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Appearing Pro Hac Vice

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Connor L., by and through his guardians
ad litem Kevin and Danielle Leibel;
Kevin Leibel, individually and in his
capacity as guardian ad litem; Danielle
Leibel, individually and in her capacity
as guardian ad litem,

Plaintiffs,
vs.

City of Buckeye; Buckeye Police
Department; Officer David Grossman,
individually and in his official capacity;
Lieutenant Charles Arlak, individually
and in his official capacity; Chief Larry
Hall, individually and in his official
capacity; Doe BPD Officers 1-10,
individually and in their official
capacities,

Defendants.

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Civil Action No. _____

Complaint for Damages for:

1. 42 U.S.C. § 1983: Illegal Arrest.
2. 42 U.S.C. § 1983: Use of Excessive Force.
3. *Monell*: Failure to train and/or supervise.
4. *Monell*: Ratification of Illegal Conduct.
5. ADA: Wrongful arrest.
6. ADA: Failure to accommodate.
7. Battery.
8. Negligence.
9. Negligent Training and Supervision.

Demand for Jury Trial.

INTRODUCTION

1. While playing at a public park, Plaintiff Connor L.—a 14-year-old autistic teenager—was forcibly restrained, slammed against a tree, and pinned to the ground by Buckeye Police Department Officer David Grossman. Connor was doing nothing illegal; he was “stimming” with a piece of string, a common behavior that many people with autism use to cope with their environment. Defendant Grossman—who has a long record of serious disregard for the constitutional rights and safety of others—had never received training on autism, stimming, or even dealing with disabled persons generally. Defendant Grossman, a supposed “drug recognition expert,” took Connor’s innocent stimming for illegal drug use and forcefully seized him. Connor suffered serious injuries as a result. In addition to providing no meaningful training to Grossman, the City of Buckeye and supervisors within the Buckeye Police Department later refused to discipline him, instead defending and ratifying his illegal conduct.

This civil complaint can be summarized as follows:

Count	Claim	Defendants
1	42 U.S.C. § 1983 / Fourth Amendment (Illegal Arrest).	Officer Grossman.
2	42 U.S.C. § 1983 / Fourth Amendment (Excessive Force).	Officer Grossman.
3	Unconstitutional failure to train and/or supervise (<i>Monell</i> , 42 U.S.C. § 1983).	City of Buckeye, Buckeye Police Department, Lieutenant Arlak, Chief of Police Hall.
4	Unconstitutional ratification of illegal conduct (<i>Monell</i> , 42 U.S.C. § 1983).	City of Buckeye, Buckeye Police Department, Lieutenant

		Arlak, Chief of Police Hall.
5	Americans with Disabilities Act (“ADA”), <i>42 U.S.C. § 12101 et seq.</i> , (Wrongful arrest)	City of Buckeye, Buckeye Police Department, Officer Grossman.
6	ADA (Failure to accommodate).	City of Buckeye, Buckeye Police Department, Officer Grossman.
7	Battery.	Officer Grossman.
8	Negligence.	City of Buckeye, Buckeye Police Department, Officer Grossman.
9	Negligent Training and Supervision.	City of Buckeye, Buckeye Police Department, Lieutenant Arlak, Chief of Police Hall, Doe BPD Officers.

Plaintiffs request a jury trial to pursue justice on these claims.

JURISDICTION AND VENUE

2. This is a civil action where jurisdiction is founded on a federal question under 28 U.S.C. § 1331.

1 3. Plaintiffs' claims arise in this judicial district where the events and
2 omissions giving rise to this complaint occurred, namely the City of Buckeye in the
3 County of Maricopa, which is situated in the District of Arizona.

4 4. Venue is proper in the United States District Court for the District of
5 Arizona under 28 U.S.C. § 1391.

6 5. Plaintiffs filed a timely tort claim against the City of Buckeye and its
7 employees under A.R.S. 12-821.01 on January 9, 2018 (City of Buckeye, Buckeye
8 Police Department, Officer David Grossman, Chief of Police Larry Hall) and
9 March 27, 2018 (Lieutenant Charles Arlak). Defendants never responded to any of
10 Plaintiffs' claims.

11 **PARTIES**

12
13 6. Plaintiff Connor L. was, at all times relevant to this lawsuit, a minor and a
14 resident of the State of Arizona, and a citizen of the United States.

15 7. Plaintiffs Kevin and Danielle Leibel are Plaintiff's parents. They were, at all
16 times relevant to this lawsuit, residents of the State of Arizona and citizens of the
17 United States. Because Plaintiff is a minor, Kevin and Danielle Leibel also appear
18 in this action as his guardians ad litem. *See* Exhibit A (Declaration of Kevin and
19 Danielle Leibel).

20 8. Defendant City of Buckeye is a governmental entity organized and existing
21 under the laws of the State of Arizona and a municipality existing in the County of
22 Maricopa, Arizona. At all times mentioned herein, the Buckeye Police Department
23 ("BPD") was a branch of the City of Buckeye and a governmental entity organized
24 and existing under the laws of the State of Arizona.

25 9. Defendant BPD Officer David Grossman, at all times relevant herein, was an
26 officer with the BPD. He was near the Verrado Town Square Park in the City of
27 Buckeye on July 19, 2017. At all times mentioned herein, defendant Grossman
28

1 was an employee of the BPD and acting in an official capacity and under color of
2 law.

3 10. Defendant BPD Lieutenant Charles Arlak, at all times relevant herein, was
4 an officer with the BPD. On information and belief, he is a supervisor within the
5 BPD and is defendant Grossman's brother-in-law. At all times mentioned herein,
6 defendant Arlak was an employee of the BPD and acting in an official capacity and
7 under color of law.

8 11. Defendant BPD Chief Larry Hall, at all times relevant herein, was the Chief
9 of Police of the Buckeye Police Department. He is a supervisor within the BPD
10 and the BPD's chief policy-maker. At all times mentioned herein, defendant Hall
11 was an employee of the BPD and acting in an official capacity and under color of
12 law.

13 12. Defendants Doe BPD Officers 1-10, individually and in their official
14 capacities, at all times relevant herein, were officers and/or employees for the
15 BPD, acting in their official capacity and under color of law. These defendants
16 include officers in supervisory positions that participated in the supervision and
17 ratification of Grossman's actions, and in the training and supervision of officers at
18 the BPD.

19 20 **FACTUAL ALLEGATIONS**

21 13. Plaintiff Connor L. is 15 years old and has autism spectrum disorder.

22 14. Autism spectrum disorder, according to the National Institute of Mental
23 Health, is a developmental disorder that affects communication and behavior.

24 15. According to the Diagnostic and Statistical Manual of Mental Disorders
25 (DSM-5), people with autism have difficulty communicating and interacting with
26 others, restricted interests and repetitive behaviors, and symptoms that impair the
27 person's ability to function properly in school, work, and other areas of life.
28

1 16. In the afternoon of July 19, 2017, Connor arrived at the Verrado Town
2 Square—a public park within the City of Buckeye—in the company of his
3 caregiver Diane Craglow.

4 17. Ms. Craglow allowed Connor to remain in the park and play while she
5 crossed the street to inquire about a music lesson for Connor’s younger sister.

6 18. Ms. Craglow felt comfortable momentarily leaving Connor at the park by
7 himself, given the fact that Connor had never behaved aggressively towards others,
8 had never been mistaken for a drug user or criminal, and had played alone at that
9 same park many times without incident.

10 19. Connor’s brief moment of independence constituted a small step toward the
11 outside world and toward his integration into the community—an important goal
12 for many people with autism and their families.

13 20. Shortly after Ms. Craglow left the area, defendant Grossman drove by the
14 park in an unmarked black pickup truck.

15 21. Grossman saw Connor playing and noticed Connor’s “stimming.”

16 22. “Stimming,” or “self-stimulatory behavior,” is the repetition of physical
17 movements and sounds, or the repetitive movement of objects, common in
18 individuals with developmental disabilities, and most prevalent in people
19 with autism. *See* www.cdc.gov/ncbddd/autism/signs.html (last visited May 8,
20 2018) (“people with an ASD might spend a lot of time repeatedly flapping their
21 arms or rocking from side to side. . . These types of activities are known as self-
22 stimulation or ‘stimming.’”)

23 23. “Stimming” provides people with autism with a sense of calm and helps
24 them cope with their surroundings. *Id.*

25 24. “Stimming” is a well-known and common symptom of autism. *Id.*

26 25. Grossman saw Connor “stimming” and claims that he mistook that behavior
27 for illegal drug use.
28

1 26. Grossman says he mistook this innocent behavior for illegal drug use despite
2 purportedly being qualified as a “drug recognition expert.”

3 27. The Buckeye Police Department (“BPD”) considers Grossman a “drug
4 recognition expert” despite never having trained him on behavior, like stimming,
5 that *does not* constitute a sign or symptom of drug use.

6 28. The BPD considers Grossman a “drug recognition expert” despite keeping
7 no logs, records, or documents regarding Grossman’s ability or reliability (or lack
8 thereof) in recognizing controlled substances or drug-related behavior.

9 29. Grossman saw Connor stimming, stopped his truck, and quickly approached
10 Connor.

11 30. Grossman was wearing a body camera at the time of his approach.

12 31. Grossman’s body camera recorded his interaction with Connor.

13 32. The BPD has possession of the entire unredacted footage of the incident.

14 33. Upon reaching Connor, Grossman asked him what he was doing.

15 34. Connor responded, “Me? Good.”

16 35. Grossman again asked Connor what he was doing.

17 36. Connor answered accurately: “I’m stimming.”

18 37. Grossman answered: “What?”

19 38. Connor again told Grossman that he was stimming, stating accurately: “I
20 stim with this,” while holding up a piece of string for Grossman to see.

21 39. Grossman responded, “What is that?” while sternly commanding Connor to
22 “stop walking away from me.”

23 40. Connor stopped moving and answered, “It’s a string,” and again held the
24 string up for Grossman to see.

25 41. Grossman responded, “Ok. So why are you bouncing around that way,” or
26 words to that effect, and immediately asked Connor if “he had any ID on him.”

27 42. At that point, Grossman had no probable cause or reasonable suspicion to
28 suspect that Connor was involved in any illegal or criminal activity.

1 43. Grossman's conversation and interaction with Connor should have dispelled
2 any concern that Connor had drugs or contraband in his hand. Specifically,
3 Connor had twice shown Grossman that he had a piece of string in his hand—not
4 paraphernalia or any illegal substance—and had succinctly and accurately told
5 Grossman that he was stimming.

6 44. At that point, Grossman knew or should have known that Connor was
7 disabled and should have adjusted his interaction with Connor accordingly.

8 45. At that point, a properly-trained officer would have realized that Connor was
9 disabled and would have proceeded accordingly in any further interactions with
10 Connor.

11 46. But Grossman had not received any training in dealing with persons with
12 autism.

13 47. Grossman did not recognize Connor's disability and did not know what
14 "stimming" meant.

15 48. Grossman instead continued to interact with Connor as if he was involved in
16 criminal activity.

17 49. After Grossman asked if he had ID, Connor answered "No" and turned to
18 leave.

19 50. Grossman immediately grabbed Connor's right wrist and began bending
20 Connor's right arm behind Connor's back, telling him: "Don't go anywhere."

21 51. Grossman proceed to grab both of Connor's arms, forced them behind
22 Connor's back, and began to handcuff Connor.

23 52. Predictably, Connor began screaming and tried to move away from
24 Grossman.

25 53. This was predictable because people with autism often have hypersensitivity
26 to sounds or touch, a condition known as tactory or sensory defensiveness. Many
27 people with autism often do not like being grabbed or touched, as even a slight
28 touch can cause great anxiety, discomfort, and even physical pain due to their

1 disability. *See* www.autismspeaks.org/what-autism/symptoms (last visited May 8,
2 2018) (“Many persons with autism have unusual responses to sensory input. They
3 have difficulty processing and integrating sensory information, or stimuli, such as
4 sights, sounds smells, tastes and/or movement. They may experience seemingly
5 ordinary stimuli as painful, unpleasant or confusing.”)

6 54. Grossman knew or should have known that forcefully grabbing and touching
7 a person with autism could cause significant physical harm, anxiety, stress, and
8 emotional distress to that person.

9 55. A properly-trained officer would have known that forcefully grabbing and
10 touching a person with autism could cause significant physical harm, anxiety,
11 stress, and emotional distress to that person.

12 56. But because Grossman was not properly trained, he continued to escalate the
13 encounter. He immediately slammed Connor against a nearby tree and wrestled
14 him to the ground, pinning Connor down with his full body weight.

15 57. Connor continued to scream and suffer emotional trauma, repeatedly trying
16 to calm himself by pleading in an emotional tone, “I’m ok, I’m ok.”

17 58. As Grossman continued to pin Connor down, Connor told him, “I need
18 help,” and “I can’t breathe.”

19 59. Grossman responded by telling Connor not to move and asking him: “Why
20 are you acting like this Connor?”

21 60. At that point, Ms. Craglow returned to the park and informed Grossman that
22 Connor is autistic.

23 61. Grossman initially ignored the statement and told Ms. Craglow that Connor
24 was “doing something with his hands,” to which she answered: “He’s stimming.”

25 62. Grossman responded: “Yeah. I don’t know what that is.”

26 63. Ms. Craglow replied: “It’s when you have autism. It’s his nerves.”

27 64. Grossman answered only, “Uh huh, okay,” and remained on top of Connor,
28 continuing to pin him down with his full body weight.

1 65. At that point, Grossman knew or should have known that Connor was
2 autistic, that he was not engaged in any criminal activity, and that there was no
3 reason to continue to detain and restrain Connor in a forceful manner.

4 66. At that point, Grossman knew or should have known that continuing to
5 forcefully restrain Connor only worsened Connor's physical pain, fear, anxiety,
6 and emotional distress.

7 67. As Grossman continued to pin down Connor, Ms. Craglow told Grossman
8 that Connor's hand was "turning white."

9 68. Grossman ignored that statement and continued to forcefully hold Connor
10 down. Ms. Craglow then asked him: "You don't know anything about autism,
11 huh?"

12 69. Grossman replied: "No."

13 70. Another officer then arrived at the scene, at which point Grossman allowed
14 Connor to get off the ground.

15 71. As Ms. Craglow and Connor sat on the ground nearby, Grossman told
16 another officer that he detained Connor because Connor "started backing away
17 from me while I was identifying him and trying to figure out what was in his
18 hand," despite the fact that Connor had twice shown Grossman the piece of string
19 in his hand *before* Grossman slammed him against the tree and wrestled him to the
20 ground.

21 72. Grossman also told other officers that he had been watching Connor for a
22 while before approaching him and that he had no idea what Connor meant when he
23 told him that he was "stimming."

24 73. Connor suffered significant injuries as a result of Grossman's actions.

25 74. Connor suffered scratches, cuts, and bruises to his face, back, and arms. *See*
26 Exhibit B.

1 75. Connor suffered a serious ankle injury that has required numerous draining
2 procedures with a heavy gauge needle as well as a surgical intervention.

3 Additional surgeries may be required to address the injury. *Id.*

4 76. These injuries have caused and will continue to cause Connor significant
5 pain and suffering.

6 77. Connor also suffered significant emotional damages as a result of
7 Grossman's conduct.

8 78. Due to his autism, Connor relives past grievances over and over, without an
9 appreciation of how far in the past they occurred. As a result, over the past year,
10 Connor has continued to relive Grossman's assault on him in excruciating detail.

11 79. And while Connor's parents always taught him to trust law enforcement,
12 Connor now fears police officers. He randomly makes statements such as "are the
13 police going to hurt me?" and asks if he is going to be hurt again when he sees a
14 police car.

15 80. Connor also expresses a fear of meeting new adult men in general,
16 something he had not expressed before the incident with Grossman.

17 81. Plaintiffs Kevin and Danielle Leibel have suffered economic damages as a
18 result of Grossman's actions, including medical expenses incurred in caring for
19 Connor's injuries. Kevin and Danielle Leibel will to continue to incur additional
20 expenses to address Connor's recovery after the incident.

21 82. Plaintiffs Kevin and Danielle Leibel have also suffered emotional damages
22 due to the negative changes in their son's behavior, attitude, and conduct following
23 the incident with Grossman.

24 83. Following the incident, Plaintiffs Kevin and Danielle Leibel filed a
25 complaint against Grossman with the BPD.

26 84. In responding to the complaint, the BPD admitted that Grossman "has not
27 been trained in handling special needs people or mentally ill persons."
28

1 85. Nevertheless, the BPD concluded that Grossman “acted within the law and
2 did not abuse his power as a sworn officer and was not negligent as an officer
3 during this incident.”

4 86. In a press conference following the incident, the BPD justified Grossman’s
5 actions as those of “an officer who encountered a subject who was displaying
6 behavior that he believed may have been of a subject who was under the influence
7 of an inhalant.” In that same press conference, the BPD stated that Grossman’s
8 actions were justified because Grossman “had reasonable suspicion” to “detain the
9 juvenile” and “the juvenile began to walk away.” The BPD made these statements
10 despite knowing that the body camera footage showed Connor twice showing
11 Grossman the piece of string in his hand and informing Grossman that he was
12 “stimming.”

13 87. The BPD did not impose any discipline on Grossman despite his actions
14 against Connor.

15 88. Worse, the BPD reached its conclusions and ratified Grossman’s actions
16 despite having repeated and clear evidence that Grossman is unfit for duty as a
17 law-enforcement officer.

18 89. The BPD knew that, before the incident with Plaintiff, Grossman had been
19 disciplined for a host of misconduct, from illegal arrests to false reports to failure
20 to act to abandoning his duty as a police officer.

21 90. One incident involved Grossman driving away from a high-speed pursuit of
22 carjacking suspects from Avondale. After that incident, the BPD notified
23 Grossman that “this type of call requires that you respond directly to the threat and
24 utilize all possible tools at your disposal to deal with the situation at hand.”

25 91. Another incident involved Grossman “running from” an incident involving a
26 “female armed with two machetes.” Grossman was seen running “around a corner”
27 away from the woman. After that incident, Grossman claimed that he “never heard
28 or saw anything about any knives” and “did not hear” fellow officers

1 “commanding the woman to drop the knives.” In response, the BPD admitted that
2 it “is worrisome...if you did not hear these same commands” and advised him that
3 it was “concerned that your situational awareness may not be adequate enough for
4 the rigors of law enforcement.”

5 92. Another incident involved Grossman turning his body, retreating, and
6 running into another officer during a “year-end decision shoot” in which a role-
7 player pointed a gun at him. In response, the BPD informed Grossman that “you
8 constantly have to assess situations for appropriate response.” The BPD further
9 admitted that “when [Grossman] blindly retreated, you effectively removed your
10 cover officer response from being able to assist you with the situation you are now
11 dealing with and you are empowering the suspect to persevere over this situation.”

12 93. Another incident involved Grossman failing to secure the rear area of a
13 residence in which a “subject known to have a valid felony warrant for his arrest”
14 was hiding. After the subject ran into his house, Grossman advised that he was “in
15 position behind the residence with a view of the back door.” But after officers did
16 not find the subject upon entering the house, they consulted with Grossman about
17 the subject’s whereabouts, with Grossman advising “that no one came out.” A
18 “subsequent search show[ed] where the suspect went over the wall and landed in
19 the neighbor’s yard.” The BPD officers knew “about his performance (or lack
20 thereof) in not apprehending or seeing the suspect run from the back door of the
21 residence you were watching.”

22 94. Each of these incidents occurred within seven years of the incident with
23 Connor.

24 95. Aside from the incidents mentioned above, at the time it ratified Grossman’s
25 actions, the BPD also knew that defendant Grossman had engaged in numerous
26 other serious disciplinary violations as a law-enforcement officer.

27 96. The BPD knew that Grossman had chased down an alleged suspect, wrestled
28 him to the ground, and pepper-sprayed him, *despite having no legal grounds to*

1 *deploy force in that manner.* After the incident, the BPD advised Grossman: “As
2 we have previously discussed, ‘seizing’ a person requires articulation which you
3 could not provide when you performed these actions. Adding to the situation, you
4 used chemical agents against the person. *Looking for charges after an arrest is*
5 *made is unacceptable and unconstitutional.”*

6 97. The BPD knew that Grossman had previously searched a car, found and
7 seized a set of “brass knuckles” after claiming that they were illegal, and then
8 logged them into evidence for destruction. After that incident, the BPD admitted
9 that “*this is another example of making a decision that has you operating against*
10 *current law.*”

11 98. The BPD had previous knowledge of Grossman writing defective police
12 reports, telling him that “your reports that are of a substantive nature continually
13 have to be returned for extensive modification.”

14 99. The BPD knew Grossman was a reckless driver, telling him that “your
15 driving has been observed and reported by fellow officers to be unsafe, i.e., driving
16 too fast, following others too closely, and inappropriate response to calls for
17 service.” The BPD knew that Grossman “continued to operate your police vehicle
18 in disregard of policy during response to non-life-threatening calls for service.”

19 100. Despite these numerous and serious disciplinary, regulatory, and
20 constitutional violations, the BPD continued to employ and failed to appropriately
21 discipline Grossman, thereby sanctioning and ratifying his unconstitutional
22 behavior.

23 101. In fact, supervisors within the BPD—including defendants Charles Arlak
24 and Chief of Police Larry Hall—actively protect Grossman, minimizing and
25 covering-up Grossman’s illegal behavior.

26 102. On information and belief, defendant Arlak is Grossman’s brother-in-law
27 and a close friend of defendant Chief of Police Larry Hall.
28

1 103. As a supervisor within the BPD, defendant Arlak has helped Grossman
2 retain his employment by minimizing or covering-up Grossman's numerous
3 disciplinary violations.

4 104. Other BPD officers have specifically heard defendant Arlak saying that he
5 has needed to "protect" Grossman due to his repeated illegal conduct.

6 105. Arlak has used his position as a supervisor and his relationship with
7 defendant Hall to order other members of the BPD to "quit targeting" Grossman.

8 106. Defendant Larry Hall has protected Grossman in other ways.

9 107. Hall runs a private-security business named Blue Knights Securities Group
10 LLC with one of Grossman's supervisors, Lieutenant Gary McGeough.

11 108. With Hall's approval, McGeough ratified Grossman's illegal conduct against
12 Connor and imposed no meaningful punishment on Grossman.

13 109. Hall and McGeough have "targeted" supervisors who have attempted to
14 discipline Grossman for his repeated illegal conduct.

15 110. In protecting Grossman and ratifying his illegal and unconstitutional
16 behavior, Defendants Buckeye, BPD, Hall, and Arlak acted egregiously,
17 reprehensibly, and with an evil mind.

18 111. In protecting Grossman and ratifying his illegal and unconstitutional
19 behavior, Defendants Buckeye, BPD, Hall, and Arlak consciously pursued a course
20 of conduct knowing that it created a substantial risk of harm to Connor and others
21 like him.

22 112. BPD employees have brought these and other serious concerns to the
23 attention of Buckeye City Manager Roger Klingler.

24 113. Defendant Buckeye has done nothing to address defendants' conduct.
25
26
27
28

I.

FIRST CAUSE OF ACTION

Violation of constitutional rights under color of law (42 U.S.C. § 1983)

(False arrest)

114. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs.

115. Defendant Grossman, during all times relevant herein was acting under color of state law. This defendant is being sued in his individual capacity for the purposes of this cause of action.

116. Connor had a Fourth Amendment right to freedom of movement, and to be free from illegal and unreasonable arrest.

117. Defendant Grossman violated this right by detaining and arresting Connor for alleged drug use without reasonable suspicion or probable cause. This defendant was not acting in good faith, was acting under color of law, and violated Connor's Fourth Amendment rights.

118. Defendant Grossman's actions in illegally detaining and arresting Connor caused damage to Plaintiffs, in an amount to be proven at trial.

II.

SECOND CAUSE OF ACTION

Violation of constitutional rights under color of law (42 U.S.C. § 1983)

(Use of excessive force)

119. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs.

120. Defendant Grossman, during all times relevant herein was acting under color of state law. This defendant is being sued in his individual capacity for the purposes of this cause of action.

121. Connor had a Fourth Amendment right to be free from being subjected to the use of excessive force by an arresting officer.

122. Defendant Grossman violated this right by slamming Connor against a tree, tackling him to the ground, and pinning him down for an extended amount of time, despite having no reasonable suspicion or probable cause to believe that any crime had been committed. This defendant was not acting in good faith, was acting under color of law, and violated Connor's Fourth Amendment rights to be free from excessive force.

123. Defendant Grossman's actions in tackling Connor to the ground and pinning him down as part of an illegal and unreasonable arrest caused damage to Plaintiffs, in an amount to be proven at trial.

III.

THIRD CAUSE OF ACTION

Failure to train and / or supervise (42 U.S.C. § 1983, *Monell*)

124. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs.

125. Defendants City of Buckeye and BPD, as a matter of custom, practice, or policy, failed to institute, require, and enforce proper and adequate training and supervision on interacting and dealing with individuals with disabilities—including individuals with autism—when the need for such training and supervision was obvious. Defendants' failure to properly train and supervise their employees resulted in a violation of Connor's Fourth Amendment rights.

126. Defendants Buckeye and BPD failed to train their employees on how to identify an individual with autism and on how to distinguish such an individual from a common drug user.

127. Defendants Buckeye and BPD failed to train their employees to recognize "stimming" as a common and recurrent tool used by autistic individuals to cope with their surroundings.

128. Defendants Buckeye and BPD failed to train their employees to avoid unwarranted and unnecessary touching of an autistic individual, when that

1 touching could result in substantial harm and anxiety to the autistic person as a
2 result of their condition.

3 129. Defendants Buckeye and BPD failed to train their employees on techniques
4 for communicating with an autistic person, including using a reasonable tone of
5 voice and making requests that account for the person's condition.

6 130. Defendants Buckeye and BPD failed to supervise their employees on their
7 knowledge and adherence to the practices outlined above, and others, and on the
8 proper procedures and practices used by its employees generally in interacting with
9 disabled individuals.

10 131. Defendants Chief of Police Larry Hall and Lieutenant Arlak are also liable
11 in their individual capacity as supervisors as a result of their actions and inactions
12 in the training, supervision, and control of Grossman, for their acquiescence in
13 Grossman's deprivation of Connor's constitutional rights, and for conduct that
14 showed a reckless or callous indifference to Connor's constitutional rights.

15 132. Defendants' failure to properly train and supervise their officers, as a matter
16 of policy, custom, and practice, was deliberately indifferent to Connor's Fourth
17 Amendment rights and done with conscious disregard for the dangers of harm and
18 injury to Connor and others similarly situated.

19 133. Defendants' failure to train and supervise their employees was the moving
20 force behind the violation of Connor's Fourth Amendment rights, and proximately,
21 foreseeably, and actually caused Plaintiffs to suffer damages in an amount to be
22 proven at trial.

23 IV.

24 FOURTH CAUSE OF ACTION

25 Ratification of unconstitutional conduct (42 U.S.C. § 1983, *Monell*)

26 134. Plaintiffs reallege and incorporate herein by reference each and every
27 allegation contained in the preceding paragraphs.
28

1 135. Defendant Grossman acted under color of state law during his illegal arrest
2 of Connor.

3 136. Defendant Grossman's illegal conduct deprived Connor of his Fourth
4 Amendment rights.

5 137. Defendant BPD Chief Larry Hall acted under color of state law.

6 138. Defendant Hall had final policymaking authority from defendants City of
7 Buckeye and BPD concerning Grossman's conduct in this case.

8 139. Defendant Hall ratified defendant Grossman's unconstitutional actions
9 against Connor, that is, Hall knew of and specifically made a deliberate choice to
10 approve of Grossman's actions and the alleged basis for them.

11 140. Defendant Hall illegally ratified Grossman's conduct against Connor by
12 approving of Grossman's actions, clearing him of any improper conduct, failing to
13 impose discipline, and ordering the BPD to defend Grossman in press conferences
14 after the illegal arrest of Plaintiff.

15 141. Defendant Hall illegally ratified Grossman's conduct despite knowing about
16 Grossman's extensive and repeated disregard for the constitutional rights of others
17 and by doing nothing to protect Connor and others from further harm.

18 142. Defendant Hall illegally ratified Grossman's conduct by, along with
19 defendant Arlak and other supervisors, protecting Grossman from discipline and
20 harassing and targeting any employees who complained against Grossman or
21 attempted to correct Grossman's illegal behavior.

22 143. Defendants Hall and Arlak are also liable in their individual capacity as a
23 result of their actions and inactions in the training, supervision, and control of
24 Grossman, for their acquiescence in Grossman's deprivation of Connor's
25 constitutional rights, and for conduct that showed a reckless or callous indifference
26 to Connor's constitutional rights.

1 144. Defendants' ratification of Grossman's conduct was deliberately indifferent
2 to Connor's Fourth Amendment rights and done with conscious disregard for the
3 dangers of harm and injury to Connor and others similarly situated.

4 145. Defendants' ratification of Grossman's conduct was the moving force
5 behind the violation of Connor's Fourth Amendment rights, and proximately,
6 foreseeably, and actually caused Plaintiffs to suffer damages in an amount to be
7 proven at trial

8 **V.**

9 **FIFTH CAUSE OF ACTION**

10 **Americans with Disabilities Act (42 U.S.C. § 12132)**

11 **(Wrongful arrest)**

12 146. Plaintiffs reallege and incorporate herein by reference each and every
13 allegation contained in the preceding paragraphs.

14 147. Connor is an individual with a disability under the law.

15 148. Specifically, Connor has autism spectrum disorder, a physical and mental
16 impairment that substantially limits one or more of Connor's major life activities,
17 including caring for himself, performing manual tasks, learning, concentrating,
18 communicating, and interacting with others.

19 149. Connor, as an individual with autism spectrum disorder, is qualified under
20 the ADA to be free from discrimination by any public entity.

21 150. The BPD is a public entity within the meaning of the ADA.

22 151. The BPD, through defendant Grossman, discriminated against Connor by
23 wrongfully arresting him because of Connor's disability.

24 152. Defendant Grossman knew or should have known that Connor was disabled.

25 153. Defendant Grossman arrested Connor because of conduct related to
26 Connor's disability.
27
28

1 154. Specifically, Grossman arrested Connor after purportedly mistaking
 2 Connor's "stimming"—an innocent activity commonly associated with and
 3 directly related to Connor's disability—for drug use.

4 155. Grossman's actions amounted to a wrongful arrest under the ADA,
 5 constituted discrimination for reason of Connor's disability in violation of the
 6 ADA, and proximately and foreseeably caused damages to Plaintiffs in an amount
 7 to be proven at trial.

8 VI.

9 SIXTH CAUSE OF ACTION

10 Americans with Disabilities Act (42 U.S.C. § 12132)

11 (Failure to Accommodate)

12 156. Plaintiffs reallege and incorporate herein by reference each and every
 13 allegation contained in the preceding paragraphs.

14 157. Connor, as a disabled individual, had a right to be free from discrimination
 15 by a public entity by reason of his disability.

16 158. The BPD had a duty under the ADA to provide Connor a reasonable
 17 accommodation upon learning of Connor's disability.

18 159. The BPD, through defendant Grossman, violated this duty by failing to
 19 reasonably accommodate Connor despite knowing of Connor's disability.

20 160. Grossman knew or should have known that Connor was autistic.

21 161. Grossman could have attempted alternate means of interacting and
 22 communicating with Connor before relying on unjustified and excessive force to
 23 restrain Connor.

24 162. Grossman could have asked Connor to sit down while he inquired about
 25 Connor's condition. Grossman could have used a more reasonable and measured
 26 tone when addressing Connor. Grossman could have requested guidance or
 27 assistance from other officers if he was unsure about Connor's condition.
 28

1 163. Grossman also failed to accommodate Connor after restraining him on the
2 ground.

3 164. Despite being informed by Connor's caretaker about Connor's disability,
4 Grossman continued to pin Connor to the ground with his full body weight.
5 Grossman could have released Connor entirely or relied on less forceful means to
6 keep Connor in the vicinity, including allowing Connor to sit nearby with his
7 caretaker.

8 165. Grossman's failure to accommodate Connor while arresting him caused
9 Connor to suffer greater injury and indignity during the process as compared to
10 other arrestees.

11 166. Grossman's actions amounted to a failure to accommodate in violation of the
12 ADA, constituted discrimination for reason of Connor's disability in violation of
13 the ADA, and proximately and foreseeably caused damages to Plaintiffs in an
14 amount to be proven at trial.

15 **VII.**

16 **SEVENTH CAUSE OF ACTION**

17 **Battery**

18 167. Plaintiffs reallege and incorporate herein by reference each and every
19 allegation contained in the preceding paragraphs.

20 168. Defendant Grossman acted with an intent to cause harmful or offensive
21 contact with the person of Connor and the intended harmful or offensive contact
22 did in fact occur.

23 169. Defendant Grossman slammed Connor against a tree, tackled him to the
24 ground, and pinned him down by use of his full body weight.

25 170. Defendant Grossman acted in his official capacity and in the scope of his
26 employment as officer of the BPD.
27
28

171. The harmful or offensive contact was not privileged nor consented to and was excessive, unreasonable, and done with deliberate indifference to the rights and safety of Connor.

172. As a result of Defendant Grossman's intent to cause harmful or offensive contact with the person of Connor, and the fact that the intended harmful or offensive contact did in fact occur, Plaintiffs suffered damages according to proof at the time of trial. Said damages are currently in excess of the jurisdictional minimum of this court and include general and special damages according to proof at the time of trial.

VIII.

EIGHTH CAUSE OF ACTION

Negligence

173. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs.

174. Defendants Buckeye, BPD, and Grossman had a duty to use reasonable care when interacting with a disabled person, specifically a person with autism.

Defendants Buckeye, BPD, and Grossman had a duty to use reasonable care in determining whether reasonable suspicion or probable cause existed to detain and arrest a person with autism. Defendants Buckeye, BPD, and Grossman had a duty to use reasonable care in performing an arrest on a person with autism without resorting to unnecessary and excessive force. Defendants Buckeye, BPD, and Grossman had a duty to use reasonable care when, after detaining a disabled person, continuing to use force against that person.

175. These defendants breached their duty of care and caused harm to Plaintiffs, including physical pain and suffering, terror, mental anguish, humiliation, degradation, damage to reputation, and financial loss.

176. Grossman acted in his official capacity and in the scope of his employment as an officer for the City of Buckeye and the BPD.

1 177. As a direct, proximate, and foreseeable result of these defendants' breach of
2 their duty of care, Plaintiffs suffered damages in an amount according to proof at
3 the time of trial.

4 **IX.**

5 **NINTH CAUSE OF ACTION**

6 **Negligent Training and Supervision**

7 178. Plaintiffs reallege and incorporate herein by reference each and every
8 allegation contained in the preceding paragraphs.

9 179. Defendants Buckeye and BPD had a duty to use reasonable care in the
10 training and supervision of its employees, including Defendant Grossman.
11 Defendants Buckeye and BPD had a duty to train their officers in the proper means
12 of interacting with people with disabilities, including individuals with autism
13 spectrum disorder. Defendants Buckeye and BPD had a duty to properly train their
14 officers to avoid exposing disabled citizens to illegal arrests and avoid exposing
15 them to the risk of excessive force. Defendants Buckeye and BPD had a duty to
16 ensure that incidents of use of force by their employees are properly investigated,
17 supervised, and if necessary, disciplined. Defendants Buckeye and BPD had a
18 duty to supervise their employees to ensure that disabled citizens are not exposed
19 to harm from an officer that has shown repeated disregard for the Constitution and
20 the rights and safety of others.

21 180. Defendants Arlak and Hall had a duty to properly investigate incidents of
22 use of force and impose discipline on employees that violate BPD regulations and
23 state and federal laws. Defendants Arlak and Hall had a duty to ensure that their
24 employees are adequately trained to interact with individuals with disabilities.
25 Defendants Arlak and Hall had a duty to adequately supervise their employees to
26 protect against violations of the constitutional rights of disabled individuals and
27 citizens generally.

181. These defendants breached their duty of care and caused harm to Plaintiffs, including physical pain and suffering, terror, mental anguish, humiliation, degradation, damage to reputation, and financial loss.

182. As a direct, proximate, and foreseeable result of these defendants' breach of their duty of care, Plaintiffs suffered damages in an amount according to proof at the time of trial.

PRAYER FOR RELIEF

Plaintiffs pray for judgment against defendants as follows:

1. General and compensatory damages in an amount according to proof;
2. Punitive and exemplary damages;
3. Civil penalties as provided by law;
4. Declaratory and injunctive relief remedying the continued policies, customs and practices governing how the Buckeye Police Department interacts with individuals with disabilities;
5. Attorney fees under 42 U.S.C. § 12205 and 42 U.S.C. § 1983;
6. Costs of suit;
7. And for such other and further relief as the Court may deem proper.

Dated: June 6, 2018

Respectfully Submitted,

s/ Timothy A. Scott

s/ Nicolas O. Jimenez

TIMOTHY A. SCOTT
NICOLAS O. JIMENEZ

SCOTT TRIAL LAWYERS, APC
Attorneys for Plaintiffs

EXHIBIT

A

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Connor L., et al.,

Plaintiffs,

vs.

City of Buckeye, et al.,

Defendants.

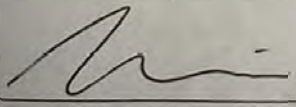
Civil No. _____

**Declaration of Kevin Leibel and
Danielle Leibel**

We, Kevin Leibel and Danielle Leibel, declare under penalty of perjury as follows:

1. We are the parents of Plaintiff Connor L., a minor.
2. We have legal custody of Connor.
3. We are competent and willing to serve as Connor's *guardian ad litem* for all matters in this case.

We declare the foregoing to be true and correct under penalty of perjury,
under the laws of the United States, this 5 of June, 2018, in County of Maricopa,
Arizona.


KEVIN LEIBEL


DANIELLE LEIBEL

EXHIBIT

B













