

MICHAEL K. JEANES
Clerk of the Superior Court
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Description	Amount
CASE# CV2017-052558	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STACIA RAE CLARKE, on her own behalf
 12 and on behalf of the statutory beneficiaries of
 13 DANIELLE JACOBS,

14 Plaintiff,

15 v.

16 CITY OF MESA, a municipal entity; JOSEPH
 17 DEMARCO and JANE DOE DEMARCO,
 18 husband and wife; TIMOTHY LEFEVER and
 19 JANE DOE LEFEVER, husband and wife;
 20 STEPHEN J. SHANNON and JANE DOE
 21 SHANNON, husband and wife; and DOES 1
 22 through 50,

23 Defendants.

Case No: CV2017-052558

24 **COMPLAINT**

25 **(Wrongful Death)**

26 Through undersigned counsel, on her own behalf and on behalf of the statutory
 27 beneficiaries of her daughter, Danielle Jacobs (hereinafter "Danielle"), who is deceased, Stacia
 28 Rae Clarke (hereinafter "Stacia") alleges as follows:

JURISDICTION AND VENUE

1. This action is brought for Danielle's wrongful killing by officers of the City of
 Mesa Police Department (hereinafter "City of Mesa"). On February 4, 2016, officers responded
 to a call that Danielle, known by the officers to be mentally ill, might be suicidal. They cornered
 Danielle in a small darkened room. Instead of trying to calm her, the officers drew and pointed
 their guns into the dark and shouted demands, terrifying Danielle. The situation escalated

1 dramatically and nonsensically, until Mesa police officer Joseph DeMarco shot Danielle in the
2 abdomen for no good reason whatsoever, killing her.

3 2. This action is brought pursuant to A.R.S. § 12-611 *et seq.* for Danielle's wrongful
4 death.

5 3. Stacia is Danielle's natural mother and a resident of Maricopa County, Arizona.

6 4. Defendant City of Mesa is a municipality in Maricopa County, Arizona and
7 subject to this Court's jurisdiction pursuant to A.R.S. § 12-123 and Article VI § 14, Arizona
8 State Constitution.

9 5. Upon information and belief, Defendants Joseph DeMarco and Jane Doe
10 DeMarco, Timothy Lefever and Jane Doe Lefever, and Stephen J. Shannon and Jane Doe
11 Shannon are residents of Maricopa County, Arizona.

12 6. All defendants caused events to occur in Maricopa County, Arizona, giving rise to
13 this Complaint.

14 7. Jurisdiction and venue in this Court are appropriate.

15 **THE PARTIES**

16 8. Stacia is one of Danielle's statutory beneficiaries pursuant to A.R.S. § 12-612,
17 and brings this case on her own behalf. Pursuant to *Wilmot v. Wilmot*, 203 Ariz. 565, 58 P.3d
18 507 (2002), Stacia also brings this case on behalf of all statutory beneficiaries.

19 9. Defendant City of Mesa, including its divisions; subdivisions, and departments,
20 including the Mesa Police Department, is a public municipal corporation formed and designated
21 as such pursuant to Title 9 of the Arizona Revised Statutes. As such, the City of Mesa is subject
22 to civil suit and may be held liable both independently and vicariously as permitted by federal
23 and state law, for the wrongful conduct of its employees and agents, including the named
24 Defendants and all other officers of the City of Mesa Police Department.

25 10. At all times relevant hereto, Officers Joseph DeMarco, Timothy Lefever and
26 Stephen Shannon (collectively, the "Defendant Officers") were agents and/or employees of the
27 City of Mesa, who were acting within the course and scope of their employment. The City of
28

1 Mesa is vicariously liable for their conduct as alleged herein.

2 11. The Jane Doe Defendants are the spouses of named Defendants. At all times
3 relevant hereto, the named Defendants acted for and on behalf of the marital communities to
4 which they belong, whereby the Jane Doe Defendants are vicariously liable for the conduct of
5 the named Defendants to whom they are married.

6 12. Defendants Does 1 through 50 are employees and/or agents of the City of Mesa
7 who are liable for Plaintiffs' damages as alleged herein. At all times relevant hereto, Defendants
8 Does 1 through 50 were acting within the course and scope of their particular employment and/or
9 agency with the City of Mesa. Accordingly, the City of Mesa is vicariously liable for their
10 conduct as alleged herein. When the identities of Defendants Does 1-50 are ascertained, this
11 Complaint will be amended accordingly.

12 **BACKGROUND**

13 13. At the time of her death, Danielle was a 24 year old woman who fought a long
14 struggle with mental illnesses.

15 14. Danielle's mental illnesses included Asperger's syndrome, bi-polar disorder and
16 depression.

17 15. Prior to the date of her death, Danielle's mental illnesses were well known to the
18 Mesa Police Department, as they interacted with her several times over the years.

19 16. On February 4, 2016, Danielle's friend, Linda Deede (hereinafter "Linda"), called
20 911 to report that Danielle was at her small home, speaking of suicide.

21 17. Officers DeMarco and Lefever were the first officers to arrive at Danielle's very
22 small home.

23 18. Linda met with Officers DeMarco and Lefever outside Danielle's home. Linda
24 informed them that Danielle was mentally ill, that she had her service dog in a small room in the
25 back of the house, and that she recently had spoken of suicide.

26 19. Linda and Officers DeMarco and Lefever entered Danielle's home. Linda went
27 by herself, down a narrow hallway into the small back room, and tried unsuccessfully to talk
28

1 Danielle out. Linda caged the service dog, and she then left Danielle in the darkened room and
2 informed Officers DeMarco and Lefever that Danielle was holding something that might be a
3 knife.

4 20. About then, Officer Shannon arrived in the home.

5 21. At that point in time, the Defendant Officers were aware that Danielle was a
6 mentally ill young woman, that she was alone in a small darkened room and possibly suicidal,
7 and that she was possibly holding a knife.

8 22. At that point in time, the Defendant Officers knew that Danielle was not a present
9 danger to them or to any other third-party.

10 23. At that point in time, the Defendant Officers each had Tasers on their vests.

11 24. At that point in time, the Defendant Officers each had a duty to attempt to calm
12 Danielle and de-escalate the situation through non-lethal intervention; or, to summon somebody
13 who had the ability to do so.

14 25. Officer Lefever went outside to retrieve his bean-bag gun.

15 26. Officer DeMarco then led Officer Shannon down the narrow hallway.

16 27. As he approached the doorway of the small darkened room where Danielle was
17 hiding, Officer DeMarco attempted to engage Danielle verbally.

18 28. After some verbal interaction, Officer DeMarco saw, through the dark, that
19 Danielle did have a knife.

20 29. In response, Officers DeMarco and Shannon drew and turned their guns on
21 Danielle and began shouting orders that she drop the knife and give herself up.

22 30. Danielle was clearly confused and terrified, and she screamed back at Officers
23 DeMarco and Shannon that she would not be taken back to the psychiatric ward, or be medicated
24 against her will.

25 31. As Officer DeMarco continued to scream at and confuse and terrify this poor
26 mentally ill young woman, Officer Shannon reached around the doorway and suddenly, without
27 informing Officer DeMarco, flipped on the light switch.

1 32. According to the police report, the sudden brightness startled Officer DeMarco,
2 who had his gun drawn toward Danielle.

3 33. Officers DeMarco and Shannon both write in their reports that after being startled
4 by the sudden brightness, Danielle, who believed that she was going to be institutionalized and
5 forced medication, started walking towards them.

6 34. At that time, Officer DeMarco, without any warning or hesitation, fired his gun
7 and shot Danielle in the abdomen, immediately dropping her to the ground.

8 35. Officer Shannon shot a round that missed its target, Danielle, and went through a
9 wall.

10 36. Danielle died from the gunshot wound later that evening.

11 37. A timely and detailed Notice of Claim was served on Defendants pursuant to
12 A.R.S. § 12-821.01. More than 60 days have passed since the filing of the Notice of Claim and
13 Defendants have not responded to said claim.

14 **COUNT ONE**

15 **(Negligence/Gross Negligence in**
16 **Training and Supervision - Against Defendant City of Mesa)**

17 38. Stacia realleges all previous paragraphs by this reference.

18 39. The City of Mesa is legally responsible for the screening, hiring, training,
19 retaining, and supervision of all of its employees and agents.

20 40. The City of Mesa has a duty to the public at large, including Danielle, to make
21 certain that police policies, procedures, practices, protocols, customs and training satisfy all
22 federal, state and applicable standards.

23 41. The City of Mesa also has a duty to the public at large, including Danielle, to train
24 Officers DeMarco, Lefever, and Shannon in crisis intervention.

25 42. The crisis intervention training that should have been provided to the Defendant
26 Officers would have informed them as to proper methods of dealing with suicidal and mentally
27 ill individuals, and the employment of non-lethal force in such situations.

28 43. The City of Mesa was grossly negligent by failing to train the Defendant Officers

1 in such methods, or by providing inadequate training, or otherwise by failing to ensure that the
2 Defendant Officers would act appropriately in crisis situations, including the crisis that led to
3 Officer DeMarco killing Danielle.

4 44. As a result of the gross negligence of the City of Mesa as detailed herein, the
5 Defendant Officers failed to attempt reasonable means of de-escalating the situation, and Officer
6 DeMarco shot and killed Danielle.

7 45. As a result of Danielle's death, Stacia has lost the love and companionship of her
8 daughter, and she has experienced profound grief, shock, dismay, distress, and sadness.

9 **COUNT TWO**

10 **(Negligence/ Gross Negligence - Against Officers DeMarco, Lefever, and Shannon)**

11 46. Stacia realleges all previous paragraphs by this reference.

12 47. The Defendant Officers have statutory and common law duties to use only
13 necessary and reasonable force in detaining persons and otherwise interacting with the public at
14 large.

15 48. When the Defendant Officers encountered Danielle, they knew she was mentally
16 ill and possibly suicidal and that she was vulnerable and confined in a small darkened room.

17 49. The Defendant Officers were grossly negligent by failing to employ methods of
18 de-escalation and attempt non-lethal force in their interaction with Danielle.

19 50. As a result of the gross negligence of the Defendant Officers as set forth herein,
20 Danielle was shot and killed.

21 51. As a result of Danielle's death, Stacia has lost the love and companionship of her
22 daughter, and she has experienced profound grief, shock, dismay, distress, and sadness.

23 **COUNT THREE**

24 **(Assault - Against Defendant Officers DeMarco and Shannon)**

25 52. Stacia realleges all previous paragraphs by this reference.

26 53. By cornering Danielle in a darkened room and drawing their weapons, Officers
27 DeMarco and Shannon intended to cause Danielle the apprehension of an immediate harmful or
28 offensive contact without reasonable or legal justification.

1 54. Danielle did, in fact suffer the apprehension of an immediate harmful or offensive
2 contact.

3 55. Any reasonable person under the circumstances would have found Officer
4 DeMarco's and Officer Shannon's contact offensive.

5 56. As a result of this offensive contact, Danielle was shot and killed.

6 57. As a result of Danielle's death, Stacia has lost the love and companionship of her
7 daughter, and she has experienced profound grief, shock, dismay, distress, and sadness.

8 **COUNT FOUR**

9 **(Battery – Against Defendant Officers DeMarco)**

10 58. Stacia realleges all previous paragraphs by this reference.

11 59. Officer DeMarco intended to cause apprehension of an immediate harmful or
12 offensive contact without reasonable or legal justification.

13 60. Officer DeMarco caused harmful or offensive contact with Danielle by shooting
14 and killing her.

15 61. As a result of Danielle's death, Stacia has lost the love and companionship of her
16 daughter, and she has experienced profound grief, shock, dismay, distress, and sadness.

17 **COUNT FIVE**

18 **(Wrongful Death - Against All Defendants)**

19 62. Stacia realleges all previous paragraphs by this reference.

20 63. By committing the aforementioned torts, all Defendants caused Danielle's
21 wrongful death. A.R.S. § 12-611 *et seq.*

22 64. As a result of Danielle's death, Stacia has lost the love and companionship of her
23 daughter, and she has experienced profound grief, shock, dismay, distress, and sadness.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for relief against all named and unnamed Defendants as
26 follows:

27 A. For general damages to Plaintiffs against each Defendant, jointly and severally,
28 for Danielle's wrongful death, and for Plaintiff's resulting emotional pain, distress, hardship,

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suffering, shock, worry, anxiety, sleeplessness, and suffering;

B. For prejudgment interest; and

C. For such other relief as the Court may deem proper.

DATED this 2nd day of February 2017.

HYMSON GOLDSTEIN PANTILIAT & LOHR, PLLC



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Richard D. Lyons (SBN 020558)

Attorney for Plaintiff