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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THOMAS MACHOWICZ, individually,

Case No.: CV2021-001720

Plaintiff,

COMPLAINT

vs.

MARICOPA COUNTY; CITY OF PHOENIX
POLICE DEPARTMENT; JERI WILLIAMS,
in her individual and official capacities Chief of
Police for the City of Phoenix; JOHN and
JANE DOE AGENTS and EMPLOYEES I-X;
BLACK CORPORATIONS I-X; and WHITE
PUBLIC ENTITIES I-X,

Defendants.

Thomas Richard Machowicz, (hereinafter "Plaintiff"), for his complaint, alleges:

1. In the spring and summer of 2020 a reckoning centuries in the making swept across all fifty states of this great but flawed nation.

2. On May 25, 2020, George Floyd was murdered by members of the Minneapolis Police Department.

3. His murder sparked outrage and protest across this country.

1 4. These protesters were mostly peaceful and were seeking to change the entrenched
2 racial biases in the police departments in the United States and the very real problem of
3 systematic racism in the United States.

4 5. If not for journalists that were on the streets every waking second of the protests,
5 hundreds of millions of Americans would not have witnessed these protests and not understood
6 the true gravity of the occasion.

7 6. These protests occurred in Phoenix as well and Plaintiff was one of those brave
8 journalists documenting what was occurring in real time.

9 7. Unfortunately for him, he was a victim of the very same police brutality that the
10 protesters were on the streets attempting to resolve.

11 **JURISDICTION, VENUE and PARTIES**

12 8. Plaintiff is, and was at all times material herein, a resident of the County of
13 Maricopa, State of Arizona.

14 9. Defendant Maricopa County is a political subdivision of the State of Arizona that
15 has established offices including the Phoenix Police Department.

16 10. Defendant Maricopa County, by and through its established offices of the Phoenix
17 Police Department, caused events to occur in Maricopa County out of which this cause of
18 action arises.

19 11. Defendant, Jeri Williams, ("Defendant Williams") is the Chief of Police for the City
20 of Phoenix, who at material times hereto worked for and on behalf of Maricopa County and
21 the Phoenix Police Department.

22 12. Defendant Williams caused events to occur in Maricopa County out of which this
23 cause of action arises.

24 13. This court has jurisdiction over the subject matter of this action and jurisdiction
25 over each of the parties.

1 14. Venue in Maricopa County is appropriate pursuant to A.R.S. §§12-401(15) and 12-
2 401(7)

3 15. Plaintiff complied with all preliminary notice provisions to bring a claim against
4 Defendants and filed and served a Notice of Claim pursuant A.R.S. § 12-820.01.

5 **VICARIOUS LIABILITY**

6 16. At all times relevant hereto, Defendant Williams was an employee or agent of
7 Defendant Maricopa County and the City of Phoenix Police Department.

8 17. Defendant Maricopa County and Defendant City of Phoenix Police Department are
9 vicariously liable for the conduct of their agents and employees as alleged herein, including
10 Defendant Williams.

11 **UNKNOWN PARTIES**

12 18. John and Jane Doe Agents and Employees I-X are persons who worked for, on
13 behalf of, or at the direction of any and all named and unnamed Defendants and who are
14 responsible for the injuries suffered and the damages incurred by Plaintiff, but whose
15 identities are currently unknown to Plaintiff. When the true identities of John and Jane Doe
16 agents and employees are discovered, this complaint will be amended accordingly.

17 **NOTICE OF CLAIM**

18 19. Within six months of the incident, Plaintiff filed written Notice of Claim with
19 Maricopa County and the City of Phoenix Police department. Over 30 days have elapsed since
20 the filing of that notice, and this matter has not been settled or otherwise disposed of.

21 **GENERAL ALLEGATIONS**

22 **Background**

23 20. Plaintiff works as a freelance photojournalist, documenting newsworthy events in
24 and around Phoenix Arizona.

1 21. In May of 2020, mass demonstrations were held across the United States, including
2 but not limited to, Phoenix, Arizona.

3 22. These demonstrations were in response to incidents of alleged police brutality that
4 had resulted in the deaths of United States Citizens.

5 **The May 30, 2020 Incident**

6 23. On May 30, 2020, demonstrations against alleged police brutality occurred at or
7 around the Phoenix Police Department Headquarters located at 620 W. Washington Street in
8 Phoenix, Arizona.

9 24. At the same time and place, Mr. Machowicz was documenting the events unfolding
10 at the demonstration as a photojournalist.

11 25. While Mr. Machowicz was photographing the events, police officers with the
12 Phoenix City police Department deployed gas to disperse the demonstrators.

13 26. After the gas was deployed, Mr. Machowicz turned to leave the scene.

14 27. While he was leaving, an unnamed Officer with the Phoenix City Police
15 Department took aim and fired a rubber bullet at Mr. Machowicz.

16 28. The rubber bullet struck Mr. Machowicz in his lower back.

17 29. A second shot was fired at Mr. Machowicz and struck him in the ribs, knocking him
18 to the ground.

19 30. While on the ground, a third bullet was fired at Mr. Machowicz striking him in the
20 back of the head.

21 **CAUSES OF ACTION**

22 **COUNT 1 – Section 1983 Claim for Violation of Freedom of the Press**

23 **(Against Defendant Maricopa County, Defendant Phoenix Police Department, and**
24 **Defendant Williams)**

25 31. Plaintiff hereby incorporates all previous allegations of this Complaint.

1 32. The United States Constitution guarantees the right to journalists to “gather
2 information about what public officials do on public property, and specifically a right to
3 record matters of public interest” *See Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th
4 Cir. 2000).

5 33. Plaintiff was attending the protest in his capacity as a photojournalist.

6 34. The protest occurred on public property.

7 35. The protests surrounding the alleged acts of police brutality involving the death of
8 Geroqe Floyd, Dion Johnson, and countless others captivated the attention of the nation and
9 the world and were unquestionably matters of public interest.

10 36. Defendants used unreasonable and excessive force against Plaintiff.

11 37. Defendants utilized this force against Plaintiff for exercising his right to record
12 police activity in public places.

13 38. Defendants actions deprived Plaintiff of his well-established rights under the First
14 Amendment to the United States Constitution as applied to the states under the Fourteenth
15 Amendment to the United States Constitution. .

16 39. Defendants’ actions were taken in reckless disregard to Plaintiff’s constitutional
17 rights and performed under color of state law.

18 40. Defendant restriction through excessive force on the Plaintiff’s right to record
19 police activity were in violation of the Free Press Clause of the First Amendment to the United
20 States Constitution.

21 41. The conduct of Defendants was willful and exhibited a flagrant disregard for
22 Plaintiff’s federally secured rights. Accordingly, Defendants are liable to Plaintiff under 42
23 U.S.C. §1983.

24 42. Defendants had customs, practices and/or policies that failed to adequately guard
25 against violation of Plaintiff’s constitutional right to record matters of public interest. The

1 Defendants were on notice that their omissions would likely result in a constitutional
2 violation.

3 43. Defendants, practices and/or policies, and lack thereof, were a moving force behind
4 the violation of Plaintiff's constitutionally protected right to record matters of public interest.

5 44. As a direct and proximate cause of Defendants violation of Plaintiff's constitutional
6 rights, negligence, Plaintiff has suffered damages set forth in paragraphs below.

7 **COUNT 2 – Section 1983 Excessive Force**

8 **(Against Defendant Maricopa County, Defendant Phoenix Police Department, and**
9 **Defendant Williams)**

10 45. Plaintiff hereby incorporates all previous allegations of this Complaint.

11 46. As discussed *infra* Plaintiff was exercising his constitutionally protected right to
12 record activities of a public official in a public place.

13 47. Upon being ordered to leave, Plaintiff proceeded to leave the area.

14 48. As Plaintiff was leaving the area he was struck in his lower back by a rubber bullet
15 fired by an Officer with the Phoenix Police Department.

16 49. A second rubber bullet was then fired at Plaintiff striking him in the ribs and
17 knocking him to the ground.

18 50. While Plaintiff was on the ground, a third rubber bullet was fired striking him in the
19 head.

20 51. None of the shots fired at Plaintiff were justified. Plaintiff was engaged in a
21 constitutionally protected activity at the time he was shot. The force exerted by Officers upon
22 the body of Plaintiff, was unjustified, excessive, and unconstitutional.

23 52. The unjustified shooting of Plaintiff deprived him of his right to be secure in his
24 persons against unreasonable searches and seizures as guaranteed under the Fourth
25

1 Amendment to the United States Constitution and applied to state actors by the Fourteenth
2 Amendment.

3 53. As a result, Plaintiff suffered mental and physical pain and suffering, loss of
4 enjoyment of life.

5 54. The use of force was excessive as Plaintiff was engaging in a constitutionally
6 protected activity, leaving the area when he was shot, and was shot again even after had
7 already fallen to the ground.

8 55. The conduct of Defendant was willful, wanton, malicious, and done with reckless
9 disregard for the rights and safety of Plaintiff and therefore warrants the imposition of
10 exemplary and punitive damages.

11 **COUNT 4 – Negligence**

12 **(Against Defendant Maricopa County, Defendant Phoenix Police Department, and**
13 **Defendant Williams)**

14 56. Plaintiff re-alleges and incorporates herein by reference all preceding paragraphs.

15 57. Defendants had a duty to use reasonable care in the discharge of crowd control
16 devices, such as the rubber bullets which were fired at Plaintiff.

17 58. Defendants failed to use reasonable care in the operation of crowd control devices
18 and were negligent in the discharge and firing of rubber bullets at Plaintiff.

19 59. Defendants had a duty reasonable care in employing force to gain compliance with
20 a lawful order.

21 60. Defendants failed to use reasonable care to gain compliance with the order to
22 disburse and were negligent in firing the first, second, and third rubber bullets at Plaintiff as he
23 left the area in compliance with the order of Officers.

24 61. As a direct and proximate result of Defendant's negligence, Plaintiff suffered
25 damages set for in paragraphs below.

1 **COUNT 4 – Negligent Hiring, Supervision and Retention**
2 **Respondeat Superior**
3 **(Against Defendant Maricopa County, Defendant Phoenix Police Department, and**
4 **Defendant Williams)**

5 62. Defendant Maricopa County and the Phoenix Police Department owed Plaintiff a
6 duty to supervise and/or establish guidelines for acceptable practices for police conduct.

7 63. One such practice should have included the training and use of force by officers with
8 the Phoenix City Police Department.

9 64. Defendant Maricopa County and the City of Phoenix Police Department either failed
10 to establish such guidelines or failed to appropriately instruct and supervise or failed to properly
11 screen officers at the time of their hire or failed to discover during her employment that they
12 were likely to act negligently.

13 65. As a direct and proximate result of Defendant's negligence, Plaintiff suffered injury,
14 lost dignity, physical suffering, involuntary solitude, torment, fear, anxiety, anguish, misery and
15 severe emotional distress.

16 **DAMAGES**

17 66. Plaintiff re-alleges and incorporates paragraphs 1-26 above as if fully set forth herein.

18 67. As a direct and proximate result of the negligent, reckless, and careless conduct of
19 Defendants, Plaintiff suffered severe injuries which caused him pain, suffering, distress, mental
20 and emotional anguish and anxiety, and a general decrease in his quality and enjoyment of life,
21 all in an amount to be proven at trial.

22 68. As a further direct and proximate result of the negligent, reckless, and careless
23 conduct of Defendants, Plaintiff has incurred expenses for medical care, and may incur expenses
24 for future medical care, all in an amount to be proven at trial.
25

69. As a further direct and proximate result of the negligent, reckless, and careless conduct of Defendants, Plaintiff has or may have suffered lost earnings and may suffer future lost earnings and/or diminished earning capacity, all in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each other defendant named herein, jointly and severally, as follows:

- (a) For Plaintiff's general and special damages;
- (b) For punitive damages;
- (c) For Plaintiff's expenses incurred for past medical care and treatment of Plaintiff's injuries for future medical treatment expenses;
- (d) For Plaintiff's past and future lost wages and loss of earning capacity; and
- (e) For Plaintiff's costs incurred herein;
- (f) For interest at the highest legal rate on all damages and costs from the time incurred on the date of such judgment, whichever is sooner, until paid; and
- (g) For such other and further relief as the Court deems just and proper

STATEMENT OF TIER VALUE

Consistent with the factors and characteristics identified in the lawsuit above, this matter is a negligence case, and pursuant to Rule 26.2(b) of the Arizona Rules of Civil Procedure, the damages sought in this case qualify it as a Tier 3 case.

DATED this 1st day of February, 2021.

PHILLIPS LAW GROUP, P.C.

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