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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 CALEB SMITH, individually and as Co-)
16 Successor-in-Interest to Decedent CALEB)
17 SMITH JR.; TAMOSHIA MASON,)
18 individually and as Co-Successor-in-Interest)
19 to Decedent CALEB SMITH JR.; and K.S.)
20 individually and as Co-Successor-in-Interest)
21 to Decedent CALEB SMITH by and)
22 through his Guardian Ad Litem TIFFANY)
23 TRAMMELL,)

24 Plaintiffs,)

25 v.)

26 CITY OF HAYWARD, a municipal)
27 corporation; MICHAEL MILLER, in his)
28 individual capacity as a police officer for the)
29 CITY OF HAYWARD; CHRISTOPHER)
30 SUOZZO in his individual capacity as a)
31 police officer for the CITY OF HAYWARD;)
32 DYNATON TRAN in his individual capacity)
33 as a police officer for the CITY OF)
34 HAYWARD; and DOES 1-50, inclusive.)

35 Defendants.)

Case No.:

COMPLAINT FOR DAMAGES
(42 U.S.C. § 1983)

JURY TRIAL DEMANDED

1
2 **INTRODUCTION**

3 1. On Tuesday, March 16, 2021, City of Hayward Police Officers Michael Miller,
4 Christopher Suozzo, and Dynaton Tran shot into a car they had blocked with their police SUVs,
5 killing 22-year-old Caleb Smith Jr. In their haste to open fire, the officers failed to take into
6 account the car's passengers or the numerous innocent bystanders in the path of their errant
7 bullets.

8 2. The involved Hayward Police Officers deliberately ignored their training, creating a
9 dangerous situation for themselves and the public, resulting in their unlawful use of deadly force
10 and the tragic yet preventable loss of the young father's life.

11 **JURISDICTION**

12 3. This action arises under Title 42 of the United States Code, Section 1983. Title 28 of the
13 United States Code, Sections 1331 and 1343, confers jurisdiction upon this Court. The unlawful
14 acts and practices alleged herein occurred in Hayward, California, which is within this judicial
15 district. Title 28 United States Code Section 1391(b) confers venue upon this Court.

16 **PARTIES**

17 4. Decedent CALEB SMITH, JR. was unmarried and had one biological child, his minor
18 son, K.S. at the time of his death.

19 5. Plaintiff CALEB SMITH, SR. sues in his individual capacity as Decedent's father.
20 Plaintiff brings his claims on the basis of 42 USC §§ 1983 and 1988, the United States
21 Constitution, and federal civil rights law.

22 6. Plaintiff TAMOSHIA MASON sues in her individual capacity as Decedent's mother.
23 Plaintiff brings her claims on the basis of 42 USC §§ 1983 and 1988, the United States
24 Constitution, and federal civil rights law.

25 7. Plaintiff K.S. is and was at all times herein mentioned the biological minor son of

1 Decedent CALEB SMITH, JR. Plaintiff K.S. brings this action by and through his Guardian Ad
2 Litem TIFFANY TRAMMELL, as Co-Successor-in-Interest to Decedent CALEB SMITH, JR.

3 8. pursuant to California Code of Civil Procedure §§ 377.20 et seq. and 377.60 et seq.
4 which provide for survival and wrongful death actions. Both the wrongful death and survival
5 claims survive the death of CALEB SMITH, JR.; both arise from the same wrongful act or
6 neglect of another, and such claims are properly joined pursuant to California Code of Civil
7 Procedure § 377.62. Plaintiff also brings his claims on the basis of 42 USC §§ 1983 and 1988,
8 the United States Constitution, and federal civil rights law.
9

10 9. Defendant CITY OF HAYWARD is and at all times herein mentioned a municipal entity
11 duly organized and existing under the laws of the State of California that manages and operates
12 the CITY OF HAYWARD POLICE DEPARTMENT.

13 10. Defendant MICHAEL MILLER (hereinafter “Defendant MILLER”) was and at all times
14 mentioned herein is a police officer for the Hayward Police Department and CITY
15 OF HAYWARD, and is sued in his individual capacity.

16 11. Defendant CHRISTOPHER SUOZZO (hereinafter “Defendant SUOZZO”) was and at all
17 times mentioned herein is a police officer for the Hayward Police Department and CITY OF
18 HAYWARD, and is sued in his individual capacity.

19 12. Defendant DYNATON TRAN (hereinafter “Defendant TRAN”) was and at all
20 times mentioned herein is a police officer for the Hayward Police Department and CITY
21 OF HAYWARD, and is sued in his individual capacity.
22

23 13. Plaintiff is ignorant of the true names and/or capacities of Defendants sued herein as
24 DOES 1 through 50, inclusive, and therefore sue said Defendants by such fictitious names.
25 Plaintiff will amend this Complaint to allege the true names and capacities when ascertained.

1 Plaintiff believes and alleges that each of the DOE Defendants is legally responsible and liable
2 for the incident, injuries, and damages hereinafter set forth. Each Defendant proximately caused
3 injuries and damages because of his/her negligence, breach of duty, negligent supervision,
4 management or control, and violation of public policy. Each Defendant is liable for his/her
5 personal conduct, vicarious or imputed negligence, fault, or breach of duty, whether severally or
6 jointly, or whether based upon agency, employment, ownership, entrustment, custody, care, or
7 control or upon any other act or omission. Plaintiff will ask leave to amend this complaint
8 subject to further discovery.
9

10 14. In doing the acts alleged herein, Defendants, and each of them acted within the course
11 and scope of their employment for the CITY OF HAYWARD.

12 15. Due to the acts and/or omissions alleged herein, Defendants, and each of them, acted
13 under color of authority and/or under color of law.

14 16. Due to the acts and/or omissions alleged herein, Defendants, and each of them, acted as
15 the agent, servant, and employee and/or in concert with each of said other Defendants herein.

16 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
17 gave consent, aid, and assistance to each of the remaining Defendants, and ratified and/or
18 authorized the acts or omissions of each Defendant as alleged herein, except as may be
19 hereinafter otherwise specifically alleged. At all material times, each Defendant was jointly
20 engaged in tortious activity, and had fundamental involvement, and was an integral participant to
21 the events and violations of rights described herein, resulting in the deprivation of Plaintiff's and
22 Decedent's constitutional rights and other harm.
23

24 17. Plaintiff is informed and believes and thereon alleges that each of the Defendants sued
25 herein was negligently, wrongfully, and otherwise responsible in some manner for the events and

1 happenings as hereinafter described and proximately caused injuries and damages to Plaintiff.

2 Further, one or more Doe defendants was at all material times responsible for the hiring, training,
3 supervision, and discipline of other defendants, including Doe Defendants.

4 18. The acts and omissions of all Defendants as set forth herein were at all material times
5 pursuant to the actual customs, policies, practices, training, and procedures of THE HAYWARD
6 POLICE DEPARTMENT.

7 **FACTUAL ALLEGATIONS**

8
9 19. On Tuesday, March 16, 2021, City of Hayward Police Officers Michael Miller, Christopher
10 Suozzo, and Dynaton Tran confronted a blue Volvo in a Motel 6 parking lot in the City of
11 Hayward. Although Defendant Tran reportedly suspected the car had been involved in prior
12 criminal conduct, he did not have any information about the driver or passengers in the Volvo.
13 Nevertheless, he called for back-up and proceeded to drive toward the Volvo without the aid of
14 any back up officers.

15 20. Prior to back-up arriving on the scene, Mr. Smith attempted to drive away, colliding with
16 the first police SUV in the process. Defendant Tran responded by violently ramming Mr. Smith's
17 vehicle, forcing it back towards the Motel and its occupants.

18 21. Another Hayward PD SUV arrived on scene and parked. The driver of the 2nd Hayward
19 PD SUV parked the SUV in such a way so as to corner the Volvo between the Motel behind it and
20 the two Police SUV's to its front, effectively blocking the Volvo's exit route.

21
22 22. Next, the officers exited their SUVs and immediately drew their firearms, pointing them at
23 the suspected vehicle while shouting, "Let me see your fucking hands." The vehicle's tinted
24 windows prevented the officers from seeing inside, positively identifying the occupants and/or
25 whether there were any children inside the Volvo.

1 23. Mr. Smith tried to drive away and struck the police vehicles in the process. The three
2 Defendant Hayward Police Officers then opened fire on the Volvo despite them not being in
3 imminent danger of death or serious harm since they were positioned behind their hulking SUV's
4 which essentially served as barricades and cover. While Mr. Smith's attempt to drive away caused
5 property damage to the City's SUVs, he did not come close to striking the Defendant Officers or
6 anyone else with the Volvo. Indeed, his car was blocked in and the Defendant Officers had over
7 two tons of steel, metal and rubber between them and the Volvo. Moreover, the Defendant Officers
8 were in position to maintain their position of safety by simply stepping back and away from the
9 vehicles while continuing to allow the vehicles and their presence to serve as an effective perimeter
10 around the Volvo.
11

12 24. Three of the Defendants Officers' bullets struck Mr. Smith. One of the Defendants' bullets
13 hit Mr. Smith in his forehead. A yet to be identified woman, who was standing just inches away
14 from the Volvo could have easily been felled by the Officers' barrage of bullets.

15 23. After shooting Mr. Smith, Officers Miller, Suozzo, and Tran yelled for Mr. Smith to exit
16 the vehicle. They continued to order him out the Volvo despite one of the SUVs having the Volvo's
17 driver-side door pinned closed, trapping Mr. Smith inside and making it impossible for him to
18 receive the medical attention he critically needed.

19 25. This was a preventable calamity as Defendant Hayward Police Officers Miller, Suozzo,
20 and Tran failed to take the time to properly assess the situation and exhaust all other reasonable
21 intervention techniques. The officers had the opportunity to wait for additional back-up, follow
22 the vehicle to a safe, less populated location, and/or properly block the vehicle, form a perimeter
23 and wait for the occupants to exit.
24

25 26. As a result of the officers' excessive and deadly use of force, Mr. Smith suffered extensive

1 pain, suffering, and ultimately death. Mr. Smith's parents, Plaintiffs Caleb Smith, Sr. and
2 Tamoshia Mason, suffered the loss of their beloved son. Minor Plaintiff K.S. has lost his dad
3 forever!

4 **DAMAGES**

5 27. As a direct and proximate result of each of the Defendant's unreasonable and excessive
6 force, Decedent and Plaintiffs suffered injuries, emotional distress, fear, terror, anxiety,
7 humiliation, and loss of sense of security, dignity, and pride as a United States Citizen.

8 28. As a direct and proximate result of each Defendant's acts and/or omissions as set forth
9 above, Plaintiffs sustained the following injuries and damages, past and future, among others.

- 10
- 11 a. Wrongful death of Caleb Smith Jr.;
 - 12 b. Coroner's fees, funeral and burial expenses;
 - 13 c. Loss of familial relationships, including loss of love, companionship,
14 comfort, affection, society, services, solace, and moral support
 - 15 d. Pain and Suffering, including emotional distress;
 - 16 e. Caleb Smith's loss of life, pursuant to federal civil rights laws;
 - 17 f. Violation of constitutional rights; and
 - 18 g. All damages, penalties, and attorneys' fees and costs recoverable
19 under 42 U.S.C. §§ 1983, 1988; California Civil Code §§ 52, 52.1,
20 California Code of Civil Procedure §1021.5, and as otherwise allowed
under California and United States statutes, codes, and common law.

21 29. The conduct of Defendants Miller, Suozzo, Tran and DOES 1-50 was malicious, wanton,
22 oppressive, and in reckless disregard of the rights and safety of Caleb Smith and Plaintiffs.
23 Plaintiffs are therefore entitled to an award of punitive damages against Defendants Miller,
24 Suozzo, Tran and DOES 1-50.

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3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **(Fourth Amendment - Survival Action – Excessive Force under 42 U.S.C. Section 1983)**
6 *(Minor Plaintiff K.S. by and through his G.A.L TIFFANY TRAMMELL as Successor-in-Interest*
7 *to Decedent CALEB SMITH against Defendants MILLER, SUOZZO, TRAN, and DOES 1-50)*

8 30. Plaintiff re-alleges and incorporates by reference each and every paragraph in this
9 Complaint as is fully set forth here.

10 31. At the time Defendant officers shot an unarmed Mr. Smith while he was in the vehicle,
11 killing him, they violated their training, generally accepted law enforcement standards, and
12 Decedent’s constitutional rights under the Fourth Amendment.

13 32. As a direct and proximate result of Defendants MILLER, SUOZZO, TRAN, and DOES
14 1-50 conduct as described above, Decedent sustained serious and permanent injuries and is
15 entitled to damages, penalties, costs, and attorneys’ fees as set forth in paragraphs above.

16 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

17 **SECOND CAUSE OF ACTION**

18 **Violation of Plaintiffs’ 14th Amendment Rights/Right to Familial Relationship**
19 *(Minor Plaintiff K.S. by and through his G.A.L TIFFANY TRAMMELL as Successor-in-*
20 *Interest to Decedent CALEB SMITH, CALEB SMITH, SR. and TAMOSHIA MASON*
21 *individually against Defendants Miller, Suozzo, Tran and DOES 1-50)*

22 33. Plaintiffs hereby re-allege and incorporate each and every paragraph in this Complaint
23 as fully set forth here.

24 34. Defendants’ unlawful tactics and collective uses of force were unnecessary and
25 unreasonable under the circumstances, were conscience-shocking, and done without legitimate
law enforcement purpose, all in violation of Plaintiffs’ right to be free from wrongful
government interference with familial relationships, and Plaintiff’s and Decedent’s right to

1 companionship, society, and support of each other, as secured by the First and Fourteenth
2 Amendments.

3 35. As a direct and proximate result of Defendants MILLER, SUOZZO,
4 DYNATON, TRAN, and DOES 1-50 conduct as described above, Plaintiffs sustained serious
5 and permanent injuries and are entitled to damages, penalties, costs, and attorneys' fees as set
6 forth in paragraphs above.

7 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
8

9 **THIRD CAUSE OF ACTION**

10 **(Negligence – Survival Claims & Wrongful Death Claims)**

11 *(Minor Plaintiff K.S. by and through his G.A.L TIFFANY TRAMMELL Successor-in-Interest to*
12 *Decedent CALEB SMITH against Defendants MILLER, SUOZZO, TRAN, and DOES 1-50)*

13 36. Plaintiff hereby re-alleges and incorporates each and every paragraph in this Complaint
14 as fully set forth here.

15 37. At all times, Defendants MILLER, SUOZZO, TRAN, and DOES 1-50 owed Plaintiff
16 and Decedent the duty to act with due care in the execution and enforcement of any right, law,
17 or legal obligation.

18 38. At all times, Defendants MILLER, SUOZZO, TRAN, and DOES 1-50 Does 1-50 owed
19 Plaintiff and Decedent the duty to act with reasonable care.

20 39. These general duties of reasonable care and due care owed to Plaintiff by Defendants
21 include but are not limited to the following specific obligations:

- 22 a. to refrain from using excessive and/or unreasonable force against
23 Caleb Smith Jr.;
- 24 b. to refrain from unreasonably creating the situation where force,
25 including but not limited to deadly force, is used;
- c. to refrain from abusing their authority granted to them by law;

1 d. to refrain from violating Plaintiff's and Decedent's rights guaranteed
2 by the United States and California Constitutions, as set forth above
3 and as otherwise protected by law.

4 40. Defendants, through their acts and omissions, breached each and every one of the
5 aforementioned duties owed to Plaintiff and Decedent.

6 41. Defendant CITY OF HAYWARD is vicariously liable for the wrongful acts and
7 omissions of its employees and agents pursuant to Cal. Gov. Code section 815.2.

8 42. As a direct and proximate result of Defendants' negligence, Plaintiff sustained injuries
9 and damages, and against every Defendant is entitled to relief as set forth above.
10

11 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

12 **FOURTH CAUSE OF ACTION**
13 **(Violation of the Bane Act (Cal. Civ. Code 52.1))**

14 *(Minor Plaintiff K.S. by and through his G.A.L TIFFANY TRAMMELL Successor-in-Interest to*
15 *Decedent CALEB SMITH against Defendants MILLER, SUOZZO, TRAN, CITY OF HAYWARD*
16 *and DOES 1-50)*

17 43. Plaintiff hereby re-alleges and incorporates each and every paragraph in this Complaint
18 as fully set forth here.

19 44. By their conduct described herein, Defendants MILLER, SUOZZO, TRAN, and Does 1-
20 50, acting in concert/conspiracy, as described above, violated Plaintiff's rights under California
21 Civil Code § 52.1, and the following clearly-established rights under the United States
22 Constitution and the California Constitution:

- 23 a. Plaintiff's right to be free from unreasonable searches and seizures
24 as secured by the Fourth Amendment to the United States
25 Constitution and by Article I, §13 of the California Constitution;
- b. Plaintiff's right to be free from excessive and unreasonable force in

1 the course of arrest or detention, as secured by the Fourth
2 Amendment to the United States Constitution and by Article 1, §13
3 of the California Constitution;

4 c. Plaintiff's right to a familial relationship as secured by the First &
5 Fourteenth Amendment to the United States Constitution and by
6 Article 1, §13 of the California Constitution;

7
8 44. Excessive force, which violates the Fourth Amendment, also violates the Bane
9 Act. Defendants' use of unlawful force against Plaintiff, in and of itself, satisfies the "by threat,
10 intimidation, or coercion" requirement of the Bane Act.

11 45. Further, any volitional violation of rights done with reckless disregard for those rights also
12 satisfies the "by threat, intimidation, or coercion" requirement of the Bane Act. All of Defendants'
13 violations of duties and rights were volitional, intentional acts, done with reckless disregard for
14 Plaintiffs' rights; none was accidental or merely negligent.

15 46. Alternatively, Defendants violated Plaintiff's rights by the following conduct constituting
16 threat, intimidation, or coercion that was above and beyond any lawful seizure or use of force:

17 d. Using deliberately reckless and provocative tactics to apprehend Decedent in
18 violation of generally accepted law enforcement training and standards, and in
19 violation of Decedent's rights;

20 e. Defendants shooting Decedent in the absence of any threat or need for such
21 force;

22 f. Using excessive, unreasonable, and unjustified force against Decedent;

23 g. Failing to intervene to stop, prevent, or report the unlawful seizure and use of
24 excessive and unreasonable force by other officers;
25

1 h. Violating multiple rights of Decedent

2 47. Defendant CITY is vicariously liable for the wrongful acts and omissions of its
3 employees and agents pursuant to Cal. Gov. Code section 815.2.

4 48. As a direct and proximate result of Defendants' violation of California Civil Code
5 §52.1 and of Decedent's rights under the United States and California Constitutions, Decedent
6 sustained injuries and damages, and against all Defendants and is entitled to relief as set forth
7 above, including punitive damages against Defendants and Does 1-50, and including all damages
8 allowed by California Civil Code §§ 52, 52.1, and California law, not limited to costs, attorneys
9 fees, treble damages, and civil penalties.
10

11 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

12 **JURY DEMAND**

13 49. Plaintiffs hereby demand a jury trial in this action.

14 **PRAYER**

15 Wherefore, Plaintiffs pray for relief, against each and every Defendant, jointly and severally,
16 as follows:

- 17 1. For general damages in a sum to be proven at trial;
18 2. For special damages, including but not limited to past, present, and/or future wage loss,
19 income and support, medical expenses, and other special damages in a sum to be
20 determined according to proof.
21 3. For punitive damages against Defendants MICHAEL MILLER, CHRISTOPHER
22 SUOZZO, DYNATON TRAN, and DOES 1-50 in a sum according to proof.
23 4. All other damages, penalties, costs, interest, and attorney fees as allowed by 42 U.S.C.
24 §§ 1983 and 1988, Cal. Code of Civ Proc. §§ 377.20 et seq., 377.06 et seq., 1025, Cal.
25

1 Civil Code §§ 52 et seq., 52.1, and as otherwise may be allowed by California and/or
2 federal law;

3 5. For cost of suit herein incurred; and

4 6. For such other and further relief as the Court deems just and proper.
5

6
7 Date: October 30, 2021

Respectfully submitted,

8
9 **POINTER & BUELNA, LLP**
10 **LAWYERS FOR THE PEOPLE**

11 /s/Adanté Pointer
12 ADANTÉ D. POINTER
13 COUNSEL FOR PLAINTIFF
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