UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION
CIVIL ACTION NO. 1:21-CV-00050-GNS

Electronically Filed

ESTATE OF JEREMY MARR,
by and through its Administrator,
JOANNA MARR, *et al.* PLAINTIFFS

v.

CITY OF GLASGOW, *et al.* DEFENDANTS

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants, the City of Glasgow, the City of Glasgow Police Department, Guy Joseph Turcotte, Hayden Phillips, and Cameron Murrell, by counsel, state as follows for their reply in support of their motion to dismiss the Complaint:

Introduction and Factual Background

This matter arises from the death of Plaintiffs' decedent, Jeremy Marr. Officers of the Glasgow Police Department responded to a home invasion call to find Marr inside a home that did not belong to him, armed with a knife, and behaving erratically. Marr resisted the officers' attempt to take him into custody, refusing to allow himself to be handcuffed and physically striking the officers. Marr's behavior forced the officers to deploy a Taser and knee strikes. When the officers finally had Marr under control, they realized his breathing was shallow. They immediately administered first aid and called for EMS. Unfortunately, Marr later died at the hospital. Defendants anticipate discovery will establish Marr died as a result of a medical episode while he was under the influence of drugs and not because of any unlawful actions of the officers. The Special Prosecutor determined that there was no credible evidence that the Glasgow officers caused Marr's death.

Defendants recognize that, at the pleading stage, the Court must accept as true Plaintiffs' well-pleaded factual allegations. Even so, several of Plaintiffs' factual admissions and omissions are noteworthy. Plaintiffs do not dispute that Marr was at a residence that was not his. They allege he was "making remarks that people were trying to murder him," but do not claim people were in fact trying to kill Marr—this supports Defendants' assertion that Marr was behaving erratically. [Compl., DN 1 at 4 ¶11.] Plaintiffs acknowledge Marr possessed a knife and do not allege he surrendered it at any point during the encounter. [*Id.* at 5 ¶14.] According to Plaintiffs, the "total interaction time" between Marr and the officers was no more than five minutes, with the physical altercation lasting "less than approximately three minutes." [*Id.* at 5-6 ¶¶18, 22.] Plaintiffs' emphasis on the short duration of the encounter undercuts Plaintiffs' argument that Marr's death resulted from deliberate acts of the officers. Finally, Plaintiffs do not dispute the officers immediately began administering aid to Marr once they realized he was in medical distress. [*Id.* at 6 ¶22.]

Before turning to Plaintiffs' legal arguments, Defendants feel compelled to comment on the needlessly inflammatory language Plaintiffs use in their response. Specifically, Plaintiffs refer to this incident as an "execution" on two occasions and call the individual officers "executioner[s]." [Pls.' Resp., DN 12 at 2, 19.] These hyperbolic comments are not supported by the facts of the case, or even by Plaintiffs' own factual allegations. In the Complaint, which was verified by Joanna Marr, Plaintiffs do not allege the officers intentionally killed Marr. Rather, the Complaint describes this incident as an "unfortunate death" wherein Marr "succumbed to his injuries," and says the officers' use of force "was a substantial factor" in this result. [DN 1 at 2-3.] Yet, in an unverified filing Plaintiffs knew would likely be reported on and disseminated by local news media, Plaintiffs falsely and misleadingly described Marr's death as an "execution."

Plaintiffs' early attempt to poison the jury pool succeeded, as their baseless claim of an "execution" made it onto the front page of the Bowling Green Daily News in bold print. Defendants believe comments and conduct like those in Plaintiffs' response potentially fall within Rule 11(b)(1)'s prohibition against improper and harassing language, but they have chosen not to make a motion under that Rule at this time.

Argument

I. Preliminary Issues

Defendants' motion to dismiss raised a number of issues that Plaintiffs have either conceded or have not seriously contested. First, Defendants explained that the Glasgow Police Department is merely a subdivision of the City of Glasgow, and is therefore "not an entity which may be sued." *Matthew v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994); *see also Pittman v. Rutherford*, No. 19-36-DLB-CJS, 2019 WL 5558572, at *4 (E.D. Ky. Oct. 28, 2019); *Longwood, LLC v. Voegele*, No. 3:17-CV-00676-TBR, 2018 WL 1660086, at *5 (W.D. Ky. Apr. 5, 2018). Despite well-established case law from this Court, its sister Court, and the Sixth Circuit on this issue, Plaintiffs say dismissal of the Glasgow Police Department as a separately-named defendant is improper as "[t]here has been no proof in this matter as it relates to the structure of the City of Glasgow, nor the oversight of its Police Department by the City of Glasgow." [DN 12 at 5-6.] However, Plaintiffs fail to explain what proof could possibly overcome the conclusive holdings in the above-cited cases – because there is no such possible proof. The Glasgow Police Department should be dismissed as a named defendant.

Second, Defendants pointed out that, although Plaintiffs' Complaint references both the Fourth and Eighth Amendments, only the Fourth Amendment applies here because Marr was not a convicted prisoner. *Coley v. Lucas Cnty.*, 799 F.3d 530, 537 (6th Cir. 2015). Plaintiffs' response

concedes this is a Fourth Amendment case and abandons any Eighth Amendment-premised claim. [*Id.* at 19.] Therefore, to the extent Plaintiffs attempted to state an Eighth Amendment cruel-and-unusual-punishment claim, the parties agree such claim should be dismissed.

Third, Defendants argued Plaintiffs' official-capacity § 1983 claims against the individual officers were merely another way of pleading claims against the City of Glasgow. Because Plaintiffs named the City as a defendant, their official-capacity claims against the officers are duplicative and should be dismissed. *Thorpe ex rel. D.T. v. Breathitt Cnty. Bd. of Educ.*, 923 F. Supp. 2d 799, 802 (E.D. Ky. 2013); *Baar v. Jefferson Cnty. Bd. of Educ.*, 686 F. Supp. 2d 699, 704 (W.D. Ky. 2010). Plaintiffs respond meagerly to this argument, stating only that, because "there has been no discovery as it relates to the allegations herein . . . these claims should be reserved pending discovery." [*Id.* at 6.] They offer no authority supporting this request and have therefore forfeited their official-capacity claims. *See White Oak Prop. Dev., LLC v. Washington Twp.*, 606 F.3d 842,850 (6th Cir. 2010) ("issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, re deemed waived, and that it is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to … put flesh on its bones." (Citing *United States v. Robinson*, 380 F.3d 853, 886 (6th Cir. 2004). Further, the cases cited by Defendants in their motion demonstrate dismissal of these claims is appropriate under these circumstances.

Fourth, Defendants asserted the individual officers were entitled to qualified official immunity, also known as discretionary function immunity, under Kentucky law on Plaintiffs' ordinary negligence and wrongful death claims. Plaintiffs do not dispute that, under Kentucky law, "the determination of the amount of force required to effect the investigatory stop or arrest is [] a discretionary act." *Smith v. Norton Hosps., Inc.*, 488 S.W.3d 23, 31 (Ky. Ct .App. 2016).

Rather, they counter that the officers would not be cloaked with immunity if Plaintiffs can demonstrate bad faith, which may be predicated on the violation of a constitutional or statutory right. [*Id.* at 20]; *see Yanero v. Davis*, 65 S.W.3d 510, 523 (Ky. 2001). And because Plaintiffs have alleged the officers violated Marr's Fourth Amendment rights, they say, they can overcome the qualified official immunity hurdle at the pleading stage. But Plaintiffs do not dispute that the opposite is also true – if Plaintiffs cannot establish a plausible Fourth Amendment violation (and they cannot), then the individual officers are entitled to immunity for their allegedly negligent performance of discretionary acts. Therefore, if this Court agrees with Defendants that Plaintiffs' Fourth Amendment claims against the officers should be dismissed, then the officers are entitled to qualified official immunity on Plaintiffs' state-law negligence claims and those claims must be dismissed as well.

Fifth, Defendants said Plaintiffs' negligent hiring, retention, supervision, and training claim must be dismissed because the Claims Against Local Governments Act (CALGA), KRS 65.2001 *et seq.*, affords the City immunity on that claim, and because that claim was not supported by any well-pleaded factual allegations. [DN 11-1 at 16.] Plaintiffs responded to Defendants' CALGA immunity argument, but they did not attempt to explain how their negligent hiring claim satisfies the federal pleading standard. [DN 12 at 21-22.] For the reasons more fully set forth in Defendants' motion, and because Plaintiffs have forfeited it, the negligent hiring claim against the City must be dismissed. *See White Oak*, 606 F.3d at 850.

Finally, after explaining why Plaintiffs' § 1983 claims should be dismissed, Defendants noted that a necessary consequence of such dismissal would be the dismissal of Plaintiffs' common-law battery claim. *Reich v. City of Elizabethtown*, No. 3:16-cv-00429, 2018 WL 6028719, at *12 (W.D. Ky. Nov. 16, 2018) (citation omitted). Plaintiffs do not contest this

argument. Instead, they state that, because they believe they have plausibly pleaded § 1983 claims, their battery claim should not be dismissed. [*Id.* at 19.] Likewise, Defendants argued that Plaintiffs' loss of spousal and parental consortium claims were merely derivative of the underlying merits claims, and must be dismissed if the underlying claims are dismissed. Plaintiffs do not dispute this argument. [*Id.* at 22.] Therefore, Plaintiffs agree with Defendants that their common-law battery and loss of consortium claims rise and fall with their § 1983 claims. As explained below, those claims fail, so the remaining common-law claims must be dismissed as well.

II. Plaintiffs Failed to Plead a Fourth Amendment Claim Against the Individual Officers

As noted above, the parties agree the Fourth Amendment governs Plaintiffs' constitutional claims arising under 42 U.S.C. § 1983. The parties also agree that Plaintiffs' excessive force claims against the individual officers ultimately turn on whether the officers' actions were objectively reasonable in light of three factors: (1) the severity of Marr's crime; (2) whether Marr posed an immediate threat to the safety of the officers or others; and (3) whether Marr actively resisted arrest or attempted to evade arrest by flight. *Estate of Hill v. Miracle*, 853 F.3d 306, 312-13 (6th Cir. 2017); [DN 12 at 7]. And finally, the parties agree the officers are entitled to qualified immunity and cannot be held liable on Plaintiffs' claims unless Plaintiffs demonstrate their "conduct violated a right so clearly established that a reasonable person in [the officers'] position would have clearly understood that he or she was under an affirmative duty to refrain from such conduct." *Id.* at 312 (citation omitted); [*Id.*].

In their principal brief, Defendants cite a number of Sixth Circuit cases holding that officers are entitled to tase and use knee strikes against suspects who are in possession of a weapon and/or resisting arrest as Marr was here. [Defs.' Mot. at 7-8.] Plaintiffs attempt to distinguish each of these cases, unsuccessfully. *Rudlaff v. Gillispie*, 791 F.3d 638, 641-43 (6th Cir. 2015), establishes

it is constitutionally permissible to deploy a Taser and knee strikes against a suspect who actively resists arrests by refusing to allow himself to be handcuffed as Marr did here. *Hagans v. Franklin County Sheriff's Office*, 695 F.3d 505, 507 (6th Cir. 2012), and *Estate of Collins v. Wilburn*, 755 F. App'x 550, 552-53 (6th Cir. 2018), demonstrate officers may use multiple taser strikes in such situations. In *Roell v. Hamilton County*, 870 F.3d 471, 480-83 (6th Cir. 2017), the Sixth Circuit held officers likely did not violate a suspect's Fourth Amendment rights and were entitled to qualified immunity when they restrained and tased a suspect experiencing a mental health episode who posed a threat to private persons and officers and was actively resisting arrest. *See also Sheffey v. City of Covington*, 564 F. App'x 783 (6th Cir. 2014) (same). Read in conjunction, these cases demonstrate the Glasgow officers' conduct was lawful, in both the type and the extent of the force used.

Next, Plaintiffs cite a handful of cases of their own purporting to demonstrate the officers' conduct was objectively unlawful. These cases are factually distinguishable and do not go as far as Plaintiffs suggest. The plaintiff in *Thomas v. Plummer*, 489 F. App'x 116, 125 (6th Cir. 2012), "had assumed a completely submissive position by dropping to her knees and raising her hands above her head" prior to being tased. In *Kijowski v. City of Niles*, 372 F. App'x 595, 599-600 (6th Cir. 2010), officers "accosted" the plaintiff while he was seated in a truck and there was no opportunity for him to resist arrest prior to being tased. The officers in *Landis v. Baker*, 297 F. App'x 453, 461 (6th Cir. 2008), forced the decedent's face down into two feet of mud and water using baton and taser strikes, and he ultimately drowned. While the risk of subduing the suspect in *Landis* in a face-down manner was reasonably apparent given the physical characteristics of the site of restraint, here there was nothing about the site of restraint that contributed to Marr's death. And in *Roberts v. Manigold*, 240 F. App'x 675, 676 (6th Cir. 2007), the suspect was pinned by an

officer who conceded he would have been able to subdue the suspect without the other officer tasing the suspect. The remaining cases cited by Plaintiffs all involve the use of chemical agents, not Tasers, and are therefore not analogous. And, in all of Plaintiffs' cases, the suspects were not armed as Marr was here.

Finally, it is important to note the increasingly high bar the Supreme Court and Sixth Circuit have set for Plaintiffs to overcome qualified immunity. Plaintiffs must show the officers' conduct "violated a right so clearly established that a reasonable official in [their] position would have clearly understood that he or she was under an affirmative duty to refrain from such conduct." *Miracle*, 853 F.3d at 312 (citation omitted). "Existing caselaw . . . must put the precise question beyond debate." *Rudlaff*, 791 F.3d at 643 (citation and internal quotation marks omitted). In a recent case, the Supreme Court went so far as to say that qualified immunity is a "demanding standard [that] protects all but the plainly incompetent or those who knowingly violate the law." *District of Columbia v. Wesby*, ___ U. S. ___, 138 S. Ct. 577, 589 (2018) (citation and internal quotation marks omitted). The very fact that both sides can cite a half-dozen or more cases in support of their respective positions, as applied to the particular facts of this situation, demonstrates the law is not clearly established, the officers' conduct was not plainly unlawful, and qualified immunity exists here. Plaintiffs' § 1983 claims against the individual officers must be dismissed.

III. Plaintiffs Failed to Plead a *Monell* Claim Against the City of Glasgow

Plaintiffs have also asserted a *Monell* [*v. Dept. of Social Services of City of New York*, 436 U.S. 658 (1978)] municipal liability claim against the City of Glasgow. Because Plaintiffs have failed to plead an underlying constitutional violation against the individual officers, their *Monell* claim against the City must be dismissed. *Dibrell v. City of Knoxville*, 984 F.3d 1156, 1165 (6th Cir. 2021) ("'[t]here can be no *Monell* municipal liability under § 1983 unless there is an

underlying unconstitutional act' against the plaintiff.") (Citations omitted). However, even if the Court believes Plaintiffs' claims against the officers should move forward, their claims against the City should be dismissed because they have failed to allege any actionable municipal wrongdoing.

Because § 1983 does not permit vicarious liability, plaintiffs may hold municipalities like the City of Glasgow liable only by showing "the municipality's policy or custom . . . led to a violation of the plaintiff's constitutional rights." *Id.* (citations and internal quotation marks omitted). Here, Plaintiffs argue the City may be held liable because it inadequately trained and/or supervised its officers. [DN 12 at 15.] Specifically, Plaintiffs say the City "has not adequately trained its officers, despite its knowledge of the officers' use of excessive force," and has therefore "acted with deliberate indifference in failing to properly train its agents and officers, impliedly approving of the use of excessive force during the commission of police duties." [*Id.* at 16.]

While Defendants appreciate Plaintiffs' clarification of their *Monell* claim, their Complaint is still insufficient and fails federal pleading standards as a matter of law. In *Canton v. Harris*, 489 U.S. 378 (1989) – the case upon which Plaintiffs primarily rely – the Supreme Court did hold "that a city can be liable under § 1983 for inadequate training of its employees." *Id.* at 388. However, it set an exacting standard for such claims that Plaintiffs cannot meet:

> In resolving the issue of a city's liability, the focus must be on adequacy of the training program in relation to the tasks the particular officers must perform. That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program. It may be, for example, that an otherwise sound program has occasionally been negligently administered. Neither will it suffice to prove that an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct. Such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the usual and recurring situations with which they much deal. And plainly, adequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the city liable.

Id. at 390-91 (internal citations omitted). In subsequent cases, the Sixth Circuit has clarified that, to prevail on a *Monell* inadequate training claim, a plaintiff must show "(1) that a training program is inadequate to the tasks the officers must perform; (2) that the inadequacy is the result of the City's deliberate indifference; and (3) that the inadequacy is closely related to or actually caused the plaintiff's injury." *Brown v. Chapman*, 814 F.3d 447, 463 (6th Cir. 2016) (cleaned up).

The requirements for pleading and proving a municipal failure-to-train claim must, of course, be read in conjunction with the applicable federal pleading standards. This Court must presume all of the factual allegations in the complaint are true and draw all reasonable inferences in favor of the non-moving party. *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008) (citation omitted). "The court need not, however, accept unwarranted factual inferences." *Id.* (citation omitted). Moreover, "[c]onclusory allegations or legal conclusions masquerading as factual allegations will not suffice" and need not be accepted as true. *Followell v. Mills*, 317 F. App'x 501, 505 (6th Cir. 2009); *Gregory v. Shelby Cnty.*, 220 F.3d 433, 446 (6th Cir. 2000).

The Plaintiffs' complaint here is nothing more than conclusory allegations and they are insufficient to survive a motion to dismiss. The parties agree that Plaintiffs' allegations concerning the City of Glasgow's police training and policies are confined to a handful of paragraphs on pages seven and eight of the Complaint. *See* [DN 12 at 18.] Those paragraphs are quoted in Defendants' principal motion, and contain such conclusory statements as:

- "On information and belief, the GPD's training and policies fail to provide adequate training to officers . . . ." [DN 1 at 7 ¶32.]
- ". . . there is a pattern of GPD officers in exercising unreasonable force . . . ." [*Id.* at 7 ¶33.]

- "Upon information and belief, GPD has not adequately trained its officers . . . . The GPD has acted with deliberate indifference in failing to properly train its agents and officers . . . ." [*Id.* at 7 ¶35.]

- "If the GPD had adequately trained its officers in using reasonable force, the GPD policemen would not have used excessive force on Jeremy Marr . . . ." [*Id.* at 8 ¶36.]

The above-quoted paragraphs are long on legal conclusions, but absent of required factual allegations. Plaintiffs concede the City does in fact have policies and directives concerning the use of less-lethal force. [*Id.* at 7 ¶¶29-31.] However, Plaintiffs do not attempt to explain what those polices are or how they fall short of the applicable constitutional standards and this is fatal to their complaint. Instead, Plaintiffs' allegations closely mirror the elements necessary to establish a *Monell* inadequate training claim. *Brown*, 814 F.3d at 463. But a "pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Howell v. Father Maloney's Boys' Haven, Inc.*, 424 F. Supp. 3d 511, 515 (W.D. Ky. 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Paragraphs 32 and 35 of Plaintiffs' Complaint are alleged upon Plaintiffs' "information and belief." [DN 1 at 8 ¶¶32, 35.] Interestingly, when Plaintiffs quoted those paragraphs in their response, they chose to omit the "information and belief" language. [DN 12 at 18.] This is a noteworthy omission, especially since Defendants pointed out in their motion that "information and belief" allegations are now disfavored because they "are precisely the kinds of conclusory allegations that *Iqbal* and *Twombly* condemned and thus told [courts] to ignore when evaluating a complaint's sufficiency." *16630 Southfield Ltd. P'ship v. Flasgstar Bank, F.S.B.*, 727 F.3d 502, 506 (6th Cir. 2013).

Despite Plaintiffs' protestations to the contrary, their *Monell* claim is substantially similar to the claims this Court recently dismissed in *Karsner v. Hardin County*, No. 3:20-CV-125-RGJ,

2021 WL 886233 (W.D. Ky. Mar. 9, 2021). There, the plaintiff filed a litany of claims following an allegedly unlawful arrest, among them municipal liability claims against the county and city. *Id.* at *12. Plaintiff alleged, among other things: that the county attorney "failed to adequately train, supervise and control its employees accepting from citizens criminal complaints"; that the city and its police department "fail to adequately train, supervise and control its police department"; and that "municipal policy makers are aware of and condone the types of misconduct at issue." *Id.* at *12-13. This Court dismissed the plaintiff's failure-to-train claim, holding her aforementioned allegations were "legal conclusions devoid of factual enhancement." *Id.* at *15 (cleaned up). This Court should do likewise here.

Similarly, in *Lewis v. Louisville/Jefferson County Metro Government*, this Court dismissed *Monell* claims brought by an incarcerated person. No. 3:18-CV-00071-GNS-CHL, 2020 WL 6386871 (W.D. Ky. Oct. 30, 2020). The plaintiff, who alleged jail officials failed to protect him from an attack by another inmate, also claimed "the deliberate indifference of the LMDC Defendants elevated their commissions and/or omissions to the level of custom and/or policy." *Id.* at *5. The Court held this "scant allegation . . . [was] simply insufficient" to make out a *Monell* municipal liability claim because the plaintiff "ha[d] not provided any factual basis concerning any Louisville Metro custom or policy, that any applicable policy is illegal, or that there is a policy of inadequate training, supervision, etc." *Id.* (citations omitted). And in *Taylor v. Brandon*, another wrongful arrest and excessive force case, the plaintiff alleged the municipality "adopted practices, policies, or customs allowing the use of excessive force and that they negligently trained or supervised the officers." No. 3:14-cv-588-DJH-DW, 2016 WL 258644, at *2 (W.D. Ky. Jan. 20, 2016). This Court dealt with the plaintiff's *Monell* claim "summarily," holding it must be dismissed because the "complaint offer[ed]no facts to support" the plaintiff's conclusory assertion

that the city's policies were unlawful. *Id.* at *2-3. The Court noted that "[m]erely alleging that negligent training occurred and amounts to deliberate indifference . . . is the sort of threadbare recital of the elements of a cause of action that the Supreme Court found inadequate in *Iqbal*." *Id.* (citing *Iqbal*, 226 U.S. at 679) (cleaned up).

Here, Plaintiffs' *Monell* claim against the City of Glasgow fares no better than the claims brought by the plaintiffs in *Karsner*, *Lewis*, and *Taylor*. Plaintiffs have set forth no substantive, non-conclusory facts explaining what the City's police training program consists of, why it is constitutionally inadequate, and how that inadequacy directly caused Marr's death. And importantly, Plaintiffs have not alleged or argued such facts are beyond their reach at this juncture. As such, Plaintiffs' § 1983 municipal liability claim against the City must be dismissed.

Conclusion

For the foregoing reasons, Defendants City of Glasgow, City of Glasgow Police Department, Guy Joseph Turcotte, Hayden Phillips, and Cameron Murrell respectfully ask this Court to grant their motion and dismiss Plaintiffs' Complaint against them with prejudice. The entry of a consistent order is respectfully prayed.

This the 17th day of May, 2021.

KERRICK BACHERT PSC
1025 State Street
Bowling Green, KY 42101
Telephone: (270) 782-8160
tkerrick@kerricklaw.com
mcook@kerricklaw.com

/s/ Matthew P. Cook
Thomas N. Kerrick
Matthew P. Cook
Counsel for Defendants

CERTIFICATE OF SERVICE

This will certify that on the 17th day of May, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record. I further certify that on the 17th day of May, 2021, I emailed a copy of the foregoing pleading to the following:

David F. Broderick
Broderick & Davenport, PLLC
921 College Street
P.O. Box 3100
Bowling Green, KY 42102-3100
dbroderick@broderickfirm.com

/s/ Matthew P. Cook
Thomas N. Kerrick
Matthew P. Cook
Counsel for Defendants