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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

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

Plaintiff,

vs.

CITY AND COUNTY OF  
HONOLULU; RONALD V.  
DUMLAO; CHANCE C. CORREA;  
JOSE J. VILLANUEVA; SUSAN  
BALLARD; and JOHN and/or JANE  
DOES 1-10,

CIVIL No. 21-00087  
(Other Civil Action)

COMPLAINT FOR DAMAGES;  
and DEMAND FOR JURY TRIAL

Defendants.

**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 arise from 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 Hawai‘i Revised Statutes 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. Defendant RONALD V. DUMLAO (hereinafter “Dumlao”) is and has been a resident of the State of Hawai‘i at all times relevant to the claims raised in this Complaint.

7. Defendant CHANCE C. CORREA (hereinafter “Correa”) is and has been a resident of the State of Hawai‘i at all times relevant to the claims raised in this Complaint.

8. Defendant JOSE J. VILLANUEVA (hereinafter “Villanueva”) is and has been a resident of the State of Hawai‘i at all times relevant to the claims raised in this Complaint.

9. Defendant SUSAN BALLARD (hereinafter “Ballard”) is and has been a resident of the State of Hawai‘i at all times relevant to the claims raised in this Complaint.

10. JOHN and/or JANE DOES 1-10 (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 HPD and the individually named defendants and within the course and scope of said agency and employment. For purposes of this Complaint, the officers who supervised Defendants Dumlao, Correa, and Villanueva are designated as Doe Defendants 1-5. 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 Doe Defendants 6-10.

### **FACTUAL ALLEGATIONS**

11. 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.

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

13. Mr. Thomas, Girlfriend, and Friend were stopped at a traffic light while still in the Walmart parking lot when a number of government-subsidized, unmarked cars surrounded and boxed-in Vehicle. At that point, Defendants Dumlao, Correa, and Villanueva (hereinafter collectively "Plainclothes Officer Defendants") exited their cars and approached the driver and passenger-side of Vehicle.

14. Upon information and belief, HPD policy requires traffic stops to be conducted by uniformed officers in marked cars.

15. The police report of the subject incident (hereinafter “Police Report”) indicates that Plainclothes Officer Defendants were on-duty, plainclothes HPD officers when they surrounded and boxed-in Vehicle.

16. 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.

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

18. Plainclothes Officer Defendants instructed Mr. Thomas, Friend, and Girlfriend to put their hands in the air. Mr. Thomas, Girlfriend, and Friend immediately complied.

19. As Mr. Thomas, Friend, and Girlfriend raised their hands as they were instructed to do, Officer Correa used his fist to smash the driver-side window of Vehicle and fired a shot into Vehicle, killing Mr. Thomas.

20. Upon information and belief, prior to shooting Mr. Thomas, none of the Plainclothes Officer Defendants issued a verbal warning that shots would be fired.

21. Upon information and belief, during their encounter with Mr. Thomas Plainclothes Officers did not employ any conflict de-escalation or intervention techniques and did not have any intermediate-force weapons.

22. 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 Plainclothes 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.

23. After Officer Correa shot Mr. Thomas, 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 this action caused the car to move forward.

24. Upon information and belief, either Officer Dumlao or Officer Villanueva fired shots at the Vehicle as the car rolled to the other side of the street.

25. The Vehicle stopped after hitting a tree on the opposite side of the street.

26. Mr. Thomas was pronounced dead on the scene. Friend and Girlfriend were taken to a local hospital with life-threatening injuries.

27. Upon information and belief, none of the Plainclothes Officers had a personal relationship or prior association with Mr. Thomas, Friend, or Girlfriend.

28. Upon information and belief, the HPD has never brought any criminal charges against Mr. Thomas relating to the actions which took place on February 20, 2019 (hereinafter "Incident").

*Prior Hit and Run Involving Officer Chance Correa*

29. Several years prior to the Incident, Officer Correa confessed to fleeing the scene of a motor vehicle accident in which the vehicle he was driving collided with another car (hereinafter "Hit and Run"). Officer Correa was employed by the HPD at the time. Upon information and belief, as a result of the collision, the driver of the other vehicle was pinned behind his steering wheel, lost consciousness, and suffered serious head and face injuries. Officer Correa acknowledged that he fled the scene of the accident, failed to render medical aid, and failed to notify emergency medical services.

30. Upon information and belief, prior to Officer Correa's confession, Officer Correa untruthfully stated that his vehicle had been stolen during the HPD's investigation of the Hit and Run.

31. As evidenced by his participation in Mr. Thomas's death, Officer Correa continued his employment with HPD subsequent to the Hit and Run.

32. According to a recently published audit of the HPD's policies and procedures, HPD has a pattern and practice of knowingly retaining police officers who engage in criminal activity or other serious misconduct. *See* Audit of the Honolulu Police Department's Policies, Procedures, and Controls, Honolulu City Council Resolution 19-255 (2019) (hereinafter "Audit Report"). Under the status quo, some HPD officers are engaging in similar or related misconduct, again and again. *Id.*

33. According to the Audit Report, although the relevant data is available to the HPD, the HPD fails to "make responsive, proactive management changes in order to prevent misconduct or reduce complaints". *Id.*

34. Upon information and belief, the HPD Chief of Police can eliminate or implement any HPD policy or procedure. Upon information and belief, the HPD Chief of Police makes all the decisions for the Department, including decisions related to officer discipline.

*Training*

35. Upon information and belief, prior to Mr. Thomas's death, Defendant City was aware that the training policies with respect to plainclothes officers such as Plainclothes Officer Defendants was deficient. Specifically, Defendant Ballard has acknowledged that plainclothes officers need more formal training with a focus on de-escalation. Defendant Ballard has also admitted that plainclothes officers are not provided with intermediate force weapons but should be because "right now, they just carry their guns, and it goes from touch to bang and there's no option [in] between."

36. Upon information and belief, Plainclothes Officer Defendants were not provided with any training in how to use intermediate force weapons prior to the Incident.

**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 Defendants DUMLAO, CORREA, VILLANUEVA, and 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. 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 . . .

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

40. 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.

41. 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.

42. 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.

43. 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.

44. 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 Mr. Thomas's Fourth Amendment rights.

45. Upon information and belief, plainclothes officers *support* uniformed patrol officers and therefore plainclothes officers, such as Plainclothes Officer Defendants, are prohibited from making traffic stops for law enforcement purposes. HPD plainclothes officers are required to call for uniformed patrol officers to make traffic stops.

46. Upon information and belief, Plainclothes Officer Defendants violated HPD policy when they attempted to seize Mr. Thomas instead of waiting for uniformed officers to stop the vehicle Mr. Thomas was driving.

47. Upon information and belief, Plainclothes Officer Defendants boxed-in the vehicle Mr. Thomas was driving in order to physically restrain Mr. Thomas's movement and prevent him from moving the vehicle.

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

49. Plainclothes Officer Defendants use of deadly force upon Mr. Thomas was excessive, unreasonable, and a violation of HPD policy. 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 none of the occupants in the vehicle were 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.

50. 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.

51. Upon information and belief, prior to the Incident, the HPD trained its officers how to apprehend a suspect in a vehicle without the use of deadly force, even if the officer believes that the suspect is driving towards the officer. Upon information and belief, Defendant Ballard has publicly stated that, "[the HPD has] training for positioning as far as moving vehicles so you don't put yourself in that situation if that car drives at you." Plainclothes Officer Defendants therefore failed to exercise the procedures in which they were trained and instead used excessive force by shooting and killing Mr. Thomas.

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

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

54. 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.

55. 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.

56. 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. There may also be special damages for lien interests.

57. 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 Substantive Due Process Under the Fourteenth Amendment**

[Plaintiff Estate and Ms. Thomas's Claim Against Defendants DUMLAO, CORREA, VILLANUEVA, and Doe Defendants 1-10, in their Individual Capacities]

58. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 57, above, and incorporate these allegations by reference.

59. 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.

60. 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.

61. 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, and property in such a manner as to shock the conscience.

62. 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.

63. 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.

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

65. 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.

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

67. 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.

68. 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.

69. 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.

70. 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.

**THIRD COUNT**

**42 U.S.C. Section 1983; Municipal Liability - Negligent Retention,  
Supervision, and Control**

[Plaintiff Estate's Claim Against Defendants CITY, BALLARD and Doe  
Defendants 1-10, in their Individual Capacities]

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

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

73. 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.

74. In this context, municipal liability exists where a city negligently retains a police officer who is incompetent or unfit to perform the work, the city knew or reasonably should have known of the particular incompetence or unfitness, and the incompetence or unfitness was a foreseeable cause of the plaintiff's injury.

75. The Estate is informed and believes and thereupon alleges that Defendant Ballard and Doe Defendants 1-10 (hereinafter collectively "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.

76. 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.

77. 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.

78. At all times relevant hereto, Defendant City had a duty to retain only those officers who were fit and competent to serve as police officers.

79. At all times relevant hereto, Defendant City had a duty to properly supervise and control its employees and agents.

80. Officer Correa perpetrated the Hit and Run while he was employed as a police officer. Officer Correa therefore knew that it would be unlawful and a violation of HPD policy to flee the scene of a collision, fail to render medical aid, fail to notify emergency medical services, and lie to investigators. *See* HPD Standards of Conduct, Policy 2.21, pg. 13, 17 (stating that Officers “shall not commit any criminal act,” “shall not leave the scene of a motor vehicle collision,” “shall take appropriate action to assist those who cannot care for themselves,” “shall take appropriate action to provide emergency services,” and “are required to be truthful at all times.”).

81. With regard to the Hit and Run, Officer Correa was untruthful to his superiors, demonstrated poor judgment, broke the law, violated HPD policy, panicked under life-threatening circumstances, and injured a civilian without regard for that individual's safety or health.

82. Prior to Mr. Thomas's death, City and Supervisor Defendants were aware that Officer Correa had confessed to the Hit and Run. *See supra*, ¶¶ 29, 30. Defendant City and Supervisor Defendants were also aware that Officer Correa untruthfully stated that his vehicle was stolen prior to Officer Correa's confession. *Id.*

83. Despite Officer Correa's unfitness to serve as a police officer, Defendant City and Supervisor Defendants continued to employ Officer Correa.

84. In the course of retaining Officer Correa, Defendant City and Supervisor Defendants failed to adequately supervise and/or control Officer Correa knowing that Officer Correa had the aforementioned propensities and character traits. Defendant City and Supervisor Defendants failed to provide Officer Correa any training in conflict de-escalation and intervention techniques, failed to equip Officer Correa with intermediate-force weapons, failed to limit his police powers, and failed to make adequate supervisory adjustments despite his demonstrated inability to maintain composure and self-control in life-or-death situations.

85. Based on Officer Correa's criminal actions, his attempt to conceal his behavior, and the lack of corrective action, it was foreseeable that Officer Correa would again exercise poor judgment, panic, and seriously harm another individual.

86. On February 20, 2019, Officer Correa again violated HPD policy when he stopped Mr. Thomas's vehicle while in plainclothes and in an unmarked car instead of calling for uniformed officers in marked vehicles to make the stop. Despite HPD's instruction to wait for uniformed officers, Officer Correa escalated the situation by smashing the window of Mr. Thomas's vehicle. Instead of reversing course or taking corrective action, Officer Correa predictably panicked and fired his weapon.

87. When Officer Correa shot and killed Mr. Thomas, Officer Correa behaved in conformity with the propensities and character traits as described above. *See supra*, ¶¶ 81, 82.

88. According to the City Auditor, Officer Correa's continued employment as a police officer is not unusual. Upon information and belief, HPD has a de facto policy, practice, or custom of retaining police officers who engage in criminal behavior, resulting in the failure to prevent such misconduct from occurring in the future.

89. Upon information and belief, the following is a non-exhaustive list of police officers who the HPD continued to employ after he or she was prosecuted for the following criminal acts:

- a. In 1997, R.J. pled guilty to assault. R.J. was charged with assault again in 2010;
- b. In 2010, R.A. pled guilty to assault and a domestic abuse charge was dropped;
- c. In 2010, E.C. pled guilty to assault;
- d. In 2010, D.H. pled no contest to assault;
- e. In 2013, Z.C. pled no contest to theft and tampering with government records;
- f. In 2014, L.C. pled no contest to assault;
- g. In 2015, C.F. pled no contest to assault; and
- h. In 2016, B.S. was charged with leaving the scene of an accident that caused injury and driving under the influence.

90. Upon information and belief, from 2002 to 2019, approximately one HPD officer every year fled the scene of a motor vehicle collision, some resulting in bodily injury. Upon information and belief, the majority, if not all of these officers were retained by the HPD.

91. Upon information and belief, in the course of retaining the aforementioned police officers, the HPD also failed to adequately supervise and limit the police powers of said officers.

*Audit of the Honolulu Police Department's Policies, Procedures, and Controls, Honolulu City Council Resolution 19-255 (2019)*

92. Pursuant to Honolulu City Council *Resolution 19-255* (2019) (hereinafter "*Resolution 19-255*"), in December 2020, the City Auditor published the HPD Audit Report. *Resolution 19-255* required the City Auditor to conduct a performance audit of the Honolulu Police Department and the Department of Prosecuting Attorney's policies and procedures related to employee misconduct.

93. The City Auditor found that the Honolulu Police Department needs to do more to prevent misconduct in its ranks because the HPD "does not make preventive use of feedback information produced by its review [of officer misconduct] to consider or make responsive, proactive management changes in order to prevent misconduct or reduce complaints." *Id.*

94. According to the Audit Report, each year from 2015-2019, about a third of officers who were accused of committing the most serious kind of misconduct have complaints alleging criminal conduct, including "hit and runs" that result in bodily injury, sexual assault, and driving under the influence. That level of misconduct "upsets the fundamental expectation for officer personal and

professional conduct to be lawful,” the audit stated, but HPD fails to aggregate and analyze that information and learn from it. *Id.*

95. Upon information and belief, the HPD has acknowledged that it does not track arrest or conviction reports of Honolulu police officers.

96. Under the status quo, some HPD officers are repeatedly engaging in misconduct. *Id.* According to the Audit Report, the HPD continued to employ numerous officers who had multiple cases of misconduct reported. *Id.* In 2015, two unnamed officers had at least 5 reported cases of misconduct. *Id.*

a. In 2002, the HPD was aware that Officer D.C.’s (hereinafter “D.C.”) then wife (hereinafter “Ex-Wife”) filed a temporary restraining order (hereinafter “TRO”) against D.C. citing a series of violent episodes, including choking, sexual assault, kicking, and biting. In 2009, Ex-Wife filed a second TRO against D.C. stating that D.C. continued to physically abuse her. Upon information and belief, between 2002 and 2009, Ex-Wife filed five HPD complaints against D.C. alleging physical abuse. Upon information and belief, D.C. was neither disciplined nor discharged following any of these incidents. Five years later, D.C. was caught on surveillance video assaulting his girlfriend in a Waipahu restaurant. Although HPD responded to the restaurant, D.C. was never arrested or charged. In 2017, D.C.’s second wife (hereinafter “Second Wife”) called 911 to report that D.C. was choking her. D.C. was not arrested following this incident even though HPD

Officers noticed red marks around her neck. In 2019, D.C., still employed by the HPD, was finally arrested and charged with misdemeanor abuse for a separate incident involving Second Wife. Upon information and belief, D.C. is still employed by the HPD.

b. In or around 2014, the HPD retained then Officer D.S. (hereinafter “D.S.”) after he fled the scene of a motor vehicle collision and failed to initiate a report of involvement with a subsidized vehicle. A year later, the HPD continued to employ D.S. after he assaulted a complainant numerous times while the complainant was detained in the backseat of a police vehicle. In 2016, while under the influence of an intoxicant, D.S. collided with a center median guardrail, did not stop, failed to inform the police, and was untruthful during the investigation. Upon information and belief, HPD’s negligent retention of D.S. and its failure to adequately supervise and control D.S. were the proximate causes of the aforementioned civilian injuries and property damage.

c. In or around 2012, the Honolulu Police Commission found that HPD Officer K.D. (hereinafter “K.D.”) committed unnecessary and excessive force and engaged in conduct unbecoming an officer when he and several other HPD officers slammed Johnny Helm (hereinafter “Mr. Helm”) face first into the ground after Mr. Helm was mistaken for a burglary suspect. Mr. Helm suffered broken bones in his face and a metal rod needed to be inserted through his eyelid to repair the

injuries. Upon information and belief, K.D. was not disciplined by the Department. A few years later, K.D. pled no contest to assaulting a truck driver (hereinafter “Truck Driver”) on Interstate H-1 after a car accident. Upon information and belief, HPD’s negligent retention of K.D. and its failure to adequately supervise and control K.D. were the proximate causes of Truck Driver’s injuries.

97. According to the Audit Report, data regarding police officer misconduct, arrests, and conviction reports are available to the HPD. City and Supervisor Defendants, therefore, acted with deliberate indifference when they knowingly retained police officers who engaged in criminal behavior and failed to adequately supervise and control said employees, including Officer Correa, during the course of their employment with HPD.

98. 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. Retaining as police officers and other personnel, including Officer Correa, whom Supervisor Defendants at all times material herein knew or reasonably should have known had dangerous propensities for abusing their authority and for mistreating civilians by failing to follow written HPD policies; and
- b. Inadequately supervising, controlling, and assigning 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.

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

100. Defendant City and Supervisor Defendants, together with various other officials, whether named or unnamed, had actual and 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.

101. 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.

102. Furthermore, Defendant City and Supervisor Defendants' negligent retention and supervision of Officer Correa was affirmatively linked to and was the moving force behind Plainclothes Officer Defendants' treatment of Mr. Thomas.

103. 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.

#### **FOURTH COUNT**

**42 U.S.C. Section 1983; Municipal Liability– Failure to Train**  
[Plaintiff Estate's Claim Against Defendant CITY, Defendant BALLARD, and Doe Defendants 1-10, in their Individual Capacities]

104. Plaintiff Estate hereby restates and realleges the allegations set forth in paragraphs 1 through 103 above and incorporates these allegations by reference.

105. Municipal liability exists where a city fails to properly train its employees and said failure amounts to a deliberate indifference to the public's constitutional rights.

106. 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.

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

108. 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.

109. The HPD failed to adequately train its plainclothes police officers, including but not limited to, Plainclothes Officer Defendants, in conflict de-escalation and intervention techniques. As a result, Plainclothes Officer Defendants were untrained in how to handle the usual and recurring situations with which they must deal, including how to: (1) first make contact with individuals who may not be aware that said officers in plainclothes and unmarked cars are police officers; (2) defuse potentially dangerous situations especially with individuals who may be confused or afraid; (3) take steps to reduce the use of

unnecessary or excessive force; (4) use less-than-lethal options prior to resorting to the use of deadly force including verbal de-escalation tactics; and (5) apply principles of officer-self regulation and emotional control to maintain rational thinking processes. These inadequate training policies existed prior to the date of this incident.

110. Upon information and belief, equipping police officers with intermediate-force weapons are consistent with conflict de-escalation and intervention techniques and the reduction of the use of lethal force in police confrontations. Defendant City fails to equip said plainclothes officers with intermediate force weapons and therefore the relevant training in how to use such weapons. As a result, HPD plainclothes officers, including Plainclothes Officer Defendants, have severely limited use-of-force options prior to resorting to deadly force during police encounters.

111. Upon information and belief, Defendant Ballard admitted that she, and therefore Defendant City, was aware that de-escalation training for plainclothes officers was lacking and that plainclothes officers are not provided intermediate weapons but should be because plainclothes officers “just carry their guns and it goes from touch to bang and there’s no options between.”

112. Upon information and belief, prior to Mr. Thomas’s death, Defendant Ballard and Supervisor Defendants were aware that HPD plainclothes officers

were repeatedly and inappropriately escalating police encounters as a result of the aforementioned deficiencies.

113. Upon information and belief, in 2008, plainclothes officers shot and killed a civilian driver for suspected shoplifting even though there was no indication that the civilian was armed. Upon information and belief, said plainclothes officers did not have any intermediate force weapons and did not receive any training in how to use such weapons.

114. Upon information and belief, in 2009, plainclothes officers fired multiple shots and injured a civilian driver while the officers were following another car that the officers suspected was stolen. Upon information and belief, there was no indication that that the civilian was in possession of a firearm. Upon information and belief, said plainclothes officers did not have any intermediate force weapons and did not receive any training in how to use such weapons.

115. More recently, Defendant City and Supervisor Defendants were made aware of a criminal incident involving a plainclothes officer who unlawfully escalated what should have been a routine police encounter. In 2015, HPD plainclothes officer V.M. was caught on surveillance video punching, kicking, and throwing a chair at a man while V.M. was trying to serve an arrest warrant for another man at a game room. This Court found that V.M. violently and

unnecessarily escalated an otherwise standard law enforcement action and sentenced him to 30 months in federal prison.

116. Despite Defendant City and Supervisor Defendants knowledge of the aforementioned deficiencies, Defendant City and Supervisor Defendants failed to make changes. Upon information and belief, in December 2020, HPD plainclothes officers again fatally shot a man while attempting to serve a parole re-take warrant. Upon information and belief, there was no indication that the suspect was armed. Upon information and belief, said plainclothes officers did not have intermediate force weapons and did not receive any training in how to use such weapons.

117. While federal Appellate courts have upheld a failure to provide de-escalation training on a single-incident theory of liability, here, upon information and belief, City Defendant and Supervisor Defendants were aware of the aforementioned multiple lethal instances of force by plainclothes officers. Upon information and belief, some of these instances formed the basis for Defendant Ballard's comments regarding circumstances with HPD plainclothes officers that "go from touch to bang with nothing between."

118. The pattern of past similar incidents and Defendant Ballard's comments demonstrate that Defendant City and Supervisor Defendants were deliberately indifferent to the known and obvious consequences of its failure to train its plainclothes police officers adequately with regards to: (1) teaching said

officers how to utilize techniques and practices to de-escalate confrontations with police and require them to implement these techniques and practices, especially with respect to non-violent crimes and (2) using less than lethal options prior to resorting to the use of deadly force.

119. Defendant City and Supervisor Defendants were aware that failure to implement some sort of formal de-escalation training for its plainclothes officers and failure to equip plainclothes officers with intermediate-force weapons and provide the necessary training for how to use said weapons, caused HPD plainclothes officers to routinely and unnecessarily escalate police encounters, as described in the aforementioned lethal instances of force and with respect to Mr. Thomas's death.

120. These policy failures were the moving force that led to 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.

121. By failing to provide adequate training in conflict de-escalation and intervention techniques, failing to equip plainclothes officers, including Plainclothes Officer Defendants with intermediate force weapons, and failing to provide the relevant training in how to use such weapons, Defendant City acted

with an intentional, reckless, and callous disregard for Mr. Thomas's life, and Mr. Thomas's constitutional rights.

122. 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.

### **FIFTH COUNT**

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

[Plaintiff Estate and Ms. Thomas's Claim Against Defendant CITY, Defendants BALLARD, DUMLAO, CORREA, VILLANUEVA, and Doe Defendants 1-10, in their Individual Capacities]

123. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 122 above as if set forth fully herein.

124. 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.

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

126. 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.

127. 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.

128. As a result of Defendants’ actions, 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.

129. As a result of Defendants’ wrongful acts, 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.

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

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

**SIXTH COUNT**

**Negligence/Gross Negligence**

[Plaintiff Estate’s Claim Against Defendants CITY, BALLARD, DUMLAO, CORREA, VILLANUEVA, and Doe Defendants 1-10, in their Individual Capacities]

132. Plaintiff Estate incorporates by reference each and every allegation contained in Paragraphs 1 through 131 above as if set forth fully herein.

133. 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.

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

135. 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, not using any force unless necessary, using less than lethal options, and only using deadly force as a last resort.

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

137. 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 plainclothes officers, including Plainclothes Officer Defendants, in conflict de-escalation and intervention techniques;
- b. the failure to provide plainclothes officers with intermediate force weapons and the failure to provide the relevant training in how to use such weapons;
- c. the retention and supervision of Officer Correa;
- d. the failure to properly and adequately assess the need to detain, arrest, and use force, including deadly force, against Mr. Thomas;
- e. the negligent detention, arrest, and use of force, including deadly force, against Mr. Thomas;
- f. the negligent tactics and handling of the situation with Mr. Thomas;
- g. the failure of Plainclothes Officer Defendants to comply with HPD policy and wait for uniformed officers to stop Mr. Thomas;
- h. the failure of Plainclothes Officer Defendants to announce themselves as police officers;
- i. the failure of Plainclothes Officer Defendants to give a verbal warning prior to shooting Mr. Thomas;

- j. the failure of Plainclothes Officer Defendants to exercise the procedures in which they were trained with respect to apprehending an individual in a vehicle without the use of deadly force; and
- k. shooting an individual who is complying with the commands of an officer.

138. The aforementioned negligent actions of Defendants occurred within the scope of their employment.

139. For purposes of Plaintiff's negligent supervision claim, Plaintiff pleads in the alternative that Plainclothes Officer Defendants were acting outside the scope of their employment during the Incident.

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

141. 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.

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

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

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

145. 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. Punitive damages against the individual defendants;
- g. Attorneys' fees and costs of suit; and
- h. Such other relief as the Court may deem equitable and just.

DATED: Honolulu, Hawai'i, February 11, 2021.

/s/ Gina Szeto-Wong

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