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7 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 JAMIE HALLAM, a single woman,
10 individually and on behalf of all statutory
11 wrongful death beneficiaries,

12 Plaintiff,

13 vs.

14 STATE OF ARIZONA, Department of
Economic Security, a public entity; DAVID
15 A. BERNS, in his capacity as former Director
of the Department of Economic Security for
the State of Arizona; TRACY L. WAREING,
16 in her capacity as current Director of the
Department of Economic Security for the
17 State of Arizona; MARY LOU HANLEY, in
her capacity as Deputy Director for Children
18 Youth & Families for the Arizona
Department of Economic Security; CINDY
19 GRAUPMANN, in her capacity as Case
Worker with Child Protective Services for
20 the Arizona Department of Economic
Security; CHRISTINA TARPLEY, in her
21 capacity as Case Supervisor for Child
Protective Services for the Arizona
22 Department of Economic Security; CITY OF
TUCSON, Tucson Police Department, a
23 public entity; JOHN AND/OR JANE DOES I-
X; BLACK AND WHITE COMPANIES I-V;
24 GOVERNMENT ENTITIES OR AGENCIES
I-V,
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26 Defendants.
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Case No.: CV2008-003612

COMPLAINT

(Tort Non-Motor Vehicle)

1 Plaintiff, Jamie Hallam, individually, and on behalf of all statutory wrongful
2 death beneficiaries, as and for her complaint, alleges as follows:

3 **PARTIES**

4 1. Plaintiff Jamie Hallam is the natural and surviving mother of Ariana
5 Socorro Payne and Tyler Christopher Payne, her deceased children.¹ At all times relevant,
6 Jamie Hallam resided in Pima County, Arizona.

7 2. Plaintiff Jamie Hallam is a proper Plaintiff and statutory wrongful
8 death beneficiary, whose claim for the wrongful death of her children, Ariana Payne and
9 Tyler Payne, is brought on behalf of herself and, in a representative capacity, on behalf of
10 all other statutory wrongful death beneficiaries, under A.R.S. §12-611, *et. seq.*

11 3. Defendant State of Arizona is a public entity that oversees, and is
12 ultimately responsible for, the Department of Economic Security and the child welfare
13 program known as Child Protective Services, as well as the program known as Children
14 Youth & Families.

15 4. The Arizona Department of Economic Security ("DES") is the agency
16 within the Arizona state government established pursuant to A.R.S. § 41-1952 which
17 directly employs, administers and oversees Child Protective Services ("CPS") and its
18 workers, pursuant to A.R.S. § 8-802(A) as well as Children Youth & Families ("CYF").

19 5. At all times relevant, up to and including approximately November,
20 2006, defendant David A. Berns was the Director of DES and is named in that capacity.

21 6. At all times relevant, from and after approximately November, 2006,
22 defendant Tracy L. Wareing was the Director of DES and is named in that capacity.

23 7. At all times relevant, defendant Mary Lou Hanley was the Deputy
24 Director for CYF under Arizona DES and is named in that capacity.

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¹ The body of Tyler Christopher Payne has never been found; therefore, his death is presumed by the State of Arizona and by plaintiff.

1 8. At all times relevant, defendant Christina Tarpley was a Case
2 Supervisor with CPS, responsible for supervising defendant Cindy Graupmann, and is
3 named in that capacity.

4 9. At all times relevant, defendant Cindy Graupmann was a Case Worker
5 with CPS and is named in that capacity.

6 10. Defendant CITY OF TUCSON is a public entity that oversees, and is
7 ultimately responsible for, the Tucson Police Department ("Tucson PD").

8 11. The exact names and identities of defendants John and/or Jane Does I-
9 X, Black and White Companies I-V, Government Entities or Agencies I-V, are unknown to
10 Plaintiff at this time, but Plaintiff believes, and therefore alleges, that they may have had
11 some part in causing or contributing to the circumstances complained of herein. Therefore,
12 Plaintiff asks leave of the Court to amend her Complaint as though they were originally set
13 forth herein once such names and identities are known to Plaintiff.

14

15 JURISDICTION AND VENUE

16 12. This is a civil action arising out of events that the Defendants caused to
17 occur in Arizona. Therefore, this Court has jurisdiction pursuant to A.R.S. § 12-123.

18 13. Venue is proper in Maricopa County, Arizona.

19 14. Plaintiff filed and served a proper Notice of Claim upon the State of
20 Arizona and City of Tucson, pursuant to A.R.S. § 12-821.01, on August 16, 2007. (**Exhibit**
21 **A**) Subsequently, Plaintiff served an Addendum to her Notice of Claim upon the State of
22 Arizona on November 7, 2007. (**Exhibit B**)

23

24 FACTUAL BACKGROUND

25 15. Jamie Hallam and Christopher Payne were married on January 25, 2002
26 in Tucson, Arizona. Their first child, Tyler Christopher Payne was born prior to their
27 marriage, on November 15, 2001 in New Jersey. Their second child, Ariana Socorro Payne,
28 was born on October 18, 2002 in Tucson, Arizona.

1 16. At all times relevant, Christopher Payne had a long-standing history,
2 dating back to 1996, of arrests for crimes including assault, disorderly conduct/fighting,
3 drug possession and use, providing alcohol to a minor, domestic violence, and
4 intimidation/threats/harassment. Payne also had a history of arrest warrants, probation
5 violations, Orders of Protection and orders to complete anger management and substance
6 abuse classes.

7 17. In late 2002, shortly after the birth of Ariana, and following an episode
8 of severe physical violence, Jamie Hallam filed for divorce.

9 18. In the final Payne divorce decree dated June 16, 2003, Jamie Hallam
10 was granted sole custody of her children Ariana and Tyler Payne by Judge/Commissioner
11 David R. Ostapuk of the Pima County Superior Court in case number D20030804. In that
12 decree, Judge Ostapuk ordered that, in the best interests of the children, Christopher Payne
13 was to have no visitation with his children, specifically because of Christopher Payne's
14 violent environment, alcohol, drugs, and domestic violence. Judge Ostapuk also ordered
15 sole custody of the minor children to be awarded to Jamie Hallam with no parenting time
16 for Christopher Payne.

17 19. From November 2002 until late December 2005, Christopher Payne
18 neither attempted nor had any contact with his children, Ariana and Tyler. During that
19 time, the children were nurtured and safe under the exclusive care of their mother, Jamie
20 Hallam.

21 20. In late December 2005, Christopher Payne contacted Jamie Hallam by
22 telephone and asked to see his children. Because he was the children's natural father,
23 because Christopher Payne had never physically harmed his own children, and because
24 Christopher Payne had a new girlfriend and a new baby (i.e. brother to Ariana and Tyler),
25 Jamie Hallam cautiously allowed Payne a supervised visit with the children which
26 occurred in a public park, with Jamie Hallam present.

27 21. A few weeks later, in early 2006, Christopher Payne called Jamie
28 Hallam again and asked that his children spend a weekend with him. Based on the

1 uneventful prior visit with the children, Jamie Hallam cautiously agreed. She talked to the
2 children on the telephone several times during the weekend. The visit went well and
3 Christopher Payne returned the children to Jamie Hallam without incident on Sunday
4 evening, as agreed.

5 22. A few days prior to the weekend of January 20, 2006, Christopher Payne
6 called Jamie Hallam again and asked to spend yet another weekend with his children.
7 Based on the two prior successful visits, Jamie Hallam agreed, with the understanding that
8 the children would be returned on Sunday evening. However, on Sunday, Christopher
9 Payne asked Jamie Hallam if he could keep the children for the entire week, stating that he
10 had taken the week off of work to spend time with the children. Jamie again agreed. At the
11 end of that week Payne again requested additional time with the children and ultimately
12 refused to return them to Jamie Hallam. After repeated telephone calls and requests to
13 return the children, by early February 2006 Jamie Hallam had lost contact with
14 Christopher Payne, who then refused to answer his telephone and refused to return the
15 children to the lawful custody of Jamie Hallam.

16 23. On February 17, 2006 Jamie Hallam was in communication with CPS²,
17 advising CPS of her efforts to retrieve her children from Christopher Payne.

18 24. On March 1, 2006, case worker Cindy Graupmann and case supervisor
19 Christina Tarpley had a telephone conversation with Jamie Hallam, wherein Jamie Hallam
20 was informed that CPS had closed its investigation (of the October 14, 2005 report) and
21 informed Jamie Hallam that she had the right to pick up her children. However, CPS
22 neither offered nor assisted Jamie Hallam in retrieving her children from Christopher
23 Payne, notwithstanding CPS's knowledge that Christopher Payne was refusing to return
24 the children to Jamie Hallam, and notwithstanding Payne's long history of violence and
25 criminal behavior.

26 ...

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28 ² CPS and case worker Cindy Graupmann became involved with Jamie Hallam following an October 14, 2005
call to CPS by an unknown caller who had made allegations against Jamie Hallam of drug addiction and
domestic violence. This report was later unsubstantiated by CPS.

1 25. On March 9, 2006 Jamie Hallam enlisted the assistance of the Tucson PD
2 to retrieve her children. The Tucson PD met Jamie Hallam at the residence of Christopher
3 Payne, where she presented them with a copy of her valid and legally binding June 16, 2003
4 sole custody order by Judge Ostapuk (ordering no visitation and no parenting rights by
5 Christopher Payne). When confronted by Tucson PD, Christopher Payne stated that CPS
6 had an open investigation regarding Jamie Hallam and that CPS had instructed him to file
7 for a change of custody of the children. Tucson PD reports confirm that court papers
8 presented to them by Christopher Payne in no way established any legal custody rights to
9 his children.

10 26. On that same date, Tucson PD spoke to CPS worker Cindy Graupmann
11 and her supervisor Christina Tarpley, who advised Tucson PD that there was an open
12 investigation regarding Jamie Hallam and who then instructed the Police Department that
13 the children should remain with their father, Christopher Payne. Based on this instruction,
14 and despite Jamie Hallam's legally binding custody order, the Tucson PD left Ariana and
15 Tyler Payne in the custody of Christopher Payne.

16 27. In directing the Tucson PD on March 9, 2006 to leave the Payne children
17 in the custody of Christopher Payne, CPS failed to perform a thorough background check
18 on Christopher Payne or his live-in girlfriend, Reina Gonzales, and therefore failed to
19 discover Christopher Payne's long history of violence, arrests, and Orders of Protection.
20 Furthermore, CPS failed to investigate or obtain a copy of the custody order that granted
21 Jamie Hallam sole custody of her children and ordered that Christopher Payne was to have
22 no visitation and no parenting rights as to his children, specifically because of his history of
23 violence and drug use.

24 28. In following CPS's instructions to leave the Payne children with
25 Christopher Payne, Tucson PD failed to perform their own background check regarding
26 Christopher Payne or his live-in girlfriend, Reina Gonzales, and therefore failed to discover
27 Christopher Payne's long history of violence, arrests, and Orders of Protection.

28 ...

1 29. After Jamie Hallam was unlawfully denied custody of her children by
2 CPS and the Tucson PD on March 9, 2006, Jamie Hallam presumed that CPS was still
3 investigating her (despite being informed 8 days earlier that CPS's investigation was closed
4 and despite being instructed to go pick up her children from Christopher Payne). Jamie
5 Hallam also presumed that during their "investigation" CPS would be in close contact with
6 Christopher Payne, that CPS would discover his past history by obtaining all relevant and
7 available history records and reports, that CPS would obtain a copy of the Custody Order
8 dated June 16, 2003, and that CPS would perform periodic home visits to ensure that her
9 children were safe in the home that CPS placed them in.

10 30. After March 9, 2006, CPS failed to conduct any "investigation" into
11 Christopher Payne or Reina Gonzales's background and failed to ever check on the welfare
12 of the Payne children to determine whether or not they were safe. The subsequent autopsy
13 report of Ariana Payne following her death confirms that the children were not safe by
14 evidence of prior injuries in different stages of healing, and confirmed a pattern of abuse
15 over time.

16 31. Furthermore, had CPS conducted an adequate "investigation" before
17 leaving Ariana and Tyler Payne in Payne's custody, CPS would have also discovered that
18 Christopher Payne was committing acts of domestic violence towards his new girlfriend,
19 and mother of his youngest child, Reina Gonzales. CPS would have also discovered that
20 Payne had been arrested on a drug paraphernalia charge during the time period that his
21 children were residing with him.

22 32. After March 9, 2006, CPS took no action involving either Jamie Hallam or
23 Christopher Payne until October of 2006, when CPS removed yet another child from Jamie
24 Hallam immediately following the birth in response to unfounded allegations of drug use
25 by Jamie Hallam.³ Despite the fact that CPS soon returned her newborn baby to Jamie
26 Hallam's care and custody, CPS still took no steps at that time to check on the welfare of

27 ³ After the birth of that child (Autumn), the baby had tested positive for amphetamines. However, based on
28 Jamie Hallam's report that she had taken over-the-counter medication for the flu and for her bipolar disorder
before the birth, and based on the fact that Jamie Hallam tested negative for any drugs, Autumn was returned
to Jamie Hallam's care six (6) days later.

1 Ariana and Tyler Payne, whom Jamie Hallam reminded CPS, were still in the custody of
2 Christopher Payne. CPS also took no steps to have Ariana and Tyler Payne returned to
3 Jamie Hallam's care and custody.

4 33. Ultimately, on February 18, 2007 the brutally murdered and severely
5 decomposing body of Ariana Payne was discovered in a locked rental storage facility in
6 Tucson, Arizona. The body of Tyler Payne has never been found and he is now presumed
7 to be dead as well. Christopher Payne is criminally accused by the State of Arizona of
8 murdering his children. His girlfriend, Reina Gonzales, is also charged in their deaths.

9 **GENERAL ALLEGATIONS**

10 34. Defendant State of Arizona, through its DES, is responsible for the
11 selection and training of its "protective service workers" or "workers," pursuant to A.R.S. §
12 8-801.1.

13 35. The individually named CPS defendants herein (Berns, Wareing,
14 Hanley, Graupmann and Tarpley) are all "child protective service workers" as defined by
15 A.R.S. § 8-801.1.

16 36. The individually named CPS defendants herein were all hired and
17 trained by defendant State of Arizona, under the requirements proscribed by the Arizona
18 Department of Economic Security, pursuant to A.R.S. § 8-802.

19 37. At all times relevant, upon information and belief, until approximately
20 November 2006, and as to all events described herein, defendant David A. Berns was acting
21 within the course and scope of his employment with defendant State of Arizona,
22 Department of Economic Security.

23 38. At all times relevant, upon information and belief, from approximately
24 November 2006, and as to all events described herein, defendant Tracy L. Wareing was
25 acting within the course and scope of her employment with defendant State of Arizona,
26 Department of Economic Security.

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1 39. At all times relevant, and as to all events described herein, defendant
2 Mary Lou Hanley was acting within the course and scope of her employment with
3 defendant State of Arizona, Department of Economic Security.

4 40. At all times relevant, and as to all events described herein, defendant
5 Christina Tarpley was acting within the course and scope of her employment with
6 defendant State of Arizona, Department of Economic Security.

7 41. At all times relevant, and as to all events described herein, defendant
8 Cindy Graupmann was acting within the course and scope of her employment with
9 defendant State of Arizona, Department of Economic Security.

10 42. Defendant State of Arizona is vicariously liable for the acts and
11 omissions of the individually named Defendants herein, under the doctrine of *respondeat*
12 *superior*.

13 43. Defendant City of Tucson, Tucson PD is responsible for the protection
14 of citizens in Tucson and is required to follow and enforce all laws of the State of Arizona
15 and all lawful court orders of the Arizona courts.

16 44. At all times relevant, and as to all events described herein, the involved
17 City of Tucson police officers, civilian assistants, employees and agents were acting within
18 the course and scope of their employment with Defendant City of Tucson Police
19 Department.

20 45. Defendant City of Tucson Police Department is vicariously liable for
21 the acts and omissions of its police officers, civilian assistants, employees, and agents
22 responsible for, or involved in, the Payne case, under the doctrine of *respondeat superior*.

23 46. The defendants, and each of them, had a duty to enforce the Court
24 Order of Judge Ostapuk dated June 16, 2003, wherein Judge Ostapuk ordered sole custody
25 of the Payne children to Jamie Hallam and specifically ordered no visitation or parenting
26 rights, to Christopher Payne.

27 47. The defendants, and each of them, owed a duty to Jamie Hallam and to
28 Ariana and Tyler Payne to act reasonably in the conduct of their respective investigations

1 and decision making, particularly on March 9, 2006 when they each made the decision to
2 defy and disregard the earlier and valid Court Order and to allow the Payne children to
3 remain in the custody of Christopher Payne. Defendants had a further obligation to
4 thoroughly investigate Christopher Payne's history, both in the criminal and domestic
5 relations courts, as well as all available police reports and public records, to fully assess his
6 fitness to retain physical custody of his children.

7 48. As a direct result of the negligence and failures specified above,
8 defendants, and each of them, failed to assure the safety of the Payne children by leaving
9 them in the care and physical custody of their father and therefore defendants legally
10 caused the abuse, neglect and deaths of Ariana and Tyler Payne as discovered on February
11 18, 2007.

12 COUNT ONE

13 **(Recklessness and Gross Negligence – Against All Defendants)**

14 49. Plaintiff alleges, and incorporates herein by this reference, paragraphs
15 1 through 48 of this Complaint.

16 50. Defendant State of Arizona, DES, by and through its employees and
17 agents, including but not limited to, defendants David A. Berns, Tracy L. Wareing, Mary
18 Lou Hanley, Christina Tarpley and Cindy Graupmann, owed non-delegable common law
19 duties to plaintiff Jamie Hallam and to the decedents Ariana and Tyler Payne, all to protect
20 Ariana and Tyler Payne from abuse, neglect and death.

21 51. Defendant City of Tucson, by and through its Police Department, by
22 and through its officers, civilian assistants, employees and agents, owed common law
23 duties to Plaintiff Jamie Hallam and to the decedents Ariana and Tyler Payne, all to protect
24 Ariana and Tyler Payne from abuse, neglect and death.

25 52. Given: 1) CPS's decision and instructions to Jamie Hallam on March 1,
26 2006 that their case was CLOSED and that she was therefore free to retrieve her children
27 from Christopher Payne; 2) defendants' knowledge of the legally binding custody order
28 dated June 16, 2003; and 3) Christopher Payne's easily obtainable and relevant history and

1 background records, Defendants breached their common law duties by conducting their
2 respective investigations and reaching their decisions that left the Payne children in the
3 physical custody of Christopher Payne with a conscious indifference and/or reckless
4 disregard for the safety, protection and welfare of the decedents, Ariana and Tyler Payne,
5 all amounting to Defendants' recklessness and gross negligence.

6 53. As a direct and proximate result of Defendants' recklessness and gross
7 negligence in failing to reasonably investigate and protect Ariana and Tyler Payne, Plaintiff
8 Jamie Hallam has suffered the following injuries and damages:

9 A. Psychological and emotional damage, shock and grief as a result
10 of the reckless and grossly indifferent acts of neglect by the Defendants, resulting in the
11 wrongful deaths of Ariana and Tyler Payne.

12 B. Loss of companionship and consortium with her children,
13 Ariana and Tyler Payne, as a result of their wrongful deaths.

14 C. Past and future medical expenses including counseling services
15 for plaintiff Jamie Hallam.

16 D. Other incidental damages as a result of the deaths of Ariana and
17 Tyler Payne, including funeral and burial expenses.

18
19 **COUNT TWO**

20 **(Negligence – Against All Defendants)**

21 54. Plaintiff alleges, and incorporates herein by this reference, paragraphs
22 1 through 53 of this Complaint.

23 55. In committing the common law breaches, as described in Count One
24 above, defendant State of Arizona, through its employees and agents, defendants David A.
25 Berns, Tracy L. Wareing, Mary Lou Hanley, Christina Tarpley and Cindy Graupmann,
26 failed to exercise the minimum degree of care, skill and due diligence expected of a
27 reasonable CPS worker and/or supervisor during the investigation of the alleged neglect
28 and/or abuse, under the same or similar circumstances as those presented in the Payne case.

1 56. In committing the common law breaches, as described in Count One
2 above, Defendant City of Tucson, through Tucson PD, through its employees and agents,
3 failed to exercise the minimum degree of care, skill and due diligence expected of a
4 reasonable police officer, investigator, worker and/or employee during the investigation
5 and decision making regarding the Payne children.

6 57. As a direct and proximate result of the Defendants' negligence, plaintiff
7 Jamie Hallam has suffered the following injuries and damages:

8 A. Psychological and emotional damage, shock and grief as a result
9 of the reckless and grossly indifferent acts of neglect by the Defendants, resulting in the
10 wrongful deaths of Ariana and Tyler Payne.

11 B. Loss of companionship and consortium with her children,
12 Ariana and Tyler Payne, as a result of their wrongful deaths.

13 C. Past and future medical expenses including counseling services
14 for plaintiff Jamie Hallam.

15 D. Other incidental damages as a result of the deaths of Ariana and
16 Tyler Payne, including funeral and burial expenses.

17 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of
18 them, as follows:

19 A. That Plaintiff be awarded a judgment in an amount that will
20 compensate plaintiff Jamie Hallam fairly and fully for the wrongful deaths of Ariana and
21 Tyler Payne;

22 B. That Plaintiff be awarded her attorneys fees and expenses;

23 C. That the costs of this action be assessed against all Defendants
24 and in favor of Plaintiff; and

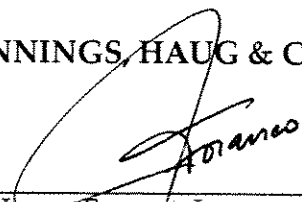
25 D. That the Plaintiff be awarded such other and further relief as the
26 Court deems just and proper.

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1 DATED this 15th day of January, 2008

2 JENNINGS, HAUG & CUNNINGHAM, LLP

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4 By



Jorge Franco, Jr.
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Attorneys for Plaintiffs

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