

1 JOHN L. BURRIS, Esq., SBN 69888
2 ADANTE D. POINTER, Esq., SBN 236229
3 LAW OFFICES OF JOHN L. BURRIS
4 Airport Corporate Centre
5 7677 Oakport St., Suite 1120
6 OAKLAND, CA 94621
7 Telephone: (510) 839-5200
8 Facsimile: (510) 839-3882
9 Email: john.burris@johnburrislaw.com
10 adante.pointer@johnburrislaw.com

11 Attorneys for Plaintiff

12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED *a*
JUL 25 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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13 KATHERINE HUTCHINSON, individually
14 and as personal representative of the Estate
15 of DARNELL HUTCHINSON; the Estate of
16 DARNELL HUTCHINSON,

17 Plaintiffs,

18 v.

19 CITY OF SAN LEANDRO, a municipal
20 corporation; OFFICER BRIAN BUSS
21 individually and in his official capacity as a
22 Police Officer for the CITY OF SAN
23 LEANDRO; OFFICER JEFF WALTON
24 individually and in his official capacity as a
25 Police Officer for the CITY OF SAN
26 LEANDRO; DOES 1-50, inclusive;
27 individually and in their official capacities as
28 POLICE OFFICERS for the CITY OF SAN
LEANDRO

Defendants.

Case No.:

C12-03898

COMPLAINT FOR DAMAGES FOR
VIOLATIONS OF CIVIL RIGHTS AND
WRONGFUL DEATH

(42 U.S.C §§ 1983; and pendant tort claims)

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 1. This case arises out of the wrongful death of thirty-two year old DARNELL HUTCHINSON
3 at the hands of two SAN LEANDRO Police Officers during the night of October 9, 2011.
4

5 **JURISDICTION**

6 2. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction is
7 conferred upon this Court by Title 42 of the United States Code, Section 1331 and 1343. The
8 unlawful acts and practices alleged herein occurred in the City of SAN LEANDRO, County of
9 Alameda, California, which is within this judicial district.
10

11 **PARTIES**

12 3. Plaintiff herein KATHERINE HUTCHINSON, is, and at all times mentioned herein, is a
13 competent adult who appears both individually and as the personal representative of DARNELL
14 HUTCHINSON. Plaintiff is the surviving parent of decedent, DARNELL HUTCHINSON.

15 4. Plaintiff, THE ESTATE OF DARNELL HUTCHINSON appears by and through its
16 representative KATHERINE HUTCHINSON, and may maintain causes of action and recover
17 damages for the value of decedent's life and decedent's pain and suffering.

18 5. Defendant CITY OF SAN LEANDRO ("hereinafter Defendant") is and at all times herein
19 mentioned, a municipal entity duly organized and existing under the laws of the State of California.

20 6. At all times mentioned herein, BRIAN BUSS, Officer of the SAN LEANDRO POLICE
21 DEPARTMENT ("hereinafter Defendant"), is sued in his individual and official capacity.

22 7. At all times mentioned herein, JEFF WALTON, Officer of the SAN LEANDRO POLICE
23 DEPARTMENT ("hereinafter Defendant"), is sued in his individual and official capacity.

24 8. Plaintiffs are ignorant of the true names and/or capacities of defendants sued herein as DOES
25 1 through 50, inclusive, and therefore sue said defendants by such fictitious names. Plaintiffs will
26 amend this complaint to allege their true names and capacities when ascertained. Plaintiffs believe
27 and allege that each of the DOE defendants is legally responsible and liable for the incident, injuries
28 and damages hereinafter set forth. Each defendant proximately caused injuries and damages because
of their negligence, breach of duty, negligent supervision, management or control, violation of public

1 policy, and false arrests. Each defendant is liable for his/her personal conduct, vicarious or imputed
2 negligence, fault, or breach of duty, whether severally or jointly, or whether based upon agency,
3 employment, ownership, entrustment, custody, care or control or upon any other act or omission.
4 Plaintiffs will ask leave to amend this complaint subject to further discovery.

5 9. In doing the acts alleged herein, Defendants, and each of them acted within the course and
6 scope of their employment.

7 10. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted under
8 color of authority and/or under color of law.

9 11. Due to the acts and/or omissions alleged herein, Defendants, and each of them, acted as the
10 agent, servant, and employee and/or in concert with each of said other Defendants herein.

11 12. For State causes of action related to Federal claims, Plaintiffs are required to comply with an
12 administrative claim requirement under California law. Plaintiffs have complied with all applicable
13 requirements.

14 FACTS

15 13. On or about October 9, 2011, at approximately 11:30 p.m., decedent, Darnell Hutchinson, at
16 the time a 32 year old African-American male, was sitting and eating at Nation's Hamburgers in
17 Washington Plaza in San Leandro, CA. Shortly, after completing his meal he walked outside of the
18 restaurant and was confronted by CITY OF SAN LEANDRO Police Officers BRIAN BUSS and JEFF
19 WALTON. Both Officers aggressively approached and physically accosted Mr. Hutchinson by
20 grabbing him about his upper body. Mr. Hutchinson asked a group of witnesses to "not leave" in the
21 hope that the Officers would not further accost and assault him if they remained present.
22 Unfortunately, the witnesses' presence did not cause the Officers to relent. Instead, the Officers
23 proceeded to place Mr. Hutchinson's arms behind his back. Next, one of the Officers tased Mr.
24 Hutchinson causing the group to fall to the ground.

25 14. Once on the ground, additional Officers arrived and joined in the unlawful assault. The
26 Officers held Mr. Hutchinson down by digging their knees and feet into his body and leveraging their
27 bodies against his and the pavement. Then, one or more Officers drive stunned Mr. Hutchinson
28 multiple times. Mr. Hutchinson pleaded with the Officers to please "don't kill me!" The Officers

1 ignored his pleas and within moments, Mr. Hutchinson became non responsive and was never
2 revived. He was later declared dead.

3 15. Plaintiffs are informed and believe and thereon allege that the CITY OF SAN LEANDRO
4 and DOES 26-50, inclusive, breached their duty of care to the public in that they have failed to discipline
5 defendants BRIAN BUSS, JEFF WALTON and DOES 1-25 inclusive, for their respective misconduct
6 and involvement in the incident described herein. Their failure to discipline defendants BRIAN BUSS,
7 JEFF WALTON and DOES 1-25 inclusive, demonstrates the existence of an entrenched culture, policy or
8 practice of promoting, tolerating and/or ratifying with deliberate indifference the making of improper
9 detentions and arrests, the use of excessive and/or deadly force and the fabrication of official reports to
10 cover up defendants' BRIAN BUSS, JEFF WALTON and DOES 1-25's inclusive, misconduct.

11 16. Plaintiffs are informed and believe and thereon allege that members of the CITY OF SAN
12 LEANDRO Police Department, including, but not limited to, defendants BRIAN BUSS, JEFF
13 WALTON, and/or DOES 1-25 and/or each of them, have individually and/or while acting in concert with
14 one another, engaged in a repeated pattern and practice of making improper detentions and/or false arrests
15 and using excessive, arbitrary and/or unreasonable force against individuals, including, but not limited to
16 decedent, DARNELL HUTCHINSON.

17 17. Plaintiff is further informed and believes and thereon alleges that as a matter of official policy --
18 rooted in an entrenched posture of deliberate indifference to the constitutional rights of primarily minority
19 citizens defendant CITY OF SAN LEANDRO POLICE DEPARTMENT has long allowed citizens, such
20 as the decedent, to be abused by its police officers, including by defendants BRIAN BUSS, JEFF
21 WALTON and/or DOES 1-25 and/or each of them, individually and/or while acting in concert with one
22 another.

23 18. As a result of the pre-existing customs, policies, patterns and/or practices of such abuses by
24 members of defendant CITY OF SAN LEANDRO Police Department, decedent and Plaintiffs were
25 subjected to the violation of their constitutional rights as alleged herein.
26
27
28

DAMAGES

1
2 19. As a consequence of Defendants violation of Plaintiff's federal civil rights under 42 U.S.C. §1983
3 and the Fourteenth Amendment, Plaintiff KATHERINE HUTCHINSON was mentally, and emotionally
4 injured and damaged as a proximate result of decedent's wrongful death, including but not limited to:
5 Plaintiff's loss of familial relations, decedent's society, comfort, protection, companionship, love,
6 affection, solace, and moral support.
7

8 20. Plaintiff, ESTATE OF DARNELL HUTCHINSON, by and through, KATHERINE
9 HUTCHINSON, the personal representative of DARNELL HUTCHINSON's estate, is entitled to recover
10 wrongful death damages pursuant to C.C.P. §§ 377.60 and 377.61 and Probate Code §6402(b).
11 Additionally, Plaintiff is entitled to the reasonable value of funeral and burial expenses pursuant to C.C.P.
12 §§ 377.60 and 377.61.
13

14 21. Plaintiff, ESTATE OF DARNELL HUTCHINSON is entitled to recover damages by and through
15 KATHERINE HUTCHINSON, the personal representative of decedent's estate pursuant to his right of
16 survivorship for the pain and suffering he endured as a result of the violation of his civil rights.
17

18 22. Plaintiff found it necessary to engage the services of private counsel to vindicate the rights of
19 decedent and Plaintiff's rights under the law. Plaintiff is therefore entitled to an award of attorneys' fees
20 and/or costs pursuant to statute(s) in the event that she is the prevailing party in this action under 42
21 U.S.C. §§§§ 1983, 1985-86 and 1988.

FIRST CAUSE OF ACTION
(Violation of Fourth Amendment of the United States Constitution
(42 U.S.C. §1983)
(THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)

22
23
24
25 23. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 24 of this complaint.
26 Defendants' above-described conduct violated decedent's right as provided for under the Fourth
27 Amendment to the United States Constitution to be free from excessive and/or arbitrary and/or
28 unreasonable use of deadly force against him.

1 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

2 **SECOND CAUSE OF ACTION**
3 **(Deliberate Indifference to Decedent's Medical Needs)**
4 **(THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)**

5 24. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 23 of this
6 Complaint.

7 25. Decedent was entitled to receive necessary medical attention while in the care and custody of the
8 SAN LEANDRO Police Department. In doing the acts complained of, defendants, and each of them,
9 acted under color of state law to deprive the decedent of urgently needed medical care in violation of his
10 rights, under the Due Process Clause of the Fourteenth Amendment.

11 26. As a proximate result of defendants' conduct, Plaintiff suffered injuries and damages as set forth
12 herein.

13
14 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

15
16 **THIRD CAUSE OF ACTION**
17 **(Wrongful Death)**
18 **(42 U.S.C. §1983)**
19 **(THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)**

20 27. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 26 of this
21 Complaint.

22 28. Defendants acted under color of law by shooting and killing decedent without lawful justification
23 and subjecting decedent to excessive force thereby depriving Plaintiff and the decedent of certain
24 constitutionally protected rights, including, but not limited to:

- 25 a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth and
26 Fourteenth Amendments to the United States Constitution;
- 27 b. The right not to be deprived of life or liberty without due process of law, as guaranteed by the
28 Fourteenth Amendments to the United States Constitution;

1 c. The right to be free from the use of excessive force by police officers, which is guaranteed by
2 the Fourth and Fourteenth Amendments to the United States Constitution; and/or,

3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

4 **FOURTH CAUSE OF ACTION**

5 **(Violations of Plaintiffs' Civil Rights to Familial Relationship)**

6 **(42 U.S.C. § 1983)**

7 **(KATHERINE HUTCHINSON v BUSS, WALTON & DOES 1-25)**

8 29. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 28 of this
9 Complaint as though fully set forth;

10 30. Defendants, acting under color of state law, and without due process of law, deprived Plaintiff of
11 her right to a familial relationship by seizing decedent by use of unreasonable, unjustified and deadly
12 force and violence, causing injuries which resulted in decedent's death, all without provocation and
13 attempted to conceal their excessive use of force and hide the true cause of decedent's demise to deprive
14 Plaintiff of her right to seek redress, all in violation of rights, privileges, and immunities secured by the
15 First, Fourth, and Fourteenth Amendments to the United States Constitution.
16

17 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

18 **FIFTH CAUSE OF ACTION**

19 **(Survival action: Violation of decedent's civil rights)**

20 **(42 U.S.C. §1983)**

21 **(THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)**

22 31. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 30 of this
23 Complaint.

24 32. DARNELL HUTCHINSON was forced to endure great conscious pain and suffering because of
25 the Defendants' conduct before his death;

26 33. DARNELL HUTCHINSON did not file a legal action before his death;

27 34. Plaintiff KATHERINE HUTCHINSON, as personal representative of the ESTATE OF
28 DARNELL HUTCHINSON claims damages for the conscious pain and suffering incurred by DARNELL
HUTCHINSON, as provided for under 42 U.S.C. §1983.

1 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

2 **SIXTH CAUSE OF ACTION**

3 **(Monell)**

4 **(42 U.S.C. §1983)**

5 **(THE ESTATE OF DARNELL HUTCHINSON Against CITY OF SAN LEANDRO, CHIEF**
6 **SPAGNOLI and DOES 26-50)**

7 35. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through 31 of this
8 Complaint.

9 36. As against Defendants CITY OF SAN LEANDRO, and/or DOES 26-50 and/or each of them,
10 individually and/or in their capacities as official policy-maker(s) for BART, the Plaintiff further alleges
11 that the acts and/or omissions alleged in the Complaint herein are indicative and representative of a
12 repeated course of conduct by members of Defendant CITY OF SAN LEANDRO Police Department
13 tantamount to a custom, policy or repeated practice of condoning and tacitly encouraging the abuse of
14 police authority, and disregard for the constitutional rights of citizens, such as Plaintiff.

15 37. Plaintiff is informed and believes and thereon alleges that the acts and/or omissions alleged herein
16 are the proximate result of a custom, policy, pattern or practice of deliberate indifference by Defendants
17 CITY OF SAN LEANDRO, and DOES 26-50 and/or each of them, to the repeated violations of the
18 constitutional rights of citizens by CITY OF SAN LEANDRO police officers, which have included, but
19 are not limited to, repeated acts of: making false reports, providing false and/or misleading information in
20 causing detentions, arrests, imprisonments and/or malicious prosecutions based on fabricated and/or
21 misleading statements and/or engaging in similar acts of misconduct on a repeated basis and failure to
22 institute and enforce a consistent disciplinary policy.

23 38. Plaintiff is further informed and believes and thereon alleges that the acts and/or omissions
24 alleged herein are the proximate result of a custom, policy, pattern or practice of deliberate indifference
25 by Defendants CITY OF SAN LEANDRO, DOES 26-50 and/or each of them, to the repeated violations
26 of the constitutional rights of citizens by CITY OF SAN LEANDRO police officers, which have
27 included, but are not limited to, using excessive and/or deadly force on a repeated basis.
28

1 39. Plaintiff is further informed and believes and thereon alleges that the damages sustained as alleged
2 herein were the proximate result of customs, policies and/or practices which included, but were not
3 limited to, the failure to adequately or appropriately hold officers accountable for their misconduct, the
4 failure to properly and fairly investigate complaints about officers' misconduct, the failure to enact or
5 adopt policies to ensure adequate and/or appropriate oversight of officers to prevent continuing violations
6 of the rights of citizens.
7

8 40. Plaintiff is further informed and believes and thereon alleges that the damages sustained as alleged
9 herein were the proximate result of customs, policies and/or practices which included, but were not
10 limited to, the failure to adequately or appropriately train officers using reality based training techniques,
11 workshops and/or simulations.
12

13 41. Plaintiff is further informed and believes and thereon alleges that the damages sustained as alleged
14 herein were the proximate result of customs, policies and/or practices which included, but were not
15 limited to, the failure to adequately or appropriately train officers in making detentions, arrests and/or
16 using force against mentally impaired and/or emotionally disturbed persons.
17

18 42. The aforementioned deliberate indifference, customs, policies or practices of Defendants CITY
19 OF SAN LEANDRO, and DOES 26-50, and/or each of them, resulted in the deprivation of the
20 constitutional rights of the Decedent and Plaintiff, including, but not limited to, the following:

- 21 a. the right not to be deprived of life, liberty or property without Due Process of Law;
- 22 b. the right to be free from unreasonable searches and/or seizures; and/or,
- 23 c. the right to equal protection of the law.
- 24 d. the right to familial relationships
- 25 e. the right to enjoy civil and statutory rights

26 43. Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the
27 United States Constitution.
28

44. As a result of the violation of their constitutional rights by Defendants CITY OF SAN
LEANDRO, and/or DOES 26-50 and/or each of them, Plaintiff sustained the injuries and/or damages as

1 alleged heretofore in this Complaint.

2
3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

4
5 **SEVENTH CAUSE OF ACTION**

6 **(Wrongful Death - Negligence)**

7 **(C.C.P. §377.60 and 377.61)**

8 **(KATHERINE HUTCHINSON v. v BUSS, WALTON & DOES 1-25)**

9 45. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 34 of this
10 Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and
11 oppressive conduct by defendants, and any and all allegations requesting punitive damages.

12 46. Defendants and DOES 1-25 inclusive, by and through their respective agents and employees,
13 proximately caused the death of decedent DARNELL HUTCHINSON, on October 9, 2011 as a result of
14 their negligent conduct and/or negligent failure to act as set-forth herein.

15 47. As an actual and proximate result of said defendants' negligence, and the death of decedent,
16 Plaintiff KATHERINE HUTCHINSON has sustained pecuniary loss resulting from the loss of comfort,
17 society, and services of her son, decedent, in an amount according to proof at trial.

18 48. As a further actual and proximate result of said defendants' negligence, Plaintiff incurred funeral
19 and burial expenses, in an amount according to proof at trial.

20 49. Pursuant to California C.C.P. Sections 377.60 and 377.61, Plaintiff has brought this action, and
21 claims damages from said defendants for the wrongful death of decedent, and the resulting injuries.

22
23 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

24 **EIGHTH CAUSE OF ACTION**

25 **(Violation of Decedent's Right To Enjoy Civil Rights)**

26 **(Violation of CALIFORNIA CIVIL CODE §52.1)**

27 **(THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)**

28 50. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 of this complaint.

51. Defendants' above-described conduct constituted interference, and attempted interference, by
threats, intimidation and coercion, with decedent's peaceable exercise and enjoyment of rights secured by

1 the Constitution and laws of the United States and the State of California, in violation of California Civil
2 Code §52.1.

3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

4 **NINTH CAUSE OF ACTION**
5 **(Violation of Decedent's State Statutory Rights)**
6 **(Violation of CALIFORNIA CIVIL CODE §51.7)**
7 **(THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)**

8 52. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 41 of this
9 complaint.

10 53. Plaintiff is informed and believes and thereon alleges that the conduct of Defendants BRIAN
11 BUSS, JEFF WALTON and DOES 1 through 25, inclusive, as described herein, was motivated by
12 prejudice against DARNELL HUTCHINSON. Decedent is and was readily recognizable as African-
13 American. In engaging in such conduct, Defendants violated decedent's rights under California Civil
14 Code §51.7 to be free from violence, or intimidation by threat of violence committed against him because
15 of his race.

16 54. Under the provisions of California Civil Code §52(b), Defendants are liable for punitive damages
17 for each violation of Civil Code §51.7, reasonable attorney's fees and an additional \$25,000.00.

18 55. As a proximate result of Defendants' wrongful conduct, decedent suffered damages as hereinafter
19 set forth.

20 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

21 **TENTH CAUSE OF ACTION**
22 **(Intentional Infliction of Emotional Distress)**
23 **(THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)**

24 56. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 47 of this complaint.

25 57. Defendants' above-described conduct was extreme, unreasonable and outrageous.

26 58. In engaging in the above-described conduct, defendants intentionally ignored or recklessly
27 disregarded the foreseeable risk that decedent would suffer extreme emotional distress as a result of
28 defendants' conduct.

1
2 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

3
4 **ELEVENTH CAUSE OF ACTION**
5 **(Assault And Battery)**

6 (THE ESTATE OF DARNELL HUTCHINSON v BUSS, WALTON & DOES 1-25)

7 59. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 of this complaint.

8 60. Defendants' above-described conduct constituted assault and battery.

9 WHEREFORE, Plaintiff prays for relief as hereinafter set forth

10 **JURY DEMAND**

11 Plaintiffs hereby demand a jury trial on all issues so triable.

12 **PRAYER**

13 WHEREFORE, plaintiff prays for relief, as follows:

14 1. For general damages in a sum to be determined at trial;

15 2. For special damages, including but not limited to, past, present and/or future wage loss, income
16 and support, medical expenses and other special damages in a sum to be determined according to proof;

17 3. For funeral and burial expenses according to proof;

18 4. For punitive damages and exemplary damages in amounts to be determined according to proof
19 as to defendants Officer BRIAN BUSS and Officer JEFFREY WALTON and/or DOES 1 through 25
20 and/or each of them;

21 5. For reasonable attorney's fees pursuant to 42 U.S.C. §1988;

22 6. For cost of suit herein incurred.

23 Dated: July 25, 2012

24 **THE LAW OFFICES OF JOHN L. BURRIS**

25 

26 JOHN L. BURRIS
27 Attorneys for Plaintiffs
28