

OCTOBER 16, 2023

SENT VIA CERTIFIED MAIL / IN-PERSON

City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403	Officer Joshua R. Condra (326) C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403	Corporal Dana Peterson C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403
Officer Chad.T. Graybeal C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403	Sergeant Clint Wilcox C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403	Officer Cameron Hollis (296) C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403
Officer Julio Flores C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403	Officer Danielle Banuelos C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403	Officer Aron Phoenix C/O City of Lake Havasu 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403

Re: Notice of Claim – David Hezekiah Adams

To Whom It May Concern:

Pursuant to A.R.S. § 12-821.01, this Notice of Claim is submitted by **David Hezekiah Adams** (the “Claimant”) for claims – including, but not limited to – intentional infliction of emotional distress (“IIED”); Assault; Negligence; Gross Negligence; Negligent Hiring/Training/Supervision; False Imprisonment; Instigation of False Imprisonment; Malicious Prosecution; Civil Conspiracy; 42 U.S.C. § 1983 claims for violation of Claimant’s 4th Amendment right to be free from excessive and unreasonable force, Claimant’s right to be free from unreasonable search/seizure, *Monell* violations against the City of Lake Havasu (the “City”), and potential violations of the 5th Amendment’s and 14th Amendment’s due process and equal protection rights; and 42 U.S.C. § 1985 Conspiracy.

These claims arise from the extreme and recklessly indifferent actions on June 7, 2023 resulting in severe and life-altering injuries to David (the “Incident”) occurring at the hands of the City’s Police Department and its officers Chad T. Graybeal (“Graybeal”), Officer Julio Flores (“Flores”), Joshua R. Condra (326) (“Condra”), Sergeant Clint Wilcox (“Wilcox”), Officer Danielle Banuelos (“Banuelos”), Corporal Dana Peterson (“Peterson”), Officer Cameron Hollis (296) (“Hollis”), Officer Aron Phoenix (“Phoenix”), and other Officers (collectively, the “Offenders”).

Specifically, this NOC is being brought against the Offenders and the City.

The Claimant, via his counsel and otherwise, are still investigating the events in question. Accordingly, this Notice of Claim is based largely on the information currently available including without limitation a review of documents provided by the Claimant.

A Litigation Hold Letter (the “Lit Hold”) was sent via certified mail/fax/email by undersigned counsel to Lake Havasu Police Department, 2360 McCulloch Blvd. N. Lake Havasu City, AZ 86403; Lake Havasu Fire Department, 2330 McCulloch Blvd. N. Lake Havasu City, AZ 86403; and the City of Lake Havasu, 2330 McCulloch Blvd. N. Lake Havasu, AZ 86403 on June 27, 2023.

Undersigned counsel received certified mail receipts signed June 30, 2023 regarding the Lit Hold.

A public records’ request pursuant to A.R.S § 39-121 *et al.* was submitted to the City of Lake Havasu by undersigned counsel on July 12, 2023. To date – nearly three months later – our public records request has not been fulfilled *or even responded to in any way.*

The certified mail receipts for delivery of the public records’ request were received back on July 21, 2023.

Because of the stonewalling being performed by the City in regards to our properly submitted public records request dated July 12, 2023, undersigned counsel is further putting the City on notice that they are violating public records statutes and are liable under Arizona law for damages stemming from the refusal to comply.

We are prepared to file a lawsuit against the City for its refusal to comply. In lawsuits alleging the denial of requested public records, a court may award attorneys’ fees and other legal costs to requesters who substantially prevail. A.R.S. § 39-121.02(B). This does not limit the rights of any party to recover attorney’s fees, expenses, and double damages that are authorized by other statutes. *Id.*

Furthermore, a public officer or agency may also be liable for damages that result from wrongfully denying a person access to public records. A.R.S. § 39-121.02(c)

THIS NOTICE OF CLAIM IS BEING SUBMITTED BASED ON THE INFORMATION AT HAND. THE CITY IS THE SOLE CUSTODIAN OF ALL RECORDS PERTAINING TO POLICIES, PROCEDURES, AND THE RECKLESSLY INDIFFERENT AND NEGLIGENT ACTIONS OF CITY OFFICERS.

THROUGH A PUBLIC RECORDS REQUEST, THE CITY HAS NOT PROVIDED THE FULL NAMES OF ALL POTENTIAL OFFICERS/DEPUTIES RESPONSIBLE FOR THE ACTS AND OMISSIONS DETAILED HEREIN. THEREFORE, THE CLAIMANT RESERVES THE RIGHT TO AMEND HIS NOTICE OF CLAIM OR COMPLAINT IN A COURT OF COMPETENT JURISDICTION BASED ON THE LACK OF INFORMATION CURRENTLY IN THE CITY’S SOLE CUSTODY AND CONTROL BEING WITHHELD FROM CLAIMANT BASED ON EQUITABLE LEGAL THEORIES INCLUDING THE DISCOVERY RULE.

IF FOR ANY REASON YOU BELIEVE THIS NOTICE OF CLAIM IS NOT IN COMPLIANCE WITH A.R.S. § 12-821.01, OR IF ADDITIONAL FACTS/INFORMATION IS NEEDED, PLEASE CONTACT UNDERSIGNED COUNSEL AT THE NUMBER LISTED BELOW.

The Claimant will seek an award of damages reasonably calculated to compensate for the injuries he suffered in the Incident.

Furthermore, the terms and content of this NOC are subject to Rule 408 of the Arizona Rules of Evidence and Rule 408 of the Federal Rules of Evidence.

I. FACTUAL BASIS ESTABLISHING LIABILITY

Two brothers had a sibling rivalry moment. This is normal. They exchanged words and had a tug of war over a blanket that each wanted to use. As the words became more heated, David told his brother to leave. His brother left the apartment and then called the police because David locked him out. The brothers' sister reported to police that there was a tug of war, but no punches were thrown and then it ended.

David told all officers on scene that they were not allowed to enter the resident. David told his sister and brother not to let the officers in. After nearly an hour of Officers cajoling and compelling Rebekah under duress, she came outside to talk with the officers. The Officers then took the opportunity to enter the residence without explicit permission.

The responding officers knew the Adams family. They also knew David. They knew David was – according to them – “special needs.” They somehow knew that David’s mother, Casandra was not home. They called her the family “controller” and espoused that she wouldn’t be interfering because she was gone. They had motivation from previous contacts to escalate a simple situation to the extreme. Knowing that Casandra’s developmentally delayed child was home without her, they did just that – escalated the situation far beyond that which was necessary.

Officer Graybeal and Officer Condra entered the apartment without permission or warrant. They walked directly up to David.

As they approached David, David repeatedly told them to leave the residence. David had just woken up and rose from his bed to tell the officers to leave. The officers report that David grabbed his cellphone. Instead of using *any* de-escalation techniques, Officer Condra grabbed David’s arm forcefully and immediately and attempted to wrench it behind his back. David, a developmentally disabled individual who was groggy after being asleep and being woken up by the ridiculous number of officers who responded on-scene was understandably confused by the situation.

Suddenly, the officers rushed David, tackling him into a sitting position with their full weight pressed against David’s back, neck, and they grabbed his arms. David – throughout this horrific event – told the officers repeatedly that he had done nothing wrong and that they were hurting him and at points that he could not breathe.

David was stuck in a position that made it extremely difficult if not impossible to move his arms behind his back. Video footage proves this. Video footage also proves that David was in no way attacking, assaulting, or even physically resisting arrest.

The officers then started tasing David. They tased him not once, not twice, but at least thirty times, and likely in the forties based on medical examination. Officer Condra reports that he drive stunned David in his back, then his right thigh, then his stomach. David yelled that he was having seizures. Officer Condra didn't care. He then reports that he tased David in his stomach *again*. David was having a health crisis and the officers could not have cared less. In fact, Officer Condra then reports that instead of de-escalating and bringing medical in to evaluate David – like any reasonable officer would have done – that he punched David in his right bicep with a closed fist. Officer Condra then reports that he continued to drive stun David with his taser.

Wilcox continually pushes David's face into a plastic bag, causing David to face suffocation. In fact, David's face turned blue multiple times as a result of Wilcox's actions.

The officers also injected David multiple times with an unknown substance via syringe. To date, nobody has provided the information as to what substance was used when they injected it into David's body.

During the Incident, David's brother Noah began videotaping with his cellphone. David can be heard screaming that they are hurting him, that he cannot breathe, and that he didn't do anything wrong.

Noah repeatedly tells the officers to stop hurting his brother. Eventually, the officers – still amped up – pushed Noah forcefully out of the apartment threatening him that he would also be tased and slammed the front door on his foot.

During the Incident, David passed out multiple times. The Offenders even refer to him as a “dead body.” (All of the above, collectively, the “Incident”).

Inexplicably, David was charged with Disorderly Conduct/Domestic Violence, a Class 1 misdemeanor in violation of ARS § 13-2904.A.1, 13-3601, 13-707, 13-902, and 13-802; Assault/Domestic Violence, A Class 1 misdemeanor, in violation of ARS § 13-1203.a.1, 13-3601, 13-707, 13-902, and 13-802; and, Resisting Arrest, A Class 1 Misdemeanor in violations of ARS § 13-1203.a.1, 13-3601, 13-707, 13-802, and 13-902.

II. INJURIES

David suffered severe and life-altering injuries due to the Incident. The extreme electrical shocks David received have resulted in a diagnosis of Rhabdomyolysis (“Rhabdo”). Furthermore, he has hyperkalemia, hyperphosphatemia, and myoglobinuri. Rhabdo is caused by the death of muscle fibers and the resultant release of those fibers into the bloodstream. According to the CDC:

Rhabdomyolysis (often called rhabdo) is a serious medical condition that can be fatal or result in permanent disability. Rhabdo occurs when damaged muscle tissue releases its proteins and

electrolytes into the blood. These substances can damage the heart and kidneys and cause permanent disability or even death.

Furthermore, David's Creatine Kinase ("CK") levels are rising to a deadly level – multitudes higher than the normal range of 55-170.

David has had to make repeated visits to the hospital and doctors to monitor his condition and has had to make emergency visits because of the symptoms he has been feeling.

David can no longer work as he is incapable of maintaining his health. It is feared that the Incident has potentially caused him to face the deadly diagnosis of Multiple Sclerosis.

III. LEGAL BASIS OF CLAIMS

a. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

To sue for intentional infliction of emotional distress, a claimant must show: (1) defendant's conduct was extreme and outrageous; (2) defendant either intended or recklessly disregarded the certainty that the claimant would suffer emotional distress; and (3) the claimant suffered emotional distress. *Mintz v. Bell Atl. Sys. Leasing Int'l, Inc.*, 183 Ariz. 550, 553, 905 P.2d 559, 562 (Ct. App. 1995).

The Offenders engaged in extreme and outrageous conduct by repeatedly tasing, suffocating, and injecting David with an unknown substance. Through their conduct, the Offenders either intended or completely disregarded David's dignity and constitutional rights and knew their conduct would lead Claimant to suffer emotional distress. Thus, the Offenders are liable for intentional infliction of emotional distress.

b. VIOLATION OF EQUAL PROTECTION OF THE LAW UNDER FOURTEENTH AMENDMENT

By the actions described above, the entities and individuals to whom this Notice of Claim is addressed violated David Adams' right to freedom from unreasonable seizure and excessive force as protected by the Fourth Amendment of the United States Constitution and his right to equal protection of the law as protected by the Fourteenth Amendment to the United States Constitution.

c. 42 U.S.C. § 1983 - EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AMENDMENT

42 U.S.C. § 1983 provides individuals with a cause of action to sue for violations of his or her constitutional rights. The 14th Amendment protects individuals from constitutional violations of State and local authorities. As incorporated by the 14th Amendment, the 4th Amendment protects individuals from the use of excessive force by law enforcement officers. The Offenders, while acting in their official capacity and individual capacities and under the color of law, violated David Adams' rights to freedom from unreasonable seizures.

Under Article 2, Section 8 (Rights to Privacy) and 13 (Equal Privileges and Immunities) of the Arizona Constitution: By authorizing, acquiescing in, employing, failing to adequately train or supervise those directly involved in and/or participating in or being deliberately indifferent to the force used on David Adams. The entities and individuals to whom this Notice of Claim is addressed violated David Adams' right to freedom from unreasonable seizure. David Adams was also subjected to unreasonable seizure based on the Offenders' use of excessive force. The Offenders had a duty to refrain from using excessive force in specific circumstances. The Offenders used excessive force by punching, tasing, suffocating, and injecting David. He was not brandishing a weapon nor was a weapon near his body.

David was neither a threat of death nor of great bodily harm to the Offenders, nor was he engaging in any conduct that justified the extent of force used by the Offenders.

By ruthlessly beating, tasing, suffocating, and injecting David first and asking questions later, the Offenders violated David Adams' rights. The Offenders had available to them common sense and reason. They could have done a million things other than what they chose to do.

d. NEGLIGENCE

The basic elements of actionable negligence are a duty owed to the plaintiff, a breach thereof and an injury proximately caused by the breach. *Ballesteros v. State*, 161 Ariz. 625, 627, 780 P.2d 458, 460 (App. 1989).

“A duty is a matter of ‘the relation between individuals which imposes upon one a legal obligation for the benefit of another.’” *Id.* (internal citations omitted). A duty is breached when the defendant fails to conform to the standard of care reasonable under the circumstances. *Ballesteros*, 161 Ariz. at 627.

The Offenders, while acting as agents and employees for the City, owed a duty to David to perform their responsibilities as officers of the law and avoid harm to David. The Offenders, while acting as agents and employees for the City, owed a duty to David to act reasonably under the circumstances. The Offenders' use of extreme and barbaric excessive force upon David constitutes recklessness and/or negligence for which the Offenders are individually liable. The Offenders' conduct constitutes negligence and gross negligence for which the Offenders are individually liable. In taking the actions as described above, the Offenders breached their duty to refrain from such unreasonable and indifferent conduct.

e. GROSS NEGLIGENCE

The Offenders' acts and omissions constitute reckless and/or gross negligence for which the individual Offenders are liable. The actions of the Offenders, as described above, were taken with such reckless disregard for the life and safety of David so as to be a conscious violation of David's rights. As a direct and proximate result of the individual Offenders' conduct, David suffered injuries.

f. EXCESSIVE FORCE

Under A.R.S. § 13-409, the use of excessive force by a peace officer against another is justified in using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in

preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:

1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.
2. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.
3. A reasonable person would believe the arrest or detention to be lawful.

The Offenders had a duty to refrain from using excessive force in specific circumstances. David was neither a threat of death or great bodily harm to the officers, nor was he engaging in conduct that justified the extent of force used by the officers.

None of the circumstances required under the statute were present when the Offenders brutally and barbarically beat, tased, suffocated, and injected David.

g. ASSAULT/BATTERY

The Offenders intentionally beat, tased, suffocated, and injected David causing harmful or offensive contact with David. As a direct and proximate result of this harmful or offensive contact, David has suffered and continues to suffer life-altering physical and mental injuries. The Offenders' acts constitute a battery upon David in the above-described bodily contact was intentional, unauthorized, or grossly offensive in nature. The acts and omissions of the Offenders were intentional, negligent, reckless, and unwarranted, and without any just cause or provocation.

As a direct and proximate result of the Offenders conduct, David was deprived of his liberty, and was ultimately permanently injured. The conduct described in this Notice of Claim was undertaken by the Offenders within the scope of their employment and under color of law such that their employer, City is vicariously liable for their actions.

h. NEGLIGENCE HIRING, SUPERVISION, RETENTION, AND/OR TRAINING

City was negligent in their hiring, supervision, retention, and/or training of the Offenders. The acts, omissions, and conduct of the Offenders as described in this Notice of Claim were the direct and proximate cause of the severe and permanent injuries to David and violated David's constitutional, statutory and common law rights as guaranteed by the law and Constitution of the State of Arizona.

IV. SPECIFIC AMOUNT FOR WHICH CLAIM CAN BE SETTLED

As a result, David intends to file an action in Mohave County Superior Court or other appropriate forum in both state and federal court wherein David will seek, among other things, compensatory damages, special damages, and hedonistic damages. David will also seek an award of incurred attorney's fees and costs.

Should this matter proceed to litigation, David will obtain compensatory damages that will include, without limitation:

- a. An award of compensatory damages for David approaching \$20,000,000 for the extreme emotional distress, negligent actions causing injury.
- b. An award of compensatory damages for David for the acts and omissions performed by the Offenders and for loss of consortium caused by the extreme distress.

In addition to his state law claims, David intends to assert claims pursuant to federal law, most particularly 42 U.S.C. § 1983 et seq. Under federal law, in addition to compensatory damages, David will also be entitled to an award of punitive damages and his incurred attorney's fees and costs. See e.g., 42 U.S.C. §1988. Given the gravity of the wrongful conduct, it is foreseeable that these awards will in and of themselves be substantial.

Should David be forced to litigate, it is likely he will obtain a jury verdict that may exceed \$20,000,000.

To avoid years of litigation, it is in the best interest of David to resolve this matter short of litigation in a way that provides solace during this terribly emotional and difficult time and for years to come. Moreover, A.R.S. § 12-821.01 requires the Claimants to include in their Notice of Claim a specific dollar amount for which their claims can be settled;

For David that amount is eight million five hundred thousand dollars (\$8,500,000).

Very truly yours,

MILLS + WOODS LAW



Sean A. Woods

SAW: