

September 8, 2009

Name
Phoenix Police Department
690 W. Washington Street
Phoenix, Arizona 85003

RE: NOTICE OF CLAIM PUSUANT TO
A.R.S. § 12-821.01
Decedent: Romelia Vargas
Date of Death: February 4, 2006

Dear name,

This firm represents the heirs of Romelia Vargas.

This letter shall serve as a Notice of Claim pursuant to A.R.S. § 12-821.01. The heirs of Romelia Vargas intend to pursue litigation for Romelia's wrongful death against the above-named recipient of this claim letter if the following claim is not accepted.

This Notice of Claim letter contains a fair and accurate description of the recipient's intentional, reckless and grossly negligent conduct. The full and complete facts regarding this claim are in possession of the Phoenix Police Department. This Notice of Claim will serve, however, as a reasonable foundation for representatives of the Phoenix Police Department to fully and completely investigate the circumstances of the claim and reach an informed decision about whether to settle.

This Notice of Claim letter also contains a fair, reasonable, and firm demand for compensation. Based on the particular facts of this matter and our research regarding wrongful death settlements and awards, we believe the amount demanded for Romelia's heirs is reasonable and will be accepted if offered by any recipient of this Notice of Claim letter.

The Claimants:

The nature of the claim is a wrongful death action pursuant to A.R.S. § 12-611 et seq. As Romelia's surviving spouse, Alvin Hogue will bring this action for and on behalf of himself, as the surviving spouse, and Ms. Vargas' surviving children, Kenia Valdovinos, age 21, Jesus Valdovinos, age 19, Melissa Valdovinos, age 17, and Travis Silvano Hogue and Anthony Emiliano Hogue, both age 3. A summary of each claimant follows.

Alvin, 51, married Romelia on April 26, 2003. Mr. Hogue was a Motor Transport Operator in the United States Army from 1978 to 1985 and was then employed as a transport operator for Arizona Materials in Phoenix Arizona. Mr. Hogue was recently placed on furlough by his employer and at present is unemployed.

Twins Travis and Anthony were 5 months old at the time of their mother's death. Anthony is a special needs child; he was born with Down's syndrome. At the present time, Anthony is enrolled in ACCESS and receives care from Alvin, who provides for both of the twins' full time care. Anthony will have special needs for the remainder of his life.

Kenia was living with and being supported by Alvin and Romelia at the time of her mother's death. She is a high school graduate who left the family home after her mother's demise. She is self supporting.

Jesus was also living with and being supported by Alvin and Romelia at the time of his mother's death. Jesus left the family home after his mother's untimely demise. He has his GED and is self supporting.

Finally, Melissa lived with and was being supported by Alvin and Romelia at the time of her mother's death. She presently lives with Kenia and attends Greenway High School as a junior, where she is engaged in the usual teenage pursuits.

The Decedent:

At the time of her untimely demise, Romelia was 37 years old. As described above, she had 6 children. All of those children except her son Eric, born April 2000¹, lived with her at the time of her death.

Approximately 6 months before her demise, Romelia purchased a catering truck in order to pursue a small business opportunity. She had worked in the catering business for some years before purchasing her own truck. Romelia's income figures show that she earned gross taxable income of approximately \$150/day, or \$750/wk, and that her business was doing well. Both she and Alvin anticipated that her business would continue to expand.

¹ Eric is not a party to this claim.

At the time of her demise, Romelia provided financial and emotional support to all of her children. Although she did not earn a significant wage, she gave to her children the resources she could, and each of the children received what money was necessary for their care and upkeep. She maintained a close emotional relationship with her children. Her children looked to her for support and comfort in their daily lives, as all children do. Furthermore, Romelia provided the usual routine services a mother does by providing a clean, safe, home environment and serving as an example of hard work to her children.

Obviously, Romelia's children are devastated by the tragic loss of their mother.

Alvin maintained a close and loving relationship with Romelia throughout their marriage. As normal spouses, they lived, worked, and enjoyed life together. They relied on each other for emotional love and support. Alvin's loss is as tragic and profound as the loss suffered by Romelia's children.

Romelia was a good and honest person who was brutally murdered in the truck she hoped to use to provide for her and her family. The loss to the dependents of love, comfort, and companionship is immense. The economic loss suffered as a result of her absence, both as a wage earner and manager of the family, is substantial.

The Facts:

Mark Goudeau

On September 20, 2005, Mark Goudeau ("Goudeau") approached two sisters who were walking home from a city park. He held a gun to one sister's pregnant stomach and forced the two into the bushes, where he forced them to strip and continued to hold a gun to the pregnant sister's stomach while he sexually assaulted the other sister. Phoenix Police eventually obtained two DNA samples. The swabs were taken from one of the sister's left and right breasts, which Goudeau licked and later rubbed with dirt in an attempt to get rid of his saliva.

At that time, police were not aware that Goudeau was responsible for the September 8, 2005 murder of Georgia Thompson outside her Tempe apartment. Goudeau shot Thompson in the head a single time. Police also did not realize that Goudeau previously committed sexual assaults in Phoenix on August 6, 2005, August 14, 2005, and September 15, 2005.

After the sexual assault on September 20, 2005, Goudeau's crime spree continued with a September 28, 2005 robbery in Tempe and sexual assault and robbery in Phoenix, then a November 3, 2005 robbery and sexual assault in Phoenix. Goudeau was also responsible for a string of three separate robberies in Phoenix on November 7, 2005. On December 12, 2005, Goudeau murdered pre-school teacher Tina Washington, who was on her way home from the preschool where she worked. Goudeau shot Washington in the face. On December 13, 2005, Goudeau committed yet another robbery in Phoenix.

Two months later, Goudeau brutally shot Romelia and her co-worker, Mirna Palma-Roman, to death inside Romelia's catering truck in Phoenix on February 20, 2006. On March 15, 2006, he committed yet another double homicide in Phoenix, this time shooting two employees of Yoshi's Fast Food Restaurant in the head. Goudeau was also responsible for the March 29, 2006 murder of Kristin Nicole Gibbons. As he did with multiple other victims, Goudeau shot Gibbons in the head.

On April 10, 2006, Sophia Nunez's eight-year-old son found his mother, Sophia Nunez dead in her bathtub. Goudeau shot her as well. Next, Goudeau committed a May 1, 2006 sexual assault at gunpoint outside the same restaurants he robbed on November 7, 2005, and finally, he murdered Carmen Miranda on June 29, 2006 in Phoenix. Goudeau abducted Miranda from a self-serve carwash near the scene of his May 1, 2006 and November 7, 2005 crimes. He shot her in the head behind a nearby barbershop, and the murder was captured on closed circuit television. That was Goudeau's final murder.

Goudeau was ultimately responsible for no fewer than 9 murders, 15 sexual assaults and 11 kidnappings over the span of a little less than eleven months.

The DNA Evidence

Although Phoenix Police obtained DNA samples from one of the sisters Goudeau sexually assaulted on September 20, 2005, they **intentionally** waited until June of 2006 to send it to the Department of Public Safety ("DPS") for Y-STR DNA testing. DPS immediately matched both DNA samples to Goudeau, including a sample the Phoenix Crime Lab previously tested without success.

Approximately one month after securing the DNA from the September 20, 2005 sexual assault, the Phoenix crime lab performed a partial analysis of the evidence and determined that saliva was present on both of the swabs. Members of the crime lab tested one of the swabs, the one from the right breast, and decided not to test the left one, which had dirt on it. The test results showed a partial DNA profile which was insufficient to identify a suspect given the DNA technology used by the Phoenix crime lab at the time.

Despite the urgency of resolving the case, and rather than sending the swabs to the DPS crime lab where the newer Y-STR testing was immediately available, an intentional decision was made to forego testing and store the swabs in an evidence locker until such time as the Phoenix crime lab was equipped with the ability to conduct Y-STR testing. The sole reason for this intentional decision not to send the swabs to the DPS crime lab for immediate Y-STR testing was so the Phoenix crime lab could be the lab to test the swabs and obtain the results of the Y-STR DNA testing on the swabs.

At the time of the decision to store rather than test the swabs at the DPS crime lab, the Phoenix crime lab was aware the DPS crime lab had the ability to conduct Y-STR DNA testing and the Phoenix crime lab had routinely sent other items of evidence to the DPS crime lab for

testing in many unrelated cases. The Phoenix crime lab could have easily sent the two swabs to the DPS lab for Y-STR DNA testing had they chose to send them.

While the Phoenix crime lab was unable to perform the Y-STR DNA test, the DPS crime lab had been conducting Y-STR DNA testing since April 2005, months before Goudeau began his crime spree. Although the Phoenix Police Department outsourced a significant amount of scientific testing work to DPS, they decided not to ask DPS for help. Instead, a decision was made to hold onto the swabs and delay testing until the Phoenix Crime Laboratory could conduct Y-STR testing itself.

The reason for the intentional delay in testing the DNA evidence was based entirely on a selfish motive. The Phoenix Police Department wanted to solve the well-publicized “Baseline Killer” case without outside help. Intentional decisions were made to withhold referring the evidence to other police agencies, notably DPS, in order to make sure all credit and accolades went to the Phoenix Police Department.

Sometime after the series of initial attacks, members of the investigative team began to believe that one individual was responsible for the series of attacks. Investigators’ concerns arose before the murder of Romelia Vargas. Only because of the public outcry and a change of management was DPS finally asked to examine the DNA evidence. Claimants believe that this Notice of Claim request was made sometime in late summer of 2006, well after the violent series of murders that included Romelia's murder had ended.

DPS not only found Goudeau’s DNA on the untested left breast swab from the September 20, 2005 sexual assault, but also on the right breast swab from which the Phoenix crime lab only obtained a partial match. After putting the DNA profile into the Combined DNA Index System, DPS matched it to Goudeau, who was immediately arrested in September of 2006. Had the two swabs been tested earlier, the murders in question would not have occurred.

Claimants believe that the above facts are a fair and reasonable description of the events giving rise to this Notice of Claim letter. The basic facts are in the possession of the Phoenix Police Department, and the above information should serve as a reasonable basis for representatives of the Police Department to investigate the allegations of this claim. *See Deer Valley Unified School District No. 97 v. Houser*, 214 Ariz. 293, 152 P.3d 490 (2007).

The Claim:

The factual foundation for this claim is the intentional, reckless and grossly negligent conduct by members of the Phoenix Police Department and the Phoenix Crime laboratory that directly lead to Romelia's murder on February 20, 2006. The perpetrator of this crime is Goudeau, deemed the “Baseline Killer” by the local press. Romelia is but one of Goudeau’s many victims, and had the Phoenix Police Department and its crime lab outsourced DNA testing to DPS in a timely and reasonable manner, not only would her murder not have happened, but several other tragedies would have been avoided as well.

Throughout the fall of 2005 and for the next year thereafter, Goudeau committed a series of violent crimes on random members of the public. Goudeau committed 9 murders and 15 sexual assaults in at least 16 different violent crimes.

The Phoenix Police Department gathered 2 separate DNA samples from a victim of a sexual assault in September 2005. This evidence was from the perpetrator of the crime. Had this evidence been timely studied, the results would have ended Goudeau's crime spree. Phoenix had reason to believe that the series of violent crimes was being committed by one person before February of 2006. However, this evidence was not subjected to testing until summer of 2006, approximately 1 year and 9 murders later.

Claimants believe the evidence will show that members of the Phoenix Police Department, including those acting in a supervisory capacity as well as managers, purposefully decided not to test the above described DNA samples for reasons having nothing to do with reasonable police practices and procedures. They were motivated by public relations and inter-agency competition. Simply put, members of the Phoenix Police Department and Phoenix crime lab wanted credit for solving the crimes. This decision not to test was an intentional act and outrageous in nature.

In the alternative, the decision not to test the DNA sample was reckless or grossly negligent, as the members of the Police Department and Phoenix crime lab knew and understood the alternative to not testing the DNA samples was that further violent crimes would lead to more injured victims and grieving families. As the number of sexual assaults and murders grew during the remainder of 2005 and continued growing well into 2006, the callousness of the decision not to test the DNA became obscene.

There is no question about the effect of testing the DNA sample. The DNA test DPS conducted immediately led to the arrest of the perpetrator of the sexual assaults and murders, including Romelia's murder. The arrest was a direct result of the testing without any discussion or professional decision as to whether the owner of the DNA should or should not have been arrested.

It is clear and undisputed that as a direct and proximate result of the Phoenix Police Department's intentional, reckless and grossly negligent decision not to test the DNA, Romelia was murdered. But for the intentional, reckless and gross conduct of managers and supervisors at the Phoenix Police Department and the Phoenix Crime Laboratory, she would be alive today.

The Recipients:

The culpable members of the Phoenix Police Department and recipients of this Notice of Claim letter are the following.

Tracy Montgomery, Assistant Chief of Police, Phoenix Police Department: Chief Montgomery was in a position of authority in the "Baseline Killer" case and exercised management and control over the DNA evidence described above. Chief Montgomery participated in the decision to delay testing.

Brett Vermeer, Phoenix Police Crime Lab Commander: Mr. Vermeer was in a position of authority regarding the “Baseline Killer” case, as he managed and controlled the Phoenix Crime Lab and had authority to process or outsource testing of the DNA evidence from the September 2005 sexual assault. His decision not to process the evidence was made for no good professional reason.

Roger Schneider, DNA Supervisor, Phoenix Police Crime Lab: Mr. Schneider was in a position of authority regarding the “Baseline Killer” case, as he managed and controlled the Phoenix Crime Lab and had authority to process the DNA evidence from the September 2005 sexual assault. His decision not to process the evidence was made for no good professional reason.

Alison Sedowski, Assistant to Roger Schneider: Ms. Sedowski was in a position of authority regarding the “Baseline Killer” case, as she participated in the management and control the Phoenix Crime Lab and had authority to process the DNA evidence from the September 2005 sexual assault. Her decision not to process the evidence was made for no good professional reason.

Venny Pina, lieutenant Phoenix Police Department: Lt. Pina was in a position of authority regarding the “Baseline Killer” case, as he managed and controlled the investigation of the “Baseline Killer” case and had authority to order the testing of the DNA evidence from the September 2005 sexual assault. His decision not to process the evidence was made for no good professional reason.

Andy Anderson, Assistant Chief of Police, Phoenix Police Department: Chief Anderson was in a position of authority regarding the “Baseline Killer” case, as he managed and controlled the investigation of the “Baseline Killer” case as well as the Phoenix Crime Lab. He had authority to order the testing of the DNA evidence from the September 2005 sexual assault. His decision not to process the evidence was made for no good professional reason.

Jack Harris, Chief of Police, Phoenix Police Department: Chief Harris was in a position of authority regarding the “Baseline Killer” case, as he managed and controlled the investigation of the “Baseline Killer” case, as well as the Phoenix Crime Lab. He had authority to order the testing of the DNA evidence from the September 2005 sexual assault. His decision not to process the evidence was made for no good professional reason.

The Claimants believe that all of the above participated in the decision not to test the DNA evidence gathered from the September 2005 sexual assault long after it was common knowledge within the department that one violent, serial criminal was committing rapes and murders in Phoenix. Claimants believe that any of the above could have decided to refer the

DNA evidence to the DPS crime lab for proper testing prior to February 20, 2006, which would have prevented Romelia's death.

Damages:

The following is a description of the damages suffered by each Claimant:

Romelia earned approximately \$750/wk as the owner of a catering truck. That computes to approximately \$39,000 per year. Romelia had a life expectancy of approximately 40 additional years, during which time she could be expected to work until she was 65 years old, or for another 28 years. Over the course of her working life, Romelia could therefore be expected to earn \$1,090,000.00. That money would go to support the community existing between her and Alvin, as well as her twin boys, one of whom, Anthony, has Down's syndrome. It can be assumed that Anthony would require constant care up until the end of Romelia's working life.

Furthermore, Romelia served as a caregiver for her family. She engaged in the usual household chores, such as cooking, cleaning, and providing a safe environment for her family. There is a cost to replacing this service. While there are no receipts for the replacement service, nevertheless, Claimants can calculate that Romelia provided such services for approximately 4 hours each day during the week and 16 hours over the weekend. This computes to 36 hours per week that need to be replaced. Assuming a cost of replacement of \$10 per hour, Romelia's death has a value of approximately \$360 per week or \$18,720.00 per year. Over the total life of the community, and necessarily over the span of Anthony's life, this would amount to \$788,000.00.

There are no exact documents supporting the damage claims, as Alvin has not engaged replacement service providers and no heirs have sought the services of a health care provider. However, the loss of a mother or wife is profound and will be remembered throughout each heir's life.

Damages in a wrongful death cases are subjective. Damages are for the loss of the financial and emotional support of the decedent. Here, the financial support is notable in that the mother made little money and had to share it with her husband and 5 children, one of whom is special needs. However, it is important to note that Romelia did work hard, was very industrious, and shared her income with her family.

Each Claimant has a separate burden of proof pursuant to A.R.S. § 12-611 et. Seq. Therefore, each Claimant will present a separate Claim for damages.

Kenia is the oldest of Romelia's children. She lived continuously with Romelia until Romelia's death. Throughout her life, Romelia provided for Kenia's financial support. Even after Kenia left the age of minority, Romelia still contributed when Kenia asked. Further, Romelia contributed to Kenia's health and welfare by providing services for her and offering the love, comfort, guidance, and support one would expect from a loving mother. The loss has been

profound for Kenia, as it has been for all of Romelia's grown children. They miss their mother's companionship.

There is little in the way of supporting documentation for Kenia's claim. There are no medical bills, psychological counseling, or other such objective indication of Kenia's loss. Rather, she has suffered from the loss of her mother, the one consistent source of love and comfort in her young life. A mother's guidance is perhaps needed most during the time when a young adult must make decisions that will affect them over the course of their entire life. Kenia will miss that guidance.

Assuming that she benefitted from Romelia's income or services to any degree, there is some objective monetary value to be added to the claim. A review of wrongful death damages suffered by adult daughters for the loss of their mothers shows damages ranging from \$100,000.00 to \$3,000,000.00. Kenia believes that \$2,000,000.00 is a reasonable and fair value to settle her claim.

Jesus is the next oldest of Romelia's children. All that describes Kenia's relationship with her mother also describes Jesus' relationship with his mother. Mother and son had a loving and supportive relationship. The loss of his mother was also profound, and while Jesus also benefitted from some of the financial support and services Romelia provided, he soon left the family home to become a self supporting adult. Since then, he has attempted to deal with the realities of living as an adult. Now more than ever, he misses his mother's support and comfort, as being alone in the adult world is very difficult.

As for damages, the same analysis for Kenia applies to Jesus. There is a large range of values for an adult son's loss of his mother. However, unique to Jesus's situation, the loss came at an important time in his life. The damages range from \$100,000.00 to \$3,000,000.00, and Jesus believes that \$2,000,000.00 is a reasonable and fair value to settle his claim.

Melissa was 13 at the time of her mother's death. She is presently a junior in high school and lives with her sister, Kenia, who is trying to substitute as a mother for Melissa. Melissa intends to go to college. While the same statement of damages for the other adult children applies to Melissa, she would have remained with her mother for many more years had Romelia survived.

Romelia would have supported Melissa financially and provided services for her until well after college. This financial damage could easily be calculated to exceed \$50,000.00. Furthermore, the loss of the love, comfort and companionship of her mother has a value equal to, or even in excess of, the other adult children. A strong mother-daughter relationship is particularly important for a maturing young woman, and Melissa was deprived of the guidance of her mother during this important time of her life. Damages for an adolescent daughter can range from \$100,000.00 to \$4,500,000.00. Because of the value of this special relationship, Melissa believes that \$3,000,000.00 is a reasonable and fair value to settle her claim.

Travis Hogue was 5 months old at the time of his mother's death. He will never know his mother. While his siblings had the privilege of knowing and learning from their mother, Travis will never have that opportunity. Travis will wonder about his mother, ask his siblings questions about her, and think about how his life might have been different if his mother had survived.

Obviously, Travis would have benefitted from the services provided by his mother for at least 18 years, probably longer, as well as her financial support. Assuming that the value of the income and services are split 3 ways between Travis, Anthony and Melissa, Travis's loss of financial support and the value of the home services would be in excess of \$265, 000.00.

A review of values of the loss to a newly born child of his mother ranges from \$100,000.00 to over \$10,000,000.00. We believe that a reasonable settlement value of Travis claim is \$4,000,000.00.

Anthony is a special needs child. He has Downs Syndrome. He will need the financial support and home services of his mother for either his life or the life of his mother, whichever is longer. Assuming that Romelia's income remains at the \$750 per week for the remainder of her life and that she allows a full 36 hours per week of home services, valued at \$10.00 per hour, the financial loss suffered by Anthony is \$450,000.00.

Importantly, his mother provided a service that a skilled health care provider would have to provide in her absence. A Down's syndrome child requires more services than what one would ordinarily expect from someone providing home services. It is believed that the value of the damages suffered by Anthony is actually double the amount discussed above, or \$900,000.00.

The loss of a mother to a special needs newborn is huge and ranges from \$1,000,000.00 to over \$10,000,000.00. We believe a reasonable settlement value for Anthony's claim is \$6,000,000.00.

Alvin Hogue was born in 1958. He only recently became the father of twin boys and lost his wife. He has suffered the loss of her income and services to the family as well. These losses have been described above. He now must raise twin boys, one of whom is a special needs child, on his own. The loss of the income and support for Alvin is equal to Anthony's loss, as the relationship would have lasted as long as either spouse survived.

We believe that Mr. Hogue's claim has a value ranging from \$500,000.00 to over \$10,000,000.00. We believe a reasonable settlement value for Mr. Hogue's claim is \$5,000,000.00.

In conclusion, pursuant to *Deer Valley Unified School District No. 97 v. Houser*, 214 Ariz. 293, 152 P.3d 490 (2007), we submit the following firm settlement offers:

Kenia Valdovinos

\$2,000,000.00

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Jesus Valdovinos	\$2,000,000.00
Melissa Valdovinos	\$3,000,000.00
Travis Hogue	\$4,000,000.00
Anthony Hogue	\$6,000,000.00
Alvin Hogue	\$5,000,000.00

If you have any questions, we suggest you contact the legal department for the City of Phoenix. We look forward to a quick and reasonable settlement of this matter.

Sincerely,

Marc J. Victor

Cc: Matthew Brown
Adrian Little
Alvin Hogue
Kenia Valdovinos
Jesus Valdovinos
Melissa Valdovinos