

Assigned to Judicial Officer _____

For All Purposes

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

NOV 30 2023

STEPHANIE CAMERON, CLERK
[Signature]

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6 Attorney for Plaintiff, Marcia Villanueva, Individually and as Successor in Interest To the Estate
7 of Allen Aguirre,
8
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF TULARE

12	MARCIA VILLANUEVA, INDIVIDUALLY)	Case No. 303814
13	AND AS THE SUCCESSOR IN INTEREST)	
14	TO THE ESTATE OF ALLEN AGUIRRE,)	PLAINTIFF'S COMPLAINT FOR
15	Plaintiffs,)	DAMAGES AND DEMAND FOR JURY
16)	TRIAL
17)	1. NEGLIGENCE
18	vs.)	2. WRONGFUL DEATH
19)	3. NEGLIGENT SUPERVISION, HIRING
20)	AND TRAINING
21	CITY OF VISALIA, and DOES 1 through 20,)	
22	inclusive,)	
23)	<u>CASE MANAGEMENT CONFERENCE</u>
24	Defendants.)	Hearing Date: <u>3/29/2024</u>
25)	Time: <u>8:30AM</u>
)	Department: <u>2</u>

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff MARCIA VILLANUEVA, who for causes of action against the Defendants,
24 CITY OF VISALIA including Does 1-20, complain and allege as follows:
25

PARTIES

1
2 1. Plaintiff MARCIA VILLANUEVA is an individual and parent/Successor in
3 Interest of the decedent ALLEN AGUIRRE, who at all relevant times was a resident of the State
4 of California. Plaintiff brings a survival action on behalf of ALLEN AGUIRRE’S estate and this
5 wrongful death action under the provisions of the Code of Civil Procedure.

6 2. Defendant CITY OF VISALIA is and was at all relevant times a public entity
7 existing under the Constitution and laws of the State of California.

8 3. The true names and/or capacities whether individual corporate, associate, or
9 otherwise of the Defendants identified as Does 1 through 20, are unknown to Plaintiff who
10 therefore sues these Defendants by such fictitious names. The Plaintiff is informed and believe
11 that each Defendant fictitiously named as Doe is legally responsible, negligent, or in some other
12 actionable manner liable for the events alleged in the Complaint. The Plaintiff will seek leave of
13 court to amend this Complaint to insert the true names and/or capacities of the fictitiously named
14 Defendants when their identities have been ascertained.
15

16 4. The Plaintiff alleges that at all relevant times, Defendant, City of Visalia, and
17 Does 1 through 20, were the agents, servants, employees and/or joint venturers of all of the co-
18 defendants including Does 1-20 and were acting within the course, scope, and authority of their
19 agency, employment, and/or venture and that Defendant, City of Visalia, when acting as
20 principal, was negligent in the selection and hiring of each and every other Defendant including
21 Does 1-20 as an agent, and/or employee.

22 5. The use of the terms “Defendant,” “Defendants,” in this Complaint shall mean all
23 Defendants, including Defendant CITY OF VISALIA, and Does 1 through 20.
24
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VENUE

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2 6. Venue in this action is proper in that all alleged actions took place or originated
3 in the County of Tulare.

GOVERNMENT CLAIM PRESENTMENT

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5 7. On or about January 19, 2023, Plaintiff served an Administrative Claim for
6 Damages on City of Visalia (See Exhibit "A" attached hereto and incorporated herein). City of
7 Visalia rejected Plaintiff's claim on March 4, 2023. (See Exhibit "B" attached hereto and
8 incorporated herein.)

PUBLIC ENTITY LIABILITY

9
10 8. The public entity Defendants are liable to the Plaintiff pursuant to, without
11 limitation, Government Code §§ 815.2, 815.4, 820, and 835, among other statutory and case
12 authority.

COMMON FACTS TO ALL CAUSES OF ACTION

13
14
15 9. On or about November 1, 2022, 911 officers were notified of a person who turned
16 out to be decedent Aguirre, acting erratically at a mini mall/gas station at the corner of Lover's
17 Lane and East Noble in Visalia. A Visalia police officer responded to the scene. What the officer
18 initially saw, as depicted on video from the officer's body camera, was Mr. Aguirre sitting down
19 against a building wall next to a trash bin. There were a number of individuals standing around
20 him and to the side.

21 10, Mr. Aguirre was screaming in pain holding his stomach. Mr. Aguirre was in such
22 pain that the only verbal response he could give the officer was his name. Other than that
23 communication, Mr. Aguirre simply screamed in pain while sitting down against the wall, he
24 was not attempting to move nor flee. There were a number of people standing nearby watching,
25

1 who were just a few feet from Mr. Aguirre who did not demonstrate any fear of Mr. Aguirre at
2 all. At the moment he arrived, it was that officers duty to summon immediate medical care. He
3 did not do so. Instead, he arrested Mr. Aguirre. The officer went to where Mr. Aguirre was
4 sitting, in stomach pain, minding his own business, and physically forced Mr. Aguirre to stand
5 up, even though Mr. Aguirre had great difficulty doing so. Once the officer had forced Mr.
6 Aguirre to physically stand up, the officed turned Mr. Aguirre around and began to handcuff
7 him. When Mr. Aguirre slightly struggled in apparent further pain as a result of his hands being
8 pulled behind is back, the officer placed Mr. Aguirre face down on the ground while handcuffed.
9 Mr. Aguirre did not attempt to flee while handcuffed. He could barely walk.

10 11. Once Mr. Aguirre was face down on the ground, with his hands cuffed behind his
11 back, the officer then knelt down with his knee just below Mr. Aguirre's neck, in his back. Mr.
12 Aguirre struggled for a short time being in that position. The officer then watched Mr. Aguirre's
13 leg flop and struggle, and then slowly stop moving as Mr. Aguirre died.

14 12. The combination of being placed face down on the ground, handcuffed, with his
15 hands behind his back, the officers knee being placed in his upper back, along with whatever
16 medical issue was occurring, was the proximate cause of Mr. Aguirre's death. The officer waited
17 until Mr. Aguirre appeared to have died before calling emergency medical care to come to the
18 scene.
19

20 **FIRST CAUSE OF ACTION-NEGLIGENCE**
21 **AS TO DEFENDANT CITY OF VISALIA**
22 **AND DOES 1-20**

23 13. Plaintiff re-alleges in this cause of action as if fully set forth and incorporates
24 herein by reference all of the allegations in this Complaint.
25

1 14. Defendant City of Visalia and Does 1-20, were negligent in their treatment of
2 Decedent Allen Aguirre while he was detained by a City of Visalia police officer on November
3 1, 2022. The City of Visalia police department staff owed a duty of due care to prevent harm to
4 Decedent Allen Aguirre. The facts explicated previously herein detail the negligent actions and
5 breach of duty of the City of Visalia police department personnel.

6
7 **SECOND CAUSE OF ACTION-NEGLIGENT SUPERVISION,**
8 **HIRING, TRAINING, AND RETENTION**
9 **(BY PLAINTIFF AGAINST ALL DEFENDANTS INCLUDING DOES 1-20)**

10 15. Plaintiff re-alleges in this cause of action as though fully set forth at length and
11 incorporates herein by reference all of the allegations in this Complaint.

12 16. Defendants City of Visalia and Does 1 through 20 owed a duty to the public,
13 Plaintiff, and the Decedent to hire, train, retain, and supervise Defendant's police department
14 personnel with reasonable care.

15 17. Defendants City of Visalia and Does 1 through 20 negligently breached that duty,
16 pursuant to Government Code section 815.2, by inadequately training said personnel and
17 authorized and ratified Defendant's personnel's misconduct. Defendants' Negligent action in
18 failing to properly hire, select, supervise, discipline, train, control and review their employees
19 were the direct, actual and legal cause of Decedent's death and resulting severe emotional
20 distress of Plaintiff. The action required by the responding Visalia police department employee
21 when he first came upon Mr. Aguirre was to request and provide immediate medical treatment,
22 not to handcuff him, arrest him, and place him face down on the ground. It was readily apparent
23 to the initial responding officer that Mr. Aguirre was having a severe medical emergency, not a
24 criminal emergency. Again, when the first officer arrived at the scene Mr. Aguirre was sitting
25 down against the wall in severe physical pain, that was obvious to the officer. Mr. Aguirre was
not moving, was not trying to flee, was not a threat to anyone, including the numerous

1 bystanders that were around him. Instead of arresting, handcuffing, and placing Mr. Aguirre face
2 down on the ground with his hands behind his back in handcuffs, with the officer's knee in Mr.
3 Aguirre's neck and back, the officer should have requested immediate medical treatment. Had
4 the officer requested immediate medical treatment, and not delayed, Mr. Aguirre would not have
5 died.

6 18. Defendants' City of Visalia and Does 1 through 20's breaches caused and were a
7 substantial factor in causing the death of the Decedent, and the resulting severe emotional
8 distress of Plaintiff.

9 19. As a direct, proximate, and legal cause of the Defendants' wrongful conduct, the
10 Plaintiff suffered foreseeable past and future physical and emotional injuries and general, special,
11 and incidental damages in an amount according to proof in excess of the jurisdictional
12 requirements of this court.

13
14 **THIRD CAUSE OF ACTION**
WRONGFUL DEATH AS TO DEFENDANT CITY OF VISALIA AND DOES 1-20.

15 20. Plaintiffs re-allege in this cause of action as if fully set forth and incorporates
16 herein by reference all of the allegations in this Complaint.

17 21. Plaintiff is the sole surviving heir of Decedent Allen Aguirre. Defendant and all
18 Does each of them failed to meet their statutory and common law duties to Allen Aguirre by
19 failing to adequately care for him when he was in their custody. As a result of this negligence
20 previously explicated, Allen Aguirre died.

21 22. Prior to the death of Allen Aguirre, Plaintiff enjoyed the love, society, comfort,
22 and attention of her son. As a proximate result of the negligent acts of Defendants, and each of
23 them, Plaintiff has sustained loss of love, companionship, comfort, care, assistance, protection,
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25

1 affection, society and funeral expenses in a sum according to proof at trial within the
2 jurisdictional limits of this Court.

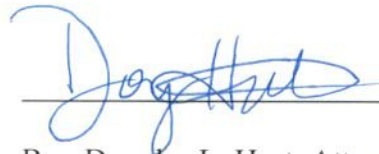
3 **PRAYER**

4 The Plaintiffs pray for judgment against all Defendants, including Does 1-20, as follows:

- 5 1. General damages, as established at the time of trial;
6 2. Special damages, as established at the time of trial;
7 3. Prejudgment interest, as allowed by law, according to proof;
8 4. Civil penalties; Costs of suit; and attorney's fees as allowable by law;
9 5. Such other relief as the court deems in the interests of justice.

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11 Dated: 11/30/23

LAW OFFICES OF DOUGLAS L. HURT

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15 By: Douglas L. Hurt, Attorney for Plaintiff
16 Marcia Villanueva