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11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF ARIZONA**

13 Tyron McAlpin, an individual,  
14  
15 Plaintiff,

No. \_\_\_\_\_

16 vs.

**COMPLAINT**

(Tort – Civil Rights)

17 City of Phoenix, a municipality; Benjamin  
18 Harris, an individual; Kyle Sue, an  
19 individual; and Jorge Acosta, an individual,  
20  
21 Defendants.

(Jury Trial Demanded)

22 Plaintiff Tyron McAlpin complains against Defendants City of Phoenix, Benjamin  
23 Harris, Kyle Sue, and Jorge Acosta and alleges as follows:

**PARTIES**

- 24 1. Plaintiff Tyron McAlpin is a resident of Maricopa County, Arizona.
- 25 2. Defendant City of Phoenix is a municipality and a political subdivision of the  
26 State of Arizona, organized and existing under the laws of the State of Arizona. It is a “state  
27 actor” as that term is used under the jurisprudence of 42 U.S.C. § 1983.
- 28 3. Defendant Benjamin Harris is an individual and a resident of Maricopa  
County, Arizona.
- 4. Defendant Kyle Sue is an individual and a resident of Maricopa County,  
Arizona.

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1 Defendants reside within Maricopa County, Arizona. Thus, venue is proper in the District  
2 of Arizona under 28 U.S.C. § 1391(b).

3 15. As to Plaintiff’s claims under Arizona state law, Plaintiff served a timely  
4 notice of claim under A.R.S. § 12-821.01 upon the City of Phoenix and the Officer  
5 Defendants. The notice of claim complied in all ways with the statute, was timely served,  
6 and is deemed denied by operation of law.

7 **JURY DEMAND**

8 16. Plaintiff demands a jury trial.

9 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

10 17. Tyron McAlpin is African American, deaf, and suffers from cerebral palsy.

11 18. On the morning of August 19, 2024, Tyron was at the Circle K located at 1122  
12 E. Indian School Road.

13 19. Also present at the store was a white male (hereinafter, “D.S.”)

14 20. D.S. was behaving oddly and aggressively in the store. At one point, D.S. laid  
15 down on the floor in the Circle K and said that he was dizzy.

16 21. When D.S. began behaving aggressively toward Tyron and refused to leave  
17 the Circle K, Circle K employees called 9-1-1. They reported that there was a white man  
18 who had started a fight in the store and was refusing to leave the store. The Circle K  
19 employee made clear that the white man was the aggressor and that she wanted him removed  
20 from the store.

21 22. Officers Harris and Sue responded to the Circle K. Officer Harris did not speak  
22 to the complaining Circle K employees to find out what had happened. Instead, Officer  
23 Harris spoke to D.S.

24 23. Officers Harris and Sue did not handcuff D.S. or ask him to sit down. Nor did  
25 they ask for his identification. Had they checked his identification and arrest history, the  
26 officers would have discovered that D.S. had a history of recent arrests for disorderly  
27 conduct and assault.  
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1           24. In conversation with Officer Harris, D.S. claimed that an African American  
2 man had assaulted him.

3           25. D.S. then pointed at Tyron, who was walking eastbound on Indian School, and  
4 alleged that Tyron was the African American man who had assaulted him.

5           26. D.S.'s allegations against Tyron were false.

6           27. At no point in this conversation did D.S. claim that he had lost a cell phone,  
7 that his cell phone had been stolen, or that Tyron had stolen his cell phone.

8           28. Officers Harris and Sue then told D.S. to wait at the very store that they had  
9 been called to remove him from. They then entered their police vehicles and pursued Tyron.

10          29. Tyron walked eastbound on Indian School to the Dollar Tree Store on Indian  
11 School and Longview Road. Tyron's home is just north of the Dollar Tree, and he was  
12 walking back to his house.

13          30. As Tyron walked through the parking lot of the Dollar Tree in the direction of  
14 his home, Officer Harris pulled his police truck in front of Tyron.

15          31. Officer Harris did not activate his lights or sirens or make any commands that  
16 Tyron could hear.

17          32. When Harris pulled in front of Tyron, Tyron turned right to avoid Harris' truck  
18 and continued walking.

19          33. Harris stopped his truck and immediately physically assaulted Tyron.

20          34. On exiting his vehicle, Harris did not ask any questions or give any commands  
21 that Tyron could hear or respond to.

22          35. Instead, Harris charged Tyron with his hands outstretched and attacked him.

23          36. Tyron attempted to raise his hands to his ears to signal that he was deaf. But  
24 before he could do this, Officer Harris simultaneously grabbed Tyron's shoulders and  
25 stepped on Tyron's foot.

26          37. When Tyron attempted to maintain his balance, Harris repeatedly tried to  
27 punch Tyron in the face and head.

28

1           38.    Officer Sue then arrived. Officer Sue grabbed Tyron by the neck, and he and  
2 Harris forced Tyron to the ground.

3           39.    They forced Tyron into a prone position on the ground, and Officer Sue knelt  
4 on Tyron’s back.

5           40.    At this point, Tyron was afraid for his life.

6           41.    Officer Harris wrapped his hands around Tyron’s neck in a chokehold.

7           42.    When Officer Harris released his chokehold, Officer Sue and Officer Harris  
8 began punching Tyron in the back of the head and slamming Tyron’s head into the asphalt.

9           43.    Tyron attempted to use his hands to protect his head against the officers’  
10 repeated blows.

11           44.    While Officer Sue continued to strike Tyron in the head, Officer Harris stood  
12 up, drew his Taser, and fired it in “dart mode” twice: once into Tyron’s right shoulder and  
13 once into Tyron’s right abdomen. The Taser shocked Tyron and caused extreme pain and  
14 immobilization. He could not move his muscles.

15           45.    After Harris tased Tyron, Officer Sue slammed his knee into the back of  
16 Tyron’s head, causing Tyron’s face to slam into the asphalt.

17           46.    Officer Sue then handcuffed Tyron, and the two officers arrested him on false  
18 charges of resisting arrest, aggravated assault, and theft.

19           47.    Shortly after Tyron was handcuffed, his girlfriend arrived at the scene and  
20 advised Officers Harris and Sue that Tyron was deaf and suffered from cerebral palsy.

21           48.    Officers Harris and Sue dismissed this information and omitted it from their  
22 reports.

23           49.    When Tyron’s girlfriend protested the arrest, Officer Harris threatened to  
24 arrest her without any legal basis.

25           50.    After Tyron was handcuffed and arrested, other officers investigated D.S.’s  
26 allegations against Tyron.

27           51.    Officer Brown spent approximately one hour at the Circle K talking to Circle  
28 K employees and reviewing Circle K video.

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52. As he noted in his report, the video showed no evidence that Tyron had assaulted D.S. or to suggest that Tyron had done anything wrong.

53. According to Officer Brown, the surveillance video does show D.S. adopting a “fighting stance” while in the Circle K. According to Officer Brown, the surveillance video shows Tyron “attempting to avoid” D.S.

54. Even though D.S.’s allegations against Tyron were baseless and false, Officer Acosta wrote a false report and probable cause statement to charge Tyron with stealing his own cell phone:

OFFICER HARRIS ARRIVED AT THE CIRCLE K AND SPOKE WITH THE VICTIM. THE VICTIM SAID HE WAS AT THE CIRCLE K WITH HIS PHONE IN HIS HAND WHEN THE SUSPECT APPROACHED HIM AND PUNCHED HIM IN THE FACE. THE VICTIM SAID THE PUNCH CAUSED HIM TO DROP HIS PHONE ONTO THE GROUND AND THE SUSPECT PICKED IT UP AND WALKED EAST-BOUND FROM THE CIRCLE K ONTO EAST INDIAN SCHOOL ROAD. THE VICTIM DESCRIBED HIS CELLPHONE AS BLACK IN COLOR.

55. This statement is a complete fabrication.

56. The footage from Officer Harris’ body worn camera does not contain any statement from D.S. alleging that a cell phone had been stolen or that Tyron had stolen a cell phone. Nor did Officer Harris include this information in his own account of the incident.

57. Officer Acosta falsified his police report to include this information in order to cover up for Officers Harris and Sue’s violent attack and to harm and damage Tyron’s reputation.

58. Following the attack, Tyron McAlpin was taken to the hospital then booked into the Maricopa County jail.

59. Unable to post bond, Tyron was jailed for 23 days and was ultimately released on September 10, 2024.

60. On October 17, 2024, Maricopa County Attorney Rachel Mitchell dismissed all charges against Tyron.

**The City of Phoenix’s Policies, Customs, and Procedures**

61. Defendant City of Phoenix is responsible for training and supervising Phoenix police officers, including the Officer Defendants, regarding the use of force.

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62. The City of Phoenix Police Department has a pattern and practice of using excessive force. That pattern and practice amounts to an unwritten policy.

63. The City’s pattern and practice of using excessive force is the result of training officers that they can use force whenever they want to, as long as they can “articulate” a justification for using force, regardless of constitutional standards.

64. The result of this training is that City of Phoenix police officers believe that they can use force so long as they can think of a justification for using force, even where the force they use is in clear violation of the Fourth Amendment.

65. The City’s pattern and practice of using excessive force is also the result of systematically failing to discipline or retrain officers who use excessive force.

66. In the last 10 years, the City has repeatedly avoided disciplining officers who used force, including deadly force, in ways that violated City policies and training. This failure to discipline or retrain officers is so widespread that it amounts to an unwritten policy that has created a culture of impunity among the City’s officers.

67. The City has a pattern and practice of discriminating against Black Americans when enforcing the law.

68. The City has a pattern and practice of ignoring the rights of the disabled when enforcing the law.

69. Defendant City of Phoenix has a policy, custom, or procedure for training and allowing its officers to “escalate” situations (*i.e.*, to use more force than is reasonably necessary or appropriate to respond to situations).

70. At all times, the Officer Defendants were acting in accordance with the foregoing unconstitutional customs, practices, and training, such that the City’s customs, practices, and training were moving forces of the Officer Defendants’ conduct and of the violations of Tyron’s rights.

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**COUNT I**

**Assault and Battery**

**(Against Defendants City of Phoenix, Harris, and Sue)**

71. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

72. At all relevant times, Officers Harris and Sue were acting in the course and scope of their employment for Defendant City of Phoenix.

73. Officers Harris and Sue assaulted and battered Tyron McAlpin.

74. Officers Harris and Sue intentionally caused harmful or offensive contact to Tyron McAlpin.

75. The assault and battery were not justified.

76. As a result of the assault and battery, Tyron McAlpin sustained serious injuries and emotional distress, and he incurred medical expenses, other economic losses, and general damages.

**COUNT II**

**Negligence**

**(Against Defendant City of Phoenix)**

77. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

78. Defendant City of Phoenix owes a duty of care to members of the public with whom its officers come into contact and/or investigate, including Tyron McAlpin.

79. Defendant City of Phoenix breached this duty by failing to adequately supervise its officers, including the Officer Defendants.

80. Defendant City of Phoenix breached this duty by failing to adequately train its officers with respect to the seizure of suspects and the use of force.

81. Defendant City of Phoenix breached this duty by failing to adopt adequate and reasonable policies and training with respect to the seizure of suspects and the risks of using force.

82. As a result of Defendant City of Phoenix’s breaches, Tyron McAlpin sustained serious injuries and emotional distress, and he incurred medical expenses, other economic losses, and general damages.

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**COUNT III**  
**42 U.S.C. § 1983 – Violation of Fourth Amendment**  
**Right to be Free of Unlawful Seizures and Excessive Force**  
**(Against the Officer Defendants)**

83. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

84. Tyron McAlpin has a Fourth Amendment right to be free from unlawful searches and seizures and from excessive force.

85. The Officer Defendants violated Tyron McAlpin’s Fourth Amendment rights when they used excessive force against him.

86. Because the Defendants’ actions were done knowingly, intentionally, and maliciously, Tyron McAlpin is entitled to recover compensatory and punitive damages.

**COUNT IV**  
**42 U.S.C. § 1983 – Violation of Fourth Amendment**  
**Right to be Free of Unlawful Seizures and False Arrest**  
**(Against the Officer Defendants)**

87. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

88. Tyron McAlpin has a Fourth Amendment right to be free from unlawful searches and seizures, including false arrests.

89. The Officer Defendants violated Tyron McAlpin’s Fourth Amendment rights when they arrested him without probable cause to believe that he had committed a crime.

90. Tyron McAlpin suffered damages as the result of the deprivation of his Fourth Amendment right to be free from false arrest.

91. Defendants’ actions in falsely arresting Tyron McAlpin were done knowingly, intentionally, maliciously, or with reckless disregard to his constitutional rights, and Tyron McAlpin is entitled to recover compensatory and punitive damages.

**COUNT V**  
**42 U.S.C. § 1983 – *Monell* Claim**  
**(Against Defendant City of Phoenix)**

92. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

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93. Defendant City of Phoenix was deliberately indifferent to the proper training and supervision of their employees, including the Officer Defendants, regarding the appropriate use of force.

94. The City of Phoenix has policies, customs, or procedures that were deliberately indifferent to the rights of citizens to be free from excessive force, including the following:

- a. failing to train its officers regarding the proper use of force;
- b. allowing and encouraging Phoenix police officers to escalate situations by using force that was not reasonable or necessary under the circumstances;
- c. failing to review uses of force, use of force reports, and failing to adequately monitor, investigate, discipline, and retrain officers involved in excessive force incidents, and, therefore, creating a culture of impunity that encouraged officers to use excessive force;
- d. failing to monitor and investigate the frequency and extent of officer uses of force; and
- e. failing to monitor and identify officers who use excessive force.

95. The City of Phoenix was deliberately indifferent to the Fourth Amendment rights of members of the public, including Tyron McAlpin.

96. The City of Phoenix’s unconstitutional policies, customs, and procedures caused or contributed to the deprivation of Tyron McAlpin’s rights under the Fourth Amendment.

97. The City of Phoenix is liable for all damages arising from the constitutional violations it caused.

WHEREFORE, Plaintiff prays for judgment as follows:

A. For special damages, including but not limited to current and future medical fees and expenses, lost wages, and other economic losses;

1 B. For general and compensatory damages, including but not limited to pain and  
2 suffering, emotional distress, and loss of enjoyment of life;

3 C. For punitive damages against the Officer Defendants;

4 D. For taxable costs and pre- and post-judgment interest to the extent permitted  
5 by law;

6 E. For attorneys' fees and costs under 42 U.S.C. § 1988 to the fullest extent  
7 permitted by law; and

8 F. Such other relief as the Court deems just and proper.

9 RESPECTFULLY SUBMITTED: March 5, 2025

10 **ROBBINS CURTIN MILLEA & SHOWALTER, LLC**

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