ANDRICKA WILLIAMS O/B/O OF MINOR CHILDREN, ALTON STERLING, JR., JOURNEE WILLIAMS AND JOSIAH WILLIAMS; QUINYETTA MCMILLION O/B/O MINOR CHILD CAMERON STERLING; KIMBERLY PIERSON O/B/O MINOR CHILD NA'QUINCY PIERSON

VERSUS

THE CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE, THE BATON ROUGE POLICE DEPARTMENT, OFFICER BLAINE SALAMONI, OFFICER HOWIE LAKE, CHIEF OF POLICE CARL DABADIE, JR. AND XYZ INSURANCE COMPANY

NUMBER DIV

19TH JUDICIAL DISTRICT COURT

EAST BATON ROUGE PARISH

STATE OF LOUISIANA

PETITION FOR WRONGFUL DEATH AND SURVIVAL ACTION

NOW INTO COURT through undersigned counsel comes the Petitioners: **Andricka Williams** on behalf of her minor children **Alton Sterling, Jr., Journee Williams**, and **Josiah Williams**, being a person of full age and majority and residing in West Baton Rouge Parish; **Quinyetta McMillion** on behalf of her minor child **Cameron Sterling,** being a person of full age and majority and a resident of Harris County, Texas; and **Kimberly Pierson** on behalf of her minor child **Na'Quincy Pierson,** being a person of full age and majority and a resident of East Baton Rouge, Louisiana.

1.

Ms. Andricka Williams is the natural tutor of the minor children, Alton Sterling, Jr., Journee Williams, and Josiah Williams.

Ms. Quinyetta McMillion is the natural tutor of the minor child Cameron Sterling.

Ms. Kimberly Pierson is the natural tutrix of minor child Na'Quincy Pierson.

2.

Made Defendants herein are the following: **THE CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE**, a local government entity and body politic created by statute, being a municipality and political subdivision of the State of Louisiana but not an agency, or department, or arm of the State of Louisiana (hereinafter sometimes referred to as "City", "Parish", "C-P", "City-Parish").

3.

BATON ROUGE POLICE DEPARTMENT ("BRPD"), a governmental entity and department of City of Baton Rouge created by the Charter of the City of Baton Rouge, Parish of East Baton Rouge and not an arm or instrumentality of the State of Louisiana.

4.

BLANE SALAMONI, also made Defendant herein individually and in his official capacity as an Officer in the Baton Rouge Police Department, a person of full age and majority, domiciled in the Parish of East Baton Rouge.

5.

HOWIE LAKE, II, also made Defendant herein individually and in his official capacity as an Officer in the Baton Rouge Police Department, a person of full age and majority, domiciled in the Parish of East Baton Rouge.

6.

CHIEF CARL DABADIE, JR., in his official capacity, a person of full age and majority who at all times was and is Chief of Police for the City of Baton Rouge Police Department domiciled in East Baton Rouge Parish.

7.

XYZ INSURANCE COMPANY, an insurance company authorized to do, and doing business in the State of Louisiana providing general liability coverage and/or **Excess of Loss Coverage** for Chief Dabadie, Officer Salamoni, Officer Lake and/or the City of Baton Rouge and Baton Rouge Police Department for any and all acts and damages occurring from this incident and all **excess damage claims** incurred by the City of Baton Rouge on behalf of all named defendants.

8.

At the time of this incident Mr. Alton Sterling, Sr. was in fact the father of five (5) minor children.

9.

The Petitioners, as the natural tutrixs pursuant to Article 197 Louisiana Code of Civil Procedure, alleges that Alton Sterling, Sr. was, in fact, the father of five minor children, Alton Sterling, Jr., Journee Williams, Josiah Williams, Cameron Sterling, and Na'Quincy at the time of his death.

10.

Petitioners allege that, at the time of his death, Mr. Alton Sterling, Sr. had formally acknowledged Alton Sterling, Jr. through the signing of his birth certificate.

11.

And at the time of his death, Mr. Sterling had informally publicly acknowledged his twin children, Journee Williams and Josiah Williams, as his natural children. Because of Mr. Sterling was not present at the time of completion of birth certificates forms and did not sign.

12.

The Petitioner, Andricka Williams, as natural tutrix, avers that as a result of DNA test administered by the DNA Diagnostic Center of Baton Rouge, Alton Sterling, Sr. is, in fact, the biological father of **Alton Sterling, Jr.** by results of analysis of DNA with probability of 99.99999998%. (See DNA reports attached as Exhibit 1.)

13.

The Petitioner, Andricka Williams, as natural tutrix avers that as a result of DNA test administered by the DNA Diagnostic Center of Baton Rouge, Alton Sterling, Sr. is, in fact, the biological father of **Journee Williams** by results of analysis of DNA with probability of 99.99999995%. (See DNA reports attached as Exhibit 1.)

14.

The Petitioner, Andricka Williams, as natural tutrix avers that as a result of DNA test administered by the DNA Diagnostic Center of Baton Rouge, Alton Sterling, Sr. is, in fact, the biological father of **Josiah Williams** by results of analysis of DNA with probability of 99.9999999%. (See DNA reports attached as Exhibit 1.)

15.

Petitioners allege that at the time of his death, Mr. Alton Sterling, Sr. had formaly acknowledged Cameron Sterling through a Juvenile Court proceeding No.: 6-01-254A-C in East Baton Rouge Parish.

16.

The Petitioner, Quinyetta McMillion as natural tutrix avers that as a result of DNA test administered by Reliagene Technologies, Inc. that Alton Sterling, Sr. is, in fact, the biological father of Cameron Sterling by result of analysis of DNA with probability of 99.999% (see DNA reports attached as Exhibit 1).

17.

Petitioners allege that at the time of his death Mr. Alton Sterling, Sr. had formally acknowledged Na'Quincy Pierson through public acknowledgment.

18.

The Petitioner, Kimberly Pierson, as natural tutrix avers that as a result of DNA test administered by DNA Diagnostic Center of Baton Rouge, that Alton Sterling, Sr. is, in fact, the biological father of Na'Quincy Pierson by result of analysis of DNA with probability of 99.9999% (see DNA reports attached as Exhibit 1).

19.

Petitioners allege that on or about midnight of July 5, 2016 an unnamed individual placed a 911 call to the 911 Operating System in East Baton Rouge Parish alleging that he had been threatened by a black man wearing a red shirt and selling CDs at the Triple S Food market on North Foster Drive.

20.

The 911 dispatch relayed that information to Officer Howie Lake and Officer Blaine Salamoni who then responded to the Triple S Food Market located in the City of Baton Rouge at the intersection of North Foster Drive and Fairfield Drive in Baton Rouge, Louisiana. Officer Howie Lake arrived first at the Triple S Food Market and engaged Mr. Alton Sterling, Sr.

21.

Mr. Sterling was positioned where he normally set up his display to sell CDs and other merchandice outside the Triple S Food Market with permission of his friend, the store owner.

22.

Officer Lake engaged Mr. Sterling and immediately told him to place his hands on the hood of a car. Mr. Sterling displayed no aggressive behavior or manners. Officer Blaine Salamoni arrived onto the scene. Immediately exiting his squad car, Officer Salamoni pulled out his gun from his holster, pointed his service weapon to Mr. Sterling's head, and yelled aggressively with intent "BITCH, I WILL FUCKING KILL YOU", "I AM GOING TO SHOOT YOU IN YOUR MOTHER FUCKING HEAD".

23.

Mr. Sterling attempted to place his hands on the hood of the car. The officers placed their hands on Mr. Sterling, and the struggle began.

24.

Mr. Sterling, after being obviously upset, wanted to know why the officers had accosted him and began to question the officers' conduct and motive toward him.

25.

Mr. Sterling then placed his hands on the hood of the car.

26.

Officer Lake not satisfied that Mr. Sterling was complying quickly enough pulled out his taser and tased Mr. Sterling, who initially fell to his knees. Mr. Sterling attempted to get up from the ground and try to stand. Officer Lake then used his taser on Mr. Sterling a second time.

27.

Officer Salamoni, at that point, violently tackled Mr. Sterling to the ground so that Mr. Sterling was laying on his back. Officer Salamoni was on top of Mr. Sterling using unnecessary force to restrain a tased suspect.

28.

Officer Lake compounded the excessive take down by kneeling on Mr. Sterling's left arm, gaining control of Mr. Sterling.

29.

Officer Lake drew his weapon and yelled at Mr. Sterling to not move. The two officers continued to hold Mr. Sterling on the ground on his back preventing Mr. Sterling from moving.

30.

Mr. Sterling had a medical history of adverse breathing problems and could not lie on his back for any extended period of time.

31.

In less than one (0:00:1) second, Officer Salamoni yelled at Mr. Sterling and then pulled his gun and fired three (3) shots into Mr. Sterling's chest.

32.

After the first three shots were fired, Officer Salamoni, then rolled off of Mr. Sterling's chest onto his back facing Mr. Sterling's back with his weapon still drawn.

33.

Mr. Sterling, severely wounded, struggled to move and rolled to his left side with his back to the officers.

34.

Mr. Sterling's right hand was on the ground and not close to his right pockets.

35.

Officer Salamoni then fired three (3) more rounds needlessly and excessively into the back of Mr. Sterling.

36.

Officer Lake then stood behind both of them with his weapon still drawn and never fired his weapon.

37.

Mr. Alton Sterling struggled to breath, remained in agony, and pain for several minutes before he died as a result of the vicious, negligent, and unreasonable fatal actions of Officers Salamoni and Lake.

38.

Petitioners allege that the actions by Officers Salamoni and Lake were unreasonable, unnecessary, violated police officer protocol and procedure, an excessive use of deadly force, negligent, an exercise of bad judgment, wrongfully committed negligent homicide, and violated Mr. Sterling 4th Amendment and 14th Amendments of the United States Constitution and certain Louisiana Constitutional rights.

39.

Because there is additional evidence in the possession of law enforcement agencies, Petitioners reserve the right to supplement the petition with additional facts contained from that information.

40.

The Petitioners now asserts claims against the Defendant pursuant to the La. C.C. P. Art. 2315, 2315.1, 2315.2, 2316, 2317, and 2320. Additionally, the Petitioner asserts claims under the United States Constitution's 4th and 14th Amendments, Louisiana Constitution's Article 1 § 2 and 5, and also 42 USC § 1983 and 42 USC § 1988.

Actions of the City of Baton Rouge, Baton Rouge Police Department, and Chief of Police.

41.

Petitioners allege that the City of Baton Rouge is a municipality and a political subdivision of the State of Louisiana.

42.

Petitioners allege that the City of Baton Rouge and the Baton Rouge Police Department are not instrumentalities or agencies of the State of Louisiana.

43.

The City of Baton Rouge utilizes or employs its own police department known as the Baton Rouge Police Department (BRPD). The Chief of BRPD at all relevant times before, during and after this incident was Chief Carl Dabadie, Jr. The responsible decision maker and policy maker for the BRBD.

44.

The shooting sued upon herein occurred in City of Baton Rouge and the exclusive territorial jurisdiction of the City of Baton Rouge's Police Department.

45.

At all times material herein, Chief Dabadie and the BRPD employed Officer Howie Lake and Officer Blaine Salamoni as full-time police officers for the BRPD.

46.

As the Chief of Police for the City of Baton Rouge and as the responsible decision and policy maker for the Baton Rouge Police Department, Chief Dabadie's actions, omissions, and/or inactions are attributable and imputable to the City of Baton Rouge and vicariously liable for its employees.

47.

In the Chief's official capacity as Chief of Police, he was and is responsible for adopting, promulgating, and implementing and enforcing policies, customs, or practices pertaining to making arrest and preserving the peace in the City of Baton Rouge as well as other customs, policies, and practices regarding the governing of the City of Baton Rouge which includes screening, hiring, disciplining, training, supervising, and retaining of City Police Officers to ensure each police officer was qualified and properly trained to perform the duties and functions of a peace officer including making arrests, preserving the peace, and the constitutional use of deadly force.

48.

Petitioners allege that the City of Baton Rouge through the Chief of Police did not properly examine and scrutinize the backgrounds of Officers Lake and Salamoni, and failed to ensure these

officers were properly trained and skilled on the proper use of force continuum, as well as have in place a deadly use of force policy for the City of Baton Rouge. Additionally, the Chief failed to publish such policy, distribute and train all active police officers under his control and supervision, and the Chief failed to ensure that these officers followed and abided by the General Orders outlined in paragraph 71 below.

42 USC § 1983 Monell Actions against the City of Baton Rouge

49.

Petitioners allege that the City of Baton Rouge violated 42 USC § 1983. Its officers are sworn to protect and serve and have the ability to use deadly force in that process, and have an obvious need to have proper policies and training by BRPD and the City of Baton Rouge. On July 5, 2016, the City of Baton Rouge and the BRPD failed to have a written policy on the use of deadly force, and has history of incidents of excessive force, racism in the BRPD toward members of the African American community and inadequate oversight by decision makers in the BRPD and City.

50.

This lack of policy amounted to gross negligence, recklessness, and deliberate indifference on behalf of the City of Baton Rouge and its surrogate the BRPD.

51.

The action of Officer Salamoni and Officer Lake use of excessive force was undertaken pursuant to the policy, practice and custom of the BRPD and the City of Baton Rouge including immediate approaching MR. Sterling in a confrontational and physical manner.

52.

In establishing its procedures, the City of Baton Rouge has a duty under the 4th and 14th Constitutional Amendments of the United States to refrain from enforcing or continuing in effect policies and procedures that create a substantial likelihood that persons such as Mr. Sterling would be subjected to the BRPD's officer's misconduct.

53.

Petitioners aver that the unconstitutional policies, practices and customs amounted to deliberate indifference demonstrated by the City of Baton Rouge and BRPD. These recklessly inadequate or non-existent policies protecting against having officers without proper training in

the use of deadly force, and the use of de-escalation tactics, the use of force continuum was the moving force of the conduct described in this petition.

54.

Petitioners aver that the shooting of Mr. Sterling was caused by the reckless inadequate or non-existence of such policies; regarding use of force and de-escalation and the apparent failure to adopt, promulgate and enforce such policies amounts to the deliberate indifference to the Constitutional Rights of Mr. Sterling.

55.

Petitioners aver that given knowledge that law enforcement officers will be called upon to use force, including deadly force, when apprehending suspects or otherwise discharging their duties as peace officers, the need to promulgate and enforce a written use of deadly force policy and de-escalation is required. The failure of the City to do so shows deliberate indifference to Mr. Sterling's Constitutional rights, which resulted in his wrongful death.

56.

The Petitioners aver that the City of Baton Rouge, BRPD and Chief of Police failed to have adequate written policies and mandatory continuing training for proper use of verbal judo, use of appropriate de-escalation techniques and appropriate use of deadly force.

57.

Petitioners further avers that the City of Baton Rouge, BRPD, and its Chief failed to have a use of deadly force policy and a de-escalation policy in place; and it was not until the newly elected Mayor, Sharon Weston Broome, put such a policy in place that Chief Dabadie then, in fact, adopted and promulgated an adequate use of deadly force policy for all Baton Rouge Police officers to now use. Additionally, the BRPD still fails to meet Federal Justice Department Standards as outlined in a 37-year-old Consent Decree over its hiring practices. (See Exhibit 2)

58.

Subsequent to this policy change and as a result of the unprofessional and reprehensible actions of these officers, the Mayor has, after a review of their actions, publicly called for the Chief of Police to discipline Officer Lake and terminate Officer Salamoni. (see Exhibit 3, letter from Mayor Broome to Sterling Family). To date Chief Dabadie has refused to take any action regarding discipline for either officer, which in another common practice by BRPD decision makers.

59.

The Petitioners further alleges that the Chief of Police and the City of Baton Rouge knowingly failed to properly train and supervise these officers, and continued to allow them to operate without the proper use of de-escalation, verbal judo, the appropriate use of deadly force, and mandatory "general orders" as outlined in the Blue Book.

60.

Petitioners allege that the BRPD and its Chief had knowledge that these officers had prior internal affairs investigations in reference to their conduct. Petitioners further allege that the City of Baton Rouge and the Baton Rouge Police Chief knew that Officers Lake and Salamoni had had previous citizens' complaints for use of excessive force that were documented in the business records of the BRPD which are a matter of public record.

61.

The Petitioners aver that the City of Baton Rouge possesses the information that Officers Lake and Salamoni were not well trained in the use of deadly force and the up or down use of force continuum. The City and Chief knew or should have known that not having such a policy and lack of adequate training would cause a fatal incident to occur.

62.

Additionally, the Petitioners avers that the City's failure to have a deadly use of force policy in place when this incident occurred, all while knowing that there were or have been multiple citizen complaints and lawsuits against the City of Baton Rouge and the Baton Rouge Police Department for excessive use of force, and that Officers Lake and Salamoni had been investigated by internal affairs for complaints of excessive use of force against them, was a contributing factor to Officers Lake and Salamoni's negligent horrendous behavior.

63.

The City of Baton Rouge has a long standing pervasive policy of tolerating racist behavior by some of its officers. The Chief of Police has knowledge of such incidents, not limited to racist group text incidents by officers in 2014 and 2017 including an incident calling Alton Sterling protestors chimps." (See attached articles as Exhibit 4)

64.

There have also been multiple verbal racist comments by officers reported to the department. This tolerance of such behavior directly leads to the mistreatment of individuals of African American decent.

65.

The City of Baton Rouge had knowledge that BRPD had a long-standing custom and practice of excessive and unnecessary use of force. The City thereby acquiesced in or tacitly authorized it. The City of Baton Rouge knew or should have known that an incident like the shooting of Mr. Alton Sterling, Sr. would or could take place if it continued to allow officers to continue in these customs, practices and policies.

66.

Chief Dabadie and the City continued to allow and foster a double standard within the department when it comes policing, discipline, and enforcement of policy.

67.

Upon information and belief, BRPD officers have been involved in the systematic process of abusing its citizens through inappropriate traffic stops, including DWI, where citizens are more prone to being stopped and arrested due to their socioeconomic status thereby allowing white officers to make additional pay.

68

Black citizens are also targeted by white officers in majority black neighborhoods through aggressive police tactics in order to increase the number of arrests which in turn creates an economic benefit to those officer through additional overtime pay.

69.

Petitioners aver that the City of Baton Rouge and the BRPD have knowledge of a long history of excessive force used by BRPD. The City through the former Mayor Melvin "Kip" Holden and Chief Greg LeDuff were placed on notice by other out of state law enforcement agencies during and after Hurricane Katrina that BRPD Officers were using excessive and unnecessary forces against citizens of Baton Rouge. "If there is blame to be placed on aggressive enforcement, blame it on me" said mayor Melvin "Kip" Holden after the storm.

70.

Fifty-five (55) state troopers from New Mexico and Michigan were sent to Baton Rouge to assist with post-storm policing. The out-of-state cops were yanked out of Baton Rouge after only two days because of their concerns about misconduct.

71.

The visiting officers said Baton Rouge cops referred to African Americans as "heathens" and "animals" that "needed to be beaten down." A spokeswoman for the Michigan State Police told a reporter that "troopers observed Baton Rouge police officers engage in actions that were an affront to their sense of dignity and respect."

72.

Petitioners aver that Officer Salamoni's and Officer Lake's misconduct was a product of this environment and undertaken pursuant to one or more de facto policies, practices and/or customs of the BRPD and the City of Baton Rouge and the Defendants are guilty of the following wrongful acts including by not limited to:

a) Failing to properly hire, supervise and train BRPD officers;

b) Failing to properly train and supervise on approaching civilians, discharging weapon and de-escalation strategies;

c) Refusing to supervise, reprimand, discipline, transfer, monitor, counsel and/or otherwise control Police Officers who engage in misconduct contrary to the laws, rules and regulations, thus condoning the use of excessive force;

d) Failing to retrain and/or otherwise control Police Officers who engage in excessive force and /or unjustified shooting against civilians;

e) Failing to establish appropriate policies and procedures to address and correct the repeated use of excessive force;

f) Inadequately and/or failing to independently and adequately investigate complaints or allegations of excessive force and other types of misconduct by Police Officers;

g) Tacitly approving of law enforcement officers using their power and position to interfere with other citizens' rights;

h) Allowing the continuance in force and effect of policies and procedures which resulted in the use of outrageous and excessive force against civilians, including Mr. Sterling;

i) As a matter of both policy and practice the City of Baton Rouge and the BRPD facilitates the very type of misconduct at issue here by failing to protect civilians from reckless indifference of Defendant's City agents, servants, and employees in its Police Department; and

j) Allowing the policy, practice, and custom of a "police code of silence" resulting in police officers refusing to report instances of police misconduct of which they are aware.

73.

The de facto policies including the "police code of silence" are interrelated and exacerbate the effects of each other and said interrelated policies, practices and customs, as set forth above both individually and together, were maintained and implemented with deliberate indifference, and encouraged, the Defendant officers to conduct the aforesaid acts against Mr. Sterling and therefore acted as the moving force and were separately and together, direct and proximated causes of the death of to Mr. Sterling.

Actions of Officer Lake and Officer Salamoni

74.

Petitioners aver that as a result of Officers Lake and Salamoni intentionally being overly aggressive and Officer Salamoni intentionally pointing his service revolver at Mr. Sterling's head while saying **"bitch I will fucking kill you" and "I am going to shoot you in your motherfucking head"**, these officers knew or should have known that this continued escalation and provocation would have caused a negative encounter with Mr. Sterling.

75.

Petitioners aver that the actions of Officers Lake and Salamoni were negligent, excessive, unreasonable, malicious, and that they had a reckless disregard for the consequences of their actions. Further, the Petitioners aver that the actions of Officer Salamoni were calculated and did cause serious physical and emotional pain and suffering and the eventual death of Mr. Alton Sterling, Sr.

76.

Petitioners aver that Officer Lake and Officer Salamoni deviated and/or strayed away from appropriate police conduct as outlined in their training, protocol and general orders of the policy and procedure manuals of the BRPD, as outlined in paragraph 70 herein below.

77.

As police officers with the BRPD, Officers Lake and Salamoni are subject to ethical, professional, and legal standards as required by the City of Baton Rouge and the Baton Rouge Police Department. The Baton Rouge Police officers are guided by BRPD Policy and Procedures ("The Blue Book") and nationally generally accepted policy and procedures for law enforcement officers.

78.

Petitioners allege that Officer Salamoni and Officer Lake violated and ignored basic police practices and, in particular, several "General Orders" as outlined in the Policies and Procedures Manual of the Baton Rouge Police Department that will be more fully shown at trial including but not limited to:

101. Duties and Responsibilities of Police Officer;
106. Mission/Values of BRPD
107. Code of Ethics/Oath
108. Bias Based Profiling
109. Early Intervention System
135. Less-Lethal Force
135.1 Taser
135.2 Less-Lethal Impact Projectiles
141. Victim/Witness Assistance
209. Arrests
242. Communications Procedure
270. Field Interviews
281. Search of Persons
303. Custodial Interrogation
310. Misdemeanor Investigations
311. Miranda Warnings
319. Warrantless Searches

79.

Petitioners aver that the actions of Officer Salamoni were so grossly negligent that he knew or should have known that pointing a loaded gun to the head of another could have caused severe emotional and physical harm to Mr. Sterling, and he did in fact cause Mr. Sterling to struggle for his life fearing that the Officer was there to kill him and not arrest him.

80.

The Petitioners aver that Officers Lake and Salamoni were acting under the color of state law as peace officers, agents, and employees of the Defendant, City of Baton Rouge, and under

the supervision of the Chief of Police, and were in the course and scope of their employment when Officer Salamoni shot and killed Mr. Alton Sterling, Sr.

81.

The Petitioners aver that the second volley of shots fired into Mr. Sterling was an excessive use of force, unreasonable, unnecessary, and was an additional gross breach of his duty as a police officer and this negligent behavior violated all appropriate law enforcement protocol and procedure.

82.

The shooting of Mr. Sterling in his back while on the ground was unnecessary and excessive and an act of gross negligence on behalf of Officer Salamoni.

83.

The failure of Officer Lake to stop or interrupt Officer Salamoni from this continued use of excessive force was also a breach of protocol and procedure and his continuing duty to deescalate this situation, which resulted in the negligent wrongful death of Mr. Sterling.

84.

Officer Lake knew or should have known that the conduct of Officer Salamoni could and would have caused emotional and physical harm to Mr. Sterling and the Petitioners.

85.

Petitioners further aver that the Defendants are liable for violations of Article I Section 5 of the Louisiana State Constitution, which establishes the rights of Louisiana citizens be secure and their persons, property, and communication, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.

86.

Officers Lake and Salamoni did not speak to the 911 caller directly prior to them engaging Mr. Sterling in a reckless and violently aggressive way. They received the information from the 911 dispatch operator which amounted to a "tip" and it should have been treated as such. They had no probable cause to believe that Mr. Sterling posed an imminent threat or danger that would require the use of deadly force. In fact, at the point in which they approached Mr. Sterling, they did not see a weapon nor was he brandishing a weapon. Mr. Sterling was invited by the owner of the Triple S Food Market and was allowed to set up and sale CD's in the parking lot. Their initial

approach violated appropriate protocol and procedure that would have been used by a reasonable officer in a similar circumstance.

42 USC § 1983 & 42 USC § 1988 Causes of Actions

87.

Petitioners assert that all Defendants are persons for purposes of **42 USC § 1983**.

88.

Petitioners believe that all Defendants are liable pursuant to 42 USC § 1983 which provides:

> **"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."**

89.

Petitioners herein seek vindication of certain rights conferred upon them under the 4th and 14th Amendments to the United States Constitution including the rights to be free from unreasonable seizure and excessive force and that the Defendants did violate on July 5, 2016 these rights owed to Mr. Alton Sterling, Sr.

90.

Petitioners bring this 42 USC § 1983 actions against Officer Lake, Officer Salamoni and Chief Dabadie in their individual capacities.

91.

Petitioners also bring these claims against the Baton Rouge Police Department and the City of Baton Rouge for the following:

A) For improper screening of Officer Lake and Officer Salamoni,

B) For the hiring of Officer Lake and Officer Salamoni,

C) For failing to properly train and supervise them regarding the constitutional limitations of the use of deadly force,

D) Failure to promulgate and operationalize a constitutional use of deadly force policy, and

E) Other claims described herein including the deliberate indifference to the protection of Mr. Sterling's constitutional rights.

92.

The Petitioners aver that Mr. Sterling's death was the result of poor official policy, custom, or practice of these Defendants. The action and inactions of the Department's Chief as policy maker are attributable to the City of Baton Rouge and were the direct result of deliberate indifference attributable to each of the Defendants.

93.

Chief Carl Dabadie, as the Chief of Police, is the official policy maker for the Baton Rouge Police Department.

94.

Petitioners also bring this action under the **4th and 14th Amendments to the United States Constitution** for depravation for their constitutionally protected rights. These rights include due process and equal protection under the 14th Amendment as well as the rights guaranteed under the 4th Amendment such as the right to be free from unreasonable searches, seizures, and excessive force. The Defendants violated these rights owed to Mr. Alton Sterling on July 5, 2016.

95.

The 14th Amendment of the United States Constitution provides "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by both or affirmation, and particularly described in the place to be searched, and the person or thing to be seized."

96.

Section 1. of the 14th Amendment of the United States Constitution provides:

> **All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law;**

nor deny to any person within its jurisdiction the equal protection of the laws.

97.

Petitioners alleg the Defendants Officer Lake and Officer Salamoni were acting in the course and scope of their employment with the Baton Rouge Police Department and the City of Baton Rouge, committed acts under the color of law and deprived Mr. Alton Sterling, Sr. of his rights secured by the 14th Amendment of the United States Constitution.

98.

The Defendants, while acting in their official capacities as police officers, deprived Mr. Sterling of liberty without due process of law, made an unreasonable seizure of his person and thereby depriving Mr. Sterling of his rights and privileges as guaranteed by the 4th and 14th Amendments of the United States Constitution.

99.

By using deadly and excessive force described in this petition when it was not objectively reasonable to do so, Officer Lake and Officer Salamoni deprived Mr. Sterling of his constitutionally protected right of life and liberty without due process of law.

100.

The conduct, including actions and omissions of the Defendants while in the course and scope of their employment was excessive and unreasonable, it was done intentionally, willfully, maliciously, and with deliberate indifference and reckless disregard for the natural probable consequences of their acts.

101.

The actions of the Defendants were done without justification and no basis in policy or reasonable standards. Their actions were intentionally calculated, and did cause serious physical and emotional pain and suffering and the death of Mr. Sterling in violation and deprivation of his constitutional rights protected under **42 USC § 1983** and the 4th and 14th Amendments to the United States Constitution including the right to be free of unreasonable search and seizure and the right to be free from the use of excessive, unreasonable and unjustified deadly force.

102.

At all times, hereto, the Defendants were acting under color of law as police officers.

103.

Petitioners aver that at no time when Officers Lake and Salamoni approached Mr. Sterling did he present an eminent threat of death or great bodily harm to anyone in the area.

104.

Any reasonable law enforcement officer would know or should have known of these constitutionally protected rights at the time that they approached Mr. Sterling as they were clearly established and were or should have been a part of the officers' training.

105.

Chief Dabadie, Officer Lake, and Officer Salamoni all took an oath to support the Constitution of the United States and the Constitution of this State, which affords rights and protections to all citizens.

106.

Petitioners aver that Officer Salamoni willfully used deadly and excessive force when he discharged his weapon on two different occasions, shooting and fatally wounding Mr. Sterling.

107.

At the time, Officer Salamoni discharged his weapon he knew or should have known the result of its discharge that it would reasonably likely cause death or great bodily harm to Mr. Sterling.

108.

Petitioners aver that force exhibited was excessive and violates the 4th Amendment of the United States Constitution because it was not reasonable in the light of the circumstances facing the officers.

109.

The facts and circumstances of Officer Salamoni firing the second round of three (3) shots into the back of Mr. Sterling was clearly and objectively unreasonable in light of the circumstances facing these officers.

110.

Petitioners aver that the fact that Officer Lake who was also at the scene in very close proximity to Mr. Sterling, did not fire his weapon either time because he did not fear for his life therefore establishing that Mr. Sterling perpetuated no imminent danger to the officers.

111.

Petitioners aver that leading up to the confrontation with Mr. Sterling, the Defendants did not have reasonable or probable cause to walk up and place a gun to the side of Mr. Sterling's head and threaten to kill him acting only on a "tip". They knew or should have known that Louisiana is an "open carry state' and that upon arrival not seeing or observing a weapon in the hands of Mr. Sterling, would not have required them to be overly aggressive and use excessive force to detain and question Mr. Sterling.

112.

Petitioners aver the Defendants are therefore liable for all damages Petitioners have suffered because of Defendants unreasonable seizure and search and the objectively unreasonable use of deadly force.

113.

Petitioners aver the conduct, acts and/or omission of the Defendants in both their individual and official capacity, resulted in the implementation, utilization, and execution of unconstitutional customs, policies, and practices that were a direct and proximate cause and moving force of the wrongful shooting and death of Alton Sterling, Sr.

114.

The above described acts by the Defendants City of Baton Rouge/Parish of East Baton Rouge, Baton Rouge Police Department were caused by their negligence and breach of their duty to the Petitioners as follows:

City of Baton Rouge/Parish of East Baton Rouge

A) Failing to put into writing policies and procedures consistent with the laws and the constitutions of the United States and the State of Louisiana;

B) Failing to protect Mr. Alton Sterling, Sr.'s constitutional rights guaranteed by the State and Federal Constitution;

C) Failing to properly supervise Defendants Officer Howie Lake and Officer Blane Salamoni;

D) Failing to ensure that the Chief of Police properly supervised and directed Officer Lake and Officer Salamoni; and

E) Any other acts of negligence or breach of duties under the Constitution brought forth during trial.

115.

The above described acts by the Defendants Officer Howie Lake and Officer Blane Salamoni were caused by their negligence and breach of their duty to the Petitioners as follows:

Officer Howie Lake and Officer Blane Salamoni

A) Invasion of Mr. Alton Sterling's Constitutional rights under the color of law including but not limited to due process, equal protection and unreasonable search and seizure; and

B) Any other acts of negligence or breach of duties under the Constitution brought forth during trial.

116.

The above described acts by the Defendant Baton Rouge Police Chief Carl Dabadie was caused by his negligence and breach of their duty to the Petitioners as follows:

Chief Carl Dabadie

A) Failing to guarantee Mr. Alton Sterling, Sr. his rights as provided by Federal and State laws, and the Constitutions of the United States and the State of Louisiana under the color of law;

B) Failing to take timely corrective action to protect Mr. Sterling's rights including right to due process and right to be free from unreasonable search and seizure;

C) Failing to properly supervise Officer Howie Lake and Officer Blane Salamoni; and

D) Any other acts of negligence or breach of duties under the Constitution brought forth during trial in this matter.

117.

Petitioners aver that Defendants are liable pursuant to **42 USC Section 1988** claims for attorneys' fees.

118.

Petitioners bring this action as a result of 42 USC Section 1988 which provides for an award of attorneys' fees if the Petitioners prevail in an action under 42 USC Section 1983.

119.

Petitioners submit that an award of attorneys' fees would not be unjust and therefore Petitioners seeks an award of attorneys' fees for which the Defendants are liable.

120.

Petitioners retained counsel to prosecute their claims, rights, and causes of action against the Defendants and therefore are entitled to an award of attorneys' fees.

121.

All of the Defendants are liable to the Petitioners for all compensatory damages, attorneys' fees, punitive damages, and cost which they are entitled to under the applicable law.

Tort Causes of Actions

122.

Petitioners also aver that the Defendants are liable pursuant to **Louisiana Code of Civil Procedure Article 2315**, which requires that every act whatever man that causes damage to another obliges him by whose fault it is to repair it.

123.

The Defendant, Blane Salamoni, did in fact shoot Mr. Sterling six times, three times in the chest and three times in the back killing him. He inflicted great bodily harm when Mr. Sterling posed no imminent threat of danger or great bodily harm to the officers.

124.

The officers could have used other de-escalation tactics in order to gain control of the situation, including but not limited to, verbal judo, calling for back up, reporting the incident to a supervisor, continuing to Taser him, and any and all other acceptable police tactics short of deadly force which will more fully be shown at trial.

125.

Petitioners aver that the Defendants are liable pursuant to **Louisiana Code of Civil Procedure Article 2316**, which provides that every person is responsible for the damage he occasions not merely by his actions, but also by his negligence, prudence, or his want of skill.

126.

Petitioners allege that the Defendants are liable pursuant to **Louisiana Code of Civil Procedure Article 2317**, which provides that individuals are responsible not only for damage occasioned by their own acts, but also for damage caused by acts of persons for whom the individual is answerable, or of the thing which the individual has in his custody.

127.

Petitioners aver that the Defendants are liable pursuant to **Louisiana Code of Civil Procedure Article 2320,** which provides that employers are answerable for the damage occasioned by their employees in the exercise of the functions in which they are employed.

128.

Herein, Officers Lake and Salamoni had a duty not to shoot and kill Mr. Alton Sterling, Sr. At the time of the shooting any reasonable officer employed by BRPD, exercising their function as a police officer, would not have used deadly force because of the circumstances surrounding this incident. Mr. Sterling was not a threat when they approached him and was not exhibiting threatening behavior which would have warranted a use of deadly force.

129.

Petitioners aver that the Defendants are liable pursuant to **Louisiana Revised Statue 42:1441.3** which provides that municipalities are responsible for the actions, offences, and torts of their officials and deputy officials.

130.

The Defendants breached their duty owed to the Petitioners in this matter because of their unnecessary, negligent, and excessive use of deadly force, which in fact caused the death of Mr. Sterling.

131.

Petitioners aver that the Defendants are liable pursuant to **Article I Section 2 of the Louisiana State Constitution**, which provides that no person shall be deprived of life, liberty, or property except by due process of law.

132.

The Petitioners aver that the Defendants are liable for the injuries and damaged sustained herein due to the acts and/or omissions of negligence and/or fault that are included, but not limited to the following:

a) the excessive use of force against Mr. Alton Sterling, Sr.;

b) the use of deadly force against Mr. Alton Sterling, Sr.;

c) failure to employ alternative modes of de-escalating the situation;

d) failure to act reasonably as a prudent police officer;

e) violation of applicable law enforcement standards;

f) failure to ensure the safety of other citizens in the area; and

g) the acts and/or omissions which may be fully shown at trial.

133.

As a result of the wrongful death of Mr. Sterling under **Louisiana Code of Civil Procedure Articles 2315, 2316, 2317, 2320 and La. R.S. 42§ 1441.3** Petitioners, Ms. Andricka Williams on behalf of her minor children, Alton Sterling, Jr., and Journee and Josiah Williams, Quinyetta McMillion on behalf of her minor child Cameron Sterling, and Kimberly Pierson on behalf of her minor child Na'Quincy Pierson brings this action to recover damages arising out of Mr. Sterling's wrongful death. The Petitioners sustained damages including, but or not limited to the following:

a) the Decedent's pain and suffering prior to death,

b) the Decedent's mental anguish and anxiety prior to death.

c) scarring and disfigurement suffered prior to death,

d) Decedent's funeral expenses,

e) Petitioners' loss of love, affections, society, consortium and services,

f) Petitioners' mental anguish and anxiety,

g) Petitioners' loss of support,

h) any related medical expenses,

i) loss of enjoyment of life,

j) loss of support,

k) loss of income,

l) loss of consortium, and

m) any and all other damages both general and special, which will be more fully proven at trial.

134.

Mr. Sterling did not immediately die. He continued to suffer for several minutes even after he was shot in the back three (3) additional times by Officer Salamoni.

135.

The officers failed to render any sort of urgent medical care or first-aid including failing to make attempts to stop the bleeding, failing to use measures to allow him to breath and failing to use resuscitative measures.

136.

Mr. Sterling lay mortally wounded in the parking lot of the Triple S Food Market for several minutes before Emergency Medical Services were called and able to attempt treatment. Petitioners bring this additional action to recover damages arising out "survival action" under **Louisiana Code of Civil Procedure Article 2315.1** and **Louisiana Code of Civil Procedure Article 2315.2.** The Petitioners sustained damages as a result of their survival of action claim to included, but not limited to the following:

n) the Decedent's pain and suffering prior to death,

o) the Decedent's mental anguish and anxiety prior to death.

p) scarring and disfigurement suffered prior to death,

q) Decedent's funeral expenses,

r) Petitioners' loss of love, affections, society, consortium and services,

s) Petitioners' mental anguish and anxiety,

t) Petitioners' loss of support,

u) any related medical expenses,

v) loss of enjoyment of life,

w) loss of support,

x) loss of income,

y) loss of consortium, and

z) any and all other damages both general and special, which will be more fully proven at trial.

Petitioners request that this matter be tried by a jury.

137.

The Petitioners now PRAYS that this Court finds a declaration of Paternity and filiation pursuant to Article 196 and 197 of the La. Civil Code establishing Alton Sterling, Sr. as the father of the minor children.

WHERFORE, Petitioners also PRAYS as follows:

1. That this matter be deemed good and sufficient,
2. That the Defendants be duly served with Petition and Citation,
3. That after service and applicable legal delays there be judgment rendered herein in favor of the Petitioners, Andricka Williams, on behalf of her minor children Alton Sterling, Jr.,

Journee Williams, and Josiah Williams, Quinyetta McMillion on behalf of her minor child Cameron Sterling, and Kimberly Pierson on behalf of her minor child Na'Quincy Pierson and against the Defendants for all general and equitable relief granted in the premises herein, for punitive damages, including but not limited to all damages under 42 USC § 1983 and Petitioners be awarded attorney fees pursuant to 42 USC § 1988.

4. After due proceedings had, that all costs associated herein be levied against the Defendants.

Respectfully Submitted:

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222 St. Louis St., 3rd Floor
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Baton Rouge City Police
Officer Blane Salamoni
Officer Howe Blake, III
Chief Carl Dabadie
Through East Baton Rouge Parish Attorney
Honorable Lee Ann Batson
222 St. Louis St., 9th Floor
Baton Rouge, LA 70802

http://www.theadvocate.com/baton_rouge/news/courts/article_0568014c-3a72-11e7-827d-df011cf01d5d.html

Baton Rouge Police Department remains non-compliant with 37-year-old consent decree despite reform, diversity efforts

BY JIM MUSTIAN | JMUSTIAN@THEADVOCATE.COM MAY 20, 2017 - 2:25 PM

Advocate Staff Photo by PATRICK DENNIS

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Baton Rouge Police Chief Carl Dabadie, Jr., left and Sgt. Bryan Taylor, with the Baton Rouge Union of Police, right, answer questions regarding body cameras during the Metro Council meeting Wednesday.

Jim Mustian

Four decades ago, the U.S. Justice Department issued an unequivocal warning to some three dozen Louisiana cities: Diversify your police and fire departments or risk losing federal funding.

The edict, delivered during a closed-door meeting, followed a civil-rights investigation that found a pattern of discriminatory hiring practices from New Iberia to Monroe, and it resulted in a sweeping court settlement intended to shatter the glass ceilings of the state's law enforcement community, which had been dominated by white males since its inception.

The settlement, known as a federal consent decree, contained an ambitious affirmative action plan designed to make Louisiana's police and fire departments look more like the communities they serve. Among the signatories was Baton Rouge, a city that did not pin its first badge on a black police officer until 1963.

Story Continued Below

"All we have to do is make an honest effort," a city-parish official told reporters after a federal appeals court upheld the consent decree in 1980. "We're already doing the best we can."

After a contentious start to the proceedings — the mayor of Abbeville publicly accused the feds of "blackmail" — the case faded into relative obscurity.

Nearly 37 years later, almost all of the cities involved have been dismissed from the litigation. Earlier this month, the Justice Department filed court papers releasing Covington, Harahan and West Monroe from the consent decree, praising those jurisdictions for overhauling their hiring and promotion processes.

Government lawyers vowed to "continue to work with the remaining municipalities" — Alexandria and Baton Rouge — which still have not met the mark.

Indeed, in a city that is about 55 percent black, the Baton Rouge Police Department remains 67 percent white, despite recruiting efforts that have intensified over the past few years. The gaping disparity makes the agency one of the least representative big-city departments in the country.

"No one would like to get this consent decree lifted more than us," Baton Rouge Police Chief Carl Dabadie said in an interview. "With everything we've been through the past 10 months, I think it's very critical. We're under the microscope and being looked at in every aspect of what we do."

While the fatal shooting of Alton Sterling last summer did not result in civil-rights charges against the officers involved in his death, it prompted a host of reforms aimed at restoring the community's trust in the Police Department, from a new use-of-force policy to the implementation of body-worn cameras.

Does BRPD need more 'reform?' Depends who you ask

As debate continues in the Capital City on whether those changes went far enough, the 1980 consent decree has garnered new attention. Largely forgotten for decades, the settlement has taken on new relevance in a community riven by racial conflict in the months following the Sterling shooting and the subsequent slayings of three law enforcement officers.

A local group of black pastors recently urged U.S. Attorney General Jeff Sessions to "revive" the long-dormant agreement, blaming the BRPD's demographic imbalance for "the apparent hostility and tension between law enforcement officers and the African-American community."

Fresh intervention from the Justice Department could "quell" this enmity, said the Rev. Gerard Robinson Sr., who mailed the letter on behalf of the Coalition of African American Pastors for Justice.

In an interview, Robinson said he was encouraged by the recent activity in the consent decree proceedings, the first under Sessions, who has been vocally skeptical of federally supervised police reform.

"People need to know that officers who are on the street understand their culture and that they understand what their community is experiencing at large," he said. A diverse police department, he added, "creates an atmosphere of trust. It creates an atmosphere of awareness."

Alton Sterling decision: Baton Rouge Mayor Broome says she understands anger, frustration

Alton Sterling decision: Baton Rouge Mayor Broome says she understands anger, frustration

A number of racially tinged scandals have set back the BRPD in recent years in its relationship with the black community, including some involving officer misconduct. More than a decade before Sterling's death, in the wake of Hurricane Katrina, Baton Rouge police faced a series of complaints, lodged by out-of-state troopers who came to Louisiana to help after the storm, that officers were repeatedly harassing and assaulting black people. Some of those visiting lawmen said they had been given orders upon arriving to make life difficult for displaced New Orleanians.

The consent decree had become something of a relic in Baton Rouge until a few years ago, with even some elected leaders and police officers unaware of its existence.

It was thrust to the fore in 2013 during the contentious firing of Police Chief Dewayne White, who in airing a host of grievances revealed that the Justice Department had "expressed grave concern that the Police Department still is not doing enough to recruit and hire black persons and females."

Consent decree under review

The consent decree stemmed from an aggressive civil rights campaign and related litigation that began in Louisiana in the early 1970s. White men made up about 83 percent of the BRPD when the Justice Department began its investigation. By 1980, the year the 5th Circuit Court of Appeals upheld the consent decree, Baton Rouge's population was only about 28 percent black.

The proceedings rankled public officials around the state, who resented affirmative action generally and denied discriminating against black people and women seeking to joining police and fire departments. The case named as defendants most of the state's major cities, except New Orleans, which was not a part of the litigation.

The Morning Advocate's editorial board derided the Justice Department's civil complaint as a "charade," siding with a federal judge in New Orleans, Jack Gordon, who initially refused to sign the agreement on the basis that it would discriminate against white males. "Qualification of applicants should be the first concern of the fire and police departments, not the race or the sex of a particular applicant," the newspaper told readers.

The federal government accused the Louisiana cities of using "entry-level and promotional examinations and other selection processes that had an adverse impact on blacks and women and were not shown to be job-related and consistent with business necessity," according to court filings.

The consent decree prohibited the municipalities from discriminating on the grounds of race or sex, and it spelled out a series of guidelines that called for hiring an equal number of white and black police and fire recruits. It required the departments to jettison titles like "policeman" or "fireman" in favor of gender-neutral terms such as "police officer and "firefighter."

As a long-term goal, the departments were to try to hire a force that represented the proportion of black people and women in the local labor force, subject to the availability of qualified applicants. The cities agreed to review their officer selection processes and recruitment efforts, with an eye toward eliminating discrimination.

It's unclear exactly what benchmarks the cities had to meet to be released from the consent decree, but city-parish officials have said their aim is to bring the agency's demographics in line with the population of the city. "We have to do better," Dabadie said.

The road to compliance included regular submissions of paperwork to the Justice Department, which seemed indifferent at times to the cities' progress, or lack thereof.

"This has been a cumbersome issue for us, just keeping up with the documentation and reporting requirements," Tim Lentz, the Covington police chief, said last week. "We had been more than compliant for years."

In Baton Rouge, city-parish officials interpreted the consent decree as a series of goals rather than strict quotas. Dabadie, the police chief, said he is not aware of the city ever being sanctioned for noncompliance.

Nine jurisdictions were released from the litigation between 1980 and 2004. Another 20 cities and parishes — including Lake Charles, Monroe and Shreveport — were found to have substantially complied with the agreement and so were released from it in late 2012. But Baton Rouge was not among them.

Dabadie said the department's recruitment efforts have been frustrated by an antiquated civil service system that requires officers to work between 15 to 18 years to reach a supervisory position. The result is that it's difficult to retain new recruits, regardless of their race, as they're easily lured to better-paying jobs in agencies like the State Police. The officers who do stay longer are older and tend to be white, he said.

"Our promotional system is based on seniority," Dabadie said. "And this is a generation that expects instant gratification."

Nevertheless, the police chief pointed to a number of positive signs of progress. Some of the department's most recent training academy classes have had more minority recruits than white. One of them, which began in October 2015, had 11 black graduates and five white ones.

"We've worked very hard," Dabadie said. "In 2016 alone, we had 56 job fairs."

Robinson, who is pastor of McKowen Missionary Baptist Church in Baton Rouge, lauded Dabadie's efforts, saying, "He's doing the best job that he can given what he has to work with." But he cautioned against complacency after the recent reforms introduced by Mayor-President Sharon Weston Broome.

"One of the biggest problems in our community is that people are seeing us talk but not seeing any benefits from it yet," he said.

Dabadie disputed the suggestion that racial disparities have produced an "us-versus-them" mentality in some of the city's predominantly black neighborhoods.

"We have a lot of good policemen here that go into these neighborhoods and talk to people, and it doesn't matter whether they're white or black," the chief said. "Of course, citizens would like to see a department that reflects the community, but when they need the police, I don't think it matters to them whether the officer is black or white but whether they do a professional job.

"I think we're doing that."

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Here's why experts say new use-of-force policies put Baton Rouge ahead of most police agencies

BY ANDREA GALLO, BRYN STOLE and STEVE HARDY | Advocate staff writers **FEB 2, 2017 - 9:00 AM**

Advocate Staff Photo by PATRICK DENNIS

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Mayor Sharon Weston Broome announces policy changes for the Baton Rouge Police.

Andrea Gallo

Bryn Stole

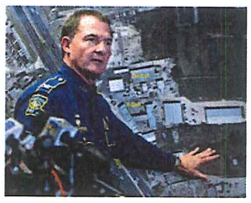
Steve Hardy

Mayor-President Sharon Weston Broome announced the reworking of the Baton Rouge Police Department's policy guiding how officers can use force while on the job, following through Thursday on part of a major campaign plank to implement changes at the agency.

While BRPD Chief Carl Dabadie Jr. said the department already trains officers in the practices announced by the administration, he agreed that writing them into policy was necessary to ensure that officers who do not follow them can be punished.

Broome's pledge to implement new policies at BRPD was partially spurred by the shooting of Alton Sterling in July by a BRPD officer, an incident that provoked complaints about the police department's interactions within the black community. The shooting, which occurred after two city officers struggled with Sterling outside a north Baton Rouge convenience store, remains under federal investigation.

Story Continued Below



No word yet on Alton Sterling investigation, but police expect advance notice of results

Criminal justice experts said that the changes put Baton Rouge ahead of many police departments in instituting written policies based on accepted best policing practices. They added that the measures may seem like common sense, but are often not penned into police policy manuals.

The changes, which became effective immediately on Thursday, are:

• Officers must give verbal warnings before using deadly force unless there are extenuating circumstances.

• Officers cannot use force before trying to de-escalate situations when possible. The outlined strategies include disengagement, area containment, waiting on subjects, summoning reinforcements and calling in specialized units.

• Police cannot use chokeholds or strangleholds unless they are in an emergency and do not have other weapons available.

• Police cannot shoot at moving vehicles unless the people inside of them pose immediate deadly threats.

• Officers are now required to intervene to stop their colleagues from using excessive force. They are also required to report when they see another officer use excessive force.

Broome developed the use-of-force policies in closed-door meetings over the past month with an "advisory council on law enforcement" that included community activists, pastors, council members and law enforcement representatives. The policies represent the first major change that a local political leader has successfully made to the department since the Sterling shooting.

"There's a difference between training and putting this in policy, and so now it becomes policy, and policy represents accountability," Broome said at a news conference as her advisory council stood behind her.

The police chief can take any number of disciplinary measures against an officer who violates policy, ranging from small reprimands to firing an officer.

Professional police agencies are moving in the direction of mandating de-escalation, said Dennis Kenney, a professor at John Jay College of Criminal Justice in New York and a former police officer. He pointed to the policy of mandating officers to report excessive force from other officers as one of the most rare.

"Where this becomes important is a case where an officer is found guilty of using excessive force and there were several other officers around, those other officers are now liable as well," Kenney said. "That's a pretty progressive thing on the part of the department. They should really be applauded for that."

Not allowing chokeholds and not shooting at cars are standard practices at most police departments, according to Kenney and Samuel Walker, a professor emeritus at the University of Nebraska at Omaha.

Shooting at cars is "a real danger to innocent bystanders," Walker said.

But Walker, who was written extensively about police accountability and studied many cities' reform efforts, questioned whether Baton Rouge was backward in rolling out policy changes for training that already exists. He said policy should come first, and the policy should dictate training to teach officers what is and what is not acceptable.

He and Kenney also agreed that the policy changes should not hurt officer safety.

"In fact, especially with de-escalation, it's likely to enhance officer safety," Walker said. "If you can enter in a situation and talk it down to a peaceful resolution, it's less likely that the officer is going to be injured."

At BRPD, the practices have previously been more "understandings of this is part of police work and this is what you do" as opposed to written out, Dabadie said.

The existing BRPD "use of force" policy is relatively vague. When arresting suspects, officers should use "only the amount of force necessary to effect the arrest," according to existing policy.

"Employees shall employ deadly force only in defense of their own lives or in defense of the life of another person," the existing policy reads. "It is essential that the employees reasonably believe that he or some other person is in immediate and apparent danger of suffering death or great bodily harm and that the use of deadly force is the only prudent preventative measure available to him."

The true test of the policies will be what happens when an officer violates them, said Franz Borghardt, a Baton Rouge defense attorney.

"This creates a standard that will allow individuals on both sides to bolster their case on why there was or wasn't excessive force," Borghardt said.

But he said it's clear that the policies were the result of compromise, given the "except" and "unless" caveats tucked into each of them. The general language still leaves wiggle room for officers, he said.

When reached Thursday, BRPD Union President Sgt. C. Bryan Taylor said he had not had time to read the policy changes and that he would review them before commenting.

The Metro Council was on a retreat while Broome announced the changes. Council members decided to hold off on discussing the matter; several said afterward that they had not confirmed the details of the mayor's plan or read the list of advisory board members.

Since the Sterling shooting last summer, the Metro Council has discussed possible changes to BRPD policies — which notably included a residency requirement — though no binding measures have passed. Elsewhere, some council members have held meetings with community leaders and academics to brainstorm other possibilities, though no concrete proposals have advanced so far.

Councilman LaMont Cole, a Democrat who serves on Broome's advisory council, praised the mayor's actions, especially as the introduction of body cameras will make the new policies more enforceable. Republican Councilman Trae Welch wondered what affect the new policies will actually have because of the existing training.

Members of Broome's advisory council include Dabadie, Arthur "Silky Slim" Reed, Gary Chambers, Cleve Dunn Jr., State Police Col. Mike Edmonson, East Baton Rouge Sheriff Sid Gautreaux, Constable Reginald Brown, Broderick Bagert of the group Together Baton Rouge and others. Several committee members attended Broome's announcement on Thursday morning and applauded it afterward.

"What if these kinds of policies were in place last July?" said the Rev. Richard Andrus, pastor at St. Paul the Apostle Catholic Church and a council member. "I believe Alton Sterling would still be alive."

A Baton Rouge Police Department internal affairs probe into the Sterling shooting — which will consider whether the officers violated any policies or procedures during their handling of the incident — is pending.

Brief cellphone video footage of the shooting, which circulated widely online, appears to show the officers ordering Sterling against a car and using stun guns before the shooting of the 37-year-old man, who had a gun in his pants pocket. A BRPD report after the shooting said that at least one officer believed Sterling was reaching for the weapon. Additional evidence, including store surveillance footage that could show more of incident, is being reviewed by federal investigators and has not been made public.

After Alton Sterling, Baton Rouge police considering unique way to examine use-of-force incidents

While Broome and Dabadie worked together on the new policies, she is continuing to search for a new police chief. The two said that they continue to meet but have not yet reached a resolution, as civil service laws prevent Broome from easily firing Dabadie although she has said she wants to replace him.

Why civil service law could make it tough for Baton Rouge mayor to replace police chief

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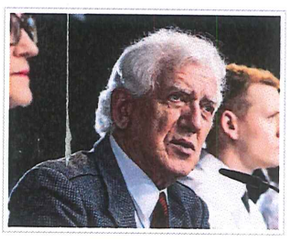

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SHARON WESTON BROOME
Mayor-President

May 25, 2017

Dear Chief Dabadie:

I am formally requesting your reexamination of paid administrative leave and disciplinary action for officers Howie Lake II and Blane Salamoni.

As we have discussed before in meetings, I understand both officers are entitled to due process, including internal and current investigation and subsequent decisions. They are also entitled to civil service protections. However, I am concerned that there is a violation of police conduct policies.

It has been nearly a year since Alton Sterling was killed on camera. While the Department of Justice declined to pursue civil rights charges, during a consultation with the Department of Justice, you and I were made privy to very disturbing details surrounding the actions of Officer Salamoni. I was shocked and appalled by this information. From what was described to both of us, I believe Officer Salamoni seriously violated established police policy and procedures to the extent that termination is warranted.

The ultimate decision is yours, as you have direct and mandated authority. I implore you, as mayor-president of this city that we both serve, to consider the community and the integrity of the department you lead as you make this decision. As I consistently state, I appreciate the service that the men and women of the BRPD provide to our capital city. Our city deserves 21st century professional policing.

I look forward to your written response within 24 hours. If you would like to schedule a meeting or a call in addition to this, I am always available.

Sincerely,

Sharon Weston Broome
Mayor-President

http://www.theadvocate.com/baton_rouge/news/crime_police/article_4807a414-3f2a-11e7-b79f-c38f92235780.html

Baton Rouge officer suspended after alleged racial message about Alton Sterling protests

BY JIM MUSTIAN | JMUSTIAN@THEADVOCATE.COM MAY 22, 2017 - 3:07 PM

A Baton Rouge police unit shown May 22, 2017.

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Advocate staff photo by HILARY SCHEINUK

Jim Mustian

A Baton Rouge police officer has been suspended amid allegations he sent a racially charged image to a group of colleagues who had been exchanging text messages about a recent protest following the decision by the U.S. Justice Department not to pursue civil-rights charges in the fatal shooting of Alton Sterling.

The officer, Blaine Dupuy, a nearly three-year veteran of the force, was placed on administrative leave Thursday after department brass received a written complaint about the image.

"It was definitely inappropriate," Police Chief Carl Dabadie said. "He was placed on leave the day it hit my desk. We're going to handle it the way we would anything else."

Story Continued Below

The police chief did not elaborate on the text exchange, citing an internal investigation. But a law enforcement official familiar with the matter said the image depicted a chimpanzee and the phrase "chimp out," allegedly in reference to the Sterling protesters, many of whom were black.

The online Urban Dictionary defines "chimping out" as a slur describing "when a black person removes his/her facade as a civilized human being and releases his/her inner chimp; as in to start acting violent and out of control."

Dupuy is white. The text exchange, a regular form of communication for officers on his squad, included black recipients, though it's unclear how many, said the law enforcement official, who spoke on condition of anonymity.

Mayor-President Sharon Weston Broome issued a statement late Monday saying Dabadie "has informed me of this incident, and I find it appalling. I agree with disciplinary action, including termination."

Dupuy was placed on leave for potential administrative violations of "command of temper" and "conduct unbecoming an officer," said Lt. Jonny Dunnam, a Baton Rouge Police Department spokesman. "We don't discuss administrative investigations publicly," Dunnam said. "They're extremely confidential."

Dupuy could not be reached for comment Monday, and it was not clear whether he has an attorney. Sgt. C. Bryan Taylor, the president of the Baton Rouge police union, did not return calls seeking comment.

The text exchange is the latest controversy for a Police Department that has been no stranger to racial conflict in recent years. The agency still is recovering from the fallout from Sterling's death last summer, a shooting that involved two white police officers who were investigated for — though ultimately not charged with — civil rights violations in Sterling's death.

That announcement prompted a new round of demonstrations earlier this month and fresh calls for police reform in Baton Rouge. The officers in Dupuy's squad had been discussing one such protest when Dupuy sent the image in question, the law enforcement official said. At least one of the officers included in the text exchange complained about the image, known as a GIF.

The episode is reminiscent of a controversy in 2014 in which another Baton Rouge police officer, Michael Elsbury, resigned from the department after racist text messages he authored surfaced in the news media, including one in which he wrote, "I wish someone would pull a Ferguson on them and take them out. I hate looking at those African monkeys at work ... I enjoy arresting those thugs with their saggy pants."

The Elsbury case drew intense criticism from several members of the public, who told Metro Council members at that time the text messages had deepened a racial divide in Baton Rouge and distrust of the police among black residents.

In the wake of Sterling's death, which prompted a number of police reforms, several faith-based community leaders also have brought new attention to city's failure to comply with a decades-old consent decree that had been intended to diversify the Baton Rouge Police Department. The agency remains 67 percent white, while the city's population is approximately 55 percent black.

"It's already a tough climate and for you to do something like this, it's a travesty," said state Rep. C. Denise Marcelle, D-Baton Rouge, who called for Dupuy to be fired. "We can't tolerate this."

http://www.theadvocate.com/baton_rouge/news/article_d0199f31-8256-5acb-adf1-81cfac494e92.html

Baton Rouge cop resigns, accused of sending racially charged texts

Criminal charges still possible

Daniel Bethencourt dbethencourt@theadvocate.com **SEP 5, 2014 - 6:00 PM**

A Baton Rouge police officer accused of sending racist text messages resigned Thursday, but NAACP leaders said they still want answers, particularly whether any of the arrests the officer made in the past may have been racially motivated.

Michael Elsbury, who has been with the department for about 15 years, still faces a criminal investigation even though he resigned, said Cpl. Don Coppola, a Baton Rouge Police spokesman.

The allegations surfaced Wednesday when NAACP state President Ernest Johnson said he was shown a series of text messages with racial slurs that purportedly had been sent by Elsbury to a friend outside of the Police Department.

Story Continued Below

The texts were given to police "by a girl, a friend" of Elsbury's, Police Chief Carl Dabadie said Thursday night.

Part of the string of texts read: "I wish someone would pull a Ferguson on them and take them out. I hate looking at those African monkeys at work ... I enjoy arresting those thugs with their saggy pants."

Another part of one of the texts reads: "They are nothing but a bunch of monkeys."

Dabadie said once the friend turned the cellphone in to police, detectives worked to try to authenticate the text messages and determine whether Elsbury sent them.

"When you dump a phone, that's a lot of texts to go through," Dabadie said. "That's what was taking so long."

By about 6:15 p.m. Wednesday, Dabadie said, police had enough information to place Elsbury on administrative leave.

The police chief said he read the text messages in question.

"It was gut-wrenching to believe that someone had that much hate in them, especially a police officer who is out there enforcing the law every day," Dabadie said. "It made me sick to my stomach."

The investigation continued Thursday, but by that afternoon, Dabadie said, he was contacted by a union representative who said Elsbury had decided to resign.

"At that point, we couldn't prove within a shadow of a doubt that he sent those texts, but you can draw your own conclusions," Dabadie said. "I can only conclude that he thought it was in his best interest to resign."

Dabadie said the department never asked Elsbury to resign.

"I never even spoke to him," the chief said.

While he's well aware that an incident like this can "cast a bad light" on the entire department, he does not believe the kind of racism exhibited in the text messages runs through the department.

"I believe this is an isolated incident that occurred between the officer and this girl," Dabadie said. "I do not want this to become a direct reflection on our officers. I have 650 officers, and 649 of them work their butts off every day for the city of Baton Rouge."

But others were still troubled by the text messages.

The Rev. Al Sharpton, speaking to media in Baton Rouge on Thursday night at an unrelated event, called the text messages "beyond frightening" and said every arrest Elsbury has made in his tenure as an officer needs to be reviewed.

"One or two (bad cops) can make the difference between our kids spending an inordinate amount of time in jail," Sharpton said while stressing that he does not think that most cops are bad people.

Johnson, the NAACP's state president, called the texts "very disturbing."

"If those reports are true," he said, "there's no place in our community or anywhere in this country for a person upholding the safety of the law to make the kinds of comments that I saw."

Johnson said he still wants answers about Elsbury's past police conduct, including whether any of his arrests were racially motivated. Johnson also wanted to know whether the texts reflect the views of anyone else in the department.

"I don't want this to end with him resigning," Johnson said. "I think there's more to it than that."

Johnson said the organization is inviting Dabadie as well as District Attorney Hillar Moore III to a town hall meeting to be held Tuesday at the Labor Union Hall on Government Street.

The meeting was already scheduled as part of a series of meetings across the state, but Johnson now says the texting will be a key point of discussion and that the issue should be discussed further in public.

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