

City of Burnet, Texas (“Sgt. Butler”), in his individual capacity pursuant to 42 U.S.C. §1983 and the Fourth and Fourteenth Amendment to the United States Constitution. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343, and pursuant to 28 U.S.C. §1367(a).

Sgt. Butler made an unreasonable search and seizure of the person and vehicle of decedent Brandon Jacque, violating his rights under the Fourth and Fourteenth Amendments to the United States Constitution and ultimately, depriving him of his life. These constitutional violations were committed as a result of policies and customs of the City of Burnet, as well as the improper hire, inadequate training and supervision of Sgt. Butler by the City of the Burnet, Texas. The City of Burnet is liable under 42 U.S.C. §1983 for acting with deliberate indifference, thus breaching its duty to provide Sgt. Butler with adequate supervision and training regarding the reasonable use of force.

Plaintiffs herein comply with the pleading requirements of F.R.C.P. Rule 8(a)(2) and the requirements of *Ashcroft v. Iqbal*, 556 U.S. 129 S.Ct. 1937, 1949 (2009) that “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

I.

PARTIES

1. This suit is brought by Plaintiff **SYDNEY PAIGE OLSON**, as next friend of H.J., minor child of **BRANDON JACQUE**, deceased, an individual residing in Williamson County in the State of Texas.

2. This suit is also brought by Plaintiff **KIMBERLY FELAN**, as next friend of **BRANDON JACQUE**, deceased, an individual residing in Burnet County in the State of Texas. Plaintiff **KIMBERLY FELAN** is the biological mother of decedent **BRANDON JACQUE**.

3. Defendant, **CITY OF BURNET, TEXAS** (“City of Burnet”), is a municipal corporation located within the boundaries of the Austin Division of the Western District of Texas. This Defendant will be extended the opportunity to accept service of process pursuant to F.R.C.P. 4(d). If this Defendant fails or refuses to accept service as requested, then Plaintiff will request service of process upon the City Secretary pursuant to F.R.C.P. 4(j).

4. Defendant, **RUSSELL BUTLER** is, upon information and belief, a resident of Burnet County, Texas, and may be served with citation at his current residence located at 312 Sunset Drive, Burnet, Texas 78611-9736.

II.

JURISDICTION AND VENUE

5. U.S.C. §1983 and 42 U.S.C. §1988 provide jurisdiction over Plaintiffs’ constitutional claims for redress, which are conferred on this Court by 28 U.S.C. §1343(a)(3).

6. Federal question jurisdiction is conferred on this Court by 28 U.S.C. §1331, because this action arises under the Constitution and laws of the United States.

7. This Court also has pendant jurisdiction over all other claims asserted under the laws of the State of Texas, pursuant to 28 U.S.C. §1367(a).

8. Venue is proper pursuant to 28 U.S.C. §1391 because, as detailed herein, a substantial part of the events giving rise to the claims asserted in this action arose in Burnet County, Texas, which lies in the Western District of Texas, Austin Division.

III.

DUTY AND APPLICABLE LAW

9. Decedent Brandon Jacque was subjected to excessive and deadly force in violation of his rights guaranteed to him by the Fourth and Fourteenth Amendments of the United States Constitution.

10. Plaintiffs commence this action pursuant to 42 U.S.C. §1983, which provides in relevant part for redress for every person within the jurisdiction of the United States for the deprivation, under color of state law, of any rights, privileges, or immunities secured by the Constitution and laws of the United States.

11. Sgt. Butler was acting under the color of law at all relevant times and is therefore liable under 42 U.S.C. §1983.

12. Policymakers within the City of Burnet owe a legal duty to implement and/or enforce policies, practices and procedures for the City of Burnet's police officers that are not violative of its citizens and visitors' constitutional rights. These policymakers within the City of Burnet further owe a legal duty to the public to adequately screen, hire, train, supervise and discipline its officers, including Sgt. Butler, in deference to the rights of those citizens and members of the public with whom the City of Burnet's police officers will interact. *See Canton v. Harris*, 489 U.S. 378, 388 (1989).

IV.

FACTS

13. In the early morning of March 27, 2019, Sgt. Butler responded to a loud noise complaint outside of a residence located at 308 S. McNeil Street, Burnet, Texas, 78611.

14. Brandon Jacque was sitting in a vehicle in front of the house at 308 S. McNeil Street playing music and visiting with his friend and owner of the house, Ms. Rose Anne Bales. Less

than two minutes after Sgt. Butler arrived at the residence of Ms. Rose Anne Bales to investigate the alleged noise complaint, Brandon Jacque was murdered.

15. Upon information and belief, Sgt. Butler approached the vehicle without announcing his presence, drew his service weapon and fired upon the occupants of the vehicle, striking and killing Brandon Jacque as he sat in the front driver seat of his vehicle.

16. Similar to the event documented by YouTube user “Taser Survivor” on May 7, 2017, Sgt. Butler did not conduct a lawful traffic stop on March 27, 2019. Sgt. Butler failed to alert the occupants of the vehicle that a traffic stop and/or similar investigation of the vehicle was being conducted by the City of Burnet Police Department prior to escalating the situation and employing deadly force. In this instance, the unreasonable escalation resulted in Brandon Jacque being shot to death through the front windshield of his vehicle.



17. Upon information and belief, the only indication that Sgt. Butler was standing outside Brandon Jacque’s vehicle during the dark early morning hours was a brief burst of bright

light across the bottom of the front windshield, immediately followed by gunshots fired into the vehicle that fatally wounded Brandon Jacque. Notably, neither the decedent, nor homeowner and fellow vehicle occupant Rose Anne Bales, were in possession of any firearms or contraband at the time of the subject incident.

18. After an investigation by the Texas Rangers, a Burnet County grand jury indicted Sgt. Butler for First Degree Murder and three (3) counts of Aggravated Assault by a Public Servant, all of which are first degree felony charges. *See Exhibit "A,"* Indictment of Russell Butler. Upon information and belief, Sgt. Butler's criminal case remains pending.

19. Plaintiffs' request to secure the body-worn camera and dash cam footage of the subject incident have been temporarily procedurally stymied due to Sgt. Butler's pending criminal case. Plaintiffs will supplement this pleading further once such materials and information are voluntarily made available to Plaintiffs, sought through discovery and/or obtained pursuant to the subpoena powers conferred by Federal R. Civ. P. 45.

V.

PLAINTIFFS' CIVIL RIGHTS CLAIM

20. The Civil Rights Acts, as codified at 42 U.S.C. § 1983, provides as follows:

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 any other person within the jurisdiction thereof to the deprivation of any laws, 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.

42 U.S.C. § 1983.

**PLAINTIFFS' FIRST CLAIM:
EXCESSIVE FORCE - PEACE OFFICER LIABILITY**

21. Plaintiffs restate, re-allege, re-aver, and hereby incorporate by reference any and all allegations contained in the above paragraphs as if fully set forth herein.

22. Plaintiffs bring a claim against **DEFENDANT RUSSELL BUTLER**, individually, pursuant to 42 U.S.C. §1983.

23. The force used by **DEFENDANT RUSSELL BUTLER** was excessive, and therefore violates the Fourth Amendment of the United States Constitution, which prohibits unreasonable searches and seizures.

24. At all times relevant, **DEFENDANT RUSSELL BUTLER** had actual awareness that **BRANDON JACQUE** had constitutional protection against unreasonable search and seizure. Despite having actual awareness of these protections, **DEFENDANT RUSSELL BUTLER** violated the constitutional rights of **BRANDON JACQUE** and caused his wrongful death.

25. The acts and failures of defendants on the occasion in question were unreasonable and were the proximate and producing cause of the injuries, wrongful death and damages suffered by Plaintiffs and the decedent, Brandon Jacque. The City of Burnet, Texas is liable to Plaintiffs under 42 U.S.C. §1983 for acting with deliberate indifference. Specifically, the City of Burnet breached their duty to provide Sgt. Butler with adequate supervision and training regarding the reasonable use of force. Despite knowing that a police officer within its ranks required additional or different training regarding the use or threat of deadly force, the City of Burnet chose to disregard the excessive risk that Sgt. Butler posed to the safety of its citizens and allowed him to continue to patrol its streets.

26. Sgt. Butler's misconduct, while acting under color of the law on March 27, 2019, including but not limited to the unlawful and unreasonable search and seizure of Brandon Jacque,

is violative of the decedent's Fourth and Fourteenth Amendment rights under the United States Constitution. In this case, the violation of Brandon Jacque's constitutional rights caused his untimely death.

27. The City of Burnet's failure to properly screen, hire, train and/or supervise Sgt. Butler demonstrates deliberate indifference to the rights of those whom the City of Burnet's police officers are charged with protecting. The City of Burnet's wholly avoidable failure in its screening, hiring, training and supervision of Sgt. Butler caused the death of Brandon Jacque.

**PLAINTIFFS' SECOND CLAIM:
NEGLIGENT RETENTION – CITY OF BURNET LIABILITY**

28. The **DEFENDANT CITY OF BURNET** and the Burnet Police Department are liable under 42 U.S.C. §1983 for failing to train and failing to supervise their law enforcement officers. Moreover, the City of Burnet had the following policies and/or practices in effect prior to the shooting:

- a. Inadequate supervision of officers regarding their use of force;
- b. Inadequate warning systems to discipline and/or weed out potentially dangerous officers;
- c. Negligently retaining dangerous officers known to Burnet Police Department to be dangerous;
- d. Failing to adequately investigate use of force by Burnet Police Department officers; and
- e. Inadequate training.

29. The City of Burnet's policies/practices were the moving force of Brandon Jacque's death and caused Brandon Jacque to be deprived of his constitutional rights to be free from unlawful seizures.

A. MUNICIPAL LIABILITY

30. To establish municipal liability under 42 U.S.C. §1983, a plaintiff must establish three elements: 1) a policymaker; 2) an official policy and 3) a violation of constitutional rights whose moving force is the policy or custom. *Zarnow v. City of Wichita Falls*, 614 F.3d 161, 166 (5th Cir. 2010).

31. Upon information and belief, the City of Burnet failed to provide proper training to its officers in the following areas:

- a) Proper conduct and procedure while investigating a noise complaint;
- b) Proper conduct and procedure during a routine traffic stop;
- c) Proper use of non-lethal weapons;
- d) Proper use of a firearm;
- e) Proper use of non-lethal self-defense measures;
- f) Limiting excessive force and use of deadly force;
- g) Seeking professional and/or administrative assistance with mental health issues;
and;
- h) Deliberately ignoring troubling signs indicating an inability to effectively communicate with the public as was demonstrated in Sgt. Butler's FTO reports.

32. In this case, the City of Burnet's failure to properly train Sgt. Butler on the use or threat of deadly force led to the events of March 27, 2019, where Sgt. Butler's violation of Brandon Jacque's constitutional rights caused his untimely death.

33. The failure to train municipal employees may constitute a "policy," but only when it reflects a deliberate or conscious choice by a municipality. *City of Canton v. Harris*, 489 U.S. 378, 379 (1989). In the case of police officers, or other municipal officers for whom the need for

additional or different training is obvious and the inadequacy of such training would likely result in violation of constitutional rights, the policymakers of the municipality can reasonably be said to have been “deliberately indifferent.” *Id.* at 390.

34. In this case, policymakers within the City of Burnet knew, or reasonably should have known, that Sgt. Butler, at a minimum, required additional training based on his prior conduct and bad acts while acting in his official capacity as a Sergeant for the City of Burnet Police Department. The City of Burnet’s failure to create proper policies for the hiring, screening, training and enforcement of departmental discipline for its police officers constitutes inexcusable inaction and subjects the city to municipal liability.

35. The aforementioned customs and policies of the City of Burnet and the consequent misconduct of Sgt. Butler has resulted in several similar events and/or injuries, as detailed below.

36. On or about April 2016, a history teacher at Burnet Middle School was working late after nightfall in his classroom grading papers and preparing the lesson plan for the following day’s classroom activities. Suddenly and without warning, Sgt. Butler burst through the door of the history teacher’s classroom brandishing and pointing his firearm at the shocked educator. Upon information and belief, despite this demonstrated lapse in judgment and need for additional and/or different training, the City of Burnet’s policymaker(s) did not take steps to train, supervise and otherwise ensure that Sgt. Butler was properly trained in constitutional criminal procedure and the use or threat of deadly force. *See Exhibit “B”, Affidavit of Scott Severance.*

37. On May 7, 2017, Sgt. Butler initiated a traffic stop on the basis that the occupants of the vehicle failed to stop at a stop sign near their home. When the occupants of the vehicle pull into their own driveway and exit their car a few seconds later, Sgt. Butler approaches the driveway brandishing a taser at the driver and unnecessarily escalates the situation. In the documented video

of the incident,¹ Sgt. Butler admits that he suffers from post-traumatic stress syndrome. Despite this bizarre documented instance of police misconduct and Sgt. Butler's on-camera admission of suffering from Post-Traumatic Stress Disorder, the City of Burnet's policymaker(s) allowed Sgt. Butler to continue to police its streets and did not call for additional and/or different training to protect the constitutional rights of its citizens.

38. Upon information and belief, Sgt. Butler was involved in another incident involving unnecessary escalation of force on or about May 20, 2017. Ashley Taylor, a custodian hired to clean a commercial building owned by Crawford Properties, was performing her overnight janitorial work when she accidentally tripped the building's alarm. Ms. Taylor's car was parked directly in front of the building and the lights to the building were on. Sgt. Butler arrived at the building, entered and pointed a gun at Ms. Taylor from just a few feet away. Fortunately, Ms. Taylor was unharmed following the incident. Despite yet another alarming incident involving extremely poor judgment and improper use of force, the City of Burnet did not call for additional training and continued to allow Sgt. Butler to serve in his law enforcement capacity in deliberate conscious indifference of the constitutional rights of its citizens.

39. Even when the factual allegations above are viewed in the light most favorable to Sgt. Butler, the conduct of Sgt. Butler in these similar incidents is objectively unreasonable and violative of established constitutional criminal procedure. Sgt. Butler posed an immediate threat to the constitutional rights of the citizens of the City of Burnet, and this threat was consciously and deliberately ignored by the City of Burnet's policymakers. For all of these reasons, the City of Burnet, through its internal policymaking, training and regulatory practices for its municipal police

¹ <https://www.youtube.com/watch?v=bSc1-Q8QpB4&app=desktop>

force, is legally responsible for the actions of Sgt. Butler that ultimately caused Brandon Jacque's death.

B. QUALIFIED IMMUNITY

40. To affirmatively establish that Sgt. Butler is not entitled to qualified immunity, Plaintiffs must satisfy a three-pronged test: 1) Plaintiffs must allege facts that assert a violation of a constitutional right; (2) Plaintiffs must show that this constitutional right was clearly established at the time of Sgt. Butler's actions; and (3) Plaintiffs must show that Sgt. Butler's actions were objectively unreasonable. The clearly established right must be defined with specificity. *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019).¹⁵ Here Sgt. Butler approached the vehicle without announcing his presence, drew his service weapon and fired upon the occupants of the vehicle, striking and killing Brandon Jacque as he sat in the front driver seat of his vehicle. As a result of Sgt. Butler's actions, he has been charged with murder.

41. As detailed and referenced hereinabove, Sgt. Butler's actions in using unreasonable and unwarranted deadly force against Brandon Jacque constitute a violation of the decedent's constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution. Brandon Jacque was entitled to be free from unreasonable search and seizure and was likewise entitled to equal protection under the United States Constitution. Instead, Sgt. Butler deliberately violated Brandon Jacque's constitutional rights and proceeded to act as judge, jury and executioner.

42. Decedent Brandon Jacque never waived any of his constitutional rights during his brief, albeit deadly, encounter with Sgt. Butler on March 27, 2019. Sgt. Butler's unconstitutional execution of Brandon Jacque was carried out without announcement, warning and/or due process

of law. It is undisputed that Sgt. Butler violated Brandon Jacque's clearly established Fourth and Fourteenth Amendment constitutional rights during the early morning hours of March 27, 2019.

43. After a brief investigation by the Texas Department of Public Safety's Texas Rangers, Sgt. Butler was referred to the Llano County grand jury and was indicted for murder and three counts of aggravated assault by a public servant on April 23, 2019. Later that day, Sgt. Butler's employment was terminated by the City of Burnet for violating the City of Burnet Police Department's use of force policy.

44. The doctrine of qualified immunity does not protect those who are plainly incompetent or those who knowingly violate the law. The conduct of Sgt. Butler alleged herein amounts to willful violations of the constitutional rights of the civilians he was charged with protecting.

45. Sgt. Butler's unconstitutional search, seizure and execution of Brandon Jacque are objectively unreasonable, even when viewed in the light most favorable to the investigating officer. No weapons were present in the vehicle at the time of the incident. Neither occupant of the vehicle was even aware of any police presence in the moments that immediately preceded Sgt. Butler firing his weapon into the vehicle, fatally wounding Brandon Jacque.

VI.

SUBSTANTITIVE DUE PROCESS AND EQUAL PROTECTION

46. In addition to violating the rights guaranteed to Brandon Jacque by the Fourth, and Fourteenth Amendments to the United States Constitution, the **DEFENDANTS**, acting under color of law, violated the rights guaranteed to Brandon by the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution.

VII.

RECOVERABLE DAMAGES

47. The actions and omissions of **DEFENDANTS** deprived **BRANDON JACQUE** of his civil rights under the United States Constitution. Moreover, these acts and omissions by Defendants, their agents, employees, and/or representatives, proximately caused and/or were the moving force of the injuries and damages to Plaintiffs and proximately caused and/or were the moving force of the wrongful death of **BRANDON JACQUE**. Accordingly, Plaintiffs assert claims under 42 U.S.C. § 1983 and the Texas Wrongful Death and Survivorship Statutes. Defendants' acts, as set out above, are proximate causes of Plaintiffs' damages.

48. Plaintiffs seek damages in excess of \$75,000.00 for the violation of **DEFENDANT BRANDON JACQUE'S** Fourth Amendment constitutional right to be free from unreasonable search and seizure.

49. These damages are in excess of the minimal jurisdictional limits of this Court. Plaintiffs hereby plead for the following damages recoverable by law:

a. Estate of Brandon Jacque:

1. Conscious pain and suffering;
2. Funeral and burial expense.

b. Sydney Paige Olson, as next friend of H.J, minor child of Brandon Jacque, deceased.

1. Pecuniary loss sustained in the past;
2. Pecuniary loss that, in reasonable probability, H.J. will sustain in the future;
3. Loss of companionship and society sustained in the past;
4. Loss of companionship and society that, in reasonable probability, H.J. will sustain in the future;
5. Mental anguish sustained in the past;

6. Mental anguish that, in reasonable probability, H.J. will sustain in the future; and
7. Loss of addition to the estate.

c. Kimberly Felan, as next friend of Brandon Jacque, deceased,

1. Pecuniary loss sustained in the past;
2. Pecuniary loss that, in reasonable probability, Kimberly Felan will sustain in the future;
3. Loss of companionship and society sustained in the past;
4. Loss of companionship and society that, in reasonable probability, Kimberly Felan will sustain in the future;
5. Mental anguish sustained in the past; and
6. Mental anguish that, in reasonable probability, Kimberly Felan will sustain in the future.

VIII.

GROSS MISCONDUCT AND EXEMPLARY DAMAGES

50. In conjunction with all of the foregoing, and otherwise intentionally and with deliberate or conscious indifference to the safety and well-being of citizens, including the decedent Brandon Jacque, the City of Burnet adopted or maintained, through its final policymakers, unconstitutional policies and customs and failed to implement constitutional and proper policies and procedures. These actions proximately caused or resulted in the violation of the constitutional rights of Brandon Jacque, and proximately caused his death and all resulting damages to his estate and legal beneficiaries.

51. Sgt. Butler acted willfully, deliberately, maliciously, or with reckless disregard for Brandon Jacque's constitutional rights when he used excessive and deadly force on the morning of March 27, 2019.

52. Plaintiffs ask that the jury determine the proper amount of exemplary damages.

IX.

ATTORNEY'S FEES

53. Plaintiffs have been required to retain the services of experienced attorneys to represent them in this complex and difficult proceeding and cause of action. Plaintiffs have retained the undersigned attorneys, and pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, Plaintiffs are entitled to recover reasonable and necessary fees incurred for these attorneys, and the reasonable and necessary expenses incurred in the pursuit of this claim at the trial level, the Court of Appeals level if the case is appealed to that Court, and in the Supreme Court of the United States, if necessary.

X.

JURY DEMAND

54. Plaintiffs hereby request a jury on all issues so triable, pursuant to the United States Constitution, 7th Amendment.

XI.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs prays that Defendants be cited and required to answer herein accordingly to law, that this cause be set for trial before a jury, that Plaintiffs recover judgment of and from Defendants for the following:

- a. judgment against Defendants, jointly and severally, on behalf of the Plaintiffs for actual damages pursuant to 42 U.S.C. §1983;

- b. statutory and reasonable attorney fees pursuant to 42 U.S.C. §1988(b) of the Federal Civil Rights Act, pre-judgment interest, post-judgment interest, and all of their costs herein expended;
- c. judgment against the City of Burnet, Texas on behalf of the Plaintiffs for actual damages pursuant to *Tex. Civ. Prac. & Rem. Code* §101;
- d. judgment for the Plaintiffs and against Defendants, for exemplary damages in an amount to be determined by the jury and this Court; and
- e. any and all additional relief to which the Plaintiffs may appear to be entitled.

Respectfully submitted,

ERSKINE & BLACKBURN, L.L.P.

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