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**FILED**  
Malheur County Circuit Court

DEC 19 2018

Time: 4:45 P.m By SAS

CIRCUIT COURT, STATE OF OREGON

MALHEUR COUNTY

JESSICA BATES, individually, as the guardian of the minor children, DOMINIC ROBERT BATES, JERRY EMMETT BATES, DANIELLE ANGELINE BATES, JORDAN DAVID BATES and DARIAN JUDE BATES, and as the Personal Representative for the ESTATE OF DAVID BATES,

Plaintiff,

vs.

OREGON STATE PSYCHIATRIC SECURITY REVIEW BOARD, a political subdivision of the State of Oregon; the OREGON STATE HOSPITAL; a medical facility owned and operated by the State of Oregon, and the OREGON HEALTH AUTHORITY, a political subdivision of the State of Oregon, MUKESH MITTALL, M.D. and JOHN DOES 1-5,

Defendants.

CASE NO. 18CV57527

COMPLAINT

Fee Category: 1(a)

Fee: \$350.00

(DEMAND FOR JURY TRIAL)

PRAAYER AMOUNT: \$400,000.00

Pursuant to ORCP 18

COMES NOW Plaintiff JESSICA BATES, individually, as the guardian of the minor children, DOMINIC ROBERT BATES, JERRY EMMETT BATES, DANIELLE ANGELINE BATES, JORDAN DAVID BATES and DARIAN JUDE BATES, and as the Personal Representative of the ESTATE OF DAVID BATES, and for cause of action against the Defendants herein named, CLAIM AND ALLEGE as follows:

Complaint and Demand for Jury Trial – Page 1

Bruce D. Skaug (OSB# 021583)  
SKAUG LAW, PC  
Attorneys for Plaintiffs  
1226 E Karcher Rd  
Nampa, ID 83687  
Tel: (208) 466-0030 Fax: (208) 466-8903  
Email: bruce@skauglaw.com

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**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Jessica Bates, individually, was, at all times relevant, a resident of the City of Vale, County of Malheur, State of Oregon, and was the wife of David Bates who was killed in a traffic collision on January 9, 2017, which occurred in Malheur County, Oregon.

2. Plaintiff Jessica Bates is the natural mother of, and decedent David Bates was the natural father of, the minor children, DOMINIC ROBERT BATES, JERRY EMMETT BATES, DANIELLE ANGELINE BATES, JORDAN DAVID BATES and DARIAN JUDE BATES.

3. Plaintiff Jessica Bates is the duly appointed personal representative of the Estate of David Joseph Bates on April 17, 2017 in Malheur County Case No. 5980.

4. Defendant Oregon State Psychiatric Security Review Board (“Security Review Board”) was, at all times relevant, a political and governmental subdivision of the State of Oregon.

5. Defendant Oregon State Hospital (“State Hospital”) was, at all times relevant, a medical facility owned and operated by the State of Oregon.

6. Defendant Oregon Health Authority is a political subdivision of the State of Oregon, responsible for the oversight of Defendant Oregon State Hospital.

7. Defendant John Does 1-5, are unknown persons and employees of the State of Oregon, whose identities and whereabouts are currently unknown, but are believed to have caused harm to Plaintiffs by their wrongful acts.

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8. Plaintiffs served Notices of Tort Claims pursuant to the Oregon Tort Claims Act, *Oregon Code* §30.275(2)(b) on or about July 6, 2017.

9. The events giving rise to this cause of action occurred in Ontario, Oregon, located in Malheur County, making jurisdiction proper in the above-entitled Court.

**GENERAL ALLEGATIONS**

10. At all times relevant herein Defendant Oregon State Hospital was a medical facility providing treatment for patients under care for mental illness.

11. At all times relevant herein Defendant Oregon Health Authority was a State entity responsible for the oversight of the facility known as the Oregon State Hospital.

12. At all times relevant herein Defendant Oregon State Psychiatric Review Board was a medical entity funded and staffed by the State of Oregon, and charged with the review and diagnosis of individuals under care for mental illness in the State of Oregon, including the suitability of such patients for conditional release into the community.

13. At all times relevant herein Anthony Montwheeler was an individual recently released from the Oregon State Hospital, under the recommendation of the Oregon State Psychiatric Review Board, where he had been under treatment for several years for mental illness.

14. At a hearing on April 27, 2016, Defendant Psychiatric Security Review Board found as fact that Defendant Montwheeler was “affected by a mental disease or defect which, when active, renders him a substantial danger to others, is under the jurisdiction of the Psychiatric Security Review Board,” and because of this, Defendant

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Montwheeler was not a proper subject for conditional release because he could not be adequately controlled and treated in the community and therefore it would not be in the best interest of justice and the protection of society to release him at this time.

15. The State of Oregon through its legal counsel, recommended that Defendant Montwheeler not be released.

16. Testimony at that hearing included Mukesh Mittal, M.D., who testified that Defendant Montwheeler recently “requested to try himself without the medication and this was discontinued about 4 ½ months ago and for which [he} is no worse. It is however too early to dismiss a diagnosis of bipolar disorder as recurrence/relapse can occur within a two year period with and without medications. As of now, I am maintaining a diagnosis of bipolar disorder which satisfies jurisdictional criteria. If the diagnosis of bipolar disorder is indeed accurate, then it will be reasonable to presume that the symptoms, if and when active, would render him a substantial danger towards others.”

17. Defendant Psychiatric Security Review Board recommended Defendant Montwheeler’s release at a December 7, 2016 hearing.

18. At that hearing the Defendant Psychiatric Security Review Board found as a matter of fact that State did not sustain its burden of proving by a preponderance of the evidence that Mr. Montwheeler continued to be affected by a mental disease or defect. A finding that was based upon the expert testimony of Mukesh Mittal, M.D., Mr. Montwheeler’s current treating psychiatrist, to the effect that at that time Mr. Montwheeler did not suffer from a qualifying mental disease or defect.

19. Dr. Mittal also noted that in his experience, in the absence of psychotropic

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medications, a bipolar diagnosis will always reveal itself eventually and in Montwheeler’s case, the period of time has been long enough to conclude that *he does not suffer from this particular illness.*

20. Mr. Montwheeler had received conflicting evaluations by psychiatrists and psychologists as to his diagnosis and fitness for conditional release.

21. At that hearing, Brian Hartman, PsyD, a psychologist who evaluated Mr. Montwheeler for approximately two years prior to his release warned that he was still dangerous, and that “if in the community without supervision, his risk of violence would be high, and it would most likely to target an intimate partner or other family members.”

22. These concerns were also expressed by the Psychiatric Security Review Board Acting Chair, Kate Lieber, who told Mr. Montwheeler at the December 2016 hearing that, “my hope is that you will do the right thing. I’m sincerely worried that you won’t.”

23. On the morning of January 9, 2017, Mr. Montwheeler stabbed his ex-wife to death in the parking lot of a gas station convenience store in Ontario, Oregon, and while fleeing the scene in a black Dodge pickup, Mr. Montwheeler intentionally struck Plaintiffs’ vehicle head-on with his pickup at milepost 29 on Highway 201 South, just north of SW 18<sup>th</sup> Avenue, on the outskirts of the City of Ontario, Oregon.

24. Subsequent to the events giving rise to this litigation, Mr. Montwheeler was transported to the Oregon State Hospital on or about September 1, 2017, for a court directed evaluation to determine whether he lacked fitness to proceed with his criminal case by reason of incapacity, and after an evaluation performed at the Oregon State Hospital by a certified evaluator of the Forensic Evaluation Services, Montwheeler was deemed

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incapacitated as a result of a qualifying mental disorder.

25. As a result of the January 9, 2017 collision the Plaintiff Jessica Bates was severely injured and her husband, David Bates, was killed.

26. Anthony Montwheeler had been released from the Oregon State Hospital less than four weeks prior to the events giving rise to this litigation.

27. Defendant Oregon State Hospital released Montwheeler from treatment upon recommendation of the State Psychiatric Security Review Board, which relied in principal on the medical testimony of Mukesh Mittal, M.D., Mr. Montwheeler's treating psychiatrist.

28. Montwheeler had been under the custody and care of the Oregon State Hospital for several years prior to the incident giving rise to this litigation, where he had received treatment for mental illness.

29. Defendants Oregon State Hospital and State Psychiatric Security Review Board had knowledge that Montwheeler was mentally unstable and unsuitable for release because he was prone to extreme violence and as such posed a danger to others.

30. State Psychiatric Security Board personnel had reason to believe that Montwheeler would cause harm to others if released, but nevertheless recommended his release from the custody and care of the Oregon State Hospital.

31. The Defendants Oregon State Hospital and State Psychiatric Security Review Board were negligent and/or reckless in releasing Montwheeler from the custody and care of the Oregon State Hospital when they knew he presented a credible danger to others.

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32. As a direct and proximate result of the negligent and/or reckless conduct of Defendants Oregon State Hospital and State Psychiatric Security Review Board, Defendant Anthony Montwheeler embarked on a spree of murder and intentionally harmful conduct against the citizens of the State of Oregon.

33. As a direct and proximate result of the negligent and/or reckless conduct of Defendants Oregon State Hospital and State Psychiatric Security Review Board, Plaintiff has suffered damages in the form of physical injury, mental anguish, emotional distress, loss of consortium, lost future income and the wrongful death of her husband, in an amount and scope to be determined at trial, but which is alleged to be \$100,000.00 for purposes of ORCP 18.

**COUNT ONE**  
***Negligence***

***As against Defendant State Psychiatric Security Review Board,  
Defendant Oregon State Hospital and Defendant Oregon Health Authority***

34. Plaintiffs reallege and incorporate the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

35. Defendant State Psychiatric Security Review Board, Defendant Oregon State Hospital and Defendant Oregon Health Authority had a duty of care to ensure that Mr. Montwheeler met the criteria for conditional release from the Oregon State Hospital, including that he was free from any mental illness and not a danger to anyone at the time of the hearing on December 7, 2016 hearing.

36. At the time of the April 27, 2016 hearing before Defendant State Psychiatric Security Review Board, there was medical testimony that indicated Montwheeler was

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mentally ill and a danger to others if released, and that while in a state of remission, his symptoms were such that they could manifest themselves within a period of two years, whether Montwheeler remained on medication or not.

37. At the time of the December 7, 2016 hearing before the Psychiatric Security Review Board, despite conflicting opinions regarding the fitness of Montwheeler's mental state and capacity for dangerous behavior toward others, and despite the fact that a medically indicated time period within which release could occur had not yet passed, Defendant State Psychiatric Security Review Board deemed Montwheeler suitable for conditional release.

38. In spite of these conflicting opinions and medical evidence, Defendant Psychiatric Security Review Board determined that Montwheeler was suitable for conditional release, and did release him from treatment at Defendant Oregon State Hospital.

39. The conditional release of Montwheeler under such circumstances is indicative of the breach of duty by Defendants State Psychiatric Security Review Board, Defendant Oregon State Hospital and Defendant Oregon Health Authority.

40. The conditional release of Montwheeler from treatment was the actual and proximate cause of the resulting actions of Montwheeler on the morning of January 9, 2017, including the criminal actions and conduct of Montwheeler when he drove his Dodge pickup head-on into the vehicle in which Plaintiff Jessica Bates was riding as a passenger.

41. As a direct and proximate result of the decision to release Montwheeler, Plaintiff has suffered damages in the form of physical injury, mental anguish, emotional



1 distress, loss of consortium, lost future income and the wrongful death of her husband, in  
2 an amount and scope to be determined at trial, but which is alleged to be \$100,000.00 for  
3 purposes of ORCP 18.  
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5 **COUNT TWO**

6 ***Negligence Per Se***

7 ***As against Defendant State Psychiatric Security Review Board,  
8 Defendant Oregon State Hospital and Defendant Oregon Health Authority***

9 42. Plaintiffs reallege and incorporate the allegations contained in the preceding  
10 paragraphs of this Complaint as if they were fully set forth herein.

11 43. ORS 161.346(a) and ORS 161.351(1) requires that the PSRB discharge a  
12 person from its jurisdiction if it finds that, by a preponderance of the evidence, at a full and  
13 fair hearing, a patient no longer has a mental illness – even if the person is at high risk to  
14 reoffend.

15 44. Additionally, the Oregon State Hospital is mandated by ORS 161.341(a) to  
16 request an early discharge hearing if the hospital does not believe a patient has a mental  
17 illness.

18 45. Defendants Oregon State Hospital and State Psychiatric Security Review  
19 Board had knowledge that Mr. Montwheeler was mentally unstable and unsuitable for  
20 release because he was prone to extreme violence and as such posed a danger to others.

21 46. State Psychiatric Security Board personnel had reason to believe that  
22 Montwheeler would cause harm to others if released, but nevertheless recommended his  
23 release from the custody and care of the Oregon State Hospital.  
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25 47. The Defendants Oregon State Hospital and State Psychiatric Security  
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27 Complaint and Demand for Jury Trial – Page 9

28 Bruce D. Skaug (OSB# 021583)  
SKAUG LAW, PC  
Attorneys for Plaintiffs  
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Review Board were negligent and/or reckless in releasing Montwheeler from the custody and care of the Oregon State Hospital when they knew he presented a credible danger to others.

48. As a direct and proximate result of Defendants' negligence per se, Plaintiff has suffered damages in the form of physical injury, mental anguish, emotional distress, loss of consortium, lost future income and the wrongful death of her husband, in an amount and scope to be determined at trial, but which is alleged to be \$100,000.00 for purposes of ORCP 18.

**COUNT THREE**

***Loss of Consortium***

***As Against Defendant State Psychiatric Security Review Board, Defendant Oregon State Hospital and Defendant Oregon Health Authority***

49. Plaintiffs reallege and incorporate the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

50. Defendants' negligence per se and negligence and the acts underlying the same caused the death of the Decedent David Bates.

51. As a direct and proximate result of the death of the Decedent David Bates, Plaintiff Jessica Bates, his spouse, and their minor children, DOMINIC ROBERT BATES, JERRY EMMETT BATES, DANIELLE ANGELINE BATES, JORDAN DAVID BATES and DARIAN JUDE BATES have been injured and suffered loss of consortium, including, but not limited to loss of comfort, affection, companionship, and security.

52. Plaintiffs suffered damages by Defendants' negligence per se and negligence in the form of physical injury, mental anguish, emotional distress, loss of

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consortium, lost future income and the wrongful death of her husband, in an amount and scope to be determined at trial, but which is alleged to be \$100,000.00 for purposes of ORCP 18.

**COUNT FOUR**  
***Wrongful Death***

***As Against Defendant State Psychiatric Security Review Board, Defendant Oregon State Hospital and Defendant Oregon Health Authority***

53. Plaintiffs reallege and incorporate the allegations contained in the preceding paragraphs of this Complaint as if they were fully set forth herein.

54. As a direct and proximate result of the death of the Decedent David Bates, Plaintiff Jessica Bates, his spouse, and their minor children, DOMINIC ROBERT BATES, JERRY EMMETT BATES, DANIELLE ANGELINE BATES, JORDAN DAVID BATES and DARIAN JUDE BATES, have been injured and suffered loss of consortium, including, but not limited to loss of comfort, affection, companionship, and security.

55. Plaintiffs suffered damages by Defendants' negligence per se and negligence in the form of physical injury, mental anguish, emotional distress, loss of consortium, lost future income and the wrongful death of her husband, in an amount and scope to be determined at trial, but which is alleged to be \$100,000.00 for purposes of ORCP 18.

**COUNT FIVE**  
***State Created Danger***  
***As Against the State of Oregon***

56. Plaintiffs reallege and incorporate the allegations contained in the preceding

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paragraphs of this Complaint as if they were fully set forth herein.

57. The State of Oregon, in failing to properly train and supervise its employees regarding the review and diagnosis of individuals under their care for mental illness such as and under similar circumstances as Mr. Montwheeler, knowingly placed the Decedent and Plaintiff Jessica Bates in grave physical danger at the hands of Montwheeler.

69. Montwheeler had been released from the Oregon State Hospital less than four weeks prior to the events giving rise to this litigation.

70. Defendant Oregon State Hospital released Montwheeler from treatment upon recommendation of the State Psychiatric Security Review Board, which relied in principal on the medical testimony of Mukesh Mittal, M.D., Montwheeler's treating psychiatrist.

71. Montwheeler had been under the custody and care of the Oregon State Hospital for several years prior to the incident giving rise to this litigation, where he had received treatment for mental illness.

72. Defendants Oregon State Hospital and State Psychiatric Security Review Board had knowledge that Montwheeler was mentally unstable and unsuitable for release because he was prone to extreme violence and as such posed a danger to others.

73. State Psychiatric Security Board personnel had reason to believe that Montwheeler would cause harm to others if released, but nevertheless recommended his release from the custody and care of the Oregon State Hospital.

74. Defendants Oregon State Hospital and State Psychiatric Security Review Board were negligent and/or reckless in releasing Montwheeler from the custody and care

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of the Oregon State Hospital when they knew he presented a credible danger to others.

75. The State of Oregon's failure to properly train and/or supervise its employees created the danger to the Decedent and Plaintiff Jessica Bates that was, based upon the circumstances, highly likely to occur – and did in fact occur – following Defendants' decision to release Montwheeler.

76. As a direct and proximate result of the negligent and/or reckless conduct of Defendants Oregon State Hospital and State Psychiatric Security Review Board, Montwheeler embarked on a spree of murder and intentionally harmful conduct against the citizens of the State of Oregon.

77. The State of Oregon, in its failure to properly train and/or supervise its employees, acted recklessly, willfully and wantonly and with disregard for the likely and foreseeable consequences of failing to properly train and/or supervise employees.

78. These acts and omissions deprived the Decedent's and Plaintiffs' rights under the First, Fifth and Fourteenth Amendments of the United States Constitution and caused the Plaintiffs' to suffer substantial injury, loss and damage.

79. As a direct and proximate result of the negligent and/or reckless conduct of Defendants Oregon State Hospital and State Psychiatric Security Review Board, Plaintiff has suffered damages in the form of physical injury, mental anguish, emotional distress, loss of consortium, lost future income and the wrongful death of her husband, in an amount and scope to be determined at trial, but which is alleged to be \$100,000.00 for purposes of ORCP 18.

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**REQUEST FOR ATTORNEY FEES**

Plaintiffs have been required to obtain the services of Skaug Law, PC in order to prosecute this action and are entitled to an award of their reasonable attorney fees and costs.

**PRAYER**

WHEREFORE, Plaintiffs pray for Judgment, Order and Decree of this Court as follows:

1. Damages in an amount greater than \$75,000.00, to be proven at trial;
2. For reasonable attorney fees incurred in prosecuting this action;
3. For costs of suit incurred herein; and
4. For such other and further relief as to the Court is just and equitable.

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DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury composed of not less than twelve (12) persons on all issues so triable.

DATED this 18<sup>th</sup> day of Dec., 2018.

SKAUG LAW


By: Bruce Skaug  
Bruce D. Skaug  
Attorneys for Plaintiffs

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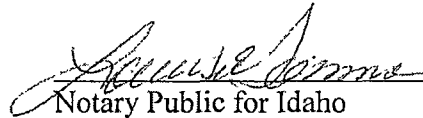
VERIFICATION

STATE OF IDAHO )  
 ) ss.  
County of Canyon )

I, Jessica Bates, Plaintiff herein, being first duly sworn, do hereby declare to the undersigned authority that I have read and examined the foregoing Verified Complaint, and to the best of my knowledge and belief it is true, correct and complete.

  
JESSICA BATES, Individually, as the guardian of the minor children, DOMINIC ROBERT BATES, JERRY EMMETT BATES, DANIELLE ANGELINE BATES, JORDAN DAVID BATES and DARIAN JUDE BATES, and as Personal Representative for the Estate of David Bates

SUBSCRIBED AND SWORN TO before me this 18<sup>th</sup> day of December, 2018.

  
Notary Public for Idaho  
My Commission Expires: 10/30/22

