

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SONIA JOSEPH, individually and as
Special Administrator of the ESTATE OF
GIOVONN JOSEPH-McDADE, and
GIOVANNI McDADE, individually,

Plaintiffs,

v.

CITY OF KENT, a Washington
municipality; CITY OF KENT POLICE
DEPARTMENT; WILLIAM DAVIS;
MATTHEW RAUSCH; and JOHN DOES
1-10,

Defendants.

No. 2:20-cv-00771-BJR

DEFENDANTS' AMENDED ANSWER
TO COMPLAINT FOR DAMAGES

DEMAND FOR JURY

Defendants, CITY OF KENT; CITY OF KENT POLICE DEPARTMENT;
WILLIAM DAVIS; and MATTHEW RAUSCH; and in answer to *Plaintiffs' Complaint for
Damages*, admits, denies and alleges as follows:

Unless specifically admitted herein, Defendants deny each and every allegation in
Plaintiffs' Complaint for Damages.

I. PARTIES

1. Defendants are without knowledge sufficient to form a belief as to the truth of the
allegations contained in paragraph 1 of *Plaintiffs' Complaint for Damages*, and therefore,
deny the same.

1 2. Defendants are without knowledge sufficient to form a belief as to the truth of the
2 allegations contained in paragraph 2 of Plaintiffs' *Complaint for Damages*, and therefore,
3 deny the same.

4 3. Defendants are without knowledge sufficient to form a belief as to the truth of the
5 allegations contained in paragraph 3 of Plaintiffs' *Complaint for Damages*, and therefore,
6 deny the same.

7 4. Defendants admit the allegations contained in paragraph 4 of Plaintiffs' *Complaint*
8 *for Damages*.

9 5. Defendants admit the allegations contained in paragraph 5 of Plaintiffs' *Complaint*
10 *for Damages*.

11 6. Defendants are without knowledge sufficient to form a belief as to the truth of the
12 allegations contained in paragraph 6 of Plaintiffs' *Complaint for Damages*, and therefore,
13 deny the same.

14 7. Defendants admit the City of Kent is a municipality within the State of Washington
15 and that it employed Mr. Davis and Mr. Rausch during the time relevant to the incident
16 described in the *Complaint for Damages*. The remainder of paragraph 7 of Plaintiffs'
17 *Complaint for Damages* calls for a legal conclusion and is therefore denied.

18 8. Defendants are without knowledge sufficient to form a belief as to the truth of the
19 allegations regarding John Doe(s) 1 through 4 contained in the first sentence of paragraph 8
20 Plaintiffs' *Complaint for Damages*, and therefore, deny the same. The remainder of
21 paragraph 8 of Plaintiffs' *Complaint for Damages* calls for a legal conclusion and is therefore
22 denied.

23 9. Defendants are without knowledge sufficient to form a belief as to the truth of the
24 allegations contained in paragraph 9 of Plaintiffs' *Complaint for Damages*, and therefore,
25 deny the same.

II. JURISDICTION AND VENUE

10. The allegations contained in paragraph 10 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

11. The allegations contained in paragraph 11 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

12. The allegations contained in paragraph 12 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

13. The allegations contained in paragraph 13 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

14. The allegations contained in paragraph 14 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

a. Defendants are without knowledge sufficient to form a belief as to the truth of Plaintiff's beliefs contained in paragraph 14(a) of Plaintiffs' *Complaint for Damages*, and therefore, deny the same.

b. Defendants admit the allegations contained in paragraph 14(b) of Plaintiffs' *Complaint for Damages*.

c. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 14(c) of Plaintiffs' *Complaint for Damages*, and therefore, deny the same.

d. Defendants admit the allegations contained in paragraph 14(d) of Plaintiffs' *Complaint for Damages*.

III. STATUTORY COMPLIANCE

15. Defendants admit the City of Kent received Plaintiff's claim form on or about February 20, 2020 and that over sixty days have elapsed without resolution of the claims. Defendants are without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 15 of Plaintiffs' *Complaint for Damages*, and therefore, deny the same.

16. The allegations contained in paragraph 16 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

IV. JURY DEMAND

17. This paragraph does not contain a factual allegation and does not require a response.

V. STATEMENT OF FACTS

18. Defendants deny the allegations contained in paragraph 18 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 18 of Plaintiffs' *Complaint for Damages* are legal conclusions, Defendants therefore deny the same.

19. Defendants admit the allegations contained in paragraph 19 of Plaintiffs' *Complaint for Damages*.

20. Defendants admit the allegations contained in paragraph 20 of Plaintiffs' *Complaint for Damages*.

21. Defendants admit that around 12:05 a.m. on June 24, 2017, Officer Rausch entered the ARCO AM/PM gas station parking lot located at 10402 SE 256th Street in Kent, Washington, and noticed a tan, 1990's four door Honda near the gas pumps. Officer Rausch observed two individuals in the vehicle and a third approaching the vehicle. Based on Officer Rausch's knowledge that 1990's Hondas are a commonly stolen vehicle and that the City of Kent in particular has a problem with vehicle theft, Officer Rausch ran a WACIC (Washington Crime Information Center) and DOL (Department of Licensing) database inquiry which returned the vehicle as a 1994 Honda Accord. The vehicle had an expired and cancelled registration. Officer Rausch noticed the third individual approaching the Honda had a scared look on his face as he saw Officer Rausch's patrol car and that he was hesitant to get into the Honda. The Honda then exited the ARCO and Officer Rausch followed the Honda slowly out of the ARCO lot and onto 104th Avenue SE. Upon noticing Officer Rausch turned the same direction as the Honda, the driver of the Honda then immediately turned back

1 into the same ARCO lot it had just exited and pulled back up to the pumps again. Officer
2 Rausch believed these actions were odd as it appeared the vehicle was trying to avoid being
3 stopped or confronted by him. Defendants deny the remainder of paragraph 21 of Plaintiffs'
4 *Complaint for Damages*.

5 22. Defendants deny the allegations contained in paragraph 79 of Plaintiffs'
6 *Complaint for Damages*. In addition, the allegations contained in paragraph 22 of Plaintiffs'
7 *Complaint for Damages* are legal conclusions and are therefore denied the same.

8 23. Defendants admit Officer Rausch attempted a traffic stop on the Honda in the
9 parking lot of the Applebee's restaurant at 25442 10th Avenue in Kent. Defendants deny the
10 remainder of paragraph 23 of Plaintiffs' *Complaint for Damages*.

11 24. Defendants admit that Officer Rausch advised over the radio that he was making
12 a traffic stop. Officer Rausch then pulled in behind the Honda which had stopped in the
13 parking lot. At this time, Officer Rausch had his red and blue overhead emergency lights on.
14 While Officer Rausch was going through procedure of informing dispatch of his location and
15 the vehicle he was with, Mr. Joseph-McDade exited his vehicle and turned to face Officer
16 Rausch. Pursuant to standard procedures, and for officer safety Officer Rausch directed Mr.
17 Joseph-McDade to get back in his vehicle. At that time, Officer Rausch requested a second
18 unit based on the driver's actions to that point. Defendants deny the remainder of paragraph
19 24 of Plaintiffs' *Complaint for Damages*.

20 25. Defendants deny the allegations contained in paragraph 25 of Plaintiffs'
21 *Complaint for Damages*. The document speaks for itself.

22 26. Defendants admit the driver of the Honda, now known to be Mr. Joseph-McDade,
23 exited his vehicle during the traffic stop and Officer Rausch directed him to return to his
24 vehicle pursuant to his training. Then for no apparent reason, the driver drove off prior to
25 Officer Rausch making contact with him and obtaining his identification or vehicle
26 registration. Defendants are without knowledge sufficient to form a belief as to the truth of
27 the remaining allegations contained in paragraph 26 of Plaintiffs' *Complaint for Damages*,

1 and therefore, deny the same.

2 27. Defendants admit that around 12:16 AM, Officer Davis responded to Officer
3 Rausch's request for a second officer. Defendants deny the remaining allegations contained
4 in paragraph 27 of Plaintiffs' *Complaint for Damages*.

5 28. Defendants admit the Computer Aided Dispatch (CAD) printout has a timestamp
6 of 00:17:03 with a corresponding comment stating "IN PURSUIT – TRFC VIOL...NO
7 TRFC, SPEEDS 20, SLOWING DOWN." Defendants deny the remaining allegations
8 contained in paragraph 28 of Plaintiffs' *Complaint for Damages*.

9 29. Defendants deny the allegations contained in paragraph 29 of Plaintiffs'
10 *Complaint for Damages*.

11 30. Defendants admit officers Davis and Rausch communicated some of the events
12 that occurred while pursuing Mr. Joseph-McDade's vehicles to dispatch. The officers were
13 also focused on the road and Mr. McDade's vehicle, which at times reached up to 60 miles
14 per hour on city streets. Defendants deny the remaining allegations contained in paragraph
15 30 of Plaintiffs' *Complaint for Damages*.

16 31. Defendants admit that at or about 12:17 AM, Officer Rausch reported there was
17 no traffic. Defendants deny the remaining allegations contained in paragraph 31 of Plaintiffs'
18 *Complaint for Damages*.

19 32. Defendants admit that the Honda and Officer Rausch's vehicles' speeds ranged
20 between twenty to sixty miles per hour on city streets and that the vehicles' speeds decreased
21 once the vehicles entered a neighborhood.

22 33. Defendants admit that no other vehicles or pedestrians are identified on the CAD
23 as being present on the road during the pursuit.

24 34. Defendants admit that no other vehicles or pedestrians are identified on the CAD
25 as being endangered during the pursuit.

26 35. Defendants deny the allegations contained in paragraph 35 of Plaintiffs'
27 *Complaint for Damages*.

1 36. Defendants admit that at or about 12:17:53 AM, Officer Rausch attempted to
2 disable Mr. Joseph-McDade's vehicle by using a pursuit intervention technique (also known
3 as a "pursuit immobilization technique" or "PIT") maneuver to contact the rear-driver's side
4 of Mr. Joseph-McDade's vehicle. Officer Rausch did not contact Mr. McDade's vehicle nor
5 did he attempt to contact the Honda in a manner that would be considered deadly force.
6 Defendants deny the remaining allegations contained in paragraph 36 of Plaintiffs' *Complaint*
7 *for Damages*.

8 37. Defendants admit that as the vehicles approached the roundabout, Officer Davis
9 attempted to position his vehicle in a manner that would require Mr. Joseph-McDade to stop
10 and that would safely end Mr. Joseph-McDade's erratic driving. When Officer Davis realized
11 he could not do so in a safe manner, he intentionally slowed his vehicle to avoid striking the
12 Honda. Defendants deny the remaining allegations contained in paragraph 37 of Plaintiffs'
13 *Complaint for Damages*.

14 38. Defendants are without knowledge sufficient to form a belief as to the truth of
15 Plaintiff's beliefs contained in paragraph 14(a) of Plaintiffs' *Complaint for Damages*, and
16 therefore, deny the same.

17 39. Defendants admit that once inside the cul-de-sac, Officer Rausch again attempted
18 the PIT maneuver on the back driver's side of the Honda while traveling at a slow speed but
19 was unsuccessful in disabling the vehicle. Officer Rausch did not attempt to contact the
20 Honda in a manner that would be considered deadly force. Defendants deny the remaining
21 allegations contained in paragraph 39 of Plaintiffs' *Complaint for Damages*.

22 40. Defendants admit that once inside the cul-de-sac, Officers Davis and Rausch
23 attempted to position their patrol vehicles to prevent the Honda from escaping where it could
24 return to a main city street and potentially harm innocent vehicles or pedestrians. Defendants
25 deny the remaining allegations contained in paragraph 40 of Plaintiffs' *Complaint for*
26 *Damages*.

1 41. Defendants deny the allegations contained in paragraph 41 of Plaintiffs'
2 *Complaint for Damages.*

3 42. Defendants deny the allegations contained in paragraph 42 of Plaintiffs'
4 *Complaint for Damages.*

5 43. Defendants deny the allegations contained in paragraph 43 of Plaintiffs'
6 *Complaint for Damages.*

7 44. Defendants admit that once inside the cul-de-sac, Officer Davis exited his patrol
8 vehicle and approached the Honda with his duty pistol raised. At this time, Officer Davis
9 also shouted commands to the driver to the effect of "turn the car off!" Officer Davis hit the
10 driver's-side window of the Honda with his sidearm, but despite Plaintiffs' allegations to the
11 contrary, did not shatter the glass. Mr. Joseph-McDade looked straight ahead and did not
12 acknowledge Officer Davis while his passenger, later identified as Devonte Cheeks, appeared
13 to raise his hands and grab for the door handle as if he was trying to exit the vehicle.
14 Defendants deny the remaining allegations contained in paragraph 44 of Plaintiffs' *Complaint*
15 *for Damages.*

16 45. Defendants deny the allegations contained in paragraph 45 of Plaintiffs'
17 *Complaint for Damages.*

18 46. Defendants admit that the driver of the Honda Accord placed the car in reverse
19 after being directed to turn off the vehicle, and drove back some distance away from the
20 officer. Despite having other easy avenues of escape that would have avoided the officer, the
21 driver then put the car in drive and deliberately drove straight at Officer Davis.

22 47. Defendants admit that after the Honda began to accelerate directly at Officer
23 Davis, Officer Rausch attempted to move his vehicle in front of the Honda and prevent it
24 from running over Officer Davis. However, Officer Rausch could not get there in time to
25 block the Honda. Defendants deny the remaining allegations contained in paragraph 47 of
26 Plaintiffs' *Complaint for Damages.*

1 48. Defendants admit Kent Police Department Policy #15.130 states, in part, “[i]n
2 determining reasonableness, the officer should consider the risk of bodily injury presented to
3 the fleeing suspect by use of the forcible stopping technique in light of the threat to the officer
4 or the public presented by the fleeing suspect’s actions.” Defendants deny the remaining
5 allegations contained in paragraph 48 of Plaintiffs’ *Complaint for Damages*.

6 49. Defendants admit that while Officer Rausch’s vehicle was accelerating towards
7 the Honda to prevent it from running over Officer Davis, Officer Davis was forced to make
8 a split second decision whether to use deadly force to prevent Mr. Joseph-McDade from
9 striking and killing him. Defendants deny the remaining allegations contained in paragraph
10 49 of Plaintiffs’ *Complaint for Damages*.

11 50. Defendants admit that Officer Davis fired two gunshots through the front
12 windshield of the Honda while positioned in front of the Honda on the passenger’s half of
13 the vehicle. According to the King County Medical Examiner’s autopsy report, those two
14 bullets struck Mr. Joseph-McDade in the chest. Mr. Joseph-McDade also had a “graze
15 gunshot wound of the proximal right arm.” Defendants deny the remaining allegations
16 contained in paragraph 50 of Plaintiffs’ *Complaint for Damages*.

17 51. Defendants admit that Officer Davis acted to prevent Mr. Joseph-McDade from
18 running him over with his Honda vehicle. This occurred after Mr. Joseph-McDade fled from
19 a lawful traffic stop and fled from officers on City of Kent streets. Defendants deny the
20 remaining allegations contained in paragraph 51 of Plaintiffs’ *Complaint for Damages*.

21 52. Defendants admit the allegations contained in paragraph 52 of Plaintiffs’
22 *Complaint for Damages*.

23 53. Defendants deny the allegations contained in paragraph 53 of Plaintiffs’
24 *Complaint for Damages*.

25 54. Defendants deny the allegations contained in paragraph 53 of Plaintiffs’
26 *Complaint for Damages*.

1 55. Defendants admit that under KPD Policy #3.80, Officers Davis and Rausch were
2 authorized to use deadly force against the driver of the Honda for reasons including, but not
3 limited to, “in self-defense or in the defense of another” and “when they have reason to
4 believe they or another are in immediate danger of death or great bodily harm.” Mr. Joseph-
5 McDade created those circumstances when he disobeyed Officer Davis’ clear order to turn
6 off his vehicle and instead reversed his car and intentionally drove it straight at Officer Davis.
7 Defendants deny the allegations contained in paragraph 55 of Plaintiffs’ *Complaint for*
8 *Damages*.

9 56. Defendants deny the allegations contained in paragraph 56 of Plaintiffs’
10 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 56
11 of Plaintiffs’ *Complaint for Damages* are legal conclusions, they are therefore denied the
12 same.

13 57. Defendants deny the allegations contained in paragraph 57 of Plaintiffs’
14 *Complaint for Damages*.

15 58. Defendants admit that according to reports from the King County Medical
16 Examiner’s Office Associate Medical Examiner Dr. Timothy Williams and Medicolegal
17 Investigator Geerdes arrived at the scene at or around 7:38 on June 24, 2017. Mr. Joseph-
18 McDade was pronounced dead on scene around 12:45 AM the same day.

19 59. Defendants admit the allegations contained in paragraph 59 of Plaintiffs’
20 *Complaint for Damages*.

21 60. Defendants deny the allegations contained in paragraph 60 of Plaintiffs’
22 *Complaint for Damages*. The report speaks for itself. Defendants further deny that there were
23 “multiple gunshot wounds to both the central chest and right lateral chest” - there only two
24 gunshots.

25 61. Defendants admit Officer Davis completed a required Public Safety Notice at the
26 scene.

1 62. Defendants deny the allegations contained in paragraph 62 of Plaintiffs'
2 *Complaint for Damages*.

3 63. Defendants deny the allegations contained in paragraph 63 of Plaintiffs'
4 *Complaint for Damages*.

5 64. Defendants admit that neither Officer Davis nor Officer Rausch were disciplined
6 for their involvement in the events that ended with Mr. Joseph-McDade's death. Defendants
7 deny the remaining allegations contained in paragraph 64 of Plaintiffs' *Complaint for*
8 *Damages*.

9 65. Defendants deny the allegations contained in paragraph 65 of Plaintiffs'
10 *Complaint for Damages*.

11 66. Defendants deny the allegations contained in paragraph 66 of Plaintiffs'
12 *Complaint for Damages*.

13 67. Defendants deny the allegations contained in paragraph 67 of Plaintiffs'
14 *Complaint for Damages*.

15 68. Defendants deny the allegations contained in paragraph 68 of Plaintiffs'
16 *Complaint for Damages*.

17 69. Defendants deny the allegations contained in paragraph 69 of Plaintiffs'
18 *Complaint for Damages*.

19 70. Defendants deny the allegations contained in paragraph 70 of Plaintiffs'
20 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 56
21 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
22 same.

23 71. Defendants deny the allegations contained in paragraph 71 of Plaintiffs'
24 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 56
25 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
26 same.

1 72. The allegations contained in paragraph 72 of Plaintiffs' *Complaint for Damages*
2 are legal conclusions and are therefore denied the same.

3 73. The allegations contained in paragraph 73 of Plaintiffs' *Complaint for Damages*
4 are legal conclusions and are therefore denied the same.

5 74. The allegations contained in paragraph 16 of Plaintiffs' *Complaint for Damages*
6 are legal conclusions and are therefore denied the same.

7 75. Defendants admit that no firearm was located in the vehicle. A search of the
8 vehicle discovered items including marijuana and methamphetamine. Defendants deny the
9 remaining allegations contained in paragraph 75 of Plaintiffs' *Complaint for Damages*.

10 76. Defendants deny the allegations contained in paragraph 76 of Plaintiffs'
11 *Complaint for Damages*.

12 77. Defendants deny the allegations contained in paragraph 77 of Plaintiffs'
13 *Complaint for Damages*.

14 78. Defendants admit the City of Kent found the officers' actions were consistent with
15 department training, department policy, and Federal/State Law. The allegations contained in
16 the remainder of paragraph 78 of Plaintiffs' *Complaint for Damages* are legal conclusions
17 and are therefore denied the same.

18 79. Defendants deny the allegations contained in paragraph 79 of Plaintiffs'
19 *Complaint for Damages*.

20 80. Defendants deny the allegations contained in paragraph 80 of Plaintiffs'
21 *Complaint for Damages*.

22 81. Defendants deny the allegations contained in paragraph 80 of Plaintiffs'
23 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 80
24 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
25 same.

26 82. Defendants deny the allegations contained in paragraph 82 of Plaintiffs'
27 *Complaint for Damages*.

83. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of Plaintiffs' *Complaint for Damages*, and therefore, deny the same.

84. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of Plaintiffs' *Complaint for Damages*, and therefore, deny the same.

85. Defendants are without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of Plaintiffs' *Complaint for Damages*, and therefore, deny the same.

VI. FIRST CAUSE OF ACTION

86. Defendants incorporate by reference their responses to all preceding paragraphs.

87. Defendants deny the allegations contained in paragraph 87 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 87 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

88. Defendants deny the allegations contained in paragraph 88 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 88 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

89. Defendants deny the allegations contained in paragraphs 89, including subsections (a)-(d), of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraphs 89, including subsections (a)-(d), of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

90. Defendants deny the allegations contained in paragraph 90 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 90 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

VII. SECOND CAUSE OF ACTION

91. Defendants incorporate by reference their responses to all preceding paragraphs.

92. Defendants deny the allegations contained in paragraph 92 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 92 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

93. Defendants deny the allegations contained in paragraph 93 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 93 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

94. Defendants deny the allegations contained in paragraph 94 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 94 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

95. Defendants deny the allegations contained in paragraph 95 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 95 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

VIII. THIRD CAUSE OF ACTION

96. Defendants incorporate by reference their responses to all preceding paragraphs.

97. The allegations contained in paragraph 92 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

98. Defendants deny the allegations contained in paragraph 98 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 98 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

1 99. Defendants deny the allegations contained in paragraph 99 of Plaintiffs'
2 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 99
3 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
4 same.

5 100. Defendants deny the allegations contained in paragraph 100 of Plaintiffs'
6 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 100
7 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
8 same.

9 101. Defendants deny the allegations contained in paragraph 101 of Plaintiffs'
10 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 101
11 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
12 same.

13 102. Defendants deny the allegations contained in paragraph 102 of Plaintiffs'
14 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 102
15 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
16 same.

17 103. Defendants deny the allegations contained in paragraph 103 of Plaintiffs'
18 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 103
19 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
20 same.

21 104. Defendants are without knowledge sufficient to form a belief as to the truth of
22 the allegations contained in paragraph 104 of Plaintiffs' *Complaint for Damages*, and
23 therefore, deny the same.

24 105. Defendants deny the allegations contained in paragraph 105 of Plaintiffs'
25 *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 105
26 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the
27 same.

IX. FOURTH CAUSE OF ACTION

106. Defendants incorporate by reference their responses to all preceding paragraphs.

107. Defendants deny the allegations contained in paragraph 107 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 107 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

X. FIFTH CAUSE OF ACTION

108. Defendants incorporate by reference their responses to all preceding paragraphs.

109. Defendants deny the allegations contained in paragraph 109 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 109 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

110. Defendants deny the allegations contained in paragraph 110 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 110 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

111. Defendants deny the allegations contained in paragraph 111 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 111 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

112. Defendants deny the allegations contained in paragraph 112 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 112 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

XI. SIXTH CAUSE OF ACTION

113. Defendants incorporate by reference their responses to all preceding paragraphs.

114. Defendants are without knowledge sufficient to form a belief as to the truth of

the allegations contained in paragraph 114 of Plaintiffs' *Complaint for Damages*, and therefore, deny the same.

115. Defendants deny the allegations contained in paragraph 115 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 115 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

116. Defendants deny the allegations contained in paragraph 116 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 116 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

117. Defendants deny the allegations contained in paragraph 117 of Plaintiffs' *Complaint for Damages*. In addition, to the extent the allegations contained in paragraph 117 of Plaintiffs' *Complaint for Damages* are legal conclusions, they are therefore denied the same.

XII. SEVENTH CAUSE OF ACTION

118. Defendants incorporate by reference their responses to all preceding paragraphs.

119. Defendants admit Officers Davis and Rausch were acting within the scope of their employment for the City of Kent during their encounter with Mr. Joseph-McDade on June 24, 2017.

120. The allegations contained in paragraph 22 of Plaintiffs' *Complaint for Damages* are legal conclusions and are therefore denied the same.

XIII. PRAYER FOR RELIEF

Defendants deny Plaintiffs are entitled to any of the requested relief set forth in paragraphs 121-126.

DEFENDANT'S AFFIRMATIVE DEFENSES

BY WAY OF FURTHER ANSWER FIRST AFFIRMATIVE DEFENSE, Defendants contend that the injuries and damages, if any, claimed by Plaintiffs were

1 proximately caused or contributed to by the fault of Plaintiffs' decedent, and/or his reckless,
2 willful and wanton or intentional actions.

3 BY WAY OF FURTHER ANSWER SECOND AFFIRMATIVE DEFENSE,
4 Defendants contend that Plaintiff's claims are precluded by the doctrine of qualified
5 immunity.

6 BY WAY OF FURTHER ANSWER THIRD AFFIRMATIVE DEFENSE,
7 Defendants contend that the injuries and damages, if any, claimed by Plaintiffs herein, arise
8 out of a condition of which Plaintiffs' decedent had knowledge and to which Plaintiffs'
9 decedent voluntarily subjected himself.

10 BY WAY OF FURTHER ANSWER FOURTH AFFIRMATIVE DEFENSE,
11 Defendants contend that if Plaintiffs sustained any injury or damage, the same was the result
12 of reasonable conduct and required conduct of Defendants under the circumstances and was
13 excusable and justifiable in connection with Plaintiffs' decedent's attempt to evade police
14 and drive over a police officer with a vehicle, and that any force utilized by Defendants was
15 reasonable, necessary and lawful under the circumstances and/or in the defense of self or
16 others, and was privileged.

17 BY WAY OF FURTHER ANSWER FIFTH AFFIRMATIVE DEFENSE,
18 Defendants contend that Defendant at all times acted in good faith in the performance of their
19 duties and are therefore immune from suit for the matters charged in Plaintiff's complaint.

20 BY WAY OF FURTHER ANSWER SIXTH AFFIRMATIVE DEFENSE,
21 Defendants contend that if the Plaintiff suffered any damages, recovery therefor is reduced
22 or barred by Plaintiff's failure to mitigate said damages.

23 BY WAY OF FURTHER ANSWER SEVENTH AFFIRMATIVE DEFENSE,
24 Defendants contend that Plaintiffs' damages are completely barred because Plaintiffs'
25 decedent was under the influence of intoxicating liquor or drug at the time of the occurrence
26 causing the injury or death and that such condition was a proximate cause of the injury or
27 death. RCW 5.40.060.

1 BY WAY OF FURTHER ANSWER EIGHTH AFFIRMATIVE DEFENSE,
2 Defendants contend that Plaintiffs' damages are completely barred because Plaintiffs'
3 decedent was engaged in the commission of a felony at the time of the occurrence causing
4 the injury or death and the felony was a proximate cause of the injury or death. RCW
5 4.24.420.

6 BY WAY OF FURTHER ANSWER NINTH AFFIRMATIVE DEFENSE,
7 Defendants contend that Plaintiffs lack capacity and standing to bring some or all of he
8 claims.

9 BY WAY OF FURTHER ANSWER TENTH AFFIRMATIVE DEFENSE,
10 Defendants contend that Defendant Kent Police Department lacks capacity and/or standing
11 to be sued and is not a "person."

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Defendants CITY OF KENT; CITY OF KENT POLICE
14 DEPARTMENT; WILLIAM DAVIS; and MATTHEW RAUSCH; prays for the following
15 relief:

- 16 1. That Plaintiff's complaint be dismissed with prejudice, and that Plaintiffs take
17 nothing by their complaint;
- 18 2. That Defendant be allowed its statutory costs and reasonable attorney fees
19 incurred herein; and
- 20 3. For such additional relief the Court may deem just and equitable.

21 **DEMAND FOR JURY TRIAL**

22 Pursuant to Fed.R.Civ.P. 38, Defendants respectfully demand their right to a trial by
23 a jury of six or more persons in this matter.

24 //

25 //

1 DATED this 6th day of August 2020.

2 KEATING, BUCKLIN & McCORMACK, INC., P.S.

3
4 By: /s/ Stewart A. Estes

5 Stewart A. Estes, WSBA No. 15535

6 Derek C. Chen, WSBA No. 49723

Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the below date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Plaintiffs

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