

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT
CIVIL ACTION No. 09-1595

NICHOLAS PARSONS, by his)
Mother and Next Friend,)
DONNA PARSONS, GARY)
PARSONS & DONNA PARSONS,)
Plaintiffs)

AMENDED COMPLAINT

v.)

JURY TRIAL DEMANDED

TOWN OF TEWKSBURY, ROBERT)
WARE, ADAM COLANTUONI,)
TYLER WILLETTE,)
TIMOTHY WILLETTE,)
DOREEN WILLETTE, and)
STEFAN HERCEG,)
Defendants)

PARTIES

1. The plaintiff, Nicholas Parsons, is an individual who resides at 272 Kendall Road, Tewksbury, Middlesex County, Commonwealth of Massachusetts, was a minor at the time this action was filed, and brought this action by his Mother and Next Friend, Donna Parsons.

2. The plaintiff, Gary Parsons, is an individual who resides at 272 Kendall Road, Tewksbury, Middlesex County, Commonwealth of Massachusetts, and is the father of the plaintiff, Nicholas Parsons, and the spouse of the plaintiff, Donna Parsons.

3. The plaintiff, Donna Parsons, is an individual who resides at 272 Kendall Road, Tewksbury, Middlesex County, Commonwealth of Massachusetts, and is the mother of the plaintiff, Nicholas Parsons, and the spouse of the plaintiff,

Gary Parsons.

4. The defendant, Town of Tewksbury (hereafter "Town" or "Tewksbury"), is a municipality duly incorporated under the laws of the Commonwealth of Massachusetts, located in Middlesex County, Commonwealth of Massachusetts.

5. The defendant, Robert Ware, is an individual who has a principal place of business at the John W. Wynn Middle School, located in Tewksbury, Middlesex County, Commonwealth of Massachusetts.

6. The defendant, Adam Colantuoni, is an individual who has a principal place of business at the John W. Wynn Middle School, located in Tewksbury, Middlesex County, Commonwealth of Massachusetts.

7. The defendant, Tyler Willette, is an individual who resides at 114 Patten Road, Tewksbury, Middlesex County, Commonwealth of Massachusetts, and is the minor child of the defendants, Timothy Willette and Doreen Willette.

8. The defendant, Timothy Willette, is an individual who resides at 114 Patten Road, Tewksbury, Middlesex County, Commonwealth of Massachusetts, and is the father of the defendant, Tyler Willette, and the spouse of the defendant, Doreen Willette.

9. The defendant, Doreen Willette, is an individual who resides at 114 Patten Road, Tewksbury, Middlesex County,

Commonwealth of Massachusetts, and is the mother of the defendant, Tyler Willette, and the spouse of the defendant, Timothy Willette.

10. The defendant, Stefan Herceg, is an individual who resides at 14 Pace Road, Tewksbury, Middlesex County, Commonwealth of Massachusetts.

FACTS COMMON TO ALL COUNTS

11. At all times material, the defendant Town operated a public "middle" school known as the John W. Wynn Middle School, located in Tewksbury, Middlesex County, Commonwealth of Massachusetts (hereafter "Wynn Middle School").

12. At all times material, defendants Ware and Colantuoni, were employees of the defendant Town and worked as teachers and/or administrators at the Wynn Middle School.

13. At all times material, the then minor plaintiff, Nicholas Parsons, was a 12 year old 7th grade student at the Wynn Middle School.

14. At all times material, the defendant, Tyler Willette, also was a student at the Wynn Middle School.

15. At all times material, the defendant, Stefan Herceg, also was a student at the Wynn Middle School.

16. At all times material, the defendant Town's Wynn Middle School was subject to the direction, control and supervision of the defendant Town's Tewksbury School Committee, which was

authorized by law to adopt and implement, and which did adopt and implement policies, procedures, rules and regulations to govern the safe and efficient operation of the defendant Town's public schools for the purpose of safely and properly educating the defendant Town's minor public school student population.

17. At all times material, the defendant Town's School Committee was authorized by law to employ, train, direct, supervise and control, and did employ, train, direct, supervise and control administrators, educators, teachers and facilitators to implement the policies, procedures, rules and regulations promulgated by the defendant Town's School Committee in order to ensure the safe and efficient operation of the defendant Town's public schools for the purpose of safely and properly educating the defendant Town's minor public school student population.

18. At all times material, the defendant Town's School Committee promulgated policies which were codified in a "Tewksbury School Committee Policy Manual" (hereafter "Policy" or "Manual") which repeatedly stressed the School Committee's commitment "to providing a safe learning and working environment for all students and staff", "to insur[ing] that an environment exists within each of the [defendant Town's] schools that is safe, orderly and respectful towards all students, staff and visitors", and to delegating authority to school administrators to enable them "to prevent, address, and punish those responsible

for school-related violence and other behavior that is not conducive with attendance in a public school". Policy ADD, "Safe Schools".

19. To the same end, the defendant Town's School Committee promulgated, *inter alia*, the following policies and procedures for the purpose of ensuring the safe education of the defendant Town's minor student population, which were in effect at the time of the incidents which give rise to this action: Policy ADA, "Tewksbury Public Schools Mission Statement" ("To create and maintain a school culture which supports the physical, social and emotional well being of all members of the school community."); Policy EB, "Safety Program" ("The Tewksbury School Committee will guard against such [accidents] by taking every possible precaution to protect the safety of all students ... present on school property or at school-sponsored events."); Policy GBEB, "Staff Conduct" ("Essential to the success of ongoing school operations and the instructional program are the following specific responsibilities, which will be required of all personnel: *** 5. Concern for and attention to their own and the school system's legal responsibility for the safety and welfare of students, including the need to ensure that students are under supervision at all times."); Policy JICD, "Maintenance of Orderly Conduct" ("All employees of the district shall share responsibility for supervising the behavior of students and for

seeing that they meet the standards of conduct which have been or may hereafter be established by the Tewksbury School Committee or its agents."); Policy JICFB, "Bullying" ("The Tewksbury Public Schools will endeavor to maintain a learning and working environment free of bullying. [¶] Bullying is defined as the act of one or more individuals intimidating one of [sic] more persons through verbal, physical, mental, or written interactions. *** [¶] The school committee expects administrators and supervisors to make clear to students and staff that bullying in the school building, on school grounds, ... will not be tolerated and will be grounds for the disciplinary action up to and including suspension and expulsion for students, and termination for employees. [¶] The district will promptly and reasonable [sic] investigate allegations of harassment, including bullying. The Principal of each building will be responsible for handling all complaints by students alleging harassment, including bullying and taking the appropriate action."); Policy JICI, "Weapons and Firearms" ("The Tewksbury School Committee believes that all students must be provided a safe environment conducive to teaching and learning."); Policy JK, "Student Discipline" ("Students violating any of the policies on student conduct and control will be subject to disciplinary action."); Policy JL, "Student Welfare" ("The Tewksbury School Committee expects all members of the school community to regard a student's welfare as

their primary goal. *** School personnel engaged in supervision of students are expected to act as reasonably prudent adults in providing for the safety of the students in their charge."); Policy JLI, "Student and School Safety", ("The Tewksbury School District is committed to providing a safe, orderly and productive learning environment for all members of the school community.").

20. At all times material to this action, the defendant Town's School Committee mandated that school principals "maintain supervision of school premises to deter intimidation of students", and that school staff receive training to "recognize early manifestations of disruptive activities, and respond appropriately", including learning "conflict management techniques and ... intervention measures and community resources which may help students". Policy JCIF, "Gang Activity/Secret Societies".

21. The defendant Town's School Committee mandated specific procedures for addressing observations of "inappropriate student behavior, inconsistent with the principles set forth in this Policy". Policy JLI, "Student and School Safety". In particular, Policy JLI mandated immediate staff reporting of student behavior that could "pose a threat of safety to any member of the school community" to the school administrator who had charge of the student, followed by a written report submitted no later than the close of the same school day. Policy JLI

required the school administrator to meet with the student to conduct a preliminary investigation and to meet with parents, guardians, legal representatives, police and others, as necessary, if further action was warranted, including, without limitation, discipline and/or suspension. Policy JLI required school administrators to notify the Tewksbury Police of the status of school investigations and of facts discovered.

22. To the same end, the defendant Town's School Committee promulgated and maintained in effect at all times material, *inter alia*, Policy EBCA, which established a crisis team and "Crisis Team Procedures" to be used proactively in non-emergency situations "to respond to those situations which threaten the safety or well being of the members of the respective school community or have an impact on the daily lives of the members of the school community". The Policy mandated the crisis team to assess situations, identify resources to address each situation, and develop action plans to address the crisis.

23. Also to the same end, the defendant Town's School Committee promulgated and maintained in effect at all times material, Policy JKD, "Suspension/Expulsion From School", which mandated that "[a] student will be suspended and may be referred to an expulsion hearing for the following behaviors: *** 3. Intimidating, harassing, hazing, or causing physical harm to others, 4. Fighting", and "may be expelled for the following

behaviors: 3. Use of force against an individual. *** 6.
Violation of an individual's civil rights".

24. In conformity with the Policies of the defendant Town's School Committee, the Wynn Middle School Student Handbook, which itself had been prepared and approved in accordance with the 1993 Education Reform Act and Policy CHCA, "Approval of Handbooks and Directives", specifically warned students that "(C.) If you assault anyone on school premises or at school sponsored or school-related events ... you will be immediately suspended for an indefinite period of time and may be subject to expulsion from the school or school district by the principal." "Code of Student Conduct, Student Conduct Affected by the Education Reform Act, Violent Behavior, Possession of Weapons and Controlled Substances, and Violation of Others' Civil Rights".

25. At all times material, defendant Tyler Willette was the leader of a small clique of boys who were students in the defendant Town's public schools and who traveled as a pack and engaged in harassing, threatening and anti-social activities against clique outsiders and against one member of the clique who was designated as the "dunce".

26. Defendant Tyler Willette's group intimidated and harassed several Wynn Middle School girls with sexist slurs, harming the reputation of some by calling them "sluts", and driving at least one girl to engage in self-destructive behavior.

27. Despite notice, Wynn Middle School staff failed to recognize or to respond to the violent, disruptive and illegal behavior of defendant Tyler Willette and his cohort.

28. Among other forms of notice, two students informed defendant Colantuoni, who at the time was the defendant Town's employed Wynn Middle School Guidance Counselor, that a female student had been cutting herself because of sexual insults directed against her by defendant Tyler Willette.

29. Despite the actual notice which had been provided to defendant, Colantuoni, neither that defendant nor any of his supervisors at the defendant Town's Wynn Middle School took any action to discipline defendant Tyler Willette or to protect the defendant Town's student population from harm at the hands of defendant Tyler Willette or his minions.

30. For a short time before the April 2006 public school vacation, the then minor plaintiff, Nicholas Parsons, had been a member of defendant Tyler Willette's coterie. However, after being designated the "dunce" and targeted for derision by the clique, the then minor plaintiff disassociated himself from defendant Tyler Willette's group.

31. The then minor plaintiff, Nicholas Parsons, told defendant Colantuoni and another employee of the defendant Town's Wynn Middle School that defendant Tyler Willette's clique had mistreated and harassed the then minor plaintiff.

32. Notwithstanding the actual notice provided to the defendant Town's employees of the maltreatment of the then minor plaintiff, who was a student under the defendant Town's jurisdiction and control, by defendant Tyler Willette, who was another student subject to the defendant Town's jurisdiction and control, the defendant Town's school administrators, including without limitation defendant Colantuoni, did nothing to address the problem.

33. In particular, the defendant Town's Wynn Middle School administrators, including without limitation defendant Colantuoni, undertook no investigation and imposed no discipline on defendant Tyler Willette or his minions.

34. By their refusal and failure to respond to the actual notice of defendant Tyler Willette's misconduct which had been provided by the then minor plaintiff, Nicholas Parsons, and by other students of the defendant Town's public schools, the defendant Town's public school administrators and other employed staff failed to recognize the early manifestations of defendant Tyler Willette's disruptive activities, failed to deter student intimidation, failed to make clear the consequences of bullying, and failed to employ community resources to prevent violence, all in violation of the defendant Town's School Committee Policies.

35. In gang fashion, defendant Tyler Willette had another clique member, Brendan Weiss, attempt to "discipline" the then

minor plaintiff, Nicholas Parsons, by slamming Nicholas in the head with a book on the defendant Town's school property, and in the presence of a Wynn Middle School English teacher.

36. The Wynn Middle School English teacher who had witnessed the assault sent Weiss to defendant Ware, who at all times material, was the Wynn Middle School Behavior Management Facilitator, for investigation and discipline.

37. Defendant Ware summoned the then minor plaintiff, Nicholas Parsons, to a meeting with defendant Ware and Brendan Weiss.

38. During the course of said meeting, the then minor plaintiff, Nicholas Parsons stated, and the assailant, Brendan Weiss confirmed, that Weiss' assault had not been provoked by the then minor plaintiff.

39. Nevertheless, defendant Ware told both boys to apologize to each other and did not meaningfully discipline Brendan Ware or defendant Tyler Willette or the other members of defendant Tyler Willette's group.

40. After learning of the refusal of Wynn Middle School administrators, including defendant Ware, to enforce the policies of the defendant Town's School Committee which were designed to ensure the safety of the defendant Town's minor student population, the plaintiff, Donna Parsons, telephoned defendant Ware to complain about the Weiss assault upon the then minor

plaintiff and the manner in which it had been addressed by the defendant Town's employees, including defendant Ware.

41. Notwithstanding the plaintiff, Donna Parsons' complaint, the defendant Town's school administrators refused and failed to take any additional measures to address the violence, despite the mandated School Committee Policies which required them to do so.

42. Concerned for her son's safety in light of the Wynn Middle School administrators' refusal to act, the plaintiff, Donna Parsons kept the then minor plaintiff, Nicholas Parsons, home from school the Wednesday before the April 2006 vacation, hoping that tempers would cool.

43. During the school vacation, defendant Tyler Willette provoked two fist fights with the then minor plaintiff, Nicholas Parsons, on the same day, on the street on which the plaintiffs lived.

44. After both fights ended without resolution and without injuries, defendant Tyler Willette challenged the then minor plaintiff, Nicholas Parsons, to yet another fight, which the then minor plaintiff declined.

45. The very day that the defendant Town's public school students returned to school after vacation, defendant Tyler Willette attempted to provoke yet another fight with the then minor plaintiff by screaming loudly and publicly that defendant

Tyler Willette hated the then minor plaintiff and by posting sexually offensive insults in a chat room which was accessible on the defendant Town's public school computers and which were accessed there by the then minor plaintiff.

46. Defendant Stefan Herceg learned of the harassment of the plaintiff by defendant Tyler Willette and the fighting that had occurred between Tyler Willette and Nicholas Parsons and instigated and provoked further violence between the two boys.

47. Defendant Herceg warned the then minor plaintiff, Nicholas Parsons, that defendant Tyler Willette intended to harm him unless the then minor plaintiff agreed to fight defendant Tyler Willette and that the harassment would not stop until the plaintiff Nicholas Parsons fought the defendant Tyler Willette, but still the then minor plaintiff refused the provocation.

48. Defendant Herceg told the then minor defendant Tyler Willette that unless he fought the then minor plaintiff Nicholas Parsons, both boys would be harassed by other students until they fought each other.

49. During gym class at the Wynn Middle School, defendant Tyler Willette charged the then minor plaintiff, Nicholas Parsons, during a game of kickball. The defendant Town's Wynn Middle School gym teacher asked the boys what was going on but took no further action, and in violation of the defendant Town's School Committee Policy JLI, the gym teacher did not report the

incident to school administrators for further investigation and redress.

50. As a direct and proximate result of the on-going bullying and harassment by defendant Tyler Willette and his minions, and the refusal to respond in accordance with mandatory School Committee policies and procedures, and the lack of response from the defendant Town's school staff and administrators to the matters of which they had been informed by the then minor plaintiff, Nicholas Parsons, and/or by his mother, the plaintiff, Donna Parsons, and/or which the defendant's employed staff personally had observed, and the instigation and provocation of defendant Stefan Herceg, the then minor plaintiff, Nicholas Parsons, felt that he had no alternative and agreed to fight defendant Tyler Willette to end the intimidation and bullying.

51. The foolishness of such a decision by a harassed 12 year old boy is foreseeable and is precisely the reason why the promulgation and enforcement of reasonable school disciplinary rules is entrusted to "responsible" adults and not to teenagers.

52. Defendant Stefan Herceg arranged for the then minor plaintiff, Nicholas Parsons, and defendant Tyler Willette to fight in the Wynn Middle School gym locker room after class on April 26, 2006, but the fight was "rescheduled" and "relocated" to a boy's restroom later that day because the gym teacher was

present in the locker room and the boys did not want to get caught fighting.

53. During that day, the fight was well publicized among the Wynn Middle School student population.

54. During that day, defendant Tyler Willette threatened to break the then minor plaintiff's leg with a karate maneuver.

55. Defendants Ware and Colantuoni were observed inspecting and/or monitoring a boys' restroom, activities which they had not been observed performing previously.

56. Notwithstanding the reports circulating around the Wynn Middle School that defendant Tyler Willette and the then minor plaintiff were to fight that afternoon, none of the defendant Town's employed school staff, including without limitation defendants Ware and Colantuoni, approached the then minor plaintiff to inquire of potential trouble, or to offer help, support or a reasonable alternative to the then minor plaintiff physically defending himself against defendant Tyler Willette.

57. Before the then minor plaintiff, Nicholas Parsons, reported to his seventh block writing class, defendant Tyler Willette confronted the plaintiff in the second floor boys' restroom for the expressed purpose of fighting the then minor plaintiff.

58. The then minor plaintiff's writing teacher reportedly inquired about the absence from her class of both the then minor

plaintiff, Nicholas Parsons, and the defendant Tyler Willette, and she was advised by students that the two boys were "solving things with fists".

59. Notwithstanding said notice, the defendant Town's employed Wynn Middle School teacher refused and failed to act to stop the reported fight, reportedly said that she did not want to get involved, and in violation of the defendant Town's School Committee Policies, did not even telephone Wynn Middle School administrators from the classroom telephone to notify supervisory officials of the reported fight.

60. Defendant Stefan Herceg met defendant Tyler Willette and plaintiff Nicholas Parsons in the restroom for the purpose of witnessing and "refereeing" the fight that was to occur in part because defendant Stefan Herceg had arranged it.

61. Defendant Stefan Herceg instigated and provoked the fight as late as moments before the boys started to exchange blows in the restroom.

62. At no time did defendant Stefan Herceg make any effort to prevent the fight or to notify school authorities or personnel that a fight was to occur between defendant Tyler Willette and the then minor plaintiff Nicholas Parsons.

63. Defendant Tyler Willette pushed and shoved the then minor plaintiff in the boys' rest room and kicked his legs between the then minor plaintiff's, fracturing the then minor

plaintiff, Nicholas Parsons' right femur.

64. The then minor plaintiff, Nicholas Parsons, was unable to rise due to his severe and disabling injuries.

65. As the then minor plaintiff lay on the ground helpless, defendant Tyler Willette punched the then minor plaintiff, Nicholas Parsons, in the head twice.

66. Defendants Tyler Willette and Stefan Herceg carried the severely injured minor plaintiff, Nicholas Parsons, to the Nurse's office of the defendant Town's Wynn Middle School.

67. The defendant Town's employed School Nurse, Judith Hopkins, reported that the then minor plaintiff was crying; that his right leg was swollen at the knee and above; that the then minor plaintiff could not lift his right leg below the knee; that he had decreased range of motion in his right leg; and that his forehead and the left side of his face had red areas.

68. While the then minor plaintiff was being evaluated and treated in the defendant Town's Wynn Middle School Nurse's Office, defendant Ware entered the office, cursed the students, including the severely injured minor plaintiff, and told the then minor plaintiff, Nicholas Parsons, to "walk it off" and to follow defendant Ware.

69. Notwithstanding defendant Ware's interference, Nurse Hopkins countermanded defendant Ware's orders, transferred the then minor plaintiff into a wheelchair and into a more private

area of the office, and telephoned for an ambulance, which transported the then minor plaintiff to Saints Memorial Hospital.

70. Following defendant Tyler Willette's violent assault upon the then minor plaintiff, the defendant Town's Wynn Middle School administrators refused to expel defendant Tyler Willette from the Tewksbury school system, in violation of School Committee policies, and suspended defendant Tyler Willette only briefly.

71. Following defendant Stefan Herceg's instigation and provocation of the fight, the defendant Town's Wynn Middle School administrators refused to expel or suspend defendant Stefan Herceg from the Tewksbury school system.

72. As a direct and proximate result of the physical and emotional bullying, harassment, and assault of defendant Tyler Willette, the instigation and provocation of defendant Stefan Herceg, and the refusal and failure to respond in accordance with mandatory Tewksbury School Committee policies and procedures by the defendant Town's school staff and administrators, including without limitation defendants Ware and Colantuoni, the then minor plaintiff, Nicholas Parsons, suffered severe and permanent physical and emotional damages, which have disabled him from his usual activities and which have required multiple surgeries and extended hospital, medical and therapeutic care and treatment, and his parents, the plaintiffs Donna Parsons and Gary Parsons,

have incurred expenses for the reasonable and necessary hospital, medical, physical therapy, and psychotherapeutic care and treatment of the then minor plaintiff, Nicholas Parsons; and all of the plaintiffs have suffered, *inter alia*, emotional injuries and distress, lost earnings and lost earning capacity, and loss of the pleasures and enjoyments of life.

COUNT I: TORT CLAIM
(ALL PLAINTIFFS v. DEFENDANT, TOWN of TEWKSBURY)

73. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

74. The defendant, Town of Tewksbury, is the public employer of defendants Ware and Colantuoni and of the administrators, teachers, educators and facilitators of the John W. Wynn Middle School, and of the Tewksbury School Committee, all of whom are public employees within the definition of G.L. c. 258, §1.

75. The defendant, Town of Tewksbury, as "public employer", is liable for any injuries caused by the negligent acts or omissions of any public employees while said employees act within the scope of their office or employment, pursuant to G.L. c. 258, §2.

76. The defendant, Town of Tewksbury, is liable for the negligence of defendants Ware and Colantuoni and of the administrators, teachers, educators and facilitators of the John

W. Wynn Middle School, and of the Tewksbury School Committee, in connection, *inter alia*, with their negligent failure to investigate properly the plaintiffs' allegations of violence, bullying, harassment, and assault against defendant Tyler Willette and members of his group; their negligent decision to not discipline defendant Tyler Willette; their negligent decision to not expel defendant Tyler Willette; and their negligent failure to implement the mandatory policies of the Tewksbury School Committee which were promulgated to ensure a safe and effectual learning environment for the defendant Town's minor public school student population.

77. The defendant, Town of Tewksbury, is liable for the negligence of its School Committee, *inter alia*, in hiring, retaining and supervising defendants Ware and Colantuoni; in refusing and failing to enforce School Committee policies and procedures which were promulgated to ensure a safe and effectual learning environment for the defendant Town's minor public school student population; and in failing properly to instruct, train, and supervise defendants Ware and Colantuoni and other administrators, teachers, educators and facilitators of the John W. Wynn Middle School in connection with proper methods of implementing Tewksbury School Committee policies, practices and procedures which were promulgated to ensure a safe and effectual learning environment for the defendant Town's minor public school

student population.

78. The Wynn Middle School staff's and administration's refusal to enforce the policies mandated by the Tewksbury School Committee, and the School Committee's failure to ensure that their policies were being implemented, empowered defendant Tyler Willette and his minions to engage in the violent, bullying, intimidating, and anti-social activities prohibited by the defendant Town's School Committee policies.

79. As a result of their conduct, the defendant Town's Wynn Middle School staff and administration, and the defendant's School Committee ratified the intimidation, enabled the bully, and increased the level of violence, ultimately resulting in the fracture of the then minor plaintiff, Nicholas Parsons' right leg.

80. The defendant Town's failure to expel defendant Tyler Willette even after he "[u]se[d] force against" the then minor plaintiff, Nicholas Parsons, also evidenced ratification in violation of Policy JKD.

81. The refusal of the defendant Town's Wynn Middle School staff and administration and the defendant Town's School Committee to enforce the School Committee's own policies and procedures at a time when defendant Tyler Willette was engaging in intimidation rather than physical assault, and could have been deterred from escalating his level of violence, "materially

contributed to creating the specific 'condition or situation' that resulted in the harm" to the then minor plaintiff, Nicholas Parsons.

82. As a direct and proximate result of the negligence of the public employees of the defendant, Town of Tewksbury, the plaintiffs suffered the damages aforesaid.

83. On or about April 24, 2008, the plaintiffs made timely written demand for relief upon the defendants, in accordance with G.L. c. 258, §4, a copy of which demand is annexed hereto as Exhibit "1".

84. The defendant, Town of Tewksbury, failed to respond in satisfactory written manner to the plaintiffs' written demand for relief, thus constituting a denial of said demand within the meaning of the statute.

**COUNT II: VIOLATION OF MASSACHUSETTS DECLARATION OF RIGHTS
(PLAINTIFF, NICHOLAS PARSONS v. DEFENDANTS, TOWN OF TEWKSBURY,
ROBERT WARE, and ADAM COLANTUONI)**

85. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

86. The defendants, Town of Tewksbury, Robert Ware, and Adam Colantuoni, deprived the then minor plaintiff, Nicholas Parsons, of his right to enjoy in safety and tranquility his natural rights and the blessings of life and liberty; of his right of enjoying and defending his life and liberty; of his

right of seeking and obtaining safety and happiness; of his right to be protected by society in the enjoyment of his life, liberty and property according to standing laws; of his right to find remedy by having recourse to the laws for all injuries and wrongs which he has received to his person, property or character; and of his right not to be put out of the protection of the law or deprived of liberty or estate but by the judgment of his peers and the law of the land, all in violation of the Preamble and of Articles I, X, XI, XII and CVI of the Declaration of Rights of the Commonwealth of Massachusetts.

87. As a direct and proximate result of the defendants' deprivation of the then minor plaintiff's civil rights under the Declaration of Rights of the Commonwealth of Massachusetts, the then minor plaintiff, Nicholas Parsons, suffered the damages aforesaid.

88. The plaintiff has a cause of action directly under the provisions of the Declaration of Rights of the Commonwealth of Massachusetts for the Constitutional deprivations inflicted upon him by the defendants.

**COUNT III: VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT
(PLAINTIFF, NICHOLAS PARSONS v. DEFENDANT, TYLER WILLETTE)**

89. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

90. The defendant, Tyler Willette, interfered with the

minor plaintiff's enjoyment and exercise of his rights protected by the constitutions and laws of the United States and of the Commonwealth of Massachusetts, by engaging in a pattern of threats, intimidation and coercion, including without limitation by illegally assaulting, battering, harassing and bullying the then minor plaintiff, which acts were designed to and which did interfere with the then minor plaintiff's exercise of his rights to liberty and safety and to due process, as provided, preserved and protected by the Constitution of the United States and by the Declaration of Rights of the Commonwealth of Massachusetts and by various and sundry statutes of the United States and of the Commonwealth of Massachusetts.

91. As a direct and proximate result of the defendant Tyler Willette's violation of the then minor plaintiff's civil rights, the then minor plaintiff, Nicholas Parsons, suffered the damages aforesaid.

COUNT IV: ASSAULT
(PLAINTIFF, NICHOLAS PARSONS v. DEFENDANT, TYLER WILLETTE)

92. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

93. The defendant, Tyler Willette, illegally assaulted the minor plaintiff, Nicholas Parsons, without probable cause, in violation of law, and without justification or defense.

94. As a direct and proximate result of the defendant's

assault upon the then minor plaintiff, the then minor plaintiff, Nicholas Parsons, suffered the damages aforesaid.

COUNT V: BATTERY
(PLAINTIFF, NICHOLAS PARSONS v. DEFENDANT, TYLER WILLETTE)

95. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

96. The defendant, Tyler Willette, illegally battered the minor plaintiff, Nicholas Parsons, without probable cause, in violation of law, and without justification or defense.

97. As a direct and proximate result of the defendant's battery of the then minor plaintiff, the then minor plaintiff, Nicholas Parsons, suffered the damages aforesaid.

COUNT VI: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(ALL PLAINTIFFS v. DEFENDANTS, TOWN OF TEWKSBURY,
ROBERT WARE, and ADAM COLANTUONI)

98. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

99. The conduct of the defendants, Robert Ware, Adam Colantuoni, and employees of the defendant Town of Tewksbury, set forth above constitutes extreme and outrageous conduct beyond all bounds of decency which is utterly intolerable in a civilized society.

100. The tortuous conduct of the defendants was sanctioned,

approved and ratified by the defendant Town of Tewksbury.

101. As a direct and proximate result of the defendants' tortuous conduct, the plaintiffs suffered the damages aforesaid.

**COUNT VII: NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
(ALL PLAINTIFFS v. DEFENDANTS, TOWN OF TEWKSBURY,
ROBERT WARE, ADAM COLANTUONI, TYLER WILLETTE and STEFAN HERCEG)**

102. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

103. The plaintiffs suffered emotional distress accompanied and manifested by physical symptomatology.

104. As a direct and proximate result of the defendants' tortuous conduct, the plaintiffs suffered the damages aforesaid.

**COUNT VIII: STRICT LIABILITY PURSUANT TO G.L. c. 231, §85G
(ALL PLAINTIFFS v. DEFENDANTS, TIMOTHY WILLETTE and
DOREEN WILLETTE)**

105. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

106. Each of the defendants, Timothy Willette and Doreen Willette, as custodial parents, are strictly liable to the plaintiffs for the intentional torts committed upon the then minor plaintiff, Nicholas Parsons, by the then minor defendant, Tyler Willette, who is the then minor child of the defendants, Timothy Willette and Doreen Willette.

COUNT IX: LOSS OF CONSORTIUM
(PLAINTIFFS GARY PARSONS and DONNA PARSONS v. ALL DEFENDANTS)

107. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs, as though they were fully set forth herein.

108. The plaintiffs, Gary Parsons and Donna Parsons, suffered the loss of the care, comfort and services of their minor son, the plaintiff, Nicholas Parsons, as a direct and proximate result of the negligence and tortuous acts of all of the defendants.

COUNT X: NEGLIGENCE
(ALL PLAINTIFFS v. DEFENDANT, STEFAN HERCEG)

109. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

110. The defendant, Stefan Herceg, owed a duty to exercise reasonable care towards the plaintiffs to avoid causing foreseeable physical harm to the then minor plaintiff, Nicholas Parsons.

111. The defendant, Stefan Herceg, breached the duty which he owed the plaintiffs to exercise reasonable care to avoid causing foreseeable physical harm to the then minor plaintiff, Nicholas Parsons, by instigating and provoking and arranging the fight between the then minor plaintiff, Nicholas Parsons, and the defendant, Tyler Willette.

112. As a direct and proximate result of the defendant's breach of his duty of care, the plaintiffs suffered the damages aforesaid.

COUNT XI: NEGLIGENCE
(ALL PLAINTIFFS v. DEFENDANT, TYLER WILLETTE)

113. The plaintiffs adopt, repeat, reallege and incorporate by reference the allegations set forth in the preceding paragraphs as though they were fully set forth herein.

114. The defendant, Tyler Willette, owed a duty to exercise reasonable care towards the plaintiffs to avoid causing foreseeable physical harm to the then minor plaintiff, Nicholas Parsons.

115. The defendant, Tyler Willette, breached the duty which he owed the plaintiffs to exercise reasonable care to avoid causing foreseeable physical harm to the then minor plaintiff, Nicholas Parsons, by negligently succumbing to the instigation and provocation of defendant Stefan Herceg and fighting the then minor plaintiff, Nicholas Parsons, and by failing to avail himself of reasonable alternatives to combat.

116. As a direct and proximate result of the defendant's breach of his duty of care, the plaintiffs suffered the damages aforesaid.

RELIEF SOUGHT

117. WHEREFORE, the plaintiffs respectfully demand judgment

against all of the defendants, jointly and severally, in an amount to be determined by a jury, plus costs, interest, reasonable attorney fees where authorized by law, multiple and punitive damages where authorized by law, and such other and further relief as this Court deems equitable and just.

JURY TRIAL DEMAND

THE PLAINTIFFS RESPECTFULLY DEMAND A TRIAL BY JURY ON ALL COUNTS OF THEIR COMPLAINT.

Respectfully Submitted,
The Plaintiffs,
By their Attorney,

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April 13, 2012

CERTIFICATION UNDER TIME STANDARDS

I, Mark F. Itzkowitz, counsel for Plaintiffs, hereby certify that the within documents are being filed in accordance with the time standards set forth in Standing Order No. 1-88 or by permission of the Regional Administrative Justice.

MARK F. ITZKOWITZ (BBO #248130)

CERTIFICATE OF SERVICE

I, Mark F. Itzkowitz, counsel for the plaintiff, hereby certify that on April 13, 2012, I made service of the within document by mailing/faxing/hand-delivering a copy of same to counsel of record:

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Peter E. Flynn, P.C.
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