or employees within the MCSO observed and reported obvious violations of the MCSO Vehicular Pursuit Policy by Deputy Schmalshof.

105. Prior to January 27, 2023, the MCSO and the County had notice of the Prior Pursuits and of violations of the MCSO Vehicular Pursuit Policy by its Deputies and/or employees.

106. At no time prior to July 27, 2023, was Deputy Schmalshof disciplined and/or reprimanded by MCSO for his conduct in connection with a Pursuit.

COUNT I - 42 U.S.C. §1983 - FOURTEENTH AMENDMENT VIOLATIONS

Plaintiff v. Defendant Schmalshof, individually and in his official capacity

1-106. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and realleges paragraphs 1 through 106 as though fully set forth herein.

107. On January 27, 2023, James F. Mellenthin had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive him of his life, liberty, or property in such a manner as to shock the conscience.

108. On January 27, 2023, Deputy Schmalshof was provided with no information, and had no reason to believe, that James F. Mellenthin or any occupant of the 2006 Pontiac had committed a “forcible felony” as defined in the MCSO Vehicular Pursuit Policy.

109. Deputy Schmalshof’s Pursuit of James F. Mellenthin on January 27, 2023, was conducted in a manner which shocks the conscience, with deliberate indifference and/or reckless disregard for the life, liberty, and property of James F. Mellenthin, and such that one can infer he intended to inflict injury upon James F. Mellenthin in one or more of the following respects (hereinafter referred to as the “Conduct that Shocks the Conscience”):

- a. While driving his MCSO vehicle in excess of 100 mph on a dark, unlit two-lane road, Deputy Schmalshof intentionally steered his MCSO vehicle across the centerline of Route 67, into the northbound (oncoming) lane, with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac;

- b. While driving his MCSO vehicle southbound in excess of 100 mph on a dark, unlit two-lane road, Deputy Schmalshof willingly and intentionally occupied the full northbound lane and positioned his MCSO vehicle where the front bumper was adjacent to the left-rear quarter panel of the 2006 Pontiac, with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac;
- c. While traveling alongside the 2006 Pontiac at a speed in excess of 100 mph, Deputy Schmalshof willingly and intentionally steered his MCSO vehicle across the centerline toward the left-rear quarter panel of the 2006 Pontiac with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac;
- d. Shortly before occupying the northbound lane, Deputy Schmalshof positioned his MCSO vehicle less than one car length from the rear bumper of the 2006 Pontiac and, as a result of following dangerously close to the 2006 Pontiac, crossed the centerline, and narrowly avoided colliding with oncoming traffic;
- e. Deputy Schmalshof drove at a speed at or in excess of 100 mph, narrowly avoided a head on collision with oncoming traffic, and steered his MCSO vehicle across the centerline with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac, all while Tyler Mason, a civilian, was sitting in the front passenger seat of Deputy Schmalshof's MCSO vehicle;
- f. In a posted 55 mph speed limit zone and while driving on Route 67 through four intersections and past five residential driveways, Deputy Schmalshof willingly operated his vehicle at speeds up to 140 mph in his Pursuit of the 2006 Pontiac;
- g. Deputy Schmalshof unreasonably, unjustifiably, and in blatant violation of the MCSO Vehicular Pursuit Policy, engaged in a vehicular Pursuit through traffic in commercial business areas within the city limits of the City of Macomb, at speeds far in excess of the speed limit, and in disregard of posted traffic markings, signs, signals and devices;
- h. Deputy Schmalshof willingly and intentionally initiated and continued a vehicular Pursuit in clear violation of the MCSO Vehicular Pursuit Policy and in a manner that is unjustifiable by any government interest;
- i. While substantially exceeding the posted speed limit within the city limits of the City of Macomb and with knowledge that the Macomb PD had terminated its pursuit of the 2006 Pontiac, Deputy Schmalshof willingly and deliberately failed to terminate his Pursuit knowing that the risk to the safety of the motoring public exceeded any benefit to the community that might come from apprehending the occupant(s) of the 2006 Pontiac, in violation of MCSO Vehicular Pursuit Policy 114(A)(1);
- j. While substantially exceeding the posted speed limit within the city limits of the City of Macomb, Deputy Schmalshof willingly and intentionally Pursued James F.

Mellenthin within the city limits of the City of Macomb, Illinois without supervisory permission, in violation of MCSO Vehicular Pursuit Policy 114(A)(1)(a);

- k. Deputy Schmalshof willingly and intentionally Pursued James F. Mellenthin for a suspected offense that was a non-forcible felony, in violation of MCSO Vehicular Pursuit Policy 114(A)(1)(c);
- l. Deputy Schmalshof willingly and intentionally Pursued James F. Mellenthin for a suspected offense that was a misdemeanor or lesser offense, in violation of the MCSO policy and the training he received from the MCSO;
- m. Deputy Schmalshof willingly and deliberately engaged in a Pursuit of the 2006 Pontiac without notifying McDonough 911 or any employee of the MCSO of the most serious crime for which the 2006 Pontiac was wanted, in violation of MCSO Vehicular Pursuit Policy 114(A)(2)(e)(3);
- n. Deputy Schmalshof willingly and deliberately drove his MCSO vehicle alongside the 2006 Pontiac, and then across the centerline of the Route 67 roadway, causing physical contact between his MCSO vehicle and the 2006 Pontiac, in violation of MCSO Vehicular Pursuit Policy 114(A)(2)(f)-(g);
- o. Deputy Schmalshof willingly and deliberately entered into an on-going pursuit by the Macomb PD without being directly assigned to assist in the Pursuit by a MCSO supervisor and without being requested to assist in the pursuit by the Macomb PD, in violation of MCSO Vehicular Pursuit Policy 114(A)(3); and/or
- p. Deputy Schmalshof willingly initiated and engaged in an emergency response (chasing the 2006 Pontiac) when he knew or should have known that there was an unnecessary risk to the safety, life and property of James F. Mellenthin, the general public, and the occupants of Deputy Schmalshof's MCSO vehicle, in violation of MCSO Manual Section OPS-101.

110. On January 27, 2023, Deputy Schmalshof engaged in a vehicular Pursuit of James F. Mellenthin with sufficient knowledge of the danger that his Conduct that Shocks the Conscience would cause great bodily harm or death to James F. Mellenthin, which Deputy Schmalshof consciously disregarded, refused, and failed to prevent.

111. The significant risk of great bodily injury and/or death to James F. Mellenthin, which resulted from his Conduct that Shocks the Conscience, was obvious and known to Deputy Schmalshof, who consciously disregarded and refused to prevent the risk of death to the occupant(s) of the 2006 Pontiac.

112. When Deputy Schmalshof engaged in his Conduct that Shocks the Conscience, Deputy Schmalshof intended to restrict the liberty of James F. Mellenthin and inflict damage to the person and property of James F. Mellenthin.

113. As a direct and proximate result of Deputy Schmalshof's Conduct that Shocks the Conscience, the decedent, James F. Mellenthin, sustained severe injuries and died.

114. On January 27, 2023, Deputy Schmalshof violated the substantive due process rights of decedent James F. Mellenthin who had a right to be free from state actions that would deprive him of life, liberty, and property and which shock the conscience.

115. As a further direct and proximate result of the acts and omissions of Deputy Schmalshof, including his violation of the constitutional rights of James F. Mellenthin, Plaintiff has suffered damages and incurred attorneys' fees.

WHEREFORE, Plaintiff prays for judgment against Defendant EVAN C. SCHMALSHOF for compensatory damages in an amount to be determined, for punitive damages, for the costs and reasonable expenses of this action pursuant to 42 U.S.C. §1988(b) and (c), for attorneys' fees, prejudgment interest, any and all other relief that the Court and Jury deem proper under these circumstances.

COUNT II - 42 U.S.C. §1983 - FOURTH AMENDMENT VIOLATIONS

Plaintiff v. Defendant Schmalshof, individually and in his official capacity

1-115. Plaintiff TAMMY MELLENTIN, as independent administrator of the Estate of JAMES F. MELLENTIN, deceased, hereby adopts and realleges paragraphs 1 through 115 as though fully set forth herein.

116. The actions of Deputy Schmalshof constitute unreasonable excessive and deadly force against Plaintiff's decedent James F. Mellenthin in violation of his rights under the Fourth Amendment of the United States Constitution and 42 U.S.C. §1983.

117. Based on the information and knowledge that Deputy Schmalshof had at the time he was in Pursuit, it was objectively unreasonable for Deputy Schmalshof to engage in the Conduct that Shocks the Conscience.

118. Based on the information and knowledge that Deputy Schmalshof had at the time he was in Pursuit, Deputy Schmalshof did not have probable cause to believe that the occupant(s) of the 2006 Pontiac posed a threat of serious physical harm, either to themselves or to others.

119. The actions of Deputy Schmalshof constitute an intentional termination of decedent James F. Mellenthin's freedom and life.

120. As a direct and proximate result of Deputy Schmalshof's unreasonable, unjustified, excessive, and deadly use of force, James F. Mellenthin suffered severe injuries to his person, damages, a violation of his constitutional rights, and death.

WHEREFORE, Plaintiff prays for judgment against Defendant EVAN C. SCHMALSHOF for compensatory damages in an amount to be determined, for punitive damages, for the costs and reasonable expenses of this action pursuant to 42 U.S.C. §1988(b) and (c), for attorneys' fees, prejudgment interest, and for any and all other relief that the Court and Jury deem proper under these circumstances.

COUNT III - 42 U.S.C. §1983 - MONELL LIABILITY

Failure to Train

Plaintiff v. Defendants County of McDonough and McDonough County Sheriff's Office

1-120. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and realleges paragraphs 1 through 120 as though fully set forth herein.

121. The MCSO and County have policy making authority with regard to establishing written policies and training programs governing the conduct of the MCSO officers performing policing functions on behalf of the MCSO.

122. The County maintains policies and procedures under which it oversees the use of law and legal resources for the MCSO.

123. The MCSO and County established and/or approved the MCSO's written policies and training governing the conduct of MCSO officers/Deputies performing Pursuits.

124. Prior to January 27, 2023, Defendants MCSO and the County, had in effect *de facto* policies, practices, or customs that perpetuated and fostered the unconstitutional conduct of Deputy Schmalshof.

125. Prior to January 27, 2023, Defendants MCSO and the County, failed to properly and adequately train its agents, employees, and/or Deputies, including Deputy Schmalshof and Deputy Ruggio, regarding:

- a. The safe operation of MCSO vehicles during a vehicular Pursuit;
- b. The circumstances under which it is permissible, appropriate and/or necessary to engage in a vehicular Pursuit;
- c. The circumstances under which it is appropriate, required, and/or necessary to terminate a vehicular Pursuit;
- d. The proper procedure that must be followed in order to engage in a vehicular pursuit to assist other police jurisdictions;
- e. The circumstances under which a supervisor's approval is required before engaging in a vehicular Pursuit;
- f. The circumstances under which a vehicular Pursuit within the limits of a recognized Illinois municipal entity, including the City of Macomb, is permissible, appropriate and/or necessary; and/or
- g. The mandatory requirements of the MCSO Vehicular Pursuit Policy.

126. Prior to January 27, 2023, MCSO had no written policy regarding training and did not regularly provide training to its employees, including its Deputies, on vehicular Pursuits or its own MCSO Vehicular Pursuit Policy.

127. Any training provided by the MCSO prior to January 27, 2023 was not adequate to ensure that MCSO employees and Deputies would engage in vehicular Pursuits in a manner that was consistent with existing MCSO policies and in a manner that did not infringe on the constitutional rights of the public.

128. In the ordinary course of fulfilling their job responsibilities between September 3, 2004 and January 27, 2023, the agents, employes, and/or Deputies of the MCSO, including Deputy Schmalshof, regularly engaged in vehicular Pursuits in violation of existing MCSO policies and which can and did result in bodily injury, death, and/or property damage, and/or unnecessarily jeopardize the safety of the public.

129. In light of the conduct of the MCSO Deputies violating the MCSO Vehicular Pursuit Policy, including but not limited to Deputy Pledge, Deputy Schmalshof (in the Prior Pursuits and the Pursuit of James F. Mellenthin) and Deputy Ruggio (in the Pursuit of James F. Mellenthin), the need for additional, reasonable, effective, and/or different training on police Pursuits was obvious.

130. Defendants MCSO and the County knew or should have known that the failure to provide adequate training to its employees and Deputies, including Deputy Schmalshof and Deputy Ruggio, on how to reasonably and appropriately conduct a vehicular Pursuit would likely cause property damage, bodily injury, and/or death, and/or constitutional violations to members of the motoring public, including an individual such as decedent, James F. Mellenthin.

131. Defendants MCSO and the County acted with deliberate indifference and reckless disregard of the obvious and foreseeable consequences of their failure to adequately train their employees and Deputies on how to reasonably and appropriately conduct a vehicular Pursuit, including the obvious and foreseeable consequence of MCSO's Deputies violating the constitutional rights of the motoring public and James F. Mellenthin.

132. The following actions and/or omissions of Defendants County and MCSO created an official *de facto* Pursuit policy that authorized and/or allowed MCSO Deputies to violate the constitutional rights of the motoring public, including James F. Mellenthin, with impunity:

- a. The failure to provide reasonable and adequate training on how to reasonably and appropriately conduct a vehicular Pursuit;
- b. The failure to provide reasonable and adequate training on the MCSO Vehicular Pursuit Policy;
- c. Allowing and condoning conduct by MCSO Deputies that created an obvious risk to the motoring public;
- d. Allowing and condoning conduct by MCSO Deputies that violates MCSO Vehicular Pursuit Policy; and/or
- e. The acquiescence to Deputy violations of the MCSO Vehicular Pursuit Policy.

133. By failing to train Deputies and employees prior to January 27, 2023, Defendants County and MCSO tacitly or overtly authorized the custom and practice of MCSO Deputies to engage in Pursuits with deliberate indifference and/or reckless disregard for the safety and life of the motoring public, with the intent to harm or cause injury to fleeing suspects or their property, and/or in a manner where injury or death of fleeing suspects was highly likely.

134. The MCSO and County's failure to train was the moving force behind the actions of Deputy Schmalshof and Deputy Ruggio which resulted in the injuries and death of decedent James F. Mellenthin.

135. As a direct and proximate result of the acts and omissions of Defendants MCSO and County, including its failure to reasonably and properly train employees and Deputies on how to reasonably and appropriately conduct a vehicular Pursuit, Plaintiff suffered damages as a result of the violation of his federal constitutional rights and incurred attorneys' fees.

WHEREFORE, Plaintiff prays for judgment against Defendants THE COUNTY OF MCDONOUGH and THE MCDONOUGH COUNTY SHERIFF'S OFFICE, for an amount in compensatory damages to be determined, for punitive damages, for the costs and reasonable expenses of this action pursuant to 42 U.S.C. § 1988(b) and (c), for attorneys' fees, prejudgment interest, and for any and all other relief that the Court and Jury deem proper under the circumstances.

COUNT IV - 42 U.S.C. §1983 - MONELL LIABILITY

Custom, Policy, and Practice

Plaintiff v. Defendants County of McDonough and McDonough County Sheriff's Office

1-135. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges Paragraphs 1 through 135 as though fully set forth herein.

136. On and prior to January 27, 2023, Defendants County and MCSO had a duty to refrain from violating the constitutional rights of the decedent, James F. Mellenthin, including his substantive due process rights to be secure in his bodily integrity.

137. Plaintiff's injuries, death, and damages alleged herein were proximately caused by policies, written and *de facto*, and practices of the MCSO which were/are adopted and enforced under the authority vested in the MCSO and the County.

138. The actions of Deputy Schmalshof on January 27, 2023 in Pursuit of James F. Mellenthin were taken pursuant to *de facto* policies, practices, and/or customs of the MCSO and County that are so pervasive and widespread that they carry the force of law.

139. On and prior to January 27, 2023, it was the widespread *de facto* policy of MCSO employees and Deputies, including Deputy Schmalshof and Deputy Ruggio, to violate the MCSO Vehicular Pursuit Policy by engaging in vehicular Pursuits for misdemeanors, lesser/petty offenses, and non-forcible felonies, and/or to drive MCSO vehicles in Pursuit with reckless disregard for the safety and life of the motoring public, with the intent to harm or cause injury to fleeing suspects or their property, and/or in a manner where injury or death of fleeing suspects was a highly predictable consequence of Deputies' conduct in a Pursuit.

140. On and prior to January 27, 2023, Defendants County and MCSO, including Sheriff Petitgout and employees of the MCSO with supervisory authority, were on notice and knew or should have known that it was the *de facto* policy of MCSO Deputies to violate the MCSO Vehicular Pursuit Policy and to engage in Pursuits with deliberate indifference and/or reckless disregard for the safety and life of the motoring public, with the intent to harm or cause injury to fleeing suspects or their property, and/or in a manner where injury or death of fleeing suspects was a highly predictable consequence of Deputies' conduct in a Pursuit.

141. On and prior to January 27, 2023, it was the *de facto* policy of Defendants County and MCSO to allow Deputies to violate the existing MCSO Vehicular Pursuit Policy with impunity.

142. On and prior to January 27, 2023, it was the *de facto* policy of the County and MCSO to fail to adequately investigate, supervise, control, discipline, and/or educate MCSO employees and Deputies who engaged in Pursuits that violated the MCSO Vehicular Pursuit Policy

and which were otherwise conducted in a fashion that was unreasonably and deliberately dangerous and constituted a deliberate indifference for the safety of the motoring public.

143. On and prior to January 27, 2023, Defendants County and MCSO tacitly or overtly authorized the *de facto* policies, Pursuit customs, and practices of its Deputies by deliberately acquiescing in and condoning the conduct of their Deputies which included violations of the MCSO Vehicular Pursuit Policy.

144. Since at least August 11, 2021, Defendants County and MCSO were at all times on notice of, and knew or should have known, the *de facto* policy and widespread practice of MCSO employees and Deputies of routinely engaging in Pursuits with deliberate indifference and/or reckless disregard for the safety and life of the motoring public, with the intent to harm or cause injury to fleeing suspects or their property, and/or in a manner where injury or death of fleeing suspects was a highly predictable consequence, all of which constitutes a deliberate indifference for the safety of the motoring public, including James F. Mellenthin.

145. Due to the aforementioned *de facto* policies (individually and collectively), Defendants County and MCSO tacitly or overtly authorized the custom and practice of MCSO Deputies to engage in Pursuits with reckless disregard for the safety and life of the motoring public, with the intent to harm or cause injury to fleeing suspects or their property, and/or in a manner where injury or death of fleeing suspects was a highly predictable consequence.

146. Given the aforementioned *de facto* policies, practices and customs, Defendants County and MCSO, including Sheriff Petitgout and supervisory employees of the MCSO, plausibly assured MCSO agents and employees and/or Deputies, including Deputy Schmalshof and Deputy Ruggio, that they could violate the MCSO Vehicular Pursuit Policy and engage in misconduct with deliberate indifference and/or reckless disregard to the safety and life of the

motoring public, including James F. Mellenthin, with impunity and without fear of official consequence or meaningful discipline.

147. Individually and collectively, the aforementioned widespread *de facto* policies, Pursuit customs, and practices of MCSO and County, have been maintained and/or implemented with utter indifference for the life, health, and safety of the public, by the MCSO and the County, and said *de facto policy* was/is allowed to flourish because it is directly encouraged and authorized by the action or inaction of the County and MCSO, including Sheriff Petitgout and supervisory employees of the MCSO.

148. The County and the MCSO, including Sheriff Petitgout and supervisory employees of the MCSO, encouraged and authorized the very type of misconduct that resulted in the injury and death of James F. Mellenthin through the aforementioned *de facto* policies, Pursuit customs and practices, thus directly encouraging future violations of the MCSO Vehicular Pursuit Policy which resulted in the death of James F. Mellenthin.

149. Given the widespread aforementioned *de facto* policies, Pursuit customs, and practices of Defendants County and MCSO, Deputy Schmalshof's and Deputy Ruggio's misconduct and violations of the MCSO Vehicular Pursuit Policy were a highly predictable consequence that caused the injury and death of James F. Mellenthin.

150. The widespread aforementioned *de facto* policies, Pursuit customs, and practices were so well-settled that they constituted the *de facto* policy of the County and MCSO, and the practices were able to exist and thrive because governmental policymakers with authority over said policies and practices, including Sheriff Petitgout and supervisory employees of the MCSO, exhibited deliberate indifference to the *de facto* policies, Pursuit customs, and practices, thereby effectively ratifying them.

151. Individually and collectively, the aforementioned widespread *de facto* policies, Pursuit customs, and practices of Defendants County and MCSO directly encouraged and is thereby the moving force behind the very type of conduct which caused James F. Mellenthin's injuries and death (i.e., engaging in Pursuits in violation of the MCSO Vehicular Pursuit Policy with deliberate indifference and reckless disregard to the motoring public).

152. The County and MCSO violated the constitutional rights of James F. Mellenthin by maintaining the aforementioned *de facto* policies, Pursuit customs and practices that were the moving force behind the violation of James F. Mellenthin's substantive due process right to be secure in his bodily integrity.

153. The injuries and death of James F. Mellenthin, and the Plaintiff's damages herein, were proximately caused by *de facto* Pursuit customs, policies and practices of the County and MCSO, which allowed and condoned the conduct of Deputy Schmalshof and Deputy Ruggio who engaged in a Pursuit of the 2006 Pontiac with deliberate indifference to the bodily integrity, life, and liberty of James F. Mellenthin.

WHEREFORE, Plaintiff prays for judgment against Defendants THE COUNTY OF MCDONOUGH and THE MCDONOUGH COUNTY SHERIFF'S OFFICE, for an amount in compensatory damages to be determined, for punitive damages, for the costs and reasonable expenses of this action pursuant to 42 U.S.C. § 1988(b) and (c), for attorneys' fees, prejudgment interest, and for any and all other relief that the Court and Jury deem proper under the circumstances.

COUNT V - WRONGFUL DEATH

Plaintiff v. Defendants County of McDonough and McDonough County Sheriff's Office

1-106, 136-153. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges Paragraphs 1 through 106 and 136 through 153 as though fully set forth herein.

154. Plaintiff, TAMMY MELLENTHIN, as Administrator of the Estate of JAMES F. MELLENTHIN, deceased brings this cause of action pursuant to the provisions of 740 ILCS 180/1, *et seq.*, commonly known as the Illinois Wrongful Death Act.

155. On January 27, 2023, and at all times during the Pursuit of the 2006 Pontiac, Defendants County and MCSO, acting by and through its duly authorized are sworn Deputies, officers, agents, representatives, and employees, including Deputy Schmalshof and Deputy Ruggio, had a duty to refrain from intentional and reckless willful and wanton conduct in the operation of its official vehicle(s) while in the exercise of the official duties of the MCSO.

156. Notwithstanding the aforesaid duty, the County and MCSO, by and through its agent and employee Deputy Schmalshof, was recklessly willful and wanton through a course of action which without legal justification demonstrated an utter indifference to, or conscious disregard for, the safety of others, including James F. Mellenthin, in one of more of the following respects:

- a. While driving his MCSO vehicle in excess of 100 mph on a dark, unlit two-lane road, Deputy Schmalshof intentionally steered his MCSO vehicle across the centerline of Route 67, into the northbound (oncoming) lane, with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac;
- b. While driving his MCSO vehicle southbound in excess of 100 mph on a dark, unlit two-lane road, Deputy Schmalshof willingly and intentionally occupied the full northbound lane and positioned his MCSO vehicle where the front bumper was adjacent to the left-rear quarter panel of the 2006 Pontiac, with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run

the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac;

- c. While traveling alongside the 2006 Pontiac at a speed in excess of 100 mph, Deputy Schmalshof willingly and intentionally steered his MCSO vehicle across the centerline toward the left-rear quarter panel of the 2006 Pontiac with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac;
- d. Shortly before occupying the northbound lane, Deputy Schmalshof positioned his MCSO vehicle less than one car length from the rear bumper of the 2006 Pontiac and, as a result of following dangerously too close to the 2006 Pontiac, crossed the centerline, and narrowly avoided oncoming traffic;
- e. While Deputy Schmalshof drove about or in excess of 100 mph, narrowly avoided a head on collision with oncoming traffic due to his deliberately following dangerously close to the 2006 Pontiac and steering his MCSO vehicle across the centerline with the intent to: (i) execute a PIT maneuver; (ii) cause physical contact with the 2006 Pontiac; (iii) run the 2006 Pontiac off the road; and/or (iv) cause catastrophic damage to the 2006 Pontiac – all while Tyler Mason, a civilian, was sitting in the front passenger seat of Deputy Schmalshof's MCSO vehicle;
- f. In a posted 55 mph speed limit zone and while driving on Route 67 through four intersections and past five driveways, Deputy Schmalshof willingly operated his vehicle at speeds of 140 mph or more in his Pursuit of the 2006 Pontiac;
- g. Deputy Schmalshof unreasonably, unjustifiably, and in blatant violation of the MCSO Vehicular Pursuit Policy, engaged in a vehicular Pursuit through traffic in commercial business areas within the city limits of the City of Macomb, at speeds far in excess of the speed limit, and in disregard of posted traffic markings, signs, signals and devices;
- h. Unjustifiably by any government interest, Deputy Schmalshof willingly and intentionally initiated and continued a vehicular Pursuit in clear violation of the MCSO Vehicular Pursuit Policy;
- i. While substantially exceeding the posted speed limit within the city limits of the City of Macomb and with knowledge that the Macomb PD had terminated its pursuit of the 2006 Pontiac, Deputy Schmalshof willingly and deliberately failed to terminate his Pursuit knowing that the risk to the safety of the motoring public exceeded any benefit to the community that might come from apprehending the occupant(s) of the 2006 Pontiac, in violation of MCSO Vehicular Pursuit Policy 114(A)(1);
- j. While substantially exceeding the posted speed limit within the city limits of the City of Macomb, Deputy Schmalshof willingly and intentionally Pursued James F. Mellenthin within the city limits of the City of Macomb, Illinois without

supervisory permission, in violation of MCSO Vehicular Pursuit Policy 114(A)(1)(a);

- k. Deputy Schmalshof willingly and intentionally Pursued James F. Mellenthin for a suspected offense that was a non-forcible felony, in violation of MCSO Vehicular Pursuit Policy 114(A)(1)(c);
- l. Deputy Schmalshof willingly and intentionally Pursued James F. Mellenthin for a suspected offense that was a misdemeanor or lesser offense, in violation of MCSO policy and the training he received from the MCSO;
- m. Deputy Schmalshof willingly and deliberately engaged in a Pursuit of the 2006 Pontiac without notifying McDonough 911 or any employee of the MCSO of the most serious crime for which the 2006 Pontiac was wanted, in violation of MCSO Vehicular Pursuit Policy 114(A)(2)(e)(3);
- n. Deputy Schmalshof willingly and deliberately drove his MCSO vehicle alongside the 2006 Pontiac, and then across the centerline of the Route 67 roadway, causing physical contact between his MCSO vehicle and the 2006 Pontiac, in violation of MCSO Vehicular Pursuit Policy 114(A)(2)(f)-(g);
- o. Deputy Schmalshof willingly and deliberately entered into an on-going pursuit by the Macomb PD without being directly assigned to assist in the Pursuit by a MCSO supervisor and without being requested to assist in the pursuit by the Macomb PD, in violation of MCSO Vehicular Pursuit Policy 114(A)(3);
- p. Deputy Schmalshof willingly initiated and engaged in an emergency response (chasing the 2006 Pontiac) when he knew or should have known that there was an unnecessary risk to the safety, life and property of James F. Mellenthin, the general public, and the occupants of Deputy Schmalshof's MCSO vehicle, in violation of MCSO Manual Section OPS-101;
- q. Deputy Schmalshof engaged in a Pursuit of the vehicle when the risk of injury or death to the general public exceeded the benefit;
- r. Deputy Schmalshof operated his MCSO vehicle with a conscious disregard and utter indifference for the safety of all persons;
- s. Deputy Schmalshof failed to terminate the alleged vehicular Pursuit when it was clearly dangerous; and/or
- t. Deputy Schmalshof willfully operated a motor vehicle in violation of 625 ILCS 5/11-205(e).

157. Notwithstanding the aforesaid duty, the County and MCSO, by and through its agent and employee Deputy Ruggio, was recklessly willful and wanton through a course of action

which without legal justification demonstrated an utter indifference to, or conscious disregard for, the safety of others, including James F. Mellenthin, in one of more of the following respects:

- a. Deputy Ruggio deliberately failed to intervene when he knew that the Pursuit of the 2006 Pontiac by Deputy Schmalshof was being conducted in clear violation of the MCSO Vehicular Pursuit Policy;
- b. Deputy Ruggio failed to intervene when he knew that Deputy Schmalshof's violation of the MCSO Vehicular Pursuit Policy was likely to cause great bodily harm or death;
- c. Deputy Ruggio knew or should have known that the violation the MCSO Vehicular Pursuit Policy by Deputy Schmalshof created a substantial risk of injury or death to the motoring public and James F. Mellenthin;
- d. Deputy Ruggio drove his MCSO vehicle at speeds that exceeded the speed limit on roadways that were within the city limits of the City of Macomb;
- e. The Macomb PD did not request assistance from MCSO in the apprehension of the 2006 Pontiac;
- f. Deputy Ruggio, at locations within the city limits of the City of Macomb, passed three Macomb PD squad cars, all of which were not in pursuit of the 2006 Pontiac;
- g. Deputy Ruggio knew or should have known that the Macomb PD had terminated its pursuit of the 2006 Pontiac;
- h. Deputy Ruggio traveled eastbound on Jackson Street at speeds in excess of the speed limit and passed vehicles in locations where commercial businesses were located;
- i. Deputy Ruggio traveled in the center turn lane and in the westbound (oncoming) lane of traffic on Jackson Street in locations where commercial businesses were located;
- j. Deputy Ruggio disregarded traffic safety control devices, including traffic signals and signs, on Jackson Street in locations where commercial businesses were located;
- k. McDonough 911 provided Deputy Schmalshof with the license plate number of the 2006 Pontiac, the owner's name, and the residence of the owner of the vehicle;
- l. Deputy Ruggio drove through locations where commercial businesses were located at speeds that exceeded the speed limit without having visual contact with the 2006 Pontiac; and/or

- m. Deputy Ruggio did not, at any time during the Pursuit, notify McDonough 911 of the “[m]ost serious crime for which the [2006 Pontiac] [was] wanted [for].”

158. The County and MCSO, by and through its agent and/or employee Deputy Schmalshof and/or Deputy Ruggio, engaged in the Pursuit of the 2006 Pontiac of James F. Mellenthin in an intentionally willful and wanton manner, without legal justification showing actual or deliberate intention to harm the driver of the 2006 Pontiac, James Mellenthin.

159. It was reasonably foreseeable that injury to a person and/or death would result from the conduct of the agents and employees of the MCSO and the County in its/their Pursuit of the 2006 Pontiac on January 27, 2023.

160. As a direct and proximate result of Defendants’ recklessly or intentionally willful and wanton acts and/or omissions, and the deliberate disregard for the life of James F. Mellenthin, Deputy Schmalshof collided with the 2006 Pontiac and Plaintiff’s Decedent, James F. Mellenthin, was injured and died.

161. As a direct and proximate cause of Defendants’ reckless or intentional willful and wanton actions and the death of James F. Mellenthin, the decedent’s children have suffered a loss of society, services, support, companionship, love, affection, and will continue to suffer such losses in the future.

162. As a direct and proximate cause of Defendants’ reckless or intentional willful and wanton actions and the death of James F. Mellenthin, the decedent’s children suffered a loss of money, benefits, goods, and services customarily contributed by James F. Mellenthin and which were likely to have been contributed by James F. Mellenthin in the future.

WHEREFORE, Plaintiff, TAMMY MELLENTHIN, demands judgment be entered against Defendants THE COUNTY OF MCDONOUGH and THE MCDONOUGH COUNTY SHERIFF’S OFFICE, a law enforcement agency organized under the laws of the State of Illinois

for an amount in excess of \$75,000.00, plus costs with interest in bringing this action, and for such other relief this Court deems just.

COUNT VI – WRONGFUL DEATH

Plaintiff v. Defendant Schmalshof, individually and as agent of the County of McDonough and the McDonough County Sheriff's Office

1-106; 136-162. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges Paragraphs 1 through 106 and 136 through 162 as though fully set forth herein.

163. Plaintiff, TAMMY MELLENTHIN, as Administrator of the ESTATE OF JAMES F. MELLENTHIN, Deceased brings this cause of action pursuant to the provisions of 740 ILCS 180/1, *et seq.*, commonly known as the Illinois Wrongful Death Act.

164. On January 27, 2023, and at all times during the Pursuit of the 2006 Pontiac, Defendant Schmalshof, individually and as agent of the County and the MCSO, had a duty to refrain from intentional and reckless willful and wanton conduct in the exercise and discharge of his duties as a MCSO Deputy, and also in his individual capacity.

165. Notwithstanding the aforesaid duty, Deputy Schmalshof individually and as agent of the County and the MCSO, was recklessly willful and wanton through a course of action which without legal justification demonstrated an utter indifference to, or conscious disregard for, the safety of others, including James F. Mellenthin.

166. Deputy Schmalshof, individually and as agent of the County and the MCSO, engaged in the Pursuit of the 2006 Pontiac of James F. Mellenthin in an intentionally willful and wanton manner without legal justification showing actual or deliberate intention to harm the driver of the 2006 Pontiac, James Mellenthin.

167. It was reasonably foreseeable that injury to a person and/or death would result from the reckless or intentional willful and wanton conduct of Deputy Schmalshof on January 27, 2023.

168. As a direct and proximate result of Defendant Schmalshof's reckless or intentional willful and wanton acts and/or omissions, and the deliberate disregard for the life of James F. Mellenthin, Deputy Schmalshof collided with the 2006 Pontiac and Plaintiff's Decedent, James F. Mellenthin, was injured and died.

169. As a direct and proximate cause of Defendant Schmalshof's reckless or intentional willful and wanton actions and the death of James F. Mellenthin, the decedent's children have suffered a loss of society, services, support, companionship, love, affection, and will continue to suffer such losses in the future.

170. As a direct and proximate cause of Defendant Schmalshof's reckless or intentional willful and wanton actions and the death of James F. Mellenthin, the decedent's children suffered a loss of money, benefits, goods, and services customarily contributed by James F. Mellenthin and which were likely to have been contributed by James F. Mellenthin in the future.

WHEREFORE, Plaintiff, TAMMY MELLENTHIN, demands judgment be entered against Defendant EVAN C. SCHMALSHOF, individually and as an agent of THE COUNTY OF MCDONOUGH and THE MCDONOUGH COUNTY SHERIFF'S OFFICE, for an amount in excess of \$75,000.00, plus costs with interest in bringing this action, and for such other relief this Court deems just.

COUNT VII - WRONGFUL DEATH

Plaintiff v. Defendant Ruggio, individually and as agent of the County of McDonough and the McDonough County Sheriff's Office

1-106; 136-170. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges Paragraphs 1 through 106 and 136 through 170 as though fully set forth herein.

171. Plaintiff, TAMMY MELLENTHIN, as Administrator of the ESTATE OF JAMES F. MELLENTHIN, deceased brings this cause of action pursuant to the provisions of 740 ILCS 180/1, *et seq.*, commonly known as the Illinois Wrongful Death Act.

172. On January 27, 2023, and at all times during the Pursuit of the 2006 Pontiac, Defendant Deputy Ruggio, individually and as agent of the County and the MCSO, had a duty to refrain from reckless or intentional willful and wanton conduct in the exercise and discharge of his duties as a MCSO Deputy, and also in his individual capacity.

173. Notwithstanding the aforesaid duty, Deputy Ruggio was recklessly willful and wanton through a course of action which without legal justification demonstrated an utter indifference to, or conscious disregard for, the safety of others, including James F. Mellenthin.

174. In a recklessly willful and wanton manner through a course of action without legal justification demonstrating an utter indifference to, or conscious disregard for, the safety of others including James F. Mellenthin, Deputy Ruggio engaged in the Pursuit of the 2006 Pontiac of James F. Mellenthin as alleged herein and further failed to intervene when he knew that the Pursuit of the 2006 Pontiac was being conducted in clear violation of the MCSO Vehicular Pursuit Policy and in a manner that unnecessarily and unjustifiably created a serious threat to the safety of the motoring public.

175. In an intentionally willful and wanton manner without legal justification, showing actual or deliberate intention to harm the driver of the 2006 Pontiac, James Mellenthin Deputy Ruggio engaged in the Pursuit of the 2006 Pontiac of James F. Mellenthin as alleged herein and further failed to intervene when he knew that the Pursuit of the 2006 Pontiac was being conducted in clear violation of the MCSO Vehicular Pursuit Policy and in a manner that unnecessarily and unjustifiably created a serious threat to the safety of the motoring public and was likely to cause great bodily harm or death to the driver of the 2006 Pontiac, James F. Mellenthin.

176. Deputy Ruggio knew at all times that the ongoing violation of the MCSO Vehicular Pursuit Policy by Deputy Ruggio and Deputy Schmalshof created a substantial risk of injury or death to the motoring public and James F. Mellenthin.

177. It was reasonably foreseeable that injury to a person and/or death would result from the reckless or intentional willful and wanton conduct of Deputy Ruggio on January 27, 2023.

178. As a direct and proximate result of Deputy Ruggio's reckless or intentional willful and wanton acts and/or omissions, and his deliberate disregard for the life of James F. Mellenthin, Deputy Schmalshof continued his Pursuit of the 2006 Pontiac and Plaintiff's Decedent, James F. Mellenthin, and caused a high-speed collision with the 2006 Pontiac which resulted in injuries to, and the death of, James F. Mellenthin.

179. As a direct and proximate cause of Defendant Ruggio's reckless or intentional willful and wanton actions and the death of James F. Mellenthin, the decedent's children have suffered a loss of society, services, support, companionship, love, affection, and will continue to suffer such losses in the future.

180. As a direct and proximate cause of Defendant Ruggio's reckless or intentional willful and wanton actions and the death of James F. Mellenthin, the decedent's children suffered

a loss of money, benefits, goods, and services customarily contributed by James F. Mellenthin and which were likely to have been contributed by James F. Mellenthin in the future.

WHEREFORE, Plaintiff, TAMMY MELLENTHIN, demands judgment be entered against Defendant NICHOLAS B. RUGGIO, individually and as an agent of THE COUNTY OF MCDONOUGH and THE MCDONOUGH COUNTY SHERIFF'S OFFICE, for an amount in excess of \$75,000.00, plus costs with interest in bringing this action, and for such other relief this Court deems just.

COUNT VIII - SURVIVAL ACTION

Plaintiff v. Defendants County of McDonough and McDonough County Sheriff's Office

1-106; 136-180. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges Paragraphs 1 through 106 and 136 through 180 as though fully set forth herein.

181. Plaintiff, TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, brings this action, pursuant to the provisions of 755 ILCS 5/27-6, known as the Illinois Survival Statute.

182. As a direct and proximate result of one or more of the Defendants' reckless or intentional willful and wanton acts, JAMES F. MELLENTHIN, suffered injuries of a personal and pecuniary nature, including but not limited to great pain and suffering, disability and loss of a normal life, and mental and emotional anguish, for which for which JAMES F. MELLENTHIN, would have been entitled to compensation had he survived, subjecting Defendants to liability pursuant to the Illinois Survival Act, 755 ILCS 5/27-6.

WHEREFORE, Plaintiff, TAMMY MELLENTHIN, demands judgment against THE COUNTY OF MCDONOUGH and MCDONOUGH COUNTY SHERIFF'S OFFICE a law enforcement agency organized under the laws of the State of Illinois, for an amount in excess of

\$75,000.00, plus costs with interest in bringing this action, and for such other relief this Court deems just.

COUNT IX – SURVIVAL ACTION

Plaintiff v. Defendant Schmalshof, individually and as agent of the County of McDonough and the McDonough County Sheriff's Office

1-106; 136-182. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges Paragraphs 1 through 106 and 136 through 182 as though fully set forth herein.

183. Plaintiff, TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, brings this action, pursuant to the provisions of 755 ILCS 5/27–6, known as the Illinois Survival Statute.

184. As a further direct and proximate result of Deputy Schmalshof's aforementioned reckless or intentional willful and wanton acts or omissions, decedent JAMES F. MELLENTHIN suffered serious injuries of a personal and pecuniary nature, including but not limited to great pain and suffering, disability and loss of a normal life, and mental and emotional anguish, for which for which JAMES F. MELLENTHIN, would have been entitled to compensation had he survived, subjecting Defendant Deputy Schmalshof to liability pursuant to the Illinois Survival Act, 755 ILCS 5/27–6.

WHEREFORE, Plaintiff, TAMMY MELLENTHIN, demands judgment against Defendant EVAN C. SCHMALSHOF for an amount in excess of \$75,000.00, plus costs with interest in bringing this action, and for such other relief this Court deems just.

COUNT X - SURVIVAL ACTION

Plaintiff v. Defendant Ruggio, individually and as agent of the County of McDonough and the McDonough County Sheriff's Office

1-106; 136-184. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges Paragraphs 1 through 106 and 136 through 184 as though fully set forth herein.

185. Plaintiff, TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, brings this action, pursuant to the provisions of 755 ILCS 5/27-6, known as the Illinois Survival Statute.

186. As a further direct and proximate result of Deputy Ruggio's aforementioned reckless or intentional willful and wanton acts or omissions, decedent JAMES F. MELLENTHIN suffered serious injuries of a personal and pecuniary nature, including but not limited to great pain and suffering, disability and loss of a normal life, and mental and emotional anguish, for which for which JAMES F. MELLENTHIN, would have been entitled to compensation had he survived, subjecting Defendant Deputy Ruggio to liability pursuant to the Illinois Survival Act, 755 ILCS 5/27-6.

WHEREFORE, Plaintiff, TAMMY MELLENTHIN, demands judgment against Defendant NICHOLAS B. RUGGIO for an amount in excess of \$75,000.00, plus costs with interest in bringing this action, and for such other relief this Court deems just.

COUNT XI - INDEMNIFICATION

Plaintiff v. Defendants County of McDonough and McDonough County Sheriff's Office

1-186. Plaintiff TAMMY MELLENTHIN, as independent administrator of the Estate of JAMES F. MELLENTHIN, deceased, hereby adopts and re-alleges all previous Paragraphs as though fully set forth herein.

187. At all relevant times, the MCSO was the employer of Deputy Schmalshof and/or Deputy Ruggio.

188. Illinois public entities are required to pay any tort judgment for compensatory damages awarded against its employee while acting within the scope of his/her employment.

189. As a proximate result of the aforementioned actions of Deputy Schmalshof and/or Deputy Ruggio, which occurred within the scope of their employment, Plaintiff's decedent JAMES F. MELLENTHIN was injured and died.

WHEREFORE, should Defendant EVAN C. SCHMALSHOF and/or Defendant NICHOLAS B. RUGGIO be found liable on one or more of the claims set forth herein, Plaintiff demands that the Defendants THE COUNTY OF MCDONOUGH and THE MCDONOUGH COUNTY SHERIFF'S OFFICE be found liable for any compensatory judgment Plaintiff obtains against Defendant EVAN C. SCHMALSHOF and/or Defendant NICHOLAS B. RUGGIO, plus attorney's fees, prejudgment interest, costs awarded and such other and additional relief that this Court deems equitable and just.

DEMAND FOR JURY TRIAL

NOW COMES, Plaintiff, TAMMY MELLENTHIN, as Administrator and Personal Representative of the Estate of JAMES F. MELLENTHIN, deceased, by and through her attorneys, SPESIA & TAYLOR, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Respectfully Submitted,

SPESIA & TAYLOR

BY: /s/ John M. Spesia
Attorneys for Plaintiff

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