

JELLISON LAW OFFICES, PLLC

2020 North Central Avenue
Suite 670
Phoenix, Arizona 85004
Telephone: (602) 772-5520
Facsimile: (602) 772-5509
E-mail: jim@jellisonlaw.com

JAMES M. JELLISON, ESQ. #012763
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MARIA ADAME, in her individual capacity;
CLARISA ABARCA, as parent of minor
child; C.A., in her individual capacity, and the
ESTATE OF DEREK ADAME, as statutory
beneficiaries of the claim for wrongful death
of Derek Adame, deceased,

Plaintiffs,

v.

CITY OF SURPRISE, SURPRISE POLICE
DEPARTMENT, OFFICER JOSEPH
GRUVER and OFFICER SHAUN
MCGONIGLE,

Defendants.

Case No.: CV-2017-3200-PHX-GMS

**NOTICE OF REMOVAL OF ACTION
FROM STATE COURT**

To the Clerk of the above entitled Court:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§1331, 1441 and 1446 and U.S. District Court Local Rule 3.6, Defendants the City of Surprise, City of Surprise Police Department, and City of Surprise Police Officers Gruver and McGonigle hereby notice the removal of the above-captioned case from the Arizona Superior Court, County of Maricopa, to this Court and in support thereof respectfully show:

1 1. Defendant City of Surprise received the Complaint in the state court action on or
2 about August 22, 2017. On September 7-8, 2017, undersigned counsel waived service for the
3 remainder of the City of Surprise Defendants. Copies of such are attached hereto as Exhibit "A"
4 and incorporated herein by reference.
5

6 2. This Notice of Removal is being filed within thirty days after receipt of the
7 Complaint, which states federal claims for the first time in the underlying state court action, and
8 is timely filed under 28 U.S.C. §1446(b).
9

10 3. The time for Defendants to answer or move with respect to the Complaint has not
11 expired; Defendants have not answered or otherwise responded to the Complaint.

12 4. Upon information and belief, Plaintiffs are residents of the State of Arizona.

13 5. A copy of the Notice has been filed with the Clerk of the Superior Court for
14 Maricopa County.
15

16 6. This is a civil action in which Plaintiffs appear to allege causes of action pursuant
17 to 42 U.S.C. §1983, Count I: Excessive Force, Count II: Supervisory Liability, Count III:
18 Failure to Intervene, Count IV: Municipal Liability, and Count V: Wrongful Death.
19

20 WHEREFORE, City of Surprise Defendants request the above-entitled action now
21 pending in the Superior Court of the State of Arizona, in and for the County of Maricopa, be
22 removed to this Court and that all further proceedings in this action be conducted in this Court as
23 provided by law, and as a Phoenix Precinct matter pursuant to LRCiv. 77.1.
24
25
26

1 DATED this 20th day of September, 2017.

2 JELLISON LAW OFFICES, PLLC

3 By: s/James M. Jellison _____

4 James M. Jellison

Attorney for Defendants

5 I hereby certify that on September 20, 2017
6 I electronically transmitted the attached document
7 to the Clerk's Office using the
8 CM/ECF System for filing.

9 Copy mailed to:

10 MY AZ LAWYERS

11 Anthony Ramirez

12 1731 West Baseline Road, Suite 101

13 Mesa, AZ 85202

14 *Attorney for Plaintiffs*

15 s/Kasey M. Rivera _____

EXHIBIT A

Date: 3-22-2017
Time: 10:11 AM
Served by: Proctor Schur
Badge No.: MC-8737
Accepted by: [Signature]
LIT/NOC No.: 17-07

MY AZ LAWYERS
Anthony J. Ramirez #033119
1731 W. Baseline Road, Suite 101
Mesa, Arizona 85202
Telephone: (480) 263-1699
Facsimile: (480) 478-0714
anthony@myazlawyers.com
Attorney for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CV 2017-095167

MARIA ADAME, in her individual capacity,
CLARISA ABARCA, as parent of minor child
C^{Redacted} A^{Redacted}, in her individual capacity,
and the ESTATE OF DEREK ADAME, as
statutory beneficiaries of the claim for
wrongful death of Derek Adame, deceased,

Plaintiffs,

v.

CITY OF SURPRISE, SURPRISE POLICE
DEPARTMENT, OFFICER JOSEPH
GRUVER and OFFICER SHAUN
MCGONIGLE

Defendants.

NO.

**SUMMONS
(TORT - NON-MOTOR VEHICLE)**

ASSIGNED TO:

If you would like legal advice from a lawyer,
Contact the Lawyer Referral Service at
602-257-4434

or

www.maricopacountybar.org
Sponsored by the
Maricopa County Bar Association

STATE OF ARIZONA TO THE DEFENDANTS:

CITY OF SURPRISE
16000 N. CIVIC CENTER PLAZA
SURPRISE, AZ 85374

1
2 **SURPRISE CITY PROSECUTOR**
3 **16000 N. CIVIC CENTER PLAZA**
4 **SURPRISE, AZ 85374**

5 **CITY OF SURPRISE POLICE DEPARTMENT**
6 **14250 WEST STATLER PLAZA**
7 **SUITE 103**
8 **SURPRISE, AZ 85374**

9 **OFFICER JOSEPH GRUVER**
10 **CITY OF SURPRISE POLICE DEPARTMENT**
11 **14250 WEST STATLER PLAZA**
12 **SUITE 103**
13 **SURPRISE, AZ 85374**

14 **OFFICER SHAUN MCGONIGLE**
15 **CITY OF SURPRISE POLICE DEPARTMENT**
16 **14250 WEST STATLER PLAZA**
17 **SUITE 103**
18 **SURPRISE, AZ 85374**

19
20
21
22
23
24
25
26
27
28
A lawsuit has been filed against you.

YOU ARE HEREBY SUMMONED and required to appear and defend, within the time applicable, in this action in this Court. If served within Arizona, you shall appear and defend within 20 days after the service of the Summons and Complaint upon you, exclusive of the day of service. If served out of the State of Arizona, whether by direct service, by registered or certified mail, or by publication, you shall appear and defend within 30 days after the service of the Summons and Complaint upon you in complete, exclusive of the day of service. Where process is served upon the Arizona Director of

1 Insurance as an insurer's attorney to receive service of legal process against it in this
2 state, the insurer shall not be required to appear, answer or plead until the expiration of
3 40 days after day of such service upon the Director. Service by registered or certified
4 mail without the State of Arizona is complete 30 days after the date of filing the receipt
5 and affidavit of service with the Court. Service by publication is complete 30 days after
6 the date of first publication. Direct service is complete when made. Service upon the
7 Arizona Motor Vehicle Superintendent is complete 30 days after filing the Affidavit of
8 Compliance and return receipt of Officer's Return. RCP 4; Arizona Revised Statutes,
9 Section 20-222, 28-502, 28-503.
10

11
12
13
14 YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend
15 within the time applicable, judgment by default may be rendered against you for the
16 relief demanded in the Complaint.
17

18
19 YOU ARE CAUTIONED that in order to appear and defend, you must file an
20 Answer or proper response in writing with the Clerk of this Court, accompanied by the
21 necessary filing fee, within the time required and you are required to serve a copy of any
22 Answer or response upon the Plaintiffs attorney; RCP 10(d); Arizona Revised Statutes,
23 Section 12-311; RCP 5.
24

25
26 The name and address of the Plaintiffs' attorney is:
27

28
Anthony J. Ramirez, Esq.
1731 West Baseline Road, Suite 101
Mesa, AZ 85202

P. 480-833-8000, F. 602-478-0714

REQUESTS FOR REASONABLE accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled proceeding.

SIGNED AND SEALED THIS DATE: _____

By: _____ **COPY**
Deputy Clerk

AUG 09 2017



MICHAEL K. JEANES, CLERK
DEPUTY CLERK

1 **MY AZ LAWYERS**
2 **Anthony J. Ramirez #033119**
3 1731 W. Baseline Road, Suite 101
4 Mesa, Arizona 85202
5 Telephone: (480) 263-1699
6 Facsimile: (480) 478-0714
7 anthony@myazlawyers.com
8 *Attorney for Plaintiffs*

COPY

AUG 09 2017



MICHAEL K. JEANES, CLERK
DEPUTY CLERK

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 MARIA ADAME, in her individual capacity,
12 CLARISA ABARCA, as parent of minor child
13 C^{Redacted} A^{Redacted}, in her individual capacity,
14 and the ESTATE OF DEREK ADAME, as
15 statutory beneficiaries of the claim for
16 wrongful death of Derek Adame, deceased,

17 Plaintiffs,

18 v.

19 CITY OF SURPRISE, SURPRISE POLICE
20 DEPARTMENT, OFFICER JOSEPH
21 GRUVER and OFFICER SHAUN
22 MCGONIGLE

23 Defendants.

Case No.

CV 2017-095167

**COMPLAINT FOR WRONGFUL
DEATH**

(TORT - NON-MOTORVEHICLE)

24 COMES NOW Plaintiffs, MARIA ADAME, surviving mother of decedent DEREK
25 ADAME; and CLARISA ABARCA, parent of minor child, C^{Redacted} A^{Redacted}, surviving
26 minor daughter of decedent DEREK ADAME, on behalf of the ESTATE OF DEREK
27 ADAME, by and through undersigned counsel, hereby state the following in support of their
28 Petition for Wrongful Death against the above-named Defendants:

INTRODUCTION

1
2
3 This action arises from the unjustified fatal shooting of Derek Adame ("Adame") by
4 Surprise Police Officer Joseph Gruver ("Defendant Gruver"). This is a civil action filed
5 pursuant to sections 12-611 and 12-612 of the Arizona Revised Statutes, which is commonly
6 referred to as the state of Arizona's Wrongful Death Statutes. It is also brought under 42
7 U.S.C. § 1983 to redress the deprivation under the color of law of Adame's rights as secured by
8 the United States Constitution. Without any warning or legal justification, Defendant Gruver
9 jumped into Adame's vehicle, shot him twice, and killed him on November 26, 2016. Adame
10 had no weapon in his hand or on his person and had been sleeping in his vehicle. Defendant
11 Gruver's willful, excessive, and unreasonable force resulted in Adame sustaining fatal gunshot
12 wounds to his right forearm, torso, and right shoulder which are the causes of in his premature
13 death. Officer McGonigle (McGonigle) was staying updated on the suspicious vehicle call.
14 was present during the shooting, and did nothing to intervene. Present during the shooting
15 Defendant Gruver was employed by the City of Surprise, Arizona ("Defendant City" or "SPD")
16 at the time he shot and killed Adame.
17
18
19
20
21

22 Acting under the color of law, Defendant Gruver deprived Adame of his well-established
23 civil rights protected both by the United States Constitution and the state of Arizona
24 Constitution. Plaintiffs, Marie Adame, surviving mother of decedent Adame; and Clarisa
25 Abarca, parent of minor child, C^{Redacted} A^{Redacted} surviving minor daughter of decedent Adame
26 ("Plaintiffs"), seek compensatory and punitive damages, in addition to any other relief this
27 Honorable Court deems just and proper under the circumstances.
28

1 agency of Defendant City of Surprise. At all times relevant herein, Defendant Gruver was
2 acting under the color of laws, statutes, ordinances, regulations, policies, customs and/or usage
3 of the State of Arizona and the Surprise Police Department, in the course and scope of his
4 duties and functions as an officer, agent, servant, and employee of Defendant City of Surprise.
5 was acting for, and on behalf of, and with the power and authority vested in him by the City of
6 Surprise and the Surprise Police Department, and was otherwise performing and engaging in
7 conduct incidental to the performance of his lawful functions in the course of his duties.
8

9
10
11 9. Defendant City is and was at all times relevant herein a municipal entity created
12 and authorized under the laws of the state of Arizona. It is authorized by law to maintain a
13 police department which acts as its agent in the area of law enforcement and for which it is
14 ultimately responsible. Defendant City assumes the risks incidental to the maintenance of a
15 police force and the employment of police officers. Defendant City was at all times relevant
16 herein the public employer of Defendant's Gruver and McGonigle, identified more fully *infra*,
17 including at the time Defendant Gruver shot and killed Adame.
18

19
20 10. By the conduct, acts, and omissions complained of herein, Defendant's Gruver
21 and McGonigle violated clearly established constitutional standards under the United States
22 Constitution of which a reasonable police officer under the circumstances would have known.
23

24 **NOTICE OF CLAIM**

25
26 11. Plaintiff timely filed a Notice of Claim with the City Clerk of the City of
27 Surprise, setting forth the facts underlying Plaintiff's claim against the City of Surprise,
28 pursuant to A.R.S. § 12-821, et. seq., and Arizona Rule of Civil Procedure 4.1(1).

STATEMENT OF FACTS

1
2
3 12. On November 26, 2016, at approximately 12:48 a.m., Adame was sleeping in
4 his vehicle located on North 177th Avenue.

5 13. Simultaneously, Defendant Gruver was driving toward the area of a suspicious
6 vehicle call. He noticed and began to follow a vehicle that he felt was suspicious. As he was
7 following a suspicious vehicle, he passed Adame's vehicle.
8

9 14. After Defendant Gruver determined the vehicle was no longer suspicious to him,
10 he asked for the suspicious vehicle call to be assigned to him.
11

12 15. Upon reaching Adame's vehicle, Defendant Gruver ran the vehicle's license
13 plate in his mobile data computer. The computer returned an "ACIC stolen tag."
14

15 16. Defendant Gruver turned on his "takedown" lights, proceeded to exit his
16 vehicle, and called the license plate over the radio to reconfirm if it was stolen.
17

18 17. Defendant Gruver proceeded to walk behind his vehicle and, before approaching
19 Adame's vehicle, removed his firearm from its holster.

20 18. As Defendant Gruver got to the front of his vehicle, his firearm was in his hand.
21

22 19. Upon confirmation from dispatch, Defendant Gruver continued to walk toward
23 Adame's vehicle. He knocked on the passenger window while pointing his firearm in the
24 direction of the vehicle. With no answer, Defendant Gruver opened the passenger door and
25 proceeded to point his firearm at Adame. Defendant Gruver identified himself as Surprise
26 Police and told Adame to raise his hands and do not move. He then proceeded to tell Adame to
27 place his hands on the steering wheel, which Adame complied.
28

20. Defendant Gruver continued to shout at Adame and ordered him to keep his

1 hands up. Adame replied, "I'm not doing anything wrong." Defendant Gruver continued to
2 shout at Adame and began to move toward the vehicle, his firearm inside the vehicle and
3 pointed at Adame.
4

5 21. Defendant Gruver proceeded to jump into the vehicle with both knees on the
6 passenger seat with his firearm pointed at Adame. The vehicle began to slowly pull forward
7 when Defendant Gruver yelled, "I will...", and shot his firearm twice into Adame. Defendant
8 Gruver then fell out of the vehicle. The vehicle accelerates down 177th Avenue and crashes
9 into a dark gray, full-sized Dodge Ram truck.
10
11

12 22. Without any warning or legal justification, Defendant Gruver used willful,
13 excessive, and unreasonable force when he shot and killed Adame.
14

15 23. Defendant Gruver's negligent handling of his firearm resulted in Adame
16 sustaining fatal gunshot wounds to his right forearm, torso, and right shoulder, which
17 subsequently resulted in Adame's premature death.
18

19 24. At no time during the course of this incident did Adame have a firearm or
20 dangerous weapon of any kind in his hand or on his person.
21

22 25. At the time of the shooting, Defendant Gruver and an additional officer did not
23 witness Adame holding a firearm or dangerous weapon in his hand.
24

25 26. Defendant Gruver shooting throughout the incident was a violation of Adame's
26 constitutionally guaranteed rights to be free from the use of excessive force, the right to life,
27 due process under the law, and equal protection under the law.
28

27 27. Prior to his death, Adame endured a substantial amount of conscious pain and
suffering from the moment Defendant Gruver shot him until his body ultimately succumbed to

1 death.

2 28. During the SPD investigation, Officer McGonigle stated he did not advise
3 Defendant Gruver that the plate was stolen because he did not want to “freak him out.” He
4 stated “he had a weird feeling that something might go down,” so he started heading to the
5 direction of the call although he did not assign himself to the call.
6
7

8 29. During the SPD investigation, Officer McGonigle stated that when he initially
9 approached as backup and Adame had both of his hands on the steering wheel.
10

11 30. During the SPD investigation, Defendant Gruver attempted to justify and
12 rationalize the unlawful killing of twenty (20) year-old Adame by stating that there were a lot
13 of unknowns, he was by himself, and that Adame was moving his hands.
14

15 **COUNT I: EXCESSIVE FORCE (42 U.S.C. § 1983)**

16 31. Plaintiffs incorporate the allegations stated in each Paragraph of this Complaint
17 as if restated fully herein.
18

19 32. As described in the preceding paragraphs, the conduct of Defendant Gruver
20 constituted excessive force against Derek Adame in violation of the United States Constitution.
21

22 33. The conduct and actions of Defendant Gruver, acting in concert and under color
23 of law, in authorizing, directing, and/or shooting a firearm in Adame’s right forearm, torso, and
24 right shoulder causing his premature death, was excessive and unreasonable, was done
25 intentionally, willfully, with a deliberate indifference and/or with reckless disregard for the
26 natural and probable consequences of his actions, was done without lawful justification or
27 reason, and was designed to and did cause specific and serious physical pain and suffering in
28 violation of Plaintiff’s rights as guaranteed under 42 U.S.C. § 1983, including the right to be

1 free from the use of excessive, unreasonable, and unjustified force.

2
3 34. The actions of Defendant Gruver as described above violated and deprived
4 Adame of his clearly established and well-settled civil rights to be free from the use of
5 excessive and deadly force, as well as the deprivation of liberty without due process of law and
6 equal protection of the law.

7
8 35. The death of Adame was directly and proximately caused by the aforementioned
9 violations and deprivation of his constitutional rights by Defendant Gruver, as Defendant
10 Gruver unlawfully used deadly force against Adame when it was blatantly unwarranted and
11 unjustified to do so.

12
13 36. On November 26, 2016, Defendant Gruver used unnecessary and excessive
14 force on Adame of life, liberty, and due process of law. Defendant Gruver jumped into
15 Adame's vehicle while his firearm was drawn and pointed at Adame, and shot him twice.

16
17 37. As a direct and proximate result of said Defendant City's and Defendant
18 Gruver's acts, omissions, and excessive force, Adame was deprived of his rights to due process
19 of law, equal protection, and the right to life guaranteed to him by the Fourth and Fourteenth
20 Amendments of the United States Constitution.

21
22 38. The conduct described in this Count was undertaken by Defendant Gruver
23 within the scope of his employment and under the color of law such that his employer,
24 Defendant City, is liable for his actions.

25
26 39. The conduct described in this Count was objectively unreasonable and was
27 undertaken intentionally with willful indifference to Adame's constitutional rights and to the
28 resulting harm to Adame and Plaintiffs.

1 40. As a result of the conduct described in this Court, Plaintiffs suffered damages.

2 **COUNT II: SUPERVISORY LIABILITY (42 U.S.C. § 1983)**

3
4 41. Plaintiff incorporate the allegations stated in each of the Paragraphs of this
5 Complaint as if restated fully herein.

6 42. Defendant City has a duty to provide reasonable and effective operations of its
7 police department.

8 43. Defendant City also has a duty to establish proper policies, customs, and
9 regulations of the police department.

10 44. The wrongful death of Adame was directly and proximately caused by the
11 failure, negligence, and carelessness of the Defendant City because it failed to properly hire,
12 train, and supervise the police officers it employs.

13 45. The conduct described in this Count was undertaken by Defendant Gruver
14 within the scope of his employment and under the color of law such that his employer,
15 Defendant City, is liable for his actions.

16 46. As a result of the conduct described in this Court, Plaintiffs suffered damages.

17 **COUNT III: FAILURE TO INTERVENE (42 U.S.C. § 1983)**

18 47. Plaintiffs hereby incorporate all above paragraphs as through fully set forth
19 herein.

20 48. Pleading in the alternative, Defendant McGonigle had a reasonable opportunity
21 to prevent the violations of Adame's constitutional rights as described in this Complaint had
22 they been so inclined, but failed to do so.

23 49. Defendant McGonigle's actions were undertaken intentionally and with reckless
24
25
26
27
28

1 indifference to Adame's rights.

2 50. As a direct and proximate result of the misconduct described in this Count,
3 Adame's constitutional rights were violated, and Adame and Plaintiffs suffered damages.
4

5 **COUNT IV: MUNICIPAL LIABILITY (42 U.S.C. § 1983)**

6 51. Plaintiffs hereby incorporate all above paragraphs as through fully set forth
7 herein.
8

9 52. Defendant City have a duty to provide reasonable and effective operations of its
10 police department.
11

12 53. Defendant City also have a duty to establish proper policies, customs, and
13 regulations of the police department.
14

15 54. Defendant City directly caused the constitutional violations suffered by Adame,
16 and is liable for the damages suffered by Adame and Plaintiffs as a result of the conduct of the
17 defendant officers. The conduct of Defendant and the surrounding officers was a direct
18 consequence of policies and practices of Defendant City.
19

20 55. At all times relevant to this complaint, Defendant City, acting through the
21 Surprise Police Department, had in effect policies, practices, and customs that condoned and
22 fostered the unconstitutional conduct of the individual defendants, and were a direct and
23 proximate cause of damages and injures complained of herein.
24

25 56. The wrongful policies, practices, customs and/or usages complained of herein,
26 demonstrated a deliberate indifference on the part of policymakers of the Defendant City to the
27 constitutional rights of persons within the city, and were the direct and proximate cause of the
28 violations of Adames' rights alleged herein.

COUNT V: WRONGFUL DEATH

1
2
3 57. Plaintiffs hereby incorporate all above paragraphs as though fully set forth
4 herein.

5 58. As described in the preceding Paragraphs of this Complaint, Defendant Gruver
6 committed a wrongful act that caused Adame's premature death.
7

8 59. Defendant Gruver intentionally, negligently and outside of Police Department
9 policy, jumped into Adame's vehicle with his firearm withdrawn and fired his firearm at
10 Adame, causing a harmful or offensive contact with Adame to occur. This harmful or
11 offensive contact caused Adame's death.
12

13 60. Defendant Gruver fired his firearm with reckless indifference to the result or the
14 rights or safety of others. In doing so, Defendant Gruver breached his duty to refrain from such
15 conduct.
16

17 61. The conduct described in this Count was undertaken by Defendant Gruver
18 within the scope of his employment and under the color of law such that his employer,
19 Defendant City, is liable for his actions.
20

21 62. As a result of the conduct as described in this Court, Adame's death occurred
22 and Plaintiffs occurred and Plaintiffs suffered damages.
23

24 **DAMAGES**

25 63. As a direct and proximate result of the violations and deprivation of Adame's
26 rights, he suffered severe, painful, and fatal injuries.
27

28 64. As a direct and proximate result of these actions, Plaintiffs lost the love, care,
companionship, comfort, guidance, services, and support of Adame.

1 65. As a direct and proximate result of these actions, Plaintiffs have experienced
2 pain, grief, sorrow, anguish, stress, shock, and mental suffering presently and is reasonably
3 probable to experience in the future.
4

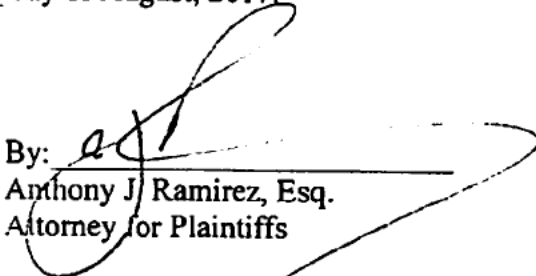
5 66. As a direct and proximate result of these actions, Plaintiffs have lost income and
6 services as a result of the death, and is reasonably probable to be lost in the future.
7

8 67. As a direct and proximate result of the injuries to Adame, Plaintiffs have
9 become obligated for necessary medical care and service for the injury that resulted in the
10 untimely death.
11

12 68. As a direct and proximate result of the injuries to Adame, Plaintiffs have
13 become obligated for necessary funeral and burial expenses.
14

15 **WHEREFORE**, for all of the foregoing reasons, Plaintiffs, MARIE ADAME and
16 C. ^{Redacted} A ^{Redacted} through her mother CLARISA ABARCA, respectfully request that the
17 Court enter judgement in their favor and against Defendants, CITY OF SURPRISE and
18 JOSEPH GRUVER and SHAUN MCGONIGLE awarding compensatory damages, punitive
19 damages, and any other relief this Court deems just and appropriate.
20

21 RESPECTFULLY SUBMITTED this 8th day of August, 2017.
22

23
24
25 By: 
26 Anthony J. Ramirez, Esq.
27 Attorney for Plaintiffs
28

27 \\
28 \\
29

1 **ORIGINAL** and one copy of the foregoing of the foregoing
2 filed this ___ day of August, 2017 with:

3 Clerk of the Court
4 Maricopa County Superior Court

5 **COPY** of the foregoing mailed/delivered
6 this _____ day of August, 2017 to:

7 Surprise City Prosecutor
8 16000 North Civic Center Plaza
9 Surprise, AZ 85374

10 City of Surprise
11 Office of the City Clerk
12 16000 North Civic Center Plaza
13 Surprise. AZ 85374

14 By: _____
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MY AZ LAWYERS**
2 **Anthony J. Ramirez #033119**
3 1731 W. Baseline Road, Suite 101
4 Mesa, Arizona 85202
5 Telephone: (480) 263-1699
6 Facsimile: (480) 478-0714
7 anthony@myazlawyers.com
8 *Attorney for Plaintiffs*

COPY

AUG 09 2017



MICHAEL K. JEANES, CLERK
DEPUTY CLERK

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 MARIA ADAME, in her individual capacity,
12 CLARISA ABARCA, as parent of minor child
13 C. ^{Redacted} A. ^{Redacted}, in her individual capacity,
14 and the ESTATE OF DEREK ADAME, as
15 statutory beneficiaries of the claim for
16 wrongful death of Derek Adame, deceased,

17 Plaintiffs,

18 v.

19 CITY OF SURPRISE, SURPRISE POLICE
20 DEPARTMENT, OFFICER JOSEPH
21 GRUVER and OFFICER SHAUN
22 MCGONIGLE

23 Defendants.

CV2017-095167

NO.

**DEMAND FOR JURY TRIAL
(TORT – NON-MOTOR VEHICLE)**

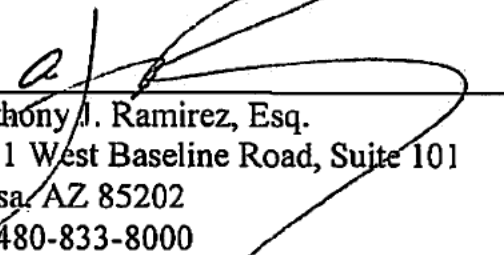
ASSIGNED TO:

24 Plaintiffs, by and through undersigned counsel, pursuant to Rule 38, Arizona
25 Rules of Civil Procedure, hereby request trial by jury in the event this matter is not set
26 for compulsory arbitration or an appeal is taken from arbitration.

27 \\
28 \\
\\

1 DATED this 8TH day of August, 2017.
2
3

4
5 MY ARIZONA LAWYERS, PLLC.

6
7 By 
8 Anthony J. Ramirez, Esq.
9 1731 West Baseline Road, Suite 101
10 Mesa, AZ 85202
11 P. 480-833-8000
12 Attorney for Plaintiffs
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MYAZ LAWYERS**
2 **Anthony J. Ramirez #033119**
3 1731 W. Baseline Road, Suite 101
4 Mesa, Arizona 85202
5 Telephone: (480) 263-1699
6 Facsimile: (480) 478-0714
7 anthony@myazlawyers.com
8 *Attorney for Plaintiffs*

COPY

AUG 09 2017



AMANDA JENNER, CLERK
DEPUTY CLERK

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 MARIA ADAME, in her individual capacity,
12 CLARISA ABARCA, as parent of minor child
13 C, ^{Redacted} A ^{Redacted} in her individual capacity,
14 and the ESTATE OF DEREK ADAME, as
15 statutory beneficiaries of the claim for
16 wrongful death of Derek Adame, deceased,

17 Plaintiffs,

18 v.

19 CITY OF SURPRISE, SURPRISE POLICE
20 DEPARTMENT, OFFICER JOSEPH
21 GRUVER and OFFICER SHAUN
22 MCGONIGLE

23 Defendants.

CV 2017-095167

CASE NO.

**CERTIFICATE OF COMPULSORY
ARBITRATION**

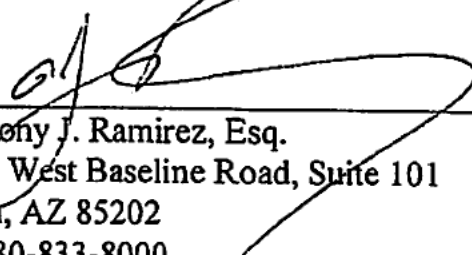
(TORT - NON-MOTOR VEHICLE)

ASSIGNED TO:

24
25 The undersigned certifies that the largest award sought by Plaintiffs, including
26 punitive damages, but excluding interest, attorneys' fees, and costs exceeds the limits
27 set by Local Rule for compulsory arbitration. This case is not subject to the Arizona
28 Rules of Civil Procedure governing compulsory arbitration.

1 DATED this 8th day of August, 2017.
2
3
4

5 MY ARIZONA LAWYERS, PLLC.

6
7 By 
8 Anthony J. Ramirez, Esq.
9 1731 West Baseline Road, Suite 101
10 Mesa, AZ 85202
11 P. 480-833-8000
12 Attorney for Plaintiffs
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MYAZ LAWYERS**
2 **Anthony J. Ramirez #033119**
3 1731 W. Baseline Road, Suite 101
4 Mesa, Arizona 85202
5 Telephone: (480) 263-1699
6 Facsimile: (480) 478-0714
7 anthony@myazlawyers.com
8 *Attorney for Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 MARIA ADAME, in her individual capacity,
12 CLARISA ABARCA, as parent of minor child
13 C. ^{Redacted} A ^{Redacted} in her individual capacity,
14 and the ESTATE OF DEREK ADAME, as
15 statutory beneficiaries of the claim for
16 wrongful death of Derek Adame, deceased,

17 Plaintiffs,

18 v.

19 CITY OF SURPRISE, SURPRISE POLICE
20 DEPARTMENT, OFFICER JOSEPH
21 GRUVER and OFFICER SHAUN
22 MCGONIGLE

23 Defendants.

NO. CV2017-095167

**WAIVER OF SERVICE OF SUMMONS
RE:**

**CITY OF SURPRISE POLICE
DEPARTMENT**

24 TO: Anthony Ramirez, Plaintiffs' attorney:

25 I, Jim Jellison, acknowledge receipt of your request that I waive service of the
26 summons in the above captioned action, which is case number CV2017-095167, in the
27 Superior Court of the State of Arizona in and for the County of Maricopa. I have also
28

1 received a copy of the complaint in the action, two copies of this instrument, and a means
2 by which I can return the signed waiver to you without cost to me.
3

4 I agree to save the cost of service of a summons and an additional copy of the
5 complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am
6 acting) be served with judicial process in the manner provided by the Arizona Rules of
7 Civil Procedure.
8
9

10 I (or the entity on whose behalf I am acting) will retain all defenses or objections
11 to the lawsuit or to the jurisdiction or venue of the court except for objections based on
12 a defect in the summons or in the service of the summons.
13

14 I understand that a judgment may be entered against me (or the party on whose
15 behalf I am acting) if an answer or motion under Rule 12 is not served upon you within
16 sixty (60) days after the Request for Waiver of Service of Summons was sent, or within
17 ninety (90) days after that date if the request was sent outside the United States.
18
19

20 DATED this 7th day of SEPTEMBER, 2017.
21

22
23 
24 Jim Jellison, Esq.
25

26 **DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS**
27

28 Rule 4.1 and Rule 4.2 of the Arizona Rules of Civil Procedure require certain parties to cooperate in saving unnecessary costs of service of the summons and the

1 pleading. A defendant located in the United States who, after being notified of an action
2 and asked by a plaintiff located in the United States to waive service of a summons, fails
3 to do so will be required to bear the cost of such service unless good cause be shown for
4 its failure to sign and return the waiver.
5
6

7 It is not good cause for a failure to waive service that a party believes that the
8 complaint is unfounded, or that the action has been brought in an improper place or in a
9 court that lacks jurisdiction over the subject matter of the action or over its person or
10 property. A party who waives service of the summons retains all defenses and objections
11 (except any relating to the summons or to the service of the summons), and may later
12 object to the jurisdiction of the court or to the place where the action has been brought.
13
14
15

16 A defendant who waives service must, within the time specified on the waiver
17 form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the
18 complaint and also must file a signed copy of the response with the court. If the answer
19 or motion is not served within this time, a default judgment may be taken against that
20 defendant. By waiving service, a defendant is allowed more time to answer than if the
21 summons had been actually served when the request for waiver of service was received.
22
23
24
25
26
27
28

1 **MY AZ LAWYERS**
2 **Anthony J. Ramirez #033119**
3 1731 W. Baseline Road, Suite 101
4 Mesa, Arizona 85202
5 Telephone: (480) 263-1699
6 Facsimile: (480) 478-0714
7 anthony@myazlawyers.com
8 *Attorney for Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 MARIA ADAME, in her individual capacity,
12 CLARISA ABARCA, as parent of minor child
13 C^{Redacted} A^{Redacted} in her individual capacity,
14 and the ESTATE OF DEREK ADAME, as
15 statutory beneficiaries of the claim for
16 wrongful death of Derek Adame, deceased,

17 Plaintiffs,

18 v.

19 CITY OF SURPRISE, SURPRISE POLICE
20 DEPARTMENT, OFFICER JOSEPH
21 GRUVER and OFFICER SHAUN
22 MCGONIGLE

23 Defendants.

NO. CV2017-095167

**WAIVER OF SERVICE OF SUMMONS
RE:**

OFFICER JOSEPH GRUVER

24 TO: Anthony Ramirez, Plaintiffs' attorney:

25 I, Jim Jellison, acknowledge receipt of your request that I waive service of the
26 summons in the above captioned action, which is case number CV2017-095167, in the
27 Superior Court of the State of Arizona in and for the County of Maricopa. I have also
28

1 received a copy of the complaint in the action, two copies of this instrument, and a means
2 by which I can return the signed waiver to you without cost to me.
3

4 I agree to save the cost of service of a summons and an additional copy of the
5 complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am
6 acting) be served with judicial process in the manner provided by the Arizona Rules of
7 Civil Procedure.
8
9

10 I (or the entity on whose behalf I am acting) will retain all defenses or objections
11 to the lawsuit or to the jurisdiction or venue of the court except for objections based on
12 a defect in the summons or in the service of the summons.
13

14 I understand that a judgment may be entered against me (or the party on whose
15 behalf I am acting) if an answer or motion under Rule 12 is not served upon you within
16 sixty (60) days after the Request for Waiver of Service of Summons was sent, or within
17 ninety (90) days after that date if the request was sent outside the United States.
18
19

20 DATED this 7th day of SEPTEMBER, 2017.
21

22
23 
24 Jim Jellison, Esq.
25

26 **DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS**
27

28 Rule 4.1 and Rule 4.2 of the Arizona Rules of Civil Procedure require certain parties to cooperate in saving unnecessary costs of service of the summons and the

1 pleading. A defendant located in the United States who, after being notified of an action
2 and asked by a plaintiff located in the United States to waive service of a summons, fails
3 to do so will be required to bear the cost of such service unless good cause be shown for
4 its failure to sign and return the waiver.
5
6

7 It is not good cause for a failure to waive service that a party believes that the
8 complaint is unfounded, or that the action has been brought in an improper place or in a
9 court that lacks jurisdiction over the subject matter of the action or over its person or
10 property. A party who waives service of the summons retains all defenses and objections
11 (except any relating to the summons or to the service of the summons), and may later
12 object to the jurisdiction of the court or to the place where the action has been brought.
13
14
15

16 A defendant who waives service must, within the time specified on the waiver
17 form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the
18 complaint and also must file a signed copy of the response with the court. If the answer
19 or motion is not served within this time, a default judgment may be taken against that
20 defendant. By waiving service, a defendant is allowed more time to answer than if the
21 summons had been actually served when the request for waiver of service was received.
22
23
24
25
26
27
28

1 **MYAZ LAWYERS**
2 **Anthony J. Ramirez #033119**
3 1731 W. Baseline Road, Suite 101
4 Mesa, Arizona 85202
5 Telephone: (480) 263-1699
6 Facsimile: (480) 478-0714
7 anthony@myazlawyers.com
8 *Attorney for Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 MARIA ADAME, in her individual capacity,
12 CLARISA ABARCA, as parent of minor child
13 C. ^{Redacted} A ^{Redacted} in her individual capacity,
14 and the ESTATE OF DEREK ADAME, as
15 statutory beneficiaries of the claim for
16 wrongful death of Derek Adame, deceased,

17 Plaintiffs,

18 v.

19 CITY OF SURPRISE, SURPRISE POLICE
20 DEPARTMENT, OFFICER JOSEPH
21 GRUVER and OFFICER SHAUN
22 MCGONIGLE

23 Defendants.

NO. CV2017-095167

WAIVER OF SERVICE OF SUMMONS
RE:

OFFICER SHAUN MCGONIGLE

24 TO: Anthony Ramirez, Plaintiffs' attorney:

25 I, Jim Jellison, acknowledge receipt of your request that I waive service of the
26 summons in the above captioned action, which is case number CV2017-095167, in the
27 Superior Court of the State of Arizona in and for the County of Maricopa. I have also
28

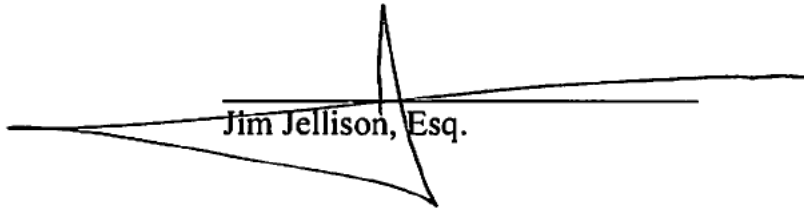
1 received a copy of the complaint in the action, two copies of this instrument, and a means
2 by which I can return the signed waiver to you without cost to me.
3

4 I agree to save the cost of service of a summons and an additional copy of the
5 complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am
6 acting) be served with judicial process in the manner provided by the Arizona Rules of
7 Civil Procedure.
8
9

10 I (or the entity on whose behalf I am acting) will retain all defenses or objections
11 to the lawsuit or to the jurisdiction or venue of the court except for objections based on
12 a defect in the summons or in the service of the summons.
13

14 I understand that a judgment may be entered against me (or the party on whose
15 behalf I am acting) if an answer or motion under Rule 12 is not served upon you within
16 sixty (60) days after the Request for Waiver of Service of Summons was sent, or within
17 ninety (90) days after that date if the request was sent outside the United States.
18
19

20 DATED this 8th day of SEPTEMBER, 2017.
21

22
23 
24 Jim Jellison, Esq.
25

26 **DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS**
27

28 Rule 4.1 and Rule 4.2 of the Arizona Rules of Civil Procedure require certain parties to cooperate in saving unnecessary costs of service of the summons and the

1 pleading. A defendant located in the United States who, after being notified of an action
2 and asked by a plaintiff located in the United States to waive service of a summons, fails
3 to do so will be required to bear the cost of such service unless good cause be shown for
4 its failure to sign and return the waiver.
5
6

7 It is not good cause for a failure to waive service that a party believes that the
8 complaint is unfounded, or that the action has been brought in an improper place or in a
9 court that lacks jurisdiction over the subject matter of the action or over its person or
10 property. A party who waives service of the summons retains all defenses and objections
11 (except any relating to the summons or to the service of the summons), and may later
12 object to the jurisdiction of the court or to the place where the action has been brought.
13
14
15

16 A defendant who waives service must, within the time specified on the waiver
17 form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the
18 complaint and also must file a signed copy of the response with the court. If the answer
19 or motion is not served within this time, a default judgment may be taken against that
20 defendant. By waiving service, a defendant is allowed more time to answer than if the
21 summons had been actually served when the request for waiver of service was received.
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff Maria Adame ; Clarisa Abarca ; , (s): C.A., minor	, City of Surprise; , Surprise Police Defendant Department; Joseph Gruver , (s): Police Officer; Shaun McGonigle , Police Officer
---	---

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Anthony Ramirez , Attorney (Maria Adame ;
 Clarisa Abarca ; , C.A., minor)
MY AZ LAWYERS
1731 West Baseline, suite 101
Mesa, Arizona 85202
480-263-1699

Defendant's Atty(s):

James M. Jellison , Attorney (, City of
 Surprise; , Surprise Police Department; Joseph
 Gruver , Police Officer; Shaun McGonigle ,
 Police Officer)
Jellison Law Offices
2020 N. Central, suite 670
Phoenix, Arizona 85004
602-772-5520

REMOVAL FROM MARICOPA COUNTY, CASE #CV 2017-095167

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
 Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin : **2. Removed From State Court**

V. Nature of Suit: **440 Other Civil Rights**

VI.Cause of Action: **42 U.S.C. section 1983**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/James M. Jellison

Date: 9/20/2017

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

**SUPPLEMENTAL CIVIL COVER SHEET
FOR CASES REMOVED FROM ANOTHER JURISDICTION**

This form must be attached to the Civil Cover Sheet at the time
the case is filed in the United States District Clerk's Office

Additional sheets may be used as necessary.

1. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party</u>	<u>Party Type</u>	<u>Attorney(s)</u>
Maria Adame, in her individual capacity Clarisa Abarca, as parent of minor child; C.A. in her individual capacity, and the Estate of Derek Adame	Plaintiffs	Anthony J. Ramirez (state bar no. 033119) MY AZ LAWYERS 1731 West Baseline Road, Suite 101 Mesa, AZ 85202 (480) 263- 1699
City of Surprise City of Surprise Police Department City of Surprise Officer Gruver City of Surprise Officer McGonigle	Defendants	James M. Jellison (state bar no. 012763) for Defendants Jellison Law Offices, PLLC 2020 North Central Avenue, Suite 670 Phoenix, AZ 85004 (602) 772-5520

2. Jury Demand:

Was a Jury Demand made in another jurisdiction? Yes No
If "Yes," by which party and on what date?

In the Maricopa County Superior Court by Plaintiff on August 9, 2017.

3. Answer:

Was an Answer made in another jurisdiction? Yes No
If "Yes," by which party and on what date?

4. Served Parties:

The following parties have been served at the time this case was removed:

<u>Party</u>	<u>Date Served</u>	<u>Method of Service</u>
Defendant City of Surprise	08/22/2017	process server
City of Surprise Police Department	09/07/2017	waiver of service
City of Surprise officers Gruver and McGonigle	09/07/2017	waiver of service

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claims</u>
Plaintiff	alleges violations to 42 U.S.C section 1983; excessive force, supervisory liability, failure to intervene, municipal liability, and wrongful death.

Pursuant to 28 USC § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.