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IN THE MARICOPA COUNTY SUPERIOR COURT
FOR THE STATE OF ARIZONA

CALVIN HOLLINS, a single man, on
behalf of himself as Father of Decedent
Dalvin Hollins, and on behalf of all statutory
beneficiaries of Decedent Dalvin Hollins;

Plaintiffs,

vs:

TEMPE ARIZONA, a political subdivision
of the State of Arizona;
SYLVIA MOIR, in her official capacity as
Chief of Police of Tempe City, Arizona;
EDWARD OUIMETTE, in his individual
capacity as a Police Officer of Tempe City,
Arizona;
JOHN DOES AND JANE DOES I
through X,

Defendants.

No. CV2017-050249

COMPLAINT

Jury Trial Demanded

1 Plaintiff, by and through undersigned counsel, for his cause of action against
2 the Defendants herein, allege as follows. Any allegations made herein as to liability
3 are made by and on behalf of all Plaintiffs; any allegations made by individual
4 Plaintiffs are made by and on behalf of that Plaintiff only.

5 **PARTIES**

6 1. At all times material hereto, Dalvin Hollins was a resident of
7 Maricopa County, Arizona.

8 2. Dalvin Hollins died on July 27, 2016 in Maricopa County, Arizona in
9 a fatal encounter with the Tempe City Police Department.

10 3. At all times material hereto, Plaintiff Calvin Hollins was a resident of
11 Maricopa County, Arizona and surviving parent of decedent Dalvin Hollins.

12 4. Decedent Dalvin Hollins is also survived by his mother Sarah
13 Coleman who is a statutory beneficiary under A.R.S. §12-611.

14 5. Defendant Tempe City is a political subdivision of the State of
15 Arizona, existing in Maricopa County, organized and existing under the laws of the
16 State of Arizona, and as such, is responsible for its own acts and omissions, and the
17 acts and omissions of its employees acting in the scope and course of their
18 employment under the doctrine of *respondeat superior*. Plaintiffs do not assert
19 *respondeat superior* liability for purposes of their Civil Rights claims under 42
20 U.S.C. § 1983.
21

22 6. Defendant Sylvia Moir is the duly appointed Chief of Police of
23 Defendant Tempe City, Arizona, and is named in her official capacity. Chief Moir
24 is responsible for her own acts and omissions, and for the acts and omissions of her
25 employees, including officers and other employees of the Tempe City Police
26 Department, acting in the scope and course of their employment under the doctrine
27 of *respondeat superior*. Plaintiffs do not assert *respondeat superior* liability for
28 purposes of their Civil Rights claims under 42 U.S.C. § 1983.

1 7. Upon information and belief, at all times material hereto Defendant
2 Edward Ouimette was a resident of Maricopa County, Arizona and was employed
3 by Defendant Tempe City and Defendant Chief Moir as a Tempe City Police
4 Officer. All of the actions, omissions, or other conduct of Defendant Edward
5 Ouimette as described in this Complaint were undertaken within the scope and
6 course of his employment with the Tempe City Police Department.

7 8. For purposes of Plaintiff's claims pursuant to the Civil Rights Act of
8 1871, 42 U.S.C. §1983 ("section 1983"), Edward Ouimette is named herein in his
9 individual capacity. Edward Ouimette is a state actor for purposes of section 1983.
10

11 9. Defendants John and Jane Does I-X, on information and belief, are
12 married and residing in the State of Arizona, and at all times relevant hereto were
13 acting in furtherance of their marital communities. Upon information and belief,
14 said Defendants have helped to cause the incidents alleged herein. The true names
15 of John and Jane Does I-X are not known but will be provided to this Court as they
16 are learned.

17 **JURISDICTION AND VENUE**

18 10. This action arises under the Constitution of Arizona and the
19 Constitution of the United States, particularly the Fourth and Fourteenth
20 Amendments, and under the laws of the United States, particularly the Civil Rights
21 Act, 42 U.S.C. § 1983, and under Arizona law.

22 11. The acts complained of herein occurred within Tempe City, Maricopa
23 County, State of Arizona. All Defendants currently reside, or resided at relevant
24 times, within the State of Arizona.

25 12. This court has jurisdiction over claims arising under state law and has
26 concurrent jurisdiction over those claims arising under federal law.

27 13. As to Plaintiffs' claims under Arizona state law, Plaintiffs served a
28 timely notice of claim upon Defendants pursuant to A.R.S. § 12-821.01, which

1 complied in all ways with the statute, was timely served, and deemed denied by
2 operation of statute.

3 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

4 14. Defendant Tempe City, by and through the Tempe City Police
5 Department, is charged with the management of law enforcement activities
6 throughout Tempe City, Arizona.

7 15. Dalvin Hollins was a 19 year old who died on July 27, 2016, at the
8 hands of Tempe City Police Officer and Defendant Edward Ouimette.

9 16. On July 27, 2016, around 9:25 a.m. Dalvin Hollins was approached by
10 Tempe City Police Officers as a potential suspect in a robbery of a Walgreens in
11 Tempe City, Arizona that had occurred earlier in the morning at approximately 9:05
12 a.m.

13 17. After observing Dalvin, Tempe Police Officer T. Spencer approached
14 Dalvin to question him near a Jack in the Box restaurant located at 6350 South
15 Rural Road in Tempe. This restaurant was approximately one and one-half miles
16 from the Walgreens that had been robbed.

17 18. Dalvin started to walk away from Officer Spencer while Officer
18 Ouimette drove his vehicle into the parking lot from another direction. Officer
19 Ouimette's vehicle was using full lights and sirens at the time.

20 19. Dalvin ignored the requests of Tempe Police officers to stop and
21 submit to questions, but instead began to run away from the officers northbound
22 through the parking lot.

23 20. Officer T. Spencer dropped his radio and broke off the foot pursuit but
24 officer Ouimette continued to pursue the suspect alone, first in his vehicle and then
25 later on foot.

26 21. While still in his vehicle, Officer Ouimette saw Dalvin go into the
27 property located at 6100 and 6150 South Rural Road in Tempe. These properties
28

1 comprise the Westchester Senior Living Center. Officer Ouimette drove into the
2 south driveway of the property located at 6150 South Rural Road, exited his vehicle,
3 and began to give chase on foot.

4 22. Dalvin continued to flee from the officers eventually entering a
5 parking area between the properties located at 6100 and 6150 South Rural Road.
6 This parking area was between the Care Center Building and Westchester Building
7 #2 which contained some of the residential area of the complex. While in that
8 parking just north of Westchester building #2 and South of the Care Center, Officer
9 Ouimette got to a position where he could see Dalvin fleeing.

10 23. While in the parking lot just north of building 2 Officer Ouimette
11 yelled "Stop or I'm gonna shoot you!"

12 24. Officer Ouimette then proceeded to shoot Dalvin in the back. The
13 autopsy result showed that the bullet entered Dalvin's back moving from back to
14 front, left to right and slightly downward.

15 25. Officer Ouimette reported that he believed Dalvin flinched a little but
16 continued to run away from Officer Ouimette.

17 26. Dalvin then fled into a maintenance room where he hid in a closet and
18 eventually bled to death from his wounds. The autopsy showed that Dalvin's lung
19 had collapsed and noted that the wound would not have been immediately fatal.

20 27. At approximately 10:19 a.m., approximately 50 minutes after Dalvin
21 entered the maintenance room, SWAT Officers of Tempe City entered the
22 maintenance room after Dalvin failed to respond to commands and he was found
23 deceased as a result of his gunshot wound.

24 28. No weapon was ever observed on Dalvin and no weapon was ever
25 found on anywhere at the scene of the pursuit.

26 29. Officer Ouimette never turned his body camera on until after he shot
27 Dalvin.
28

1
2
3 **CLAIMS FOR RELIEF**

4 **Count One: Wrongful Death**

5 30. The foregoing paragraphs are incorporated as though each were fully set
6 forth herein.

7 31. Pursuant to A.R.S. §12-611, *et seq*, the surviving parents of Dalvin
8 Hollins and/or the personal representatives of the estate of Dalvin Hollins are
9 entitled to maintain an action for wrongful death against Defendants in this matter
10 for losses and injuries stemming from the loss of their son.

11 32. The acts or omissions of Defendants as described herein were
12 negligent, an assault and/or battery, and a violation of Article 2, Sections 4 and 8 of
13 the Arizona Constitution, and the Fourth Amendment to the United States
14 Constitution.

15 33. As a direct and proximate cause of Dalvin Hollins' death, Plaintiffs
16 and all statutory beneficiaries of Dalvin Hollins sustained damages, including pain
17 and suffering, grief, loss of love and affection, loss of enjoyment of life, and lost
18 income, for which they are entitled to redress from Defendants.

19 WHEREFORE, Plaintiffs pray for Judgment as follows:

20 A. For general damages, including but not limited to the loss of love,
21 affection, companionship and guidance resulting from the death of Dalvin Hollins, pain,
22 grief, sorrow, anguish, stress, shock and mental suffering already experienced and
23 reasonably probable to be experienced in the future, and economic losses and loss of
24 income, hedonic damages, and Dalvin Hollins' pre-death pain and suffering;

25 B. For special damages, including but not limited to the expenses of
26 burial and funeral;
27
28

1 C. For taxable costs and pre- and post-judgment interest to the extent
2 permitted by law; and

3 D. Such other relief as the Court deems just and proper.

4 **Count Two: 42 U.S.C. §1983**

5 28. The foregoing paragraphs are incorporated as though each were set forth
6 herein.

7 29. The Fourth Amendment to the United States Constitution prohibits a state
8 actor from using unreasonable force. Defendant Ouimette, acting under color of law,
9 violated the Fourth Amendment when he used excessive and deadly force against
10 Dalvin Hollins.

11 30. Defendants Tempe City and Chief Sylvia Moir, contributed and/or caused
12 the death of Dalvin Hollins through their own acts and omissions, and through their
13 unconstitutional policies, practices, custom, and procedures, including but not limited
14 to:

15 (a) Their policy or practice (or failure to train or supervise) with respect
16 to the use of firearms in a pursuit situation, where there were no hostages and the
17 suspect was not known to be armed with any type of gun;

18 (b) Their policy or practice (or failure to train and supervise) with respect
19 to the proper use of force in a foot pursuit situation, where there were no hostages and
20 the suspect was not known to be armed with any type of weapon.

21 (c) Their policy or practice of tolerating, authorizing, condoning, and
22 approving Defendant Ouimette's use of excessive force and his lack of truthfulness.

23 (d) Their policy or practice assuring whether this officer was fit for duty.

24 (e) Their deliberate indifference to the obvious risk that Defendant
25 Ouimette would violate civilians' rights.

26 30. As a direct and proximate result of Defendants' breach of Dalvin's
27 constitutional rights as described herein, Dalvin was killed.
28

31. As a direct and proximate cause of Dalvin Hollins' death, Plaintiffs and all statutory beneficiaries of Dalvin Hollins sustained damages, including pain and suffering, grief, loss of love and affection, loss of enjoyment of life, and lost income, for which they are entitled to redress from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

A. For general damages, including but not limited to the loss of love, affection, companionship and guidance resulting from the death of Dalvin Hollins, pain, grief, sorrow, anguish, stress, shock and mental suffering already experienced and reasonably probable to be experienced in the future, and economic losses and loss of income, hedonic damages, and Dalvin Hollins' pre-death pain and suffering;

B. For special damages, including but not limited to the expenses of burial and funeral;

C. For taxable costs and pre- and post-judgment interest to the extent permitted by law;

D. For exemplary damages to the extent permitted by law;

E. For attorney's fees and expenses pursuant to 42 U.S.C. §1988; and

F. Such other relief as the Court deems just and proper.

DATED this 18 of July, 2017.

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