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9 Attorney for Plaintiff

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF OREGON

12 Eugene Division

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14
15
16 FELISA ROLD, Individually and as
17 Personal Representative of the Estate of
18 Gregory Angar Rold,

19 Plaintiff,

20 vs.

21 CITY OF SALEM, an Oregon municipal
22 corporation, JACOB PRATT, DARON
23 MUMEY, ADAM WAITE, ERIC BROWN,
and DOES 1 through 10,

Defendants.

Case No.

COMPLAINT FOR CIVIL RIGHTS

VIOLATION AND WRONGFUL DEATH

DEMAND FOR JURY TRIAL

24 Plaintiff alleges:

25 ///

26 COMPLAINT - 1

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1 PARTIES, JURISDICTION, AND VENUE

2 1.

3 Plaintiff is a registered alien, a resident of Marion County, Oregon, and is the
4 mother and sole heir of Gregory Angar Rold (Mr. Rold), who died intestate domiciled in
5 Marion County, Oregon on May 23, 2009, and personal representative of Mr. Rold's
6 estate, pursuant to appointment by the Circuit Court of the State of Oregon for Marion
7 County.
8

9 2.

10 Defendant City of Salem (City) is an Oregon municipal corporation and the
11 employer of the other defendants, all of whom were acting at all relevant times in the
12 course and scope of their employment.
13

14 3.

15 Defendant Pratt is a police officer employed by City and a resident of Oregon,
16 sued individually and in his official capacity.
17

18 4.

19 Defendant Mumey is a police corporal employed by City and a resident of
20 Oregon, sued individually and in his official capacity.
21

22 5.

23 Defendant Waite is a police officer employed by City and a resident of Oregon,
24 sued individually and in his official capacity.
25

26 6.

27 Defendant Brown is a police corporal employed by City and a resident of Oregon,
28 sued individually and in his official capacity.
29

30 COMPLAINT - 2

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1 7.

2 Defendant Doe 1 is an employee of City assigned to police dispatch on May 23,
3 2009 at approximately 8:00 p.m.

4 8.

5 Defendants Does 2 through 10 are various other employees of City, including but
6 not limited to other officers interacting with Mr. Rold in the incident giving rise to the
7 claims stated herein, sued individually and in their official capacities.

8 9.

9 This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 1367, as an
10 action for redress for violations of Mr. Rold's civil liberties under color of state law, as a
11 federal question, with associated claims for violations of state law.

12 10.

13 Venue lies in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

14
15
16
17 FIRST CLAIM FOR RELIEF

18 Count One

19 (Civil Rights Violation – Excessive Force)

20 11.

21 Plaintiff realleges paragraphs 1 through 8.

22 12.

23 All defendants were acting under color of state law at the time of the incidents
24 giving rise to this claim.

25 ///
26 COMPLAINT - 3

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13.

On May 23, 2009, at approximately 8:00 p.m., City police dispatched officers to Plaintiff's apartment in Marion County, Oregon, to remove Mr. Rold pursuant to a prior trespass notice given by Plaintiff's landlord. Pratt arrived first and was joined shortly afterward by Mumey. Brown, Waite, and Does 2 through 10 arrived when Pratt requested backup.

14.

Pratt informed Mr. Rold that he was under arrest. Mr. Rold did not immediately comply and made conflicting statements whether he would comply. Notwithstanding his slow response, Mr. Rold displayed only passive resistance and made no threats or displays of violence, nor did he initially make any gestures suggesting that he was armed or attempting to use or display a weapon or attempt to flee.

15.

Notwithstanding that Mr. Rold did not threaten or display violence, Mumey tased Mr. Rold without warning or hearing whether Pratt had warned Mr. Rold. When the initial cycle failed to subdue Mr. Rold, Mumey and Pratt tased Mr. Rold a total of 16 cycles over a four minute period, electrocuting Mr. Rold for a total of 158 seconds.

16.

Mr. Rold physically resisted only after Mumey and Pratt had tased him multiple times.

17.

After Mumey and Pratt ceased tasing Mr. Rold, they attempted to physically subdue him.

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18.

Approximately 17 minutes after Mumey and Pratt had ceased tasing Mr. Rold, Brown and Waite arrived. At the time of their arrival, Mr. Rold was leaning on the kitchen table, not actively offering resistance.

19.

When Mr. Rold attempted to flee further into the apartment, Brown tased Mr. Rold twice for a total of 13 seconds, the first time without warning.

20.

After Brown tased Mr. Rold, Mumey, Pratt, and Waite physically subdued Mr. Rold, including striking Mr. Rold with an ASP baton to the knees and punches to the side.

21.

During their attempts to subdue Mr. Rold, Mumey, Pratt, and Waite pushed him to a prone position and pulled his arms behind his back, handcuffing his hands behind him, with Waite placing a knee on Mr. Rold's back.

22.

Mr. Rold was no more than six feet tall, was heavily built, and weighed 300 to 350 pounds.

23.

The pressure on Mr. Rold's lungs and trachea from the position he was held and Waite's knee caused him to suffer positional asphyxiation, resulting in a fatal cardiac arrhythmia.

///
COMPLAINT - 5

1 24.

2 Mumey, Pratt, Brown, and Waite violated Mr. Rold's constitutional rights in one or
3 more of the following particulars:

- 4 (a) By using a degree of force unreasonable under the circumstances, in violation
5 of his right to be free of unreasonable seizure under the Fourth Amendment;
6
7 (b) By subjecting him to punishment without the benefit of trial by jury and cruel
8 and unusual punishment, in violation of his rights under the Sixth and Eighth
9 Amendments; and
10 (c) By depriving him of his liberty by subjecting him to unwarranted and
11 unreasonable restraints on his person without due process, in violation of his
12 rights under the Fifth and Fourteenth Amendments.

13 25.

14 As a result of Defendants' actions, Mr. Rold died after suffering pain and
15 suffering from excessive electrocution and painful pressure on his lungs and trachea.
16

17 26.

18 As a result of Defendants' actions, Mr. Rold's estate has been damaged in the
19 sum of \$405,000 economic damages and \$50,000 non-economic damages.

20 27.

21 Defendant's conduct further violated Plaintiff's rights to due process under the
22 Fourteenth Amendment by depriving her of her liberty interest in Mr. Rold's
23 companionship.
24

25 ///

26 ///

COMPLAINT - 6

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1 28.

2 As a result of Defendants' actions, Plaintiff has suffered loss of consortium
3 totaling \$1 million non-economic damages.

4 29.

5 Defendants were recklessly indifferent to Mr. Rold's rights. As a result of
6 Defendants' actions, Mr. Rold's estate is entitled to an award of punitive damages in the
7 sum of \$4.5 million.

8 30.

9 Pursuant to 42 U.S.C. § 1988, Plaintiff is entitled to her reasonable attorney fees
10 and litigation expenses.

11
12
13 Count Two

14 (Wrongful Death – Negligence – Excessive Force)

15 31.

16 Plaintiff realleges paragraphs 1 through 8 and 11 through 28.

17 32.

18 Defendants' actions violated City's official policy regarding the use of tasers in
19 one or more of the following particulars:

- 20
21 (a) Use of tasers on a person offering only passive resistance;
22 (b) Use of tasers in a situation not creating an immediate or credible threat of
23 danger;
24 (c) Use of tasers to an excessive degree;
25 (d) Use of tasers without reconsidering the necessity for their use; and
26

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1 (e) Use of tasers before display of active physical resistance.

2 33.

3 Defendants' use of the tasers and striking Mr. Rold, under the circumstances in
4 which they were used, amounted to deadly physical force.

5 34.

6 Defendants were not justified in using deadly physical force pursuant to ORS
7 161.239.

8 35.

9 Defendants' actions were negligent or negligent *per se*.

10 36.

11 Attached as Exhibit 1 and hereby incorporated by reference is a copy of a tort
12 claim notice sent to City on June 16, 2009.

13 37.

14 The limitation of liability under the Oregon Tort Claims Act in effect at the time of
15 the incident giving rise to Plaintiff's claims violate Article I, Section 10 of the Oregon
16 Constitution as applied to Plaintiff's state law claims.

17
18
19
20 Count Three

21 (Wrongful Death – Battery)

22 38.

23 Plaintiff realleges paragraphs 1 through 8 and 11 through 37.

24 39.

25 Defendants' actions constituted battery.

26 COMPLAINT - 8

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1
2 SECOND CLAIM FOR RELIEF

3 Count One

4 (Civil Rights Violation – Practice of Inadequate Training)

5 40.

6 Plaintiff realleges paragraphs 1 through 8 and 11 through 36.

7 41.

8 City's official training protocol for use of tasers includes annual training including
9 written examinations and usage tests.

10 42.

11 City has a pattern or practice of failing to train its police officers in use of tasers
12 consistent with its written training protocol.

13 43

14 As a result of City's pattern or practice of inadequate training, Pratt, Mumey, and
15 Brown tased Mr. Rold under circumstances inconsistent with City's protocol for use of
16 tasers and in excessive frequency and duration.

17 Count Two

18 (Wrongful Death – Negligence – Training)

19 44.

20 Plaintiff realleges paragraphs 1 through 8, 11 through 37, and 40 through 43.

21 45.

22 City was negligent in its training of Pratt, Mumey, and Brown.

23 COMPLAINT - 9

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1 THIRD CLAIM FOR RELIEF

2 (Negligence – Failure to Prepare for Interaction)

3 46.

4 Plaintiff realleges paragraphs 1 through 8, 11 through 28, and 31 through 37.

5 47.

6 City knew through prior contacts with Mr. Rold that Mr. Rold was a Trukese-
7 speaking Pacific Islander whose command of English was sufficiently limited that an
8 interpreter was used in previous interactions and that Mr. Rold suffered from mental
9 illness affecting his behavior.

10 48.

11 Prior to Pratt's arrival on the scene, Doe 1 failed to properly inform Pratt, Mumey,
12 Brown, Waite, and the other Doe officers of City's knowledge of Mr. Rold's language
13 skills or mental illness.

14 49.

15 Prior to his arrival on the scene, Pratt, Mumey, Brown, Waite, and Does 2 through
16 10 failed to sufficiently familiarize themselves with City's knowledge of Mr. Rold's
17 language skills or mental illness.

18 50.

19 None of the Defendants requested that a Trukese interpreter be made available,
20 nor did they take advantage of the presence of Mr. Rold's brother, Siplus Ruba, as a
21 potential interpreter until after the incident had progressed beyond the first tasing.

22 ///

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24 COMPLAINT - 10

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51.

None of the Defendants requested that an officer skilled in interactions with mentally ill suspects or a negotiator trained or experienced in interactions with mentally ill suspects be made available.

52.

Doe 1, Pratt, and Mumey violated Mr. Rold’s rights to equal protection under the Fourteenth Amendment to the United States Constitution by failing to adequately respond to Mr. Rold’s known and readily apparent limited English skills.

53.

City’s official policy for justification of use of force is based on the reasonable beliefs of the officer based on information known at the time.

54.

Doe 1’s failure to make information regarding the City’s knowledge of Mr. Rold’s mental illness and limited English skills was negligent.

55.

Defendants’ failure to familiarize themselves with the City’s knowledge of Mr. Rold’s mental illness and limited English skills was negligent.

FOURTH CLAIM FOR RELIEF

(Wrongful Death – Negligence – Failure to Recognize Injury)

56.

Plaintiff realleges paragraphs 1 through 8, 11 through 28, and 31 through 37.

///
COMPLAINT - 11

1 57.

2 Pratt, Mumey, Waite, Brown, and Does 2 through 10 failed to promptly recognize
3 that Mr. Rold had stopped breathing and, as a result, delayed their reaction to his
4 asphyxia for several minutes.

5 58.

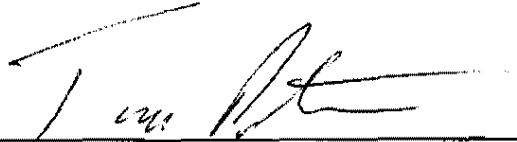
6 Defendants' actions were negligent.
7

8
9 WHEREFORE, Plaintiff prays for relief as follows:

- 10 1. Judgment for Plaintiff and against Defendants in the sum of \$1.455 million
11 compensatory damages and \$4.5 million punitive damages;
12 2. For her costs, disbursements, and reasonable attorney fees and litigation
13 costs; and
14 3. Such other relief as is just and equitable.
15

16
17 PLAINTIFF DEMANDS A JURY TRIAL.

18
19 Dated this 30th day of March, 2010.

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21
22 
23 Todd Peterson, OSB No. 913945
24 Attorney for Plaintiff
25
26

COMPLAINT - 12

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