

**ED AUGUSTINE**  
5514 Bucknell Rd  
Baltimore, MD 21202

and

**STACY FIELDS**  
5514 Bucknell Rd.  
Baltimore, MD 21202

*Plaintiffs,*

V.

**STATE OF MARYLAND**  
Serve: Nancy K. Kopp, State Treasure  
80 Calvert St, Room 400  
Annapolis, MD 21204

and

**MAYOR AND CITY COUNCIL OF BALTIMORE**  
Serve: George Nilson, Baltimore City Solicitor  
Baltimore City Department of Law  
100 N. Holliday Street, Suite 101  
Baltimore, MD 21201

and

**BALTIMORE CITY POLICE DEPARTMENT**  
601 East Fayette Street  
Baltimore, MD 21202

and

**BALTIMORE CITY POLICE OFFICER H781**  
In his official Capacity as a  
Baltimore City Police Officer  
Baltimore City Police Department  
242 West 29<sup>th</sup> Street  
Baltimore, MD 21211

and

**UNKNOWN BALTIMORE CITY POLICE OFFICER**  
In his official Capacity as a

IN THE

CIRCUIT COURT

OF

MARYLAND

FOR

BALTIMORE CITY

Case No.:

Baltimore City Police Officer \*  
Baltimore City Police Department \*  
242 West 29<sup>th</sup> Street \*  
Baltimore, MD 21211 \*

*Defendants.* \*

\* \* \* \* \*

**Complaint and Demand for Jury Trial**

COME NOW, the Plaintiffs, Stacy Fields and Ed Augustine, by and through counsel Richard G. Berger and Andrew B. Saller, sue the Defendants, Baltimore City Police Officer H781, Unknown Baltimore City Police Officer, the State of Maryland, the Mayor and City Council of Baltimore (hereinafter "Baltimore City"), and the Baltimore City Police Department, and as grounds therefore state the following:

**Introduction**

This complaint arises out of the unjustified shooting of Plaintiffs' Stacy Fields' (hereinafter, "Plaintiff Fields") and Ed Augustine's (hereinafter "Plaintiff Augustine") pet canine, Kincaid, following an entry onto the Plaintiffs' property by the Baltimore City Police during their pursuit of a criminal suspect unrelated to the Plaintiffs. The shooting of Kincaid occurred at approximately 11:00 a.m. on January 1, 2013, when Defendant Baltimore City Police Officer H781 (hereinafter "Officer H781") accompanied by Defendant Unknown Baltimore City Police Officer (hereinafter "Unknown Officer") chased a criminal suspect to the exterior basement stairwell of the Plaintiffs' home. The exterior basement stairwell was parallel to the rear wall of the house and adjacent to the rear porch where Kincaid was killed. Further, the rear yard of the Plaintiffs' home is surrounded by a fence.

Prior to the subject occurrence, Plaintiff Augustine noticed a knocking on his exhaust fan, at which point Kincaid responded by barking at the unusual noise. To investigate, Plaintiff Augustine stepped outside onto the rear porch along with his dog, Kincaid. Plaintiff Augustine observed the Unknown Officer at the top of his basement stairs, actively apprehending the suspect a short distance away from Kincaid. At the same time, Officer H781 was approaching from the alleyway, a short distance away from Kincaid, and ordered Plaintiff Augustine to secure his pet. Plaintiff Augustine complied promptly, announced that fact to the Defendant Officers, and asked that they not shoot his pet, Kincaid. Nonetheless, as Plaintiff Augustine reached down to secure Kincaid's harness, Officer H781 fired six shots in the general direction of Kincaid; missing three times while the subsequent three shots fatally wounded Kincaid.

At the time of the shooting, Plaintiff Augustine was not more than twenty-four inches away from Kincaid. Plaintiff Augustine was, in fact, fortunate not to be struck by Officer H781's stray gun fire, and was at all times perfectly capable of exercising control over Kincaid who was in Plaintiff Augustine's lunge, reach and grasp. During this incident, Kincaid never attempted to descend from the porch, or exhibited any posture of aggression towards the Defendant Officers. In spite of the unusual stimuli around him, Kincaid's hair remained unruffled and his teeth concealed by his relaxed face. Kincaid's only provocative act was barking; a common non-threatening activity shared by many domesticated dogs, and which was Kincaid's only way of audibly expressing his emotional state arising from the confusing situation, and his method of alerting his owner to the presence of unknown individuals.

After witnessing the killing of his beloved dog, a dog he considered his child, Plaintiff Augustine was ordered to sit on the steps of his porch and wait for animal control. The Unknown Officer additionally threatened Plaintiff Augustine with arrest if he attempted to touch, pet, or cover his slain dog. Adding insult to injury, while Plaintiff Augustine was sitting inches away from his beloved companion, Officer H781 and the Unknown Officer jested and joked, seemingly immune to the emotional ramifications of their actions. The insensitivity of the Defendant Officers was exacerbated further when the Unknown Officer offered congratulatory praises with regard to Officer H781's marksmanship in quickly slaying Kincaid. Despite his earlier statement, Officer H781 subsequently informed Plaintiff Augustine that animal control would not be coming and that Plaintiff Augustine needed to comply with Baltimore City ordinances and bury his slain companion outside of city limits.

There are certainly situations when a police officer may need to use lethal force against an attacking dog to ensure his or her safety. In the instant case however, Kincaid did not rush the Defendant Officers, did not snarl or growl, or make any aggressive motions towards the Defendant Officers. Further, Kincaid stayed within the safety of his porch and barked to alert his owner to an unusual and foreign element within the confines of his fenced domain. Kincaid merely exhibited the type of response that any dog owner would identify as a reasonable response from an obedient and loyal pet.

Kincaid's internal thought process can only be speculated through the observation and assessment of its manifestation in Kincaid's external expressions. Kincaid's actions were inconsistent with a dog posturing to attack. On the contrary, his actions served only to alert and request the attention of his owner. Unfortunately, while Plaintiff Augustine

was reaching down to return his beloved pet to the comfort of his home, to remove him from harm, and to assuage the trepidations of the Defendant Officers, Kincaid was shot once in the torso and twice in the head.

Kincaid was violently ripped away from his loving owners despite being steps away from safety. The three year story of Kincaid's happy and carefree existence was punctuated abruptly by the harsh staccato of Officer H781's sidearm. That moment before death, however slight, contained a lifetime of torment and pain for an innocent being, while one of his owners, Plaintiff Augustine, stood only a few steps away and watched his best friend slowly expire.

#### **Jurisdiction and Venue**

1. This Court has jurisdiction pursuant to MD. Code Ann., Cts. & Jud. Proc. §6-102 through §6-103, §16-2(a) of the Public Local Laws of Baltimore City, and the Maryland Tort Claims Act, Md. Code Ann., State Gov't § 12-101 et seq.
2. Venue is proper pursuant to MD. Code Ann., Cts. & Jud. Proc. §6-201. All material events occurred in Baltimore City, Maryland.

#### **Parties**

3. Plaintiff Augustine is an adult resident of Baltimore City, Maryland.
4. Plaintiff Fields is an adult resident of Baltimore City, Maryland and the daughter of Plaintiff Augustine.
5. Defendant Officer H781 is a natural person who, at all relevant times to this Complaint, was employed by Defendants State of Maryland, Baltimore City, and Baltimore City Police Department as a Baltimore City police officer. Plaintiffs are unaware of the true name of the above defendant and reserve the right to amend this

complaint as soon as it is ascertained.

6. Defendant Unknown Officer is a natural person who, at all relevant times to this Complaint, was employed by Defendants State of Maryland, Baltimore City, and Baltimore City Police Department as a Baltimore City police officer. Plaintiffs are unaware of the true name of the above defendant and reserve the right to amend this complaint as soon as it is ascertained.

7. Defendant Baltimore City Police Department is the local government entity created by General Assembly of Maryland as a state agency through Ch. 367 of the Acts of 1867 to safeguard the lives and safety of all persons within the City of Baltimore. Defendant Baltimore City Police Department is responsible for the conduct and actions of the Baltimore City Police Department and its agents, servants and employees who perform the business of that police department and carry out its duties.

8. Defendant Baltimore City is responsible for the conduct and actions of the Baltimore City Police Department and its agents, servants and employees who perform the business of that police department and carry out its duties.

9. Defendant State of Maryland is responsible for the conduct and actions of the Baltimore City Police Department and its agents, servants and employees who perform the business of that police department and carry out its duties.

#### **Facts Common to All Counts**

10. On January 1, 2013, Defendants, Officer H781 and Unknown Officer, entered Plaintiffs' property while pursuing a criminal suspect unrelated to the property or its occupants

11. Plaintiff Augustine investigated the unusual sounds emanating from the rear of his property while accompanied by his dog, Kincaid.

12. While standing on his back porch with Kincaid, Plaintiff Augustine was ordered by Defendant Officer H781 to secure his dog.

13. While Plaintiff Augustine was complying with the order and standing within twenty-four inches of his pet, Defendant Officer H781 fired six rounds at Kincaid, missing three times.

14. Kincaid was struck once in the chest and twice in the head.

15. Defendant Officer H781 ordered Plaintiff Augustine to sit on the steps of his porch.

16. Defendant Unknown Officer threatened to arrest Plaintiff Augustine if he attempted to touch Kincaid, whose exposed carcass was lying only inches from Plaintiff Augustine.

17. Only after the Defendant Officers on the scene had detained the suspect that they chased onto Plaintiff Augustine's property, was Plaintiff Augustine permitted to cover Kincaid's body with a tarp.

18. While waiting for animal control, Defendants, Officer H781 and Unknown Officer, made inflammatory and disrespectful remarks about the shooting of Kincaid in the presence, and at the direct expense, of Plaintiff Augustine.

19. Defendant Officer H781 then informed Plaintiff Augustine that animal control would not be coming and that he could bury Kincaid outside of Baltimore City limits.

20. At all time relevant hereto, Defendants, Officer H781 and Unknown Officer, were acting within the scope of their employment for Defendants State of Maryland, Baltimore City, and Baltimore City Police Department as Baltimore City Police Officers.

**Count 1**  
**Respondeat Superior**  
**(State of Maryland, Baltimore City, Baltimore City Police Department)**

21. Plaintiffs adopt and incorporate all prior paragraphs herein.

22. At all time relevant hereto, Defendant Officer H781 was acting within the scope of his employment for Defendants State of Maryland, Baltimore City, and Baltimore City Police Department as a Baltimore City police officer.

23. At all time relevant hereto, Defendants, Officer H781 and Unknown Officer, were acting within the scope of their employment for Defendants State of Maryland, Baltimore City, and Baltimore City Police Department as Baltimore City Police Officers.

24. The Baltimore City Police Department was “established as an agency and instrumentality of the State of Maryland” by the Public Local Laws of Baltimore City § 16-2(a), and was designated a local government entity by the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. § 5-301(d)(21).

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory damages in excess of \$75,000, plus interest, costs, attorneys' fees, and such other and further relief as the Court deems appropriate.

**Count 2**  
**Trespass to Chattel**  
**(Officer H781, State of Maryland, Baltimore City, Baltimore City Police Department)**

25. Plaintiffs adopt and incorporate all prior paragraphs herein.

26. At all time relevant hereto, Defendant Officer H781 maliciously and with the intent to seriously harm or kill, shot and killed Plaintiffs' family pet, Kincaid.

27. Defendants had no legal justification to shoot and seriously injure the Plaintiffs' family pet.

28. Defendants deliberately and with intent to seriously harm or kill, deprived Plaintiffs of their pet, Kincaid.

29. At all times relevant hereto, Defendant Officer H781 acted without legal justification or excuse.

30. At all times relevant hereto, Defendant Officer H781 deliberately acted with an evil and rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the Plaintiffs, and at all times relevant hereto, Defendant Officer H781 acted deliberately with ill will, improper motive and actual malice.

31. At all times relevant hereto, Defendant Officer H781 acted under color and pretense of law, and under the color of statutes, customs and usages of the State of Maryland and Baltimore City.

32. At all times relevant hereto, Defendant Officer H781 and Unknown Officer were acting within the scope of their employment as Baltimore City Police Officers.

33. At all times relevant hereto, Defendant Officer H781 acted with negligence and/or gross negligence in violation of lawful duties owed the Plaintiffs and within the scope of his employment as a Baltimore City Police officer.

34. As a direct and proximate result of Defendants' actions, Plaintiffs have been deprived of the companionship of a kind and loving family pet and have suffered economic loss, mental anguish, substantial emotional distress, loss of the capacity for the

enjoyment of life, and were caused to endure pain and suffering

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory and punitive damages in excess of \$75,000, plus interest, costs, attorneys' fees, and such other and further relief as the Court deems appropriate.

**Count 3**  
**Intentional Infliction of Emotional Distress**  
**(Officer H781, Unknown Officer, State of Maryland, Baltimore City, Baltimore City Police Department)**

35. Plaintiffs adopt and incorporate all prior paragraphs herein.

36. Defendant Officer H781 intentionally and recklessly pointed his department issued firearm towards Plaintiff Augustine and the Plaintiffs' home to shoot, with intent to seriously injure or kill Kincaid, their family pet. Plaintiff Augustine was standing within twenty-four inches of Kincaid and reaching for Kincaid when the firearm was discharged. Defendant Officer H781 was fully aware that Plaintiff Augustine was reaching for Kincaid and was asked not to shoot Kincaid by Plaintiff Augustine. It was at moment that Defendant Officer H781 discharged his weapon, killing Kincaid.

37. Defendant Officer H781's reckless discharge of his weapon towards the home of the Plaintiffs and at Kincaid when Defendant was aware that Plaintiff Augustine was in close proximity to, and reaching for, Kincaid was extreme and outrageous conduct.

38. The conduct of the Defendant Officers was extreme and outrageous when the Defendant Officers made light of the incident and laughed about the shooting just moments after, and in the presence of Plaintiff Augustine, while Plaintiff Augustine was in a fragile and emotional state of shock.

39. Defendant Officers made no attempt to assist Plaintiff Augustine with Kincaid and did nothing to lessen the gravity of their unconscionable, unjustified, and heinous actions. Instead, Defendant Unknown Officer threatened to arrest Plaintiff Augustine if he merely touched his pet.

40. Defendant Officers' actions were intentional, reckless, extreme and outrageous, and done with a callous disregard for the safety of the Plaintiffs.

41. At all times relevant hereto, Defendants, Officer H781 and Unknown Officer, acted without legal justification or excuse.

42. At all times relevant hereto, Defendants, Officer H781 and Unknown Officer, acted deliberately with an evil and rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the Plaintiffs, and at all times relevant hereto, Defendants, Officer H781 and Unknown Officer, acted deliberately with ill will, improper motive and actual malice.

43. At all times relevant hereto, Defendants, Officer H781 and Unknown Officer, acted under color and pretense of law, and under the color of statutes, customs and usages of the State of Maryland and Baltimore City.

44. At all times relevant hereto, Defendant Officer H781 and Unknown Officer were acting within the scope of their employment as Baltimore City Police Officers.

45. Plaintiffs continue to experience severe emotional hardship as they mourn the loss of a member of their family. Since the incident, Plaintiffs Augustine and Fields have continued to suffer nightmares, fits of extreme stress and anxiety resulting from an experience akin to the loss of a child. As a result of his severe emotional distress, Plaintiff Augustine has been unable to consistently fulfill his employment obligations.

46. As a direct and proximate result of Defendants' extreme and outrageous conduct, Plaintiffs suffered severe physical, psychological, and emotional damages.

47. As a direct and proximate result of the intentional, reckless, outrageous and extreme conduct of Defendants, Officer H781 and Unknown Officer, Plaintiffs were caused to suffer severe emotional distress, including grief and anxiety. Defendant Officers made no attempt to assist Plaintiff Augustine with Kincaid and did nothing to lessen the gravity of their unconscionable, unjustified, and heinous actions. Instead, Defendant Unknown Officer threatened to arrest Plaintiff Augustine if he merely touched his pet.

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory and punitive damages in excess of \$75,000, plus interest, costs, attorneys' fees, and such other and further relief as the Court deems appropriate.

**Count 4**

**Violation of Article 24 of the Maryland Declaration of Rights  
(Officer H781, State of Maryland, Baltimore City Police Department, Baltimore  
City)**

48. Plaintiffs adopt and incorporate all prior paragraphs herein.

49. Defendant Officer H781 unlawfully seized the Plaintiffs' dog, Kincaid, when he shot and killed him without legal justification or excuse, thereby injuring the Plaintiffs by depriving them of their property without due process of law, in violation of Article 24 of the Maryland Declaration of Rights.

50. As a direct and proximate result of Defendants' constitutional violations, Plaintiffs suffered injuries in the form of economic damages, fear and apprehension of imminent bodily harm, death of their family pet, humiliation, disgrace, loss of dignity,

and pain and suffering.

51. The State of Maryland, Baltimore City, and the Baltimore City Police Department are vicariously liable for the constitutional violation of Defendant Officer H781.

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory damages in excess of \$75,000, plus interest, costs, attorneys' fees, and such other and further relief as the Court deems appropriate.

**Count 5**

**Negligence**

**(Officer H781, Unknown Officer, State of Maryland, Baltimore City, Baltimore City Police Department)**

52. Plaintiffs adopt and incorporate all prior paragraphs herein.

53. Defendant Officer H781 owed Plaintiffs a duty to use reasonable care in his treatment of Plaintiffs' dog, Kincaid.

54. Defendant Officer H781, breached his duty to Plaintiffs by unlawfully seizing Plaintiffs' dog, Kincaid, by pointing and discharging his firearm in Plaintiff Augustine's direction, and fatally wounding Plaintiffs' pet, Kincaid.

55. At all times relevant hereto, Defendant Officers were acting within the scope of their employment as Baltimore City Police Officers.

56. At all times relevant hereto, Defendant Officer H781 deliberately acted with an evil and rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the Plaintiffs, and at all times relevant hereto, Defendant Officer H781 acted deliberately with ill will, improper motive and actual malice.

57. As a direct and proximate cause of the Defendants' breach, Plaintiffs suffered actual emotional injuries, economic damages, fatal injury to their family dog, Kincaid, and pain and suffering.

WHEREFORE, Plaintiffs demand judgment against the Defendants for compensatory and punitive damages in excess of \$75,000, plus interest, costs, attorneys' fees, and such other and further relief as the Court deems appropriate.

**Count 6**

**Negligent Hiring, Training, Supervision, and Retention  
(State of Maryland, Baltimore City, Baltimore City Police Department)**

58. Plaintiffs adopt and incorporate all prior paragraphs herein.

59. Defendants Baltimore City Police Department, Baltimore City, and State of Maryland had a duty to use reasonable care in selecting, retaining, and supervising employees who are competent for the work assigned to them.

60. At all times relevant hereto, Defendant Officers were acting within the scope of their employment for Defendants State of Maryland and Baltimore City Police Department as Baltimore City Police Officers.

61. Defendants Baltimore City Police Department, Baltimore City, and State of Maryland breached their duty by failing to use reasonable care in selecting, retaining, and supervising employees who are competent for the work assigned to them.

62. The Defendants State of Maryland, Baltimore City, and Baltimore City Police Department knew or should have known through the exercise of diligence and reasonable care that the Defendant Officers were capable of inflicting harm on citizen through the use of excessive force, and that they were not properly qualified or trained to serve as police officers.

63. As a direct and proximate cause of the Defendants Officers' conduct, Plaintiffs suffered actual emotional injuries, economic damages, fatal injury to their family dog, Kincaid, and pain and suffering.

64. As a direct and proximate cause of the Defendants State of Maryland, Baltimore City, and Baltimore City Police Department failure to use reasonable care in selecting, retaining, and supervising employees who are competent for the work assigned to them, Plaintiffs suffered actual emotional injuries, economic damages, fatal injury to their family dog, Kincaid, and pain and suffering.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages in excess of \$75,000, attorneys' fees, and such other and further relief as the Court deems appropriate.

**Count 7**  
**Declaratory Judgment**

65. Plaintiffs adopt and incorporate by reference the allegations contained in the preceding paragraphs.

66. This declaratory judgment action is brought pursuant to Md. Code. Ann., Cts. and Jud. Proc. Art. §§ 3-406 and 3-407 for the purpose of determining questions of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding.

67. The aforesaid actions of the Defendants and their ongoing pattern and practice violate Maryland law, including Articles 24 and 26 of the Maryland Declaration of Rights. Specifically, the repeated practice, custom, and policy of the Defendants in routinely shooting and seriously injuring or killing family pets without cause or

provocation when police are present on private property.

68. These Defendants incorrectly contend that their conduct was reasonable and does not violate Maryland law and the Maryland Declaration of Rights.

69. There exists an actual controversy regarding justiciable issues between the Plaintiffs and Defendants within the jurisdiction of this Court, involving whether the aforesaid actions of the Defendants, as well as their ongoing pattern and practices set forth herein of routinely shooting family pets, violate the Maryland Declaration of Rights.

70. Antagonistic claims are present between the parties. These claims not only indicate imminent and inevitable litigation, but a high likelihood that this pattern of deprivation of the constitutional rights of innocent persons and animals will continue absent a declaration from the court

WHEREFORE, the Plaintiffs demand:

- a. that this Court determine and adjudicate the rights and liabilities of the parties with respect to the aforesaid actions of the Defendants, as well as their ongoing pattern and practice of unlawfully shooting innocent pets;
- b. that this Court determine that these practices are unlawful, unconstitutional and violate the provisions of Articles 24 and 26 of the Maryland Declaration of rights;
- c. that this Court award the Plaintiffs the costs of these proceedings; and
- d. that this Court award the Plaintiffs such other and further relief as justice may require.

**Count 8**  
**Injunctive Relief**

71. Plaintiffs adopt and incorporate by reference the allegations contained in the preceding paragraphs.

72. Defendants are likely to continue the unlawful customs, policies, and practices unless enjoined by the Court to conform to the law.

73. Defendants should be enjoined to discontinue their practice of routinely shooting and killing family pets without cause or provocation while present on citizens' private property.

74. Defendants should be further enjoined to: (a) promulgate general orders that ensure compliance with the law and discontinuance of these unlawful and unconstitutional practices; (b) to institute education and training programs to ensure discontinuance of these unlawful and unconstitutional practices; and (c) to institute monitoring and reporting systems to ensure discontinuance of these unlawful and unconstitutional practices and compliance with the law.

75. Plaintiffs are highly likely to prevail on the merits. Plaintiffs and others like them will suffer substantial and irreparable harm without injunctive relief. The balance of convenience favors the Plaintiffs. The issuance of injunctive relief to ensure compliance with the law is plainly in the public interest.

WHEREFORE, the Plaintiffs demand:

- a. that this Court issue a permanent injunction with respect to the aforesaid actions of the Defendants, as well as their ongoing pattern and practice of unlawful shooting of innocent pets;
- b. that this Court award the Plaintiffs the costs of these proceedings; and

c. that this Court award the Plaintiffs such other and further relief as justice may require.

**Demand For Jury Trial**

Plaintiffs demand a jury trial as to all claims so triable.

Respectfully Submitted,

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