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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

SUSAN NEESE, individually and as)
personal representative of the Estate of)
MICHAEL CHAD BREINHOLT,)
)
Plaintiffs,)
v.)
)
TYLER LONGMAN; COLLEEN JACOBS;)
WEST VALLEY CITY; WEST VALLEY)
CITY POLICE DEPARTMENT; TAYLOR)
ATKIN, MATTHEW LANE, RAYMOND)
WILHELM, JARON AVERETT, and JOHN)
DOES 1–10,)
)
Defendants.)

COMPLAINT

Case No.: 2:21-cv-00500

“You’re about to die, my friend”—these were the words of Sergeant Tyler Longman, a repeat killer, to Michael Chad Breinholt, who was restrained by two other police officers in the basement of West Valley City Hall. This is a civil rights action seeking justice for the cruel shooting and killing that followed. Chad’s entirely preventable death was the culmination of hours of discriminatory deliberate indifference toward, and reckless disregard of, Chad’s safety and mental health while he was in the custody of the West Valley City Police Department. The Defendants knew Chad was intoxicated, overdosed on psychiatric medication, suffering serious mental health conditions, and experiencing a suicidal crisis. Yet rather than protect and serve Chad, they antagonized, berated, and humiliated him, recklessly creating a dangerous situation that resulted in the deliberate killing of Chad. Susan Neese, Chad’s mother and the personal representative of his estate, seeks justice and accountability for Defendants’ violations of Chad’s rights guaranteed by the laws and constitutions of the United States and the State of Utah. She complains against Defendants as follows:

PARTIES

1. Plaintiff, Susan Neese, is a citizen and resident of the United States and the State of Illinois. She is the surviving mother and heir of Michael Chad Breinholt (“Chad”), deceased. She is the personal representative of the Estate of Michael Chad Breinholt (the “Estate”).

2. Defendants Tyler Longman (“Longman”), Taylor Atkin (“Atkin”), Matthew Lane (“Lane”), Raymond Wilhelm (“Wilhelm”), Jaron Averett (“Averett”), and John Does 1–10 are citizens and residents of the State of Utah and at all material times hereto were officers, agents, and employees of West Valley City Police Department and West Valley City.

3. Defendant Colleen Jacobs (“Jacobs”) is a citizen and resident of the State of Utah and at all material times hereto was Chief of the West Valley City Police Department. She is responsible for the implementation and establishment of policies, procedures, and customs, and the supervision and training of the police department’s officers, agents, and employees.

4. Defendant West Valley City (the “City”) is a political subdivision of the State of Utah and a municipal entity. The City is responsible for the implementation and establishment of policies, procedures, and customs, and the supervision and training of officers, agents, and employees of the City and of the West Valley City Police Department.

5. Defendant West Valley City Police Department (“WVCPD”) is a municipal entity and department of the City. WVCPD is responsible for the implementation and establishment of policies, procedures, customs, and the supervision and training of its officers, agents, and employees.

JURISDICTION

6. This action arises under the United States Constitution, particularly the provisions of the Fourth and Fourteenth Amendments, 42 U.S.C. § 1983, and the Utah Constitution, particularly Article I, Section 1 (inherent and inalienable rights), Section 7 (due process of law), Section 9 (unnecessary rigor), and Section 14 (unreasonable seizures forbidden).

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367.

8. The acts of the Defendants described herein were undertaken by the Defendants under color of state law, particularly the statutes, ordinances, regulations, policies, customs, practices, and usages of, and under the authority of, the City and WVCPD, and the individual offices of Defendants as officers, agents, and employees of the City and WVCPD.

9. Jurisdiction for violations of the Utah Constitution is founded upon supplemental jurisdiction because the claims of violations of federal law are substantial and the supplemental claims derive from a common nucleus of operative facts and are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

10. Under protest—and vigorously asserting the inapplicability or the unconstitutionality of the Bond requirement of Utah Code § 78B-3-104, under the Due

Process, Petition, and Equal Protection guarantees of the United States and Utah Constitutions, as well as the Open Courts Clause of the Utah Constitution—Plaintiff has deposited with the Clerk of the Court \$300 for the Bond and filed with the Court a Bond, pursuant to DUCivR 67-1(c).

GENERAL ALLEGATIONS

11. On Friday, August 23, 2019, West Valley Police received a call about Chad. The caller reported that Chad was at his girlfriend’s workplace and appeared to be intoxicated.

12. The caller reported that Chad was “stumbling” and “slurring” and that “we are . . . mostly concerned about his health” and “don’t want anything to happen to him.”

13. The caller stated, “I called because I don’t want anything to happen to him, he might need to go to a detox.”

14. The WVCPD dispatcher asked, “Are you or anyone else in danger right now?” The caller responded, “No, I think he’s the only one that’s in danger,” referring to Chad.

15. The WVCPD dispatcher then asked, “Does anyone need medical attention?” The caller responded, “No . . . except him,” again referring to Chad. The WVCPD dispatcher then responded, “I get that.”

16. The caller reported to the WVCPD dispatcher that Chad told his girlfriend he had taken 9 pills of Klonopin. Klonopin is a psychiatric medication used to treat anxiety

and other conditions. It is highly dangerous to overdose on Klonopin, especially in combination with alcohol.

17. The WVCPD dispatcher asked the caller whether Chad had taken the pills to harm himself, and the caller responded that Chad had “depression.”

18. Defendants Atkin and Lane went to the scene.

19. Defendant Atkin spoke to the caller and Chad’s girlfriend. They told Defendant Atkin that they were mostly concerned for Chad’s health because he said he had taken a lot of pills and his breath smelled like alcohol.

20. Defendant Atkin acknowledged that the number of pills was “a lot” and inquired about whether Chad said he was trying to hurt himself.

21. Chad’s girlfriend told Defendant Atkin, “It seems like he just wants to commit suicide.” She then told him, “He just said that he took all those pills so he’ll die.”

22. Defendants Atkin and Lane spoke to Chad while he sat on the curb. He told Defendant Lane that he was on Wellbutrin, a medication for depression, and clonazepam, which is the generic name for Klonopin.

23. Defendants Atkin and Lane conferred with each other and shared facts they had learned about Chad and the situation.

24. While speaking with Defendants Atkin and Lane, Chad frequently cried uncontrollably. Chad was obviously experiencing a mental and emotional crisis.

25. Defendants Atkin and Lane did not arrange for Chad to be transported to a medical or mental health unit. Neither did they recruit the assistance of medical personnel or anyone trained in mental health. Rather, Defendants Atkin and Lane conducted a field breathalyzer and arrested Chad. Defendant Lane searched Chad for weapons and found none. Chad was arrested for suspicion of driving under the influence.

26. Defendant Lane took Chad to the intoxilyzer room in the basement of the West Valley City Hall, located at 3600 South Constitution Boulevard. The room was small and cramped, measuring approximately 6 feet by 7 feet.

27. Defendants Longman, Atkin, Lane, Wilhelm, and Averett (“Involved Officers”) supervised Mr. Breinholt while he was in custody.

28. Defendant Longman, as a Sergeant, supervised the other Involved Officers. Defendant Longman observed, directed, and ratified the misconduct and omissions of the other Involved Officers in and near the intoxilyzer room.

29. Each of the Involved Officers was informed that no weapons were found on Chad when he was searched incident to his arrest.

30. Chad was seated on a chair where suspects are given a breath test for alcohol.

31. For over two hours, Chad was trapped in and near the intoxilyzer room with his hands cuffed behind his back.

32. Chad was visibly upset, intoxicated, and suffering serious mental health issues and conditions, demonstrated in part by delayed and inappropriate reactions and uncontrollable sobbing.

33. During this time, the Involved Officers antagonized, threatened, harassed, and humiliated Chad. The Involved Officers threatened to charge Chad with additional crimes such as giving a false name; a felony for his third DUI; and felony charges for damaging a power cord in the intoxilyzer room. The Involved Officers also threatened and antagonized Chad by discussing other cases where the officers used physical force against suspects.

34. The Involved Officers also baselessly suggested that Chad—who was largely unable to move because he was physically restrained, highly intoxicated, and overmedicated—was threatening them.

35. At one point, the Involved Officers left Chad, crying and pleading for help, lying on the concrete floor for more than eleven minutes.

36. Detective Lynes of the WVCPD observed Chad in the intoxilyzer room and noted as follows in his report:

Chad had his head down and [was] crying uncontrollably. . . . During the time I was in the area, Chad continued to cry, I though[t] to myself that he was crying more then [sic] he should have been for a simple case of driving under the influence. . . . I went out to my police vehicle and pulled up the details of the call to see if there was something more that had occurred as again the level of how he was crying was far more than any other arrested party I have observed in my 20-year career as a law enforcement office[r] and his behavior seemed off to me and not normal.

37. At all material times, all the Involved Officers knew that Chad was delirious, incoherent, intoxicated, overmedicated, unable to think clearly, distressed, suffering serious mental conditions, and suicidal.

38. Reflecting their deliberate indifference to Chad's safety and his obvious and serious mental health needs, at no time did any of the Involved Officers consult with, or seek assistance from, any person with training to address mental health issues, mental and emotional crises, or suicidality.

39. The conduct of those officers was motivated by, and reflected, a culture of disdain and indifference ingrained in the WVCPD.

40. The Involved Officers did not demonstrate any empathy or concern for the safety of Chad, whom the officers had a duty to protect.

41. Instead, the Involved Officers intended to, and did, callously disregard the safety, well-being, and mental conditions of Chad for their own entertainment and to punish Chad for inconveniencing them.

42. The Involved Officers called the fire department for a paramedic evaluation of Chad because he was complaining of chest pain. But the Involved Officers failed to disclose relevant and necessary information, including but not limited to the facts that Chad reportedly had taken 9 of his Klonopin pills, was depressed, had been experiencing a prolonged mental and emotional crisis, and was suicidal. As a result, the paramedics

assessed Chad's vital signs and, not finding evidence of a physical emergency based on those vital signs, left.

43. Chad asked to be taken to the University Neuropsychiatric Institute, referred to as "UNI" (now known as the Huntsman Mental Health Institute), but the Involved Officers unreasonably and baselessly refused to ensure that Chad received any accommodation whatsoever for his mental condition. Instead, Defendant Longman told Chad (1) he had "wasted our fire department's time by having them come out for some bullshit" and (2) "I'm not taking you to UNI, I'm taking you to jail."

44. Chad stood up at one point and told the Involved Officers, "I have a gun in my pants." The Involved Officers laughed at Chad, and Defendant Atkin responded, "Good try."

45. Defendant Atkin then continued to antagonize and threaten Chad by asking the other Involved Officers, "Does that count as a threat of violence if he reached into his pants and said, 'I have a gun in my pants?'"

46. Chad—who the Involved Officers knew and should have known was highly intoxicated, overmedicated, suicidal, experiencing a prolonged mental and emotional crisis, and subject to hours-long antagonization, humiliation, and threats by the Involved Officers—demonstrated an obvious, immediate threat of suicidal ideation and behavior by claiming to have a gun. That obvious threat was casually and recklessly dismissed by the

Involved Officers, who were deliberately indifferent to Chad's constitutional rights, safety, well-being, and mental condition.

47. Chad then managed to remove one of his shoes.

48. Defendant Atkin, knowing that Chad had been searched and was determined to not be carrying any weapon, pretextually suggested that Chad had a gun in his shoe by asking, "Is there a gun in your shoe, too?" It was obvious that there was no gun in his shoe.

49. Chad then told the Involved Officers, "There's a gun in my shoe." The Involved Officers, again, recklessly and with deliberate indifference, ignored the obvious risk that Chad would imminently endanger himself or others.

50. Defendant Atkin then told Chad to sit down and that the officers would get the "gun" out of his shoe.

51. Any reasonable officer knows that the officer's own weapons are among the greatest sources of danger when interacting with an unarmed person in custody. However, none of the Involved Officers (1) secured their weapons at any time before or during their presence in the confined space with Chad in and around the intoxilyzer room while they held him in custody or (2) ensured that Defendants Atkin and Wilhelm maintained the security of their weapons before entering the room to take Chad's shoe. The failure to do so was reckless and deliberately indifferent to Chad's rights and safety. The Involved Officers could have, but did not, simply secure their weapons in the trunks of their vehicles. WVCPD and the City could have, but did not, provide secure gun storage at the West

Valley City Hall so that officers could safely store their weapons while holding individuals like Chad in custody there.

52. Chad was obviously not presenting a physical risk to anyone by holding his own shoe behind his back in his cuffed hands.

53. Defendants Atkin and Wilhelm began scuffling with Chad to obtain the shoe.

54. Defendant Atkin recklessly disregarded the danger presented by his own weapons and reached over Chad to grab the harmless shoe.

55. In doing so, Defendant Atkin presented his holster and gun to Chad, placing them immediately next to Chad's hand. Defendant Atkin's conduct reflected (1) reckless disregard of, and deliberate indifference toward, the rights and safety of Chad and (2) grossly inadequate training and supervision with respect to maintaining the security of his weapons.

56. Chad then grabbed either Defendant Atkin's duty belt, gun holster, or the handle of the gun while it remained in the holster.

57. Chad's act of grabbing Defendant Atkin's duty belt, gun holster, or gun handle was the foreseeable result of Defendants' conduct and omissions.

58. Defendant Atkin shouted, "Oh fuck, he's got my gun!"

59. When he heard Defendant Atkin say that, Defendant Longman immediately had the intention to shoot and kill Chad.

60. Defendants Atkin and Wilhelm restrained Chad, forcing his head and body down and away from Atkin while Longman rushed into the room, withdrawing his own gun.

61. Defendant Atkin's gun remained secured in its holster because one or more officers pushed down on the gun, preventing it from being lifted out of the holster. Moreover, the gun was in a specialized, secure holster that prevents the gun from being removed unless someone precisely moves the release mechanism in two directions in sequence. Thus, it was impossible for Chad to remove the gun, and the Involved Officers knew or should have known it was impossible.

62. Defendant Longman then grabbed Chad's head and announced, "You're about to die, my friend," and placed his gun on Chad's temple.

63. At this point, all the Involved Officers, and especially Defendant Atkin, knew or should have known that Defendant Atkin's gun was secure in its holster and that Chad had been restrained. Chad only weighed approximately 125 pounds and his hands were cuffed behind his back. He was also highly intoxicated, overmedicated, weakened, delirious, confused, and reacting slowly. It was not difficult for multiple officers to physically push and control Chad. By the time Longman announced he was about to kill Chad, Defendants Atkin and Wilhelm had already successfully restrained Chad and neutralized any possible threat, which never actually existed, that Chad could obtain any of the officers' weapons.

64. None of the Involved Officers, however, intervened to prevent Defendant Longman from killing Chad, which could have been done by simply telling Longman that the gun was secure in the holster or saying something to the effect of “wait,” “don’t shoot,” or “hold your fire.”

65. Defendant Longman then pulled the trigger and ended Chad Breinholt’s life.

66. It was physically impossible for Chad to access, let alone remove and use, any officer’s weapon. Following Longman’s shooting, Atkin’s weapon was still in the holster.

67. The Involved Officers knew that Chad had been restrained and posed no imminent danger to any person and that use of lethal force against Chad was unjustified.

68. Defendant Longman intended to punish Chad and deliberately and flagrantly violated Chad’s rights by shooting and killing him.

69. On August 17, 2020, Plaintiff submitted to the City and WVCPD a notice of claim pursuant to Utah Code § 63G-7-401.

FIRST CLAIM FOR RELIEF

(Violations of the Fourth and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. § 1983 – Against all Defendants)

70. Plaintiff repeats and incorporates by this reference the allegations set forth above.

71. Longman’s use of deadly force against Chad was excessive and in violation of Chad’s rights under the Fourth and Fourteenth Amendments of the United States

Constitution. Under the circumstances, no use of force by Defendant Longman could be justified because Chad was already restrained and posed no imminent threat of harm to any person.

72. Chad, a pre-trial detainee, was entitled to be free from punishment under the Fourteenth Amendment to the United States Constitution.

73. Longman's use of deadly force against Chad was unconstitutional punishment of a pretrial detainee and an unconstitutional seizure.

74. By their acts and omissions, as described herein, Defendants deprived Chad of his rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

75. Defendants Atkin, Wilhelm, Lane, and Averett, despite having the opportunity to do so, failed to intervene to prevent Defendant Longman from using excessive, deadly force against Chad.

76. Defendants Atkin, Wilhelm, Lane, and Averett were present prior to and during Defendant Longman's exercise of excessive force.

77. Defendants Atkin, Wilhelm, Lane, and Averett also knew and had reason to know that Defendant Longman intended to use excessive, deadly force, including by the fact that he announced such an intention by saying, "You're about to die, my friend."

78. Defendants Atkin, Wilhelm, Lane, and Averett are liable for their failure to intervene.

79. The purported justification for using force against Chad, that Chad purportedly grabbed the handle of Defendant Atkin's gun, was the foreseeable result of Defendants' conduct and omissions in the totality of the circumstances. The Involved Officers themselves created the dangerous situation by presenting Defendant Atkin's gun to Chad and failing to take measures to keep the officers' weapons secured from Chad. Because the Involved Officers created the dangerous situation purportedly necessitating lethal force, Defendants cannot escape liability arising from the lethal force used against Chad on the basis that lethal force was justified.

80. Defendant Longman's use of force exceeded constitutional limitations under circumstances that constitute a usual and recurring situation with which police officers must deal.

81. The inadequate training, policies, procedures, supervision, and customs described herein are directly and causally linked with the killing of Chad and reflect deliberate indifference by the City, WVCPD, and Jacobs toward persons with whom police officers come into contact.

82. Defendant Jacobs personally perpetuated and ratified an unconstitutional custom, pattern, and practice of the City and WVCPD that police officers, like Defendant Longman, who have shot and killed people they were sworn to protect, would be allowed to continue in their duties and carry a firearm without corrective training, supervision, and oversight.

83. Defendant Jacobs, the City, and WVCPD knew of Defendant Longman's history of using lethal force, yet failed to supervise, train, discipline, or oversee him in such a way as to prevent his unlawful and unconstitutional use of lethal force in the future.

84. WVCPD's custom and practice of permitting and tacitly endorsing the unnecessary use of lethal force caused Defendant Longman, who had shot and killed two people prior to killing Chad, to be emboldened and to use more lethal force, ultimately leading to the premeditated shooting and killing of Chad.

85. Defendant Jacobs personally perpetuated and ratified an unconstitutional custom, pattern, and practice of the City and WVCPD that police officers, like Defendant Longman, who on information and belief used nonlethal but excessive force and unnecessarily drew and raised his firearm in other cases prior to killing Chad, would be allowed to continue in their duties and carry a firearm without corrective training, supervision, and oversight.

86. Defendant Jacobs, the City, and WVCPD knew of Defendant Longman's history of using excessive but nonlethal force and unnecessarily drawing and raising his firearm, yet failed to supervise, train, discipline, or oversee him in such a way to prevent his unlawful and unconstitutional use of force in the future. That unconstitutional custom caused Defendant Longman to be emboldened and to use more lethal force, ultimately leading to him shooting and killing Chad.

87. Defendants Jacobs and Longman personally perpetuated and ratified an unconstitutional custom, pattern, and practice of the City and WVCPD that police officers would not intervene to prevent the excessive use of force of their fellow officers.

88. Defendant Jacobs, Longman, the City, and WVCPD knew of repeated failures of their officers to intervene to prevent the use of excessive force, but failed to supervise, train, discipline, or oversee their officers so that they would intervene to prevent excessive force in the future. That unconstitutional custom, pattern, and practice motivated and caused the Involved Officers to fail to intervene to prevent Defendant Longman's excessive and lethal force against Chad.

89. The Involved Officers were deliberately indifferent to Chad's constitutional rights, his obvious and serious mental health needs, his mental conditions and disability, his mental and emotional crisis, his apparent and reported suicidality, and the risk that he would attempt to harm himself or others because of his suicidality. That deliberate indifference was reflected repeatedly by the Involved Officers' conduct, including that they failed to arrange for Chad's transportation to a medical or mental health facility, failed to consult with a medical or mental health professional about Chad's mental health and suicidality, failed to disclose to paramedics facts about Chad's mental health and suicidality, failed to address or even attempt to address Chad's mental health and suicidality, failed to ensure Chad's safety from his own conduct, failed to properly secure their weapons before being in close proximity with Chad while he was held in custody in

a small room, failed to maintain safe distance and practices with regard to Chad and the officers' weapons, and failed to prevent the use of lethal force against Chad once he was restrained.

90. The City and WVCPD knew that WVCPD officers frequently are called upon to interact with people experiencing mental health issues, mental health conditions, mental and emotional crises, and suicidality. Nationally, conservative estimates have concluded that approximately 10% of police interactions with the public involve someone who is mentally ill. On information and belief, WVCPD encounters people with mental illness at a similar or greater rate.

91. The City and WVCPD failed to institute appropriate policies, procedures, customs, and training with regard to people experiencing mental health issues, mental health conditions, mental and emotional crises, and suicidality. The City and WVCPD could have instituted, but failed to institute, policies, procedures, customs, supervision, and training by which (1) police officers would arrange for or allow such persons to be transported to a medical or mental health facility rather than being arrested and taken to jail; (2) police officers would be required to secure their weapons prior to being in close proximity with such persons, or any person, being held in temporary custody; (3) detainees would not be held in inadequate and dangerous facilities such as the small intoxilyzer room at West Valley City Hall; (4) gun lockers would be available at West Valley City Hall or any other such place where detainees were held in temporary custody; (5) police officers

would recognize the need for, and ensure, intervention by qualified individuals with respect to mental health issues, mental health conditions, mental or emotional crises, and suicidality; (6) a crisis intervention team would be available and utilized to respond to situations like that presented by the call to police about Chad or presented by the circumstances after Chad was taken into custody; (7) police officers would recognize signs of suicidality and take appropriate measures to prevent suicidal persons from harming themselves or others; and (8) police officers would be required to take precautions regarding their weapons prior to entering close physical proximity to people with mental conditions creating a risk of harm to themselves or others.

92. Defendants Jacobs, Longman, WVCPD, and the City condoned and ratified the failures to institute policies, procedures, customs, supervision, and training described herein. They did so with deliberate indifference toward the rights and safety of detainees such as Chad. They knew of the availability and need for such policies, procedures, customs, supervision, and training, but recklessly and callously chose to disregard the substantially certain result that detainees would be deprived of constitutional rights through the failure to adopt such policies, procedures, customs, and training. Violations of detainees' rights, up to and including death, was the obvious and likely consequence of Defendants' failures to adopt such policies, procedures, customs, and training.

93. Defendants Jacobs and Longman personally perpetuated and ratified a culture by WVCPD police officers of disdain for, indifference to, and callous disregard of

the rights, safety, and well-being of arrested persons generally, as well as specifically such persons who also experienced mental health issues, mental health conditions, mental or emotional crises, or suicidality. Defendants Jacobs, Longman, the City, WVCPCD, and other officers and leadership of the City and WVCPCD acted with deliberate indifference in creating, perpetuating, and ratifying the unconstitutional customs, patterns, and practices described herein.

94. The conduct and omissions of the Involved Officers toward Chad, and their ability, encouragement, and motivation to engage in such conduct and omissions under the constitutionally deficient policies, customs, patterns, practices, training, and supervision of Defendants Jacobs, Longman, the City, and WVCPCD, was treatment that was clearly deficient and unjustified, in violation of Chad's rights, including those under the Fourth and Fourteenth Amendment of the United States Constitution.

95. As a direct and proximate result of the wrongful conduct and omissions of the Defendants, Chad was tragically and unnecessarily killed by Longman.

96. Chad's death was premature and caused the loss of the enjoyment of his life and of the love, affection, and consortium of his family and caused his family to incur funeral and cremation expenses. Chad and his estate lost substantial earnings based on the probable duration of Chad's life had he not been cruelly and unnecessarily killed by Longman. Chad suffered physical pain, emotional distress, and mental anguish while in custody. Chad and his Estate suffered these and other damages recognized at law, for which

Defendants are liable to Plaintiff, as personal representative of the Estate, for the benefit of Chad's heirs, in an amount to be proved at trial.

97. Before his death, Chad was a loving son to Plaintiff and was a source of companionship, joy, happiness, service, love, affection, guidance, and counsel to her. Plaintiff's losses thereof proximately caused by Defendants' wrongful conduct and omissions, ultimately resulting in Longman's killing of Chad, entitle Plaintiff to receive in her personal capacity damages in an amount that will be proved at trial.

98. Pursuant to Utah's wrongful death statute, Utah Code § 78B-3-106, Plaintiff is entitled in her personal capacity as Chad's heir to recover all damages that may be just under the circumstances for Defendants' wrongful acts or neglect that caused Chad's wrongful death. The violations of Chad's rights under the United States Constitution as described above, which caused Chad's death, constitute "wrongful acts" or "neglect" within the meaning of Utah Code § 78B-3-106.

99. Plaintiff is entitled to recover from and against the Defendants, jointly and severally, all damages sustained because of the Defendants' wrongful conduct and omissions, including but not limited to the damages described above and, in addition, all reasonable attorneys' fees and costs incurred in this action, pursuant to 42 U.S.C. §§ 1983 and 1988.

100. Plaintiff is further entitled to recover from and against the Defendants, except the City and WVCPCD, punitive damages, in an amount determined at trial, for the

Defendants' willful, wanton, deliberate, reckless, and callous indifference toward and disregard of Chad's federally protected rights, which proximately caused his tragic and unnecessary death.

SECOND CLAIM FOR RELIEF

(Violations of the Utah Constitution, Article I, sections 1, 7, 9, and 14 – Against all Defendants)

101. Plaintiff repeats and incorporates by this reference the allegations set forth above.

102. Chad, a pre-trial detainee, was entitled to be free from punishment and the unreasonable deprivation of his life under the Due Process clause of Article I, section 7 of the Utah Constitution, which provides that “[n]o person shall be deprived of life, liberty or property, without due process of law.”

103. Chad was protected by the prohibition against the treatment of persons arrested or imprisoned with unnecessary rigor under Article I, section 9 of the Utah Constitution.

104. By their acts and omissions, as described above, Defendants deprived Chad of his rights guaranteed by Article I, sections 7 and 9 of the Utah Constitution, including by their unlawful punishment and killing of Chad.

105. By their acts and omissions, as described above, Defendants deprived Chad of his rights guaranteed by Article I, section 14 of the Utah Constitution, which provides

that the “right of the people to be secure in their persons . . . against unreasonable . . . seizures shall not be violated.”.

106. By their acts and omissions, as described above, Defendants deprived Chad of his rights guaranteed by Article I, section 1 of the Utah Constitution, which provides that “[a]ll persons have the inherent and inalienable right to enjoy and defend their lives and liberties.”

107. The only remedy for Defendants’ violations of the Utah Constitution is under the common law, and because of the repugnance of Defendants’ conduct and omissions and the strong interests of the State of Utah in discouraging similar future conduct and omissions, no special factors counsel hesitation by this Court in providing or fashioning an appropriate remedy for the violations of Chad’s rights under the Utah Constitution in this case.

108. Chad suffered flagrant violations by Defendants of his clearly established constitutional rights.

109. No existing remedies redress Chad’s unnecessary death. That is particularly true where different standards apply under the federal claims, such as for the Due Process Clause of the Fourteenth Amendment, and under the state constitutional claims, such as for the Unnecessary Rigor Clause of the Utah Constitution. It cannot be known until a jury verdict is returned whether a federal remedy will adequately redress the injuries and damages alleged herein.

110. Equitable relief, such as an injunction, was and is wholly inadequate to protect Chad's rights or redress his tragic and unnecessary death because of Defendants' unconstitutional conduct and omissions.

111. The conduct and omissions of the Defendants toward Chad were an abuse to the extent that they cannot be justified by necessity and were needlessly harsh, degrading, and dehumanizing treatment of Chad.

112. The conduct and omissions of the Involved Officers toward Chad, and their ability, encouragement, and motivation to engage in such conduct and omissions under the constitutionally deficient policies, customs, patterns, practices, training, and supervision of Chief Jacobs, Longman, the City, and WVCPD, was treatment that was clearly deficient and unjustified, in violation of Article I, sections 1, 7, 9, and 14 of the Utah Constitution.

113. As a direct and proximate result of the wrongful conduct and omissions of the Defendants, Chad was tragically and unnecessarily killed by Longman.

114. Chad's death was premature and caused the loss of the enjoyment of his life and of the love, affection, and consortium of his family and caused his family to incur funeral and cremation expenses. Chad and his estate lost substantial earnings based on the probable duration of Chad's life had he not been cruelly and unnecessarily killed by Longman. Chad suffered physical pain, emotional distress, and mental anguish while in custody. Chad and his Estate suffered these and other damages recognized at law, for which

Defendants are liable to Plaintiff, as personal representative of the Estate, for the benefit of Chad's heirs, in an amount that shall be proven at trial.

115. Plaintiff is entitled to recover from and against the Defendants, jointly and severally, all damages sustained because of the Defendants' wrongful conduct and omissions, including but not limited to the damages described above and, in addition, all reasonable attorneys' fees and costs incurred in this action, pursuant to Utah Code § 78B-3-104(3).

116. Before his death, Chad was a loving son to Plaintiff and was a source of companionship, joy, happiness, service, love, affection, guidance, and counsel to her. Plaintiff's losses thereof proximately caused by Defendants' wrongful conduct and omissions, ultimately resulting in Longman's killing of Chad, entitle Plaintiff to receive in her personal capacity damages in an amount that will be proved at trial.

117. Pursuant to Utah's wrongful death statute, Utah Code § 78B-3-106, Plaintiff is entitled in her personal capacity as Chad's heir to recover all damages that may be just under the circumstances for Defendants' wrongful acts or neglect that caused Chad's wrongful death. The violations of Chad's rights under the Utah Constitution as described above, which caused Chad's death, constitute "wrongful acts" or "neglect" within the meaning of Utah Code § 78B-3-106.

118. Plaintiff is further entitled to recover from and against the Defendants, except the City and WVCPCD, punitive damages, in an amount determined at trial, for the

Defendants' willful, wanton, deliberate, reckless, and callous indifference toward and disregard of Chad's rights protected under the Utah Constitution, which proximately caused his tragic and unnecessary death.

THIRD CLAIM FOR RELIEF

(Violation of the Americans with Disabilities Act – Against all Defendants)

119. Plaintiff repeats and incorporates by this reference the allegations set forth above.

120. Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

121. WVCPD and the City are public entities under the ADA.

122. Law enforcement officers, including Defendants, who are acting in a custodial capacity are performing “services, programs, or activities” within the scope of Title II of the ADA. Providing safety to detainees is one such service and activity.

123. Title II of the ADA and its implementing regulations, including but not limited to 28 C.F.R. § 35.130(b)(7), required training, policies, supervision, and customs by the WVCPD and the City to ensure officers recognize situations that are likely to involve persons with mental disabilities and to arrest and hold such persons in custody in a manner that reasonably accommodates their disabilities.

124. Chad suffered mental impairments—including but not limited to depression, anxiety, substance use and addiction, mental and emotional crisis, and suicidality—that substantially limited one or more major life activities of Chad. On the day of Chad’s death, he experienced a serious mental health episode involving severe depression and suicidality.

125. Chad repeatedly requested accommodations, including by asking to be transported to the University Neuropsychiatric Institute.

126. Chad’s need for accommodations based on his mental condition and the totality of the circumstances was obvious and did not require an explicit request from Chad.

127. The Involved Officers refused to accommodate Chad’s mental condition, obvious needs for mental health care, and safety concerns arising from his condition, including especially his suicidality.

128. The Involved Officers’ refusal to provide accommodations to Chad was caused and motivated by the failure by the City and WVCPCD to institute policies, procedures, customs, and training by which (1) police officers would arrange for or allow persons with mental conditions and disabilities to be transported to a medical or mental health facility rather than being arrested and taken to jail; (2) police officers would be required to secure their weapons prior to being in close proximity to persons being held in temporary custody with mental conditions and disabilities such as Chad’s; (3) detainees with mental conditions and disabilities such as Chad’s would not be held in custody in inadequate and dangerous facilities such as the small intoxilyzer room at West Valley City

Hall; (4) gun lockers would be available at West Valley City Hall or any other such place where detainees with mental conditions and disabilities such as Chad's were held in temporary custody; (5) police officers would recognize the need for, and ensure, intervention by qualified individuals with respect to mental health issues, mental health conditions, mental or emotional crises, and suicidality; (6) a crisis intervention team would be available and utilized to respond to situations like that presented by the call to police about Chad or presented by the circumstances after Chad was taken into custody; (7) police officers would recognize signs of suicidality and take appropriate measures to prevent suicidal persons from harming themselves or others; and (8) police officers would be required to take precautions regarding their weapons prior to entering close physical proximity to people with mental conditions creating a risk of harm to themselves or others.

129. As a result of Defendants' conduct and omissions, Chad was discriminatorily precluded altogether from access to appropriate mental health treatment.

130. As a result of Defendants' conduct and omissions, Chad was discriminatorily denied safety from his own dangerous conduct while in the Defendants' custody.

131. As a result of Defendants' conduct and omissions, Chad was discriminatorily subject to excessive and lethal force.

132. Chad's injuries and death could have been avoided had the Involved Officers been subject to adequate supervision, training, policies, procedures, and customs that

ensured they would recognize and reasonably accommodate individuals exhibiting signs of mental illness, disability, mental and emotional crises, and suicidality.

133. Chad's death was premature and caused the loss of the enjoyment of his life and of the love, affection, and consortium of his family as well as funeral and cremation expenses. Chad and his estate lost substantial earnings based on the probable duration of Chad's life had he not been cruelly and unnecessarily killed by Longman. Chad suffered physical pain, emotional distress, and mental anguish while in custody. Chad and his Estate suffered these and other damages recognized at law, for which Defendants are liable to Plaintiff, as personal representative of the Estate, for the benefit of Chad's heirs, in an amount to be proved at trial.

134. Prior to his death, Chad was a loving son to Plaintiff and was a source of companionship, joy, happiness, service, love, affection, guidance, and counsel to her. Plaintiff's losses thereof proximately caused by Defendants' wrongful conduct and omissions, ultimately resulting in Longman's killing of Chad, entitle Plaintiff to receive in her personal capacity damages in an amount that will be proved at trial.

135. Pursuant to Utah's wrongful death statute, Utah Code § 78B-3-106, Plaintiff is entitled in her personal capacity as Chad's heir to recover all damages that may be just under the circumstances for Defendants' wrongful acts or neglect that caused Chad's wrongful death. The violations of Chad's rights under the ADA as described above, which

directly and proximately caused Chad's death, constitute "wrongful acts" or "neglect" within the meaning of Utah Code § 78B-3-106.

136. Plaintiff is entitled to recover from and against the Defendants, jointly and severally, all damages sustained because of the Defendants' wrongful conduct and omissions, including but not limited to the damages described above and, in addition, all reasonable attorneys' fees and costs incurred in this action.

137. Plaintiff is further entitled to recover from and against the Defendants, except WVCPD and the City, punitive damages, in an amount determined at trial, for the Defendants' intentional discrimination in violation of Chad's federally protected rights, which proximately caused his tragic and unnecessary death.

FOURTH CLAIM FOR RELIEF

(Wrongful Death — Against Defendants Longman and Atkin)

138. Plaintiff repeats and incorporates by this reference the allegations set forth above.

139. The wrongful acts and omissions of Defendants Longman and Atkin described above violated Chad's constitutional, statutory, and common law rights.

140. If Defendants Longman and Atkin maintain that they believed Chad posed some threat of harm to anyone at the time Longman shot and killed Chad, that belief was unreasonable and mistaken, and the result of not only negligence but gross negligence and recklessness on the part of Defendants Longman and Atkin. During the entire time in which Defendant Longman withdrew his gun, declared his intention to kill Chad, aimed his gun

at Chad's head, and fired, all the facts available to, and actually known by, Defendants Longman and Atkin indicated, conclusively and unequivocally, that Chad was restrained, posed no threat of harm to anyone, and could not possibly obtain any of the officers' weapons, let alone use them against someone. There was no basis for Defendants Longman or Atkin to believe that it was justified for Defendant Longman to use any force against Chad after he was restrained.

141. Chad was tragically and unnecessarily killed as a result of the wrongful acts and omissions of Defendants Longman and Atkin. Chad's death was premature and caused the loss of the enjoyment of his life and of the love, affection, and consortium of his family as well as causing his family to incur funeral and cremation expenses. Chad and his estate lost substantial earnings based on the probable duration of Chad's life had he not been cruelly and unnecessarily killed by Longman. Chad suffered physical pain, emotional distress, and mental anguish while in custody. Chad and his Estate suffered these and other damages recognized at law, for which Defendants Longman and Atkin are liable to Plaintiff, as personal representative of the Estate, for the benefit of Chad's heirs, in an amount to be proved at trial.

142. Before his death, Chad was a loving son to Plaintiff and was a source of companionship, joy, happiness, service, love, affection, guidance, and counsel to her. Plaintiff's losses thereof proximately caused by the wrongful acts and omissions of

Defendants Longman and Atkin entitle Plaintiff to receive in her personal capacity damages in an amount to be proved at trial.

143. Pursuant to Utah's wrongful death statute, Utah Code § 78B-3-106, Plaintiff is entitled in her personal capacity as Chad's heir to recover all damages that may be just under the circumstances for the wrongful acts and omissions of Defendants Longman and Atkin that caused Chad's wrongful death. The conduct and omissions of Defendants Longman and Atkin described above constitute "wrongful acts" or "neglect" within the meaning of Utah Code § 78B-3-106.

144. Plaintiff is entitled to recover from and against Defendants Longman and Atkin all damages sustained because of their wrongful conduct and omissions, including but not limited to the damages described above.

145. Plaintiff is further entitled to recover from and against Defendants Longman and Atkin punitive damages, in an amount determined at trial, for their willful, wanton, deliberate, reckless, and callous indifference toward and disregard of Chad's rights, which proximately caused his tragic and unnecessary death.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief against Defendants, jointly and severally, as follows:

- 1) For an award of compensatory damages, including all special and general damages, the amount of which will be established at trial, with pre-judgment interest on all special damages;

- 2) For an award of punitive damages against all Defendants, except the City and WVCPCD, in an amount to be established at trial;
- 3) For an award of reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988 and Utah Code § 78B-3-104(3); and
- 4) For such other and further relief as the Court deems just and appropriate.

DATED this 20th day of August 2021:

DEWSNUP KING OLSEN WOREL
HAVAS MORTENSEN

/s/ Walter M. Mason

Colin P. King
Paul M. Simmons
Walter M. Mason

Plaintiff's Address:

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