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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DEBRALYNN THOMAS, Individually
and in her capacity as personal
representative of the ESTATE OF KYLE
THOMAS,

Plaintiff,

vs.

CITY AND COUNTY OF
HONOLULU; JOHN and/or JANE
DOES 1-20,

Defendants.

CIVIL No. 20-00294
(Other Civil Action)

COMPLAINT FOR DAMAGES;
and DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

Plaintiff DEBRALYNN THOMAS, individually and as personal representative of the Estate of KYLE THOMAS, by and through her undersigned attorneys, alleges as follows:

JURISDICTION and VENUE

1. This Court is vested with jurisdiction over this matter pursuant to 42 U.S.C. section 1983 and 28 U.S.C. sections 1331 and 1343, *inter alia*. Any and all state law claims contained herein form part of the same case or controversy as gives rise to Plaintiff's federal law claims and therefore fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. section 1367.

2. Venue is proper in the United States District Court for the District of Hawai'i pursuant to 28 U.S.C. section 1391, as all, or a substantial part, of the acts and/or omissions that form the basis for this lawsuit occurred in the State of Hawai'i within the District of Hawai'i, and all of the Defendants reside in the State of Hawai'i.

PARTIES

3. Plaintiff DEBRALYNN THOMAS (hereinafter "Ms. Thomas") is and has been a resident of the State of Hawai'i at all times relevant to the claims raised in this Complaint and is the natural mother of KYLE THOMAS (hereinafter "Mr. Thomas").

4. By order of the Circuit Court of the First Circuit, State of Hawai‘i, based on a verified application filed pursuant to HRS section 560:3-301, Ms. Thomas was informally appointed as the personal representative of the Estate. In her capacity as personal representative of the Estate, Ms. Thomas is authorized to bring any and all claims which accrued to Mr. Thomas during his life until the time of his death.

5. Defendant CITY AND COUNTY OF HONOLULU (hereinafter “City”) is and has been a duly organized municipal corporation of the State of Hawai‘i at all times pertinent hereto and operates the Honolulu Police Department (“HPD”).

6. JOHN and/or JANE DOES 1-20 (hereinafter “Doe Defendants”) are individuals whose true identities and capacities are as yet unknown to Plaintiff and her counsel, despite diligent inquiry and investigation, and who are responsible in some manner for Plaintiff’s claims as set forth herein. The true names and capacities of Doe Defendants shall be substituted as they become known to Plaintiff. Plaintiff is informed and believes, and thereupon alleges, that at all times herein mentioned, Doe Defendants were the officers, managers, agents, servants, and/or employees of each of the named Defendants and/or Doe Defendants, and were acting with the permission and consent of DPS and the individually named defendants and within the course and scope of said agency and employment. For

purposes of this Complaint, the plainclothes officers who were present at the time of the incident which is the basis of the Complaint are referred to as “Plainclothes Officer” Defendants and are designated as Doe Defendants 1-10. For purposes of this Complaint, the officers who supervised Plainclothes Officers are designated as Doe Defendants 11-15. For purposes of this Complaint, the managers, supervisors, and policymakers employed by the HPD who may be liable on the Complaint, but who are unknown at this time, are designated as Defendants 16-20.

FACTUAL ALLEGATIONS

7. On the afternoon of February 20, 2019, Mr. Thomas, Mr. Thomas’s girlfriend (hereinafter “Girlfriend”), and Mr. Thomas’s friend (hereinafter “Friend”) were shopping at the Walmart in Mililani, Hawai‘i.

8. When Mr. Thomas, Girlfriend, and Friend were finished shopping they entered their vehicle and attempted to exit the Walmart parking lot. Mr. Thomas was driving the vehicle, Friend was in the front passenger seat, and Girlfriend was seated in the backseat.

9. Mr. Thomas, Girlfriend, and Friend were stopped at a traffic light while still in the Walmart parking lot when a number of unmarked vehicles surrounded and blocked in the car that Mr. Thomas was driving. At that point, Plainclothes Officer Defendants exited their unmarked vehicles and approached the

driver and passenger side of the vehicle Mr. Thomas was driving. Another unmarked car was parked in front of the vehicle Mr. Thomas was driving in.

10. Upon information and belief, Plainclothes Officer Defendants were off-duty when they surrounded and boxed-in the vehicle Mr. Thomas was driving.

11. Upon information and belief, Plainclothes Officer Defendants did not announce themselves as HPD officers when they approached Mr. Thomas, Girlfriend, and Friend nor did they do so at any other time during the incident.

12. Mr. Thomas, Girlfriend, and Friend did not know that the individuals surrounding the vehicle were plainclothes police officers.

13. One of the Plainclothes Officer Defendants next to Mr. Thomas's side of the vehicle instructed Mr. Thomas, Friend, and Girlfriend to put their hands in the air. Mr. Thomas, Girlfriend, and Friend immediately complied.

14. As Mr. Thomas, Friend, and Girlfriend raised their hands as they were instructed to do, the Plainclothes Officer Defendant standing next to Mr. Thomas fired a shot into the vehicle, killing Mr. Thomas.

15. At the time of the shooting, Mr. Thomas posed no immediate threat of death or serious physical injury to Plainclothes Officer Defendants, or any other person. The vehicle that Mr. Thomas was driving was at a complete stop when Plainclothes Officer Defendants approached the car; Mr. Thomas, Friend, and Girlfriend were compliant with Plain Clothes Officer Defendants' demands to put

their hands in the air; Mr. Thomas, Friend, and Girlfriend were not holding or brandishing a weapon of any kind at the Plainclothes Officer Defendants; Mr. Thomas, Friend, or Girlfriend were not making any verbal or physical gestures or threats at Plainclothes Officer Defendants that could have been interpreted as hostile or aggressive. Further, Plainclothes Officer Defendants did not observe Mr. Thomas, Friend, or Girlfriend commit any crime, Plainclothes Officer Defendants had no reason to believe Mr. Thomas, Friend and/or Girlfriend were armed with a weapon, and there was no reason to believe that Mr. Thomas, Friend, or Girlfriend had physically injured anyone.

16. After Mr. Thomas was shot, Friend observed that Mr. Thomas was injured by a bullet and feared for his life. Friend immediately crouched down under the dashboard and applied pressure to Mr. Thomas's right leg. Mr. Thomas's right foot was on the gas pedal. Thus, when Friend applied pressure to Mr. Thomas's right leg his action caused the car to move forward.

17. Upon information and belief, the vehicle stopped after hitting a tree on the opposite side of the street.

18. Upon information and belief, Mr. Thomas was pronounced dead on the scene. Friend and Girlfriend were taken to a local hospital with life-threatening injuries.

19. Upon information and belief, the HPD has never brought any criminal charges against Mr. Thomas relating to the actions which took place on the night of February 20, 2019.

FIRST COUNT

42 U.S.C. Section 1983; Violation of the Fourth Amendment's Prohibition Against Unreasonable Search and Seizures – Excessive Force
[Plaintiff Estate's Claim Against Plainclothes Officer Defendants (Doe Defendants 1-10), in their Individual Capacities]

20. Plaintiff Estate hereby restates and realleges the allegations set forth in paragraphs 1 through 19, above, and incorporates these allegations by reference.

21. 42 U.S.C. section 1983 (hereinafter "Section 1983") provides that:

Every person, who under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

22. All of the individual Defendants to this claim are persons potentially liable under Section 1983.

23. In this jurisdiction, claims for constitutional violations under Section 1983 survive the death of the injured party. Therefore, Plaintiff Estate has standing to bring claims against Plainclothes Officer Defendants.

24. The Estate is informed and believes and thereupon alleges that Plainclothes Officer Defendants acted and/or purported to act herein under color of state law, statutes, regulations, customs, practices, and/or usages of the City and County of Honolulu, and/or the HPD.

25. At the time of the relevant events, Mr. Thomas had a clearly established Fourth Amendment right under the United States Constitution to be secure in his person from unreasonable seizure through excessive force.

26. Any reasonable police officer would know or should have known of these rights at the time of the complained conduct as they were clearly established at that time.

27. Plainclothes Officer Defendants' actions, use of force, and unjustified shooting of Mr. Thomas as described herein, were malicious and/or involved reckless, callous, and deliberate indifference to Mr. Thomas's federally protected rights. The force used by Plainclothes Officer Defendants shocks the conscience and violated the Fourth Amendment rights of Plaintiff.

28. Plain Clothes Officer Defendants unlawfully seized Mr. Thomas by means of objectively unreasonable and excessive physical force, thereby unreasonably depriving Mr. Thomas of his freedom.

29. None of the Plainclothes Officer Defendants took any steps to protect Mr. Thomas from the objectively unreasonable and conscience-shocking excessive

force of the other Plainclothes Officer Defendants despite being in a position to do so. Therefore, each Plainclothes Officer Defendant is liable for the violation of Mr. Thomas's rights under Section 1983 as well as the bodily injuries, death, and damages resulting from the objectively unreasonable and conscience-shocking force of each Plainclothes Officer Defendant.

30. The use of deadly force upon Mr. Thomas was excessive and unreasonable. Mr. Thomas posed no threat of harm to Plainclothes Officer Defendants, there was no immediate defense of life situation, Mr. Thomas was compliant with Plainclothes Officer Defendants' commands and was not brandishing or displaying a weapon at the Plainclothes Officer Defendants. The Plainclothes Officer Defendants did not give a verbal warning that deadly force would be used and there were other reasonable options available to them other than shooting and killing Mr. Thomas.

31. The acts or omissions of all Plainclothes Officer Defendants were the direct cause of Mr. Thomas's injuries.

32. The Plainclothes Officer Defendants acted in concert and joint action with one another.

33. As a proximate result of Plainclothes Officer Defendants' unlawful conduct, Mr. Thomas suffered actual physical and emotional injuries, including

death and other damages and losses as described herein entitling the Estate to compensatory damages in amounts to be determined at trial.

34. As a further result of the Plainclothes Officer Defendants' unlawful conduct, the Estate has incurred special damages, including medically related expenses and other special damage related expenses in amounts to be established at trial.

35. Plaintiff Estate is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. section 1988, pre-judgment interest, and costs as allowable by federal law.

36. In addition to compensatory, economic, consequential, and special damages, Plaintiff Estate is entitled to punitive damages against each of the individually named Individual Defendants under Section 1983, in that the acts and omissions of each of the individual Defendants were malicious, willful, and/or were performed with a reckless or wanton disregard of the constitutional rights of Mr. Thomas.

SECOND COUNT

42 U.S.C. Section 1983; Violation of the Fourth Amendment's Prohibition Against Unreasonable Search and Seizures – Detention and Attempted Arrest
[Plaintiff Estate's Claim Against Plainclothes Officer Defendants (Doe Defendants 1-10) in their Individual Capacities]

37. Plaintiff Estate hereby restates and realleges the allegations set forth in paragraphs 1 through 36, above, and incorporates these allegations by reference.

38. At the time of the relevant events, Mr. Thomas had a clearly established Fourth Amendment right under the United States Constitution to be secure in his person from unreasonable search and seizure.

39. Any reasonable police officer would know, or should have known, of these rights at the time of the complained conduct as they were clearly established at that time.

40. Plainclothes Officer Defendants' actions caused Mr. Thomas to be unlawfully detained. Plainclothes Officer Defendants unlawfully seized Mr. Thomas by means of objectively unreasonable and excessive physical force, thereby unreasonably depriving Mr. Thomas of his freedom.

41. Upon information and belief, Plainclothes Officer Defendants attempted to arrest Mr. Thomas in violation of his right to be secure in his person against unreasonable searches and seizures as guaranteed to Mr. Thomas under the Fourth Amendment to the United States Constitution.

42. The above-described actions of Plainclothes Officer Defendants were malicious and/or involved reckless, callous, and deliberate indifference to Mr. Thomas's federally protected rights.

43. As a proximate result of the unlawful conduct of Plainclothes Officer Defendants, Mr. Thomas suffered actual physical and emotional injuries, including

death and other damages and losses as described herein, which entitle the Estate to compensatory damages in amounts to be determined at trial.

THIRD COUNT

**42 U.S.C. Section 1983; Violation of Substantive Due Process Under the
Fourteenth Amendment**

[Plaintiff's Claim Against Plainclothes Officer Defendants
(Doe Defendants 1-10) in their Individual Capacities]

44. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 43, above, and incorporate these allegations by reference.

45. In this jurisdiction under Section 1983, parents have standing to challenge a state's severance of a parent-child relationship as interfering with their liberty interests in the companionship of their children. Ms. Thomas therefore has standing to bring substantive due process claims against Plainclothes Officer Defendants.

46. The Estate is informed and believes, and thereupon alleges, that Plainclothes Officer Defendants acted and/or purported to act herein under color of state law, statutes, regulations, customs, practices, and/or usages of the City and County of Honolulu and/or the HPD.

47. At the time of the relevant events, Mr. Thomas had a clearly established right under the Fourteenth Amendment to the United States Constitution to be free from state actions that deprived him of life, liberty, property in such a manner as to shock the conscience.

48. Ms. Thomas had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive her of life, liberty, or property in such a manner as to shock the conscience, including but not limited to, unwarranted state interference in Ms. Thomas's familial relationship with her son, Mr. Thomas.

49. Any reasonable police officer would know, or should have known, of these rights at the time of the complained of conduct as they were clearly established at that time.

50. As a result of the excessive force by Plainclothes Officer Defendants, Mr. Thomas died.

51. The aforementioned actions of Plainclothes Officer Defendants, along with other as yet undiscovered conduct, shock the conscience, in that they were made with deliberate indifference to the constitutional rights of Mr. Thomas and Ms. Thomas and with purpose to harm unrelated to any legitimate law enforcement objective.

52. Thus, Plainclothes Officer Defendants, acting under color of state law, violated the Fourteenth Amendment substantive due process rights of Mr. Thomas and Ms. Thomas.

53. As a direct and proximate cause of the acts of Plainclothes Officer Defendants, Mr. Thomas and Ms. Thomas suffered extreme and severe mental

anguish and pain and were injured in mind and body. Ms. Thomas has also been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of her son, and will continue to be so deprived for the remainder of her natural life.

54. As a result of their conduct, Plainclothes Officer Defendants are liable for Mr. Thomas's injuries because they were integral participants in the denial of his rights to substantive due process.

55. As a proximate result of Plainclothes Officer Defendants' unlawful conduct, Mr. Thomas suffered actual physical and emotional injuries, including death and other damages and losses as described herein entitling the Estate and Ms. Thomas to compensatory damages in amounts to be determined at trial.

FOURTH COUNT

42 U.S.C. Section 1983; Municipal Liability for Unconstitutional Custom or Policy

[Plaintiff Estate's Claim Against Defendant City and Doe Defendants 11-20, in their Individual Capacities]

56. Plaintiff Estate hereby restates and realleges the allegations set forth in paragraphs 1 through 19, above, and incorporates these allegations by reference.

57. Section 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges, or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

58. All of the individual Defendants to this claim are persons potentially liable under Section 1983.

59. Municipal bodies are liable for constitutional violations under Section 1983 when execution of a policy or custom deprives an individual of his or her rights under the Constitution.

60. In this jurisdiction, claims for constitutional violations under Section 1983 survive the death of the injured party. Therefore, Plaintiff Estate has standing to bring claims against Doe Defendants 11-20 (hereinafter “Supervisor Defendants”) and Defendant City.

61. The Estate is informed and believes and thereupon alleges that Supervisor Defendants and Defendant City acted and/or purported to act herein under color of state law, statutes, regulations, customs, practices, and/or usages of the City and County of Honolulu and/or the HPD.

62. At the time of the relevant events, Mr. Thomas had clearly established rights and liberties secured to him by the Fourth Amendment to the United States Constitution.

63. Any reasonable HPD supervisor or policymaker would know, or should have known, of these rights and liberties at the time of the complained conduct herein as they were clearly established at that time.

64. Prior to and on February 20, 2019, Supervisor Defendants and Defendant City deprived Mr. Thomas of the rights and liberties secured to him by the Fourth Amendment to the United States Constitution. Defendant City and Supervisor Defendants and their agents and representatives, acting with gross negligence and with reckless and deliberate indifference to the rights and liberties of the public in general, and of Mr. Thomas in particular, knowingly maintained, enforced, and applied an officially recognized custom, policy, and practice of:

- a. Employing and retaining as police officers and other personnel, including Plainclothes Officer Defendants whom Supervisor Defendants at all times material herein knew or reasonably should have known had dangerous propensities for abusing their authority and for mistreating citizens by failing to follow written HPD policies, including, but not limited to Article VIII, Section C-13 of HPD's policy on standards of conduct which provide: "[p]hysical force shall only be used by officers in their official capacity when legally justified";

- b. Inadequately supervising, training, controlling, assigning, and disciplining HPD officers, and other personnel, who Defendant City knew, or in the exercise of reasonable care should have known, had the aforementioned propensities and character traits;
- c. Failing to adequately train officers, including Plainclothes Officer Defendants in the use of force;
- d. Failing to institute appropriate policies, regarding the use of force, including deadly force; and
- e. Inadequately training Plainclothes Officer Defendants, with respect to the appropriate circumstances, if any, under which an officer may shoot a compliant individual, including, but not limited to, an individual with his hands in the air who is not brandishing or displaying a weapon.

65. By reason of the aforementioned policies and practices of Defendant City and Supervisor Defendants, Mr. Thomas was severely injured and subjected to pain and suffering and lost his life.

66. Defendant City and Supervisor Defendants, together with various other officials, whether named or unnamed, had either actual or constructive knowledge of the deficient policies, practices and customs alleged in the paragraphs above. Despite said knowledge, these Defendants condoned, tolerated

and through actions and inactions, ratified such policies. Said Defendants also acted with deliberate indifference to the foreseeable effects and consequences of these policies with respect to the constitutional rights of persons such as Mr. Thomas.

67. By perpetuating, sanctioning, tolerating, and ratifying outrageous conduct and other wrongful acts, Supervisor Defendants acted with an intentional, reckless, and callous disregard for the life and constitutional rights of persons similarly situated to Mr. Thomas. The actions of Supervisor Defendants were willful, wanton, oppressive, malicious, fraudulent, and unconscionable to any person of normal sensibilities.

68. Furthermore, the policies, practices, and customs implemented and maintained by Defendant City and Supervisor Defendants, were affirmatively linked to and were a significantly influential force behind Plainclothes Officer Defendants' treatment of Mr. Thomas.

69. As a proximate result of the unlawful conduct of Defendant City and Supervisor Defendants, Mr. Thomas suffered actual physical and emotional injuries, including death and other damages and losses as described herein, entitling the Estate compensatory damages in amounts to be determined at trial.

70. As a further result of the unlawful conduct of Defendant City and Supervisor Defendants, the Estate has incurred special damages, including

medically related expenses and other special damage related expenses in amounts to be established at trial.

FIFTH COUNT

42 U.S.C. Section 1983; Municipal Liability – Failure to Train

[Plaintiff Estate’s Claim Against Defendant City and Supervisor Defendants, in their Individual Capacities]

71. Plaintiff Estate hereby restates and realleges the allegations set forth in paragraphs 1 through 19 and 57 through 70, above, and incorporates these allegations by reference.

72. Municipal liability exists where a city fails to properly train, supervise, and discipline its employees and said failure amounts to a deliberate indifference to the public’s constitutional rights.

73. The Estate is informed and believes and thereupon alleges that Defendant City acted and/or purported to act herein under color of state law, statutes, regulations, customs, practices, and/or usages of the City and County of Honolulu and/or the HPD.

74. At all times relevant hereto, Defendant City had a duty to properly train, supervise, and discipline its employees and agents.

75. While acting under the color of state law and within the course and scope of their employment as police officers for the HPD, Plainclothes Officer Defendants’ shooting of Mr. Thomas, who had his hands raised in the air when he was shot, deprived Mr. Thomas of the rights and liberties secured to him by the

Fourth Amendment, including his right to be free from unreasonable search and seizure.

76. The policies of Defendant City's police department were not adequate to train, supervise, and discipline its police officers, including but not limited to, Plainclothes Officer Defendants, with regards to using deadly force. As a result, City police officers, including Plainclothes Officer Defendants, were untrained in how to handle the usual and recurring situations with which they must deal, including how to appropriately respond to individuals who respond to their instructions. These inadequate training policies existed prior to the date of this incident.

77. Defendant City and Supervisor Defendants were deliberately indifferent to the known or obvious consequences of its failure to train, supervise, and discipline its police officers, including Plainclothes Officer Defendants, adequately with regards to using deadly force including failing to teach and require officers to: give a verbal warnings, when feasible, prior to using deadly force, recognizing when an individual is complying with an officer's instructions, announcing themselves as police officers, and using less than lethal options prior to resorting to the use of deadly force, among other things.

78. Defendant City was aware that failure to implement some sort of training, supervision, and discipline with regards to its officers' use of deadly force

and dealing with compliant suspects would result in dire results including the high incidence of numerous unreasonable officer-involved shootings of compliant individuals.

79. The failure of the Defendant City to provide adequate training, supervision, and discipline regarding use of deadly force resulted in Plainclothes Officer Defendants depriving Mr. Thomas of his constitutional rights and was a proximate cause of Plainclothes Officer Defendants' wrongful and unjustifiable shooting of Mr. Thomas.

80. By failing to provide adequate training, supervision, and discipline to Defendant City's police officers, including Plainclothes Officer Defendants, Defendant City acted with an intentional, reckless, and callous disregard for Mr. Thomas's life and Mr. Thomas's constitutional rights.

81. As a proximate result of the unlawful conduct of the City Defendant, Mr. Thomas suffered actual physical and emotional injuries, including death and other damages and losses as described herein entitling the Estate to compensatory damages in amounts to be determined at trial.

SIXTH COUNT

Haw. Const. Art. I, Section 5; Violation of State Constitutional Right to Substantive Due Process

[Plaintiff Estate's Claim Against Plainclothes Officer Defendants (Doe Defendants 1-10), in their Individual Capacities]

82. Plaintiff Estate incorporates by reference each and every allegation contained in Paragraphs 1 through 19 of this Complaint as if set forth fully herein.

83. At the time of the relevant events, Mr. Thomas had a clearly established Constitutional right under the Article I, Section V of the Hawai'i Constitution to be free from state actions that deprive him of life and liberty.

84. Any reasonable police officer would have known, or should have known, of these rights at the time of the complained conduct as they were clearly established at that time.

85. As a result of the excessive force by Plainclothes Officer Defendants, Mr. Thomas died.

86. The aforementioned actions of Plainclothes Officer Defendants, along with other as yet undiscovered conduct, shock the conscience, in that they acted with deliberate indifference to the state constitutional rights of Mr. Thomas with purpose to harm him which was unrelated to any legitimate law enforcement objective.

87. Plainclothes Officer Defendants, acting under color of state law violated Mr. Thomas's substantive due process rights.

88. As a direct and proximate cause of the acts of Plainclothes Officer Defendants, Mr. Thomas suffered extreme and severe mental anguish and pain and was been injured in mind and body.

89. Plainclothes Officer Defendants are liable for Mr. Thomas's injuries and death because they were integral participants in the denial of his rights to due process.

90. As a proximate result of Plainclothes Officer Defendants' unlawful conduct, Mr. Thomas suffered actual physical and emotional injuries, including death and other damages and losses as described herein, entitling the Estate to compensatory damages in amounts to be determined at trial.

SEVENTH COUNT

Hawai'i Revised Statute Section 663-3; Wrongful Death

[Plaintiffs Estate and Ms. Thomas's Claim Against Defendant City, Supervisor Defendants, and Plainclothes Officer Defendants, in their Individual Capacities]

91. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 19, above, as if set forth fully herein.

92. Pursuant to Hawai'i Revised Statutes (hereinafter "HRS") section 663-3(b) of Hawai'i's Wrongful Death statute, the parent of a decedent may bring an action for wrongful death.

93. Ms. Thomas is the natural mother of Mr. Thomas.

94. Pursuant to HRS section 663-3(a) of Hawai'i's Wrongful Death statute, the personal representative or estate of a decedent may bring an action for wrongful death on behalf of the decedent.

95. Mr. Thomas's death was a direct and proximate result of Supervisor Defendants, Plainclothes Officer Defendants, and Defendant City's (hereinafter

collectively referred to as “Defendants”) negligent acts, omissions, nonfeasance, malfeasance and/or failure to take necessary action to prevent Mr. Thomas’s death.

96. As a result of the actions of Plainclothes Officers, Mr. Thomas suffered severe mental and physical pain and suffering, loss of earning capacity, loss of enjoyment of life, and ultimately died from his injuries.

97. As a result of the wrongful acts of the Defendants, Ms. Thomas has been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of her son, and will continue to be so deprived for the remainder of her natural life.

98. Defendants are jointly and severally liable for the wrongful death of Mr. Thomas.

99. Defendant City is liable for the wrongdoing committed by Supervisor Defendants and Plainclothes Officer Defendants pursuant to the doctrine of Respondeat Superior.

EIGHTH COUNT

Negligence/Gross Negligence

[Plaintiff Estate’s Claim Against Supervisor Defendants and Plainclothes Officer Defendants, in their Individual Capacities and Defendant City]

100. Plaintiff Estate incorporates by reference each and every allegation contained in Paragraphs 1 through 19, above, as if set forth fully herein.

101. Hawai‘i has adopted a statute which provides that a decedent’s claim for wrongful acts which occurred during his lifetime survives his death. HRS section 663-7 provides:

Survival of cause of action. A cause of action arising out of a wrongful act, neglect, or default, except a cause of action for defamation or malicious prosecution, shall not be extinguished by reason of the death of the injured person. The cause of action shall survive in favor of the legal representative of the person and any damages recovered shall form part of the estate of the deceased.

102. Under Hawai‘i’s Survival Statute, Mr. Thomas’s claims for negligence and gross negligence survive his death.

103. Police Officers, including Plainclothes Officer Defendants, have a duty to use reasonable care to prevent harm or injury to others. This duty includes using appropriate tactics, giving appropriate commands, giving warnings, and not using any force unless necessary, using less than lethal options, and only using deadly force as a last resort.

104. Plainclothes Officer Defendants breached their duty of care to Mr. Thomas.

105. Upon information and belief, the actions and omissions of Defendants were negligent and reckless, including but not limited to:

- a. the failure to properly and adequately train employees, including Plainclothes Officer Defendants, with regards to the use of force, including deadly force;
- b. the failure to properly and adequately assess the need to detain, arrest, and use force, including deadly force, against Mr. Thomas;
- c. the negligent tactics and handling of the situation with Mr. Thomas;
- d. the negligent detention, arrest, and use of force, including deadly force, against Mr. Thomas;
- e. shooting an individual who is complying with the commands of an officer(s); and
- f. the failure to give a verbal warning prior to shooting.

106. As a result of the negligent actions of Defendants, Mr. Thomas suffered substantial injuries and death.

107. Defendants failed to use the care that a reasonable person would use to avoid injury to Mr. Thomas. The conduct of Defendants was an aggravated and magnified failure to use that care which a reasonable person would use to avoid injury to Mr. Thomas.

108. Mr. Thomas's death was the reasonably foreseeable outcome of Defendants' acts and omissions.

109. The acts and/or omissions of each Defendant were the actual and proximate cause of Mr. Thomas's death.

110. Defendants are jointly and severally liable to Estate for the wrongdoings set forth herein.

111. Defendant City is vicariously liable for the wrongful acts of Plainclothes Officer Defendants and Supervisor Defendants pursuant to the doctrine of Respondeat Superior.

WHEREFORE, Plaintiff seeks the following relief:

- a. Special damages;
- b. Consequential damages;
- c. General Damages;
- d. Damages for pain and suffering;
- e. Damages for wrongful death;
- f. Attorneys' fees and costs of suit; and
- g. Such other relief as the Court may deem equitable and just.

DATED: Honolulu, Hawai'i, July 1, 2020.

/s/ Gina Szeto-Wong
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