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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

CHELSEA DIAMOND, as personal
representative of the estate of,
DOUGLAS DIAMOND, deceased,

Plaintiff,

vs.

CITY OF SANDY, a municipal corporation,
CLACKAMAS COUNTY, **MICHAEL
BOYES**, **WILLIAM WETHERBEE**, and
SEAN COLLINSON,

Defendants.

Case No.: 3:22-cv-00346

**COMPLAINT
Civil Rights Violation
Excessive Force
(42 U.S.C. § 1983)**

**Oregon Tort Claims Act
(Or. Rev. Stat. § 30.260 *et seq*)
Wrongful Death**

Jury Trial Demanded

Plaintiff Chelsea Diamond, by and through her attorneys, hereby alleges that:

NATURE OF ACTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 and Or. Rev. Stat. § 30.265 by Chelsea Diamond (Plaintiff). Chelsea Diamond is the appointed personal representative of the estate of Douglas Diamond, her father. On July 3, 2020, Defendant Michael Boyes, a person that the City of Sandy allowed to work as an armed police officer despite having almost no training as a police officer, shot and killed Douglas Diamond. Mr. Diamond had committed no crime. The shooting was preceded and precipitated by completely unjustified uses of force by Defendants William Wetherbee and Sean Collinson. The acts and omissions of Defendants violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution and state common law. As a result of Defendants' acts and omissions, Plaintiff suffered economic and noneconomic damages. Plaintiff is entitled to damages and an award of attorney's fees and costs.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiffs' claims of violation of federal constitutional rights pursuant to 28 U.S.C. §§ 1331 and 1343 because the causes of action arise under 42 U.S.C. § 1983. This Court has supplemental jurisdiction over Plaintiffs' pendent state law claims under 28 U.S.C. § 1367.

3. Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the District of Oregon and because Defendants are subject to personal jurisdiction in the District of Oregon.

TORT CLAIM NOTICE

4. Notice of this claim to Clackamas County is satisfied by the filing of this lawsuit pursuant to ORS 30.275(3)(c). Notice of this claim to the City of Sandy was provided on or about November 17, 2020.

PARTIES

5. Douglas Diamond died intestate. Chelsea Diamond is Douglas Diamond's daughter. The Clackamas County Circuit Court appointed her as personal representative of the estate of Douglas Diamond on March 8, 2021. *See, In the Matter of the Estate of Douglas R. Diamond*, Case No. 21PB01903. Chelsea Diamond is a resident of the state of Oregon.

6. Douglas Diamond was a resident of the state of Oregon at the time he was killed and all relevant times.

7. At all relevant times, Michael Boyes was employed as a law enforcement officer for the City of Sandy, Oregon acting under color of state law. He is sued in his individual capacity.

8. At all relevant times, William Wetherbee was employed as a law enforcement officer for the City of Sandy, Oregon acting under color of state law. He is sued in his individual capacity.

9. At all material times, Sean Collinson was employed as a law enforcement officer for Clackamas County, Oregon acting under color of state law. He is sued in his individual capacity.

10. The City of Sandy is a municipal corporation in the State of Oregon. As a local governmental entity, the City of Sandy is a person under 42 U.S.C. § 1983. At all material times, the City of Sandy employed Defendants Boyes and Wetherbee.

11. Clackamas County is a political subdivision of the State of Oregon. As a local governmental entity, Clackamas County is a person under 42 U.S.C. § 1983. At all material times, Clackamas County employed Defendant Collinson.

GENERAL ALLEGATIONS

12. The City of Sandy hired Michael Boyes as a police officer and gave him a badge and a gun even though he had not attended the state's basic police academy or undergone any equivalent training. He was allowed and required to carry a firearm as a police officer despite the fact that he had no training in the lawful use of that firearm or the constitutional limits placed on police use of force generally.

13. Boyes was hired on or about March 24, 2020. He did not attend the basic police academy until November 2020, four months after shooting and killing Douglas Diamond.

14. On July 3, 2020, Douglas Diamond's family members called the police because they were concerned about Mr. Diamond's safety. He had been making some statements that suggested he may be feeling suicidal. They informed the police that he was a retired police officer and likely armed. At the time, Mr. Diamond was living in his RV in a mobile home park just east of the City of Sandy, on Highway 26, in Clackamas County.

15. The first police officers to arrive at the RV park were Clackamas County Sheriff's Office Deputies Gabriel Adel, Jared Riehl, and Christopher Thomas. Deputy Adel has advanced training in crisis intervention and hostage negotiation. These deputies approached the area where Mr. Diamond lived on foot to see if they could spot him without approaching his home and escalating the situation. As the deputies approached, Mr. Diamond was outside his home; he spotted them walking through the woods nearby and they began talking.

16. Deputy Adel asked Mr. Diamond to take his hands out of his pockets and Mr. Diamond refused. At that point, Deputy Adel radioed his sergeant, Defendant Sean Collinson, to ask for direction. Deputy Adel suggested they should simply back off and leave Mr. Diamond alone—their only purpose in contacting him was to make sure he was alive, and they had confirmed that he was indeed alive. Collinson directed Deputy Adel “not to give any ground unless he had to” and started racing to the scene from the other side of the county.

17. Deputy Adel followed Collinson’s direction and simply engaged Mr. Diamond in conversation. Mr. Diamond was speaking calmly with Deputy Adel. He had committed no crime and was standing outside of his own home. Deputy Adel continued this calm conversation for approximately 15 minutes. Mr. Diamond asked the deputies to leave several times during this conversation, but they did not because Collinson had instructed them not to. Eventually, Mr. Diamond and Deputy Adel agreed that Mr. Diamond was just going to go watch TV and drink a beer, ending the interaction. At that moment, Collinson and his group showed up and immediately escalated a calm situation.

18. Sergeant Collinson arrived at the RV park after driving well over the posted speed limit on two lane highways for 15 minutes. On the way, he requested the assistance of a less-lethal shotgun operator. Defendant Weatherbee, a Sandy Police Officer and Boyes’ training officer, was a less-lethal operator. Weatherbee and Boyes responded. Weatherbee and Boyes followed Collinson to the RV park, arriving at the same time. Weatherbee drove as Boyes was not yet even trained to drive a police car.

19. Upon arrival at the RV park, Collinson directed a plan. The three of them were going to approach Mr. Diamond. Collinson would order Mr. Diamond to remove his hand from his pocket. If Mr. Diamond refused, Collinson would direct Weatherbee to shoot him with his

less lethal shotgun. Boyes, despite his complete lack of experience or training, was to provide “lethal cover.” Collinson did not communicate this plan to Deputy Adel.

20. The three defendants then executed their plan. As they approached Mr. Diamond, Mr. Diamond saw them before Deputies Riehl or Adel. Mr. Diamond became agitated and asked Deputy Adel to tell them to back off. After all, Mr. Diamond had just agreed to end the interaction by going back to his RV to watch TV. Deputy Adel attempted to tell Collinson to back off, shouting at the defendants to back away, but the defendants either did not hear him or ignored him. Collinson ordered Mr. Diamond to take his hand out of his pocket. Mr. Diamond ignored Collinson. Collinson ordered Weatherbee to shoot him with the less lethal. Weatherbee did so. Weatherbee then shot Mr. Diamond two more times with the less lethal shotgun. Mr. Diamond stood there, refusing to move or take his hand out of his pocket.

21. At that point, Collinson decided to shoot Mr. Diamond with his Taser, despite the fact that Mr. Diamond was wearing a heavy sweatshirt. The probes did not connect. When that did not work Collinson charged at Mr. Diamond, grabbing him in a bear hug. Collinson says that at this point, while he was grabbing Mr. Diamond’s arms, he could see the butt of a pistol in Mr. Diamond’s pocket. Collinson yelled, “Gun, gun, gun!”, and Boyes opened fire.

22. Boyes shot both Collinson and Mr. Diamond. He killed Mr. Diamond and injured Collinson.

23. Even though there was no evidence to suggest that Mr. Diamond fired his weapon, the Clackamas County Sheriff’s Office put out a press release falsely claiming that he did in an attempt to justify the police conduct and tarnish Mr. Diamond’s name. The detectives who conducted the investigation into the shooting repeated the same lies to Mr. Diamond’s family, exacerbating their distress.

FIRST CLAIM FOR RELIEF
(Excessive Force – Violation of Fourth and Fourteenth Amendments)

Count 1: Individual Liability of Michael Boyes

24. As alleged above, Defendant Boyes' use of force was objectively unreasonable under the circumstances, constituted excessive force, and was an unreasonable and unjustifiable use of deadly force.

Count 2: Individual Liability of William Weatherbee

25. As alleged above, Defendant Weatherbee's use of force was objectively unreasonable under the circumstances and constituted excessive force.

Count 3: Individual Liability of Sean Collinson

26. As alleged above, Defendant Weatherbee's person use of force was objectively unreasonable under the circumstances and constituted excessive force. He was also the but for cause of both Defendant Weatherbee and Defendant Boyes' use of force and is therefore personally liable for all force used against Mr. Diamond.

Count 4: Municipal Liability of the City of Sandy – Failure to Train Defendant Boyes

27. The City of Sandy allowed Boyes to work as an armed police officer despite having no training in the lawful use of force. This failure was all but certain to lead to Boyes using unconstitutional force as he did in this situation. The City is therefore responsible for Boyes' use of excessive force.

SECOND CLAIM FOR RELIEF
(Wrongful Death – Or. Rev. Stat. § 30.020 *et. seq.*)

Count 1: Battery - Michael Boyes and the City of Sandy

28. As alleged above, Defendant Boyes' use of force was intentional.

29. As alleged above, Defendant Boyes' use of force was unreasonable.

Count 2: Battery - William Weatherbee and the City of Sandy

30. As alleged above, Defendant Weatherbee's use of force was intentional.

31. As alleged above, Defendant Weatherbee's use of force was unreasonable.

Count 3: Battery - Sean Collinson and Clackamas County

32. As alleged above, Defendant Collinson's use of force was intentional.

33. As alleged above, Defendant Collinson's use of force was unreasonable.

34. As alleged above, Defendant Collinson aided and facilitated each use of force by Defendants Weatherbee and Boyes. He is therefore legally responsible for their unlawful uses of force.

Count 4: Negligence – Michael Boyes and the City of Sandy

35. As alleged above, Defendant Boyes acted negligently by:

- a. Agreeing to perform the duties of lethal cover when he knew or should have known that he lacked the essential training to do so;
- b. Shooting at Douglas Diamond.

Count 5: Negligence – William Weatherbee and the City of Sandy

36. As alleged above, Defendant Weatherbee acted negligently by:

- a. Allowing Defendant Boyes to act as lethal cover when he knew that Boyes was not trained to do so;
- b. Firing his less lethal shotgun at Mr. Diamond without justification.

Count 6: Negligence – Sean Collinson and Clackamas County

37. As alleged above, Defendant Collinson acted negligently by:

- a. Ordering Deputy Adel not to back away from the situation;

- b. Failing to communicate his plan with Deputy Adel;
- c. Failing to find out from Deputy Adel what had transpired in the 15 minutes that Deputy Adel had been talking with Mr. Diamond before formulating his plan;
- d. Failing to consider whether any force was lawful before ordering Defendant Weatherbee to shoot Mr. Diamond with his less lethal shotgun;
- e. Shooting Mr. Diamond with a Taser without any justification and when he knew or should have known that the Taser was unlikely to be effective based on Mr. Diamond's clothing;
- f. Going hands-on with Mr. Diamond when he believed that Mr. Diamond was armed and he had no lawful justification for using force against him;
- g. Seizing Mr. Diamond with no probable cause to believe he committed a crime;
- h. Shouting that Mr. Diamond had a gun.

Count 7: Negligence – City of Sandy

38. As alleged above, the City of Sandy was negligent by allowing Defendant Boyes to work as an armed police officer without any training on lawful use of force.

DAMAGES

39. As a direct and proximate result of the conduct of the Defendants, Plaintiffs suffered economic and noneconomic damages, including:

- a. Medical services, burial services, and memorial services;
- b. Douglas Diamond's loss of enjoyment of life;

- c. Compensation for Douglas Diamond's loss of his civil right to be free from the use of excessive force by law enforcement;

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court will enter a Judgment in his favor, and against Defendants, as follows:

- A. Grant Plaintiff compensatory damages against Defendants in an amount to be determined at trial;
- B. Award Plaintiff reasonable costs, expenses, and attorney's fees;
- C. Grant Plaintiff such further relief as this Court deems just and equitable under the circumstances.

JURY DEMAND

Plaintiff hereby demands a jury trial.

DATED this 3rd day of March, 2022

By: /s Jesse Merrithew
Jesse Merrithew, OSB No. 074564
Of Attorneys for Plaintiff