

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KELLY SURTIN,

Plaintiff,

vs.

CITY OF O'FALLON,

CITY OF ST. CHARLES,

CITY OF ST. PETERS,

DOMINICK MISURACA, in his official
and individual capacities,

ADAM ASHLEY, in his official and
individual capacities,

MATTHEW FRKOVIC, in his official
and individual capacities,

ANTHONY FOLLMER, in his official
and individual capacities,

MATTHEW GODFREY, in his official
and individual capacities,

and

JOHN DOE and JANE DOE OFFICERS,
In their official and individual capacities

Defendants.

Case No.: 25-1019

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, Plaintiff, by and through counsel, and for her Complaint, states:

On November 19, 2022, Taylor Shomaker was shot to death by police while he was getting his dog out of his car. The fatal shot was to his back. That day, Mr. Shomaker was alone inside his parents' O'Fallon Missouri house. The police were called. Mr. Shomaker was known to be armed, and the police surrounded the house. One police officer, who was located at the Command Center, was acting as a "negotiator" and was text messaging with Mr. Shomaker. After several messages back and forth, Mr. Shomaker texted the negotiator that he was coming out to let his dog out of the car, that he would be armed, and he asked that the officers be calm. The negotiator texted Mr. Shomaker back, did not tell Mr. Shomaker to leave his gun inside, and told Mr. Shomaker he would tell the other officers to be calm. The negotiator relayed Mr. Shomaker's message to the officers on scene, surrounding the house, which can be heard on bodycam footage.

Shortly after the police officers were notified, Mr. Shomaker came out of the house and walked calmly towards his car with his gun pointed at the ground in his right hand. The police officers yelled at Mr. Shomaker to drop his gun. He kept calmly walking towards his car with his gun still pointed at the ground and announced he was letting his dog out. Mr. Shomaker made no threatening movements towards the police officers, who were in secure locations. This is verified by video and eyewitnesses. A police officer, barricaded behind a car at the neighbor's house and armed with an assault-style rifle then, unprovoked, shot at Mr. Shomaker five times but missed. He then stopped shooting. An officer to his immediate left fired no shots at that time. Even after being shot at, Mr. Shomaker kept calmly walking towards his car with his gun still pointed at the ground. Mr. Shomaker still made no threatening movements towards the officers. He continued to the car, opened the rear-passenger door, and let his dog out. A police officer then shot Mr. Shomaker in his leg and then the back. Mr. Shomaker, continuing to take bullets, fell to the ground and died. He was 32 years old.

PARTIES AND JURISDICTION

1. This case is about the November 19, 2022, shooting of Taylor Shomaker and Mr. Shomaker's death.

2. At all times relevant, Plaintiff, Kelly Surtin (hereinafter "Ms. Surtin") was a resident of St. Charles County, State of Missouri and a citizen of the United States of America. She is the natural mother of Mr. Shomaker, deceased.

3. Defendant Dominick Misuraca (hereinafter "Defendant Misuraca") was at all times relevant a City of O'Fallon police officer. Upon information and belief, he is a resident of the State of Missouri. He is sued in both his individual and official capacities. At all times relevant he was acting under color of state law.

4. Defendant Adam Ashley (hereinafter "Defendant Ashley") was at all times relevant a City of O'Fallon police officer. Upon information and belief, he is a resident of the State of Missouri. He is sued in both his individual and official capacities. At all times relevant he was acting under color of state law.

5. Defendant Matthew Frkovic (hereinafter "Defendant Frkovic") was at all times relevant a City of O'Fallon police officer. Upon information and belief, he is a resident of the State of Missouri. He is sued in both his individual and official capacities. At all times relevant he was acting under color of state law.

6. Defendant Anthony Follmer (hereinafter "Defendant Follmer") was at all time relevant a City of St. Charles police officer. Upon information and belief, he is a resident of the State of Missouri. He is sued in both his individual and official capacities. At all times relevant he was acting under color of state law.

7. Defendant Matthew Godfrey (hereinafter “Defendant Godfrey”) was at all time relevant a City of St. Peters police officer. Upon information and belief, he is a resident of the State of Missouri. He is sued in both his individual and official capacities. At all times relevant he was acting under color of state law.

8. Defendant City of O’Fallon is and was at all times materials hereto a political subdivision of the State of Missouri, organized and existing under and by virtue of the laws of Missouri.

9. Defendant City of St. Charles is and was at all times materials hereto a political subdivision of the State of Missouri, organized and existing under and by virtue of the laws of Missouri.

10. Defendant City of St. Peters is and was at all times materials hereto a political subdivision of the State of Missouri, organized and existing under and by virtue of the laws of Missouri.

11. Collectively, O’Fallon, St. Charles and St. Peters will be referenced as “Defendant Cities.”

12. Defendants many John Doe and Jane Doe officers were other officers at the scene who participated in the unconstitutional shooting of Mr. Shomaker, failed to prevent it, were improperly trained, and failed to follow proper protocols while interacting with Mr. Shomaker.

13. Defendants Misuraca, Ashley, Frkovic, Follmer, Godfrey, and the Does will collectively be referred to as “Defendant Officers.”

14. This action is brought under the Missouri wrongful death statute and Missouri common law and pursuant to 42 U.S.C. Sections 1983 and 1988 and the Fourth, Fifth, Eighth and/or Fourteenth Amendments to the Unites States Constitution. This court has jurisdiction over

this action pursuant to 28 U.S.C. § 1331. Plaintiff further invokes the supplemental jurisdiction of this Court to hear and decide the claims arising under state law pursuant to 28 U.S.C. § 1367.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) (2) as the judicial district where the events giving rise to the claim occurred.

16. Plaintiff demands a trial by jury pursuant to Fed. R. Civ. P. 38(b)

FACTS COMMON TO ALL COUNTS

17. Mr. Shomaker was 32 years old at the time he was shot at and killed by Defendants.

18. On November 19, 2022, the O’Fallon Police Department was called in response to an incident at 738 Longfellow Circle Drive, O’Fallon, MO. O’Fallon Police Department told Mr. and Ms. Surtin to leave the house, at which point they entered their personal vehicle and left. Mr. Shomaker remained in the house, alone, for approximately ninety minutes.

19. At approximately 2:50pm Defendant Frkovic arrived at the scene and began setting up a perimeter around the house. Shortly thereafter, Defendants Ashley and Misuraca arrived at the scene and continued to set up a perimeter. Additional law enforcement personnel, including SWAT, St. Charles City Police Department, and St. Charles County Police Department also arrived and aided in supporting the police perimeter around 738 Longfellow Circle Dr.

20. A command center was established at St. Dominic High School located at 31 St. Dominic Dr., O’Fallon, MO 63366, approximately 1.5 miles away. At some point additional police officers arrived at the command center.

21. For a little more than 90 minutes, Mr. Shomaker remained in the house, alone, while law enforcement personnel remained outside of the dwelling and continued to set up their perimeter. While in the house, Mr. Shomaker was not a threat to police officers or others.

Mr. Shomaker establishes communication with police

22. From the command center, a police officer assigned to communicate with Mr. Shomaker (“Communications Officer”) established a line of communication, via text messaging, with Mr. Shomaker, at approximately 3:37pm. Communications Officer told Mr. Shomaker “I would like to talk to you and help you.....I am not here to hurt you.” Communications Officer was the “negotiator” and the liaison between law enforcement personnel surrounding 738 Longfellow Circle Dr. and Mr. Shomaker. Throughout the entire text exchange, Communications Officer remained at the Command Center.

23. Communications Officer also established lines of communication between the officers at the Command Center and those on the scene, including Defendant Officers and the SWAT team.

24. Communication Officer stated, “He says he has PTSD but he’s not a veteran so that’s not a thing.”

25. Communications Officer had no discretion but to inform the officers on scene and at the Command Center of Mr. Shomaker’s statement that he has PTSD.

Mr. Shomaker told Communications Officer he was coming outside, with a gun, to let his dog out of his car. The Communication Officer did not object, relayed that information to all the officers and instructed the officers to be calm.

26. Shortly after 4 p.m., after sending several messages back and forth, Mr. Shomaker sent a text message to Communications Officer stating “I’m coming out to let my dog out. I am armed. Be calm.”

27. Communications Officer confirmed receipt of the text message with Mr. Shomaker and responded with “Taylor I’ll let everyone know. What door are you coming out so they are not shocked or surprised.”

28. Communications Officer's text message, essentially, invited Mr. Shomaker to come outside while armed.

29. Communications Officer did not tell Mr. Shomaker to leave his gun inside the house.

30. Communications Officer did not tell Mr. Shomaker to remain in the house.

31. Communications Officer did not tell Mr. Shomaker he would be shot by police if he did not leave his gun inside the house. Rather, he told Mr. Shomaker "I'm not here to hurt you."

32. Communications Officer did not give Mr. Shomaker any indication or notice, explicitly or implicitly, that coming out of the house armed would be deemed a alleged "threat" to the Police Officers stationed outside and around the house.

33. Communications Officer relayed Mr. Shomaker's message to the officers at the scene that Mr. Shomaker was coming out of the house, to let his dog out of the car (parked in front of the house), that he was armed and told the officers to be calm.

34. Mr. Shomaker's message and intent was relayed to Defendant Officers.

35. Defendant Officers heard Communications Officer's message that Mr. Shomaker was coming out of the house, to let his dog out of the car, that he was armed and to be calm.

Mr. Shomaker came out of the house and calmly walked to let his dog out of the car

36. Shortly thereafter, and consistent with his text message with Communications Officer, Mr. Shomaker exited the garage and began calmly walking towards the rear-passenger side of his vehicle, a four-door Honda Civic, which was parked, on the street, at the end of the driveway at 738 Longfellow. Mr. Shomaker's dog was in the back seat of his vehicle.

37. Mr. Shomaker was holding a gun, in his right hand, which was pointed down and towards the ground, continuously while he walked on the driveway to his car, consistent with his text messages with Communications Officer.

38. At no point while Mr. Shomaker was walking down the driveway to his car, did he move his right hand and/or move the gun in any manner.

39. He did not make any threatening movements towards any officers, who were concealed at various locations, while walking down the driveway to his car.

40. Mr. Shomaker made no affirmative movements in any capacity which can be deemed threatening to the police officers or others.

41. The police officers began yelling at Mr. Shomaker to drop the gun. However, they never identified themselves as police officers to Mr. Shomaker.

42. Mr. Shomaker then confirmed what all the police officers already knew when he calmly pointed to his vehicle with his left hand and verbally stated "I'm letting my dog out." Camera footage confirms Mr. Shomaker's non-threatening, non-affirmative actions and his statement to Defendants.

43. All the police officers at the scene were prepared for Mr. Shomaker to exit the house with a gun and Officers Allen, Frkovic, and Misuraca were protected by vehicle cover when Mr. Shomaker exited the residence. Upon information and belief, Officers Follmer and Godfrey had cover as well.

Police start shooting at Mr. Shomaker even though he posed no threat. Even though Defendant Frkovic's fired his first five shots at Mr. Shomaker and, Mr. Shomaker remained calm.

44. A few seconds after Mr. Shomaker exited the garage and before he reached his vehicle, Defendant Frkovic used deadly force when he fired five shots using his shoulder .223

assault rifle towards Mr. Shomaker. It was six seconds or less between the first time someone yelled “drop the gun” and the first shot fired at Mr. Shomaker.

45. At that point, Mr. Shomaker had committed no criminal acts. He was not posing a threat of death or serious physical injury to the officers or others. He was just walking to the car, at the end of the driveway, to let his dog out. The police officers knew this was exactly what Mr. Shomaker was going to do.

46. When he fired the shots, Mr. Shoemaker’s gun was at his right side and pointed toward the ground. Defendant Frkovic was on Mr. Shomaker’s left side, behind a car. At no time prior to Defendant Frkovic firing those first five shots did Mr. Shomaker turn toward Defendant Frkovic.

47. Defendant Frkovic’s use of deadly force, when he first fired five shots, was entirely unprovoked.

48. Defendants Frkovic fired the initial five shots while behind Mr. Shomaker and protected by a vehicle parked in the neighbor’s driveway

49. The officer to Defendant Frkovic’s immediate left, also behind a car, did not fire any shots at that time Defendant Frkovic fired the first five shots. In fact, no other officer fired any shots at this time.

50. At no point before Defendant Frkovic shot five times at Mr. Shomaker, did Mr. Shomaker raise his right arm.

51. At no point before Defendant Frkovic shot five times at Mr. Shomaker, did Mr. Shomaker point his gun at any law enforcement officer or civilian.

52. At no point before Defendant Frkovic shot five times at Mr. Shomaker, did Mr. Shomaker present the gun in his hand in a threatening manner to any of the Law Enforcement officers or civilians located on the scene.

53. At no point before Defendant Frkovic shot five times at Mr. Shomaker did Mr. Shomaker try to enter his vehicle.

54. No officers except Defendant Frkovic fired their gun until after Mr. Shomaker had already reached the vehicle and after Mr. Shomaker had been hit by a shot.

55. Video footage of the incident confirms that before Defendant Frkovic shot at Mr. Shomaker five times, Mr. Shomaker did not present the gun in his hand in a threatening manner to any of the Law Enforcement officers or civilians located on the scene.

56. Immediately after Defendant Frkovic's five shots, Mr. Shomaker did not react, make any movements with his right arm or gun. He continued to point the gun towards the ground, remained calm, and continued walking towards the rear-passenger door of his car. He did not make any threatening movements towards and police officers at the scene.

57. With his left hand, Mr. Shomaker opened the rear-passenger door of his vehicle, let his dog out, and closed the door immediately after the dog exited the vehicle. His right hand and gun remained pointed at the ground during this entire process.

After Mr. Shomaker let the dog out, Officers shot at him again. The bullets hit him, mostly in his back.

58. Immediately after letting his dog out, and closing the rear-passenger car door, and while his back was still facing Officers Frkovic and Ashley, Mr. Shomaker was shot in the leg and began hopping beside his car. Mr. Shomaker's right hand and gun remained pointed at the ground.

59. After being shot, Mr. Shomaker was hopping away from Defendants Frkovic and Ashley, with his back still facing them.

60. Defendant Officers kept firing shots at Mr. Shomaker while he kept hopping.

61. Mr. Shomaker was shot multiple times by Defendant Officers. Most of the gunshot wounds were in Mr. Shomaker's back. The gunshots hit Mr. Shomaker's:

- a. Upper surface of his right back;
- b. The posterior surface of his right shoulder;
- c. The superior surface of his left hip;
- d. Upper surface of his right hip;
- e. Left jaw;
- f. Right thigh;
- g. The medial surface of the right thigh;
- h. The superior surface of the left buttock;
- i. The lateral surface of the left buttock;
- j. The posterior surface of the left thigh;
- k. Left forearm;

62. Upon information and belief, the shot to the back was the fatal one.

63. A police officer shooting a civilian in the back is never acceptable.

64. Before he fell to the ground, Mr. Shomaker did not return fire.

65. Before he fell to the ground, Mr. Shomaker did not make any threatening actions or gestures towards any police officers.

66. After being shot and hopping, on one leg. Defendant Officers continue to shoot at Mr. Shomaker and while hit by bullets, Mr. Shomaker fell to the ground.

67. Mr. Shomaker was subsequently shot numerous times by the police officers on the scene, including upon information and belief the Defendant Officers.

68. Defendant Frkovic fired a total of ten shots from his .223 assault rifle. Upon information and belief, Defendant Frkovic shot and hit Mr. Shomaker.

69. Defendant Ashley fired a total of five shots from his 9mm sidearm. Upon information and belief, Defendant Ashley shot and hit Mr. Shomaker.

70. Defendant Miscura fired a single shot from his 9mm sidearm. Upon information and belief, Defendant Misuraca shot and hit Mr. Shomaker.

71. Defendant Follmer fired a single shot from his .223 assault rifle while he was standing besides the Bearcat armored vehicle. Upon information and belief, Defendant Follmer shot and hit Mr. Shomaker.

72. Defendant Godfrey fired twice from his .223 assault rifle while he was standing besides the Bearcat armored vehicles. Upon information and belief, Defendant Godfrey shot and hit Mr. Shomaker.

Mr. Shomaker was never a threat to officers or others.

73. Before he was shot at again and hit in the back of the legs by Defendants, Mr. Shomaker did not make any threatening moves.

74. Before he was shot at again and hit by Defendants, Mr. Shomaker did not exhibit his firearm towards any law enforcement officer.

75. Before he was shot at again and hit by Defendants, Mr. Shomaker did not make any threatening actions nor did he make any threatening actions with his firearm.

76. A neighbor and a retired St. Louis City Police Officer who served 20 years ("Officer Neighbor"), resides two doors away from the subject residence was witness to the events and the shooting. Officer Neighbor confirms:

a. Officer Neighbor never saw Mr. Shomaker raise his arm or gun or make any threatening movements towards any police officers and that the Officers Frkovic and Ashley fired their weapons first.

b. Officer Neighbor's house was hit by 3 bullets.

77. As a retired and experienced Police Officer, Officer Neighbor observed the lack of command and authority exhibited by the Police Officers before and while Mr. Shomaker exited the garage and made his way to his vehicle to let his dog out.

78. Neighbors 2 and 3 reside directly across the street from the subject residence and were also witnesses and will corroborate the events they witnessed as stated herein.

Defendants were not justified in shooting a man who was letting his dog out of the car. They failed to follow appropriate protocols.

79. Defendants were not justified in the use of deadly force in shooting and killing Mr. Shomaker.

80. Simply because an individual is armed does not, alone, give police officers the right to shoot and/or kill that individual.

81. In Missouri, individuals are allowed to openly carry a firearm.

82. Upon information and belief, Defendants did not have sufficient training, experience, and/or expertise in dealing with scenario like the one in question.

83. Defendant Frkovic's own body-cam footage shows his trigger finger sitting inside the trigger well, with his finger on the trigger, before Mr. Shomaker exited the garage. His finger should not have been on the trigger at that time.

84. Defendants failed to establish proper command and control after arriving at the scene. Defendants' failure to follow established protocols led to the dangerous crossfire that was created by the police officers.

85. Defendants failed to follow proper protocol by not preparing or using other less lethal force weapons in order to neutralize Mr. Shomaker, if any force at all was necessary at all.

86. Defendants failed to follow proper protocol by shooting Mr. Shomaker before Mr. Shomaker posed a significant threat of death or serious physical injury to the officers or others.

87. Defendants failed to follow protocol by shooting and killing Mr. Shomaker even though Mr. Shomaker never acted in any manner which could be reasonably construed and/or interpreted as an active or immediate threat to the police officers present on scene and/or anyone else.

88. Defendants failed to follow proper police protocols and training regarding post-incident officer involved shootings by not separating the involved officers during their post-incident interviews and questioning.

89. Defendants failed to follow proper police protocol and investigation techniques by failing to perform a ballistics analysis of the number of weapons used during the incident, failing to register the number of rounds each Officer's weapons contained before and after the incident, and failing to properly question and interview the Officers involved in the incident.

90. Defendants failed to have an Officer serving as a negotiator on-site prepared to begin a conversation with Mr. Shomaker after he exited the residence.

Videos show the post-event police reports and statements are untrue and a coverup.

91. At the exact time of the shooting, Mr. and Ms. Surtin were still at the command center at St. Dominick High School. Mr. and Ms. Surtin were able to clearly hear the gunfire at their residence. Shortly thereafter, Mr. and Ms. Surtin and were misled by the police officers that Mr. Shomaker exited the house and immediately began firing his weapon at police officers. That never happened.

92. In his post incident report, Defendant Frkovic justified the use of deadly force by falsely claiming: “As the suspect approached a vehicle in the street, due to my knowledge and training, I became concerned that the suspect was going to take cover at the vehicle to fire at officers, retrieve additional weapons, and/or enter the vehicle leading to an armed subject in a high-speed pursuit.” In his report, Defendant Frkovic also stated “The suspect slowed down and stopped at the vehicle near the engine compartment and A-pillar. The suspect began turning towards my location..... the eminent risk he posed to the public and other officers on scene, the fact that he was turning in my direction and could quickly raise the firearm significantly faster than I would be able to defend myself, I was in fear of my life.” Defendant Frkovic continues “... ..I became worried because I felt that if the suspect was willing to shoot his own step-father, he would be even more willing to shoot police or other citizens”

93. In his post-incident report, Defendant Ashley also states that he witnessed Mr. Shomaker exit the house and walk towards his car. Defendant Ashley claimed to have justification to use deadly force when he wrote that, “After the back right passenger door was opened, I saw the armed male subject turn and face me.”

94. Videos of the shooting, for example, show that Defendant Frkovic and Ashley’s post-incident reports include factually incorrect and purposely untrue statements.

95. None of Defendants’ post-incident reports document or even mention the initial five shots fired by Defendant Frkovic after Mr. Shomaker exited the garage and before he reached his car to let his dog out.

96. Several months after Mr. Shomaker’s death, Ms. Surtin learned that the police statements were misleading and wrong.

COUNT I
USE OF EXCESSIVE FORCE IN VIOLATION OF THE CONSTITUTION OF THE
UNITED STATES (Defendant Officers in their individual and official capacities)

97. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

98. Defendant Officers fired shots from their weapons, each behind cover with no threat to their safety, when Mr. Shomaker exited the house and despite Mr. Shomaker not making any movements or acting in an active or imminent threat towards these Defendants or others, each of them fired their weapons and hit Mr. Shomaker's body, multiple times, until those shots killed him.

99. The use of force by Defendant Officers was excessive because it was unreasonable in light of the circumstances and clearly in excess of the force required to be used against Mr. Shomaker.

100. The use of force by Defendant Officers was not reasonable in light of the facts and/or circumstances at the time of the incident as the use of deadly force was not needed against Mr. Shomaker and was neither justified nor factually supported.

101. A reasonable officer on the scene would not have used such force against Mr. Shomaker under the same or similar circumstances.

102. Defendant Officers were acting individually, under color of state law at all times relevant.

103. As a direct and proximate result of the excessive force by Defendant Officers, Mr. Shomaker was, shot, suffered great personal injury, pain and suffering and then was ultimately killed.

104. As a direct and proximate result of the excessive force by Defendant Officers, Plaintiff has been deprived of decedent's valuable services, companionship, comfort, consortium, support, love, and affection.

105. The conduct of these defendants and each of them jointly and severally was reckless and indifferent to the rights afforded Mr. Shomaker under the United States Constitution. Defendants' actions were callous, malicious, and wanton making the award of punitive damages necessary to punish them and to deter them and others from the same or similar future misconduct.

WHEREFORE, Plaintiff prays this Court to enter judgment in her favor and against the individual Defendants, jointly and severally, and thereafter:

- A. Award Plaintiff compensatory damages against these Defendants;
- B. Award Plaintiff punitive damages;
- C. Award Plaintiff reasonable attorneys' fees and costs; and
- D. Allow such other relief as the Court deems just and proper.

COUNT II
SECOND AND FOURTEENTH AMENDMENTS VIOLATION
(Defendant Officers individually and in their official capacities)

106. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

107. On the date in question, Mr. Shomaker had a right to carry a handgun outside the home, which is protected by the Second and Fourteenth Amendments to the United States Constitution. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 10, 142 U.S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022).

108. Mr. Shomaker was carrying a gun on the date in question.

109. In Missouri, individuals can carry firearms outside of the home without a permit.

110. Certain officers shouted drop the gun, to gain possession of that gun.

111. At the time, Mr. Shomaker was not doing anything illegal, nor did any Defendant have probable cause to believe Mr. Shomaker was committing a crime.

112. Defendant Officers unlawfully seized his firearm by shooting and killing Mr. Shomaker.

113. By shooting and killing him, Defendant Officers infringed on his right to bear arms.

114. And by killing Mr. Shomaker, Defendants, obviously, deprived him of his ability to acquire any other firearm.

115. As a direct and proximate result of the excessive force by Defendants Mr. Shomaker was, shot, suffered great personal injury, pain and suffering and then was ultimately killed.

116. As a direct and proximate result of the excessive force by Defendants, Plaintiff has been deprived of decedent's valuable services, companionship, comfort, consortium, support, love, and affection.

117. The conduct of these defendants and each of them jointly and severally was reckless and indifferent to the rights afforded Mr. Shomaker under the United States Constitution. Defendants' actions were callous, malicious, and wanton making the award of punitive damages necessary to punish them and to deter them and others from the same or similar future misconduct.

WHEREFORE, Plaintiff prays this Court to enter judgment in her favor and against the individual Defendants, jointly and severally, and thereafter:

- A. Award Plaintiff compensatory damages against these Defendants;
- B. Award Plaintiff punitive damages;
- C. Award Plaintiff reasonable attorneys' fees and costs; and
- D. Allow such other relief as the Court deems just and proper.

COUNT III
MUNICIPAL CUSTOM AND/OR WRONGFUL HIRE, FAILURE TO TRAIN,
INSTRUCT, SUPERVISE, CONTROL AND/OR DISCIPLINE IN VIOLATION OF THE
FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN
VIOLATION OF 42 U.S.C. § 1983 UNDER *MONELL* AND ITS PROGENY
(City Defendants)

118. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

119. Mr. Shomaker's constitutional rights were violated as described herein.

120. There exists within the Defendant Cities and their respective police departments, widespread customs, practices and usages that are so pervasive that they constitute the policies of each City and its police department, which caused constitutional and/or statutory deprivations set forth above and including:

- a. Shooting non-threatening individuals;
- b. Taking away a gun without cause;
- c. City Defendants and their respective police departments, failed to properly train, equip and/or supervise Defendant Officers on the scene in the use of deadly force; and/or failed to have proper policies and procedures in place to ensure that its officers did not discharge service weapons in response to non-lethal threats; and/or failed to have proper policies and procedures in place to handle individuals such as Mr. Shomaker; and/or failed to create and maintain a proper chain of command between and amongst the law enforcement agencies that responded to the scene;
- d. O'Fallon failed to properly instruct Defendant Frkovic on how to handle his firearm in preparation for contact with Mr. Shomaker; and/or failed to instruct Mr. Shomaker to leave his gun inside the house prior to exiting the garage.

- e. City Defendants and their respective police departments, failed to properly train and/or supervise Defendants and possibly other unknown officers on the proper procedure on drafting post-incident reports without compromising and jeopardizing the truth and making statements that were not true.
- f. City Defendants and their respective police departments' failure to train, equip, and/or have in place reasonable policies and procedures regarding the use of deadly force deprived Mr. Shomaker of the rights guaranteed him under the United States Constitution.
- g. City Defendant and their respective police departments, failed to train, equip, and/or have in place reasonable policies and procedures regarding command and control of the scene when its officers and SWAT team were in control or partially in control of the scene before and while Mr. Shomaker was shot.

121. Upon information and belief, this is not the first fatal shooting for Defendant Cities.

122. Defendant Cities policymaking officials demonstrated deliberate indifference to or tacit authorization of the Defendants' misconduct after notice of such misconduct.

123. Defendant Cities failure to train in these respects evidenced a deliberate indifference to the rights of others, to include Mr. Shomaker.

124. Additionally, but without waiver of the foregoing, Defendant Cities failed to supervise, control, and/or discipline officers when they engaged in constitutional violations like those set forth herein, such that they demonstrated deliberate indifference to or tacit authorization of such acts on the part of the officers at the scene.

125. Plaintiff has been damaged as a direct and proximate result of Defendants' acts and omissions, as set forth in this Complaint.

126. The deficiencies in Defendants training procedures actually caused Mr. Shomaker's death in violation of his Constitutional rights.

127. These acts of these Defendants were taken under color of state law.

128. As a direct and proximate result of the acts and/or omissions of Defendants, Mr. Shomaker was killed and Plaintiff lost her son's life and has suffered emotional, and mental injuries and will continue to suffer mental anguish, humiliation, embarrassment, loss of enjoyment of life, and extreme stress. Plaintiff has been deprived of decedent's valuable services, companionship, comfort, consortium, support, love, and affection.

129. The conduct of these Defendants and each of them jointly and severally was reckless and callously indifferent to Mr. Shomaker's Constitutional rights. These acts and omissions were malicious and wanton with respect to those rights, making an award of punitive damages warranted and necessary to punish the Defendants in their individual capacities and to deter each of them and others from the same or similar misconduct in the future.

WHEREFORE, Plaintiff prays this Court to enter judgment in her favor and against the individual Defendants, jointly and severally, and thereafter:

- A. Award Plaintiff compensatory damages against these Defendants;
- B. Award Plaintiff punitive damages;
- C. Award Plaintiff reasonable attorneys' fees and costs; and
- D. Allow such other relief as the Court deems just and proper.

COUNT IV CIVIL CONSPIRACY AGAINST ALL DEFENDANTS
(Defendant Cities and the Defendant Officers in their individual and official capacities)

130. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

131. Defendants' acting under color of state law, conspired together amongst themselves and reached a mutual understanding to undertake a course of conduct to conceal the unconstitutional acts and/or omissions of Defendants.

132. In furtherance of this conspiracy, more than one of the Defendants engaged in one or more overt acts, including but not limited to the following:

- a. Deliberate omission on behalf of Defendants Frkovic and Ashley to not include in the reports the initial shots fired by Defendant Frkovic at Mr. Shomaker as he exited the garage and before he reached his vehicles to let his dog out;
- b. Created and publicized a false narrative that Mr. Shomaker made active and imminent threats towards the police officers, including Defendant Officers and others, and other unknown officers who had arrived on the scene; and/or created and publicized a false narrative that Mr. Shomaker, after letting his dog out of the car, turned towards Defendants Ashley and Frkovic; and/or that Mr. Shomaker was attempting to use his vehicle to take cover or gain a superior fighting position; and
- c. Upon information and belief, met to coordinate false stories to cover-up the events or to create a false narrative about the events surrounding their unconstitutional misconduct towards Mr. Shomaker.

133. The individual Defendants shared the general conspirator objective which was that after shooting and killing Mr. Shomaker, they conspired to insulate themselves from sanction, civil, and/or criminal liability by failing to give factually accurate information and accounting of the events that led to the shooting and death of Mr. Shomaker.

134. After the shooting, Defendants individually and collectively continued the shared conspiracy by failing to perform post-incident ballistics tests, which are performed in the normal and general course of investigations, especially officer-involved shootings.

135. Defendants felt authorized and empowered to engage in the conspirator misconduct described above, without any fear or sanction, punishment, and/or retribution.

136. These Defendants furthered the conspiracy by participating in it from its inception or by participating in the cover-up and/or ignoring this course of conduct so as to insulate themselves and others from liability for the unconstitutional and unlawful acts of these Defendants as described herein.

137. As a direct and proximate result of the conspiracy amongst Defendants, Mr. Shomaker was killed and the truth was covered-up and because of this Plaintiff has lost her son and suffered physical, emotional, and mental injuries and will continue to suffer mental anguish, humiliation, embarrassment, loss of enjoyment of life, and extreme stress.

138. Mr. Shomaker was killed and suffered from the time he was first shot until he died; and Plaintiff has suffered physical, emotional, and mental injuries and will continue to suffer mental anguish, humiliation, embarrassment, loss of enjoyment of life, and extreme stress.

139. The conduct of Defendants, and each of them jointly and severally was reckless and callously indifferent to the constitutional rights of Plaintiff, malicious and wanton with respect to those rights, making an award of punitive damages warranted and necessary to punish them in their individual capacities and to deter each of them and others from the same or similar misconduct in the future.

WHEREFORE, Plaintiff prays this Court to enter judgment in her favor and against the individual Defendants, jointly and severally, and thereafter:

- A. Award Plaintiff compensatory damages against these Defendants;
- B. Award Plaintiff punitive damages;
- C. Award Plaintiff reasonable attorneys' fees and costs; and
- D. Allow such other relief as the Court deems just and proper.

COUNT V
WRONGFUL DEATH- NEGLIGENCE
(Officer Defendants in their individual and official capacities)

140. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

141. Defendants owed Mr. Shomaker a duty to act reasonably in the use of deadly force and to conform to an objectively reasonable standard of conduct regarding when, where and under what circumstances deadly force is warranted. They owe him a duty to not shoot him under the circumstances described above.

142. Defendants Frkovic, Ashley, Misuraca and possibly other unknown officers breached that duty by discharging their firearms at Mr. Shomaker despite Mr. Shomaker not posing an active or immediate threat towards Defendants or any others.

143. Defendant Officers breached its/their duty by not having in place reasonable policies and procedures when they:

- a. Failed to follow policies and procedures that would protect Mr. Shomaker;
- b. Shot at him;
- c. Shot him;
- d. Failing to allow Mr. Shomaker to get his dog;
- e. Firing at someone not making movements that would objectively pose a significant threat of death or serious physical injury to the officers or others;
- f. Failed to first use less lethal force;

- g. Announce themselves as officers before firing shots;
- h. Listening to command that ordered the officers to be calm; and
- i. Killed him.

144. Defendant officers did not have discretion to violate any of the subparagraphs directly above.

145. As a direct and proximate result of the acts and/or omissions of Defendants, Mr. Shomaker was killed and Plaintiff lost her son's life and has suffered emotional, and mental injuries and will continue to suffer mental anguish, humiliation, embarrassment, loss of enjoyment of life, and extreme stress. Plaintiff has been deprived of decedent's valuable services, companionship, comfort, consortium, support, love, and affection.

146. Defendant Officers acted with direct malice when firing their weapons at and hitting Mr. Shomaker. This is especially true for the shots that hit his back. It is malicious to shoot someone to death in the back.

147. The conduct of these Defendants and each of them jointly and severally was reckless and callously indifferent, malicious and wanton to Mr. Shomaker and to Plaintiff. Plaintiff seeks compensatory and punitive damages.

WHEREFORE, Plaintiff prays this Court to enter judgment in her favor and against the individual Defendants, jointly and severally, and thereafter:

- A. Award Plaintiff compensatory damages against these Defendants;
- B. Award Plaintiff punitive damages; and
- C. Allow such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED ON ALL COUNTS

Respectfully submitted,

PLEBAN & ASSOCIATES LAW LLC

By: /s/J.C. Pleban

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jc@plebanlaw.com

C. John Pleban, Mo. Bar No. 24190

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(314) 645-7376 – Facsimile

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

CITY OF O'FALLON c/o Mayor Bill Hennessy

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

CITY OF ST. CHARLES c/o Mayor Dan Borgmeyer

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

CITY OF ST. PETERS c/o Len Pagano

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

DOMINICK MISURACA, official capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

DOMINICK MISURACA, individual capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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Date: _____

Signature of the attorney or unrepresented party

ADAM ASHLEY, official capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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Date:

Signature of the attorney or unrepresented party

ADAM ASHLEY, individual capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

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Date: _____

Signature of the attorney or unrepresented party

MATTHEW FRKOVIC, official capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

MATTHEW FRKOVIC, individual capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

Signature of the attorney or unrepresented party

ANTHONY FOLLMER, official capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

ANTHONY FOLLMER, individual capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

MATTHEW GODFREY, official capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

v.

CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

MATTHEW GODFREY, individual capacity

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

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CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

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To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

John & Jane Doe Officers, official capacities

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

KELLY SURTIN

Plaintiff

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CITY OF O'FALLON, MO et al.

Defendant

Civil Action No. 25-1019

WAIVER OF THE SERVICE OF SUMMONS

To: JC PLEBAN

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2025, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

John & Jane Doe Officers, individual capacities

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

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