

Notice of Claim

Page 1 of 3

NOTICE OF CLAIM AGAINST THE CITY/TOWN OF Sierra Vista, Arizona

The undersigned submits the following information and makes claim against the City/Town of Sierra Vista, Arizona, and/or employee (see attached) as follows.

1. **CLAIMANT INFORMATION**

Claimant name: Michael Jackson, Mark Dunigan, and Cindy Dunigan

Address: C/O: Perry Hicks, Attorney, The Country Lawyer 741 East Fry Blvd

City: Sierra Vista State: AZ Zip: 85635

Phone No. Home _____ Work (520) 459-6400

Date of Birth: _____

Email Address: michele@thecountrylawyer.com, perry@thecountrylawyer.com

2. **OCCURRENCE OR EVENTS GIVING RISE TO THE CLAIM**

Date of Occurrence June 23, 2023 Time approx. 6:15 pm

Location of occurrence Alley behind [REDACTED] Calle Del Norte, Sierra Vista, AZ 85650

Give specifics of the occurrence, event, act or omission that you claim caused your injury or damage Please see attached.

Notice of Claim

Page 2 of 3

Describe how or why you believe the City/Town or employee was at fault _____

Please see attached

If this was a vehicle accident, state what road or highway the accident occurred on _____

N/A

Your vehicle license number _____

Year _____ Make _____ Model _____

The license of the City/Town vehicle _____

Name of the City/Town driver _____

Was a police report filed? Yes ☒ No ☐ I Don't Know ☐

Police agency involved **Sierra Vista Police Department**

3. DESCRIPTION OF PROPERTY DAMAGE AND INJURIES

Describe the property that was damaged **Please see attached**

Dollar amount of property damage claimed \$ **0**

Describe the personal injuries suffered **Please see attached**

Notice of Claim

Page 3 of 3

Dollar amount of personal injuries suffered \$ \$7,500,000.00 *see attached
(Attach receipts, or other documentation of the amounts claimed. Attach medical reports where available).

TOTAL DAMAGES CLAIMED \$ 7,500,000.00 *see attached

4. **WITNESSES** \$ 2,500,000.00 as to Mark Dunigan, \$ 2,500,000.00 as to Cindy Dunigan, \$ 2,500,000.00 as to Michael Jackson, for a total of \$ 7,500,000.00.

List all witnesses, with their name(s), address and phone.

Please see attached

5. Are there any additional comments, details or information you want us to consider in responding to your claim? Please see attached

6. By signing, you verify the information presented in this claim is true to the best of your knowledge and belief.

Signature Perry Heich Date 12-18-23
Preferred Method of Communication: Mail ☒ Phone ☒ Email ☒

7. Notice of Claim Received by:

Name _____ Date _____ Time _____

The Country Lawyer ®, P.C.

Perry Hicks, Attorney at Law
Wallace R. Hoggatt, Attorney at Law, of Counsel

741 East Fry Blvd.
Sierra Vista, AZ 85635
(520) 459-6400
(520) 459-2540 FAX

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December 18, 2023

The City of Sierra Vista, Arizona
City Manager, Chuck Potucek
Mayor Clea McCaa, II
Council Member William Benning
Council Member Gregory Johnson
Council Member Angelica Landry
Council Member Marta Messmer
Council Member Mark Rodriguez
Council Member Carolyn Umphrey
Dana Kennedy, Animal Control Officer, No. U604
Arleen Garcia, Animal Control Supervisor, No. [unknown]
Adam D. Thrasher, [Former] Chief of Police of the City of Sierra Vista, Arizona
Christopher Hiser, Chief of Police of the City of Sierra Vista, Arizona

Notice of Claim Pursuant to A.R.S. § 12-821.01 Against:

The City of Sierra Vista, Arizona, and the Mayor and Council thereof; Dana Kennedy, Animal Control Officer, No. U604; Arleen Garcia, Animal Control Supervisor, No. [unknown] ; Adam Thrasher, [Former] Chief of Police of the City of Sierra Vista, Arizona; Christopher Hiser, Chief of Police of the City of Sierra Vista, Arizona

Re: Claim by Michael Jackson, Cindy Dunigan and Mark Dunigan as surviving spouse and her adult children of Helene Jackson, deceased, for damages resulting from the wrongful death of Helene Jackson, who was killed in an attack by at least one, and possibly two, vicious, dangerous, and aggressive dogs on or about June 23, 2023. The dog(s) that killed Helene Jackson on that date had previously shown its or their vicious, dangerous, and aggressive character when, on or about February 11, 2023, they had attacked and injured another person and another canine. On or about February 11, 2023, the City of Sierra Vista, Arizona – referred to in this Claim as “Sierra Vista” or as “the City” – had imposed a “bite quarantine” on the dogs after their vicious and unprovoked attack on the other person and canine. The City had the ability and authority to ensure that the impounded dogs would not harm anyone else, but nonetheless returned them to their owner(s) without taking meaningful action. This Claim is against the City and the officers, agents, and employees stated above. The Claim for Michael Jackson, surviving spouse of Helene Jackson, is for the total amount of two million, five hundred thousand dollars (\$2,500,000.00). The Claim for Cindy Dunigan, surviving child of Helene Jackson is for the total amount of two million, five hundred thousand dollars (\$2,500,000.00). The Claim for Mark Dunigan, surviving child of Helene Jackson, is for the total amount of two million, five hundred thousand dollars (\$2,500,000.00). The Claim for Michael Jackson, Cindy Dunigan and Mark Dunigan, the surviving spouse and children of Helene Jackson is for the total amount of seven million five hundred thousand dollars (\$7,500,000.00).

To Whom It May Concern:

This firm represents Claimants Michael Jackson, the surviving spouse of Helene Jackson; Cindy Dunigan, the surviving child of Helene Jackson; and Mark Dunigan, the surviving child of Helene Jackson. Helene Jackson was killed by vicious and aggressive dogs on or about June 23, 2023.

A. Facts

1. Persons Relevant to this Claim.

No attempt is now made to list each and every person who may have played a part in the facts described herein or who may have material information. Many of such persons are identified in Sierra Vista Police Department ("SVPD") Officers' Reports (and Supplemental Reports or Addenda) for Incident 23-17381, and the Rule 15 disclosure in *State v. Shimira Marie Sanches and Ashlee Sanches*, Cochise County Superior Court Nos. CR202300803 and CR202300802. All of the City's reports, supplements, and addenda are in the possession of the City and all of the Rule 15 disclosure referred to herein can be accessed by any and all relevant City employees. It may be that other relevant reports, notes, and other records may be identified by other case numbers, but the City and its relevant employees would be aware of any such other case numbers. However, for present purposes, the following persons are relevant to the present Claim:

(a) Helene Jackson (referred to in this Claim by her full name or as "Helene") an 84-year-old resident of Sierra Vista, Arizona, who was killed on or about June 23, 2023, in the canine attack discussed below.

(b) Michael Jackson (referred to in this Claim by name), surviving spouse of Helene Jackson. References to "Claimants" are to all three claimants.

(c) Cindy Dunigan (referred to in this Claim by name), surviving adult daughter of Helene Jackson.

(d) Mark Dunigan (referred to in this Claim by name), surviving adult son of Helene Jackson.

(e) [REDACTED] (referred to in this Claim collectively as "the [REDACTED]" or individually by name), owners of and persons responsible for a male American pit bull terrier dog named Thor and a female American pit bull terrier dog named Panda. Claimant believes and therefore asserts that Thor attacked and killed both Helene Jackson and her small dog, Lily, and that Panda may or may not have joined in the canine killing frenzy on or about June 23, 2023.

(f) [REDACTED] (referred to in this Claim as "Mr. [REDACTED]"), who was attacked (and whose dog [REDACTED] was also attacked) by Thor and Panda on or about February 11, 2023.

(g) Dana Kennedy (referred to in this Claim as "ACO Kennedy"), who was employed by the City as an Animal Control Officer in February 2023, and remains so employed today. ACO Kennedy took action in the aftermath of the February 11, 2023, attack by Thor and Panda against Mr. [REDACTED]. ACO Kennedy's identification number given to her by the City is U604. At all times relevant to this Claim, ACO Kennedy acted within the course and scope of her employment with the City.

(h) Arleen Garcia (referred to in this Claim as "ACS Garcia"), who was employed by the City as the Animal Control Supervisor in February 2023, and remains so employed today. She is the person described in the City's Animal Control Ordinance § 90.05(B) as "the Animal Control Supervisor," who had discretion in February 2023 to allow or to refuse to allow the [REDACTED] to redeem Thor and Panda after they attacked and injured Mr. [REDACTED] on or about February 11, 2023. At all times relevant to this Claim, ACS Garcia acted within the course and scope of her employment with the City.

(i) Adam Thrasher was the Chief of Police for the City in 2023, up until July 15, 2023, when he retired and was replaced as Chief of Police for the City by Christopher Hiser, who continues in such position. Under the City's Animal Control Ordinance § 90.01, Animal Control Officers (ACOs) serve the City under the direction of the City Chief of Police. Although Chief Hiser was not yet Chief of Police for the City until July 15, 2023, at all material times up until that date he was Deputy Chief, and as such he was responsible for participating in training and supervising Sierra Vista animal control officers, including ACO Kennedy.

2. The Killing of Helene and Lily by the [REDACTED] Dog(s) on or about June 23, 2023.

No attempt is now made to state each and every fact relating to the attack upon and deaths of Helene and her dog Lily on or about June 23, 2023. Many facts are set forth in SVPD Officers' Reports (and Supplemental Reports or Addenda) for Incident 23-17381, and the Rule 15 disclosure in *State v. Shimira Marie Sanches and Ashlee Sanches*, Cochise County Superior Court Nos. CR202300803 and CR202300802. All of the City's reports, supplements, and addenda are in the possession of the City and all of the Rule 15 disclosure referred to herein can be accessed by any and all relevant City employees. It may be that other relevant reports, notes, and other records may be identified by other case numbers, but the City and its relevant employees would be aware of any such other case numbers. However, for present purposes, the following facts are important to state:

On or about June 23, 2023, Helene Jackson, an 84-year-old resident of Sierra Vista, took her small dog, Lily, for a walk. She walked Lily in an alley behind a number of residences, including a house at [REDACTED] Calle Del Norte, in Sierra Vista, where two adult persons, the [REDACTED] resided.

At [REDACTED] Calle Del Norte, the Sancheses owned, possessed, and had responsibility for, two dogs. Their two dogs were American pit bull terriers – Thor, a male dog, and Panda, a female dog. As Helene walked Lily in the alley, one of the dogs, believed by Claimants to be Thor, jumped the fence surrounding the back yard of [REDACTED] Calle Del Norte and got into the alley. Helene Jackson gathered up Lily in her arms in an effort to protect Lily from the attack by Thor, but was unable to protect her dog. Thor was able to wrest Lily from Helene's arms. Thor killed Lily, and then attacked, mauled, and killed Helene. Claimant does not know whether or not Panda participated in the attacks on Lily and Helene Jackson.

Thor and Panda were shot and killed by responding SVPD officers.

Notwithstanding the aftermath of an earlier attack on or about February 11, 2023, described below, when it was discovered that Thor and Panda had not received current rabies vaccinations, as of June 23, 2023, the Sancheses had still not obtained current rabies shots for their two dogs.

At no time did Helene provoke either Thor or Panda, or do anything to invite the canine attack upon her and Lily by Thor and/or Panda. Helene was not negligent in any way that contributed to her death or to the death of Lily, nor did Helene assume the risk of the attack on her and her dog. She was not at fault in any degree or to any extent whatsoever. At all relevant times, Helene and Lily were in a place they had the legal right to be.

3. The Attack on Mr. [REDACTED] by the [REDACTED] Dogs in February, 2023.

No attempt is now made to state each and every fact relating to the attack upon and injuries to Mr. [REDACTED] on or about February 11, 2023. Many facts are set forth in SVPD Animal Control Officers' Reports (and Supplemental Reports or Addenda) for Call Card ID 154027 and Bite Case Report for Bite ID 2147, and the Rule 15 disclosure in *State v. Shimira Marie Sanches and Ashlee Sanches*, Cochise County Superior Court Nos. CR202300803 and CR202300802. All of the City's reports, supplements, and addenda are in the possession of the City and all of the Rule 15 disclosure referred to herein can be obtained by any relevant City employees. It may be that other relevant reports, notes, and other records may be identified by other case numbers, but the City and its relevant employees would be aware of any such other case numbers. However, for present purposes, the following facts are important to state:

On or about February 11, 2023, during the mid-afternoon, Mr. [REDACTED] walked his dog, [REDACTED] in the alley behind the [REDACTED] residence at [REDACTED] Calle Del Norte in Sierra Vista. Essentially, Mr. [REDACTED] in the same location where, less than five months later, Helene Jackson and her dog Lily would be attacked and killed. On or about February 11, 2023, the [REDACTED] two dogs, Thor and Panda, escaped the confines of their yard by jumping the back fence and attacked Mr. [REDACTED]. Both Mr. [REDACTED] were injured, but fortunately they survived the attack – probably because of the timely assistance of a nearby resident,

who used a shovel to break the hold of Thor and Panda on their victims and to stop the attack. On information and belief, and based on the Bite Case Report for Bite ID 2146, it appears that at all material times, Mr. [REDACTED] were in a location where they had the legal right to be. There is no basis in such report to assert that Mr. [REDACTED] provoked Thor or Panda in any way whatsoever. It does not appear that Mr. [REDACTED] was in any way negligent so as to contribute to the attack, nor did Mr. [REDACTED] assume any risk of such an attack. It appears that Mr. [REDACTED] was not at fault in any degree or to any extent.

The City, acting through ACO Kennedy, became aware of the above-described attack on Mr. [REDACTED] and his dog, [REDACTED] by Thor and Panda on February 11, 2023, the date that it occurred. Claimant does not know if other persons employed by the City to deal with animal control matters – such as ACS Garcia – also became aware of the attack on the date it occurred or some later date. In any event, the City, acting through ACO Kennedy, learned on February 11, 2023, that Thor and Panda committed acts making them “vicious animal[s]” as that term is defined in City Animal Control Ordinance § 90.01. Each of such dogs was an “animal that has a propensity to attack, that bites, attempts to bite, endangers, injures or causes an injury to a human being(s) or other animal(s) without provocation...” Each of such dogs was an “[a]ggressive dog,” as that term is defined in A.R.S. § 11-1014.01(D)(1), and the City, acting through ACO Kennedy, was aware of that fact as of February 11, 2023.

At no time after the City learned that Thor and Panda were “vicious animals” and “aggressive dogs” as asserted above, did the City learn of any further facts or information to indicate that either Thor or Panda or both were no longer vicious or aggressive.

Thor and Panda were at large and unconfined after they jumped the fence and escaped from their yard on or about February 11, 2023, and attacked Mr. [REDACTED]. Thor and Panda were found by the City to be at large and unconfined on or about February 11, 2023.

On the same day as the attack on Mr. [REDACTED] on or about February 11, 2023, ACO Kennedy spoke to Shimira Sanches, who agreed to bring Thor and Panda in to the City’s Nancy J. Brua Animal Care Center for a “bite quarantine.” Claimants do not claim to have all records from the City regarding the quarantining or impounding by the City of Thor and Panda, but it can be inferred from City records that have so far been made available to Claimants, that Thor and Panda were brought in to the Nancy J. Brua Animal Care Center on or about February 11, 2023. Neither Thor nor Panda had received current vaccinations against rabies as of such date.

Bite quarantines are governed by City Animal Control Ordinance § 90.20. Despite the City’s knowledge that Thor and Panda were dangerous and vicious dogs, it does not appear that either Thor or Panda was impounded in accordance with City Animal Control Ordinance § 90.05(B).

ACO Kennedy quarantined Thor and Panda for ten days, from February 11 to February 21, 2023. During that time, the only action taken by ACO Kennedy (and by ACS Garcia) was to quarantine Thor and Panda to check for any signs of rabies. When there were no signs of rabies after

ten days in quarantine, ACO Kennedy and ACS Garcia allowed [REDACTED] to redeem both Thor and Panda. No action was taken by either ACO Kennedy or ACS Garcia (or any other employee of the City with responsibilities for animal control) to address the vicious and aggressive attack by Thor and Panda on Ricardo Russell or his dog. No action was taken by either ACO Kennedy or ACS Garcia (or any other employee of the City with responsibilities for animal control) to ensure that the [REDACTED] complied with A.R.S. § 11-1014.01(A) or with City Animal Control Ordinance § 90.05(A) after the dogs were released back to them. Neither ACO Kennedy nor ACS Garcia (nor any other employee of the City with responsibilities for animal control) ordered Thor or Panda to be euthanized; nor did ACO Kennedy or ACS Garcia (or any other employee of the City with responsibilities for animal control) require that the Sancheses build a more secure wall or fence around their property within which to enclose Thor and Panda to keep them from escaping again and attacking another unsuspecting victim; nor did ACO Kennedy or ACS Garcia (or any other employee of the City with responsibilities for animal control) require that Thor and/or Panda be supervised by an adult or restrained by leash or chain or otherwise when they were allowed outside.

At no time after the City learned of the attack by Thor and Panda against Mr. [REDACTED] and Saltwater did ACS Garcia or ACO Kennedy or anyone else working animal control for the City apply to any court for any orders regarding Thor or Panda or both.

B. Cause of Action

When the City learned on February 11, 2023, that Thor and Panda were vicious and dangerous dogs and found them to have been at large and unconfined, the City had the obligations under City Animal Control Ordinance § 90.05(B) to impound Thor and Panda. In fact, the City, acting through ACO Kennedy, did impound Thor and Panda on February 11, 2023. When ACO Kennedy impounded Thor and Panda, ACO Kennedy and her employer, the City of Sierra Vista, became the possessors of and “persons responsible for the dog[s]” under A.R.S. § 11-1020 and under common-law principles of liability for canine attacks. *See Jones v. Manhart*, 120 Ariz. 338, 340 (App. 1978) (“[a] possessor of a domestic animal that he knows or has reason to know has dangerous propensities abnormal to its class, is subject to liability for harm done by the animal to another, although he has exercised the utmost care to prevent it from doing the harm.”). *See also James v. Cox*, 130 Ariz. 152, 154 (App. 1981).

Here, the City had the legal obligation under City Animal Control Ordinance § 90.05(B) to impound two aggressive and vicious animals, Thor and Panda, after they escaped their yard and attacked Mr. [REDACTED] on or about February 11, 2023. However, the City did not impound the two animals as required. Rather, instead of impounding such animals, they required only a “bite quarantine” under City Animal Control Ordinance § 90.20. The owner of an animal subject merely to a “bite quarantine” is legally allowed to redeem the animal if one of six circumstances exists – see City Animal Control Ordinance § 90.20(C) – no one of which relates in any way to the animal’s propensity for attacking people and other animals. For example, under City Animal Control Ordinance § 90.20(C)(6), the owner of a dog subject to a bite quarantine is

authorized to redeem if the owner pays a mere \$50 recovery fee "in addition to any other associated costs." Or, under City Animal Control Ordinance § 90.20(C)(1), the owner of a dog subject to a bite quarantine may redeem the dog merely by showing that the dog is licensed.

By contrast, however, a vicious or aggressive dog which is found at large or unconfined, must be impounded, and thereafter may be redeemed by the owner only "at the discretion of the Animal Control Supervisor, designee, or by authorization from any court having jurisdiction." City Animal Control Ordinance § 90.05(B). Such discretion should and would involve consideration of how the Sancheses were to comply with A.R.S. § 11-1014.01(A) or with City Animal Control Ordinance § 90.05(A) after the dogs were released back to them. Here, two vicious and aggressive dogs were returned by the City to their owners without the exercise of the discretion required by City Animal Control Ordinance § 90.05(B) and without any consideration of any requirements to be imposed upon the owners of the dogs to protect innocent persons and animals at any later date. Had the City and ACS Garcia complied with their obligations under City Animal Control Ordinance § 90.05(B) in February 2023, Thor and Panda would either have been euthanized, or appropriate safeguards required of the [REDACTED] before return of the dogs by the City.

The City and its animal control officers, including ACO Kennedy and ACS Garcia, had a duty to protect citizens such as Helene Jackson from attacks by canines such as Thor and Panda, once the vicious and aggressive nature of such canines becomes known to them. The City, ACO Kennedy, and ACS Garcia breached their duty to Helene Jackson and acted negligently and with gross negligence and recklessness in returning Thor and Panda to their owners without taking meaningful action to protect Helene and Lily. Their negligence, gross negligence, and recklessness proximately caused Helene's and Lily's death.

C. Damages Proximately Resulting to Claimants

As a direct and proximate result of the actions and inactions stated above, Claimant Michael has suffered injuries and damages – primarily consisting of the death by mauling of his wife Helene. Claimants' injuries and damages are without limit, but are valued here to be two million, five hundred thousand dollars (\$2,500,000.00).

As a direct and proximate result of the actions and inactions stated above, Claimant Cindy Dunigan has suffered injuries and damages – primarily consisting of the death by mauling of her mother Helene. Claimants' injuries and damages are without limit, but are valued here to be two million, five hundred thousand dollars (\$2,500,000.00).

As a direct and proximate result of the actions and inactions stated above, Claimant Mark Dunigan has suffered injuries and damages – primarily consisting of the death by mauling of his mother Helene. Claimants' injuries and damages are without limit, but are valued here to be two million, five hundred thousand dollars (\$2,500,000.00).

D. Claim

Claimant Jackson authorizes settlement of this Claim for his injuries and damages, in the total amount of two million, five hundred thousand dollars (\$2,500,000.00). Accordingly, and pursuant to A.R.S. § 12-821.01, claim is hereby made on his behalf against the City of Sierra Vista and its employees identified in the heading on the first page of this Claim, for the amount of two million, five hundred thousand dollars (\$2,500,000.00).

Claimant Cindy Dunigan authorizes settlement of this Claim for her injuries and damages, in the total amount of two million, five hundred thousand dollars (\$2,500,000.00). Accordingly, and pursuant to A.R.S. § 12-821.01, claim is hereby made on her behalf against the City of Sierra Vista and its employees identified in the heading on the first page of this Claim, for the amount of two million, five hundred thousand dollars (\$2,500,000.00).

Claimant Mark Dunigan authorizes settlement of this Claim for his injuries and damages, in the total amount of two million, five hundred thousand dollars (\$2,500,000.00). Accordingly, and pursuant to A.R.S. § 12-821.01, claim is hereby made on his behalf against the City of Sierra Vista and its employees identified in the heading on the first page of this Claim, for the amount of two million, five hundred thousand dollars (\$2,500,000.00).

Claimants Michael Jackson, Cindy Dunigan and Mark Dunigan, the parties authorized to sue under the appropriate Arizona Statutes, authorize settlement of this Claim for their injuries and damages, in the total amount of seven million five hundred thousand dollars (\$7,500,000.00). Accordingly, and pursuant to A.R.S. § 12-821.01, claim is hereby made on his behalf against the City of Sierra Vista and its employees identified in the heading on the first page of this Claim, for the total amount of seven million five hundred thousand dollars (\$7,500,000.00) on behalf of all statutory victims.

E. Additional Information

Submitted along with the present claim, and incorporated herein by this reference, is a List of Exhibits with Copies of the Same, containing exhibits currently known to Claimant that support the present claim. Claimants have requested additional information from the City of Sierra Vista but as of this date have received no additional disclosure.

Any information known to the City of Sierra Vista, or any of the employees thereof identified in the heading on the first page of this Claim, or any of the City of Sierra Vista's employees, agents, investigators, or adjustors – but not known at this time to Claimant – pertaining to the matters set forth above is fully incorporated herein.

The City of Sierra Vista
December 18, 2023
Page Nine

For purposes of evaluation of this claim, the City of Sierra Vista, and the employees thereof identified in the heading on the first page of this Claim, are hereby notified that because of the time constraints imposed by A.R.S. § 12-821.01, further evidence concerning the issues referred to above is likely to be developed as the investigation continues.

RESPECTFULLY SUBMITTED this 18 day of December, 2023.

Sincerely,

A handwritten signature in cursive script that reads "Perry Hicks".

Perry Hicks
Attorney for Claimants Michael Jackson,
Cindy Dunigan and Mark Dunigan