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Attorneys for Plaintiff

L. LINDSAY MYENI, Widow of LINDANI SANELE MYENI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

L. LINDSAY MYENI, Widow of LINDANI
SANELE MYENI

Plaintiff,

v.

CITY AND COUNTY OF HONOLULU,
GARRICK OROSCO, in his individual
capacity as a Honolulu police officer; BRENT
K. SYLVESTER, in his individual capacity as
a Honolulu police officer; DOE OFFICER #3,
in his/her individual capacity as a Honolulu
police officer; and DOE DEFENDANTS 1-50,

Defendants.

CIVIL NO. 1CCV-21-0000504
(Assault & Battery)
(Other Non-Vehicle Tort)

FIRST AMENDED COMPLAINT;
DEMAND FOR JURY TRIAL; SUMMONS

FIRST AMENDED COMPLAINT

Plaintiff L. LINDSAY MYENI, Widow of LINDANI SANELE MYENI, Personal Representative of the Estate of LINDANI SANELE MYENI, and Limited Conservator for M.N.M and N.L.M, minor children, for her complaint against the CITY AND COUNTY OF HONOLULU; GARRICK OROSCO, in his individual capacity as a Honolulu police officer;

BRENT K. SYLVESTER, in his individual capacity as a Honolulu police officer; DOE OFFICER #3, in his/her individual capacity as a Honolulu police officer; and DOE DEFENDANTS 1-50, allege as follows:

INTRODUCTION

1. This cause of action arises out of the shooting of LINDANI SANELE MYENI (“Mr. Myeni”) on April 14, 2021 by one or more Honolulu Police Department officers at 91 Coelho Way, Honolulu, Hawaii, and Mr. Myeni’s resulting death.

PARTIES

2. Mr. Myeni is survived by his wife, Plaintiff L. LINDSAY MYENI, and their two minor children, M.N.M. and N.L.M (names are reflected here by initials in order to protect their privacy).

3. Plaintiff L. LINDSAY MYENI (“Lindsay Myeni,” “Plaintiff” or “Plaintiff Myeni”) brings this suit as the spouse of Mr. Myeni under HRS Section 663-3, as the Personal Representative of the Estate of LINDANI SANELE MYENI, and as the Limited Conservator for her minor children, M.N.M. and N.L.M.

4. Defendant CITY AND COUNTY OF HONOLULU (the “City” or “Defendant City”) is a municipal corporation organized and existing under the laws of the State of Hawai‘i as a political subdivision thereof and it is sued herein in connection with actions and omissions taken by one or more of its officers, officials, directors, employees and departments, including the Honolulu Police Department (“HPD”).

5. At all relevant times, Defendant GARRICK OROSCO (“Officer Orosco”) was employed as a police officer by the HPD and acting within the course and scope of such

employment. Defendant Officer Orosco is being sued in his individual capacity and official capacity as a Honolulu police officer.

6. At all relevant times, Defendant BRENT K. SYLVESTER (“Officer Sylvester”) was employed as a police officer by the HPD and acting within the course and scope of such employment. Defendant Officer Sylvester is being sued in his individual capacity and official capacity as a Honolulu police officer.

7. At all relevant times, Defendant DOE OFFICER #3 (“Doe Officer #3”) was employed as a police officer by the HPD and acting within the course and scope of such employment. Defendant Doe Officer #3 is being sued in all applicable capacities. The true identity of Doe Officer # 3 is unknown to Plaintiff despite investigation and due diligence, including requests for information made to the City.

8. Officer Orosco, Officer Sylvester, and Doe Officer # 3 are referred to herein collectively as “the Officers”.

9. DOE DEFENDANTS are sued herein under fictitious names for the reason that their true names and identities are presently unknown to Plaintiff except that they, in some manner or form not currently discovered or known to Plaintiff, may have contributed to or be responsible for the injuries alleged herein and/or are in some manner legally responsible for the damages and/or injuries to Plaintiff and Plaintiff pray for leave to certify their true names, identities, capacities, activities, and/or responsibilities when the same are ascertained. Plaintiff has made a diligent and good faith effort to identify said Doe Defendants prior to filing the Complaint.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the claims in this matter pursuant to HRS § 603-

21.5(a)(3), and venue is proper in this Circuit pursuant to HRS 603-36(5) since all of the acts, omissions, and occurrences alleged herein took place within the City and County of Honolulu, State of Hawai'i.

FACTUAL ALLEGATIONS

11. Mr. Myeni is a South African national married to Plaintiff who is a U.S. Citizen. He is of Zulu ancestry. At all relevant times, he was unarmed and, until assaulted by Defendant City's employees, was peaceful.

12. On the evening of April 14, 2021, at approximately 8 pm, one hour after sundown, Mr. Myeni drove in his car to and parked at or near 91 Coelho Way in Honolulu, in the district of Nuuanu (the "Coelho Way Property" or "the Property").

13. The Coelho Way Property was a place of public accommodation within the meaning of HRS Chapter 489 at 91 Coelho Way. The business operated at that location was "an establishment that provides lodging to transient guests," within the meaning of HRS Section 489-1 which had advertised on Airbnb.com and Instagram. As such, discrimination by persons owning, operating or controlling that establishment on grounds of race is prohibited by law.

14. The Coelho Way Property is immediately adjacent to and shares grounds with another adjacent establishment held open to the public, the ISKCON Temple at 51 Coelho Way. (Both were originally a single parcel that was later subdivided but remain connected).

15. The two properties each have driveways on Coelho Way and share similarities such as hedges and circular driveways with *porte cocheres*. It is unknown whether Mr. Myeni was intending to make inquiries about the business at 91 Coelho Way or mistakenly thought he was visiting the ISKCON Temple.

16. By virtue of multiple prior complaints by members of the public, the City was aware that the Coelho Way Property acted as a public accommodation, that travelers and strangers stayed there and/or visited, and that many people would come and go from the Property.

17. After Mr. Myeni arrived by car and removed his shoes upon entering the transient accommodations house on the Property, Mr. Myeni became aware that he was unwelcome and left the house peacefully. Plaintiff alleges that the response by the occupants of the Property was motivated by Mr. Myeni's race and constituted racial discrimination in public accommodation.

18. One of the persons present at the Property, with sufficient apparent authority and control over the premises to feel justified in calling police regarding Mr. Myeni's entrance into the house, contacted police to report Mr. Myeni's presence.

19. Unbeknown to Mr. Myeni, the police decided to treat this non-violent and peaceful entry into, and departure from, a place of public accommodation, as a crime in progress, and arrived at the scene without lights, sirens or other indicators of their presence in an apparent attempt to take the "perpetrator" by surprise. As there was no moon present in the sky at the time and this was a residential street in Nuuanu, it was dark.

20. The Officers were armed with (1) guns, (2) Tasers, and (3) high intensity flashlights (sometimes referred to by their brand name as Maglites).

21. The high-intensity lights are blinding at night and, when pointed towards a person, make it impossible for him or her to see anything other than the light and objects in the path of the light beam.

22. As Mr. Myeni stood still, unarmed, on the side of the driveway just a few feet off the street, one of the Officers, while hysterical screams of "that's him" emanated from a person

standing in the doorway of the house on the Property, suddenly shone the flashlight directly in Mr. Myeni's eyes and held a pistol in the flashlight beam pointed at Mr. Myeni. At the same time, without ever announcing that he was an officer or using the word "police," or stating his purpose, that officer shouted several times in a rough, aggressive, disrespectful, and threatening manner "get on the ground."

23. This conduct towards Mr. Myeni, treating him as less than a human being regardless of whatever alleged "crime" was being investigated and callously not deigning to explain themselves, their identity, or their purpose, was motivated by racial discrimination towards people of Mr. Myeni's African descent.

24. The threat of force is considered the "use of force" under Hawaii law, and requires an officer to state his purpose before it is justified. Pointing a gun at someone constitutes a threat generally, as well as a threat of the ultimate force of a bullet. Ordering a person at gunpoint to lie on the ground constitutes a use of force.

25. The foregoing conduct towards Mr. Myeni was unjustified as a matter of law.

26. Furthermore, the pointing of a gun and flashlight and commanding Mr. Myeni to "get on the ground" constituted a civil assault, placing Mr. Myeni in fear of his life from armed assailants unknown and undeclared.

27. The failure of the Officers to announce they were police officers or declare their purpose was not only unlawful in these circumstances, but doing so with a gun drawn also negligently and recklessly communicated to Mr. Myeni that they were **not** police officers, but rather "Maglite muggers" or "Maglite murderers," because reasonable people are aware that police officers will announce themselves as officers in order to make their commands to stop, restrain or arrest a person to be lawful commands.

28. The Officers knew or reasonably should have known of the effect of their high-intensity flashlights on Mr. Myeni's vision and his inability to discern their identity or any lawful purpose in their action.

29. The Officers knew or reasonably should have known that Mr. Myeni would perceive a blinding flashlight, the pointing of a gun at him, and the disrespectful and aggressive commands to "get on the ground" without any announcement of police identity or purpose, as a threat to his life.

30. Under such circumstances Mr. Myeni, who was in fear of his life from the intense threat of being blinded by high intensity lights while threatened with a gun or guns by unknown assailants who were ordering him to get into a vulnerable position, made the lawful choice to defend himself against this unjustified use of force and the muggers' bullet that could soon be coming his way.

31. As a trained and skilled athlete who had played rugby at the top level and understood how to defend himself physically, he also knew that the best chance of overcoming an armed assailant who might shoot you in the back if you run is to act quickly and try to take the assailant down and/or disarm him before he can act, and Mr. Myeni attempted to do this.

32. Despite the fact that Mr. Myeni was lawfully defending himself against an unjustified use of force by unknown and unidentified assailants, the Officers reacted with their Tasers and guns.

33. Still not having announced themselves, one or more of the Officers shot Mr. Myeni a total of four times. They did not announce their identity or purpose until after all four shots were fired.

34. As a result of the shooting, Mr. Myeni was killed.

35. The shooting was tortious and unjustified, because any claimed fear of Mr. Myeni or threat posed by Mr. Myeni was the direct result of the Officers' unlawful conduct described above, creating circumstances in which Mr. Myeni was justified in defending himself.

36. For the reasons stated herein the killing, as well as the acts of Defendants that led up to the killing, were unlawful, unjustified, reckless, grossly negligent and negligent.

COUNT I
(Negligence)

37. Plaintiff Myeni hereby realleges and incorporates all of the above allegations.

38. The conduct of Defendants as alleged herein was at a minimum negligent or grossly negligent and such negligence was a substantial factor in causing the death of Mr. Myeni.

39. At all times relevant hereto, Defendant Officer Orosco, Defendant Officer Sylvester, and Defendant Doe Officer #3 were acting within the course and scope of their employment as police officers, and were under the direct control of, and acting as employees, agents, and representatives of, Defendant City and County of Honolulu.

40. By virtue of these facts, the City is liable under doctrines of vicarious liability and *respondeat superior* for the conduct of the Officers and for causing the wrongful death of Mr. Myeni.

41. Plaintiff Myeni has lost her husband as a result of the wrongful conduct of Defendants and is entitled to damages caused by the wrongful death of her husband, in such amounts as shall be proved at trial, for (1) loss of society, companionship, comfort, consortium, or protection, (2) loss of marital care, attention, advice, or counsel, (3) loss of support and (4) emotional distress including severe grief.

42. Because the conduct of Defendants was grossly negligent, reckless, wanton and/or in conscious disregard of the rights of Mr. Myeni, Plaintiff Myeni is entitled to an award of punitive damages on this Count in amounts to be proved at trial.

COUNT II
(Assault & Battery)

43. Plaintiff Myeni hereby realleges and incorporates all of the above allegations.

44. The conduct of the Officers described above constitutes the torts of assault and battery.

45. As a direct and proximate result of these torts, Mr. Myeni was placed in fear of his life, suffered extreme emotional distress and ultimately was killed.

46. Plaintiff Myeni has lost her husband as a result of the assault and battery by Defendants, leading to his death, and is entitled to damages in such amounts as shall be proved at trial, for (1) loss of society, companionship, comfort, consortium, or protection, (2) loss of marital care, attention, advice, or counsel, (3) loss of support and (4) emotional distress including severe grief.

47. Because the conduct of Defendants was grossly negligent, reckless, wanton and/or in conscious disregard of the rights of Mr. Myeni, Plaintiff Myeni is entitled to an award of punitive damages on this Count in amounts to be proved at trial.

WHEREFORE, Plaintiff Myeni prays for relief as follows:

A. That judgment be entered in Plaintiff Myeni's favor on each count of the Complaint;

B. For general, special, and punitive damages against Defendants in an amount to be proven at trial;

C. For reimbursement of Plaintiff Myeni's costs and expenses herein, including

reasonable provision for her attorneys' fees if available under applicable law;

D. For an award of pre- and post-judgment interest; and

E. For any such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawai'i, December 28, 2022.

/s/ James J. Bickerton

JAMES J. BICKERTON

BRIDGET G. MORGAN-BICKERTON

Attorneys for Plaintiff L. LINDSAY

MYENI, Widow of LINDANI SANELE

MYENI

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STATE OF HAWAI‘I

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DEMAND FOR JURY TRIAL

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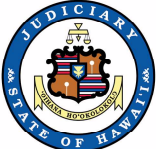

Plaintiff LINDSAY MYENI, Widow of LINDANI SANELE MANELE, by and through her attorneys, Bickerton Law Group LLLP, hereby demands a trial by jury on all issues triable herein.

DATED: Honolulu, Hawai‘i, December 28, 2022.

/s/ James J. Bickerton

JAMES J. BICKERTON
BRIDGET G. MORGAN-BICKERTON

Attorneys for Plaintiff L. LINDSAY
MYENI, Widow of LINDANI SANELE
MYENI

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER 1CCV-21-0000504
PLAINTIFF L. LINDSAY MYENI, Widow of LINDANI SANELE MYENI		VS. DEFENDANT(S) CITY AND COUNTY OF HONOLULU, GARRICK OROSCO, in his individual capacity as a Honolulu police officer; BRENT K. SYLVESTER, in his individual capacity as a Honolulu police officer; DOE OFFICER #3, in his/her individual capacity as a Honolulu police officer; and DOE DEFENDANTS 1-50
PLAINTIFF'S NAME & ADDRESS, TEL. NO. JAMES J. BICKERTON 3085 BRIDGET G. MORGAN-BICKERTON 8705 ROBERT S. MIYASHITA 9509 JEREMY K. O'STEEN 10682 745 Fort Street, Suite 801, Honolulu, Hawai'i 96813 Phone: (808) 599-3811; Facsimile: (808) 694-3090		
<p>TO THE ABOVE-NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to file with the court and serve upon</p> <p>JAMES J. BICKERTON, ESQ., BRIDGET G. MORGAN-BICKERTON, ESQ., ROBERT S. MIYASHITA, ESQ, JEREMY O'STEEN, ESQ, BICKERTON LAW GROUP, LLLP, 745 Fort Street, Honolulu, HI 96813</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	Effective Date of 28-Oct-2019 Signed by: /s/ Patsy Nakamoto Clerk, 1st Circuit, State of Hawai'i 	
 <p>In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date.</p>		