

ERIC A. SEITZ
ATTORNEY AT LAW
A LAW CORPORATION

ERIC A. SEITZ 1412
DELLA A. BELATTI 7945
SARAH R. DEVINE 9673
820 Mililani Street, Suite 714
Honolulu, HI 96813
Telephone: (808) 533-7434
Facsimile: (808) 545-3608

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GULSTAN E. SILVA, JR., as)	CIVIL NO. 15-00436
Personal Representative of the)	
Estate of Sheldon Paul Haleck;)	COMPLAINT FOR DAMAGES; DEMAND
JESSICA Y. HALECK, Individually)	FOR JURY TRIAL
and as Guardian Ad Litem of)	
JEREMIAH M.V. HALECK; WILLAM E.)	
HALECK; and VERDELL B. HALECK,)	
)	
Plaintiffs,)	
)	
Vs.)	
)	
CITY AND COUNTY OF HONOLULU;)	
DONNA Y.L. LEONG, Individually)	
and in her Official Capacity;)	
LOUIS M. KEALOHA, Individually)	
and in his Official Capacity;)	
CHRISTOPHER CHUNG; SAMANTHA)	
CRITCHLOW; STEPHEN KARDASH; and)	
JOHN and/or JANE DOES 1-10,)	
)	
Defendants.)	
)	

COMPLAINT FOR DAMAGES

Plaintiffs GULSTAN E. SILVA, JR., as Personal
Representative of the Estate of Sheldon Paul Haleck, JESSICA Y.
HALECK, Individually and as Guardian Ad Litem of JEREMIAH M.V.

HALECK, WILLIAM E. HALECK, and VERDELL B. HALECK, by and through their undersigned attorneys, allege as follows:

I. Introduction

(1) This is an action to redress the deprivation under color of statutes, ordinances, rules, regulations, customs, policies, practices, and/or usages of rights, privileges, and immunities secured to Sheldon Paul Haleck by the Fourth and Fourteenth Amendments to the Constitution of the United States, inter alia, Article I, Sections 5, 6, and 7, of the Constitution of the State of Hawaii, inter alia, and 42 U.S.C. Section 1983, et seq.

(2) Plaintiffs contend that Sheldon Paul Haleck was wrongfully seized, denied his liberty, and fatally assaulted by Defendants CHUNG, CRITCHLOW, KARDASH, and/or JOHN and/or JANE DOES 1-10 in violation of applicable provisions of the Constitution of the United States and the Constitution of the State of Hawaii, inter alia.

(3) Plaintiffs contend that Defendants LEONG and KEALOHA, and/or JOHN and/or JANE DOES 1-10 have deliberately withheld information from Plaintiffs and the public and affirmatively acted to cover up and distort the true facts and circumstances relating to the death of Sheldon Paul Haleck.

II. Jurisdiction and Venue

(4) This case arises under the Constitution and

statutes of the United States of America and the State of Hawaii, inter alia.

(5) The claims asserted herein present a question of federal law thereby conferring jurisdiction upon the Court pursuant to 28 U.S.C. Sections 1331, 1343(3), 2201 and 2202, and 42 U.S.C. Section 1983, inter alia. Any and all state law claims contained herein form part of the same case or controversy as gives rise to Plaintiffs' federal law claims and therefore fall within the Court's supplemental jurisdiction pursuant to 28 U.S.C. Section 1367.

(6) Venue resides in the United States District Court for the District of Hawaii pursuant to 28 U.S.C. Section 1391(b), inter alia, as all of the events and/or omissions described herein occurred in the State of Hawaii.

III. Parties

(7) Sheldon Paul Haleck (hereinafter "Sheldon") was a resident of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto.

(8) Plaintiff GULSTAN E. SILVA, JR., is the natural uncle and Personal Representative of the Estate of Sheldon Paul Haleck and has been a resident of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto.

(9) Plaintiff JESSICA Y. HALECK is the wife of Sheldon and Guardian Ad Litem of JEREMIAH M.V. HALECK and has been a

resident of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto.

(10) JEREMIAH M.V. HALECK is the minor son of Sheldon and Jessica Y. Haleck and has been a resident of the City and County of Honolulu, State of Hawaii, at all times pertinent hereto.

(11) WILLIAM E. HALECK is the natural father of Sheldon and has been a resident of the State of Utah at all times pertinent hereto.

(12) VERDELL B. HALECK is the natural mother of Sheldon and has been a resident of the State of Utah at all times pertinent hereto.

(13) Defendant CITY AND COUNTY OF HONOLULU is and has been a duly organized municipal corporation of the State of Hawaii at all times pertinent hereto.

(14) Defendant DONNA Y.L. LEONG (hereinafter "Defendant LEONG") is and has been a citizen and resident of the City and County of Honolulu, State of Hawaii, and is and has been the Corporation Counsel for the City and County of Honolulu at all times pertinent hereto. Defendant LEONG is sued herein in her individual and official capacities.

(15) Defendant LOUIS M. KEALOHA (hereinafter "Defendant KEALOHA") is and has been a citizen and resident of the City and County of Honolulu, State of Hawaii, and is and has been the

Chief of the Honolulu Police Department at all times pertinent hereto. Defendant KEALOHA is sued herein both in his individual and official capacities.

(16) Plaintiffs are informed and believe, and thereupon allege, that Defendant CHRISTOPHER CHUNG (hereinafter "Defendant CHUNG") is and has been a citizen and resident of the City and County of Honolulu, State of Hawaii, and is and has been employed as a police officer by the Honolulu Police Department at all times pertinent hereto. Defendant CHUNG is sued herein both in his individual and official capacities.

(17) Plaintiffs are informed and believe, and thereupon allege, that Defendant SAMANTHA CRITCHLOW (hereinafter "Defendant CRITCHLOW") is and has been a citizen and resident of the City and County of Honolulu, State of Hawaii, and is and has been employed as a police officer by the Honolulu Police Department at all times pertinent hereto. Defendant CRITCHLOW is sued herein both in her individual and official capacities.

(18) Plaintiffs are informed and believe, and thereupon allege, that Defendant STEPHEN KARDASH (hereinafter "Defendant KARDASH") is and has been a citizen and resident of the City and County of Honolulu, State of Hawaii, and is and has been employed as a police officer by the Honolulu Police Department at all times pertinent hereto. Defendant KARDASH is sued herein both in his individual and official capacities.

(19) Defendants JOHN and/or JANE DOES 1-10 (hereinafter "DOE DEFENDANTS") are individuals whose true identities and capacities are as yet unknown to Plaintiffs and their counsel, despite diligent inquiry and investigation, and who acted herein as described more particularly below in connection with the breaches of duties and/or violations of law alleged herein and who in some manner or form not currently discovered or known to Plaintiffs may have contributed to or be responsible for the wrongful death and injuries alleged herein. The true names and capacities of DOE DEFENDANTS will be substituted as they become known. DOE DEFENDANTS are sued herein both in their individual and official capacities.

IV. Factual Allegations

(20) On or about March 16, 2015, at or about 8:16 pm, Sheldon was at or near the intersection of South King Street and Richards Street in Honolulu, Hawaii.

(21) At or about 8:16 pm, for reasons unknown to Plaintiffs, Defendant Officers CHUNG, CRITCHLOW, KARDASH, and other unnamed DOE DEFENDANTS arrived at or near the intersection of South King Street and Richards Street, confronted Sheldon, and began questioning him.

(22) Plaintiffs are informed and believe, and thereupon allege, that as Sheldon was talking to Defendant Officers, for reasons unknown to Plaintiffs and without warning to Sheldon,

Defendant CRITCHLOW deployed her Taser which struck Sheldon in his chest.

(23) After being struck by Defendant CRITCHLOW's initial Taser discharge, Sheldon attempted to back away from Defendant Officers as Defendant Officers continued to pursue him.

(24) Sheldon turned away and attempted to walk away from Defendant Officers when Defendant CRITCHLOW deployed her Taser a second time, this time striking Sheldon in his back.

(25) After being struck a second time, Sheldon fell to his back on the ground along South King Street.

(26) Defendants CHUNG, CRITCHLOW, KARDASH, and/or other unnamed DOE DEFENDANTS then physically assaulted Sheldon as he lay on the ground on his back.

(27) Defendant Officers flipped Sheldon on to his stomach, restraining him on the ground for several minutes.

(28) An unidentified officer then assaulted and restrained Sheldon by violently and forcefully planting his knee on to and across Sheldon's neck and upper back while other officers restrained and cuffed Sheldon's hands and legs.

(29) Plaintiffs are informed and believe, and thereupon allege, that Sheldon was dragged along the road to the sidewalk by Defendant Officers CHUNG, CRITCHLOW, KARDASH, and/or certain of the DOE DEFENDANTS.

(30) Plaintiffs are informed and believe, and thereupon allege, that Sheldon sustained injuries including but not limited to loss of consciousness, punctures to his chest and back, abrasions to his right forehead, right cheekbone, both feet, both knees, and inner left ankle, and swelling of both hands and both feet.

(31) Plaintiffs are informed and believe, and thereupon allege, that no officer ever warned Sheldon that a Taser would be deployed prior to the first or second deployment of Defendant Officer CRITCHLOW's Taser.

(32) Plaintiffs are informed and believe, and thereupon allege, that no officer announced to Sheldon that he was under arrest prior to the first or second deployment of Defendant Officer CRITCHLOW's Taser.

(33) Sheldon was unarmed at all times pertinent hereto.

(34) Sheldon was not threatening members of the public or any of the Defendants at all times pertinent hereto.

(35) Sheldon was not actively resisting or threatening Defendants CHUNG, CRITCHLOW, KARDASH and/or any DOE DEFENDANTS at all times pertinent hereto.

(36) At or about 8:30 pm, Sheldon was arrested for disorderly conduct pursuant to HRS Section 711-1101.

(37) Some time after 8:50 pm, Sheldon was taken to Queen's Medical Center for treatment of his injuries that were a

direct and proximate cause of being shot with the Taser and assaulted by Defendants CRITCHLOW, CHUNG, KARDASH, and/or other DOE DEFENDANTS.

(38) As a result of the actions of Defendants CHUNG, KARDASH, CRITCHLOW, and/or other DOE DEFENDANTS, Sheldon suffered fatal injuries and died on Tuesday, March 17, 2015, at or about 7:33 am.

(39) Sheldon did not at any time provoke, invite, consent to, or otherwise allow or permit Defendants CHUNG, CRITCHLOW, KARDASH and/or DOE DEFENDANTS to touch, seize, or assault him.

(40) Plaintiffs are informed and believe, and thereupon allege, that all of the individually named Defendant Officers and DOE DEFENDANTS were instructed pursuant to the Honolulu Police Department's Policy Number 1.04 entitled "Use of Force."

(41) Plaintiffs are informed and believe, and thereupon allege, that Defendant KEALOHA ratified Policy Number 1.04.

(42) Pursuant to Policy Number 1.04, individual Defendant Officers are permitted to "use reasonable force to effectively bring an incident under control" and are "restricted to the use of force that is "objectively reasonable" in light of the facts and circumstances as the officer perceived them to be at the time of the incident."

(43) The Honolulu Police Department's Policy Number 1.04 prohibits the use of unreasonable or excessive force, in relevant part, as follows:

"Unreasonable force is not justified or condoned by the department. Unreasonable force is defined as the use of force which is not reasonable or justifiable by the circumstances of the particular event. The use of force need not be excessive to be deemed unreasonable, as in situations that do not require any use of force.

...

Excessive force is not justified or condoned by the department. Excessive force is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all the circumstances."

(44) Plaintiffs are informed and believe, and thereupon allege, that the above described actions of Defendants CHUNG, CRITCHLOW, KARDASH and/or DOE DEFENDANTS were without reasonable, just, and/or probable cause.

(45) As a direct and proximate result of the foregoing, Sheldon suffered traumatic and fatal injuries, great physical and mental pain, anguish and suffering, severe emotional distress, anxiety, embarrassment, humiliation, worry and anger.

(46) As a direct and proximate result of the foregoing, Sheldon required medical treatment in amounts to be proven at trial.

(47) As a direct and proximate result of the foregoing, Sheldon suffered loss of earnings in amounts to be proven at trial.

(48) As a direct and proximate result of the foregoing Plaintiffs have suffered great mental pain, anguish and suffering, severe emotional distress, anxiety, embarrassment, humiliation, worry and anger.

V. First Cause of Action
(Fourth Amendment and/or
42 U.S.C. Section 1983 Violations)

(49) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 48 above.

(50) Plaintiffs are informed and believe, and thereupon allege, that Defendants CHUNG, CRITCHLOW, KARDASH and/or DOE DEFENDANTS acted and/or purported to act herein under color of statutes, ordinances, rules, regulations, customs, policies, practices, and/or usages of the City and County of Honolulu, State of Hawaii, and in the scope and course of their employment as police officers in the Honolulu Police Department.

(51) Plaintiffs are informed and believe, and thereupon allege, that Sheldon was seized and assaulted and suffered the loss of his life and liberty without any probable, sufficient, just, or reasonable cause in violation of rights guaranteed to him by the Fourth Amendment to the United States Constitution, and Article I of the Constitution of the State of Hawaii, inter alia.

(52) As a direct and proximate result of the actions of Defendants CHUNG, CRITCHLOW, KARDASH, and/or certain other DOE

DEFENDANTS, Sheldon sustained substantial damages in amounts to be proven at trial.

VI. Second Cause of Action
(Fourteenth Amendment and/or
42 U.S.C. Section 1983 Violations)

(53) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 48, and 50 through 52 above.

(54) Defendants CHUNG, CRITCHLOW, KARDASH, and/or certain other DOE DEFENDANTS knew, or should have known that their actions were unreasonable and/or excessive and violated Sheldon's clearly established constitutional rights.

(55) Defendants CHUNG, CRITCHLOW, KARDASH and/or certain other DOE DEFENDANTS were deliberately indifferent to Sheldon's clearly established constitutional rights and acted with a purpose to harm Sheldon unrelated to legitimate law-enforcement objectives.

(56) JEREMIAH M.V. HALECK has directly and proximately suffered the loss of companionship and society of his father without any probable, sufficient, just, or reasonable cause.

(57) WILLIAM E. HALECK and VERDELL B. HALECK have directly and proximately suffered the loss of companionship and society of their son without any probable, sufficient, just, or reasonable cause.

(58) As a direct and proximate result of the foregoing, Plaintiffs JEREMIAH M.V. HALECK, WILLIAM E. HALECK, and VERDELL B. HALECK sustained substantial damages in amounts to be proven at trial.

VII. Third Cause of Action
(Constitutional and/or 42 U.S.C. Section 1983
Violations: Municipal Liability)

(59) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 48, and 50 through 52.

(60) Plaintiffs allege that it is the policy, practice, and custom of Defendant KEALOHA, the Honolulu Police Department, its supervisors, and police officers to tolerate and ratify the use of unreasonable and/or excessive uses of force by its police officers, employees, and/or agents.

(61) Plaintiffs are informed and believe, and thereupon allege, that despite the clear prohibitions against excessive and unreasonable force contained in Policy Number 1.04, Defendants CHUNG, CRITCHLOW, KARDASH, and/or certain other DOE DEFENDANTS were not adequately trained, investigated, supervised, disciplined, and/or retrained by Defendants KEALOHA and CITY AND COUNTY OF HONOLULU in the use of Tasers and other means of force.

(62) As a direct and proximate result of the foregoing, Sheldon sustained substantial damages in an amount to be proven at trial.

VIII. Fourth Cause of Action
(Assault and Battery)

(63) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 48 above.

(64) Defendants CHUNG, CRITCHLOW, KARDASH, and/or DOE DEFENDANTS acted herein outside the scope of their employment as police officers with the Honolulu Police Department.

(65) Plaintiffs are informed and believe, and thereupon allege, that Defendants CHUNG, CRITCHLOW, KARDASH, and/or certain DOE DEFENDANTS intentionally, willfully, knowingly, maliciously, and deliberately assaulted and attacked Sheldon without provocation and/or lawful justification.

IX. Fifth Cause of Action
(Intentional Infliction of Emotional Distress)

(66) Plaintiffs hereby incorporate all of the above allegations contained in Paragraphs 1 through 48, 64 and 65 above.

(67) Plaintiffs are informed and believe, and thereupon allege, that Defendants CHUNG, CRITCHLOW, KARDASH, and/or DOE DEFENDANTS maliciously, knowingly, intentionally, willfully, deliberately, and without regard for the rights, interests, and well-being of Sheldon, proximately caused Plaintiffs to suffer severe emotional distress in amounts to be proven at trial.

X. Sixth Cause of Action
(Negligence Claims)

(68) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 48 above.

(69) Plaintiffs are informed and believe, and thereupon allege, that Defendants CHUNG, CRITCHLOW, KARDASH, and/or DOE DEFENDANTS acted herein negligently thereby proximately and directly causing Sheldon to suffer physical injuries, pain, mental anguish, severe emotional distress, anxiety, embarrassment, humiliation, worry, and anger in amounts to be proven at trial.

(70) Plaintiffs are informed and believe, and thereupon allege, that Defendants CHUNG, CRITCHLOW, KARDASH, and/or DOE DEFENDANTS proximately and directly caused Plaintiff JESSICA HALECK, individually, to suffer loss of companionship, comfort, consortium, protection, marital care, attention, advice, and counsel from her husband, Sheldon, in amounts to be proven at trial.

(71) Plaintiffs are informed and believe, and thereupon allege, that Defendants CHUNG, CRITCHLOW, KARDASH, and/or DOE DEFENDANTS proximately and directly caused JEREMIAH M.V. HALECK to suffer loss of companionship, comfort, protection, and parental care from his father, Sheldon, in amounts to be proven at trial.

(72) Plaintiffs are informed and believe, and thereupon allege, that Defendants CHUNG, CRITCHLOW, KARDASH, and/or DOE DEFENDANTS proximately and directly caused Plaintiffs WILLIAM HALECK and VERDELL B. HALECK to suffer loss of companionship, comfort, protection, and loss of filial care and attention from their son, Sheldon, in amounts to be proven at trial.

XII. Eighth Cause of Action
(Negligent Infliction of Emotional Distress)

(73) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 48, 69 through 72 above.

(74) Plaintiffs are informed and believe, and thereupon allege, that Defendants negligently caused Sheldon to suffer mental anguish, severe emotional distress, anxiety, embarrassment, humiliation, worry, and anger in amounts to be proven at trial.

(75) Defendants CHUNG, CRITCHLOW, KARDASH, and/or DOE DEFENDANTS' actions herein were committed within the scope of their employment by Defendants CITY AND COUNTY OF HONOLULU and KEALOHA as Honolulu police officers.

XIV. Tenth Cause of Action
(Interference with Civil Rights)

(76) Plaintiffs hereby incorporate all of the allegations contained in Paragraphs 1 through 48, 50 through 52, 54 through 57, and 60 through 62 above.

(77) Plaintiffs made numerous oral requests for police reports and documents pertaining to the Honolulu Police Department's interactions with Sheldon on March 15 and 16, 2015, and records, including Sheldon's autopsy report.

(78) On or about May 13, 2015, Plaintiffs requested, in writing, from Defendant KEALOHA the police reports, radio transmissions, documents, or records pertaining to Honolulu Police Department interactions with Sheldon on March 15 and 16, 2015.

(79) On or about May 27, 2015, Defendant KEALOHA denied Plaintiffs the requested documents because "[t]he documents requested are part of an ongoing investigation and production would constitute a frustration of government purpose pursuant to Section 92F-13(3), Hawaii Revised Statutes."

(80) Defendant KEALOHA further denied Plaintiffs the requested documents because the documents "are protected by Section 92F-14, Hawaii Revised Statutes."

(81) On or about June 5, 2015, Plaintiffs requested, in writing, a copy of the Honolulu Medical Examiner's autopsy report related to Sheldon.

(82) Plaintiffs' request was denied by the Honolulu Medical Examiner because the Honolulu Medical Examiner needed to receive clearance from Defendant CITY AND COUNTY OF HONOLULU and its agencies, including but not limited to the Honolulu Police

Department and the Department of the Prosecuting Attorney.

(83) On June 9, 2015, Plaintiffs requested from Defendant LEONG, in writing, a copy of the Medical Examiner's autopsy report, death certificate, all police reports, radio transmissions, and other documents or records pertaining to the Honolulu Police Department's interactions with Sheldon on March 15 and 16, 2015, to which Defendant LEONG has never responded.

(84) On June 24, 2015, Christopher Happy, M.D., Chief Medical Examiner ("Dr. Happy") of the City and County of Honolulu completed his autopsy report on Sheldon.

(85) Despite the privacy protections previously cited to by Defendant KEALOHA, on or about June 30, 2015, Defendant KEALOHA and the Honolulu Police Department issued two releases and released two videos from the night of March 16, 2015, to Hawaii media outlets depicting Sheldon's last moments before he was brutally electrocuted, attacked and killed by Defendants CHUNG, CRITCHLOW, KARDASH, and/or other DOE DEFENDANTS.

(86) On or about July 1, 2015, Dr. Happy was interviewed by media outlet KHON 2 and reported, consistent with the autopsy report he completed, that Sheldon died from "multiple metabolic and cardiac complications" and that he was "acutely intoxicated."

(87) In spite of Sheldon's privacy rights and/or Defendant CITY AND COUNTY OF HONOLULU and KEALOHA's alleged

"ongoing investigation," the videos were immediately and broadly reported on media outlets including Civil Beat, Hawaii News Now, and K5 News Hawaii, and continue to be viewed and commented upon by members of the public. Dr. Happy's comments were also widely reported by KHON 2.

(88) On or about July 14, 2015, Defendant CITY AND COUNTY OF HONOLULU, KEALOHA, and/or LEONG released a copy of the Honolulu Medical Examiner's autopsy performed on Sheldon without notification of availability or prior release of the autopsy to Plaintiffs.

(89) The contents of this autopsy report were again immediately and broadly reported on by media outlets including Civil Beat and continue to be viewed and commented upon by members of the public.

(90) Plaintiffs finally received a formal copy of the autopsy on July 15, 2015.

(91) Despite Plaintiffs' repeated requests for other documents, including all police reports and radio transmissions, no other requested documents have ever been produced by Defendants CITY AND COUNTY OF HONOLULU, LEONG, and/or KEALOHA to Plaintiffs.

(92) As a direct and proximate result of the manner in which police press statements, videos, and Sheldon's autopsy were released to the public, in disregard of Plaintiffs' requests and

Sheldon's privacy interests, Plaintiffs have suffered great mental pain, anguish, suffering, severe emotional distress, anxiety, embarrassment, humiliation, worry, and anger in amounts to be proven at trial.

(93) By preventing Plaintiffs from receiving all requested information, covering up, and whitewashing the events of March 16, 2015, with selective public release of information and video recordings, Defendants CITY AND COUNTY OF HONOLULU, KEALOHA, LEONG, and/or certain other DOE DEFENDANTS have impeded, hindered, and obstructed the due course of justice and denied Plaintiffs due process and equal protection of the laws thereby proximately and directly causing injuries to Plaintiffs complained of herein.

WHEREFORE, Plaintiffs pray for relief as follows:

(1) For general damages in amounts to be proven at trial;

(2) For special damages in amounts to be proven at trial;

(3) For punitive damages against the individually named Defendants;

(4) For reimbursement of Plaintiffs' costs and expenses herein, including reasonable provision of his attorneys' fees; and

(5) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, October 20, 2015.

/s/ Eric A. Seitz

ERIC A. SEITZ

DELLA A. BELATTI

SARAH R. DEVINE

Attorneys for Plaintiffs