FILED
SUPREME COURT
STATE OF WASHINGTON
10/17/2017 11:35 AM
BY SUSAN L. CARLSON
CLERK

No. 95062-8

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SUPREME COURT
OF THE STATE OF WASHINGTON

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CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO,

Petitioners,

v.

CITY OF TACOMA, a political subdivision of the State of Washington,

Respondent.

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# APPENDIX TO MOTION FOR DISCRETIONARY REVIEW

---

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**APPENDIX TO**
**MOTION FOR DISCRETIONARY REVIEW**

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PIERCE COUNTY, WASHINGTON

August 27 2015 9:14 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No.<br><br>**COMPLAINT** |

COME NOW the above-named Plaintiffs, by and through their attorneys of record John. R. Connelly, Jr. and Micah R. LeBank of Connelly Law Offices, PLLC, and by way of claim allege upon personal knowledge as to themselves and their own actions, and upon information and belief upon all other matters, as follows:

## I. PARTIES

1. Defendant CITY OF TACOMA is a political subdivision of the State of Washington. Among other things, the City of Tacoma provides law enforcement services through its police department ("TPD"). TPD's mission is supposed to include creating a safe and secure environment in which to live, work and visit, enforcing the law in a fair and



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impartial manner and safeguarding its citizens' Constitutional guarantees.

2. Michel Volk ("Officer Volk") is a City of Tacoma police officer who, at all times relevant hereto, was acting within the scope of her employment and under color of state law at all relevant times herein.

3. Plaintiff CESAR BELTRAN-SERRANO ("Cesar Beltran") is a Spanish speaking disabled and mentally ill man of Mexican heritage who was negligently and unreasonably shot multiple times and seriously injured by TPD Officer Volk. BIANCA BELTRAN is the daughter and guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO.

4. Jurisdiction and venue are proper in this Court as the City of Tacoma is located in Pierce County and the events giving rise to this action occurred in Pierce County.

## II. STATUTORY COMPLIANCE

5. On or about June 25, 2015, an administrative claim for damages was served upon the City of Tacoma.

6. Any prerequisites to the maintenance of this action imposed by RCW 4.96 have accordingly been satisfied.

## III. STATEMENT OF FACTS

7. This case arises from the negligent and unprovoked assault and battery against Cesar Beltran and the unnecessary, unreasonable, negligent, reckless, wanton and excessive use of force against Cesar Beltran by the Tacoma Police Department, including Officer Michel Volk.

8. On June 29, 2013 at approximately 3:00 p.m. Cesar Beltran, a mentally disabled Tacoma citizen, of minority descent, age 53, was walking southbound with his bike



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along the shoulder of Portland Avenue, approaching the intersection of E. 28th Street. Mr. Beltran was not engaged in any illegal activity or violating any laws as he walked with his bike.

9. As he approached the intersection of E. Portland Avenue and E 28th Street, Mr. Beltran stopped to inspect something that he saw alongside the road when he was approached by Tacoma Police Department Officer Michel Volk. Although Mr. Beltran is Spanish speaking, Officer Volk attempted to communicate with Mr. Beltran in English.

10. Officer Volk confirmed that Mr. Beltran did not speak English and radioed for a Spanish speaking officer. Officer Volk, however, did not wait for a Spanish speaking officer and continued to interrogate Mr. Beltran in English.

11. Mr. Beltran did not understand Officer Volk and could not comprehend why the officer was stopping and speaking to him. Confused, Mr. Beltran then turned away from Officer Volk and began to continue on his way, crossing the intersection of E. 28th Street and Portland Avenue. Without any indication that Mr. Beltran was involved in a crime or any illegal activity, suddenly and without reason or warning, Officer Volk chased after Mr. Beltran across the street, and fired her Taser, in an attempt to stun and subdue him.

12. Unfortunately, the officer failed to properly use and deploy her Taser, and it did not make proper contact with Mr. Beltran. Mr. Beltran then swayed to shake the Taser tags away from his body. In an effort to get away from the unreasonable, unnecessary, and unprovoked attack and assault by Officer Volk, Mr. Beltran turned with his back toward Officer Volk and began move away from her across the intersection.

13. Suddenly and for no apparent reason, Officer Volk panicked and without warning repeatedly and unnecessarily shot and discharged her firearm repeatedly in rapid



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succession, firing several shots into Mr. Beltran's body, striking him in the back, torso and upper extremities. Mr. Beltran was shot multiple times by Officer Volk. He was on the ground bleeding profusely and completely incapacitated. Despite the fact that he was clearly incapacitated and not moving, officers then angrily slammed him to the pavement, kneed him in his neck and back, forcefully restrained him and proceeded to handcuff him.

14. At the time of the unnecessary shooting, Mr. Beltran was moving away from Officer Volk, did not pose an immediate threat to the safety of Officer Volk or others, and he was not actively resisting or attempting to evade arrest. Instead, of simply allowing him to walk away and waiting for a Spanish speaking officer to arrive, Officer Volk pursued Mr. Beltran, escalated the situation, and then panicked and shot him repeatedly.

15. Subsequently, the Tacoma Police Department began to try to justify Officer Volk's actions, trying to convince witnesses that Mr. Beltran had threatened Officer Volk or that he somehow posed a threat to a police officer armed with a taser and police issued firearm. Despite the fact that he had a mental disability and had just been shot, the Police Department then hurried to Mr. Beltran's hospital room and attempted to compel him to give a statement after he had been shot multiple times by a police officer and had undergone multiple surgeries to save his life.

16. Mr. Beltran has been found to be incompetent on multiple occasions. Despite his obvious mental health issues, the Tacoma Police Department and Officer Volk failed to acknowledge his disability or to act appropriately with a mentally ill Spanish speaking individual. Training regarding use of deadly force, training regarding handling a situation without unnecessarily escalating it, and training regarding a Spanish speaking individual with mental disabilities was extremely unreasonable, negligent, lacking and substandard and the



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police at the scene including Officer Volk didn't understand or follow the directives that they had.

17. The Tacoma Police Department improperly, unreasonably, and unnecessarily escalated the situation, handled it extremely unprofessionally and poorly, attacked and shot a mentally disabled Spanish speaking citizen without provocation and then tried to influence witnesses in an attempt to justify their inappropriate and substandard conduct. Under the totality of the circumstances, the conduct by these officers and, particularly officer Volk, was well below the standard of care, negligent, unreasonable, unnecessary, reckless and wanton and, additionally, constituted an assault and battery against a disabled Spanish speaking individual who was trying to get away from an unnecessary and unreasonable attack.

## IV. FIRST CAUSES OF ACTION – NEGLIGENCE – ASSAULT & BATTERY

18. Defendant owes a duty of care when engaging in law enforcement functions.

19. Defendant owes a duty to refrain from negligently, unreasonably, recklessly, and wantonly engaging in the non-consensual invasion of the sanctity of a person's bodily and personal security.

20. Defendant owes a duty to refrain from negligently engaging in harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such harm or apprehension that such contact is imminent.

21. Defendant owes a duty to properly train and supervise its employees in dealing with the mentally ill and in the appropriate use of force.

22. Defendant breached that duty when they engaged in the improper, unreasonable, unnecessary and excessive use of force, including but not limited to shooting Cesar Beltran in the back while he was trying to walk away from Officer Volk.



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23. Defendant breached that duty, acted unreasonably and was negligent, when it failed to have and follow proper training, policies, and procedures on the standard practices of officers in contacting Spanish speaking individuals with mental illness.

24. Defendant breached that duty, acted unreasonably and was negligent, when it used unnecessary and improper physical force and violence against Cesar Beltran.

25. Defendant breached that duty when it unreasonably, unnecessarily, and without provocation shot Cesar Beltran in the back, torso, and extremities and otherwise engaged in harmful or offensive contact with Plaintiff thereby inflicting an assault and battery on Cesar Beltran.

26. As a direct and proximate result of the breaches, failures, and negligence of Defendant, as described above and in other respects as well, Plaintiff was shot in the back, side, torso, and upper extremities multiple times causing serious injuries. Mr. Beltran has suffered physical pain, mental anguish and anxiety, distress, fear and humiliation, mental and physical pain and suffering, and other general and special damages as a direct result of Defendant's failures and the officers' actions and omissions.

27. As a direct and proximate result of the breaches, failures, and negligence of Defendant, as described above and in other respects as well, Plaintiffs have incurred and will continue to incur general and special damages in amounts to be proven at trial.

28. The negligent and unreasonable actions of Defendant occurred while the officers were in the course of their police work and amounted to misfeasance that created a risk of harm, and actual harm, to Plaintiff Cesar Beltran. The officers' actions were egregious, excessive, unreasonable, and well outside the standards that police officers must follow when interacting with citizens of Tacoma and particular Spanish speaking mentally ill individuals. The officers'



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affirmative actions exposed Plaintiff to unnecessary physical and emotional harm; in acting affirmatively, the officers were required to act reasonably and follow the course of conduct of a reasonable officer. Sadly, the officers did not act reasonably in choosing to deploy lethal force against Cesar Beltran, and unreasonably and unnecessarily shot him multiple times in the back, side, torso, and extremities causing serious and diverse injuries that have rendered him permanently and totally disabled for the remainder of his life. Plaintiff suffered general and special damages as a result of the officers' affirmative conduct.

## V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request a judgment against Defendant CITY OF TACOMA:

(a) Fashioning an appropriate remedy and awarding general and special damages, including damages for pain, suffering, terror, and loss of enjoyment of life in an amount to be proven at trial;

(b) Awarding reasonable attorneys' fees and costs as available under the law;

(c) Awarding any and all applicable interest on the judgment; and

(d) Awarding such other and further relief as the Court deems just and proper.

DATED this 27th day of August, 2015.

CONNELLY LAW OFFICES, PLLC

By _____

John R. Connelly, Jr. WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Attorneys for Plaintiffs



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E-FILED
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PIERCE COUNTY, WASHINGTON

November 13 2015 11:14 AM
KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE GRETCHEN LEANDERSON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

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|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | NO. 15-2-11 618-1<br><br>DEFENDANT CITY OF TACOMA'S ANSWER |

COME NOW the defendant City of Tacoma, by and through its undersigned attorney, and by way of answer to plaintiffs' Complaint, admit, deny and allege as follows:

## I. PARTIES

1. Answering paragraph 1 of plaintiff's Complaint, the defendant admits the City of Tacoma is a political subdivision of the State of Washington



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that provides law enforcement services through the Tacoma Police Department and that the Police Department's Mission Statement reads, "To create a safe and secure environment in which to live, work, and visit by working together with the community, enforcing the law in a fair and impartial manner, preserving the peace and order in our neighborhoods, and safeguarding our Constitutional guarantees."

2. Answering paragraph 2 of plaintiff's Complaint, the defendant admits the same.

3. Answering paragraph 3 of plaintiff's Complaint, the defendant admits that Bianco Beltran is the daughter and guardian *ad litem* of the person and estate of Cesar Beltran-Serrano. As to the remaining allegations contained herein, the defendant is without information sufficient to form a belief as to the truth of said allegations, and therefore denies the same.

4. Answering paragraph 4 of plaintiff's Complaint, the defendant admits the same.

## II. STATUTORY COMPLIANCE

5. Answering paragraph 5 of plaintiff's Complaint, the defendant admits the same.

6. Answering paragraph 6 of plaintiff's Complaint, the defendant admits the same.

## III. STATEMENT OF FACTS

7. Answering paragraph 7 of plaintiff's Complaint, the defendant denies the same.



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8. Answering paragraph 8 of plaintiff's Complaint, the defendant admits the incident occurred on June 29, 2013 at approximately 3:00 p.m. The defendant is without knowledge or information sufficient to form a belief as to whether plaintiff is a mentally disabled Tacoma citizen of minority decent and age 53, and therefore denies same. Defendant denies all remaining allegations contained herein.

9. Answering paragraph 9 of plaintiff's Complaint, the defendant denies that plaintiff stopped to inspect something he saw alongside the road when he was approached by Officer Volk. Defendant admits that Officer Volk attempted to communicate with plaintiff in English. On information and belief, the defendant admits that plaintiff speaks Spanish, but denies that he is unable to communicate in English.

10. Answering paragraph 10 of plaintiff's Complaint, defendant denies that plaintiff could not speak English and that Officer Volk interrogated plaintiff in English without waiting for a Spanish speaking officer. Defendant admits that Officer Volk radioed for a Spanish speaking officer.

11. Answering paragraph 11 of plaintiff's Complaint, on information and belief, defendant denies that plaintiff did not understand Officer Volk. This defendant is without knowledge and information sufficient to form a belief as to whether plaintiff was confused, and therefore denies same. This defendant denies that Officer Volk suddenly and without reason or warning chased after plaintiff across the street. Defendant admits that after plaintiff failed to comply with Officer Volk's commands, she deployed and used her Taser.



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12. Answering paragraph 12 of plaintiff's Complaint, defendant denies the same.

13. Answering paragraph 13 of plaintiff's Complaint, defendant denies that Officer Volk panicked suddenly and for no apparent reason. Defendant admits there was insufficient time to issue a warning before discharging her firearm and further admits that Office Volk fired several shots and that plaintiff was shot multiple times by Officer Volk. Defendant admits plaintiff was on the ground bleeding and completely incapacitated. Defendant denies that officers angrily slammed plaintiff to the pavement, kneed him in his neck and back, forcefully restrained him, but admit that plaintiff was handcuffed.

14. Answering paragraph 14 of plaintiff's Complaint, defendant denies the same.

15. Answering paragraph 15 of plaintiff's Complaint, defendant admits plaintiff was interviewed while in the hospital, but is without knowledge or information sufficient to form a belief as to whether plaintiff had undergone multiple surgeries to save his life, and therefore denies same. Defendant denies the remaining allegations contained in this paragraph.

16. Answering paragraph 16 of plaintiff's Complaint, on information and belief, defendant admits that plaintiff has been found to be incompetent on one occasion. Defendant denies all remaining allegations contained herein.

17. Answering paragraph 17 of plaintiff's Complaint, defendant denies the same.



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## IV. FIRST CAUSE OF ACTION – NEGLIGENCE – ASSULT & BATTERY

18. Answering paragraph 18 of plaintiff's Complaint, defendant denies the same.

19. Answering paragraph 18 of plaintiff's Complaint, defendant denies the same.

20. Answering paragraph 18 of plaintiff's Complaint, defendant denies the same.

21. Answering paragraph 21 of plaintiff's Complaint, defendant denies the same.

22. Answering paragraph 22 of plaintiff's Complaint, defendant denies the same.

23. Answering paragraph 23 of plaintiff's Complaint, defendant denies the same.

24. Answering paragraph 24 of plaintiff's Complaint, defendant denies the same.

25. Answering paragraph 25 of plaintiff's Complaint, defendant denies the same.

26. Answering paragraph 26 of plaintiff's Complaint, defendant denies the same.

27. Answering paragraph 27 of plaintiff's Complaint, defendant denies any breach, failure or negligence by the defendant. As to all other allegations contained in this paragraph, the defendant is without knowledge or information



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sufficient to form a belief as to the truth of said allegations, and therefore denies the same.

28. Answering paragraph 28 of plaintiff's Complaint, defendant denies the same.

## V. PRAYER FOR RELIEF

Answering plaintiff's Prayer for Relief, and all subparagraphs contained therein, the defendants deny the allegations contained therein, and deny that plaintiff is entitled to relief of any kind.

## VI. AFFIRMATIVE DEFENSES

6.1 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant alleges that plaintiff has failed to state a claim upon which relief can be granted.

6.2 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant alleges that any injuries or damages complained of herein by the plaintiff was caused by his own conduct and fault, and therefore, any award or judgment against the defendant should be barred or diminished accordingly.

6.3 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant alleges that plaintiff's negligence claims are not cognizable under the public duty doctrine, as no individualized duty was owed.

6.4 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant alleges that at all time



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alleged herein, the officers acted in good faith and with reasonable grounds during the course of a valid law enforcement contact.

6.5 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant alleges that the force applied in this case was both reasonable and necessary given the totality of the circumstances.

6.6 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant alleges, on belief and to avoid inadvertent waiver, that plaintiff has failed to mitigate his damages.

6.7 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S COMPLAINT, the defendant reserves the right to amend its answer to assert additional affirmative defenses, cross-claims, counter-claims and/or claims against third-party defendants as further information becomes known.

WHEREFORE, having fully answered plaintiff's Complaint, defendant prays for judgment as follows:

1. That plaintiff's Complaint be dismissed with prejudice and that plaintiff takes nothing thereby;

2. That the defendant be awarded its costs, disbursements and attorney's fees on any applicable basis;

3. For such other and further relief as the Court deems just and equitable.



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DATED this 13TH day of November, 2015.

ELIZABETH A. PAULI, City Attorney

By: */s/ Jean Homan*
JEAN P. HOMAN
WSB #27084
Deputy City Attorney
Attorney for Defendant



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## DECLARATION OF SERVICE

I hereby certify that on November 13, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Attorneys for Plaintiffs**

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Micah R. LeBank, WSBA No. 38047
2301 North 30th Street
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Email: jconnelly@connelly-law.com
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DATED: November 13, 2015

*/s/ Staci Black*
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March 16 2017 10:52 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: March 24, 2017

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

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|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiffs,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** |

## I. RELIEF REQUESTED

COMES NOW the Plaintiffs, through their attorneys of record and respectfully request leave of Court to file an amended complaint amending the case caption to reflect Plaintiff Cesar Beltran-Serrano's legal status as an incapacitated person. This motion is being made pursuant to Court Rule ("CR") 15(a) which permits the Court to grant leave to amend and states that "leave shall be freely given when justice so requires."



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## II. FACTS

### 1. Background

This case involves a Tacoma police officer's shooting of an unarmed, mentally ill, non-English speaking man. On June 29, 2014 Plaintiff Cesar Beltran-Serrano was wandering around the intersection of Portland Avenue and E. 28th Street in Tacoma, WA. A Tacoma Police Officer, Michel Volk, approached him, and observed Cesar digging in a hole for no apparent reason. Cesar then lifted an old bottle out of the hole, took a swig of an orange liquid, and put the bottle back. Officer Volk said hello, and asked for Cesar's identification. Cesar looked at her blankly and continued to dig in the hole. Officer Volk radioed for a Spanish speaking officer, and then continued to interrogate Cesar in English.

Cesar became scared of the officer and confused, and attempted to get away from her. He started to cross the intersection of E. 28th Street and Portland Avenue. Officer Volk chased after Cesar across the street, and fired her Taser. Cesar then swayed to shake the Taser tags away from his body. He turned his back towards the officer and continued to try to get away from her. Officer Volk panicked and immediately threw her Taser to the ground, pulled out her Glock 45 and fired four shots in Cesar's stomach, torso, arms, and buttocks.

Plaintiffs filed the instant suit in August 2015 against the Tacoma Police Department for the negligent, unreasonable, reckless, and wanton violence inflicted against Mr. Beltran by Officer Volk. The case caption reflected the Plaintiffs were Cesar Beltran-Serrano and Bianca Beltran.



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In February 2017, the Pierce County Superior Court declared Mr. Beltran-Serrano an incapacitated individual within the meaning of RCW 11.88.[1] Pursuant to the formal guardianship proceedings, Bianca Beltran was appointed the guardian of the person and estate of Cesar.[2] The *guardian ad litem* for purposes of the guardianship proceeding recommended Cesar be declared incapacitated based on her investigation, including interviews with Cesar and review of a psychological examination performed by Dr. Michael Badger.[3] The *guardian ad litem* found "[b]ased on the Medical/Psychological Report and the records reviewed, Cesar Beltran-Serrano requires assistance with decision-making for all medical, financial, and legal matters."[4]

**2. Amendments**

There are two amendments that have been made to the complaint.[5] The first amendment is the caption has been changed to reflect the suit is brought by Bianca Beltran as *guardian ad litem* of Cesar Beltran-Serrano. The second amendment is in the "parties" section, where Cesar Beltran-Serrano is described as an incapacitated person within the meaning of RCW 11.88.

## III. LEGAL AUTHORITY

The question before the Court is whether the Plaintiffs may amend the complaint.

Pursuant to CR 15(a)

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed

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[1] Declaration of Meaghan Driscoll, Ex. 1 (Order Appointing Guardian).
[2] Id.
[3] Driscoll Decl., Ex. 2 (GAL Report).
[4] Id. at p. 4.
[5] Driscoll Decl., Ex. 3 (Amended Complaint).



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> upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

"This rule serves to facilitate proper decisions on the merits, to provide parties with adequate notice of the basis for claims and defenses asserted against them, and to allow amendment of the pleadings except where amendment would result in prejudice to the opposing party." *Chadwick Farms Owners Ass'n v. FHC, LLC,* 139 Wn.App. 300, 313, 160 P.3d 1061 (2007) (quoting *Wilson v. Horsley,* 137 Wn.2d 500, 505, 974 P.2d 316 (1999)).

Plaintiffs cannot anticipate any prejudice to the Defendants in making these amendments to the complaint. These amendments will serve the interests of justice and judicial economy.

## IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request leave to file an amended complaint changing the case caption and describing Cesar Beltran-Serrano as an incapacitated individual.

DATED this 16th day of March, 2017.

CONNELLY LAW OFFICES, PLLC

By_____

John R. Connelly, Jr. WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
Attorneys for Plaintiffs



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15-2-11618-1 49114853 ORGLA 04-24-17

FILED
DEPT. 14
IN OPEN COURT
APR 21 2017
Pierce County Clerk
By..... DEPUTY

HONORABLE SUSAN K. SERKO
Hearing Date: April 21, 2017

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO<br>Plaintiff,<br>v.<br>CITY OF TACOMA, a political subdivision of the State of Washington;<br>Defendant. | NO. 15-2-11618-1<br>~~(PROPOSED)~~ STIPULATED ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT |

THIS MATTER having come before the court on Plaintiffs' motion for leave to file an amended complaint, the parties' being in agreement, and the Court having reviewed the records and files herein including:

1. Plaintiffs' motion for leave to file amended complaint;

2. Declaration of Meaghan Driscoll in Support of Plaintiffs' Motion for Leave to File Amended Complaint;

3. _____

_____; and



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4/25/2017 102 0091

4. _____

_____.

NOW, therefore, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion to File Amended Complaint is hereby **GRANTED**.

DONE IN OPEN COURT this 21 day of April, 2017.

HONORABLE SUSAN K. SERKO

Presented by:

CONNELLY LAW OFFICES, PLLC

John R. Connelly, Jr., WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Meaghan Driscoll, WSBA No. 49863
Attorneys for Plaintiff

FILED
DEPT. 14
IN OPEN COURT
APR 21 2017
Pierce County Clerk
By..... DEPUTY

Approved as to Content and Form;
Notice of Presentation waived:

ELIZABETH A. PAULI, City Attorney

By _____
Jean Homan, WSBA No. 27084
Deputy City Attorney
Attorney for Defendants



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E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

May 11 2017 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| BIANCA BELTRAN, individually, and as *guardian ad litem* of CESAR BELTRAN, an incapacitated person;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**AMENDED COMPLAINT** |

COME NOW the above-named Plaintiffs, by and through their attorneys of record John. R. Connelly, Jr. and Micah R. LeBank of Connelly Law Offices, PLLC, and by way of claim allege upon personal knowledge as to themselves and their own actions, and upon information and belief upon all other matters, as follows:

## I. PARTIES

1. Defendant CITY OF TACOMA is a political subdivision of the State of Washington. Among other things, the City of Tacoma provides law enforcement services through its police department ("TPD"). TPD's mission is supposed to include creating a safe and secure environment in which to live, work and visit, enforcing the law in a fair and impartial manner and safeguarding its citizens' Constitutional guarantees.



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2. Michel Volk ("Officer Volk") is a City of Tacoma police officer who, at all times relevant hereto, was acting within the scope of her employment and under color of state law at all relevant times herein.

3. Plaintiff CESAR BELTRAN-SERRANO ("Cesar Beltran") is a Spanish speaking disabled and mentally ill man of Mexican heritage and is an incapacitated person within the meaning of RCW 11.88 who was negligently and unreasonably shot multiple times and seriously injured by TPD Officer Volk. BIANCA BELTRAN is the daughter and guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO.

4. Jurisdiction and venue are proper in this Court as the City of Tacoma is located in Pierce County and the events giving rise to this action occurred in Pierce County.

## II. STATUTORY COMPLIANCE

5. On or about June 25, 2015, an administrative claim for damages was served upon the City of Tacoma.

6. Any prerequisites to the maintenance of this action imposed by RCW 4.96 have accordingly been satisfied.

## III. STATEMENT OF FACTS

7. This case arises from the negligent and unprovoked assault and battery against Cesar Beltran and the unnecessary, unreasonable, negligent, reckless, wanton and excessive use of force against Cesar Beltran by the Tacoma Police Department, including Officer Michel Volk.

8. On June 29, 2013 at approximately 3:00 p.m. Cesar Beltran, a mentally disabled Tacoma citizen, of minority descent, age 53, was walking southbound with his bike along the shoulder of Portland Avenue, approaching the intersection of E. 28th Street. Mr.



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Beltran was not engaged in any illegal activity or violating any laws as he walked with his bike.

9. As he approached the intersection of E. Portland Avenue and E 28th Street, Mr. Beltran stopped to inspect something that he saw alongside the road when he was approached by Tacoma Police Department Officer Michel Volk. Although Mr. Beltran is Spanish speaking, Officer Volk attempted to communicate with Mr. Beltran in English.

10. Officer Volk confirmed that Mr. Beltran did not speak English and radioed for a Spanish speaking officer. Officer Volk, however, did not wait for a Spanish speaking officer and continued to interrogate Mr. Beltran in English.

11. Mr. Beltran did not understand Officer Volk and could not comprehend why the officer was stopping and speaking to him. Confused, Mr. Beltran then turned away from Officer Volk and began to continue on his way, crossing the intersection of E. 28th Street and Portland Avenue. Without any indication that Mr. Beltran was involved in a crime or any illegal activity, suddenly and without reason or warning, Officer Volk chased after Mr. Beltran across the street, and fired her Taser, in an attempt to stun and subdue him.

12. Unfortunately, the officer failed to properly use and deploy her Taser, and it did not make proper contact with Mr. Beltran. Mr. Beltran then swayed to shake the Taser tags away from his body. In an effort to get away from the unreasonable, unnecessary, and unprovoked attack and assault by Officer Volk, Mr. Beltran turned with his back toward Officer Volk and began move away from her across the intersection.

13. Suddenly and for no apparent reason, Officer Volk panicked and without warning repeatedly and unnecessarily shot and discharged her firearm repeatedly in rapid succession, firing several shots into Mr. Beltran's body, striking him in the back, torso and



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upper extremities. Mr. Beltran was shot multiple times by Officer Volk. He was on the ground bleeding profusely and completely incapacitated. Despite the fact that he was clearly incapacitated and not moving, officers then angrily slammed him to the pavement, kneed him in his neck and back, forcefully restrained him and proceeded to handcuff him.

14. At the time of the unnecessary shooting, Mr. Beltran was moving away from Officer Volk, did not pose an immediate threat to the safety of Officer Volk or others, and he was not actively resisting or attempting to evade arrest. Instead, of simply allowing him to walk away and waiting for a Spanish speaking officer to arrive, Officer Volk pursued Mr. Beltran, escalated the situation, and then panicked and shot him repeatedly.

15. Subsequently, the Tacoma Police Department began to try to justify Officer Volk's actions, trying to convince witnesses that Mr. Beltran had threatened Officer Volk or that he somehow posed a threat to a police officer armed with a taser and police issued firearm. Despite the fact that he had a mental disability and had just been shot, the Police Department then hurried to Mr. Beltran's hospital room and attempted to compel him to give a statement after he had been shot multiple times by a police officer and had undergone multiple surgeries to save his life.

16. Mr. Beltran has been found to be incompetent on multiple occasions. Despite his obvious mental health issues, the Tacoma Police Department and Officer Volk failed to acknowledge his disability or to act appropriately with a mentally ill Spanish speaking individual. Training regarding use of deadly force, training regarding handling a situation without unnecessarily escalating it, and training regarding a Spanish speaking individual with mental disabilities was extremely unreasonable, negligent, lacking and substandard and the police at the scene including Officer Volk didn't understand or follow the directives that they



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had.

17. The Tacoma Police Department improperly, unreasonably, and unnecessarily escalated the situation, handled it extremely unprofessionally and poorly, attacked and shot a mentally disabled Spanish speaking citizen without provocation and then tried to influence witnesses in an attempt to justify their inappropriate and substandard conduct. Under the totality of the circumstances, the conduct by these officers and, particularly officer Volk, was well below the standard of care, negligent, unreasonable, unnecessary, reckless and wanton and, additionally, constituted an assault and battery against a disabled Spanish speaking individual who was trying to get away from an unnecessary and unreasonable attack.

## IV. FIRST CAUSES OF ACTION – NEGLIGENCE – ASSAULT & BATTERY

18. Defendant owes a duty of care when engaging in law enforcement functions.

19. Defendant owes a duty to refrain from negligently, unreasonably, recklessly, and wantonly engaging in the non-consensual invasion of the sanctity of a person's bodily and personal security.

20. Defendant owes a duty to refrain from negligently engaging in harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such harm or apprehension that such contact is imminent.

21. Defendant owes a duty to properly train and supervise its employees in dealing with the mentally ill and in the appropriate use of force.

22. Defendant breached that duty when they engaged in the improper, unreasonable, unnecessary and excessive use of force, including but not limited to shooting Cesar Beltran in the back while he was trying to walk away from Officer Volk.

23. Defendant breached that duty, acted unreasonably and was negligent, when it



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failed to have and follow proper training, policies, and procedures on the standard practices of officers in contacting Spanish speaking individuals with mental illness.

24. Defendant breached that duty, acted unreasonably and was negligent, when it used unnecessary and improper physical force and violence against Cesar Beltran.

25. Defendant breached that duty when it unreasonably, unnecessarily, and without provocation shot Cesar Beltran in the back, torso, and extremities and otherwise engaged in harmful or offensive contact with Plaintiff thereby inflicting an assault and battery on Cesar Beltran.

26. As a direct and proximate result of the breaches, failures, and negligence of Defendant, as described above and in other respects as well, Plaintiff was shot in the back, side, torso, and upper extremities multiple times causing serious injuries. Mr. Beltran has suffered physical pain, mental anguish and anxiety, distress, fear and humiliation, mental and physical pain and suffering, and other general and special damages as a direct result of Defendant's failures and the officers' actions and omissions.

27. As a direct and proximate result of the breaches, failures, and negligence of Defendant, as described above and in other respects as well, Plaintiffs have incurred and will continue to incur general and special damages in amounts to be proven at trial.

28. The negligent and unreasonable actions of Defendant occurred while the officers were in the course of their police work and amounted to misfeasance that created a risk of harm, and actual harm, to Plaintiff Cesar Beltran. The officers' actions were egregious, excessive, unreasonable, and well outside the standards that police officers must follow when interacting with citizens of Tacoma and particular Spanish speaking mentally ill individuals. The officers' affirmative actions exposed Plaintiff to unnecessary physical and emotional harm; in acting



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affirmatively, the officers were required to act reasonably and follow the course of conduct of a reasonable officer. Sadly, the officers did not act reasonably in choosing to deploy lethal force against Cesar Beltran, and unreasonably and unnecessarily shot him multiple times in the back, side, torso, and extremities causing serious and diverse injuries that have rendered him permanently and totally disabled for the remainder of his life. Plaintiff suffered general and special damages as a result of the officers' affirmative conduct.

## V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request a judgment against Defendant CITY OF TACOMA:

(a) Fashioning an appropriate remedy and awarding general and special damages, including damages for pain, suffering, terror, and loss of enjoyment of life in an amount to be proven at trial;

(b) Awarding reasonable attorneys' fees and costs as available under the law;

(c) Awarding any and all applicable interest on the judgment; and

(d) Awarding such other and further relief as the Court deems just and proper.

DATED this 15th day of March, 2017.

CONNELLY LAW OFFICES, PLLC

By _____

John R. Connelly, Jr. WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Attorneys for Plaintiffs



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PIERCE COUNTY, WASHINGTON

May 11 2017 9:45 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE SUSAN SERKO

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| BIANCA BELTRAN, individually, and as *guardian ad litem* of CESAR BELTRAN, an incapacitated person;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>DEFENDANT'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT |

COME NOW the defendant City of Tacoma, by and through its undersigned attorney, and by way of answer to plaintiffs' Amended Complaint, admit, deny and allege as follows:

## I. PARTIES

1. Answering paragraph 1 of plaintiff's Amended Complaint, the defendant admits the City of Tacoma is a political subdivision of the State of Washington that provides law enforcement services through the Tacoma Police Department and that the Police Department's Mission Statement reads, "To create a safe and secure



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environment in which to live, work, and visit by working together with the community, enforcing the law in a fair and impartial manner, preserving the peace and order in our neighborhoods, and safeguarding our Constitutional guarantees."

2. Answering paragraph 2 of plaintiff's Amended Complaint, the defendant admits the same.

3. Answering paragraph 3 of plaintiff's Amended Complaint, the defendant admits that Bianco Beltran is the daughter and guardian *ad litem* of the person and estate of Cesar Beltran-Serrano. On information and belief, the defendant admits that there has been a judicial finding Cesar Beltran incapacitated. As to the remaining allegations contained herein, the defendant is without information sufficient to form a belief as to the truth of said allegations, and therefore denies the same.

4. Answering paragraph 4 of plaintiff's Amended Complaint, the defendant admits the same.

## II. STATUTORY COMPLIANCE

5. Answering paragraph 5 of plaintiff's Amended Complaint, the defendant admits the same.

6. Answering paragraph 6 of plaintiff's Amended Complaint, the defendant admits the same.

## III. STATEMENT OF FACTS

7. Answering paragraph 7 of plaintiff's Amended Complaint, the defendant denies the same.

8. Answering paragraph 8 of plaintiff's Amended Complaint, the defendant admits the incident occurred on June 29, 2013 at approximately 3:00 p.m. The



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defendant is without knowledge or information sufficient to form a belief as to whether plaintiff is a mentally disabled Tacoma citizen of minority decent and age 53, and therefore denies same. Defendant denies all remaining allegations contained herein.

9. Answering paragraph 9 of plaintiff's Amended Complaint, the defendant denies that plaintiff stopped to inspect something he saw alongside the road when he was approached by Officer Volk. Defendant admits that Officer Volk attempted to communicate with plaintiff in English. On information and belief, the defendant admits that plaintiff speaks Spanish, but denies that he is unable to communicate in English.

10. Answering paragraph 10 of plaintiff's Amended Complaint, defendant denies that plaintiff could not speak English and that Officer Volk interrogated plaintiff in English without waiting for a Spanish speaking officer. Defendant admits that Officer Volk radioed for a Spanish speaking officer.

11. Answering paragraph 11 of plaintiff's Amended Complaint, on information and belief, defendant denies that plaintiff did not understand Officer Volk. This defendant is without knowledge and information sufficient to form a belief as to whether plaintiff was confused, and therefore denies same. This defendant denies that Officer Volk suddenly and without reason or warning chased after plaintiff across the street. Defendant admits that after plaintiff failed to comply with Officer Volk's commands, she deployed and used her Taser.

12. Answering paragraph 12 of plaintiff's Amended Complaint, defendant denies the same.

13. Answering paragraph 13 of plaintiff's Amended Complaint, defendant denies that Officer Volk panicked suddenly and for no apparent reason. Defendant



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admits there was insufficient time to issue a warning before discharging her firearm and further admits that Office Volk fired several shots and that plaintiff was shot multiple times by Officer Volk. Defendant admits plaintiff was on the ground bleeding and completely incapacitated. Defendant denies that officers angrily slammed plaintiff to the pavement, kneed him in his neck and back, forcefully restrained him, but admit that plaintiff was handcuffed.

14. Answering paragraph 14 of plaintiff's Amended Complaint, defendant denies the same.

15. Answering paragraph 15 of plaintiff's Amended Complaint, defendant admits plaintiff was interviewed while in the hospital, but is without knowledge or information sufficient to form a belief as to whether plaintiff had undergone multiple surgeries to save his life, and therefore denies same. Defendant denies the remaining allegations contained in this paragraph.

16. Answering paragraph 16 of plaintiff's Amended Complaint, on information and belief, defendant admits that plaintiff has been found to be incompetent on one occasion. Defendant denies all remaining allegations contained herein.

17. Answering paragraph 17 of plaintiff's Amended Complaint, defendant denies the same.

## IV. FIRST CAUSE OF ACTION – NEGLIGENCE – ASSULT & BATTERY

18. Answering paragraph 18 of plaintiff's Amended Complaint, defendant denies the same.



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19. Answering paragraph 18 of plaintiff's Amended Complaint, defendant denies the same.

20. Answering paragraph 18 of plaintiff's Amended Complaint, defendant denies the same.

21. Answering paragraph 21 of plaintiff's Amended Complaint, defendant denies the same.

22. Answering paragraph 22 of plaintiff's Amended Complaint, defendant denies the same.

23. Answering paragraph 23 of plaintiff's Amended Complaint, defendant denies the same.

24. Answering paragraph 24 of plaintiff's Amended Complaint, defendant denies the same.

25. Answering paragraph 25 of plaintiff's Amended Complaint, defendant denies the same.

26. Answering paragraph 26 of plaintiff's Amended Complaint, defendant denies the same.

27. Answering paragraph 27 of plaintiff's Amended Complaint, defendant denies any breach, failure or negligence by the defendant. As to all other allegations contained in this paragraph, the defendant is without knowledge or information sufficient to form a belief as to the truth of said allegations, and therefore denies the same.

28. Answering paragraph 28 of plaintiff's Amended Complaint, defendant denies the same.



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## V. PRAYER FOR RELIEF

Answering plaintiff's Prayer for Relief, and all subparagraphs contained therein, the defendants deny the allegations contained therein, and deny that plaintiff is entitled to relief of any kind.

## VI. AFFIRMATIVE DEFENSES

6.1 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S AMENDED COMPLAINT, the defendant alleges that plaintiff has failed to state a claim upon which relief can be granted.

6.2 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S AMENDED COMPLAINT, the defendant alleges that any injuries or damages complained of herein by the plaintiff was caused by his own conduct and fault, and therefore, any award or judgment against the defendant should be barred or diminished accordingly.

6.3 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S AMENDED COMPLAINT, the defendant alleges that plaintiff's negligence claims are not cognizable under the public duty doctrine, as no individualized duty was owed.

6.4 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S AMENDED COMPLAINT, the defendant alleges that at all time alleged herein, the officers acted in good faith and with reasonable grounds during the course of a valid law enforcement contact.

6.5 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S AMENDED COMPLAINT, the defendant alleges that the



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force applied in this case was both reasonable and necessary given the totality of the circumstances.

6.6 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S AMENDED COMPLAINT, the defendant alleges, on belief and to avoid inadvertent waiver, that plaintiff has failed to mitigate his damages.

6.7 FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE DEFENSE TO PLAINTIFF'S AMENDED COMPLAINT, the defendant reserves the right to amend its answer to assert additional affirmative defenses, cross-claims, counter-claims and/or claims against third-party defendants as further information becomes known.

WHEREFORE, having fully answered plaintiff's Amended Complaint, defendant prays for judgment as follows:

1. That plaintiff's Amended Complaint be dismissed with prejudice and that plaintiff takes nothing thereby;

2. That the defendant be awarded its costs, disbursements and attorney's fees on any applicable basis;

3. For such other and further relief as the Court deems just and equitable.

DATED this 11th day of May, 2017.

BILL FOSBRE, Acting City Attorney

By: */s/ Jean Homan*
JEAN P. HOMAN
WSB #27084
Deputy City Attorney
Attorney for Defendant



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## DECLARATION OF SERVICE

I hereby certify that on May 11, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Attorneys for Plaintiffs**

John R. Connelly, Jr., WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
2301 North 30th Street
Tacoma, WA 98403
Email: jconnelly@connelly-law.com
mlebank@connelly-law.com

DATED: May 11, 2017

*/s/ Staci Black*
Staci Black, Paralegal
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PIERCE COUNTY, WASHINGTON

July 26 2017 11:15 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendants. | NO. 15-2-11618-1<br><br>**DECLARATION OF TERESA GRAHAM** |

TERESA GRAHAM: declares and states as follows:

1. I was a witness to an officer involved shooting that occurred on June 29, 2013 at the intersection of East 28th Street and East Portland Avenue. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge, information, and belief.

2. On June 29, 2013 I was driving with my daughter in my 2004 Yukon XL Four door SUV. We were headed down Portland Avenue and we stopped at the light before the underpass in order to go southbound on I-5. While we were stopped at the red light at the



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northwest Teresa Graham

~~Southeast~~ corner of the intersection I saw a police officer talking to a Hispanic man near an orange bike. The interaction appeared calm and I did not see anything physical going on or loud talking or shouting. I had my window down and had a clear and unobstructed view of the intersection.

3. The man started running across the street in the crosswalk crossing the lane coming off of the freeway. The officer pursued him and she tried to shoot him with a taser. The taser appeared to miss him but may have nicked him because he turned around briefly and then turned away from the officer and continued across the street away from her. The officer threw down the taser and grabbed her weapon and he turned his back around to run away and she just shot him four times. My complete attention was on the entire interaction, from the time the officer was talking with the man until the man was shot.

4. He fell and then I sat there a little while. The light was green and some of the other cars were going and I was kinda like, wow, did that just happen. And then I continued on. I was about to get onto the freeway, but I decided to do a U-turn and go back around. I drove up to the Shell station parking lot overlooking the location where the man had been shot and I witnessed the officers standing on the man's back and neck with their boots. I could see that the man had been shot in his back and was bleeding on the ground.

5. At the time that the officer shot the man in the back, he was 10 or more feet away from the officer and was trying to move away from her. The man wasn't moving very fast and I didn't see anything in his hands. The man had his back to the officer at the time that she shot him.

6. I understand that the officer claims that the man had some kind of metal object in his hand at the time that she shot him. This is not true. I witnessed the entire event and



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never saw any object in the man's hand. I also did not see any object near the man's body either after he was shot and lying bleeding on the ground. The man was completely unarmed and was attempting to get away from the officer when she shot him. He had his back turned to her at the point that she grabbed her gun and shot him in the back. After the man was shot I sat there a minute, and I couldn't believe it. I was like, well what did I miss? Is there something that I missed? Everything just didn't add up to me.

7. I also understand that the officer has claimed that the man may have posed a threat to someone else nearby. I did not see the man threaten anyone, including the officer.

8. I did not understand why the police officer shot the man. I understand that the police claimed that the officer was hurt. I don't think that this is true as I didn't see any sign of an injury to the officer. I gave a statement to the police on the day of the incident and I told them that I did not see any objects on or near the man. I told them exactly what I had seen and told them that I did not understand why the officer shot the man and did not feel that the shooting was justified. The man was attempting to get away from the officer and she continued to pursue him. The man did not strike the officer at any point, did not have a weapon, and did not pose a threat to the officer or anyone else for that matter.

9. I had a complete unobstructed view of the entire incident and it was clear that the man was moving away from the officer and that he was shot in the back. There was no reason for the officer to shoot the man and he didn't pose a threat to anyone. There was not an emergency and I don't see why the officer couldn't have waited for back-up to assist her if she was having trouble with the man.

10. Attached as Exhibit A is a true and accurate copy of the recorded interview that I gave with the Tacoma Police Department.



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I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE.

Signed this 19th day of May, 2016, at Pierce County, Washington.

By Teresa Graham
TERESA GRAHAM



CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

EXHIBIT A

EXHIBIT A

| | | | | | |
|---|---|---|---|---|---|
| PDA: | Yes | Homeland Security: | | Subject: | Aggravated Assault \| Other Crim - Shooting \| Fel \| Transcription - T. Graham |
| IBR Disposition: | Active | Case Management Disposition: | | | |
| Forensics: | | Reporting By/Date: | T07670 - Bair, John 7/2/2013 13:31:31 | | |
| Case Report Status: | Approved | Reviewed By/Date: | T57193 - Miller, Gene 7/10/2013 11:50:45 | | |

Incident No. 131800756.30

**Related Cases:**

| Case Report Number | Agency |
|---|---|

**Non-Electronic Attachments**

| Attachment Type | Additional Distribution | Count |
|---|---|---|

OFFICIAL USE
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DATE PREPARED

| | | | |
|---|---|---|---|
| Location Address: | E 28TH St/E Portland Av | Location Name: | |
| City, State, Zip: | Tacoma, WA 98404 | Cross Street: | |
| Contact Location: | | City, State, Zip: | |
| Recovery Location: | | City, State, Zip: | |
| CB/Grid/RD: | 461 - Tacoma | District/Sector: | TA41 - Tacoma |
| Occurred From: | 6/29/2013 15:03:00 Saturday | Occurred To: | |
| Notes: | | | |

## Offense Details: 1305 - Assault - Aggravated - NonFamily - Weapon

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown | Juvenile: | |
| Completed: | Completed | | | Crime Against: | PE | Hate/Bias: | None (No Bias) |
| Criminal Activity: | | | | | | Using: | |
| Location Type: | Street/Right of Way | | | Type of Security: | | Tools: | |
| Total No. of Units Entered: | | | | Evidence Collected: | | | |
| Entrance Compromised: | | | | | | | |
| Entry Method: | | | | | | | |
| Suspect Description: | | | | | | | |
| Suspect Actions: | | | | | | | |
| Notes: | | | | | | | |

## Offense Details: 090Z - All Other Offenses - Criminal - SHOOTING

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown | Juvenile: | |
| Completed: | Completed | | | Crime Against: | | Hate/Bias: | None (No Bias) |
| Criminal Activity: | | | | | | Using: | |
| Location Type: | Street/Right of Way | | | Type of Security: | | Tools: | |

| | | | |
|---|---|---|---|
| Call Source: | Field | Assisted By: | |
| Phone Report: | | Notified: | |
| Insurance Letter: | | Entered By: | T07670 - Bair, John |
| Entered On: | 7/2/2013 13:29:28 | Approved By: | E08455 - Easton, Sally |
| Approved On: | 7/10/2013 12:22:04 | Exceptional Clearance: | |
| Adult/ Juvenile Clearance: | | Exceptional Clearance Date: | |
| Additional Distribution: | | Other Distribution: | |

| Validation Processing | Distribution Date: | County Pros. Atty. | Juvenile | Other | CPS | Supervisor: |
|---|---|---|---|---|---|---|
| | By: | City Pros. Atty. | Military | DSHS | PreTrial | |

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Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.

**Printed: 7/10/2013 12:22:04**
**Printed By: E08455 - Easton, Sally**

| | | | |
|---|---|---|---|
| Total No. of Units Entered: | | Evidence Collected: | |
| Entrance Compromised: | **Not Applicable** | | |
| Entry Method: | | | |
| Suspect Description: | | | |
| Suspect Actions: | | | |
| Notes: | | | |

## Weapon 1: Blunt Object (bat, brick, rock, etc.)

| | | | |
|---|---|---|---|
| Offense: | **1305 - Assault - Aggravated - NonFamily - Weapon** | Serial No: | |
| Offender: | **S1 - Doe, John** | OAN: | |
| Weapon: | **Blunt Object (bat, brick, rock, etc.)** | Automatic: | |
| Other Weapon: | | Caliber: | |
| Action: | | Gauge: | |
| Manufacturer: | | Length: | |
| Make: | | Finish: | |
| Importer: | | Grips: | |
| Model: | | Stock: | |
| Weapon Notes: | | | |

## Investigative Information

| | | | |
|---|---|---|---|
| Means: | | Motive: | |
| Vehicle Activity: | | Direction Vehicle Traveling: | |

| | |
|---|---|
| Synopsis: | |

Narrative:

Bair: This is going to be a recorded statement of Teresa Graham. This is the 29th of June, 2013. The time right now is 1811 hours. We're currently located at 3701 South Pine, on the second floor of the Criminal Investigations Interview Room. Present is myself, Detective John Bair, ID 388, and also present is Teresa Graham. This is regarding Case Number 13-1800756. Before I go any further, Teresa, do I have your permission to record this statement?

Graham: Yes sir.

Bair: And can you state your first, your middle and your last name, and the spelling of each of your names, please?

Graham: Teresa S. Graham. T-E-R-E-S-A, um, middle name Shlonda, S-H-L-O-N-D-A. Last name Graham, G-R-A-H-A-M.

Bair: And Teresa, where do you currently reside?

Graham: Um, East Tacoma.

Bair: Okay.

Graham: 1835 East Tacoma.

Bair: Okay. And we've had a chance to re, have a conversation off the recorder. Is that correct?

Graham: Yes.

Bair: And the reason you're here today is involving a incident that you saw, part of an incident involving what you believe is a police officer and another individual that you believe was shot by the police officer. Is that correct?

Graham: Yes.

Bair: Okay. And off the recorder we were able to document your, what you believe took place, as far as what you saw. Can we document, first off, what time of day was this? Was this daylight hours or evening hours? Are you . . .

Graham: Daylight.

Bair: Okay. And do you remember what kind of weather it was today?

Graham: Sunny.

Bair: Was it hot?

Graham: Hot.
Bair: Okay, how was the visibility?
Graham: Um, very clear.
Bair: Okay. And you had talked about where you were coming from and what this took, where this took place. Why don't we just go ahead and repeat it for the purpose of the recorder?
Graham: Okay.
Bair: Go ahead.
Graham: Um, I was actually, me and my daughter were headed back to Home Depot. We came from there. I left my ID at home. Anyway, we were headed down Portland Avenue and we stopped at the light. We actually went to the gas station first and then we stopped at 28th and Portland Avenue . . .
Bair: Okay.
Graham: . . . at the light and we were gonna go southbound on I-5.
Bair: So you're waiting to turn?
Graham: We're waiting . . . . No. The turn was . . .
Bair: Later.
Graham: . . . we had not crossed the underpass.
Bair: Gotcha. Okay.
Graham: Yeah. So we were waiting at the light before the underpass . . .
Bair: Gotcha. Okay.
Graham: . . . and I noticed that there was an officer across the street talking with a male, a darker-haired male across the street by a orange bike.
Bair: Okay.
Graham: There wasn't really anything like physical going on. I didn't hear anybody talking like really loud.
Bair: Okay.
Graham: I couldn't really, probably even if they did, I probably wouldn't be able to hear what was going on. But I didn't see anything physical going on.
Bair: Okay.
Graham: So um, when we were at the light, he started, I guess that he started running across the street, acrossed a crosswalk in front of the lane that came off the freeway going northbound. On th, the lane that got off the freeway, the one on Portland Avenue. But anyway, he ran across the street. The offico, cer, pursued him and she tried to shoot him with the taser. The taser, I don't know if it missed him. I believe that it missed him. It may, may have nicked him, because he did turn around briefly and when he turned around, she threw down the taser and then grabbed her weapon and he turned back around to run away and she just shot him four times.
Bair: Okay.
Graham: So . . . And then he fell and then I, I sat there a little while. The light was green and some of the other cars were going and I was kinda like, wow, did that just happen. And then I continued on. I was about to get on the freeway, but I decided to do a U-turn and go back around. And from there I seen um a officer handcuff him and then um another officer, I don't know if it was the same officer, but one was standing on him with his boot on his back. And then they put it on his, the side of his face or his neck and I was, I mean basically that's what I seen from that point.
Bair: Okay. Let's just back up and take each of this . . . . You were driving your vehicle.
Graham: Um-hum.
Bair: Describe your vehicle.
Graham: It's a 2004 Yukon XL.
Bair: So that's a four-door?
Graham: Four-door.
Bair: Okay. What color is it?
Graham: Um, dark gray.
Bair: Okay. And you're in the traffic waiting for the light to turn green, to proceed under the overpass and get onto I-5 southbound?.
Graham: Yes.
Bair: To go to Home Depot, I believe you said?
Graham: Um-hum.
Bair: And you're, who's all in your vehicle with you?
Graham: Um, my daughter and myself and my dog, Mocha.
Bair: Your dog, Mocha. Okay. And the, but the seating positions, obviously you're the driver.

Graham: I'm the driver.
Bair: Your daughter in the front, back? Where's she at?
Graham: She's in the passenger seat.
Bair: In the front?
Graham: She, we were, yeah, she's in the front. We were both actually trying to figure out what was going on across the street.
Bair: Okay.
Graham: Um, so our eyes were on there even before . . .
Bair: Okay.
Graham: . . . they started running across the street.
Bair: . . . Let's, let's talk about that. Obviously you've lived in Tacoma how many years?
Graham: Um-hum. Um, ten.
Bair: So would you, would it be fair to say this was a marked police vehicle? You've seen one before?
Graham: Yeah. It was a white vehicle.
Bair: How . . . Was there any emergency equipment on the vehicle that were activated? You know, emergency lights equipment?
Graham: I don't think, I don't think so.
Bair: Okay.
Graham: I don't remember seeing that.
Bair: And . . .
Graham: I think I was um, let me think about that. I can't, I couldn't tell you one hundred percent if it was.
Bair: Okay. No, no, no problem.
Graham: Yeah.
Bair: But you knew that it was a police vehicle by what means?
Graham: For sure . . . .
Bair: Tell me the markings.
Graham: Um, the police uh on the side.
Bair: Okay.
Graham: And um it was a white vehicle.
Bair: Okay. Have you seen a vehicle like that in Tacoma before?
Graham: Yeah.
Bair: Okay, did it have the emergency lights on top and . . . Was it a unmarked car?
Graham: Something, something about it looked different.
Bair: Okay.
Graham: I couldn't tell you what.
Bair: Was it white? Do you remember the . . .
Graham: It was white. Yeah.
Bair: Okay. And how about the officer that was outside of the vehicle? Describe . . . Were they unmarked? Did they have a marked uniform on?
Graham: Um marked.
Bair: And describe what a marked uniform is to you. What did it look like?
Graham: Um, it was a dark uniform with a badge on it.
Bair: Okay.
Graham: So, yeah, it was, it was marked and she had the belt on.
Bair: Okay.
Graham: Well at the time I thought it was a, a male.
Bair: Okay.
Graham: So I can't say . . .
Bair: You later found out that it . . .
Graham: It was a female, by close observation after the shooting.
Bair: After you did a U-turn and came back?
Graham: Um-hum.
Bair: Okay. So at the time you thought it was a male officer in a marked . . .
Graham: Yeah.
Bair: . . . vehicle? Don't know if the lights were on or off? The emergency lights.
Graham: Don't know. Don't know.

Bair: Okay. But your attention's drawn to this and this officer's having some type of dialogue, or something's going on with a, a male, a white male?
Graham: What I, I to this point think that I thought it was a Hispanic or . . .
Bair: Okay.
Graham: . . . a Indian.
Bair: No problem. And he's got a bicycle or something? Describe it.
Graham: I don't, I still don't know if that's his bicycle.
Bair: Okay. But it's near him?
Graham: It's near him.
Bair: And you, you had your window down, but you don't remember a dialogue?
Graham: Didn't . . . I heard her yell something before she uh shot the taser.
Bair: Okay.
Graham: I heard her yell something. I couldn't tell you what she said.
Bair: Okay, now, let's say I'm seated in your car and I'm watching this. Am I looking to my left . . . ?
Graham: Left.
Bair: And this is all going down within so many feet? How, how many feet do you think away you are? In two lanes away or one lane away or . . ?
Graham: Um, I would say, because of the way the center is made, maybe um a little over two lanes.
Bair: Okay. And her car is facing back towards the Shell Station? Like you're gonna go to Salishan? Is it facing going . . .
Graham: No, it was on . . . The car . . .
Bair: Her, her vehicle.
Graham: I don't know, I don't know if it was her vehicle or not, but the car was, was on, like I said, the, the cars that, if you were going northbound on I-5 . . . .
Bair: Okay.
Graham: . . . and you were to get off on that Portland Avenue exit . . .
Bair: Okay.
Graham: . . . to be honest, I don't know if the car was facing the wrong way or it was straight.
Bair: No problem. Did, but you did see the vehicle over there within her proximity?
Graham: Um-hum.
Bair: And she's by her, this officer is by theirselves? Correct? There's no other officer at that time with them? Cause you initially . . . .
Graham: I, I tell you . . . I, I really, at, I really don't know if there was a officer. I didn't see any officer standing over there with her.
Bair: Okay.
Graham: But I seen other officers in the area.
Bair: Okay.
Graham: I seen a, a officer that um, I don't know which way they went because, in my . . . Because I'm thinking about this. Because after it happened, I was thinking, well if it was so serious, the other officers that were in the area, it seems like they would have, you know . . .
Bair: Okay.
Graham: . . . . been, like BOOM, before all this happened. I don't know.
Bair: Okay, so, so . . .
Graham: This is what I thought about after.
Bair: Sure. But at the time you're sitting there waiting for the light to turn to get on the freeway, it appears that there's one officer with one person having some type of dialogue? Correct?
Graham: Um-hum.
Bair: And you don't know if the bicycle's involved, but there's a bicycle nearby. Is that fair to say?
Graham: Yeah.
Bair: And then is your attention completely on them the whole time, but do you, are you looking back in your vehicle and then glancing back at them?
Graham: On them the whole time.
Bair: Okay. And then at some point there's some, who yells, or does, does it . . .
Graham: The officer. I don't know what she said to him.
Bair: Okay. But you hear . . .
Graham: She said something to him before she uh shot her taser.
Bair: Okay. But he's already taken off and started running?

Graham: He's, he's taken off and he started running. She pursued him across the crosswalk.
Bair: Okay.
Graham: And he made it um right past that "Do Not Enter" sign.
Bair: Okay. So now are you having to turn your body around to look at this?
Graham: Um, no. Because the, the way the light is, okay, this is the light. They were like right over to the left side of the street, but . . . .
Bair: Okay.
Graham: So it's almost like this.
Bair: All right. So we're, what we're gonna do here, is I got a piece of paper in front of you.
Graham: Um-hum.
Bair: And I'm gonna draw kind of an intersection here. All right? And what I'm doing here is like the underpass/overpass area. So this is Portland. This road here is Portland, going this way and this way. Okay? And you got the Shell Station over here.
Graham: Um-hum.
Bair: And you guys are coming up to the first light, which is 28th Street?
Graham: Right.
Bair: Okay, this is 28th Street.
Graham: Um-hum.
Bair: From right there, go ahead and draw where your position, your . . . Draw a square and which direction you're facing.
Graham: This is the light . . . .
Bair: Yep. Right there.
Graham: . . . . here? And is this the underpass over here?
Bair: You'd, this, this would be, yeah.
Graham: This is where. This is the light. This is where I was sitting at.
Bair: Okay.
Graham: There's two lanes going this way.
Bair: Okay.
Graham: And then there's a, it's like a little . . .
Bair: Median.
Graham: Median kinda in the area.
Bair: Okay.
Graham: I don't know if it goes . . . I'm thinking that it goes smaller down here.
Bair: Okay.
Graham: And bigger right here. But I was sitting right here and there was another car right here.
Bair: Okay.
Graham: And I think there was maybe two more other cars over here.
Bair: Sure. Understood.
Graham: So this happened over here.
Bair: Okay.
Graham: We'll say this is the right below the underpass.
Bair: So can you just put a "me" right there, where that's you and then officer over here.
Graham: Um-hum.
Bair: Just write it so we know what we're talking about. So this is where they are initially?
Graham: Right.
Bair: And then tell me, draw a line of where they run, where the subject runs and where the officer, where they're going.
Graham: This is a area coming off of I-5 . . .
Bair: Okay.
Graham: . . . and then they turn onto Portland Avenue. There's a crosswalk that goes right here and then it's like a median.
Bair: Okay.
Graham: And then there's another crosswalk. The guy takes off running, and this is the sidewalk. He takes off running across the street. She yells . . . I mean, this is like the corner. He makes it maybe, I'd say probably about eight feet from where the sidewalk starts, and then she yells something and she shoots her taser.
Bair: Somewhere in this area?

Graham: In this area.
Bair: And how do you know . . . .
Graham: Probably about eight feet from . . . .
Bair: How do you know it was a taser? Have you seen a taser before?
Graham: I've never seen a taser before.
Bair: How do you know it is a taser?
Graham: Because there was some silver things that came out of it.
Bair: Sparks?
Graham: Um, it, I wouldn't say it was sparks. It was shiny.
Bair: Okay.
Graham: I couldn't tell because of all the sunlight you couldn't tell what was sparks or what . . .
Bair: Was, was . . .
Graham: I don't know what a taser does.
Bair: Okay, well what got you to the conclusion that you thought it was a taser?
Graham: Um because I seen the wires.
Bair: Okay. Okay.
Graham: The wires come out of it. And then I seen her throw it on the ground.
Bair: Okay.
Graham: And then grab her gun and then shoot . . .
Bair: So is the taser . . .
Graham: . . . and I don't know if she shot him with her left hand. I don't know if she shot her, shot him with the right hand. I just know that she threw down the taser and she grabbed a gun and BOOM, BOOM, BOOM, BOOM.
Bair: Okay.
Graham: Shot him.
Bair: Okay. And so at some point where you, you're drawing with this pen here, for the purpose of the recorder, at some point we, we're, we're in this area here on the diagram, the taser's deployed.
Graham: Um-hum.
Bair: Is that fair to say?
Graham: Um-hum.
Bair: And then in some area right beyond that, the firearm's deployed.
Graham: Um-hum.
Bair: And you hear approximately four, five rounds go off? How many rounds did you, did you think you heard?
Graham: I, I thought it was um four to five.
Bair: Okay.
Graham: I was trying to replay it in my mind. At the time when it happened, cause my daughter was, she was like, was that a taser that she shot him with, mom? And I said no, I think that was a gun.
Bair: Okay.
Graham: So . . .
Bair: And the light's still red? You haven't moved from this position during this whole time?
Graham: No, but . . .
Bair: At the time this happened . . .
Graham: . . . . the, the other car did, because right after it happened I looked up and the light was green and this car was no longer in front of me anymore.
Bair: Okay.
Graham: So . . . .
Bair: So from the time you're sitting here to the time this all takes place, you never moved? Is that fair to say?
Graham: Never moved.
Bair: When you do move, it's, does the cuffing take place already or did you move after . . . . when did you . . . ?
Graham: Um, after the, after the guy was shot I kinda sat there a minute because I was kinda in disbelief of what just happened. I was trying, I think I was trying to figure out was he shot. I was trying to see if there was blood coming out of him and then when the blood came out of him, it was kinda like I sat there a minute and I couldn't believe it and I was like, well what did I miss. Is there something that I missed because it just, everything didn't add up to me.

Bair: Okay.
Graham: So I, I drove down. I passed the light and then my daughter was kinda upset, so . . . She was like, Is the man okay? Can we go back and see if he's okay? And so I made a U-turn and I went back around to the Shell Station.
Bair: Okay. Did you park at the Shell Station?
Graham: Yeah, we went up . . .
Bair: Okay.
Graham: . . . and by, we drove past and kinda . . . I think we were still trying to figure out, is he really shot. And, you know, then when I drove past 'em, I seen 'em handcuffing him, you know, around his back and I seen a bullet wound somewhere around his back, his lower part of his back.
Bair: Okay.
Graham: And then I just went up there and I parked and I, I think I was still like . . .
Bair: Okay, so the handcuffing takes place after you do a U-turn?
Graham: After I do a U-turn.
Bair: And you, you're driving by to park when you see some of the handcuffing?
Graham: Um-hum.
Bair: And then you park and then you get out of your vehicle?
Graham: I seen the handcuffing and then when we were passing, I seen the handcuffing and then once I reached the top of the Shell, where the hill kinda overlooks, then that's when I seen . . . That's why I say I don't know if it was the officer that handcuffed him or another officer that was standing on his back . . .
Bair: Okay.
Graham: . . . . and on his neck or the side of his face.
Bair: Okay.
Graham: That's why I don't know. I kinda missed that part when I turned in.
Bair: Are, are your windows down? Can you hear anything going on when this handcuffing's taking place?
Graham: Um-um.
Bair: No dialogue at all.
Graham: I couldn't hear because um my daughter's side of the, the passenger side of the car, the window doesn't roll . . . .
Bair: Okay.
Graham: . . . roll down.
Bair: Do you have tinted windows?
Graham: No.
Bair: Okay.
Graham: They're, I think they're slightly tinted in the back part of the truck.
Bair: Anything else that you saw . . . . I think I asked you off the recorder, did you ever see anything in the subject's hands during this?
Graham: I didn't.
Bair: Okay. And after he went down, did you ever see anything around his body?
Graham: I didn't.
Bair: Okay. Did your daughter ever indicate anything to you of the like?
Graham; She didn't, she didn't say it . . . No, she didn't say anything. She, what she said to me was, Mom, why, why did the officer shoot him?
Bair: Okay.
Graham: And, was kinda, kinda teared up over it.
Bair: Okay.
Graham: She said, that's the only thing. So I'm assuming, I'm just assuming that she didn't see anything . . . .
Bair: Okay.
Graham: . . . .either, because she knows the difference between, you know, right and wrong, and if she had seen it, I'm not saying it wasn't there.
Bair: No.
Graham: If she had seen it, she would have thought in her mind that it was something that she had to do.
Bair: Right, and I'm, I'm just asking you if you ever saw anything in his, in his hands or saw anything around him?

Graham: Um-um.

Bair: Any objects that would, may have been on him that, that you saw during the course of either this going, what you did see from the time you U-turn and you slowly went . . . . Sounds like when you did the U-turn and you went by, you may have had a better angle coming back by the other way, cause you're now in the other lane of traffic.

Graham: I actually, I don't think it helped. I think I seen just as much as I could see . . .

Bair: Okay.

Graham: . . . .from where I was.

Bair: Okay. Cause you're moving.

Graham: Only because the window was all the way down and I was kinda out of the window.

Bair: Certainly.

Graham: Kinda following 'em.

Bair: Okay.

Graham: So . . .

Bair: Anything else that I haven't asked that you want to bring up that you think is pertinent to this investigation?

Graham: Um-um.

Bair: Okay. And right here at the bottom I'm making an "X" and putting a line. Could you sign this this is your diagram and put today's date? Today's the 29th of June. And a couple of last things. Do you take prescription eyewear, do you wear contacts?

Graham: No.

Bair: Do you have impaired vision at all?

Graham: No.

Bair: Twenty-twenty vision?

Graham: Twenty-twenty. Yeah.

Bair: Okay. And were you on any prescription medicines, any hay fever or anything like that during the time this took place?

Graham: No.

Bair: Okay. The time right now is 1830 hours and this concludes this interview.

End of Recording:

/sm

| Reviewed By: | | Reviewed Date: | |
|---|---|---|---|

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

August 02 2017 3:02 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMEMENT ON PAST MEDICAL SPECIALS** |

## I. RELIED REQUESTED

Plaintiffs move the Court for an order establishing that the medical expenses incurred as a result of the shooting are reasonable, necessary, and related to the treatment required to treat the injuries sustained by Cesar Beltran on June 29, 2013. This motion will streamline the trial in this case and will eliminate the need to call witnesses in order to establish the reasonableness of past medical bills charged by local providers in this community. This motion is brought pursuant to CR 56(c).



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## II. STATEMENT OF FACTS

On June 29, 2013, Cesar Beltran was shot four times by TPD Officer Michel Volk. Plaintiffs have retained expert physiatrist Dr. Jennifer James to evaluate Mr. Beltran, review his records, and provide testimony at trial regarding the injuries that he sustained from the gunshot wounds. Dr. James has provided a comprehensive report containing a list of the injuries and medical conditions Mr. Beltran sustained when he was shot by Officer Volk on June 29, 2013 ("the incident"), including:

- Assault with multiple gunshot wounds on June 29, 2013, resulting in ballistic injuries to the chest, abdomen, pelvis, spine, and bilateral upper extremities.
- Splenic laceration, status post splenectomy. He is at greater risk for certain infections, and must have annual immunizations.
- Ballistic laceration to the stomach, status post partial gastrectomy.
- Ballistic laceration to transverse and descending colon, status post partial resection of the colon on June 29, 2013.
- Creation of a colostomy on July 4, 2013, with reversal on February 13, 2014.
- Renal ballistic laceration requiring surgical laproscopic repair June 29, 2013.
- Endoscopic retrograde cholangiopancreatography placement of a stent for common bile duct laceration July 2013.
- Placement and removal of drains for treatment of perihepatic abscesses.
- Clostridium difficile infection twice during acute hospital stay, requiring dual antibiotics, now resolved.
- Multiple abdominal hernias have been confirmed as of August 11, 2015. He is



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now scheduled for surgery. He will always be at risk to develop abdominal hernias due to the perforation of fascia and other abdominal stressors from the ballistic injuries.

- Transient protein-calorie malnutrition during the 54-day hospital stay of June 29 through August 22, 2013, now resolved.
- Right peroneal vein thrombosis complication during acute hospital stay, resolved.
- Status post left lung partial thoracotomy due to ballistic laceration.
- Increased risk for obstructive sleep apnea due to subsequent multiple abdominal hernias, weight gain, and thoracotomy.
- Bilateral upper extremity forearm through-and-through gunshot wounds, requiring surgical repair. X-rays showed no bony injuries; however, this has resulted in significant residual scar formation which may be encroaching on peripheral nerves.
- Bilateral upper extremity decreased sensation is concerning for median versus ulnar nerve entrapment from the scar tissue. This results in numbness every time he bends his elbows.
- Residual ballistic fragments left in right gluteal muscle.
- Traumatic L1 spinal fractyure seen on CT scan on July 3, 2013.
- Bilateral S3-4 level sacral fractures with likely nerve disruption, seen on CT scan on July 3, 2013.
- Complaints of severe bilateral sacral pain with decreased range of motion and



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decreased ability to perform prolonged standing more than 5 minutes.

- Complaints of bilateral lower extremity sensory radiculopathy with risk of sacral nerve plexus injury bilaterally.

See Report of Jennifer James, M.D. at 30-31 attached as Exhibit A to LeBank Decl. Dr. James opined that "[i]n my opinion, all of the treatment he has received since the incident has been reasonable, necessary, and causally related to incident." Id. at 33.

Anthony Choppa is an expert case manager and life care planner. He is familiar with the reasonable and customary rates charged by medical providers and facilities in this region for the types of services provided to Mr. Beltran. Mr. Choppa has reviewed the medical charges incurred by Mr. Beltran for the care that was provided as a result of the gunshot wounds and has opined that the costs associated with the care are reasonable and customary in the medical community. See Declaration of Anthony J. Choppa, M.Ed., CRC, CDMS, CCM, filed herewith.

Mr. Beltran has incurred the following charges related to the above medical care:

| Provider | Dates of Treatment | Amount |
|---|---|---|
| Tacoma General Hospital Hospital Charges | 6/29/13 to 8/22/13 | $616,444.45 |
| Tacoma General Hospital Professional Charges | 6/29/2013 – 8/22/2013 | $1015.00 |
| Providence Medical Center | 9/2/2013 to 9/3/3013 | $5,102.84 |
| Tacoma General Hospital/Multicare Hospital Charges | 10/1/2013 | $8,657.00 |
| Tacoma General Hospital/ Multicare Hospital Charges | 2/6/2014 to 2/21/2014 | $69,827.40 |
| Tacoma General Hospital/ Multicare | 10/26/2015 – 10/27/2015 | $11,637.30 |
| TOTAL: | | $712,719.99 |

See Choppa Decl.



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Defendant City of Tacoma has retained Aleksandra M. Zietak, M.D. as its expert physiatrist. Dr. Zietak reviewed Mr. Beltran's medical history and performed a CR 35 evaluation. Dr. Zietak then authored a report which includes a summary of Mr. Beltran's medical history. Dr. Zietak offered the following diagnoses as being related to the ballistic wounds sustained by Cesar Beltran:

1. Multiple gunshot wounds.
2. Splenic laceration with subsequent splenectomy.
3. Hepatic laceration.
4. Status post injury to the transverse and descending colon, status post partial colectomy, colostomy, and reversal of colostomy, with development of incisional ventral hernias.
5. Lung laceration status post thoracotomy, renal laceration.
6. Right peroneal vein thrombosis.
7. L1 anterior column fracture without structural sequelea.
8. CT Scan evidence of small metallic fragment in the sacral canal on the left at S3-S4 with multiple bone fragments.
9. Perihepatic abscesses, resolved.

See Report of Dr. Zietak at 6 attached as Ex. B to LeBank Decl.; Dep. of Zietak at 59:15 – 66:17, attached as Ex. C to LeBank Decl. Dr. Zietak testified that the treatment that Mr. Beltran received at Tacoma General Hospital related to the ballistic injuries was appropriate and was related to the ballistic injuries that he sustained.

Q: [B]ut you agree that the treatment was appropriate?



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A: Yes.

Q: And related to the injuries that he sustained?

A: Yes.

Q: How about for the splenic laceration with subsequent splenectomy?

A: Yes.

Q: That was related, and the treatment was also related?

A: Yes. And that was during that hospitalization.

Q: Okay. And then also the hepatic laceration?

A: Yes.

Q: Also related?

A: Yes.

Q: And the treatment was also related and appropriate?

A: Yes.

*Id*. at 59:10 to 59:24. In addition, Dr. Zietak testified that the treatment for the injury to Mr. Beltran's transverse and descending colon, and insertion of a partial colostomy bag, and subsequent reversal of the colostomy bag along with the development of incisional hernias was all related to the ballistic injuries and the treatment was necessary and appropriate.

Q: And then the -- No. 4, the injury to transverse and descending colon, the partial colectomy, colostomy, reversal of colostomy, and development of incisional ventral hernias, that was all related to the gunshot wounds?

A: Yes.

Q: The treatment was related and was appropriate?

A: Yes.



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Id. at 59:25 – 60:6. With regard to the costs associated with the treatment, Dr. Zietak testified that the physician charges were reasonable but could not comment on the hospital charges. Id. at 65:17 – 66:18. Dr. Zietak testified that "I can't comment on the hospital charges, but I – the physicians' charges appeared to be appropriate." Id. at 66:16-18. The City of Tacoma does not have another medical expert other than Dr. Zietak and has not provided any evidence that any of the treatment provided or charges incurred are not related to the injuries sustained by Cesar Beltran. Because this issue is not in dispute, Plaintiff requests a ruling establishing that he has sustained $711,783.99 in past medical specials related to the gunshot wounds.

## III. LEGAL AUTHORITY & ARGUMENT

Under Washington law, a plaintiff is entitled to recover "[t]he reasonable value of necessary medical care, treatment, and services received to the present time." WPI 30.07.01; RCW 4.56.250(1)(a) (defining economic damages in part as "objectively verifiable monetary losses, including medical expenses."). The note on use to the jury instruction provides as follows:

> If the plaintiff presents sufficient evidence establishing the reasonable value and necessity of plaintiff's past medical care, treatment, and services, and the defendant elicits no controverting evidence, then the uncontroverted reasonable value of that medical care, treatment and services, should be listed as an undisputed line item on the damages instruction to be given (WPI 30.01.01, 30.02.01, or 30.03.01).

Medical expenses must be both reasonable and necessary to be recovered as damages. See *Palmer v. Jensen*, 132 Wn.2d 193, 199, 937 P.2d 597 (1997). The burden of proving the reasonableness and necessity of medical expenses rests with the plaintiff. *Patterson v. Horton*, 84 Wn.App. 531, 543, 929 P.2d 1125 (1997). To prove the reasonableness and necessity of



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past medical expenses, the plaintiff may not rely solely on his or her own testimony as to amounts incurred. *Nelson v. Fairfield*, 40 Wn.2d 496, 501, 244 P.2d 244 (1952). Nor can the plaintiff rely solely on medical records and bills. *Patterson*, 84 Wn.App. at 543; *Carr v. Martin*, 35 Wn.2d 753, 762, 215 P.2d 411 (1950). "[M]edical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and the bills were both necessary and reasonable." *Patterson*, 84 Wn.App. at 543. Generally, expert testimony will be necessary to establish the reasonableness and necessity of medical expenses. *See Lakes v. Vondermenhden*, 117 Wn.App. 212, 219, 70 P.3d 154 (2003) (suggesting that in the absence of an admission by defendant that certain medical expenses were reasonable and necessary, expert testimony would be needed). Where medical testimony is uncontroverted the plaintiff has met his or her burden of establishing that the medical expenses are reasonable and necessary resulting from the accident. *Hills v. King*, 66 Wn.2d 738, 404 P.2d 997 (1965).

When the plaintiff presents sufficient evidence establishing the reasonableness and necessity of his or her medical treatment and expenses, and the defendant elicits no controverting evidence, the reasonableness and necessity of plaintiff's medical expenses are not a matter of legitimate dispute. *Palmer*, 132 Wn.2d at 199-200; *Ide v. Stoltenow*, 47 Wn.2d 847, 851, 289 P.2d 1007 (1955).

Here, Plaintiffs have met their burden of establishing both that the treatment provided to Mr. Beltran was related to the injuries that he sustained and that the amounts charged were reasonable and customary in the medical community. Dr. James has reviewed the entirety of Mr. Beltran's medical treatment and is of the opinion that the treatment was all related to the gunshot wounds. Further, Plaintiff has provided additional expert testimony through Anthony



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Choppa, M.Ed, CRC establishing that the charges by both the hospitals and physicians are reasonable, necessary, and customary in the medical community. The City of Tacoma's own expert agrees that the treatment was related. She testified that the physician charges were reasonable but could not testify regarding the hospital charges. The City of Tacoma does not have another expert who can rebut the reasonableness of the charges incurred from local medical providers. This testimony is not in controversy, and no reasonable factfinder would find plaintiffs have not met their burden. Because this issue is beyond dispute, the Court should grant partial summary judgment on this issue in Plaintiffs' favor.

## IV. CONCLUSION

Based on the foregoing, Plaintiff requests a ruling on partial summary judgment that he has incurred $712,719.99 in past medical expenses as a result of the injuries sustained in the shooting on June 29, 2013 and that this amount is not a subject of dispute at trial and should be included in the jury's verdict should they find for the plaintiff.

DATED this 2nd day of August, 2017.

CONNELLY LAW OFFICES, PLLC

By_____

John R. Connelly, Jr. WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
Attorneys for Plaintiffs



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August 02 2017 3:02 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**DECLARATION OF MICAH R. LEBANK IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS** |

MICAH R. LEBANK declares and states as follows:

1. I am an attorney for the Plaintiff in the above-captioned case. I make this declaration in Support of Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge information and belief.

2. Attached hereto as Exhibit A is a true and correct copies of the report of Jennifer



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James, M.D. regarding Plaintiff Cesar Beltran

3. Attached hereto as Exhibit B is a true and correct copy of the defense medical exam report of Aleksandra Zietak, M.D. regarding Plaintiff Cesar Beltran, dated November 8, 2016.

4. Attached hereto as Exhibit C is a true and correct copy of selected portions of the deposition of Dr. Aleksandra Zietak, taken July 19, 2017.

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed this 2nd day of August 2017 at Tacoma, WA.

CONNELLY LAW OFFICES, PLLC

Micah R. LeBank, WSBA No. 38047


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EXHIBIT A

EXHIBIT A

**INDEPENDENT MEDICAL EVALUATION**

**Name:** Cesar Beltran-Serrano
**Date of injury:** June 29, 2013
**Date of birth:** November 20, 1959

**Regarding:** Beltran v. City of Tacoma

**Entity requesting examination:** Micah R. LeBank
Connelly Law Offices, PLLC
2301 North Tacoma Street
Tacoma, WA 98403
Telephone: 253-593-5100
Fax: 253-593-0380

**Date of Examination:** June 29, 2016

**Location of Examination:** 801 Pine Street, Suite 100
Seattle, WA 98101

**Examiner:** Jennifer J. James, MD

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**INTRODUCTION:**

Cesar and his daughter, Bianca, were scheduled to begin the interview for the independent medical examination at 10:00 this morning. However, Bianca is not used to the difficult driving in downtown Seattle. The interview began at 10:45 a.m. and concluded at 12:15 p.m. We were also joined by Jamie Gamez, the life care planner. Bianca is an excellent interpreter, and is very fluent in English and Spanish. Jamie is also fluent in both languages, but she did not do any of the interpreting. We sat at a table in the conference room during the interview. The physical examination began at 12:15 and concluded at 1:00 p.m. After the conclusion of the physical examination, I asked Bianca and Cesar if they had any questions. They were informed that if they thought of any other information to contribute, they should inform their attorney, who then could pass that information along to me. From 1:15 to 3:15 was spent in conference between the physician and life care planner for development of the life care plan.

**CHIEF COMPLAINTS:**

1) Paranoid Schizophrenia and depression were present for many years prior to the gunshot wound incident of June 29, 2013. During the hospitalization, Cesar was put on Risperdal and Wellbutrin. Bianca says that he has been stable longer than she has ever seen him regarding his Schizophrenia. She thinks that this combination of medications is working very well.

2) Increased depression. Cesar endorses feeling increased depression because of his lack of ability to go outside. He has severe anxiety and fear of going outside the house (agoraphobia). He is afraid that he is going to be shot again. He is also fearful that he is going to be arrested. He is also fearful of crowds. Bianca says that she has to be right next to him whenever they go anywhere such as a grocery store. He cannot tolerate being out in the community for any length of time due to his anxiety and agoraphobia. This is definitely new since the incident. Before the incident, he was able to take the bus on his own and go to appointments on his own. He used to like to go to church and go for walks. He does not do that anymore.

3) Gastrointestinal conditions. He has developed multiple abdominal hernias. These have been confirmed on a CT scan. These are extremely large on clinical examination today. The hernias are painful when he coughs and when he defecates. He has already seen a general surgeon and surgery is planned. He was told by Dr. Strong (the surgeon that did all of his surgical interventions after the incident) that he would be at risk for hernias.

4) Pulmonary. Mr. Beltran unfortunately continues to smoke a pack a day of cigarettes. However, he did not have any respiratory problems prior to the incident. He complains now that he is "gasping for air" when he lies down. The hernia seems to be pressing up against his lungs. He is status post left partial thoracotomy from the incident. Bianca has noticed that he snores loudly and has long pauses where he does not breathe when he sleeps. She is convinced that he has obstructive sleep apnea. He has also gained a considerable amount of weight. He used to weigh around 170 pounds at 5 feet 8 inches. He now weighs 220 pounds. She says that their primary care physician, Dr. Mustafa, has recommended that he have an overnight polysomnography study to rule out obstructive sleep apnea.

5) Parkinsonian-like syndrome, as a side effect of taking Risperdal for the schizophrenia. We discussed the fact that he was diagnosed with this by a neurologist back in 2010. The Parkinsonian-type syndrome consists of dizziness, tremors (especially in his hands) when he is performing tasks, trouble swallowing, trouble initiating tasks, decreased balance, and rigid movements.

He was tried on a medication in 2010 but it was not helpful. Bianca has noticed that the tremors are much better on the Cogentin. He continues to take this medication. We have discussed the fact that it is difficult to tell if the lack of ability to perform activities of daily living and mobility are from the Parkinsonism, left knee pain versus left back pain. He complains of all three and all three contribute to decreased independence in activities of daily living and mobility. The Parkinsonian-type syndrome is caused by taking Risperdal for his Schizophrenia. Risperdal is the best medication for his Schizophrenia and he cannot stop taking it. Unfortunately, the Risperdal causes an extrapyramidal syndrome. This syndrome looks like Parkinson syndrome. This includes a shuffling gait, decreased balance, a blank facial stare, dizziness, and tremors as well as difficulty initiating tasks. He was continued on Risperdal while hospitalized for the incident. Cogentin was added to treat the symptoms of Parkinsonism caused by the Risperdal. The Cogentin is doing an excellent job, according to Bianca.

6) Gastrointestinal complications.

- He has developed multiple large abdominal hernias and is scheduled for surgery. This is definitely a complication of the multiple surgeries and the large 37-centimeter midline incision with breach of the fascia.

- He is status post splenectomy. This makes him slightly immunocompromised. He had received all of his immunizations when he was in the hospital for the incident. Bianca is not sure if he has received all of his immunizations every year since that time. She did not know that a splenectomy caused immune compromise and decreased resistance to certain diseases.

- His liver function tests have remained stable since discharge from the Tacoma General Hospital. However, she and I discussed the advisability of him seeing a gastroenterologist on a regular basis to check for the various ballistic trauma that was caused to the liver, the common bile duct, and the colon. He required an endoscopic retrograde cholangiopancreatography with placement of a stent in the common bile duct which has since been removed.

- Cesar complains of chronic constipation. He had a colostomy placed during hospitalization for the incident. Thankfully this was later reversed. Nonetheless, he is left with a residual colectomy (short bowel). It is advisable to see a gastroenterologist to determine if he is a candidate for medication for chronic constipation such as Linzess.

7) Upper extremity numbness. Cesar was shot with through-and-through wounds in bilateral upper forearms. He has significant residual scar tissue. He complains of occasional numbness in both of his upper extremities distal to the scar tissue. He is unable to distinguish whether it is in a median, ulnar, or radial pattern. On physical examination today, it appears to be more in an ulnar nerve pattern on the right and a median and ulnar nerve pattern on the left, which would be consistent with the placement of the scars, and the possibility of scar tissue encroachment on peripheral nerve roots. Cesar says that he gets increased numbness in his hands when he bends his elbows. This is the worst at night when he likes to sleep with his elbows bent.

8) He has had no difficulties with the right lower leg swelling since he was discharged from the hospital. He had developed a deep venous thrombosis complication during the hospital stay. However, he has no signs of phlebitis.

9) Axial pain.

- Bianca and Cesar are well aware that he has a residual bullet fragment in his right gluteal muscle. I informed them that he had a traumatic L1 spinal fracture. He also had bilateral S3-4 sacral fractures seen on the CT scan on July 3, 2013. The reading radiologist was of the opinion that there was "likely nerve disruption." According to Bianca, he has not had any follow-up lumbosacral CT scans or even lumbar x-rays since the hospitalization.

- Cesar complains of constant bilateral sacral pain that he calls low back pain; however, when he stands up and points, this is definitely in the bilateral lower sacral area. This is increased when he is walking or with prolonged sitting. He says the intensity is 0 to 10 on a 0-to-10 scale and usually hovers around level 8. The only time he experiences relief is when he is lying supine.

- Bianca says Cesar has complained of bilateral lower extremity radiating pain and loss of sensation from his low back and sacral region into the bottom of both feet. She says it is more common on the right than on the left. He denies that he has these symptoms today. Bianca explains that these radicular symptoms come and go and are more prevalent when he has more severe low back and sacral pain.

10) Significant insomnia. Cesar has trouble falling asleep as well as staying asleep. When he lies down, he feels like he is gasping for air. At this point, I told her that it was my thoughts that his large abdominal hernias are pressing up against his diaphragm and lungs when he lies in a supine position. He might be better

served to sleep on a couple of pillows until he has his hernia repair. Once he lies down, he snores very loudly and has pauses in his breathing. This is consistent with obstructive sleep apnea. We agreed that he needs to be evaluated for this; however, it would be best to wait until he has had the abdominal surgery for hernia repair. The obstructive sleep apnea may get much better once he has had all the large hernias removed. He also has insomnia because of pain in his low back and pain in his left knee. Both hands also tend to go numb when he is sleeping and this wakes him up as well.

11) Bianca is very concerned about his obesity. He is 5 feet 8 inches and now weighs 220 pounds. She thinks his usual weight is around 170 pounds. She thinks that he tends to overeat because he is depressed and anxious. She tries to limit his portions as best she can. She also tried to get him to go swimming for exercise; however, he said that it was too painful for his shoulders. Unfortunately, it is difficult for him to get out because of the agoraphobia. It hurts for him to walk because of his sacral pain and his left knee pain.

12) Left knee pain. Mr. Beltran has documented preexisting left knee osteoarthritis. This has gotten worse over the years. In my opinion, this was not exacerbated by the incident. According to scientific literature, advancing knee arthritis is most likely increased due to excessive weight.

13) Decreased independence in activities of daily living. Prior to the incident, Cesar was living in an adult family home and was independent in all his activities of daily living. He was able to dress and bathe himself, shop for groceries, and make his own simple meals. At this point, he has the following capabilities:

**Basic Activities of Daily Living:**

- Showering/Bathing: Cesar is able to stand in the shower independently and bathe himself. Bianca does not feel comfortable assisting him in this because of family modesty. She thinks he probably needs more help, but Cesar and Bianca are reticent to do this because of the difference in their sexes. She knows that her father often has to sit on a shower chair. Today Cesar says that he often has to sit on the shower chair because of knee and back pain. She does not think that he would be able to operate a handheld shower hose because of his upper extremity tremors.

- Dressing. Cesar used to be able to dress himself completely independently prior to the incident. Now he can no longer stand to dress himself and must sit down. Cesar says this is because he has back pain, left knee pain, and also does not have the balance anymore. (Loss of balance would be from the Parkinsonism, which is unrelated to the

incident.) Once Cesar has on his underwear, if he needs help, Bianca will assist him. She says his greatest challenge is buttoning his shirt because of his tremors. However, he also has difficulty buttoning his shirts because this requires bending his arms at his elbows. Whenever he bends his arms at his elbows, then his hands become numb. This has occurred since he had the ballistic injuries with residual scar tissue at the bilateral upper forearms.

- Simple cooking. Cesar used to be independent in this. Since his discharge from the hospital after the incident, he is completely dependent. He is unable to even make himself a sandwich. This is a combination of tremors in his upper extremities and numbness in both hands when he has to flex at both elbows. Cesar is not safe at the stove or the microwave because he tends to burn things, according to Bianca.

- Household safety. Bianca does not think Cesar is safe to be left alone in the house for even an hour or two. She does not think he would be capable of dialing 911. She says he is not good with technology or fine motor coordination. She makes sure that one of her two children, ages 14 and 12, or her mother is present in the home in case she has to leave the house for an hour or two.

- Eating. Cesar is able to feed himself after set-up; however, he has difficulty due to upper extremity tremors, as well as the numbness that sets in when he starts flexing his elbows.

- Grooming. He is able to brush his own teeth and comb his own hair. However, this is also a challenge because of numbness that has occurred since the incident, as well as the preexisting tremors.

**Higher-Lever Activities of Daily Living:**

- Shopping. Cesar was previously able to independently shop for groceries and other sundry items such as clothing and self-care necessities. He is not able to shop at all now. Bianca says a good part of this is his agoraphobia. He has fear and anxiety about being outside of the house. He is very agoraphobic. He is concerned that he is going to be shot again or arrested. She thinks he only has about 5 minutes of comfortable mobility using a cane on even terrain such as the grocery store. This is due to a combination of the Parkinsonism, left knee, but mostly back pain. Thus, he is not able to perform any shopping whatsoever.

- Financial management. Cesar no longer has the concentration to manage his own finances or bills. He is unable to write checks because of the new numbness in his right hand as well as the preexisting tremors. He complains of increased depression and inability to concentrate on such matters.

- Driving. He did not drive a car prior to the injury, but he was able to access the community via the bus. He is no longer able to do that. Please see mobility.

14) Mobility.

- Cesar was previously able to access the community independently without the use of any assistive devices or adaptive equipment. He was able to use the bus for transportation independently.

- At this time, he is able to walk around the house approximately 5 minutes on even terrain, before he experiences fatigue from the Parkinsonism, left knee pain, and severe low back (sacral) pain. He usually uses a cane held in either his right or left hand for balance.

- Cesar says he is unable to walk up or down an incline. It throws him off balance and causes increased knee or back pain.

- He says he is able to go up and down steps. There is a flight of stairs accessing their apartment outside. He is able to go up and down the stairs very slowly. He says this is hard on his balance, his left knee, and on his back.

15) Community access. He used to access the community without any difficulty as explained previously. Now Bianca says that he insists that she be right next to him. He is fearful that he is going to be shot again or arrested. He has severe anxiety when he is outside the house, and especially in crowds.

16) Bianca describes herself as a 33-year-old single mother of a 14-year-old girl and a 12-year-old son. She was working full time up until Cesar was discharged from the hospital. At that time, she had to stop working in order to be his full-time caregiver. She now is paid $94 per month by DSHS to care for her father. She says that she loves her father very much, but she is getting very burned out. There are four other children that are involved in his life, but none of them share his care.

**HISTORY OF THE CURRENT INJURY:**

Cesar Beltran-Serrano is currently a 56-year-old right-hand dominant Hispanic man who speaks and understands only Spanish. He is 5 feet 8 inches tall and currently weighs 220 pounds. He has a preexisting history of Paranoid Schizophrenia and depression. His schizophrenia was treated with Risperdal. This caused him to develop extrapyramidal complications resulting in Parkinsonism (Parkinson-like syndrome). This syndrome includes a blank facial expression, trouble swallowing, difficulty with balance, tremors that increase when he is performing tasks (especially of both arms), and difficulty with initiating a task. He has a past medical history of a right humerus fracture status post-surgical intervention in 2007. He was diagnosed with gastroesophageal reflux disease in 2008. In 2010, he was referred to a neurologist for the Parkinsonian-type syndrome, otherwise known as tardive dyskinesia from taking neuroleptic medication (Risperdal). The neurologist noted that he had to have the Risperdal to treat his Schizophrenia. Medications were recommended to control the Parkinsonian-type tardive dyskinesia symptoms; however, he did not respond to Keppra. He developed left knee osteoarthritis with multiple knee effusions requiring aspiration in early 2013. X-rays showed osteoarthritis.

He lived in an adult family home and was independent in all his activities of daily living and his mobility. He was able to take the bus and go to church as well as access the community.

On June 29, 2013, he sustained multiple gunshot wounds with severe ballistic injuries to the bilateral upper extremities, chest, abdomen, pelvis, spine, and sacrum. He was taken immediately into surgery. Surgeries included a splenectomy, repair of laceration to his colon with a partial colectomy and creation of a colostomy. He had partial thoracotomy of his left lung, and repair of a renal laceration. The surgeon repaired through-and-through bullet wounds in bilateral lateral forearms. Imaging studies showed a traumatic L1 spinal fracture and bilateral S3-4 sacral fractures "with likely nerve disruption." There were remaining ballistic fragments in the right gluteal muscle.

In July, he required an endoscopic retrograde cholangiopancreatography for placement of a stent in the common bile duct for a perforation. In August he developed hepatic abscesses which required percutaneous drains placed by interventional radiology.

During his 54-day admission, a psychiatric nurse practitioner was consulted. She recommended restarting Risperdal for further treatment of his schizophrenia. Wellbutrin was added for treatment of depression. Cogentin was later added for treatment of the extrapyramidal tardive dyskinesia (tremors).

He was discharged after 54 days of hospitalization to live with his daughter and her family. Upon discharge, he was requiring maximum-to-moderate assistance with all

activities of daily living. He was able to mobilize with a cane for less than 10 minutes. The only instructions for follow-up were for her to return to the gastroenterology clinic for removal of the endoscopic retrograde cholangiopancreatography stent which was done in September. The colostomy was reversed on February 13, 2014.

Mr. Beltran has been seen regularly at SeaMar Community Health since discharge.

**CHART REVIEW:**

I have been provided with approximately 54 inches of medical records. I am not a psychiatrist and a good deal of the records are associated with psychiatric care. In order to prepare a salient summary, I have focused on medical records, although psychiatric diagnoses/treatment/complications are a large part of this review.

On January 18, 2008, there is an inpatient psychiatric assessment for admission at Western State Hospital in Tacoma. Mr. Cesar Beltran is a 48-year-old, divorced, homeless, unemployed, Mexican-American man, who is referred from Pierce County. He is supposed to reside at Park Place. He left Park Place on January 6, 2008, without permission and did not return. He left his medications and refused to take them. He had no money or place to stay and decompensated. He reports that he was diagnosed with schizophrenia when he was 33 years old. He reports a history of drinking alcohol and using cocaine and marijuana; however, he denies a history of delirium or withdrawal symptoms of not drinking alcohol. He says he has not had cocaine in a long time and he has not been able to find it. He denies suicide or violence towards others. He reports he has pain in his back and his legs. He says his feet are swollen. He had right shoulder surgery a month ago. On physical examination, he is a 48-year-old, Hispanic male, who appears his stated age. He has fair hygiene and grooming. He was cooperative with the interview and responded to questions by an interpreter over the phone. He speaks only Spanish. He denied any hallucinations. He was alert and oriented. His fund of knowledge for current events is extremely limited and he appeared to have below-normal intellectual functioning. He had fair judgement, but no insight into his condition. He was diagnosed with psychosis, rule out drug induced; rule out schizophrenia. It was not clear if his psychosis was primary or substance related. He is status post shoulder surgery. He complains of pain and swelling of his lower limbs. The plan is to place him in a therapeutic milieu where he can receive group and pharmacotherapy. An internal medicine consultation will be obtained in order to diagnose the cause of swelling in his legs.

On January 22, 2008, x-rays show a humeral neck fracture with anatomic alignment.

On January 22, 2008, x-rays of the lumbar spine show mild degenerative changes at L3-L4. There is slight wedging of L4 suspected to be a chronic injury.

On January 29, 2008, a chest x-ray shows no evidence of prior or current tuberculosis.

On May 5, 2008, he was discharged from Western State Hospital. He was given a 14-day supply of medications. He was found to be PPD (tuberculosis) positive and was treated with isoniazid. He was taking risperidone 1 mg twice a day for his psychosis. He was getting thiamine for nutritional supplement. He was discharged to a boarding home in Tacoma and will receive his mental health care at Comprehensive Mental Health. During the hospitalization, he received oxycodone, Naprosyn, and Vicodin for his shoulder pain. During his admission, he was cooperative, and his mood was stable. At discharge, his intellectual and cognitive functioning was determined to be average and intact as was evident from his ability to use authorized leave time into the community. His final diagnosis was paranoid schizophrenia.

On May 29, 2008, he was seen by Janitzia Schurch, MD. He is presenting to follow up on his right shoulder. He says he is living at a group home where his medications are managed. He is here to establish care. He has no other complaints. His musculoskeletal examination shows him to be grossly normal. The spine examination shows no tenderness with full range of motion. He has normal strength and tone. He has full range of motion of the right shoulder. He is alert and oriented. He was diagnosed with schizophrenia, not otherwise specified, and stable right shoulder. He was told to follow up. (*Reviewer's Note: His medications are not listed.*)

On September 21, 2009, he followed up with Dr. Schurch at Sea Mar Community Health Center. He reports that his right arm has 5/10 pain for the past two years. He says his right arm started shaking a year ago. He has no other concerns. He says he lives in a group home and receives several medications from mental health. On examination, his right arm has involuntary shaking. He was diagnosed with abnormal involuntary movements and it is recommended that he have a consult to neurology. She also thinks he should have an EMG.

On October 23, 2009, he returned to see Dr. Schurch. He was not able to be compliant with the EMG. She thinks he should have a CT scan of the head to see if he has any cerebral atrophy.

On November 30, 2009, CT scan of the head is essentially normal. The reading radiologist recommends an MRI since this is more sensitive to evaluate subtle abnormalities of the brain parenchyma than a CT scan.

On March 22, 2010, he returned to Sea Mar Clinic, and a neurology consult was recommended again.

On June 4, 2010, he was seen by Traci Ryan, MD, neurologist. The patient has bilateral upper extremity tremors on physical examination. There are notes in the chart to suggest that he has a history of alcohol-withdrawal delirium, but there is no confirmation of that. He is getting intramuscular Risperdal because compliance has

been an issue. He was seen with the assistance of a Spanish interpreter. Dr. Ryan states that he certainly has Parkinsonism. It is not clear if this is related to the use of long-term neuroleptic medication, and is, therefore, tardive dyskinesia or if he truly is developing Parkinson's disease. He has diminished blink rate. He has increased tone throughout his body. He has cogwheel rigidity. He has a high-amplitude, low-frequency tremor on the right more prominently than on the left, but it is bilateral in the upper extremities. He does not have a head tremor, a vocal tremor, or a leg tremor. He has normal reflexes and no ataxia; however, his gait is forward stooped. He has diminished arm swing and developed a right-sided tremor with normal gait. He has en bloc turns and walks with a forward stoop. He has not responded to Cogentin. He is at high risk if his neuroleptic medication would be discontinued or reduced; therefore, she plans to treat the tremor. It will only become apparent across time whether or not this represents a medication-related Parkinsonism or, indeed, Parkinson's disease itself. Risperdal is well reported to cause Parkinsonian side effects. She plans to start him on Keppra 500 mg twice a day, which has been useful for tardive tremor and for dystonic tremor.

On August 13, 2010, Dr. Ryan sent a letter to Dr. Schurch. She saw Mr. Beltran back for follow-up. Mr. Beltran says his tremor is really not any better with the Keppra, but he is not having any side effects from it. His caregiver accompanies him and corroborates this. He is still functionally impaired from the tremor. Dr. Ryan now thinks that the tremor is caused from the side effects of the Risperdal neuroleptic medication; however, he is not able to discontinue his Risperdal. On examination, he has definite signs of Parkinsonism with bradykinesia. She plans to increase the Keppra to 1,000 mg twice a day and ask him to return in two months or sooner.

On March 31, 2013, he presented to Tacoma General Hospital Emergency Department complaining of left knee pain that got worse today. Two to three days ago, he was putting on his boot when he "stomped on the concrete very hard." He has been unable to walk because of the pain. He does not use alcohol. He smokes a pack a day of cigarettes. His vital signs are normal. He lives in a group home. His medications include Cogentin, Prozac, Ativan, Inderal, Risperdal, and Vistaril. On physical examination, the left knee was slightly swollen and had pain with range of motion. A left knee x-ray shows a moderate joint effusion. He was given a knee immobilizer and crutches. He was diagnosed with internal derangement of the left knee with pain. He was told to follow up with his regular doctor. There was medial joint space narrowing consistent with osteoarthritis on the x-ray.

On April 3, 2013, an electroencephalogram was normal, showing no seizure activity.

On April 7, 2013, he was taken into Tacoma General Hospital Emergency Room. The staff at the group home had witnessed a tonic-clonic seizure. Laboratory studies were essentially normal. Urine toxicity screen showed no ingestion of any substances, to include alcohol. After he was admitted, it was noticed that he was very dehydrated and

hypotensive with a low pulse. It was thought that perhaps he has taken too much propranolol. His Depakote level was therapeutic. He was given fluids.

On April 8, 2013, MRI of the brain with and without contrast shows minimal chronic microvascular ischemic changes throughout both hemispheres. There are mild-to-moderate inflammatory changes in the paranasal sinuses. He was discharged on April 9, 2013, with a diagnosis of new-onset seizure of no clear etiology.

On April 15, 2013, he was admitted to Tacoma General Hospital Emergency Room. He reportedly left Park Place three days ago and was found urinating in a homeowner's yard today. He says that he used cocaine and drank one beer. The patient says he fell and now has increased left knee pain; however, the urine toxicity screen shows no evidence of any alcohol or cocaine or any other substance. His liver function tests are normal. His valproic acid level is subtherapeutic at 39 micrograms per milliliter. (Normal is 50 through 100.) Left knee x-ray shows a joint effusion and medial joint space narrowing. An arthrocentesis was performed at the left knee. A social worker was consulted to refer him to get him back to Park Place. He is welcomed back according to the residence. According to the social worker, the patient was at Park Place earlier today and is taking all of his prescribed medication. The synovial fluid showed white blood cells, so he was given Augmentin to prevent any infection. He was discharged on crutches with a diagnosis of acute-on-chronic left knee effusion. He was also diagnosed with an acute exacerbation of schizophrenia. He was told to wear a left knee immobilizer and use crutches as needed for ambulation. He was given Vicodin for pain. He was told to follow up with an orthopedic surgeon and he may need an outpatient MRI for his left knee.

On April 21, 2013, he was seen again in the Tacoma General Hospital Emergency Room for severe left knee pain. The x-ray showed increased effusion. He was given another arthrocentesis. The x-ray showed degenerative joint disease mostly in the medial compartment. He was given pain medication and crutches and told to wear his knee immobilizer. He was discharged on Vicodin, Augmentin, and Naprosyn. A venous duplex Doppler has been done with each emergency room admission with no evidence of deep venous thrombosis.

On May 26, 2013, there is a mental health contact report from his daughter, Bianca, asking the police department to pick him up because he is depressed and angry with his family. Drug use is suspected. He was taken in four-point restraints to St. Francis Emergency Department. Urinalysis was performed showing no cocaine (which was suspected); however, he did have cannabis. The social worker states the patient is noncompliant with his schizophrenic medications and was trying to burn clothing today. He is to be transferred to Greater Lakes with a diagnosis of homicidal ideation and schizophrenia.

On June 29, 2013, he was admitted to Tacoma General Hospital via the emergency room. Admitting physician is Michelle Strong, MD. This is a 45-year-old man with multiple gunshot wounds to his chest and abdomen. He was awake and talking at the scene, but is now unresponsive. He is clearly in shock upon arrival five minutes away from the scene of trauma. There is a drawing of multiple gunshot wounds showing two left anterior axillary points of entry, one right anterior axillary point of entry. There are bilateral anterior hip points of entry. There are through-and-through gunshot wounds to bilateral forearms. There is another gunshot wound in the right flank. It is not clear if this is an entry or an exit wound since all other drawings show anterior entry. The urinalysis is negative for any substances. A chest x-ray showed a left-sided pneumothorax and ballistic fragments overlying the pelvis in mid upper abdomen. Emergent endotracheal intubation was performed and he was taken immediately to the operative suite.

On June 29, 2013, Dr. Strong performed the first of many procedures. These include an emergency department left partial thoracotomy with placement of a clamp on the injured lung. She performed a closure of the left chest and placement of left chest tube via an exploratory laparoscopy. She performed a partial gastrectomy and repair and packing of the liver. Due to a severe splenic laceration, a splenectomy was performed. Repair and debridement of the left upper extremity wound was performed. Washout and packing of the right upper extremity wound was performed. A liver laceration, large hole in the stomach, splenic hilar bleeding, transverse and descending colon injury, right renal laceration, and two injuries to the left lower of the lungs were found. He lost 3 liters of blood. A wound vac (vacuum-assisted closure) was placed in the open abdomen.

On June 29, 2013, a transection of the colon was performed after finding two injuries to the left colon at the splenic flexure. The patient required 17 units of blood; however, he made little over 1 liter of urine during the surgery and was brought to the intensive care unit in critical condition after the surgery on June 29, 2013.

June 29, 2013, x-ray of the pelvis shows multiple ballistic fragments overlying the pelvis at midline and the right flank. There are no fractures. Both hip joints are congruent without evidence of fracture or dislocation.

June 29, 2013, x-rays of the right and left forearm show punctate metallic foreign bodies at the level of the proximal right forearm and skin staples at the level of the proximal left forearm.

On June 30, 2013, he was seen by the nutritionist. His albumin is 2.6. His weight on admission is 165 pounds. His most recent weight was 211 pounds. (*Reviewer's Note: Day not given.*) His ideal body weight is 75 kilograms (165 pounds). His estimated height is 5 feet 10 inches. He is in great risk for protein-calorie malnutrition due to open

wounds, respiratory distress requiring mechanical ventilation, and multiple gunshot wounds with multiorgan compromise. A Dobbhoff tube was recommended when possible to initiate oral feeding.

On July 1, 2013, Dr. Strong performed another exploratory laparoscopy. This time, she performed further bullet fragment removal, packed the liver again for bleeding, and placed a colostomy as well as a Dobbhoff tube and two Jackson-Pratt drains. In the operative report, she notes that quite a bit of the liver looked somewhat ischemic. She was able to palpate a bullet in the right lobe of the liver, which was removed and put on the operative table. She was able to control the bleeding in his right upper quadrant and then perform a colostomy. She attempted to close the abdomen.

On July 1, 2013, the nutritionist makes recommendation of high-protein enteric feeding.

On July 2, 2013, he required fluid boluses for decreased blood pressure as well as platelet transfusions for thrombocytopenia. He remains intubated. He has had massive transfusions. The physician plans to transfuse more platelets and more packed red blood cells. He remains sedated on medication and is on Zosyn antibiotics.

On July 3, 2013, he received vacuum-assisted closure wound dressing for two separate openings of the 24.0-centimeter midline abdominal incision. There is one dehiscence that is 16.0 centimeters long and 2.5 centimeters wide. The second distal wound dehiscence is 5.0 centimeters long and 2.2 centimeters wide and 2.8 centimeters deep.

On July 4, 2013, he was seen by Teresa Bell, MD, critical care attending physician. This is a 40-year-old, Hispanic male status post multiple gunshot wounds. He sustained a large liver injury status post resection, gastric perforation status post resection tolerating tube feedings, splenic laceration status post splenectomy, pulmonary laceration status post lung resection, renal laceration, transverse and descending colon injury status post left hemicolectomy and colostomy, profound hypovolemic shock currently resuscitated, bilateral upper extremity gunshot wound status post incision and drainage with no fractures on plain films. An L1 fracture was diagnosed on a CT scan last night as well as sacral 3 and 4 bilateral fractures with likely nerve disruption. His hospitalization has been complicated by respiratory failure. Attempts to wean off the ventilator have been tried. He has suffered a “shock liver.” He has had thrombocytopenia requiring transfusions of platelets. He has impaired mobility, nutritional deficit, blood-loss anemia, electrolyte changes, and renal failure, as well as fever and encephalopathy. Her plan is to ask for a spine evaluation with Alex Mohit, MD, neurosurgeon, in light of the recent fracture diagnosis. Regarding psychiatric history, he needs to be monitored for his need of antipsychotics once his encephalopathy resolves. His necrotic liver can be the source of his fevers and increasing white blood cell count for several weeks. He may need a change in antibiotics. It is recommended that he be mobilized as soon as he can be extubated. She recommends starting Lovenox. He still has open wounds in his

abdomen requiring vacuum-assisted closure. He is more responsive when spoken to in Spanish.

On July 4, 2013, he was seen by Alex Mohit, MD, neurosurgeon. A CT scan of the chest, abdomen, and pelvis was reformatted. This shows small metallic fragments in the sacral canal on the left at S3-S4 with multiple bone fragments. At L1, there is an anterior column fracture without any structural sequelae and no neural canal compromise. He says that the sacral nerve roots on the left at S3-S4 may be injured, but the injury is unilateral, and there is bilateral innervation to the sphincters. He does not think he needs surgery now that this injury is five days out. The L1 anterior column fracture is stable. He plans to write a complete consult note to follow.

On July 7, 2013, he was extubated. The critical care physician, Dr. Inouye, recommended starting physical and occupational therapy now that he is extubated. He plans to remove the left chest tube; however, the right chest tube still has output. He is now on Zosyn, fluconazole, Bactrim, and Flagyl. His albumin level is only 1.5 grams per deciliter. (*Reviewer's Note: Normal is 3.2 to 5.0 grams per deciliter.*) Hematocrit is 27.7 percent. (*Reviewer's Note: Normal is 40 to 54 percent.*) Liver function tests are still slightly elevated. He has 80 percent segmented neutrophils and seven bands in his white blood cell count, which is quite high at 39 kilograms per microliter. (*Reviewer's Note: Normal is 4 to 12 kilograms per microliter.*) He has positive respiratory cultures, but clostridium difficile is suspected.

On July 8, 2013, he was seen by Kris Fincher, a psychiatric nurse practitioner. She got a psychiatric history from his daughter, Bianca, who is very involved and worried and would like to remain informed. He recently was living with his son and son's family in Tacoma. The daughter reports that when he is taking his medications, he is stable. When not, that is when trouble begins. He has been connected with comprehensive mental health and has a case manager named John. The daughter believes his last appointment at Comprehensive Mental Health was the day of the event leading to his admission here. He has been compliant and cooperative with his care since hospitalized. He is presently not on any psychiatric medications. The daughter gives a history of underlying paranoid schizophrenia and bipolar illness. She is trying to ascertain his previous medications.

On July 10, 2013, it was documented that he was positive for clostridium difficile the day before. He was on Flagyl empirically. Oral vancomycin has now been added.

On July 11, 2013, the 13$^{th}$ day of hospitalization, it is documented that he pulled out his Dobbhoff tube in the early morning. He is refusing to work with physical and occupational therapy. There is a question of confusion by his family. There was no Spanish interpreter available for the documenting physician assistant.

On July 12, 2013, the trauma physician, Thomas Ferrer, MD, spoke with him via an interpreter. Mr. Beltran understands that he needs to cooperate. Dr. Ferrer thinks that he may be depressed and needs a psychiatric evaluation next week. He is unable to mobilize due to multiple-system trauma from gunshot wounds. He has a PICC line in his right upper extremity. He is on multiple antibiotics as well as Diflucan for clostridium difficile as well as yeast and pulmonary infections. He still has a chest tube drain. He still has right and left upper quadrant drains with serosanguineous discharge and a colostomy that he has not yet been trained in taking care of. He has unspecified protein-calorie malnutrition.

The next day, he reportedly ate 30 percent of breakfast and 75 percent of his lunch. He says he does not have any pain, and he is ready to go; however, he still has multiple drains in place with open wounds. The team is not requesting a psychiatric consult until the following week.

On July 15, 2013, the dietitian records his admission weight at 211 pounds and his most recent weight at 173 pounds. He is eating 50 percent or less at meals. It is recommended to reinsert the Dobbhoff tube and start tube feedings at night.

On July 16, 2013, Dr. Inouye documents the patient is ambulating, and he has his Foley catheter out. He does not describe how Mr. Beltran is ambulating or how much assistance he needs. He still has an elevated white blood cell count, but he looks good.

On July 16, 2013, Dr. Inouye says that the patient is eating a regular diet, walking in the hall, and seems to have no difficulty. He still has a drain in bilateral upper abdomen. He is still on Flagyl for clostridium difficile and is still on vancomycin. The chest x-rays from the morning show that there is some accumulation of pleural effusions now that the chest tubes have been removed. Dr. Inouye plans to remove the PICC line. If he remains clinically stable, he will be discharged to incarceration. He will need to manage his own colostomy and he is to have no wound care by the time of discharge. He will need a Spanish interpreter to assist.

On July 16, 2013, the physician assistant notes that there is bile leaking from his abdominal drains. He is still positive for clostridium difficile and continues on Flagyl. He is not ready to be discharged since he cannot ambulate on his own or change his colostomy bag and still has open wounds on his abdomen. Per the physical therapy note, he is doing better, but still needs assistive devices to ambulate.

On July 18, 2013, it is documented that the right Jackson-Pratt drain continues to produce a significant amount of bile-colored drainage. There has been a referral to gastroenterology for further evaluation and possible ERCP (endoscopic retrograde cholangiopancreatography). A calorie count was started that day.

On July 18, 2013, he was seen by an ostomy and wound nurse. The patient attempted to empty his colostomy bag and then he was unsuccessful. He did not know his bag was off and that he had stool on his skin. The nurse needed to replace it and says that he needs more supervised practice. He also does not have a well-fitting pouch and needs a different size. She says he needs more teaching.

July 19, 2013, the physician assistant documents that she has spoken with physical therapy. He is working with physical therapy and will need an assistive device to walk, such as a cane or a walker. He will need to be able to hold a tray while he is walking in jail. They are not sure if he will be able to achieve this or if he will need a cane or a walker. She plans to order ambulation up and down the hallway with a front-wheeled walker four times a day.

There is a note on the same day that the psychiatric nurse practitioner stopped by, but was unable to see him. She is there to manage his depression. Nothing is said about her trying to manage his diagnosis of schizophrenia. The only medication that he has been on is Zyprexa (olanzapine).

On July 19, 2013, Klaus Mergener, MD, performed a percutaneous ERCP, sphincterotomy for a preprocedure and postprocedure diagnosis of bile duct perforation. He also placed a biliary stent. A cholangiogram confirms a bile leak from intrahepatic ducts in the left lobe. The common bile duct was stented. He advised the surgical team to manage the drainage from the percutaneous drain. He plans to repeat the ERCP in two to three months to remove the stent.

On July 22, 2013, the CT scan of the abdomen shows hepatic abscesses, healing left rib fractures, stable L1 vertebral fracture, stable bilateral pleural effusions, lower lobe atelectasis; status post splenectomy, partial transverse colectomy, biliary stent, and gastric surgery. He has a stable comminuted inferior sacral fracture containing shrapnel. There are stable bilateral gluteal muscle lacerations with right gluteal shrapnel.

On July 24, 2013, Aml Raafat, MD, indicates the patient can be released to home eventually. The police have released him from custody, although they will be calling him later for charges. He still has extreme Jackson-Pratt bile output.

On July 24, 2013, he was seen by the psychiatric nurse practitioner. He has been refusing to work with physical therapy. He is more withdrawn and is staying in bed. He has lost his appetite. When she met with him, however, he was up in his chair preparing to walk with a therapist. He is using a walker slowly, but needs standby assistance. The psychiatric nurse thinks he is oversedated from daytime olanzapine and he has depression associated with the trauma. She plans to discontinue olanzapine and start him on Wellbutrin.

On July 25, 2013, the psychiatric nurse talked with his daughter, who is very concerned about him and worried for his safety. He expressed suicidal ideation to the social worker. His daughter thinks he is not going to be able to adjust to his colostomy bag. The nurse practitioner plans to add Risperdal to his medications.

On July 29, 2013, he had a successful session of changing his colostomy pouch with the nurse practitioner accompanied by a Spanish interpreter.

On July 31, 2013, David Patterson, MD, notes the patient has pseudomonas infection in his Jackson-Pratt drain. He plans to check a CT scan and start him on Zosyn.

On August 1, 2013, Andrew Hardy, MD, interventional radiologist, performed ultrasound and CT-guided drain placement for liver abscesses. He still has an elevated white blood cell count at 13.67 kilograms per microliter. (*Reviewer's Note: Normal is 4.0 to 12.0 kilograms per microliter.*)

On August 6, 2013, a CT scan revealed two hepatic abscesses with drains in place that are significantly smaller or resolved. At the dome of the liver, there is a third undrained loculated fluid collection, most likely representing another abscess, which is significantly smaller. There are pleural effusions. There is a persistent fluid collection in the liver laceration drained. There is fluid around the cholecystectomy. A bullet tract is identified through the sacrum with a retained bullet at the right gluteus maximus. There are multiple rib fractures consistent with gunshot wound injuries. There is an L1 bullet fracture.

On August 16, 2013, it is documented that he is being treated for the second round of Clostridium difficile with dual antibiotics.

On August 17, 2013, Steven Casos, MD, documented that he has performed an echocardiogram to make sure he does not have any vegetations on his heart, since he has a climbing white blood cell count. This test was negative for any cardiac vegetation.

On August 19, 2013, Thomas Ferrer, MD, documents that this is day 50 after multiple gunshot wounds. All of the drains have now been discontinued. He has started a regular diet and is being treated for recurrent Clostridium difficile. His white blood cell count continues to go up, without an identified source. He has no complaints of direct abdominal pain, but has general discomfort when he eats. He is getting Megace for his poor appetite. He has had a bedside sitter since he expressed suicidal ideation a couple of weeks ago. The team is working on an appropriate discharge disposition.

On August 20, 2013, Dr. Ferrer documented that Mr. Beltran has had his vaccines, since he has had a splenectomy. (*He is at risk for numerous infections after a splenectomy.*)

On August 21, 2013, it is documented that Mr. Beltran is not going to be detained by mental health services. Mr. Beltran agrees to the least restrictive option of outpatient mental health services. He agrees to adhere to taking his psychiatric medication. He is going to live with his daughter, and his daughter has agreed to take him.

On August 22, 2013, there is a discharge summary from the adult trauma center written by James Martin, a physician assistant. The admission date is June 29, 2013. The length of stay is 54 days. The description of the hospital course indicates that he is a 53-year-old man brought into the trauma center at Tacoma General Hospital after sustaining multiple gunshot wounds in an altercation with the police. After undergoing emergency surgery, he was transferred to the intensive care unit for further recovery. Despite significant injuries, he has done quite well from a physical standpoint. His course has been complicated by a bile leak requiring ERCP with a stent. Several drains were placed by interventional radiology for intra-abdominal abscesses and fluid collections, which have since been removed. His course was further complicated by two episodes of Clostridium difficile. He has a history of schizophrenia and psychosis. This required treatment while hospitalized. He has been stabilized on Wellbutrin and risperidone. Since being stabilized on his medications, he has had no further episodes of suicidal ideation and no reports of hallucination. He has been cooperative with the staff and his treatment plan. He has been evaluated by the mental health professionals and deemed medically sound for discharge by his attending physician. He is to follow up in the trauma clinic with the gastrointestinal service for a stent removal and should follow up with outpatient psychiatric services. He will be staying with his daughter upon discharge.

On August 22, 2013, his active diagnoses problem list is as follows:

- Assault with multiple gunshot wounds.
- Splenic laceration with open wound into cavity, status post splenectomy.
- Stomach injury with open wound into cavity, status post partial gastrectomy.
- Large hepatic laceration, status post resection.
- Injury to transverse and descending colon, status post partial colectomy, requiring colostomy.
- Status post thoracotomy for a lung laceration.
- Renal laceration with open wound requiring repair.
- Unspecified protein-calorie malnutrition.

- Clostridium difficile infections twice.
- Postoperative bile leak, likely from known liver injury, requiring ERCP with a stent.
- Right peroneal deep venous thrombosis.
- Colostomy care.

On August 22, 2013, procedures were listed as follows:

- Lung resection twice.
- Closure of a chest wound.
- Placement of left chest tube.
- Exploratory laparotomy.
- Repair of large stomach injury.
- Splenectomy.
- Repair and control of liver hemorrhage.
- Diaphragm repair.
- Colon resection.
- Packing of the abdomen with vacuum-assisted closure placement.

On July 4, 2013, he had the following procedures:

- Exploratory laparotomy.
- Removal of packs and irrigation of the abdomen.
- Creation of a colostomy.
- Placement of two Jackson-Pratt drains.
- Closure of the abdominal fascia. (*Nonetheless, the fascia closure dehisced and he had subsequent wound care necessitated.*)

July 9, 2013: ERCP biliary sphincterotomy. Common bile duct stent placed.

August 1, 2013: Ultrasound and CT-guided liver abscess drain placements times two.

On August 29, 2013, he followed up at the Sea Mar Marysville Clinic with Eunice Soh, Nurse Practitioner. He is complaining of pain in his left knee, and he is following up after his long Tacoma General admission. He is taking all of his medications as prescribed and living with his daughter. He has a follow-up appointment at the trauma clinic at Tacoma General Hospital on September 9 for stent removal and an

appointment on September 5 at Sea Mar Everett Behavioral Health. He also complains of chronic right shoulder pain with no acute changes. He was supposed to have a procedure done on his right shoulder a couple of years ago and would like to reevaluate this. He also has a history of chronic left knee pain. His medications include bupropion, gabapentin, and risperidone. On examination, he is 5 feet 7 inches and weighs 164 pounds, for a body mass index of 25.5, which is normal. The abdomen shows a well-healing linear surgical scar and a colostomy that is intact. His right shoulder has full range of motion. He is alert and oriented and able to concentrate. His left knee shows no swelling, with normal range of motion.

Nurse Practitioner Soh recommends the following: (1) Keep the post-hospitalization follow-up appointments. (2) Schizophrenia. Continue medications and keep appointment with mental health. (3) Chronic right shoulder pain. Right shoulder x-ray ordered. Return to review the results of the study.

On December 3, 2013, he returned to Sea Mar Clinic and was seen by Greg Sanders, MD. He would like to get a referral for physical therapy. He is complaining of chronic lumbar pain, bullet fragments in his sacral region, and left knee pain. Now his height is 5 feet 8½ inches and he weighs 197 pounds, for a body mass index of 29.5, which is overweight. On physical examination, Dr. Sanders notes some pill rolling tremors of the right hand. He has mild swelling in his left knee. Dr. Sanders notes that the patient has tardive dyskinesia from antipsychotics, but recommends he continue with risperidone and bupropion. He recommends he continue with gabapentin for his chronic pain. He plans to refer him to physical therapy for his lumbar pain and get imaging for the left knee.

On December 4, 2013, left knee x-rays show mild medial compartment narrowing consistent with minimal left knee osteoarthritis. Unfortunately, this was not compared with the previous knee x-rays of earlier in 2013 that also show mild medial compartment narrowing and that are also consistent with osteoarthritis.

On February 3, 2014, there is a letter from Department of Social and Health Services, Katie Eaves, Social Worker, to whom it may concern at Sea Mar Community Health Centers. Mr. Beltran has applied for in-home personal care assistance through the COPES program. As part of this process, a three-hour assessment of his care needs was completed in his home. Mr. Beltran says he experiences daily pain that is 8/10 on a 0-to-10 scale. He is taking medication for pain and depression. He requested that Ms. Eaves write a letter to Sea Mar Community Health Centers informing them of his ongoing pain and depression.

On February 10, 2014, Michelle Strong, MD, performed a preadmission history and physical in preparation for reversal of his colostomy. It has been greater than six

months, and she thinks it is appropriate to reverse the colostomy. This was done on February 13, 2014.

On February 13, 2014, there is an operative note from Dr. Strong for an exploratory laparotomy and takedown of a prior colostomy site. The operative note indicates that she was able to take down some adhesions on both sides of the abdominal wall. The right side of the abdominal wall had "kind of a Swiss cheese appearance of the fascia." This was all connected into one, and the skin was brought back in so that the fascial could be closed.

He was discharged eight days later on February 20, 2014, after his colostomy takedown.

On March 5, 2014, he was seen at Sea Mar Clinic by Nurse Practitioner Soh. His abdominal wound is healing well, and abdominal pain is usually controlled with Roxicet; however, he ran out and needs a refill of this medication. The physical examination shows that he has a closed linear surgical wound on his abdomen, with no discharge. Percocet was prescribed. He was told to follow up with the surgeon.

On March 19, 2014, he presented to Sea Mar Clinic to Nurse Soh to have his abdominal staples removed. The staples were removed without complications.

On July 19, 2014, he was seen by Divya Parihar, MD, at the Sea Mar Clinic. He is complaining of pain in bilateral lower quadrants of his abdomen as well as his left knee. On physical examination, he is 5 feet 8½ inches tall and weighs 207 pounds, for a body mass index of 31.05. He is not in any distress. He has increased tone with cogwheeling and a resting tremor, and forward-stooped gait. She diagnosed him with chronic pain syndrome and recommended gabapentin and told him to stop smoking.

On August 15, 2014, he was seen by Dr. Parihar at the Sea Mar Clinic. He is doing fine, with no acute issues. He has no abdominal pain. He weighs 205 pounds. He has chronic lumbar pain. Dr. Parihar plans to refer him to physical therapy. He is complaining of blood in his stool.

On August 28, 2014, Dr. Parihar notes a drop in hemoglobin from 15.5 to 11.3, with a positive occult stool. He is referred to gastroenterology.

On August 29, 2014, he returned to see Dr. Parihar. He complains of now left knee pain, and the plan is to recommend him to physical therapy.

On December 2, 2014, a colonoscopy was performed, showing medium internal hemorrhoids. A polypectomy was performed.

On December 23, 2014, he was seen by Rebecca Nebel, Nurse Practitioner, at Sea Mar Clinic. The patient is complaining of swelling in both of his legs that started a week ago.

He also says he has had so much back pain that he took "maybe 15 pills" at one time. His family says they do not have acetaminophen or oxycodone in the house, so she thinks it must have been the gabapentin. The patient says that at night sometimes he wakes up suddenly and feels like he cannot breathe. His family notes that he snores and sometimes stops breathing when he is sleeping, concerning for sleep apnea. He complains of fatigue during the day. On physical examination, he now weighs 225 pounds, for a body mass index of 33.74 (obese). He has 2+ pitting edema up to his knees bilaterally. It was the impression of the nurse that his edema in both of his legs might be due to the overdose of gabapentin. It was recommended that he use compression stockings and elevate his legs above the level of his heart as much as possible. Laboratory studies will be done. He will be referred to sleep medicine to determine if he has sleep apnea. He was told to use Tylenol for his chronic low back pain.

On January 14, 2015, he returned to see Dr. Parihar at Sea Mar Clinic. He is complaining of low back pain in the morning, trouble walking for any distance, bilateral swelling feet, and pain in his entire body. He is using Tylenol. When he was last seen, he had leg swelling, and compression stockings were advised. He still has leg swelling, and he is not using compression stockings or performing leg elevation as advised. He still has low back pain, and his daughter wants a pain clinic referral. He had physical therapy for this condition, and it did not help. The laboratory studies have been done, and cardiac, hepatic, as well as renal causes of his acute peripheral edema were ruled out. On physical examination, he weighs 221 pounds, for a body mass index of 33.11 (obese). There is no edema in his legs. He has normal back posture, but limitation on spine flexion and extension. The doctor plans to refer him to pain management for his back. Once again he was advised to use compression stockings during the day and elevate his legs above his heart as much as possible. He is to get his immunizations.

On April 1, 2015, he was seen by Nurse Nebel for his general physical at Sea Mar Clinic in Kent. He reports that he takes his medications every day and eats and sleeps well. He does not do any regular exercises, but sometimes walks. He lives in an apartment in Des Moines with his children. He weighs 210 pounds, body mass index 31.56. There is a noticeable occasional tremor in his right hand. He is alert and oriented. There is no edema of his legs. His teeth are discolored, with upper front teeth missing. It was determined that his schizophrenia is stable on risperidone. He is going to be started on simvastatin for his hyperlipidemia. Laboratory studies will be performed. He was counseled on exercise and diet.

On April 29, 2015, he was seen by Dr. Parihar at Sea Mar Clinic "for medical clearance for admission to Western State Hospital." He complains of chronic pain in his low back and left knee. He has physical therapy with some improvement. He also has pain in his right shoulder. More than five years ago, he broke his right arm and had a surgical repair. He takes Tylenol, docusate, gabapentin, risperidone, and simvastatin. He weighs

208 pounds, for a body mass index of 31.17. On physical examination, he is in no acute distress. His heart and lungs are clear. Abdomen is soft. There is no edema of his extremities, and he has a nonfocal neurological examination.

On August 11, 2015, he was seen by Dr. Parihar. He has complaints of postural dizziness. His daughter is requesting referrals for back pain and left knee. His daughter thinks he has a hernia. The patient says they have received care from Western State Hospital. His blood pressure was 100/66 sitting down. Standing blood pressure was not taken. He weighs 217 pounds. His pulse is 103 sitting down. Standing pulse was not taken. The impression is that his dizziness is likely multifactorial, including medication-induced, Parkinsonian, dehydration, or anemia. The electrocardiograph shows that he is in normal sinus rhythm. Dr. Parihar plans to check labs. She appreciates an abdominal hernia, described as a "big midline epigastric hernia that reduces on lying down." She plans to refer him to general surgery.

On September 1, 2015, he returned to see Dr. Parihar. This 55-year-old man is still complaining of hot sweats and dizziness and that his abdominal hernia has grown in size. This time, sitting and standing pulse and blood pressure were taken. This did not show any significant difference. He is taking Tylenol, benztropine, bupropion, docusate, gabapentin, risperidone, and simvastatin. His daughter says he does not drink much fluid. Dr. Parihar plans to refer him for an echocardiogram.

On September 16, 2015, he was seen by Jordan Gale, MD, General Surgeon. This is a 55-year-old man who presents with a ventral hernia in the setting of a previous left-sided colostomy. He had resuscitative thoracotomy and exploratory laparotomy in June of 2013 for multiple gunshot wounds. He had several lung wedge resections and associated partial gastrectomy, colon resection, and splenectomy. He was left with an open abdomen. Afterward, he had a long Hartmann pouch created. He recovered well and then had his colostomy reversed in early 2014. He comes to the clinic today complaining of a hernia at his old colostomy site. He says that this intermittently causes 10/10 pain. On physical examination, there is a bulge present between the left-sided colostomy site and midline incision. However, the note ends there, and there is no assessment or plan.

On October 26, 2015, he was seen at Tacoma General Hospital Emergency Department by William Crabb, MD. He complains of abdominal pain, hematemesis, and dark stools. He also complains of shortness of breath when he lies down and weakness of his legs. Laboratory studies show an elevated white blood cell count with a left shift. The CT scan is remarkable for supraumbilical ventral wall hernias without evidence of strangulation. His daughter requested a check for Helicobacter pylori, since another family member just had peptic ulcer disease. The impression was abdominal pain with possible gastroesophageal reflux disease and possible peptic ulcer disease. He was discharged on Prilosec, Zofran, and Norco.

On February 2, 2016, he was seen again at Sea Mar Clinic in Kent. This time, he comes in for request for referral to a neurologist. He complains of pain throughout his entire body. He is taking risperidone, gabapentin, bupropion, docusate, and Cogentin. He weighs 218 pounds. His pain level is 9/10. His blood pressure is 126/70. Pulse is 110 and regular. He has an abdominal hernia. It was requested he get a referral to sleep medicine to rule out obstructive sleep apnea.

On February 23, 2016, he was seen at Sea Mar Clinic for complaints of two years of constipation as well as pain in his left knee. On examination, there is a small protrusion of the abdomen and crepitus of the left knee.

On March 9, 2016, Mustafa, MD, of Sea Mar Clinic indicates that he has had an x-ray of his left knee, which showed moderate tricompartmental osteoarthritis and mild medial narrowing, with a small effusion.

On March 22, 2016, he returned to Sea Mar Clinic complaining of left knee pain. He is diagnosed with primary osteoarthritis of the left knee. Dr. Mustafa states that the recent x-ray shows moderate to severe osteoarthritis. He will be given an injection today, although this will be difficult, given his range of motion and Parkinsonian features. He also plans to refer him to physical therapy. He plans to refer him to neurology. He was seen by a neurologist in 2010 regarding his Parkinsonism from his antipsychotic medication. He has a pill rolling tremor, masked facies, and bradykinesia. He plans to refer him to neurology for further workup and recommendations. Regarding his schizophrenia, he has been getting his psychiatric medications from Sea Mar Clinic. However, given his Parkinsonism, Dr. Mustafa thinks he should be seen by a psychiatrist, since he has not been seen by a psychiatrist in many years. Regarding his back pain, physical therapy will be considered.

On March 22, 2016, Dr. Mustafa aspirated an effusion of the left knee and injected triamcinolone.

**PAST MEDICAL HISTORY:**

**Injuries:** In early 2013 he had multiple emergency room visits for osteoarthritis of the left knee with the need to aspirate effusions.

**Illnesses:** He was diagnosed with Paranoid Schizophrenia at age 33; gastroesophageal reflux disease in 2008. Diagnosed with Parkinsonism from the side effects of Risperdal by a neurologist in 2010.

**Surgeries:** Prior to the multiple surgeries from the traumatic incident, he had right shoulder surgery for a fractured humerus in 2007.

**Allergies:** He has no known medication allergies.

**Medications:** Wellbutrin Sustained Release 150 mg once a day; gabapentin 300 mg twice a day; Cogentin 1 mg once a day; simvastatin 20 mg a day; risperidone 4 mg twice a day; docusate sodium 100 mg twice a day; ibuprofen as needed.

**FAMILY MEDICAL HISTORY:**

Mr. Beltran is unable to elaborate on a family medical history.

**REVIEW OF SYSTEMS:**

He is right-hand dominant.

**Head, Eyes, Ears, Nose, Throat:** There are no complaints of vision or hearing.

**Pulmonary:** He says that he gasps for air, especially when he lies down at night.

**Neurological:** He complains of numbness in both of his distal upper extremities whenever he bends his elbows. He has upper extremity tremors and dizziness as well as decreased balance and a slow shuffling gait from the Parkinsonism from taking Risperdal.

**Cardiovascular:** He takes simvastatin for elevated cholesterol.

**Gastrointestinal:** He has multiple huge abdominal hernias that are painful when he coughs. He tends to have chronic constipation.

**Genitourinary:** He says that he is having a hard time starting his stream of urine as he gets older.

**Musculoskeletal:** He complains of left knee pain which is worse, but started in 2008. He states he is also starting to get right knee pain as well. His chief complaint is that of severe excruciating bilateral "low back" pain. However, he points to both sacral regions. He has to use a cane to walk and can only walk about 5 minutes.

**Psychological:** He has been treated for Paranoid Schizophrenia for many years. He was also previously diagnosed with depression. He states his depression got worse after the traumatic incident. He has a new Anxiety Disorder and also complains of agoraphobia.

**SOCIOECONOMIC HISTORY:**

The patient was born in Culiacan, Mexico. He began coming to work in the State of Washington in 1987. He has three years of elementary education in Mexico. He is able to speak short phrases in English, but cannot converse in English. He is able to read a little Spanish.

**Marital Status and Dependents:** He is divorced. He has five children.

**Education:** He has a third grade education from Mexico. He cannot speak English. He speaks only Spanish and can write only a little bit of Spanish.

**Military:** He has never served in the military.

**Brief Work History:** He has worked at a ranch, an asparagus farm, and most recently at a chocolate factory. He is divorced and has five children who live in the United States. He has not been employed since 2008. He previously worked in factory jobs.

**Habits:** He smokes one pack per day of cigarettes. He does not use alcohol. He does not use any controlled substances.

**Physical Activity:** He does not exercise.

**PHYSICAL EXAMINATION:**

Cesar Beltran-Serrano is a pleasant 56-year-old Hispanic man who is right-hand dominant. He is 5 feet 8 inches and gives his weight at 220 pounds.

During the lengthy interview, he was able to consistently answer questions, but his answers were very brief. His daughter, Bianca, was an excellent Spanish interpreter. The majority of the information in history was gleaned from Bianca, who is his primary caregiver.

Cesar was able to walk up and down the six steps outside leading into and out of the clinic. We asked him to do this instead of using the ramp. He was able to do this without holding onto the handrail and without the use of his cane. However, these steps are extremely shallow, and about half the size of a regular step.

He is unable to balance on one foot. His stance pattern is with a forward head, hunched shoulders, and leaning forward with both hands slightly tremoring. The right hand always tremors more than the left.

He is able to rock back on his heels and arise on his toes, only if I hold his hands. Otherwise, he loses his balance.

Ambulation reveals an extremely wide-based shuffling gait pattern with his head down and leaning forward, typical for a Parkinsonian gait pattern.

A Romberg test is not attempted given his poor balance.

Finger-to-nose testing with his eyes open reveals increased tremors.

He has pill-rolling tremors of both of his hands at rest throughout the interview and the physical examination. He has clubbing of his fingernails (this is from many years of smoking).

Cranial nerves II through XII are tested and intact. When I asked him to stick out his tongue, the tongue had a tremor.

Reflexes are 1+ and symmetrical bilateral biceps, triceps, brachioradialis, patellar, and Achilles.

He has positive bilateral Hoffmann maneuver and equivocal bilateral Babinski maneuver.

He has severe onychomycosis (fungal infection) of all of his toenails.

He has a dusky appearance to both of his distal lower extremities when his legs are dependent. This is consistent with peripheral vascular disease from smoking. I am unable to appreciate bilateral dorsalis pedis or posterior tibial pulses.

He was able to transition and transfer independently from a standing to a sitting position and from sitting to standing position without the use of a cane.

He was able to ambulate without the use of a cane, but with a slow shuffling wide based forward gait pattern.

He was able to transition from a standing to sitting to supine to sitting to standing position without any assistance.

Pinprick and light touch sensation is tested and intact bilateral C4 through T1 and bilateral L1 through S2 dermatomes.

He has positive bilateral carpal and cubital Tinel testing.

Circumferential measurements right upper arm 36 centimeters, left upper arm 35 centimeters, right forearm 30 centimeters, left forearm 29.5 centimeters. Right calf 41 centimeters, left calf 41 centimeters.

He had no tenderness to palpation of either knee. There is mild crepitation with range of motion of the left knee. Bilateral knees have full range of motion 0 to 110 degrees.

He has equal bilateral shoulder range of motion in all planes. He has diminished bilateral shoulder flexion and abduction to 160 degrees. Extension is to 30 degrees, internal and external rotation to 65 degrees. He has negative bilateral impingement testing.

He has negative bilateral supine and seated straight leg raising.

His strength is 5/5 bilateral biceps, triceps, wrist extensors, finger flexors, hip flexion, knee extension, dorsiflexion, plantarflexion, and extensor hallucis valgus muscle testing.

He has full cervical range of motion in all planes. Any movement of his neck or shoulders caused his right more than his left hand to tremor.

He has negative bilateral Spurling maneuver.

In a standing position, he has a large abdominal pannus from obesity; however, he has a large left central abdominal hernia.

He achieved 65 degrees of forward lumbar flexion and only 5 degrees of extension.

He appears to have normal cervical, thoracic, and lumbosacral alignment; however, he lacks any lumbar lordosis and stands with a flat back posture.

Overall, his posture shows hunched shoulders, forward head, slight flexion of the knees, flat back, and a shuffling wide-based gait. This is all typical of Parkinsonism.

He has numerous scars as follows:

Right anterior shoulder, oblique 12-centimeter scar from the shoulder surgery of 2007. On the right arm, he has three ballistic scars. The first is proximal and lateral to the antecubital fossa measuring 1.5 centimeters. The second is distal and lateral to the antecubital fossa measuring 3.5 centimeters. The third is medial and distal to the antecubital fossa measuring 1.5 centimeters.

He has a large left 12-centimeter horizontal thoracotomy scar.

On the left upper extremity, he has a 7.5-centimeter horizontal scar just distal to the antecubital fossa.

There is a 4.5-centimeter scar anterior to the left axilla and a 1.5-centimeter scar anterior to the right axilla. There are punctate chest tube scars on the right and the left measuring 1.5 centimeters.

There is a large 6- by 3-centimeter scar in the left lower quadrant of the abdomen from the removal of the colostomy.

He has a 37-centimeter midline vertical abdominal scar. Twenty-five centimeters of this scar is above his umbilicus.

**DISCUSSION:**

1. *A comprehensive listing of the injuries and medical conditions Mr. Beltran sustained when he was shot by Officer Volk on June 29, 2013 ("the incident").*

   - Assault with multiple gunshot wounds on June 29, 2013, resulting in ballistic injuries to the chest, abdomen, pelvis, spine, and bilateral upper extremities.

**Gastrointestinal:**

- Splenic laceration, status post splenectomy. He is at greater risk for certain infections, and must have annual immunizations.
- Ballistic laceration to the stomach, status post partial gastrectomy.
- Ballistic laceration to transverse and descending colon, status post partial resection of the colon on June 29, 2013.
- Creation of a colostomy on July 4, 2013, with reversal on February 13, 2014.
- Renal ballistic laceration requiring surgical laparoscopic repair June 29, 2013.
- Endoscopic retrograde cholangiopancreatography placement of a stent for common bile duct laceration July 2013.
- Placement and removal of drains for treatment of perihepatic abscesses.
- Clostridium difficile infection twice during acute hospital stay, requiring dual antibiotics, now resolved.
- Multiple abdominal hernias have been confirmed as of August 11, 2015. He is now scheduled for surgery. He will always be at risk to develop abdominal hernias due to the perforation of fascia and other abdominal stressors from the ballistic injuries.
- Transient protein-calorie malnutrition during the 54-day hospital stay of June 29 through August 22, 2013, now resolved.

**Hematology:**

- Right peroneal vein thrombosis complication during acute hospital stay, resolved.

**Pulmonary:**

- Status post left lung partial thoracotomy due to ballistic laceration.
- Increased risk for obstructive sleep apnea due to subsequent multiple abdominal hernias, weight gain, and thoracotomy.

**Bilateral Upper Extremities:**

- Bilateral upper extremity forearm through-and-through gunshot wounds, requiring surgical repair. X-rays showed no bony injuries; however, this has resulted in significant residual scar formation which may be encroaching on peripheral nerves.
- Bilateral upper extremity decreased sensation is concerning for median versus ulnar nerve entrapment from the scar tissue. This results in numbness every time he bends his elbows.

**Axial Pain:**

- Residual ballistic fragments left in right gluteal muscle.
- Traumatic L1 spinal fracture seen on CT scan on July 3, 2013.
- Bilateral S3-4 level sacral fractures with likely nerve disruption, seen on CT scan on July 3, 2013. (*Reviewer's Note: There has been absolutely no follow-up on this. He has not had CT scans, or even lumbosacral x-rays since the initial injury, despite complaints of low back pain.*)
- Complaints of severe bilateral sacral pain with decreased range of motion and decreased ability to perform prolonged standing more than 5 minutes.
- Complaints of bilateral lower extremity sensory radiculopathy with risk of sacral nerve plexus injury bilaterally.

**Psychiatric:**

- Preexisting Paranoid Schizophrenia treated with Risperdal.
- Preexisting depression, which has reportedly worsened since the ballistic incident.
- New onset severe anxiety and agoraphobia which severely limits his community access, activities of daily living, and ability to exercise outdoors.

**Activities of Daily Living:**

- Decreased independence in basic and higher level activities of daily living as a result of the ballistic injury.

**Mobility:**

- Decreased independence in mobility due to severe bilateral sacral pain as a result of the incident.

- Community access is severely limited due to decreased mobility, anxiety, and agoraphobia when he is outside the home. This is all due to the traumatic incident.

2. *Your diagnoses related to the incident.*

Please see the answer to number 1.

3. *Your objective findings.*

- Objective findings for the multiple ballistic injuries can be found in the medical records. This would include diagnostic imaging studies and surgical reports. On clinical examination, he has a 37-centimeter vertical midline scar from the laparotomy. He has multiple scars from the gunshot wounds that have been described in the physical examination. There is a 6- by 3-centimeter scar in the left lower quadrant from the colostomy that once existed. He has a 12-centimeter scar from the left partial thoracotomy.

- Objective evidence to support his subjective complaints of the low back and sacral pain would include the CT scan showing bilateral sacral fractures with remaining ballistic fragments. On clinical examination, he has extremely limited lumbosacral range of motion and tenderness to palpation over the sacral region.

- Objective findings on clinical examination to support his subjective complaints of numbness in bilateral arms include positive cubital and carpal Tinel testing.

- On clinical examination he exhibits all signs of extrapyramidal disorder consistent with Risperdal-induced Parkinsonism. He has pill-rolling resting tremors of the right more than the left hand. He has right more than left upper extremity intention tremors. He does not have a head tremor. He has decreased balance and a wide-based shuffling gait pattern. He stands and walks with a hunched forward posture typical of Parkinsonism. He has a masked face. With tongue protrusion, he has tremors of his tongue.

- On clinical examination, Mr. Beltran has an extremely large abdominal pannus. In addition, he has several palpable large abdominal hernias.

4. *Whether the treatment Mr. Beltran has received since the incident has been reasonable, necessary, and causally related to the incident.*

- In my opinion, all of the treatment he has received since the incident has been reasonable, necessary, and causally related to incident. However, after he returned home from the acute admission, he complained of chronic left knee pain. He had preexisting radiographically proven left knee osteoarthritis prior to the multiple gunshot wound incident. Progression of osteoarthritis would not be related to the gunshot wound incident. Treatment of the left knee is not related to the traumatic incident.

- He had preexisting schizophrenia. During the acute admission, and after he returned home, he continued to receive treatment for his preexisting mental health conditions of schizophrenia and depression. It is beyond the realm of my expertise to determine whether or not his preexisting schizophrenia and depression were exacerbated or aggravated by the traumatic incident. I cannot say whether or not the treatment for depression and schizophrenia during his hospital stay and afterward would be related to the traumatic incident. However, after the traumatic incident, he has new onset of anxiety and agoraphobia.

- Mr. Beltran had preexisting tremors and Parkinsonian-like presentation consistent with tardive dyskinesia from the use of risperidone. This began in 2008 and was diagnosed by a neurologist in 2010. He is treated with Cogentin for this during his acute hospitalization. In my opinion, the tardive dyskinesia and Parkinsonism were not exacerbated or aggravated by the traumatic event. Treatment for this would not be causally related to the incident, although it would be reasonable and necessary.

5. *A discussion regarding the recovery he has achieved from the injuries and medical conditions that you relate to the incident.*

- Overall, he has achieved excellent recovery from the multiple organ compromise and multiple traumatic organ injuries requiring surgical intervention, which were caused by the gunshot wounds.

**Gastrointestinal:**

- He has recovered from the Clostridium difficile infections. He required a partial colectomy for ballistic injuries to the colon. He required a colostomy but this was able to be reversed. He still has chronic constipation, however.

- He has recovered from the laceration to the common bile duct and the hepatic abscesses. He has had normal liver function tests since discharge from the hospital.

- Spleen: He has had a successful splenectomy; however, this makes him permanently slightly immunocompromised.

- He is at a lifetime risk of developing midline abdominal hernias. At this point, he has several which were confirmed by CT scan in August of 2015. He requires surgery as soon as possible.

**Axial Injuries:**

- The L1 fracture and bilateral sacral fractures with residual ballistic fragments causing sacral pain have not been addressed. He continues to suffer from low back pain. He has not recovered from this, and it has not been addressed.

- Bilateral upper extremity through-and-through gunshot wounds with residual scar tissue. He now suffers from numbness in both of his upper extremities whenever he flexes his elbows. Clinical examination indicates bilateral ulnar neuropathy with possible median neuropathy, nerve entrapment from the scar tissue. He will require further treatment.

**Psychiatric:**

- He has had excellent stabilization of his preexisting Paranoid Schizophrenia and depression with the use of Risperdal, Wellbutrin, and Cogentin; however, he has developed new onset of anxiety and agoraphobia which is probably due to the traumatic incident.

6. *Mr. Beltran's prognosis for further recovery.*

- His prognosis for further recovery regarding the midline abdominal hernia would be deferred to a general surgeon, following appropriate imaging studies and evaluation.

- His recovery from the L1 fracture and residual shrapnel which has caused the acute bilateral sacral fractures with likely nerve disruption cannot be determined until he has the following studies:

Recommendations:

(1) Lumbosacral x-rays to include anteroposterior, lateral, and bilateral oblique flexion and extension views.

(2) CT scan of the lumbosacral spine.

(3) Bilateral lower extremity electrodiagnostic studies to rule out lumbosacral radiculopathies.

- Prognosis from possible bilateral upper extremity median versus ulnar neuropathies cannot be determined at this time. He requires imaging studies and electrodiagnostic as well as nerve conduction studies. Depending on the results of these studies, he may need further intervention. If the residual scar tissue is encroaching on peripheral nerve roots, he will probably need surgical intervention.

- Recovery from psychiatric diagnoses of possible increased depression, as well as new anxiety and agoraphobia would be deferred to a psychiatric evaluation and treatment plan.

- Prognosis for further recovery from gastrointestinal complications to include partial colectomy and chronic constipation would be deferred to a gastroenterology consultation.

- Recovery and improvement in his ability to be independent in activities of daily living will be dependent upon multiple diagnostic evaluations by several providers and specialists. This is to be followed by a comprehensive treatment plan. I will refer the reader to the life care plan.

- Further recovery and improvement from loss of mobility cannot be determined at this time. I would refer the reader to the comprehensive evaluation and treatment outlined in the life care plan.

- In my opinion, Mr. Beltran will always need a 24/7 attendant versus assistant, as a result of the numerous conditions inflicted by this traumatic incident. Apportionment regarding preexisting conditions can be determined after implementation of the diagnostic studies, specialty consultations, and further treatment recommendations have all been accomplished.

7. *A description of any preexisting conditions, including the prognosis and symptomatology of the preexisting conditions at the time of the incident, and*

*whether or not you feel the accident aggravated (permanently or temporarily) any preexisting conditions.*

He had the following preexisting conditions:

- Right shoulder humerus fracture status post-surgical intervention in 2007 with residual right shoulder pain. In my opinion, this was not exacerbated or aggravated by the traumatic incident. On clinical examination today, he has equally decreased range of motion in both shoulders in all planes.

- Gastroesophageal reflux disease preexisted the traumatic injury. He is status post partial gastrectomy required by the ballistic injury. Any increase of gastroesophageal reflux disease would be deferred to gastroenterology consultation. It is beyond the realm of my expertise to determine if this got worse after the partial gastrectomy required by the traumatic gunshot wound.

- Schizophrenia and depression preexisted the traumatic injury. Cesar and Bianca both state that his Schizophrenia is in excellent control. However, he does endorse increased depression. He also has the new onset of an anxiety disorder and agoraphobia. It is beyond the realm of my expertise to determine if the preexisting depression was worsened by the traumatic injury, or his complaints of depression represent a new kind of depression attributed to the traumatic injury.

- Preexisting left knee osteoarthritis. In my opinion, this was not aggravated or exacerbated by the traumatic gunshot wound injury.

- Parkinsonism with tardive dyskinesia and tremors, slow gait, and decreased balance. This is a side effect from taking Risperdal for many years in order to treat his Schizophrenia. It began in 2008 and was diagnosed by a neurologist in 2010. In my opinion, this was not aggravated or exacerbated by the traumatic injury. These symptoms are improved on Cogentin.

8. *A description of the treatment currently recommended and whether or not the recommended treatment is necessitated by the incident.*

**Projected Specialist Evaluation:**

- Physical medicine and rehabilitation is required to coordinate occupational and physical therapy evaluation, interpret electrodiagnostic and nerve conduction studies, and advise intervention. The physical medicine and rehabilitation physician will need to further evaluate low back and sacral pain after he has undergone imaging and electrodiagnostic studies. Advice

regarding intervention cannot be determined until that point. Physical medicine and rehabilitation physician will prescribe any durable medical equipment and assistive devices. The physical medicine and rehabilitation physician will be coordinating rehabilitation care between various specialists.

- Primary care. Mr. Beltran will need to see his primary care physician once a year for immunizations regarding his splenectomy. The physical medicine physician will be the physician coordinating all of his rehabilitation care. Therefore, he will see his primary care physician for primary care needs that are not attributed to the traumatic incident. These would include primary osteoarthritis of the left knee, right shoulder pain, hypercholesterolemia and hyperlipidemia.

- General surgery. Multiple abdominal hernia repair with necessary follow-up.

- Evaluation by a pulmonologist after Mr. Beltran has recovered from the hernia repair. The purpose would be for evaluation regarding any complications from the left lung partial thoracotomy. The other purpose would be to determine if he has any risk factors for obstructive sleep apnea that would be associated with the complications and conditions that have arisen from the traumatic incident. An overnight polysomnography may be required, as well as pulmonary function studies.

- Gastroenterologist evaluation monitoring and treatment. Mr. Beltran should be seen by the gastroenterology specialist every six months. He is status post partial colectomy, liver laceration, endoscopic retrograde cholangiopancreatography of the common bile duct, perforation requiring a stent placement and removal. He has chronic constipation. He has preexisting gastroesophageal reflux disease, and is status post partial gastrectomy. He is at risk for B12 deficiency with the partial gastrectomy. This will all need to be monitored by the gastroenterology specialist. He may be a candidate for treatment with Linzess, a medication that does not harm the liver, used for chronic constipation.

- Evaluation by a neurologist for electrodiagnostic and nerve conduction studies for bilateral upper extremities to rule out median versus ulnar neuropathies. He also will require another appointment with a neurologist for bilateral lower extremity electrodiagnostic and nerve conduction studies to rule out sacral plexopathy versus sacral radiculopathy. Follow-up can be done with a physical medicine and rehabilitation doctor.

- Physical medicine physician who is dual board certified in pain management. This will be determined by the primary physical medicine and rehabilitation physician pending the results of all of the diagnostic studies.

- Comprehensive psychiatric evaluation. In my opinion, this would require several hours for an initial evaluation to include a record review. He has preexisting Schizophrenia and some depression; however, he complains of increased depression. He has new anxiety and agoraphobia after the traumatic injury. His primary care physician says he is no longer comfortable prescribing psychiatric medications. It would be best to defer this to a psychiatrist. Thus, he should see a psychiatrist on a regular basis as outlined in the life care plan.

- Occupational therapy is recommended for a home evaluation to provide recommendations for modifications and equipment as well as promote independence with activities of daily living and compensatory strategies.

- Physical therapy is recommended to improve his balance and mobility; given the severe sacral pain he is experiencing after the traumatic injury. He will need treatment for improved functional mobility and development of an individual exercise program. The physical therapist will need to go to the home first for a home evaluation and then proceed to treatment and development of a home exercise program that can be implemented by his caregivers.

**Diagnostic Studies:**

- X-ray of the pelvis to determine remaining ballistic fragments.

- Chest x-ray preceding the pulmonary consultation.

- X-rays of bilateral forearms to determine the location of any residual ballistic metallic fragments and scar tissue. A CT scan of bilateral forearms might be required in order to better determine the location of the scar tissue to peripheral nerve roots.

- CT scan of the abdomen and pelvis with intravenous contrast will probably be required after he has his hernia surgery. This is to be determined by the general surgeon and the gastroenterologist.

- Laboratory studies related to the traumatic injury would include a B12 level due to the partial gastrectomy, hepatic function panel due to the liver injury.

- Following his pulmonary consultation, (which should be done after he recovered from his hernia surgery) the pulmonologist may request an overnight polysomnography to determine if he has obstructive sleep apnea that may be attributed to residual conditions of the traumatic incident.

**Medications:**

- Bupropion is a new medication that was started during his hospitalization for depression.

- Gabapentin is also a new medication that he is taking for treatment of neuropathic pain. He takes docusate sodium for the chronic constipation and also takes ibuprofen. The gastroenterologist may recommend Linzess for chronic constipation. If he has low B12 levels from his partial gastrectomy, he will require oral B12 replacement for the rest of his life until his B12 level is normal.

- He will require every immunization available, due to the splenectomy.

**Aids for Independent Functioning:**

- Handheld shower.

- Shower bench.

- Grab bars in the shower.

- Quad cane.

- Raised toilet seat.

- Medical pendant.

**Home Care/Residential Care:**

- Household assistance is absolutely required. Mr. Beltran is unable to shop for food, prepare his meals, manage his medications, wash his clothing, clean his apartment, or other household duties. Apportionment cannot be determined until all diagnostic studies, specialty consultations, and treatment have been performed.

- Mr. Beltran requires a case manager.

**Transportation Needs:**

- Prior to the traumatic incident, Cesar was able to take the bus independently. After the injury, he requires someone to transport him to all appointments.

**Avocational Needs:**

- The case manager or a rehabilitation counselor can assist Mr. Beltran and his attendant in promoting socialization and improved community involvement.

- A structured exercise program is definitely recommended. Given Mr. Beltran's new onset of agoraphobia and his need for 24/7 management, he will need to be accompanied by an attendant to participate in an exercise program outside of the home.

9. *A description of his current ADL and attendant care needs, the level of care required, and a prognosis for his ADL and attendant care needs into the future, including whether or not these needs were necessitated by the incident.*

   At this time, he requires 24/7 attendant care needs. This has been delineated earlier in the report regarding the level of care required for each activity of daily living. It is my prognosis that he can improve his independence and participation in activities of daily living if the diagnostic and treatment plan is implemented. However, he will still require 24/7 attendant care. The majority of these needs are necessitated by the traumatic incident. Precise apportionment cannot be determined until he has received the diagnostic studies recommended, had a consultation by the various specialists, and participated in the treatment recommendations.

10. *Whether there is permanent disability and/or physical restrictions resulting from the injuries sustained in the accident along with a description of the restrictions and how the restrictions affect Mr. Beltran's activities of daily living and/or his recreational activities.*

    Cesar Beltran-Serrano is permanently disabled and has significant physical restrictions resulting from the multiple injuries sustained in this traumatic injury. The causation is multi-systemic, both psychiatric and physiologic. As stated in the answer to question 9, the precise determination of permanent disability for each individual system and body part, as well as precise physical restrictions, cannot be determined until he has received multiple diagnostic imaging studies, electrodiagnostic studies, consultations from multiple specialists, and participated in the treatment that is recommended.

All of my opinions stated in the preceding answers are based upon a more-probable-than-not degree of reasonable medical certainty. The opinions are based upon my examination, my experience, and the review of records I have been provided to date.

Thank you for requesting this independent medical evaluation.

Jennifer J. James, MD
Board Certified in Physical Medicine and Rehabilitation
Board Certified in Spinal Cord Injury Medicine
Certified Independent Medical Examiner

Phone: 206-226-9183
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Office Manager-Medical Assistant:
Kris Nitschke-Norris
k.norris.nwpm@gmail.com

JJJ/imt11/imt6/imt13

EXHIBIT B

Northwest Medical Experts
*The Trusted Source for IME Services*

December 7, 2016

Jean P. Homan, Deputy City Attorney
City of Tacoma Office of the City Attorney
747 Market Street, Suite 1120
Tacoma, WA 98402

**Examinee Name: Cesar Beltran-Serrano**

**Cause Number: 15-2-11618-1**
**Case Reference: Cesar Beltran-Serrano, Bianca Beltran v. City of Tacoma**
**NWME File No.: 6306**

Dear Ms. Homan:

Northwest Medical Experts appreciates the opportunity to assist you in facilitating this CR 35 Medical Examination on Cesar Beltran-Serrano. The examination was performed by Aleksandra M. Zietak, MD. Attached you will find the report.

Accompanying the hard copy of this report is a CD containing an electronic copy of the report, and an exact copy of the records and materials "as reviewed" by the Examiner; and if available, a copy of any intake forms completed by the Examinee.

The opinions expressed are those of the Examiner and do not represent the views of Northwest Medical Experts.

We look forward to assisting you again in the future.

Sincerely,

Northwest Medical Experts Inc.

600 University St., Ste. 2325, Seattle, WA 98101
(206) 926-3756 Local * (866) 276-0505 Toll Free * (866) 223-4996 Toll Free Facsimile
www.nwmedicalexperts.com

# Examination Report

**Examinee:** **Cesar Beltran-Serrano**
**Cause Number:** **15-2-11618-1**
**Case Reference:** **Cesar Beltran-Serrano, Bianca Beltran v. City of Tacoma**

Performed by

Aleksandra M. Zietak, MD

Requested by

Jean P. Homan, Deputy City Attorney
City of Tacoma Office of the City Attorney
747 Market Street, Suite 1120
Tacoma, WA 98402

Exam Date

November 8, 2016

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Northwest Medical Experts
*The Trusted Source for IME Services*

December 7, 2016

Jean P. Homan, Deputy City Attorney
City of Tacoma Office of the City Attorney
747 Market Street, Suite 1120
Tacoma, WA 98402

| | |
|---|---|
| **Re:** | **CR 35 MEDICAL EXAMINATION** |
| **Examinee Name:** | **Cesar Beltran-Serrano** |
| **Case Reference:** | **Cesar Beltran-Serrano, Bianca Beltran v. City of Tacoma** |
| **Cause Number:** | **15-2-11618-1** |
| **Date of Birth:** | **November 20, 1959** |
| **Date of Injury/Loss:** | **June 29, 2013** |
| **Date of Exam:** | **November 8, 2016** |

**Examiner:** **Aleksandra M. Zietak, MD**

Dear Ms. Homan:

Thank you for asking me to evaluate Cesar Beltran-Serrano on November 8, 2016.

The CR 35 medical examination process was explained to the Examinee, and he understands that no patient/treating physician relationship was established. Mr. Beltran-Serrano was advised that the information provided will not be confidential and a report will be sent to the requesting client.

Mr. Beltran-Serrano was instructed at the time of the examination to not engage in any physical maneuvers beyond what he could tolerate, or which he felt were beyond his limits, or could cause physical harm or injury.

Mr. Beltran-Serrano was seen for an independent medical examination at MVP Physical Therapy in Tacoma. Present with him were Pamela Wells, paralegal from Connelly Law Offices; Carlo Tanne, certified court interpreter; and Rebecca Bellerive, RN, disability case manager/life care planner. Ms. Wells audio-recorded the examination.

## CHIEF COMPLAINT(S):

Gunshot wounds.

## HISTORY OF THE CURRENT INJURY:

The claimant is a 56-year-old Spanish-speaking man who resides in Federal Way. When asked about the June 29, 2013, incident and subsequent hospitalization, the claimant stated he did not wish to remember it and he did not want to talk about it with anybody except with an attorney. Per the records, Mr. Beltran-Serrano was admitted to Tacoma General Hospital on June 29, 2013, after sustaining multiple gunshot wounds in an altercation with the police. He underwent numerous surgical procedures and ultimately was discharged on August 22, 2013, to the home of his daughter, Bianca, who was living in Marysville at the time. At the time of discharge, he had a colostomy in place. The colostomy was taken down in February of 2014. His daughter Bianca has since moved to Federal Way and the claimant continues to reside with her.

## CURRENT CONDITION:

The claimant was asked about his current symptoms. He states he was diagnosed with Schizophrenia but this is not related to the subject accident. His ribs hurt a lot. Both knees hurt, the left more than the right, and he struggles to walk. He states that the lateral rib soreness came on recently and it is constant. He takes a capsule for this but it does not help. He states he has difficulty breathing. He does not get oxygen to his heart. He becomes short of breath and anxious when lying down. Symptoms are transient. He does not utilize oxygen. He states he is to undergo studies tomorrow to check his heart.

The claimant states that he has had x-rays taken of his knees and he has been given injections but his knees are getting worse. He has had fluid aspirated from his knees. The knees always hurt when he walks, especially going up stairs. His knees only hurt with movement. His lateral ribs also hurt when he walks. He gets tired and states that he feels a heavy weight on his body. He states in the last year, that is sometime in 2015, he underwent two abdominal surgeries. He states doctors plan more surgery to correct the abdominal hernia. He states he has an appointment tomorrow with a surgeon whose name he cannot recall.

Mr. Beltran-Serrano states that he lives in an apartment with his daughter, Bianca; her daughter's fiance' and a granddaughter named Paulia. I asked him what he does all day and his response was "not much." He watches television. He was going out to walk but his knee swelled up. He states there is not much to do except to vacuum. Sometimes he washes dishes. He says his daughter, Bianca, is his guardian and she takes care of him. She gives him his medications when they are scheduled. He states that she washes his feet and scrubs his back which he cannot do alone. He does not know what medicines he is on. He takes four pills in the morning and two pills at bedtime. Sometimes Bianca helps him don his shirt. He says he gets dressed about every other day. There are times when he can don his shirt independently but his right shoulder hurts when he has the arm elevated. He states he cannot move his right arm very well, referring to the shoulder. If he does not want to bother his daughter, he dons and doffs his shirts independently. He dons and doffs his pants independently. He struggles to tie his shoes. Today he is wearing cowboy boots and he states he can don and doff these independently, although he struggles. He is independent in toileting. For bathing, he sits in a chair in the shower. He does not use a handheld shower and there are no grab bars in the bathroom. He lives in a second-floor apartment. He uses the right or left handrail when climbing the stairs.

He states he does not go out because he gets too tired. He has only been to the store in the last month. Usually he goes alone to Safeway. Sometimes he buys something. He pays with food stamps. He does not drive.

The claimant states he does not know the names of the doctors that he sees. He says his memory is bad and names are hard for him. He goes to doctors at SeaMar every one and a half to two months. His daughter drives him to those appointments.

## PAST MEDICAL HISTORY:

Illnesses
The claimant has longstanding Schizophrenia.

Operations
He has undergone right shoulder surgery in the past. He states he cannot move the right arm very well.

## REVIEW OF SYSTEMS:

Head, Eyes, Ears, Nose, Throat
He states he cannot read but if he had glasses, he would read something like the Bible. He lost his glasses several years ago. He can read a little, slowly. His right ear pops. He states it is hard to swallow corn tortillas sometimes as they are rough. He has no trouble swallowing water. He then states that he must eat soft food since the 2013 incident. When asked about his sense of smell, he states that in the past he could detect bad odors. When he was in Mesa or Phoenix, Arizona, he got a pill and the "bad odor went away."

Pulmonary
As above.

Cardiac
Negative.

Gastrointestinal
He reports occasional heartburn and takes capsules which help him. He states he had constipation in the past. He is not sure if he is on any medications for his bowels. He states that he now must sit on the toilet for 15 to 20 minutes in order to have a bowel movement. He has an abdominal hernia. Sometimes when he bends over it hurts, he indicates the left lower quadrant.

Genitourinary
He reports normal bladder function.

Skin
No issues reported.

Neurological
He reports no headaches. He states he occasionally has some numbness in the distal upper arms and in the dorsal forearms. He describes "bone pain" in his entire body from his head to his feet. He has noticed this for two years. He also reports pain in the buttocks and this sometimes wakes him up.

Musculoskeletal
He sometimes has swelling in his hands. His left knee becomes swollen. When he rests, the swelling decreases. He also reports a little swelling in the feet and ankles. He states that his left knee buckles and his left knee was fine prior to the subject incident. He was using a cane for ambulation but lost it two or three months ago. He believes he forgot his cane at a 7/11 store where he had gone by himself. He points to the dorsal aspects of the third and fourth metacarpal joints and states he experiences cramping in these areas sometimes when he is asleep. This will wake him up.

Appetite
He reports a good appetite. He says his daughter is a good cook. He states that his usual weight was between 180 and 190 pounds.

Sleep
Sometimes he cannot fall asleep and other times he can. He does not feel rested in the day. He says he naps daily for two or two and a half hours.

## MEDICATIONS:

He does not know the names of his medications.

## ALLERGIES:

No known drug allergies.

## HABITS:

He states he smokes one pack of cigarettes per day when he has cigarettes. His daughter buys them. Usually he smokes Marlboros. He admits he used to drink a lot of alcohol. He denies using marijuana. He used to use cocaine once in a while.

## FAMILY HISTORY:

Not obtained.

## SOCIOECONOMIC:

The claimant is from a town in Sinaloa, Mexico. He has nine siblings and states that he is one of the younger children in the family. He completed the third grade. He worked in the fields in Mexico. He states he has very little ability to read and write in Spanish. He came to the United States in 1980 (age 21). He did farm work in California for about five months and then he moved to Washington State. He worked in the fields in Walla Walla. He was a migrant farm worker. He cannot recall when he was last employed. He states he worked in a chocolate store making chocolate bars in Tacoma for eight months.

The claimant states that he was married at age 23 and divorced after 17 years. He has five children whose ages he does not recall. The eldest is Bianca, who was born in 1982. He states he used to drive but does not have a driver's license. When asked about leisure interests, he

states that in the past he would work and stay busy. When asked about current leisure activities, he states that his knee do not let him walk. He likes to be busy and read but he does not have eyeglasses. He states it is good to be busy. He states he gets very anxious and sometimes cannot walk and he does not know what to do with himself. He states that his current income is Social Security and food stamps.

## PHYSICAL EXAMINATION:

Stated height 5 feet 8 inches. Stated weight about 220 pounds. Right-hand dominant. He sports a mustache. He speaks in a soft voice. He appears to sit comfortably for the entire interview, approximately one and a half hours. His affect is somewhat flat, though occasionally he smiles. Eye contact is fair. Occasionally he exhibits a mild pill-rolling tremor on the right side and less often just a trace tremor on the left side. His hygiene appears to be good. He comes to stand without difficulty. He doffs his jacket and reaches up to hang it on a hook on the door without difficulty. He is cooperative. He is using no assistive device. On standing, his shoulders are somewhat protracted. The shoulders and the pelvis appear to be level. There are left and right posterior punctate scars as well as a left horizontal thoracotomy scar measuring approximately 13 centimeters in length. There is a round scar in the upper outer quadrant of the left buttock. There is a midline abdominal scar extending to the umbilicus and then veering toward the right side. He has a protuberant abdomen with a hernia on the left side, visible particularly when he is standing. No muscle spasms are noted in the neck or back. On palpation he reports no tenderness in the neck, back, or pelvic girdles.

Active cervical rotation is 60 degrees to the left and right, lateral bending 20 degrees to the left and right, flexion 40 degrees, and extension 50 degrees. He has no complaints of discomfort with these motions. Active lumbar flexion is 70 degrees, extension 30 degrees, and lateral bending 20 degrees to the left and right. Thoracolumbar rotation is 30 degrees to the left and right. He has no complaints of discomfort with these motions.

The arms and legs are warm and dry. Fungal changes are noted of the skin of the feet and toenails. There is trace pretibial edema bilaterally. There is mild clubbing of the fingers. There is a surgical scar over the right anterior shoulder that is within normal limits without evidence of a propulsive pattern.

The claimant was casually dressed in a front button shirt, jeans, socks, and cowboy boots. He could doff and don his clothes for the examination without assistance.

## DIAGNOSTIC STUDIES REVIEWED:

None are indicated, none are reviewed. I would be glad to review any that become available.

## DIAGNOSES:

1. Multiple gunshot wounds.

2. Splenic laceration with subsequent splenectomy.

3. Hepatic laceration.

4. Status post injury to the transverse and descending colon, status post partial colectomy, colostomy, and reversal of colostomy, with development of incisional ventral hernias.

5. Lung laceration status post thoracotomy, renal laceration.

6. Right peroneal vein thrombosis.

7. L1 anterior column fracture without structural sequelae.

8. CT scan evidence of small metallic fragment in the sacral canal on the left at S3-S4 with multiple bone fragments.

9. Perihepatic abscesses, resolved.

## PRE-EXISTING CONDITIONS:

1. History of paranoid schizophrenia and depression

2. History of alcohol and narcotic abuse.

3. Chronic low back and bilateral lower extremity pain with imaging evidence of lumbar spine degenerative changes.

4. Chronic right shoulder pain with history of humeral neck fracture and subsequent open reduction and internal fixation.

5. History of tuberculosis.

6. Parkinsonism versus tardive dyskinesia.

7. Chronic left knee pain with imaging evidence of osteoarthritis.

8. History of tonic-clonic seizures.

9. MRI evidence of chronic vascular ischemic changes in the brain.

10. Gastroesophageal reflux disease.

11. Onychomycosis.

12. Chronic obstructive pulmonary disease.

13. Dyslipidemia.

## DISCUSSION:

The following responses to the questions submitted in your cover letter are based upon the information available at this time, including the history given by the Examinee, the medical records, diagnostic studies, as well as the physical findings.

1. ***Does Mr. Beltran-Serrano currently have any diagnosable physical conditions or impairments?***

   The diagnoses are listed above.

2. ***For any conditions or impairments that Mr. Beltran-Serrano currently has, what is the probable cause of each condition or impairment that you have identified and to what extent, if any, are these conditions or impairments attributable to the incident upon which this suit is based?***

   Conditions related to the gunshot wounds from the June 29, 2013, incident are listed above. I find no residual dysfunction from any of these conditions. Mr. Beltran-Serrano has developed incisional ventral hernias that are not symptomatic. I defer to the psychiatrist any psychiatric residuals resulting from this incident.

3. ***For any conditions or impairments you identify, what treatments are available/recommended and what is your opinion as to the long-term prognosis?***

   I defer to the psychiatrist regarding any changes in Mr. Beltran-Serrano's pre-existing psychiatric condition. Mr. Beltran-Serrano has an abdominal hernia noted on examination. A CT of the abdomen obtained in October, 2015. showed evidence of multiple ventral abdominal hernias. Per the records provided, surgical repair has not been advised; however, I do note that there has been little follow-up with any surgeons regarding the abdominal hernia. If there are medical records related to evaluation and recommended treatment of the abdominal hernias, I would want to review them. The aforementioned abdominal CT scan showed that these hernias contain fat. If Mr. Beltran-Serrano remains asymptomatic (*regarding these hernias*), he may not require surgical repair. Risk factors for poor healing are his tobacco use and obesity. It should be noted that Mr. Beltran's reported weight is similar now to what it had been prior to the subject incident.

4. ***For any conditions or impairments attributable to the incident upon which this suit is based, was there any treatment Mr. Beltran-Serrano should have completed but failed to complete?***

   Mr. Beltran-Serrano is to have followed up with a surgeon regarding the abdominal hernia. I find no evidence in the records that were provided that he has done so.

5. ***Finally, I would like you to include in your evaluation an assessment of the opinions offered by Dr. James, identifying those opinions with which you agree and those with which you do not agree. For any opinions with which you disagree, please state the basis for your disagreement.***

   I have reviewed the independent medical examination report of Dr. James. I am not in agreement with many of her recommendations.

   Status post splenectomy. Dr. James notes he is at greater risk for certain infections and must have annual immunizations. It is true that persons who have undergone splenectomy can be at risk for infections. Mr. Beltran-Serrano appears to have done well in the three-plus years since the subject incident in that he has not had any major infections. He was hospitalized for the colostomy takedown and no significant complications were noted. Annual immunizations are recommended for the elderly and for individuals with health problems. Annual immunizations would have been recommended for Mr. Beltran-Serrano prior to the subject incident.

Multiple abdominal hernias have been noted on the abdominal CT scan. Physical examination reveals one large hernia to the left of midline in the abdomen. Mr. Beltran-Serrano's primary care physician has referred him multiple times to a surgeon. We have no records to show that Mr. Beltran-Serrano has followed through with this recommendation. There is one note in the record (January 14, 2015) attributed to Mr. Beltran-Serrano's daughter. She states that Dr. Strong is not recommending any surgical repair of the abdominal hernia unless it "turns acute." He may not be a candidate for surgery as he continues to smoke cigarettes. Not all abdominal hernias require surgical repair. The claimant underwent a CT of the abdomen at the request of Jigish Patel on October 22, 2015. Records from Dr. Patel were not provided.

Low back pain. Records show low back pain predating the subject incident. Because of the subject incident, the claimant sustained a traumatic L1 spinal fracture and left side S3-S4 sacral fractures. In the records, there are intermittent complaints of low back pain as there had been prior to the subject incident. There is no evidence of radiculopathy. Further workup of the lumbosacral fractures, locations of the metallic fragments, or of lower back pain etiology is not indicated.

Activities of daily living. There is documentation in the records that the claimant has been independent in activities of daily living following the subject incident. He himself admits that he is independent in activities of daily living, but agrees to assistance from his daughter when she is there to provide it.

Mobility. I find no evidence in a reduction in mobility. The claimant did not report severe bilateral sacral pain at the time of my evaluation. This complaint is not noted in the numerous records that have been reviewed.

Upper extremity neurological conditions. The subjective complaints at the time of this examination as well as review of the records do not reveal evidence of upper extremity neuropathies. There are no indications for further workup such as electrodiagnostic studies.

Projected specialist evaluations. Mr. Beltran-Serrano does not need to see a physical medicine rehabilitation specialist or pulmonologist or gastroenterologist or neurologist as it regards the subject incident. Records note visits every few months to a primary care provider at SeaMar. The claimant would be seeing a primary care doctor at this frequency given his general health. He is a chronic smoker and any pulmonary problems would be related to this. Records note that he also has chronic obstructive pulmonary disease. The claimant has a history of gastroesophageal reflux disease. This is unrelated to the subject incident. Nerve conduction studies of the upper extremities are not indicated as the neurological examination is within normal limits. A pain management evaluation is not indicated. Additional x-rays of the pelvis and upper extremities are not indicated.

Medications. Gabapentin was prescribed while Mr. Beltran-Serrano was hospitalized following the subject incident in 2013. It is not clear whether this was prescribed for treatment of his psychiatric condition or for treatment of pain, as gabapentin is utilized for both of these conditions. When the claimant was seen by the primary care provider in August, 2013, he reported chronic pain in his right shoulder and left knee. These are pain conditions that predate the subject incident. In March, 2014, the claimant denied constipation, although he was taking a stool softener. It is unknown what kind of stool softener he was on. There was nothing in the records provided about a stool softener

being prescribed. Mr. Beltran-Serrano had complained of constipation to his primary care provider in August 2014 and docusate was then prescribed. In February, 2016, when Mr. Beltran-Serrano reported constipation, Dr. Mustafa provided dietary and exercise counseling. Docusate was not prescribed. Constipation is a common symptom and I cannot relate the constipation to the injuries the claimant sustained or to the sequelae of the injuries.

Household assistance. Mr. Beltran-Serrano had been living in group homes or with family prior to the subject incident. He was homeless for a time in early 2013. Prior to the subject incident, he was not consistent in taking medications for the schizophrenia, which resulted in periods of decompensation. It does not appear that Mr. Beltran-Serrano could safely live alone prior to the subject incident and this has not changed since then. He has no greater needs now than he did prior to the subject incident.

In summary, Mr. Beltran-Serrano has had a very good recovery from injuries sustained in the unfortunate June 29, 2013, incident. He appears to be at his baseline, with the exception of now having a large abdominal hernia. If he has seen surgeons in regard to this hernia it would be helpful to review those records. According to his daughter, Dr. Strong did not recommend surgical repair unless he developed acute symptoms related to the hernia. Such documentation was not provided.

Thank you for providing me with the opportunity to evaluate Mr. Beltran-Serrano. If more information becomes available at a later date, an additional service, report, or reconsideration may be requested. This opinion does not constitute, per se, a recommendation for specific claims or administrative functions to be made or enforced.

All opinions expressed by me in this report are based on a reasonable degree of medical certainty, centered on the medical examination and documentation as provided on a more-probable-than-not basis, with the assumption that I am in possession of all available records and the material is true and correct.

I, Aleksandra M. Zietak, MD, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct and based upon my own personal knowledge and belief:

1. I am over 18 years old, competent to testify, and have personal knowledge of the facts contained in this declaration.

2. I declare that the attached CR 35 Medical Evaluation of Cesar Beltran-Serrano was prepared by me and is true and correct to the best of my knowledge.

3. Unless specified otherwise, my opinions and conclusions are stated on a more probable than not basis with a reasonable degree of medical probability.

4. My curriculum vitae, attached hereto and incorporated herein by this reference, sets forth my relevant training and experience.

*SIGNED and DATED this 7th day of December, 2016, in the State of Washington.*

Electronic Signature Authorized 12/07/2016
Aleksandra M. Zietak, MD
Physical Medicine and Rehabilitation Specialist
License: WA – MD00020784

AMZ:imt6:12/06/16:imt13:12/7/16

*For report quality assurance questions, contact Mona Betzler at (866) 276-0505 x 1214 or via email to Mona@nwmedicalexperts.com.*

EXHIBIT C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian ad litem of the person and estate of CESAR BELTRAN-SERRANO, | ) |
| Plaintiffs, | ) |
| vs. | ) No. 15-2-11618-1 |
| CITY OF TACOMA, a political subdivision of the State of Washington, | ) |
| Defendant. | ) |

DEPOSITION OF ALEKSANDRA M. ZIETAK, M.D.

July 19, 2017

Tacoma, Washington

Byers & Anderson, Inc.

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EXAMINATION INDEX


| EXAMINATION BY: | PAGE NO. |
|---|---|
| Mr. LeBank | 4 |
| Ms. Homan | 84 |


EXHIBIT INDEX


| EXHIBIT NO. | DESCRIPTION | PAGE NO. |
|---|---|---|
| Exhibit No. 1 | 1-page "Attorney Billing Charges" document | 17 |
| Exhibit No. 2 | 6-page copy of payments received | 19 |
| Exhibit No. 3 | 2-page list of cases | 20 |
| Exhibit No. 4 | 51-page document. 49-page report and 2-page CV | 25 |
| Exhibit No. 5 | 9-page copy of handwritten notes | 25 |
| Exhibit No. 6 | 1-page color copy of photograph | 71 |

1 BE IT REMEMBERED that on Wednesday,
2 July 19, 2017, at 747 Market Street, Tacoma, Washington,
3 at 1:42 p.m., before Cindy M. Koch, Certified Court
4 Reporter, RPR, CRR, CLR, appeared ALEKSANDRA M. ZIETAK,
5 M.D., the witness herein;
6 WHEREUPON, the following proceedings
7 were had, to wit:
8
9 <<<<<< >>>>>>
10
11 ALEKSANDRA M. ZIETAK, M.D., having been first duly sworn
12 by the Certified Court
13 Reporter, testified as
14 follows:
15
16 EXAMINATION
17 BY MR. LEBANK:
18 Q Can you please state your name and spell it for the
19 record.
20 **A Yes. My name an Aleksandra Maria Zietak, M.D.,**
21 **A-l-e-k-s-a-n-d-r-a, M-a-r-i-a, Z-i-e-t-a-k.**
22 Q And what is your profession?
23 **A Physician.**
24 Q And what -- do you have a subspecialty?
25 **A I have a specialty, physical medicine and rehabilitation.**

1 Q Okay. Can you -- what's your understanding of the
2 initial injuries that Mr. Beltran sustained from the
3 shooting?
4 **A Okay.**
5 Q And you're referencing your report?
6 **A I'm referencing my report. I'm going to find the initial**
7 **hospital record.**
8 **So he had multiple gunshot wounds to the chest and**
9 **abdomen. He had left-side pneumothorax.**
10 Q In listing out the -- on Page No. 5, is this a list of
11 the wounds that he sustained, 1 through 9?
12 **A Yes.**
13 Q Okay. So would that be helpful?
14 **A That's helpful.**
15 Q Okay.
16 **A Do you want me to read them?**
17 Q Well, yeah, I'd like you to go through and explain --
18 **A Okay.**
19 Q -- what each of the injuries were that he sustained.
20 **A So he had, as I said earlier, the multiple gunshot**
21 **wounds. They were to the chest and abdomen.**
22 **He sustained a laceration of the spleen and**
23 **subsequently underwent splenectomy, or removal of the**
24 **spleen.**
25 **There was a laceration to his liver.**

1 **He had injury to his intestines, specifically the**
2 **transverse and descending colon, and he underwent partial**
3 **colectomy, which is removal of some of the intestines. A**
4 **colostomy was placed. Later the colostomy was reversed,**
5 **and he developed an incisional ventral -- actually**
6 **incisional ventral hernias.**
7 **He had a lung laceration and had undergone**
8 **thoracotomy.**
9 **He had a laceration to the kidney.**
10 **During the hospitalization, he was found to have**
11 **right peroneal vein thrombosis.**
12 **He had an L1 anterior column fracture without**
13 **structural sequelae.**
14 **And there was CT scan evidence of a small metallic**
15 **fragment in the sacral canal on the left at S3-S4 with**
16 **multiple bone fragments.**
17 **And there had been abscesses around the liver, and**
18 **those had resolved.**
19 Q Let's start with No. 1. So multiple gunshot wounds, you
20 said to the abdomen, chest, and then you didn't say, but
21 also bilateral arms --
22 **A Right.**
23 Q -- upper extremities; right?
24 **A Right.**
25 Q Okay. And one of those gunshots, did you look at the

1 CTs?
2 A **I did. I --**
3 Q Or the x-rays?
4 A **I had -- and that should be -- if it's not in one of**
5 **those boxes, I had a CD with all of his imaging studies.**
6 Q Was one bullet -- stayed inside of him and was eventually
7 recovered?
8 A **That's what the records said, yes.**
9 Q And where was that bullet recovered from?
10 A **I don't know. I'd have to read the records to see where**
11 **it was taken out.**
12 Q And then you indicated that there was another -- it was
13 later on, a -- No. 8, CT scan evidence of small metallic
14 fragment in the sacral canal on the left at S3-S4 with
15 multiple bone fragments?
16 A **Yes.**
17 Q Okay. And so that would have been a different bullet,
18 the bullet that went through his buttocks and then
19 injured the sacrum?
20 A **Yes.**
21 Q Okay. And that there was a piece of that bullet that was
22 left in him?
23 A **Yes.**
24 Q And is that still there?
25 A **I believe so.**

1 Q Do you know whether or not that injury causes him
2 continuing pain?
3 **A I believe it does not.**
4 Q Okay. What's the basis for that?
5 **A His testimony and my examination, review of the records.**
6 **I have treated individuals over the years with gunshot**
7 **wounds, many that are veterans, and sometimes where a**
8 **bullet is, it just stays there. There's no need to**
9 **remove it if it's not causing a problem.**
10 **Mr. Beltran has chronic back pain predating this**
11 **incident. His -- the location of his back pain is**
12 **variable. If the bullet were bothering him, he would**
13 **consistently have pain in that one area, and that's not**
14 **the case here.**
15 Q Okay. You mentioned that he had difficulty breathing?
16 **A That's what he stated.**
17 Q Okay. And did he have a pulmonary injury from the
18 shooting?
19 **A There was a laceration to the lungs, yes.**
20 Q Okay. And what was the extent of the laceration to the
21 lungs?
22 **A I don't believe it was that serious. He -- there's no**
23 **evidence -- he didn't have to go on oxygen after he left**
24 **the hospital. He's a chronic cigarette smoker, which is**
25 **going to contribute to his breathing issues, but I -- I**

1 **don't find that the lung laceration was something that**
2 **left him with any residual deficits.**
3 Q Okay. Then No. 2, he had a splenic laceration with
4 subsequent splenectomy, so they removed his spleen?
5 **A They did.**
6 Q Okay. What does the spleen do?
7 **A The spleen protects us from getting infections.**
8 Q Okay. So what does it mean for someone not to have a
9 spleen then?
10 **A In theory, he'd be prone to more injections [sic]. In**
11 **practice, it means nothing. Many people have their**
12 **spleens removed from -- it's a common type of surgery**
13 **after blunt force injuries to the abdomen. Particularly**
14 **car accidents, we see that happen. Generally, we don't**
15 **do anything about it, and in looking at the records,**
16 **subsequent to 2013, I don't see that he's had infections**
17 **or had any issues, so it's really not an issue.**
18 Q Okay. Could he be more prone to infection in the future?
19 **A If that were the case, we would have seen it already.**
20 **Could he be prone to infections? He's getting up in his**
21 **years. He's got other health issues. And so he's not --**
22 **he's not very active. I mean, he stays in an apartment**
23 **all day. So yes, he's going to be more prone to**
24 **infections than someone else, a healthy, active person.**
25 Q What type of infections? Like getting an infection, like

1 a Staph infection, something from a splinter, or like
2 viral infections? What --
3 **A We're talking about viral infections. He still smokes**
4 **cigarettes, so if he gets the -- a flu or he's got a**
5 **grandchild living with him, kids bring home bacteria. He**
6 **could easily get pneumonia. That could be -- have all**
7 **kinds of complications.**
8 **But as I say in the records I have, in the three**
9 **years subsequent to this, I haven't seen that he's had**
10 **infection, so he's not any more prone to infections than**
11 **anybody else with health problems would be.**
12 Q And in the three years since he was shot, what has his
13 living situation been?
14 **A He's been living with his daughter Bianca.**
15 Q Okay. Has he lived in a group home in the three years
16 since the shooting?
17 **A I don't know. I'd have to -- I think he -- I think he's**
18 **been living only with Bianca, but I could be wrong.**
19 Q Okay. And prior to the shooting, do you know whether or
20 not he ever lived in group homes?
21 **A Oh, he was homeless. He lived in group homes. He lived**
22 **with a daughter in the Tri-Cities or Yakima. He, I**
23 **believe, lived with Bianca. Yeah, he --**
24 Q Moved around a lot?
25 **A -- moved around.**

1 Q The next is hepatic laceration?
2 **A Yes.**
3 Q What's that?
4 **A A laceration to the liver.**
5 Q And how bad was that?
6 **A It's healed. It's not an issue. His liver function**
7 **tests have been normal. And that's even given his**
8 **history of alcohol and drug abuse, so that's good.**
9 Q Okay. Then No. 4 says, "Status post injury to the
10 transverse and descending colon, status post partial
11 colectomy, colostomy, and reversal of colostomy, with
12 development of incisional ventral hernias"; correct?
13 **A Yes.**
14 Q And so what does that mean?
15 **A So as I said earlier, there was -- there were injuries to**
16 **his intestines. So he had part of the intestines**
17 **removed. He had a colostomy for a time, and that was**
18 **removed, and he's now able to have bowel movements.**
19 **And so it looks like, just looking at that section,**
20 **he has done well. He has recovered. He tends to be**
21 **constipated. He -- and that's noted in the records. I**
22 **believe he's been advised to take stool softeners, and I**
23 **don't know that he does. And constipation is not an**
24 **unusual problem in -- in the population, and I cannot say**
25 **that that's related to this.**

1 Q Okay.
2 **A And then there's the issue of the hernia.**
3 Q Are -- do you -- hold on a second.
4 **A Okay.**
5 Q Do you specialize in working with individuals that have
6 bladder disorders?
7 **A As it pertains to conditions, patients that I see, yes.**
8 **I see -- I said I see persons with spinal cord injury,**
9 **stroke, multiple sclerosis. They have very specific**
10 **bladder issues that I do treat.**
11 Q Okay. In terms of the injuries, he had to have a portion
12 of his intestines removed; right?
13 **A Yes.**
14 Q And he also had an injury to his colon?
15 **A Yes.**
16 Q And then for a period he had a colostomy bag; right?
17 **A Yes.**
18 Q And that's a -- essentially they diverted his colon so
19 that, instead of having bowel movements, it would go into
20 a colostomy bag?
21 **A That's right.**
22 Q And then they reversed that and removed the bag, and then
23 reattached his colon?
24 **A And reattached the colon, yes.**
25 Q And then he developed these ventral hernias from these

1 procedures?
2 A **From the surgery site, and he -- that can occur.**
3 Q Were the -- well, was the colostomy related to the
4 gunshot wound?
5 A **Yes. In that he had injury to his intestine and had to**
6 **have this procedure done, yes.**
7 Q So both the initial injury, the requirement to have the
8 colostomy bag, the reversal of the colostomy bag, and
9 then the hernias that developed?
10 A **It's all related.**
11 Q Okay. And then the surgery hernia, is that related?
12 A **Yes.**
13 Q Obviously the gunshot wounds are related; right?
14 A **Yes.**
15 Q Were all the medical treatment related to the gunshot
16 wounds related --
17 A **What --**
18 Q -- to these injuries?
19 A **What medical treatment are you talking about?**
20 Q At Tacoma General Hospital.
21 A **For that 50-some days that he was hospitalized, yes.**
22 Q Okay. And did you find that that treatment was all
23 appropriate?
24 A **Yes.**
25 Q Okay. Did you review any of the medical bills associated

1 with that treatment?
2 A **I did.**
3 Q And were those bills reasonable and customary?
4 MS. HOMAN: Object as to form.
5 THE WITNESS: As far as I can tell.
6 They're hospital billing records, and I don't understand
7 how hospitals bill.
8 Q (By Mr. LeBank) Okay. So that's beyond the scope?
9 A **Some of that's beyond my scope.**
10 Q Okay. But you agree that the treatment was appropriate?
11 A **Yes.**
12 Q And related to the injuries that he sustained?
13 A **Yes.**
14 Q How about for the splenic laceration with subsequent
15 splenectomy?
16 A **Yes.**
17 Q That was related, and the treatment was also related?
18 A **Yes. And that was during that hospitalization.**
19 Q Okay. And then also the hepatic laceration?
20 A **Yes.**
21 Q Also related?
22 A **Yes.**
23 Q And the treatment was also related and appropriate?
24 A **Yes.**
25 Q And then the -- No. 4, the injury to transverse and

1 descending colon, the partial colectomy, colostomy,
2 reversal of colostomy, and development of incisional
3 ventral hernias, that was all related to the gunshot
4 wounds?
5 **A Yes.**
6 Q The treatment was related and was appropriate?
7 **A Yes.**
8 **So it's been two hours.**
9 Q You're welcome to have a break whenever you want.
10 **A No, you paid for two hours. I thought this is only two**
11 **hours. That's one thing. Second, I have to plug my**
12 **meter if we're going to go beyond two hours.**
13 Q No, I think we're going to keep going.
14 **A Okay.**
15 Q We'll pay you for whatever additional time we use.
16 (Recess from 3:15 p.m. to
17 3:26 p.m.)
18 EXAMINATION (Continuing)
19 BY MR. LEBANK:
20 Q So I think we were talking about -- we went through this
21 list of his eight initial diagnoses that are here on
22 Page 5 and 6 of your report?
23 MS. HOMAN: Nine.
24 THE WITNESS: Yeah, nine diagnoses.
25 Q (By Mr. LeBank) I'm sorry, nine. And I don't think I

1 got to the last page. So I think that the last one we
2 talked about was No. 4; is that right?
3 A **Yes.**
4 Q Okay. So if we look at No. 5, lung laceration status
5 post thoracotomy and renal laceration, those were both
6 caused by the gunshot wounds?
7 A **They were.**
8 Q And the treatment associated with that was appropriate?
9 A **Yes.**
10 Q Okay. Then No. 6, the right peroneal vein thrombosis,
11 that appeared in the hospital?
12 A **Yes. And they weren't sure if that was -- they didn't**
13 **treat it, and I believe they said it may have just been**
14 **an incidental finding, if I remember correctly. Here we**
15 **go. Isolated right calf peroneal vein deep vein**
16 **thrombosis. Patient's symptoms are in the left leg.**
17 **This may be an incidental finding. And I don't see that**
18 **there was any specific treatment for that.**
19 **So I listed it because it was in the hospital**
20 **records --**
21 Q Okay.
22 A **-- but I -- was that caused by the gunshot wound? No. I**
23 **mean, could he get thrombosis from being in the hospital**
24 **and lying in bed? Yes. So I don't know what to make of**
25 **that. They didn't treat it.**

1 Q Okay. So there was no cost associated with it?
2 **A No cost associate- -- well, they did the test, but he**
3 **had -- they did the test because he had left leg pain,**
4 **and they checked both legs. So there was a test done,**
5 **which was appropriate, you know, given his situation. He**
6 **was bedbound and --**
7 Q From the gunshot wounds?
8 **A From the gunshot wounds.**
9 Q Okay. So in that regard, the test was associated with
10 the reason that he was in the hospital?
11 **A Yes.**
12 Q Okay. No. 8, the CT -- or no, No. 7, the L1 anterior
13 column fracture without structural sequelae?
14 **A Yes.**
15 Q Was that related to the gunshot wounds?
16 **A Yes.**
17 Q And was the treatment associated with that appropriate?
18 **A There was no treatment needed. Just a consultation.**
19 **Actually, he had imaging studies and a neurosurgeon saw**
20 **him, and no treatment was indicated.**
21 Q Okay. Then No. 8, the CT scan evidence of small metallic
22 fragment in sacral canal on the left at S3 to S4 with
23 multiple bone fragments, was that related to the gunshot
24 wounds?
25 **A It was.**

1 Q Okay. And any treatment associated with that, was that
2 appropriate?
3 **A Again, just he had imaging studies. He was seen by the**
4 **neurosurgeon. There are no problems associated with**
5 **that. No further treatment is indicated.**
6 Q And then there was a perihepatic abscess, or multiple --
7 **A Perihepatic abscesses, and these have resolved.**
8 Q What were those?
9 **A Those are abscesses around the liver. Those are sites of**
10 **infection that are -- would be associated with the**
11 **gunshot wounds.**
12 Q How would you classify Mr. Beltran's initial injuries?
13 **A Classify as in what classification?**
14 Q Well, someone comes into the emergency room, was he in
15 critical condition?
16 **A He was in critical condition. He was unconscious.**
17 Q And can you walk us through what his surgical course was
18 in the hospital?
19 **A Well, he was taken immediately to the emergency room for**
20 **exploratory laparoscopy. That's a surgery to his**
21 **abdomen, opening the abdomen to see what's going on**
22 **there. Exploration of the left chest, and he required**
23 **transfusions.**
24 **They did a thoracotomy and placed a chest tube on**
25 **the left side. That would be for the lung injury. They**

1 performed the splenectomy, some liver repair. There was
2 debridement of the left arm wound and cleaning and
3 packing of the right arm wounds.
4 Then there was the lung surgery. He had underwent a
5 lung resection. That's removal of some of the lung
6 tissue.
7 Again another placement of a chest tube, or maybe
8 not again. Maybe I'm misreading this. Repair of the
9 liver. He -- there was a diaphragm injury. That was
10 repaired.
11 He had VAC placement, that's V-A-C, and I forget
12 what that stands for. It's commonly used for wound care.
13 It's -- I forget what that stands for.
14 He had a subclavian line inserted. That's an
15 intravenous line through which he could get antibiotics,
16 which he would require.
17 He had the colostomy surgery on July 1.
18 And it was just monitoring after that. He did have
19 the pain in his left leg, and they did the venous studies
20 that showed the thrombosis in the right calf, which may
21 have been an incidental finding. They did not
22 anticoagulate him.
23 There were further studies. So it was mostly just
24 stabilization and letting the wounds heal.
25 And then he was discharged after 50-some days in the

1 **hospital.**
2 **He was admitted for takedown of the colostomy, it**
3 **looks like February of 2014, and he did well with that.**
4 **Then he was diagnosed with the hernias, and there**
5 **have been just a few appointments to a surgeon. He was**
6 **to have more appointments. Whether he has had these**
7 **appointments, I don't know. I didn't get those records.**
8 **From a record that I don't have, according to**
9 **Bianca, his daughter, the surgeon had said there would be**
10 **no future surgery planned for the hernia, but I have no**
11 **statement from the surgeon to support that.**
12 Q Okay.
13 **A And that may be true because we don't operate on all**
14 **hernias.**
15 Q Okay.
16 **A I think that sums it up.**
17 Q Okay. Now, in terms of the treatment that he received in
18 that initial hospitalization, the fifty -- I think it was
19 54 days that he was hospitalized, have you reviewed any
20 of the charges associated with that treatment?
21 **A I did. I had a whole -- pages of charges.**
22 Q Okay.
23 **A And again, a lot of those are hospital-type charges that**
24 **I -- I don't know where -- how they get their numbers.**
25 Q Okay. So you don't intend to testify whether or not

1 those charges are reasonable and customary?
2 MS. HOMAN: Objection. Asked and
3 answered.
4 THE WITNESS: Yeah, I probably am not
5 the person to testify in that matter.
6 Q (By Mr. LeBank) Okay. What about any of the charges for
7 any of the physicians' services?
8 **A Those, I can -- I can provide opinions on.**
9 Q Okay. Did you review the charges for the physicians'
10 services for the hospitalization?
11 **A Yes.**
12 Q And were those appropriate?
13 **A They appeared to be.**
14 Q Okay. Did you review the charges associated with the
15 reversal of the colostomy bag?
16 **A Yes. And the same thing. I can't comment on the**
17 **hospital charges, but I -- the physicians' charges**
18 **appeared to be appropriate.**
19 Q Okay. In terms of the -- on Page 6, the preexisting
20 conditions, so he had a history, and a -- by "history,"
21 he had a diagnosis of schizophrenia and depression; is
22 that correct?
23 **A Yes.**
24 Q And so he had a diagnosis of schizophrenia that predated
25 the shooting; correct?

1 STATE OF WASHINGTON ) I, Cindy M. Koch, CCR, RPR, CRR,
) ss CLR, a certified court reporter
2 County of Pierce ) in the State of Washington, do
hereby certify:
3
4
That the foregoing deposition of ALEKSANDRA M. ZIETAK,
5 M.D. was taken before me and completed on July 19, 2017, and
thereafter was transcribed under my direction; that the
6 deposition is a full, true and complete transcript of the
testimony of said witness, including all questions, answers,
7 objections, motions and exceptions;

8 That the witness, before examination, was by me duly
sworn to testify the truth, the whole truth, and nothing but
9 the truth, and that the witness waived the right of
signature;
10
That I am not a relative, employee, attorney or counsel
11 of any party to this action or relative or employee of any
such attorney or counsel and that I am not financially
12 interested in the said action or the outcome thereof;

13 That I am herewith securely sealing the said deposition
and promptly delivering the same to Micah R. LeBank.
14
IN WITNESS WHEREOF, I have hereunto set my signature on
15 the 24th day of July, 2017.

16

17

18

19 Cindy M. Koch, CCR, RPR, CRR, CLR
20 Certified Court Reporter No. 2357
(Certification expires 06/09/18.)
21
Byers & Anderson certifies that court reporting fees,
22 arrangements, terms of payment, costs, and/or services are
being offered to all parties on equal terms, and that if
23 there is an agreement between Byers & Anderson and/or its
court reporters and any persons and/or entities involved in
24 this litigation, and/or any third party agreements relevant
to this litigation, Byers & Anderson shall disclose the
25 agreement to all parties.

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August 02 2017 3:02 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**DECLARATION OF ANTHONY J. CHOPPA, M.Ed., CRC, CDMS, CCM** |

ANTHONY J. CHOPPA, M.Ed., CRC, CDMS, CCM declares and states as follows:

1. I am the owner and founding partner of OSC Vocational Systems, Inc., retained by the Plaintiffs in this case. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge information and belief. The opinions herein are provided on a more probable than not basis.

2. I am the owner and founding partner of OSC Vocational Systems, Inc. I have over



CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

thirty-eight years of experience in the fields of Rehabilitation Counseling, Vocational Rehabilitation, Case Management, and Life Care Planning. I am a Certified Rehabilitation Counselor, Registered Private Rehabilitation Counselor with the Washington State Department of Labor and Industries, Certified Disability Management Specialist, Certified Case Manager, Veterans Administration Certification, Certified Rehabilitation Counselor with the State of Oregon Workers' Compensation Division, and Registered Vocational Rehabilitation Counselor with the State of Alaska, Department of Labor, Workers' Compensation Division. In addition to my work as a rehabilitation counselor and case manager, I also provide expert testimony and life care planning services. As a case manager and life care planner, I have had the opportunity to research and become familiar with the amounts charged by medical providers and medical institutions in this region. I have been qualified to offer testimony regarding both past and future medical and vocational expenses in personal injury and workers compensation cases. I have authored numerous publications which are listed in my CV a copy of which is attached as Exhibit A.

3. In this case, I have reviewed Cesar Beltran's medical records and bills and have consulted with Dr. Jennifer James and other providers in order to prepare a life care plan for Mr. Beltran. In addition, I have reviewed the past medical charges incurred by Mr. Beltran as a result of the ballistic injuries that he sustained on June 29, 2013, including the billing records attached hereto at Exhibit B.

4. On June 29, 2013, Cesar Beltran was shot four times by TPD Officer Michel Volk. Mr. Beltran was transported from the scene of the shooting on June 29, 2013, by the Tacoma Fire Department, via ambulance, to Tacoma General Hospital and was admitted from June 29, 2013,



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to August 22, 2013 for treatment of injuries sustained from the gunshot wounds.

5. While admitted to Tacoma General Hospital Plaintiff Beltran underwent the following surgical procedures:

**6/29/2013:**

1. Emergent endotracheal intubation for airway control

**6/29/2013: (Dr. Strong)**

1. Lung resection x2.
2. Closure of the left chest.
3. Placement of left chest tube.
4. Exploratory laparotomy.
5. Repair of large stomach injury.
6. Splenectomy.
7. Repair and control of liver hemorrhage.
8. Diaphragm repair.
9. Colon resection x1.
10. Packing of the abdomen with Spider VAC placement.

**7/4/2013: (Dr. Strong)**

1. Exploratory laparotomy
2. Removal of packs and irrigation of the abdomen
3. Creation of a colostomy
4. Placement of 2 JP drains
5. Closure of the abdominal fascia.

**7/19/2013: (Dr. Mergener)**

1. ERCP, Biliary sphincterotomy, CBD stent

**8/1/2013: (Dr. Hardy)**

1. Ultrasound and CT guided liver abscess drain placements

6. From September 2, 2013 to September 3, 2013, Mr. Beltran was evaluated by Erika Shroeder, MD at Providence Medical Center Emergency Department for severe abdominal pain with a history of multiple abdominal surgeries and placement of new colostomy bag.



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7. On October 1, 2013, Mr. Beltran was admitted to Tacoma General Hospital for endoscopic retrograde cholangiopancreatogram with anesthesia for stent removal by Klaus Mergener, M.D.

8. From February 6, 2014 to February 21, 2014, Mr. Beltran was admitted to Tacoma General Hospital for exploratory laparotomy, colocolostomy and takedown of a prior colostomy site, performed by Michelle Strong, M.D.

9. From October 26 to October 27, 2015, Mr. Beltran was admitted to Tacoma General Hospital for evaluation of abdominal pain with history of abdominal pain, hematemesis, dark stools, and prior history of abdominal exlap. He was evaluated and treated by Drs. William Crabb, MD and Wingmei Lagesse, MD. Mr. Beltran has incurred the following charges related to the above medical care:

| Provider | Dates of Treatment | Amount |
|---|---|---|
| Tacoma General Hospital Hospital Charges | 6/29/13 to 8/22/13 | $616,444.45 |
| Tacoma General Hospital Professional Charges | 6/29/2013 – 8/22/2013 | $1,015.00 |
| Providence Medical Center | 09/02/2013 to 09/03/2013 | $5,102.84 |
| Tacoma General Hospital/Multicare Hospital Charges | 10/1/2013 | $8,657.00 |
| Tacoma General Hospital/ Multicare Hospital Charges | 2/6/2014 to 2/21/2014 | $69,827.40 |
| Tacoma General Hospital/ Multicare | 10/26/2015 – 10/27/2015 | $11,673.30 |
| TOTAL: | | $712,719.99 |

10. I have reviewed the charges associated with the above listed medical care. It is my opinion that the charges incurred are customary of the amounts charged by hospitals and medical providers in the medical community and are therefore reasonable.

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I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed this 2 day of August, 2017 at Bothel, WA.

Anthony J. Choppa



CONNELLY LAW OFFICES, PLLC
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EXHIBIT A

EXHIBIT A

**Anthony J. Choppa, M.Ed., CRC, CDMS, CCM**

OSC Vocational Systems, Inc.
10132 NE 185th Street
Bothell, WA 98011
(425) 486-4040 (425) 486-8701 fax
tony@osc-voc.com

## Education

B.A., Sociology, Mount Union College, Alliance, OH, 1976.

M.Ed., Rehabilitation Counseling, Kent State University, 1979.
Internship, Hillside Rehabilitation Hospital, Warren, OH, 1979.

## Certifications

Certified Rehabilitation Counselor (CRC), #15989, 1982.
Registered Private Rehabilitation Counselor, Washington State Department of Labor and Industries, #3001.
Certified Disability Management Specialist (CDMS), #01028, 1985.
Certified Case Manager (CCM), #10317, 1993.
Veterans Administration Certification, #346-113.
Certified Vocational Rehabilitation Counselor, State of Oregon, Workers' Compensation Division.
Registered Vocational Rehabilitation Counselor, State of Alaska, Department of Labor, Workers' Compensation Division.

## Employment

Intake and Vocational Counselor, Youngstown Society for the Blind and Disabled, 1976 - 1979.

Training Coordinator, Conbela Associates, Seattle, WA, 1979 - 1980.

Rehabilitation Counselor and Consultant (founding partner), OSC Vocational Systems, Inc., Seattle, WA 1981 - present.

## Professional Areas of Expertise

Vocational rehabilitation counseling, case management, developing rehabilitation plans, job development and placement, psychometric testing, expert testimony, life care planning, and case management. Manager of a large staff of rehabilitation professionals providing a variety of rehabilitation services in the areas of workers compensation, personal injury, veterans services, social security, railroad, maritime, and longshore cases.

## Anthony J. Choppa, M.Ed., CRC, CDMS, CCM

### Publications

Field, T., Choppa, A. & Shafer, K. (1984). **Labor Market Access (Rev.)**. Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (1985). **Washington Workers' Compensation Law.** Eau Claire, WI: Professional Education Systems, Inc.

Choppa, A., et al, (1986). **Vocational Consultation to Determine Loss of Wage Earning Capacity in Personal Injury Cases Involving Children and Young Adults.** The Vocational Expert, 3(1).

Choppa, A. (1987). Contributor to **Casebook: Rehabilitation in the Private Sector.** Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (1989). **Workers' Compensation in Washington - Vocational Rehabilitation Rules.** Eau Claire, WI: National Business Institute, Inc.

Choppa, A. Rappleyea S., (1989). **Transitional Planning.** Learning Disabilities Association of America, 24(6); and State News Focus of the Washington State Head Injury Foundation, 5(6).

Choppa, A., et al, (1990). **Are There Damages? The Role of Vocational Rehabilitation.** Professional Rehabilitation Organization of Washington Newsletter, 10(5).

Choppa, A., et al, (1991). **Workers' Compensation in Washington: Issues and Answers.** Eau Claire, WI: National Business Institute.

Choppa, A., Cutler, F. & Siefker, J., et al, (1992). **Vocational Evaluation in Private Sector Rehabilitation.** Stout, WI: University of Wisconsin - Stout.

Choppa, A., et al, (1993). **Vocational Rehabilitation of Older Displaced Workers.** Journal of Rehabilitation, 59(3).

Choppa, A., et al, (1993). **Life Care Planning and Mediation.** The Rehabilitation Review, 2(5).

**Publications (cont.)**

Choppa, A., Shafer, K. & Siefker, J. (1995). **How Changes in the Labor Market Affect Vocational Rehabilitation.** NARPPS Journal, 10(4).

Choppa, A., et al, (1996). **Vocational Rehabilitation Counselors as Case Managers.** The Case Manager, 7(5).

Choppa, A., et al, (1997). **A Study Guide for the Certified Case Manager Exam.** Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (1998). **CDMS Study Guide for the Certified Disability Management Specialist Exam.** Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (1998). **Forensic Casebook: Vocational and Economic Reports.** Athens, GA: Elliott & Fitzpatrick, Inc.

Field, T., Choppa, A., Dillman, E., Garner, D., Grimes, J., Jayne, K., Kelsay, E., Kilcher, D.G., Kilcher, J. & Taylor, D. (2000). **A Resource for the Rehabilitation Consultant on the Daubert and Kumho Rulings.** Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (2001). **Comprehensive Study Guide for the exams of Case Manager Certification (C.C.M.), Certification of Disability Management Specialist (C.D.M.S.), Certified Life Care Planner (C.L.C.P.);** Kelsay, M., Kilcher, J., Taylor, D.; Editors, Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al (2002). **Approaches to estimating lost earnings: Strategies for the Rehabilitation Consultant.** Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al (2003). **Book Review,** The Transitional Classification of Jobs, *Journal of Life Care Planning*, Vol. 2, No. 4, 215-218. Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (2004), **The Efficacy of Professional Clinical Judgment: Developing Expert Testimony in Cases Involving Vocational Rehabilitation and Care Planning Issues**, Journal of Life Care Planning, Vol. 3, No. 3, 131-150. Athens, GA: Elliott & Fitzpatrick, Inc.

## Anthony J. Choppa, M.Ed., CRC, CDMS, CCM

**Publications (cont.)**

Choppa, A., et al, (2006), **Admissible Testimony**,. Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (2006), **The Daubert Challenge; From Referral to Trial**,. Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (2007), **Rule of Evidence vs. Professional Certifications: The Real Basis for Establishing Admissible Testimony by Rehabilitation Counselors and Case Managers,** Rehabilitation Professional Journal, Vol. 15, No. 3, 7 – 15, Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (Contributor, 2008**), CDMS Study Guide, 5th Edition**, Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A. and Johnson, C., **Response to Estimating Earning Capacity: Venues, Factors and Methods,** Timothy F. Field, Ph.D., Earning Capacity Journal, Vol. 1, No. 1, Athens, GA: Elliott & Fitzpatrick, Inc. (2008)

Choppa, A., et al, (2009), **Bereavement and Mortality: A Methodology for Assessing Capacity and Functioning Following the Loss of a Spouse,** Journal of Life Care Planning, Vol. 7, No. 4, 163-179. Athens, GA: Elliott & Fitzpatrick, Inc.

Choppa, A., et al, (2009), **Clinical Judgement: A Working Definition for the Rehabilitation Professional**, The Rehabilitation Professional, Vol. 17, No. 4, 185-193. Athens, GA: Elliot & Fitzpatrick Inc.

Choppa, A. et al, (2010**), Resources for Wounded Warriors with Major Traumatic Limb Loss**, Journal of Rehabilitation Research and Development, Vol. 47, No. 4, 415. Library of Congress Control Number - 846 46003. Department of Veteran Affairs.

Choppa, A. et al, (2010), **Resources for Wounded Warriors with Major Traumatic Limb Loss**, The Rehabilitation Professional (reprinted with permission) Vol. 18, (4) , 2010 Athens, GA: Elliot & Fitzpatrick Inc.

## Anthony J. Choppa, M.Ed., CRC, CDMS, CCM

**Publications (cont.)**

Choppa, A., Johnson, C., Meier, R., **Life Care Planning for Persons with Amputations** Johnson, C. & Lacerte, M., Co-Editors, (2013) **Special Issue on Life Care Planning, Physical Medicine and Rehabilitation Clinics of North America**, Vol 24, No 3, Elsevier, Philadelphia, PA

Choppa, A., Johnson, C., & Neulicht, A., (2013) **Foundations for Forensic Vocational Rehabilitation - *Chapter 11* Case Conceptualization: Achieving Opinion Validity through the Lens of Clinical Judgment**, Springer Publishing Company, New York, NY

**Professional Associations**

- National Rehabilitation Association
- International Association of Rehabilitation Professionals – National Board Member – 2008-09
- Case Management Society of America
- National Association of Service Providers in Private Rehabilitation
- International Academy of Life Care Planners – Board Member – 2008-09
- Professionals in Worker's Compensation
- JRRD Reviewer: Journal of Rehabilitation Research and Development. Department of Veteran Affairs Rehabilitation Research and Development Service, Baltimore, MD., 2012.
- Spinal Cord Injury Association of Washington – Member Board of Directors

**Special Projects**

"Impact of the Department of Defense Paradigm Shift on Amputee Prosthetic Care".
Team member to identify service needs of injured soldiers returning from Operation Enduring Freedom (Afghanistan) and Operation Iraqi Freedom. Focus on state-of-the-art rehabilitation care and prosthetic devices. Goal to assist the Department of Defense and the Department of Veterans Affairs in providing for long term care planning/prosthetic needs.
University of Washington and VA Puget Sound Health Care System , 2010.

International Association of Rehabilitation Professionals – Webinar Clinical Judgment, October 13, 2010

**Special Projects (cont.)**

Canadian Life Care Planning Summit 2011, Toronto, Ontario, June 3-4, 2011. Group Facilitator.

Choppa, A., **Life Care Planning Process and Practice**, Association Internationale de Dommage Corporel Pre-Congress Workshop: Life care Planning: State of Art, Montreal, Canada, September 9, 2012.

Choppa A., & Johnson, C., **Case Studies and Discussion: Amputation and Spinal Cord Injury**, Association Interantionale de Dommage Corporel Pre-Congress Workshop: Life care Planning: State of Art., Montreal, Canada, September 9, 2012.

Choppa A., & Johnson, C., **Fundamentals and Practice of Life Care Planning**, Washington Chapter International Association of Rehabilitation Professionals, Fall Conference, Tacoma, WA, September 21, 2012.

EXHIBIT B

MultiCare
BetterConnected

**MultiCare Health System**
737 Fawcett Ave
Tacoma, WA 98415
253.459.7956
*Printed On: May 11, 2016*

Beltran,Cesar
6721 20TH ST E
APT 1
FIFE, WA 98424

**Guarantor ID:** 1809618
**Patient Age:** No DOB on File.

**Patient DOB:** 11/20/1959
**Patient Sex:** Male

Visit Coverages:

**PRIMARY: Medicare**
MEDICARE A & B
Subscriber ID: 542197326A
Group Number:

**SECONDARY: Medicaid**
MEDICAID WA APPLE HEALTH
Subscriber ID: 100126128WA
Group Number:

This is not a bill. This is an itemization of your hospital services for:

**Patient:** Beltran,Cesar
**Admission Date:** 06/29/2013
**Visit Number:** 13147937
**Discharge Date:** 08/22/2013
**Discharge Location:** TACOMA GENERAL HOSPITAL

Current Balance for Visit: **$0.00**

**Hospital Charges**

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 06/29/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL VI | 1 | 4,991.00 |
| 06/29/2013 | 0250 | | BACITRACIN-NEOMYCIN-POLYMYXIN 5-400-5000 OINT 0.9 G PACKET | 2 | 10.60 |
| 06/29/2013 | 0250 | | CALCIUM CHLORIDE 100 MG/ML SOLN 10 ML SYRINGE | 20 | 127.40 |
| 06/29/2013 | 0250 | | DEXTROSE 50 % SOLN 50 ML VIAL | 1 | 81.00 |
| 06/29/2013 | 0250 | | ETOMIDATE 2 MG/ML SOLN 10 ML VIAL | 10 | 200.00 |
| 06/29/2013 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 76.90 |
| 06/29/2013 | 0250 | A4649 | NACL .9% IRR 1000ML BT | 1 | 8.00 |
| 06/29/2013 | 0250 | | NOREPINEPHRINE 4 MG IN D5W 250 ML (PYXIS) 16 MCG/ML SOLN 250 ML BAG | 1 | 156.50 |
| 06/29/2013 | 0250 | | NOREPINEPHRINE 4 MG IN D5W 250 ML (PYXIS) 16 MCG/ML SOLN 250 ML BAG | 2 | 162.95 |
| 06/29/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 100 ML VIAL | 10 | 200.00 |
| 06/29/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 100 ML VIAL | 10 | 200.00 |
| 06/29/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 50 ML VIAL | 5 | 200.00 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 06/29/2013 | 0250 | | ROCURONIUM 10 MG/ML SOLN 5 ML VIAL | 2 | 200.00 |
| 06/29/2013 | 0250 | | ROCURONIUM 10 MG/ML SOLN 5 ML VIAL | 2 | 200.00 |
| 06/29/2013 | 0250 | | SODIUM BICARBONATE 4.2 % 0.5 MEQ/ML SOLN 10 ML SYRINGE | 10 | 93.65 |
| 06/29/2013 | 0250 | | SODIUM BICARBONATE 8.4 % SOLN 50 ML VIAL | 50 | 78.80 |
| 06/29/2013 | 0250 | | TRANEXAMIC ACID 100 MG/ML SOLN | 10 | 252.60 |
| 06/29/2013 | 0270 | A4649 | SPONGE HEMOSTAT ABS 2X14IN | 1 | 391.00 |
| 06/29/2013 | 0272 | C1751 | C CS-CATH CENT VEN 7FR 16CM POWER | 1 | 881.00 |
| 06/29/2013 | 0272 | C1894 | C CS-CATH PERCUTAN INTRODUCER 9FR | 1 | 580.00 |
| 06/29/2013 | 0272 | A4649 | C CS-DRESSING VAC ABTHERA 5/BX | 1 | 2,370.00 |
| 06/29/2013 | 0272 | C1894 | C CS-INTRO SHEATH AV MW 5FRX11CM | 2 | 138.00 |
| 06/29/2013 | 0272 | A4344 | CATH FOLEY TRAY I/C 16FR | 1 | 108.00 |
| 06/29/2013 | 0272 | A4649 | CUTTER LINEAR SAFETY 75MM | 2 | 902.00 |
| 06/29/2013 | 0272 | A7043 | DRAIN CHEST BLD RECVRY H20 SEA | 1 | 305.00 |
| 06/29/2013 | 0272 | A4649 | RELOAD STAPLER LINEAR 55MM | 3 | 1,416.00 |
| 06/29/2013 | 0272 | A4649 | RELOAD STAPLER LINEAR 75MM | 5 | 3,380.00 |
| 06/29/2013 | 0272 | A4649 | SPONGE HEMOSTAT ABS 2X3IN | 1 | 260.00 |
| 06/29/2013 | 0272 | A4649 | STAPLER/CUTR LINEAR 55MM | 1 | 307.00 |
| 06/29/2013 | 0278 | A4649 | C IMPL-SEALANT FLOSEAL MATRIX 10ML | 2 | 23,092.00 |
| 06/29/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 06/29/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 06/29/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 06/29/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 06/29/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 06/29/2013 | 0301 | 80101 (CPT®) | C DRUG SCR COMPONENT ADDL | 1 | 320.00 |
| 06/29/2013 | 0301 | 82055 (CPT®) | O ALCOHOL | 1 | 218.00 |
| 06/29/2013 | 0301 | 82330 (CPT®) | C IONIZED CALCIUM (PNL) | 1 | 122.00 |
| 06/29/2013 | 0301 | 82330 (CPT®) | C IONIZED CALCIUM (PNL) | 1 | 122.00 |
| 06/29/2013 | 0301 | 82330 (CPT®) | C IONIZED CALCIUM (PNL) | 1 | 122.00 |
| 06/29/2013 | 0301 | 82330 (CPT®) | C IONIZED CALCIUM (PNL) | 1 | 122.00 |
| 06/29/2013 | 0301 | 82330 (CPT®) | O IONIZED CALCIUM | 1 | 122.00 |
| 06/29/2013 | 0301 | 82435 (CPT®) | C CHLORIDE ADD-ON | 1 | 66.00 |
| 06/29/2013 | 0301 | 82435 (CPT®) | C CHLORIDE ADD-ON | 1 | 66.00 |
| 06/29/2013 | 0301 | 82435 (CPT®) | C CHLORIDE ADD-ON | 1 | 66.00 |
| 06/29/2013 | 0301 | 82435 (CPT®) | C CHLORIDE ADD-ON | 1 | 66.00 |
| 06/29/2013 | 0301 | 82565 (CPT®) | C CREATININE ADD-ON | 1 | 36.00 |
| 06/29/2013 | 0301 | 82805 (CPT®) | C BLOOD GASES W/02 SATURATION | 1 | 222.00 |
| 06/29/2013 | 0301 | 82805 (CPT®) | C BLOOD GASES W/02 SATURATION | 1 | 222.00 |
| 06/29/2013 | 0301 | 82805 (CPT®) | C BLOOD GASES W/02 SATURATION | 1 | 222.00 |
| 06/29/2013 | 0301 | 82805 (CPT®) | C BLOOD GASES W/02 SATURATION | 1 | 222.00 |
| 06/29/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 06/29/2013 | 0301 | 82947 (CPT®) | C GLUCOSE ADD-ON | 1 | 70.00 |
| 06/29/2013 | 0301 | 82947 (CPT®) | C GLUCOSE ADD-ON | 1 | 70.00 |
| 06/29/2013 | 0301 | 82947 (CPT®) | C GLUCOSE ADD-ON | 1 | 70.00 |
| 06/29/2013 | 0301 | 82947 (CPT®) | C GLUCOSE ADD-ON | 1 | 70.00 |
| 06/29/2013 | 0301 | 82962 (CPT®) | C POCT-GLUCOSE BY MONITORING DEVICE | 1 | 36.00 |
| 06/29/2013 | 0301 | 82962 (CPT®) | C POCT-GLUCOSE BY MONITORING DEVICE | 1 | 36.00 |
| 06/29/2013 | 0301 | 83605 (CPT®) | C LACTATE (PNL) | 1 | 170.00 |
| 06/29/2013 | 0301 | 83605 (CPT®) | O LACTATE | 1 | 170.00 |
| 06/29/2013 | 0301 | 83735 (CPT®) | C IONIZED MAGNESIUM (PNL) | 1 | 62.00 |
| 06/29/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 06/29/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 06/29/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 06/29/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 06/29/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 06/29/2013 | 0301 | 84132 (CPT®) | C POTASSIUM ADD-ON | 1 | 38.00 |
| 06/29/2013 | 0301 | 84132 (CPT®) | C POTASSIUM ADD-ON | 1 | 38.00 |
| 06/29/2013 | 0301 | 84132 (CPT®) | C POTASSIUM ADD-ON | 1 | 38.00 |
| 06/29/2013 | 0301 | 84132 (CPT®) | C POTASSIUM ADD-ON | 1 | 38.00 |
| 06/29/2013 | 0301 | 84295 (CPT®) | C SODIUM ADD-ON | 1 | 38.00 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 06/29/2013 | 0301 | 84295 (CPT®) | C SODIUM ADD-ON | 1 | 38.00 |
| 06/29/2013 | 0301 | 84295 (CPT®) | C SODIUM ADD-ON | 1 | 38.00 |
| 06/29/2013 | 0301 | 84295 (CPT®) | C SODIUM ADD-ON | 1 | 38.00 |
| 06/29/2013 | 0301 | 84520 (CPT®) | C BUN ADD-ON | 1 | 104.00 |
| 06/29/2013 | 0302 | 86850 (CPT®) | O ANTIBODY SCREEN | 1 | 124.00 |
| 06/29/2013 | 0302 | 86850 (CPT®) | O ANTIBODY SCREEN | 1 | 124.00 |
| 06/29/2013 | 0302 | 86900 (CPT®) | O ABO BLOOD GROUP | 1 | 38.00 |
| 06/29/2013 | 0302 | 86900 (CPT®) | O ABO BLOOD GROUP | 1 | 38.00 |
| 06/29/2013 | 0302 | 86901 (CPT®) | O RH GROUP | 1 | 46.00 |
| 06/29/2013 | 0302 | 86901 (CPT®) | O RH GROUP | 1 | 46.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0302 | 86920 (CPT®) | C CROSSMATCH IMMEDIATE SPIN | 1 | 94.00 |
| 06/29/2013 | 0305 | 85014 (CPT®) | C HCT (PNL) | 1 | 34.00 |
| 06/29/2013 | 0305 | 85014 (CPT®) | C HCT (PNL) | 1 | 34.00 |
| 06/29/2013 | 0305 | 85014 (CPT®) | C HCT (PNL) | 1 | 34.00 |
| 06/29/2013 | 0305 | 85014 (CPT®) | C HCT (PNL) | 1 | 34.00 |
| 06/29/2013 | 0305 | 85014 (CPT®) | O HEMATOCRIT | 1 | 34.00 |
| 06/29/2013 | 0305 | 85018 (CPT®) | O HEMOGLOBIN | 1 | 26.00 |
| 06/29/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 06/29/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 06/29/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 06/29/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 06/29/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 06/29/2013 | 0305 | 85730 (CPT®) | O PTT | 1 | 48.00 |
| 06/29/2013 | 0305 | 85730 (CPT®) | O PTT | 1 | 48.00 |
| 06/29/2013 | 0305 | 85730 (CPT®) | O PTT | 1 | 48.00 |
| 06/29/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 06/29/2013 | 0306 | 87077 (CPT®) | C AEROBIC ISOLATE ID | 1 | 52.00 |
| 06/29/2013 | 0306 | 87086 (CPT®) | O URINE CULTURE | 1 | 258.00 |
| 06/29/2013 | 0306 | 87186 (CPT®) | C SUSCEPTIBILITY MIC | 1 | 76.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 06/29/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 06/29/2013 | 0307 | 81001 (CPT®) | C UA W/MICROSCOPIC | 1 | 36.00 |
| 06/29/2013 | 0310 | 88307 (CPT®) | C SURG PATH EXAM V W/MODIFIER | 1 | 600.00 |
| 06/29/2013 | 0310 | 88307 (CPT®) | C SURG PATH EXAM V W/MODIFIER | 1 | 600.00 |
| 06/29/2013 | 0310 | 88307 (CPT®) | C SURG PATH EXAM V W/MODIFIER | 1 | 600.00 |
| 06/29/2013 | 0312 | 88307 (CPT®) | C SURG PATH GROSS EXAM V | 1 | 600.00 |
| 06/29/2013 | 0320 | 72170 (CPT®) | C XR PELVIS 1-2 VIEW | 1 | 453.00 |
| 06/29/2013 | 0320 | 73090 (CPT®) | C XR FOREARM | 1 | 350.00 |
| 06/29/2013 | 0320 | 73090 (CPT®) | C XR FOREARM | 1 | 350.00 |
| 06/29/2013 | 0320 | 74000 (CPT®) | C XR ABDOMEN 1 VIEW - AP | 1 | 391.00 |
| 06/29/2013 | 0320 | 74000 (CPT®) | C XR ABDOMEN 1 VIEW - AP | 1 | 391.00 |
| 06/29/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 06/29/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 06/29/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 06/29/2013 | 0360 | | C OR-SURG LEVEL 4 ADDL 15 MINUTES | 15 | 38,340.00 |
| 06/29/2013 | 0360 | | C OR-SURG LEVEL 4 FIRST 15 MINUTES | 1 | 8,528.00 |
| 06/29/2013 | 0361 | 36556 (CPT®) | C AIS-INS NT CENT INSRTD CVC 5 | 1 | 1,319.00 |
| 06/29/2013 | 0370 | | C ANE-ANESTHESIA LEVEL II-15MIN | 16 | 9,744.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9012 | C CRYOPRECIPITATE EA UNIT | 1 | 332.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |
| 06/29/2013 | 0390 | P9016 | C LEUKOCYTE POOR BLOOD, UNIT | 1 | 1,378.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9017 | C ONE DONOR FRESH FROZN PLASMA | 1 | 388.00 |
| 06/29/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 06/29/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 06/29/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 06/29/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 06/29/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 06/29/2013 | 0390 | 86965 (CPT®) | C POOLING CRYO/FFP | 1 | 116.00 |
| 06/29/2013 | 0390 | 86965 (CPT®) | C POOLING CRYO/FFP | 1 | 116.00 |
| 06/29/2013 | 0391 | 36430 (CPT®) | C MHOC-BLOOD/BLOOD PRODUCTS TRNSFSD 1-120M | 1 | 1,233.00 |
| 06/29/2013 | 0412 | 94002 (CPT®) | C RT-ADULT VENT MGMT FIRST DAY | 1 | 5,130.00 |
| 06/29/2013 | 0450 | | C ED-PROCEDURE-MAJOR | 2 | 3,400.00 |
| 06/29/2013 | 0450 | | C ED-PROCEDURE-MINOR | 1 | 895.00 |
| 06/29/2013 | 0450 | 99291 (CPT®) | C VISIT- ADULT ED,LEVEL VI | 1 | 11,027.00 |
| 06/29/2013 | 0480 | 92950 (CPT®) | C PROC-CODE 4 TEAM | 1 | 1,373.00 |
| 06/29/2013 | 0636 | | CEFAZOLIN 300 MG/ML SOLR | 4 | 79.85 |
| 06/29/2013 | 0636 | | CEFAZOLIN 300 MG/ML SOLR | 4 | 79.85 |
| 06/29/2013 | 0636 | | EPINEPHRINE 0.1 MG/ML SOLN 10 ML SYRINGE | 10 | 90.50 |
| 06/29/2013 | 0636 | | EPINEPHRINE 0.1 MG/ML SOLN 10 ML SYRINGE | 10 | 90.50 |
| 06/29/2013 | 0636 | | FACTOR IX COMPLEX 1500 UNITS SOLR | 2030 | 4,381.75 |
| 06/29/2013 | 0636 | | FENTANYL 50 MCG/ML SOLN 2 ML VIAL | 1 | 125.00 |
| 06/29/2013 | 0636 | | FENTANYL 50 MCG/ML SOLN 2 ML VIAL | 1 | 125.00 |
| 06/29/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 06/29/2013 | 0636 | | MIDAZOLAM 5 MG/ML SOLN 2 ML VIAL | 10 | 125.00 |
| 06/29/2013 | 0636 | | MORPHINE 4 MG/ML SOLN 1 ML CRTRDG-NDL | 1 | 125.00 |
| 06/29/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 06/29/2013 | 0636 | | POTASSIUM CHLORIDE IN STERILE WATER 40 MEQ/100ML SOLN 100 ML FLEX CONT | 20 | 83.40 |
| 06/29/2013 | 0636 | | SUCCINYLCHOLINE 20 MG/ML SOLN | 10 | 200.00 |
| 06/29/2013 | 0637 | | INSULIN REGULAR HUMAN (NOVOLIN) SQ SLIDING SCALE (CUSTOM) 100 UNITS/ML SOLN 0.01 ML PACKAGE | 1 | 8.00 |
| 06/29/2013 | 0682 | G0390 | C ED-TRAUMA ACTIVATION LEVEL I | 1 | 19,238.00 |
| 06/30/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL VI | 1 | 4,991.00 |
| 06/30/2013 | 0250 | | 0.9 % NACL 0.9 % SOLN 250 ML FLEX CONT | 25 | 50.00 |
| 06/30/2013 | 0250 | | 0.9 % NACL SOLN | 5 | 50.00 |
| 06/30/2013 | 0250 | | 0.9 % NACL SOLN | 5 | 50.00 |
| 06/30/2013 | 0250 | | 0.9 % NACL SOLN | 5 | 50.00 |
| 06/30/2013 | 0250 | | NOREPINEPHRINE 1 MG/ML SOLN | 4 | 81.50 |
| 06/30/2013 | 0250 | | NOREPINEPHRINE 1 MG/ML SOLN | 4 | 81.50 |
| 06/30/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 100 ML VIAL | 10 | 200.00 |
| 06/30/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 100 ML VIAL | 10 | 200.00 |
| 06/30/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 100 ML VIAL | 10 | 200.00 |
| 06/30/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 100 ML VIAL | 10 | 200.00 |
| 06/30/2013 | 0272 | A4649 | C CS-CANISTER VAC W/GEL 1000ML 5/EA | 1 | 324.00 |
| 06/30/2013 | 0272 | A4649 | C CS-CANISTER VAC W/GEL 1000ML 5/EA | 3 | 972.00 |
| 06/30/2013 | 0274 | L3999 | C CS-SUPPORT WRIST ARTY HANDAID | 1 | 24.00 |
| 06/30/2013 | 0300 | 36416 (CPT®) | P COLLECTION OF CAPILLARY BLOOD | 1 | 94.00 |



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|---|---|---|---|---|---|
| 06/30/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 3 | 504.00 |
| 06/30/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 4 | 672.00 |
| 06/30/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 06/30/2013 | 0301 | 80053 (CPT®) | O COMPREHEN METABOLIC PANEL | 1 | 110.00 |
| 06/30/2013 | 0301 | 82330 (CPT®) | O IONIZED CALCIUM | 1 | 122.00 |
| 06/30/2013 | 0301 | 82330 (CPT®) | O IONIZED CALCIUM | 1 | 122.00 |
| 06/30/2013 | 0301 | 82330 (CPT®) | O IONIZED CALCIUM | 1 | 122.00 |
| 06/30/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 06/30/2013 | 0301 | 82962 (CPT®) | C POCT-GLUCOSE BY MONITORING DEVICE | 1 | 36.00 |
| 06/30/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 06/30/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 06/30/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 06/30/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 06/30/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 06/30/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 06/30/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 06/30/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 06/30/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 06/30/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 06/30/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 06/30/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 06/30/2013 | 0305 | 85730 (CPT®) | O PTT | 1 | 48.00 |
| 06/30/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 06/30/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 06/30/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 06/30/2013 | 0412 | 94003 (CPT®) | C RT-ADULT VENT MGMT SUBSEQUENT DAY | 1 | 4,362.00 |
| 06/30/2013 | 0636 | | ALBUMIN 5% (HUMAN) 50 MG/ML SOLN 250 ML VIAL | 1 | 264.40 |
| 06/30/2013 | 0636 | | CALCIUM GLUCONATE 100 MG/ML SOLN | 1 | 82.65 |
| 06/30/2013 | 0636 | | CALCIUM GLUCONATE 100 MG/ML SOLN | 1 | 82.65 |
| 06/30/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 06/30/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 06/30/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 06/30/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 06/30/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 06/30/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 06/30/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 06/30/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 06/30/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 06/30/2013 | 0636 | | MAGNESIUM SULFATE IN STERILE WATER 40 MG/ML SOLN 50 ML FLEX CONT | 4 | 96.60 |
| 06/30/2013 | 0636 | | MAGNESIUM SULFATE IN STERILE WATER 40 MG/ML SOLN 50 ML FLEX CONT | 4 | 96.60 |
| 06/30/2013 | 0636 | | MIDAZOLAM (VERSED) 50 MG IN 0.9 % NACL (NS) 100 ML 0.5 MG/ML SOLN 100 ML BAG | 50 | 281.60 |
| 06/30/2013 | 0636 | | PANTOPRAZOLE SOLR 1 EACH VIAL | 1 | 90.05 |
| 06/30/2013 | 0636 | | PHYTONADIONE 10 MG/ML SOLN | 10 | 101.70 |
| 06/30/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 06/30/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 06/30/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 06/30/2013 | 0636 | | SODIUM BICARBONATE 150 MEQ IN D5W (CAPS) 0.15 MEQ/ML 1,000 ML BAG | 2 | 131.00 |
| 06/30/2013 | 0636 | | SODIUM BICARBONATE 150 MEQ IN D5W (CAPS) 0.15 MEQ/ML 1,000 ML BAG | 2 | 131.00 |
| 06/30/2013 | 0920 | 36600 (CPT®) | C RT-ARTERIAL BLOOD DRAW | 1 | 231.00 |
| 07/01/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL V | 1 | 4,300.00 |
| 07/01/2013 | 0250 | | 0.9 % NACL SOLN | 5 | 50.00 |
| 07/01/2013 | 0250 | | 0.9 % NACL SOLN | 5 | 50.00 |



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|---|---|---|---|---|---|
| 07/01/2013 | 0250 | A4649 | NACL .9% IRR 1000ML BT | 1 | 8.00 |
| 07/01/2013 | 0250 | | NOREPINEPHRINE 1 MG/ML SOLN | 4 | 81.50 |
| 07/01/2013 | 0250 | | NOREPINEPHRINE 1 MG/ML SOLN | 4 | 81.50 |
| 07/01/2013 | 0270 | A4649 | SPONGE HEMOSTAT ABS 2X14IN | 2 | 782.00 |
| 07/01/2013 | 0272 | A7043 | DRAIN CHEST BLD RECVRY H20 SEA | 2 | 610.00 |
| 07/01/2013 | 0272 | C1729 | TUBE DRAIN 10MM FLAT PERFORA | 2 | 108.00 |
| 07/01/2013 | 0278 | B4081 | TUBE FEED 8FRX43IN ENDERAL | 1 | 189.00 |
| 07/01/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 2 | 336.00 |
| 07/01/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/01/2013 | 0301 | 80053 (CPT®) | O COMPREHEN METABOLIC PANEL | 1 | 110.00 |
| 07/01/2013 | 0301 | 82330 (CPT®) | O IONIZED CALCIUM | 1 | 122.00 |
| 07/01/2013 | 0301 | 82330 (CPT®) | O IONIZED CALCIUM | 1 | 122.00 |
| 07/01/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 07/01/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/01/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/01/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/01/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/01/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/01/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/01/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/01/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/01/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/01/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/01/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 07/01/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 07/01/2013 | 0305 | 85730 (CPT®) | O PTT | 1 | 48.00 |
| 07/01/2013 | 0305 | 85730 (CPT®) | O PTT | 1 | 48.00 |
| 07/01/2013 | 0320 | 74000 (CPT®) | C XR ABDOMEN 1 VIEW - AP | 1 | 391.00 |
| 07/01/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/01/2013 | 0360 | | C OR-SURG LEVEL 2 ADDL 15 MINUTES | 10 | 17,770.00 |
| 07/01/2013 | 0360 | | C OR-SURG LEVEL 2 FIRST 15 MINUTES | 1 | 5,924.00 |
| 07/01/2013 | 0370 | | C ANE-ANESTHESIA LEVEL II-15MIN | 11 | 6,699.00 |
| 07/01/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 07/01/2013 | 0412 | 94003 (CPT®) | C RT-ADULT VENT MGMT SUBSEQUENT DAY | 1 | 4,362.00 |
| 07/01/2013 | 0636 | | ALBUMIN 5% (HUMAN) 50 MG/ML SOLN 250 ML VIAL | 1 | 264.40 |
| 07/01/2013 | 0636 | | CALCIUM GLUCONATE 100 MG/ML SOLN | 1 | 82.65 |
| 07/01/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/01/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/01/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/01/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/01/2013 | 0636 | | FENTANYL 50 MCG/ML SOLN 5 ML VIAL | 3 | 125.00 |
| 07/01/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 07/01/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 07/01/2013 | 0636 | | MIDAZOLAM (VERSED) 50 MG IN 0.9 % NACL (NS) 100 ML 0.5 MG/ML SOLN 100 ML BAG | 50 | 281.60 |
| 07/01/2013 | 0636 | | MIDAZOLAM (VERSED) 50 MG IN 0.9 % NACL (NS) 100 ML 0.5 MG/ML SOLN 100 ML BAG | 50 | 281.60 |
| 07/01/2013 | 0636 | | PANTOPRAZOLE SOLR 1 EACH VIAL | 1 | 90.05 |
| 07/01/2013 | 0636 | | PHYTONADIONE 10 MG/ML SOLN | 10 | 101.70 |
| 07/01/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/01/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/01/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/01/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/01/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/01/2013 | 0636 | | SODIUM BICARBONATE 150 MEQ IN D5W (CAPS) 0.15 MEQ/ML 1,000 ML BAG | 2 | 131.00 |
| 07/01/2013 | 0920 | 36600 (CPT®) | C RT-ARTERIAL BLOOD DRAW | 1 | 231.00 |
| 07/02/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL VI | 1 | 4,991.00 |
| 07/02/2013 | 0250 | | 0.9 % NACL 0.9 % SOLN 250 ML FLEX CONT | 25 | 50.00 |
| 07/02/2013 | 0272 | A4649 | C CS-PORT RENASYS F SOFT MED | 1 | 278.00 |
| 07/02/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 2 | 336.00 |
| 07/02/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/02/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/02/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 07/02/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/02/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/02/2013 | 0302 | 86022 (CPT®) | O HEPARIN INDUCED PLATELET AB | 1 | 172.00 |
| 07/02/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/02/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/02/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/02/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/02/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/02/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/02/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/02/2013 | 0390 | P9037 | C PLT PHERESIS LEUKORED IRRAD | 1 | 3,578.00 |
| 07/02/2013 | 0412 | 94003 (CPT®) | C RT-ADULT VENT MGMT SUBSEQUENT DAY | 1 | 4,362.00 |
| 07/02/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/02/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/02/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/02/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/02/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 07/02/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 07/02/2013 | 0636 | | MIDAZOLAM (VERSED) 50 MG IN 0.9 % NACL (NS) 100 ML 0.5 MG/ML SOLN 100 ML BAG | 50 | 281.60 |
| 07/02/2013 | 0636 | | PANTOPRAZOLE SOLR 1 EACH VIAL | 1 | 90.05 |
| 07/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/02/2013 | 0920 | 36600 (CPT®) | C RT-ARTERIAL BLOOD DRAW | 1 | 231.00 |
| 07/03/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL VI | 1 | 4,991.00 |
| 07/03/2013 | 0250 | | LACTULOSE 10 GM/15ML SOLN 30 ML CUP | 45 | 22.15 |
| 07/03/2013 | 0250 | | SODIUM PHOSPHATE 3 MMOLE/ML SOLN | 10 | 84.25 |
| 07/03/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/03/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 2 | 336.00 |
| 07/03/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/03/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/03/2013 | 0301 | 82140 (CPT®) | O AMMONIA | 1 | 156.00 |
| 07/03/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 07/03/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/03/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/03/2013 | 0302 | 80074 (CPT®) | O HEPATITIS ACUTE PANEL | 1 | 336.00 |
| 07/03/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/03/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/03/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/03/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/03/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/03/2013 | 0352 | 74177 (CPT®) | C CT ABDOMEN&PELVIS W/CONTRAST | 1 | 7,948.00 |
| 07/03/2013 | 0412 | 94003 (CPT®) | C RT-ADULT VENT MGMT SUBSEQUENT DAY | 1 | 4,362.00 |
| 07/03/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/03/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/03/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/03/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/03/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/03/2013 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 07/03/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 07/03/2013 | 0636 | | MIDAZOLAM 1 MG/ML (5 ML) SOLN 5 ML VIAL | 2 | 125.00 |
| 07/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/03/2013 | 0920 | 36600 (CPT®) | C RT-ARTERIAL BLOOD DRAW | 1 | 231.00 |
| 07/04/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL V | 1 | 4,300.00 |
| 07/04/2013 | 0250 | | 0.9 % NACL SOLN | 50 | 50.00 |
| 07/04/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/04/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/04/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/04/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/04/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 2 | 14.00 |
| 07/04/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/04/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/04/2013 | 0250 | | MULTIVITAMIN (ADULT FORMULATION) LIQD | 5 | 20.20 |
| 07/04/2013 | 0250 | | POTASSIUM PHOSPHATE 3 MMOLE/ML SOLN | 14 | 81.65 |
| 07/04/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/04/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/04/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/04/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/04/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 07/04/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/04/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/04/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/04/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/04/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/04/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/04/2013 | 0306 | 87070 (CPT®) | C AEROBIC CULTURE OTHER SOURCE | 1 | 78.00 |
| 07/04/2013 | 0306 | 87070 (CPT®) | C AEROBIC CULTURE OTHER SOURCE | 1 | 78.00 |
| 07/04/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 07/04/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 07/04/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 07/04/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 07/04/2013 | 0306 | 87077 (CPT®) | C AEROBIC ISOLATE ID | 1 | 52.00 |
| 07/04/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 07/04/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 07/04/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 07/04/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 07/04/2013 | 0307 | 81001 (CPT®) | C UA W/MICROSCOPIC | 1 | 36.00 |
| 07/04/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/04/2013 | 0410 | 94640 (CPT®) | C RT-SVN TREATMENT | 1 | 119.00 |
| 07/04/2013 | 0410 | 94640 (CPT®) | C RT-SVN TX W MECH VENT | 1 | 119.00 |
| 07/04/2013 | 0412 | 94003 (CPT®) | C RT-ADULT VENT MGMT SUBSEQUENT DAY | 1 | 4,362.00 |
| 07/04/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/04/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/04/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/04/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/04/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/04/2013 | 0636 | | MAGNESIUM SULFATE IN STERILE WATER 40 MG/ML SOLN 100 ML PLAS CONT | 8 | 84.20 |
| 07/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/04/2013 | 0920 | 36600 (CPT®) | C RT-ARTERIAL BLOOD DRAW | 1 | 231.00 |
| 07/05/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL V | 1 | 4,300.00 |
| 07/05/2013 | 0250 | | 0.9 % NACL SOLN | 50 | 50.00 |
| 07/05/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/05/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/05/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/05/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/05/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/05/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/05/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/05/2013 | 0250 | | LANSOPRAZOLE 30 MG TBDP | 1 | 28.25 |
| 07/05/2013 | 0250 | | MULTIVITAMIN (ADULT FORMULATION) LIQD | 5 | 20.20 |
| 07/05/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/05/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/05/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 07/05/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/05/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/05/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/05/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/05/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/05/2013 | 0410 | 94640 (CPT®) | C RT-SVN TX W MECH VENT | 1 | 119.00 |
| 07/05/2013 | 0412 | 94003 (CPT®) | C RT-ADULT VENT MGMT SUBSEQUENT DAY | 1 | 4,362.00 |
| 07/05/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/05/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/05/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/05/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/05/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/05/2013 | 0636 | | HAEMOPHILUS B POLYSACCHARIDE CONJUGATE VACCINE SOLR | 1 | 205.75 |
| 07/05/2013 | 0636 | | MENINGOCOCCAL CONJUGATE VACCINE SOLR | 1 | 456.65 |
| 07/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/05/2013 | 0636 | | PNEUMOCOCCAL 13-VAL CONJ VACCINE SUSP 0.5 ML SYRINGE | 1 | 612.00 |
| 07/05/2013 | 0636 | | POTASSIUM CHLORIDE 2 MEQ/ML SOLN | 20 | 77.90 |
| 07/05/2013 | 0920 | 36600 (CPT®) | C RT-ARTERIAL BLOOD DRAW | 1 | 231.00 |
| 07/06/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL V | 1 | 4,300.00 |
| 07/06/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/06/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/06/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/06/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/06/2013 | 0250 | | BACITRACIN-NEOMYCIN-POLYMYXIN 3.5-400-5000 OINT 28.35 G TUBE | 29 | 23.75 |
| 07/06/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 2 | 14.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/06/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/06/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/06/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/06/2013 | 0250 | | LANSOPRAZOLE 30 MG TBDP | 1 | 28.25 |
| 07/06/2013 | 0250 | | MULTIVITAMIN (ADULT FORMULATION) LIQD | 5 | 20.20 |
| 07/06/2013 | 0250 | | POTASSIUM CHLORIDE 20 MEQ/15ML (10%) LIQD 15 ML CUP | 15 | 4.65 |
| 07/06/2013 | 0250 | | POTASSIUM CHLORIDE 20 MEQ/15ML (10%) LIQD 15 ML CUP | 15 | 4.65 |
| 07/06/2013 | 0250 | | SODIUM PHOSPHATE 3 MMOLE/ML SOLN | 5 | 79.65 |
| 07/06/2013 | 0270 | | C CS-DRESSING SURGICEL 3X4 | 1 | 411.00 |
| 07/06/2013 | 0272 | C1751 | C CS-CATH PICC PWR SAPIENS MB DL 5F | 1 | 1,845.00 |
| 07/06/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/06/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/06/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/06/2013 | 0301 | 82805 (CPT®) | C RT POCT-ARTERIAL BLOOD GAS | 1 | 222.00 |
| 07/06/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/06/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/06/2013 | 0301 | 84132 (CPT®) | O POTASSIUM | 1 | 38.00 |
| 07/06/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/06/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/06/2013 | 0306 | 87040 (CPT®) | O BLOOD CULTURE | 1 | 128.00 |
| 07/06/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/06/2013 | 0361 | 36569 (CPT®) | C IV-PICC INSERT W/O PUMP/PORT 5 YO+ | 1 | 1,645.00 |
| 07/06/2013 | 0402 | 76937 (CPT®) | C IV-US GUIDE FOR VASCULAR ACCESS | 1 | 322.00 |
| 07/06/2013 | 0412 | 94003 (CPT®) | C RT-ADULT VENT MGMT SUBSEQUENT DAY | 1 | 4,362.00 |
| 07/06/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/06/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/06/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/06/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/06/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/06/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/06/2013 | 0636 | | POTASSIUM CHLORIDE IN STERILE WATER 20 MEQ/100ML SOLN 100 ML FLEX CONT | 10 | 82.20 |
| 07/06/2013 | 0730 | 93041 (CPT®) | C EKG-RHYTHM STRIP TRACING | 1 | 113.00 |
| 07/06/2013 | 0920 | 36600 (CPT®) | C RT-ARTERIAL BLOOD DRAW | 1 | 231.00 |
| 07/07/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL V | 1 | 4,300.00 |
| 07/07/2013 | 0250 | | 0.9 % NACL SOLN | 10 | 50.00 |
| 07/07/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/07/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/07/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/07/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/07/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/07/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/07/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/07/2013 | 0250 | | LANSOPRAZOLE 30 MG TBDP | 1 | 28.25 |
| 07/07/2013 | 0250 | | MULTIVITAMIN (ADULT FORMULATION) LIQD | 5 | 20.20 |
| 07/07/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG/5ML SOLN 5 ML CUP | 5 | 25.00 |
| 07/07/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG/5ML SOLN 5 ML CUP | 10 | 25.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/07/2013 | 0250 | | POTASSIUM PHOSPHATE 3 MMOLE/ML SOLN | 5 | 77.50 |
| 07/07/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/07/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/07/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/07/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/07/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/07/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/07/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/07/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/07/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/07/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/07/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/07/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/07/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/07/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/07/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/07/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/07/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/07/2013 | 0636 | | FENTANYL 10 MCG/ML SOLN 100 ML BAG | 10 | 215.60 |
| 07/07/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/07/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/07/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/07/2013 | 0636 | | MAGNESIUM SULFATE IN STERILE WATER 40 MG/ML SOLN 50 ML FLEX CONT | 4 | 96.60 |
| 07/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/08/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL V | 1 | 4,300.00 |
| 07/08/2013 | 0250 | | 0.9 % NACL 0.9 % SOLN 500 ML FLEX CONT | 50 | 50.00 |
| 07/08/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/08/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/08/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/08/2013 | 0250 | | ASCORBIC ACID 500 MG/5ML SYRP | 1 | 20.20 |
| 07/08/2013 | 0250 | | GABAPENTIN 250 MG/5ML SOLN | 2 | 23.25 |
| 07/08/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/08/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/08/2013 | 0250 | | LANSOPRAZOLE 30 MG TBDP | 1 | 28.25 |
| 07/08/2013 | 0250 | | METRONIDAZOLE 5-0.79 MG/ML-% SOLN 100 ML FLEX CONT | 10 | 79.80 |
| 07/08/2013 | 0250 | | METRONIDAZOLE 5-0.79 MG/ML-% SOLN 100 ML FLEX CONT | 10 | 79.80 |
| 07/08/2013 | 0250 | | MULTIVITAMIN (ADULT FORMULATION) LIQD | 5 | 20.20 |
| 07/08/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG/5ML SOLN 5 ML CUP | 10 | 25.00 |
| 07/08/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG/5ML SOLN 5 ML CUP | 5 | 25.00 |
| 07/08/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/08/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/08/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/08/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/08/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/08/2013 | 0272 | A4649 | C CS-PORT RENASYS F SOFT LG | 1 | 391.00 |
| 07/08/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/08/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/08/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/08/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/08/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/08/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/08/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/08/2013 | 0306 | 87493 (CPT®) | C IADNA C DIFFICILE AMPL PROBE | 1 | 380.00 |
| 07/08/2013 | 0307 | 81001 (CPT®) | C UA W/MICROSCOPIC | 1 | 36.00 |
| 07/08/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/08/2013 | 0352 | 71260 (CPT®) | C CT CHEST W/ CONTRAST | 1 | 3,844.00 |
| 07/08/2013 | 0352 | 74177 (CPT®) | C CT ABDOMEN&PELVIS W/CONTRAST | 1 | 7,948.00 |
| 07/08/2013 | 0424 | 97001 (CPT®) | C PT-EVALUATION I | 1 | 394.00 |
| 07/08/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/08/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/08/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/08/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/08/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 07/08/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 07/08/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/08/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/08/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/08/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/08/2013 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 07/08/2013 | 0636 | | MAGNESIUM SULFATE IN STERILE WATER 40 MG/ML SOLN 50 ML FLEX CONT | 4 | 96.60 |
| 07/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/08/2013 | 0636 | | POTASSIUM CHLORIDE IN STERILE WATER 20 MEQ/100ML SOLN 100 ML FLEX CONT | 10 | 82.20 |
| 07/08/2013 | 0761 | 97605 (CPT®) | C NEG PRESS WOUND THRPY <50 | 1 | 400.00 |
| 07/09/2013 | 0200 | | C ROOM CHARGE ACUITY LEVEL V | 1 | 4,300.00 |
| 07/09/2013 | 0250 | | 0.9 % NACL 0.9 % SOLN 1,000 ML FLEX CONT | 100 | 50.00 |
| 07/09/2013 | 0250 | | 0.9 % NACL 0.9 % SOLN 1,000 ML FLEX CONT | 100 | 50.00 |
| 07/09/2013 | 0250 | | 0.9 % NACL 0.9 % SOLN 1,000 ML FLEX CONT | 100 | 50.00 |
| 07/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/09/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/09/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/09/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/09/2013 | 0250 | | METRONIDAZOLE 5-0.79 MG/ML-% SOLN 100 ML FLEX CONT | 10 | 79.80 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/09/2013 | 0250 | | METRONIDAZOLE 5-0.79 MG/ML-% SOLN 100 ML FLEX CONT | 10 | 79.80 |
| 07/09/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/09/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/09/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/09/2013 | 0250 | | SODIUM PHOSPHATE 3 MMOLE/ML SOLN | 5 | 79.65 |
| 07/09/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/09/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/09/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/09/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/09/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/09/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/09/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/09/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/09/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/09/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/09/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/09/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/09/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/09/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/09/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/09/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/09/2013 | 0434 | 97003 (CPT®) | C OT-EVALUATION | 1 | 416.00 |
| 07/09/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/09/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/09/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/09/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/09/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/09/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/09/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/09/2013 | 0636 | | FUROSEMIDE 10 MG/ML SOLN 4 ML VIAL | 2 | 77.50 |
| 07/09/2013 | 0636 | | MAGNESIUM SULFATE IN STERILE WATER 40 MG/ML SOLN 50 ML FLEX CONT | 4 | 96.60 |
| 07/09/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/09/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/09/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/10/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/10/2013 | 0250 | | 0.9 % NACL SOLN 1,000 ML FLEX CONT | 100 | 50.00 |
| 07/10/2013 | 0250 | | 0.9 % NACL SOLN 1,000 ML FLEX CONT | 100 | 50.00 |
| 07/10/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/10/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/10/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/10/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/10/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/10/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/10/2013 | 0250 | | METRONIDAZOLE 5-0.79 MG/ML-% SOLN 100 ML FLEX CONT | 10 | 79.80 |
| 07/10/2013 | 0250 | | METRONIDAZOLE 5-0.79 MG/ML-% SOLN 100 ML FLEX CONT | 10 | 79.80 |
| 07/10/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/10/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/10/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/10/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/10/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/10/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/10/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/10/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/10/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/10/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/10/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/10/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/10/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/10/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/10/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/10/2013 | 0272 | A7043 | C CS-DRAIN CHEST ADULT ATRIUM 2050 | 1 | 305.00 |
| 07/10/2013 | 0272 | A4649 | C CS-PORT RENASYS F SOFT LG | 1 | 391.00 |
| 07/10/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/10/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/10/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/10/2013 | 0301 | 82330 (CPT®) | O IONIZED CALCIUM | 1 | 122.00 |
| 07/10/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/10/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/10/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/10/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/10/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/10/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/10/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/10/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/10/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/10/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/10/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/10/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/10/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/11/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/11/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/11/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/11/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/11/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/11/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/11/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/11/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/11/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/11/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/11/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/11/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/11/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/11/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/11/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/11/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/11/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/11/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/11/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/11/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/11/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/11/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/11/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/11/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/11/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/11/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/11/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/11/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/11/2013 | 0420 | 97530 (CPT®) | C PT-FUNCTIONAL ACTIVITIES PER 15MIN | 1 | 150.00 |
| 07/11/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/11/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/11/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/11/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/11/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/12/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/12/2013 | 0250 | | 0.9 % NACL SOLN 1,000 ML FLEX CONT | 100 | 50.00 |
| 07/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/12/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/12/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/12/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/12/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/12/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/12/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/12/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/12/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/12/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/12/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/12/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/12/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/12/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/12/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/12/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/12/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/12/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/12/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/12/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/12/2013 | 0270 | A4649 | C CS-PUMP PICO W/4X12 DRESSING | 1 | 1,469.00 |
| 07/12/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/12/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/12/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/12/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/12/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/12/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/12/2013 | 0430 | 97530 (CPT®) | C OT-FUNCTIONAL ACTIVITIES 15 MIN | 1 | 150.00 |
| 07/12/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/12/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/12/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/12/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/12/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/12/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/12/2013 | 0636 | | MAGNESIUM SULFATE IN DEXTROSE 5% 10 MG/ML SOLN 100 ML FLEX CONT | 2 | 87.80 |
| 07/12/2013 | 0636 | | ONDANSETRON 2 MG/ML SOLN 2 ML VIAL | 4 | 77.45 |
| 07/13/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/13/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/13/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/13/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/13/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/13/2013 | 0250 | | BACITRACIN-NEOMYCIN-POLYMYXIN 3.5-400-5000 OINT 28.35 G TUBE | 29 | 23.75 |
| 07/13/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/13/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/13/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/13/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/13/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/13/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/13/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/13/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/13/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/13/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/13/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/13/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/13/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/13/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/13/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/13/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/13/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/13/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/13/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/13/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/13/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/13/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/13/2013 | 0301 | 84132 (CPT®) | O POTASSIUM | 1 | 38.00 |
| 07/13/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/13/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/13/2013 | 0324 | 71020 (CPT®) | C XR CHEST 2 VIEW - PA, LAT | 1 | 451.00 |
| 07/13/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/13/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/13/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/13/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/13/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/13/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/14/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/14/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/14/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/14/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/14/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/14/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/14/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/14/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/14/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/14/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/14/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/14/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/14/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/14/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/14/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/14/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/14/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/14/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/14/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/14/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/14/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/14/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/14/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/14/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/14/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/14/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/14/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/14/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/14/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/14/2013 | 0430 | 97530 (CPT®) | C OT-FUNCTIONAL ACTIVITIES 15 MIN | 1 | 150.00 |
| 07/14/2013 | 0430 | 97535 (CPT®) | C OT-ADL TRAINING-15MIN | 1 | 109.00 |
| 07/14/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/14/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/14/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/14/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/14/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/14/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/15/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/15/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/15/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/15/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/15/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/15/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/15/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/15/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/15/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/15/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/15/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/15/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/15/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/15/2013 | 0250 | | SULFAMETHOXAZOLE-TRIMETHOPRIM 400-80 MG/5ML SOLN | 21 | 99.95 |
| 07/15/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/15/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/15/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/15/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/15/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 2 | 336.00 |
| 07/15/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/15/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/15/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/15/2013 | 0301 | 86140 (CPT®) | C C-REACTIVE PROTEIN | 1 | 258.00 |
| 07/15/2013 | 0302 | 84134 (CPT®) | O PREALBUMIN | 1 | 120.00 |
| 07/15/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/15/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/15/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/15/2013 | 0430 | 97535 (CPT®) | C OT-ADL TRAINING-15MIN | 2 | 218.00 |
| 07/15/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/15/2013 | 0636 | | DEXTROSE 5 % SOLN | 1 | 50.00 |
| 07/15/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/15/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/15/2013 | 0761 | 51798 (CPT®) | C PROC-BLADDER SCAN (NURSING UNITS) | 1 | 277.00 |
| 07/16/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/16/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/16/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/16/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/16/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/16/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/16/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/16/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/16/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/16/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/16/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/16/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/16/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/16/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/16/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/16/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/16/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/16/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/16/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/16/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/16/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/16/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 07/16/2013 | 0420 | 97530 (CPT®) | C PT-FUNCTIONAL ACTIVITIES PER 15MIN | 1 | 150.00 |
| 07/16/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/16/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML FLEX CONT | 1 | 89.80 |
| 07/17/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/17/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/17/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/17/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/17/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/17/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/17/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/17/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/17/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/17/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/17/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/17/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/17/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/17/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/17/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/17/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/17/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/17/2013 | 0301 | 82247 (CPT®) | O BILIRUBIN NEONATAL TOTAL | 1 | 30.00 |
| 07/17/2013 | 0301 | 82247 (CPT®) | O BILIRUBIN NEONATAL TOTAL | 1 | 30.00 |
| 07/17/2013 | 0301 | 82248 (CPT®) | O BILIRUBIN DIRECT | 1 | 28.00 |
| 07/17/2013 | 0301 | 82248 (CPT®) | O BILIRUBIN DIRECT | 1 | 28.00 |
| 07/17/2013 | 0301 | 83690 (CPT®) | O LIPASE | 1 | 112.00 |
| 07/17/2013 | 0301 | 83690 (CPT®) | O LIPASE | 1 | 112.00 |
| 07/17/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/17/2013 | 0324 | 71020 (CPT®) | C XR CHEST 2 VIEW - PA, LAT | 1 | 451.00 |
| 07/17/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 07/18/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/18/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/18/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/18/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/18/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/18/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/18/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/18/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/18/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/18/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/18/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/18/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/18/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/18/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/18/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/18/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/18/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/18/2013 | 0420 | 97530 (CPT®) | C PT-FUNCTIONAL ACTIVITIES PER 15MIN | 2 | 300.00 |
| 07/18/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/18/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/19/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/19/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/19/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/19/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 07/19/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/19/2013 | 0250 | | LIDOCAINE PRESERVATIVE FREE 2% SOLN 5 ML VIAL | 5 | 80.00 |
| 07/19/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/19/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/19/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/19/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/19/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 20 ML VIAL | 2 | 200.00 |
| 07/19/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/19/2013 | 0250 | | ROCURONIUM 10 MG/ML SOLN 5 ML VIAL | 1 | 200.00 |
| 07/19/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/19/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/19/2013 | 0272 | A4649 | C CS-CANNULATOME DBL LUM II (AKA 40511815) | 1 | 846.00 |
| 07/19/2013 | 0278 | C1769 | C CS-GUIDE HYDRA JAGWIRE 0.35 | 1 | 1,323.00 |
| 07/19/2013 | 0278 | C1894 | C IMP-STENT OASIS INTRODUCER | 1 | 463.00 |
| 07/19/2013 | 0278 | C2617 | C IMPL-STENT BILIARY CL50 10-5 | 1 | 351.00 |
| 07/19/2013 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 168.00 |
| 07/19/2013 | 0301 | 82962 (CPT®) | C POCT-GLUCOSE BY MONITORING DEVICE | 1 | 36.00 |
| 07/19/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 07/19/2013 | 0320 | 74329 (CPT®) | C XR ENDOSCOPY PANCREATIC | 1 | 857.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/19/2013 | 0370 | | C ANE-ANESTHESIA LEVEL I-15MIN | 4 | 1,584.00 |
| 07/19/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/19/2013 | 0636 | | FENTANYL 50 MCG/ML SOLN 2 ML VIAL | 1 | 125.00 |
| 07/19/2013 | 0636 | | IOPAMIDOL 61 % SOLN 50 ML VIAL | 50 | 97.20 |
| 07/19/2013 | 0636 | | MIDAZOLAM 1 MG/ML (2 ML) SOLN 2 ML VIAL | 2 | 125.00 |
| 07/19/2013 | 0636 | | NEOSTIGMINE 1 MG/ML SOLN 3 ML SYRINGE | 6 | 76.65 |
| 07/19/2013 | 0710 | | C PACU-PHASE 1 RECOV 15 MIN | 5 | 3,220.00 |
| 07/19/2013 | 0750 | 43262 (CPT®) | C GIL-ERCP FOR SPHINCTEROTOMY | 1 | 2,841.00 |
| 07/19/2013 | 0750 | 43268 (CPT®) | C GIL-ERCP W/BILIARY OR PANCREATIC STENT | 1 | 2,872.00 |
| 07/20/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/20/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/20/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/20/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/20/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/20/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/20/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/20/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/20/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/20/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/20/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/20/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/20/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/20/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/20/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/20/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/20/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/20/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/20/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/20/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/20/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/20/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/20/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/21/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/21/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/21/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/21/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/21/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/21/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/21/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/21/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/21/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/21/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/21/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/21/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/21/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/21/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/21/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/21/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/21/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/21/2013 | 0301 | 80053 (CPT®) | O COMPREHEN METABOLIC PANEL | 1 | 110.00 |
| 07/21/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/21/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/21/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/22/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/22/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/22/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/22/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/22/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/22/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/22/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/22/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/22/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/22/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/22/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/22/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/22/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/22/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/22/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/22/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/22/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 07/22/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/22/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/22/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/22/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/22/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/22/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/22/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/22/2013 | 0307 | 81001 (CPT®) | C UA W/MICROSCOPIC | 1 | 36.00 |
| 07/22/2013 | 0352 | 74177 (CPT®) | C CT ABDOMEN&PELVIS W/CONTRAST | 1 | 7,948.00 |
| 07/22/2013 | 0420 | 97530 (CPT®) | C PT-FUNCTIONAL ACTIVITIES PER 15MIN | 1 | 150.00 |
| 07/22/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 07/22/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 07/22/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/22/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/22/2013 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 07/23/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/23/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/23/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/23/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/23/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/23/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/23/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/23/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/23/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/23/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/23/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/23/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/23/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/23/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/23/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/23/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/23/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/23/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/23/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/23/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/23/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/23/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/23/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 5 | 24.10 |
| 07/23/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/23/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/23/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/23/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/23/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/23/2013 | 0921 | 93970 (CPT®) | C VAS DUPLEX VENOUS LWR EXT BILATERAL | 1 | 1,326.00 |
| 07/24/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/24/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/24/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/24/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/24/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/24/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 07/24/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 07/24/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/24/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/24/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/24/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/24/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/24/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/24/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/24/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/24/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 07/24/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/24/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 11.00 |
| 07/24/2013 | 0250 | | OLANZAPINE 5 MG TBDP | 1 | 19.00 |
| 07/24/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/24/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/24/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/24/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/25/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/25/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/25/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/25/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/25/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 07/25/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/25/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/25/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/25/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/25/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/25/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/25/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/25/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/25/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/25/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/25/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/25/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/25/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/25/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/25/2013 | 0420 | 97530 (CPT®) | C PT-FUNCTIONAL ACTIVITIES PER 15MIN | 1 | 150.00 |
| 07/25/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/26/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/26/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/26/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/26/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/26/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/26/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/26/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/26/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/26/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/26/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/26/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/26/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 07/26/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 07/26/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/27/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/27/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/27/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/27/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/27/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/27/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 07/27/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/27/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/27/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/27/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/27/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/27/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/27/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/27/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/27/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/27/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/27/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/27/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/27/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/27/2013 | 0301 | 80053 (CPT®) | O COMPREHEN METABOLIC PANEL | 1 | 110.00 |
| 07/27/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/27/2013 | 0324 | 71020 (CPT®) | C XR CHEST 2 VIEW - PA, LAT | 1 | 451.00 |
| 07/27/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/27/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/28/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/28/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/28/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/28/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/28/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/28/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 07/28/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 07/28/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/28/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/28/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/28/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/28/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/28/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/28/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/28/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/28/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/28/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/28/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/28/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/28/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/28/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 07/28/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/28/2013 | 0301 | 82247 (CPT®) | O BILIRUBIN NEONATAL TOTAL | 1 | 30.00 |
| 07/28/2013 | 0301 | 82248 (CPT®) | O BILIRUBIN DIRECT | 1 | 28.00 |
| 07/28/2013 | 0301 | 83735 (CPT®) | O MAGNESIUM | 1 | 62.00 |
| 07/28/2013 | 0301 | 84100 (CPT®) | O PHOSPHATE | 1 | 32.00 |
| 07/28/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/28/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/28/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/29/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/29/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/29/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/29/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/29/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/29/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 07/29/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/29/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/29/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/29/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/29/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/29/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/29/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/29/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/29/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/29/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/29/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/29/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/29/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/29/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/29/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/29/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/29/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/29/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/30/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/30/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/30/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/30/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/30/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/30/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 07/30/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/30/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/30/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/30/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/30/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/30/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/30/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/30/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/30/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/30/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/30/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/30/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/30/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/30/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/30/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/30/2013 | 0301 | 83789 (CPT®) | C MASS SPECTROMETRY QUANT,NONSPEC | 1 | 250.00 |
| 07/30/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/30/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 07/30/2013 | 0306 | 87186 (CPT®) | C SUSCEPTIBILITY MIC | 1 | 76.00 |
| 07/30/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 07/30/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/30/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/31/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 07/31/2013 | 0250 | | 0.9 % NACL SOLN 1,000 ML FLEX CONT | 100 | 50.00 |
| 07/31/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/31/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/31/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/31/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 07/31/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 07/31/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/31/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 07/31/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 07/31/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/31/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/31/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/31/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 07/31/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 07/31/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 07/31/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/31/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 07/31/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/31/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 07/31/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/31/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 07/31/2013 | 0301 | 80076 (CPT®) | O HEPATIC FUNCTION PANEL | 1 | 100.00 |
| 07/31/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 07/31/2013 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 44.00 |
| 07/31/2013 | 0352 | 74177 (CPT®) | C CT ABDOMEN&PELVIS W/CONTRAST | 1 | 7,948.00 |
| 07/31/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 07/31/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 07/31/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/31/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 07/31/2013 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 07/31/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/31/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 07/31/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/01/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/01/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/01/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/01/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 08/01/2013 | 0250 | | EPHEDRINE 50 MG/ML SOLN | 1 | 76.65 |
| 08/01/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/01/2013 | 0250 | | GLYCOPYRROLATE 0.2 MG/ML SOLN 5 ML VIAL | 5 | 81.65 |
| 08/01/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/01/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/01/2013 | 0250 | | LIDOCAINE PRESERVATIVE FREE 2% SOLN 5 ML VIAL | 5 | 80.00 |
| 08/01/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/01/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 20 ML VIAL | 2 | 200.00 |
| 08/01/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 08/01/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/01/2013 | 0250 | | ROCURONIUM 10 MG/ML SOLN | 1 | 200.00 |
| 08/01/2013 | 0272 | C1729 | C CS-CATH DRAINAGE PERC 10FRX20CM | 1 | 633.00 |
| 08/01/2013 | 0272 | C1729 | C CS-NDL CATH CENT YUEH 5FR19GX20CM | 2 | 300.00 |
| 08/01/2013 | 0278 | C1729 | C CS-CATH DRAINAGE PERC 12FRX20CM | 1 | 647.00 |
| 08/01/2013 | 0278 | C1769 | C CS-GUIDEWIRE .035X75CM AMPLATZ SS | 2 | 492.00 |
| 08/01/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/01/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/01/2013 | 0320 | 75989 (CPT®) | C IR ABSCESS DRAINAGE | 1 | 2,029.00 |
| 08/01/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 08/01/2013 | 0352 | 74150 (CPT®) | C CT ABDOMEN W/O IV CONTRAST | 1 | 3,150.00 |
| 08/01/2013 | 0361 | 47011 (CPT®) | C DRAINAGE OF LIVER LESION, PERCUT | 2 | 2,218.00 |
| 08/01/2013 | 0402 | 76942 (CPT®) | C US GUIDE NEEDLE BIOPSY | 1 | 1,144.00 |
| 08/01/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/01/2013 | 0636 | | NEOSTIGMINE 1 MG/ML SOLN 3 ML SYRINGE | 6 | 76.65 |
| 08/01/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/01/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/01/2013 | 0636 | | SUCCINYLCHOLINE 20 MG/ML SOLN | 10 | 200.00 |
| 08/01/2013 | 0710 | | C PACU-PHASE 1 RECOV 15 MIN | 5 | 3,220.00 |
| 08/02/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/02/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/02/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/02/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/02/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/02/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/02/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/02/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/02/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/02/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/02/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/02/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/02/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/02/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/02/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/02/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/02/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 08/02/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 08/02/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/02/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/02/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/02/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/02/2013 | 0324 | 71020 (CPT®) | C XR CHEST 2 VIEW - PA, LAT | 1 | 451.00 |
| 08/02/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/02/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/02/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/03/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/03/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/03/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/03/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/03/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/03/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/03/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/03/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/03/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/03/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/03/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/03/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/03/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/03/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/03/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 08/03/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/03/2013 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 08/03/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/03/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/03/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/03/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/03/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/03/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/03/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/04/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/04/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/04/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/04/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/04/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/04/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/04/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 08/04/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/04/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/04/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/04/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/04/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/04/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/04/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/04/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/04/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/04/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/04/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/04/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/04/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/04/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/04/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 08/04/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 08/04/2013 | 0306 | 87070 (CPT®) | C CULTURE OTHER SOURCE | 1 | 78.00 |
| 08/04/2013 | 0306 | 87186 (CPT®) | C SUSCEPTIBILITY MIC | 1 | 76.00 |
| 08/04/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 08/04/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 08/04/2013 | 0306 | 87205 (CPT®) | O GRAM STAIN | 1 | 40.00 |
| 08/04/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/04/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/04/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/05/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/05/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/05/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/05/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/05/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/05/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/05/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/05/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/05/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/05/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/05/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/05/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/05/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/05/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/05/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/05/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/05/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/05/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/05/2013 | 0301 | 82150 (CPT®) | O AMYLASE | 1 | 92.00 |
| 08/05/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/05/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/05/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/05/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/06/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/06/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/06/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/06/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/06/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/06/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/06/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/06/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/06/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/06/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/06/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/06/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/06/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/06/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/06/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/06/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/06/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/06/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/06/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/06/2013 | 0352 | 71260 (CPT®) | C CT CHEST W/ CONTRAST | 1 | 3,844.00 |
| 08/06/2013 | 0352 | 74177 (CPT®) | C CT ABDOMEN&PELVIS W/CONTRAST | 1 | 7,948.00 |
| 08/06/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 08/06/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 08/06/2013 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 08/06/2013 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 08/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/06/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/07/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/07/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/07/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/07/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/07/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/07/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/07/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/07/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/07/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/07/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/07/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/07/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/07/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/07/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/07/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/07/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/07/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/07/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/07/2013 | 0250 | | SILVER NITRATE-POT NITRATE 75-25 % MISC | 10 | 18.55 |
| 08/07/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/07/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/07/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/08/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/08/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/08/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/08/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/08/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/08/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/08/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/08/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/08/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/08/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/08/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/08/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/08/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/08/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/08/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/08/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/08/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/08/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/09/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/09/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/09/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/09/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 08/09/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/09/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/09/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/09/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/09/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/09/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/09/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/09/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/09/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 08/09/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/09/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/09/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/09/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/09/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/09/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/09/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/09/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/10/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/10/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/10/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/10/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/10/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/10/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/10/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/10/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/10/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/10/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/10/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/10/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/10/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/10/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/10/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/10/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/10/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/10/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/10/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/10/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/10/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/10/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/10/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/11/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/11/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/11/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/11/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/11/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/11/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/11/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/11/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/11/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/11/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/11/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/11/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/11/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/11/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/11/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/11/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/11/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/11/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/11/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/11/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/11/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/11/2013 | 0306 | 87040 (CPT®) | O BLOOD CULTURE | 1 | 128.00 |
| 08/11/2013 | 0306 | 87040 (CPT®) | O BLOOD CULTURE | 1 | 128.00 |
| 08/11/2013 | 0306 | 87086 (CPT®) | O URINE CULTURE | 1 | 258.00 |
| 08/11/2013 | 0306 | 87493 (CPT®) | C IADNA C DIFFICILE AMPL PROBE | 1 | 380.00 |
| 08/11/2013 | 0307 | 81003 (CPT®) | O UA MACROSCOPIC (NO CULTURE) | 1 | 34.00 |
| 08/11/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/11/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML PLAS CONT | 1 | 95.40 |
| 08/11/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/11/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/11/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/11/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/12/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/12/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/12/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/12/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/12/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/12/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/12/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/12/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/12/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/12/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/12/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/12/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/12/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/12/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/12/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/12/2013 | 0250 | | RISPERIDONE 1 MG TABS | 2 | 6.25 |
| 08/12/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/12/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/12/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/12/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/12/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/12/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML PLAS CONT | 1 | 95.40 |
| 08/12/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/12/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/12/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/12/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/13/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/13/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/13/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/13/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/13/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/13/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/13/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 08/13/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/13/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/13/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/13/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/13/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/13/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/13/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/13/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/13/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/13/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/13/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/13/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/13/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/13/2013 | 0250 | | RISPERIDONE 1 MG TABS | 3 | 7.90 |
| 08/13/2013 | 0250 | | RISPERIDONE 1 MG TABS | 3 | 7.90 |
| 08/13/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/13/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/13/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/13/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/13/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/13/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/13/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/13/2013 | 0636 | | ENOXAPARIN 30 MG/0.3 ML SOLN 0.3 ML SYRINGE | 3 | 85.85 |
| 08/13/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 08/13/2013 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 08/13/2013 | 0636 | | FLUCONAZOLE IN NS 200-0.9 MG/100ML-% SOLN 100 ML PLAS CONT | 1 | 95.40 |
| 08/13/2013 | 0636 | | PIPERACILLIN-TAZOBACTAM IN 100 ML NS 3.375 1 EACH VIAL | 3 | 212.75 |
| 08/14/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/14/2013 | 0250 | | ACETAMINOPHEN 325 MG TABS | 2 | 3.20 |
| 08/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/14/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/14/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/14/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/14/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/14/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/14/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/14/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/14/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/14/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/14/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/14/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/14/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/14/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/14/2013 | 0250 | | RISPERIDONE 1 MG TABS | 3 | 7.90 |
| 08/14/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/14/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/14/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/14/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/14/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/14/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/14/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/14/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 08/14/2013 | 0302 | 84134 (CPT®) | O PREALBUMIN | 1 | 120.00 |
| 08/14/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/14/2013 | 0352 | 74177 (CPT®) | C CT ABDOMEN&PELVIS W/CONTRAST | 1 | 7,948.00 |
| 08/14/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/14/2013 | 0636 | | DIATRIZOATE MEGLUMINE 66-10 % SOLN 30 ML BOTTLE | 30 | 35.55 |
| 08/14/2013 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 08/15/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/15/2013 | 0250 | | ACETAMINOPHEN 325 MG TABS | 2 | 3.20 |
| 08/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/15/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/15/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/15/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/15/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/15/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/15/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/15/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/15/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/15/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/15/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/15/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/15/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/15/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/15/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/15/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/15/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/15/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/15/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/15/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/15/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/15/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/15/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/15/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/15/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/16/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/16/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/16/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/16/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/16/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/16/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/16/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/16/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/16/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/16/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/16/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/16/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/16/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/16/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/16/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/16/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 08/16/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/16/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/16/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/16/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/16/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/16/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/16/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/16/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 08/16/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/16/2013 | 0483 | 93306 (CPT®) | P ECHO XTHORACIC,CONG ANOM,COMPLETE | 1 | 4,628.00 |
| 08/16/2013 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 08/17/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/17/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/17/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/17/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/17/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/17/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/17/2013 | 0250 | | HYDROGEN PEROXIDE 3 % SOLN 473 ML BOTTLE | 473 | 24.40 |
| 08/17/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/17/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/17/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/17/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/17/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/17/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/17/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/17/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/17/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/17/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/17/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/17/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/17/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/17/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/17/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/17/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/17/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/17/2013 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 100.00 |
| 08/18/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/18/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/18/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/18/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/18/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/18/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/18/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/18/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/18/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/18/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/18/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/18/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/18/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/18/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/18/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/18/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/18/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/18/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/18/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/18/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/18/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/18/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/18/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/18/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/18/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/18/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/18/2013 | 0306 | 87040 (CPT®) | O BLOOD CULTURE | 1 | 128.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/18/2013 | 0307 | 81001 (CPT®) | C UA W/MICROSCOPIC | 1 | 36.00 |
| 08/18/2013 | 0636 | | ONDANSETRON 2 MG/ML SOLN 2 ML VIAL | 4 | 77.45 |
| 08/19/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/19/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/19/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/19/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/19/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/19/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/19/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/19/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/19/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/19/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/19/2013 | 0250 | | IBUPROFEN 600 MG TABS | 1 | 3.15 |
| 08/19/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/19/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/19/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/19/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/19/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/19/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/19/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 1 | 25.00 |
| 08/19/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/19/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/19/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/19/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/19/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/19/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/19/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/19/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/19/2013 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 84.00 |
| 08/19/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/19/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/19/2013 | 0324 | 71010 (CPT®) | C XR CHEST 1 VIEW - PA OR AP | 1 | 345.00 |
| 08/20/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/20/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/20/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/20/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 08/20/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/20/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/20/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/20/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/20/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/20/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/20/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/20/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/20/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/20/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/20/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/20/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/20/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/20/2013 | 0250 | | VANCOMYCIN 125 MG CAPS | 1 | 99.05 |
| 08/20/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/20/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/20/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/21/2013 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 1,812.00 |
| 08/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 08/21/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/21/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/21/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/21/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/21/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/21/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/21/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/21/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/21/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/21/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/21/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/21/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/21/2013 | 0250 | | OXYCODONE-ACETAMINOPHEN 5-325 MG TABS | 2 | 25.00 |
| 08/21/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/21/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 3 | 22.05 |
| 08/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 3 | 22.05 |
| 08/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 3 | 22.05 |
| 08/21/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 3 | 22.05 |
| 08/21/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/21/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/21/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |
| 08/22/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/22/2013 | 0250 | | ASCORBIC ACID (VITAMIN C) 500 MG TABS | 1 | 3.10 |
| 08/22/2013 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 08/22/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/22/2013 | 0250 | | GABAPENTIN 300 MG CAPS | 1 | 3.45 |
| 08/22/2013 | 0250 | | MEGESTROL 40 MG/ML SUSP 10 ML SYRINGE | 1 | 12.25 |
| 08/22/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/22/2013 | 0250 | | METRONIDAZOLE 500 MG TABS | 1 | 5.10 |
| 08/22/2013 | 0250 | | MULTIVITAMIN THERAPEUTIC W/MINERALS TABS | 1 | 3.10 |
| 08/22/2013 | 0250 | | RISPERIDONE 1 MG TABS | 4 | 9.50 |
| 08/22/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 3 | 22.05 |
| 08/22/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 3 | 22.05 |
| 08/22/2013 | 0250 | | VANCOMYCIN 50 MG/ML 50 MG/ML | 3 | 22.05 |
| 08/22/2013 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 130.00 |
| 08/22/2013 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 26.00 |
| 08/22/2013 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 52.00 |

**Hospital Payments and Adjustments**

| Description | Amount |
|---|---|
| Medicaid Adjustments | -1,184.00 |
| Medicaid Payments | 0.00 |
| Non-covered: 616,444.45 | |
| Medicare Adjustments | -455,734.80 |
| Medicare Payments | -159,525.65 |
| Deductible: 1,184.00 | |
| Non-covered: 3,255.63 | |
| **Total insurance payments and adjustments** | **-616,444.45** |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

MultiCare
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**MultiCare Health System**
737 Fawcett Ave
Tacoma, WA 98415
253.459.7956
*Printed On: May 11, 2016*

Beltran,Cesar
6721 20TH ST E
APT 1
FIFE, WA 98424

**Guarantor ID:** 1809618
**Patient Age:** No DOB on File.

**Patient DOB:**
**Patient Sex:**

Visit Coverages:

**PRIMARY: Medicaid**
MEDICAID WA APPLE HEALTH
Subscriber ID: 100126128WA
Group Number:

**SECONDARY: Medicare**
MEDICARE A & B
Subscriber ID: 542197326A
Group Number:

This is not a bill. This is an itemization of your hospital services for:

**Patient:** Beltran,Cesar
**Admission Date:** 06/29/2013
**Visit Number:** 320621169
**Discharge Date:** 08/22/2013
**Discharge Location:** TACOMA GENERAL HOSPITAL

Current Balance for Visit: **$0.00**

**Professional Charges**

| Date | Rev Code | Procedure Code | Description | Qty | Amount |
|---|---|---|---|---|---|
| 07/08/13 | | 90791 | P PSYCHIATRIC DIAGNOSTIC EVALUATION | 1 | 348.00 |
| 07/15/13 | | 96151 | P ASSESS HLTH/BEHAVE, SUBSEQ | 2 | 100.00 |
| 07/17/13 | | 99232 | P SUBSEQUENT HOSPITAL CARE,LEVL II | 1 | 161.00 |
| 07/18/13 | | 99231 | P SUBSEQUENT HOSPITAL CARE,LEVL I | 1 | 89.00 |
| 07/24/13 | | 99231 | P SUBSEQUENT HOSPITAL CARE,LEVL I | 1 | 89.00 |
| 07/29/13 | | 96151 | P ASSESS HLTH/BEHAVE, SUBSEQ | 1 | 50.00 |
| 07/29/13 | | 99231 | P SUBSEQUENT HOSPITAL CARE,LEVL I | 1 | 89.00 |
| 08/14/13 | | 99231 | P SUBSEQUENT HOSPITAL CARE,LEVL I | 1 | 89.00 |

**Professional Payments and Adjustments**



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Description | Amount |
|---|---|
| Medicaid Adjustments | -67.29 |
| Medicaid Payments | 0.00 |
| Medicare Adjustments | -683.97 |
| Medicare Payments | -263.74 |
| **Total insurance payments and adjustments** | **-1,015.00** |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

PROVIDENCE Health & Services

BUSINESS OFFICE
BUSINESS OFFICE
PORTLAND OR 97208

# EXPLANATION OF CHARGES

**Customer Service**
Phone: **Toll-Free 1-866-PHS-BILL** (1-866-747-2455)
Hours : Monday - Friday: 8:00 a.m. - 7:00 p.m.

CESAR BELTRAN
8323 47TH AVE NE
MARYSVILLE, WA 98270

**Patient Information**

| | |
|---|---|
| | Date 08/01/16 |
| Name | **Cesar Beltran** |
| Guarantor Account ID | 592002 |
| Account Number | 316000510893 |
| Date of Service | 09/02/2013 - 09/03/2013 |
| Service Provided | Emergency |
| Total Charges | $ 5,102.84 |
| Insurance | MEDICARE PART A AND B |
| Secondary | MEDICAID WASHINGTON |

If you have questions about this account, please call customer service. Uninsured patients may qualify for free or reduced cost medical care. Contact us for information.

## *Charge Activity*

**Hospital Charges**

| Date | Rev Code | Procedure Code | Description | Qty | Amount |
|---|---|---|---|---|---|
| 09/02/13 | 0636 | J7030 | SODIUM CHLORIDE 0.9% QS BASE 1,000 ML FLEX CONT | 1 | 70.08 |
| 09/02/13 | 0305 | 30510062 | HC COMPLETE CBC AUTOMATED | 1 | 54.32 |
| 09/02/13 | 0307 | 30710008 | HC URINALYSIS AUTO W/O SCOPE | 1 | 46.57 |
| 09/02/13 | 0636 | J2405 | ONDANSETRON 2 MG/ML SOLN 2 ML VIAL | 4 | 73.99 |
| 09/02/13 | 0636 | J2275 | MORPHINE (PF) 4 MG/ML SOLN 1 ML SYRINGE | 1 | 58.19 |
| 09/02/13 | 0301 | 30112005 | HC ASSAY OF LACTIC ACID | 1 | 130.88 |
| 09/02/13 | 0301 | 30112062 | HC COMPREHEN METABOLIC PANEL | 1 | 86.44 |
| 09/02/13 | 0636 | Q9967 | IOPAMIDOL 370 MG/ML SOLN 100 ML GLASS CONT | 100 | 51.00 |
| 09/02/13 | 0350 | 35010025 | HC CT ABDOMEN & PELVIS W/ DYE | 1 | 2,091.84 |
| 09/02/13 | 0450 | 45010213 | HC EMERGENCY DEPT VISIT LEVEL IV | 1 | 1,274.56 |
| 09/02/13 | 0450 | 94010208 | HC TX/PRO/DX IV PUSH NEW DRUG ADDON | 1 | 181.73 |
| 09/02/13 | 0450 | 26010008 | HC HYDRATE IV INFUSION ADD-ON | 1 | 267.17 |
| 09/02/13 | 0450 | 26010008 | HC HYDRATE IV INFUSION ADD-ON | 2 | 534.34 |
| 09/02/13 | 0450 | 94010207 | HC THER/PROPH/DIAG IV PUSH | 1 | 181.73 |
| **Total hospital charges:** | | | | | **5,102.84** |

**Hospital Payments and Adjustments**

| Description | Amount |
|---|---|
| MEDICAID WASHINGTON Adjustments | -258.19 |
| MEDICARE Adjustments | -4,122.37 |
| MEDICARE Payments | -722.28 |
| Coinsurance: 258.19 | |
| **Total hospital payments and adjustments:** | **-5,102.84** |

MultiCare
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**MultiCare Health System**
737 Fawcett Ave
Tacoma, WA 98415
253.459.7956
*Printed On: May 11, 2016*

Beltran,Cesar
6721 20TH ST E
APT 1
FIFE, WA 98424

**Guarantor ID:** 1809618
**Patient Age:** No DOB on File.

**Patient DOB:** 11/20/1959
**Patient Sex:** Male

Visit Coverages:

**PRIMARY: Medicare**
MEDICARE A & B
Subscriber ID: 542197326A
Group Number:

**SECONDARY: Medicaid**
MEDICAID WA APPLE HEALTH
Subscriber ID: 100126128WA
Group Number:

This is not a bill. This is an itemization of your hospital services for:

**Patient:** Beltran,Cesar
**Admission Date:** 10/01/2013
**Visit Number:** 13386739
**Discharge Date:** 10/01/2013
**Discharge Location:** TACOMA GENERAL HOSPITAL

Current Balance for Visit: **$0.00**

**Hospital Charges**

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 10/01/2013 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 10/01/2013 | 0250 | | PROPOFOL 10 MG/ML EMUL 20 ML VIAL | 2 | 200.00 |
| 10/01/2013 | 0272 | A4649 | C CS-CANNULATOME DBL LUM II | 1 | 846.00 |
| 10/01/2013 | 0320 | 74329 (CPT®) | C XR ENDOSCOPY PANCREATIC | 1 | 857.00 |
| 10/01/2013 | 0370 | | C ANE-ANESTHESIA LEVEL I-15MIN | 2 | 792.00 |
| 10/01/2013 | 0636 | | FENTANYL 50 MCG/ML SOLN 2 ML VIAL | 1 | 125.00 |
| 10/01/2013 | 0710 | | C PACU-PHASE 1 RECOV 15 MIN | 3 | 1,932.00 |
| 10/01/2013 | 0710 | | C PACU-PHASE 2 RECOV 15 MIN | 5 | 745.00 |
| 10/01/2013 | 0750 | 43269 (CPT®) | C GIL-ERCP/REMOVAL AND/OR CHANGE STENT | 1 | 3,153.00 |

**Hospital Payments and Adjustments**

| Description | Amount |
|---|---|
| Medicaid Adjustments | -468.81 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Description | Amount |
|---|---|
| Medicaid Payments | 0.00 |
| Non-covered: 8,657.00 | |
| Medicare Adjustments | -6,350.49 |
| Medicare Payments | -1,837.70 |
| Coinsurance: 468.81 | |
| Non-covered: 5,541.50 | |
| **Total insurance payments and adjustments** | **-8,657.00** |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

MultiCare
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**MultiCare Health System**
737 Fawcett Ave
Tacoma, WA 98415
253.459.7956
*Printed On: May 11, 2016*

Beltran,Cesar
6721 20TH ST E
APT 1
FIFE, WA 98424

**Guarantor ID:** 1809618
**Patient Age:** No DOB on File.

**Patient DOB:** 11/20/1959
**Patient Sex:** Male

Visit Coverages:

**PRIMARY: Medicare**
MEDICARE A & B
Subscriber ID: 542197326A
Group Number:

**SECONDARY: Medicaid**
MEDICAID WA APPLE HEALTH
Subscriber ID: 100126128WA
Group Number:

This is not a bill. This is an itemization of your hospital services for:

**Patient:** Beltran,Cesar
**Admission Date:** 02/12/2014
**Visit Number:** 13832997
**Discharge Date:** 02/21/2014
**Discharge Location:** TACOMA GENERAL HOSPITAL

Current Balance for Visit: **$0.00**

**Hospital Charges**

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 02/06/2014 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 110.00 |
| 02/06/2014 | 0301 | 80053 (CPT®) | O COMPREHEN METABOLIC PANEL | 1 | 116.00 |
| 02/06/2014 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 28.00 |
| 02/06/2014 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 74.00 |
| 02/06/2014 | 0305 | 85610 (CPT®) | O PROTHROMBIN (PT) | 1 | 46.00 |
| 02/10/2014 | 0510 | 99212 (CPT®) | C FAC VISIT EST PT LEVEL II | 1 | 126.00 |
| 02/12/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/12/2014 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 02/12/2014 | 0250 | | EPHEDRINE 50 MG/ML SOLN 1 ML AMPULE | 1 | 76.65 |
| 02/12/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/12/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/12/2014 | 0250 | | GLYCOPYRROLATE 1 MG/5ML SOLN | 1 | 77.15 |
| 02/12/2014 | 0250 | A4649 | NACL .9% IRR 1000ML BT | 1 | 8.00 |
| 02/12/2014 | 0250 | | PROPOFOL 10 MG/ML EMUL 20 ML VIAL | 2 | 200.00 |
| 02/12/2014 | 0250 | | ROCURONIUM 10 MG/ML SOLN 5 ML VIAL | 1 | 200.00 |
| 02/12/2014 | 0250 | | ROCURONIUM 10 MG/ML SOLN 5 ML VIAL | 1 | 200.00 |



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| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 02/12/2014 | 0270 | | STAPLER LINER 60MM RELOAD | 1 | 726.00 |
| 02/12/2014 | 0272 | A4344 | CATH FOLEY TRAY I/C 16FR | 1 | 108.00 |
| 02/12/2014 | 0272 | A4649 | CUTTER LINEAR SAFETY 75MM | 1 | 451.00 |
| 02/12/2014 | 0272 | A4649 | RELOAD STAPLER LINEAR 75MM | 3 | 2,028.00 |
| 02/12/2014 | 0300 | 36592 (CPT®) | C CENTRAL/PERIPH BLOOD DRAW | 1 | 193.00 |
| 02/12/2014 | 0301 | 82962 (CPT®) | C POCT-GLUCOSE BY MONITORING DEVICE | 1 | 38.00 |
| 02/12/2014 | 0302 | 86850 (CPT®) | O ANTIBODY SCREEN | 1 | 130.00 |
| 02/12/2014 | 0302 | 86900 (CPT®) | O ABO BLOOD GROUP | 1 | 40.00 |
| 02/12/2014 | 0302 | 86901 (CPT®) | O RH GROUP | 1 | 48.00 |
| 02/12/2014 | 0312 | 88304 (CPT®) | C SURG PATH GROSS EXAM III | 1 | 298.00 |
| 02/12/2014 | 0360 | | C OR-SURG LEVEL 3 ADDL 15 MINUTES | 9 | 21,123.00 |
| 02/12/2014 | 0360 | | C OR-SURG LEVEL 3 FIRST 15 MINUTES | 1 | 7,817.00 |
| 02/12/2014 | 0370 | | C ANE-ANESTHESIA LEVEL I-15MIN | 10 | 4,360.00 |
| 02/12/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/12/2014 | 0636 | | FENTANYL 50 MCG/ML SOLN 2 ML VIAL | 1 | 125.00 |
| 02/12/2014 | 0636 | | FENTANYL 50 MCG/ML SOLN 2 ML VIAL | 1 | 125.00 |
| 02/12/2014 | 0636 | | FENTANYL 50 MCG/ML SOLN 2 ML VIAL | 1 | 125.00 |
| 02/12/2014 | 0636 | | HEPARIN (PF) 5000 UNIT/0.5ML SOLN 0.5 ML SYRINGE | 5 | 76.75 |
| 02/12/2014 | 0636 | | HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL | 1 | 125.00 |
| 02/12/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/12/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/12/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/12/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/12/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 02/12/2014 | 0636 | | MORPHINE 30 MG IN 30 ML NS (ADULT) PCA 1 MG/ML SOLN | 1 | 125.00 |
| 02/12/2014 | 0636 | | NEOSTIGMINE 1 MG/ML SOLN 3 ML SYRINGE | 6 | 76.65 |
| 02/12/2014 | 0636 | | ONDANSETRON 2 MG/ML SOLN 2 ML VIAL | 4 | 77.45 |
| 02/12/2014 | 0636 | | PHENYLEPHRINE 10 MG/ML SOLN 1 ML VIAL | 1 | 95.80 |
| 02/12/2014 | 0710 | | C PACU-PHASE 1 RECOV 15 MIN | 6 | 4,254.00 |
| 02/13/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/13/2014 | 0250 | | CEFOTETAN IN 100 ML NS SOLR 2 G VIAL | 1 | 263.80 |
| 02/13/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/13/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/13/2014 | 0301 | 80048 (CPT®) | O BASIC METABOLIC PANEL | 1 | 88.00 |
| 02/13/2014 | 0305 | 85007 (CPT®) | C DIFFERENTIAL MANUAL | 1 | 28.00 |
| 02/13/2014 | 0305 | 85027 (CPT®) | O BLOOD COUNT AND PLT | 1 | 74.00 |
| 02/13/2014 | 0424 | 97001 (CPT®) | C PT-EVALUATION I | 1 | 374.00 |
| 02/13/2014 | 0434 | 97003 (CPT®) | C OT-EVALUATION | 1 | 395.00 |
| 02/13/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/13/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/13/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/13/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/13/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/13/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/13/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/13/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML PLAS CONT | 1 | 50.00 |
| 02/14/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/14/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/14/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/14/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/14/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/14/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/14/2014 | 0301 | 80053 (CPT®) | O COMPREHEN METABOLIC PANEL | 1 | 116.00 |
| 02/14/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/14/2014 | 0636 | | KETOROLAC 15 MG/ML SOLN 1 ML VIAL | 1 | 77.30 |
| 02/14/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/14/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 02/14/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/14/2014 | 0636 | | MORPHINE 30 MG IN 30 ML NS (ADULT) PCA 1 MG/ML SOLN | 3 | 125.00 |
| 02/15/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/15/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/15/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/15/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/15/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/15/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/15/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/15/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/15/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/16/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/16/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/16/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/16/2014 | 0250 | | FAMOTIDINE 10 MG/ML SOLN 2 ML VIAL | 2 | 77.05 |
| 02/16/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/16/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/16/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/16/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/16/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/16/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/16/2014 | 0636 | | LACTATED RINGERS SOLN 1,000 ML FLEX CONT | 1 | 50.00 |
| 02/16/2014 | 0636 | | MORPHINE 30 MG IN 30 ML NS (ADULT) PCA 1 MG/ML SOLN | 3 | 125.00 |
| 02/17/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/17/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/17/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/17/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/17/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/17/2014 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS (AKA 41710062) | 1 | 7.00 |
| 02/17/2014 | 0250 | | OXYCODONE 5 MG TABS | 2 | 25.00 |
| 02/17/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/17/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/17/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/17/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/17/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/17/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/17/2014 | 0300 | 36415 (CPT®) | P VENIPUNCTURE | 1 | 110.00 |
| 02/17/2014 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 106.00 |
| 02/17/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/17/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/17/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/17/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/17/2014 | 0636 | | MORPHINE 4 MG/ML SOLN 1 ML CRTRDG-NDL | 1 | 125.00 |
| 02/17/2014 | 0636 | | MORPHINE 4 MG/ML SOLN 1 ML CRTRDG-NDL | 1 | 125.00 |
| 02/18/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/18/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/18/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/18/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/18/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/18/2014 | 0250 | | DOCUSATE SODIUM 250 MG CAPS | 1 | 3.15 |
| 02/18/2014 | 0250 | | OXYCODONE 5 MG TABS | 2 | 25.00 |
| 02/18/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/18/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/18/2014 | 0250 | | POLYETHYLENE GLYCOL PACK | 1 | 5.50 |
| 02/18/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/18/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/18/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/18/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 02/18/2014 | 0250 | | SENNA-DOCUSATE 8.6-50 MG TABS | 1 | 3.20 |
| 02/18/2014 | 0250 | | SENNA-DOCUSATE 8.6-50 MG TABS | 1 | 3.20 |
| 02/18/2014 | 0430 | 97535 (CPT®) | C OT-ADL TRAINING-15MIN | 2 | 240.00 |
| 02/18/2014 | 0434 | 97003 (CPT®) | C OT-EVALUATION | 1 | 395.00 |
| 02/18/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/18/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/18/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/18/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/19/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/19/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/19/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/19/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/19/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/19/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/19/2014 | 0250 | | DOCUSATE SODIUM 250 MG CAPS | 1 | 3.15 |
| 02/19/2014 | 0250 | | OXYCODONE 5 MG TABS | 2 | 25.00 |
| 02/19/2014 | 0250 | | OXYCODONE 5 MG TABS | 2 | 25.00 |
| 02/19/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/19/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/19/2014 | 0250 | | POLYETHYLENE GLYCOL PACK | 1 | 5.50 |
| 02/19/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/19/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/19/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/19/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/19/2014 | 0250 | | SENNA-DOCUSATE 8.6-50 MG TABS | 1 | 3.20 |
| 02/19/2014 | 0250 | | SENNA-DOCUSATE 8.6-50 MG TABS | 1 | 3.20 |
| 02/19/2014 | 0250 | | SODIUM HYPOCHLORITE 0.25 % SOLN 473 ML BOTTLE | 1 | 29.95 |
| 02/19/2014 | 0636 | | CEFAZOLIN IN 100 ML NS 1 G PACKAGE | 2 | 156.75 |
| 02/19/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/19/2014 | 0636 | | MORPHINE 4 MG/ML SOLN 1 ML CRTRDG-NDL | 1 | 125.00 |
| 02/20/2014 | 0120 | | C ROOM CHARGE ACUITY LEVEL III | 1 | 2,029.00 |
| 02/20/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/20/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/20/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/20/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/20/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/20/2014 | 0250 | | DOCUSATE SODIUM 250 MG CAPS | 1 | 3.15 |
| 02/20/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/20/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/20/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/20/2014 | 0250 | | OXYCODONE 5 MG TABS | 2 | 25.00 |
| 02/20/2014 | 0250 | | POLYETHYLENE GLYCOL PACK | 1 | 5.50 |
| 02/20/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/20/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |
| 02/20/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/20/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/20/2014 | 0250 | | SENNA-DOCUSATE 8.6-50 MG TABS | 1 | 3.20 |
| 02/20/2014 | 0250 | | SENNA-DOCUSATE 8.6-50 MG TABS | 1 | 3.20 |
| 02/20/2014 | 0636 | | ENOXAPARIN 40 MG/0.4 ML SOLN 0.4 ML SYRINGE | 4 | 91.15 |
| 02/21/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/21/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/21/2014 | 0250 | | ACETAMINOPHEN 500 MG TABS | 1 | 3.10 |
| 02/21/2014 | 0250 | | BUPROPION 150 MG TB12 | 1 | 4.65 |
| 02/21/2014 | 0250 | | DOCUSATE SODIUM 250 MG CAPS | 1 | 3.15 |
| 02/21/2014 | 0250 | | OXYCODONE 5 MG TABS | 2 | 25.00 |
| 02/21/2014 | 0250 | | OXYCODONE 5 MG TABS | 2 | 25.00 |
| 02/21/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/21/2014 | 0250 | | OXYCODONE 5 MG TABS | 3 | 25.00 |
| 02/21/2014 | 0250 | | RANITIDINE 150 MG TABS | 1 | 3.30 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 02/21/2014 | 0250 | | RISPERIDONE 2 MG TABS | 2 | 5.35 |
| 02/21/2014 | 0250 | | SENNA-DOCUSATE 8.6-50 MG TABS | 1 | 3.20 |

**Hospital Payments and Adjustments**

| Description | Amount |
|---|---|
| Medicaid Payments | -1,216.00 |
| Medicare Adjustments | -57,516.93 |
| Medicare Payments | -11,094.47 |
| Deductible: 1,216.00 | |
| **Total insurance payments and adjustments** | **-69,827.40** |

Visit Number: 13832997



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

MultiCare
BetterConnected

**MultiCare Health System**
737 Fawcett Ave
Tacoma, WA 98415
253.459.7956
*Printed On: May 11, 2016*

Beltran,Cesar
6721 20TH ST E
APT 1
FIFE, WA 98424

**Guarantor ID:** 1809618
**Patient Age:** No DOB on File.

**Patient DOB:** 11/20/1959
**Patient Sex:** Male

Visit Coverages:

**PRIMARY: Medicare**
MEDICARE A & B
Subscriber ID: 542197326A
Group Number:

**SECONDARY: Medicaid**
MEDICAID WA APPLE HEALTH
Subscriber ID: 100126128WA
Group Number:

This is not a bill. This is an itemization of your hospital services for:

**Patient:** Beltran,Cesar
**Admission Date:** 10/26/2015
**Visit Number:** 700449876
**Discharge Date:** 10/27/2015
**Discharge Location:** TACOMA GENERAL HOSPITAL

Current Balance for Visit: **$0.00**

**Hospital Charges**

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| 10/26/2015 | 0250 | | C IV-BUFFERED LIDOCAINE PER DS | 2 | 14.00 |
| 10/26/2015 | 0301 | 80053 (CPT®) | O COMPREHEN METABOLIC PANEL | 1 | 104.00 |
| 10/26/2015 | 0301 | 83690 (CPT®) | O LIPASE | 1 | 84.00 |
| 10/26/2015 | 0305 | 85025 (CPT®) | O CBC WITH DIFF | 1 | 95.00 |
| 10/26/2015 | 0306 | 87086 (CPT®) | O URINE CULTURE | 1 | 98.00 |
| 10/26/2015 | 0307 | 81001 (CPT®) | C UA W/MICROSCOPIC | 1 | 39.00 |
| 10/26/2015 | 0352 | 74177 (CPT®) | C CT ABDOMEN&PELVIS W/CONTRAST | 1 | 7,156.00 |
| 10/26/2015 | 0450 | 96374 (CPT®) | C ED-IVPUSH/INF 15M/LESS INIT | 1 | 318.00 |
| 10/26/2015 | 0450 | 96375 (CPT®) | C ED-IVPUSH/INF 15M/LESS ADDL | 2 | 660.00 |
| 10/26/2015 | 0450 | 99283 (CPT®) | C VISIT- ADULT ED,LEVEL III | 1 | 1,635.00 |
| 10/26/2015 | 0636 | | FAMOTIDINE 10 MG/ML SOLN | 20 | 77.55 |
| 10/26/2015 | 0636 | | HYDROMORPHONE 1 MG/ML SOLN | 1 | 125.00 |
| 10/26/2015 | 0636 | | IOPAMIDOL SOLN | 75 | 108.90 |
| 10/26/2015 | 0636 | | ONDANSETRON 2 MG/ML SOLN | 4 | 77.85 |
| 10/27/2015 | 0302 | 86677 (CPT®) | O H. PYLORI SCREEN | 1 | 176.00 |
| 10/27/2015 | 0402 | 76705 (CPT®) | C US ABDOMINAL, LIMITED (SPECIFY AREA) | 1 | 905.00 |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

| Service Date | Rev Code | Procedure Code | Description | QTY | AMOUNT |
|---|---|---|---|---|---|
| | | | | | |

**Hospital Payments and Adjustments**

| Description | Amount |
|---|---|
| Medicaid Adjustments | -147.76 |
| Medicaid Payments | -107.44 |
| Medicare Adjustments | -10,719.74 |
| Medicare Payments | -698.36 |
| Coinsurance: 255.20 | |
| **Total insurance payments and adjustments** | **-11,673.30** |



*Please refer to this visit number for all inquiries and correspondence. This detail bill reflects charges, payments, and adjustments posted on this date of service.*

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

August 03 2017 4:24 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT<br><br>Noted for:<br>September 1, 2017 |

## MOTION

COMES NOW the defendant, City of Tacoma, by and through its attorney of record, Jean P. Homan, and moves the Court for an order granting Defendant's Motion for Partial Summary Judgment. This motion is brought pursuant to CR 56, CR 7 and PCLR 7, and is based on the Affidavit of Jean P. Homan in Support of Defendant's Motion for Partial Summary Judgment, and on the documents and pleadings on file herein.



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
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## MEMORANDUM

## I. STATEMENT OF FACTS

On June 29, 2013, Tacoma Police Officer Michel Volk saw plaintiff Cesar Beltran-Serrano, on the corner of E. 28th Street and Portland Avenue, an area known to be frequented by panhandlers. Amended Complaint, para. 8, on file herein; Exhibit 1 (Volk Deposition Excerpts) to the Affidavit of Jean P. Homan in Support of Defendant's Motion for Summary Judgment (hereinafter Homan Affidavit), p. 38:12-16. When Officer Volk saw the plaintiff, he was holding a sign, walking in and out of traffic and approaching vehicles. Exhibit 1, p. 41:16-20. During the course of the encounter, Mr. Beltran grabbed a metal club-like object, struck Officer Volk with the object and then ran. Id. at 48:3-10; p. 48:25-49:4. See also Exhibit 2 (Rushton Deposition Excerpt) to Homan Affidavit, p. 50-59. Officer Volk pursued the plaintiff and ultimately shot him. Exhibit 1, p. 50:13-51:22.

Plaintiff commenced this litigation, asserting claims for 1) assault and battery; and 2) negligence against the City of Tacoma. With respect to negligence, plaintiff has alleged the following:

- "Defendant owes a duty to refrain from negligently, unreasonably, recklessly and wantonly engaging in the non-consensual invasion of the sanctity of a person's bodily and personal security" (Amended Complaint, para. 19);
- "Defendant owes a duty to refrain from negligently engaging in harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff



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to suffer such harm or apprehension that such contact is imminent" (Amended Complaint, para 20);

- "Defendant owes a duty to properly train and supervise its employees in dealing with the mentally ill and in the appropriate use of force" (Amended Complaint, para. 21);
- "Defendant breached that duty when they engaged in the improper, unreasonable, unnecessary and excessive use of force, including but not limited to shooting Cesar Beltran in the back while he was trying to walk away from Officer Volk" (Amended Complaint, para. 22)
- "Defendant breached that duty, acted unreasonably and was negligent, when it failed to have and follow proper training, policies, and procedures on the standard practices of officers in contacting Spanish speaking individuals with mental illness" (Amended Complaint, para. 23);
- "Defendant breached that duty, acted unreasonably and was negligent, when it used unnecessary and improper physical force and violence against Cesar Beltran" (Amended complaint, para. 24); and
- "Defendant breached that duty when it unreasonably, unnecessarily, and without provocation shot Cesar Beltran in the back, torso, and extremities and otherwise engaged in harmful or offensive contact with Plaintiff thereby inflicting an assault and battery on Cesar Beltran" (Amended complaint, para. 25).



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While some of these allegations are couched in terms of a breach of a duty of care, the thrust of some of these allegations is clearly assault and battery[1]. See, e.g., Amended Complaint, paras. 19, 20, 22. The remaining allegations – negligent training, negligent supervision, negligent use of force – are the focus of the instant motion.

As outlined herein, plaintiff's negligence claims all fail, as a matter of law. First, because Officer Volk was engaged in a law enforcement function at the time of this contact, any negligence claims are not cognizable under the public duty doctrine, as the duty owed was to the general public as a whole and not to the plaintiff as an individual. Second, to the extent plaintiff is alleging a negligent application of deadly force, such a claim is not cognizable as the shooting was an intention act and not a failure to exercise reasonable case. Last, plaintiff's claims of negligent training and supervision are not cognizable, as Officer Volk was acting within the course and scope of employment at all relevant times during this incident.

The facts material to the instant motion are not in dispute and the City is entitled to judgment, as a matter of law, on plaintiff's negligence claim.

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[1]Under Washington law, "a police officer making an arrest is justified in using sufficient force to subdue a prisoner, however he becomes a tortfeaser and is liable as such for assault and battery if unnecessary violence or excessive force is used in accomplishing the arrest." Boyles v. Kennewick, 62 Wn. App. 174, 176, 813 P.2d 178, review denied, 118 Wn.2d 1006 (1991). Because plaintiff claims that his damages were caused by Officer Volk's use of deadly force, which plaintiff claims is excessive, any allegation that is based on an excessive use of force necessarily relates to the assault and battery claim.



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## II. ISSUES FOR REVIEW

1. Whether plaintiff's negligence claims should be dismissed as there was no duty owed to the plaintiff, as an individual, and any duty owed was to the public in general.

2. Whether plaintiff's negligent shooting claim should be dismissed as the shooting was an intentional act.

3. Whether plaintiff's negligent training and supervision claims should be dismissed as Officer Volk was acting within the course and scope of employment at the time of the shooting.

## III. STANDARD ON MOTION FOR SUMMARY JUDGMENT

On a motion for summary judgment, the moving party bears the initial burden of showing the absence of a material issue of fact. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989). A *defendant* can meet this burden in one of two ways. First, the defendant can set forth its version of the facts and allege that there is no material issue as to those facts. Hash v. Children's Orthopedic Hosp. & Med. Ctr., 110 Wn.2d 912, 916, 757 P.2d 507 (1988). In the alternative, the defendant can meet its burden by showing that there is absence of evidence to support the nonmoving party's case. Howell v. Spokane & Inland Empire Blood Bank, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

Under the latter method, the defendant is not required to support its motion with affidavits or other materials *disproving* the plaintiff's case. Burnet v. Spokane Ambulance, 54 Wn. App. 162, 166, 772 P.2d 1027 (1989) reversed on other grounds by 131, Wn.2d 484, 933 P.2d 1036 (1997). The defendant need only "identify those



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portions of the record, together with the affidavits, if any, which he or she believes demonstrate the absence of a genuine issue of material fact." Guile v. Ballard Community Hosp., 70 Wn. App. 18, 22, 851 P.2d 689, rev. denied, 122 Wn.2d 1010 (1993).

After the defendant makes its required showing, the burden then shifts to the plaintiff:

> If, at this point, the plaintiff [as nonmoving party] "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial", then the trial court should grant the motion...."In such a situation, there can be 'no genuine issue as to any material fact,' since ***a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial***."

(emphasis added) Hiatt v. Walker Chevrolet, 120 Wn.2d 57, 66, 837 P.2d 618 (1992). Consequently, the plaintiff "must do more than express an opinion or make conclusory statements"; ***the plaintiff must set forth specific and material facts to support each element of his prima facie case***. Id.

Finally, while "[t]he nonmoving party is entitled to have the evidence viewed in a light most favorable to him," the standard on summary judgment does not relieve the nonmoving party of his burden to adduce competent, admissible evidence sufficient to support a jury's verdict. Seiber v. Poulsbo Marine Center, Inc., 136 Wn. App. 731, 736, 150 P.3d 633 (2007). ***"[I]f the plaintiff, as the nonmoving party, can offer only a "scintilla" of evidence, evidence that is "merely colorable," or evidence that "is not significantly probative," the plaintiff will not defeat the motion."*** Id. (citing Herron v. Tribune Publishing Co., 108 Wn.2d 162, 170, 736 P.2d 249 (1987)). See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 106 S.Ct. 2505, 91 L.Ed.2d



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202 (1986) ("*The mere existence of a scintilla of evidence in support of the plaintiff's position is insufficient*; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict – "whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed." (emphasis added)).

## IV. ANALYSIS

### A. The public duty doctrine bars plaintiff's negligence claims.

As outlined above, plaintiff's negligence claims fall into three main camps: a failure to have appropriate policies; a negligent application of force; and a failure to train or supervise Officer Volk. While there are separate legal reasons for dismissing the negligent application of force and negligent training/supervision claims (see Sections IV.B and IV.C, *infra*), all of plaintiff's claims fail, due to the absence of any actionable duty.

In order to establish a prima facie case, plaintiff must adduce competent and credible evidence of a legal duty owed by the defendants, that the defendants breached that duty, that the breach resulted in injury, and that the breach of duty was the proximate cause of plaintiff's injury. See e.g., Hartley v. State, 107 Wn.2d, 768, 698 P.2d 77 (1985). The existence of a duty is the threshold question in any negligence action and the action will fail if no duty is established. Cummins v. Lewis County, 156 Wn.2d 844, 852, 133 P.3d 458 (2006). The existence of a legal duty is a



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pure question of law. Folsom v. Burger King, 135 Wn.2d 658, 671, 958 P.2d 301 (1998); Honcoop v. Wash., 111 Wn.2d 182, 188, 759 P.2d 1188 (1988).

The public duty doctrine is a focusing tool, used by the court to determine the scope of the duty owed by governmental entities under the specific circumstances of the case. Moore v. Wayman, 85 Wn. App. 710, 717, 934 P.2d 707, review denied, 133 Wn.2d 1019 (1997). The doctrine recognizes that some duties owed by the government are duties imposed for the good of society as a whole and as such, those duties will not generally support a negligence action[2]. In other words, "*governments, unlike private persons, are tasked with duties that are not legal duties within the meaning of tort law*." Washburn v. City of Federal Way, 178 Wn.2d 732, 753, 310 P.3d 1275 (2013).

"Where the plaintiff claims the governmental entity has breached a duty owed to the public in general, he or she may not recover in tort for lack of an actionable legal duty." Id. Thus, a plaintiff seeking recovery from a municipal corporation in a negligence action must show that the duty breached was owed to the injured plaintiff *as an individual*, as opposed to society at large ("a duty to all is a duty to no one"). Washington courts have consistently held that the duties owed by police "are owed to

[2] In Munich v. Skagit Emergency Comm'n Center, 175 Wn.2d 871, 879, 288 P.2d 328 (2012), in a concurring opinion, Justice Chambers asserted that the public duty doctrine only applied to functions required by statute (as opposed to functions that have been deemed to be governmental, instead of proprietary). While later courts have continued to analyze the application of the public duty doctrine by reference to governmental versus proprietary functions (and without reference to statutorily imposed duties) (see, e.g., Sunshine Heifers, LLC v. Dep't of Agric., 188 Wn. App. 960, 966-68, 355 P.3d 1204, 1208-09 (2015) ; Fabre v. Town of Ruston, 180 Wn. App. 150, 159-60, 321 P.3d 1208, 1213 (2014)), this distinction is of no import when analyzing application of the doctrine to law enforcement activities. Law enforcement is a uniquely governmental function, one specifically authorized by constitutional police powers and mandated by statute. See Fourth Amendment to the United States Constitution; Article XI, section 11 of the Washington Constitution; RCW §35.22.280(35)(2015) (tasking first class cities with duty and authority to enforce the laws and keep the peace). See also Munich, 175 Wn.2d at 895 (Chambers, *concurrence*)("We must recognize that some governmental functions are not meaningfully analogous to anything a private person or corporation might do." (citing Evangelical United Brethren Church v. State, 67 Wn.2d 246, 252-53, 407 P.2d 440 (1965)).



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the public at large and are unenforceable as to individual members of the public." Chambers-Castanes v. King County, 100 Wn.2d 275, 284, 669 P.2d 451 (1983). "The relationship of police officer to citizen is too general to create an actionable duty. Courts generally agree that responding to a citizen's call for assistance is basic to police work and not special to a particular individual." Torres v. City of Anacortes, 97 Wn. App. 64, 74, 981 P.2d 891 (1999), rev. denied, 140 Wn.2d 1007 (2000). Therefore, in order to establish his negligence claims, plaintiff must first establish an exception to the public duty doctrine which would establish a particularized duty owed to him. In Washington, the four recognized exceptions to the public duty doctrine are: (i) the legislative intent exception, (ii) the failure to enforce exception, (iii) the rescue doctrine exception, and (iv) the special relationship exception. See Cummins v. Lewis County, 156 Wn.2d 844, 853, 133 P.3d 458 (2006). If plaintiff cannot establish one of these four exceptions, then no liability may be imposed for a public officer's negligent conduct, based on the reasoning that a duty was not owed specifically to the individual plaintiff, as opposed to the public in general. Cummins, 156 Wn.2d at 852.

During the course of discovery, plaintiff did not identify any facts to establish any of the recognized exceptions to the public duty doctrine. See Exhibit 3 (Excerpts from Plaintiff's Responses to Discovery Requests) to Homan Affidavit, Interrogatory Nos. 10 and 11. With regards to the first three exceptions, no applicable regulatory statute has been cited that evidences a clear legislative intent to identify and protect a particular and circumscribed class of persons; no statute has been identified that defendants were responsible for enforcing and failed to enforce despite actual knowledge of a violation thereof, and no allegation has been made that defendants



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assumed a duty to warn or come to Orn's aid. See Bailey v. Town of Forks, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987); Honcoop v. State, 111 Wn.2d 182, 188-190, 759 P.2d 1188 (1988). Nor is plaintiff able to establish that he had a special relationship with the City or its employees. To establish a special relationship creating an actionable duty on the part of a governmental entity, he must show : (i) he had direct contact or privity with a public official, thereby setting him part from the general public; (ii) the public official gave "express assurances" to him ; and (iii) he justifiably relied on such express assurances to his detriment. See Cummins, 156 Wn.2d at 854. In this case, there is simply no evidence to support that any of the elements of this exception. No basis exists for concluding that TPD or any of its officers owed plaintiff a duty specifically and apart from the duty owed to the public in general[3].

**B. Plaintiff cannot premise a negligence claim on an intentional act, so any negligence claims based on the shooting must be dismissed.**

In addition to the hurdle presented by the public duty doctrine, to the extent that plaintiff's negligence claim is predicated upon Officer Volk's use of deadly force, such a claim is not cognizable. A plaintiff may not base a claim of negligence on an intentional act, like the use of excessive force. See Willard v. City of Everett, 2013 U.S. Dist. LEXIS 126409, 2013 WL 4759064 at *4-5 (W.D. Wash. Sept. 4,

[3] As the Willard court noted, the recent Supreme Court's decision in Robb v. City of Seattle, 176 Wn.2d 427, 295 P.3d 212 (2013), does not change application or analysis of the public duty doctrine. In Robb, the Supreme Court recognized that police *misfeasance*, as opposed to *nonfeasance*, could give rise to a duty absent a special relationship; that duty, however, was the duty to control the conduct of a third person so as to prevent him or her from causing harm to another. Id. at 433-39. In this case, no contention is made that TPD and its officers failed to protect Orn from some third person, and the Robb decision has no applicability. Accord Washburn v. City of Federal Way, 178 Wn.2d 732, 753, 310 P.3d 1275 (2013) (citing Restatement §302B and the Robb case to support the contention that a duty arises to control the conduct of a third person in situations of misfeasance).



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2013)[4](citing Nix v. Bauer, 2007 U.S. Dist. LEXIS 14951, 2007 WL 686506 at *4 (W.D. Wash. Mar. 1, 2007); Tegman v. Accident & Med. Investigations, Inc., 150 Wn.2d 102, 75 P.3d 497 (2003) ("fault" within the meaning of RCW Chapter 4.22, which encompasses liability for negligence, does not include intentional acts or omissions)). See also Brutsche v. City of Kent, 164 Wn.2d 664, 679, 193 P.3d 100 (2008)(declining to address negligence claim where officer's act of breaching the door on plaintiff's property was intentional, not accidental); Roufa v. Constantine, 2017 U.S. Dist. LEXIS 4966, at *30-31 (W.D. Wash. Jan. 11, 2017) (plaintiff cannot base a claim of negligence on alleged intentional actions, such as excessive force or unlawful arrest); Lawson v. City of Seattle, 2014 U.S. Dist. LEXIS 55883, at *37-40 (W.D. Wash. Apr. 21, 2014).

In the instant case, there is no allegation, let alone evidence, to establish that the discharge of Officer Volk's firearm was accidental. See Exhibit 3 to Homan Affidavit, Interrogatory No. 10. Her application of deadly force was intentional and therefore, that act cannot support a negligence claim.

### C. Plaintiff's claims for negligent training and supervision are not cognizable, as the officer was acting within the course and scope of her employment.

In Washington, the elements of a negligent hiring and a negligent retention claim are identical with the exception of when the wrongful act allegedly occurs. Peck v. Siau, 65 Wn. App. 285, 288, 827 P.2d 1108 (1992). In a negligent hiring claim, the

[4] Pursuant to GR 14.1, copies of all opinions designated as "unpublished" and "not for publication" are attached as an appendix to the instant motion. Citation to federal opinions decided after January 1, 2007, where such opinions are designated as "unpublished" or "not for publication" is permitted pursuant to Federal Rule of Appellate Procedure 32.1.



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employer's negligence occurs at the time of hiring; with a negligent retention claim, it occurs in the course of employment. Id. "An employer can be liable for negligent hiring or retention for failing to exercise ordinary care by hiring or retaining an employee known to be unfit." Evans v. Tacoma Sch. Dist. No. 10, 195 Wn. App. 25, 46, 380 P.3d 553 (2016). "Distinct from these causes of action are negligent supervision and training, for which an employer can be liable for failing to exercise ordinary care in supervising an employee." Id. at 47. "Liability arises when the employer knows or has reason to know that the employee presented a risk of danger to others." Id. (citing Niece v. Elmview Group Home, 131 Wn.2d 39, 48-49, 929 P.2d 420 (1997)).

These causes of action, however, are "analytically different from vicarious liability." Evans, 195 Wn. App. at 47. Respondeat superior "imposes liability on an employer for the torts of an employee who is acting on the employer's behalf." Niece, 131 Wn.2d at 48. Claims of negligent hiring, retention, training, and supervision are based not on the concept of vicarious liability (respondeat superior), but on the notion that "the employer's *own* negligence is a wrong to the injured party, independent from the employer's liability for its employee's negligence imputed by the doctrine of respondeat superior." Evans, 195 Wn. App. at 47 (citing Niece, 131 Wn.2d at 48).

In cases such as the instant case, where the plaintiff is asserting that the allegedly tortious employee was acting within the scope of his or her employment, claims for negligent supervision are redundant and futile. As the court in Gilliam v. DSHS noted:

> *Here, the State acknowledged Morrow was acting within the scope of her employment*, and that the State would be vicariously liable for her conduct. *Under these circumstances a cause of action for negligent*



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> *supervision is redundant.* If Gilliam proves Morrow's liability, the State will also be liable. If Gilliam fails to prove Morrow's liability, the State cannot be liable even if its supervision was negligent.

(emphasis added) Gilliam v. DSHS, 89 Wn. App. 569, 584-85, 950 P.2d 20, rev. denied, 135 Wn.2d 1015 (1998). Thus, "an injured party generally cannot assert claims for negligent hiring, retention, supervision or training of an employee when the employer is vicariously liable for the employee's conduct." Evans, 195 Wn. App. at 47 (citing LaPlant v. Snohomish County, 162 Wn. App. 476, 479-80, 217 P.3d 254 (2011)).

The Gilliam and Evans courts' analysis is equally applicable to the instant case. In this case, all of the officers involved in this incident were acting within the course and scope of their employment and plaintiff concedes as much. Amended Complaint, para. 2, on file herein. Because there no dispute that Officer Volk was acting within the course and scope of her employment, any claims of negligent hiring, training and supervision fail as a matter of law[5] and must be dismissed.

## V. CONCLUSION

As outlined herein, plaintiff's negligence claims fails, as a matter of law, for a variety of reasons. First, because all claims are based on law enforcement actions, any claims are barred by the lack of an actionable duty. There is no question that law enforcement is a traditional government function, a duty imposed on government for

[5] Moreover, even if these claims did not fail due to the fact that the employees were acting within the course and scope of their employment, no evidence has been developed during the course of discovery to establish the essential elements of plaintiffs' prima facie case. There is no evidence to establish that the City failed to exercise reasonable care by hiring ore retaining an employee known to be unfit (negligent hiring or retention) or that the City had reason to know that Officer Volk presented a risk of danger to others (negligent training or supervision. Consequently, these claims fail on this basis as well.



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the benefit of the public as a whole and plaintiff has not alleged facts sufficient to establish any of the recognized exceptions to the doctrine. Further, to the extent plaintiff is claiming that Officer Volk was negligent in her application of force, this claim cannot stand as it is based on an intentional act. Finally, to the extent plaintiff is alleging claims of negligent hiring, retention, training or supervision, such claims are not cognizable because Officer Volk was acting within the course and scope of her employment at all time relevant to this matter.

For these reasons, the City respectfully moves this court for an order, dismissing plaintiff's negligence claims, in their entirety and with prejudice.

DATED this 3RD day of August, 2017.

WILLIAM FOSBRE, City Attorney

By:

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## DECLARATION OF SERVICE

I hereby certify that on August 3, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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## APPENDIX

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2. Roufa v. Constantine…… .11

3. Lawson v. City of Seattle…… 11

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# Willard v. City of Everett

United States District Court for the Western District of Washington

September 4, 2013, Decided; September 4, 2013, Filed

C12-14 TSZ

**Reporter**
2013 U.S. Dist. LEXIS 126409 *; 2013 WL 4759064

LARRY WILLARD, et al., Plaintiffs, v. CITY OF EVERETT, et al., Defendants.

**Subsequent History:** Affirmed by *Willard v. City of Everett, 2016 U.S. App. LEXIS 3785 (9th Cir. Wash., Mar. 1, 2016)*

**Counsel:** **[*1]** For Larry Willard, Individually and as Personal Representative of the estate of Dustin Willard, Debra Willard, Clint Willard, Plaintiffs: Anna L Price, John R. Connelly, Jr., Julie Anne Kays, CONNELLY LAW OFFICES, TACOMA, WA.

For City of Everett, a political subdivision of the State of Washington, Stephen Harney, Aaron Showalter, Sunny Radosevich, Defendants: Louis David Peterson, Mary E Crego, Michael J Ewart, HILLIS CLARK MARTIN & PETERSON, SEATTLE, WA.

**Judges:** THOMAS S. ZILLY, United States District Judge.

**Opinion by:** THOMAS S. ZILLY

## Opinion

ORDER

THIS MATTER comes before the Court on defendants' motion for summary judgment, docket no. 34. Having reviewed all papers filed in support of and in opposition to the motion, and having considered the oral arguments of counsel, the Court enters the following Order.

**Background**

This case concerns the shooting death of Dustin Willard by Everett police officers on November 8, 2008. In the early morning, one of Willard's neighbors heard noises coming from Willard's house and called 911 to report a possible burglary in progress. Shortly after 1:44 a.m., members of the Everett Police Department ("EPD"), including Stephen Harney, Aaron Showalter, and Sunny (Radosevich) Taylor, **[*2]** responded to the scene.

After arriving at Willard's residence, Taylor and another officer scouted along the fence surrounding the back yard. They heard a dog barking and heard a male voice give commands to the dog. They were unable to see over the fence or ascertain how many individuals might be inside the house, and they decided not to attempt to make contact. Meanwhile, Harney and Showalter took positions to the left of the front porch. Taylor passed by Harney on her way toward the perimeter of the front yard. She told Harney she could see mud smear marks on the front door; the marks were consistent with someone trying to kick in the door. Harney made a similar observation.

Taylor placed herself behind a utility pole; from this vantage point, she could see the front of the house and was able to read the address numbers. Having ascertained the address, Taylor asked a dispatcher to find a telephone number for the residence. Almost instantaneously, Harney either rang the doorbell or knocked on the front door. The front door opened and Willard stepped onto the front porch, holding a shot gun at an angle, with the barrel pointed up. Harney aimed his weapon at Willard and shouted, "Police. **[*3]** Drop the gun." Taylor simultaneously yelled "gun" several times.

Willard lowered the barrel of his shot gun in Harney's direction and brought the stock of the firearm to his shoulder as though he was preparing to fire. Harney and Showalter began moving backwards in an effort to put distance between them and Willard. As they did so, Taylor started firing her weapon. Harney and Showalter also shot at Willard. Willard died at the scene.

Willard's father, mother, and brother initiated this action against City of Everett, Harney, Showalter, and Taylor, alleging three claims: (i) unconstitutional use of excessive force by the individual defendants; (ii) violation of constitutional rights by City of Everett; and (iii) negligence. Complaint (docket no. 1). Pursuant to defendants' unopposed motion, all claims brought by Willard's brother and the *Fourth Amendment* and state law claims asserted by Willard's father and mother were dismissed. Order (docket no. 21). The only claims remaining in this action are those of Willard and his estate, for which his father is the personal representative, and the *Fourteenth Amendment* claim asserted by Willard's father and mother. Defendants have moved for summary **[*4]** judgment in their favor as to these claims.

## Discussion

### A. Standard for Summary Judgment

The Court shall grant summary judgment if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(a)*. To survive a motion for summary judgment, the adverse party must present "affirmative evidence," which "is to be believed" and from which all "justifiable inferences" are to be favorably drawn. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 257, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. "*Rule 56* 'mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" *Beard v. Banks, 548 U.S. 521, 529, 126 S. Ct. 2572, 165 L. Ed. 2d 697 (2006)* (quoting *Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986))*.

### B. Negligence

Willard and his estate have no cognizable claim for negligence. A plaintiff may not base a claim of negligence on an intentional act, like the use of excessive force. *Nix v. Bauer, 2007 U.S. Dist. LEXIS 14951, 2007 WL 686506 at *4 (W.D. Wash. Mar. 1, 2007)*; *see Tegman v. Accident & Med. Investigations, Inc., 150 Wn.2d 102, 75 P.3d 497 (2003)* **[*5]** ("fault" within the meaning of RCW Chapter 4.22, which encompasses liability for negligence, does not include intentional acts or omissions). Instead, to maintain an action for negligence, a plaintiff must first demonstrate that the defendant owed the plaintiff a duty of care. *See Honcoop v. Wash., 111 Wn.2d 182, 188, 759 P.2d 1188 (1988)*.

In Washington, the public duty doctrine defines the four instances under which a governmental entity may be found to owe a statutory or common law duty to a particular member of the public, namely (i) legislative intent, (ii) failure to enforce, (iii) the rescue doctrine, or (iv) a special relationship. *See Cummins v. Lewis County, 156 Wn.2d 844, 853, 133 P.3d 458 & n.7, (2006)*. If one of these four "exceptions" does not apply, then no liability may be imposed for a public officer's negligent conduct, based on the reasoning that a duty was not owed specifically to the individual plaintiff, as opposed to the public in general. *Id. at 852*. The first three "exceptions" have not been asserted. No applicable regulatory statute has been cited that evidences "a **[*6]** clear legislative intent to identify and protect a particular and circumscribed class of persons," *see Honcoop, 111 Wn.2d at 188*; no statute has been identified that defendants were responsible for enforcing and failed to enforce despite actual knowledge of a violation thereof, *see id. at 190* (citing *Bailey v. Town of Forks, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987))*; and no allegation has been made that defendants assumed a duty to warn or come to Willard's aid, *see Bailey, 108 Wn.2d at 268*.

The only exception upon which Willard and his estate might rely is a "special relationship." To

establish a special relationship creating an actionable duty on the part of a governmental entity, a plaintiff must show: (i) the plaintiff had direct contact or privity with a public official, thereby setting the plaintiff apart from the general public; (ii) the public official gave "express assurances" to the plaintiff; and (iii) the plaintiff justifiably relied on such express assurances to his or her detriment. *See Cummins, 156 Wn.2d at 854*. In this case, the elements of the "special relationship" exception to the public duty doctrine have not been satisfied. No evidence has been presented of any **[*7]** direct contact between Willard and a public official and no proof has been proffered that a public official gave "express assurances" to Willard upon which he could have justifiably relied to his detriment. No basis exists for concluding that the EPD or any of its officers owed Willard a duty specifically and apart from the duty owed to the public in general.

The Washington Supreme Court's recent decision in *Robb v. City of Seattle, 176 Wn.2d 427, 295 P.3d 212 (2013)*, on which plaintiffs rely, does not change this analysis. Although the *Robb* Court recognized that police misfeasance, as opposed to nonfeasance, could give rise to a duty absent a special relationship, the duty at issue was to control the conduct of a third person so as to prevent him or her from causing harm to another. *Id. at 433-39*. In this case, no contention is made that the EPD and its officers failed to protect Willard from some third person, and the *Robb* decision has no applicability. Defendants' motion for summary judgment is GRANTED as to Willard's negligence claim, and such claim is DISMISSED with prejudice.

**C.Excessive Force**

With respect to Willard's excessive force claim, no contention is made that the officers' **[*8]** defensive use of deadly force after Willard aimed his shot gun at them was improper. Rather, the excessive force claim is premised on alleged violation of the *Fourth Amendment* in connection with the events preceding Willard's encounter with police. The Ninth Circuit has recognized that when "an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent *Fourth Amendment* violation, he may be held liable for his otherwise defensive use of deadly force." *Billington v. Smith, 292 F.3d 1177, 1189 (9th Cir. 2002)*.

In *Billington*, the Ninth Circuit made clear that the *Fourth Amendment's* reasonableness standard differs from the "reasonable care" owed under tort law, and merely negligent acts do not give rise to constitutional liability. *Id. at 1190*. Thus, a plaintiff cannot use the provocation doctrine to transform into a *Fourth Amendment* violation an officer's failure to choose a "less intrusive alternative" or poor tactical decision, which resulted in a deadly confrontation that might have otherwise been avoided. *Id. at 1188-90*. Rather, to give rise to an excessive force claim, the provocation must be intentional or reckless and must constitute **[*9]** a violation of the *Fourth Amendment*, with the events leading up to the use of force judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id. at 1190*.

The provocation alleged in this case consists of silently approaching, surveying, and surrounding Willard's residence and then not announcing "police" when ringing the doorbell or knocking on the door. The underlying theory is that Willard heard noises outside his home, responded to the doorbell or knock with a shot gun, so as to protect himself from any miscreant, and then did not have sufficient time to realize that police were present and/or respond to commands to disarm before being fatally wounded. In support of the assertion that the police conduct leading up to Willard's exit from the residence violated the *Fourth Amendment*, plaintiffs rely on knock-and-wait statute, *RCW 10.31.040*, as interpreted in *State v. Coyle, 95 Wn.2d 1, 621 P.2d 1256 (1980)*, and *State v. Richards, 136 Wn.2d 361, 962 P.2d 118 (1998)*. The statute provides:

> To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or **[*10]** any other inclosure, if, after notice of his or her office and purpose, he or

she be refused admittance.

RCW 10.31.040.

In Coyle, the Washington Supreme Court held that the knock-and-wait statute applies when (i) force is used to obtain entry; and (ii) police enter without valid permission. 95 Wn.2d at 5-6. To comply with the statute, prior to a nonconsensual entry, police must announce their identity, demand admittance, announce the purpose of their demand, and be explicitly or implicitly denied admittance. Id. at 6. But see Richards, 136 Wn.2d at 374-78 (an announcement that officers have a search warrant constitutes an implicit demand for entry, and officers need not thereafter wait for a grant or denial of admission). The knock-and-wait requirements must be satisfied even if police enter through an open door. Coyle, 95 Wn.2d at 6. Washington's knock-and-wait statute is consistent with the less demanding "rule of announcement" developed under 18 U.S.C. § 3109 and the *Fourth Amendment*. See Richards, 136 Wn.2d at 370 (citing United States v. Bustamante-Gamez, 488 F.2d 4 (9th Cir. 1973)).

The knock-and-wait statute does not apply to the circumstances at issue in this case. EPD officers **[*11]** did not use force to gain entry and did not enter or intend to enter Willard's home when Harney rang the doorbell or knocked on the door. Rather, in response to the doorbell or knock, Willard opened the door and stepped out onto the front porch. No officer entered Willard's home before the shooting. The EPD officers arrived at Willard's home in response to a 911 call concerning a possible burglary. They took a stealthy approach to the residence to avoid engaging in a violent confrontation with any intruders and/or creating a hostage situation. Consistent with these goals, Harney did not announce "police" when he rang the doorbell or knocked on the door. The contention that Willard would not have carried his shot gun across the threshold had he known, prior to opening the door, that the individuals roaming around his house were law enforcement officers presents nothing more than a challenge to the tactical decisions made on the morning in question, and does not establish the type of intentional or reckless provocation and independent violation of the *Fourth Amendment* that is required to hold defendants liable for use of excessive force. Defendants' motion for summary judgment is GRANTED **[*12]** as to Willard's *Fourth Amendment* claim, and such claim is DISMISSED with prejudice. [1]

**D.*Fourteenth Amendment***

Although an individual who claims excessive police force was directed at him or her can raise only a *Fourth Amendment* claim, parents who claim that such use of force resulted in the loss of companionship and society of their child may raise a claim for deprivation of a protected liberty interest under the *Fourteenth Amendment*. Curnow v. Ridgecrest Police, 952 F.2d 321, 325 (9th Cir. 1991). To prevail on such substantive due process claim, the parents must demonstrate that the officer's conduct "shocks the conscience." Wilkinson v. Torres, 610 F.3d 546, 554 (9th Cir. 2010); Moreland v. Las Vegas Metro. Police Dept., 159 F.3d 365, 372 (9th Cir. 1998). In analyzing whether use of lethal force shocks the conscience, the Court must inquire whether the circumstances made "actual deliberation" by the officer or officers practical. Wilkinson, 610 F.3d at 554; Moreland, 159 F.3d at 372. If actual deliberation is possible, then an officer's deliberate indifference might suffice to shock **[*13]** the conscience. Wilkinson, 610 F.3d at 554. On the other hand, when an officer is forced to make a snap judgment because of an escalating situation, the officer's conduct may be found to shock the conscience only if the officer acts "with a purpose to harm unrelated to legitimate law enforcement objectives." Id. Such purpose to harm might be proven by evidence that the officer used force to bully a suspect or to "get even." Id.

In this case, after Willard exited his house with a shot gun in hand, the EPD officers had no opportunity to engage in actual deliberation, but rather had to react quickly to the danger posed by Willard. Their decision to fire was not made with a

[1] Thus, the Court need not address whether the individual defendants are entitled to qualified immunity.

purpose to harm that was unrelated to a legitimate law enforcement objective; rather, they discharged their weapons to protect themselves and their fellow officers. To the extent Willard's parents assert that the circumstances before Willard stepped onto the front porch made actual deliberation on the part of EPD officers practical, their substantive due process claim still fails. They present no evidence that EPD officers acted with deliberate indifference or in a manner that might shock the conscience. Defendants' **[*14]** motion for summary judgment is GRANTED as to the *Fourteenth Amendment* claim asserted by Willard's parents, and such claim is DISMISSED with prejudice.

**E.Municipal Liability**

A municipality may not be held liable under *§ 1983* on a respondeat superior theory. *Ulrich v. City & County of San Francisco, 308 F.3d 968, 984 (9th Cir. 2002)*. Instead, municipal liability must be premised on one of four theories: (i) a policy or longstanding practice or custom from which the alleged constitutional violation resulted; (ii) an unconstitutional action by an official with final policy-making authority; (iii) ratification by an official with final policy-making authority of a subordinate's unconstitutional conduct; or (iv) a failure to adequately train employees that amounts to "deliberate indifference" concerning the constitutional right at issue. *See, e.g., Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005)*; *see also City of Canton v. Harris, 489 U.S. 378, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989)*; *Clouthier v. County of Contra Costa, 591 F.3d 1232, 1249-50 (9th Cir. 2010)*. The contention made in this case is that City of Everett is liable for an alleged failure to adequately train EPD officers to knock and announce when **[*15]** investigating a possible burglary and for not reprimanding and thereby ratifying the shooting of Willard. With regard to the latter assertion, no showing has been made that any EPD officer engaged in unconstitutional conduct, and therefore, City of Everett cannot be liable for ratifying the actions of EPD officers on the morning of November 8, 2008.

To impose liability on a municipal employer for failure to adequately train its employees, a plaintiff must prove that the government's omission amounted to "deliberate indifference" to the right at issue. *Clouthier, 591 F.3d at 1249*. Deliberate indifference is established when "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.* (quoting *Harris, 489 U.S. at 390*). A plaintiff must demonstrate that the failure to train "reflects a 'deliberate' or 'conscious' choice by a municipality." *Id. at 1250* (quoting *Harris, 489 U.S. at 389*). To adopt a lesser standard of fault "would result in *de facto respondeat superior* liability on municipalities," which **[*16]** the United States Supreme Court has consistently rejected, and would force the federal courts to engage in "an endless exercise of second-guessing municipal employee-training programs," a task for which federal courts are "ill suited" and which would "implicate serious questions of federalism." *Id.* (quoting *Harris, 489 U.S. at 392*).

Because the knock-and-wait statute does not apply when police respond to the scene of a possible burglary and have no intent to enter the dwelling, but rather hope to draw the suspect out of the residence, any failure to train the officers involved here to knock and announce in such situations cannot amount to deliberate indifference. No showing has been made that any need for more or different training was obvious or that any inadequacy in training was likely to result in the unfortunate shooting death of Dustin Willard. Defendants' motion for summary judgment is GRANTED as to the allegation of municipal liability, and all claims against City of Everett are DISMISSED with prejudice.

**Conclusion**

For the foregoing reasons, defendants' motion for summary judgment, docket no. 34, is GRANTED, and all of plaintiffs' claims are DISMISSED with prejudice. Defendants' **[*17]** motion to exclude the testimony of plaintiffs' experts D.P. Van Blaricom and Susan Peters, docket no. 43, is STRICKEN as

moot. The Clerk is DIRECTED to enter judgment consistent with this Order and to send a copy of this Order to all counsel of record.

IT IS SO ORDERED.

Dated this 4th day of September, 2013.

/s/ Thomas S. Zilly

THOMAS S. ZILLY

United States District Judge

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# Roufa v. Constantine

United States District Court for the Western District of Washington

January 11, 2017, Decided; January 11, 2017, Filed

CASE NO. C15-1379JLR

**Reporter**
2017 U.S. Dist. LEXIS 4966 *

ANDREW HARRIS ROUFA, Plaintiff, v. DOW CONSTANTINE, et al., Defendants.

**Counsel:** **[*1]** For Andrew Harris Roufa, Plaintiff: Leah R Altaras, LEAD ATTORNEY, ALTARAS LAW PLLC, SEATTLE, WA.

For Dow Constantine, King County Executive, Sgt. Mohamed, County of King, Captain Allen, Officer Wells, Officer Allred, Officer Hallock, Officer B. Owens, Officer Grant, Nurse Gabriella, C/O Van Der Vliet, Officer Mendez, Officer Sprague, Carol Bryner, Major Corinna Hyatt, Captain Todd Clark, Commander Karlsson, Captain Woodbury, King County Department of Adult and Juvenile Detention, Defendants: John Robert Zeldenrust, KING COUNTY PROSECUTING ATTORNEY'S OFFICE (3RD AVE), SEATTLE, WA.

**Judges:** JAMES L. ROBART, United States District Judge.

**Opinion by:** JAMES L. ROBART

## Opinion

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

### I. INTRODUCTION

Before the court is Defendants' motion for summary judgment.[1] (MSJ (Dkt. # 12).) The court has considered Plaintiff Andrew Harris Roufa's opposition to the motion (Resp. (Dkt. # 28)), Defendants' reply memorandum (Reply (Dkt. # 32)), the relevant portions of the record, and the applicable law. On January 5, 2017, the court also heard the argument of counsel. (Min. Entry (Dkt. # 34).) Being fully advised, the court GRANTS Defendants' motion for summary judgment for the reasons set forth below.

### [*2] II. BACKGROUND

#### A. Defendants' Version of Events

1. Mr. Roufa's Arrest

This case arises from Mr. Roufa's arrest and booking into King County Jail[2] on June 9, 2012. (*See* Compl. (Dkt. # 1-2) ¶¶ 1, 14, 22; MSJ at 1.) Around 6:30 p.m. that evening, the Seattle Police Department ("SPD") received a call that a man was "acting bizarre[ly] in the area of 1st Avenue South & South Michigan Street." (MSJ at 2 (citing 1st Zeldenrust Decl. (Dkt. # 24) ¶¶ 2-3, Ex. 1 ("1st Police Rep.") at 4, Ex. 2 ("2d Police Rep.").) The

[1] Defendants in this action are identified in Mr. Roufa's complaint as follows: King County; King County Executive Dow Constantine ("Executive Constantine"); Sergeant Mohamed; Captains Allen, Clark, and Woodbury; Officers Wells, Allred, Hallock, Owens, Grant, Van Der Vliet, Mendez, and Sprague; "Nurse Gabriella"; Carol Bryner; Major Hyatt; Commander Karlsson; and the King County Department of Adult and Juvenile Detention ("DAJD"). (Compl. (Dkt. # 2-1) at 1.) The court will refer collectively to Captains Allen, Clark, and Woodbury, Major Hyatt, and Commander Karlsson as "Supervisory Defendants." The court will refer collectively to Officers Wells, Allred, Hallock, Owens, Grant, Van Der Vliet, Mendez, and Sprague as Officer Defendants.

[2] King County Jail is a division of DAJD. (*See* Compl. ¶ 2 ("The King County Jail is one jail that is run by the King County Department of Adult and Juvenile Detention.").)

police later identified this man as Mr. Roufa. (*See* 1st Police Rep. at 1.) During the time that Mr. Roufa was acting strangely, a Washington State Patrol ("WSP") trooper detained Mr. Roufa, and SPD Officer Thaimin Saewong responded to the scene. (*See* 1st Police Rep.; 2d Police Rep.)

When Officer Saewong responded, Dora Smith "flagged [him] down" and told him that "the male [they] were looking for was her friend," Mr. Roufa. (1st Police Rep. at 5.) Ms. Smith told Officer Saewong that she was concerned about Mr. Roufa's mental health and that he had been diagnosed with paranoid schizophrenia and bipolar disorder. (*Id.* at 4-5; 2d Police Rep. at 6.) Officer Saewong then checked whether Mr. Roufa had any outstanding warrants and determined that Mr. Roufa had "an active . . . warrant" from **[*3]** Seattle Municipal Court for domestic violence/harassment. (1st Police Rep. at 5.) Upon learning of the outstanding warrant, Office Saewong and his partner, Officer Suarez, arrested Mr. Roufa without incident. (MSJ at 2 (citing 1st Police Rep. at 5).)

Once Mr. Roufa was in their police car, however, he became hostile. (1st Police Rep. at 5.) Mr. Roufa threatened to sue the officers, stated that "he wanted everything recorded," and indicated that "he thought [the officers] were going to beat him down." (*Id.*) Mr. Roufa also threatened to assault the officers and said that "he wanted to get beat up by officers" and that "he would not cooperate" with them. (*Id.*) Officer Saewong received approval to book Mr. Roufa directly into King County Jail because of the hostile behavior. (*Id.*)

After Mr. Roufa's arrest, Ms. Smith dialed 911 and said that Mr. Roufa had assaulted her, which Ms. Smith had not mentioned to Officer Saewong when they spoke. (2d Police Rep. at 6.) Officer Saewong went to Ms. Smith's house to investigate the incident, and Ms. Smith told Officer Saewong that she and Mr. Roufa had dated for about three years and lived together, but that Mr. Roufa had recently been living in a motel and on the streets. (*Id.*) Mr. Roufa had been "kicked out of the Star **[*4]** Motel" and phoned Ms. Smith on June 9, 2012, to give him a ride. (*Id.*) Ms. Smith picked Mr. Roufa up in the Georgetown area of Seattle (*id.*), and Ms. Smith told Officer Saewong that Mr. Roufa began acting hostilely towards her, "tried [to] pick[] fights" with random strangers they encountered, argued with her, and shoved her in the chest while she was driving (*id.*). Ms. Smith then made Mr. Roufa get out of the car near 1st Avenue South in Seattle, where Mr. Roufa ultimately encountered the WSP trooper. (*Id.; see also* 1st Police Rep. at 1.)

2. Mr. Roufa's Booking into the King County Jail

When Mr. Roufa arrived at the King County Jail, he initially cooperated with the corrections officers who put Mr. Roufa in a holding cell in the Intake, Transfer, and Release ("ITR") section of the jail. (1st Police Rep. at 4.) However, by approximately 9:15 p.m., the corrections officers stopped taking pictures and fingerprints of Mr. Roufa because he spit and screamed from his cell. (Grant Decl. (Dkt. # 15) ¶ 2, Ex. 1 ("Grant Rep.") at 2; Hallock Decl. (Dkt. # 16) ¶ 2, Ex. 1 ("Hallock Rep.") at 2; Mohamed Decl. (Dkt. # 19) ¶ 2, Ex. 1 ("1st Mohamed Rep.") at 3.) The officers "placed [Mr. Roufa] on 15[-]minute checks in anticipation **[*5]** of moving him to a different cell." (1st Mohamed Rep. at 3; *see also* Sprague Decl. (Dkt. # 20) ¶ 2, Ex. 1 ("Sprague Rep.") at 2.)

At this time, the second shift ITR sergeant, Abdulmonaiem Mohamed, contacted the Acting Captain, Captain Allen, to report "the possible anticipated use of force" in moving Mr. Roufa to a different cell. (1st Mohamed Rep. at 3) Captain Allen authorized Sergeant Mohamed to "use reasonable and necessary force while dealing with [Mr.] Roufa." (*Id.*) Sergeant Mohamed then directed Officer Kenneth Grant to contact Jail Health Services Nurse Kimberly to see "if there [we]re any contraindications preventing the use of pepper spray or [a] [t]aser on [Mr.] Roufa." (*Id.*; Grant Rep. at 2.) Officer Grant told Sergeant Mohamed that "Nurse Kimberley" said there were no contraindications. (*Id.*; Grant Rep. at 2; Hallock Rep. at 2.)

Officer Grant and Officer Owens then directed Mr. Roufa to "approach the pass-through of the holding cell door so he could be handcuffed" and moved to a different cell. (MSJ at 5 (emphasis omitted)

(citing Grant Rep. at 2; 1st Mohamed Rep. at 3; Hallock Rep. at 2).) Mr. Roufa complied, and the officers moved him to a different cell. (Grant Rep. at 2.) After Mr. Roufa entered the new cell, however, he pulled his hands away from the officers and they were **[*6]** unable to remove the handcuffs. (1st Mohamed Rep. at 3; Hallock Rep. at 2.) Sergeant Mohamed directed Mr. Roufa several times to come to the pass-through to have the handcuffs removed, but Mr. Roufa continued to refuse. (1st Mohamed Rep. at 3.) Sergeant Mohamed "warned [Mr.] Roufa that he would deploy . . . pepper spray if [Mr.] Roufa did not comply with [Sergeant Mohamed's] orders." (1st Mohamed Rep. at 3.) Mr. Roufa continued to refuse, and Sergeant Mohamed sprayed the pepper spray into the cell. (*Id.*; Mohamed Decl. ¶ 3, Ex. 2 ("2d Mohamed Rep.") at 1; *see also* Allred Rep. at 2.) Two cans of pepper spray failed to deploy correctly. (1st Mohamed Rep. at 3; *see also* Clark Decl. (Dkt. # 14) ¶ 2, Ex. 1 ("Clark Rep.") at 2.) From a "partially full" third can and a fourth can, Sergeant Mohamed "sprayed several bursts [that] struck [Mr.] Roufa on the back." (2d Mohamed Rep. at 2.) After each time he sprayed, Sergeant Mohamed directed Mr. Roufa to come to the pass-through, but Mr. Roufa refused. (*Id.; see also* 1st Mohamed Rep. at 3.) Sergeant Mohamed "then sprayed the pepper spray into [Mr.] Roufa's face," but Mr. Roufa "still refused to comply and ran around inside his cell." (MSJ at 5 (citing 2d Mohamed Rep. at 2); *see also* Grant Rep. at 2.)

Sergeant Mohamed then "directed several corrections officers to suit up for a cell extraction." (MSJ at 5 (citing **[*7]** 2d Mohamed Rep. at 2); *see also* Grant Rep. at 2; Hallock Rep. at 2.) Officer Sprague checked with the jail's psychiatric nurse—"Nurse Gabriella"—to see whether a taser could be used on Mr. Roufa. (2d Mohamed Rep. at 2.) The nurse told Officer Sprague that a taser could not be used because the nurse concluded that Mr. Roufa had a heart condition based on the medicine he was taking. (2d Mohamed Rep. at 2; Sprague Rep. at 2; Mohamed Decl. ¶ 4, Ex. 3.) After learning that Mr. Roufa could not be tased, Sergeant Mohamed decided to "transfer [Mr.] Roufa to a different cell so that he could decontaminate." (2d Mohamed Rep. at 2.) Captain Allen told Sergeant Mohamed to use a video camera during the move. (*Id.*)

While Sergeant Mohamed made these arrangements, another officer removed Mr. Roufa's handcuffs, after which Mr. Roufa removed all of his clothes. (Grant Rep. at 2; Van Der Vliet Decl. (Dkt. # 21) ¶ 2, Ex. 1 ("Van Der Vliet Rep.") at 2 ("I uncuffed the inmate through the pass through without incident.").) Mr. Roufa "was having [a] hard time dealing with the effect of pepper spray." (2d Mohamed Rep. at 2.) Around 9:30 p.m., Mr. Roufa stated that he would comply with officers, and Sergeant Mohamed directed Officers Allred and Van Der Vliet to move Mr. Roufa to another cell so that Mr. Roufa could decontaminate. (*See* 2d Mohamed Rep. at 2 **[*8]**; Allred Rep. at 2.) The officers moved Mr. Roufa without further incident. (Grant Rep. at 2; Van Der Vliet Rep. at 2.)

When Sergeant Mohamed came to the new cell "[a] short time later," Mr. Roufa told Sergeant Mohamed that the pepper spray still burned his body, particularly his genitals. (2d Mohamed Rep. at 2.) Sergeant Mohamed agreed to let Mr. Roufa "decontaminate in the day-room shower, provided that he returned to his cell immediately" after he finished showering, to which Mr. Roufa agreed. (MSJ at 6; *see also* 2d Mohamed Rep. at 2.) Officers Sprague and Mendez disagreed with Sergeant Mohamed's decision, telling him that "it was unwise to allow an agitated psychiatric inmate to access the dayroom" and that the "proper procedure . . . was to allow the inmate to use his cell sink for decontamination." (MSJ at 7; Sprague Rep. at 2; Mendez Decl. (Dkt. # 18) ¶ 2, Ex. 1 ("Mendez Rep.") at 2.) Sergeant Mohamed, however, believed that Mr. Roufa had calmed down and should be allowed to fully decontaminate in the shower. (2d Mohamed Decl. at 2; *see also* Mendez Rep. at 2.)

3. <u>The Dayroom Incident</u>

Mr. Roufa showered in the dayroom, but refused to return to his cell. (2d Mohamed Rep. at 2; Allred Rep. at 2; Grant Rep. at 2; Hallock Rep. at 2; Mendez Rep. at 2; Van Der Vliet Rep. at 2.) Instead, he "ran naked from one end of the dayroom to the other, yelling incoherently and acting in an erratic and combative manner." (MSJ

at 7 (citing 2d Mohamed Rep. at 2; Allred Rep. at 2; Grant Rep. at 2; Hallock Rep. at 2; Mendez Rep. at 2; Van Der Vliet Rep. at 2).) Sergeant Mohamed **[*9]** directed Mr. Roufa to return to his cell several times, but Mr. Roufa did not comply. (2d Mohamed Rep. at 2.) Mr. Roufa ran into his cell at one point, but came out into the dayroom again before the officers could secure him inside. (*Id.*; Allred Rep. at 2; Van Der Vliet Rep. at 2.) Sergeant Mohamed warned Mr. Roufa that he would use the pepper spray again if Mr. Roufa did not return to his cell. (2d Mohamed Rep. at 2.)

At about 9:45 p.m., Captain Woodbury and two other sergeants came to the dayroom to help with the situation. (*Id.* at 3; Van Der Vliet Rep. at 3; Grant Rep. at 2.) Captain Woodbury decided that the officers would not use any more pepper spray on Mr. Roufa, and because the officers believed they could not use a taser, Sergeant Mohamed "directed a number of officers to assemble and form an extraction team" that included Officers Wells, Allred, Hallock, Owens, and Grant. (2d Mohamed Rep. at 3.) At 9:49 p.m., Captain Woodbury authorized Sergeant Mohamed to direct the extraction team to enter the dayroom, even though the video camera had not yet arrived on the scene. (2d Mohamed Rep. at 3; *see also* Van Der Vliet Rep. at 3 ("I was part of the second wave of Officers that entered the dayroom . . . .").) By this time, Mr. Roufa had gone back into the bathroom of the dayroom. (2d Mohamed Rep. at 3.)

4. Extraction from the Dayroom

Officers Allred, Hallock, Grant, and Wells entered the dayroom with Officer Wells **[*10]** leading with a shield. (Allred Rep. at 2; Grant Rep. at 3; Hallock Rep. at 2; Wells Decl. (Dkt. # 22) ¶ 2, Ex. 1 ("Wells Rep.") at 2; *see also* 2d Mohamed Rep. at 3.) Officer Wells "struck [Mr.] Roufa with the flat part of the shield to pin [Mr. Roufa] against the wall," and Mr. Roufa collapsed. (MSJ at 8; *see also* Wells Rep. at 2 ("I did cut my ring [finger] on my left hand from the impact of the shield hitting the inmate.").) Officer Allred pulled Mr. Roufa out of the bathroom into the dayroom by "secur[ing] [his] left arm." (Allred Rep. at 2.) Mr. Roufa attempted to stand up, but the officers took him "to the ground" and placed him "on his stomach." (Hallock Rep. at 2.) As the officers ordered Mr. Roufa "to stop resisting and put his hands behind his back," Mr. Roufa struggled "and kept his arms under his body." (*See* MSJ at 9.) The officers used their bodyweight on top of Mr. Roufa to keep him on the ground. (*See* Grant Rep. at 3.) Mr. Roufa continued to struggle against the officers' attempts to secure Mr. Roufa's arms with handcuffs. (*See* Hallock Rep. at 2; Allred Rep. at 2; Grant Rep. at 3.) Officer Allred "used approximately three closed fist strikes to the shoulder/tricep area" to stop Mr. Roufa from resisting. (Allred Rep. at 2; *see also* Grant Rep. at 2).) Officer Allred was then able to handcuff Mr. Roufa. (Allred Rep. at 2.)

After the officers handcuffed Mr. Roufa, they **[*11]** saw that he was bleeding significantly from his left eyebrow. (*Id.*; Grant Rep. at 3.) Nurse Gabriella told Sergeant Mohamed that Mr. Roufa needed to go to the hospital, and the officers secured Mr. Roufa in the dayroom until an ambulance arrived around 10:30 p.m. to escort Mr. Roufa. (2d Mohamed Rep. at 3.)

5. Mr. Roufa's Injury

Hospital staff diagnosed Mr. Roufa with a five-centimeter laceration above his left eye. (1st Zeldenrust Decl. ¶ 5, Ex. 4 at 3.) Staff gave Mr. Roufa a CT scan, which showed no "intracranial bleeding or pathology" (*id.* at 4), and thought that Mr. Roufa's behavior was consistent with a manic episode (*id.* at 5). After he received treatment for his injury, Mr. Roufa returned to the King County Jail by 5:00 a.m. on June 10, 2012. (*See* MSJ at 9.)

6. The Investigation

Following the incident with Mr. Roufa, Captain Woodbury investigated the events pursuant to the jail's Use of Force policy. (*See* Clark Decl. (Dkt. # 14), ¶ 2, Ex. 1 ("Clark Rep.") at 2; Hyatt Decl. (Dkt. # 17) ¶ 4, Ex. 2 at 3.)[3] The investigation focused

[3] Defendants also submit Captain Woodbury's declaration in support of their motion. (*See* Woodbury Decl. (Dkt. # 23).) However, Captain Woodbury did not sign his declaration, so the court does not consider it. *See United States v. Godfrey, Cr. No. S-10-117 KJM, 2014 U.S. Dist. LEXIS 50675, 2014 WL 1419428, at *1 (E.D. Cal. Apr. 11, 2014)* (collecting cases

on three issues: (1) that Sergeant Mohamed allowed Mr. Roufa to leave his cell to shower in the dayroom when Mr. Roufa could have decontaminated in his cell; (2) that Officers Mendez and Sprague acted inappropriately **[*12]** "in challenging Sergeant Mohamed's order to allow [Mr.] Roufa out of his cell to use the dayroom shower"; and (3) that Nurse Gabriella provided inaccurate information about whether the officers could use a taser on Mr. Roufa. (*See* MSJ at 11; Clark Rep. at 2-3.) Captain Woodbury determined that Sergeant Mohamed "could have made 'better choices'" regarding the decontamination. (*Id.*) Another captain, Captain Todd Clark, spoke with Officers Mendez and Sprague and counseled them that their challenge to Sergeant Mohamed was inappropriate. (*Id.*) The investigation further revealed that Nurse Gabriella had misinformed the officers about contraindications for using a taser on Mr. Roufa. (Hyatt Decl. ¶ 2, Ex. 1 at 3; 1st Zeldenrust Decl. ¶ 4, Ex. 3; *see also* Mohamed Decl. ¶ 4, Ex. 3.) Nurse Gabriella had "noted that [Mr. Roufa] was on a medication that could be used for both seizures and behavior" and thought that Mr. Roufa could not be tased. (Hyatt Decl. ¶ 2, Ex. 1 at 3; 1st Zeldenrust Decl. ¶ 4, Ex. 3; *see also* Mohamed Decl. ¶ 4, Ex. 3.) When she reviewed his chart again, however, after the ambulance arrived, Nurse Gabriela "determined that [Mr. Roufa] was on the medication for behavior only." (MSJ at 11 (citing Zeldenrust **[*13]** Decl., ¶ 4, Ex. 3 at 2-3).)

In July 2012, Major Corinna Hyatt reviewed the results of the investigation. (*See generally* Hyatt Decl.) She followed up with Captain Clark and Sergeant Mohamed to convey her concern about Sergeant Mohamed's decision to let Mr. Roufa leave his cell and the amount of force the officers had used to subdue him once he refused to be handcuffed and leave the dayroom. (*Id.* ¶ 2, Ex. 1 at 3.) Major Hyatt concluded that the use of the extraction team was "excessive" and that it would have been better to leave Mr. Roufa to de-escalate because Mr. Roufa had not actually threatened anyone while he was in the dayroom. (*Id.*)

**B. Mr. Roufa's Version of Events**

Mr. Roufa agrees that he has bipolar disorder "with psychotic features/schizoaffective tendencies" and explains that he "lives on Social Security Disability income on account of his mental health disability." (Resp. at 2 (citing Altaras Decl. (Dkt. # 29) ¶ 2, Ex. A ("Roufa Dep.") at 13).) Mr. Roufa was arrested and held at the King County Jail at least four times before the June 9, 2012, incident that gives rise to this lawsuit. *Id.* (citing Altaras Decl. ¶ 2, Exs. B, C).) Thus, Mr. Roufa **[*14]** contends that he was "well known to the officers assigned to the 7th floor of the King County Jail—the mental health unit." (*Id.* (citing Altaras Decl. ¶ 2, Exs. B, C).)

Mr. Roufa further agrees that he was experiencing a mental health episode at the time of his arrest, but his version of the facts deviate from Defendants' version beginning when Mr. Roufa first changed cells. (*See* Roufa Dep.) He concedes that he was verbally aggressive, but denies being physically aggressive. (*Id.* at 23-28; Altaras Decl. ¶ 2, Ex. D ("Claim Form") at 2.) Mr. Roufa states that he was transported to the Psychiatric Ward of the jail on the Seventh Floor without incident, but that when Officers Grant and Owens directed Mr. Roufa to put his hands through the pass-through to have the handcuffs removed, "[t]he officers were so rough with Mr. Roufa's wrists that Mr. Roufa's wrist began to hurt" and he "pulled his cuffed hands back into the cell and refused to put them back on." (Resp. at 3 (citing Roufa Dep. at 23-28; Claim Form at 2).) He says he refused because he was in pain and did not want the officers to further hurt his wrists. (Roufa Dep. at 29-31.)

Mr. Roufa contends that Sergeant Mohamed directed him to return to the pass-through and **[*15]** that when he turned around, he was "immediately sprayed with not only one, but four large canisters of pepper spray." (Resp. at 3 (citing to Grant Decl., Mendez Decl., and Sprague Decl.).) Mr. Roufa states that he "was in horrible discomfort." (*Id.* (citing Altaras Decl. ¶ 2, Ex. F ("2016 DAJD Pepper Spray Policy").) Mr. Roufa does not dispute that he was then removed to the dayroom to decontaminate in the shower, but argues that once he was in the day room he acted

in which courts rejected an unsigned declaration submitted in connection with a motion for summary judgment).

as though anyone would be expected to after being pepper sprayed. (Roufa Dep. at 43.) Specifically, "he ran through the room because the cold air eased his pain, and he doused himself with cold water from the toilet because the hot water from the shower exacerbated his pain." (Resp. at 4 (citing Roufa Dep. at 43).)

Mr. Roufa's account of events differs most significantly from the Defendants' account when it comes to the extraction team's actions. (*See generally* Roufa Dep. at 43-47; *compare* MSJ, *with* Resp.) Mr. Roufa contends that the officers punched him and that Sergeant Mohamed repeatedly pushed his foot into Mr. Roufa's back, cutting off Mr. Roufa's air supply. (*See* Roufa Dep. at 45-47:2-3, 12-14.) Mr. Roufa received stitches **[*16]** for the cut and contends that he has permanent scarring above his eyebrow and that he "suffered pain and bruising for nearly a month after the incident." (Resp. at 5 (citing Roufa Dep. at 50-52; Altaras Decl. ¶ 2, Ex. H (jail records for Mr. Roufa after the incident); Zeldenrust Decl., Ex. 4; Altaras Decl. ¶ 2, Ex. E (Mr. Roufa's psychiatric records for June 10, 2012).) Mr. Roufa also testifies that he suffers extreme post-traumatic stress disorder and emotional distress from the incident. (Roufa Dep. at 90-91, 99-104.)

When Mr. Roufa returned to King County Jail, officers cited him for an infraction and placed him in solitary confinement for several days as punishment. (Altaras Decl. ¶ 2, Ex. I.) The infraction report did not mention that he was suffering a mental health episode at the time of his arrest. (*Id.*) On June 11, 2012, disciplinary hearing staff "found that Mr. Roufa was not competent to commit any violation" and "specifically [found] that Mr. Roufa could not control his own behavior at the time of the incident . . . ." (Resp. at 5 (citing Altaras Decl. ¶ 2, Ex. I).)

Mr. Roufa states that King County Jail did not have any "department policies regarding dealing with the accommodation **[*17]** of mental health patients until after this incident." (Resp. at 7 (citing Altaras Decl., Exs. K ("DAJD Policy Index"), L ("2016 DAJD Inmate Disability Policy").) Mr. Roufa also states that Major Hyatt and Captain Woodbury's investigations "endorsed" the officers' actions because they determined that the officers and Sergeant Mohamed had not violated any policies or procedures. (*Id.* at 6-7.)

### C. This Lawsuit

Mr. Roufa asserts six state law claims and two federal claims. (Compl. ¶¶ 40-57.) Specifically, Mr. Roufa alleges a *42 U.S.C. § 1983* claim against all Defendants in their official capacities for excessive force in violation of the *Fourth* and *Fourteenth Amendments* (*id.* ¶ 40-42); a *42 U.S.C. § 1983* claim against King County, Executive Constantine, DAJD, and Supervisory Defendants for failure to train and inadequate supervision in violation of the *Fourth* and *Fourteenth Amendments* (*id.* ¶¶ 43-45); negligent supervision and retention against Supervisory Defendants (*id.* ¶¶ 46-49); battery (*id.* ¶¶ 50-51); intentional infliction of emotional distress ("IIED") (*id.* ¶ 52); negligent infliction of emotional distress ("NIED") (*id.* ¶ 53); disability discrimination under Washington's Law Against Discrimination ("WLAD"), ch. *RCW 49.60* (*id.* ¶¶ 54-55); and "respondeat superior" (*id.* ¶¶ 56-57).[4] Defendants **[*18]** now seek summary judgment on those claims. (*See generally* MSJ.)

## III. ANALYSIS

### A. Legal Standard

Summary judgment is appropriate if the evidence shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*; *see Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*; *Galen v. Cty. of L.A., 477 F.3d 652, 658 (9th Cir. 2007)*. A fact is "material" if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. A factual

[4] Mr. Roufa does not make clear against which Defendants he alleges his claims of battery, IIED, NIED, disability discrimination, and respondeat superior. (*See id.* ¶¶ 50-57.) The court need not conclusively rule on this issue, however, because the court finds that these claims fail as a matter of law no matter which Defendants Mr. Roufa asserts the claims against. *See infra* §§ III.C-G.

dispute is "'genuine' only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party." Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 992 (9th Cir. 2001) (citing Anderson, 477 U.S. at 248-49).

The moving party bears the initial burden of showing there is no genuine dispute of material fact and that the movant is entitled to prevail as a matter of law. Celotex, 477 U.S. at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can show the absence of a dispute of material fact in two ways: (1) by producing evidence negating an essential element of the nonmoving party's case, or (2) by showing that the nonmoving party lacks evidence of an essential element of its claim or defense. Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party meets its burden of production, the burden then shifts to the nonmoving party to identify specific facts from which a fact finder could reasonably find in the nonmoving party's **[*19]** favor. Celotex, 477 U.S. at 324; Anderson, 477 U.S. at 252.

The court is "required to view the facts and draw reasonable inferences in the light most favorable to the [non-moving] party." Scott v. Harris, 550 U.S. 372, 378, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007). The court may not weigh evidence or make credibility determinations in analyzing a motion for summary judgment because these responsibilities are "jury functions, not those of a judge." Anderson, 477 U.S. at 249-50. Nevertheless, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." Scott, 550 U.S. at 380 (internal quotation marks omitted) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)). Accordingly, "mere allegation and speculation do not create a factual dispute for purposes of summary judgment," Nelson v. Pima Cmty. Coll., 83 F.3d 1075, 1081-81 (9th Cir. 1996), and "[a] trial court can only consider admissible evidence in ruling on a motion for summary judgment," Orr v. Bank of Am., NT & SA, 285 F.3d 764, 773 (9th Cir. 2002).

The court first addresses Mr. Roufa's state law claims and then turns to his federal law claims.

**B. Negligent Supervision and Retention**

"[N]egligent supervision and training" occurs when an employer "fail[s] to exercise ordinary care in supervising an employee." Evans v. Tacoma Sch. Dist. No. 10, 195 Wn. App. 25, 380 P.3d 553, 563-64 (Wash. Ct. App. 2016). Liability for negligent supervision and training "arises when the employer knows **[*20]** or has reason to know that the employee presented a risk of danger to others." Id. at 564. In addition, "Washington cases have generally held that an employer is not liable for negligent supervision of an employee unless the employer knew, or in the exercise of reasonable care should have known, that the employee presented a risk of danger to others." Niece v. Elmview Grp. Home, 131 Wn.2d 39, 929 P.2d 420, 426 (Wash. 1997). "A successful negligent retention claim imposes liability on the employer for his or her own negligence in retaining an unfit employee." Peoples v. Puget Sound's Best Chicken!, Inc., 185 Wn. App. 691, 345 P.3d 811, 815 n.5 (Wash. Ct. App. 2015).

"These claims arise when the employee is acting outside the scope of employment." Evans, 380 P.3d at 564. An employee acts outside the scope of his employment when his "conduct involv[es] the employee's 'wholly personal motive' and 'solely personal objectives or desires.'" Id. at 559 (quoting Thompson v. Everett Clinic, 71 Wn. App. 548, 860 P.2d 1054, 1058 (Wash. Ct. App. 1993)). Accordingly, such claims are rooted in "the employer's *own* negligence[,] [which] is a wrong to the injured party, independent from the employer's liability for its employee's negligence imputed by the doctrine of respondeat superior." Id. at 564.

Defendants argue that Mr. Roufa's claim against Supervisory Defendants for negligent supervision and retention fails because all of the Defendants acted within their scope of employment during the June 9, 2012, incident at King County Jail. (MSJ at 13.) **[*21]** Defendants further "admit that all

individually[] named defendants were acting in the scope of their employment" and therefore Mr. Roufa's negligent supervision and retention claim fails as a matter of law. (*Id.*)

Mr. Roufa does not address this claim in his response to Defendants' motion. (*See generally* Resp.) Although the court may not consider a party's failure to oppose an argument on summary judgment as an admission that the argument has merit, the court may conclude that the claims fail as a matter of law where Mr. Roufa provides no evidence in support of his claims once Defendants show a lack of evidence or negate an essential element of the claim. *See* Nissan Fire, 210 F.3d at 1106 (noting that the moving party can demonstrate the lack of a dispute of material fact by showing a lack of evidence or negating an element of the claim).

The court agrees that Mr. Roufa's claim fails. The evidence before the court demonstrates that all of the named Defendants who Mr. Roufa contends were negligently supervised and retained acted within the scope of their employment during the June 9, 2012, incident. (*See, e.g.*, Hyatt Rep. (failing to note any acts outside scope of employment); *see also* Compl. ¶ 20 ("At all times relevant **[*22]** to Andrew Harris Roufa's allegations in this Complaint, all defendants acted with the scope and authority of their employment with [DAJD].").) Nothing in the record suggests that the employees over whom Supervisory Defendants exercised authority acted outside the scope of their employment—that is, for a "personal motive" or to advance their "personal objectives." Thompson, 860 P.2d at 1058. For this reason, the court grants Defendants' motion for summary judgment on Mr. Roufa's claim against Supervisory Defendants for negligent supervision and retention.

### C. Battery

"A battery is 'an intentional and unpermitted contact with the plaintiff's person.'" Swank v. Valley Christian Sch., 194 Wn. App. 67, 374 P.3d 245, 256 (Wash. Ct. App 2016) (quoting Kumar v. Gate Gourmet, Inc., 180 Wn.2d 481, 325 P.3d 193, 204 (Wash. 2014)). Washington law bars a plaintiff from bringing a cause of action for battery more than two years after the alleged battery.[5] *See* RCW 4.16.100 (stating that "[a]n action for . . . assault and battery" must be brought "[w]ithin two years"); *see also* Swank, 374 P.3d at 256 ("[B]attery . . . is barred by the two-year statute of limitations."). Washington law also precludes a plaintiff from filing a lawsuit against a local governmental entity and its agents for tortious conduct for 60 days after a plaintiff serves the entity with a claim for damages. *See* RCW 4.96.020(4) ("No action subject to the claim filing requirements of this **[*23]** section shall be commenced . . . for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period.").

Defendants argue that Mr. Roufa's battery claim fails as a matter of law because Washington's two-year statute of limitations bars it. (MSJ at 14.) Specifically, they argue that Mr. Roufa alleges in his complaint that "because he was incarcerated at the time of this incident, the statute of limitations did not commence until his release [from jail] on September 13, 2012." (*Id.* at 14-15 (citing Compl. at 5).) Defendants assume that Mr. Roufa's timeline for the statute of limitations to start running on his battery claim is correct. (*Id.* at 15.) They argue that the statute of limitations expired by the end of November 2014, assuming the period started on the date Mr. Roufa alleges in his complaint and takes into account the 60-day tolling period. (*Id.*) Mr. Roufa does not dispute Defendants' assertion that his battery claim is time-barred **[*24]** and provides no evidence to rebut Defendants' showing.[6] (*See generally* Resp.)

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[5] State-law claims of battery against police officers are subject to the two-year limitations period, even though Washington's three-year statute of limitations for personal injury suits applies to claims under ***42 U.S.C. § 1983***. *See* Southwick v. Seattle Police Officer John Doe #s 1-5, 145 Wn. App. 292, 186 P.3d 1089, 1092 (Wash. Ct. App. 1998).

[6] Mr. Roufa's counsel admitted at oral argument that Mr. Roufa's battery claim is barred by the two-year statute of limitations. (*See* Min. Entry.)

The court agrees that Mr. Roufa's battery claim is time-barred. Mr. Roufa filed his claim for damages with King County on May 29, 2015 (Claim Form at 2), and subsequently filed this lawsuit on July 31, 2015 (*see* Compl. at 1). Mr. Roufa therefore asserted his battery claim several months after the statute of limitations had run. (*See id.*); RCW 4.16.100. Mr. Roufa's battery claim fails as a matter of law because he filed it well after the applicable statute of limitations expired.

**D. Intentional Infliction of Emotional Distress**

"In order to [establish] a prima facie case of [IIED], a plaintiff seeking to survive summary judgment must produce evidence showing three elements: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to the plaintiff of severe emotional distress." *Christian v. Tohmeh, 191 Wn. App. 709, 366 P.3d 16, 30 (Wash. Ct. App. 2015)*. "Extreme and outrageous conduct must be conduct that the recitation of the facts to an average member of the community would arouse his resentment against the actor and lead him to exclaim 'Outrageous!'" *Id.* (internal quotation marks omitted). Therefore, "[c]onduct must go 'beyond all possible bounds of decency, **[*25]** and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Monetti v. City of Seattle, 875 F. Supp. 2d 1221, 1231 (W.D. Wash. 2012)* (quoting *Grimsby v. Samson, 85 Wn.2d 52, 530 P.2d 291, 295 (Wash. 1975))*.

The three elements present questions of fact, but under Washington law, courts act as "gatekeepers" for the first element and determine whether the alleged conduct is sufficiently outrageous for the IIED claim to go to the jury. *Id.* ("Washington courts . . . have considered themselves gatekeepers for purposes of allowing a jury to decide claims of [IIED]. The trial court . . . renders an initial screening to determine whether the defendant's conduct and mental state, together with the plaintiff's mental distress, rise to the level necessary to make out a prima facie case."); *see also Robel v. Roundup Corp., 148 Wn.2d 35, 59 P.3d 611, 619 (Wash. 2002)* ("This first element of the test goes to the jury only after the court determine[s] if reasonable minds could differ on whether the conduct was sufficiently extreme to result in liability." (internal quotation marks omitted) (alteration in original)). Courts determine whether reasonable minds could differ in concluding that the alleged conduct is so extreme as to impose liability. *See id.*

Defendants argue that Mr. Roufa's IIED claim fails as a matter of law because the conduct Mr. Roufa alleges is not sufficiently extreme **[*26]** to go to the jury. (MSJ at 15; *see also* Reply at 6 (arguing that "none of [Mr.] Roufa's [r]esponse [b]rief allegations appear in his [c]omplaint in connection with his [o]utrage claim").) Mr. Roufa contends that "[i]t was extreme and outrageous for [the] officers to completely disregard [his] established medical mental health condition, of which they were or should have been aware." (Resp. at 14.) Mr. Roufa further asserts that "empty[ing] four industrial canisters of mace into his one[-]man cell, where he was secured, alone, in handcuffs" and putting him in solitary confinement as punishment for his mental health condition amounts to outrageous conduct. (*Id.*) In addition, although he does not argue these facts specifically in regard to his IIED claim, Mr. Roufa provides the court with his deposition testimony, in which he testifies that Sergeant Mohamed repeatedly stepped on his back and cut off his air supply and kicked him in the back of the head once. (*See* Roufa Dep. at 45:2-3, 12:14, 47.)

Although the behavior Mr. Roufa describes in his deposition could present a triable question of fact, "summary judgment is not a procedural second chance to flesh out inadequate pleadings." *Wasco Prods., Inc. v. Southwall Techs., Inc., 435 F.3d 989, 992 (9th Cir. 2006)*. Where a plaintiff "fail[s] to assert any factual allegations in its **[*27]** complaint" to support a theory or claim, the plaintiff's "provision of affidavits and declarations supporting [that theory or claim] at the summary judgment stage is ineffectual." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest, 624 F.3d 1083, 1088-89 (9th Cir. 2010)*. Indeed, courts routinely decline to consider evidence proffered in response to a motion for summary judgment when the evidence is

untethered from the factual allegations made in the complaint. *See id.*; *In re TFT-LCD (Flat Panel) Antitrust Litig., No. M 07-1827 SI, 2012 U.S. Dist. LEXIS 160337, 2012 WL 5411590, at *2 (N.D. Cal. Nov. 6, 2012)*; *Edinger v. City of Westminster, No. SA CV 14-0145-DOC (RNB), 2015 U.S. Dist. LEXIS 167801, 2015 WL 8770002, at *7 (C.D. Cal. Dec. 14, 2015)* ("Because these allegations [of retaliatory speech] have not been properly pleaded, they are not properly before the Court" in response to a motion for summary judgment."); *Corona v. Time Warner Cable, Inc., No. CV 13-5521 PSG (VBKx), 2014 U.S. Dist. LEXIS 186736, 2014 WL 11456535, at *4 (C.D. Cal. Oct. 16, 2014)* (finding that the plaintiff's complaint did not encompass the theory raised in response to a motion for summary judgment). When a complaint fails to contain factual allegations later raised in opposition to a motion for summary judgment, the defendant may not have fair notice of "'the grounds upon which [the plaintiff's claim] rests." *TFT-LCD Antitrust Litig., 2012 U.S. Dist. LEXIS 160337, 2012 WL 5411590, at *2* (quoting *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007))* and declining to consider breach of a contract other than the purchase orders identified **[*28]** in the complaint in response to a motion for summary judgment because the complaint did not give the defendant fair notice). The rationale for this rule rests primarily on the threat of prejudice from a late change in the plaintiff's theory, but the court need not make a finding of prejudice to reject a plaintiff's new theory. *See id.* (rejecting argument based on factual allegations not in complaint without making a finding of prejudice); *City of Lake Forest, 624 F.3d at 1088-89*

The court finds that "[r]easonable jurors could not [conclude] that . . . the physical force used here was so unconscionable as to rise to the level of outrage, nor is there evidence of severe emotional distress suffered by the plaintiff." *Monetti, 875 F. Supp. 2d at 1231*. The conduct Mr. Roufa highlights as extreme enough to support an IIED claim—hurting his wrists while removing the handcuffs, generally disregarding his mental health, using several canisters of pepper spray to subdue him,[7] and placing him in solitary confinement following the incident-does not rise to the level of provoking someone to shout "Outrageous!" upon hearing of it. *Christian, 366 P.3d at 30*. In addition, Mr. Roufa cites no case law or evidence in the record to support his argument that such conduct is outrageous. (*See id.* at 14-15.) Further, even though **[*29]** Mr. Roufa does not argue his testimony about Sergeant Mohamed's conduct toward him demonstrates outrageous conduct that keeps his IIED claim alive, the court concludes that it would be improper to determine that this testimony creates a genuine dispute of material fact that precludes summary judgment.[8] Mr. Roufa did not plead this conduct in his

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[7] Mr. Roufa argues that spraying four canisters of pepper spray into his cell constituted outrageous and extreme conduct. (Resp. at 14.) However, Mr. Roufa presents no evidence that Officer Defendants actually emptied the four canisters of pepper spray into his cell. (*See generally* Resp.; Dkt.). Rather, the unrebutted evidence before the court is that Sergeant Mohamed attempted to spray from four canisters of pepper spray but the first two canisters failed to deploy. (*See* Resp. at 3 (citing generally Grant Decl., Mendez Decl., and Sprague Decl.).) Sergeant Mohamed therefore emptied only one full canister and one partial canister of pepper. (*See* 2d Mohamed Rep. at 2.) The court cannot conclude on these facts that the amount of pepper spray Officer Defendants used amounted to outrageous and extreme conduct.

Further, the court is not required to scour the record to determine if there are additional facts that support either party's position. *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig., 978 F. Supp. 2d 1053, 1093 n.66 (C.D. Cal. 2013)* (noting that the party "failed to cite to evidence of record") (citing *Orr, 285 F. 3d at 774-75*); *Fleischer Studios, Inc. v. A.V.E.L.A., Inc., No. 2:06-CV-06229 FMC, 2009 U.S. Dist. LEXIS 130729, 2009 WL 7464165, at *2 (C.D. Cal. Feb. 18, 2009))*. Rather, the parties are expected to bring relevant facts to the court's attention.

[8] The claim Mr. Roufa served on Defendants before filing this lawsuit mentioned that Sergeant Mohamed cut off Mr. Roufa's air supply and kicked him in the back of the head. (*See* Claim Form at 2-3.) However, Mr. Roufa's complaint contained no such allegations, and the claim is not incorporated by reference into Mr. Roufa's complaint. In addition, the claim itself is not evidence. Accordingly, Defendants did not have fair notice to defend against these allegations. *See TFT-LCD Antitrust Litig., 2012 U.S. Dist. LEXIS 160337, 2012 WL 5411590, at *2*.

complaint, and he cannot now add factual allegations to withstand summary judgment where Defendants have met their burden. Accordingly, Mr. Roufa's claim fails because reasonable minds could not differ in concluding that the conduct Mr. Roufa alleges in his complaint and the undisputed facts before the court do not rise to the level of outrageous conduct.[9] *See* Christian, 366 P.3d at 30.

Mr. Roufa also does not present evidence of "severe emotional distress." *Id.* At most, Mr. Roufa contends that he has experienced post-traumatic stress disorder and "expects to have medical evidence ready to present at the time of trial, via expert testimony, that Mr. Roufa has suffered a diagnosable emotional disorder as a result of his treatment at the jail on June 9, 201[2]."[10] (Resp. at **[*30]** 16.) However, Mr. Roufa's anticipation that he may procure evidence of an essential element of his case by the time trial starts is insufficient to withstand summary judgment. *See* Celotex, 477 U.S. at 324 (noting that if the moving party meets its burden, the nonmoving party must identify specific facts from which a fact finder could reasonably find in his favor). Because Mr. Roufa lacks evidence that Defendants' conduct towards him was sufficiently outrageous and that he suffered severe emotional distress as a result, the court grants Defendants summary judgment on Mr. Roufa's IIED claim.

**E. Negligent Infliction of Emotional Distress**

A plaintiff may recover on a claim for NIED by proving negligent conduct, which consists of the familiar elements of duty, breach, proximate cause, and harm, as well as that the resulting emotional distress is (1) within the scope of foreseeable harm of the negligent conduct, (2) a reasonable reaction given the circumstances, and (3) manifest by objective symptomatology. Schmidt v. Coogan, 181 Wn.2d 661, 335 P.3d 424, 430 (Wash. 2014); Kumar v. Gate Gourmet Inc., 180 Wn.2d 481, 325 P.3d 193, 205 (Wash. 2014); Hunsley v. Giard, 87 Wn.2d 424, 436, 553 P.2d 1096 (Wash. 1976) (stating requirement of objective symptomatology). "The symptoms of emotional distress must also 'constitute a diagnosable emotional disorder.'" Kloepfel, 66 P.3d at 633 (quoting Hegel v. McMahon, 136 Wn.2d 122, 960 P.2d 424 (Wash. 1998)).

A plaintiff, however, "may **[*31]** not base claims of negligence on alleged intentional actions, such as excessive force or unlawful arrest." Lawson v. City of Seattle, No. C12-1994MAT, 2014 U.S. Dist. LEXIS 55883, 2014 WL 1593350, at *13 (W.D. Wash. Apr. 21, 2014) (granting summary judgment on an NIED claim predicated on the intentional acts underlying the plaintiff's false arrest claim); *see also* St. Michelle v. Robinson, 52 Wn. App. 309, 759 P.2d 467, 470 (1988) ("[T]he abuse was an intentional act, and the resulting emotional distress was also intentionally inflicted as a matter of law. Therefore, St. Michelle cannot state a cause of action for the negligent infliction of emotional distress."); ***Willard v. City of Everett, No. C12-0014TSZ, 2013 U.S. Dist. LEXIS 126409, 2013 WL 4759064, at *2 (W.D. Wash. Sept. 4, 2013)*** ("A plaintiff may not base a claim of negligence on an intentional act, like the use of excessive force."); Nix v. Bauer, No. C05-1329TSZ, 2007 U.S. Dist. LEXIS 14951, 2007 WL 686506, at *4 (W.D. Wash. Mar. 1, 2007)

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[9] Courts may consider whether to allow a plaintiff to amend his complaint when he raises new factual allegations and theories in response to a motion for summary judgment. *See, e.g.,* Corona, 2014 U.S. Dist. LEXIS 186736, 2014 WL 11456535, at *5. However, because the deadline to amend pleadings that the court set in its scheduling order has passed (Sched. Order (Dkt. # 7) (setting amendment deadline for September 7, 2016)), Mr. Roufa must show good cause to amend his complaint, rather than simply that the liberal pleading standards of Federal Rule of Civil Procedure 15 are met, *see* Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992). Mr. Roufa has not attempted to demonstrate good cause, so the court does not consider whether amendment is permissible. (*See generally* Resp.)

[10] The court notes that Mr. Roufa need not provide "evidence of objective symptomatology and medical diagnosis" to prevail on an IIED claim. *See* Kloepfel v. Bokor, 149 Wn.2d 192, 66 P.3d 630, 632-33 (Wash. 2003). Mr. Roufa must, however, provide evidence of outrageous conduct to show severe emotional distress, which Mr. Roufa has not done here. *See id. at 635* ("Once [extreme and outrageous conduct intended to cause emotional distress] ha[s] been shown, it can be fairly presumed that severe emotional distress was suffered."); (*see generally* Resp.).

("[A]llegations of intentional conduct cannot support a claim of negligence.") (citing Boyles v. Kennewick, 62 Wn. App. 174, 813 P.2d 178 (Wash. 1991)).

Defendants contend that Mr. Roufa cannot prevail on his NIED claim because he bases the claim on intentional conduct, rather than negligent conduct. (MSJ at 17.) Specifically, Defendants argue that "the gist of this case is alleged excessive force." (*Id.*) Defendants also argue that Mr. Roufa cannot establish the elements of an NIED claim, even if he bases the claim on negligent conduct. (*Id.* at 16.)

Mr. Roufa counters that "[i]f a jury **[*32]** did not find that [Defendants] intentionally inflicted emotional distress, they could, on the same facts, reasonably find negligent infliction of emotional distress." (Resp. at 15.) Mr. Roufa also states, without citation to any specific evidence in the record, that he has established all of the elements of his NIED claim. (*See id.* (stating that Defendants owed Mr. Roufa a duty of care, that Defendants breached the duty of care "when they completely disregarded and ignored Mr. Roufa's medical condition and exercised force upon him rather than rendering aid," and that Mr. Roufa has suffered emotional distress within the scope of foreseeable harm).) Mr. Roufa also claims that he "expects to have medical evidence ready to present at the time of trial, via expert testimony, that Mr. Roufa has suffered a diagnosable emotional disorder as a result of his treatment at the jail on June 9, 201[2]." (*Id.* at 16.)

The court concludes that Mr. Roufa's claim fails because he bases it on intentional conduct. For example, Mr. Roufa argues that "Defendants breached their duty" to Mr. Roufa when they "exercised force upon him rather than rendering aid," and "Defendants' use of force resulted in Mr. Roufa's severe **[*33]** injury and the emotional distress that followed." (Resp. at 15.) It is therefore clear that Mr. Roufa's NIED claim is based on Defendants' intentional acts—their use of force against Mr. Roufa during his booking into King County Jail. (*See* Compl. ¶¶ 26, 33, 38; Resp. at 3-4.)

However, even if Mr. Roufa's claim were based on negligent rather than intentional acts, Mr. Roufa fails to put forth evidence sufficient to withstand summary judgment. Defendants have shown that Mr. Roufa has no evidence on which to proceed on essential elements of his claim, particularly that he has objective symptoms of a diagnosable emotional disorder as a result of Defendants' conduct. (*See* MSJ at 16.) In response, Mr. Roufa cites to no evidence in the record (*see* Resp. at 15-16) and expressly admits that he lacks evidence to demonstrate that he suffered emotional distress (*id.* at 16 (stating that Mr. Roufa expects to have evidence of a diagnosable emotional disorder by the time of trial)). Mr. Roufa's legal arguments are not evidence, and the court is not required to wade through the record to find evidence to support Mr. Roufa's claims.[11] *See* United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs."); In re Toyota Motor Corp., 978 F. Supp. 2d at 1093 n.66 (noting that **[*34]** the party "failed to cite to evidence of record" (citing Orr, 285 F. 3d at 774-75)); Fleischer Studios, Inc. v. A.V.E.L.A., Inc., No. 2:06-CV-06229 FMC, 2009 U.S. Dist. LEXIS 130729, 2009 WL 7464165, at *2 (C.D. Cal. Feb. 18, 2009). Accordingly, the court dismisses Mr. Roufa's NIED claim because Mr. Roufa has produced no evidence on essential elements of his claim.

**F. Disability Discrimination**

WLAD prevents discrimination in places of public accommodation on the basis of a person's disability. *See* Fell v. Spokane Transit Auth., 128 Wn.2d 618, 911 P.2d 1319, 1323 (Wash. 1996). To establish a prima facie case of disability discrimination, a plaintiff must prove that

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[11] Further, Mr. Roufa has not demonstrated that the "resulting emotional distress is (1) within the scope of foreseeable harm of the negligent conduct, [and] (2) a reasonable reaction given the circumstances." Schmidt, 335 P.3d at 430; (*see, e.g.*, Compl. ¶¶ 28 ("Later, upon a more thorough review of Mr. Roufa's chart, Nurse Gabriella indicated that there were in fact no medical reasons that Mr. Roufa could not be tased."), 30 (alleging that Sergeant Mohamed "made the decision to release Mr. Roufa from his secured cell in order to shower" in spite of Officer Mendez and Officer Sprague's objections).)

> (1) [he or she has] a disability recognized under the statute; (2) the defendant's business or establishment is a place of public accommodation; (3) [he or she was] discriminated against by receiving treatment that was not comparable to the level of designated services provided to individuals without disabilities by or at the place of public accommodation; and (4) the disability was a substantial factor causing the discrimination.

*Id. at 1328*. Public accommodations encompass "places and facilities," not services. *See id. at 1329* (noting that places of public accommodation include "restaurants, parks and public resorts, movie theaters, a weight control clinic, and barbershops"). Defendants argue that they are entitled to summary **[*35]** judgment on Mr. Roufa's disability discrimination claim because jails are not places of public accommodation under the statute, and that even if jails are places of public accommodation, "[Mr.] Roufa fails to identify who failed to accommodate him and what accommodations were denied." (MSJ at 17.) Mr. Roufa argues that the term "public accommodation" is to be interpreted expansively under WLAD and that what constitutes a place of public accommodation is a question for the trier of fact. (Resp. at 10 (citing *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 224, 59 P.3d 655 (Wash. 2002)*, and *Fell, 911 P.2d at 1319*)).

Although Washington State courts have not addressed the issue, the District Courts for the Western and Eastern Districts of Washington have concluded that jails are not places of public accommodation under WLAD. *See Vega v. United States, No. C11-0632RSM, 2012 U.S. Dist. LEXIS 157102, 2012 WL 5384735, at *12 (W.D. Wash. Nov. 1, 2012)* ("To this date, no Washington case has applied WLAD to a prisoner's treatment by a jail or residential treatment center because they are not places of public accommodation."); *Kral v. King Cty., No. C10-1360MAT, 2012 U.S. Dist. LEXIS 29883, 2012 WL 726901, at *17 (W.D. Wash. Mar. 6, 2012)* (concluding that even if the plaintiff's claim were "more broadly construed" to identify King County correctional facilities as places of public accommodation, plaintiff's claim failed because such facilities are not **[*36]** considered places of public accommodation under WLAD); *Foley v. Klickitat Cty., No. C08-3068JPH, 2009 U.S. Dist. LEXIS 120943, 2009 WL 5216992, at *6 (E.D. Wash. Dec. 30, 2009)* ("Plaintiff offers no basis for this Court to conclude a county jail is a place of public accommodation under the WLAD."); *Kral v. Benton Cty., No. C09-5014RHW, 2009 U.S. Dist. LEXIS 105165, 2009 WL 3856918, at *4 (E.D. Wash. Nov. 10, 2009)* ("The Court finds that extending *RCW 49.60.215* to courthouses and jails would be a significant and wholly unsupported leap from the types of facilities identified in the case law to date."); *Brown v. King Cty. Dep't of Adult Corr., No. C97-1909W, 1998 U.S. Dist. LEXIS 20152, 1998 WL 1120381, at *16-17 (W.D. Wash. Dec. 9, 1998)* (stating that the WLAD's statutory definition "strongly suggests that a 'place of public . . . accommodation' does not encompass a prison environment[,]" and finding no basis to conclude a county jail constituted "a place of 'public accommodation' under *RCW § 49.60.215*"). Based on these authorities, Defendants have met their burden of negating an essential element of Mr. Roufa's case—that the alleged discrimination occurred in a place of public accommodation. *See Fell, 911 P.2d at 1328*. The undersigned judge finds no compelling reason to depart from the reasoning of the many judges in the Western and Eastern Districts who have concluded that jails are not places of public accommodation. *Vega, 2012 U.S. Dist. LEXIS 157102, 2012 WL 5384735, at *12*; *Kral, 2012 U.S. Dist. LEXIS 29883, 2012 WL 726901, at *17*; *Foley, 2009 U.S. Dist. LEXIS 120943, 2009 WL 5216992, at *6*; *Kral, 2009 U.S. Dist. LEXIS 105165, 2009 WL 3856918, at *4*; *Brown, 1998 U.S. Dist. LEXIS 20152, 1998 WL 1120381, at *16-17*.

Mr. Roufa further contends that "[t]he fact **[*37]** that jail health services are run by 'Public Health of King County,' and that the jail has finally implemented a disability accommodation policy is further evidence that [the jail] is a place of public accommodation." (Resp. at 10.) However, Mr. Roufa's contention that King County's adoption of a disability policy for its jail demonstrates that the jail is a place of public accommodation flouts WLAD's

statutory language and Washington case law, which strongly suggests that services do not amount to places of public accommodation. *See* Fell, 911 P.2d at 1329. Further, Mr. Roufa's citation to *Fraternal Order of Eagles* to support his argument for an expansive definition of public accommodation is inapt. (*See* Resp. at 10.) In *Fraternal Order of Eagles*, the Washington Supreme Court considered the meaning of the phrase "fraternal order" in WLAD and did so in part by considering the legislative purpose of WLAD—"to deter and eradicate discrimination in Washington." Fraternal Order of Eagles, 59 P.3d at 667; *see also* id. at 662 (construing the meaning of "fraternal organizations," which were exempt from the definition of public accommodation). The Court was not considering the general definition of public accommodation as Mr. Roufa suggests it was. Id. at 662, 667; (*see also* Resp. **[*38]** at 10.) Because Mr. Roufa has failed to demonstrate that he was discriminated against in a place of public accommodation, Mr. Roufa's disability discrimination claim under WLAD fails as a matter of law.[12]

**G. Respondeat Superior**

The doctrine of respondeat superior "imposes liability on an employer for the torts of an employee who is acting on the employer's behalf." Niece, 929 P.2d at 426. Respondeat superior, however, "is not an independent cause of action." Zellmer v. Constantine, No. C10-1288MJP, 2015 U.S. Dist. LEXIS 47698, 2015 WL 1611939, at *3 (W.D. Wash. Apr. 9, 2015); Fulbright v. Dayton Sch. Dist. No. 2, No. C13-0030TOR, 2013 U.S. Dist. LEXIS 52623, 2013 WL 1497388, at *6 (E.D. Wash. Apr. 10, 2013) ("Respondeat superior . . . is a theory of liability rather than a separate cause of action." (citing Hollinger v. Titan Capital Corp, 914 F.2d 1564, 1576-77 n.28 (9th Cir.1990))).

Although Defendants admit that the Officer Defendants acted within the scope of their employment, they argue that this claim fails as a matter of law because respondeat superior is not a "separate cause of action." (MSJ at 17.) Mr. Roufa does not address Defendants' argument or otherwise advance his own argument on this claim. (*See* Resp.)

The court grants Defendants' motion for summary judgment on Mr. Roufa's claim because to the extent Mr. Roufa intends to assert a standalone respondeat superior claim, the law does not recognize it.[13] *See* Zellmer, 2015 U.S. Dist. LEXIS 47698, 2015 WL 1611939, at *3.

**H. *Section 1983* Violations for [*39] Failure to Train and Supervise and for Use of Excessive Force**

"*Section 1983* provides a remedy for violations of rights secured by the Constitution by persons acting under the color of state law." Kirkpatrick v. Cty. of Washoe, 843 F.3d 784, 2016 WL 7176654, at *3 (9th Cir. 2016) (citing *42 U.S.C. § 1983*). Local governmental units may be sued under *Section 1983*, "but to prevail on a claim against a municipal entity for a constitutional violation, a plaintiff must also show that his or her injury is attributable 'to official municipal policy of some nature.'" *Id.* (quoting Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). To establish a municipal policy, "a plaintiff must show a constitutional right violation resulting from (1) an employee acting pursuant to an expressly adopted official policy; (2) an employee acting pursuant to a longstanding practice or custom; or (3) an employee acting as a final policymaker." *Delia v. City of Rialto, 621 F.3d 1069, 1081-82 (9th Cir. 2010)* (internal quotation marks and citation omitted). A policy "causes an injury where it is the moving force behind the constitutional violation." Chew v. Gates, 27 F.3d 1432, 1444 (9th Cir. 1994) (internal quotations omitted).

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[12] The court does not address Defendants' other arguments related to this claim because the court finds that King County Jail was not a place of public accommodation as a matter of law.

[13] Although Mr. Roufa could advance a respondeat superior theory of liability for Officer Defendants' alleged torts, the court has dismissed Mr. Roufa's tort claims against Defendants. *See supra* §§ III.B-E.

*Section 1983* claims may be brought against officers in their official or individual capacities. An action against an officer in his official rather than individual capacity is "treated as a claim against the entity itself." Bryant v. Lovick, No. C09-1565TSZ, 2010 U.S. Dist. LEXIS 28652, 2010 WL 1286791, at *5 (W.D. Wash. Mar. 25, 2010) **[*40]** (citing Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)); *cf.* Graham, 473 U.S. at 165 ("Personal-capacity suits seek to impose personal liability upon a government official for actions [an official] takes under color of state law."). "Because the real party in interest in an official capacity suit is the governmental entity and not the named official, to establish municipal liability the plaintiff must show that the entity is a moving force behind the deprivation or that the entity's policy or custom played a part in the violation of federal law." Low v. Stanton, No. CIV S-05-2211 MCE DAD P, 2009 U.S. Dist. LEXIS 17417, 2009 WL 595985, at *3 (citing Graham, 473 U.S. at 166). To hold a supervisor individually liable "[w]here the constitutional violations were largely committed by subordinates," the supervisor must have participated in or directed the violations. *Humphries v. Cty. of L.A.* 554 F.3d 1170, 1202 (9th Cir. 2009) *rev'd on other grounds by* L.A. Cty., Cal. v. Humphries, 562 U.S. 29, 131 S. Ct. 447, 178 L. Ed. 2d 460 (2010).

1. Failure to Train and Supervise

Mr. Roufa seeks to hold King County, Executive Constantine, and Supervisory Defendants liable for failing to train or for inadequately training Officer Defendants. (*See* Compl. at 10.) Although it is unclear from Mr. Roufa's complaint whether he alleges this claim against Supervisory Defendants and Executive Constantine in their official or individual capacities (*see* Compl. **[*41]** at 10 (listing defendants against whom this claim is asserted), 13 (seeking damages)), the court construes Mr. Roufa's complaint as suing these defendants in their individual capacities absent an indication to the contrary, *see* Shoshone-Bannock Tribes v. Fish & Game Comm'n, 42 F.3d 1278, 1284 (9th Cir. 1994) ("Where state officials are named in a complaint which seeks damages under *42 U.S.C. § 1983*, it is presumed that the officials are being sued in their individual capacities.").

*a. King County and DAJD*

"A failure to train or inadequate training may form the basis for municipal liability under *§ 1983* where the training or failure to train amounts to deliberate indifference to the rights of the persons with whom the municipality's employees come into contact." Flores v. Cty. of L.A., 758 F.3d 1154, 1158 (9th Cir. 2014). To establish a failure to train claim against a municipality, the plaintiff "must show that (1) he was deprived of a constitutional right, (2) the City had a training policy that amounts to deliberate indifference to the [constitutional] rights of the person with whom [its officers] are likely to come into contact; and (3) his constitutional injury would have been avoided had the City properly trained those officers." Blankenhorn v. City of Orange, 485 F.3d 463, 484 (9th Cir. 2007) (internal quotations omitted).

A municipality is deliberately indifferent "when the need for more or different **[*42]** action is so obvious, and the inadequacy [of the current policy] so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need." City of Canton v. Harris, 489 U.S. 378, 390, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989); *see also* Mortimer v. Baca, 594 F.3d 714, 723 (9th Cir. 2010); McFarland v. City of Clovis, 163 F. Supp. 3d 798, 802 (E.D. Cal. 2016). "'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.'" Connick v. Thompson, 563 U.S. 51, 62, 131 S. Ct. 1350, 179 L. Ed. 2d 417 (2011) (quoting Bd. Of Cty. Comm'rs of Bryan Cty., Okl. v. Brown, 520 U.S. 397, 410, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997)). Further, a "pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference." *Id.* (citation omitted).

The Ninth Circuit Court of Appeals recently reaffirmed that although it is "ordinarily necessary for a plaintiff to demonstrate a pattern of similar

constitutional violations by untrained employees" to prove "that the municipality was on notice of a constitutionally significant gap in its training," "evidence of a pattern of constitutional violations is not always required to succeed on a *Monell* claim." Kirkpatrick, 843 F.3d 784, 2016 WL 7176654, at *7 (internal quotations omitted). In "rare" circumstances, "a particular 'showing of "obviousness" can substitute for the pattern of violations ordinarily necessary to establish municipal culpability.'" *Id.* (quoting Connick, 563 U.S. at 63). **[*43]** Nevertheless, "a single constitutional incident, without more," does not "establish that a municipality failed to provide proper training." 843 F.3d 784, *Id. at* *9.

Mr. Roufa alleges that King County, DAJD, Executive Constantine, and Supervisory Defendants failed to train and adequately supervise Officer Defendants in their interactions with people with mental health disabilities. (Compl. at 10.) As to King County and DAJD, Defendants contend that Mr. Roufa "does not sufficiently identify any custom or policy of King County that led to [Mr. Roufa's] alleged deprivation," "does not identify any particular omission in King County's policies," or establish that "King County had actual or constructive notice of any particular omission in its policies." (MSJ at 20 (emphasis omitted).) Defendants further argue that Mr. Roufa "alleges no facts indicating that this alleged failure to train rises to the level of an official government policy for purposes of *[Section] 1983*." (*Id.*)

In response, Mr. Roufa argues that he has established a prima facie showing of failure to train and supervise. (Resp. at 11.) He contends that "[t]here is not one mention of any policy or training relating to the care of mental health patients anywhere in the jail incident **[*44]** report" and that the jail did not enact a disability accommodation policy until 2016. (*Id.*) Mr. Roufa further contends that the fact that the jail's investigation concluded that the officers "acted within the scope of jail policy" establishes that in 2012 the jail had "a policy of indifference in regards to managing mental health patients in crisis at the jail, including Mr. Roufa." (*Id.* at 12.)

The court concludes that Mr. Roufa's claim for failure to train and supervise as to King County and DAJD fails as a matter of law. When a plaintiff alleges that a municipality's omission caused its employees to commit a constitutional violation, "the plaintiff must show that the municipality's deliberate indifference led to its omission and that the omission caused the employee to commit the constitutional violation." Gibson v. Cty. of Washoe, Nev., 290 F.3d 1175, 1186 (9th Cir. 2002). "Only then can such a shortcoming be properly thought of as a city policy or custom that is actionable under *§ 1983*." Connick, 131 S. Ct. at 1359-60 (internal citation and quotation omitted). Mr. Roufa has presented no evidence of a "pattern of similar constitutional violations" or that the lack of a policy will obviously lead to constitutional violations and thereby "substitute for the pattern of violations." Kirkpatrick, 843 F.3d 784, 2016 WL 7176654, at *7; (*see* Resp.). **[*45]** His legal argument without any citation to record evidence is insufficient to withstand summary judgment.[14] *See* Estrella v. Brandt, 682 F.2d 814, 819-20 (9th Cir. 1982) ("Legal memoranda . . . are not evidence . . . ."). Mr. Roufa also provides no evidence showing that an omission caused Defendant Officers to commit a constitutional violation—that is, "that the alleged omission was the moving force behind the alleged constitutional violation or that [King County] could have prevented the alleged violation through an appropriate policy." Contreras v. City of Des Moines, No. C11-0326JLR, 2012 U.S. Dist. LEXIS 24238, 2012 WL 627993, at *6 (W.D. Wash. Feb. 27, 2012); *see also* Chew, 27 F.3d at 1444; (*see* Resp.). In the absence of evidence to support these elements, Mr. Roufa's claim under *Section 1983* for failure to train fails as a matter of law.

*b. Executive Constantine and Supervisory Defendants*

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[14] In addition, Defendants present evidence that King County in fact had a policy regarding inmates with mental health disabilities at the time of Mr. Roufa's booking. (2d Zeldenrust Decl. (Dkt. # 33), Ex. 4 (attaching DAJD Use of Force Policy Effective on October 25, 2010).) Mr. Roufa did not address this policy in his response or assert that anything is omitted from it. (*See* Resp.)

Defendants also argue that Mr. Roufa similarly fails to identify any policy decisions sufficient to impose liability on Executive Constantine or Supervisory Defendants in their individual capacities. (MSJ at 20.) Defendants argue that this claim fails as to these Defendants because a plaintiff cannot recover against an officer's supervisor on a theory of respondeat superior. (*Id.* at 21.) Rather, Defendants contend that to prevail on a claim "against any individual defendant, **[*46]** [a] plaintiff must . . . show[] that the individual defendant participated in or directed the alleged violation, or knew of the violation and failed to prevent it." (*Id.* (citing *Holcomb v. Burnett, No. C14-5087RBL-KLS, 2014 U.S. Dist. LEXIS 13892, 2014 WL 1931179, at *2 (W.D. Wash. 2014))*.) Mr. Roufa does not address this particular argument in his response. (*See* Resp. at 11-12.)

"To the extent [a plaintiff's] allegations against the heads of the sheriff and police departments are premised solely on the responsibility of those individuals to supervise police, sheriff, and/or jail employees alone, such allegations are insufficient to state a *§ 1983* [claim]." *Holcomb, 2014 U.S. Dist. LEXIS 13892, 2014 WL 1931179, at *2*. A plaintiff must instead prove that each government official, through his own actions, violated the Constitution. *Id.* An official's individual liability "depends on whether he 'set in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he knew or reasonably should have known, would cause others to inflict the constitutional injury.'" *Marshall v. Hertzog, No. C12-1335JCC, 2013 U.S. Dist. LEXIS 109067, 2013 WL 3977137, at *7 (W.D. Wash. Aug. 2, 2013)* (citing *Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th Cir. 1998))*.

Mr. Roufa alleges in his complaint that these defendants "were the responsible parties for supervising the training, instructions, discipline, control, conduct[,] and hiring of jail **[*47]** guards." (Compl. ¶¶ 4-6; *see also id.* ¶ 10 (stating that Executive Constantine was "responsible for the promulgation of rules and administration of the King County Jail").) Mr. Roufa does not plead, however, that these defendants' own actions amounted to constitutional violations. (*See generally id.*) In addition, he offers no evidence in response to Defendants' motion for summary judgment to show that his claim against these defendants is based their own constitutional violations, rather than on a failure to adequately train Officer Defendants. (*See* Resp.)

Despite Mr. Roufa's failure to respond to this argument, the court nevertheless examines the record to determine if Defendants have met their summary judgment burden. Of the defendants whom Mr. Roufa sues for failure to train in their individual capacities, the court finds nothing in the record to support liability against Executive Constantine, Major Hyatt, Captain Clark, or Commander Karlsson on this theory. (*See generally* Compl.; Resp.) They were not present at the time of the incident, and there is no indication that they acted in their individual capacities to allegedly deprive Mr. Roufa of his constitutional rights. (*See* Compl.; **[*48]** Resp.; Hyatt Decl., Exs. 1-3.)

Indeed, only Captain Allen and Captain Woodbury were present at the June 9, 2012, incident. (*See* 1st Mohamed Rep. at 2-3; 2d Mohamed Rep. at 3.) According to the evidence before the court, Captain Allen authorized Sergeant Mohamed to use reasonable and necessary force in dealing with Mr. Roufa during Mr. Roufa's manic episode, and later told Sergeant Mohamed to use a video camera during Mr. Roufa's move to the dayroom. (*See* 1st Mohamed Rep. at 3.) Captain Woodbury arrived to the dayroom shortly before the extraction team entered to remove Mr. Roufa, and Captain Woodbury authorized Sergeant Mohamed to order the extraction team to enter the dayroom without waiting for the video camera. (*See* 2d Mohamed Rep. at 3.) From these uncontested facts, the court cannot reasonably infer that Captain Woodbury or Captain Allen "'set in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which he knew or reasonably should have known, would cause others to inflict the constitutional injury.'" *Marshall, 2013 U.S. Dist. LEXIS 109067, 2013 WL 3977137, at *7* (quoting *Watkins, 145 F.3d at 1093*).

For these reasons, Mr. Roufa's failure to train and

supervise claim is dismissed as to all defendants against whom Mr. Roufa alleges it.

2. Excessive Force

Mr. Roufa brings a *Fourth Amendment* excessive force claim **[*49]** "[a]gainst all named defendants in their official capacities."[15] (Compl. at 9.) Although courts presume that *Section 1983* suits are brought against officers in their individual capacities, *see Shoshone-Bannock Tribes, 42 F.3d at 1284*, a complaint rebuts this presumption when it specifically designates named officers as individual or official defendants, *cf. id.* ("[W]here the plaintiff fails to specify in the body of the complaint the capacity in which suit is brought against the defendants, we hold that what is, and is not, expressly stated in the caption controls."); *Stoner v. Santa Clara Cty. Office of Educ., 502 F.3d 1116, 1123 (9th Cir. 2007)* (citing *Kentucky v. Graham, 473 U.S. 159, 167 n.14, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)* (Where a complaint does "not clearly specify whether officials are sued personally, in their official capacity, or both," the course of proceedings "typically will indicate the nature of the liability sought to be imposed.")); *Arkens v. Cty. of Sutter, No. 2:16-00951 WBS KJN, 2016 U.S. Dist. LEXIS 96882, 2016 WL 4001057, at *2 (July 25, 2016)* (stating that courts "look[] to the substance of the plaintiff's claim, the relief sought, and the course of proceedings to determine the nature of a [] suit" (internal quotation marks omitted)). Because Mr. Roufa explicitly states that his excessive force claim is "[a]gainst all named defendants in their official capacities" (Compl. at 9), the court construes his claim in that manner.

Here, Defendants argue that because Mr. Roufa **[*50]** sued all of the named defendants in their official capacities, he must establish that the entity's policy or custom contributed to the constitutional violation. (MSJ at 21.) In response to Defendants' argument, Mr. Roufa contends that there is "ample evidence" to show that King County had a policy of allowing officers to use excessive force in dealing with mentally ill inmates. (Resp. at 14.) Because of the officers' actions in pepper spraying Mr. Roufa and in extracting him from the dayroom, Mr. Roufa argues that "[a] reasonable jury could conclude, based upon the evidence, that King County, specifically the King County Jail, has policies and practices that violate *42 U.S.C. § 1983*." (*Id.*) He states that "evidence of unnecessary force and a municipality's indifference to officers' conduct can at times be inferred by an agency's blind acceptance of reports authored by officers who have used significant and excessive force against individuals [who] have done nothing wrong." (*Id.* at 13.)

Although Mr. Roufa alleges that DAJD had "a departmental policy or custom of resorting to the use of excessive force," *Larez v. City of L.A., 946 F.2d 630, 647 (9th Cir. 1991)*, and states that there is "ample evidence" (Resp. at 14), Mr. Roufa provides no evidence of such a policy or custom, **[*51]** relying instead on his own argument (*id.*). Courts in the Ninth Circuit dismiss excessive force cases against officers in their official capacities when plaintiffs lack evidence of a policy, custom, or practice. *See Williams v. Richey, No. CV 09-327-DOC (AGR), 2010 U.S. Dist. LEXIS 80255, 2010 WL 3075715, at *9 (C.D. Cal. June 4, 2010)* (recommending grant of summary judgment where plaintiff did not "identify an unconstitutional use of force policy, custom[,] or practice that led to a violation of his constitutional rights"); *Dang v. Cross, No. CV00-130001GAF(RZX), 2002 U.S. Dist. LEXIS 20969, 2002 WL 31368991, at *6 (C.D. Cal. October 16, 2002)* (granting summary judgment on official capacity claim because the plaintiff had not "shown that [the defendant] designed or condoned any practices designed to deprive federal rights"); *contra Fuller v. City of Orange, 276 F. App'x 675, 679 (9th Cir. May 2, 2008)* (reversing grant of summary judgment in favor of sheriff acting in his official capacity where the plaintiff "introduced a report that was prepared by a criminal justice consultant" who "detailed concerns regarding the use of force by jail personnel during the time period relevant to the instant case").

Mr. Roufa also provides no legal authority for his

[15] It is not clear to the court why Mr. Roufa brought his excessive force claim against Officer Defendants in their official rather than individual capacities.

proposition that a policy may "at times be inferred by an agency's blind acceptance of reports authorized by officers" who have allegedly used excessive force. (*See* Resp. at 13-14.) **[*52]** To the extent Mr. Roufa intends to argue that Supervisory Defendants took insufficient remedial steps after the June 9, 2012, incident, his claim also fails. Mr. Roufa has not presented sufficient evidence of a "policy or custom from the failure of [Supervisor Defendants] to take any remedial steps after the alleged violations." *Larez, 946 F.2d at 647*. Indeed, the evidence before the court shows that Major Hyatt and Captain Woodbury investigated the incident after it occurred and took remedial steps to address the use of force. (*See* Clark Rep at 2; Hyatt Decl. ¶ 2, Ex. 1; Hyatt Decl. ¶ 4, Ex. 2.) Mr. Roufa has therefore failed to present evidence showing there is a genuine dispute of material fact as to his excessive force claim against defendants in their official capacities.[16]

## IV. CONCLUSION

For the foregoing reasons, the court GRANTS Defendants' motion for summary judgment (Dkt. # 12) and DISMISSES Mr. Roufa's claims WITH PREJUDICE.

Dated this 11th day of January, 2017.

/s/ James L. Robart

JAMES L. ROBART

United States District Judge

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**End of Document**

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[16] When evaluating ***Fourth Amendment*** claims of excessive force, courts inquire "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." *Graham v. Connor, 490 U.S. 386, 397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)*. The court does not address whether Officer Defendants used unconstitutionally excessive force because Mr. Roufa brought this claim against Officer Defendants in their official capacities and fails to present sufficient evidence of an applicable municipal policy, custom, or practice.

Caution
As of: August 3, 2017 4:46 PM Z

# Lawson v. City of Seattle

United States District Court for the Western District of Washington

April 21, 2014, Decided; April 21, 2014, Filed

CASE NO. C12-1994-MAT

**Reporter**
2014 U.S. Dist. LEXIS 55883 *; 2014 WL 1593350

JOSH LAWSON and CHRISTOPHER FRANKLIN, Plaintiffs, v. CITY OF SEATTLE, et al., Defendants.

**Counsel:** **[*1]** For Josh Lawson, Christopher Franklin, Plaintiffs: Elizabeth Anne Padula, Mary C. Anderson, LEAD ATTORNEYS, PADULA AND ASSOCIATES, BELLEVUE, WA.

For City of Seattle, a municipal corporation, Bradley Richardson, Defendants: Brian G Maxey, Gregory Colin Narver, SEATTLE CITY ATTORNEY'S OFFICE, SEATTLE, WA.

**Judges:** Mary Alice Theiler, Chief United States Magistrate Judge.

**Opinion by:** Mary Alice Theiler

## Opinion

ORDER RE: MOTIONS FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs Josh Lawson and Christopher Franklin bring this action against the City of Seattle, Seattle Police Officer Bradley Richardson, and Seattle Police Officers 1-4, alleging violations of their federal constitutional rights under *42 U.S.C. § 1983* and violations of state law. (Dkt. 1.) Plaintiffs' constitutional claims include unreasonable force and seizure in violation of the *Fourth Amendment*, and liability of the City of Seattle through policies, practices, and/or customs causing the constitutional violations. Plaintiffs' state law claims include negligence, intentional and negligent infliction of emotional distress, assault and battery, false arrest, and false imprisonment.

Defendants City of Seattle and Richardson now move for summary judgment (Dkt. 19) **[*2]** and partial summary judgment (Dkt. 21) respectively. Plaintiffs oppose the motions. (Dkts. 39 and 40.) Having considered the motions, oppositions, and all materials filed in support, as well as the remainder of the record, the Court GRANTS in part and DENIES in part the pending motions for the reasons set forth below.[1]

BACKGROUND

On November 16, 2010, Anthony Fantozzi was assaulted as he walked through an alley on his way to a bar, "The Funhouse," located in downtown Seattle. (Dkt. 24 at 1.) Fantozzi felt something hard and blunt hit the back of his head, was punched in the face, and fell to the ground. (*Id.* at 1-2.) He saw two black males standing over him, jumped up, and ran to The Funhouse, with **[*3]** his face covered in blood. (*Id.* at 2.) Fantozzi pointed out the two men who had assaulted him to Joanna Crinnion, a fellow employee. (*Id.*)

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[1] The Court also herein *sua sponte* grants judgment in favor of "Seattle Police Officers 1-4." Discovery in this matter has been complete since February 2014 and the trial is set to commence within a matter of weeks. Plaintiffs have had ample opportunity to identify and name these individuals. *See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)*. Because they remain unnamed and unserved at this late date, plaintiffs' claims against these John Doe defendants are appropriately DISMISSED.

Crinnion called 911 to report the assault, with Fantozzi providing information in the background. (*Id.*) In the call, Fantozzi and Crinnion reported Fantozzi had been assaulted by two tall, skinny, African-American males in their mid-to-late twenties, both wearing jeans and one wearing a black or dark "hoodie" sweatshirt, and the individuals were last seen turning left (East) on Denny Way. (Dkt. 23, Ex. A (911 call) and Ex. B (computer-aided dispatch (CAD) report).)

The parties present differing versions of the events occurring on the night of Fantozzi's assault. Plaintiffs Lawson and Franklin explain they came to downtown Seattle to celebrate their acceptance into a training program. Lawson, who was wearing white sweat pants and a black t-shirt, and Franklin, who was wearing jeans and a dark hoodie, began to walk around and decided to visit a bar near the Seattle Center. (Dkt. 42 at 1; Dkt. 44 at 1-2.) As they walked, they observed a police car, "trotted" across a street to avoid a different car, and proceeded down an alley on their way to the bar. **[*4]** (Dkt. 42 at 2; Dkt. 44 at 2; Dkt. 22, Ex. A at 42 and Ex. B at 8.)

Defendant Richardson, who was working patrol, heard the dispatch as to the 911 call and was within a couple of minutes of the area of the call. (Dkt. 25 at 2.) In checking the area, Richardson observed a thin black male in his late teens, wearing a black t-shirt and white sport/sweat pants, and perceived that individual as both acting as though he was trying not to be seen and watching Richardson. (*Id.*) He does not recall seeing anyone else in the area. (*Id.* at 3.) Richardson then observed the same black male quickly cross Sixth Avenue North to the west side, where he joined another black male, who was wearing jeans and a dark hoodie, and both men began running west and then south through an alley. (*Id.*)

Richardson advised dispatch he had two suspects running in the alley behind the Best Western Hotel. (Dkt. 23, Ex. B at 5; Dkt. 25 at 4; Dkt. 33-1 at 2.) As he approached the alley entrance, he observed the same two males walking briskly through the alley, advised radio as to his location, and exited his patrol car. (Dkt. 25 at 4.) Richardson maintains the individual wearing the hoodie had his hands in his hoodie pockets, **[*5]** that he advised "Stop, Police!", and that both men continued to walk towards him. (*Id.*) He advised, "Stop, Police, show me your hands and get on the ground!", but the men continued to close the distance. (*Id.*) Richardson drew his weapon, stepped towards the men, and yelled, "Get on the ground!", with his weapon "at the low ready," meaning pointed at the ground, but out and available. (*Id.*) At that point, both men stopped, some five to six feet away, and "began to comply." (*Id.* at 5.)

Lawson (wearing the sweat pants and t-shirt) and Franklin (wearing the jeans and hoodie) attest that, as they were walking down the alley, they saw a police officer (Richardson) behind his car door, with his gun drawn and pointing at them, and yelling - only once - "Get on the ground!" (Dkt. 42 at 3; Dkt. 44 at 2.) Lawson and Franklin quickly got down, with Lawson's knees and hands on the ground, and Franklin's knees on the ground and hands behind his head, whereupon Richardson raised his boot and kicked Lawson on the right side of his face/jaw. (*Id.*) A police officer put knees on Lawson's chest/throat, two other officers put knees on his stomach, his face was pushed onto the ground, and his arms were handcuffed **[*6]** behind his back. (Dkt. 44 at 2.) Officers pushed Franklin's face onto the ground and put his hands in handcuffs behind his back. (Dkt. 42 at 3.)

Richardson contends that, while Franklin began to lay flat on the ground, Lawson slowly crouched down in a squat, and stayed that way despite being advised to lay flat. (Dkt. 25 at 5.) Although Seattle Police Officer John Schweiger had by then arrived on the scene, Richardson did not yet know of Schweiger's presence, feared Lawson would lunge at him from the squatting position, and used a flat foot, front push kick to Lawson's chest, knocking him backwards. (*Id.*) Richardson and Schweiger thereafter rolled Lawson onto his stomach. (*Id.* at 5-6.) Richardson did not assist with handcuffing Franklin. (*Id.*)

Schweiger, as he was driving to the scene, observed Richardson pull into the alley, exit his car, position himself behind the opened door, and

give verbal commands of some kind to Lawson and Franklin. (Dkt. 33-1 at 2.) Schweiger attests he saw Lawson and Franklin come within eight feet of Richardson, and Richardson emerge from his position of cover with his handgun drawn in the low-ready position and order the suspects to the ground. (*Id.*) Franklin **[*7]** went to the ground belly down, Lawson went into and remained in a crouching position, and Richardson knocked Lawson over with a front push kick to the chest. (*Id.* at 3.) Schweiger took control of Lawson's right foot/leg and, with Richardson's assistance, rolled Lawson over and under control. (*Id.*)

Some ten minutes or more after officers handcuffed Lawson and Franklin, Seattle Police Officer Brit Kelly (née Sweeney) brought Fantozzi and Crinnion to the scene for a "show-up." (Dkt. 25 at 6.) In a declaration provided to defendants, Fantozzi attests he told a female police officer (Kelly) "'those were the guys[]'" and then that he "'was pretty sure those were the guys'" but he could not be "100% sure[,]" and that Kelly told him "she was going to take that as a positive identification." (Dkt. 24 at 3.) In a subsequent declaration provided to plaintiffs, Fantozzi attests he is "certain" he was "trying to tell the police [he] was not 100% sure" they were the men who had assaulted him, and that he "was not willing to make a positive identification of [the] men[]" in his written statement. (Dkt. 50.)[2]

Richardson did not hear Fantozzi make the identification. (Dkt. 25 at 6.) He attests Kelly communicated to him a positive identification had been made and he proceeded to read Lawson and Franklin their Miranda rights. (*Id.*) Following the arrest, Lawson and Franklin were placed in patrol cars and transported to the West precinct. (*Id.*)

In addition to the above incidents, Lawson and Franklin point to various statements made by Richardson, some of which can be overheard on police in-car video recordings.[3] They assert, for example, that Richardson and other officers made fun of Lawson's middle name (Precious), stating: "'Did that hurt Precious,' 'Oh, are you ok Precious,' and 'Did your mommy name you Precious[?]'" (Dkt. 42 at 3; Dkt. 44 at 3.) Franklin points to comments by Richardson that Franklin was "going to jail for robbery[,]" and Richardson was "going to make stuff up[,] . . . [m]aybe jaywalking." (Dkt. 42 **[*9]** at 5.) He also points to various other comments, such as Richardson calling him a "fucking prick[,]" making comments about his hairstyle, and the following: "Credit cards in his own name, [damn], he has his own credit cards in his own name, [damn] it, that always sucks when I see that[,]" "I always hate it when that happens. I was going to shoot one of them too." (*Id.*)

Richardson, in response, notes "a lot of back and forth" between officers and plaintiffs as captured on in-car video, and describes his tone in making the comments about robbery and jaywalking as sarcastic. (Dkt. 25 at 6-7.) Richardson also notes Franklin's admission in his deposition that he did not hear the credit card-related comments at the time, and only later reviewed them on video. (*Id.* at 7 and Dkt. 22 at 4:24-6:5.)

Lawson and Franklin were released in the early morning of November 17, 2010, and, upon returning to Seattle Municipal Court for arraignment, were told they were not being charged with anything. (Dkt. 42 at 6; Dkt. 44 at 4-5.) Both maintain ongoing nightmares and suffering in relation to the events surrounding the stop, arrest, and their **[*10]** detention. (*Id.*)

## DISCUSSION

### A. Summary Judgment Standard

Summary judgment is appropriate when a "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a

[2] Fantozzi attested in his first declaration he wrote his statement regarding the assault (*see* **[*8]** Dkt. 24, Ex. B) before he went to the show-up. (Dkt. 24 at 3.) In his subsequent declaration, Fantozzi states that, while he is not certain when he started writing the statement, he "did not finish writing it until after" he was taken to see Lawson and Franklin. (Dkt. 50 at 1-2.)

[3] There is no in-car video recording capturing the initial stop.

sufficient showing on an essential element of his case with respect to which he has the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The Court must draw all reasonable inferences in favor of the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

The central issue is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The moving party bears the initial burden of showing the district court "that there is an absence of evidence to support the nonmoving party's case." Celotex Corp., 477 U.S. at 325. The moving party can carry its initial burden by producing affirmative evidence that negates an essential **[*11]** element of the nonmovant's case, or by establishing that the nonmovant lacks the quantum of evidence needed to satisfy its burden of persuasion at trial. Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc., 210 F.3d 1099, 1102 (9th Cir. 2000). The burden then shifts to the nonmoving party to establish a genuine issue of material fact. Matsushita Elec. Indus. Co., 475 U.S. at 585-87.

In supporting a factual position, a party must "cit[e] to particular parts of materials in the record . . .; or show[] that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., 475 U.S. at 585. "[T]he requirement is that there be no *genuine* issue of material fact. . . . Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 247-48 (emphasis in original). Also, "[t]he mere existence of a scintilla of evidence in **[*12]** support of the non-moving party's position is not sufficient[]" to defeat summary judgment. Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995). Likewise, the nonmoving party "cannot defeat summary judgment with allegations in the complaint, or with unsupported conjecture or conclusory statements." Hernandez v. Spacelabs Med. Inc., 343 F.3d 1107, 1112 (9th Cir. 2003).

B. Qualified Immunity Analysis

Under the doctrine of qualified immunity, state officials "performing discretionary functions [are protected] from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). In determining whether qualified immunity applies, the Court considers whether the plaintiff alleged sufficient facts to make out a violation of a constitutional right, and whether the constitutional right was clearly established at the time of the alleged violation. Saucier v. Katz, 533 U.S. 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001), *modified by* Pearson v. Callahan, 555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (explaining "that, while the sequence set forth [in *Saucier]* is often appropriate, **[*13]** it should no longer be regarded as mandatory").

The Court takes the facts in the light most favorable to the party asserting the injury in determining whether an official violated a constitutional right. Acosta v. City of Costa Mesa, 718 F.3d 800, 825 (9th Cir. 2013) (citing Saucier, 533 U.S. at 201). In considering whether a right is clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what [the official] is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987). The court applies an objective standard; "the defendant's subjective understanding of the constitutionality of his or her conduct is irrelevant." Clairmont v. Sound Mental Health, 632 F.3d 1091, 1109 (9th Cir. 2011) (internal quotation marks and quoted source omitted). An official who makes a reasonable mistake as to what the law requires is entitled to immunity. *See* Saucier, 533 U.S. at 205; Kennedy v. City of Ridgefield, 439 F.3d 1055, 1061

(9th Cir. 2006).

C. Richardson's Motion for Partial Summary Judgment

Plaintiffs assert Richardson violated their *Fourth Amendment* rights through unreasonable force and seizure, and assert a number **[*14]** of state law claims. Acknowledging disputes of fact relating to the kick employed on Lawson,[4] Richardson does not move for summary judgment in relation to that use of force. Richardson does, however, seek summary judgment in relation to the other force applied and all other claims brought in this lawsuit, and further asserts his entitlement to qualified immunity.

1. *Fourth Amendment*:

Plaintiffs raise their constitutional challenges under *42 U.S.C. § 1983*, which requires a showing that (1) they suffered a violation of rights protected by the Constitution or created by federal statute, and (2) that the violation was proximately caused by a person acting under color of state or federal law. West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988); Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). **[*15]** As there is no dispute Richardson acted under color of state law, the Court addresses only the *Fourth Amendment* violations alleged. *See U.S. Const. Amend. IV* ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]") Also, as construed and/or anticipated by defendant, the Court considers plaintiff's *Fourth Amendment* claims as alleging an absence of reasonable suspicion for Richardson to stop plaintiffs, that the stop was converted into an arrest, that there was an absence of probable cause for the arrest and imprisonment following the show-up at the scene with Fantozzi, and the use of excessive force.[5]

a. Reasonable suspicion to stop:

"'The *Fourth Amendment* prohibits unreasonable searches and seizures by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional **[*16]** arrest.'" United States v. Valdes-Vega, 685 F.3d 1138, 1143-44 (9th Cir. 2012) (quoting United States v. Arvizu, 534 U.S. 266, 273, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002)). *See also* Terry v. Ohio, 392 U.S. 1, 9-10, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). To justify a *"Terry* stop," an officer must have reasonable suspicion of an individual's involvement in criminal activity. Valdes-Vega, 685 F.3d at 1144.'" [R]easonable suspicion exists when an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion.'" *Id.* (quoting United States v. Montero-Camargo, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc)) (emphasis removed). There must be an objective justification for the stop; more than just a "hunch" of criminal activity. *Id.*

The Court looks at the totality of the circumstances in considering the existence of reasonable suspicion, rather than examining various factors in isolation. *Id.* "This approach 'allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.'" *Id.* (quoting Arvizu, 534 U.S. at 273).

In this case, a **[*17]** 911 call reported an assault by two tall, skinny African-American males in their mid-to-late twenties, both wearing jeans and one wearing a black or dark hoodie sweatshirt. (Dkt. 23, Ex. A.) At a minimum, and taking the facts in the light most favorable to plaintiffs, it can be said that Richardson, shortly after the 911 call and in

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[4] Lawson alleges that, while he was on his hands and knees on the ground, Richardson kicked him in the face, in the area of his jaw, causing him to fly backwards. (Dkt. 40 at 3-4.) Richardson contends he perceived Lawson as crouching into a squat from which Lawson could have lunged forward, and that he used a flat foot, front push-kick to the center of Lawson's chest to knock him backwards to the ground. (Dkt. 21 at 6, n.4.)

[5] Plaintiffs do not respond to defendant's contention that the duration of the stop, considered by itself, was reasonable. (*See* Dkt. 21 at 13-14.) The Court, therefore, only considers this as a factor relevant to the question of whether the stop was converted into an arrest.

the vicinity of the assault, observed two black males together, one of whom was wearing the clothing items identified in the 911 call, and that both individuals saw the police car, "trotted" across a street, and moved in the opposite direction of Richardson. (*See* Dkts. 22, 25, 42 and 44.) Plaintiffs also do not dispute Richardson's recollection as to an absence of other people in the area. (Dkt. 25.)[6] Considering the totality of the circumstances, the Court has no difficulty in concluding Richardson had reasonable suspicion to make a *Terry* stop.

Plaintiffs' reliance on case law providing that reasonable suspicion must be based on more than a hunch, nervous behavior, and/or moving away from a law enforcement official ignores the totality of the circumstances, including that Richardson's observations and plaintiffs' actions took place close in time and in the vicinity of the assault, and in the absence of other individuals in the same area. *Cf. Moreno v. Baca, 431 F.3d 633, 642 (9th Cir. 2005)* ("nervousness in a high crime area, without more, did not create reasonable suspicion to detain an individual" and the "simple act of walking away from the officers could not have been reasonably mistaken" for recognition that "in some circumstances an individual's flight from law enforcement in a high crime area can justify an investigatory seizure."). In fact, plaintiffs' own expert expressed his agreement as to the existence of reasonable suspicion. (Dkt. 22, **[*19]** Ex. C at 76:19-77:9, 78:25-80:7.) The Court, as such, finds defendant entitled to summary judgment on the issue of reasonable suspicion to conduct a *Terry* stop.

b. Conversion of *Terry* stop into arrest:

While a *Terry* stop necessitates only reasonable suspicion, an arrest requires the more demanding standard of probable cause. *Washington v. Lambert, 98 F.3d 1181, 1185-86 (9th Cir. 1996)*. A warrantless arrest without probable cause violates the *Fourth Amendment*. *Beck v. Ohio, 379 U.S. 89, 91, 85 S. Ct. 223, 13 L. Ed. 2d 142 (1964)*.

"There is no bright-line rule to determine when an investigatory stop becomes an arrest." *Lambert, 98 F.3d at 1185* (citing *United States v. Parr, 843 F.2d 1228, 1231 (9th Cir. 1988))*. The Court employs a fact-specific inquiry, considering the totality of the circumstances. *Gallegos v. City of Los Angeles, 308 F.3d 987, 990 (9th Cir. 2002)*. Considerations include "both the intrusiveness of the stop, i.e., the aggressiveness of the police methods and how much the plaintiff's liberty was restricted, and the justification for the use of such tactics, i.e., whether the officer had sufficient basis to fear for his safety to warrant the intrusiveness of the action taken." *Lambert, 98 F.3d at 1185* (internal **[*20]** citations omitted). *See also United States v. Buffington, 815 F.2d 1292, 1300 (9th Cir. 1987)* ("The use of force during a stop does not convert the stop into an arrest if it occurs under circumstances justifying fears for personal safety.")

Pointing a weapon at and handcuffing a suspect, ordering a suspect to lie on the ground, or placing a suspect in a police car suggest, but do not automatically convert an investigatory stop into an arrest. *Lambert, 98 F.3d at 1186, 1188-89*. The duration of the detention may also be relevant. *Id. at 1189, n.11*. The Court considers whether various factors justify the use of aggressive and intrusive police tactics, such as: (1) whether the suspect is uncooperative or takes action raising a reasonable possibility of danger or flight; (2) whether the officer had information the suspect is "currently armed;" (3) whether the stop closely follows a violent crime; (4) information a crime that may involve violence is about to occur; (5) specificity of the information leading the officers to suspect the individuals are the actual suspects, or that the actual suspects are likely to forcibly resist interrogation; and (6) the number of officers present. *Id. at 1189-90*. **[*21]** *Compare Gallegos, 308 F.3d at 991-92* (in a stop lasting forty-five

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[6] Richardson points to a variety of other factors as forming the basis for his reasonable suspicion, including, *inter alia*, his perception that Lawson was inappropriately dressed for the weather and acting suspiciously, and his contention that both Lawson and Franklin saw him and, within seconds, began to run in the **[*18]** opposite direction. (Dkt. 25.) Lawson and Franklin concede they saw the police car, but Lawson states he did not for a moment believe the police car was looking for them, and both maintain they were shocked to see Richardson drawing a gun on them in the alley. (Dkts. 42 and 44.)

minutes to an hour, officers reasonably drew their guns on and handcuffed an individual when they were unsure if he was armed, and brought him back to the area where the crime occurred and he was originally observed in order to determine whether he was the actual suspect), *with* Lambert, 98 F.3d at 1182-83, 1190-91 (finding warrantless arrest without probable cause where four officers (with a police dog) drew their guns on, handcuffed, and placed two individuals in police cars for five to twenty-five minutes, frisked them, and searched their car, despite absence of any specific information either individual was armed, no specific similarities to the actual suspects outside of race, no violent crime in the vicinity shortly before the stop, and no resistance).

Richardson here argues the tactics employed, including drawing his weapon, the handcuffing of plaintiffs, and their placement in a prone position on the ground for ten to fourteen minutes, were justified and did not convert the stop into an arrest. In addition to the factors supporting reasonable suspicion, he notes he was alone when he initiated the stop, that he **[*22]** perceived Lawson and Franklin as having run away from him and failing to obey multiple commands to stop, that he observed Franklin with his hands in his hoodie pockets and refusing the order to remove them, and that Lawson refused the command to lay on the ground.

Notably, Richardson omits mention of the fact he also kicked Lawson to the ground. Nor does he provide citation to any case law involving a similar tactic. The details surrounding the kick, including the type of kick employed, where it fell on Lawson's body, and the position of Lawson's body at the time, remain in dispute. A determination as to these facts is necessary to the resolution of whether Richardson had sufficient basis to fear for his safety to warrant the intrusiveness of the actions taken.[7] Further relevant to this issue is the fact that Richardson was apparently aware another officer, Schweiger, had arrived on the scene prior to the kick. (Dkt. 45, Ex. 5 at 5 (Richardson stated in his deposition that Schweiger arrived "within seconds[,]" was "already there as I was kicking the individual backwards[,]" and that Schweiger was able to gain control of Lawson as he was falling back; he knew Schweiger had "arrived because **[*23]** I could hear him kind of putting the car in motion, shutting the door."))

In addition, and as related to the drawing of the weapon, outside of Richardson's perception Franklin had his hands in his pockets and refused the command to remove them, there does not appear to have been any indication either Franklin or Lawson were armed. (*See, e.g.*, Dkt. 23, Ex. B (CAD report reflects report of "no weapons").) The parties also present varied depictions and perceptions as to the commands issued by Richardson and the compliance of plaintiffs in relation to those commands. Finally, Lawson and Franklin were not merely handcuffed while awaiting the show-up, but were placed on the ground by one or more officers, maintain their faces were pushed onto the ground during that process, and they remained on the ground, for some **[*24]** ten to fourteen minutes, with their hands cuffed behind their backs. That Richardson did not personally perform the act of handcuffing plaintiffs does not render this evidence irrelevant to the issue of whether the stop was converted into an arrest.[8]

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[7] The Court disagrees with defendant's contention the kick is not relevant to this motion. As discussed below, the Court declines to separate the different uses of force in the consideration of plaintiffs' excessive force claim. Nor does defendant in any way explain how the kick would not be relevant to consideration of whether the tactics employed converted the stop into an arrest.

[8] The cases cited by defendant in relation to the drawing of weapons and handcuffing of stopped individuals are distinguishable. *See, e.g.*, Allen v. City of Los Angeles, 66 F.3d 1052, 1056-58 (9th Cir. 1995) (stop followed high speed chase of over eight miles, ending in a high crime area at night, involving a car that might have been stolen, and individual alleging unlawful arrest was intoxicated and accompanied by noncompliant and combative driver); Buffington, 815 F.2d at 1300-01 (police action followed tip of informant as to planned bank robbery, suspect had known violent criminal history, was wearing a disguise, and was observed to make "antic movements"); United States v. Taylor, 716 F.2d 701, 705, 709 (9th Cir. 1983) (no apparent disputes of fact that individual twice refused commands to comply and made "furtive movements inside the truck where his hands could not be seen.").

The Court, in sum, does not find Richardson entitled to summary **[*25]** judgment in relation to the stop of Lawson and Franklin. If anything, consideration of the totality of the circumstances suggests the stop was converted into an arrest. However, a determination as to whether there was justification for the tactics employed and, therefore, any conversation of the stop into an arrest, is complicated by the above-described disputed issues of fact.

Nor is a determination of qualified immunity in Richardson's favor appropriate. As stated above, issues of fact preclude a determination as to the justification for the tactics employed. *See* Bravo v. City of Santa Maria, 665 F.3d 1076, 1087 (9th Cir. 2011) ("Summary judgment is improper where 'there is a genuine dispute as to the facts and circumstances within an officer's knowledge or what the officer and claimant did or failed to do.'") (quoting Hopkins v. Bonvicino, 573 F.3d 752, 763 (9th Cir. 2009)). Taking the facts alleged by plaintiffs as true supports the existence of both a constitutional violation and the conclusion a reasonable police officer would have known the tactics employed exceeded the boundaries of a valid *Terry* stop. *See* Saucier, 553 U.S. at 201-02. Accordingly, a finding of qualified immunity **[*26]** on the issue of whether the *Terry* stop was converted into an arrest is not warranted at this time.

c. Unlawful arrest:

A plaintiff must establish a lack of probable cause in order to prevail on a *§ 1983* unlawful arrest claim. Norse v. City of Santa Cruz, 629 F.3d 966, 978 (9th Cir. 2010) (citing Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998)). "Probable cause exists when the facts and circumstances within the officer's knowledge are sufficient to cause a reasonably prudent person to believe that a crime has been committed." Lassiter v. City of Bremerton, 556 F.3d 1049, 1053 (9th Cir. 2009). Stated another way, probable cause to arrest exists when the officer has knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe an offense has been or is being committed by the person being arrested. United States v. Lopez, 482 F.3d 1067, 1072 (9th Cir. 2007) (citing Beck, 379 U.S.at 91). Probable cause is an objective standard. *Id.*

Richardson argues probable cause to arrest plaintiffs existed following the show-up and positive identification by Fantozzi. Again, Fantozzi initially identified his assailants as two skinny African-American **[*27]** males in their mid-to-late twenties, both wearing jeans and one wearing a black or dark hoodie, and Richardson observed Lawson and Franklin, two young black males, one of whom was wearing a dark hoodie and jeans, in the vicinity of the assault, shortly after the assault occurred. Richardson was thereafter informed that Fantozzi, not long after the assault occurred, made a positive identification of Lawson and Franklin as the individuals who assaulted him. These facts and circumstances support the existence of probable cause for the arrest at that time. *See generally* United States v. Bagley, 772 F.2d 482, 492 (9th Cir. 1985) (relevant factors in considering reliability of identifications are: "(1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation.") (citing Neil v. Biggers, 409 U.S. 188, 199-200, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972)).

Plaintiffs assert Officer Kelly "switched to another transmission and communicated to Richardson that Fantozzi **[*28]** could not identify either Lawson or Franklin[,]" and that Kelly later purposely failed to communicate with Lawson and Franklin in an effort to conceal the absence of a positive identification. (Dkt. 40 at 10.) However, these contentions are unsupported by any citation or reference to evidence in the record, and do not, therefore, suffice to defeat summary judgment. Fed. R. Civ. P. 56(c)(1); Hernandez, 343 F.3d at 1112.

Plaintiffs also maintain Fantozzi never gave a positive identification, pointing to his second declaration and the fact he did not include information about a positive identification in his

written statement. (Dkt. 50 and Dkt. 24, Ex. B.) However, whatever Fantozzi may have been trying to communicate, there is an absence of any indication he actually refuted Kelly's assertion she was going to take his statements as a positive identification. (Dkt. 24 at 3.) (*See also* Dkt. 45, Ex. 10 at 34:7-12 (Kelly stated in her deposition: "I don't have specifics. I just know from my report that he gave me a positive identification. . . . He positively identified the subjects that were being detained as the subjects who had assaulted him."))

Nor is there any indication Richardson had **[*29]** any information other than that a positive identification had been made. As stated above, a determination of probable cause considers the facts and circumstances "within the officer's knowledge[.]" *Lassiter, 556 F.3d at 1053*. Also, as with the existence of reasonable suspicion, plaintiffs' own expert agreed that, once Richardson received information a positive identification had been made, he had probable cause to arrest. (*See* Dkt. 22, Ex. C at 76:12-77:9.) At the least, and as Richardson argues, he is entitled to qualified immunity for his reasonable reliance on the communication as to identification provided by his fellow officer. *Torres v. City of L.A., 548 F.3d 1197, 1212 (9th Cir. 2008)* (granting qualified immunity to officer who reasonably relied on information from a fellow officer that the suspect had been positively identified). The Court, for all of these reasons, finds defendant entitled to summary judgment in relation to the unlawful arrest claim following the show-up and positive identification by Fantozzi.[9]

d. Excessive force:

An excessive force claim is examined under the reasonableness standard of the *Fourth Amendment* and the framework outlined by the Supreme Court in *Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)*. *Davis v. City of Las Vegas, 478 F.3d 1048, 1054 (9th Cir. 2007)*; *Smith v. City of Hemet, 394 F.3d 689, 700 (9th Cir. 2005)* (en banc). "That analysis requires balancing the 'nature and quality of the intrusion' on a person's liberty with the 'countervailing governmental interests at stake' to determine whether the use of force was objectively reasonable under the circumstances." *Smith, 394 F.3d at 701* (quoting *Graham, 490 U.S. at 396*).

The Court first assesses the quantum of force - the type and amount of force - used against plaintiffs, and then considers the totality of the circumstances and factors relevant to the governmental interests at issue, including, but not limited to, (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting or attempting **[*31]** to evade arrest. *Bryan v. MacPherson, 630 F.3d 805, 824-26 (9th Cir. 2010)* (citing *Graham, 490 U.S. at 396*). Whether the force used was objectively reasonable "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham, 490 U.S. at 396-97* (citation omitted).

Because the excessive force inquiry '"nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom,'" the Ninth Circuit has '"held on many occasions that summary judgment or judgment as a matter of law in excessive force cases should be granted sparingly.'" *Smith, 394 F.3d at 701* (quoting *Santos v. Gates, 287 F.3d 846, 853 (9th Cir. 2002))*. "This is because such cases almost always turn on a jury's credibility determinations." *Id.*

Richardson clarifies he moves for summary judgment solely in relation to the pointing of the firearm, routine handcuffing techniques, and the alleged push of Franklin's face into the ground, and not in relation to the kicking of Lawson. The Court, however, finds such parsing of plaintiffs' excessive force claim inappropriate. As reflected above, "[d]etermining whether the force used to **[*32]** effect a particular seizure is 'reasonable' under the *Fourth Amendment* requires a careful balancing of 'the nature and quality of the intrusion

[9] The Court reserves for further consideration defendant's assertion that any damages relating to plaintiffs' arrest and detention are severed from the point he had **[*30]** probable cause for the arrest. *See Smith v. Kelly, C11-623-RAJ, 2013 U.S. Dist. LEXIS 153172 at *44-56 (W.D. Wash. Oct. 24, 2013)*.

on the individual's *Fourth Amendment* interests' against the countervailing governmental interests at stake." *Graham, 490 U.S. at 396*. While it appears Richardson may not be held responsible for pushing Franklin's face into the ground (*see* Dkt. 22, Ex. A at 26:4-13), the intrusion here includes, at a minimum, a kick, to Lawson's chest or face/jaw, within seconds of the drawing of Richardson's firearm, in the "low ready" position or directly at plaintiffs. The jury should be allowed the opportunity to consider all of the force brought to bear against plaintiffs so that the necessary balance is appropriately weighed. *See, e.g., Hall v. County of Whatcom, No. C09-1545-RSL, 2011 U.S. Dist. LEXIS 143486 at *12-13 (W.D. Wash. Dec. 13, 2011)* (declining to separate excessive force and state law assault claims related to alleged strikes to testicles, from use of handcuffs and a '"pain hold"'). Defendant, for these reasons, is not entitled to either summary judgment or qualified immunity on the excessive force claim.

2. False Arrest and False Imprisonment:

The **[*33]** existence of probable cause, after the identification by Fantozzi, serves as a complete defense to plaintiffs' state law false arrest and imprisonment claims. *Hanson v. City of Snohomish, 121 Wn.2d 552, 563-64, 852 P.2d 295 (1993)* ("[P]robable cause is a complete defense to an action for false arrest and imprisonment."); *McBride v. Walla Walla Cnty., 95 Wn. App. 33, 38, 975 P.2d 1029 (1999)* (same). Defendant is, accordingly, entitled to summary judgment in relation to such claims. However, as neither party addresses the existence or viability of false arrest or imprisonment claims relating to the period prior to Fantozzi's identification, the Court declines to render a ruling associated with any such claims.

3. Assault and Battery:

Defendant argues that, because the force was reasonable, plaintiffs' state law assault and battery claims must also be dismissed. *See Boyles v. Kennewick, 62 Wn. App. 174, 176, 813 P.2d 178 (1991)* ("Generally, a police officer making an arrest is justified in using sufficient force to subdue a prisoner, however he becomes a tortfeasor and is liable as such *for assault and battery* **[*34]** if unnecessary violence or excessive force is used in accomplishing the arrest.") (emphasis in original). However, as with the excessive force claim, the Court finds a ruling on plaintiffs' assault and battery claims precluded by disputes of fact.

4. Intentional Infliction of Emotional Distress:

To prove a claim for intentional infliction of emotional distress (or outrage) under Washington law, plaintiffs must show: (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) actual result of severe emotional distress. *Kloepfel v. Bokor, 149 Wn.2d 192, 195-96, 66 P.3d 630 (2003)*. The claim must be predicated on behavior "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id. at 196* (quoted sources, quotation marks, and emphasis omitted). "[M]ere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" do not rise to the requisite level of offending behavior. *Id.* While the question of whether conduct is sufficiently outrageous is ordinarily for a jury, the Court initially determines **[*35]** whether reasonable minds could differ on whether conduct has been sufficiently extreme and outrageous to result in liability. *Phillips v. Hardwick, 29 Wn. App. 382, 387, 628 P.2d 506 (1981)*.

Defendant observes and plaintiffs do not dispute that, to the extent plaintiffs' allegations of mental distress stem from their allegations of assault and battery and false arrest/ imprisonment, they are subsumed and may not be brought as an independent claim of outrage. *See Rice v. Janovich, 109 Wn.2d 48, 61-62, 742 P.2d 1230 (1987)* (finding error in jury instruction allowing for "possibility of double recovery" on both assault and tort of outrage for same conduct). Plaintiffs point to the remaining conduct, including the mockery of Lawson's name, Richardson's comments regarding Franklin's hairstyle and how he would "make stuff up," and the statements regarding Franklin's credit cards as sufficient to support an independent claim of intentional infliction of emotional distress.

Plaintiffs fail to explain how the credit card

comments, admittedly made outside of Franklin's presence (*see* Dkt. 22 at 4:24-6:5), could be construed as an intentional or reckless infliction of emotional distress. Moreover, **[*36]** even assuming all facts alleged by plaintiffs as true and drawing all reasonable inferences in their favor, the behavior at issue cannot be said to have been so outrageous and extreme "as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Kloepfel, 149 Wn.2d at 196*. "The law intervenes only where the distress inflicted is so severe that no reasonable person could be expected to endure it." *Saldivar v. Momah, 145 Wn. App. 365, 390, 186 P.3d 1117 (2008)*. Here, while clearly unprofessional and objectionable, Richardson's comments and behavior are appropriately described as "insults, indignities, threats, annoyances, petty oppressions, or other trivialities[]" not rising to the level of offending behavior required for a claim of outrage. *Kloepfel, 149 Wn.2d at 196*. *Cf. id. at 194* (conduct supporting outrage claim included, *inter alia*, violations of no contact orders resulting in multiple convictions, threats to plaintiff's life and to the life of man she was dating, 640 and 100 phone calls to plaintiff's home and work respectively, driving by her house at all hours, and resulting in plaintiff's need to spend **[*37]** weekends away from home and for her employer to make arrangements to protect her at work). Defendant is, as such, entitled to summary judgment on the claim of intentional infliction of emotional distress (outrage).[10]

5. Negligent Infliction of Emotional Distress and Negligence:

Plaintiffs also assert claims of both negligent infliction of emotional distress and negligence. In either case, a cause of action exists "only if 'the defendant owes a duty of care to plaintiff.'" *Osborn v. Mason Cnty., 157 Wn.2d 18, 27, 134 P.3d 197 (2006)* (quoting *Chambers-Castanes v. King Cnty., 100 Wn.2d 275, 284, 669 P.2d 451 (1983)*); *see also Strong v. Terrell, 147 Wn. App. 376, 387, 195 P.3d 977 (2008)* (plaintiff may recover for negligent infliction of emotional distress upon proving "negligence, that is, duty, breach of the standard of care, proximate cause, and damage," and "the additional requirement of objective symptomatology.")

"As a general **[*38]** rule, law enforcement activities are not reachable in negligence." *Keates v. City of Vancouver, 73 Wn. App. 257, 267, 869 P.2d 88 (1994)*. Under the public duty doctrine, "[w]hen the defendant is a public official . . . no liability will attach for a public official's negligent conduct unless the plaintiff can show that the duty was owed to [him] rather than to the general public." *Donaldson v. City of Seattle, 65 Wn. App. 661, 666, 831 P.2d 1098 (1992)* (citing *Taylor v. Stevens Cnty., 111 Wn.2d 159, 759 P.2d 447, 449-50 (1988))*. *See also Hernandez v. Kunkle, C12-178-RSM, 2013 U.S. Dist. LEXIS 6701 at *25 (W.D. Wash. Jan. 15, 2013)* ("Courts recognize four exceptions to the public duty doctrine: (1) legislative intent, (2) failure to enforce when there is actual knowledge of a statutory violation, (3) failure to exercise reasonable care when coming to the aid of a particular plaintiff, and (4) where the injured plaintiff has a special relationship entailing a separate duty from that owed the general public.") (cited source omitted).

As Richardson observes, plaintiffs may not base claims of negligence on alleged intentional actions, such as excessive force or unlawful arrest. **[*39]** *Willard v. City of Everett, C12-14-TSZ, 2013 U.S. Dist. LEXIS 126409 at *5 (W.D. Wash. Sep. 4, 2013)*. Moreover, plaintiffs' negligence claims are barred by the public duty doctrine given their failure to identify any duty owed to them, or exception to that doctrine. While plaintiffs suggest the Court look to some "alternate duty of reasonable care" (Dkt. 40 at 23-24), they fail to identify any such duty recognized under the law or applicable to this case. *See, e.g., Rengo v. Cobane, C12-298-TSZ, 2013 U.S. Dist. LEXIS 91613 at *14-15 (W.D. Wash. Jun. 28, 2013)* ("Police officers owe no duty to use reasonable care to avoid inadvertent infliction of emotional distress on the subjects of criminal investigation.") (citing *Keates, 73 Wn. App.*

[10] Finding the conduct alleged insufficient to constitute intentional infliction of emotional distress, the Court does not address the parties' arguments regarding evidence plaintiffs suffered actual emotional distress relating to the events at issue in this matter.

at 267); James v. City of Seattle, C10-1612-JLR, 2011 U.S. Dist. LEXIS 142680 at *54-55 (W.D. Wash. Dec. 12, 2011) ("[W]hile it is true that the officers 'owe[] a general duty to all [] citizens [of the City] to avoid the use of excessive force when effectuating an arrest, it cannot be said that they owe [the plaintiff] a specific duty.'") (quoted sources omitted). Defendant is entitled to summary judgment on plaintiffs' negligent infliction of emotional distress **[*40]** and negligence claims.[11]

D. City of Seattle's Motion for Summary Judgment

Plaintiffs also seek to hold the City of Seattle liable under § *1983* and in relation to their state law claims. In response to defendant City of Seattle's motion for summary judgment, plaintiffs provide clarification as to the nature of their municipal liability claim under § *1983* - addressing only the issue of excessive force and contending a violation of their constitutional rights through a policy or custom of "authorizing Seattle Police Officers to use excessive force against citizens without justification." (Dkt. 39 at 1-2.) The Court, as such, limits its consideration of municipal liability under § *1983* to the claim as clarified by plaintiffs.[12]

1. Municipal Liability Under § *1983*:

A local government unit or municipality can be sued as a "person" under § *1983*. Monell v. Dep't of Social Servs., 436 U.S. 658, 691-94, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). However, a municipality may only be held liable for an official's unconstitutional conduct under § *1983* if such conduct was caused by a city policy or custom. Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005) (citing Monell, 436 U.S. at 691-94). A municipality cannot be held liable solely because it employs a tortfeasor, under a *respondent superior* theory. Monell, 436 U.S. at 691.

Plaintiffs must show the identified policies or customs were the "moving force" behind the constitutional violation. *See* id. at 694-95. That is, plaintiffs must demonstrate "a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989).

Plaintiffs here maintain the violations of their constitutional rights **[*43]** occurred as a result of the City of Seattle's longstanding custom of authorizing, exonerating, and not reprimanding officers who use excessive force, and that this custom proximately caused their injuries. In support of this contention, plaintiffs rely in large part on a 2011 report from the United States Department of Justice (DOJ) finding the Seattle Police Department (SPD) engages in a pattern or practice of using unnecessary or excessive force (Dkt. 49, Ex. 9), and a report and supplemental report from plaintiffs' expert (Dkts. 53 and 55). Plaintiffs' expert opines, with no supporting analysis or explanation, that only one out of 1,216 SPD "use of force" files he reviewed was recommended for further review; that his review

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[11] Plaintiffs moved to strike the opinions of defense expert Grant Fredericks and a statement contained within defense expert Jeffrey Noble's declaration. (Dkt. 40 at 24.) However, having found no need to utilize that evidence in considering the pending motions, the Court declines to address the motion to strike.

[12] The Court further finds plaintiffs to have abandoned any federal or state municipal liability claims associated with a failure to train, ratification of an **[*41]** unconstitutional act, and/or negligent supervision, and defendant entitled to summary judgment in relation to any such claims. *See, e.g.,* Penigar v. County of San Bernardino, No. 12-55857, 561 Fed. Appx. 623, 2014 U.S. App. LEXIS 4573 at *2 (9th Cir. Mar. 11, 2014) (upholding summary judgment where County submitted evidence its training and supervision policies were reasonable, and claimant did not offer any evidence to the contrary); Marsh v. City of San Diego, 680 F.3d 1148, 1159 (9th Cir. 2010) (affirming dismissal of failure to train claim where plaintiff provided no evidence training was inadequate or that additional training was necessary); ***Sheehan v. City & County of San Francisco, 743 F.3d 1211, 1231, 2014 U.S. App. LEXIS 3321 at *50-51 (9th Cir. 2014)*** (ratification requires a showing the "'authorized policymakers approve a subordinate's decision and the basis for it.'"; ratification theory failed where there was no evidence city "'made a deliberate choice to endorse' the officers' actions[,]" and mere failure to discipline does not amount to ratification); Shope v. City of Lynnwood, C10-256-RSL, 2011 U.S. Dist. LEXIS 32069 at * 19-20 (W.D. Wash. Mar. 28, 2011) (plaintiff's negligent training, **[*42]** supervision, hiring, and retention claim against municipality barred by public duty doctrine: "The duty of the City to hire, train, retain, and supervise its officers is owed to the public at large, not to plaintiff individually.")

"documents a per se 'rubber stamping' by the SPD chain of command that any and all uses of force inflicted by their officers will be 'Within policy.'"; that the "DOJ is correct in their conclusion that the SPD has a custom and practice of inflicting excessive force on citizens within their jurisdiction."; and that "there were indications of egregious acts by SPD officers that were not further reviewed but were found to be 'within policy.'" (Dkt. 53 at 11-12; **[*44]** Dkt. 55, Ex. A.)

Defendant moves to strike the portions of the expert reports addressing municipal liability as both not timely disclosed and lacking in reliability. (Dkt. 62 at 2-7.) The Court finds these arguments compelling. However, it remains that, even considering this evidence for the purpose of evaluating the motion for summary judgment, plaintiffs fail to demonstrate municipal liability under *Monell*.

As defendant observes, and as previously found by this Court: "It is not enough to point to a policy and posit a connection between it and a constitutional violation. To do so would render *Monell* a 'dead letter.'" *Caylor v. City of Seattle, C11-1217-RAJ, 2013 U.S. Dist. LEXIS 62486 at *50 (W.D. Wash. Apr. 30, 2013)* (citing *Oklahoma City v. Tuttle, 471 U.S. 808, 823, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985)* ("Obviously, if one retreats far enough from a constitutional violation some municipal 'policy' can be identified behind almost any . . . harm inflicted by a municipal official; for example [the defendant officer] would never have killed [the suspect] if [the city] did not have a 'policy' of establishing a police force.").) Plaintiffs here, in light of the mere existence of the DOJ report and its findings and through **[*45]** the generalized and conclusory opinions in their expert report, fail to demonstrate the requisite causation between a municipal policy and the conduct at issue in this case. There is, in other words, no evidence supporting the conclusion that a policy or custom of authorizing and/or not punishing the use of excessive force as a general matter caused Richardson to draw his gun and kick Larson, as opposed to Richardson's perception - whether or not reasonable - that plaintiffs posed a risk to his safety. *See id. at *47-48* (rejecting *Monell* claim based on alleged policies of, *inter alia*, "training skewed toward the use of force and away from de-escalation skills," rubber stamping unlawful shootings, and a "use-of-force policy authorize[ing] the use of deadly force without an imminent deadly threat[,]" where there was no evidence such policies caused the officer defendant to shoot the plaintiff).

Plaintiffs also fail to support *Monell* liability through evidence of the SPD's failure to discipline Richardson in relation to this and one other, unrelated use of force incident. (*See* Dkt. 49, Ex. 6 (March 2005 use of force statement by Richardson).) While a municipal policy "may be inferred from **[*46]** widespread practices or 'evidence of repeated constitutional violations for which the errant municipal officers were not discharged or reprimanded,' [a] plaintiff cannot prove the existence of a *municipal* policy or custom based solely on the occurrence of a single incident or unconstitutional action by a non-policymaking employee." *Nadell v. Las Vegas Metro. Police Dep't, 268 F.3d 924, 929 (9th Cir. 2001)* (emphasis in original) (quoted and cited sources omitted). Indeed, and as also found by this Court, "two isolated examples" of officers acting pursuant to an alleged policy "are insufficient as a matter of law to demonstrate a longstanding policy or custom that is the 'standard operating procedure' of the municipality[,]" and "[t]o permit such an inference to suffice would eviscerate the most basic requirement of a *Monell* claim." *Morales v. Fry, C12-2235-JCC, 2014 U.S. Dist. LEXIS 40344 at *44-45 & n.12 (W.D. Wash. Mar. 25, 2014)* (citing *Marsh, 680 F.3d at 1159* (single instance of violation insufficient to constitute a 'widespread practice' that would provide notice to county that additional training was necessary); *Menotti, 409 F.3d at 1151* (plaintiff provided evidence of only two **[*47]** allegedly unlawful searches, which were insufficient to demonstrate a "longstanding practice or custom [that] constitutes the 'standard operating procedure' of the local government entity"); *Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)* ("Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the

conduct has become a traditional method of carrying out policy."))

Plaintiffs, in sum, fail to provide evidence supporting a causal link between any alleged policy or custom on the part of the SPD and defendant Richardson's use of force in this case. The Court, for this reason, finds defendant City of Seattle entitled to summary judgment on the issue of *Monell* liability.

2. Municipal Liability in Relation to State Law Claims:

As discussed above, while finding other state law claims subject to dismissal, the Court finds summary judgment on plaintiffs' assault and battery claims precluded by disputed issues of fact, and an absence of argument allowing for a determination as to any state law false arrest or imprisonment claims relating to the period prior to the witness identification. **[*48]** It appears plaintiffs also seek to hold the City of Seattle liable for state law claims of assault and battery and false arrest and/or imprisonment under a theory of *respondent superior. (See* Dkt. 71 at 2.) Finding no argument specific to the remaining or possibly remaining state law claims under the proposed theory, the Court declines to reach a determination as to municipal liability in relation to any such claims.

CONCLUSION

Defendant City of Seattle's motion for summary judgment (Dkt. 19) and defendant Richardson's motion for partial summary judgment (Dkt. 21) are GRANTED in part and DENIED in part. Specifically, summary judgment is granted as to municipal liability under *§ 1983*, in relation to reasonable suspicion for the stop, unlawful arrest following the witness identification, and state law claims of false arrest and imprisonment following the witness identification, intentional and negligent infliction of emotional distress, and negligence. All remaining claims as discussed herein will proceed to trial.

DATED this 21st day of April, 2014.

/s/ Mary Alice Theiler

Mary Alice Theiler

Chief United States Magistrate Judge

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NO: 15-2-11618-1

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | NO. 15-2-11618-1<br><br>AFFIDAVIT OF JEAN P. HOMAN IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT<br><br>Noted for Consideration: September 1, 2017 |

STATE OF WASHINGTON )
) ss.
COUNTY OF PIERCE )

JEAN P. HOMAN, being first duly sworn upon oath deposes and says:

1. I am the attorney of record for the defendants in the above-captioned action, am over the age of eighteen and am competent to testify herein.

2. Attached hereto as Exhibit 1 is a true and accurate copy of excerpts of Michel Volk's deposition testimony conducted on April 13, 2016.



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885/ Fax 591-5755

3. Attached hereto as Exhibit 2 is a true and accurate copy of excerpts of Timothy Rushton's deposition testimony conducted on September 7, 2016.

4. Attached hereto as Exhibit 3 is a true and accurate copy of Defendant's First Discovery Request to Plaintiff Cesar Beltran-Serrano with Answers and Responses Thereto dated March 1, 2016.

FURTHER YOU AFFIANT SAYETH NAUGHT.

JEAN P. HOMAN

SUBSCRIBED and SWORN to before me this 3rd day of August, 2017.

Printed Name: Gisel Castro
NOTARY PUBLIC in and for the State of Washington, residing at: Tacoma WA
My commission expires: 2-3-20.

GISEL CASTRO
COMMISSION EXPIRES
NOTARY
PUBLIC
02-03-20
STATE OF WASHINGTON



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
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# EXHIBIT 1

Transcript of the Testimony of

**Michel Volk**
April 13, 2016

**Beltran-Serrano v. City of Tacoma**
No. 15-2-11618-1

**Court Reporters/Video/Videoconferencing**
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1 A Well, I can't give you the specific, but it's basically
2 the east side of Tacoma. It's not a square box. It
3 changes by block.
4 Q Is it all east of I-5 or --
5 A No. It's -- part of Hosmer are us, but like 72nd and
6 Hosmer that actually falls under 3 Sector. And then if
7 you're closer to 38th, we actually don't take over until
8 M Street, but everything north of 38th is actually the
9 3 Sector.
10 Q Okay.
11 A And then we're pretty much everything east of that.
12 Q And in 2013, what had you been told about issues with
13 regard to panhandlers in the area of Portland Avenue?
14 A That we were having a lot of citizen complaints about
15 aggressive panhandlers at the intersections, specifically
16 at 28th and Portland.
17 Q Is that area within the City of Tacoma or within the
18 Puyallup Tribe?
19 A That is City of Tacoma.
20 Q Isn't the gas station there tribal?
21 A I am actually not sure. That area gets a little tricky.
22 I would have to look at a map. Some houses are tribal;
23 some aren't. So even if tribal owns the gas station, I
24 know I've personally taken calls there before, so I'm not
25 sure if it is actually us -- the gas station

1 **specifically, I'm not sure if that's actually us or not,**
2 **but I know I have been dispatched there before.**
3 Q What's the jurisdiction for the City of Tacoma, say, if
4 there's an issue at the casino or something like that?
5 **A It all depends on tribal. Sometimes they do not have**
6 **enough officers to cover things, so they will call us.**
7 **If it is a very serious crime, they normally call us to**
8 **handle it. But we usually do not respond to the actual**
9 **casino unless we are asked.**
10 Q Okay. What about the area like up in Fife on the west
11 side of the -- I guess it would be the north side of the
12 freeway, where, you know, there's the gas -- the service
13 station and there's the casino up there, that whole --
14 **A In Fife?**
15 Q Yeah.
16 **A Yeah, that's not our area at all.**
17 Q That's not City of Tacoma?
18 **A Yeah.**
19 Q Okay. Had you approached any panhandlers at that
20 intersection prior to the day that you approached Cesar
21 Beltran?
22 **A Yes.**
23 Q And on what occasions?
24 **A I do not have the exact dates.**
25 Q Had you ever seen Cesar Beltran there before?

1 **A** **Not that I recall.**
2 Q Had you ever seen Cesar Beltran before in your life?
3 **A** **Not that I recall.**
4 Q When you approached the intersection to encounter
5 Mr. Beltran, did you know who he was?
6 **A** **No.**
7 Q Did you know what his name was?
8 **A** **No.**
9 Q Did you know anything about him?
10 **A** **No.**
11 Q And throughout the course of that -- of the interaction
12 that day, up until the point where he was shot, did you
13 ever know his name?
14 **A** **No.**
15 Q Were you ever able to run his name through dispatch?
16 **A** **No.**
17 Q Okay. So you didn't know anything about his background?
18 **A** **Correct.**
19 Q Didn't know anything about any potential criminal
20 history?
21 **A** **Correct.**
22 Q Or a lack of criminal history?
23 **A** **Correct.**
24 Q When you approached him that day, what direction did you
25 come from?

1 **A I initially was headed north on Portland, but I had to go**
2 **under the overpass and turn around and come back. So**
3 **when I got parked, I was parked facing south on Portland**
4 **Avenue. So I would have approached him from the east.**
5 Q Okay. But originally you were driving south on Portland?
6 **A Correct.**
7 Q And I get a little turned around there. So would that
8 mean that you were headed towards the -- towards
9 downtown?
10 **A Correct.**
11 Q So you were going towards the freeway?
12 **A Correct.**
13 Q Okay. So then you would have been -- he would have been
14 to your left?
15 **A Correct.**
16 Q Okay. And what was he doing when you first saw him?
17 **A I believe he was walking in and out of traffic and**
18 **approaching vehicles.**
19 Q Did he have anything in his hands?
20 **A I believe he had a sign, a cardboard sign.**
21 Q What did that sign say?
22 **A I do not recall.**
23 Q Did you ever read that sign?
24 **A Not that I recall. I believe, when I turned back around,**
25 **he didn't have it, or he didn't have it in his hands**

1 **anymore.**
2 Q Okay. Is panhandling a misdemeanor?
3 **A At the time, yes, it was a misdemeanor in the city of**
4 **Tacoma.**
5 Q Other than suspecting that he was -- so did you suspect
6 that he was panhandling?
7 **A Yes.**
8 Q Okay. Did you actually see him -- did anyone actually
9 complain about him?
10 **A No.**
11 Q And did you actually see him take money from someone?
12 **A No.**
13 Q Did you actually see him ask anyone for money?
14 **A No.**
15 Q So you, yourself, didn't hear him ask anyone for money?
16 **A Correct.**
17 Q What is panhandling? How is it defined?
18 **A I can't give you the exact RCW on it.**
19 Q What's your understanding of the elements of panhandling?
20 **A For the aggressive panhandling law, at the time it was**
21 **basically entering traffic, approaching vehicles, holding**
22 **some sort of sign or any sort of thing asking for money,**
23 **and then actually attempting to step into traffic.**
24 Q Okay. So you don't know what the sign said; correct?
25 **A Correct.**

1 Q And you never heard him ask anyone for money?
2 **A Correct.**
3 Q So you don't know if he actually ever asked anyone for
4 money?
5 **A Correct.**
6 Q So based on what you saw, did you have enough information
7 to write a citation for panhandling?
8 **A Based on what I saw of him entering traffic? At that**
9 **point, no. Which is why I stopped to inform him of the**
10 **panhandling laws.**
11 Q Okay. But at the point that you first saw him, you had
12 insufficient information to write an infraction for
13 panhandling?
14 **A Yes.**
15 Q And so then you went through the intersection, under the
16 overpass, made a U-turn, and then came back underneath
17 the overpass on Portland Avenue?
18 **A Correct.**
19 Q Okay. And at the point that you came back, did he have
20 the sign anymore?
21 **A No.**
22 Q And was he walking in and out of cars anymore?
23 **A No. I believe at that point he was laying on the ground**
24 **with his feet in the road.**
25 Q Okay. So you didn't observe any panhandling behavior

1 when you came back?
2 A **When I turned around, no.**
3 Q Okay. So then at that point, would you have had enough
4 information to write a citation for panhandling?
5 A **No.**
6 Q Can you arrest someone on suspicion of panhandling?
7 A **If I have probable cause, yes.**
8 Q And what would you need in order to have probable cause?
9 A **It would have to meet the conditions in the RCW.**
10 Q Did you have probable cause to arrest Cesar Beltran for
11 panhandling?
12 A **At that time, no.**
13 Q Did you ever have probable cause to arrest Cesar Beltran
14 for panhandling?
15 A **No.**
16 Q And so you pulled your car over, and I understand you
17 turned your lights on; correct?
18 A **Correct.**
19 Q Okay. And then you exited your car?
20 A **Yes.**
21 Q And what happened next?
22 A **At that point I believe -- now, this is just off the top**
23 **of my head. I believe he was still laying on the ground,**
24 **and I attempted to speak with him.**
25 Q Okay. And did he respond to you?

1 A **No. I believe he looked at me.**
2 Q Okay. What happened next?
3 A **I believe he kept digging in the hole in the ground.**
4 Q Okay. What happened next?
5 A **And then at some point he stood up.**
6 Q Okay.
7 A **And then I tried to speak with him, and he wasn't**
8 **responding. So I asked him if he spoke English, and he**
9 **gave me a no. So at that time I got on the air and asked**
10 **for Jake Gutierrez, who is Paul 044, because he speaks a**
11 **little bit of Spanish, and I wanted to see if he could**
12 **come and help.**
13 Q Okay. So at this point he'd been digging in a hole in
14 the ground; correct?
15 A **Correct.**
16 Q He had been nonresponsive?
17 A **Verbally nonresponsive.**
18 Q And when you asked if he spoke English, he shook his
19 head, and you understand that -- stood that to mean that
20 he did not; correct?
21 A **Correct.**
22 Q And did he -- was he doing anything in the hole that you
23 could see?
24 A **At that point it appeared that he was just digging with**
25 **his hands.**

1 Q Okay. I read in your statement that at some point he
2 took a bottle out and took a drink of it.
3 **A Yes.**
4 Q Was that before you called Gutierrez, or after?
5 **A I would have to reread my statement for the exact time of**
6 **it.**
7 Q Okay. But you recall that he took some -- what did he
8 take out and drink from?
9 **A It appeared to be a soda bottle.**
10 Q Okay. Do you know what kind?
11 **A It appeared to be an orange liquid.**
12 Q Like Orangina?
13 **A I don't know. It was just an orange -- orange liquid.**
14 Q Like a Fresca?
15 **A I have no idea.**
16 Q Have you ever been to Mexico?
17 **A No.**
18 Q Do you know what kind of sodas they drink?
19 **A No.**
20 Q And so he took some bottle of orange soda out of a hole
21 in the ground and drank it; correct?
22 **A Correct.**
23 Q And you knew that he didn't speak English; correct?
24 **A I just knew -- I assumed he didn't speak English based on**
25 **his shaking of his head.**

1 Q Okay. And other than that, what was his appearance?
2 **A He appeared to be dirty.**
3 Q And he was lying on the ground; correct?
4 **A Correct.**
5 Q Based on your training, did this appear to be normal
6 behavior?
7 **A It all depends on your definition of normal.**
8 Q Do people that don't have some type of mental illness lay
9 on the ground and dig in holes and take sodas out and
10 drink them?
11 **A I've encountered several people who do not have diagnosed**
12 **mental illness that do things that I would not consider**
13 **normal.**
14 Q Maybe they should have diagnosed mental illness.
15 **A I'm not a mental health professional.**
16 Q Did those things seem normal to you?
17 **A No.**
18 Q And what happened next?
19 **A There's a timespan there where we are not saying anything**
20 **to each other, and I'm basically just standing there**
21 **for -- waiting for Jake Gutierrez to arrive.**
22 Q Okay.
23 **A And then --**
24 Q Did you contact him again?
25 **A I eventually asked him if he has ID, and I give him hand**

1 **signals for ID. Usually if you make a signal like this,**
2 **(indicating), people will be like, "Uh-huh."**
3 **And then his movement was to pat his pockets like he**
4 **was looking for his wallet. And then he reached down in**
5 **what I believed was the hole, so I moved up to make sure**
6 **he wasn't grabbing anything. And at that point, that is**
7 **when he came up with the pipe, and I was able to block it**
8 **with my left forearm.**
9 Q Where did it hit you specifically?
10 **A Between there and there.**
11 Q Okay. So -- and what hand did he have the pipe in?
12 **A I believe it was his right hand.**
13 Q Okay. And can you demonstrate for the camera what he did
14 with the pipe?
15 **A Sure.**
16 THE WITNESS: Am I allowed to stand
17 up?
18 MR. LEBANK: Yeah.
19 MS. HOMAN: Just --
20 THE WITNESS: I'll try to be -- so
21 basically what it was, if I'm over here on him, he
22 reached down, and in one fluid movement came up, swung
23 it. And I got my arm up and blocked it, which is why it
24 hit me here, and then he took off.
25 Q (By Mr. LeBank) Okay. So he hit you with a pipe and

1 then ran?
2 A **Correct.**
3 Q Okay. And what did you do?
4 A **I followed him.**
5 Q And how -- where did you follow him to?
6 A **He went to the middle of East 28th Street, and he was**
7 **right in front of what appeared to me to be either a red**
8 **minivan or SUV, and he was standing there. Originally,**
9 **he was facing me, and he still had the object that I'm**
10 **going to refer to as a pipe in his right arm. And he had**
11 **it held above his head in this manner.**
12 **And then he turned away from me and was facing the**
13 **car, that, from what I could tell, had at least two**
14 **passenger -- a driver and a passenger in the front seat.**
15 Q Did he ever hit the car?
16 A **No.**
17 Q Did he ever hit anyone in the car?
18 A **No.**
19 Q Did he ever threaten anyone in the car?
20 A **Verbally, no.**
21 Q Did he ever threaten anyone besides yourself?
22 A **I cannot answer that.**
23 Q Did you observe him threaten anyone besides yourself?
24 A **Depends on your definition of a threat.**
25 Q Well, did he actually threaten a human being other than

1 yourself?
2 A **Verbal- --**
3 MS. HOMAN: Object as to form.
4 THE WITNESS: Verbally, no.
5 Q (By Mr. LeBank) Okay. Physically?
6 A **Physically, standing in front -- right in front of their**
7 **vehicle with a pipe up like this, I would assume that to**
8 **be a threat.**
9 Q Okay. Did he ever actually hit anyone in the car?
10 A **No.**
11 Q Did he hit the car?
12 A **No.**
13 Q Okay. And what happened next?
14 A **At that point I was yelling verbal commands at him. He**
15 **turns back around, still pipe raised, faces me, and then**
16 **he takes off running south on Portland Avenue on the west**
17 **side of the street.**
18 Q Okay. So he was running away from you?
19 A **Correct.**
20 Q Okay. And what did you do?
21 A **At that point I got on the radio, called for priority**
22 **backup. Since he turned his back to me, I was able to**
23 **holster my firearm and pull out my ECT, which I**
24 **discharged into his back, at which point he turned**
25 **around, raised up the pipe again above his head, just**

1 **like this, (indicating), took a step towards me and**
2 **started swinging down. I literally had my Taser in my**
3 **right hand. I threw it behind me onto Portland Avenue,**
4 **and then I came up with my firearm and discharged it.**
5 Q So you threw your Taser on the ground, unholstered your
6 firearm, and discharged it; correct?
7 **A Correct.**
8 Q And where did you shoot? Where was the first shot?
9 Where did you shoot him the first time?
10 **A I can tell you --**
11 Q The first shot?
12 **A I do not know where the first shot hit.**
13 Q Okay. How many shots did you fire?
14 **A I believe it was four.**
15 Q Where were you aiming?
16 **A I was aiming at his chest.**
17 Q Okay. And where did you -- was he facing you the entire
18 time that you shot him?
19 **A In my recollection, yes.**
20 Q Okay. So in your recollection, he was facing you when
21 all four shots were fired?
22 **A In my recollection, yes.**
23 Q And how were -- can you stand up here and show us what is
24 your firing position? How do you -- what is your -- when
25 you fire your firearm, what position are you in?

# EXHIBIT 2

Transcript of the Testimony of

**Timothy Rushton**
September 7, 2016

**Beltran-Serrano v. City of Tacoma**
No. 15-2-11618-1

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1 **just -- if I pull my Taser out right now and shoot it at**
2 **the wall and let go of it, drop it on the ground, it will**
3 **go for five seconds.**
4 Q So it would be fair to say the firearms were shot during
5 that Taser cycle?
6 **A During the initial Taser cycle, yeah.**
7 MS. DRISCOLL: That's all the
8 questions that I have for you.
9 THE WITNESS: Cool.
10 MS. HOMAN: Trooper, I have just a
11 couple of questions.
12 EXAMINATION
13 BY MS. HOMAN:
14 Q If I understood your earlier testimony, the dash cam is
15 mounted on the upper portion of the window, front
16 windshield, on the passenger's side of your patrol
17 vehicle; is that correct?
18 **A Yes, ma'am.**
19 Q So does the dash cam capture the same perspective that
20 you have when sitting in the driver's seat of your patrol
21 car?
22 **A No.**
23 Q You watched the video here today captured by your dash
24 camera. Did that video depict the same view that you had
25 of the events that occurred on the corner?

1 **A No.**
2 Q Did the video depict all of the actions that you observed
3 between Mr. Beltran and Officer Volk on the corner?
4 **A No.**
5 Q You indicated that, after Mr. Beltran stood up, you saw
6 him move his arm in a downward strike towards Officer
7 Volk; is that correct?
8 **A Yes.**
9 Q Do you recall if you could see an object in his hand?
10 **A No, not in the dash cam video.**
11 Q Not in the video, but from your recollection of your
12 perspective you had from the driver's seat, could you see
13 if he had a weapon in his hand?
14 **A Not specifically, no.**
15 Q And is that action a criminal act, based on your training
16 and experience as a Washington State Patrol trooper?
17 **A To fight a law enforcement officer?**
18 Q Yes.
19 **A It is a criminal act.**
20 Q What crime is that?
21 **A Assault against a law enforcement officer in the --**
22 **whatever degree, first, second, or third.**
23 Q Is that a felony?
24 **A Yeah.**
25 Q You were interviewed by Detective Bair on June 29th, and

1 according to the interview, at approximately 5:32 in the
2 afternoon. So immediately after you cleared the scene;
3 is that correct?
4 **A** **Yes.**
5 Q And when you gave your interview with Detective Bair, did
6 you try to be as accurate you could in your recollection?
7 **A** **Yes.**
8 Q Did you try to be as complete as you could in your
9 recollection?
10 **A** **Yes.**
11 Q Did you knowingly say anything that was untrue?
12 **A** **No.**
13 Q Did you knowingly admit any information?
14 **A** **No.**
15 MS. HOMAN: No further questions.
16 MS. DRISCOLL: Just one second.
17 FURTHER EXAMINATION
18 BY MS. DRISCOLL:
19 Q Am I correct in understanding that your testimony is that
20 Mr. Beltran downwardly struck Officer Volk at a point
21 that is not in the dash cam video? Is that accurate?
22 **A** **Correct.**
23 Q At what point did you observe that?
24 **A** **From the scuffle on the corner to when they started**
25 **moving through the traffic, I believe that's where I saw**

1 **it at some point in my vision, either periphery or**
2 **looking down toward -- in the direction where they were**
3 **at or moving towards.**
4 Q Are you saying that the downward strike occurred after
5 Officer Volk and Mr. Beltran left the southwest corner --
6 or northwest corner field of view of the dash cam?
7 **A State your -- what's the question again? Sorry. That**
8 **wasn't too clear to me.**
9 Q I'll rephrase. Are you saying that the -- okay. Let's
10 go to the camera. It will be easier to be on the same
11 page here. At 3:01:39 seconds, you had circled the block
12 and were back on the street, observing Officer Volk and
13 Mr. Beltran on the northwest corner of the intersection;
14 is that accurate?
15 **A Yeah.**
16 Q And you can see Officer Volk and Mr. Beltran talking
17 through the left part of the dash cam's field of vision;
18 is that accurate?
19 **A Correct.**
20 Q At approximately 3:01:52, Officer Volk and Mr. Beltran go
21 off the camera to the left because -- or to the right and
22 are out of the field of vision of the dash cam; is that
23 accurate?
24 **A Yeah.**
25 Q Is it your testimony that Mr. Beltran downwardly struck

1 Officer Volk at this point?
2 A **At some point around this part of the video, yeah, but**
3 **it's not visible on the dash camera. All I can say is**
4 **that I recall from my field of view -- from my field of**
5 **view, not the dash cam, I could see there was something**
6 **that came down in her -- towards her direction from him.**
7 **Whether it was visible or not on the dash cam, I**
8 **don't know if you can see it or not, but there was**
9 **something swung towards her or put towards her direction**
10 **in what would be an unfriendly manner.**
11 Q And is it your testimony that that strike would have
12 occurred immediately after Officer Volk and Mr. Beltran
13 go -- leave the field of vision of the dash cam from the
14 northwest corner of the intersection?
15 A **I would have imagined that it would have taken place,**
16 **like, right there almost, almost in front of the van that**
17 **was there.**
18 Q Okay. So it would be -- it's your testimony that it
19 occurred right after the two left the northwest corner;
20 is that accurate?
21 A **What's your question?**
22 Q Whether it's your testimony that Officer Volk and
23 Mr. Beltran -- let me rephrase that. Strike that.
24 Is it your testimony that the downward strike
25 occurred almost immediately after Officer Volk and

1 Mr. Beltran leave the dash cam field of vision?
2 A **Right.**
3 Q And is it your testimony that these two cars that you see
4 in the dash cam were not obstructing your view of that
5 occurrence?
6 A **They were still in my field of view down the left side of**
7 **these cars. So -- and then once they got out of my field**
8 **of view, that's when you see me move my patrol car even**
9 **more to go out there and go help Officer Volk.**
10 Q Due to these two cars that you can see here on the dash
11 cam at approximately 3:01:55, would it be accurate to
12 say, you didn't have a clear view of what was occurring
13 between Mr. Beltran and Officer Volk?
14 MS. HOMAN: Object as to form.
15 THE WITNESS: So they were moving, so
16 when they left the field of the view -- field of view
17 from the camera, they were no longer in view of the
18 camera. I could still see them because, if you can tell
19 or not from the dash cam, it's one thing, but I was
20 positioned to the left in the lane, and sitting --
21 leaning towards the left side of the driver's seat so I
22 could see further out my windshield to keep an eye on
23 Officer Volk, make sure she was safe.
24 And then -- so when the fight ensued and they left
25 the corner, I was looking further out to the left and saw

1 the fight continue on and go through the two lanes of
2 traffic right there crossing the intersection.
3 Q (By Ms. Driscoll) Due to the angle of where you were
4 versus where Officer Volk and Beltran were, did you have
5 an unobstructed view of what was occurring?
6 **A Until they kept going on. But once I saw that the fight**
7 **was -- it wasn't stopping, I knew I needed to go over**
8 **there and help. I moved my patrol car, and so my eyes**
9 **left -- I took my eyes off of them for a moment to move**
10 **my patrol car and then parked my patrol car and got out.**
11 **And that's when they had -- when I moved my patrol**
12 **car, they had already began moving, so they were playing**
13 **like a cat-and-mouse game basically, if you want to call**
14 **it that, to where they kept getting further and further**
15 **out of my field of view.**
16 Q When did your eyes leave them for a moment?
17 **A So when the fight happened and they initially stepped off**
18 **the corner into the traffic, and I could still see them**
19 **down the left side of the vehicles, that's when the**
20 **fight -- the whole fight and everything, and the downward**
21 **strike was still taking place, that's when I moved my**
22 **patrol car. And when I moved my patrol car, they were**
23 **already moving further into traffic, and that's when I**
24 **couldn't see them.**
25 Q Can you tell me, based on the dash cam video, at what

1 point your testimony is that your eyes left Officer Volk
2 and Mr. Beltran? You can --
3 MS. HOMAN: Object as to form.
4 THE WITNESS: Probably when the patrol
5 car starts moving.
6 Q (By Ms. Driscoll) So would that be approximately --
7 **A About right there.**
8 Q Okay. So that would be 3:01:57? Does that sound right?
9 **A Yeah.**
10 Q Is it true that there were three vehicles in front of
11 you?
12 **A There was a Plymouth Caravan or Dodge Caravan. There's**
13 **a -- I think that's a Honda Odyssey in front of the**
14 **silver car, and the silver car. I think it's a Mercedes**
15 **or a Ford.**
16 Q And is the blue van depicted in the video pretty wide?
17 **A It's the normal width of a vehicle, or what that would**
18 **be.**
19 Q Normal width of a van?
20 **A Uh-huh.**
21 MS. HOMAN: "Yes"?
22 THE WITNESS: Yes. Sorry.
23 MS. HOMAN: Thank you.
24 Q (By Ms. Driscoll) And does the blue van have ladders on
25 top of it?

1 **A Yeah.**
2 Q Approximately how high would you say the top ladder is on
3 the blue vehicle?
4 MS. HOMAN: Object as to form.
5 THE WITNESS: I'm six-foot-tall, even,
6 standing on flat ground. I'd just -- from the video,
7 just estimate, probably around seven feet, maybe a little
8 taller.
9 Q (By Ms. Driscoll) So how is it that you saw past these
10 three vehicles to see Mr. Beltran?
11 MS. HOMAN: Objection. Asked and
12 answered.
13 THE WITNESS: So if the video
14 doesn't -- the video doesn't show the true position of
15 the car. I mean, you can kind of align the two push bars
16 right there and there up with the back of that car, but
17 the distance back from it, and I'm not a math wiz or
18 geometry wiz or anything like that, but all I can just
19 tell you is that from my recollection, that I was to the
20 left of the lane and pushing, like leaning against the
21 door, the window of my patrol car so I could see down the
22 left side of all the vehicles. Not a standard position
23 you would put your patrol car in unless you were trying
24 to see something or anything.
25 Q (By Ms. Driscoll) And is it your testimony that, at that

1 point, when you're leaning to the left side of -- or
2 against your patrol vehicle, you had a clear shot of what
3 was going on?
4 **A** **Correct.**
5 MS. DRISCOLL: That's it for me.
6 MS. HOMAN: No further questions.
7 (Signature waived.)
8 (Deposition concluded at
9 4:02 p.m.)
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# EXHIBIT 3

THE HORNORABLE GRETCHEN LEANDERON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | NO. 15-2-11618-1<br><br>DEFENDANT'S FIRST DISCOVERY REQEST TO PLAINTIFF CESAR BELTRAN-SERRANO<br><br>**WITH ANSWERS AND RESPONSES THERETO** |

Plaintiffs generally object to the extent that these interrogatories and instructions purpose to impose a duty on Plaintiff beyond those imposed by the rules of civil procedure and local court rules. Plaintiff further objects to Defendant City of Tacoma's instructions and definitions to the extent that they are overly broad and unduly burdensome, violate the civil rules, and require a regurgitation of information that is equally available to the City of Tacoma.



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INTERROGATORY NO. 9:

If you have ever applied for disability benefits of any kind, provide the benefit for which you applied, the disability you claimed, the date of application, the outcome of the decision, the basis for the outcome of the decision, and a summary of benefits received, if any.

ANSWER:

See response to Interrogatory No. 8 above.

REQUEST FOR PRODUCTION NO. 4: Produce all documents in your possession that relate to any social security benefit you have applied for as identified in your response to Interrogatory No. 9.

RESPONSE:

Plaintiffs do not have any responsive documents in their possession.

## LIABILITY

INTERROGATORY NO. 10: Describe in your own words what happened on June 29, 2013. Your answer should include your actions, the actions of the police officers, any commands the officers issued to you, your response to those commands, any communications you had with the officers, any physical contact you had with the officers and the position or location of persons who were present.

ANSWER:

This case arises from the negligent and unprovoked assault and battery against Cesar Beltran and the unnecessary, unreasonable, negligent, reckless, wanton and excessive use of force against Cesar Beltran by the Tacoma Police Department, including Officer Michel Volk.

On June 29, 2013 at approximately 3:00 p.m. Cesar Beltran, a mentally disabled Tacoma citizen, of minority descent, age 53, was walking southbound with his bike along the shoulder of Portland Avenue, approaching the intersection of E. 28th Street. Mr. Beltran was not engaged in any illegal activity or violating any laws as he walked with his bike.

As he approached the intersection of E. Portland Avenue and E 28th Street, Mr. Beltran stopped to inspect something that he saw alongside the road when he was approached by



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Tacoma Police Department Officer Michel Volk. Although Mr. Beltran is Spanish speaking, Officer Volk attempted to communicate with Mr. Beltran in English.

Officer Volk confirmed that Mr. Beltran did not speak English and radioed for a Spanish speaking officer. Officer Volk, however, did not wait for a Spanish speaking officer and continued to interrogate Mr. Beltran in English.

Mr. Beltran did not understand Officer Volk and could not comprehend why the officer was stopping and speaking to him. Confused, Mr. Beltran then turned away from Officer Volk and began to continue on his way, crossing the intersection of E. 28th Street and Portland Avenue. Without any indication that Mr. Beltran was involved in a crime or any illegal activity, suddenly and without reason or warning, Officer Volk chased after Mr. Beltran across the street, and fired her Taser, in an attempt to stun and subdue him.

Unfortunately, the officer failed to properly use and deploy her Taser, and it did not make proper contact with Mr. Beltran. Mr. Beltran then swayed to shake the Taser tags away from his body. In an effort to get away from the unreasonable, unnecessary, and unprovoked attack and assault by Officer Volk, Mr. Beltran turned with his back toward Officer Volk and began move away from her across the intersection.

Suddenly and for no apparent reason, Officer Volk panicked and without warning repeatedly and unnecessarily shot and discharged her firearm repeatedly in rapid succession, firing several shots into Mr. Beltran's body, striking him in the back, torso and upper extremities. Mr. Beltran was shot multiple times by Officer Volk. He was on the ground bleeding profusely and completely incapacitated. Despite the fact that he was clearly incapacitated and not moving, officers then angrily slammed him to the pavement, kneed him in his neck and back, forcefully restrained him and proceeded to handcuff him.

At the time of the unnecessary shooting, Mr. Beltran was moving away from Officer Volk, did not pose an immediate threat to the safety of Officer Volk or others, and he was not actively resisting or attempting to evade arrest. Instead, of simply allowing him to walk away and waiting for a Spanish speaking officer to arrive, Officer Volk pursued Mr. Beltran, escalated the situation, and then panicked and shot him repeatedly.

Subsequently, the Tacoma Police Department began to try to justify Officer Volk's actions, trying to convince witnesses that Mr. Beltran had threatened Officer Volk or that he somehow posed a threat to a police officer armed with a taser and police issued firearm. Despite the fact that he had a mental disability and had just been shot, the Police Department then hurried to Mr. Beltran's hospital room and attempted to compel him to give a statement after he had been shot multiple times by a police officer and had undergone multiple surgeries to save his life.

Mr. Beltran has been found to be incompetent on multiple occasions. Despite his obvious mental health issues, the Tacoma Police Department and Officer Volk failed to acknowledge his disability or to act appropriately with a mentally ill Spanish speaking



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individual. Training regarding use of deadly force, training regarding handling a situation without unnecessarily escalating it, and training regarding a Spanish speaking individual with mental disabilities was extremely unreasonable, negligent, lacking and substandard and the police at the scene including Officer Volk didn't understand or follow the directives that they had.

**INTERROGATORY NO. 11: In Section IV of your complaint, you assert a claim for negligence. State all facts and identify the legal authority upon which you rely to establish that the defendant owed you an actionable duty as an individual.**

ANSWER: Plaintiffs object to the City of Tacoma's contention interrogatories in that these types of interrogatories are strongly disfavored, especially at this stage in the litigation, and because they ask for legal conclusions which are beyond the scope of the civil rules. Specifically, a party is not required through discovery to admit or provide legal conclusions to discovery requests by opposing parties. *Brust v. Newton,* 70 Wn.App. 286, 295, 852 P.2d 1092 (1993); *Thompson v. King Feed & Nutrition Serv., Inc.,* 153 Wn.2d 447, 105 P.3d 378 (2005). This question directly and intentionally violates that cardinal rule.

Without waiver, see Plaintiffs operative complaint. *See also* Plaintiffs response to Interrogatory No. 10 above. Defendant City of Tacoma owed a duty of care to refrain from affirmatively injuring the Plaintiff. This duty is clearly set forth by the Washington Supreme Court in multiple cases and through its adoption of the Restatement (Second) of Torts § 281 cmts. c, d & § 302B (1965). *See e.g., Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d 871, 288 P.3d 328 (2012) (Chambers J., concurring); *Washburn v. City of Federal Way,* 178 Wn.2d 732 (2013); *RCW 4.92.080(2); see also Mancini v. City of Tacoma*, 2015 WL 3562229. Defendants actions in escalating the situation and in unnecessarily shooting Cesar Beltran multiple times was patently unreasonable and is to be judged under the totality of the circumstances.

**INTERROGATORY NO. 12: Identify all facts upon which you base your contention that any duty owed to you, as identified in Interrogatory No. 12, was breached.**

ANSWER: Objection. This request is overly broad and unduly burdensome, and seeks information both equally accessible to, and already possessed by Defendant. This request also seeks information protected by the attorney-client privilege and/or the work product doctrine and/or the common interest/joint defense protections, and further seeks information beyond the scope of that required to be provided by applicable rules and law. An interrogatory that purports to require a party to disclose of all facts or which request the identification of all documents supporting factual allegations "should be considered to be overly broad and unduly burdensome. *See IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D. Kan. 1998); *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 405 (D. Kan. 1998) (court will generally find interrogatories overly broad and unduly burdensome "on their face" to the extent



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they ask for "every fact" which supports identified allegations or defenses). Moreover, "a contention interrogatory is not simply a vehicle for requiring an adversary to regurgitate all factual information in discovery." *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D. 162, 173 (S.D. N.Y. 2004). To require a party to provide "each and every fact" supporting an allegation of the complaint, together with the identification of each knowledgeable person and supporting document, "would require plaintiff to improperly provide the equivalent of a narrative or otherwise detailed account of her entire case in chief, together with the identification of virtually all supporting evidence for each fact." *Hilt v. SFC Inc.*, 170 F.R.D. 182, 186 (1997). "Indiscriminate use of blockbuster interrogatories, such as these, do not comport with the just, speedy and inexpensive determination of the action. To require answers for them would more likely cause delay and unreasonable expense of time, energy and perhaps money." *Id.*, 170 F.R.D. at 187. As one commentator has discussed,

> A particular problem is the use of definitions of the term 'identify' that attempt to force an opponent to provide information about every document, witness, or event referred to in the interrogatory answers. Such sweeping definitions tend to be ineffective and invite objections--often legitimate--they are too burdensome, rendering the entire set of interrogatories useless.

Schwarzer, et al., *Civil Discovery and Mandatory Disclosure: A Guide to Effective Practice*, 4-5 to 4-7 (Second Ed. 1994), quoted in *Hilt v SFC, Inc.*, 170 F.R.D. at 188. In *Lawrence v. First Kansas Bank & Trust*, 169 F.R.D. 657, 664 (D. Kan. 1996), the Cour established a reasoned medium: the responding party need not set forth "each and every fact" supporting an allegation, but instead disclose the "principal or material" facts supporting the allegation in the complaint.

Plaintiffs also direct the City of Tacoma to the pleadings and other material already in the City's possession including but not limited to information filed in this case and to the documents and information produced and to be produced in discovery by the City of Tacoma. Without waiver of any of the foregoing objections, Plaintiff responds with the following non-exhaustive answer:

Please see the Complaint herein, as well as Plaintiff's Answer to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 5: Produce all documents upon which you rely to support your negligence claim against the City of Tacoma.

RESPONSE: Objection. This question is overly broad and unduly burdensome. Furthermore it would result in a replication of all of the documents already produced by the City of Tacoma as well as all of the testimony that has yet to be taken in this case. It is simply impossible to produce each and every document that supports the Plaintiffs claims in this case as they are numerous. Without waiver, please see attached documents in addition to all documents already produced by the City of Tacoma in response to Plaintiffs discovery requests.



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INTERROGATORY NO. 13: In Section IV of your Complaint, you assert a claim of assault and battery. State all facts upon which you base your contention that the defendant's conduct was excessive under prevailing law enforcement standards. Identify all persons who will offer testimony in support of this claim and provide a summary as to what each will say.

ANSWER: Plaintiffs object to the City of Tacoma's contention interrogatories in that these types of interrogatories are strongly disfavored, especially at this stage in the litigation, and because they ask for legal conclusions which are beyond the scope of the civil rules. Specifically, a party is not required through discovery to admit or provide legal conclusions to discovery requests by opposing parties. *Brust v. Newton,* 70 Wn.App. 286, 295, 852 P.2d 1092 (1993); *Thompson v. King Feed & Nutrition Serv., Inc.,* 153 Wn.2d 447, 105 P.3d 378 (2005). This question directly and intentionally violates that cardinal rule. See also objection to Interrogatory No. 11. Without waiver, please see Plaintiffs Complaint and response to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 6: Produce all documents upon which you rely to support your claim of assault and battery.

RESPONSE: Objection. This question is overly broad and unduly burdensome. Furthermore it would result in a replication of all of the documents already produced by the City of Tacoma as well as all of the testimony that has yet to be taken in this case. It is simply impossible to produce each and every document that supports the Plaintiffs claims in this case as they are numerous. Without waiver, please see attached documents in addition to all documents already produced by the City of Tacoma in response to Plaintiffs discovery requests.

INTERROGATORY NO. 14: In Section IV, paragraphs 21 and 22, you contend defendant breached its duty to "properly train and supervise its employees in dealing with the mentally ill and in the appropriate use of force." State all facts and identify the legal authority upon which you rely to establish this contention.

ANSWER: Plaintiffs object to the City of Tacoma's contention interrogatories in that these types of interrogatories are strongly disfavored, especially at this stage in the litigation, and because they ask for legal conclusions which are beyond the scope of the civil rules. Specifically, a party is not required through discovery to admit or provide legal conclusions to discovery requests by opposing parties. *Brust v. Newton,* 70 Wn.App. 286, 295, 852 P.2d 1092 (1993); *Thompson v. King Feed & Nutrition Serv., Inc.,* 153 Wn.2d 447, 105 P.3d 378 (2005). This question directly and intentionally violates that cardinal rule.

Without waiver, see Plaintiffs operative complaint. *See also* Plaintiffs response to Interrogatory No. 10 above. Defendant City of Tacoma owed a duty of care to refrain from affirmatively injuring the Plaintiff. This duty is clearly set forth by the Washington Supreme



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Court in multiple cases and through its adoption of the Restatement (Second) of Torts § 281 cmts. c, d & § 302B (1965). *See e.g., Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d 871, 288 P.3d 328 (2012) (Chambers J., concurring); *Washburn v. City of Federal Way,* 178 Wn.2d 732 (2013); *RCW 4.92.080(2); see also Mancini v. City of Tacoma*, 2015 WL 3562229. Defendants actions in escalating the situation and in unnecessarily shooting Cesar Beltran multiple times was patently unreasonable and is to be judged under the totality of the circumstances.

REQUEST FOR PRODUCTION NO. 7: Produce all documents upon which you rely to establish anything that relates to the defendant's duty to "properly train and supervise its employees in dealing with the mentally ill and in the appropriate use of force" as outlined in your response to the preceding interrogatory.

RESPONSE: Objection. This question is overly broad and unduly burdensome. Furthermore it would result in a replication of all of the documents already produced by the City of Tacoma as well as all of the testimony that has yet to be taken in this case. It is simply impossible to produce each and every document that supports the Plaintiffs claims in this case as they are numerous. Without waiver, please see attached documents in addition to all documents already produced by the City of Tacoma in response to Plaintiffs discovery requests.

INTERROGATORY NO. 15: State all facts and identify the legal authority upon which you rely to establish your contention in paragraphs 23 that the "defendant breached that duty, acted unreasonably, and was negligent, when it failed to have and follow proper training, policies, and procedures on the standard practices of officers in contacting Spanish speaking individuals with mental illness."

ANSWER: Plaintiffs object to the City of Tacoma's contention interrogatories in that these types of interrogatories are strongly disfavored, especially at this stage in the litigation, and because they ask for legal conclusions which are beyond the scope of the civil rules. Specifically, a party is not required through discovery to admit or provide legal conclusions to discovery requests by opposing parties. *Brust v. Newton,* 70 Wn.App. 286, 295, 852 P.2d 1092 (1993); *Thompson v. King Feed & Nutrition Serv., Inc.,* 153 Wn.2d 447, 105 P.3d 378 (2005). This question directly and intentionally violates that cardinal rule.

Without waiver, see Plaintiffs operative Complaint. *See also* Plaintiffs response to Interrogatory No. 10 above. Defendant City of Tacoma owed a duty of care to refrain from affirmatively injuring the Plaintiff. This duty is clearly set forth by the Washington Supreme Court in multiple cases and through its adoption of the Restatement (Second) of Torts § 281 cmts. c, d & § 302B (1965). *See e.g., Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d



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871, 288 P.3d 328 (2012) (Chambers J., concurring); *Washburn v. City of Federal Way,* 178 Wn.2d 732 (2013); *RCW 4.92.080(2); see also Mancini v. City of Tacoma*, 2015 WL 3562229. Defendants actions in escalating the situation and in unnecessarily shooting Cesar Beltran multiple times was patently unreasonable and is to be judged under the totality of the circumstances.

REQUEST FOR PRODUCTION NO. 8: Produce all documents upon which you rely to establish that the defendant "failed to have and follow proper training, policies, and procedures on the standard practices of officers in contacting Spanish speaking individuals with mental illness," as outlined in your response to the preceding interrogatory.

RESPONSE: Objection. This question is overly broad and unduly burdensome. Furthermore it would result in a replication of all of the documents already produced by the City of Tacoma as well as all of the testimony that has yet to be taken in this case. It is simply impossible to produce each and every document that supports the Plaintiffs claims in this case as they are numerous. Without waiver, please see attached documents in addition to all documents already produced by the City of Tacoma in response to Plaintiffs discovery requests.

## LITIGATION

INTERROGATORY NO. 16: Produce any and all statements in plaintiffs' or counsels' possession, other than those protected by the work product doctrine, relative to this case and your allegations herein. If any statements are withheld pursuant to the work product doctrine, produce a privilege log, identifying each such statement, including the name of the person(s) whose statements have been withheld and the date each such statement was taken.

RESPONSE: Objection. The information sought is protected by the work product doctrine. Without waiving the objection, please see attached. Additional statements that are in Plaintiffs' possession are duplicative of those produced by Defendant in their discovery responses.

INTERROGATORY NO. 17 : In accordance with CR 26, provide the following information regarding any expert witnesses you expect to call at the time of trial:

[***Your failure to fully answer this interrogatory will result in the City of Tacoma***



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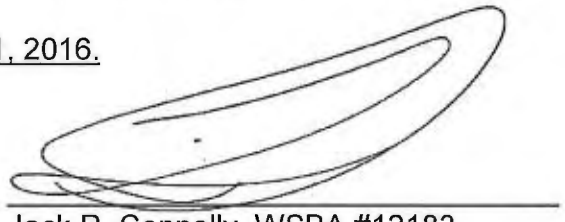
The undersigned is the attorney for Cesar Beltran-Serrano, has read the foregoing answers to Interrogatories, and certifies that they are in compliance with CR 26(g).

Responses dated: March 1, 2016.



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August 21 2017 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** |

## I. INTRODUCTION

This case involves a Tacoma police officer's negligent actions culminating in the unlawful and unjustified use of deadly force against Plaintiff Cesar Beltran. Defendant City of Tacoma now attempts to escape liability under a misguided understanding of the public duty doctrine, claiming that a police officer did not owe a duty to act reasonably when interacting with an older man with apparent mental illness, who was possibly homeless, and a non-English speaker. However, the public duty doctrine is not at issue in this case. To the contrary, under



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well-established precedent, where a law enforcement officer chooses to act, she has the duty to act reasonably. This is the law for good reason. Otherwise, law enforcement would be given carte blanche permission to engage in negligent acts which harm people, and then escape liability by hiding behind the public duty doctrine. That result is untenable under the law and contrary to the foundations of the tort system.

## II. STATEMENT OF FACTS

On June 29, 2013, Tacoma Police Officer Michel Volk was working swing shift and driving north on Portland Ave. in Tacoma, WA. Written Statement of Michel Volk, p. 1, Ex. A to LeBank Decl. She saw a man wandering aimlessly on the corner of an intersection that was a known location for panhandling. *Id*. Officer Volk decided to park her patrol vehicle near the man and educate him about panhandling laws. She did not have reasonable suspicion or probable cause that the man was committing a crime. Report of D.P. Van Blaricom, p. 10, Ex. B to LeBank Decl. The officer approached the man, and observed him digging in a hole for no apparent reason. Deposition of Michel Volk Dep. at 45:13-25; 46:20-22; 47:1-17, Ex. C to LeBank Decl. She also observed the man had poor hygiene and appeared homeless. *Id*. The man then lifted an old bottle out of the hole, took a swig of an orange liquid, and put the bottle back. LeBank Decl., Ex. A, p. 2. Officer Volk began to talk to the man. Volk Oral Statement, p. 6., Ex. D to LeBank Decl. He looked at her blankly and continued to dig in the hole. *Id*. Officer Volk then asked the man if he understood English, and he shook his head, indicating "no". *Id*. Volk radioed for a Spanish speaking officer, Jake Gutierrez. *Id*.; Ex. R to LeBank Decl. The Spanish speaking officer was nearby, between less than one and a half minute away with sirens on, or five minutes at a normal speed. Deposition of Jake Gutierrez, p. 48:20-25, 49:1-2, Ex. E to LeBank Decl.



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After determining the man did not understand her, and before the Spanish-speaking officer arrived, Officer Volk continued to move closer to the man and interrogate him in English. Volk Oral Statement, p. 6, Ex. D to LeBank Decl. The man became scared of the officer and confused, and attempted to get away from her. Declaration of Winona Stevens, ¶¶ 3-4, Ex. F to LeBank Decl. He started to cross the intersection of E. 28th Street and Portland Avenue. Declaration of Teresa Graham, ¶ 3, Ex. G to LeBank Decl.; Scene Diagram, Ex. H to LeBank Decl. Officer Volk chased after Cesar across the street. Stevens Decl. ¶ 5, Ex. F to LeBank Decl. In an attempt to stop Cesar, the officer deployed her ECT (or "taser") into his back as he was moving away from her. Volk Oral Statement, p. 6, Ex. D to LeBank Decl. The ECT did not have its desired effect and Cesar was still standing, and able to brush the taser tags away from his body. Deposition of Jeffrey Paynter, p. 74:7-9, Ex. I to LeBank Decl. Next, Cesar turned away from the officer and continued to try to get away from her. Graham Decl. ¶ 3, Ex. G to LeBank Decl. Officer Volk panicked and immediately threw her Taser to the ground, pulled out her Glock 45 and fired four shots into Cesar's right arm, through and through his buttocks, into his torso and across his left forearm into his upper left back. Report of Matthew Noedel, p. 6, Ex. J to LeBank Decl.; Stevens Decl. ¶ 5, Ex. F to LeBank Decl. The shooting occurred within 37 seconds of Volk's call for back-up. Volk Dep, 102:1-6, Ex. C to LeBank Decl.

Later, in order to attempt to justify the erratic and unprovoked shooting, Officer Volk claimed that Cesar had lifted a metal object in her direction and she was in fear of her life. Volk Written Statement, p. 3., Ex. A to LeBank Decl. Despite the fact that no eye witnesses corroborated Officer Volk's version of events, and despite the fact that Officer Volk did not sustain any injuries, the Tacoma Police charged Cesar with Assault 2 and Obstructing a Law



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Enforcement Officer. Those charges were ultimately dismissed. Ballistics expert Matthew Noedel confirms "[n]one of the fired bullet paths to Beltran support him 'swinging' or otherwise moving his arms at the time of receiving the gunshots. Such claims are not supported by the physical evidence". Noedel Report, Ex. J to LeBank Decl.

### A. Tacoma Police Officer Volk Needlessly and Recklessly Escalated an Encounter with a Mentally Ill, Spanish-Speaking Individual

Instead of following her policy and training, Officer Volk needlessly and recklessly escalated her encounter with Cesar Beltran by encountering a subject with mental illness improperly, continuing the interaction after she learned the subject did not speak English, refusing to wait for back-up to arrive, chasing after Cesar when he attempted to leave the situation, misfiring her ECT or taser device, and unreasonably believing she was in imminent danger when she shot Cesar four times.

Officer Volk's actions wholly ignored and were contrary to Tacoma Police Department policies and training on police encounters with mentally ill individuals. Tacoma police officers are trained to identify symptoms of mental illness among subjects they choose to interact with. Report of Sue Peters, Ex. K to LeBank Decl., Mental Health Policy, Ex. L to LeBank Decl. Specifically, officers learn that a person with schizophrenia may demonstrate neglect of basic hygiene, a "blunted" emotion expression, disordered thinking, and delusions. *Id*. at p. 5. The symptoms of Cesar's mental illness were readily apparent to Officer Volk by her own admissions. She described observing his poor hygiene, his confusion or inability to understand her, and his behavior of digging in a hole on the side of the road and drinking out of a bottle in the hole. See Volk Dep. at 45:13-25; 46:20-22; 47:1-17, Ex. C to LeBank Decl. In total, this behavior did not seem normal to Officer Volk. *Id*. at 47:1-17. Officer Volk also noted that the



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taser may not have affected Cesar due to his apparent mental instability. Volk Oral Statement, p. 10., Ex. D to LeBank Decl. A reasonable police officer would have been alerted that Mr. Beltran was at least potentially suffering from mental illness and acted accordingly. Officer Loretta Cool, stated:

> Q: Okay. If you approached somebody and they were on their stomach, lying on the ground, digging in a hole in the ground, and their appearance was unkept, would you have any reason to suspect that that person was suffering from mental illness?
> ….
>
> Q: Okay. So would you, in approaching that person, consider that they may be under the influence of drugs or may be suffering from mental illness?
>
> A: Yes, I would.

Deposition of Loretta Cool, 15:2-7, 16-19, Ex. M to LeBank Decl.

If a mental illness is even suspected, an officer should engage that individual in a specific manner, including: remain calm and do not overreact, show concern and understanding, exhibit extreme patience, be aware your uniform might frighten them, listen, tell them what you are going to do before you do it, don't maintain direct eye contact, etc. *See* Ex. L. These modified behaviors are important in order to prevent a situation from escalating, to calm the subject down, and handle the situation. Cool Depo. 32:23-25, 33:1-7.

Police practices expert Sue Peters explained that Officer Volk's interactions with Cesar were inconsistent with training and policy and needlessly escalated the situation. Ex. K to LeBank Decl., pp. 4-5. Among other examples, Officer Volk showed no awareness that her uniform and marked police car could frighten Cesar. Instead, she crowded Cesar closely and questioned him forcefully. In her deposition, Officer Volk was not even aware of this procedure. *Id*. at 5. Next, she rushed the interaction instead of exhibiting "extreme patience"



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when she continued to interrogate Cesar in English— even though a Spanish-speaking officer was at most five minutes away. *Id*. Expert Peters opines that "[h]ad Officer Volk continued to stand back (about 7 to 8' as she stated from Beltran), remain patient and wait for Officer Gutierrez to arrive, more likely than not, a different outcome in this case would have occurred". *Id*. Critically, in deposition, Officer Volk was unaware of a majority of the procedures guiding law enforcement interactions with mentally ill subjects. *Id.*

In addition to her errors in dealing with a mentally ill individual, Officer Volk also negligently and needlessly escalated a simple informative talk with a citizen into a deadly force situation. Officer Volk did not have reasonable suspicion or probable cause to suspect Cesar of the crime of panhandling. Report of D.P. Van Blaricom, p. 10, Ex. B to LeBank Decl. Further, multiple witnesses testified that there was no assault or altercation on the street corner. See e.g., Ex. G to LeBank Decl, ¶ 2, Ex. F to LeBank Decl, ¶ 3. Significantly, the dash cam video of Trooper Rushton likewise does not depict an altercation or assault on the corner.

Q: Okay. And is that depicted on this video?

A: I don't see it on the video, no.

Deposition of Timothy Rushton, p.19:13-19, Ex. N to LeBank Decl. Officer Volk had no legal justification or duty to pursue Cesar when he chose to walk away from her and across the street.[1]

> Q: There's been an alleged assault and before the discharge of her firearm, is it your opinion that no reasonable police officer would have taken immediate enforcement action to take Mr. Beltran into custody for assault under those circumstances?

[1] Deposition of D.P. Van Blaricom, p.54:2-15, attached as Ex. O to LeBank Decl. Expert Blaricom opines that even if Cesar had hit Officer Volk on the street corner, the officer was still under no duty or obligation to pursue him, and indeed should not have since back-up was on the way.



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A: Under the totality of these circumstances, yes, ma'am.

Blaricom Dep., 63:9-15, Ex. O to LeBank Decl.

Instead of letting the frightened and non-threatening Cesar leave, Volk chased after him and tasered him in the back as he fled. She reported, "he was no longer, in my mind, he was no longer a threat to me at that point cause his back was to me; so I put my, I holstered my firearm, pulled out my ECT, discharged it". Volk Oral Statement, p. 6, Ex. D to LeBank Decl. Next, Volk either improperly deployed the taser, or ignored her training that mentally ill individuals may not be affected by the use of a taser. *Id.* at p. 10.

Volk created a volatile and threatening situation through her own actions and in her own mind that was not supported by the facts. Report of Blaricom, pp. 10-11, Ex. B to LeBank Decl. Significantly, she knew that back-up was a mere few minutes away. *Id.* She chose not to wait for Officer Gutierrez, and instead forced an interaction with someone who could not understand her and was "non-responsive" to her commands. *Id.* Volk yelled commands in English at Cesar, and then became aggravated and agitated that he was not listening to her, despite knowing that he did not understand English. Ex. D to LeBank Decl., p. 6.

Immediately after the taser failed to have its intended effect, Officer Volk then overreacted in the most extreme manner possible and shot Cesar four times in the torso, buttocks, and arm as he was moving backward and away from her. *Id*. at 10; Noedel Report p. 6, Ex. J to LeBank Decl. Officer's Volk's determination that lethal force was justified was unreasonable in light of the objective facts and no reasonable police officer would have felt threatened in the same situation. Blaricom Report, pp. 11-12, Ex. B to LeBank Decl.

There is no evidence Cesar posed any threat, let alone a threat of imminent serious injury or death justifying use of lethal force, aside from Officer Volk's own statements. Cesar



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posed no threat to Officer Volk and no threat to anyone else. Graham Decl., ¶ 7, Ex. G to LeBank Decl. Cesar had "turned away from the officer like he was trying to run away and that's when she pulled out the gun and popped it four times". Declaration of Summer Thomas-Bournes, ¶ 4, Ex. P to LeBank Decl. Cesar was unarmed, moving away from the officer, and had an overall passive demeanor. These actions all culminated in Officer Volk's unreasonable choice to shoot Cesar four times from a distance that she described to be twenty-one-feet.

**B. Post-Incident, Officer Volk Fashions Contradicting Versions of the Events**

Between the date she shot Cesar and present, Officer Volk has given differing versions of events that led to her shooting Cesar. The day of the shooting, she spoke with fellow officer Loretta Cool. Eleven days later, she gave a written and oral statement. Two years later, and after a video emerged of portions of the encounter, Officer Volk gave yet another account of events in her deposition in this case.

Hours after shooting Cesar, Officer Volk told Officer Loretta Cool what had happened. Cool Dep, p. 44:9-25. 45:1-8, Ex. M to LeBank Decl.; see also Ex. S to LeBank Decl. Volk reported that Cesar did not listen to her, and that he came toward her. *Id*. Then she tasered him and the taser had no effect. *Id*. Next, Cesar ran across the road, she followed him, and then he came at her with a piece of metal. *Id*. She stated she "blocked the attack with her arm. *Id*. She fired her weapon, which did not seem to stop him, so she fired again. *Id*. She said the second shots stopped him". *Id*. Significant to this account is the order and location of events. In this version, Cesar is in the middle of the road when he comes at her with a piece of metal. Volk's arm is then hit by the metal immediately before she fired her gun at Cesar and while the two are in the roadway.

Eleven days later, Officer Volk issued a four-page written statement recounting the



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shooting. Ex. A to LeBank Decl. In relevant part, Volk reported that while she was standing on the street corner with Cesar, he bent over to get what she thought would be his identification.

> I thought he was bending over to get his ID for me. Instead the male grabbed what I can best describe as a piece of construction pipe that had been bent down to an almost oval shape and *immediately* swung the pipe at my upper body area with his right hand…
>
> I was able to block the pipe from hitting my upper body and neck area with my left forearm. *At that time, the male ran into the middle of E 28th St*…

*Id*. at p. 2. In an oral statement on July 10, 2013, Officer Volk reported Cesar hit her in the arm at the street corner of the intersection. Volk Oral Statement, p. 8, Ex. D to LeBank Decl. She states he then ran across the street, and she followed. *Id*. As Cesar was running away from her, Volk reported she tasered him in the back. *Id*.

Notably, the July 10th statements are incongruent with statements made to Loretta Cool. For example, the location and timing of when Cesar allegedly raised and hit Volk with the metal object differ. In one account, Cesar hit Volk while they were on the corner of the intersection. In the other, the hit occurred in the middle of the road and that she immediately responded to the threat by shooting him. Additionally, in the statement to Cool, Volk reports that she tasered Cesar when he came toward her. In the later accounts, she says that Cesar was moving away from her when she tasered him, and she tasered him in the back.

### C. Eyewitness Testimony and Video Evidence Do Not Corroborate Any of Volk's Versions of Events

None of the multiple lay witnesses who observed this event saw Cesar hit Officer Volk with a heavy metal object, either on the street corner or in the intersection. Additionally, through the course of this case, a dashcam video from a Washington State Patrol trooper has surfaced. See Dashcam video of Trooper Rushton, Ex. U to LeBank Decl. That video shows



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the interactions between Volk and Cesar on the street corner. There is no physical assault or altercation shown on that video. This was confirmed by Trooper Rushton in his deposition. Deposition of Rushton, p.19:13-19, Ex. N to LeBank decl.

A brief summary of a few key witness accounts is included here.

**Teresa Graham Decl.: (attached as Exhibit G to LeBank Decl.)**

> On June 29, 2013 I was driving with my daughter in my 2004 Yukon XL Four door SUV. We were headed down Portland Avenue and we stopped at the light before the underpass in order to go southbound on I-5. While we were stopped at the red light at the northwest corner of the intersection I saw a police officer talking to a Hispanic man near an orange bike. The interaction appeared calm and I did not see anything physical going on or loud talking or shouting. I had my window down and had a clear and unobstructed view of the intersection.
>
> The man started running across the street in the crosswalk crossing the lane coming off of the freeway. The officer pursued him and she tried to shoot him with a taser. The taser appeared to miss him but may have nicked him because he turned around briefly and then turned away from the officer and continued across the street away from her. The officer threw down the taser and grabbed her weapon and he turned his back around to run away and she just shot him four times. My complete attention was on the entire interaction, from the time the officer was talking with the man until the man was shot.

**Winona Stevens Decl.: (attached as Exhibit F to LeBank Decl.)**

> As we were stopped, I looked out my window to the left and saw a police officer and a man on the northwest corner of the intersection. I had a clear view of the entire incident. The police officer parked and her and the man started walking towards each other and ended up at the man's belongings and a bike. Then the two people stood at the corner. The officer was close to the man, about 2-3 feet away. I saw the man was down towards the ground and then he stood up.
>
> The man did not hit or strike the officer in any way. The officer then pulled out what I assumed was a weapon due to the officer's stance, which later I learned was a tazer. This action by the officer seemed to escalate the situation. The man started backing away from the officer. He was focused on her and trying to get away from her. The man had something in his hands that was black and flexible looking. It was not a hard metal object and did not resemble a weapon. The man started moving away from the officer. He was not running, but it seemed like he was trying to get away from her. The man was backing up, turning, backing- like he was trying to make sure he didn't trip over the island in the road or run into a



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car. The man never moved back towards the officer. The distance between the man and the officer was about 10-20 feet. The man did not have anything that resembled a weapon in his hands.

There is ample evidence that Cesar never hit Officer Volk. If a jury finds this fact, Defendants' own police expert has admitted Volk's use of deadly force against Cesar would not be justified.

A: Your question is that, if Mr. Beltran hypothetically did not strike Officer Volk, and hypothetically he was not armed with a 10.34-pound metal club, would the shooting have been justified? Is that what you're asking me?

Q: Yes.

A: No, it would not have.

Deposition of Jeffrey Paynter, p.55:17-25, 56:1-5, Ex. I to LeBank Decl.

This case involves a situation where an officer failed to follow department policy and procedure for dealing with the mentally ill, provoked an encounter between herself and a Spanish speaking mentally ill man, and then gave multiple versions of the events. The eye-witness accounts of the incident establish that Cesar did not strike or assault Officer Volk in any manner – that she chased him across the intersection and shot him for no apparent reason.

## III. LEGAL AUTHORITY & ARGUMENT

### A. It is well-established that police officers – just as any person – owe a duty to act reasonably to avoid the foreseeable consequences of their actions.

The common law duty that a police officer act *reasonably* is well established. Washington Courts evaluating the actions of police officers have long held that "*if the officers do act, they have a duty to act with reasonable care*." *Coffel v. Clallam County*, 47 Wn.App. 397, 403-04, 735 P.2d 686, *review denied,* 108 Wn.2d 1014 (1987) (emphasis added). This duty stems from the common law duty to avoid the foreseeable consequences of one's actions.



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"Actors have a duty to exercise reasonable care to avoid the foreseeable consequences of their acts. Restatement (Second) of Torts § 281 cmts. c, d (1965)." *Washburn v. City of Federal Way*, 178 Wn.2d 732, 757, 310 P.3d 1275 (2013). This a basic concept of negligence.

> Negligence . . . is conduct which falls below the standard established by law for the protection of others against unreasonable risk. It necessarily involves a foreseeable risk, a threatened danger of injury, and conduct unreasonable in proportion to the danger. If the defendant could not reasonably foresee any injury as the result of his act, or if his conduct was reasonable in the light of what he could anticipate, there is no negligence, and no liability.

*Hunsley v. Giard,* 87 Wn.2d 424, 435–36, 553 P.2d 1096, 1103 (1976) (quoting W. Prosser, Torts s 43 at 250 (4th ed. 1971).

Just like Washington, the California Supreme Court "has long recognized that peace officers have a duty to act reasonably when using deadly force." *Hayes v. County of San Diego*, 57 Cal.4th 622, 160 Cal.Rptr.3d 684, 305 P.3d 252 (2013) (citing *Munoz v. Olin*, 24 Cal.3d 629, 634, 596 P.2d 1143 (1979); *Grudt v. City of Los Angeles*, 2 Cal.3d 575, 587, 468 P.2d 825 (1970)).[2] "The reasonableness of an officer's conduct is determined in light of the totality of the circumstances." *Hayes,* 160 Cal.Rptr. 3d at 632 (citing *Grudt*, 2 Cal.3d at 585-588). In *Hayes,* the California Supreme Court held that an officer's "tactical conduct and decisions preceding the use of deadly force are relevant considerations under California law in determining whether the use of deadly force gives rise to negligence liability. Such liability can arise, for example, if the tactical conduct and decisions show, as part of the totality of circumstances, that the use of deadly force was unreasonable." *Hayes*, 57 Cal. 4th at 639, 305 P.3d at 263." As the California Supreme Court summarized, "peace officers have a duty to act reasonably when using deadly force, a duty that extends to the totality of the circumstances



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surrounding the shooting, including the officers' preshooting conduct." *Id*. This is a common law duty owed by police officers and applies with equal force in Washington. *See e.g., Peterson v. Lewis County*, No. 14-35201, attached as Ex. T to LeBank Decl.

Other jurisdictions, like California, have likewise held that complainants in a wrongful death or excessive force action against law enforcement are allowed to submit both a negligence claim and an assault and battery claim to the jury. *See e.g., Reed v. District of Columbia*, 474 F.Supp.2d 163, 173-174 (2007) (negligence claim submitted to jury in wrongful death shooting claim against police officer where a "distinct act of negligence, a misperception of fact, may have played a part in the decision to fire."); *see also LaBauve v. State*, 618 So.2d 1187, 1190 ( La. App. 1993) (trial court did not err in allowing negligence claim against police officer where officer pushed 76-year-old man onto rocks and gravel in course of arrest); *Picou v. Terrebonne Par. Sheriff's Office Through Rozands*, 343 So. 2d 306, 308 (La. Ct. App. 1977).

Police practices expert Sue Peters confirms "as an officer, you look at the whole situation and assess it together, so if there's several red flags, that's how an officer views situations". Peters Dep., 57:14-16, Ex. Q to LeBank Decl. A police officer's actions must be evaluated from the totality of circumstances.

> From a police practices perspective, the fundamental issues in any use of force are: 1) Was force reasonably necessary under the totality of circumstances? 2) If force was reasonably necessary, was the amount or degree of force used objectively reasonable under the totality of circumstances?

Blaricom Report, Ex. N to LeBank Decl.

**B. The Public Duty Doctrine Does Not Bar Cesar Beltran's Negligence Claim.**

The City of Tacoma requests that the Court dismiss Cesar Beltran's negligence claims

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[2] California, like Washington, has waived sovereign immunity such that public employees are statutorily liable to



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claiming that they are barred by the public duty doctrine. The City of Tacoma is misapplying the public duty doctrine. Recently, the Court of Appeals rejected a similar argument by the *City of Tacoma in Mancini v. City of Tacoma*, 188 Wn.App. 1006 (2015) (unpublished opinion). In *Mancini*, the Court of Appeals adopted the framework set forth by Justice Tom Chambers in *Munich v. Skagit Emergency Comm. Cntr.*, 175 Wn.2d 871, 878, 288 P.3d 328 (2012). Applying that framework, the court of appeals held that the public duty doctrine does not apply to common law claims that exist independent of any statutory duty.

> The public duty doctrine is not a judicially-created immunity. It does not bar a common law claim brought by the person to whom the breached duty was owed. The trial court erred in dismissing Mancini's negligence claim.

*Mancini,* 188 Wn. App. 1006 at 8. Applying the analysis adopted by the Court of Appeals in *Mancini* and set forth in multiple opinions of the Washington Supreme Court the public duty doctrine does not apply because the claims in this case are common law claims.

**i. The Washington State legislature has issued a broad waiver of sovereign immunity.**

In 1961, the legislature enacted RCW 4.92.090 and abolished sovereign immunity. That waiver was quickly extended "to the municipal branches of government." *See Kelso v. City of Tacoma*, 63 Wn.2d 913, 918-19 (1964); *Hosea v. City of Seattle*, 64 Wn.2d 678, 681, 393 P.2d 967 (1964); RCW 4.96.010 (1967). State and local government agencies in Washington have since been liable for damages arising out of their tortious conduct to the same extent as if they were a private person or corporation, "All local governmental entities.…shall be liable for damages arising out of their tortious conduct….to the same extent as if they were a private person or corporation". RCW 4.96.010(1); *see also* RCW 4.92.090.

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the same extent as private persons for injuries caused by their acts or omissions. Gov. Code, § 820.



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These legislative enactments operate to make state and local government "presumptively liable in all instances in which the Legislature has *not* indicated otherwise." *Savage v. State*, 127 Wn.2d 434, 445, 899 P.2d 1270 (1995) (emphasis in original). This constitutes "one of the broadest waivers of sovereign immunity in the country." *Id*. at 444. Shortly after the waiver of sovereign immunity went into effect, the Washington Supreme Court ruled that a municipality "was liable for its tortious conduct, if any, at the time of the automobile collision in which the plaintiff was injured." *Kelso,* 63 Wn.2d at 919.

**ii. After the waiver of sovereign immunity, courts began employing the "public duty doctrine" as a "focusing tool" to assist in ascertaining whether a special governmental duty to act had been created by statute or code.**

The public duty doctrine "began its useful life as a tool to assist courts in determining the intent of legislative bodies when interpreting statutes and codes." *Cummins v. Lewis Co.*, 156 Wn.2d 844, 863, 133 P.3d 458 (2006) (Chambers, J. concurring). If the court determines that the legislative body "intended to protect certain individuals or a class of individuals to which the plaintiff belonged," a duty to that plaintiff attaches. *Id*. at 864. On the other hand, if the duty applies to the public in general, then the outcome turns on considerations such as "whether a 'special relationship' existed between the plaintiff and the government, often based on something other than the categories established in the statute." *Id*.

> The public duty doctrine provides that regulatory statutes impose a duty on public officials which is owed to the public as a whole, and that such a statute does not impose any actionable duty that is owed to a particular individual.

*Honcoop v. State*, 111 Wn.2d 182, 188, 759 P.2d 1188 (1988).

The public duty doctrine does not provide immunity from liability, and the "public duty" analysis is not triggered simply because the defendant happens to be a government agency or entity. *Osborn v. Mason County*, 157 Wn.2d 18, 27, 134 P.3d 197 (2006). In fact,



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Washington courts "have almost universally found it unnecessary to invoke the public duty doctrine to bar a plaintiff's lawsuit." *Id*. (*quoting Bailey v. Town of Forks*, 108 Wn.2d 262, 266, 737 P.2d 1257 (1987)).

> Because a public entity is liable in tort "to the same extent as if it were a private person or corporation," the public duty doctrine does not—cannot—provide immunity from liability. Rather, it is a "focusing tool" we use to determine whether a public entity owed a duty to a "nebulous public" or a particular individual.

*Osborn*, 157 Wn.2d at 27 (citations omitted); *see also Munich v. Skagit Emergency Comm. Cntr.*, 175 Wn.2d 871, 878, 288 P.3d 328 (2012) ("the public duty doctrine is a focusing tool used to determine whether the defendant owed a duty to a nebulous public or a particular individual") (quotations omitted); *Garnett v. City of Bellevue*, 59 Wn.App. 281, 284 (1990).

In *Garnett,* the Court of Appeals upheld a jury verdict against the Bellevue Police Department involving the conduct of two police officers. The trial court recognized that the case did not fit within "any of the four [exceptions to the public duty doctrine] ... [but] presents a situation in which the doctrine should not be applied." 59 Wn.App. at 284. The Court of Appeals noted that "the general rule is that, 'a public officer is answerable to private persons who sustain special damage resulting from the negligent performance of the officer's imperative or ministerial duties, unless the wrong done is a violation of a duty which he owes solely to the public.'" *Id*. at 286 (quoting S. Speiser, *The American Law of Torts* § 17.65 (1988). Thus, if an individual would be liable under the common law then the fact that they are a police officer does not create immunity from liability.

**iii. The "public duty doctrine" does not apply to this case because Cesar Beltran's claims are based on common law duties, whereas the "public duty" analysis is triggered only where the alleged duty is based on statute or codes.**

The public duty doctrine has been referenced in a number of Washington cases, but—by



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their own admission—the Washington courts have not always been clear about what the public duty doctrine is, what it means, or when and how to apply it.

> [T]here is great confusion about what our public duty doctrine jurisprudence means. We (and I include myself) have not been careful in what we have said in past cases. This has given rise to deeply held and greatly divergent views on the doctrine. Some think the public duty doctrine is a tort of its own imposing a duty on any government that gives assurances to someone. Some view it as providing some sort of broad limit on all governmental duties so that governments are never liable unless one of the four exceptions to the public duty applies, thus largely eliminating duties based on the foreseeability of avoidable harm to a victim. In fact, the public duty doctrine is simply a tool we use to ensure that governments are not saddled with greater liability than private actors as they conduct the people's business.

*Munich*, 175 Wn.2d at 885-86 (Chambers, J.) (five-justice majority concurrence).

Importantly, the public duty doctrine does not apply where a plaintiff's claims are based on breach of a common law duty; the Washington Supreme Court has never held that a government did not have a common law duty solely by virtue of the public duty doctrine. The only governmental duties the Washington Supreme Court has limited under the public duty doctrine are those legal obligations imposed by a statute, ordinance, or regulation:

> Since its inception, the "public duty" analysis has remained largely confined to cases in which the plaintiff claims that a particular statute has created an actionable duty to the "nebulous public." Although we could have been clearer in our analyses, the only governmental duties we have limited by application of the public duty doctrine are duties imposed by a statute, ordinance, or regulation. This court has never held that a government did not have a common law duty solely because of the public duty doctrine.

*Munich*, 175 Wn.2d at 886-87 (citations omitted).

**iv. This case does not implicate the "public duty doctrine" because the doctrine applies only to cases of inaction (nonfeasance); where—as here—the government entity does act, it is axiomatic that the municipality must avoid negligence (misfeasance).**



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Cases involving *active* negligence, or misfeasance, do not implicate the public duty doctrine; exceptions to the public duty doctrine are not even relevant. When public officials "*do* act, they have a duty to act with reasonable care," and the public duty doctrine does not bar claims for negligence." *Coffel*, 47 Wn.App. at 403-04.

In *Coffel,* for example, a number of local police officers and sheriff's deputies responded to two different break-ins at the plaintiffs' place of business (both resulting from an ownership dispute). The day after the first break-in, the responding deputy told the plaintiff that the matter was "strictly a civil case, and that he 'didn't want to hear any more about it.'" 47 Wn. App. at 399. That evening, other officers responded to a second call and found that the perpetrator had returned and was destroying the premises. *Id.* Those officers "took no action to prevent the destruction" and, instead, told the property owners *they* had to leave. *Id.* at 399-400. In reversing summary judgment as to those officers and Clallam County, the appellate court rejected the suggestion that the public duty doctrine applied to the claims against them:

> The doctrine provides only that an individual has no cause of action against law enforcement officials for failure to act. Certainly if the officers do act, they have a duty to act with reasonable care.

*Id.* at 403.

In *Staats*, a fisheries patrol officer went to the home of an individual he suspected of performing construction below the high-water mark of the Snake River without a permit and demanded that he provide identification. *Staats v. Brown*, 139 Wn.2d 757, 760-61 (2000). The sixty-two-year-old individual refused to provide the requested identification, sidestepped and attempted to walk away only to be physically subdued by the officer. After the charges against Staats were dismissed he brought claims against the officer under both § 1983 and state tort law for false arrest, false imprisonment, and assault and battery. *Id*. at 777-78. The Washington



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Supreme Court noted that immunity does not exist for officers who use excessive force to effectuate an arrest.

> Officer Brown's arrest of Jack Staats was contrary to existing law. State qualified immunity does not bar Staats' state law tort action for false arrest, false imprisonment, and assault and battery.

*Id*. at 780.

Similarly, in *Parrilla v. King County*, 138 Wn. App. 427, 157 P.3d 879 (2007), a Metro bus driver left a bus running with keys in the ignition and the bus was seized by an occupant high on PCP, who drove off, injuring several people. The Washington Court of Appeals analyzed the Parrillas' suit under *Restatement (Second) of Torts* §302B, which provides that "[a]n act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal." Based on Washington precedent and the Restatement (Second), the court found that the county had a duty to protect individuals like the Parrillas from the third party's foreseeable criminal acts. *Id*. at 433-41. The Court of Appeals found the duty arose because the bus driver's affirmative acts exposed the Parrillas to foreseeable harm at the third-party criminal's hands. *Id*. at 438-39. Specifically, the Court of Appeals found the driver had acted affirmatively by getting off the bus and leaving a dangerous situation behind.

The Washington Supreme Court's decisions in *Robb v. City of Seattle*, 176 Wn.2d 427, 295 P.3d 212 (2013) and *Washburn v. City of Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013) have reaffirmed Washington precedent holding that the public duty doctrine is not triggered in cases of misfeasance, such as this. Although the Supreme Court concluded that *Robb* was a nonfeasance case, not subject to § 302B, it recognized § 302B as an independent



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basis for a duty. The court reinforced the *Robb* holding in *Washburn v. City of Federal Way*. In *Washburn*, the Supreme Court held that an officer who served an anti-harassment order had a duty to act reasonably in the service of that order, so as not to expose a third party to criminal behavior. *Washburn*, 310 P.3d at 1290.

The City of Tacoma reduces its analysis of these cases to a single footnote and claims that *Robb* and *Washburn* only apply to the duty to control the conduct of a third person. *See* Def. Mot. at 10 n. 3. This argument is non-sensical, *Robb* does not involve a duty to "control the conduct of a third person." Instead, it affirms the principle articulated in *Coffel* that where an officer chooses to act – *i.e.* an act of commission – he/she has an obligation to act reasonably. While the public duty doctrine is properly used to shield officers for their alleged failure to perform statutory duties – typically, protecting citizens from harm by third parties – the doctrine is not properly used to shield officers from their own tortious conduct. *See e.g., Washburn*, 310 P.3d at 1291 ("We have long recognized that where a municipal entity owes a duty to specific individuals, it must not discharge this duty negligently.").

Taken to its logical extreme, the City of Tacoma's argument is that officers cannot be negligent, and that one injured by an officer's misfeasance – say, speeding through a busy crosswalk – has no claim as a matter of law, because the duty not to so speed is owed to the public at large. There is no support for that position. The public duty doctrine does not and cannot bar Cesar's claim. Once Officer Volk chose to act, she owed a duty to do so reasonably. This duty was owed to the individual foreseeably injured by her actions – Cesar Beltran. Cesar's claims are not based on a failure to perform any statutory duty, but rather on a failure to act with reasonable care to prevent the foreseeable consequences of her actions. *See, e.g., Keller v. City of Spokane,* 146 Wn.2d 237, 243, 44 P.3d 845 (2002) ("The municipality, as an



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individual, is held to a general duty of care, that of a 'reasonable person under the circumstances."').

**C. Negligence and Intentional Torts May Be Tried Together.**

As an alternative basis to its misguided argument regarding the public duty doctrine, the City of Tacoma contends that "to the extent that plaintiff's negligence claim is predicated upon Officer Volk's use of deadly force, such a claim is not cognizable." To support its position, the City of Tacoma cites to two district court decisions interpreting Washington law which are not binding on this court. However, as evidenced above, an officer may be liable under the common law for acting unreasonably and such conduct is to be evaluated under the totality of the circumstances including the events leading up to the shooting. *See Coffel, Washburn, Hayes, Supra.*

The California Supreme Court has reviewed and rejected an argument nearly identical to the one presented by the City here. In *Grudt,* a police officer in plain clothes, carrying a double-barreled shotgun, approached a car, possibly causing the driver to think he was being robbed or attacked. 2 Cal.3d 575. The driver accelerated the car toward a second plainclothes officer, and then both officers open fired on the driver, killing him. *Grudt*, 2 Cal.3d at 586, 468 P.2d 825. During trial, the court granted the defendants motion to dismiss the plaintiff's negligence claims. The California Supreme Court reversed and held that the plaintiff is allowed to present both intentional and negligence theories to the jury in a case involving an officer involved shooting.

> The trial judge apparently premised his decision to remove the negligence issue from the jury's consideration upon the theory that plaintiff could not go to the jury on both negligence and intentional tort principles. He reasoned that, since both Officer Kilgo and Officer Rinehart admitted they shot Grudt with intention to kill



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> or seriously harm him, there could no longer be any issue of their negligence in the shooting. We conclude the trial court's ruling lacks support in law or reason.

*Grudt,* 2 Cal. 3d at 586, 468 P.2d 825. The California Supreme Court held that by dismissing the plaintiff's negligence claims that it deprived the plaintiff of a crucial theory of her case.

> The prejudicial effect of the trial court's erroneous decision to grant defendants' motions to exclude the issue of the officers' negligence and to strike the police tactical manual from evidence need not be belabored. The plaintiff was deprived of a crucial theory in her case which would have supported a jury verdict in her favor. By definition, that is reversible error.

*Id*. at 588. The holding in *Grudt* was subsequently affirmed in *Munoz v. Olin*, 24 Cal.3d 629, 596 P.2d 1143 (1979) wherein the trial court submitted both negligence and intentional tort theories to the jury in an officer involved shooting.

Likewise, in *Reed v. D.C.* the District of Columbia held that where a plaintiff pleads separate claims of assault and battery and negligence in a wrongful police shooting case that these claims can proceed to trial. *Reed v. D.C.*, 474 F. Supp. 2d 163, 173–74 (D.D.C. 2007); *District of Columbia v. White*, 442 A.2d 159 (D.C. 1982). The court noted that "[t]hese cases often share common characteristics, notably the use of deadly force and evidence of two opposing factual scenarios – a police officer claiming he [or she] shot in self-defense and a witness claiming the decedent was unarmed when shot." *Reed*, 474 F.Supp.2d at 174.

> Each of the cited cases in the *White* line that have upheld submitting both negligence and battery counts to a jury have common characteristics. Each involves the use of deadly force. Each invokes a police regulation establishing a standard of care with respect thereto that is arguably distinct from the excessive force standard. Each involves alternate scenarios in at least one of which a distinct act of negligence, a misperception of fact, may have played a part in the decision to fire. Each involves a negligent act that precedes the application of the relevant force of resort to firearms, i.e., prior to the pulling of the trigger.

*Dist. Of Columbia v. Chinn*, 839 A.2d 701, 710 (D.C. 2003). This case closely tracks the *White* line of cases. It involves a claim that Officer Volk improperly used deadly force, a violation of



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a policy involving the mentally ill, negligently provoking the interaction, and eyewitness accounts that directly contradict the story of the officer and an admission from the defense expert that if the eyewitnesses are correct that the officer acted unreasonably.

The City of Tacoma ignores these facts and merely claims that the "application of deadly force was intentional and therefore, that act cannot support a negligence claim" focusing on the moment that deadly force was used. See Def. Brief at 11. While the Fourth Amendment may focus more narrowly than state tort law on the moment when deadly force is used, common law negligence looks more broadly at the totality of the interaction. "The Fourth Amendments' reasonableness standard is not the same as the standard of 'reasonable care' under tort law … peace officers have a duty to act reasonably when using deadly force, a duty that extends to the totality of the circumstances surrounding the shooting, including the officer' preshooting conduct." *Hayes,* 57 Cal.4th at 638. This case is to be evaluated under the totality of the circumstances including evidence regarding the officers preshooting conduct. Focusing solely on the moment of the shooting itself would be contrary to established tort principles.

> Moreover, our holding in *Grudt* clarifies that preshooting conduct is included in the totality of circumstances surrounding an officer's use of deadly force, and therefore the officer's duty to act reasonably when using deadly force extends to preshooting conduct. (*Grudt*, at pp. 585–588, 86 Cal.Rptr. 465, 468 P.2d 825.) But in a case like this one, where the preshooting conduct did not cause the plaintiff any injury independent of the injury resulting from the shooting, the reasonableness of the officers' preshooting conduct should not be considered in isolation. Rather, it should be considered in relation to the question whether the officers' ultimate use of deadly force was reasonable.

*Hayes,* 57 Cal. 4th at 632, 305 P.3d 252, 257–58. The holding in *Hayes*, directly tracks the long line of cases from the Washington Supreme Court requiring that when an officer chooses to act that he or she must do so reasonably. *See e.g., Washburn & Coffel supra*. The negligence claim extends to the entire encounter under the totality of the circumstances and is not limited



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to her ultimate decision to shoot. It is entirely consistent with Washington negligence law to submit both negligent and intentional tort claims to the jury. Defendant's alternative request for relief should be denied.

## IV. CONCLUSION

Based on the foregoing, the City of Tacoma's Motion for Partial Summary Judgment should be denied.

DATED this 18th day of August, 2017.

CONNELLY LAW OFFICES, PLLC

By _____

John R. Connelly, Jr. WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
Attorneys for Plaintiffs



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E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

August 21 2017 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**DECLARATION OF MICAH R. LEBANK IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** |

MICAH R. LEBANK declares and states as follows:

1. I am an attorney for the Plaintiff in the above-captioned case. I make this declaration in Opposition to Defendant's Motion for Partial Summary Judgment. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge information and belief.

2. Attached hereto as Exhibit A is a true and correct copy of the written statement of Michel Volk, dated July 10, 2013.



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3. Attached hereto as Exhibit B is a true and correct copy of the report of police training and practices expert D.P. Van Blaricom.

4. Attached hereto as Exhibit C are true and correct experts of the deposition of Tacoma Police Officer Michel Volk, dated April 13, 2016.

5. Attached hereto as Exhibit D is a true and correct copy of the Michel Volk's Oral Statement, Tacoma Police Department Supplemental Report, Incident Number 131800756.35, dated July 10, 2013.

6. Attached hereto as Exhibit E are true and accurate excerpts of the deposition of Jake Gutierrez, dated May 12, 2016.

7. Attached hereto as Exhibit F is a true and correct copy of the declaration of witness Winona Stevens, dated June 1, 2016.

8. Attached hereto as Exhibit G is a true and correct copy of the declaration of witness Teresa Graham, dated May 19, 2016.

9. Attached as Exhibit H is a true and accurate copy of a scene diagram prepared by the Tacoma Police Department.

10. Attached as Exhibit I are true and accurate excerpts of the deposition of Jeffrey Paynter, dated July 17, 2017.

11. Attached as Exhibit J is a true and correct report of ballistics expert Matthew Noedel.

12. Attached hereto as Exhibit K is a true and correct report of police practices expert Sue Peters.

13. Attached hereto as Exhibit L is a true and correct copy of the Tacoma Police



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Department Procedures Manual, Mental Disorder, Handlings Individuals Suspect of.

14. Attached hereto as Exhibit M are true and accurate excerpts of the deposition of Loretta Cool, dated May 13, 2016.

15. Attached hereto as Exhibit N are true and accurate excerpts of the deposition of Timothy Rushton, dated September 7, 2016.

16. Attached as Exhibit O are true and accurate excerpts of the deposition of D.P. Van Blaricom, dated July 25, 2017.

17. Attached as Exhibit P is a true and correct copy of the declaration of Summer Thomas-Bournes, dated May 19, 2016.

18. Attached at Exhibit Q is a true and correct copy of excerpts of the deposition of Sue Peters.

19. Attached as Exhibit R is a true and correct copy of the 911 transcript, 13UOF-0145.

20. Attached at Exhibit S is a true and correct copy of the report of Officer Loretta Cool, Incident Number 131800756.35, dated July 2, 2013.

21. Attached at Exhibit T is a true and correct copy of the Ninth Circuit Court of Appeals Decision in *Peterson v. Lewis County*, No. 14-35201.

22. Exhibit U is a true and correct copy of the dashcam video from Trooper Timothy Rushton's Washington State Patrol vehicle, dated June 29, 2013. The video will be hand-delivered under separate cover in physical format.

///



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I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed this 18th day of August 2017 at Tacoma, WA.

CONNELLY LAW OFFICES, PLLC

Micah R. LeBank, WSBA No. 38047



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EXHIBIT A

EXHIBIT A

# Statement of Michel Volk

On 6/29/13 I was working swing shift (1300 to 2300 hours) in the 4 sector as a fully uniformed Tacoma Police Officer in a fully marked police car. My uniform was a Tacoma Police Department standard issue jumpsuit with Tacoma Police patches on both shoulders and a badge on my left chest. My vehicle was a Tacoma Police Department Crown Victoria with Tacoma Police decals down both sides of the vehicle and it was equipped with overhead lights.

At around 1500 hours, I was driving north on Portland Ave and as I approached E 28th St., I noticed a male standing on the northwest corner of E 28th St., which is a common area for panhandling. In the last couple of months there had been several citizen complaints made about aggressive panhandlers at the above location. There had been so many complaints by citizens that Lt. Wade had actually come into turnout approximately 2 weeks prior to this incident and asked the officers working that area to stop and contact the panhandlers due to the huge amount of citizen complaints. My intention when I saw the male was to contact him and advise him of the panhandling laws in Tacoma.

In order to get to the area where the male was at, I had to continue through the light at E 28th St then complete a U-turn under the over pass. Once I was turned around and headed south on Portland Ave., I advised LESA Dispatch that I would be out with a panhandler at E 28th and Portland Ave. I stopped my patrol car just north of E 28th St and parked my car on Portland Ave. in the curbside lane with my overhead lights on.

While parking my car, I noticed that the male was no longer standing up. He was laying on the ground on his stomach and appeared to be digging in the ground with his hands. I could see that to the right of where he was digging was a bicycle standing up with the use of the kick stand. I also believe there was a backpack or some sort of bag by the bicycle.

The male's feet were pointed south and his head was facing the north. I approached the male on foot from the east and walked towards his right side and head area with my department issued firearm holstered. As I approached the male, I said, "Hello Sir." The male, while still lying on his stomach, turned his head to the right and looked at me but said nothing. He then reached down into what looked like a construction drainpipe that had been turned vertical and buried in the ground. It was approximately a 2 1/2 to 3 foot wide circular hole that was about 1 to 2 feet deep.

I quickly looked in the hole to see what the male was digging for. I could only see trash in the hole. I asked the male if he was aware of the panhandling laws in Tacoma. The male did not verbally respond but he did look at me and shake his head to the left and right.



7-10-13 MCU

The male then got onto his knees but kept reaching into the hole. The male then pulled out an old plastic soda container that had orange liquid in it. The male opened the plastic soda container, took a drink out of it, and then threw it back in the hole.

I then asked the male if he spoke English. He stood up and shook his head to the left and right again, which I took to mean he did not speak English. At that time, I got on the radio and asked if P044, PPO Gutierrez, could head my way. I did this because PPO Gutierrez speaks a little Spanish and I thought he could help me communicate with the male. I was not sure if the male spoke Spanish or not but I knew we didn't have any translators for other languages on duty in the 4 sector and I thought it was be worth a shot to see if PPO Gutierrez could communicate with him.

While I was on the radio, the male reached back into the hole and pulled out another old plastic soda bottle. He took a drink out of it and then threw that bottle back into the hole.

I then asked the male if he had any ID on him. The male patted his pockets as if he was looking for his wallet or ID. The male then reached for the ground by his bicycle.

I thought he was bending over to get his ID for me. Instead the male grabbed what I can best describe as a piece of construction pipe that had been bent down to an almost oval shape and immediately swung the pipe at my upper body area with his right hand. The object had been outside of the hole in the in the ground and obscured from my view by the bicycle. The object was approximately 12 to 14 inches long and approximately 2 to 3 inches thick.

I was able to block the pipe from hitting my upper body and neck area with my left forearm. At that time, the male ran into the middle of E 28th St. still holding the object in his right hand and stood right in front of the vehicles stopped at the off ramp coming off North I-5.

I immediately drew my department issued firearm and held it in a low ready position in case the male were to try and attack me again or go after a citizen with the object. I was giving the male verbal orders in a loud clear voice to drop the pipe and get on the ground. The male just stood there saying nothing but kept looking around.

At this time, the male turned towards a red vehicle which I think was either a mini-van or SUV with the object raised up in this right hand. The red vehicle had been in the middle lane of the off ramp and was the first car in line at the red light. I continued to tell the male the drop the object in a loud clear voice.

I was concerned that the male was standing right in front of the red vehicle with the object raised in his right hand and I could see people inside of the vehicle and I knew if he charged the vehicle they had no place to escape to. I was also aware that I could not safely discharge my firearm to save those citizens if he did go after them because there were several occupied vehicles to both sides and behind the red vehicle.

The male, still holding the pipe in his right hand, took off running south on the west side of Portland Ave. When he turned from me, it gave me a chance to use my radio and tell LESA Dispatch "P175 Priority."

I ran after the male. Since he had turned his back to me, I knew I could safely transition from my firearm to my ECT (Electronic Control Tool). At that point, he was not a direct threat to me since he was not facing me and there were no other citizens on foot in the immediate area where the male was running.

While running after the male, I holstered my firearm and drew my ECT. I was approximately 7 yards from the male when I discharged my ECT and both probes struck the male in the back. I am an ECT Instructor for TPD and I knew that with both probes hitting the male in the back that the male should be affected. My hope was that he would drop the object and fall to the ground.

However the ECT did not seem to affect the male at all. I was still approximately 7 yards from the male when he immediately turned around to his left and was facing me. He raised the object up above his head with his right arm as if he was going to hit me in the head with the object. The male then started to move towards me.

I knew that if he was able to hit me in the head with the pipe I would be dead. So I threw my ECT behind me with my right arm and immediately drew my firearm and discharged my firearm at the male.

As I discharged my firearm, I could see the male was getting struck by the bullets but he was still standing up with the pipe raised above his head and kept coming towards me. I discharged my firearm until the male dropped the pipe and fell to the ground.

I immediately got on my radio and said, "Shots fired," to LESA Dispatch and scanned to my left and right and behind me to make sure there were no more threats coming at me. I did all of this with my firearm in a low ready position.

While doing my scan, I noticed a WSP Trooper to my right approximately 10 feet away from me with his firearm in a low ready position also. I saw the Trooper talking on his radio to his Dispatchers.



7-10-12 MAU

I then turned back to the male once I felt the area around me was safe. I advised LESA Dispatch that I needed medical aid 4-bell for the male. LESA Dispatch then wanted me to confirm that I was not injured. I advised LESA Dispatch that I had been struck with an object in the arm but that I was OK.

At that time while facing the male, I did a tactical recovery of my ECT. I removed the spent cartridge, dropped it where the ECT had been thrown, and secured it in my ECT holster. The Trooper then walked behind me and stood to my left still with his firearm in the low ready position. The Trooper said, "Do you want me to hold him at gun point while you handcuff him?" I said, "Yes just let me get my gloves on."

I then holstered my firearm, put on my protective gloves, and approached the male who was trying to sit up. I advised him to stay on the ground and that medical aid was on the way. I secured both of his hands behind his back and put on the handcuffs, which I checked and double locked.

I then told LESA Dispatch that the male was secured and asked them to advise TFD that they could come right in to attend to him. I then stayed with the male while the Trooper ran to his patrol car to get his medical aid kit.

The first TPD unit on scene that I saw was PPO Gutierrez who came running up to me along with a Puyallup Tribal Officer. PPO Gutierrez and I attended to the male until TFD arrived and the Tribal Officer started securing the scene with police tape.

Several other TPD and Tribal Officers arrived and made sure I was physically OK. When Sgt. Paris arrived, he took control of the scene and assigned PPS Weaver to stay with me.

TFD checked out my left arm at the scene and stated I should go to the hospital to have it looked at. PPS Weaver then escorted me from the scene and took me to Allenmore Hospital.

After being released from Allenmore, PPS Weaver took me to TPD Headquarters where I turned over my department issued firearm to CID. My firearm had been holstered and in my possession without any changes being made to the firearm from the point of holstering my weapon after the above incident until I turned my firearm over to CID.

That ended my involvement in the matter.

Michel Volk 7-10-13

EXHIBIT B

EXHIBIT B

**D.P. VAN BLARICOM, Inc.**
**MPA, FBI-NA, CLS, CHIEF of POLICE (Ret)**
***POLICE PRACTICES EXPERT***
**835 – 91ST Lane N.E.**
**Bellevue, Washington 98004-4811**
**(425) 453-0082 FAX 453-3263 E-Mail dvbinc@aol.com**

## REPORT OF PLAINTIFFS' POLICE PRACTICES EXPERT
## May 27, 2016 – Amended July 19, 2016

1. My name is D.P. Van Blaricom and I make this report on behalf of plaintiffs in the Pierce County 15-2-11618-1 filing of ***Beltran, et al. v. City of Tacoma, et al.*** under my file 16-1900.

2. My law enforcement career, training and experience have made me a senior police practices expert in the United States – the 9th Circuit's decision in *Glenn v. Washington County, Oregon* describes me as *"… an expert witness, a former Bellevue, Washington Chief of Police with a law enforcement career spanning over 50 years"*.

3. A detailed statement of my qualifications, experience, training and a list of all of my publications are attached hereto as Exhibit "A". My areas of expertise in the police arts and sciences include but are not limited to: police administration, policies, practices, procedures and standards of care; police use of force; police response to the mentally ill; internal investigation and discipline. As a police practices expert, I have testified in state and federal courts for both plaintiffs and defendants throughout the United States.

4. Attorney Micah LeBank retained my services on March 29, 2016 to review the facts and circumstances of the officer-involved shooting (OIS) of Cesar Beltran-Serrano (plaintiff) by City of Tacoma Police Department (TPD) Officer Michel Volk (shooter) on June 29, 2013 (Saturday) at approximately 1503 hours (3:03 PM). I have discussed the matter with plaintiffs' counsel and this report was prepared in reliance upon the facts and data obtained from my review of the following documents:

a. Complaint;
b. Answer;
c. TPD reports:
    1) 131800756,
    2) 13UOF0145,
    3) Special Directive 13-077;
d. Thumb Drives (4):
    1) Washington State Patrol (WSP) dash-cam (COBAN) video,
    2) Dispatch audio,
    3) Photographs,
e. TPD Use of Force Policy P3.1;
f. Shooter's TPD personnel file;
g. Depositions:
    1) Shooter,

2) Officer Reginal Gutierrez,
3) Officer Loretta Cool;

h. Declarations:
1) Independent witness Teresa Graham,
2) Independent Witness Summer Thomas-Bournes.

5. I have reviewed the following additional documents since submitting my preliminary report on May 27, 2016:

a. Defense expert reports:
1) Jeffrey Paynter (police practices),
2) Dr. Clifford Nelson (pathologist);

b. Shooter's return to duty psychological evaluation;

c. Depositions:
1) Detective Steven Reopelle – criminal investigation,
2) Trooper Timothy Rushton – witness,
3) Jeffrey Paynter – defense expert witness;

d. Report of plaintiff's expert witness James Manley, PhD.

6. Relevant national standards of care and best practices have been published by the International Association of Chief of Police (IACP) in the following model policies:

a. 001 – Use of Force
b. 007 – Investigation of Employee Misconduct,
c. 070 – Responding to Persons Affected by Mental Illness,
d. 076 – Officer-Involved Shootings.

7. It is my customary practice to evaluate the objective reasonableness of police conduct on a case-by-case basis from the perspective of a former Chief of Police, career law enforcement officer and nationally recognized police practices expert (see Exhibit "A"). In conducting that evaluation I apply:

a. My training and experience as a police officer, who was required to conduct field interviews in the performance of my law enforcement duties;
b. My training and experience as a police supervisor, who was assigned to conduct internal investigations;
c. My training and experience as a police supervisor and commander, who was assigned to train police officers on patrol procedures and police response to the mentally ill;
d. My training and experience as a police supervisor and commander, who had to evaluate the performance of my subordinate police officers;
e. My training and experience as a chief of police, who had to hire, train, assign, administer and, as may be necessary, discipline and/or terminate police officers;
f. My training and experience as a chief of police, who had to develop and administer policies and procedures for directing police officers under my command;
g. My training and experience as a chief of police, who had to review internal investigations and make the final administrative decision on whether to sustain or not sustain allegations of misconduct;

h. My service as an elected city council member, after my retirement as chief of police;
i. My continuing training, as is supplemented by an ongoing review of professional publications, that addresses contemporary developments in my areas of expertise (see Exhibit "A" Continuing Training);
j. Additionally, I have served as a police practices expert in 1,900+ matters of police-related litigation (see Exhibit "A"), wherein I have testified at deposition or trial in hundreds of cases on whether or not a particular fact pattern was objectively reasonable under the totality of circumstances.

8. My method of forensic analysis is to compare the specific facts of each case that I review to my training, experience (see Exhibit "A") and recognized professional standards of care:

a. State and federal appellate court decisions such as *Graham v. Connor* and similar citations,
b. IACP model policies and similar publications.

9. My use of certain terms (i.e. – *"negligent"*, *"reasonable suspicion", "probable cause", "objectively reasonable"*, *"reckless disregard"*, *"deliberately indifferent", "duty"*, *"ratified"*, *"unconstitutional"*, etc.) merely reflects my training and experience, in applying reasonable standards of care to police officers' conduct, and does not presume or imply a statement of any legal opinion.

10. Similarly, my use of certain terms merely reflects my training and experience in reviewing psychological evaluations, triage and/or autopsy reports and does not presume or imply a statement of any medical opinion.

11. This incident involved use of force, which I have hereafter briefly discussed for the fact finder's enhanced understanding of actual police practice.

a. Police officers, police trainers and police practice experts may not express legal opinions on use of force:
    1) But, they are trained to know and understand how much force may be used in the lawful performance of a police duty,
    2) And, *"The law dictates officer training, not the other way around"*, per *Weigel v. WY Hwy Ptl*, 544 F.3d 1143 (10th Cir. 2008) – one of my cases;
b. Both justification for and limitation on police use of force have been clearly established by the United States Supreme Court, which supercedes any contradictory state statutes or local police policies:
    1) *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. (1985),
    2) *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. (1989);
c. These seminal use of force decisions are further interpreted by the United States Circuit Courts (1st through 11th), thereby further clarifying legal standards that will be individually applied within each Circuit;
d. American police officers must comply with these legal standards;
e. From a police practices perspective, the fundamental issues in any use of force are:
    1) Was force reasonably necessary under the totality of circumstances?

2) If force was reasonably necessary, was the amount or degree of force used objectively reasonable under the totality of circumstances?

f. Specific factors that police officers are trained to evaluate, in determining the amount or degree of force to be used, are:
   1) Use of deadly force:
      a) Is there probable cause to believe that a criminal suspect poses an *"immediate"* threat of death or serious physical injury to the officers or others?
         (1) *"Immediate"* means *"taking place right now"*,
         (2) *"Imminent"* means *"about to happen or occur"*,
      b) And where feasible, has some warning been given?
   2) All uses of force:
      a) What is the severity of the crime at issue?
      b) Does the suspect pose an *"immediate"* threat to the safety of the officers or others?
      c) Is the suspect actively resisting arrest or attempting to flee?
   3) Situational factors also affect decision making:
      a) *"The use of force must be judged from the perspective of a reasonable officer on the scene and not from the 20/20 vision of hindsight"*,
      b) *"Allowance must be made for the fact that officers are often forced to make split-second judgments, about the amount of force that is necessary in a particular situation, in circumstances that are tense, uncertain and rapidly evolving"*,
      c) The officer's underlying intent or motivation is irrelevant;
   4) In all cases, *"the type and amount of force used must be "objectively reasonable under the totality of circumstances"*;

g. There are varying methods of applying force that may be justifiably used by an officer in response to a reasonably perceived threat and are, in ascending order, as follows:
   1) Officer presence,
   2) Voice command,
   3) Escort or soft hand hold,
   4) Intermediate pain compliance – all less-lethal *"pain-inflicting compliance techniques"* must comply with the *Graham v. Connor "objective reasonableness"* standard:
      a) Hands on (including strikes),
      b) Oleoresin capsicum (OC pepper) aerosol spray,
      c) TASER (electronic control weapon),
      d) Baton,
      e) Impact projectiles,
   5) K-9 bite,
   6) Firearm;

h. An officer is not required to progress sequentially through the afore described *"steps"*, however, and may immediately respond with the appropriate level of force to overcome whatever level of resistance is being encountered on a case by case basis;
i. As previously explained herein, the only constitutional standard for use of force is *"objective reasonableness under the totality of circumstances"*:
    1) Department policy and/or procedure may require a more restrictive use of force but does not create a constitutional standard,
    2) *"Negligence"* in any degree does not create a constitutional standard;

12. A 2014 series of highly controversial officer-involved deaths (Ferguson, et al.) have resulted in the publication of additional standards of care by recognized professional authorities (quoted verbatim hereafter), which reflect cumulative past administrative experience:

a. The President's Task Force on 21st Century Policing – 2015:
    1) *"Law enforcement culture should embrace a 'guardian', rather than a 'warrior' mindset"* and *"adopt 'procedural justice' as a guiding principle"* that includes *"transparency and accountability"*;
    2) *"Policies must reflect community values"*:
        a) *"Have clear and comprehensive policies on the use of force, including training on the importance of de-escalation"*,
        b) *"Law enforcement agencies should adopt model policies and best practices"*,
        c) *"External and independent investigations of officer-involved shootings and in-custody deaths"*,
    3) *"The need for expanded and more training has become critical"*:
        a) *"Capable to address a wide variety of challenges, including a growing mental health crisis"*,
        b) *"Mandatory Crisis Intervention Training (CIT), which equips officers to deal with individuals in crisis or living with mental disabilities"*;
b. The Police Executive Research Forum (PERF) – 2015:
    1) *"Training in most departments is inadequate"*:
        a) *"Importance of de-escalation and crisis intervention strategies for dealing with mentally ill persons"*,
        b) *"Need more 'scenario-based' training about how to respond to the types of incidents they may face, such as a mentally ill person on a street corner waving a knife"*,
    2) *"Minimizing use of force is also a question of police 'culture' and the most controversial officer-involved shootings seem to reflect training that has officers think solely about their own safety,*

*rather than a broader approach designed to protect everyone's lives"*:

a) *"Try to 'slow the situation down' when responding to an incident involving an individual experiencing a mental health crisis"* – the ***"SLOW IT DOWN"*** and ***"DE-ESCALATE"*** themes are repeatedly cautioned throughout the report!
b) *"Tactical disengagement may be a better outcome than forcing confrontation over a minor conflict"*,
c) *"The so-called '21 foot rule' is too simplistic"* and *"should never be seen as a green light to use deadly force or a kill zone"* – *"distance + cover = time"*,
d) *"Just because your first shot was justified, doesn't necessarily mean that your second shot was also justified"*,

3) *"Officers should be held accountable if they failed to de-escalate the situation in order to prevent it from ever reaching the point where the use of force was necessary"*:
   a) *"Tactics are a key component of shooting investigations"*,
   b) *"We may have a shooting that's legally justified, but for bad tactics, we would not have been in that situation to begin with"*,
4) *Make a distinction between 'could' and 'should' when evaluating use of force"* and *"just because an officer 'could' use force does not necessarily mean he or she 'should' do so"*,
5) *"Unnecessary use of force is often tied to an officer's adrenalin or anger"*,

c. Additionally and as specifically regards mental illness, the Treatment Advocacy Center has reported (2015):
   1) Approximately *"3% of adults in the United States suffer from a 'severe' mental illness"*,
   2) And, that *"3% accounts for at least 25% of all officer-involved shootings"*;
d. Further and as explained in the January 2015 edition of LAW and ORDER, there is *"no 'officer safety' exception to the United States Constitution"*.

13. My further analysis of this incident will be within the context of the foregoing explanation of police practice for use of force in the United States.

14. My specific training to review officer-involved shootings, includes the following:

a. U.S. Marine Corps small arms repairman (MOS 2111);
b. U.S. Marine Corps *"expert rifleman"*;
c. Death Investigation by the King County, WA Coroner and commissioned as a deputy coroner;
d. Police and Medical Investigation of Death by the Dade County, FL Medical Examiner;

e. International Association of Chiefs of Police (IACP):
   1) Management Controls on Police Use of Deadly Force,
   2) Investigation of Excessive Force Incidents,
   3) Active Shooter;
f. Americans for Effective Law Enforcement (AELE):
   1) Lethal and Less-Lethal Force,
   2) Legal, Psychological and Biomechanical Aspects of Officer-Involved Lethal and Less-Lethal Force;
g. Northwestern University Center for Public Safety (NUCPS):
   1) Deadly Force and the Police Officer,
   2) Shooting Reconstruction;
h. American Academy of Forensic Sciences (AAFS):
   1) Shooting Reconstruction,
   2) Recognition, Detection and Significance of Gunshot Residue,
   3) Gunshot Wounds Theory and Practice;
i. DRI International: Shooting Reconstruction: The 4 Elements of Trajectory;
j. University of North Dakota / National Institute of Justice – Death Investigation;
k. Justice Clearinghouse – Employing Timely Crime Gun Intelligence to Firearm-Related Investigations;
l. Forensics Certificate from the University of Washington;

15. Additional experience, as a career police officer, in the prevention and investigation of shootings, included:

a. Police firearms instructor for over ten years;
b. Fired a rare *"possible"* score on the FBI practical pistol course (PPC);
c. Detective commander in shooting investigations, including a freeway sniper who shot two victims in motor vehicles;
d. Incident commander in the deployment of SWAT units during critical incidents;
e. Designed prototype of Detonics MkVII .45 ACP semi-auto pistol.

16. As a police practices expert retained in over 1,900 matters, for both plaintiffs and defense, I have:

a. Reviewed 424 OIS to date;
b. Served as the prevailing party's expert in the following OIS appellate decisions:
   1) 9th Cir. *Reed v. Douglas County, OR* 1989,
   2) 1st Cir. *Roy v. City of Lewiston, ME* 1994,
   3) ID S. Ct. *Kessler v. Payette County, ID* 1997,
   4) WA App. *Lee v. City of Spokane, WA* 2000,
   5) 9th Cir. *Haugen v. City of Puyallup, WA* 2003,
   6) 9th Cir. *Wilkins v. City of Oakland, CA* 2003,
   7) 9th Cir. *Herrera v. City of Las Vegas, NV* 2004,
   8) 8th Cir. *Craighead v. City of St. Paul, MN* 2005,
   9) 9th Cir. & US S. Ct. *Lehman v. Robinson*, 2007/2009,
   10) 9th Cir. *Kiles v. City of North Las Vegas, NV* 2008,

11)9th Cir. *Tubar v. City of Kent, WA* 2008,
12)AZ App. *Celaya v. City of Phoenix, AZ* 2008,
13)9th Cir. *Bryan v. City of Las Vegas, NV* 2009,
14)6th Cir. *Jefferson v. City of Flint, MI* 2010,
15)6th Cir. *Bletz v. Ionia County, MI* 2011,
16)9th Cir. *Glenn v. Washington County, OR* 2011,
17)6th Cir. *Jones v. Sandusky County, OH* 2013,
18)6th Cir. *Peatross v. City of Memphis, TN* 2016,
19)9th Cir. *Petersen v. Lewis County, WA* 2016;

c. Lectured on Investigation of Officer-Involved Shootings at the Henry C. Lee Institute of Forensic Science;
d. Lectured on Prevention of Police-Involved Deaths of the Mentally Ill at Crisis Intervention Team International;
e. Co-authored *INVESTIGATION and PREVENTION of OFFICER-INVOLVED DEATHS* © 2011 CRC Press and includes chapters on:
    1) Reducing and Preventing Deaths by Training and Policy Guidance;
    2) Officer-Involved Shootings,
    3) Emotionally Disturbed Persons (EDP);
f. Treatment Advocacy Center research (2015) reports that 1 in 4 fatal police encounters will involve severe mental illness;
g. Testified in state and federal courts throughout the United States in OIS-related litigation;
h. Served to reconstruct OIS for my recommendation on whether or not the shooting officer should be criminally charged:
    1) Rapides Parish, LA District Attorney, wherein I recommended a criminal charge and the shooter was charged and convicted,
    2) City and County of San Francisco District Attorney, wherein I recommended no criminal charge and the shooter was not charged.

17. Based upon my knowledge, skill, experience, training or education and a careful evaluation of the totality of circumstances in this matter, it is my considered professional opinion that the following facts appear to be supported by the record:

a. Plaintiff was standing by a freeway entrance and shooter suspected him of *"panhandling"*, although she never actually saw him engaged in that activity;
b. Shooter maneuvered her patrol vehicle to pull alongside plaintiff, who had changed his positioning;
c. According to shooter, plaintiff was:
    1) *"Laying* (sic) *flat on his stomach"* and *"digging in the ground in a hole"*,
    2) *"He looked at me* (shooter) *and just kept digging in this hole"*, which appeared to contain only *"trash"*,
    3) *"He pulled out an old soda can (*from the trash in the hole)*, took a drink out of it and threw it back in the hole*";

d. Shooter asked plaintiff if he *"spoke English"* and he shook his head in the negative;
e. Shooter radioed for *"Paul 044"* (Officer Gutierrez) to assist her and he immediately began his response to her location, while plaintiff continued *"digging in the hole"* until he *"eventually stands up"*;
f. Without waiting for her backup to arrive, which only took him an estimated 1½ minutes, shooter next demanded plaintiff's identification;
g. What happened next is not clear, as shooter has given 2 completely conflicting accounts of how she was allegedly attacked by plaintiff:
    1) Immediately after the incident on 6/29/17 at approximately 1520 hours and while at the hospital, shooter was contacted by Officer Loretta Cool, who she told:
        a) Plaintiff had *"grabbed"* a *"curved piece of pipe"*,
        b) He *"came toward her so she tased* (sic) *him"*,
        c) Thereafter, plaintiff *"ran across the road"* and *"she followed him"*,
        d) Plaintiff then *"came at her with the piece of metal raised and she blocked the attack with her arm" – "elbow and back side of her forearm*",
        e) She shot him twice,
    2) Shooter self-prepared a written statement on July 10, 2013, in which next stated:
        a) Plaintiff *"grabbed what I can best describe as a piece of construction pipe"*,
        b) He *"immediately swung the pipe at my upper body"* but, *"I was able to block the pipe with my left forearm"*,
        c) Plaintiff *"took off running"* and *"I ran after him"*,
        d) She deployed her TASER at him but without effect and he *"turned and was facing me"*,
        e) Plaintiff "*raised the object up above his head, as if he was going to hit me in the head"*, and *"started to move toward me"*,
        f) She shot plaintiff *"until he dropped the pipe and fell to the ground"*;
h. Shooter's 2nd account. Given 11 days post incident, is not supported by Trooper Rushton's dash-cam video;
i. Deciding which account of shooter's accounts, if either, is true remains to the fact finder:
    1) Trooper Rushton did not witness the actual shooting,
    2) Trooper Rushton's dash-cam video did not record the alleged attack by plaintiff,
    3) Independent witnesses' accounts of what they did or did not see will have to be individually evaluated;
j. According to shooter 2nd account, plaintiff *"turned to his **LEFT**"* (emphasis supplied), raised the *"pipe object"* and *"came at me* (shooter) *with it"*:

1) As anyone who has been trained to employ a baton knows, that is **NOT** (emphasis supplied) a natural turning movement, for a right handed person to ready an impact weapon for striking another human target,
2) Significantly, TPD staff's preparation of the PowerPoint presentation for a Use of Force Review addressed this inherent physical problem by the simple expedient of changing plaintiff's turning from his *"left"* to his *"right"* (see page 14),
3) However:
    1) Shooter's own written statement specifically describes plaintiff having *"immediately turned around to his **LEFT**"* (emphasis supplied), when he *"raised the object up above his head with his right arm"* (see page 3),
    2) And once again, shooter's deposition testimony clearly affirmed, *"He* (plaintiff) *turned toward his **LEFT**"* and not to his *"right"* (page 93 lines 8-13);

k. Whereupon, shooter fired 4 x .45 ACP bullets into plaintiff until he *"fell to the ground"*;
    1) Gunshot wounds (GSW) x 4 struck plaintiff:
        1) Right forearm,
        2) Pelvis,
        3) Lower left chest and upper abdomen,
        4) Left forearm.
    2) Direction of fire:
        1) *"All shots"* were fired while plaintiff presented his *"left side towards"* shooter and he was, therefore, **FACING AWAY** (emphasis supplied) from her,
        2) The 3rd GSW was fired when plaintiff was *"slightly facing more towards"* shooter;

l. Plaintiff survived;

m. TPD conducted their own investigation of this OIS, without the participation of any other outside law enforcement agency therein and Detective Reopelle testified in his deposition:
    1) Witness Stevens' statement was consistent with plaintiff's account of the incident (page 17 lines 9-25, page 18 lines 1-25 and page 19 lines 1-2),
    2) The focus of his investigation was on plaintiff for *"criminal charges*" and shooter as a *"victim"*, solely because she had *"injuries"* and there was an *"object"* that had *"struck"* her (page 37 lines 6-8, page 38 lines 19-25, page 39 lines 1-3, page 40 lines 22-25 and Page 45 line 1).

18. Based upon my knowledge, skill, experience, training or education and a careful evaluation of the totality of circumstances in this matter, it is my considered professional opinion that plaintiff was mentally ill and shooter should have recognized that fact immediately upon her initial contact. In reaching that conclusion I was especially mindful of the following information from the record:

a. All of the information previously described herein;
b. James Manley, PhD has conducted a psychological evaluation of plaintiff and has reported:
    1) He *"has a significant mental health history including multiple psychiatric hospitalizations, including 4 Western State Hospital forensic admissions and previous findings of being incompetent to proceed to trial"*,
    2) He *"has a poor history of independent medication compliance"*;
c. Police officers often encounter the mentally ill among the homeless, many of whom are *"panhandlers"*;
d. Plaintiff's behavior, as observed by shooter when she initially made contact with him, should have alerted her to his potential for being mentally ill, which, in fact, he was;
e. Accordingly, she should have altered her approach to accommodate that demonstrated probability:
    1) Call and **AWAIT** (emphasis supplied) backup;
    2) Move slowly and take time to assess the situation
    3) Take a non-threatening approach,
    4) Do not invade his personal space,
    5) Do not demand or expect immediate compliance with requests, such as identification,
    6) Be alert to the possibility of violence and take appropriate precautions:
        a) Physical barriers (using the cover of her patrol vehicle),
        b) Distance (increasing her reactionary gap);
f. **AFTER** (emphasis supplied) the arrival of backup:
    1) Confer,
    2) Proceed to safely assess and investigate;
g. Such a professional approach would more probably than not have resulted in a peaceful encounter that would have accomplished the police purpose, without undue risk to shooter and/or plaintiff;
h. Shooter testified in her deposition:
    1) She has had *"training regarding dealing with the mentally ill"*, however:
        a) She cannot recall **ANY** (emphasis supplied) such *"training"* (page 13 lines 12-23, page 22 lines 8-25 an d page 23 lines 1-21),
        b) She further cannot recall the *"TPD policy on dealing with the mentally ill"* (page 13 lines 24-25 and page 14 line 1),
        c) And, she does *"not recall"* reading TPD *"Guidelines for Interactions with Persons Suspected of Mental Illness"* (page 25 lines 12-25 and page 26 lines 1-3),
    2) Admittedly, she had no reasonable suspicion to detain or probable cause to arrest plaintiff (page 44 lines 3-15 and page 71 lines 2-6),

3) Plaintiff's behavior that she observed was not *"normal"* (page47 lines 16-17),
4) She did nothing, however, to determine plaintiff's mental status (page 113 line 25 and page 114 lines 1-2),
5) She started shooting plaintiff *"the second he started taking a step at me"*, from *"7 yards"* away (page 90 lines 4-5 and 13-17);

i. From shooter's deposition testimony and the facts described herein, it is apparent:
   1) She was ill-prepared to encounter the mentally ill and amply demonstrated that fact by this incident with plaintiff,
   2) She apparently relied upon the discredited *"21 foot rule"* to determine at what distance to start shooting;

j. Contrary to shooter's deposition testimony that she fired at plaintiff, as he was *"taking a step at me"*, defendant's own pathologist has reported that plaintiff was **FACING AWAY** (emphasis supplied) from her, when she shot him.

19. Based upon my knowledge, skill, experience, training or education and a careful evaluation of the totality of circumstances in this matter, it is my considered professional opinion that shooter provoked this violent confrontation. In reaching that conclusion, I was specifically mindful of the following information from the record:

a. All of the information previously described herein;
b. After shooter had purportedly been struck by plaintiff:
   1) She was well-aware that he had demonstrated a potential for violence,
   2) He abandoned his belongings and desperately attempted to flee the scene;
c. Backup was approximately 1½ minutes away but shooter neither asked his estimated time of arrival nor awaited him:
   1) Plaintiff continued his attempted flight from shooter's authority,
   2) Shooter's injury was minor and did not necessitate an immediate further confrontation;
d. Nevertheless and inexplicably under these circumstances, shooter decided to physically apprehend plaintiff by herself and Trooper Rushton testified in his deposition:
   1) Plaintiff was *"running"* from her and she *"chased"* him until he heard shots being fired (page 17 lines 22-23, Page 23 line 18, page 25 line 24 and page 26 line 11),
   2) He could not see either of them, when the shots were fired (page 20 lines 11-12),
   3) He marked the positioning of shooter and plaintiff, after she shot him, on a diagram of the scene (page 30 12-25):
e. Accordingly, plaintiff had foreseeably resumed an aggressive attempt to escape from shooter's authority and she reacted by shooting him;
f. Shooter thereby provoked that final act of violence, before she purportedly shot in self-defense.

20. Based upon my knowledge, skill, experience, training or education and a careful evaluation of the totality of circumstances in this matter, it is my considered professional opinion that the shooter had no probable cause to believe that plaintiff had committed a crime involving the infliction or threatened infliction of serious physical harm. In reaching that conclusion, I was specifically mindful of the following information from the record:

a. All of the information previously described herein;
b. There is no evidence that plaintiff posed a threat of inflicting serious harm on anyone, as he merely fled from shooter;
c. Independent witness Graham has declared:
    1) Plaintiff was continuing to run away from shooter, when she continued to pursue and shot him,
    2) She *"did not see the* man (plaintiff) *threaten anyone"* and *"he didn't pose a threat to anyone"*,
    3) Her Declaration is consistent with her prior contemporaneous statement to TPD;
d. Independent witness Thomas-Bournes has declared:
    1) After shooter fired her TASER at plaintiff, he *"turned away from the officer like he was trying to run away and that's when she pulled out the gun and popped it four times"*,
    2) Plaintiff *"did not pose a threat to the officer or anyone else*",
    3) Her Declaration is consistent with her prior contemporaneous statement to TPD;
e. Furthermore, shooter gave no *"warning"*, before shooting plaintiff, and it was certainly feasible to have given such a "*warning"*;

21. I have reviewed the defense expert report of Jeffrey Paynter and offer the following rebuttal thereto:

a. Expert Paynter has served on 3 police department of successively smaller size:
    1) After 22 years of total police service, he was promoted to sergeant with the Lakewood Police Department, where he has been most recently employed:
    2) The position of sergeant is the lowest level of supervision, wherein:
        a) He has never had or exercised policy making authority,
        b) He has never had had or exercised disciplinary authority,
    3) His curriculum vitae lists no training or experience in the critical functions of conducting:
        a) Internal investigations generally,
        b) Officer-involved shootings specifically;
b. As a police practices expert, his curriculum vitae further fails to list:
    1) Any employment thereat, although he does list 10 "*cases"*, in which he has *"consulted"*,
    2) Any education or training as either an attorney or a psychologist,

3) Any training or experience in reviewing officer-involved shootings;

c. His defense expert report contains frequent legal and/or psychological opinions that he is unqualified to render;

d. Additionally, he does not claim any expertise in police response to the mentally ill or to have had any crisis intervention training (CIT) and his report serves to reflect that lack of understanding:

e. His essential (and ending) opinion in this matter is that shooter's *"decisions throughout the incident were reasonable and consistent with best practices"* and she *"would receive a passing grade"* in the classes he used to teach:

1) In spite of that pronouncement, however, he does concede, *"Waiting for backup to facilitate an arrest with greater numbers of officers is **ALWAYS*** (emphasis supplied) *the preferred choice*",

2) And, as regards the issue of how plaintiff *"turned"* to allegedly confront shooter:

a) He simply dismisses the matter, because *"there is no evidence that* (plaintiff) *was a trained fighter"* – that would seem to be even more reason for him to have made the more *"natural turning movement"*, right?

b) As further regards that *"turn"*, however, defendants' own pathologist has reported that plaintiff was **FACING AWAY** (emphasis supplied) from shooter and presenting his *"left side" to* her, when he was shot;

f. In summary, I found nothing in expert Paynter's report that would cause me to change any of my previously reported opinions;

g. <u>I have also reviewed the deposition of defense expert Paynter and he testified as follows:</u>

1) <u>Trooper Rushton's dash-cam video did not record shooter being struck by plaintiff and is inconsistent with her description of what occurred (page 38 lines 9-21, page 39 lines 1-9 and page 62 lines 20-22),</u>

2) <u>Trooper Rushton's statement of what he supposedly witnessed is inconsistent with his deposition testimony (page 41 lines 3-7 and 19-20),</u>

3) <u>In spite of plaintiff's previously described bizarre behavior, he displayed no symptoms of mental illness that shooter should have recognized (page 51 lines 4-11);</u>

4) <u>Regardless of the clearly established principle that experts may not make credibility judgments and there are witnesses who contradict shooter, he admittedly ***"GAVE HER STATEMENT MORE WEIGHT"*** (emphasis supplied) in reaching his opinions (page 56 lines 9-13),</u>

5) <u>In spite of the fact that shooter's statement to Officer Cool contradicted her later self-prepared report, that contradiction</u>

was only *"minor"* and was not noted in his report (page 65 lines 9-14, page 66 lines 1-25 and page 57 lines 1-7).

22. I have reviewed the defense expert report of Dr. Nelson and have no expertise to comment thereupon but I did rely upon his description of plaintiff's GSW x 4, as previously described herein

23. I am prepared to testify to these opinions at deposition or trial, if called upon to do so.

24. If I am provided with further documentation for my review, I may have additional opinions.

/s/ *D.P. VAN BLARICOM*

# EXHIBIT "A"


## D. P. VAN BLARICOM, INC.

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### *SUMMARY of QUALIFICATIONS*

A. Retained as a police practices expert by both plaintiffs and defendants in over **1,900+** lawsuits alleging police liability throughout the United States: AK, AL, AZ, CA, CO, DC, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, SD, TX, UT, VA, WA, WI and WY.

B. Testified in several hundred depositions, federal court trials, state court trials and arbitrations.

C. Prevailing parties' police practices expert in appellate decisions from the United States 1st, 6th, 7th, 8th, 9th and 10th Circuits; State Supreme Courts of AK, AZ, CO, ID, MT, MS, OR and WA; Appeals Courts of AZ, CA, CO, FL, GA, NM and WA – **total of 68**.

D. Recognized as an expert on the following issues and **all of the cited appellate court decisions were decided in favor of my client**:

1. **POLICE ADMINISTRATION, POLICY, PRACTICES, PROCEDURES and STANDARDS of CARE** (9th Cir. Gulliford v. Pierce County 1998, 6th Cir. Carter v. City of Detroit 2005, 9th Cir. Hall v. Hughes 2007, 7th Cir. Montano v. City of Chicago 2008, 9th Cir. Tensley v. City of Spokane 2008, 9th Cir. Howell v. Yavapai County Attorney 2008, 9th Cir. DeLew v. Adamson 2008, 9th Cir. Tennison v. City & County of San Francisco 2009, 9th Cir. Rosenbaum v. Washoe County 2011, 9th Cir. Hartrim v. City of Las Vegas 2015, 9th Cir. Bradford v. City of Yakima 2015);
2. **POLICE INTERNAL INVESTIGATION and DISCIPLINE**;
3. **POLICE USE of FORCE – Including 400+ Officer-Involved Shootings and 70+ TASER Deployments** (quoted in *Deadly Force: What We Know* 1992, 9th Cir. Davis v. City of Ellensburg 1989, 9th Cir. Reed v. Hoy 1989, 9th Cir. Davis v. Mason County 1991, a consultant to federal prosecution task force in United States v. Koon, et al. 1993, Rodney King v. City of Los Angeles 1994, 1st Cir. Roy v. City of Lewiston 1994, ID S.Ct. Kessler v. Payette County and State of ID 1997, WA App. Lee v. City of Spokane 2000, 9th Cir. & US S.Ct. Haugen v. City of Puyallup 2003/2004, 9th Cir. Wilkins v. City of Oakland 2003, 9th Cir. Marsall v. City of Portland 2004, 8th Cir. Craighead v. City of St. Paul 2005, 9th Cir. Davis v. City of Las Vegas 2007, 9th Cir./US S.Ct./9th Cir. Lehman v. City of Reno 2007/2009, 9th Cir. Kiles v. City of North Las Vegas 2008, 9th Cir. Tubar v. City of Kent 2008, AZ App. Celaya v. City of Phoenix 2008, 10th Cir. Rhoads v. Big Horn County 2009, Bryan v. City of Las Vegas 2009, 6th Cir. Jefferson v. City of Flint 2010, 6th Cir. Bletz v. Ionia County 2011, AK S.Ct. Russell v. City of Kotzebue 2011, 9th Cir. Glenn v.

Washington County 2011, 6th Cir. Haley v. City of Elsmere 2011, 9th Cir. Kita v. City of Seattle 2012, 9th Cir. & US S.Ct. denied cert. Rutherford v. City of Seattle 2013, 6th Cir. Jones v. Sandusky County 2013, 6th Cir. Peatross v. City of Memphis 2016);

4. **CONTROL of POLICE VEHICULAR PURSUIT and EMERGENCY DRIVING – Including 250+ Accidents** (my policy was recommended by the Public Risk and Insurance Management Association of Washington, D.C. as being among the 4 best in the United States 1984, quoted by 2 CA App. Payne v. City of Perris 1993 and Berman v. City of Daly City 1993, OR S.Ct. Lowrimore v. Marion County 1990, MS S.Ct. Mosby v. Jeffries 1998, CO S.Ct. Tidwell v. City & County of Denver 2003, WA App. Brooks v. City of Washougal 2007, CO App. Meyer v. City of Evans 2008 and GA App. McCobb v. Clayton County 2011);
5. **SPECIAL DUTIES to PROTECT and 911 RESPONSES** (WA S.Ct. Bailey v. Town of Forks 1987, 9th Cir. Wood v. Ostrander 1988, WA S.Ct. Roy v. City of Everett 1992, AZ S.Ct. Hutcherson v. City of Phoenix 1998, MT S.Ct. Nelson v. Driscoll 1999, 9th Cir. Kennedy v. City of Ridgefield 2005, 9th Cir. Tamas v. WA DSHS 2010, AK S.Ct. City of Hooper Bay v. Judy 2015).
6. **DOMESTIC VIOLENCE** (quoted by the National Law Enforcement Policy Center in their model policy 1991, 9th Cir. Beier v. City of Lewiston 2004, WA App. Osborne v. Seymour 2011, WA S.Ct. Washburn v. City of Federal Way 2013);
7. **POLICE RESPONSE to the MENTALLY ILL** (listed in the FBI Academy's Subject Bibliography, 9th Cir. Gibson v. Washoe County 2002, US MD PA Schorr v. Borough of Lemoyne 2003, 9th Cir. Herrera v. City of Las Vegas 2004);
8. **EXCITED DELIRIUM and RESTRAINT ASPHYXIA – Including 50+ Deaths** (10th Cir. Cruz v. City of Laramie 2001, AZ App. Oscielowski v. City of Benson 2003, 9th Cir. Arce v. City of North Las Vegas 2008 and 10th Cir. Weigle v. State of WY 2008, NM App. Bustos v. City of Clovis 2015);
9. **AMERICANS with DISABILITIES ACT** (10th Cir. Davoll v. City of Denver 1996, 9th Cir. Cripe v. City of San Jose 2001, US PA Schorr v. Borough of Lemoyne 2003);
10. **DISCRIMINATORY ENFORCEMENT or EMPLOYMENT PRACTICES** (6th Cir. Muniz-Muniz v. US Border Patrol 2013).

D. Served 29 years in municipal policing with the last 11 as Chief of Police (until retirement and election to the City Council) in Bellevue, Washington - the State's then fourth largest and fastest growing city.

E. Directed development of a progressive police department and created several model programs, including: control of vehicular pursuits, alternatives to deadly force, fully integrated emergency response team operations, domestic violence reduction, affirmative action employment of minorities and women, comprehensive crime prevention, lateral recruitment of experienced officers, police canine operations, multi-city narcotics unit and others. Additionally, co-authored the Washington State Standards on Internal Discipline of Law Enforcement agencies.

F. Served on many professional commissions and committees, including: Washington Criminal Justice Education & Training Center Steering Committee, Bellevue Community College Local Advisory Council and Chairman Law Enforcement Program Advisory Board, Washington Attorney General's Committee on Security and Privacy, consultant to U.S. Department of Justice Community Relations Service, consultant to the National Consultation on Safety and Force, intern

with 94th Congress, Governor's appointee to Community Task Force for Corrections Development, Washington State Council on Crime & Delinquency's Adult Criminal Policy Committee and Ad Hoc Committee on Board of Prison Terms/Paroles, Youth Eastside Services Board of Trustees, Eastside Community Mental Health Center Advisory Board, King County Executive's appointee to E911 Task Force, U.S. Attorney's Law Enforcement Coordinating Committee, Governor's appointee to Select Committee for Police/Fire Pension Review, IACP's Education & Training Committee, IACP's Organized Crime Committee, Assessor Team Leader for 1 of 5 Pilot Projects of the Commission on Accreditation for Law Enforcement Agencies, Governor's appointee to the Emergency Commission on Prison Overcrowding, IACP book reviewer, Suburban Cities Association's Jail Advisory Committee, Governor's Advisory Group on Personal Harassment, Portland, Oregon Chief's Committee on Police Use of Force. Assisted the appointing authorities at various times in selecting Chiefs of Police for Cities of Longview, Everett, Bellingham, Richland, Bremerton, Kirkland, Redmond, Clyde Hill, Kent (1991), Bellevue (1996) a Sheriff of King County and the Security Administrator of Seattle City Light (all in the State of Washington), King County Regional Justice Center Citizens Site Advisory Committee, Solutions To Tragedies of Police Pursuits Advisory Board, Superintendent of Public Instruction's Washington State Safe Schools Advisory Committee, King County Civil Rights Commission, Bellevue College Criminal Justice Program Advisory Board, Voices Insisting on Pursuit Safety.

G. Hold a Secret security clearance from the U. S. Government.

H. Maintain an extensive and current library of standards, policies, procedures, references, and information on other experts, with subscription services to update professional/legal developments in my areas of expertise.

## *EDUCATION and CERTIFICATION*

University of Washington - Bachelor of Arts degree with magna cum laude honors l973
Seattle University - Master of Public Administration degree 1976
Graduate of the FBI's National Academy and Law Enforcement Executive Development programs
**University of Washington – Certificate in Forensics 2000**
**Americans for Effective Law Enforcement – Certified Litigation Specialist (Police Practices) 2003/2008/2011/2015**

## *CONTINUING TRAINING*

Police Civil Liability AELE 1987, Deadly Force and the Police Officer NWU 1987, Police Liability for Policies and Practices AELE 1988, PR-24 Side Handle Baton BPD 1988, Police Civil Liability AELE 1989, Sexual Harassment and the Consequences FS 1989, Wrongful Discharge RIMS 1989, Police Practices and Use of Expert Witnesses AELE 1989, Expert Witnesses, Litigation Consultants and Attorneys NFS 1989, Police Discipline and Labor Problems AELE 1990, Assessment Center Selection Process HRA 1991, Rodney King Incident and Policing SWLEI 1992, Role of Expert Witnesses in the 1990's SEAK 1992, Critical Liability Issues AELE 1992, Pursuit Driving and Managing Use of Force ILM 1992, AFIS Live ID HP 1993, Police/Medical Investigation of Death IACP 1993, Medical Records Review for the Legal Professional PES 1994, Developing Policies, Procedures and Rules NLEPC 1994, Civil Rights Trial Advocacy ATLA 1994, Family Violence and

Police Policy SLEI 1995, Investigation of Excessive Force Incidents IACP 1995, Police Civil Liability and Defense of Misconduct Complaints AELE 1996, Use of Force and Pursuit Driving Policies SLEI 1996, Critical Incident Dispatching NWU 1996, Police Officer Survival Tactics NWU 1997, Police Civil Liability AELE 1998, Criminal Justice WSBA 1999, Critical Incident Trauma and Legal Survival CP 1999, Traffic Stops and Racial Profiling PI 2001, Racial Profiling NWU 2001, Police Liability LES 2002, Cap-Stun ZARC 2002, Masters in Trial ABOTA 2002, Discipline and Internal Investigations AELE 2003, Critical Incident Response Management and Liability AELE 2003, Police Civil Liability AELE 2003, Police-Involved Shooting Reconstruction NWU 2004, Police Liability AELE 2005, Shooting Reconstruction AAFS 2005, Police Misconduct Litigation SULS 2005, Use of Force TASER 2006, Lethal and Less-Lethal Force AELE 2006, TASER AAFS 2006, Excited Delirium SPD 2007, Winning Extreme Encounters from Street to Court FSRC 2007, Sudden Death, Excited Delirium & In-Custody Death IPICD 2007, Discipline & Internal Investigation AELE 2008, Police Liability LES 2009, Legal, Psychological and Biomechanical Aspects of Officer-Involved Lethal and Less-Lethal Force AELE 2009, Use of Force / Domestic Violence / Community Policing / Emotional Intelligence IACP-PCN 2009, Gunshot Residue / Gunshot Wounds AAFS 2010, Active Shooter / Bloodborne Pathogens / Applied Ethics / Ethnic and Sexual Harassment IACP-PCN 2010, Arrest-Related Excited Delirium Sudden Death IPICD 2010, Discipline and Internal Investigations AELE 2010, ECD Forensic Analyst IPICD 2010, Police Liability LES 2011, Police Pursuit Policy Instructor IADLEST/ALERT 2011, Police De-Escalation Strategies for Veterans in Crisis FBINA 2012, Federal Training Resources IADLEST 2012, Brady v. Maryland and Giglio v. USA FLETC 2012, Pursuit Policy Course IADLEST/NHTSA 2012, How to be a Good Expert Witness NIJ 2012, Dealing with Persons with Mental Illness NWUCPS 2012, Active Shooter: Issues and Updates NTOA 2013, Management, Oversight and Monitoring of Use of Force (emphasis on TASER) AELE 2013, Less-Lethal: Current Trends and Initiatives NTOA 2013, Negotiations: Understanding the Incident Assessment Process NTOA 2013, Connecting: CIT and SWAT Crisis Negotiation CIT 2013, Searches Incident to Arrest and Cell Phones FLETC 2014, Use of Force (Legal Aspects) FLETC 2014, Developing Legally Defensible Policies for Effective and Constitutional Policing / Use of Force / Internal Affairs and Investigating Misconduct / Force of Weapons – Parts 1 and 2 DLG 2014, Shooting Reconstruction: The 4 Elements of Trajectory RTI 2014, Meaning and History of the U.S. Constitution HC 2014, Lethal and Less-Lethal Force AELE 2014, Death Investigation UND/NIJ 2015, 21st Century Policing IACP 2015, Discipline and Internal Investigation AELE 2015, Agitated Chaotic Events and Arrest-Related Deaths IPICD 2015, Recognizing Agonal Breathing Instructor IPICD 2015, Total Appendage Restraint Instructor IPICD 2015, Brady v. Maryland Disclosure JC 2016.

## *TEACHING and TRAINING EXPERIENCE*

Washington State Vocational Education Certificate for teaching Police Supervision, taught law enforcement courses at the Bellevue Police Academy, Washington Criminal Justice Education and Training Center, Bellevue Community College, Seattle University, Northwestern University's Traffic Institute and International City Management Association's Training Institute. Lectured on police-related issues before the University of Washington School of Law and Graduate School of Public Affairs, Simon Fraser University, American Civil Liberties Union, Washington State Bar, Seattle-King County Bar, Washington State Court Administrators, Washington Association of Legal Secretaries, American G. I. Forum, United States Justice Department Community Relations Service, National Institute of Law Enforcement and Criminal Justice, U. S. Attorney General's Task Force on Family Violence, Montana Department of Social and Rehabilitation Services, Washington Advisory

Committee to the U.S. Commission on Civil Rights, American Society of Criminology, debated California Highway Patrol Commissioner on police pursuit before National Association of Police Planners and International Association of Police Planning and Research Officers in 1990, Labor Relations Information System, City of Bellevue's Management Certificate Training Program, lectured for Association of Trial Lawyers of America's Civil Rights Section and the National College of Advocacy on excessive force from the expert's perspective in 1994 and domestic violence litigation liability arising from failure of prevention and response in 1995, lectured on loss prevention civil liability to Nordstrom Washington/Alaska Region in 1997, demonstrated expert witness testimony to the American Board of Trial Advocates in 2002. Additionally, served on the Law Enforcement Education Advisory Committee to the Washington State Board for Community College Education in developing their statewide curriculum, achieved the first college accreditation of a Basic Law Enforcement Academy in the State of Washington, testified before the California State Senate on police vehicular pursuit in 2005, testified before the City of Oakland Citizens' Police Review Board on police vehicular pursuit policy in 2007, lectured at the Henry C. Lee Institute of Forensic Science on Investigation of Officer-Involved Shootings in 2010, lectured at the Crisis Intervention Team International Conference of Prevention of Police-Involved Deaths of the Mentally Ill in 2013.

## *PUBLICATIONS*

"Recruitment and Retention of Minority Race Persons as Police Officers" in September 1976 issue of The Police Chief magazine, "An Overview of Police Service Today" in the April 18th and May 2nd, 1978 issues of Law Enforcement News, "Kids Meet Cops Through Basketball Trading Card Program" in the July 9th, 1979 issue of Law Enforcement News, "A Police Chief's View of Deadly Force" in the National Institute of Law Enforcement & Criminal Justice January 1979 booklet on Police Use of Deadly Force, "Career Development: The Next Step to Police Professionalism" in the November 1979 issue of The Police Chief magazine, "Crime Prevention Cuts Insurance Cost" in the August 1980 issue of Center City Report, "A Sensible Alternative to Those High-Speed Chases" in the November 25, 1980 issue of The Seattle Times, "Chiefs Should Chase Sane Pursuit Driving Guidelines" in the December 22, 1980 issue of Law Enforcement News, "Commercial Crime Prevention Can Earn Discounts" in the February 1981 issue of the FBI Law Enforcement Bulletin, "Enforcing Malicious Harassment Laws" in the January 1983 edition of Washington Council on Crime and Delinquency News, "Reducing Crime, Traffic Accidents - Bellevue Shows It Can Be Done" in the May 10, 1983 issue of The Seattle Times and the June 27, 1983 issue of Law Enforcement News, "Carrying A Gun - It Depends On You" in the February 3, 1985 issue of the Journal-American, "When To Use Deadly Force" in the Winter 1985 issue of the Washington Law Enforcement Executive Journal, "Domestic Violence - A New Approach to an Old Problem" in the June 1985 issue of The Police Chief magazine, "It's Time for Police To Re-Examine Their Role In Society" in the October 1, 1989 issue of The Seattle Times, "Shaking The Pillars of Police Tradition" in the October 31, 1989 issue of Law Enforcement News, "Training-The First Hundred Years" in Law Enforcement In Washington State: The First Hundred Years 1889-1989, "K-9 Use of Force: A Biting Example of Questionable Policy" in the July/August 1992 issue of Law Enforcement News, "Police Pursuit: Uncontrolled Deadly Force" in the February 28, 1993 issue of Law Enforcement News, Bulletin Alert on a "Hair-raising Comb" in the June 1994 issue of the FBI Law Enforcement Bulletin, "Excessive Force - The Expert's Perspective" in the Association of Trial Lawyers of America July 1994 Annual Convention Reference Materials Volume I, "Domestic Violence Litigation: Liability Arising from Failure of Prevention and Response" in the Association of Trial Lawyers of America July 1995 Annual

Convention Reference Materials Volume I, "Shades of Blue: What White Police Officers Can - and Must - Learn from Minority Officers" in the January/February 1996 of the Police Executive Research Forum's Subject to Debate, "Doing Something About Excessive Force" in the January 15, 1998 issue of Law Enforcement News (republished by San Diego State University 2003), "The Consistent Law Enforcement Expert" in the November/December 1998 issue of The Forensic Examiner, "To Pursue or Not to Pursue: THAT is the Question" in the November 1998 issue of Police, "Handling the Mentally Ill" in the March 2000 issue of Police, "Building a Bridge" in the September 30, 2000 (25th Anniversary) issue of Law Enforcement News, "The Media: Enemies of Allies?" in the April 2001 issue of The Police Chief, "Control of Police Vehicular Pursuit" in the 2004 (1) issue of the Law Enforcement Executive Forum, "Preventing Officer-Involved Deaths of the Mentally Ill" in the Third Quarter 2004 issue of The Law Enforcement Trainer, "Suicide-by-Cop" in the September-October 2006 issue of American Cop, "Police Response to Excited Delirium" in the January 2008 issue of the IADLEST Newsletter (republished by Americans for Effective Law Enforcement 2008), "Policing in the 1950's" in the January-February 2009 issue of National Academy Associate, "Investigation of Officer-Involved Shootings" in the 19th Annual Markle Symposium program guide September 27-28, 2010 program, **Co-Author (with Dr. Cyril Wecht, Dr. Henry Lee and Chief Mel Tucker) of *INVESTIGATION and PREVENTION of OFFICER-INVOLVED DEATHS* © 2011 CRC Press**, "Implementing Change" in the Fall 2012 issue of Seattle University Magazine, "Letter of the Month" in the December 2015 issue of Leatherneck.

### *NATIONAL TELEVISION and RADIO APPEARANCES*

NBC Nightly News special report on the dangers of police vehicular pursuit.
NBC Today Show:

1. Personal protection against criminal attack;
2. Misuse of pepper spray to punish;
3. Police use of force (opposite Rev. Al Sharpton),
4. Officer-involved shooting.

NBC *"You Be The Judge"* on the dangers of police vehicular pursuit.
NPR *"Cops and the Mentally Ill"*.
CKNW World Today:

1. TASER;
2. Restraint asphyxia.

KOGO Clear Channel on police vehicular pursuit.
KHOU-TV (CBS) on police vehicular pursuit.

### *QUOTED in MAJOR NEWSPAPERS*

USA Today, Wall Street Journal, The New York Times, The Baltimore Sun, Los Angeles Times, San Francisco Chronicle, The Seattle Times, The Oregonian, Toronto Sun, The Virgin Island Daily News ("Deadly Force" won ABA's 2004 Silver Gavel Award), The Tennessean, Christian Science Monitor, Milwaukee Journal Sentinel, Vancouver (B.C.) Sun, Ottawa Citizen., Louisville Courier-Journal, Chicago Tribune.

## *PROFESSIONAL MEMBERSHIPS*

**American Academy of Forensic Sciences (AAFS)**, International Association of Chiefs of Police (IACP) - Life Member, Police Executive Research Forum (PERF), Americans for Effective Law Enforcement (AELE), Association of Certified Litigation Specialists (ACLS), FBI National Academy Associates, Washington Association of Sheriffs & Police Chiefs (WASPC) - Life Member, International Association of Directors of Law Enforcement Standards and Training (IADLEST), National Tactical Officers Association (NTOA), Association of Professional Law Enforcement Emergency Vehicle Response Trainers International (ALERT), CIT (Crisis Intervention Team) International.

## *AWARDS*

USMC Expert Rifleman, FBI "Possible Club" (of the 19,130 police officers who attended the FBI National Academy during the 50 years from when it started to the year of my retirement, I was 1 of only 165/.0086% who fired a perfect score on the PPC or TRC), Appreciation from the Drug Enforcement Administration, Outstanding Community Service from Bellevue Jaycees, Human Rights (Implementing Law and Order with Justice) from Baha'i Communities of Bellevue and Eastside, Youth Service from the Chief Seattle Council of the Boy Scouts of America, Program Innovation from the King County Domestic Violence Coalition, Support and Service from Bellevue Cadet Squadron Auxiliary USAF, Law Enforcement Appreciation from the Puget Sound Chapter of the American Society for Industrial Security (presented by the Governor of the State of Washington), Outstanding Volunteer Service from the Salvation Army, Outstanding Service as a Public Official Citizenship Award from the Bellevue Kiwanis Club, Appreciation from the United States Secret Service, **Award for Public Service from The U.S. Department of Justice**, Recognition for 30 Years of Public Service from the City of Bellevue, Recognition and Commendation Resolution by the Municipality of Metropolitan Seattle, Appreciation for Service from the Woodland Park Zoo Bond Oversight Committee, Appreciation for Service from the King County Executive, Appreciation for Personal Contribution to Developing Bellevue Convention Center from the City of Bellevue, Outstanding Support of the Arts (jointly with wife) from the City of Bellevue Arts Commission, Commendation for Outstanding Service from the City of Bellevue.

EXHIBIT C

EXHIBIT C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian ad litem of the person and estate of CESAR BELTRAN-SERRANO, | ) |
| Plaintiffs, | ) |
| vs. | ) No. 15-2-11618-1 |
| CITY OF TACOMA, a political subdivision of the State of Washington, | ) |
| Defendant. | ) |

VIDEOTAPED DEPOSITION OF MICHEL VOLK

April 13, 2016

Tacoma, Washington

Byers & Anderson, Inc.

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1 **A No. I believe he looked at me.**
2 Q Okay. What happened next?
3 **A I believe he kept digging in the hole in the ground.**
4 Q Okay. What happened next?
5 **A And then at some point he stood up.**
6 Q Okay.
7 **A And then I tried to speak with him, and he wasn't**
8 **responding. So I asked him if he spoke English, and he**
9 **gave me a no. So at that time I got on the air and asked**
10 **for Jake Gutierrez, who is Paul 044, because he speaks a**
11 **little bit of Spanish, and I wanted to see if he could**
12 **come and help.**
13 Q Okay. So at this point he'd been digging in a hole in
14 the ground; correct?
15 **A Correct.**
16 Q He had been nonresponsive?
17 **A Verbally nonresponsive.**
18 Q And when you asked if he spoke English, he shook his
19 head, and you understand that -- stood that to mean that
20 he did not; correct?
21 **A Correct.**
22 Q And did he -- was he doing anything in the hole that you
23 could see?
24 **A At that point it appeared that he was just digging with**
25 **his hands.**

1 Q Okay. I read in your statement that at some point he
2 took a bottle out and took a drink of it.
3 **A Yes.**
4 Q Was that before you called Gutierrez, or after?
5 **A I would have to reread my statement for the exact time of**
6 **it.**
7 Q Okay. But you recall that he took some -- what did he
8 take out and drink from?
9 **A It appeared to be a soda bottle.**
10 Q Okay. Do you know what kind?
11 **A It appeared to be an orange liquid.**
12 Q Like Orangina?
13 **A I don't know. It was just an orange -- orange liquid.**
14 Q Like a Fresca?
15 **A I have no idea.**
16 Q Have you ever been to Mexico?
17 **A No.**
18 Q Do you know what kind of sodas they drink?
19 **A No.**
20 Q And so he took some bottle of orange soda out of a hole
21 in the ground and drank it; correct?
22 **A Correct.**
23 Q And you knew that he didn't speak English; correct?
24 **A I just knew -- I assumed he didn't speak English based on**
25 **his shaking of his head.**

1 Q Okay. And other than that, what was his appearance?
2 **A He appeared to be dirty.**
3 Q And he was lying on the ground; correct?
4 **A Correct.**
5 Q Based on your training, did this appear to be normal
6 behavior?
7 **A It all depends on your definition of normal.**
8 Q Do people that don't have some type of mental illness lay
9 on the ground and dig in holes and take sodas out and
10 drink them?
11 **A I've encountered several people who do not have diagnosed**
12 **mental illness that do things that I would not consider**
13 **normal.**
14 Q Maybe they should have diagnosed mental illness.
15 **A I'm not a mental health professional.**
16 Q Did those things seem normal to you?
17 **A No.**
18 Q And what happened next?
19 **A There's a timespan there where we are not saying anything**
20 **to each other, and I'm basically just standing there**
21 **for -- waiting for Jake Gutierrez to arrive.**
22 Q Okay.
23 **A And then --**
24 Q Did you contact him again?
25 **A I eventually asked him if he has ID, and I give him hand**

1 Q Okay. So between requesting Officer Gutierrez at
2 15:05:01 and shots fired was, it looks like, 37 seconds;
3 correct?
4 MS. HOMAN: Object as to form.
5 Q (By Mr. LeBank) Correct?
6 **A It appears so, yes.**
7 Q Okay. Is your memory any different than what's recorded
8 here?
9 **A In my memory, time slowed down completely.**
10 Q Okay. And then at 15:05:41, it says, "Sylvester Weaver."
11 Is that another officer?
12 **A Yes.**
13 Q Okay. And then at 15:05:41, he arrived as backup?
14 **A No.**
15 Q Or he's dispatched as backup?
16 **A They had once then -- yes.**
17 Q Okay. And then at 15:05:51, there was a medical aid
18 priority call; correct?
19 **A Correct.**
20 Q Okay. But in terms of what this -- from the time that
21 you arrived until the time that you discharged your
22 firearm, according to this CAD report, it was about
23 two minutes and 26 seconds; correct?
24 MS. HOMAN: Object as to form.
25 THE WITNESS: According to this, it

EXHIBIT D

EXHIBIT D

| | | | |
|---|---|---|---|
| Description: | **Written Statement of PPO Volk** | Fingerprinted: | |
| Quantity: | **1** | Contents Sampled: | |
| Finding Location: | | Owner: | |
| Status: | **E - Evidence (Including Other Seized Property And Tools)** | Value: | |
| Recovered Date: | | Make/Brand: | |
| Recovered Value: | | Model: | |
| Field Tested: | | Serial No: | |
| Field Test Results: | | OAN: | |
| Property Disposition: | **Booked into Property** | Insurance Company: | |
| Disposition Location: | **Tacoma Police** | Policy No: | |
| **Vehicle Information:** | | | |
| License: | | Locked: | |
| License State: | | Keys in Vehicle: | |
| License Country: | | Delinquent Payment: | |
| Vehicle Year: | | Victim Consent: | |
| Make: | | Drivable: | |
| Model: | | Estimated Damage: | |
| Vehicle Style: | | Damage: | |
| Primary Vehicle Color: | | Damaged Area: | |
| Secondary Vehicle Color: | | Tow Company: | |
| VIN: | | Tow Consent: | |
| Special Features: | | Hold Requested By: | |
| **Drug Information:** | | | |
| Drug Type: | | Drug Measure: | |
| Drug Quantity: | | Drug Measure Type: | |
| **Jewelry Information:** | | | |
| Metal Color: | | Total # of Stones: | |
| Metal Type: | | Inscription: | |
| Stone Color: | | Generally Worn By: | |
| **Firearm Information:** | | | |
| Caliber: | | Length: | |
| Gauge: | | Finish: | |
| Action: | | Grips: | |
| Importer: | | Stock: | |
| Property Notes: | | | |

| Enter | Date | Time | WACIC | LESA | Initial | Release Info. | Date | Time | Release No. | Release Authority |
|---|---|---|---|---|---|---|---|---|---|---|
| Clear | | | | | | Owner Notified | | | Operators Name | |

## Investigative Information

| | | | |
|---|---|---|---|
| Means: | | Motive: | |
| Vehicle Activity: | | Direction Vehicle Traveling: | |

| | |
|---|---|
| Synopsis: | |

Narrative:

Reopelle: This is Detective Reopelle, ID #472.

The purpose of this interview is record a statement from Tacoma Police Officer Michel Volk regarding Case Number 13-180-0756. It is an officer involved shooting that occurred on June 29th, 2013 at approximately 1500 hours.

Today's date is July 10th, 2013; and the time is approximately 1320 hours.

The location of this interview is Tacoma Police Headquarters, 3701 South Pine Street, in the second floor CID conference room.

In addition to Officer Volk and myself, also present for this interview are Attorney Jeff Julius, Keith Barnes, an investigator with the Pierce County Prosecutor's Office and Detective Dan Davis, Sergeant Gretchen Aguirre is also in the room.

Is it everybody's understanding that this interview is being recorded and being recorded with everyone's permission?

Volk: Yes.
Davis: Yes.
Reopelle: Okay. It appears everybody is in agreement of that.
Um, Michel, just start asking you a few general questions if you don't mind.
Who are you currently employed by?
Volk: Tacoma Police Department.
Reopelle: And how long have you been with the Police Department?
Volk: Uh, six years.
Reopelle: Your current rank?
Volk: Patrol Officer.
Reopelle: And do you have any prior law enforcement experience?
Volk: No.
Reopelle: Have you had any assignments outside of Patrol?
Volk: No.
Reopelle: Do you have any specialized training?
Volk: ECT Instructor and Bike Certified.
Reopelle: Okay. How long have you been an ECT Instructor?
Volk: Uh, two years.
Reopelle: And what was your assignment on the date of this incident?
Volk: Patrol Officer.
Reopelle: And your start time?
Volk: 1300 hours.
Reopelle: Which is swing shift?
Volk: Yes.
Reopelle: Okay. And what time do you get off?
Volk: 11:00 pm.
Reopelle: All right. Were you working a one officer or two officer car?
Volk: One officer.
Reopelle: And what is your call sign?
Volk: Paul 175.
Reopelle: Do you have an assigned vehicle?
Volk: Yes.
Reopelle: What's the vehicle number on that?
Volk: Normally 656, which was in the shop; so I had the loaner vehicle of 608.
Reopelle: Okay. So you were driving 608 on this day.
Volk: Yes.
Reopelle: And that's a marked vehicle?
Volk: Yes.
Reopelle: White with Tacoma Police markings?
Volk: Umm-hmm, yes.
Reopelle: Overhead emergency equipment?
Volk: Yes.
Reopelle: Okay. And what uniform were you wearing that day?
Volk: Uh, my issued jumpsuit.
Reopelle: Can you describe that for me?
Volk: Uh, it's just a fully marked jumpsuit with patches on both shoulders and a badge on the left chest.
Reopelle: Okay. And your duty weapon that day?
Volk: Was a Glock 21, 45 caliber.
Reopelle: And the capacity of that weapon?

Volk: Um, how many bullets? (Unintelligible)
Reopelle: Yeah.
Volk: Um, thirteen in the magazine and one in the chamber.
Reopelle: And was it fully loaded?
Volk: Yes, it was.
Reopelle: Okay. So it had a total of fourteen rounds in it.
Volk: Yes.
Reopelle: And how many extra magazines do you carry?
Volk: Two.
Reopelle: Are each of them loaded to capacity?
Volk: Yes.
Reopelle: Do you have any backup weapons?
Volk: No.
Reopelle: All right. And you carry a taser?
Volk: Yes.
Reopelle: How many cartridges do you have for that taser?
Volk: I only carry one on me, which was loaded in the ECT.
Reopelle: Okay. And then do you have another one in the vehicle or.....
Volk: Yes.
Reopelle: Okay. Um, any other weapons on that day? Do you have a shotgun rifle in the car?
Volk: I have a rifle in the car and then a knife on my belt and on my boot.
Reopelle: Okay. And none of those were used in this incident?
Volk: No.
Reopelle: Okay. Um, Michel, we have reviewed your, your written statement that was provided to us prior to this interview. If you would I'd appreciate if you just give us the story and walk us through this thing in, in your own words in a narrative form. After that's done then we'll probably go back and ask you some clarifying questions.
Volk: Okay.

Um... well, on 6/29/13, um I was driving down Portland Avenue, where it's a known area for panhandlers, and as I approached 28th and Portland, I was headed northbound and I could see a male standing on the northwest corner. Um, and he appeared to be panhandling. To get to him I had to drive under the overpass and do a U-turn. I came back and I parked my car.

Um, and by that time when I got out he was laying flat on his stomach digging in, just appeared like he was digging in the ground at that point. And then his head was facing northbound. To his right I believe was a bike and a bag. So I got out of my vehicle, approached around the front to the side of him and I said hello sir. And he had turned his head and he looked at me and just kept digging in this hole. So I kinda peeked in the hole really quick to see what was in there and then backed off. And all I could really see was trash. And at that point, he just kept digging in the hole. Um, and he pulled out an old soda can, like an old, plastic one liter or whatever that is, and he took a drink of it and threw it back in the hole.

Um, and I asked him do you speak English or do you understand English and he shook his head no, to the left and right. Un, and at that time, um I got on the radio and I asked for Paul 044, cause he speaks a little bit of Spanish, and um our only other Spanish speaker is Jeff Smith and he was working off duty somewhere that day not in the four.

Um, that point, the gentleman kinda goes to his knees and keeps digging in the, the hole; and then eventually he stands up. He's still, I'm just trying to have like a casual conversation with him and he's still not answering or anything. Um, he eventually stands up. I ask him if he has any ID on him; and he pats his pockets and his back pocket. Um, and then he kinda made a motion towards the ground. And I thought he was reaching down towards his bag to get his ID for me and that's when he grabbed the object, the pipe like object, and came around and swung it, hit me in the arm and then took off into the middle of the intersection; at which point I drew my weapon on him and he stopped right in the middle of the intersection. And I was giving him verbal commands to drop the object um, still not responding to me at all. Um, he had the pipe up like this towards me, then turned towards the red vehicle um and at that point, I knew that if he came at me with the pipe again or if he came at them with the pipe that I didn't have a clear backdrop um to discharge my weapon at him cause there was, there was a lot of traffic backed up right there. Um, he then decides to take off running, which at that point I felt safe enough to get on the radio and say Paul 175 priority.

Um, he was no longer, in my mind, he was no longer a threat to me at that point cause his back was to me; so I put my, I holstered my firearm, pulled out my ECT, discharged it. Um, I saw both probes hit him in the back as he was running. At this point, he had made it to the sidewalk area. The ECT did not affect him at

all. He instantly turned; so they hit him in the back. He had turned to his left with this raised up and came at me with it. I threw my taser behind me, pulled out my firearm and then um discharged it until he dropped the pipe and fell to the ground.

Reopelle: Okay. Um, let's back up to the beginning a little bit.

Volk: Okay.

Reopelle: You're driving. You're on routine patrol and you see this guy.

Volk: Umm-hmm.

Reopelle: Have you ever had any contact with him before?

Volk: No.

Reopelle: Okay. Were, so you didn't know who he was. You didn't know his name, whether he had warrants or you....

Volk: No.

Reopelle: Okay.

Volk: My whole intention of stopping um was Lieutenant Wade had told us in turnout about two weeks ago that they're getting a lot of citizen complaints in that area and the Bay Street curves about panhandling um so he asked us to go contact 'em and basically move 'em along; and if we needed to issue 'em a cite and release. So my whole intention was to basically just say hey, these are the laws of Tacoma. You need to move along um, but he never verbally responded to me at all and I never got a chance to tell him any of that.

Reopelle: Did, did you see him actively panhandling? Did you see him contacting any cars or holding a sign or doing any of those kinds of things?

Volk: I did not see a sign. Um, what I saw when I was driving by was he was standing up and kinda stepping out into traffic. And then my light turned green and I went and turned around and came back and contact him but when I came back he was flat on the ground.

Reopelle: Okay. And he was, you said kinda digging through that.

Volk: Yeah. He had both hands in there just like a digging into the ground.

Reopelle: Okay. Um, and now when he bends down,....

Volk: Umm-hmm.

Reopelle: And he picks up this metal.

Volk: Umm-hmm.

Reopelle: Can you describe it for me in as much detail as you can?

Volk: At that point, I honestly couldn't see what it was. Um, it was blocked from my view by the bike. And when he stood up uh, I kinda kept my distance from him because he was just, he was completely nonverbal and non-responding; so I couldn't see what was on the other side of the bike. So when he reached down I didn't know what it was. I just saw it coming at me and then it hit me. Then I put my arm up. Um, and I didn't really see what it was until he was in the intersection and raised it up.

Reopelle: Okay. Now, this bike that ....

Volk: Umm-hmm.

Reopelle: ...that was there, was it between you and the, and the subject or was it, how was it positioned amongst the two of you?

Volk: It was off to, if I'm facing him it was off to the right hand side.

Reopelle: Okay. Off to your right hand side?

Volk: Off to my right hand side.

Reopelle: And how far away from him were you?

Volk: Uh, when I was contacting him, I was probably seven, eight feet.

Reopelle: So when he bends down and he picks up this object you're about seven or eight feet from him.

Volk: Uh, yes.

Reopelle: Okay. Um, and do you have anything in your hands at that point?

Volk: No, I do not.

Reopelle: Okay. You don't have a notepad in your hand that you were gonna write his name down with or anything like that?

Volk: No. I was probably holding my hands like this or like that but nothing in my hands. I hadn't pulled anything out cause he was not, he was completely nonverbal with me.

Reopelle: Okay. So, I, I understand that this, your view is kinda blocked from him....

Volk: Umm-hmm.

Reopelle: .... while he's obtaining this object while he's, he's bent down.

Volk: Umm-hmm.

Reopelle: And that's because of the bike, not because of the position of his body or....
Volk: Ah, well, I couldn't see it. I could not see the object when it was on the ground. When he patted, he reached down with his right arm and kinda be able to block my view but I couldn't see the object sitting on the ground because of the bike.
Reopelle: Okay. Um, now, when he comes up,...
Volk: Umm-hmm.
Reopelle: ....can just try to describe this a little bit more detailed for me if you can.
Volk: Yeah.
Reopelle: As he comes up and is it kind of in one motion that he, that he stands up and swings that at you?
Volk: Yes.
Reopelle: Okay.
Volk: Um, and it was kinda, he reached down and it was more like a tuck in and just a come around, if that makes any sense with it. It was one fluid turn and take off.
Reopelle: Was his back towards you as he, I mean was his back towards you then if it was kinda him turning around like this was his back a little bit to you ....
Volk: Yes.
Reopelle: ....while he was grabbing it?
Volk: Yes.
Reopelle: Okay. Um now, I think you had said a little bit earlier that you were about seven to eight feet between....
Volk: Yes.
Reopelle: ....you and him as he's grabbing this object.
Volk: I think um, I think I made a mistake on that one. I originally contacted him I was that far away. And then when he stood up I was that far away. And then when he asked for his ID I think I came up a little bit more; so I was probably maybe four feet.
Reopelle: Okay. So when he bends down to pick that up then and swing it at you he, you're close enough to where he's able to hit you with it?
Volk: Yes.
Reopelle: Okay. Without he doesn't run towards you or anything like that.
Volk: No.
Reopelle: It's just that one motion as he stands up.
Volk: Yeah. He literally stood up. Yeah. It was all one fluid motion.
Reopelle: Okay. Um, and what was your reaction when you realized he's swinging this hunk of metal at you? What do you do?
Volk: Uh well, it happened so quick all I could do is put up my arm um, so it bounced off my uh, my forearm and my elbow. Um, and then he instantly took off and I took off after him.
Reopelle: Okay. Um, now describe how he took off to me?
Volk: Uh, to me what I remember is it was a um when he spun and hit me that it was a run to the middle of the intersection. That's how I remember it. Um, and then I then I drew my firearm on it, at him as soon as I realized what was in his hand.
Reopelle: That, that he had struck you?
Volk: Yeah.
Reopelle: And at that point you got a better look at this ....
Volk: Yes.
Reopelle: ....this object?
Volk: Yes.
Reopelle: Okay. How big do you think it was?
Volk: Uh, I (Unintelligible) twelve inches but it was like um the best way I can describe it is it's like a big construction pipe that had been pushed down; so it was kinda like an oval shape. So it was like twelve inches and a perfect grabbing handle for him.
Reopelle: Okay. When it, when it hit your arm....
Volk: Umm-hmm.
Reopelle: ....could you feel that it had some substance to it, I mean did it, did it feel to you like it was a heavy object or?
Volk: Yes.
Reopelle: Okay. Um, so now he runs out into the, into traffic I guess crossing 28th there, the off ramp.

Volk: Yes.
Reopelle: And he stops in front of vehicles that are there?
Volk: Yes.
Reopelle: And do you remember what vehicle he stopped in front of?
Volk: It was a red vehicle. I thought it was either a minivan or an SUV. It's, what I could see at the time. And I could see people in the vehicle, appeared to be a driver and a passenger. Um, and he just stopped there, would not answer or respond to verbal commands or anything like that. And then he had the pipe or object, pipe like object, up about shoulder level just standing there.
Reopelle: Okay. And is he, I mean is he being threatening? Is he making any actions that, that cause you to believe he's gonna come at you and hit you with this. He has it raised up here, .....
Volk: Umm-hmm.
Reopelle: ....I mean is he, is he raring back a little bit and facing off like if you come close to me I'm gonna hit your or .....
Volk: Yes.
Reopelle: ....what posture is he taking?
Volk: Yes. Exactly that like he's gonna come at me. He, he appeared to be very um agitated in the sense of it looked like he was either gonna come at me or he was gonna come at that vehicle. And my fear at that moment was if he did go at that vehicle I had no, I had no clear area to discharge my firearm without harm,....
Reopelle: Okay.
Volk: ....possibly harming someone else.
Reopelle: How far away are you from him at that point while he's standing there?
Volk: Ah, I'd probably say seven feet again.
Reopelle: Okay. And are you giving him any verbal commands?
Volk: Yes. I was yelling at him to drop the weapon and then drop the object. And then I believe I said get on the ground.
Reopelle: Okay.
Volk: Um, over and over and over.
Reopelle: Okay. And you have your weapon out at this time?
Volk: Yes, in a low ready position.
Reopelle: And that's your firearm?
Volk: Yes.
Reopelle: Okay. So, explain what low ready means?
Volk: Uh, when I had it in the low ready I had it basically right at my chest level with the not or the muzzle pointing towards the ground.
Reopelle: Okay. So, you're not pointed it directly at him at that point?
Volk: Correct.
Reopelle: All right. Um, then what, what changes? He, he continues running across the intersection?
Volk: Yeah. He turns towards the vehicle and then turned back towards me and then took off running and still with the object in his hand.
Reopelle: Okay.
Volk: And then at that point, um I had enough time to get on the radio and call out for priority. And then I felt that if I could hit him with my taser, my goal was that he would just drop flat down to the ground.
Reopelle: Okay.
Volk: Um, drop the pipe, situation would be over. So that's why I holstered my pistol, transitioned to my ECT but it had no effect on him whatsoever.
Reopelle: Okay. Now, as he turns towards you there in front of that red vehicle.....
Volk: Umm-hmm.
Reopelle: .....and then comes towards you,....
Volk: Umm-hmm.
Reopelle: ....how far does he come towards you? Can you describe that to me a little bit?
Volk: Ah, probably two, two steps,.....
Reopelle: Okay.
Volk: ...two of his steps.
Reopelle: Okay.
Volk: And then he immediately went to his right; so he went southbound at that point.
Reopelle: Okay. And you chose not to fire any shots at him at that point?

Volk: Yes.
Reopelle: Okay. Why was it that you had chose not to fire at him then?
Volk: At that point, I, I didn't have a clear backdrop. I was worried about the car, the red vehicle...
Reopelle: The other vehicles?
Volk: Yes.
Reopelle: Okay. And how does he run away this time? Does he, does he just turn and run as fast as he can or how, how does that happen?
Volk: Ah, it appeared to me that he was turned and ran as fast as he could. Um, cause he instantly was gone, still with the pipe in his right hand. He never dropped it. And he made it probably from the middle of the intersection I prob, he probably made it ten, fifteen feet, I think is my estimate um until I popped him in the back with the taser.
Reopelle: Okay. And so you, you holster, then you draw your taser. Do you draw your taser with your left hand or your right hand?
Volk: My right hand.
Reopelle: Okay. Um, are you holding it up with one or two hands?
Volk: Ah, I just holstered it, I think two hands.
Reopelle: And are you, are you running after him as you fire the taser or are you or and I know it's a ECT but....
Volk: Yeah.
Reopelle: ....it's a hard habit for me to break. You fire this at him.
Volk: Umm-hmm.
Reopelle: Are you moving at that time?
Volk: Yes, I'm running after him.
Reopelle: Okay. How far away are you when you, when you do that?
Volk: Uh,....I think I'd closed a little bit of the distance. I'm, I may not, I know I keep saying seven feet. I, it seems like it was seven feet to me cause it was close enough for the probes, both probes to hit him and the wires didn't break.
Reopelle: Okay. Now, where did the probes hit him on his back? Do you remember?
Volk: From what I saw I think one was the upper, left shoulder and one the lower, left back, I believe.
Reopelle: Okay. Um, do you remember what he was wearing?
Volk: I think he just had a t-shirt on, t-shirt and jeans.
Reopelle: Okay. Do you, you're an ECT instructor.
Volk: Umm-hmm.
Reopelle: Do you have any ideas now that you've had an opportunity to reflect as to why it didn't have any effect?
Volk: Um, there's several reasons. The first one would be that the probes didn't hit but it appeared that they both hit him. Um, at that point, I couldn't hear my taser snap and firing off. Um, but it had discharged; so it shh, I mean the normal cycle is that it would go for five seconds.
Um, and then other things would be if obviously he wasn't feeling the pain due to just mental instability or some sort of drug in the system that it would just numb everything.
Reopelle: Okay. But you didn't hear it clacking? You didn't hear it?
Volk: At that point no, I did not.
Reopelle: Okay. Um, what is his reaction when, when he does get hit with that ECT?
Volk: His only and first reaction was he raised the pipe and turned towards me with it.
Reopelle: Okay. Um, so he turns around and he's facing you at this time?
Volk: Ah he, so it hits him in the back, he raises up. Yeah, he's on his way around to facing me.
Reopelle: Okay. And then you realized at this point that it didn't work. It didn't have the desired effect.
Volk: Correct.
Reopelle: So what do you do with it?
Volk: I literally threw my taser behind me and drew my firearm. And as he was coming at me I fired at him until he dropped the pipe and went to the ground.
Reopelle: Okay. Um, how many steps do you think he took towards you before you were able to fire?
Volk: Uh he, it was probably one.
Reopelle: Okay. So you, you once you got the taser out of hand you drew fairly quickly.
Volk: Yes.

Reopelle: And he was closing the distance on you.
Volk: Yes.
Reopelle: Okay. Where at in the street did this happen?
Volk: I was, he was on the sidewalk. I know I was on the street. Um, I was past the intersection. I was past the like the, the ramp onto the sidewalk. I think it was probably a foot or two feet past that but I was in the street and he was on the sidewalk.
Reopelle: Okay. Okay. Um, and then what, what effect did the bullets have
Volk: Ah he, I could see the bullets hitting him. Um, and he was still coming at me; so I kept shooting until he went to the ground um, cause at first it was having no effect on him.
Reopelle: Okay. Do you remember how many shots you fired?
Volk: I feel like I fired four um but I'm not entirely sure.
Reopelle: Okay. Um, did you have any time to once the taser doesn't work and he turns around and you drew your firearm, did you have any time to assess or give verbal commands at that time....
Volk: No.
Reopelle: ....or was it just happened so fast?
Volk: It just happened so fast.
Reopelle: Okay.
Volk: If I would have given any verbal commands, I mean he was coming at my head with the thing like it would have, I would have been done.
Reopelle: Okay. He would have been able to close that distance on you....
Volk: Yes.
Reopelle: ....and, and been able to strike you?
Volk: Yes.
Reopelle: Okay. And then afterwards when he goes down onto the ground what happens?
Volk: I immediately or no, I, I think I did my scan first. No, I got on, I got on the radio and I said shots fired. Um and then I did my 360 scan and that's when I noticed the Trooper was um pretty far down to my right hand side. Um and then I asked for medical aid four bell um and then did a tactical recovery of my taser, took the cartridge off, dropped it where it was and then re-holstered my ECT. And then the Trooper and I um, he asked me if I wanted to handcuff him or if he wanted me to handcuff him or if I wanted him to handcuff him; and I said I will do it. So he held him at a low ready with his firearm. Um and I gloved up and handcuffed him and then got back on the radio and said fire could come right in cause he was secure.
Reopelle: Okay.
Detective Davis anything?
Davis: So, let me go back ...
Volk: Umm-hmm.
Davis: ....and cover just some things too Michel that Detective Reopelle kinda already covered. And if I get anything wrong you just you straighten it out for me.
Volk: Okay.
Davis: So, from your initial contact with him where you're kinda on the corner there...
Volk: Umm-hmm.
Davis: ...where he, he swings his pipe and hits you and then takes off. Then, you know, if we could break it down it seems like there's some different things going on where you transition a little bit from one to the next.
Volk: Umm-hmm.
Davis: So, we have him hit you with the pipe and run into the street.
Volk: Umm-hmm.
Davis: And so you kinda take off after him. Is that correct?
Volk: Yes.
Davis: Um, you draw your gun when he stops. I'm assuming is that unexpectedly to you? Do you assume, at that point, that he's just gonna continue running south or?
Volk: Uh, at that point, I thought he was gonna keep running. Um, what I believe I did was as soon as he took off running um, and I knew I had been struck with that thing is I instantly went to a low ready cause as soon, as soon as it wasn't that big of a gap between um the corner ...
Davis: Right.
Volk: ....and the middle of the intersection.
Davis: Right.
Volk: And so it was kinda like a bam bam situation. So it's like I took off a couple steps, he stops, and then yeah, I instantly pulled it out to a low my firearm out to a low ready.

Davis: When he stopped and kinda turned on ya?
Volk: Yeah.
Davis: Okay. Now, and how long do you think that he's facing you before he then turns and starts going again south bound.
Volk: Ah, maybe ten seconds facing me and probably five towards the car.
Davis: Okay.
Volk: And then he came back at me.
Davis: Okay. And um, now at the point when he turns away from you and it looks like again he's gonna continue southbound, .....
Volk: Umm-hmm.
Davis: ...then you transition, you holster your gun and you go to your, your ECT.
Volk: Yes.
Davis: Okay. Did you feel then it seems that you felt at that time that as long as he's gonna continue running away from you is a less lethal force. Is that a situation then or you, you tell me.
Volk: Yes. I felt at that point um, since his back was to me and he was running um, that if my ECT was to work properly that I could safely solve the situation with less than lethal force.
Davis: Okay. And then again, what we have is kind of another transition where after he's had the ECT he stops again and then again turns toward you....
Volk: Umm-hmm.
Davis: ....and starts coming at you with the, this metal object and his hand raised.
Volk: Correct.
Davis: Okay. And at that point, you drop the ECT and you, you use your gun to stop him.
Volk: Yes.
Davis: Okay. Um, So, let me ask you something that didn't happen but just kind of to get your thoughts on what's going on in your head and.....
Volk: Okay.
Davis: .... how you're perceiving all this. Now, he obviously turned and came back at you and you shot him. What, what do you feel like you're next move would be if the ECT did not work as it, as it did.....
Volk: Umm-hmm.
Davis: ...but he continues running southbound? What do you feel like your options are?
Volk: Uh, if he would have continued running southbound and not turned back towards me um, I probably, I would have just advised incoming units ....
Davis: Okay.
Volk: ....of the foot pursuit.
Davis: Okay.
Volk: ...um and kinda just kept pursuing him.
Davis: Okay. It seems like from point A, which is on the I'll guess we'll call it the north sidewalk then across the street to the south side, .....
Volk: Umm-hmm.
Davis: .....you know, there's some different transitioning going on there. And, and I just wanted to clarify that that, you know, it sounds like his actions of turning toward you there and raising the pipe were kind of what created that situation that, you know, it was a deadly force situation if you had been struck by the pipe.
Volk: Yes.
Davis: Okay.
Volk: I definitely felt at that point um mainly from the way that he raised it, where he had it raised um, that, I mean he wasn't trying to do a body shot. He was coming at my head. And I knew if he got me in the head with it I would, I would be dead.
Davis: Okay. Um, Keith, I had another question but I forget it.
Barnes: Okay. I'll ask um, you're, are you right handed or left handed?
Volk: Right handed.
Barnes: Okay. So what hand do you use with your firearm?
Volk: Right.
Barnes: Okay. And your holster's on the right?
Volk: Yes.
Barnes: And the taser is on the left?
Volk: Correct.
Barnes: And it's a cross draw that you use?
Volk: Yes.

Barnes: Okay. And then the, the lighting conditions at that time were?
Volk: Uh, sunny.
Barnes: Daylight?
Volk: Complete daylight.
Barnes: Okay. So, it was real clear?
Volk: Yes.
Barnes: And it was clear that he knew you were a police officer?
Volk: Yes.
Barnes: Okay. And um, did he say anything to you at all?
Volk: He never said anything and actually never, he never made a sound, didn't make a sound. The taser hit him, didn't make a sound. When I was shooting him, didn't make a sound. When he was on the ground afterwards, never once said anything.
Barnes: Okay. And did, did any of his body language communicate anything to you?
Volk: Uh, he was doing head nods that, that he understood what I was saying; specifically, when I asked for his ID and I asked if he spoke and understood or if he spoke English or understood English and he, he um, gave me the no on both of 'em shaking his head to left and right. And then when I asked for his ID, he patted himself down like a normal person would looking for like oh, maybe it's in my pocket kind of thing.
Barnes: Umm-hmm. And did his demeanor change after he ran from you?
Volk: Uh, yes.
Barnes: And how did that appear?
Volk: Uh, I could tell he was, I mean he was extremely agitated. Um, ....
Barnes: And how could you tell that?
Volk: Uh, just by the look on his face.
Barnes: Okay.
Volk: He was just very and he was his muscles were tensed.
Barnes: He looked aggressive to you is that what I'm understanding?
Volk: Yes.
Barnes: Okay. And um, and you said that when he turned on you in the intersection you didn't fire your weapon because why?
Volk: Uh, because there was, there wasn't a clear backdrop um if I would have discharged it there was a greater possibility of me, even if it did strike him, possibly going through him and hitting the civilians that were in the background. There were, there was a lot of traffic backed up at that time cause the light was red.
Barnes: And, and he didn't approach you at that time. He just turned on you. Correct?
Volk: Correct.
Barnes: He didn't come at you?
Volk: Uh, he, when he went to run before he took off he took one to two steps and then took off running.
Barnes: (Unintelligible) sideways.
Volk: Umm-hmm.
Barnes: Okay. And then you chased after him.
Volk: Correct.
Barnes: And then you, that's when you tried to tase him?
Volk: Correct.
Barnes: Okay. And then he stopped and turned toward you.
Volk: Umm-hmm.
Barnes: And then what was his demeanor then?
Volk: Uh, it's really hard to describe the look on his face.
Barnes: Umm-hmm.
Volk: Um, but it was almost like basically, what the, what the F ....
Barnes: Umm-hmm.
Volk: ....are you doing like kinda thing. And he just turned and I mean, I mean it was a probably the most aggressive look I've ever got, saw. I know he, like it was very clear that he was not trying to hurt me. He was trying to kill me.
Barnes: Okay. So he was, he appeared to you that he was out to do you harm then.
Volk: Yes.
Barnes: Okay. And then you said he came towards you?
Volk: Yes.

Barnes: And what was your backdrop at that time?
Volk: Uh, there's a, there's a gas station up top but behind him is just a little grass slope.
Barnes: Umm-hmm.
Volk: (Unintelligible) there were no, nobody else out there except me and him.
Barnes: And how tall is that grass slope?
Volk: Uh, it's a pretty good, it's a pretty good slope?
Barnes: Over your head?
Volk: Yeah.
Barnes: Okay.
I think that's all I had.
Reopelle: Dan, did you think of your other question?
Davis: I, I didn't. And I, I think I covered it.
Reopelle: Okay.
Davis: In the first round.
Reopelle: Michel, is there anything else you would like to add to this statement?
Volk: I do not believe so.
Reopelle: Okay. Jeff?
Julius: I have nothing.
Reopelle: Okay. That concludes the interview.
The time is now 1353 hours.
End of recording.
/jg

| Reviewed By: | | Reviewed Date: | |
|---|---|---|---|

EXHIBIT E

EXHIBIT E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CEASAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian ad litem of the person and estate of CESAR BELTRAN-SERRANO<br><br>Plaintiffs,<br><br>vs.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington,<br><br>Defendant. | ) No. 15-2-11618-1 |

DEPOSITION OF OFFICER REGINALD (JAKE) GUTIERREZ

May 12th, 2016

Tacoma, Washington

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1 Officer Volk contacted you at 15:05:01, how far were you
2 from her location at that time?
3 **A I don't know exactly where I was, but I'm guessing a good**
4 **30 blocks or more south of her.**
5 Q And how long would it typically take you to go 30 blocks?
6 **A On a priority call, it doesn't take long at all.**
7 Q What's your best estimate of how long it would take to go
8 30 blocks?
9 **A That would depend on traffic. If it was graveyard, 2 in**
10 **the morning, I would be there less than a minute. Swing**
11 **shift, if it's rush hour traffic, people don't really pay**
12 **attention to the light bars or the sirens, so I would**
13 **have to wiggle around them, so I couldn't go as fast as I**
14 **would on graves.**
15 Q Okay.
16 **A If it was day shift and kids were going to school, so it**
17 **all depends on the time of day and what's going on. That**
18 **day, I believe I was there within a minute and a half of**
19 **her calling priority.**
20 Q If it's a nonpriority call in midafternoon around 3:00,
21 about how long would it take you to go 30 blocks?
22 **A I would have to deal with traffic. I would have to sit**
23 **in traffic, so it could take up to five minutes.**
24 Q And on a priority call around 3:00 in the afternoon, how
25 long would it take you to go 30 blocks?

1 **A That day, I'm guessing it took me less than a minute and**
2 **a half.**
3 Q Not -- not in reference to that day, but typically on --
4 around 3:00 in the afternoon on a priority call, how long
5 would it take you to go 30 blocks?
6 **A 30 blocks on a priority call, I would say two minutes,**
7 **max.**
8 Q So would it be correct to say that from your position
9 when you first got the call from Officer Volk, it would
10 have taken you anywhere between a minute and a half and 5
11 to get to the scene?
12 MS. HOMAN: Object as to form; asked
13 and answered.
14 You may answer her question.
15 THE WITNESS: So, yes, I guess on a
16 normal day with no construction or anything like that, of
17 course.
18 Q (By Ms. Driscoll) Was there anyone else you spoke with
19 at the scene about what had transpired?
20 **A I don't believe so. There would have been a supplemental**
21 **or there would be a witness statement of that event.**
22 Q Okay. Was there anything else you remember from that day
23 that is either not in this narrative or that we haven't
24 discussed?
25 **A No.**

EXHIBIT F

EXHIBIT F

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendants. | NO. 15-2-11618-1<br><br>**DECLARATION OF WINONA STEVENS** |

WINONA STEVENS: declares and states as follows:

1. I was a witness to an officer involved shooting that occurred on June 29, 2013 at the intersection of East 28th Street and East Portland Avenue. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge, information, and belief.

2. On June 29, 2013 I was driving with my son Elijah Campbell in my 2009 white Saturn Outlook. We were headed north on Portland Avenue on our way to Home



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Depot. When we got to the intersection of East 28th Street and East Portland Avenue, we stopped at a red light.

3. As we were stopped, I looked out my window to the left and saw a police officer and a man on the northwest corner of the intersection. I had a clear view of the entire incident. The police officer parked and her and the man started walking towards each other and ended up at the man's belongings and a bike. Then the two people stood at the corner. The officer was close to the man, about 2-3 feet away. I saw the man was down towards the ground and then he stood up. The man did not hit or strike the officer in any way. The officer then pulled out what I assumed was a weapon due to the officer's stance, which later I learned was a tazer. This action by the officer seemed to escalate the situation. The man started backing away from the officer. He was focused on her and trying to get away from her. The man had something in his hands that was black and flexible looking. It was not a hard metal object and did not resemble a weapon.

4. The man started moving away from the officer. He was not running, but it seemed like he was trying to get away from her. The man was backing up, turning, backing- like he was trying to make sure he didn't trip over the island in the road or run into a car. The man never moved back towards the officer. The distance between the man and the officer was about 10-20 feet. The man did not have anything that resembled a weapon in his hands. I did not feel like the man was a threat to me, my son, or the officer and did not feel that anyone was in danger of the man attacking them. He was not aggressive or angry in any of his mannerisms. However, I was scared for my son when the officer pulled her weapon out. I tried to shield my son's eyes and protect him. It scared me that we were so close to the gun.

5. The officer chased the man across the street and the man kept trying to get away from her. The man raised his hands in front of him in a passive manner, gesturing for the officer to stop coming toward him. The officer then tazed the man and then immediately shot him.



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Between being shot and tazed, the man stood there wavering and teetering and seemed stuck in place. It felt like the tasing should have been enough. She tazed him and then immediately shot him. It was like one-two.

6. I was so shocked and surprised that she shot him, that at first I thought the man was shot with rubber bullets or something like that. I couldn't understand why she would shoot him. The light turned green, I pulled through the intersection, and then did a U-turn to come back to the shooting scene to make sure the man hadn't actually been shot. I saw then that the man had actually been shot and was bleeding. I saw the officer handcuffing him. I pulled into a parking lot where two fireworks stands were and was then contacted by an officer to give a statement.

7. I gave a statement to the police the day of the shooting. I told them that I did not see anything in the man's hands that resembled a weapon. I also told them that I was afraid of the officer's gunfire and worried about my son.

8. I do not understand why the man was shot. After the shooting, I read stories in the newspaper that were not accurate. The man never attacked the officer with a pipe. I was confused why the police officer had to go to the hospital. The man did not strike or hit the officer at any time. He did not seem aggressive or angry in any of his mannerisms. He did not have anything that resembled a weapon in his hands.

9. Attached as Exhibit A is a true and accurate copy of the recorded interview that I gave with the Tacoma Police Department.

10. Attached as Exhibit B is a picture of an object I understand the Tacoma Police Department is claiming the man used to hit and threaten the officer. This is not true. During the entire incident, I am very confident the man did not have that object in his hands.



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I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE.

Signed this 1st day of June, 2016, at Pierce County, Washington.

By Winona Stevens
WINONA STEVENS



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EXHIBIT A

EXHIBIT A

PDA: Yes | Homeland Security: | Subject: Aggravated Assault | Other Crim - Shooting | Fel | Interview Stevens 06/29/13



IBR Disposition: Active
Forensics:
Case Report Status: Approved
Case Management Disposition:
Reporting By/Date: T74030 - Reopelle, Steven 7/23/2013 14:10:17
Reviewed By/Date: T19715 - Durocher, John 8/2/2013 10:25:49

**Related Cases:**

| Case Report Number | Agency |
|---|---|

**Non-Electronic Attachments**

| Attachment Type | Additional Distribution | Count |
|---|---|---|

Location Address: E 28TH St/E Portland Av
City, State, Zip: Tacoma, WA 98404
Contact Location:
Recovery Location:
CB/Grid/RD: 461 - Tacoma
Occurred From: 6/29/2013 15:03:00 Saturday
Notes:
Location Name:
Cross Street:
City, State, Zip:
City, State, Zip:
District/Sector: TA41 - Tacoma
Occurred To:

## Offense Details: 1305 - Assault - Aggravated - NonFamily - Weapon

Domestic Violence: No
Child Abuse:
Gang Related: No/Unknown
Juvenile:
Completed: Completed
Crime Against: PE
Hate/Bias: None (No Bias)
Criminal Activity:
Using:
Location Type: Street/Right of Way
Type of Security:
Tools:
Total No. of Units Entered:
Evidence Collected:
Entrance Compromised:
Entry Method:
Suspect Description:
Suspect Actions:
Notes:

## Offense Details: 090Z - All Other Offenses - Criminal - SHOOTING

Domestic Violence: No
Child Abuse:
Gang Related: No/Unknown
Juvenile:
Completed: Completed
Crime Against:
Hate/Bias: None (No Bias)
Criminal Activity:
Using:
Location Type: Street/Right of Way
Type of Security:
Tools:

Call Source: Field
Phone Report:
Insurance Letter:
Entered On: 7/23/2013 14:10:17
Approved On: 8/2/2013 16:45:19
Adult/ Juvenile Clearance:
Additional Distribution:
Assisted By:
Notified:
Entered By: T74030 - Reopelle, Steven
Approved By: E207683 - Carter, Jeanette
Exceptional Clearance:
Exceptional Clearance Date:
Other Distribution:

Validation Processing | Distribution Date: | By: | County Pros. Atty. | City Pros. Atty. | Juvenile | Military | Other | DSHS | CPS | PreTrial | Supervisor:

*For Law Enforcement Use Only – No Secondary Dissemination Allowed*
Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.

Printed: August 28, 2013 - 8:31 AM
Printed By: Reopelle, Steven

| | | | |
|---|---|---|---|
| Total No. of Units Entered: | | Evidence Collected: | |
| Entrance Compromised: | Not Applicable | | |
| Entry Method: | | | |
| Suspect Description: | | | |
| Suspect Actions: | | | |
| Notes: | | | |

## Weapon 1: Blunt Object (bat, brick, rock, etc.)

| | | | |
|---|---|---|---|
| Offense: | 1305 - Assault - Aggravated - NonFamily - Weapon | Serial No: | |
| Offender: | S1 - Doe, John | OAN: | |
| Weapon: | Blunt Object (bat, brick, rock, etc.) | Automatic: | |
| Other Weapon: | | Caliber: | |
| Action: | | Gauge: | |
| Manufacturer: | | Length: | |
| Make: | | Finish: | |
| Importer: | | Grips: | |
| Model: | | Stock: | |
| Weapon Notes: | | | |

## Property Item No. 70/1: 1311 - Recording - Interview / Statement

| | | | |
|---|---|---|---|
| Other Common Item: | | Photographed: | |
| Description: | Winona Stevens Interview 06/29/13 | Fingerprinted: | |
| Quantity: | 1 | Contents Sampled: | |
| Finding Location: | | Owner: | |
| Status: | E - Evidence (Including Other Seized Property And Tools) | Value: | |
| Recovered Date: | | Make/Brand: | |
| Recovered Value: | | Model: | |
| Field Tested: | | Serial No: | |
| Field Test Results: | | OAN: | |
| Property Disposition: | Booked into Property | Insurance Company: | |
| Disposition Location: | Tacoma Police | Policy No: | |
| **Vehicle Information:** | | | |
| License: | | Locked: | |
| License State: | | Keys in Vehicle: | |
| License Country: | | Delinquent Payment: | |
| Vehicle Year: | | Victim Consent: | |
| Make: | | Drivable: | |
| Model: | | Estimated Damage: | |
| Vehicle Style: | | Damage: | |
| Primary Vehicle Color: | | Damaged Area: | |
| Secondary Vehicle Color: | | Tow Company: | |
| VIN: | | Tow Consent: | |
| Special Features: | | Hold Requested By: | |
| **Drug Information:** | | | |
| Drug Type: | | Drug Measure: | |
| Drug Quantity: | | Drug Measure Type: | |
| **Jewelry Information:** | | | |
| Metal Color: | | Total # of Stones: | |
| Metal Type: | | Inscription: | |
| Stone Color: | | Generally Worn By: | |

**Firearm Information:**

| | | | |
|---|---|---|---|
| Caliber: | | Length: | |
| Gauge: | | Finish: | |
| Action: | | Grips: | |
| Importer: | | Stock: | |
| Property Notes: | | | |

| Enter | Date | Time | WACIC | LESA | Initial | Release Info. | Date | Time | Release No. | Release Authority |
|---|---|---|---|---|---|---|---|---|---|---|
| Clear | | | | | | Owner Notified | | | Operators Name | |

## Property Item No. 71/2: 10999 - Other - Evidence

| | | | |
|---|---|---|---|
| Other Common Item: | **Diagram** | Photographed: | |
| Description: | **Stevens Diagram** | Fingerprinted: | |
| Quantity: | **1** | Contents Sampled: | |
| Finding Location: | | Owner: | |
| Status: | **E - Evidence (Including Other Seized Property And Tools)** | Value: | |
| Recovered Date: | | Make/Brand: | |
| Recovered Value: | | Model: | |
| Field Tested: | | Serial No: | |
| Field Test Results: | | OAN: | |
| Property Disposition: | **Booked into Property** | Insurance Company: | |
| Disposition Location: | **Tacoma Police** | Policy No: | |

**Vehicle Information:**

| | | | |
|---|---|---|---|
| License: | | Locked: | |
| License State: | | Keys in Vehicle: | |
| License Country: | | Delinquent Payment: | |
| Vehicle Year: | | Victim Consent: | |
| Make: | | Drivable: | |
| Model: | | Estimated Damage: | |
| Vehicle Style: | | Damage: | |
| Primary Vehicle Color: | | Damaged Area: | |
| Secondary Vehicle Color: | | Tow Company: | |
| VIN: | | Tow Consent: | |
| Special Features: | | Hold Requested By: | |

**Drug Information:**

| | | | |
|---|---|---|---|
| Drug Type: | | Drug Measure: | |
| Drug Quantity: | | Drug Measure Type: | |

**Jewelry Information:**

| | | | |
|---|---|---|---|
| Metal Color: | | Total # of Stones: | |
| Metal Type: | | Inscription: | |
| Stone Color: | | Generally Worn By: | |

**Firearm Information:**

| | | | |
|---|---|---|---|
| Caliber: | | Length: | |
| Gauge: | | Finish: | |
| Action: | | Grips: | |
| Importer: | | Stock: | |
| Property Notes: | | | |

| Enter | Date | Time | WACIC | LESA | Initial | Release Info. | Date | Time | Release No. | Release Authority |
|---|---|---|---|---|---|---|---|---|---|---|

| Year | | | | | | Owner Notified | | | Operators Name |
|---|---|---|---|---|---|---|---|---|---|

## Investigative Information

Means: Motive:
Vehicle Activity: Direction Vehicle Traveling:

Synopsis:

Narrative:

Reopelle: This is Detective Reopelle, ID Number 472. The purpose of this interview is to record a statement regarding Tacoma Police Case Number 13-1800756, an officer-involved shooting that happened today at 28th and Portland Avenue at 1505 hours. The date is 6/29/2013, and the time is currently 1753 hours. The location of this interview is the Tacoma Police Department Criminal Investigations Division, located on the second floor of the Tacoma Police Headquarters, 3701 South Pine Street. The person that I will be interviewing is Winona Stevens, a witness to this incident. And Winona, would you spell your last name for me?

Stevens: S-T-E-V-E-N-S.

Reopelle: And your date of birth, please?

Stevens: 10/14/71.

Reopelle: Are you aware this statement is being recorded?

Stevens: Yes.

Reopelle: And is it being recorded with your permission?

Stevens: Yes.

Reopelle: Okay, Winona, we've been here maybe ten, fifteen minutes going over your statement.

Stevens: Um-hum.

Reopelle: You've kinda related to me in narrative form. I've asked you a few clarifying questions and if you would, just go ahead and tell me that story again on tape and just explain who you were with, where you were going and then what happened.

Stevens: Okay. I was um heading north on Portland Avenue and my son, Elijah Campbell, and I were heading towards Home Depot, so we were heading north on Portland Avenue, we were in the left-hand lane. When we got to the intersection by the Shell Station at I-5 um, we stopped at the light.

Reopelle: Okay, and your, your son, Elijah, is how old?

Stevens: My son, my son is 14 and a half and he was in the passenger seat.

Reopelle: Okay. And what car were you driving?

Stevens: Um, I was driving a white Saturn Outlook.

Reopelle: And I think earlier you said that was a 2009?

Stevens: 2009, yes.

Reopelle: Okay, so the light turns red.

Stevens: Um-hum.

Reopelle: And you stop. So you're facing northbound.

Stevens: Yes.

Reopelle: And are you right there at 28th Street?

Stevens: Um, I believe I was up to the light.

Reopelle: Okay, and so the, just to orientate ourselves a little bit here, the Shell Station is off to your left?

Stevens: Yeah, the Shell Station is off to my left and then there's the two lanes of traffic southbound. The yellow-laned area, where you can't drive in, and then I'm in the left-hand lane heading north.

Reopelle: Okay, and there's an off-ramp from I-5 across from you, also? Correct?

Stevens: Yes. There were um, both lanes were, um had vehicles in 'em and they were at the light, stopped as well.

Reopelle: Okay. And earlier you drew me a, a map and you placed your vehicle in that map and you placed the, the officer's vehicle and so I'll, I'll, I'll have that for future reference. Go ahead and continue, Winona, what happened there when, once you stop at the light.

Stevens: So, I stopped at the light and I noticed that the officer's car was stopped on the other side as well, in the uh right-hand lane by the corner. Uh just before the intersection . . .

Reopelle: And if I could, just, just for purposes of the tape, you're, you're putting the patrol car facing which direction?
Stevens: South.
Reopelle: South. And that'd be on the northwest corner of 28th and Portland . . . .
Stevens: Yes.
Reopelle: . . . by the off-ramp?
Stevens: Uh-huh.
Reopelle: Okay.
Stevens: And um she was stopped and um, stopped at the corner and she was walking away from her vehicle towards the um, it looked like they were heading towards the belongings um where um the guy's stuff was. And . . .
Reopelle: Did you notice what did the officer's car look like? Was it a marked car?
Stevens: Um, I believe it was a marked car. Um, I knew she was an officer cause she was dressed in her blues and she had a cap on. Um, and um . . . .
Reopelle: Th, there was no question in your mind that she was an officer, a uniformed officer?
Stevens: Yeah. Yeah, I could tell she was a uniformed officer, so . . .
Reopelle: Okay. Could you hear anything that was being said?
Stevens: No, I couldn't hear anything. We had the air conditioning on and the windows rolled up.
Reopelle: Do you remember if the officer had the emergency lights of the vehicle on? The red, blue lights?
Stevens: I don't recall seeing that the lights were on, no.
Reopelle: Okay. And so when you first see the officer, she's out of the vehicle?
Stevens: Yeah.
Reopelle: And she's walking to these belongings?
Stevens: Um-hum.
Reopelle: And there was another individual there?
Stevens: Yeah, she was walking from the curb, facing south, and he was walking away from the curb. Um, that was alongside where the uh vehicles were exiting off of I-5 and they were both um, uh walking towards his vehicle, or towards his belongings. There was a bike there, like an orange bike, and then some other things that were on the ground, but I couldn't really tell what items were on the ground.
Reopelle: Okay. And can you describe this other individual for me?
Stevens: Um, I believe he was either native or Hispanic, native American or Hispanic.
Reopelle: How, how tall was he?
Stevens: Um, maybe 5-5 or so. He didn't seem very tall. 5-6 maybe.
Reopelle: How old?
Stevens: Um, uh maybe in his 30's or 40's.
Reopelle: Okay, dark hair?
Stevens: Yes.
Reopelle: What was he wearing?
Stevens: Um, I know he had on a white T-shirt. I think he was wearing khaki pants, brown pants. Um, I believe that's what he was wearing.
Reopelle: You said that he had an orange bike there . . . .
Stevens: Um-hum.
Reopelle: . . . and some other things. Do you know what those other things were?
Stevens: No, from, from where I was at and they were on the ground and I don't know if it was like grassy or not, but I, I couldn't really tell what was on the ground.
Reopelle: But they appeared to be his items?
Stevens: Yeah, I believe so. They were both walking towards them, so I assumed that they were his.
Reopelle: Okay. What, what happens? They're both . . . Now is the, is the, is, is the guy that you described, is, was he walking across the street, walking across that off-ramp or was he . . .
Stevens: I didn't (unintelligible)
Reopelle: . . . already on the corner by the patrol car?
Stevens: I didn't see him in the street. I just saw him at the curb. That's why I assumed he was panhandling.
Reopelle: Okay. So the officer and him are kinda converging at . . .
Stevens: Um-hum.

Reopelle: . . . this, his items . . . .
Stevens: Yes.
Reopelle: . . . the bike and whatever else is there?
Stevens: Um-hum.
Reopelle: Okay, what happens next?
Stevens: And then they're both walking, um, just at a regular pace. They were both walking the same pace towards his items. Um, and um, it seemed that um, I don't know, they were both walking towards his items and then when they both got in the vicinity of like a bag or a box or something, um, he reached down into it and then . . .
Reopelle: Did there seem to be any problem at this time?
Stevens: No.
Reopelle: Okay.
Stevens: No. And then um, and then as he started to stand up, she started to back away and she pulled out her gun or her weapon. I don't know what the weapon was.
Reopelle: As he, did you say as he started to sit up?
Stevens: As he started to . . . .
Reopelle: Oh, stand up.
Stevens: . . . stand back up. He was leaning forward and then he started to lean back.
Reopelle: Okay. Were his items down on the ground?
Stevens: Yes.
Reopelle: Is that . . . so he kinda bent over to reach into . . .
Stevens: He had to bend over to, to reach into whatever he was reaching into.
Reopelle: Okay. And th, at that time when he reached in to whatever he was reaching into, the officer backed up?
Stevens: Yes, that's when she started backing up.
Reopelle: Okay. How close was she to him when, when he reached in that bag?
Stevens: Um, maybe two or three feet. They weren't like too far apart at that point. So um, they were both right up on the items, though.
Reopelle: Okay. Did he pull anything out of his items? Did you see him with anything?
Stevens: I couldn't tell what he had. Um, I thought maybe he had something like that was like black and square looking. I don't know what it was and at this point they were like, you know, all the way across the street, so I couldn't tell what was in her hand, except that she was pointing at him and I couldn't tell what was the item that he had.
Reopelle: Okay. How big was this item that you saw in his hands?
Stevens: Uh, maybe about 12 inches or so, um, it was a good distance away. I'm, I'm trying to like figure out distance wise how, but I'm guessing that's how big it was.
Reopelle: Okay. And, and for the purposes of the tape, with your hands you're kinda describing it about a foot long and maybe four to six inches wide?
Stevens: Yeah, I think so, but um, like I said, I couldn't really see it very well.
Reopelle: Okay.
Stevens: Um . . .
Reopelle: Did he have it in one hand or both hands?
Stevens: It was in one hand.
Reopelle: Do you know which hand?
Stevens: Um, I don't know. When he started, when she pulled her weapon and he started backing away, I was kinda more focused on what she was holding than what he was holding.
Reopelle: Okay.
Stevens: Cause I didn't see that . . . . I didn't, I think the only reason I recognized what she was carrying wa, as a weapon cause of her stance. So I couldn't really tell what he was carrying.
Reopelle: Now what did the officer do when she backed away from him?
Stevens: She started to back away from um him. She pulled her gun, she wa, or her weapon, and then she was aiming it at him. And then um, and then he started to back away and the traffic um was still stopped and that's when he started to like back away um across the intersection and he would turn and then backed up, and then she was following him as he was crossing the intersection until they uh made it past the little island and all the way over to the curb.
Reopelle: All right. Now, so you're describing him kinda backing away from the officer, but . . . .
Stevens: It was like backing, turning, backing, turning. He didn't . . .
Reopelle: What did he . . .

Stevens: . . . like turn around and run.
Reopelle: Okay.
Stevens: So . . .
Reopelle: It wasn't like he was trying to run away from the officer?
Stevens: No.
Reopelle: When you say he was backing and turning, when he was turning, was he, was he looking what was behind him so that he didn't trip? That . . .
Stevens: I think so. I think he was probably looking for that little island um that you hit before . . . and plus it's right in front of the highway interpa, um exit, and so cars just kinda turn free right there, so . . . .
Reopelle: Okay.
Stevens: I assumed he was looking for cars and for that, that area right there.
Reopelle: Okay.
Stevens: The little island that's . . . .
Reopelle: What is the distance between him and the officer while that's going on?
Stevens: As they were crossing the um intersection, maybe um ten to twenty feet. They had made some distance between them at that point and they didn't get any closer together until they made it all the way across the street.
Reopelle: Okay. And you said that the officer had earlier drawn her weapon.
Stevens: Um-hum.
Reopelle: Was it pointed at this individual?
Stevens: Yeah, as she followed him across the street it was pointed at him.
Reopelle: Okay. And earlier you talked, you kinda called it a gun because you said that's what she was holding, but you're not sure it was her gun. You thought it could have been her taser or her gun, you don't know.
Stevens: Yeah, it could have been her taser. I just assumed it was a gun because of her stance. You know, like I said they were both far enough away that I couldn't really get a good look at what they each held in their, their hands . . . .
Reopelle: Okay.
Stevens: . . . but the way that she was holding with her arms up and pointing towards him.
Reopelle: Okay. With both arms she was pointing it . . . .
Stevens: Yeah.
Reopelle: . . . with both hands and her arms . . .
Stevens: I believe with both, yeah.
Reopelle: Okay, her arms out in front of her extended?
Stevens: Um-hum.
Reopelle: So they make it across the street?
Stevens: Um-hum.
Reopelle: And now they're on the southwest corner?
Stevens: Um-hum.
Reopelle: Do you see anything in his hands at this time?
Stevens: Um, I thought he had something, I think it was black. I couldn't really tell. But again um, I didn't see anything that, that resembled a weapon in his hand and I was more focused on what I thought was in her hand because my son was right there and I was afraid of gunfire.
Reopelle: Okay.
Stevens: So . . .
Reopelle: And so as you were, you were, you know, realizing that your son was in the car and you didn't want him to witness this thing, you tried to protect him from that. Why don't you tell me about what you tried to do and . . . .
Stevens: Um, as soon as she pulled out her weapon and started backing away, I covered his eyes. And um, I thought that I had kept his eyes covered the whole time, but I guess I didn't. And then he saw what happened.
Reopelle: Okay, so you were probably somewhat distracted? Is that fair to say? As you were trying to protect him from seeing this.
Stevens: Yeah, I just had my hands over his eyes and was just trying to . . .
Reopelle: Okay. Now when you say you thought you saw something black in his hands, is that the same thing that you saw in his hands earlier?
Stevens: I want to say that it was. Yeah.
Reopelle: All right.

Stevens: So . . .

Reopelle: Now you still can't hear anything, is that correct? Cause the windows are rolled up, air conditioning's blowing?

Stevens: Yeah.

Reopelle: Okay, it is a warm day today.

Stevens: Um-hum.

Reopelle: Probably 85 degrees or so. What, what happens next once they're on that southwest corner?

Stevens: So they're on the corner and he's facing her, you know, I'm facing north, he's facing north. So I can't tell um, I can't hear what they're saying, but he, his arms were down and then he kinda lifted them part-way, like this. I don't know if it was just the one arm or the arm that was just nearest to where I was, and then that's when she tazed him. I saw the wires hit his body and then probably like two to three seconds after that she pulled out a gun and then she shot him three times.

Reopelle: Okay. How far away from the officer, was she from this guy when, when she fired that taser?

Stevens: Um, maybe six to ten feet.

Reopelle: Okay. And you'd told me earlier you have a real hard time estimating distances.

Stevens: Yeah. Yeah I'm pretty bad about . . .

Reopelle: Okay.

Stevens: . . . judging distance, so . . .

Reopelle: Okay. And just do the best you can and what, what was he doing when the taser was fired? Could you . . .

Stevens: He was, he was standing and then he um, he didn't like jump or he didn't fall to the ground immediately. He was just kinda like standing there and wavering and then that's when she pulled out her gun and shot him.

Reopelle: Okay. Be, before he was tazed, could you see, was he, was he standing still? Was he moving towards he officer? Was he . . .

Stevens: I don't think he was moving towards her. I think he was standing still.

Reopelle: All right. And then once the taser wires hit him, it sounds like what you're describing is he didn't have the, the reaction that you expected?

Stevens: Yeah, I'm not sure what like a normal reaction is. I mean, I think at first I described it as he froze, but I kinda would expect like jumping or collapsing immediately to the ground or whatever, but he just kinda seemed like, kind of stuck in place and was like wavering a little. Like, kinda like teetering.

Reopelle: Okay.

Stevens: So . . . .

Reopelle: Okay. And then you said that the officer drew her gun and fired three times?

Stevens: Yes.

Reopelle: And how long between the time that, that the taser wires hit and, and the shots were fired do you think is, is there? How, how long?

Stevens: So, she tazed him, and then it hit him and I was like, one thousand one, one thousand two, one thousand three, about that long. And then that's when she shot him.

Reopelle: Okay. And what, what was his reaction at that time?

Stevens: He fell over. He um, he seemed to be awake still and it just kinda seemed like he was like, I couldn't tell that he, where he was shot, but he seemed to be like holding himself. And um at that point I thought maybe she had shot him with like rubber bullets or something like that, cause I didn't see any blood. And the light turned green at that point, so I pulled up and then the next light was red, so I waited til traffic went by, did a U-turn and then driving by that's when I saw that he had actually been shot.

Reopelle: All right. And then you said when you made a U-turn, you went through the intersection, made a U-turn and came back?

Stevens: Um-hum.

Reopelle: You, you saw the officer handcuffing him?

Stevens: Yeah, at, you know, at this point he was um like rolled onto his stomach, I belive. I did see him being handcuffed and I feel like I remember the angle, so it was, it must have been as I was going by, I want to say.

Reopelle: Okay. And did you . . .

Stevens: I don't know, to be honest.

Reopelle: Okay. And where did you park at?

Stevens: Um, I turned left at the next block and pulled up into the um, into the parking lot where the two fireworks stands are, right, right across the street.

Reopelle: Did you see any other officers arriving?

Stevens: Officers were arriving very quickly. They were coming from north and from south, from both directions.

Reopelle: All right. And eventually you were contacted by an officer?

Stevens: Um-hum. One came across the street and said if any, asked if any of us had uh witnessed anything.

Reopelle: Okay. And so you, you told them that you had and then you came down here to the Station for this interview. Is that correct?

Stevens: Yeah, I was so focused on, like looking at what was going on and but the people I was with, I had already told them, you know, I saw that guy getting shot. Is he moving? And like yeah, she saw him, and then he uh walked up to me and asked if I'd be willing to give a statement. At that point I told them that my son hadn't seen anything, cause I thought that I had covered his eyes well, but I guess I didn't.

Reopelle: Right. Okay. Winona, I think that, that covers it. Is there anything that you want to say that I didn't ask you about, you'd like to add?

Stevens: Um, no, not, not that I can think of at the time, no. Other than there were definitely more witnesses there than the four of us. But I assume that's something that you guys deal withal the time.

Reopelle: They just didn't stay.

Stevens: No, the um, there were other cars there.

Reopelle: Right. Okay. Okay. Thank you, Winona. That concludes the interview. Time is now 1813 hours.

End of Recording:

/sm

| Reviewed By: | Reviewed Date: |
|---|---|

EXHIBIT B

EXHIBIT B

EXHIBIT G

EXHIBIT G

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendants. | NO. 15-2-11618-1<br><br>**DECLARATION OF TERESA GRAHAM** |

TERESA GRAHAM: declares and states as follows:

1. I was a witness to an officer involved shooting that occurred on June 29, 2013 at the intersection of East 28th Street and East Portland Avenue. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge, information, and belief.

2. On June 29, 2013 I was driving with my daughter in my 2004 Yukon XL Four door SUV. We were headed down Portland Avenue and we stopped at the light before the underpass in order to go southbound on I-5. While we were stopped at the red light at the



CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

northwest Teresa Graham

~~Southeast~~ corner of the intersection I saw a police officer talking to a Hispanic man near an orange bike. The interaction appeared calm and I did not see anything physical going on or loud talking or shouting. I had my window down and had a clear and unobstructed view of the intersection.

3. The man started running across the street in the crosswalk crossing the lane coming off of the freeway. The officer pursued him and she tried to shoot him with a taser. The taser appeared to miss him but may have nicked him because he turned around briefly and then turned away from the officer and continued across the street away from her. The officer threw down the taser and grabbed her weapon and he turned his back around to run away and she just shot him four times. My complete attention was on the entire interaction, from the time the officer was talking with the man until the man was shot.

4. He fell and then I sat there a little while. The light was green and some of the other cars were going and I was kinda like, wow, did that just happen. And then I continued on. I was about to get onto the freeway, but I decided to do a U-turn and go back around. I drove up to the Shell station parking lot overlooking the location where the man had been shot and I witnessed the officers standing on the man's back and neck with their boots. I could see that the man had been shot in his back and was bleeding on the ground.

5. At the time that the officer shot the man in the back, he was 10 or more feet away from the officer and was trying to move away from her. The man wasn't moving very fast and I didn't see anything in his hands. The man had his back to the officer at the time that she shot him.

6. I understand that the officer claims that the man had some kind of metal object in his hand at the time that she shot him. This is not true. I witnessed the entire event and



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never saw any object in the man's hand. I also did not see any object near the man's body either after he was shot and lying bleeding on the ground. The man was completely unarmed and was attempting to get away from the officer when she shot him. He had his back turned to her at the point that she grabbed her gun and shot him in the back. After the man was shot I sat there a minute, and I couldn't believe it. I was like, well what did I miss? Is there something that I missed? Everything just didn't add up to me.

7. I also understand that the officer has claimed that the man may have posed a threat to someone else nearby. I did not see the man threaten anyone, including the officer.

8. I did not understand why the police officer shot the man. I understand that the police claimed that the officer was hurt. I don't think that this is true as I didn't see any sign of an injury to the officer. I gave a statement to the police on the day of the incident and I told them that I did not see any objects on or near the man. I told them exactly what I had seen and told them that I did not understand why the officer shot the man and did not feel that the shooting was justified. The man was attempting to get away from the officer and she continued to pursue him. The man did not strike the officer at any point, did not have a weapon, and did not pose a threat to the officer or anyone else for that matter.

9. I had a complete unobstructed view of the entire incident and it was clear that the man was moving away from the officer and that he was shot in the back. There was no reason for the officer to shoot the man and he didn't pose a threat to anyone. There was not an emergency and I don't see why the officer couldn't have waited for back-up to assist her if she was having trouble with the man.

10. Attached as Exhibit A is a true and accurate copy of the recorded interview that I gave with the Tacoma Police Department.



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I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE.

Signed this 19th day of May, 2016, at Pierce County, Washington.

By Teresa Graham
TERESA GRAHAM



CONNELLY LAW OFFICES, PLLC
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Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

EXHIBIT A

EXHIBIT A

| | | | | | |
|---|---|---|---|---|---|
| PDA: | Yes | Homeland Security: | | Subject: | Aggravated Assault \| Other Crim - Shooting \| Fel \| Transcription - T. Graham |
| IBR Disposition: | Active | Case Management Disposition: | | | |
| Forensics: | | Reporting By/Date: | T07670 - Bair, John 7/2/2013 13:31:31 | | |
| Case Report Status: | Approved | Reviewed By/Date: | T57193 - Miller, Gene 7/10/2013 11:50:45 | | |

Incident No. 131800756.30

**Related Cases:**

| Case Report Number | Agency |
|---|---|

**Non-Electronic Attachments**

| Attachment Type | Additional Distribution | Count |
|---|---|---|

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DATE PREPARED

| | | | |
|---|---|---|---|
| Location Address: | E 28TH St/E Portland Av | Location Name: | |
| City, State, Zip: | Tacoma, WA 98404 | Cross Street: | |
| Contact Location: | | City, State, Zip: | |
| Recovery Location: | | City, State, Zip: | |
| CB/Grid/RD: | 461 - Tacoma | District/Sector: | TA41 - Tacoma |
| Occurred From: | 6/29/2013 15:03:00 Saturday | Occurred To: | |
| Notes: | | | |

## Offense Details: 1305 - Assault - Aggravated - NonFamily - Weapon

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown | Juvenile: | |
| Completed: | Completed | | | Crime Against: | PE | Hate/Bias: | None (No Bias) |
| Criminal Activity: | | | | | | Using: | |
| Location Type: | Street/Right of Way | | | Type of Security: | | Tools: | |
| Total No. of Units Entered: | | | | Evidence Collected: | | | |
| Entrance Compromised: | | | | | | | |
| Entry Method: | | | | | | | |
| Suspect Description: | | | | | | | |
| Suspect Actions: | | | | | | | |
| Notes: | | | | | | | |

## Offense Details: 090Z - All Other Offenses - Criminal - SHOOTING

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown | Juvenile: | |
| Completed: | Completed | | | Crime Against: | | Hate/Bias: | None (No Bias) |
| Criminal Activity: | | | | | | Using: | |
| Location Type: | Street/Right of Way | | | Type of Security: | | Tools: | |

| | | | |
|---|---|---|---|
| Call Source: | Field | Assisted By: | |
| Phone Report: | | Notified: | |
| Insurance Letter: | | Entered By: | T07670 - Bair, John |
| Entered On: | 7/2/2013 13:29:28 | Approved By: | E08455 - Easton, Sally |
| Approved On: | 7/10/2013 12:22:04 | Exceptional Clearance: | |
| Adult/ Juvenile Clearance: | | Exceptional Clearance Date: | |
| Additional Distribution: | | Other Distribution: | |

| Validation Processing | Distribution Date: | County Pros. Atty. | Juvenile | Other | CPS | Supervisor: |
|---|---|---|---|---|---|---|
| | By: | City Pros. Atty. | Military | DSHS | PreTrial | |

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Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.

**Printed: 7/10/2013 12:22:04**
**Printed By: E08455 - Easton, Sally**

| | | | |
|---|---|---|---|
| Total No. of Units Entered: | | Evidence Collected: | |
| Entrance Compromised: | **Not Applicable** | | |
| Entry Method: | | | |
| Suspect Description: | | | |
| Suspect Actions: | | | |
| Notes: | | | |

## Weapon 1: Blunt Object (bat, brick, rock, etc.)

| | | | |
|---|---|---|---|
| Offense: | **1305 - Assault - Aggravated - NonFamily - Weapon** | Serial No: | |
| Offender: | **S1 - Doe, John** | OAN: | |
| Weapon: | **Blunt Object (bat, brick, rock, etc.)** | Automatic: | |
| Other Weapon: | | Caliber: | |
| Action: | | Gauge: | |
| Manufacturer: | | Length: | |
| Make: | | Finish: | |
| Importer: | | Grips: | |
| Model: | | Stock: | |
| Weapon Notes: | | | |

## Investigative Information

| | | | |
|---|---|---|---|
| Means: | | Motive: | |
| Vehicle Activity: | | Direction Vehicle Traveling: | |

| | |
|---|---|
| Synopsis: | |

Narrative:

Bair: This is going to be a recorded statement of Teresa Graham. This is the 29th of June, 2013. The time right now is 1811 hours. We're currently located at 3701 South Pine, on the second floor of the Criminal Investigations Interview Room. Present is myself, Detective John Bair, ID 388, and also present is Teresa Graham. This is regarding Case Number 13-1800756. Before I go any further, Teresa, do I have your permission to record this statement?

Graham: Yes sir.

Bair: And can you state your first, your middle and your last name, and the spelling of each of your names, please?

Graham: Teresa S. Graham. T-E-R-E-S-A, um, middle name Shlonda, S-H-L-O-N-D-A. Last name Graham, G-R-A-H-A-M.

Bair: And Teresa, where do you currently reside?

Graham: Um, East Tacoma.

Bair: Okay.

Graham: 1835 East Tacoma.

Bair: Okay. And we've had a chance to re, have a conversation off the recorder. Is that correct?

Graham: Yes.

Bair: And the reason you're here today is involving a incident that you saw, part of an incident involving what you believe is a police officer and another individual that you believe was shot by the police officer. Is that correct?

Graham: Yes.

Bair: Okay. And off the recorder we were able to document your, what you believe took place, as far as what you saw. Can we document, first off, what time of day was this? Was this daylight hours or evening hours? Are you . . .

Graham: Daylight.

Bair: Okay. And do you remember what kind of weather it was today?

Graham: Sunny.

Bair: Was it hot?

Graham: Hot.
Bair: Okay, how was the visibility?
Graham: Um, very clear.
Bair: Okay. And you had talked about where you were coming from and what this took, where this took place. Why don't we just go ahead and repeat it for the purpose of the recorder?
Graham: Okay.
Bair: Go ahead.
Graham: Um, I was actually, me and my daughter were headed back to Home Depot. We came from there. I left my ID at home. Anyway, we were headed down Portland Avenue and we stopped at the light. We actually went to the gas station first and then we stopped at 28th and Portland Avenue . . .
Bair: Okay.
Graham: . . . at the light and we were gonna go southbound on I-5.
Bair: So you're waiting to turn?
Graham: We're waiting . . . . No. The turn was . . .
Bair: Later.
Graham: . . . we had not crossed the underpass.
Bair: Gotcha. Okay.
Graham: Yeah. So we were waiting at the light before the underpass . . .
Bair: Gotcha. Okay.
Graham: . . . and I noticed that there was an officer across the street talking with a male, a darker-haired male across the street by a orange bike.
Bair: Okay.
Graham: There wasn't really anything like physical going on. I didn't hear anybody talking like really loud.
Bair: Okay.
Graham: I couldn't really, probably even if they did, I probably wouldn't be able to hear what was going on. But I didn't see anything physical going on.
Bair: Okay.
Graham: So um, when we were at the light, he started, I guess that he started running across the street, acrossed a crosswalk in front of the lane that came off the freeway going northbound. On th, the lane that got off the freeway, the one on Portland Avenue. But anyway, he ran across the street. The offico, cer, pursued him and she tried to shoot him with the taser. The taser, I don't know if it missed him. I believe that it missed him. It may, may have nicked him, because he did turn around briefly and when he turned around, she threw down the taser and then grabbed her weapon and he turned back around to run away and she just shot him four times.
Bair: Okay.
Graham: So . . . And then he fell and then I, I sat there a little while. The light was green and some of the other cars were going and I was kinda like, wow, did that just happen. And then I continued on. I was about to get on the freeway, but I decided to do a U-turn and go back around. And from there I seen um a officer handcuff him and then um another officer, I don't know if it was the same officer, but one was standing on him with his boot on his back. And then they put it on his, the side of his face or his neck and I was, I mean basically that's what I seen from that point.
Bair: Okay. Let's just back up and take each of this . . . . You were driving your vehicle.
Graham: Um-hum.
Bair: Describe your vehicle.
Graham: It's a 2004 Yukon XL.
Bair: So that's a four-door?
Graham: Four-door.
Bair: Okay. What color is it?
Graham: Um, dark gray.
Bair: Okay. And you're in the traffic waiting for the light to turn green, to proceed under the overpass and get onto I-5 southbound?.
Graham: Yes.
Bair: To go to Home Depot, I believe you said?
Graham: Um-hum.
Bair: And you're, who's all in your vehicle with you?
Graham: Um, my daughter and myself and my dog, Mocha.
Bair: Your dog, Mocha. Okay. And the, but the seating positions, obviously you're the driver.

Graham: I'm the driver.
Bair: Your daughter in the front, back? Where's she at?
Graham: She's in the passenger seat.
Bair: In the front?
Graham: She, we were, yeah, she's in the front. We were both actually trying to figure out what was going on across the street.
Bair: Okay.
Graham: Um, so our eyes were on there even before . . .
Bair: Okay.
Graham: . . . they started running across the street.
Bair: . . . Let's, let's talk about that. Obviously you've lived in Tacoma how many years?
Graham: Um-hum. Um, ten.
Bair: So would you, would it be fair to say this was a marked police vehicle? You've seen one before?
Graham: Yeah. It was a white vehicle.
Bair: How . . . Was there any emergency equipment on the vehicle that were activated? You know, emergency lights equipment?
Graham: I don't think, I don't think so.
Bair: Okay.
Graham: I don't remember seeing that.
Bair: And . . .
Graham: I think I was um, let me think about that. I can't, I couldn't tell you one hundred percent if it was.
Bair: Okay. No, no, no problem.
Graham: Yeah.
Bair: But you knew that it was a police vehicle by what means?
Graham: For sure . . . .
Bair: Tell me the markings.
Graham: Um, the police uh on the side.
Bair: Okay.
Graham: And um it was a white vehicle.
Bair: Okay. Have you seen a vehicle like that in Tacoma before?
Graham: Yeah.
Bair: Okay, did it have the emergency lights on top and . . . Was it a unmarked car?
Graham: Something, something about it looked different.
Bair: Okay.
Graham: I couldn't tell you what.
Bair: Was it white? Do you remember the . . .
Graham: It was white. Yeah.
Bair: Okay. And how about the officer that was outside of the vehicle? Describe . . . Were they unmarked? Did they have a marked uniform on?
Graham: Um marked.
Bair: And describe what a marked uniform is to you. What did it look like?
Graham: Um, it was a dark uniform with a badge on it.
Bair: Okay.
Graham: So, yeah, it was, it was marked and she had the belt on.
Bair: Okay.
Graham: Well at the time I thought it was a, a male.
Bair: Okay.
Graham: So I can't say . . .
Bair: You later found out that it . . .
Graham: It was a female, by close observation after the shooting.
Bair: After you did a U-turn and came back?
Graham: Um-hum.
Bair: Okay. So at the time you thought it was a male officer in a marked . . .
Graham: Yeah.
Bair: . . . vehicle? Don't know if the lights were on or off? The emergency lights.
Graham: Don't know. Don't know.

Bair: Okay. But your attention's drawn to this and this officer's having some type of dialogue, or something's going on with a, a male, a white male?
Graham: What I, I to this point think that I thought it was a Hispanic or . . .
Bair: Okay.
Graham: . . . a Indian.
Bair: No problem. And he's got a bicycle or something? Describe it.
Graham: I don't, I still don't know if that's his bicycle.
Bair: Okay. But it's near him?
Graham: It's near him.
Bair: And you, you had your window down, but you don't remember a dialogue?
Graham: Didn't . . . I heard her yell something before she uh shot the taser.
Bair: Okay.
Graham: I heard her yell something. I couldn't tell you what she said.
Bair: Okay, now, let's say I'm seated in your car and I'm watching this. Am I looking to my left . . . ?
Graham: Left.
Bair: And this is all going down within so many feet? How, how many feet do you think away you are? In two lanes away or one lane away or . . ?
Graham: Um, I would say, because of the way the center is made, maybe um a little over two lanes.
Bair: Okay. And her car is facing back towards the Shell Station? Like you're gonna go to Salishan? Is it facing going . . .
Graham: No, it was on . . . The car . . .
Bair: Her, her vehicle.
Graham: I don't know, I don't know if it was her vehicle or not, but the car was, was on, like I said, the, the cars that, if you were going northbound on I-5 . . . .
Bair: Okay.
Graham: . . . and you were to get off on that Portland Avenue exit . . .
Bair: Okay.
Graham: . . . to be honest, I don't know if the car was facing the wrong way or it was straight.
Bair: No problem. Did, but you did see the vehicle over there within her proximity?
Graham: Um-hum.
Bair: And she's by her, this officer is by theirselves? Correct? There's no other officer at that time with them? Cause you initially . . . .
Graham: I, I tell you . . . I, I really, at, I really don't know if there was a officer. I didn't see any officer standing over there with her.
Bair: Okay.
Graham: But I seen other officers in the area.
Bair: Okay.
Graham: I seen a, a officer that um, I don't know which way they went because, in my . . . Because I'm thinking about this. Because after it happened, I was thinking, well if it was so serious, the other officers that were in the area, it seems like they would have, you know . . .
Bair: Okay.
Graham: . . . . been, like BOOM, before all this happened. I don't know.
Bair: Okay, so, so . . .
Graham: This is what I thought about after.
Bair: Sure. But at the time you're sitting there waiting for the light to turn to get on the freeway, it appears that there's one officer with one person having some type of dialogue? Correct?
Graham: Um-hum.
Bair: And you don't know if the bicycle's involved, but there's a bicycle nearby. Is that fair to say?
Graham: Yeah.
Bair: And then is your attention completely on them the whole time, but do you, are you looking back in your vehicle and then glancing back at them?
Graham: On them the whole time.
Bair: Okay. And then at some point there's some, who yells, or does, does it . . .
Graham: The officer. I don't know what she said to him.
Bair: Okay. But you hear . . .
Graham: She said something to him before she uh shot her taser.
Bair: Okay. But he's already taken off and started running?

Graham: He's, he's taken off and he started running. She pursued him across the crosswalk.
Bair: Okay.
Graham: And he made it um right past that "Do Not Enter" sign.
Bair: Okay. So now are you having to turn your body around to look at this?
Graham: Um, no. Because the, the way the light is, okay, this is the light. They were like right over to the left side of the street, but . . . .
Bair: Okay.
Graham: So it's almost like this.
Bair: All right. So we're, what we're gonna do here, is I got a piece of paper in front of you.
Graham: Um-hum.
Bair: And I'm gonna draw kind of an intersection here. All right? And what I'm doing here is like the underpass/overpass area. So this is Portland. This road here is Portland, going this way and this way. Okay? And you got the Shell Station over here.
Graham: Um-hum.
Bair: And you guys are coming up to the first light, which is 28th Street?
Graham: Right.
Bair: Okay, this is 28th Street.
Graham: Um-hum.
Bair: From right there, go ahead and draw where your position, your . . . Draw a square and which direction you're facing.
Graham: This is the light . . . .
Bair: Yep. Right there.
Graham: . . . . here? And is this the underpass over here?
Bair: You'd, this, this would be, yeah.
Graham: This is where. This is the light. This is where I was sitting at.
Bair: Okay.
Graham: There's two lanes going this way.
Bair: Okay.
Graham: And then there's a, it's like a little . . .
Bair: Median.
Graham: Median kinda in the area.
Bair: Okay.
Graham: I don't know if it goes . . . I'm thinking that it goes smaller down here.
Bair: Okay.
Graham: And bigger right here. But I was sitting right here and there was another car right here.
Bair: Okay.
Graham: And I think there was maybe two more other cars over here.
Bair: Sure. Understood.
Graham: So this happened over here.
Bair: Okay.
Graham: We'll say this is the right below the underpass.
Bair: So can you just put a "me" right there, where that's you and then officer over here.
Graham: Um-hum.
Bair: Just write it so we know what we're talking about. So this is where they are initially?
Graham: Right.
Bair: And then tell me, draw a line of where they run, where the subject runs and where the officer, where they're going.
Graham: This is a area coming off of I-5 . . .
Bair: Okay.
Graham: . . . and then they turn onto Portland Avenue. There's a crosswalk that goes right here and then it's like a median.
Bair: Okay.
Graham: And then there's another crosswalk. The guy takes off running, and this is the sidewalk. He takes off running across the street. She yells . . . I mean, this is like the corner. He makes it maybe, I'd say probably about eight feet from where the sidewalk starts, and then she yells something and she shoots her taser.
Bair: Somewhere in this area?

Graham: In this area.
Bair: And how do you know . . . .
Graham: Probably about eight feet from . . . .
Bair: How do you know it was a taser? Have you seen a taser before?
Graham: I've never seen a taser before.
Bair: How do you know it is a taser?
Graham: Because there was some silver things that came out of it.
Bair: Sparks?
Graham: Um, it, I wouldn't say it was sparks. It was shiny.
Bair: Okay.
Graham: I couldn't tell because of all the sunlight you couldn't tell what was sparks or what . . .
Bair: Was, was . . .
Graham: I don't know what a taser does.
Bair: Okay, well what got you to the conclusion that you thought it was a taser?
Graham: Um because I seen the wires.
Bair: Okay. Okay.
Graham: The wires come out of it. And then I seen her throw it on the ground.
Bair: Okay.
Graham: And then grab her gun and then shoot . . .
Bair: So is the taser . . .
Graham: . . . and I don't know if she shot him with her left hand. I don't know if she shot her, shot him with the right hand. I just know that she threw down the taser and she grabbed a gun and BOOM, BOOM, BOOM, BOOM.
Bair: Okay.
Graham: Shot him.
Bair: Okay. And so at some point where you, you're drawing with this pen here, for the purpose of the recorder, at some point we, we're, we're in this area here on the diagram, the taser's deployed.
Graham: Um-hum.
Bair: Is that fair to say?
Graham: Um-hum.
Bair: And then in some area right beyond that, the firearm's deployed.
Graham: Um-hum.
Bair: And you hear approximately four, five rounds go off? How many rounds did you, did you think you heard?
Graham: I, I thought it was um four to five.
Bair: Okay.
Graham: I was trying to replay it in my mind. At the time when it happened, cause my daughter was, she was like, was that a taser that she shot him with, mom? And I said no, I think that was a gun.
Bair: Okay.
Graham: So . . .
Bair: And the light's still red? You haven't moved from this position during this whole time?
Graham: No, but . . .
Bair: At the time this happened . . .
Graham: . . . . the, the other car did, because right after it happened I looked up and the light was green and this car was no longer in front of me anymore.
Bair: Okay.
Graham: So . . . .
Bair: So from the time you're sitting here to the time this all takes place, you never moved? Is that fair to say?
Graham: Never moved.
Bair: When you do move, it's, does the cuffing take place already or did you move after . . . . when did you . . . ?
Graham: Um, after the, after the guy was shot I kinda sat there a minute because I was kinda in disbelief of what just happened. I was trying, I think I was trying to figure out was he shot. I was trying to see if there was blood coming out of him and then when the blood came out of him, it was kinda like I sat there a minute and I couldn't believe it and I was like, well what did I miss. Is there something that I missed because it just, everything didn't add up to me.

Bair: Okay.
Graham: So I, I drove down. I passed the light and then my daughter was kinda upset, so . . . She was like, Is the man okay? Can we go back and see if he's okay? And so I made a U-turn and I went back around to the Shell Station.
Bair: Okay. Did you park at the Shell Station?
Graham: Yeah, we went up . . .
Bair: Okay.
Graham: . . . and by, we drove past and kinda . . . I think we were still trying to figure out, is he really shot. And, you know, then when I drove past 'em, I seen 'em handcuffing him, you know, around his back and I seen a bullet wound somewhere around his back, his lower part of his back.
Bair: Okay.
Graham: And then I just went up there and I parked and I, I think I was still like . . .
Bair: Okay, so the handcuffing takes place after you do a U-turn?
Graham: After I do a U-turn.
Bair: And you, you're driving by to park when you see some of the handcuffing?
Graham: Um-hum.
Bair: And then you park and then you get out of your vehicle?
Graham: I seen the handcuffing and then when we were passing, I seen the handcuffing and then once I reached the top of the Shell, where the hill kinda overlooks, then that's when I seen . . . That's why I say I don't know if it was the officer that handcuffed him or another officer that was standing on his back . . .
Bair: Okay.
Graham: . . . . and on his neck or the side of his face.
Bair: Okay.
Graham: That's why I don't know. I kinda missed that part when I turned in.
Bair: Are, are your windows down? Can you hear anything going on when this handcuffing's taking place?
Graham: Um-um.
Bair: No dialogue at all.
Graham: I couldn't hear because um my daughter's side of the, the passenger side of the car, the window doesn't roll . . . .
Bair: Okay.
Graham: . . . roll down.
Bair: Do you have tinted windows?
Graham: No.
Bair: Okay.
Graham: They're, I think they're slightly tinted in the back part of the truck.
Bair: Anything else that you saw . . . . I think I asked you off the recorder, did you ever see anything in the subject's hands during this?
Graham: I didn't.
Bair: Okay. And after he went down, did you ever see anything around his body?
Graham: I didn't.
Bair: Okay. Did your daughter ever indicate anything to you of the like?
Graham; She didn't, she didn't say it . . . No, she didn't say anything. She, what she said to me was, Mom, why, why did the officer shoot him?
Bair: Okay.
Graham: And, was kinda, kinda teared up over it.
Bair: Okay.
Graham: She said, that's the only thing. So I'm assuming, I'm just assuming that she didn't see anything . . . .
Bair: Okay.
Graham: . . . .either, because she knows the difference between, you know, right and wrong, and if she had seen it, I'm not saying it wasn't there.
Bair: No.
Graham: If she had seen it, she would have thought in her mind that it was something that she had to do.
Bair: Right, and I'm, I'm just asking you if you ever saw anything in his, in his hands or saw anything around him?

Graham: Um-um.

Bair: Any objects that would, may have been on him that, that you saw during the course of either this going, what you did see from the time you U-turn and you slowly went . . . . Sounds like when you did the U-turn and you went by, you may have had a better angle coming back by the other way, cause you're now in the other lane of traffic.

Graham: I actually, I don't think it helped. I think I seen just as much as I could see . . .

Bair: Okay.

Graham: . . . .from where I was.

Bair: Okay. Cause you're moving.

Graham: Only because the window was all the way down and I was kinda out of the window.

Bair: Certainly.

Graham: Kinda following 'em.

Bair: Okay.

Graham: So . . .

Bair: Anything else that I haven't asked that you want to bring up that you think is pertinent to this investigation?

Graham: Um-um.

Bair: Okay. And right here at the bottom I'm making an "X" and putting a line. Could you sign this this is your diagram and put today's date? Today's the 29th of June. And a couple of last things. Do you take prescription eyewear, do you wear contacts?

Graham: No.

Bair: Do you have impaired vision at all?

Graham: No.

Bair: Twenty-twenty vision?

Graham: Twenty-twenty. Yeah.

Bair: Okay. And were you on any prescription medicines, any hay fever or anything like that during the time this took place?

Graham: No.

Bair: Okay. The time right now is 1830 hours and this concludes this interview.

End of Recording:

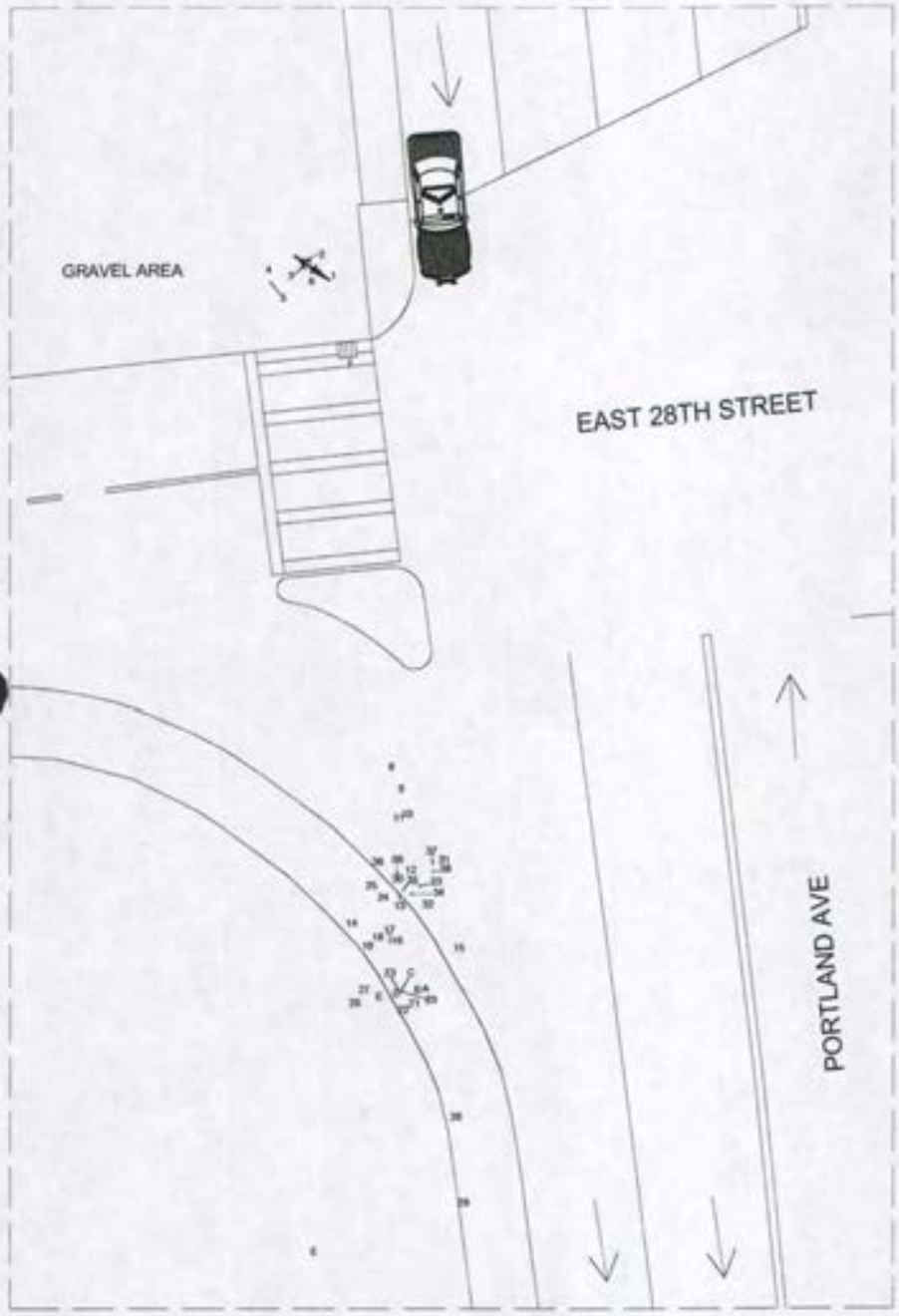
/sm

| Reviewed By: | | Reviewed Date: | |
|---|---|---|---|

EXHIBIT H

EXHIBIT H

CASE NO. 131800756 TITLE Officer Involved Shooting




*Legend*

| | |
|---|---|
| 1 | Mountain Bike |
| 2 | Jacket/Shoes/Metal Pieces |
| 3 | Bag of Personal Items |
| 4 | Cardboard Sign |
| 5 | Pieces of Cord/Shoelace |
| 6 | Small Metal Pieces |
| 7 | Piece of Cord/Shoelace |
| 8 | R-P 45 AUTO Casing |
| 9 | R-P 45 AUTO Casing |
| 10 | R-P 45 AUTO Casing |
| 11 | R-P 45 AUTO Casing |
| 12 | Taser Cartridge |
| 13 | Taser Door Hinge |
| 14 | Taser Door Hinge |
| 15 | Taser Door |
| 16 | Athletic Pants |
| 17 | Right Shoe |
| 18 | Left Shoe |
| 19 | Taser Wire with Probes |
| 20 | Disposable Lighter |
| 21 | Large Oval Metal Piece |
| 22 | Balloon Accessory |
| 23 | Necklace |
| 24 | White Plastic Piece |
| 25 | White Plastic Piece |
| 26 | Tee Shirt |
| 27 | Gauze/Cloth |
| 28 | Left Glove |
| 29 | Cement/Cinder Block Piece |
| 30 | AFID Tag |
| 31 | AFID Tag |
| 32 | AFID Tag |
| 33 | AFID Tag |
| 34 | AFID Tag |
| 35 | AFID Tag |
| 36 | AFID Tag |
| 37 | Taser Door Hinge |
| 38 | AFID Tag |
| 39 | AFID Tag |
| A-E | Suspected Blood |

AFID - Anti-Felon Identification Tag

DATE OF INCIDENT
6 DAY 29 YR 2013

LOCATION
East 28th Street and Portland Ave

REFERENCE POINT
#1 Baseline running east along the curbing from the west edge of the northbound sidewalk of the NW corner of the intersection.
#2 Baseline running north along the west curbing from the NW corner of the intersection.
#3 Baseline running north along the west curbing from the fifth expansion joint north of the Shell station driveway entrance.

DRAWN BY
R. Campbell 201038

FILE
131800756B.VCD

2/2

EXHIBIT I

EXHIBIT I

Transcript of the Testimony of

**Jeffrey Paynter**
July 17, 2017

**Beltran-Serrano v. City of Tacoma**
No. 15-2-11618-1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian ad litem of the person and estate of CESAR BELTRAN-SERRANO,
Plaintiffs,
vs. ) No. 15-2-11618-1
CITY OF TACOMA, a political subdivision of the State of Washington,
Defendant.

DEPOSITION OF JEFFREY PAYNTER

July 17, 2017

Tacoma, Washington

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EXAMINATION INDEX

| EXAMINATION BY: | PAGE NO. |
|---|---|
| Mr. LeBank | 4 |

EXHIBIT INDEX

| EXHIBIT NO. | DESCRIPTION | PAGE NO. |
|---|---|---|
| Exhibit No. 1 | 1-page copy of invoice dated 6/16/16 | 28 |
| Exhibit No. 2 | 2-page breakdown of services/charges | 28 |
| Exhibit No. 3 | 32-page undated report of Jeffrey Paynter | 28 |
| Exhibit No. 4 | 32-page undated report of Jeffrey Paynter | 28 |
| Exhibit No. 5 | 5-page CV of Jeffrey C. Paynter | 28 |
| Exhibit No. 6 | 1-page subpoena response | 28 |
| Exhibit No. 7 | 4-page PoliceOne.com article dated 5/28/14 | 104 |



BE IT REMEMBERED that on Monday, July 17, 2017, at 747 Market Street, Tacoma, Washington, at 9:14 a.m., before Cindy M. Koch, Certified Court Reporter, RPR, CRR, CLR, appeared JEFFREY PAYNTER, the witness herein;

WHEREUPON, the following proceedings were had, to wit:

<<<<<< >>>>>>

JEFFREY PAYNTER, having been first duly sworn by the Certified Court Reporter, testified as follows:

EXAMINATION

BY MR. LEBANK:

Q Can you state your name and spell it for the record.
**A My name is Jeffrey Paynter. It's P-a-y-n-t-e-r.**
Q And you're here today as an expert witness?
**A That's correct, sir, yes.**
Q And you've been retained by the City of Tacoma in this case involving Mr. Cesar Beltran vs. City of Tacoma?
**A Yes.**
Q And have you ever worked with Ms. Homan or the City of Tacoma before?

1 **A No.**
2 Q But you don't know one way or the other?
3 **A I don't know if he had been diagnosed prior to this**
4 **incident. He stated during his interviews that he had**
5 **decided to go off his medications.**
6 Q Okay.
7 **A So I would infer from that, that he was being treated if**
8 **he was prescribed medications.**
9 Q Are you relying on Mr. Beltran's statements in forming
10 your opinions?
11 **A What do you mean?**
12 Q Is that one piece of evidence that you are relying on?
13 **A Absolutely.**
14 Q What state was Mr. Beltran in when he gave that
15 statement?
16 MS. HOMAN: Object as to form.
17 THE WITNESS: Which statement are you
18 referring to?
19 Q (By Mr. LeBank) When Officer Reopelle went to his
20 hospital room and took a statement.
21 **A You're asking me what kind of mental state he was in?**
22 Q Yeah.
23 **A I don't know.**
24 Q Had he just been shot four times?
25 **A He had been shot four times.**



1 Q Had he just been through multiple surgeries?
2 **A I'm not sure.**
3 Q Was he under heavy narcotic pain medication?
4 **A That's possible.**
5 Q Okay. And was he suffering from active mental illness?
6 MS. HOMAN: Object as to form.
7 THE WITNESS: I don't know.
8 Q (By Mr. LeBank) In giving your opinions in this case,
9 are you assuming that Mr. Beltran struck Officer Volk?
10 MS. HOMAN: Object as to form.
11 THE WITNESS: No, I'm not assuming
12 that.
13 Q (By Mr. LeBank) Okay. I'd like you to assume for a
14 second that Mr. Beltran did not strike Officer Volk.
15 Okay?
16 **A So you're asking me a hypothetical?**
17 Q Yes.
18 **A Okay. So hypothetically, Mr. Beltran did not strike**
19 **Officer Volk.**
20 Q All the facts are the same, but Mr. Beltran didn't strike
21 Officer Volk throughout this encounter.
22 **A In this hypothetical, did Mr. Beltran possess a ten-pound**
23 **metal club?**
24 Q Say he had a piece of rubber. That --
25 MS. HOMAN: Object as to form.



1 Q (By Mr. LeBank) That witnesses saw some rubbery thing?
2 MS. HOMAN: Object as to form.
3 Q (By Mr. LeBank) Was there a justification for Officer
4 Volk to shoot him?
5 MS. HOMAN: Same objection.
6 Incomplete hypothetical, assumes facts contrary --
7 Q (By Mr. LeBank) Assuming that he did not strike her at
8 any point?
9 MS. HOMAN: So let me just make my
10 objection.
11 Object as to form, incomplete hypothetical, assumes
12 facts contrary to the record.
13 You may answer, if you can.
14 THE WITNESS: If I understand your
15 question --
16 Q (By Mr. LeBank) Yeah.
17 **A -- your question is that, if Mr. Beltran hypothetically**
18 **did not strike Officer Volk, and hypothetically he was**
19 **not armed with a 10.34-pound metal club, would the**
20 **shooting have been justified? Is that what you're asking**
21 **me?**
22 Q Yes.
23 **A No, it would not have.**
24 Q And why is that?
25 **A Because he would not have been armed with a deadly**



1 **weapon. He would not have committed assault first**
2 **degree.**
3 Q And you agree that there are witnesses who say that he
4 didn't strike her?
5 **A I agree.**
6 Q And so in rendering your opinions, are you giving more
7 weight to Officer Volk's version of the events than to
8 other witnesses?
9 **A If I understand your question correctly, you're asking me**
10 **whether I am weighting the value of the statement of a**
11 **participant in events more than I am witnesses that were**
12 **observing from varied distances and fields of view. Yes,**
13 **I am. I am giving her statement more weight.**
14 Q If we go back to the corner where Officer Volk was
15 talking to Mr. Beltran and identified that he didn't --
16 that he shook his head that he didn't speak English;
17 right?
18 **A Yes.**
19 Q Then she called Detective -- or Officer Gutierrez; right?
20 **A Correct.**
21 Q And then he was en route; right?
22 **A Yes. I believe he transmitted that he was en route.**
23 Q And did you read his deposition?
24 **A I did.**
25 Q How many minutes away did he say he was?

1 MS. HOMAN: Object as to form.
2 Q (By Mr. LeBank) Did Trooper Rushton witness the
3 shooting?
4 **A Witnessing and seeing are two different things. He**
5 **stated that -- in his deposition that he didn't see it.**
6 Q Okay.
7 **A He was present at the scene.**
8 Q Did he see the shooting?
9 **A He stated that he did not see the shooting.**
10 Q Did he see Mr. Beltran threaten any bystander other than
11 Officer Volk?
12 **A No.**
13 Q Okay. Did any other witness indicate that Mr. Beltran
14 threatened any bystander other than Officer Volk?
15 **A No.**
16 Q So then we move forward in Officer Volk's version of the
17 events. She claims that she was struck with the metal
18 object; that she then -- that Mr. Beltran was moving
19 across the intersection. She then drew her firearm,
20 determined that there were other vehicles in the area and
21 that she could not deploy it at that time; correct?
22 **A Let me review it. I'm on Page 12. She drew her handgun,**
23 **yes.**
24 Q You agree with what I just said in terms of what she said
25 the order of events were?



1 **A She stated the order of events was that he struck her,**
2 **she drew her handgun, and then, because of his position,**
3 **she wasn't able to fire.**
4 Q Okay. And then she holstered her handgun, drew her
5 Taser; correct?
6 **A Yes.**
7 Q And that she fired the Taser and then he brushed the
8 prongs off; correct?
9 **A Yes.**
10 Q If you look down on Page No. 12, the -- you see that?
11 **A Yes.**
12 Q It says, "Trooper Rushton stated that as he ran to assist
13 Officer Volk he saw the Taser probes strike Beltran."
14 You see that?
15 **A Yes.**
16 Q Is that consistent with his deposition?
17 **A No.**
18 Q Then "Trooper Rushton stated that the Taser application
19 was not successful because Beltran remained standing and
20 still held his striking tool in his hand."
21 Is that consistent with his deposition?
22 **A I'd have to go back to put his deposition side by side**
23 **with that. Are you talking about him stating that he did**
24 **not see? Is that what you're referring to?**
25 Q Yeah.



1 **A Okay. If that's what you're referring to, then no, it's**
2 **not consistent with his deposition.**
3 Q Then "Trooper Rushton heard Officer Volk order Beltran to
4 stop resisting"; correct?
5 **A Yes.**
6 Q And hearing is different than seeing; right?
7 **A Yes.**
8 Q "Trooper Rushton stated that Beltran did not comply";
9 correct?
10 **A Uh-huh.**
11 Q And did Trooper Rushton see Mr. Beltran not comply?
12 **A I don't know.**
13 Q "He stated that within approximately 2 seconds he heard
14 shots being fired"; correct?
15 **A Are you talking about Page 12?**
16 Q Yes.
17 **A Okay. I'm with you, yes. That's what he stated, yes.**
18 Q But he did not see shots being fired; correct?
19 **A Yes. When he was deposed, he stated he did not see shots**
20 **being fired.**
21 Q Now, you agree that there are other witnesses that
22 provide a different account than Officer Volk's?
23 **A What do you mean by "different account"?**
24 Q Well, there are other witnesses that say that they didn't
25 see Mr. Beltran strike Officer Volk; correct?



1 **A Yes, that's true.**
2 Q Now, at the point that Officer Volk claims that she --
3 when she shot Mr. Beltran, she says that he had turned to
4 come at her with the metal object; correct?
5 **A I believe so, yes.**
6 Q And that he had raised it over his head; correct?
7 **A Yes.**
8 Q Okay. Are there any witnesses that say that they -- that
9 support her version of the events, that they saw
10 Mr. Beltran with a metal object raised over his head?
11 MS. HOMAN: Object as to form.
12 THE WITNESS: I would have to review
13 my report a little bit.
14 Q (By Mr. LeBank) Go ahead.
15 **A Thanks. So just to make sure I understand your question**
16 **correctly, you're specifically asking me if another**
17 **witness saw Beltran raise the club over his head?**
18 Q Yeah.
19 **A There's no witness that specifically said he raised it**
20 **over his head.**
21 Q Is there any other witness who supports Officer Volk's
22 statement that he came back at her with a metal object?
23 **A Michael Boyer stated that Beltran moved toward Officer**
24 **Volk.**
25 Q Anyone else?

EXHIBIT J

EXHIBIT J

Noedel Scientific

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Report

RE: Cesar Beltran-Serrano v City of Tacoma
Shooting Scene Reconstruction 7/26/2017

On February 16, 2016, I was requested by attorney Micah LeBank to evaluate, consult and review aspects of the shooting event recorded as Tacoma Police Department #13-1800756. Documentation was provided in the form of police reports, depositions, scene and hospital photographs, forensic reports and other data connected to the shooting event. This report outlines the findings associated with these evaluations.

***This assessment was conducted with the materials and information provided. Should additional relevant information or evidence become available, or if the direct examination of additional physical evidence related to this event is conducted, a supplemental report may need to be generated to incorporate the new information or evidence.***

***A current Curriculum Vitae for Matthew Noedel, the fee structure and materials relied upon are included as an appendix to this report.***

**Background**

On June 29, 2013, Tacoma Police Officer Michel Volk made contact with Cesar Beltran at the northwest corner of E. 28th Street and E. Portland Avenue in Tacoma, WA. During this contact, Beltran gained access to a folded piece of metal. The encounter continued across the street where near the southwest corner of the intersection, Officer Volk discharged her TASER electronic control tool (ECT) once and discharged her Glock 45 Auto firearm four times. The TASER deployment did not disable Beltran and the firearm discharge wounded Beltran causing him to drop onto the sidewalk where he was handcuffed and taken into custody.

**Examination/Results**

This assessment was conducted using commonly accepted methods and techniques in shooting incident reconstruction.

*Evidence Examination*

On August 25, 2016, I conducted a visual examination of the outer clothing worn by Beltran collected after the shooting event. Also present during this examination was Rod Englert (and associates) who were observing on behalf of the defense.

Item MC-33: One GAP brand grey pull over t-shirt.

As received, this t-shirt had pre-existing cuts up the front and across each sleeve. I organized the shirt to approximate the original appearance and evaluated as follows (see figure 1):

- A fired bullet fell out from the wadded up t-shirt while organizing the shirt for photography. The fired bullet was consistent with a 45 Auto, jacketed hollow point bullet with polygonal rifling.

This bullet was consistent with the other fired bullet associated with Volk's Glock, 45 Auto pistol and is likely a second recovered fired bullet from this event.

Two holes were located on the shirt. One hole was through the lower right front area and a second (larger) hole was located through the lower right back area (see figure 2). With the shirt oriented as normally worn, these holes do not specifically line up with entry wounds described on the front left torso and back left flank of Beltran.

- This shirt may have been worn backwards, was twisted (or a combination of both) when the shots were delivered. If worn backwards, the two holes in the shirt approximately align with wounds documented to the left side and back, left flank of Beltran.

Item MC-23: One "Nike" brand blue nylon type sweat pants with white stripe.

As received, these pants show a variety of damage.

- A large hole is present at the center top front waist band
- A large hole is located near the right front knee area
- A small "L" shaped cut is present on the upper left leg
- An "ovoid" hole is present through the upper left buttocks area
- A collection of holes is present through the upper right buttocks area

The ovoid hole through the left upper back of the pants and any one of the numerous holes in the right upper back of the pants likely coincides with a bullet path that went through and through the buttocks of Beltran (see figure 3).

*TASER ECT Considerations*

The electronic control tool assigned to Officer Volk was a TASER model X26 (#X00-252343). When discharged, this device expels two green plastic cartridge doors, a collection of small round discs (similar to confetti called "afids") and two darts (probes) connected by wires to the base unit. The base unit (placard 12), small disks (placards 30-36, 38, 39), and pieces of the doors (placards 13, 14, 15, 37) were located in the street and sidewalk north of where the blood on the sidewalk was located.

- The parts of green plastic door and "afids" represent the area just forward of the discharge of the TASER. This supports that the TASER was fired in the direction generally toward the south from the street area onto the sidewalk area. (Note: There are two green ear plugs in the street by the recovered TASER door. It is unknown what (if any) significance these ear plugs may have in this event).

- The TASER probes (placard 19) were located on the sidewalk just north of the blood on the sidewalk where Beltran ultimately was handcuffed. Both darts still appear (in photographs) to have the knotted wire connection in-tact. Typically, the knotted connection is a weak point and designed to break if the wires become stressed from entanglement.

- The TASER cartridge (placard 12) appears (in photographs) to have had one of the two wires disconnected at the cartridge source. This would likely disrupt the effectiveness of the TASER.

- No wounds visually consistent with TASER probes embedding were observed in the available photographs of Beltran's back and upper buttocks. It is unclear where the Taser probes struck (or if they struck at all) on the body of Beltran.

The TASER products are expelled forward of the position of the shooter. Volk estimated she was approximately seven yards (21 feet) away from Beltran when she fired the TASER. Figure 4 demonstrates the approximate location of Volk based on the forward disbursement of the TASER afids and green blast door recovered.

*Firearm Accounting*

Officer Volk had access to a Glock model 21, 45 Auto pistol (serial number TPB805). This pistol has a capacity of thirteen cartridges in the magazine and one additional cartridge in the chamber (fourteen total). For every firearm discharge from Volk, there should exist a fired bullet path, a fired bullet and a fired cartridge case. Volk turned in a pistol that carried nine cartridges in the magazine and one in the chamber (ten total).

- This count supports that Officer Volk fired her Glock pistol four times during this event.

Four fired cartridge cases were located in the street and documented with original scene photographs.

- The group of fired cartridge cases supports that the four gunshots discharged by Volk occurred in the area of the southwest turn lane/sidewalk. The group of fired cartridge cases indicates that Volk was relatively stationary while shooting her firearm in this area.

- The design of this pistol when fired with the sights on top directs fired cartridge cases generally to the right and rear of the location of the shooter. Figure 5 show the location of fired cartridge cases relative to other physical evidence in this scene.

Two of the four fired bullets were recovered from this event:

- One fired bullet was recovered during surgery from the "right lobe of the liver" in the body of Beltran.
- One fired bullet fell out from the t-shirt of Beltran during examination
- Two fired bullets were never located and represent the remaining two bullet paths

Report

RE: Cesar Beltran-Serrano v City of Tacoma
Shooting Scene Reconstruction 7/26/2017

*Bullet Path Evaluation*

The bullet path evaluation includes the consideration of the following wounds. The provided medical records offer a limited description of entry versus exit detail and the photographs exhibit limited detail for bullet path analysis. The four fired bullets must collectively cause at least the following described wounds:

- A bullet path through the left upper buttock, eclipsing the tail bone and exiting through the right upper buttock
- A bullet path that "gouged" through the back, left flank
- A bullet path entered the left abdomen and ended inside the right lobe of the liver
- A bullet perforation through the right forearm/elbow. (This wound could be a continuation of the exit through the buttocks, a continuation from the graze across the left arm or an independent shot striking only the right elbow).
- A graze across the inner left forearm. (This wound could be forward and part of the bullet path into the left buttock, the left chest, the left abdomen or the right arm depending on where the arm was located at the time of this wound).

Because his arms can achieve a wide variety of orientations (high or low), a variety of arm positions are possible by Beltran while receiving gunshot wounds. The following four bullet paths and combinations are the best explanation considering the positions and appearance of the gunshot wounds described in the data (presented in random order and not meant to identify the sequence of shots delivered):

A bullet hits the left side and embeds in his liver (bullet recovered)

A bullet perforates through his left buttock, through his tail bone and exits his right butt (bullet lost)

A bullet perforates the right arm directly (bullet lost)

A shot grazes the left arm when it is oriented forward of the back wound and continues to eclipse the back left flank (bullet recovered with t-shirt)

All of the above bullet paths require Beltran to be rotated toward the east (his right) with his left side facing the source of the gunshots. Figure 6 demonstrates the area where fired TASER, fired cartridge cases and Beltran's clothing, blood and emergency response gear were located. These items represent the area where Beltran fell to the ground and was handcuffed after the shooting. Figure 7a-d show the four combinations of bullet paths described above.

*Witness Observations and Reconstruction*

Using the data described in this report, various witness observations and statements were evaluated. The following quotes were taken from data submitted and evaluated in context to the available physical evidence.

In a report authored by pathologist Dr. Clifford Nelson, he opined…

> ***"His right forearm would be slightly below horizontal in a downward swinging/chop motion."***

This opinion is not supported by the physical evidence given the wound track observed through the right arm. A fired Remington "Golden Saber (Ultimate Defense)", 45 Auto bullet fired from a Glock pistol is moving approximately 725 feet/per/second (fps). As such, the path through the arm represents less than 0.001 second (one one-thousandth of a second) of interaction with the arm. It cannot be determined if the arm was stationary or in motion (or moving up or down) during this short duration of time during bullet perforation.

In the same report authored by pathologist Dr. Clifford Nelson, he opined…

> ***"…it is definitive that Mr. Beltran was not shot in the back..."***

Figure 8 is a photograph of Beltran while in the hospital receiving treatment for his gunshot wounds. This image (identified as gunshot wound IV in the Nelson report) clearly shows that the described gunshot wound struck the back of Beltran.

A 3-D scene map was created from laser scan data to provide an overview of the perspectives described by the various witness (see figure 9).

Trooper Rushton's in car dash camera recorded some of the activity between Volk and Beltran at the northwest corner. Initially, Rushton arrives at the intersection and observes Volk talking with Beltran. Rushton departs and circles around the block and returns approximately 1.5 minutes later where he is fifth in the line of traffic heading east on 28$^{th}$. In the video, Beltran can be seen bending at the waist toward the ground and later standing up, rotating to his right and heading south at the intersection while Volk takes a step toward the south to follow. Both Beltran and Volk are quickly out of view and in front of east bound cars that block the camera view.

Officer Volk reported in an interview the following:

> ***"…I thought he was reaching down toward his bag to get his ID for me and that's when he grabbed the object, the pipe like object, and came around and swung it, hit me in the arm and then took off into the middle of the intersection."***

-and-

> ***"Q: As he comes up and is it kind of in one motion that he, that he stands up and swings that at you?***
> ***A: Yes"***

The camera view from the Rushton vehicle does not show Beltran swinging an object after standing back up. Rather, Beltran stands up, turns and moves toward the south in one fluid motion. No swinging action is visible on the video record.

Figure 10 demonstrates the area of TASER deployment based on the physical evidence recorded at the scene and showing a seven yard distance between Beltran and Volk. Volk reported that she transitioned very quickly between her TASER and firearm. Figure 11 shows a combination of TASER and fired cartridge case data that includes models to represent the areas where Beltran and Volk were located during the discharge of the TASER and firearm.

**Conclusions**

Officer Volk encountered Beltran on the northwest corner of the intersection of E. 28th Street and E. Portland Avenue in Tacoma, WA.

This encounter lasted at least 1 ½ minutes without incident. Dash camera video shows Beltran bending down and then in one motion standing up and heading toward the south without swinging an object toward Volk. The dash camera video does not capture any of the additional events that follow.

Taser "afids", blast doors and a cartridge with probes are located at the southwest corner of the intersection. This represents the area forward of where the Taser was fired by Volk.

The count of unfired ammunition turned in by Volk supports she fired her 45 Auto caliber firearm four times during this event.

Four fired cartridge cases located in the street at the southwest corner indicate the proximity from which Volk fired her firearm.

Two of the four fired bullets were located from this event, the other two were lost in the environment of the shooting area.

All four bullet paths delivered by Volk struck Beltran when Beltran was positioned with his left side and left flank facing Volk's pistol.

Beltran was hit by fired bullets in the right arm, through and through his buttocks, into his torso and across his left forearm into his upper left back.

Noedel Scientific

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Report

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None of the fired bullet paths to Beltran support him "swinging" or otherwise moving his arms at the time of receiving the gunshots. Such claims are not supported by the physical evidence.

July 26, 2017

Matthew Noedel, Forensic Scientist Date

**Figure 1: The grey t-shirt recovered from the scene near Beltran. Upon examination of this shirt, a 45 caliber, polygonal rifled fired bullet (consistent with the brand of firearm used by Volk) fell out of the bundled up shirt and was repackaged back with the shirt.**

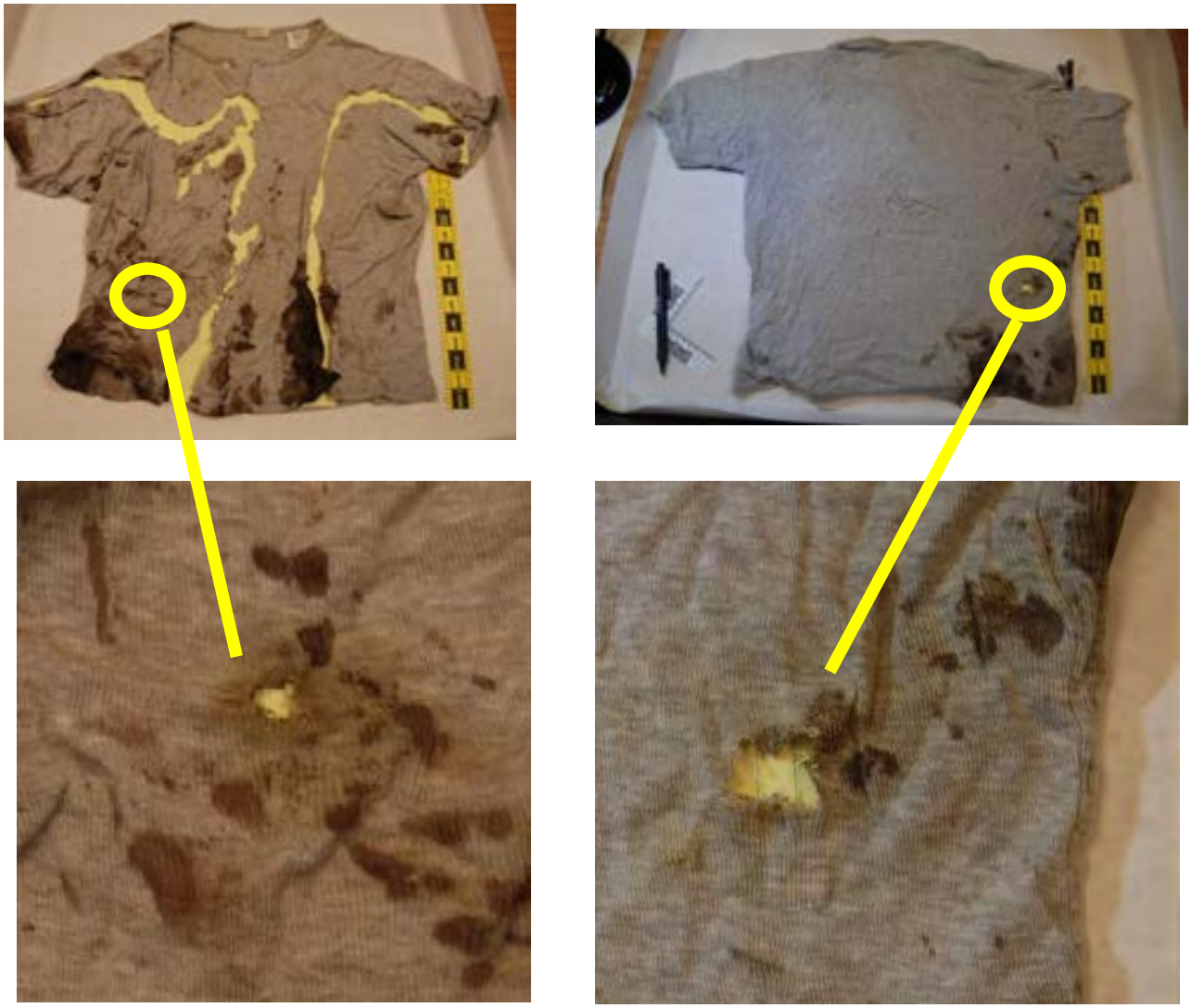

**Figure 2: Views of the front and back of the t-shirt. There was one hole through the front lower right; and one hole through the back lower right. No gunpowder patterns were located around these defects and they were not likely from "close range" gunshot discharges. These holes do not overlay wounds documented to the body of Beltran with the shirt oriented as "normally worn" and straight as laid out in these images.**

**Figure 3: A view of the back of the pants recovered from the scene near Beltran. A hole through the left butt and one of the numerous holes through the right butt generally align with a bullet path documented through the buttocks of Beltran.**

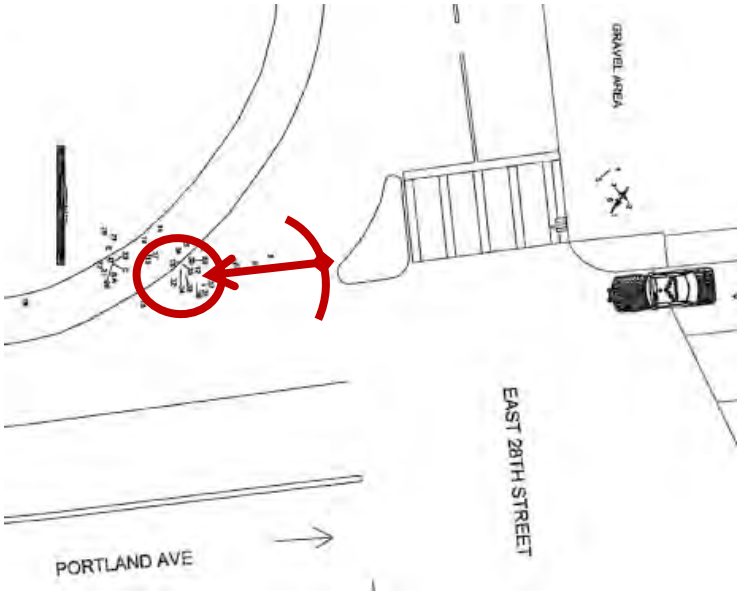

**Figure 4: Top-The map generated from initial scene processing with TASER products circled. The arrow represents approximately 21 feet distance (7 yards) away from the TASER evidence.**

**Bottom-A photograph from the original scene documentation. The red circle was added to identify where various products from the TASER deployment of Volk landed. These products are propelled forward from the position where the TASER was fired. This supports the TASER was fired from the area toward the right side of this image toward the sidewalk. Volk estimated that she fired from approximately 7 yards (21 feet) away.**

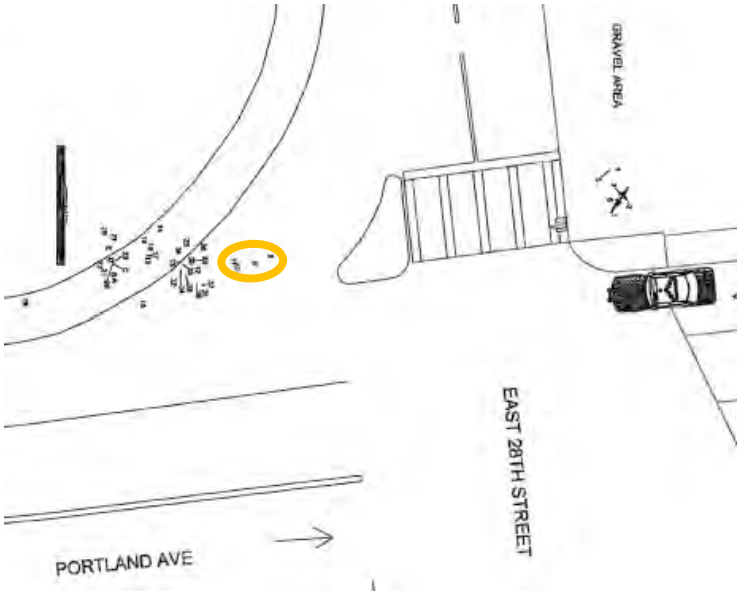

**Figure 5: Top-The map generated from initial scene processing with the four fired cartridge cases circled.**

**Bottom-A photograph from the original scene documentation. The circle was added to identify where the four fired cartridge cases from Volk landed. The location of this group of fired cartridge cases supports that Volk was in proximity to these cases while firing her firearm in the direction of Beltran.**

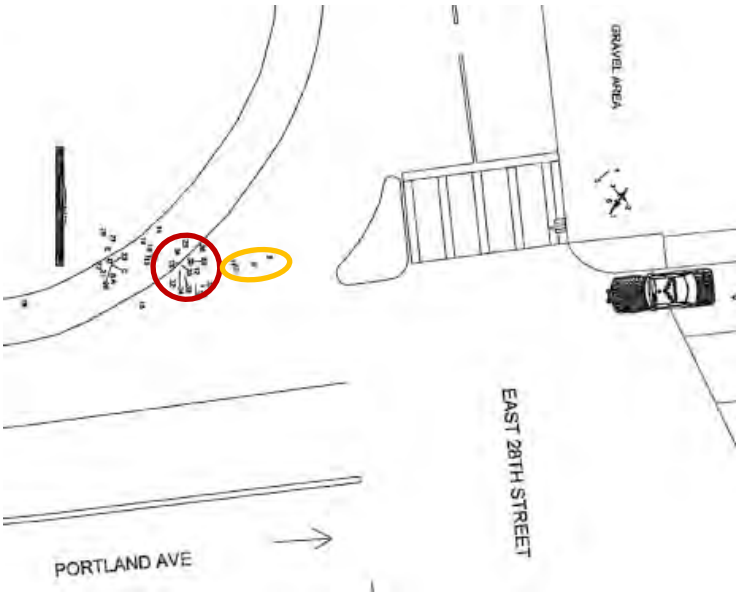

**Figure 6: Top-The map generated from initial scene processing with TASER and fired cartridge case locations circled.**

**Bottom-A photograph from the original scene documentation with TASER and fired cartridge case locations circled. The TASER evidence represents a location forward of the TASER discharge and the cartridge cases are in proximity to the firearm discharge. Collectively this evidence supports that Volk was firing toward Beltran while she was in the area of the street in the turn lane.**

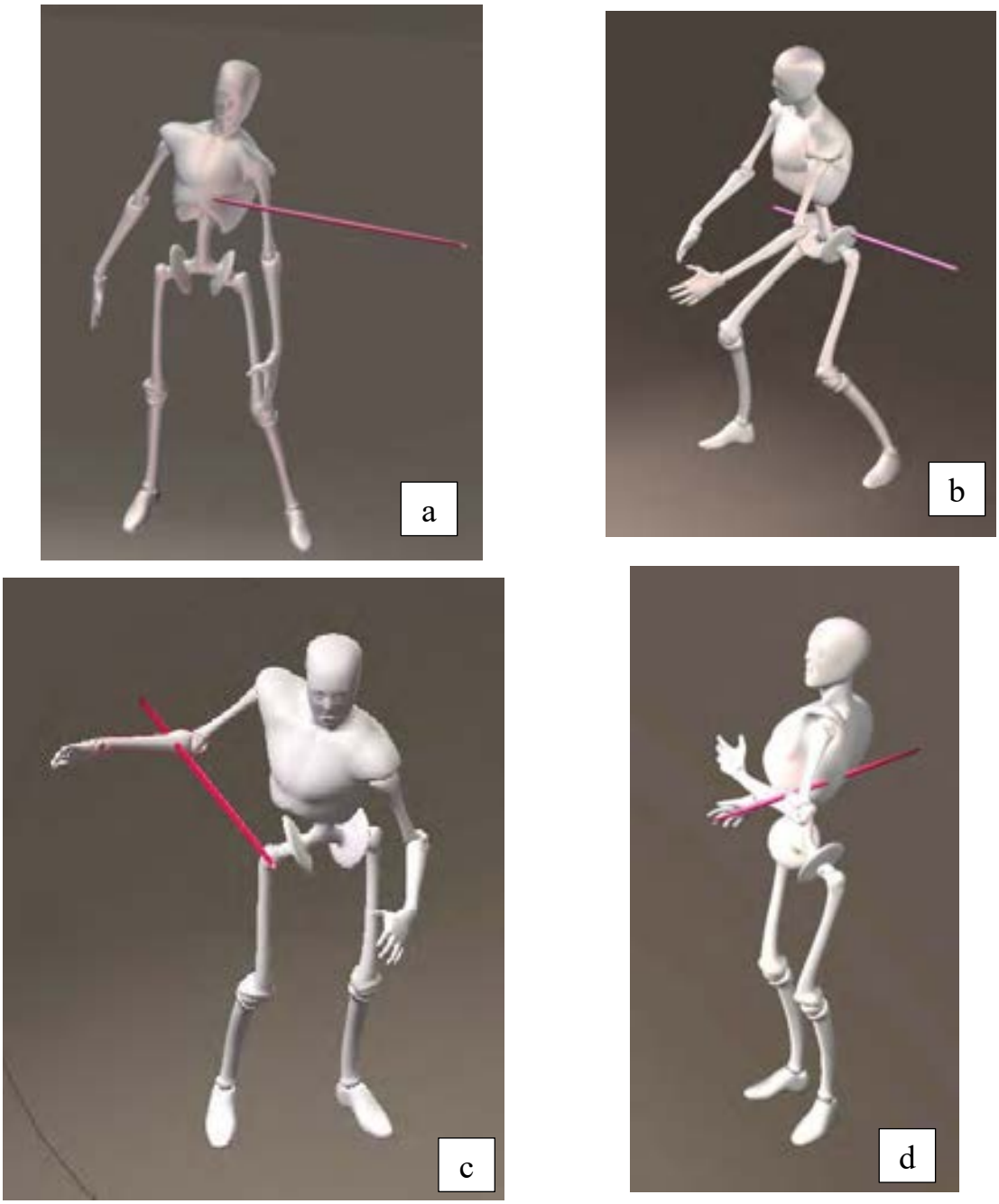


**Figure 7: Four models depicting the four fired bullet paths that impacted Beltran: a) a fired bullet struck Beltran in the left chest and ended in his liver; b) a fired bullet struck Beltran in his left buttock, continued through his tail bone and exited his right buttock; c)a fired bullet perforated Beltran's right forearm and exited near his right elbow; d) a fired bullet eclipsed the left forearm and continued into his upper left back where a bullet was recovered from within the t-shirt.**

**Figure 8: An original police photograph of Beltran in the hospital. This image shows the location of the gunshot wound to the upper left back of Beltran. The position of this gunshot wound is in the back of Beltran thus his torso was rotated at the time of this shot, exposing this position to receive a fired bullet.**

**Figure 9: A top view of the 3-D laser scan with various dimensions identified (as it appears circa July 2017). The image at the lower right was generated as the intersection appeared shortly after the shooting (circa July 2013).**

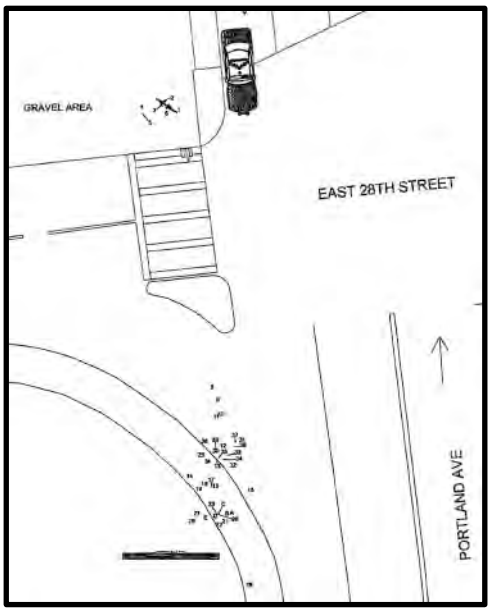

**Figure 10: A 3-D image demonstrating the described TASER deployment from a distance of approximately 7 yards (21 feet). This alignment fits with the physical evidence of TASER doors and afids documented on the scene.**

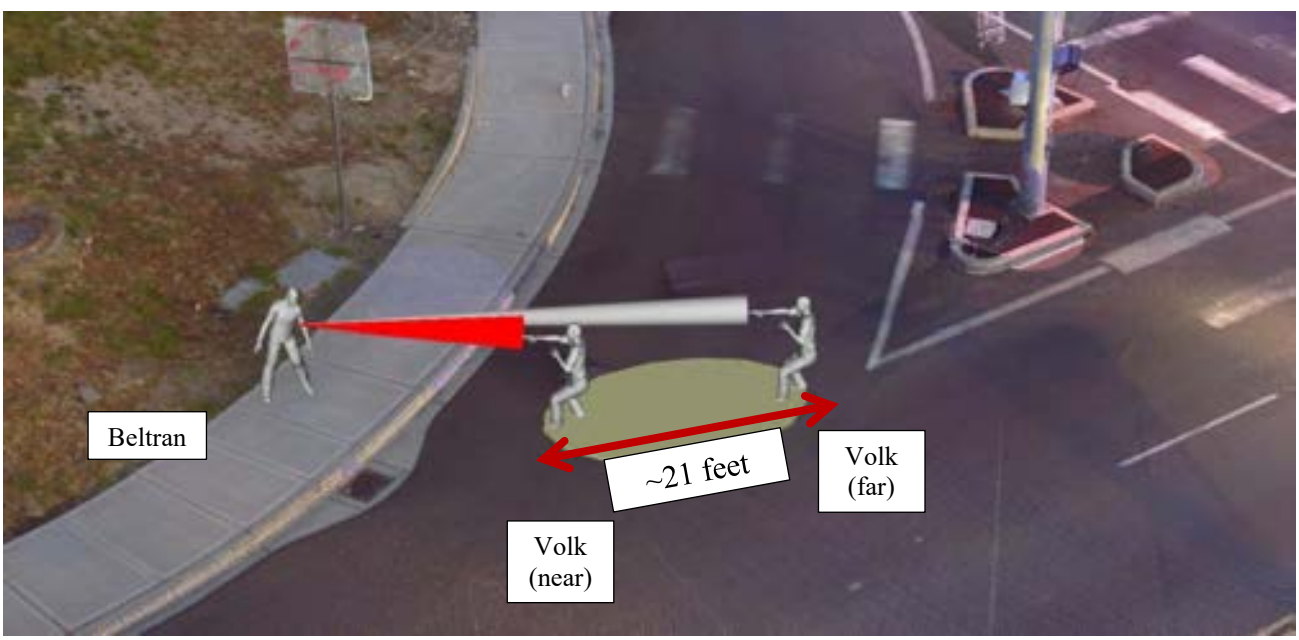


**Figure 11: A laser scan view of the intersection. Models to represent Volk and Beltran have been inserted and an oval was drawn to represent an approximately 21 foot wide area. The TASER and fired cartridge case data support the oval as the area from which Volk was shooting towards Beltran.**

**Appendix A**

All work conducted for this examination will be billed at the agreed upon fee of $300 per hour.

The following materials were provided, evaluated and/or considered for this examination:

Nelson Report 6-28-16.pdf
Nelson_CV.pdf
Page 588 Bullet Wound Diagram from Beltran-Reopelles Binder.pdf
6.17.16 Pltf's 1st Rogs-RFPs to City-Supp ANSWERS.pdf
BELTRAN-SERRANO 000755-000764.pdf
BELTRAN-SERRANO 000814-000816.pdf
BELTRAN-SERRANO 000826-000828.pdf
Cool 1-6.pdf
Cool, Loretta.pdf
Gutierrez 1.pdf
Gutierrez 2.pdf
Gutierrez, Officer Reginald (Jake).pdf
Paynter_CV 2016.pdf
Pltf's 1st Rogs-RFPs to City-2nd SUPPL ANSWERS.pdf
Tacoma General Hospital Records.pdf
Tacoma General Records.pdf
TG Discharge Summary.pdf
TG Records2.pdf
TGH Records1.pdf
Radio Update May 2008.pps
P-TRNG-MV 000001-000012_Volk Training.pdf
000665-000673 12COM-0051.pdf
000674-000684 12COM-0058.pdf
Claims list from database.pdf
000571-000602 - Communications.pdf
000029-000033 - CAD 13-1800756.pdf
000034-000301 - Incident Report 13-1800756.pdf
000308-000322 - Forensic Photograph Proof Sheets.pdf
000342-000379 - Deadly Force Review Board PowerPoint Presentation.pdf
000380-000401 - Property Reports.pdf
SRB 000001-000295 - Deadly Force Review Board 13UOF-0145.pdf
000306 - Videos TPD Shooting.mpg
000306 - Videos WSP Video.mpg
000337 - Tac 2 (99 wav files)
000338 - Tac 3 (10 wav files)
000339 - North Primary (15 wav files)
000340 - South Primary (64 wav files)

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000341 - East Dispatch (7 wav files)
000420-000423 - Officers Responsive to Scene.pdf
Volk, Michel-depo.pdf
Rushton exhibits.zip
Transcript testimony Timothy Rushton
Radiology Films
PHOTOS_SCENE-RFP #7 Part 1

EXHIBIT K

EXHIBIT K

# S. Peters
# Police Practice Expert

**P.O. Box 583, Spokane Valley, Wa. 99016 ***
**TEL. (509) 720-3225 * FAX (509) 241-3767 ***


Susan M. Peters states the following:

I have worked as a police practices expert since October of 2011. Before that, I served 29 years in law enforcement. I retired from the King County Sheriff's Office in May of 2011. I was a major crimes detective there from September of 1991 to May of 2011. As a major crimes detective, I was responsible for the investigations of homicides, suspicious deaths, no-body homicides, cold cases, kidnappings, felony assaults, officer-involved shootings and officer-involved "in-custody" deaths. During my career, I attended and participated in review boards on officer-involved shootings and in-custody deaths. These review boards discussed policies, procedures and training issues related to officer-involved shootings and in-custody deaths. During my career, I was also involved in the Green River Task force investigations. My assignments during the task force included confidential assignments, such as the investigation of police officers and corrections officers. Before I was a major crimes detective, I served as a King County police officer, where I was assigned to patrol and responded to 911 calls, among other things. I also served as a plain-clothes officer involved in undercover assignments, a field-training officer, and a sexual assault detective.

The law firm of "Connelly Law Offices" retained my services to review the circumstances involving the "Use of Deadly Force" in Tacoma Police Department Incident #131800756. This preliminary report represents my opinions concerning the above-referenced case based upon my knowledge, skill, education, training and experience, as well as a careful review and evaluation of the totality of circumstances.

I understand that discovery in this case is ongoing. The facts and data I have considered in forming my expert opinions and basis for opinions are listed below. As additional materials become available to plaintiffs through discovery, such as additional documents, written discovery, depositions or expert reports, I reserve the right to supplement or amend this report and the opinions stated herein.

<u>Brief Overview of Incident per the Tacoma Police Reports and Depositions:</u>

On June 29th, 2013, Officer Michel Volk was in the area of East 28th and Portland Ave when she observed a male (later identified as Cesar Beltran) standing on the N/W corner of the intersection, which is a common area for panhandlers.

Officer Volk continued through the light at E 28th and made a U-turn under the overpass and came back to contact Beltran.

At about 15:03:12 hours, Officer Volk contacted radio dispatch and advised she was out with a panhandler at East 28th and Portland Ave. She parked her marked patrol car to the north of E 28th on Portland Ave, curbside with the overhead lights on.

Officer Volk observed that Beltran was now lying on his stomach and digging in the ground with his hands. She approached him and said, "Hello Sir." Beltran continued to lie on his stomach and looked her direction, but did not say anything. Beltran continued to dig into a construction type hole that contained trash in the ground.

Officer Volk asked Beltran if he was aware of the panhandling laws in Tacoma. Beltran did not verbally respond and shook his head from left to right.

Beltran then got to his knees and reached into a construction type hole and pulled out an old plastic soda container that had orange liquid. Beltran drank from the container and threw it back in the hole.

Officer Volk asked Beltran if he spoke English. Beltran then stood up and shook his head to the left and right again. Officer Volk believed he did not speak English so she called for Officer Gutierrez, a Spanish-speaking officer to assist her. Per CAD, this call was made at about 15:05:01.

While on the radio, Beltran reached back into the hole again and pulled out another old plastic soda bottle and drank from it and threw the bottle back into hole.

Officer Volk then asked Beltran for ID. Beltran patted his pockets as if he was looking for a wallet. He then bent over and picked up an oval shaped metal object and swung the object at her upper body. Officer Volk blocked the object with her left arm and Beltran took off running towards the middle of the intersection, where he stopped.

Officer Volk drew her department issued firearm and held it in a low ready position in case Beltran attacked her again or if he went after a citizen in a vehicle. She gave commands for Beltran to drop the object and he did not respond. Beltran then took off running S/B on Portland Ave while still in possession of the metal object.

Officer Volk called for "Priority" backup through dispatch at about 15:05:24. She ran after Beltran and put her firearm back in her holster and transitioned to her ECT (Electronic Control Tool).

Officer Volk reported Beltran was about 7 yards from her when she discharged her ECT and both probes struck him in the back. The ECT did not affect Beltran and she stated he immediately turned around to his left and was facing her. She claims that he raised the object above his head with his right arm as if he was going to hit her in the head with the object. Officer Volk states that she threw her ECT down and drew her firearm, discharging it at Beltran. She states that she fired her weapon from a

standing as opposed to a crouched position.

Officer Volk reported "Shots Fired" to radio dispatch at 15:05:38. A WSP trooper arrived in the area and assisted Officer Volk in handcuffing Beltran. Medical aid arrived and Beltran was transported to the hospital for gunshot wounds and listed in critical condition. He ended up surviving from the serious injuries.

Officer Volk was treated for minor injuries to her left forearm at a nearby hospital.

**Opinion #1**

Based upon my knowledge, skill, training, education and experience, as well as a careful evaluation of the totality of circumstances in this matter, it is my professional opinion that Officer Volk failed to recognize that Mr. Beltran was affected by mental illness and did not follow basic police procedures when contacting Mr. Beltran, a person with a mental disorder.

Basis for Opinion

- Officers are trained in the police academy and through their department's training program on how to respond and handle subjects affected by mental illness. Officer Volk stated in her deposition (04/13/16) that she believed she had training on dealing with the mentally ill in the police academy. Further, she had training through the Tacoma Police Department's training unit. Officer Volk's training records indicated she completed courses in mental health in July of 2009, December of 2010, May of 2011, December of 2011, October of 2012 and February of 2013.

- Officer Volt clearly noted in her written report, recorded statement and deposition that Beltran exhibited signs of mental illness, such as: lying on the ground with his feet in the road, digging in a hole with his hands that contained trash, verbally non-responsive when attempting to communicate with him, drank orange liquid from an old plastic soda bottle from the hole and drank from a second old plastic soda bottle from the hole. Officer Volk also indicated that Beltran appeared dirty. In deposition, Officer Volk was asked if she did anything to determine whether or not Beltran was suffering from mental illness. She responded, "At that point, sir, he didn't say one word for me, so I had no basis of whether he was mentally ill or not." A reasonable officer would have clearly seen the "red flags" listed above that Beltran was exhibiting signs of mental health issues.

- Officer Volt did not request a "backup" officer when it was clear she was dealing with a person displaying signs of mental illness. Officers are trained to have a backup officer on scene to assist when handling a person exhibiting symptoms of mental illness. Officer Volk requested Officer Gutierrez to her

location because he spoke a little Spanish. There was no sense of urgency for Officer Gutierrez to arrive quickly and assist Officer Volk as a "backup" officer. The CAD report indicates Officer Volk stated over radio, "Tacoma, Paul 1-7-5, can you send 4-4 to this location?"

Trooper Rushton was also in the area and drove by Officer Volk's location when she was making contact with Beltran at the corner of the intersection. Trooper Rushton said he made eye contact with Officer Volk and she indicated everything was okay, so he continued by. Officer Volk had the opportunity to have him assist her as a backup unit dealing with a mentally disturbed person. This would have been proper police procedures and best practice for "officer safety" and the safety of Beltran, a person showing signs of mental illness.

- The Tacoma Police Department procedures manual clearly states their guidelines for officers handling individuals suspected of mental disorders. At the time of this shooting, Officer Volk was a police officer with Tacoma Police Department for about 6 years. Officers are expected to be familiar with procedures on handling persons with mental illness. In deposition, Officer Volk was unable to answer several questions about dealing with persons suffering from mental illness. For example, she was asked if she recalled from her training how to approach someone who is mentally ill. Her answer was, "I do not recall off the top of my head." Officer Volt was asked if anyone ever told her that in dealing with someone with mental illness, that it's important to exhibit extreme patience. She replied, "Not that I recall." Officer Volk was asked if anyone ever told her that when you encounter someone with mental illness, that it's important to remain calm. She responded, "I cannot recall."

**Section D) Mental Illness Recognition**

Members of the Tacoma Police Department, both commissioned and non-commissioned, may have contact with people in the community that suffer from mental illnesses. These contacts may be through in-station reporting, self-initiated activity, or calls for service. The objective in dealing with mentally ill is for the employee to be able to recognize symptoms of mental illness so that they may better address that person's needs and, if necessary, refer them to the appropriate professional resource.

**Section E) Guidelines for Interaction with Persons suspected of Mental Illness**

Officers should consider the following practices when interacting with anyone they suspect is suffering from mental illness or who exhibits signs of mental illness:

- Remain calm and do not overreact
- Show concern and understanding
- Exhibit extreme patience-expect the encounter to take a longer period of time than when dealing with those who do not suffer from

mental illness. *Officer Volk asked Beltran if he spoke English and he indicated to her "no" by shaking his head from left to right. Officer Volk called Officer Gutierrez to the scene to assist with the communication process in Spanish. In her deposition she stated, "There's a timespan there where we are not saying anything to each other, and I'm basically just standing there for – waiting for Jake Gutierrez to arrive." Officer Volk then stated she asked Beltran for ID and he patted his pockets, like he was looking for ID; then he bent over and picked up the pipe. Had Officer Volk continued to stand back (about 7 to 8' as she stated from Beltran), remain patient and wait for Officer Gutierrez to arrive, more likely than not, a different outcome in this case would have occurred.*

- Be aware the uniform might frighten them. *In deposition, Officer Volk was not aware of this police procedure.*
- Listen – what they say may provide insight into the underlying problem or give clues on how to best provide assistance
- Remove distractions and disruptive people
- If possible, tell them what you are going to do before you do it. *Officer Volk never informed Beltran that a Spanish-speaking officer was on the way to help them communicate*.
- Don't maintain direct eye contact. *In deposition, Officer Volk was not aware of this police procedure.*
- Limit physical contact unless it becomes necessary. *In deposition, Officer Volk was not aware of this police procedure.*
- Always scan the immediate area for potential weapons or danger. *Officers know through training and best police practices concerning "officer safety" that they should always check and scan the area for potential weapons, especially making contact with a person exhibiting signs of mental illness. Officer Volk placed herself in a close proximity of Beltran when he bent over and picked up the pipe. Officer Rushton's dash cam video clearly showed that Beltran bent over and swung his arm in one motion, striking Officer Volk in the forearm area, as she was standing next to him.*

**Opinion #2**

Based upon my knowledge, skill, training, education and experience, as well as a careful evaluation of the totality of circumstances in this matter, it is my professional opinion that Officer Volk provoked the encounter and used Unreasonable, Unnecessary and Excessive Force discharging her firearm at Cesar Beltran.

<u>Basis for Opinion</u>

- **P3.1 Use of Force Policy**

This policy shall establish the professional philosophy of the Tacoma Police Department relative to proper use of force in the performance of service to the community. Officers of the Tacoma Police Department may use force when necessary, and shall use only that force which is reasonable. All force applications shall be in conformity with the statues and Constitution of the United States and the State of Washington. All commissioned Tacoma Police employees are authorized to use force as defined by RCW 9A.16.020.

- **P3.1.6 Life Threatening-Deadly Force**
  **A) Definitions**
  **Life Threatening** – Reasonable perception that the actions of an individual would likely cause death or serious bodily injury to an individual Officer.

  Deadly Force – The use of any force that is likely to cause death or serious bodily injury. Deadly force does not include force that is likely to cause death or serious bodily injury but unexpectedly results in death or serious bodily injury to an individual officer.

  **Principals of Deadly Force Application**
  The Tacoma Police Department recognizes and respects the value of all human life. Procedures and training are designed to resolve confrontations prior to escalation to the point deadly force may be applied. During the performance of their duties and as a last resort, Officers may apply deadly force when confronted with an imminent danger of death or serious bodily injury to protect themselves or others.

- Based on the totality of circumstances, Officer Volk was not faced with an imminent danger of serious bodily injury or death when she used deadly force on Beltran. Per her statement, Beltran was about 7 yards (21 feet) away from her, allegedly holding an object above his head. He took a step towards her and she immediately went to deadly force. In deposition, Officer Volk stated, "In my recollection, the second he started taking a step at me, I fired at him." She did not access the situation to determine if Beltran would stop or turn and run away (like he did earlier when he stopped and faced her in the middle of the intersection). The crime scene diagram verified Officer Volk was about 20' to 25' away from Beltran, when he was shot. At this distance, Officer Volk fired prematurely and was not in immediate life-threatening danger. Further, there is no information in the records that Beltran was charging her, approaching her quickly and witnesses viewing the incident, never reported she was in immediate danger or that he presented a weapon in a threatening manner. (In fact, there are witness statements that provide the opposite. Witnesses stated that Beltran did not have anything in his

hands or a weapon displayed and that he was moving away from Officer Volk at the time that she shot him.)

Summer Thomas – Bournes reported reference Officer Volk firing her gun at Beltran, "Uh, he liked turned back towards like he was running. Like it looked he was deciding if he should run away or stay there, and then that's when she pulled out the gun and popped it four times."

Winona Stevens reported reference the shooting, "I saw the taser wires hit his body and then probably like two or three seconds after that she pulled out a gun and then shot him three times." Winona was asked what Beltran was doing when the taser was fired. She responded, "He was, he was standing and then he um, he didn't like jump or he didn't fall to the ground immediately. He was just kinda like standing there and wavering and then that's when she pulled out her gun and shot him."

Teresa Graham reported reference the shooting, "The wires come out of it. And then I seen her throw it on the ground. And then grab her gun and then shoot." Graham further commented she was in disbelief after the shooting and was trying to figure out was he shot and did she miss something. In a signed declaration, Graham stated she did not seeing anything in Beltran's hands when he was shot by the gun. She further stated, "The officer threw down the taser and grabbed her weapon and he turned his back around to run away and she just shot him four times."

Elijah Campbell reported reference the shooting that he saw Beltran with an object that was a circular thing. Beltran was shot with the taser and used the object to fleck off the wires. Campbell next stated, "Uh, after he did that, she pulled out her gun and shot him three times."

Michael Boyer reported reference the shooting that he did not observe anything in Beltran's hands. He saw Beltran swipe at the taser wires after Officer Volk deployed her ECT at him. He then stated, "He starts oh after he, you know, swats it off or he got it off or whatever. He started to walk down on the other side of the road to where the other sidewalk is on the other side. And then he turns around, yet again, and acts like he was gonna walk towards her stumbling wise; and I guess that might have still scared her or something, I don't know. But that's when she dropped the taser on the ground, grabbed her gun and shot him." Boyer was asked if Beltran raised his arms or anything above his head and he said no.

- No witnesses reported Officer Volk was in a life-threatening encounter. No witnesses reported that Beltran was charging her in an aggressive manner. As noted above, witness accounts provide the opposite story.

**Opinion #3**

Based upon my knowledge, skill, training, education and experience, as well as a careful evaluation of the totality of circumstances in this matter, it is my professional opinion that Officer Volk failed to consider reasonable alternatives short of the use of deadly force.

Basis for Opinion

- Officer Volk using deadly force did not conform to the provisions and standard of care of the Tacoma Police Department's policy, Washington State law and Graham vs. Conner. Deadly force was not "necessary" and was not objectively reasonable.

  RCW 9A.16.010:
  "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

  Reasonable effective alternatives did exist for Officer Volk.

- Officer Volk had called for "priority" backup at 15:05:24, before deploying her ECT. A trained officer knows that backup officers would be arriving quickly to assist, especially in a populated area where multi-agencies respond (Tribal Police, WSP, Tacoma Police and Pierce County Sheriff's). Officers are trained to wait for backup to prevent injuries to themselves and others, such as Beltran. Backup was approximately 1 ½ minutes away. Officer Volk should have waited for backup to arrive before continuing the encounter with Beltran. As provided in Opinion No. 1, Beltran was exhibiting signs of mental illness and it was unreasonable for Officer Volk to continue the encounter without first waiting for backup. By continuing to ask Beltran questions and then asking for his identification, Officer Volk escalated the encounter.

- According to Officer Volk, Beltran ran to the middle of the intersection and stopped, facing her with the object in his hand and held above his head. He then took off running towards the S/W sidewalk on Portland Ave. Officer Volk was about 7 yards from him when she deployed her ECT, which was not effective.

She was faced with the same scenario after Beltran was hit with the ECT. Beltran stopped and per her report, turned towards her with the object raised up above his head. Again, Beltran was about 7 yards from her and took a step towards her. Officer Volk did not give Beltran any type of verbal warning and immediately shot him four times. A verbal warning to Beltran was feasible and a reasonable alternative short of the use of deadly force. Beltran had run from her twice (once to the middle of the intersection and from the intersection to the sidewalk). It was a reasonable alternative to access the situation before using deadly force and wait for backup to arrive.

- Beltran was in the area of the S/W sidewalk after the ECT was deployed at him. There were no citizens in the immediate area and a reasonable effective alternative would have been for Officer Volk to wait for backup, before discharging her firearm at him.

- Finally, there are witness statements that Beltran was continuing away from Officer Volk at the time that she discharged her firearm.

Based upon my knowledge, skill, training, education and experience, as well as a careful evaluation of the totality of circumstances in this matter, it is my professional opinion had Officer Volk acted reasonably under the circumstances the shooting would not have occurred.

Respectfully submitted,

Susan M. Peters
May 31st, 2016

Curriculum Vitae

Susan M. Peters
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Spokane Valley, Washington 99016
(509) 720-3225
Sue.Peters@Comcast.net

**Experience**

- Certified Litigation Specialist – 04/2015
- State of Washington, Private Investigator, Consultant and Police Practices Expert – 10/2011 to present
- Retired from King County Sheriff - May of 2011
- King County Sheriff's Office, Law Enforcement Officer, 03/1982 - 05/2011, Seattle, Washington
- Major Crimes Detective - 2005 to 2011
- Green River Task Force Detective - 2001 to 2005
- Major Crimes Detective - 1991 to 2001
- Special Assault Detective - 1989 to 1991
- Green River Task Force Detective- 1987 to 1989
- Plain Clothes Patrol Officer - 1985 to 1987
- Patrol Officer - 1982 to1985
- Washington State Criminal Justice Training Academy -1982

**Expert Witness, Consultant – October of 2011 to present**

- Deposition testimony Finn v City of Port Angeles, January of 2015
- Deposition testimony Hamrick v State of Washington, January of 2014
- Testimony provided as an expert witness in Mitchell v City of Tukwila Police Department, January of 2014
- Deposition testimony, Petersen v Lewis County Sheriff's Office, October of 2013
- Consultant and case analysis, Alan Northrop and Larry Davis wrongful conviction and settlement, Innocence Project, September of 2013
- Deposition testimony, Mitchell v City of Tukwila, June of 2013
- Deposition testimony, Willard v City of Everett, May of 2013
- Deposition testimony, Kirby v City of East Wenatchee, March of 2013
- Deposition testimony, E.S v State of Washington, January of 2013
- Testimony provided as an expert witness in Ostling v City of Bainbridge Island Police Department, June of 2012
- Deposition testimony, Ostling v City of Bainbridge Island, January of 2012

**Training (Past 5 years)**

Child Find Investigations
Homicide By Drowning
Human Trafficking
Investigation of Water-Related Deaths

5th Annual Violent Crimes Education Conferences
Homeland Security Training
Law Enforcement Summit Conference
Crime Scene Photography
Washington State 6th Annual Adult Abuse Conference
U.S Department of Justice National Center for the Analysis of Violent Crimes Training
Code 4 Training "Inside the Mind of a Teen Killer"
Cold Case Homicide Training
Excited Delirium
Fraud Investigations
Fingerprint Techniques/DNA Training by WSPCL
Hazmat Recognition
Forced Science Training/Officer Involved shootings
Washington Legal investigators Conference, 2011
Washington Legal Investigators Conference, 2012
AELE Conference, April of 2013, ECW Tactics and Training issues, Post-Incident ECW Forensic Analysis
Washington Legal Investigators Conference, April of 2013
AELE Conference, October of 2013
Identifying and Understanding Sexual Offenders in Sexual Assault Investigations, November of 2013
Use of Force and Officer Involved Shootings, Public Agency Training Council, December of 2013
Discipline & Internal Investigations, AELE, [2014]
Excited Delirium, Arrest-Related and Sudden In-Custody Death Conference, [2014]

**Education**
Central Washing University
Ellensburg, Washington
Bachelors Degree - Criminal Justice, 1981

Kent Meridian High School – Graduate, 1976
Kent, Washington

**Awards**
Officer of the Year 1997
Doug Hansen Award – Washington State vs. John Price
DSHS-Special Recognition Award for Elder Abuse Homicide
Meritorious Award – King County Sheriff's Office – Investigation of: State of Washington vs. Mathias Bachmeier (Police officer who murdered citizen, Brad James Wren)

**Accomplishments / Recognition**
Randy Roth Investigation - A Rose For Her Grave by crime author Anne Rule

Randy Roth Investigation - Fatal Charm: The Shocking True Story of Serial Killer Randy Roth by author Carlton Smith
Green River Cases - Chasing the Devil by Sheriff David Reichert
Green River Cases - Gary Ridgway: The Green River Killer by the Staff of the County Journal
Green River Cases - The Search for the Green River Killer by Carlton Smith and Tomas Guillen
TV Documentary - Green River Killer- Crimes that Shook the World – InvestigationDiscovery.Com
Oprah Winfrey Network – Murder She Solved – Ring of Deceit (Sione Lui Homicide Investigation)

**Notable Cases – Lead Detective**
Washington State vs. Randy Roth – 1991
Washington State vs. Mark Bender – 1992
Washington State vs. Mathias Bachmeier – 1996
Washington State vs. Myron Wynn – 1996 (No-Body Homicide)
Washington State vs. Sione Lui – 2001
Green River Investigations of: Kelly McGinnis, Opal Mills, Cynthia Hinds and Marcia Chapman – 2001
Washington State vs. Joel Zellmer - 2003
Washington State vs. John Price – 2004 (No-Body Homicide)
Murder on King County Sheriff Steve Cox – 2006
Washington Stave vs. Jon Kunkel – 2007
Washington State vs. David Dunn – 2008

**Instructional Experience**
Washington Association of Legal Investigators Spring Conference, 2012-Basic Crime Scene Investigations

**Professional Affiliations**
Washington Association Of Legal Investigators
Washington Homicide Investigators Association
World Association of Detectives
International Association of Chief of Police

EXHIBIT L

EXHIBIT L

# TACOMA POLICE DEPARTMENT PROCEDURES MANUAL

06/2010 (10)
Reviewed 2010
CALEA 41.2.7(a)(b)(c)(d)(e)

## MENTAL DISORDERS, HANDLING INDIVIDUALS SUSPECTED OF

THE LAW DEMANDS THAT PERSONS SUSPECTED OF MENTAL DISORDERS BE PROVIDED WITH MEDICAL ATTENTION PRIOR TO INCARCERATION.

To comply with the requirements of the Revised Code of Washington (71.05.153 and 71.05.150(4), persons suspected of having mental disorders should be transported to a hospital ER for evaluation. Officers will advise LESA Dispatch which hospital they are enroute to, and request LESA Dispatch to contact OptumHealth so a Mobile Outreach Crisis Team (MOCT) member can respond and take over responsibility for the patient.

**A) Guidelines For Accessing Mental Health Services** CALEA 41.2.7 (b)
When individuals suspected of a mental disorder have committed a crime for which they may be legally arrested, or present a likelihood of serious harm to themselves or others, or are gravely disabled, they will be transported directly to the Recovery Response Center (RRC) located at Western State Hospital (9601 Steilacoom Blvd SW, Bldg 27, Lakewood, WA) for a mental health evaluation. Prior to transport, Officers will call the Recovery Response Center at 253-439-5901 to check for room availability and provide an estimated time of arrival. This can be done through LESA Dispatch.

If room is not available at the RRC, the Officer should transport the individual to a hospital. The Officer will contact the Crisis Line at 1-800-576-7764 and advise the Mental Health Professionals who will dispatch a member of the Mobile Crisis Team to relieve the Officer at the Hospital (This can be done through LESA Dispatch). This is a 24 hour line and the Mobile Outreach Crisis Team responds immediately.

Officers/Supervisors will exercise their judgment in deciding whether or not to formally charge the individual(s) in the criminal matter(s), but should lean toward the mental health evaluation rather than arrest and booking.

- When Officers take an arrested individual to RRC or a hospital for evaluation - they should leave the individual there with a written hold. The law allows up to 12 hours for the evaluation to take place, so the Officers should not wait while the evaluation is pending or in–progress;
- If the suspect is not committed, and the Officer/Supervisor decides the suspect will be booked, the Officer must notify the jail staff of the individual's suspected mental impairment at the time of booking;
- If the Officer/Supervisor has decided that the suspect is not to be arrested, no hold is needed;

- The Community Protection Program is a program within the DSHS Department of Developmental Disabilities;
    - Participants in this program may or may not be mentally ill, although they often have cognitive challenges;
    - Program participants live in facilities (often ordinary residences) in which they are assigned 24-hour caregivers. These facilities are not marked, so when a program participant is suspected of a crime it will be incumbent upon the officers to inquire as to whether the suspect is a participant in the program. The on-duty caregiver will have all of the information the Officer might need;
    - Officers should lean toward making the arrest if there is probable cause (just as they would with non-afflicted suspects) because most of the program participants are high functioning enough to understand the impropriety of the criminal act;
    - Program participants will not ordinarily require evaluation at a hospital prior to booking, but the correctional officer at the booking desk must be notified of the suspect's participation in the program. If the Officer/Supervisor is in doubt as to the suspect's mental health status, the suspect may be transported to a hospital for evaluation prior to booking.

The decision whether to arrest or not arrest will be based on factors including, but not limited to: the seriousness of the offense, the recommendation of the mental health workers and/or caregivers and the likelihood that the suspect will get further out of control without immediate action. The decision to arrest or not arrest is the responsibility of the Officer/Supervisor.

If an Officer comes in contact with individuals suspected of a mental disorder who have NOT committed a crime, but present a likelihood of serious harm to themselves or others or who are gravely disabled, the individuals will be taken to RRC for examination. If room should not be available at the RRC, the officer should transport the individual to a hospital. The officer will contact the Crisis Line at 1-800-576-7764 and advise the Mental Health Professionals who will dispatch a member of the Mobile Crisis Team to relieve the Officer at the Hospital (This can be done through LESA Dispatch). This is a 24 hour line and the Mobile Outreach Crisis Team responds immediately.

**If an Officer comes in contact with individuals suspected of a mental disorder who have NOT committed a crime** and do NOT present a likelihood of serious harm to themselves or others or are NOT gravely disabled, an Incident Report should be submitted with CDMHP listed in the distribution block.

- In all instances, documentation should be made of any police contact with individuals suspected of mental disorders when it is obvious that the individuals need medical assistance.
- Officers should make every effort to include all witnesses' names that might be pertinent to the investigation as they may become vital to the welfare of the patient at a later date.

**When a CDMHP originates** a request with the Police Department for transportation of an individual suspected of a mental disorder, a written authorization will be prepared by the CDMHP and furnished to the police agency before the pickup is made. If time is of the essence, oral instruction from the CDMHP will suffice. Written authorization will be provided by the CDMHP upon delivery of the patient to the facility at which the CDMHP is to conduct the examination.

- Upon arrival at RRC (or the alternative location), the Mental Health Professional will assume responsibility of the patient. This includes transportation home or to another facility.
- In case of a potentially violent patient, the Officer should remain until the individual has been secured.

**B) Attempted Suicides**

If a reasonable belief exists that the individual has ingested or been exposed to a dangerous drug/ substance, the situation should be handled first as a medical emergency regardless of the apparently healthy state of the individual. Medical assistance should be requested and the individual transported by a medical unit to the nearest Emergency Room facility for treatment. Decisions regarding detention, release, or evaluation by the CDMHP will be made by the officer, in coordination with the ER staff at the treating facility.

All suicide attempts and/or threats shall be taken seriously. Officers will provide for medical treatment (in the field or an emergency room) when necessary. After medical clearance, Officers will transport the individual to Crisis Triage.

Officers are reminded to maintain their own safety and the safety of those suspected of mental disorders through appropriate applications of force. Officers will use their best judgment regarding the use of handcuffs or similar restraints when handling individuals suspected of mental disorders.

Should the CDMHP ask the Officer to leave the room during examination, the Officer should comply.

**C) Juveniles**

Up to and including age twelve (12) may be committed to a mental health treatment facility by one or both parents. CDMHP have no authority with individuals in this age group. Physically out of control youth age twelve (12) or younger, who are suspected of having a mental disorder, may be transported to a hospital ER for a mental health evaluation.

CDMHP are authorized to involuntarily commit juveniles who have reached their thirteenth (13) birthday, but are short of the eighteenth (18) birthday.

A law enforcement Officer may request a mental health evaluation for any juvenile the Officer has arrested, if it is the Officer's opinion that the juvenile is a danger to him/her self, a danger to others, is gravely disabled, or is otherwise in need of mental health treatment. When such an evaluation is necessary, it shall be requested prior to booking into Remann Hall or release to a competent authority.

The Officer is required to notify the parent/guardian of a juvenile who is receiving mental health evaluation.

**D) Mental Illness Recognition** CALEA 41.2.7 (a)

Members of the Tacoma Police Department, both commissioned and non-commissioned, may have contact with people in the community that suffer from mental illnesses. These contacts may be through in-station reporting, self-initiated activity, or calls for service. The objective in dealing with the mentally ill is for the employees to be able to recognize symptoms of mental

illness so that they may better address that person's needs and, if necessary, refer them to the appropriate professional resource. Some of these resources include the VA, Greater Lakes Mental Healthcare, Comprehensive Mental Health Center of Tacoma-Pierce County.

Listed below are some of the symptoms for the mental illnesses that most frequently confronted. This information was gathered from the National Institute of Mental Health.

1) Panic Disorder
People with panic disorder have feelings of terror that strike suddenly and repeatedly with no warning. Common physical symptoms are feeling sweaty, weak, faint, dizzy, tingling or numbness in the hands, feeling flushed or chilled, nausea, chest pains, or a smothering sensation. Panic attacks generally peak within 10 minutes, but may last much longer.

2) Obsessive-Compulsive Disorder (OCD)
People with OCD experience anxious thoughts or rituals they feel that they can't control. The disturbing thoughts or images are called obsessions, and the rituals that are performed to try to prevent or get rid of the obsessions are called compulsions. There is no pleasure in carrying out the rituals, people are only trying to get temporary relief from the anxiety that grows if the rituals are not performed.

3) Post-Traumatic Stress Disorder (PTSD)
PTSD is a debilitating condition that can develop following a terrifying event. People with PTSD often experience nightmares and disturbing recollections during the day. They may also experience sleep problems, feel numb or detached, be easily startled, or feel irritable.

4) Bipolar Disorder
People with Bipolar Disorder experience dramatic mood swings called episodes of mania and depression.

5) Symptoms of Mania
- Increased energy, activity and restlessness;
- Excessively euphoric mood;
- Extreme irritability;
- Racing thoughts;
- Little sleep needed;
- Poor judgment;
- Spending sprees;
- Provocative, intrusive, or aggressive behavior;
- Abuse of drugs and/or alcohol.

6) Symptoms of Depression
- Lasting sad, anxious, or empty mood;
- Feelings of hopelessness or pessimism;
- Decreased energy, a feeling of fatigue;
- Difficulty concentrating, remembering, or making decision;
- Sleeping too much or unable to sleep;

- Unintended weight loss or gain;
- Chronic pain or other persistent bodily symptoms that are not caused by physical illness or injury;
- Thoughts of suicide.

7) Schizophrenia - People with schizophrenia often suffer symptoms that include:
- Distorted perceptions of reality;
- Hallucinations and illusions;
- Delusions;
- Disordered thinking;
- Neglect of basic hygiene;
- "Blunted" emotional expression.

8) Psychosis
This is a severe or acute psychotic condition that leads to hallucinations and/or delusions. Psychosis may be a symptom of Bipolar Disorder or Schizophrenia.

9) Excited Delirium
This condition is most often associated with substance abuse or mental illness. In almost every case, Police are called because a subject is behaving in a bizarre fashion and is unresponsive to verbal direction. As Police move to take custody of the individual, a violent struggle ensues and Police use some form of restraint to try and maintain control. Individuals struggle against the restraints and then lapse into tranquility. When checked, they have been found not to be breathing and efforts at resuscitation are futile. Common behaviors related to Excited Delirium include:
- Unbelievable strength and endurance;
- Imperviousness to pain;
- Ability to offer effective resistance against multiple Officers;
- Removal of clothing, or subject presents partially clothed or naked;
- Bizarre and violent behavior;
- Aggression;
- Hyperactivity;
- Extreme paranoia;
- Incoherent shouting;
- Grunting or animal-like sounds while struggling with Officers;

The following characteristics may also be present;
- Perspiration – victims are often described as drenched in sweat. (Occasionally the subject will not be sweating at all. This is usually due to a documented side-effect with certain prescribed mental health medications.);
- Foaming at the mouth;
- Drooling;
- Dilated pupils.

**E) Guidelines For Interaction With Persons Suspected Of Mental Illness** CALEA 41.2.7 (c)
Officer may interview and/or interrogate a person suspected of suffering from a mental illness. Officers should consider the following practices when interacting with anyone they suspect is suffering from mental illness or who exhibits signs of mental illness:

- Remain calm and do not overreact
- Show concern and understanding
- Exhibit extreme patience – expect the encounter to take a longer period of time than when dealing with those who do not suffer from mental illness
- Be aware your uniform might frighten them
- LISTEN – what they say may provide insight into the underlying problem or give clues on how to best provide assistance
- Remove distractions and disruptive people
- If possible, tell them what you are going to do before you do it
- Don't maintain direct eye contact
- Limit physical contact unless is becomes necessary
- ALWAYS scan the immediate area for potential weapons or danger

**F) Entry Level Training** CALEA 41.2.7 (d)
The Tacoma Police Department provides training to entry level agency personnel. For new Officers the Washington State Criminal Justice Training Commission provides the training during the Basic Academy.

**G) Refresher Training** CALEA 41.2.7 (e)
The Tacoma Police Department provides refresher training at least every three years and training includes the identification of available community mental health resources.

EXHIBIT M

EXHIBIT M

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian ad litem of the person and estate of CESAR BELTRAN-SERRANO, | ) No. 15-2-11618-1 |
| Plaintiffs, | ) |
| vs. | ) |
| CITY OF TACOMA, a political subdivision of the State of Washington, | ) |
| Defendant. | ) |

DEPOSITION OF LORETTA L. COOL

May 13, 2016

Tacoma, Washington

Byers & Anderson, Inc.

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1 **communicating. That's why you look for different or**
2 **multiple indications of mental illness.**
3 Q Okay. If you approached somebody and they were on
4 their stomach, lying on the ground, digging in a hole
5 in the ground, and their appearance was unkept, would
6 you have any reason to suspect that that person was
7 suffering from mental illness?
8 MS. HOMAN: Object as to form.
9 You may answer.
10 THE WITNESS: There would have to
11 be more. They could also be under the influence of
12 drugs.
13 Q (By Mr. LeBank) Okay. Would you consider that to be
14 normal behavior?
15 **A I would not.**
16 Q Okay. So would you, in approaching that person,
17 consider that they may be under the influence of
18 drugs or may be suffering from mental illness?
19 **A Yes, I would.**
20 Q And if you then attempted to communicate with that
21 person and they were noncommunicative back to you,
22 would that give you any additional information with
23 regard to whether they were suffering from mental
24 illness?
25 MS. HOMAN: Object as to form.

1 You may answer.
2 THE WITNESS: Again, I would need
3 more than that. We do come across people whose
4 behaviors are because they're angry or they are just
5 different. That doesn't mean that they have mental
6 illness or that they are on drugs.
7 What you described would be more than enough for
8 me to continue with that contact to determine what
9 the issue was.
10 Q (By Mr. LeBank) Okay. Then if that person grabbed a
11 bottle out of that hole with an orange liquid, took
12 it out, opened it up and drank it and then put it
13 back in the hole and continued digging, would that
14 give you any information as to whether or not that
15 person suffered from mental illness?
16 MS. HOMAN: Object as to form.
17 THE WITNESS: Again, that would
18 make me ask even more, or I would have to know what
19 was in the liquid, how long the liquid had been
20 there, what the bottle was, if the liquid belonged in
21 the bottle. You know, if it's orange juice that he
22 freshly bought and had buried there, I don't know
23 that that would be a sign of mental illness or drug
24 -- again, there's -- it's too much to make a
25 determination at that point. You'd have to continue

1 Q And you said for your safety and for theirs.
2 **A Correct.**
3 Q Why would you want to scan the area for weapons for
4 your safety and for theirs?
5 **A If they grab a weapon and I can see the potential**
6 **damage they can do, then for their safety, it would**
7 **be: I wouldn't respond because of the weapon.**
8 **If I remove the weapon, then I don't have to**
9 **worry about it. If I don't remove the weapon or**
10 **didn't see it and they grab it, then now I have to**
11 **respond to them having a weapon. My safety,**
12 **obviously, and theirs, it's the same reaction.**
13 **And that's why we scan all the time for potential**
14 **weapons with everyone we deal with.**
15 Q It sounds like, as we've gone through these factors,
16 many of them are situation-dependent, correct?
17 **A Correct.**
18 Q And would you say that you would have to evaluate all
19 of the factors of the behaviors being displayed by
20 the individuals, the environment, and the interaction
21 as it is taking place and put that all into context?
22 **A Yes.**
23 Q And as a general guideline, are officers trained to
24 try to take preventative steps when dealing with the
25 mentally ill to prevent a situation from escalating

1 into a situation where force became necessary?
2 A **Again, we're trained to do that with every**
3 **interaction that we have.**
4 Q And why is that important?
5 A **Our job is not to escalate whatever is going on. Our**
6 **job is to calm people down and relax them and handle**
7 **the situation that we're faced with.**
8 Q And what are strategies for not escalating a
9 situation?
10 A **Some of which I've already described. And, again, it**
11 **depends on what you're comfortable with in your own**
12 **-- for lack of a better word, I'll call it a**
13 **"toolbox."**
14 **One is your own body positioning, your eye**
15 **contact, your space between the person and yourself,**
16 **your tone of voice, your general demeanor, your**
17 **personality, I guess. You know, they're all hard to**
18 **describe in single words to get a picture.**
19 **There's, as I said, several different things. It**
20 **depends on the situation. Using a barrier, if you**
21 **can. You know, if you can position your car a**
22 **correct way; if you can -- sometimes talking on a PA**
23 **system will calm some people down. Sometimes talking**
24 **on a PA system makes people very angry and they go**
25 **through the roof.**

1 Q And how did you identify him?
2 **A Asking him his name and checking in the records to**
3 **see if he had any warrants.**
4 Q And did he at the time?
5 **A No.**
6 Q Okay. Other than that contact, have you ever spoken
7 with Mr. Beltran since this incident?
8 **A No.**
9 Q Okay. If you go down two paragraphs, there's a
10 paragraph, and you say, "Officer Volk then spoke
11 about the incident unsolicited by R/O. Officer Volk
12 said that the guy didn't listen. He grabbed a piece
13 of metal. Officer Volk said it was odd and shaped
14 and flattened, curved piece of pipe. She made a
15 circle design as she described it. She said he came
16 toward her so she Tased him. The Taser had no
17 effect. She said he ran across the road, which she
18 said she realized that there was no traffic behind
19 him once he crossed the road. She followed him
20 across the road where he came at her with the piece
21 of metal raised, and she blocked the attack with her
22 arm. She fired her weapon, which did not seem to
23 stop him, so she fired again. She said the second
24 shots stopped him."
25 Did I read that paragraph correctly?

1 **A Yes.**
2 Q And where did -- that information that you wrote
3 there, was that information that Officer Volk told to
4 you?
5 **A I'm not --**
6 Q This paragraph: Are you recording what Officer Volk
7 told you had occurred?
8 **A Yes.**
9 Q Okay. And what was significant about the fact that
10 she spoke about the incident unsolicited by yourself?
11 **A I don't think there was anything significant about**
12 **it. The reason I documented it that way is, I didn't**
13 **ask her any questions; she just started talking about**
14 **what happened.**
15 Q Okay. And this is the same day as the incident,
16 correct?
17 **A Correct.**
18 Q Okay. And so did you take any notes during that --
19 **A I did not.**
20 Q -- conversation?
21 So this was based on your memory, what was it,
22 two days later?
23 **A I think we determined it was, what, four days later?**
24 Q No. 7/2. This would have been 6/29. So three days
25 later. There's only 30 days in June.

EXHIBIT N

EXHIBIT N

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | | |
|---|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian ad litem of the person and estate of CESAR BELTRAN-SERRANO, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | No. 15-2-11618-1 |
| CITY OF TACOMA, a political subdivision of the State of Washington, | ) | |
| Defendant. | ) | |

DEPOSITION OF TIMOTHY RUSHTON

September 7, 2016

Tacoma, Washington

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1 as he was standing up, at this point on the video? And I
2 can -- I'll pull up the second -- approximately
3 3 o'clock, 1 minute, and somewhere between 50 and 55
4 seconds?
5 **A If it was -- if it was my testimony that he hit her when**
6 **he was standing up? He was standing up when the fight**
7 **happened. What point specifically that you're asking**
8 **about --**
9 Q Correct.
10 **A -- I'm not 100 percent sure when -- when he struck her.**
11 **I just saw that the fight had started, and I needed to**
12 **get there to help her.**
13 Q Did you see Mr. Beltran strike the officer?
14 **A There was a downward strike going from his -- from him**
15 **towards her, yes.**
16 Q And you saw that?
17 **A Yeah.**
18 Q Okay. And is that depicted on this video?
19 **A I don't see it on the video, no.**
20 Q When did the -- wait a moment.
21 Is it accurate that at the time stamp 3 o'clock,
22 1 minute and 55 seconds in the dash cam view, you could
23 no longer see the officer and the subject?
24 **A Right. They're out of view right here.**
25 Q Okay. And could you see them independently?

EXHIBIT O

EXHIBIT O

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

---

| | | |
|---|---|---|
| CESAR BELTRAN-SERRANO, | ) | |
| | ) | |
| Plaintiff(s), | ) | |
| | ) | |
| vs. | ) | No. 15-2-11618-1 |
| | ) | |
| CITY OF TACOMA, a political subdivision of the State of Washington, | ) | |
| | ) | |
| Defendant(s). | ) | |

---

DEPOSITION OF D. P. VAN BLARICOM

---

July 25, 2017

10:14 a.m.

Tacoma, Washington

GINA M. CLARKE, CCR

9115 - 171st Street Court East
Puyallup, WA 98375
(253)279-3465

1 protect your own life.
2 Q. So it's your position that Officer Volk should have
3 permitted Mr. Beltran to flee the area knowing he had --
4 believing that she had probable cause to arrest him for a
5 felony assault on a police officer?
6 MS. DRISCOLL: Objection. It misstates prior
7 testimony, assumes facts not in evidence, incomplete
8 hypothetical.
9 A. Rather than to pursue him under the totality of
10 these circumstance at that point in time, yes.
11 Q. (BY MS. HOMAN) Why?
12 A. Because he's not demonstrating he's a threat to
13 anybody except perhaps her. He has the potential for being
14 mentally ill. If she confronts him, especially after the
15 Taser failed to have any effect, it's only going to end up
16 one way and that's how it ended.
17 Q. How do you know or upon what do you base your
18 contention that we know he's not a threat to anyone else?
19 A. Well, the other witnesses at the scene didn't
20 perceive him as being a threat to anybody. In fact, they
21 didn't even perceive him as being a threat to Officer Volk.
22 Q. You would agree with me that uses of force are
23 evaluated from the perspective of the police officer, taking
24 into account the officer's training and experience?
25 A. A reasonable police officer, yes, ma'am.

1 he was doing.
2 Q. How would Officer Volk have known that?
3 A. Well, if it would have been me, I would have
4 signaled him to come back to the area.
5 Q. That wasn't my question. After they made eye --
6 A. She wouldn't know.
7 Q. Okay, she wouldn't know. So now back to my
8 question.
9 There's been an alleged assault and before the
10 discharge of her firearm, is it your opinion that no
11 reasonable police officer would have taken immediate
12 enforcement action to take Mr. Beltran into custody for
13 assault under those circumstances?
14 A. Under the totality of these circumstances, yes,
15 ma'am.
16 Q. And that by taking immediate enforcement action,
17 she provoked Mr. Beltran's final act of violence?
18 A. Well, that's what she herself says, is that after
19 she tried to arrest him, he came at her again. I don't know
20 how else you'd describe it.
21 Q. So now I'm looking at page 13 of Exhibit 5 and
22 there's one thing on here that I don't understand.
23 A. Okay.
24 Q. I'm in paragraph 21 b 1).
25 A. 21 b 1)?

EXHIBIT P

EXHIBIT P

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendants. | NO. 15-2-11618-1<br><br>**DECLARATION OF SUMMER THOMAS-BOURNES** |

SUMMER THOMAS-BOURNES: declares and states as follows:

1. I was a witness to an officer involved shooting that occurred on June 29, 2013 at the intersection of East 28th Street and East Portland Avenue. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge, information, and belief.

2. On June 29, 2013 I was driving with my mother Teresa Graham in her SUV. I was in the front passenger seat. We had just gotten gas at the Shell Station on East 28th Street and East Portland Avenue and pulled out onto Portland Ave. We stopped at a red light before



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the underpass in order to go southbound on I-5. While we were stopped at the red light, I looked over at the ~~southeast~~ northwest corner of the intersection and saw a police officer talking to a man near an orange bike. The police officer was standing close to the man, less than five feet away. I had a clear view of the intersection since we were the first car at the light.

3. Then I saw the man start walking quickly south towards the Shell station and the officer paused for a second. The officer stayed where she was for a second, and then she started following the man.

4. The officer then pulled out a taser and shot it at the man. The taser appeared to miss him since he didn't do anything. The man then turned away from the officer like he was trying to run away and that's when she pulled out the gun and popped it four times. The officer was about 10 feet from the man when all this happened.

5. The man fell and then my mom and I stayed at the light for a little longer. The light had turned green right after the shooting. Then my mom started driving northbound, but she was concerned about what had happened and she did a U-turn to go back around to the shooting site and park at the Shell station. As we turned around, I saw the man lying bleeding on the ground from his left side and it looked like he was still alive.

6. From the Shell station parking lot, I could see another officer come up to the shot man, handcuff him, and put his foot on the man's back. Then my mom and I talked to a few other witnesses and gave our contact information to some police officers.

7. I gave a statement to the police on the day of the incident and I told them everything I had seen. I told them the man was not holding any objects and I did not see anything near his body either. I told them that the man was trying to get away from the officer and she kept following him and then shot him.



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8. I did not understand why the police officer shot the man. I was upset and crying at what I had seen and asked my mom why the officer shot the man. He did not pose a threat to the officer or anyone else and it appeared that he was running away from the officer.

9. Attached as Exhibit A is a true and accurate copy of the recorded interview that I gave with the Tacoma Police Department.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE.

Signed this 19th day of May, 2016, at Pierce County, Washington.

By Summer Thomas-Bournes
SUMMER THOMAS-BOURNES



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Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

EXHIBIT A

EXHIBIT A

| | | | |
|---|---|---|---|
| PDA: | Yes | Homeland Security: | |
| Subject: | Aggravated Assault \| Other Crim - Shooting \| Fel \| Interview Transcription, (W)Thomas-Bournes | | |
| IBR Disposition: | Active | Case Management Disposition: | |
| Forensics: | | Reporting By/Date: | T12012 - Hoisington, Stuart 7/25/2013 15:06:56 |
| Case Report Status: | Approved | Reviewed By/Date: | T19715 - Durocher, John 8/22/2013 09:02:15 |

Incident No. 131800756.38

**Related Cases:**

| Case Report Number | Agency |
|---|---|

**Non-Electronic Attachments**

| Attachment Type | Additional Distribution | Count |
|---|---|---|

OFFICIAL USE
THIS INFORMATION RESTRICTED TO CRIMINAL JUSTICE AGENCIES SECONDARY RELEASE IS RESTRICTED PURSUANT TO RCW 42.56 & RCW 10.97. PREPARED BY SS911
DATE PREPARED

| | | | |
|---|---|---|---|
| Location Address: | E 28TH St/E Portland Av | Location Name: | |
| City, State, Zip: | Tacoma, WA 98404 | Cross Street: | |
| Contact Location: | | City, State, Zip: | |
| Recovery Location: | | City, State, Zip: | |
| CB/Grid/RD: | 461 - Tacoma | District/Sector: | TA41 - Tacoma |
| Occurred From: | 6/29/2013 15:03:00 Saturday | Occurred To: | |
| Notes: | | | |

## Offense Details: 1305 - Assault - Aggravated - NonFamily - Weapon

| | | | | | |
|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown |
| Juvenile: | | Completed: | Completed | Crime Against: | PE |
| Hate/Bias: | None (No Bias) | Criminal Activity: | | Using: | |
| Location Type: | Street/Right of Way | Type of Security: | | Tools: | |
| Total No. of Units Entered: | | Evidence Collected: | | | |
| Entrance Compromised: | | | | | |
| Entry Method: | | | | | |
| Suspect Description: | | | | | |
| Suspect Actions: | | | | | |
| Notes: | | | | | |

## Offense Details: 090Z - All Other Offenses - Criminal - SHOOTING

| | | | | | |
|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown |
| Juvenile: | | Completed: | Completed | Crime Against: | |
| Hate/Bias: | None (No Bias) | Criminal Activity: | | Using: | |
| Location Type: | Street/Right of Way | Type of Security: | | Tools: | |

| | | | |
|---|---|---|---|
| Call Source: | Field | Assisted By: | |
| Phone Report: | | Notified: | |
| Insurance Letter: | | Entered By: | T12012 - Hoisington, Stuart |
| Entered On: | 7/25/2013 15:06:56 | Approved By: | E207683 - Carter, Jeanette |
| Approved On: | 8/22/2013 14:12:30 | Exceptional Clearance: | |
| Adult/ Juvenile Clearance: | | Exceptional Clearance Date: | |
| Additional Distribution: | | Other Distribution: | |

| Validation Processing | Distribution Date: | County Pros. Atty. | Juvenile | Other | CPS | Supervisor: |
|---|---|---|---|---|---|---|
| | By: | City Pros. Atty. | Military | DSHS | PreTrial | |

***For Law Enforcement Use Only – No Secondary Dissemination Allowed***
Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.

**Printed: 8/22/2013 14:12:30**
**Printed By: E207683 - Carter, Jeanette**

| | | | |
|---|---|---|---|
| Total No. of Units Entered: | | Evidence Collected: | |
| Entrance Compromised: | **Not Applicable** | | |
| Entry Method: | | | |
| Suspect Description: | | | |
| Suspect Actions: | | | |
| Notes: | | | |

## Weapon 1: Blunt Object (bat, brick, rock, etc.)

| | | | |
|---|---|---|---|
| Offense: | **1305 - Assault - Aggravated - NonFamily - Weapon** | Serial No: | |
| Offender: | **S1 - Doe, John** | OAN: | |
| Weapon: | **Blunt Object (bat, brick, rock, etc.)** | Automatic: | |
| Other Weapon: | | Caliber: | |
| Action: | | Gauge: | |
| Manufacturer: | | Length: | |
| Make: | | Finish: | |
| Importer: | | Grips: | |
| Model: | | Stock: | |
| Weapon Notes: | | | |

## Property Item No. 72/1: 1306 - Recording - Audio / Video / Data - CD / DVD / Blu-Ray Disc

| | | | |
|---|---|---|---|
| Other Common Item: | | Photographed: | |
| Description: | | Fingerprinted: | |
| Quantity: | **1** | Contents Sampled: | |
| Finding Location: | | Owner: | |
| Status: | **E - Evidence (Including Other Seized Property And Tools)** | Value: | |
| Recovered Date: | | Make/Brand: | |
| Recovered Value: | | Model: | |
| Field Tested: | | Serial No: | |
| Field Test Results: | | OAN: | |
| Property Disposition: | **Booked Into Property** | Insurance Company: | |
| Disposition Location: | **Tacoma Police** | Policy No: | |

**Vehicle Information:**

| | | | |
|---|---|---|---|
| License: | | Locked: | |
| License State: | | Keys in Vehicle: | |
| License Country: | | Delinquent Payment: | |
| Vehicle Year: | | Victim Consent: | |
| Make: | | Drivable: | |
| Model: | | Estimated Damage: | |
| Vehicle Style: | | Damage: | |
| Primary Vehicle Color: | | Damaged Area: | |
| Secondary Vehicle Color: | | Tow Company: | |
| VIN: | | Tow Consent: | |
| Special Features: | | Hold Requested By: | |

**Drug Information:**

| | | | |
|---|---|---|---|
| Drug Type: | | Drug Measure: | |
| Drug Quantity: | | Drug Measure Type: | |

**Jewelry Information:**

| | | | |
|---|---|---|---|
| Metal Color: | | Total # of Stones: | |
| Metal Type: | | Inscription: | |
| Stone Color: | | Generally Worn By: | |

**Firearm Information:**

| | | | |
|---|---|---|---|
| Caliber: | | Length: | |
| Gauge: | | Finish: | |
| Action: | | Grips: | |
| Importer: | | Stock: | |
| Property Notes: | | | |

| Enter | Date | Time | WACIC | LESA | Initial | Release Info. | Date | Time | Release No. | Release Authority |
|---|---|---|---|---|---|---|---|---|---|---|
| Clear | | | | | | Owner Notified | | | Operators Name | |

## Investigative Information

| | | | |
|---|---|---|---|
| Means: | | Motive: | |
| Vehicle Activity: | | Direction Vehicle Traveling: | |

Synopsis: Transcription of taped interview with (W)Summer Thomas-Bournes, conducted at 1750 hours on June 29, 2013. A CD of the audio of this interview will be submitted into evidence.

Narrative:

Hoisington: This is Detective Hoisington with the Tacoma Police Department. The date is June 29th, 2013 and the time is 1750 hours. I am currently in a second floor CID Interview Room at Tacoma Police Headquarters. Also present with me is this young lady, Miss . . . What's your last name?

Thomas-Bournes: Thomas-Bournes.

Hoisington: Could you spell that for us, please?

Thomas-Bournes: T-H-O-M-A-S-B-O-U-R-N-E-S.

Hoisington: And what's your first name?

Thomas-Bournes: Summer.

Hoisington: And middle initial for you?

Thomas-Bournes: A.

Hoisington: Miss Thomas-Bournes, are you aware this conversation is being recorded?

Thomas-Bournes: Yeah.

Hoisington: And is it being recorded with your consent?

Thomas-Bournes: Yes.

Hoisington: Okay. Could you provide your date of birth and name for me, please?

Thomas-Bournes: March 9th, 1997.

Hoisington: And what's your address, young lady?

Thomas-Bournes: 1835 East 34th Street.

Hoisington: And do you have a cell phone number?

Thomas-Bournes: 253-310-7758.

Hoisington: Okay, who do you live with at 1835 East 34th Street?

Thomas-Bournes: I live with my mom and my step-dad.

Hoisington: Earlier this afternoon, when you were leaving your house, who were you with?

Thomas-Bournes: I was with my mom.

Hoisington: Okay. And where were you guys going?

Thomas-Bournes: We were going to Home, Home Depot, but at first we stopped to get some gas.

Hoisington: So as you left your home at 1835 East 34th, you would have gone west on 34th Street?

Thomas-Bournes: Yeah.

Hoisington: And then turned north on Portland?

Thomas-Bournes: Yes.

Hoisington: On Portland Avenue. And then where did you stop to get gas?

Thomas-Bournes: We stopped at Shell's on 28th and Portland.

Hoisington: Okay. And the Shell Station, as we discussed before, would be on the southwest corner of that intersection. Is that right?

Thomas-Bournes: Yeah.
Hoisington: As we were looking at it. Okay. So you and mom stopped to get gas and then you were pulling out of the gas station. Is that correct?
Thomas-Bournes: Um-hum.
Hoisington: And which direction were you trying to pull out?
Thomas-Bournes: We turned north.
Hoisington: As you turned out of the gas station, what lane of Portland Avenue were you in?
Thomas-Bournes: We were in the inside lane.
Hoisington: Okay. The inside lane of Portland Avenue, facing north at the intersection with East 28th Street? Is that . . .
Thomas-Bournes: Um-hum.
Hoisington: . . . sound correct?
Thomas-Bournes: Um-hum.
Hoisington: There was no one in front of you at the intersection, you told me before, before we started recording your statement. Is that correct?
Thomas-Bournes: Yes.
Hoisington: Was there anyone in the lane next to you? Was there a vehicle in the lane next to you?
Thomas-Bournes: Yeah, I think it was a van, a silver van.
Hoisington: And there were some vehicles behind you or no?
Thomas-Bournes: Yeah.
Hoisington: And at that time you had an incident that caught your attention. Is that correct?
Thomas-Bournes: Yeah, um I just seen the dude like standing sort of close to the officer and they were standing by the bike on the northwest corner of 28th and Portland. And then um they started, or the dude started walking towards Shell and then the officer kinda stayed there for a second and then started walking after him. When he got to the corner, she pulled out the taser. She yelled something. I don't know what she said. And then she shot the taser. And then she missed. She pulled out the gun and then shot at the dude. The light turned green and so me and my mom started going like towards the freeway and my mom was like, I don't think that was a gun. So we turned around and then we seen that the dude was bleeding out his side, his left side, and then we uh pulled into Shell's and we're at the top of the hill on Shell's and we were looking down and we seen the dude laying there.
Hoisington: When you first noticed the officer talking to the subject, where were they?
Thomas-Bournes: They were on the corner of um 28th and Portland on the northwest corner.
Hoisington: Okay. So it would have been the northwest corner, it was the one on the Shell side of the street, but across the off-ramp there?
Thomas-Bournes: Yeah.
Hoisington: Across from the off-ramp there. Okay. But they were not under the overpass?
Thomas-Bournes: No.
Hoisington: You said there was a bicycle there?
Thomas-Bournes: Yeah, it was orange and I think it had a helmet on it, or it had something on it.
Hoisington: Could you tell whether it was the officer's bicycle or whether it was the subject's?
Thomas-Bournes: It was, yeah. It could have been dude's bicycle. It was like a regular bike that a kid would ride.
Hoisington; What did he look like?
Thomas-Bournes: Um, he was light and then he had dark hair. He was skinny. He was average height. White shirt and gray jeans.
Hoisington: You told me before you were, you weren't able to tell whether he was white or possibly Hispanic or Native
Thomas-Bournes: Yeah. He was one of those. I don't know.
Hoisington; And what did the officer look like?
Thomas-Bournes: She had blonde hair. She was white, or she had brown or blonde hair, somewhat close to that. And I didn't really look at her, though. She had short hair.
Hoisington: You only saw one officer around, though?
Thomas-Bournes: Yeah. There was one in a car, I think. Um, on the corner over there.
Hoisington: When you say the corner over there, do you mean the . . .
Thomas-Bournes: The off-ramp over there.
Hoisington: And was that officer there the entire time or . . . .
Thomas-Bournes: I don't know.

Hoisington: But at some point you thought you noticed an officer there?
Thomas-Bournes: Yeah.
Hoisington: When you first noticed the officer talking to the man, about how far apart away were they?
Thomas-Bournes: Um, five feet.
Hoisington: And where was the bicycle?
Thomas-Bournes: The bicycle was like next to them.
Hoisington: Did you see the man have anything in his possession? Was he holding anything? Did he have anything?
Thomas-Bournes: If he had something, he had to drop it, cause I didn't see it.
Hoisington: You said they were about five feet away from each other? Is that right?
Thomas-Bournes: Um-hum.
Hoisington: Did it look as though they were speaking with each other?
Thomas-Bournes: I don't know. I really didn't pay attention to them at first. I just kinda looked over there and noticed them.
Hoisington: Did you see him approach her at that time?
Thomas-Bournes: Um-um.
Hoisington: After you initially noticed them speaking to each other from about five feet away, what happened then?
Thomas-Bournes: He started to walk off.
Hoisington: Was he walking away quickly?
Thomas-Bournes: Yeah, he was sprinting. I don't know. He wasn't running.
Hoisington: So in, initially when he was trying to get away, it looked like he was trying to move quickly?
Thomas-Bournes: Yeah, but . . .
Hoisington: But maybe he wasn't able to?
Thomas-Bournes: Yeah.
Hoisington: And what did the officer do?
Thomas-Bournes: She like, she stayed where she was for a second, then she started following after him.
Hoisington: As he was trying to move away, which direction was he moving?
Thomas-Bournes: Towards Shell's, like south, could have been.
Hoisington: So he would have been going south on that west sidewalk . . .
Thomas-Bournes: Um-hum.
Hoisington: . . . towards the Shell over there.
Thomas-Bournes: Yeah.
Hoisington: Or, excuse me, he was crossing the off-ramp . . .
Thomas-Bournes: Towards . . .
Hoisington: . . . to the south . . . .
Thomas-Bournes: Yeah.
Hoisington: . . . on the west side of the street. And what did the officer do? I'm sorry.
Thomas-Bournes: She yelled something, then she pulled out a taser. She shot it. She missed.
Hoisington: When, when she yelled something, where was he at?
Thomas-Bournes: He was on the corner, like a little bit past.
Hoisington: He had reached the curb . . . .
Thomas-Bournes: Yeah.
Hoisington: . . . on the south side of East 28th?
Thomas-Bournes: Um-hum.
Hoisington: And where was she?
Thomas-Bournes: She was in the street where the cars come off the freeway and turn right.
Hoisington: So she was in the right-hand turn lane for that East 28th off-ramp?
Thomas-Bournes: Um-hum.
Hoisington: And about how far away from each other were they?
Thomas-Bournes: Ten feet.
Hoisington: And you heard her shout something?
Thomas-Bournes: Yeah.
Hoisington: But you, you couldn't say what she was shouting?
Thomas-Bournes: No.

Hoisington: And then she pulled out her taser, you said?
Thomas-Bournes: Yeah.
Hoisington: And she fired the taser at him?
Thomas-Bournes: Um-hum. He didn't do anything, so I guess he didn't get hit by it.
Hoisington: You told me before that he had stopped and turned to look at her . . .
Thomas-Bournes: Yeah.
Hoisington: . . . briefly? And that's when she fired the taser?
Thomas-Bournes: Um-hum.
Hoisington: And you noticed that the taser didn't have any affect on him?
Thomas-Bournes: Um-uh.
Hoisington: So you told me before that you kind of assumed that it missed.
Thomas-Bournes: Yeah.
Hoisington: And what happened then?
Thomas-Bournes: Uh, he like turned back towards like he was running. Like it looked he was deciding if he should run away or stay there, and then that's when she pulled out the gun and popped it four times.
Hoisington: Which way was he facing?
Thomas-Bournes: He was facing this way, like not . . . he wasn't facing north, but he was like he wasn't facing south, he was like towards to get on the freeway. To get on the freeway going towards Seattle.
Hoisington: Oh, I see. He was facing to the east then?
Thomas-Bournes: Yeah.
Hoisington: So he, he would have had his left side turned to the officer then?
Thomas-Bournes: Yeah.
Hoisington: And what did you, what did you think he looked like he was doing? Was he thinking about?
Thomas-Bournes: Hmm, like he was gonna run off again.
Hoisington: He was thinking about running away again?
Thomas-Bournes: Yeah.
Hoisington: And about how far away was the officer?
Thomas-Bournes: Ten feet at least.
Hoisington: Has, had he, had he moved a little further south on, onto Portland Ave sidewalk?
Thomas-Bournes: Yeah.
Hoisington: He'd moved a little further south on that west side of Portland Ave?
Thomas-Bournes: Um-hum.
Hoisington: And where was she?
Thomas-Bournes: She was by the corner where the cars turn right.
Hoisington: She was right by that curb.
Thomas-Bournes: Yeah.
Hoisington: Do you remember if she was on the curb or if she was still in the street a little bit?
Thomas-Bournes: Still in the street a little bit.
Hoisington: Still in the street a little bit. You told me before they were still about ten feet apart?
Thomas-Bournes: Um-hum.
Hoisington: Did you see what she did with her taser?
Thomas-Bournes: She dropped it.
Hoisington: She dropped it.
Thomas-Bournes: She threw it down.
Hoisington: And then she drew her weapon?
Thomas-Bournes: Um-hum.
Hoisington: And what happened then?
Thomas-Bournes: She fired it.
Hoisington: Did you hear her say anything before she fired it?
Thomas-Bournes: No. Just quick.
Hoisington: About how many times?
Thomas-Bournes: Four times.
Hoisington: Is that specific or did you . . .
Thomas-Bournes: I think she fired it four times. Cause that's what made me look.

Hoisington: You told me before, they were in pretty quick succession. They, there wasn't like a gap between the four shots or anything like that?

Thomas-Bournes: No.

Hoisington: Now you mentioned to me before that pretty, pretty much right after the rounds went off the light turned green for you and mom to proceed northbound under the over-ramps there. Is that right?

Thomas-Bournes: Um-hum.

Hoisington: Okay. Did . . . And then you said that mom was concerned about what had happened?

Thomas-Bournes: Yeah, I, we both didn't think it was a gun and we went and then we came around and see that his side is bleeding and so we pulled into Shell's.

Hoisington: So you did a U-turn and came back south . . .

Thomas-Bournes: U-turn, yeah.

Hoisington: Did you see where the officer was as you were doing the U-turn?

Thomas-Bournes: No. I was just looking at the dude to see if he was still alive.

Hoisington: And he was still on the west side sidewalk of Portland Ave between that, between 28th and the driveway where it goes up into the Shell?

Thomas-Bournes: Um-hum.

Hoisington: And he was laying there on his side and you, you, he was laying there and you said he was bleeding from his left side, which would have been the side that was facing the officer.

Thomas-Bournes: Yeah.

Hoisington: Is that correct? What did you and mom do then?

Thomas-Bournes: Uh, there was people parked in the front of us and um my mom got out and asked them if they seen the same thing and they were like, Yeah.

Hoisington: And then what did the two of you do?

Thomas-Bournes: We got back in the car and then a officer walked up to the two people who were in front of us and so my mom got out and walked over there and he was asking her for her name, I think. And then I got out, too, and he asked me for my name and where I lived and all that.

Hoisington: Did you see any other officers approach the, the man who'd been shot?

Thomas-Bournes: Yeah.

Hoisington: What happened then?

Thomas-Bournes: Um, like before we pulled into Shell's . . . or no, wait. After we pulled into Shell's there was another officer that came up and handcuffed the dude and he kinda put his foot on the dude's back.

Hoisington: Okay. And then did the Fire Department or the medics arrive?

Thomas-Bournes: Yeah. They arrived like, they arrived quick. Like right as we were just pulling into the Shell's. Around that time.

Hoisington: Did you see where the officer had gone?

Thomas-Bournes: No, I was still looking at the man.

Hoisington: So you never did see her again after you made the, after you made the U-turn?

Thomas-Bournes: Um-um.

Hoisington: Anything important that I'm not thinking to ask you in regards to this incident?

Thomas-Bournes: No, I don't think so. (unintelligible)

Hoisington: Okay. Is everything you've told me today true and correct to the best of your knowledge?

Thomas-Bournes: To the best of my knowledge?

Hoisington: Yes?

Thomas-Bournes: Yes.

Hoisington: You have to say it.

Thomas-Bournes: Oh.

Hoisington: They, they can't, they can't see you nod. So . . .

Thomas-Bournes: Oh.

Hoisington: Is everything you've, is everything you've told me today true and correct to the best of your knowledge?

Thomas-Bournes: The best of my knowledge, yeah.

Hoisington: Have there been any threats or promises made to you regarding this case?

Thomas-Bournes: No.

Hoisington: The time is now 1805 hours. This is an interview in regards to TPD Incident 13-1800756 and we will be concluding the interview at this time.

| | |
|---|---|
| | End of Recording:<br>/sm |

| Reviewed By: | | Reviewed Date: | |
|---|---|---|---|

EXHIBIT Q

EXHIBIT Q

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

---

| | | |
|---|---|---|
| CESAR BELTRAN-SERRANO, | ) | |
| | ) | |
| Plaintiff(s), | ) | |
| | ) | |
| vs. | ) | No. 15-2-11618-1 |
| | ) | |
| CITY OF TACOMA, a political subdivision of the State of Washington, | ) | |
| | ) | |
| Defendant(s). | ) | |

---

DEPOSITION OF SUSAN PETERS

---

July 24, 2017

1:07 p.m.

Tacoma, Washington

GINA M. CLARKE, CCR

9115 - 171st Street Court East
Puyallup, WA 98375
(253)279-3465

1 living there. There was nothing noted that that was his
2 spot.
3 Q. Do you know that that wasn't his spot?
4 A. As far as his sleeping spot, or what are you asking
5 me?
6 Q. Well, what I'm asking you is, you have identified
7 the fact that he reached into a hole, dug around, retrieved
8 a soda and drank from it as being not normal behavior.
9 A. (Witness nods head affirmatively.)
10 Q. Would you agree with me, though, that if in fact he
11 had stashed the soda there and he was simply retrieving his
12 own belongings and drinking it, that there would be nothing
13 abnormal about that behavior at all?
14 A. Well, as an officer, you look at the whole
15 situation and assess it together, so if there's several red
16 flags, that's how an officer views situations. So did he
17 live there? I don't know.
18 Q. Well, so far what you've identified for me is he's
19 a panhandler and appeared homeless. He was dirty, which
20 could also be a function of being homeless. He was standing
21 on the corner with his belongings next to him, which is
22 indicative of being homeless. He didn't acknowledge her
23 upon contact, no verbal communication. If English is not
24 his first language, would that be unusual?
25 A. No.

EXHIBIT R

EXHIBIT R

**9-1-1 Transcript**
**13UOF-0145**

**Track 1**

| | |
|---|---|
| P 175: | Tacoma, Paul 1-7-5? |
| Radio: | 1-7-5. |
| P 175: | I'm gonna be out with a panhandler at East 28th and Portland. |
| Radio: | Received. 1502. |

**Track 2**

| | |
|---|---|
| P 175: | Tacoma, Paul 1-7-5, can you send 4-4 to this location? |
| P 44: | On my way. |
| Radio: | 1505. |

**Track 3**

| | |
|---|---|
| P 175: | 1-7-5, priority. |
| Radio: | Units priority, East 2-8 and Portland. |
| | (Beeper.) |

**Track 4**

| | |
|---|---|
| P 175: | ---5, shots fired. |
| Radio: | Shots fired. East 2-8 and Portland. 1505. |
| | (Beeper.) |
| P 490: | Paul 4-90 en route. |
| Radio: | Paul 4-90, 1505. |
| P 175: | Could you get medical for me, please? |
| Radio: | Received. Medical aid priority. 1505. |
| P 230: | (Unintelligible) |
| Radio: | Paul 230. Paul 1-7-5, confirming that you're not injured. |
| P 175: | Uh, no, I got hit in the hand, but I'm fine. |
| Radio: | Received. 1506. |
| F 456: | Frank 4-5-6 en route. |

Radio: 1506.

**Track 5**

(Beeper.)

S 437: 4-3-7, address?

Radio: East 2-8 and Portland.

(Beeper.)

**Track 6**

(Beeper.)

P 175: Paul 1-7-5, can you advise Fire, he's detained. They can come right in.

Radio: They've been advised. 1507.

**Track 7**

(Beeper.)

P 44: 4-4, we can cancel the air.

Radio: Received, cancelling the beeper on South Primary and when everyone can switch, Tac 2 will be secured for you. 1508.

F 148: Frank 1-4-8's arrived.

Radio: Frank 1-4-8, 1508.

**End of Transcript/bb**

EXHIBIT S

| | | | | | |
|---|---|---|---|---|---|
| PDA: | Yes | Homeland Security: | | Subject: | Aggravated Assault \| Other Crim - Shooting \| Fel |
| IBR Disposition: | Active | Case Management Disposition: | | | |
| Forensics: | | Reporting By/Date: | T15487 - Cool, Loretta 7/2/2013 16:45:07 | | |
| Case Report Status: | Approved | Reviewed By/Date: | T57193 - Miller, Gene 7/10/2013 09:26:41 | | |

Incident No. 131800756.31

**Related Cases:**

| Case Report Number | Agency |
|---|---|

**Non-Electronic Attachments**

| Attachment Type | Additional Distribution | Count |
|---|---|---|

OFFICIAL USE
THIS INFORMATION RESTRICTED TO CRIMINAL JUSTICE AGENCIES SECONDARY RELEASE IS RESTRICTED PURSUANT TO RCW 42.56 & RCW 10.97. PREPARED BY SS911
DATE PREPARED

| | | | |
|---|---|---|---|
| Location Address: | E 28TH St/E Portland Av | Location Name: | |
| City, State, Zip: | Tacoma, WA 98404 | Cross Street: | |
| Contact Location: | | City, State, Zip: | |
| Recovery Location: | | City, State, Zip: | |
| CB/Grid/RD: | 461 - Tacoma | District/Sector: | TA41 - Tacoma |
| Occurred From: | 6/29/2013 15:03:00 Saturday | Occurred To: | |
| Notes: | | | |

## Offense Details: 1305 - Assault - Aggravated - NonFamily - Weapon

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown | Juvenile: | |
| Completed: | Completed | | | Crime Against: | PE | Hate/Bias: | None (No Bias) |
| Criminal Activity: | | | | | | Using: | |
| Location Type: | Street/Right of Way | | | Type of Security: | | Tools: | |
| Total No. of Units Entered: | | | | Evidence Collected: | | | |
| Entrance Compromised: | | | | | | | |
| Entry Method: | | | | | | | |
| Suspect Description: | | | | | | | |
| Suspect Actions: | | | | | | | |
| Notes: | | | | | | | |

## Offense Details: 090Z - All Other Offenses - Criminal - SHOOTING

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Domestic Violence: | No | Child Abuse: | | Gang Related: | No/Unknown | Juvenile: | |
| Completed: | Completed | | | Crime Against: | | Hate/Bias: | None (No Bias) |
| Criminal Activity: | | | | | | Using: | |
| Location Type: | Street/Right of Way | | | Type of Security: | | Tools: | |

| | | | |
|---|---|---|---|
| Call Source: | Field | Assisted By: | |
| Phone Report: | | Notified: | |
| Insurance Letter: | | Entered By: | T15487 - Cool, Loretta |
| Entered On: | 7/2/2013 12:02:51 | Approved By: | E08455 - Easton, Sally |
| Approved On: | 7/10/2013 12:22:15 | Exceptional Clearance: | |
| Adult/ Juvenile Clearance: | | Exceptional Clearance Date: | |
| Additional Distribution: | | Other Distribution: | |

| Validation Processing | Distribution Date: | County Pros. Atty. | Juvenile | Other | CPS | Supervisor: |
|---|---|---|---|---|---|---|
| | By: | City Pros. Atty. | Military | DSHS | PreTrial | |

***For Law Enforcement Use Only – No Secondary Dissemination Allowed***
Records has the authority to ensure correct agency, CB/Grid/RD, and District/Sector are incorporated in the report.

**Printed: 7/10/2013 12:22:15**
**Printed By: E08455 - Easton, Sally**

| | | | |
|---|---|---|---|
| Total No. of Units Entered: | | Evidence Collected: | |
| Entrance Compromised: | **Not Applicable** | | |
| Entry Method: | | | |
| Suspect Description: | | | |
| Suspect Actions: | | | |
| Notes: | | | |

## Weapon 1: Blunt Object (bat, brick, rock, etc.)

| | | | |
|---|---|---|---|
| Offense: | **1305 - Assault - Aggravated - NonFamily - Weapon** | Serial No: | |
| Offender: | **S1 - Doe, John** | OAN: | |
| Weapon: | **Blunt Object (bat, brick, rock, etc.)** | Automatic: | |
| Other Weapon: | | Caliber: | |
| Action: | | Gauge: | |
| Manufacturer: | | Length: | |
| Make: | | Finish: | |
| Importer: | | Grips: | |
| Model: | | Stock: | |
| Weapon Notes: | | | |

## Investigative Information

| | | | |
|---|---|---|---|
| Means: | | Motive: | |
| Vehicle Activity: | | Direction Vehicle Traveling: | |

| | |
|---|---|
| Synopsis: | |

Narrative:

R/O was contacted at approximately 1520 hrs. on 6/29/2013 re; an Officer Involved Shooting that had occurred at 28th and Portland Ave. R/O was advised that the Officer had minor injuries and had been transported to the hospital. The subject of the Officer's contact had been transported to a different hospital, his condition was unknown.

R/O made additional notifications and responded to the hospital to check on the Officer involved. R/O contacted Officer Volk in emergency room 10. R/O explained to Officer Volk that the only reason for R/O's contact was to check on her well being. R/O was not making the contact to ask any questions regarding the incident only to verify that Officer Volk was physically ok.

Officer Volk was holding her left arm against her chest. Officer Volk held it up and said she thought it was okay. She then wiggled her fingers and said she could feel it but it was okay. R/O could see what appeared to be scrape marks by her elbow and the back side of her forearm appeared red and slightly swollen. R/O asked if the hospital staff was going to take x-rays and Officer Volk replied that she thought they were going to do that.

Officer Volk then spoke about the incident unsolicited by R/O. Officer Volk said that the guy didn't listen. He grabbed a piece of metal. Officer Volk said it was odd an shaped and flattened, curved piece of pipe. She made a circle design as she described it. She said he came toward her so she tased him. The Taser had no effect. She said he ran across the road. Which she said, she realized that there was no traffic behind him, once he crossed the road. She followed him across the road where he came at her with the piece of metal raised and she blocked the attack with her arm. She fired her weapon which did not seem to stop him so she fired again. She said the second shots stopped him.

R/o did not ask her any questions about the incident. R/O said, "I am glad you are alright." R/O said that if Officer Volk needed anything to call. R/O specifically did not ask any clarifying questions as this was not an interview. R/O was not clear on where exactly the confrontation took place, on the sidewalk or which side of 28th St. R/O did not clarify how many shots were fired. R/O was unclear on when the taser was deployed, before or after the subject had crossed the street. R/O did not ask if when she was struck, she fell

| | |
|---|---|
| | to the ground. Officer Volk just offered the above as what happened as she recalled it when R/O asked if she was ok.<br><br>R/O left the hospital shortly thereafter and went to 28th and Portland Ave. R/O reviewed the dispatch call screen. R/O observed the taped off location of the incident and spoke to many different media representatives. |

| Reviewed By: | | Reviewed Date: | |
|---|---|---|---|

EXHIBIT T

EXHIBIT T

FILED

AUG 03 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| STEVEN O. PETERSEN, on behalf of L.P., a minor and beneficiary and as Personal Representative of the estate of Steven V. Petersen,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>LEWIS COUNTY, a political subdivision of the State of Washington; MATTHEW MCKNIGHT,<br><br>Defendants-Appellees. | No. 14-35201<br><br>D.C. No. 3:12-cv-05908-RBL<br><br>MEMORANDUM* |

On Remand from the United States Supreme Court

Before: HAWKINS, McKEOWN, and DAVIS,** Circuit Judges.

Steven Petersen appeals the district court's grant of Lewis County's ("the County") and Matthew McKnight's motion for summary judgment on qualified-immunity grounds in Petersen's 42 U.S.C. § 1983 lawsuit arising from the shooting

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Andre M. Davis, Senior Circuit Judge for the U.S. Court of Appeals for the Fourth Circuit, sitting by designation.

of his son. We have jurisdiction under 28 U.S.C. § 1291, and we review de novo the grant of summary judgment. *See Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1135 (9th Cir. 2001). We consider this case on remand from the Supreme Court and affirm in part, reverse in part, and remand.

The district court correctly found that there were material factual disputes regarding the reasonableness of McKnight's actions as to Petersen's excessive force claim. However, even if McKnight's actions were unreasonable, Petersen has failed to identify any clearly established law putting McKnight on notice that, under these facts, his conduct was unlawful. *See White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam) (reiterating "the longstanding principle that 'clearly established law' should not be defined 'at a high level of generality'" (citations omitted)). The district court therefore correctly granted qualified immunity to McKnight on the excessive force claim.

The district court appropriately granted summary judgment to the County on Petersen's municipal liability claim. Petersen failed to present evidence that any of the County's policies were a "moving force" behind the shooting. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Additionally, Petersen failed to identify deficiencies in McKnight's training that establish a showing of deliberate indifference. *See Connick v. Thompson*, 563 U.S. 51, 61 (2011) ("[A]

municipality's failure to train its employees in a relevant respect must amount to 'deliberate indifference to the rights of persons with whom the [untrained employees] come into contact.'" (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (alteration in original))).

Likewise, the district court appropriately granted summary judgment to the County and McKnight on Petersen's substantive due process claim because he failed to show that McKnight's actions "shock[] the conscience." *See Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998) (outlining the standard for executive action that violates substantive due process).

However, summary judgment should not have been granted for McKnight on the state-law negligence claim because the reasonableness of McKnight's actions raises factual issues that should be left to a jury. *Gallegos v. Freeman*, 291 P.3d 265, 277 (Wash. Ct. App. 2013) ("An officer is entitled to state law qualified immunity where the officer (1) carries out a statutory duty, (2) according to procedures dictated to him by statute and superiors, and (3) *acts reasonably*." (emphasis added) (internal quotation marks and citations omitted)). The public duty doctrine does not bar Petersen's claim because "[t]he [public duty] doctrine provides only that an individual has no cause of action against law enforcement officials for failure to act. Certainly if the officers do act, they have a duty to act

with reasonable care." *Coffel v. Clallam Cty.*, 735 P.2d 686, 690 (Wash. Ct. App. 1987). Therefore, summary judgment was also improperly granted for the County on Petersen's vicarious liability claim. *See LaPlant v. Snohomish Cty.*, 271 P.3d 254, 256 (Wash. Ct. App. 2011) (holding that a county may be vicariously liable for officers' negligent actions taken within the scope of their employment).

Finally, the district court appropriately granted summary judgment for the County on Petersen's state-law claims for failure to train and negligent supervision because there is no indication that McKnight acted outside the scope of his employment. *Id.* at 257 ("Under Washington Law, . . . a claim for negligent hiring, training, and supervision is generally improper when the employer concedes the employee's actions occurred within the course and scope of the employment.").

Each party shall bear its own costs on appeal.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**
95 Seventh Street
San Francisco, CA 94103

**Information Regarding Judgment and Post-Judgment Proceedings**

**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**
**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)**

**(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

**Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

**Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

**Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

**Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**Form 10. Bill of Costs** .....***(Rev. 12-1-09)***

# United States Court of Appeals for the Ninth Circuit

## BILL OF COSTS

This form is available as a fillable version at:
*http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf*.

***Note:*** If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

_____ v. _____ 9th Cir. No. _____

The Clerk is requested to tax the following costs against: _____

| Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1 | **REQUESTED** *(Each Column Must Be Completed)* | | | | **ALLOWED** *(To Be Completed by the Clerk)* | | | |
|---|---|---|---|---|---|---|---|---|
| | No. of Docs. | Pages per Doc. | Cost per Page* | TOTAL COST | No. of Docs. | Pages per Doc. | Cost per Page* | TOTAL COST |
| **Excerpt of Record** | | | $ | $ | | | $ | $ |
| **Opening Brief** | | | $ | $ | | | $ | $ |
| **Answering Brief** | | | $ | $ | | | $ | $ |
| **Reply Brief** | | | $ | $ | | | $ | $ |
| **Other**** | | | $ | $ | | | $ | $ |
| | | | **TOTAL:** | $ | | | **TOTAL:** | $ |

* *Costs per page*: May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other*: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

*Continue to next page*

**Form 10. Bill of Costs -** *Continued*

I, _____, swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature _____

("s/" plus attorney's name if submitted electronically)

Date _____

Name of Counsel: _____

Attorney for: _____

---

*(To Be Completed by the Clerk)*

Date _____

Costs are taxed in the amount of $ _____

Clerk of Court

By: _____, Deputy Clerk

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

August 21 2017 1:48 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE SUSAN SERKO
Hearing Date: September 1, 2017

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>CITY OF TACOMA'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS |

Plaintiff has moved for partial summary judgment on the issue of whether the past medical expenses incurred – as reflected by the amount billed for the services rendered – was reasonable, necessary and causally related to injuries sustained in the shooting. As there is a material question of fact on whether the amount billed for past medical services represents the reasonable value of the necessary medical care, the instant motion must be denied.



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Tacoma, WA 98402-3767
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It is plaintiff's burden to prove his economic damages, which are required to be "objectively verifiable monetary losses[.]" RCW 4.56.250(1)(a). "A plaintiff in a negligence[1] case may recover only the reasonable value of medical services received, not the total value of all bills paid." Patterson v. Horton, 84 Wn. App. 531, 543, 929 P.2d 1125 (1997). See also Hayes v. Wieber Enterprises, Inc., 105 Wn. App. 611, 616, 20 P.3d 496 (2001)("...the amount billed or paid is not itself determinative. The question is whether the sums requested for medical services are reasonable."); WPI 30.07.01 (allowing recovery of "[t]he reasonable value of necessary medical care, treatment, and services received to the present time").

In carrying this burden, plaintiff "*cannot rely solely on the medical records and bills.*" (emphasis added) Patterson, 84 Wn. App. at 543. "Medical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and bills were both necessary and reasonable." Id. "Proof of [medical expenses] need not be unreasonably exacting and may come from any witness who evidences sufficient knowledge and experience respecting the type of service rendered and the reasonable value thereof." Kennedy v. Monroe, 15 Wn. App. 39, 49, 547 P.2d 899 (1976).

In the instant case, the City does not dispute that plaintiff sustained significant physical injuries as a result of the shooting. Nor does the City dispute that the medical treatment provided to the plaintiff, as outlined in paragraphs 5 through 8 of the Declaration of Anthony J. Choppa, was reasonable and necessary for treatment of

[1] The fact that the instant case involves an intentional tort – assault & battery – does not change the Patterson court's analysis.



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those injuries. The City does dispute, however, that the actual billed amount – the measure of special damages being claimed by plaintiff – represents the reasonable value of the medical services provided to the plaintiff.

As outlined in Mr. Choppa's declaration, plaintiff is claiming to have sustained special damages for past medical treatment in the amount of $712,719.99. Choppa Declaration, p. 4. This amount represents the amount billed by the various providers and Mr. Choppa opines that this amount is reasonable because it is consistent with the amounts that healthcare providers normally bill for such services. Choppa Declaration, para. 10. See also Exhibit 1 to the Affidavit of Jean P. Homan in Response to Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials (hereinafter Homan Affidavit), p. 21, lines 1-8. This assertion standing alone, however, is misleading and insufficient to carry plaintiff's burden on the reasonable value of the past medical services.

The health care industry is not a traditional market and billed charges bear little relationship to the value of the health care services provided to patients. Declaration of Thomas M. Wickizer in Response to Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials (hereinafter Wickizer Declaration), paras. 9-11, and Exhibit 2 thereto. For example, in a 2006 peer reviewed study, one researcher established that hospitals accepted – from all payers – an average of 38% of the billed charges. Id. at para. 12.

The City has retained Dr. Thomas Wickizer, a health care economist currently with Ohio State University and formerly with the University of Washington, to opine on the reasonable value of the past medical services provided to the plaintiff. Utilizing



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data collected by the federal government (collected pursuant to strict standardization procedures), Dr. Wickizer has analyzed the actual cost of providing the medical services at issue and has determined the reasonable value of those services, in light of actual costs and allowing a reasonable profit margin consistent with national averages. See Wickizer Declaration and Exhibit 2 thereto. Based on his analysis, Dr. Wickizer has concluded that the reasonable value of the past medical services provided to plaintiff in this case represents approximately 33.4% of the billed amounts.

As outlined above, under Washington law, the issue is not what health care providers normally charge. The issue whether the sums requested for medical services are reasonable. As outlined in Dr. Wickizer's report, virtually no one pays full hospital charges. Exhibit 2 to Wickizer Declaration, p. 7. Even plaintiff's expert, Anthony Choppa, admits that health care providers routinely discount the billed amounts in exchange for cash payments. Exhibit 1 to Homan Affidavit, p. 22, lines 10-17. He further admits that his opinion on the reasonableness of the amounts billed does not take such discounts into consideration. Id. at p. 25, line 8 - p. 26, line 2.

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In the instant case, in light of Dr. Wickizer's opinions, there is a material question of fact concerning the reasonable value of the past medical services provided to plaintiff. Economic damages are for the jury to determine and the jury should be permitted to decide for itself which experts' assessment of reasonable value is appropriate. For the reasons, the instant motion must be denied.

DATED this 21st day of August, 2017.

WILLIAM C. FOSBRE, City Attorney

By: 26607 for

JEAN P. HOMAN
WSB #27084
Deputy City Attorney
Attorney for Defendant



Tacoma City Attorney
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## DECLARATION OF SERVICE

I hereby certify that on August 21, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Counsel for Plaintiffs**
John R. Connelly, Jr.
Micah R. LeBank
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403
jconnelly@connelly-law.com
mlebank@connelly-law.com

DATED: August 21, 2017

*/s/ Natasha S. Cepeda*
Natasha Cepeda, Legal Assistant
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5268
Fax: (253) 591-5755
ncepeda@ci.tacoma.wa.us

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August 21 2017 1:50 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE SUSAN SERKO
Hearing date: September 1, 2017

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>AFFIDAVIT OF JEAN P. HOMAN IN RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS |

STATE OF WASHINGTON )
) ss.
COUNTY OF PIERCE )

JEAN P. HOMAN, being first duly sworn upon oath deposes and says:

1. That I am the attorney of record for the defendant in the above-captioned action, am over the age of eighteen, and am competent to testify herein.



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

2. Attached hereto as Exhibit 1 are true and correct excerpts from the deposition of Anthony Choppa, taken in this matter on August 17, 2017.

3. The City has retained Dr. Thomas Wickizer, a health economist, to offer an opinion on the reasonable value of the past medical services provided to plaintiff. Dr. Wickizer's opinions are contained in his report, attached as Exhibit 2 to his declaration, also filed herein.

4. Attached hereto as Exhibit 2 is a true and correct copy of a letter ruling issued by Judge Bruce Heller of the King County Superior Court, in the matter of Rodgers v. Navajo Express, Inc., Cause No.14-2-31392-6 KNT, dated March 18, 2016.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

JEAN P. HOMAN

SUBSCRIBED and SWORN to before me this 21st day of August, 2017.

Printed Name: Natasha S Cepeda
NOTARY PUBLIC in and for the State of Washington, residing at: Tacoma, WA
My commission expires: 7-17-21

NATASHA S CEPEDA
COMMISSION EXPIRES
NOTARY
PUBLIC
07-17-21
STATE OF WASHINGTON



Tacoma City Attorney
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## DECLARATION OF SERVICE

I hereby certify that on August 21, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Counsel for Plaintiffs**
John R. Connelly, Jr.
Micah R. LeBank
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403
jconnelly@connelly-law.com
mlebank@connelly-law.com

DATED: August 21, 2017

*/s/ Natasha S. Cepeda*
Natasha S. Cepeda, Legal Asssitant
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# EXHIBIT 1

Transcript of the Testimony of

**Anthony J. Choppa**
August 17, 2017

**Beltran-Serrano v. City of Tacoma**
No. 15-2-11618-1

**Court Reporters/Video/Videoconferencing**
**Seattle/Tacoma, Washington**

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Old Town District: 2208 North 30th Street, Suite 202 Tacoma, WA 98403-3360
Tacoma: **253 627-6401** Fax: **253 383-4884**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian ad item of the person and Estate of CESAR BELTRAN-SERRANO, | ) No. 15-2-11618-1 |
| Plaintiffs, | ) |
| vs. | ) |
| CITY OF TACOMA, a political subdivision of the State of Washington, | ) |
| Defendant. | ) |

DEPOSITION OF ANTHONY J. CHOPPA

(VIA ZOOM)

August 17, 2017

Bothell, Washington

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1 Q The base costs that are included in the life care plan,
2 that's based on what the providers are charging; is that
3 correct?
4 **A Yes. That's consistent with our standards, yes.**
5 Q When you are contacting providers, do you ever inquire as
6 to whether or not there would be a different charge if
7 the patient were paying cash?
8 **A No. The standards are clear. We are to identify the**
9 **charges that allow the services to be available now and**
10 **in the future, and what we know is these are the charges.**
11 **If there are cash prices or discounted prices, we can't**
12 **guarantee that in the future, so the life care planner**
13 **identifies the charges, and then I know you attorneys may**
14 **work out what you folks call I guess "collateral**
15 **sources," which is a term I learned over the years, but**
16 **those are -- that's our standards. We identify the**
17 **charges.**
18 Q And when you say the standards are to identify the
19 charges, what particular standards are you referencing?
20 **A The International Academy of Life Care Planners Standards**
21 **of Practice. And I don't mean to speak for your life**
22 **care planner, but her and I are members of that group. I**
23 **just know that because we see each other at conferences,**
24 **just professionally.**
25 Q Is there a particular standard within the standards of

1 practice for the International Academy of Life Care
2 Planners that you would point to as defining what you
3 should include based on the costs?
4 A **Yes. Don't ask me without me going to look. But it's**
5 **the -- it's the international -- it's the Standards of**
6 **Practice and Majority and Consensus Statements is what**
7 **the documents are called. And in there it's all laid out**
8 **and there's numbers. But off the top of my head, I**
9 **couldn't tell you which number.**
10 Q In your experience, Mr. Choppa, if approached with cash,
11 do health care providers, for example, hospitals, provide
12 discounts for patients who are paying cash?
13 A **I have seen that.**
14 Q What about private physicians? In your experience, will
15 private physicians discount their charges if a patient is
16 paying cash?
17 A **I have seen that also.**
18 Q And have you ever had an occasion to -- strike that.
19 Have you ever heard of Dr. Wickizer prior to being
20 provided his report in this case?
21 A **Yes.**
22 Q And what prior knowledge of Dr. Wickizer do you have?
23 A **Strictly in his forensic arena his reports show up.**
24 Q Have you ever spoken to Dr. Wickizer?
25 A **No.**

1 Q Do you have an opinion that you are offering in rebuttal
2 to his opinion?
3 **A Yes.**
4 Q What opinions do you have in rebuttal to Dr. Wickizer?
5 **A This is not a life care plan and does not follow**
6 **standards of methodology. I understand from reading his**
7 **depositions that this is created specifically for**
8 **litigation.**
9 **See, a life -- a life care plan deals with charges.**
10 **Looking at past charges is simply a life care plan in**
11 **reverse. His report is devoid of this reality. It's**
12 **devoid of the reality of patient access to care. For**
13 **example, he says there's an EK- -- you can get an EKG for**
14 **$11.87. I would challenge you to go into any doctor's**
15 **office or hospital and say, I'm here for an EKG and I**
16 **only have to pay $11.87 for it. It's devoid of reality.**
17 **You will not get access to service.**
18 Q So are you looking at Dr. Wickizer's report in this case?
19 **A I'm looking right at it now. That's one of the things he**
20 **says.**
21 Q So tell me the page.
22 **A 12.**
23 Q All right. One moment, please.
24 First off, Mr. Choppa, do you believe that
25 Dr. Wickizer's report is a life care plan?

1 **A Oh, it clearly is not a life care plan. I have no idea**
2 **what it is. It's --**
3 Q Do you believe that it was intended to be presented as a
4 life care plan?
5 **A No. I would hope not because it would be in complete**
6 **violation of any standards in that area.**
7 Q Right.
8 So where do you see the $11?
9 **A Look under Item No. 730 in the top half of Page 12,**
10 **EKG/ECG.**
11 Q Do you have an understanding as to how Dr. Wickizer
12 arrives at these numbers?
13 **A No, other than what he states. It's nothing consistent**
14 **with our field.**
15 Q Okay.
16 **A I have seen probably a half a dozen or more of his**
17 **reports. What I'm noticing about this report is it's not**
18 **as transparent as his other reports.**
19 Q How so?
20 **A He has bundled the service, the service description now,**
21 **if you look below on Page 12, he's bundled the service**
22 **description. He used to itemize it, but he would -- we**
23 **would find all these similar problems like an EKG for**
24 **$11, CAT scans for $29. And so I notice on this report**
25 **he's not being as transparent as those other reports**

1 and -- but patients cannot get access to care for what he
2 says in his numbers.
3 Q Do you understand what the cost-to-charge ratio is?
4 A That's not something I deal with. All I --
5 Q Okay.
6 A -- know is what it takes for a patient to get actual
7 access to care, and it's not these numbers.
8 Q In your experience, how much of a discount will a
9 hospital give to a patient who is prepared to pay cash?
10 A It -- it varies. It varies on that, and there's also
11 balance billing to insurance companies on the excess is
12 what we see. We see this balance billing issue.
13 Q Explain that to me.
14 A Well, you know, hospitals you know, they -- they have
15 charges, and if they give a discount for volume, that's
16 one issue. If they allow someone to pay less, they will
17 frequently balance bill the health care insurer or
18 Medicaid, Medicare, something like that, because -- to
19 recoup the discount. So we see that occurring as well.
20 And I don't see that reflected here. But anyway --
21 Q What about patients who pay cash who don't have
22 insurance? In your experience, do hospitals then provide
23 a significant discount on the bill charges for a cash
24 payment for an uninsured payment?
25 A Well, if they don't have insurance and there's no one

1 **else to balance bill, then there it is. I assume they**
2 **accept that cash price.**
3 Q Okay. So what have I done? I moved something. That's
4 what I moved.
5 In Dr. James' report she indicates that she spent
6 approximately two hours in conference with Ms. Gamez
7 about the life care plan on the date of her examination
8 of Mr. Beltran. Did you subsequently also meet with
9 Dr. James about the life care plan?
10 **A No. I didn't meet with her. What I did was word**
11 **processed up what I understood -- I worked with Jamie**
12 **Gamez. We word processed up Dr. James' recommendations**
13 **and then what we do in our standard of practice is we**
14 **send it back to the physician. The reason is, whether it**
15 **was Ms. Gamez or me, we worry by the time the doctor says**
16 **it, their mouth to our ear, to our pen, did we write**
17 **something down wrong? So we're, like, okay here's how**
18 **we're going to deal with it, either in the clinical**
19 **setting or forensics, we send it back to the doctor with**
20 **correspondence and the simple thing about the**
21 **correspondence is, Doctor, please review did we hear you**
22 **correctly, and if we didn't, please correct it.**
23 Q Change?
24 **A Yeah, add, delete, whatever. So that's what standard**
25 **practice occurred here.**

1 Q And your file will contain the correspondence to and from
2 Dr. James on that issue?
3 **A Yes.**
4 Q Perfect.
5 You also swore out a declaration in support of
6 plaintiffs' motion for partial summary judgment; is that
7 correct?
8 **A Is that on the reasonableness of the charges?**
9 Q Yes.
10 **A Yes.**
11 Q And as I read your affidavit, it is your opinion that the
12 charges incurred are customarily charged by hospitals and
13 medical providers and are therefore reasonable?
14 **A Yeah. Those are the -- they're reasonable -- those are**
15 **the charges. What was charged in this case are**
16 **reasonable and consistent with other charges that we see**
17 **in our work, whether it's, you know, MultiCare,**
18 **Franciscan, University of Washington Medicine, Swedish,**
19 **you know, these -- these are -- Good Sam -- well, that's**
20 **now MultiCare. These are the charges for these services**
21 **in this area.**
22 Q So what your declaration is saying is the amounts that
23 were billed in the instant case are consistent with the
24 amounts that are billed by other providers; correct?
25 **A Right. These charges are reasonable and consistent with**

1 **the other charges, that's right.**
2 Q With what is normally billed?
3 **A Yes.**
4 Q And that does not necessarily reflect the amount that the
5 providers would be willing to accept for a cash payment?
6 **A Correct.**
7 MS. HOMAN: I have no further
8 questions. Thank you.
9 Anything else, Micah?
10 MR. LEBANK: Is that the end of your
11 dep?
12 MS. HOMAN: Yes.
13 MR. LEBANK: I don't have any
14 questions.
15 MS. HOMAN: You're off the hook. It
16 was very nice to meet you.
17 (Signature reserved.)
18 (Deposition concluded at
19 1:41 p.m.)
20
21
22
23
24
25

# EXHIBIT 2

# Superior Court of the State of Washington
# for the County of King

**Bruce E. Heller**
**Judge**

**King County Superior Court**
**516 Third Avenue, Room C-203**
**Seattle, Washington 98104**

March 18, 2016

| Alan Shabino, Eq. | David Lancaster, Esq. | William O'Brien, Esq. |
|---|---|---|
| 1001 4th Ave Suite 3200 | 15500 SE 30th Place Suite 201 | 800 5th Ave Suite 3810 |
| Seatle, WA 98154-1003 | Bellevue, WA 98007-6347 | Seattle, WA 98104-3189 |

RE: *Rodgers et ano v Navajo Express Inc et al; 14-2-31392-6 KNT*

Dear Counsel,

The key issue in resolving Plaintiff's summary judgment motion is whether to strike the declaration of Dr. Thomas Wickizer. Plaintiff's counsel, Mr. Shabino, has conceded that if the court were to consider Dr. Wickizer's declaration, there would be material issues of fact as to past medical expenses. In his recent deposition testimony, Dr. Wickizer raised similar concerns with respect to future damages:

> I think the future costs raise many of the same issues as the past costs in the sense that what the lifecare planners – mainly, they're vocational rehab counselors – do is they get information that basically billed charges. And that's what they use to come up with a valuation of future expenses.

Dep. at 117. Essentially, Dr. Wickizer opines that billings should not be used to measure the reasonable value of services. Instead, such value should be based on the cost to the provider to provide a medical service, as measured by Medicare Cost reports and the Medicare Resource-Based Relative Value Scale.

Dr. Wickizer's methodology differs substantially from the traditional method in Washington for determining whether a cost is reasonable, namely, a comparison with local billing practices by similar providers for similar services. The question is whether, as a matter of law, this is the only permissible method for determining economic damages pursuant to RCW 4.56.250(1)(a)(" 'Economic damages' means objectively verifiable monetary losses, including medical expenses. . .").

There are no Washington appellate cases that have addressed the issue. The parties have cited *Hayes v. Wieber Enterprises, Inc.*, 105 Wn.App. 611 (2001), wherein the court stated:

**Bruce E. Heller**
**Judge**

**King County Superior Court**
**516 Third Avenue, Room C-203**
**Seattle, Washington 98104**

> Plaintiffs in negligence cases are permitted to recover the reasonable value of the medical services they receive, not the total of all bills paid. And the amount actually billed or paid is not itself determinative.

*Id.* at 616 (internal citations omitted). The court went on to hold: "The fact that the doctor accepted the first party insurance carrier's limit for his services does not tend to prove his charge for these services was unreasonable." *Id.* This holding is a narrow one. The court was simply saying that where a defendant has not even challenged the reasonableness of billing, a doctor's acceptance of first party insurance reimbursement does not prove that the billing was unreasonable. *Id.* Here, unlike in *Hayes*, defendants are challenging the reasonable of plaintiff's past and future medical bills. Their expert, Dr. Wickizer, maintains that medical billings bear little relationship to the actual value of services. Instead the focus should be on the cost of the service to the provider.

Economic damages are for the jury to determine. Washington law does not prescribe a particular method for making this determination, as long as expert qualifications and other requirements can be met. It is up the jury, not this court, to determine whether Dr. Wickizer's cost-based approach should be used to measure the reasonableness of Plaintiff's medical expenses.

Accordingly, Plaintiff's motion to strike and for summary judgment is denied. Please submit an Order consistent with this letter ruling.

Sincerely,

Bruce E. Heller,
Judge

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

August 21 2017 1:52 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE SUSAN SERKO
Hearing Date: September 1, 2017

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>DECLARATION OF DR. THOMAS WICKIZER IN RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS |

STATE OF WASHINGTON )
) ss.
COUNTY OF PIERCE )

I, THOMAS WICKIZER, do hereby declare, under penalty of perjury under the laws of the State of Washington, as follows:

1. I am over the age of eighteen and am competent to testify herein.



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
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2. I am currently a tenured professor at Ohio State University, and have held this position for approximately eight (8) years. I am the Chair of the Division of Health Services Management and Policy in the College of Public Health, and have held a variety of positions within the College of Public Health over the course of my tenure, including being Director of the Center for Health Outcomes, Policy and Evaluation Studies within the College of Public Health.

3. Prior to taking the position with Ohio State University, I was a professor at the University of Washington in the Department of Health Services for twenty years (1989 to 2009). I was awarded the prestigious Rhom Haas Distinguished Professorship in 1997 and was promoted to the rank of professor in 1998. In addition, I served as the Director of the School's Extended MPH Program from 2005 to 2009 and was Director of the Occupational Health Services Research doctoral training program from 2000 to 2009.

4. I am a health economist with twenty-eight years of research and teaching experience. I have authored or co-authored over 120 published peer-reviewed articles on health care expenditures, hospital expenditures, cost containment programs, substance abuse treatment outcomes and other articles in the health care field. I have also performed cost of illness studies and have analyzed the cost savings of quality improvement programs in Washington State. In my research and teaching over the years, I have studied and analyzed the question of what constitutes efficiency in the production and consumption of health care services.



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5. Attached hereto as Exhibit 1 is a true and correct copy of my curriculum vitae, which includes a list of my publications and funded research and training.

6. I was retained by Jean Homan, Deputy City Attorney, to analyze the reasonableness of economic damages claimed by plaintiff Cesar Beltran-Serrano for past medical expenses. I received the billing records for the past medical care provided to Cesar Beltran from legal staff of the City Attorney's Office and utilized the billing records in formulating my opinions in this matter.

7. I am not a medical doctor and am not offering an opinion regarding the ballistic injuries sustained by the plaintiff or whether the medical services performed were medically necessary for treatment of those injuries. My opinion is limited to the reasonable value of the medical expenses for the past medical services provided.

8. I have authored a report documenting my opinions herein, the basis for my opinions and the methodology I employed in reaching my opinions. Attached hereto as Exhibit 2, and incorporated herein by this reference as though fully set forth, is a true and correct copy of the my report in this matter, dated August 4, 2017.

9. Generally, health care markets, due to their distinctive features, do not resemble competitive markets. Entry into the health care market is limited, consumers do not have complete information on prices and quality of services offered, and many hospitals and other health care organizations are non-profit, rather than for-profit, and consequently, standard economic assumptions about firm market behavior do not apply.



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10. Also, hospital charges and other provider charges do not reflect the workings of supply and demand factors. Health care providers' billed charges often reflect the providers' efforts to maintain needed revenue in the fact of having to accept discount fees from various public and private payers (often as a result of contractually negotiated discounts). It is not uncommon for hospitals and physicians to accept discounted fees ranging from 30% – 70% off of the billed charges.

11. It is a well-known and widely accepted fact that billed charges bear little relationship to the value of the health care services provided to patients.

12. Uwe Reinhardt, a nationally known and respected health economist at Princeton, has authored a number of peer-reviewed articles addressing how health care providers set the amount of billed charges and why billed charges do not typically represent the value of efficiently produced health care services. In a 2006 publication, Professor Reinhardt demonstrated, using national data, that hospitals accepted – from all payers – an average of 38% of the billed charges.

13. Hospitals that treat Medicare patients (basically all US community hospitals) are required to submit detailed annual financial reports to the federal government documenting their revenues and expenses. It is important to note that the cost information reported by the hospitals relates to <u>all</u> patients (insured, uninsured, private pay, Medicare, etc.) and not just those who are receiving Medicare benefits. The federal cost report includes extensive information on what it costs to the hospitals to provide various tests, procedures and services, as well as information about their revenues obtained from patient care. Included within the federal costs reports is



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information about the "cost-to-charge" (CCR) ratio for these various services/tests/procedures. For example, for some services, the cost-to-charge ratio is 0.5, which indicates that the costs are 50% of the billed charges.

14. As more fully set forth in my report (Exhibit 2), when analyzing the reasonable value of the medical services provided, I applied the CCR for each of the services provided to the plaintiff to determine the reasonable value of these services. This method of determining reasonable value is based on the actual cost of providing the services and does not include a profit margin that one might argue hospitals deserve in considering the reasonable value of care. Peer reviewed research concerning hospital profit margins, based on a national sample of hospitals, demonstrated that hospital profit margins range from roughly 2% for non-profit hospitals to 6% for for-profit hospitals. In my analysis of the reasonable value of the past medical services, I therefore allowed a 5% profit margin, added to the actual cost of providing the services rendered.

15. Using this methodology, I estimate the reasonable value of the past medical services provided to the plaintiff in this case is $252,954.85, which represents 33.4% of the total billed charges ($756,714.64).

SIGNED this 20th day of August, 2017, in Columbus (City), Franklin (County), Ohio.

THOMAS WICKIZER, PH.D., M.P.H.



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

## DECLARATION OF SERVICE

I hereby certify that on August 21, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Counsel for Plaintiffs**
John R. Connelly, Jr.
Micah R. LeBank
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403
jconnelly@connelly-law.com
mlebank@connelly-law.com

DATED: August 21, 2017

*/s/ Natasha S. Cepeda*
Natasha S. Cepeda, Legal Assistant
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Fax: (253) 591-5755
ncepeda@ci.tacoma.wa.us

# EXHIBIT 1

# CURRICULUM VITAE

**Thomas M. Wickizer, Ph.D., M.P.H.**
Stephen F. Loebs Professor
Division of Health Services Management and Policy
College of Public Health
The Ohio State University
Columbus, Ohio 43210
(614) 688-3854
(twickizer@cph.osu.edu)

## PERSONAL

Place of Birth: Minneapolis, Minnesota

Home Address: 284 Lear Street
Columbus, OH 43206

## EDUCATION

Northwestern University, Evanston, Illinois
B.A., 1969

University of Washington, Seattle, Washington
School of Social Work, M.S.W., 1974

University of Michigan, Ann Arbor, Michigan
Department of Health Planning and Administration
School of Public Health, M.P.H., 1979

University of Michigan, Ann Arbor, Michigan
Department of Economics, M.A., 1987

University of Michigan, Ann Arbor, Michigan
School of Public Health, Health Services Organization
and Policy Program, Ph.D., 1989

## POSITIONS

1976-1978 Research Associate, School of Social Work, University of Washington, Seattle, Washington

1978-1983 Research Associate, Department of Health Services, School of Public Health, University of Washington, Seattle, Washington

1985-1988 Research Associate, Department of Health Services Management and Policy, School of Public Health, University of Michigan, Ann Arbor, Michigan

1988-1989 Acting Assistant Professor, Department of Health Services, University of Washington, Seattle, Washington

1989-1992 Assistant Professor, Department of Health Services, University of Washington, Seattle, Washington

1992-1998 Associate Professor, Department of Health Services, University of Washington, Seattle, Washington

1997-2003 Rohm and Haas Distinguished Professor of Public Health Sciences, School of Public Health and Community Medicine, University of Washington

1998-2009 Professor, Department of Health Services, University of Washington, Seattle, Washington

2005 - 2009 Director, Extended MPH Program, School of Public Health, University of Washington, Seattle, Washington

2009 – Present Stephen F. Loebs Distinguished Professor of Health Services Management and Policy, College of Public Health, The Ohio State University, Columbus, Ohio

2011 – 2012 Director, Center for Health Outcomes, Policy and Evaluation Studies, College of Public Health, The Ohio State University, Columbus, Ohio

2012-Present Chair, Division of Health Services Management and Policy, College of Public Health, The Ohio State University, Columbus, Ohio

## FELLOWSHIPS, HONORS AND AWARDS

1972-1974 National Institute Mental Health (NIMH) Fellowship School of Social Work, University of Washington

1978-1979 Public Health Service Fellowship, Department of Health Planning and Administration, School of Public Health, University of Michigan

1983-1986 Kellogg Fellowship, Department of Medical Care Organization, School of Public Health, University of Michigan

1985- Michigan Blue Cross Health Care Education and Research Foundation Doctoral Student Award

1986- Merit Award Scholarship, Department of Economics, University of Michigan

2005 John M. Eisenberg Article-of-the-Year Award for Health Services Research

2008 Article-of- the-Year Award, International Society for the Study of Lumbar Spine

2014 Elected Member, National Academy of Social Insurance.

## PROFESSIONAL ACTIVITIES

A. Membership in national academies and professional organizations:

Member, National Academy of Social Insurance
Member, American Public Health Association
Member, Academy Health

B. Review responsibilities in professional journals:

Reviewer, Medical Care
Reviewer, Inquiry
Reviewer, Milbank Quarterly
Reviewer, Health Affairs
Reviewer, Health Services Research
Reviewer, American Journal of Public Health
Reviewer, Journal of Health Politics, Policy, and Law
Reviewer, Hospital and Health Services Administration
Reviewer, Quality Review Bulletin

## BIBLIOGRAPHY

*Research papers in refereed journals*

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2. **Wickizer TM**, Brillant LB. Testing for polychlorinated biphenyls (PCB's) in breast milk. ***Pediatrics.*** 1981, 68:411-419.

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*Book Reviews and Letters to the Editor*

Feldstein PJ, **Wickizer TM**, Wheeler JR. Utilization review and health care expenditures (letter). ***New Engl J Med*** 1988; 319:1158.

**Wickizer TM**. Review of Health Care Cost Containment by Davis K, Anderson GF, Rowland D, Steinberg EP. ***Hospital Health Serv Admin*** 1990; 36:155-156

Kopjar B, Wiik J, Zunic J, Koepsell T, Scheidt P, **Wickizer TM**. War Injuries among children in Karlovac District, Croatia. ***Am J Public Health*** 1995; 85:1164-1165.

*Technical Reports*

Pruitt KE, **Wickizer TM**, Emby M. The Consolidated Reporting System: Development and Implementation. Final Report Submitted to Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Department of Health, Education, and Welfare, 1976.

**Wickizer TM**, Maynard C. Analysis of Completion Rates of Clients Discharged from Drug and Alcohol Treatment Programs in Washington State. Final Report Submitted to Department of Social and Health Services, Olympia, Washington, 1991.

Richardson M, **Wickizer TM**. Assessment of Needs, with Emphasis on Medical Care for Children in Alaska Who Have Special Health Care Needs. Final Report Submitted to Alaska Neonatal/Perinatal Research Foundation, Anchorage, Alaska, 1992.

**Wickizer TM**, Wagner T, Atherly A, Beck M. Economic Costs of Drug and Alcohol Abuse in Washington State for 1990. Final Report Submitted to Department of Social and Health Services, Olympia, Washington, 1993.

**Wickizer TM**. Economic Costs of Drug and Alcohol Abuse in Washington State, 1996: An Update. Final Report Submitted to Department of Social and Health Services, Olympia, Washington, 1999.

**Wickizer TM**. Economic Costs of Drug and Alcohol Abuse in Washington State, 2005. Final Report Submitted to Department of Social and Health Services, Olympia, Washington, 2007.

**Wickizer TM,** Sears J, John D, Schulman B and Graves J. Access, Quality, and Outcomes of Health Care in the California Workers' Compensation System, 2008. School of Public Health, University of Washington, September 2009.

*Invited Presentations*

**Wickizer TM**. "The Effect of Drug Free Workplace Programs on Occupational Injuries," University of Minnesota Annual Invited Health Services Research Presentation, Minneapolis, MN, October 2007.

**Wickizer TM**. "Quality Improvement in Health Care Services for Injured Workers," Nachemson Memorial Lecture, Institute for Work and Health, Toronto, October 2008.

**Wickizer TM**. "Improving the Delivery of Occupational Health Care to Injured Workers," University of Minnesota, Division of Occupational Health, Invited Presentation, June 2012.

**Wickizer TM**. "Improving Quality Can Cut Health Care Costs: Evidence from a System Intervention," University of Sheffield, Sheffield, England, May 2014.

*Papers Presented at Professional Meetings*

Shortell SM, **Wickizer TM**, "Hospital-Sponsored Primary Care: A Study of Organizational Change and Program Implementation." Presented at the Workshop on National Demonstration Evaluations, Robert Wood Johnson Foundation, Princeton, New Jersey, July 1982.

Wheeler JR, **Wickizer TM**, Shortell SM, "The Effects of Primary Care Group Practice on Community Hospitals." Presented at the 110th Annual Meeting, American Public Health Association, Montreal, Canada, November 1982.

**Wickizer TM**, "Innovation in Hospital Ambulatory Care: The Development of Hospital-Sponsored Primary Care Group Practice." Presented at the Conference on the Cost of Ambulatory Care, Key Biscayne, Florida, June 1982.

**Wickizer TM**, "Hospital-Sponsored Primary Care Group Practice: Organizational and Financial Considerations." Presented at the American Hospital Association Conference on Ambulatory Care, Denver, Colorado, September 1982.

Shortell SM, **Wickizer TM**, "Hospital-Sponsored Primary Care: Results from a National Demonstration." Presented at the Association of University Programs in Health Administration Annual Meeting, Washington, D.C., April 1983.

Shortell SM, **Wickizer TM**, "Hospital-Physician Joint Ventures: Results and Lessons from a National Demonstration." Presented at the 1983 National American Hospital Association Meeting, Houston, Texas, August 1983.

Shortell SM, **Wickizer TM**, "Hospital-Sponsored Primary Care: Findings from a Five-Year National Evaluation." Presented at the 111th Annual Meeting, American Public Health Association, Dallas, Texas, November 1983.

**Wickizer TM**, "Findings and Lessons from the Community Hospital Program." Presented at the American Hospital Association Conference on Hospital Ambulatory Care, Baltimore, Maryland, May 1983.

**Wickizer TM**, "The Management of Hospital-Sponsored Primary Care Programs: Lessons from a National Demonstration." Presented at the 111th Annual Meeting, American Public Health Association, Dallas, Texas, November 1983.

Loevy SS, **Wickizer TM**, Aday LU, "Loyal Patients, Loyal Physicians: Organizational Issues in Primary Care." Presented at the 112th Annual Meeting, American Public Health Association, Anaheim, California, November 1984.

**Wickizer TM**, Feldstein PJ, Wheeler JR, "The Effects of Private Cost Containment Programs on Hospital Utilization and Expenditures." Presented at the 115th Annual Meeting, American Public Health Association, New Orleans, October 1987.

**Wickizer TM**, "Managing Hospital Care Through Utilization Review: Impact on Use and Expenditures." Presented at the 5th Annual Meeting of the Association of Health Services Research, San Francisco, June 1988.

**Wickizer TM**, "What Case Managers Can Expect from Utilization Review." Presented at the 14th Annual Rehabilitation Update Conference, Rehabilitation Institute, McGaw Medical Center, Northwestern University, Chicago, September 1988.

**Wickizer TM**, Wheeler JR, Feldstein PJ, "Do Private Managed Care Programs Contain Health Care Costs? Results of a Three-Year Study." Presented at the 116th Annual Meeting, American Public Health Association, Boston, November 1988.

Wagner EH, **Wickizer TM**, Beery WL, et al. "Community Organization and Variation in Prevalences of Health Risk Behavior." Presented at the 118th Annual Meeting, American Public Health Association, New York, October 1990.

**Wickizer TM**, Feldstein PJ, Wheeler JR, "The Effect of Utilization Review on Employer Insurance Premiums." Presented at the 118th Annual Meeting, American Public Health Association, New York, October 1990.

**Wickizer TM**, Cheadle AD, Von Korff, et al. "Assessing Community Activation for Health Promotion." Presented at the 118th Annual Meeting, American Public Health Association, New York, October 1990.

**Wickizer TM**, Pearson D, Maeser J, et al. "Identifying Environmental Factors and Barriers to Community Health Promotion." Presented at the 118th Annual Meeting, American Public Health Association, New York, October 1990.

Curry S, **Wickizer TM**, Cheadle A. "Community Health Promotion: Conceptual, Methodologic and Practical Approaches to Evaluation." Society of Behavioral Medicine Annual Meeting, New York, March 1992.

**Wickizer TM**, Feldstein P. "The Rise in Private Health Insurance Premiums, 1985- 1991." Presented at the 120th Annual Meeting, American Public Health Association, Washington, D.C., November 1992.

Joesch J, **Wickizer TM**. "Indigent Clients' Employment Status after Treatment for Chemical Dependency," Presented at the 123rd Annual Meeting, American Public Health Association, San Diego, October 1995.

**Wickizer TM**, Joesch J. "Assessment of Employment Outcomes for Substance Abuse Treatment: Implications for Service Delivery Under Managed Care." Presented at the 123rd Annual Meeting, American Public Health Association, San Diego, October 1995.

**Wickizer TM**, Lessler D, Joesch J. "Does Utilization Management Affect the Quality of Care: Analysis of Readmission Rates among Privately Insured Mental Health Patients." Presented at the 123rd Annual Meeting, American Public Health Association, San Diego, October 1995.

**Wickizer TM**, Joesch J. "The Impact of Drug and Alcohol Treatment on Legal Earnings among Indigent Drug and Alcohol Clients in Washington State."

Presented at the 123rd Annual Meeting, American Public Health Association, San Diego, October 1995.

Keyes K, **Wickizer TM**, Franklin G. Weaver M. "Effects on Quality and Satisfaction of Managed Care in Treating Work-Related Injuries." Presented at the 124th Annual Meeting, American Public Health Association, New York, November 1996.

Keyes K, **Wickizer TM**, Franklin G. Weaver M. "Effects on Employer Satisfaction of Managed Care in Treating Work-Related Injuries." Presented at the 124th Annual Meeting, American Public Health Association, New York, November 1996.

Lessler D, **Wickizer TM**. "The Impact of Utilization Management on Hospital-Based Care for Patients with Cardiovascular Disease." Presented at the 13th Annual Meeting, Health Services Research Association, Atlanta, June 1996.

**Wickizer TM**, Lessler D. "Containing Health Care Costs through Utilization Management: Searching for the Beef." Presented at the 124th Annual Meeting, American Public Health Association, New York, November 1996.

**Wickizer TM**, Lessler D. "The Effects of Utilization Management on Mental Health Readmissions. Presented at the 124th Annual Meeting, American Public Health Association, New York, November 1996.

**Wickizer TM**, Lessler D. "Containing Costs while Maintaining Quality: An Unresolved Dilemma within Mental Health." Presented at the 13th Annual Meeting, Health Services Research Association, Atlanta, June 1996.

Keyes K, **Wickizer TM**, Franklin G. "Final Results of the Washington State Workers' Compensation Managed Care Pilot Project." Presented at the 125th Annual Meeting, American Public Health Association, Indianapolis, Indiana, November 1997.

**Wickizer TM**. "Effects of Managed Care on Medical and Cost Outcomes: Results of the Washington State Managed Care Pilot Project." Presented at the 15th annual conference of the Workers' Compensation Research Institute, Boston, March 1997.

**Wickizer TM**. "Where are Worker's Compensation Systems Going?" Presented at Occupational Low Back Pain: A Public Health Challenge, sponsored by the Washington State Department of Labor and Industries, Seattle, Washington, November 2000.

**Wickizer TM**. "The Economic Costs of Substance Abuse in Washington State: Changes from 1990 to 1996." Presented at the 128th Annual Meeting,

American Public Health Association, Boston, MA, November 2000.

**Wickizer TM**, Campbell K, Krupski T, Stark K, Spoor B. "Employment Outcomes among AFDC Recipients Treated for Substance Abuse in Washington State." Presented at the 128th Annual Meeting, American Public Health Association, Boston, MA, November 2000.

**Wickizer TM**, Franklin G. "New Developments in Disability Prevention in Washington State." Presented at the 128th Annual Meeting, American Public Health Association, Boston, MA, November 2000.

**Wickizer TM**, Franklin G. "Preventing Disability among Injured Workers: The Washington State Occupational Health Services Project." Presented at the Workers' Compensation Research Group Conference, RAND Inc., Los Angeles, CA, November 2000.

**Wickizer TM**. "Using Worker and Employers Satisfaction Data to Design a Delivery System Intervention." Presented at the Workers' Compensation Research Group Conference, Boston MA, March 2001.

**Wickizer TM**. "Opportunities and Challenges of Using Health Services Within the Field of Workers' Compensation." Presented at the Annual Meeting of the Robert Wood Johnson Foundation Workers' Compensation Health Initiative, Newport, RI, September 2001.

**Wickizer TM**. "Improving Quality and Outcomes in Workers' Compensation," Keynote address presented at the American College of Occupational and Environmental Medicine State of the Art Conference, Seattle, WA, October 2001.

**Wickizer TM**, Kopjar B, Franklin G. "The Effectiveness of Publicly Sponsored Drug-Free Workplace Program in Reducing Occupational Injuries." Presented at the Academy for Health Services Research and Health Policy Annual Meeting, Washington DC, June 2002.

**Wickizer** TM, Franklin G, Jerry Gluck, Deborah Fulton-Kehoe. "Improving the Efficiency and Effectiveness of Utilization Management in Identifying Inappropriate Care," Presented at the Academy for Health Services Research and Health Policy Annual Meeting, Washington DC, June 2002.

**Wickizer TM,** "Do patients with better treatment experience have better treatment outcomes? A population-based study of injured workers in Washington State", Presented at the Workers' Compensation Research Group Meeting, Las Vegas, NV, May 2003.

**Wickizer TM,** "Improving the Quality of Care for Injured Workers in Washington State: Challenges and Approaches to Incorporating Best Occupational Practices on a Community-Wide Level," Workers' Compensation Research Colloquium, UCLA, Los Angeles, CA, May 2003.

**Wickizer** TM, Franklin G, Deborah Fulton-Kehoe, Turner JA. "Assessing patient satisfaction in relation to outcomes in a workers' compensation system," Presented at the AcademyHealth Annual Meeting, Nashville TN, June 2003.

**Wickizer TM**, Franklin G. "The Costs and Benefits of Workplace Drug Free Programs," Presented at the 133rd Annual Meeting, American Public Health Association, Washington DC, November 2004.

**Wickizer TM**, Franklin G. "Improving the Quality of Care for Injured Workers in Washington State," Presented at the 133rd Annual Meeting, American Public Health Association, Washington DC, November 2004.

**Wickizer TM**, Franklin G, Fulton-Kehoe D. "Reducing Disability among Injured Workers in Washington State through Quality Improvement," Presented at the 134th Annual Meeting, American Public Health Association, Philadelphia PA, December 2005.

**Wickizer TM**. "An Initiative to Improve Health Care Quality for Injured Workers in Washington State," Presented at University of Washington Occupational Medicine Grand Rounds, Seattle WA, April 2006.

**Wickizer TM,** "Reducing Disability in a Workers' Compensation System: The Washington State Occupational Health Services Project," Presented at the Annual Meeting of the American Pain Society, Washington DC, May 2007.

**Wickizer TM**, Franklin G, Fulton-Kehoe D, Mootz R, Smith-Weller. "Can Quality Improvement Activities Encourage Physicians to Adopt Best Practices in the Delivery of Care? Evidence from a Quality Improvement Project in Washington State," Presented at the 135th Annual Meeting, American Public Health Association, Washington, DC, November 2007.

**Wickizer TM**, Franklin G, Fulton-Kehoe D, Mootz R, Smith-Weller. "Improving the Quality of Care in Workers' Compensation through a Communitywide Intervention: Did the IOM Get it Right?" Presented at the 135th Annual Meeting, American Public Health Association, Washington, DC, November 2007.

**Wickizer TM**, Estee S, Shah-Ford, Lucenko B. "Evaluation of the Washington State Brief Intervention and Referral to Treatment (WASBIRT) Project," Presented at the 136th Annual Meeting, American Public Health Association, San Diego, CA, November 2008.

**Wickizer TM,** Franklin G, Fulton-Kehoe D. "Improving Quality and Reducing Cost in Workers Compensation: A Population Based Study". Presented at the Workers Compensation Research Group Annual Meeting, Boston, MA, November 2010.

**Wickizer TM,** Estee S, Ford Shah M, He L, Huber A. "Do hospital emergency department SBIRT programs affect substance abuse treatment initiation? Evidence from Washington State". Presented at the 138th Annual Meeting, American Public Health Association, Denver, CO, November 2010.

**Wickizer TM**, Mancuso D. "Evaluation of the Washington State Treatment Expansion Program: Medicaid Cost Offsets". Presented at the 138th Annual Meeting, American Public Health Association, Denver, CO, November 2010.

Graves J, Fulton-Kehoe D, Franklin G, **Wickizer TM.** "Early diagnostic MRI for low back pain among Washington State workers: On-year Health and Disability"(poster). Presented at the annual meeting, American Public Health Association, Denver, CO. November 2010.

**Wickizer TM,** Mancuso D. "Cost Savings Associated with a Change in Resource Allocation to Expand Access to Substance Abuse Services in Washington State, USA". Workshop on Costs and Assessment in Psychiatry, Mental Health Policy and Economics Conference, Venice, Italy. March 2011.

**Wickizer TM,** Krupski A, Lucenko B. "Economic Cost of Alcohol and Drug Abuse in Washington State, USA in 2005". Workshop on Costs and Assessment in Psychiatry, Mental Health Policy and Economics Conference, Venice, Italy, March 2011.

**Wickizer TM,** Franklin G, Fulton-Kehoe D. "Improving the Quality of Occupational Health Care: A System Intervention." (poster) Presented at the International Forum on Quality and Safety. Amsterdam, Netherlands. April 2011.

**Wickizer TM.** "Can Physician Financial Incentives and Organizational Support Improving Quality and Outcomes? Evidence from an Intervention Study". (poster) Presented at the Academy Health Conference, Seattle, WA. June 2011.

**Wickizer, TM.** "Economic Cost of Alcohol and Drug Abuse in Washington State, USA" (poster). Presented at the 2011 ISPOR conference in Madrid, Spain. November 2011.

**Wickizer TM,** Franklin G and Fulton-Kehoe D. "Improving the Quality and Reducing Costs in Workers' Compensation Health Care: A Population-Based

Intervention Study" (poster). Presented at the 2011 ISPOR conference in Madrid, Spain. November 2011.

**Wickizer TM,** Franklin G, Fulton-Kehoe D. "Lessons and Findings from a Successful System-Level Quality Improvement Intervention" (poster). Presented at the 2012 International Forum on Quality and Safety in Paris, France. April 2012.

**Wickizer TM,** Franklin G, Fulton-Kehoe D, Smith-Weller T, Gluck J, Wu R, Eagan K "Improving Quality, Preventing Disability and Reducing Costs in Washington State Workers' Compensation". Presentation at the Canadian Association for Research on Work and Health annual conference, Vancouver, British Columbia. June 2012.

**Wickizer TM**, Estee S, Ford-Shah M. "Effect of screening and brief intervention on admission to substance abuse treatment." World Psychiatric Association International Congress. Prague, Czech Republic, October 2012.

**Wickizer TM.** "Economic costs of alcohol and drug abuse in Washington State, 2005". Presented at the 140th Annual Meeting, American Public Health Association, San Francisco, CA, November 2012.

Chaitoff A, **Wickizer TM.** "Understanding racial disparities in utilization of care". Presented at the 140th Annual Meeting, American Public Health Association, San Francisco, CA, November 2012.

Sears J, **Wickizer TM.** "Evaluation of an innovative vocational rehabilitation pilot program in Washington State". Presented at the 140th Annual Meeting, American Public Health Association, San Francisco, CA, November 2012.

**Wickizer TM,** Estee S, Ford-Shah M, Huber A. "Effect of SBIRT services provided in hospital emergency departments in Washington State on ad mission to chemical dependency treatment following screening." Presented at the 140th Annual Meeting, American Public Health Association, San Francisco, CA, November 2012.

Keeney B, Franklin G, Fulton-Kehoe, **Wickizer TM.** "Predictors of back surgery after occupational back injury." Presented at the 140th Annual Meeting, American Public Health Association, San Francisco, CA, November 2012.

**Wickizer TM**. "Crime outcomes associated with substance abuse treatment." Presented at the 141th Annual Meeting, American Public Health Association, Boston, MA, October 2013.

Paul M, **Wickizer TM**. "Racial disparities in gun-related violence, Presented at the 142 Annual Meeting, American Public Health Association, New Orleans, November 2014.

**Wickizer TM**, Franklin G. "Health system intervention: Back of the envelope to statewide transformation of occupational health care delivery." Presented at the 7th Annual Conference on the Science of Dissemination and Implementation, AcademyHealth, Bethesda, Maryland December 2014.

Wickizer TM, Franklin G, Fulton-Kehoe D. "A system intervention that achieved the triple aim." Presented at the 2015 Annual Research Meeting, AcademyHealth, Minneapolis, MN, June 2015.

## FUNDED RESEARCH and TRAINING

1976-1978 Co-Investigator (100%), "Evaluation of a Community-Based Drug Abuse Treatment and Mental Program," School of Social Work, University of Washington, $280,000, National Institute of Mental Health.

1979-1983 Project Coordinator (100%), "Community Hospital Program Evaluation," Department of Health Services, University of Washington, $760,000, Robert Wood Johnson Foundation.

1983-1988 Investigator (100%), "Evaluation of Private Health Care Cost Containment Approaches," Department of Health Services Management and Policy, University of Michigan, $349,000, Robert Wood Johnson Foundation.

1988-1989 Principal Investigator, dissertation grant, "Evaluation of the Effects of Private Cost Containment Programs on Health Care Utilization and Expenditures," Department of Health Services Management and Policy, University of Michigan, $20,000, National Center for Health Services Research.

1989-1993 Investigator (30%), "Community Health Promotion Grant Program Evaluation," Department of Health Services, University of Washington, $6,000,000 (seven years), Henry J. Kaiser Family Foundation.

1990-1994 Co-Principal Investigator (30%), "The Rise in Employer Health Care Costs," Graduate School of Management, University of California Irvine, Robert Wood Johnson Foundation, $438,000.

1991 Principal Investigator (15%), "Evaluation of Client Attrition from Drug and Alcohol Treatment Programs in Washington State," Washington State Department of Social and Health Services, $37,000.

1991- Principal Investigator, "Effects of Utilization review on Hospital Use Patterns

1992 and the Quality of care," Department of Health Services, University of Washington, $25,000, University of Washington Graduate School Research Fund ($5,000) and National Center for Research Resources, Public Health Service ($20,000).

1993-1998 Principal Investigator (35%), "The Effects of Health Care Cost Containment Programs on Quality and Access to Care," Robert Wood Johnson Foundation, $212,000.

1995-1997 Principal Investigator (20%), "Worker's Compensation Managed Care Pilot Evaluation," Washington State Department of Labor and Industries, $387,000.

1995-1997 Investigator (10%), "The Effects of Physician 1997 Compensation on Resource Utilization," Robert Wood Johnson Foundation, $616,000.

1994-1996 Investigator (10%), "Medicaid Expansion: Impact on Pregnancy Outcome and Cost," Agency for Health Care Policy and Research, $540,000.

1996-1999 Principal Investigator (30%), "Assessment of Innovations in Workplace Drug-Free Programs," Robert Wood Johnson Foundation, Substance Abuse Policy Research Program, $99,993.

1996-1999 Principal Investigator (25%), "Washington State's 1997 Workers' Compensation Managed Care Pilot Evaluation," Robert Wood Johnson Foundation, $265,000.

1997-1998 Principal Investigator (30%), "Washington State Occupational Health Services Policy Project," Washington State Department of Labor and Industries, $159,000.

1997 Principal Investigator (15%), "National Trends Study of Workers' Compensation Initiatives in Managed Care," Washington State Department of Labor and Industries, $43,818.

1998-1999 Principal Investigator (20%), "Development of Patient and Employer Satisfaction Surveys for Injured Workers," Washington State Department of Labor and Industries, $29,500.

1999-2001 Investigator, "Washington State Occupational Health Services Quality Improvement Project," Washington State Department of Labor and Industries, $287,000.

1999-2002 Principal Investigator (10%), "Evaluation of the Washington State Drug-Free Workplace Act," Robert Wood Johnson Foundation, $99,995.

2000-2005 Principal Investigator and Program Director (25%), Centers for Disease Control, National Institute for Occupational Safety and Health, Occupational Health

Services Research Training Grant, $1,100,000.

2001-2007 Investigator (10%), "Predicting Long-Term Disability among Injured Workers," National Institute for Occupational Safety and Health, $1,500,000.

2001-2003 Investigator (15%), "Occupational Health Services Project, Phase II," Department of Labor and Industries, $195,000.

2002-2004 Principal Investigator (20%), "Evaluating the Effects of Utilization Review within a Workers' Compensation Program," Robert Wood Johnson Foundation, $99,997.

2005 – 2010 Principal Investigator and Program Director (10%), Centers for Disease Control, National Institute for Occupational Safety and Health, Occupational Health Services Research Training Grant, $510,000.

2005 – 2006 Principal Investigator (10%), "Evaluation of a Telemedicine Program in Croatia," Norwegian Ministry of Health, $77,000.

2006 – 2007 Principal Investigator (10%), "Assessment of Private Market Insurance for the Treatment of Substance Abuse among Adolescents," Science and Management of Addictions Foundation, $41,000.

2006-2009 Investigator (20%), "Workers' Compensation Quality Improvement Pilot," WA State Department of Labor and Industries, $420,000

2007-2009 Principal Investigator (20%), "Assessment of Access to Care and Provider Satisfaction in California Workers' Compensation," California Division of Workers' Compensation, $538,000.

2007 – 2009 Investigator (15%), "Quality Improvement in Washington State Workers' Compensation," Washington State Department of Labor and Industries, $425,000.

2007-2009 Investigator (10%), "Evaluation of the Washington State Vocational Rehabilitation Program," Washington State Department of Labor and Industries, $750,000.

2010-2011 Principal Investigator (5%), "Annual Health Status Study," School Employees Health Care Board, $50,000.

2010-2011 Principal Investigator (12%), "Feasibility Study and Needs Assessment: Integrating Health Care for High-Mortality General Medical Conditions into Everyday Treatment," Ohio Department of Mental Health, $65,000.

2010- Principal Investigator (20%), "Development of a Comparative Effectiveness

2011 Training Program for Birth Outcomes," National Institutes of Health, $437,000.

2011–2012 Principal Investigator (15%), "Health Economic Analysis of Mitral Valve Surgery (MVS) for Mitral Valve Regurgitation (MR) and Medical Management of MR Complicated by Heart Failure (HF)," Abbot Laboratories, $25,000.

2011-2012 Investigator (5%), "Integrated Care Protocol Evaluation," Ohio Department of Mental Health," $50,000.

2011-2013 Principal Investigator (5%), "Integrated Care Best Practices," Ohio Department of Mental Health," $55,000.

2012–2014 Co-Investigator (15%), "A Process for Estimating the Association of Occupation and Chronic Disease," NIOSH (R21), $405,000.

2014-2015 Principal Investigator (15%), "Development of an Approach for Measuring Translational Science," Ohio State University Center for Clinical and Translational Science, $80,000.

2014-2015 Principal Investigator (15%), "Assessment of the Impact of the Ohio Prescription Opioid Guideline," Department of Aging, $82,000.

2015-2016 Principal Investigator (10%), "Evaluation of Patient-Centered Medical Homes in Ohio," Ohio Medicaid, $100,000.

## PENDING GRANTS

Co-Investigator (15%), "Implementation of Evidence-Based Psychology Intervention for Cancer Patients," National Cancer Institute, R01, $3,800,000.

## TEACHING

*Courses Taught (Lead Teaching Responsibility):*

HSERV 513, Health Care Financing, 4 credits, 25 students, Winter 1997.

HSERV 512, Introduction to Health Services, 3 credits, 45 students, Autumn 1989.

HSERV 517, Provision of Health Services, 2 credits, 25 students, Winter 1991.

HSERV 513, Health Care Financing, 4 credits, 35 students, 1997.

HSERV 516, Introduction to Health Services, 4 credits, 25 students, 1989 - 2009.

HSMGT 514, Introduction to Health Economics, 3 credits, 25 students, 1991 - 2009.

HSERV 512, Health Care System (doctoral seminar), 3 credits, 10 students, 2002 – 2009.

PUBHHMP 870.01, Comparative Health Care Systems, 4 credits, 16 students, 2011 - 2013.

PUBHHMP 875, Doctoral Seminar, 2 credits, 10 students, 2011 - 2012.

PUBHHMP 871, Health Services Research, 4 credits, 10-15 students, 2010 – 2012.

PUBHHMP 7678, Health Services Research, 3 credits, 6-10 students, 2013-2015.

PUBHHMP 6611, Introduction to Health Services, 3 credits, 35 students, 2015 – present.

*Thesis Committee Activities*

Chair, MPH Thesis Committee, Aiwei Fung, "An Implementation Evaluation of the Utilization Review Program at the Everett Clinic," Autumn 1992.

Member, MPH Thesis Committee, Bruce LeClair, "Use of Outpatient Services, Continuity, Access, and Satisfaction in Family Practice Enrolled and Non-Family Practice Enrolled CHAMPUS Eligible Military Retirees," Summer 1995.

Chair, MPH Thesis Committee, Karen Joy Tiggs, "Drug Exposed Infants Versus Non-drug Exposed Infants: Is There a Difference in Health Care Charges During Their First Year of Life?" Summer 1996.

Chair, MPH Thesis Committee, JoAngeles Davies, "Factors Influencing the Utilization of Laboratory Services in a Managed Care Setting," Autumn 1996.

Chair, MPH Thesis Committee, Esmail Mozaffari, "Cost Analysis of Primary Immunosuppressant Therapy in Liver Transplantation," Autumn 1996.

Chair, MPH Thesis Committee, Rob Byron, MD, "Inpatient Care Costs for a Selected Diagnosis at a Rural Indian Health Service Hospital," Fall 1998.

Chair, MPH Thesis Committee, John Holman, MD, "Comparison of Inpatient Resource Utilization by Community-Based Family Physicians and Academic Medical Center-Based Family Physicians," Summer 1999.

Chair, MPH Thesis Committee, Ginger Hines, MPH, "An Analysis of Four Risk Adjustment Methodologies for Predicting Operative Mortality Following Coronary Artery Bypass Surgery," Winter 1999.

Chair, MPH Thesis Committee, Brian Harrington, MD, "Association of Race, Gender and Socioeconomic Status with the Use of Clinical Preventive Screening Tests," Summer 1999.

Chair, MPH Thesis Committee, Margaret Lentil, "Improving delivery of preventive care services to medically a undeserved population," Fall 2002.

Chair, MPH Thesis Committee, Lori Whittiker, "An evaluation of state planning grants to improve access to health care services," Summer 2003.

Chair, PHD Committee, Bert Stover, "Validation and Evaluation of a Disability Measure for Upper Extremity Musculoskeletal Disorder Screening in the Workplace and Prognostic Factors of Long-term Disability." Fall 2004.

Chair, MPH Thesis Committee, Kathryn Duff, "The Evolution of Medicine: Transitioning from Tertiary to Secondary Screening for Developmental Dysplasia of the Hip at Women's Hospital." Fall 2005.

Chair, PHD Committee, Jeanne Sears, "Expanding the Role of Nurse Practitioners in Workers' Compensation: Effects on Access, Costs and Outcomes." Spring 2007.

Chair, PHD Committee, Colleen Daly, "Effects of Telecommuting on Health Behavior." Spring 2007.

Chair, PHD Committee, Emily Williams, "Addressing the Spectrum of Alcohol Services: Implementing and Informing Development of Effective Methods of Intervention," June 2009.

Chair, PHD Committee, Anne Kirchoff, "Late-Term Effects and Employment Outcomes for Cancer Survivors." October 2009.

Chair, PHD Committee, Sarah Veal-Brice, "Demographic and Occupational Characteristics Associated with Workplace Victimization and Reporting

Practices." December 2009.

Member, PHD Committee, Brook Martin. "Outcomes and Patterns of Use in Spinal Surgery." October 2010.

Chair, MPH Thesis Committee, Kimberly Miller, "An Evaluation of Hematologic Toxicity Associated with Weekly Docetaxel Treatment of Patients with Metastatic Breast Cancer." December 2010.

Chair, PHD Committee, Phillip Harrop, "Hospital and Community Characteristics Associated with Pediatric Appendectomy Outcomes." August 2012.

Chair, PHD Committee, David Muhlestein, "Factors Associated with Utilization of Different Surgical Procedures." June 2013.

Chair, PHD Committee, Tiasha Letoski, "Utilization and Health Status of Children with Disabilities." June 2015.

## SERVICE ACTIVITIES

*Department, School and University*

Chair, University of Washington School of Public Health and Community Medicine Curriculum Committee, 1996-2003.

Member, University of Washington Hogness Symposium Planning Committee, 1997- 2000.

Member, University of Washington School of Public Health and Community Medicine Faculty Council, 2002-2006.

Chair, University of Washington School of Public Health and Community Medicine Faculty Council, 2004-2005.

Member, Ohio State University College of Public Health Academic Promotions and Tenure Committee, 2009-2011.

Chair, Ohio State University College of Public Health Academic Promotions and Tenure Committee, 2011-present.

Member, Ohio State University Wexner Medical Center Division of General Internal Medicine, Chair Search Committee, 2012.

Member, Ohio State University Presidential Scholar Selection Committee, 2013.

*Other Service Activities*

Member, Advisory Commission, Washington State Drug and Alcohol Research Council, 1997 – 2009.

Member, Health Services Research and Development Committee, Seattle, VA Medical Center, 1998 – 2009.

Member, National Multiple Sclerosis Society Research Advisory Committee, 2003 – 2010.

Member, Scientific Advisory Committee, Institute for Work and Health, Toronto, Canada, 2012-2015.

Member, Scientific Advisory Group, Workers' Compensation Research Institute, Boston, MA, 2012-2015.

# EXHIBIT 2

# FINAL REPORT

# ANALYSIS OF DAMAGES FOR MEDICAL EXPENSES

## Beltran v City of Tacoma

**Thomas Wickizer, PHD, M.P.H.**
**Professor**
**College of Public Health**
**The Ohio State University**
**Affiliate Professor**
**Department of Health Services**
**University of Washington**

**August 4, 2017**

On June 29, 2013, Cesar Beltran, a 53-year-old mentally ill individual, was walking southbound on Portland Ave. in Tacoma. Mr. Beltran encountered Michel Volk, a City of Tacoma police officer. Mr. Beltran allegedly presented a direct and serious, physical threat to Officer Volk, resulting in Officer Volk shooting him. On March 15, 2017, Cesar Beltran filed suit (Case No: 15-2-11618-1) in Pierce County Superior Court for general and special damages arising from the June 29, 2013 incident.

As discussed in WASHINGTON PRACTICE WPI 30.07.01, Washington State statute RCW 4.56.250(1) (a) defines economic damages that in some circumstances may be recoverable from an accident as "objectively verifiable monetary losses, including medical expenses." Medical expenses must be both reasonable and necessary to be recovered as damages. The burden of proving reasonableness and necessity of past medical expenses rests with the plaintiff. *See* Patterson v. Horton, 84 Wn. App 531, 929 P.2d 1125 (1997). To prove the reasonableness and necessity of past medical expenses, the plaintiff may not rely solely on his or her own testimony as to amounts incurred. *See* Nelson v. Fairfield, 40 Wn.2d, 496, 244 P.2d 302 (1952). Nor can the plaintiff rely solely on medical records and bills, as "...medical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and the bills were both necessary and reasonable." *See* Patterson, supra at 543. The court in Hayes v. Wieber Enterprises Inc., 105 Wn. App. 611,616, 20 P.3rd 496 (2001) stated, "And the amount actually billed or paid is not itself determinative. The question is whether the sums requested for medical services are reasonable." Generally, expert testimony will be necessary to establish the reasonableness and necessity of medical expenses *See* Lakes v. Von Der Mehden, 117 Wn. App 212, 70 P.3rd 154 (2003).

Ms. Jean Holman of the Tacoma City Attorney Office requested that I review and analyze the billing records for past medical services provided by Tacoma General Hospital and Western State Hospital to Cesar Beltran after June 29, 2013, and provide my expert opinion regarding the reasonableness of economic damages claimed by the plaintiff for past medical expenses. I received the billing records for past medical care provided to Cesar Beltran from legal staff of the Tacoma City Attorney.

I am a health economist with over 20 years of research and teaching experience at the University of Washington (1989 – 2009) and now at The Ohio State University (2009 – 2015). I have served as an expert witness or legal consultant in similar cases in both Washington State and Oregon. By way of background, I have published peer-reviewed articles on health care expenditures (Feldstein and Wickizer, 1995), hospital expenditures and cost containment programs (Wickizer et al., 1989; Wickizer, Wheeler and Feldstein, 1991; Wheeler and Wickizer 1990; Wickizer and Feldstein, 1995). More recently, I have performed a cost of illness study (Wickizer 2013) and analyzed the cost savings of quality improvement programs in Washington State (Wickizer et al. 2011). In much of my teaching and research over the years, I have had to consider the question of what constitutes efficiency in the production and consumption of health care services. That question is conceptually related to the issue of "reasonable value" in the context of Beltran v City of Tacoma.

**Beltran Medical Bills**

I received the billing records for a number of health care providers that provided medical care to Cesar Beltran after June 29, 2013. Defense counsel Holman requested that I limit my analysis to the hospital care provided to Plaintiff Beltran. Two hospitals provided medical care to Mr. Beltran. Tacoma General Hospital provided initial inpatient care; Western State Hospital provided subsequent inpatient mental health care. A breakdown of the total charges for these two hospitals is shown in Table 1. As shown, the total (aggregate) billed charge was $756,714.64. Tacoma General Hospital accounts for 93.4% of the total billed hospital charges.

Table 1. Summary of Billed Hospital Charges

| Provider | Billed Charge |
|---|---|
| Tacoma General Hospital | $706,999.15 |
| Western State Hospital | $49,715.49 |
| **TOTAL** | **$756,714.64** |

As discussed in later sections of this report, the total billed charge shown in Table 1 ($756,714.64) does not represent the "reasonable value" of economic damages arising from Cesar Beltran's medical expenses. As noted earlier, I offer no formal opinion regarding whether the medical services incurred were medically necessary. In the next two sections of this report, I discuss why billed charges are not reasonable. Following this, I describe the methods I used to estimate the "reasonable value" of economic damages arising from medical expenses for hospital care received by Cesar Beltran. I then present the results of my analysis, and provide a summary of my findings, along with my opinion regarding the reasonable value of medical expenses incurred by Cesar Beltran.

**Economic Theory and the Value of Goods and Services**

The field of micro economics provides the theoretical basis for understanding the valuation of goods and services produced in a market economy. This brief discussion provides a context for understanding why provider charges are not a valid measure of reasonable value of medical expenses.

Micro economics focuses on the study of the behavior and choices of consumers and firms as they interact in markets. Of particular importance to economics is the setting of prices for goods in competitive markets, characterized as having many sellers and buyers, complete information on goods and services that allow consumers to judge quality and value, and no barriers to entry or exit. Competitive markets exhibit both allocative and production efficiency. The prices of goods and services and the quantities produced and consumed are determined by supply and demand. The price of a good or service produced and sold in a competitive market will normally reflect the marginal cost (and minimum long run average cost) of producing that good or service.

From a common sense viewpoint, most people would agree the price they pay for a good or service, including medical care, should bear some relationship to the cost of producing that good or service. To give a simple example, consider the purchase of reading glasses available in most drugstores. In general, prices of reading glasses are around $15 to $20. A knowledgeable buyer would not pay $50 to $60 (a mark-up on the order of 300%) for conventional reading glasses. If

a drug store attempted to sell reading glasses for $60, most buyers would decline to pay that price and would go to the another drugstore to shop for a cheaper pair of glasses they considered to represent the "reasonable value" of reading glasses.

Medical care is produced and consumed in a market context very different from that of other goods and services. Most hospital markets and physician markets bear little resemblance to competitive markets. Typically, in markets that have limited competition the prices charged for goods and services will be above (marginal) costs—often far above costs—and the prices observed in these markets will not be considered efficient or "reasonable."

Economic theory indicates that in a competitive market the prices of goods and services will represent "reasonable value" in that they will reflect marginal and long-run average costs. As discussed below, in most health care markets only limited competition prevails, and billed charges bear little resemblance to actual costs. For example, in Washington State the general mark-up of hospital billed charges over costs is **300%**, and at some hospitals the mark-up exceeds **400%**. No informed person would consider a mark-up of this magnitude to represent the reasonable value of care. Because health care markets do not exhibit the characteristics of competitive markets, provider (billed) charges do not provide a useful measure of "reasonable value" of economic loss arising from medical expenses from a market or social perspective, and do not do so in the present legal case.

**Nature of Health Care Markets and Implications for Determining Reasonable Value of Medical Expenses**

It is well understood by the health policy makers, researchers, and analysts that health care markets, due to their distinctive features, do not resemble competitive markets. In the great majority of health care markets, especially hospital markets, there are not many suppliers of medical care, entry into the health care market is limited, and consumers certainly do not have complete information on prices and quality. Further, many hospitals and other health care organizations are non-profit rather than for-profit, so standard assumptions about firm market behavior do not apply.

A fundamental assumption of classic economic theory is that supply and demand are independent. No one seller and no single consumer can influence price because they represent but a very small portion of the market. This assumption has been challenged in health care, and empirical evidence supports the notion that, at least to some extent, physicians (and perhaps hospitals) can "induce" demand, and thereby affect utilization (Rice 1983; Fuchs 1978; Fahs 1992; Wilson and Tedeschi 1984).

Hospital charges, and other provider charges, do not reflect the workings of supply and demand factors. Provider charges (list prices) often reflect provider efforts to maintain needed revenue in the face of having to accept discounts from payers. Many payers use fee schedules to pay for care, which require providers to accept contractual discounts. Since providers know they will have to accept discounted fees from payers, they increase their charges to make up for what they may lose on the discounted fees, fee schedules, or prospectively set prices. It is not uncommon for hospitals and physicians to accept discounted fees ranging from 30% to 70% off of their billed charges.

Further, there is wide variation from hospital to hospital and from physician to physician in billed charges. Uwe Reinhardt, a nationally known and respected health economist at Princeton, provided a thoughtful discussion of how providers set charges and why provider charges typically do not represent the value of efficiently produced health care services (Reinhardt 1987). Reinhardt documented significant variation in the prices charged for different surgical procedures and high mark-ups in the laboratory and other services. For example, the prevailing charge for a single view chest X-ray varied six-fold, while the charge for a brief follow-up hospital visit varied by almost five-fold.

In a more recent analysis, Reinhardt (2006) discussed pricing of hospital services. He noted that every hospital has a "chargemaster," which lists the charges for every procedure and supply provided. Hospitals enter into voluntary contracts with multiple health plans and payers that stipulate what the hospital will accept as payment for a given procedure. In a sense, these contracts provide some "market measure" of the hospital's valuation of its services. Using national data, Reinhardt reported that hospitals accepted (from all payers) an average of **38% of**

**their billed charges.** The decision by hospitals to accept 38% of their charges as payment, a form of market test, reinforces my opinion that billed charges do not represent the reasonable value of medical care. The fact is virtually nobody pays full hospital charges.

One recent article in the New York Times (May 8, 2013) drew wide attention for highlighting the great variation in hospital billed charges and billed charges in relation to Medicare payments. The article noted, "In one Dallas hospital the average bill for treating simple pneumonia was $14,610, while another [hospital] charged $38,000. The issue of hospital pricing has also been examined and reported by the Seattle Times (October 1, 2014, "With Huge Variability in Hospital Prices, Patients Must Beware). The Seattle Times article noted that from hospital to hospital in Washington charges can vary three- to fourfold.

An article by Beth Kutscher, titled "Hospitals say outpatient list prices are irrelevant," published in June 8, 2013 of Modern Healthcare noted, "The [hospital] charges are an artifact of a broken system…they were developed as a method for entering into negotiations with third-party payers and will become even less relevant under healthcare reform's new payment models….. I'm not aware of anyone who pays 100% of charges."

Hospital charges vary widely even within a small geographic area. The federal government has begun releasing data on hospital billed charges for 100 common diagnoses for Medicare patients. As part of my analysis, I obtained Medicare billing data for 2014 for four common diagnoses for hospitals located in different areas within the greater Puget Sound area, including Everett, Federal Way and Tacoma. As shown in Table 2, hospital billed charges vary significantly among Puget Sound hospitals. For example, the billed charge for DRG 470 (Major Joint Replacement) varied from a high of $91,784 (Tacoma General) to a low of $41,122 (Virginia Mason). Similarly, for DRG 238 (Major CVD [cardiovascular disease] Procedure), billed charges ranged from $159,162 (St. Joseph) to $71,473 (Virginia Mason). ***If billed charges were used as the metric to evaluate the reasonable value of medical expenses for DRG 470, would a patient hospitalized in Tacoma General deserve 2.23 times the award for economic damages as a patient hospitalized in Virginia Mason, despite the fact that Virginia Mason is widely respected nationally as an excellent hospital?***

Table 2. Hospital Billed Charges for Medicare Patients for Selected Puget Sound Hospitals

| Hospital | DRG 460: Spinal Fusion | DRG 470:Major Joint Replacement | DRG 871: Septicemia or Severe Sepsis | DRG 238: Major CVD Procedure |
|---|---|---|---|---|
| Harborview Medical Center | $159,027 | $89,267 | $63,816 | $135,930 |
| Northwest Hospital | $90,966 | $59,267 | ---- | ------ |
| Overlake Medical Center | $112,427 | $51,667 | $38,992 | $82,087 |
| Providence Regional Medical Center | $139,606 | $59,338 | $40,318 | $127,104 |
| St. Francis Medical Center | $142,730 | $81,003 | $57,484 | ----- |
| St. Joseph Hospital | $130,283 | $76,620 | $67,939 | $159,162 |
| Swedish Medical Center | $165,079 | $72,103 | $52,725 | $150,840 |
| Swedish Medical Center (Cherry Hill) | $116,649 | ----- | $69,094 | $152,756 |
| Tacoma General Hospital | $150,614 | $91,784 | $52,671 | $153,984 |
| UW Medical Center | $86,516 | $54,642 | $46,676 | $85,735 |
| Virginia Mason Hospital | $95,683 | $41,122 | $37,445 | $71,473 |
| Ratio of Highest to Lowest Charge | 1.90:1.00 | 2.23:1.00 | 1.84:1.00 | 2.23:1.00 |

The variation in hospital charges and the amounts charged largely reflect a "system problem" in terms of reimbursement and the process used by insurance carriers and health plans to contract with hospitals and other providers. In part, to make up for the lack of payment from public payers, hospitals increase charges (list prices on their chargemaster) and attempt to pass these higher charges on to private insurance carriers and health plans.

In cases similar to this case, plaintiffs' attorneys often rely on physicians to provide expert witness testimony to assert that billed charges are reasonable and represent the "reasonable value" of care received by the plaintiff. This is done in the absence of any external measure or criteria related to reasonable value as discussed in Hayes v. Wieber Enterprises Inc. and Patterson v. Horton, 1997. Rather, plaintiff expert witnesses review the plaintiff's billed charges and assert these charges are generally "in line" with similar billed charges. There are at least two important flaws inherent in this approach. First, it does not comport with the established fact, as

discussed above, that billed charges vary greatly from hospital to hospital and provider to provider. Second, whether a particular hospital or physician bill is "in line" with other hospital or physician charges is irrelevant for establishing reasonable value. Similarity does not imply reasonableness, contrary to the views of plaintiff expert witnesses.

The above discussion points out the problem of using provider billed charges to establish the reasonable value of medical care. Excessive billed charges and the great variability in these charges largely reflect forces in the larger health care system related to reimbursement formulas and selective payer contracting. And, as noted earlier, virtually nobody pays full hospital charges. If nobody pays hospital billed charges, it is counterintuitive to argue they represent reasonable value. To restate a central thesis of this report: hospital and physician billed charges bear little relationship to the resources used to provide care and do not represent reasonable value of medical services. What then is an alternative approach to establishing the reasonable value of hospital medical expenses for Cesar Beltran?

The actual cost of hospital services provides a more valid measure of the reasonable value of health care resource consumption than billed charges (Lave et al. 1994, 2009 Reinhardt 1987). Below I describe the method I used to estimate the reasonable value of medical expenses for care the plaintiff alleges is recoverable in this case. This method adjusts the billed charges to derive estimates of hospital inpatient and outpatient costs for hospital services provided to Cesar Beltran.

## METHOD OF ESTIMATING REASONABLE CHARGES

Cesar Beltran was admitted to Tacoma General Hospital on June 29, 2013. He remained there through August 22, 2013. The Tacoma General Hospital billing records include charges for: (1) intensive care unit (ICU) room and board (R&B) services; (2) standard R&B inpatient services; and (3) ancillary inpatient services, including x-ray, laboratory, operating room, pharmacy, and medical supplies. Charges shown in the hospital billing records were adjusted using per diem cost information and cost-to-charge ratios (CCRs) reported on the hospital Federal Cost Report. Hospital cost reports are filed annually and adhere to strict standardized accounting rules. The

reports are also subject to audit and include cost and revenue information for all patients receiving inpatient or outpatient care. These adjusted charges approximate the different costs of hospital services and provide a more valid estimate of "reasonable value" than billed charges.

Information used to perform the adjustment is listed in Worksheets C and D of the Federal Cost Report. I used information from Worksheet D to obtain per diem costs for R&B services listed on the hospital billing records. The per diem costs, as reported in the Federal Cost Report, were then multiplied by the relevant length of stay for each hospitalization to derive R&B cost estimates. To estimate the costs of hospital ancillary services, e.g., laboratory, radiology, pharmacy, I followed the conventional method of applying CCRs, as reported in the Federal Cost Report, to the charges listed on the hospital billing records. CCRs are generated by dividing allowable costs for each ancillary service cost center by the charges attributed to that center, and are reported on Worksheet C (column 9) of the Federal Cost Report. To provide an example, assume a billing record showed a $10,000 charge for hospital laboratory services and the CCR for the laboratory services was 0.50. The adjusted (reasonable) charge would then be $5,000 ($10,000 X 0.50). By summing the adjusted charges over relevant ancillary service cost centers, one obtains an estimate of the total cost for ancillary hospital services incurred by a patient. Adding these cost estimates to the cost estimates for R&B services provides an estimate of total hospital costs incurred by a patient.

The approach I have taken using CCRs to estimate reasonable value has been widely used by researchers conducting various studies aimed at assessing the value of resource consumption for the treatment of various diseases and conditions or performing some type of economic analysis. These studies have been published in leading peer-reviewed medical and health services journals. For example, Maeda et al. (2012) estimated the increase in hospital cost per case in a national study using CCRs to adjust billed charges. The researchers emphasize the advantages of estimating costs at the department, or service cost level, as opposed to the hospital overall level. This is the same cost estimation method I use. Other researchers (Ruhnke et al. 2010; Sheyn et al. 2017; Doupnik et al. 2016; Stey et al. 2015) have also used CCRs to estimate the value resource consumption for different conditions. In sum, my empirical method of estimating

reasonable value by applying CCRs to billed charges is well known, widely used, and reported in the peer-reviewed literature.

## RESULTS

**Tacoma General Hospital:** Cesar Beltran was admitted to Tacoma General Hospital on June 29, 2013. He received intermittent outpatient care there and was subsequently readmitted for a nine-day stay on February 12, 2014. The billed charges and corresponding reasonable charges for this care are shown in Tables 3-6. As shown in Table 3, the total billed charge for the initial hospitalization on June 29, 2013 was $616,444.45. The corresponding reasonable charge is **$172,112.34.** It should be noted some of the cost-to-charge ratios (CCRs) shown in Table 3 are as low as 0.04 to 0.20. These CCRs imply a mark-up of charges over costs of **400% to over 2000%.** No objective person would consider mark-ups in this range to represent anything remotely approaching reasonable value.

Table 3. Estimated Cost of Inpatient Care Provided by Tacoma General Hospital for Admission on June 29, 2013

| Revenue Code | Description | Cost-to-Charge Ratio or Per Diem Cost | Billed Charge | Reasonable Charge |
|---|---|---|---|---|
| 120 | Room & Board, 43 days @$1,812 per day | $1,061.00 | $77,916.00 | $45,623.00 |
| 200 | Room & Board, 7 days @ $4,300 per day | $1,538.39 | $30,100.00 | $10,768.73 |
| 200 | Room & Board, 4 days @ $4,991 per day | $1,538.39 | $19,964.00 | $6,153.56 |
| 250 | Pharmacy | 0.249 | $20,111.45 | $5,007.75 |
| 272 | Medical/Surgical Supplies | 0.643 | $47,284.00 | $30,403.61 |
| 300 | Laboratory | 0.160 | $38,782.00 | $6,205.12 |
| 320 | Radiology | 0.222 | $13,571.00 | $3,012.76 |
| 350 | CT Scan | 0.039 | $58,526.00 | $2,282.51 |
| 360 | Operating Room | 0.149 | $75,744.00 | $11,285.86 |
| 370 | Anesthesia | 0.200 | $18,027.00 | $3,605.40 |
| 390 | Blood Storage/Processing | 0.257 | $75,279.00 | $19,346.70 |

| | | | | |
|---|---|---|---|---|
| 400 | Other Imaging | 0.222 | $1,466.00 | $325.45 |
| 410 | Respiratory Services | 0.130 | $36,021.00 | $4,682.73 |
| 420 | Physical Therapy | 0.312 | $1,294.00 | $403.73 |
| 430 | Occupational Therapy | 0.257 | $1,043.00 | $268.05 |
| 450 | Emergency Room | 0.127 | $15,322.00 | $1,945.89 |
| 480 | Cardiology | 0.400 | $6,001.00 | $2,400.40 |
| 636 | Drugs | 0.249 | $44,869.00 | $11,172.38 |
| 680 | Trauma | 0.127 | $19,238.00 | $2,443.23 |
| 710 | Recovery Room | 0.160 | $6,440.00 | $1,030.40 |
| 730 | EKG/ECG | 0.105 | $113.00 | $11.87 |
| 750 | Gastro-intestinal | 0.400 | $5,713.00 | $2,285.20 |
| 760 | Treatment/Observation Room | 0.400 | $677.00 | $270.80 |
| 920 | Other Diagnostic | 0.400 | $2,943.00 | $1,177.20 |
| **TOTAL** | | | **$616,444.45** | **$172,112.34** |

The estimated reasonable value for outpatient services provided by Tacoma General Hospital is shown in Table 4. As shown, the total billed charge was $20,727.30. The corresponding reasonable charge is **$3,831.25.** Note there were several services, with a total billed charge of approximately $2,000, which had a CPT code but no hospital revenue code. These services were excluded from Table 4.

Table 4. Estimated Cost of Outpatient Services Provided by Tacoma General Hospital

| Date of Service | Revenue Code | Service Description | Cost-to-Charge Ratio | Billed Charge | Reasonable Charge |
|---|---|---|---|---|---|
| 9/9/2013 | 510 | Clinic | 0.400 | $120.00 | $48.00 |
| 10/1/2013 | 250 | Pharmacy | 0.249 | $7.00 | $1.74 |
| 10/1/2013 | 250 | Pharmacy | 0.249 | $200.00 | $49.80 |
| 10/1/2013 | 272 | Medical/Surgical Supplies | 0.643 | $846.00 | $543.98 |
| 10/1/2013 | 320 | Radiology | 0.222 | $857.00 | $190.25 |
| 10/1/2013 | 370 | Anesthesia | 0.200 | $792.00 | $158.40 |
| 10/1/2013 | 636 | Drugs | 0.249 | $125.00 | $31.13 |
| 10/1/2013 | 710 | Recovery Room | 0.160 | $1,932.00 | $309.12 |
| 10/1/2013 | 710 | Recovery Room | 0.160 | $745.00 | $119.20 |
| 10/1/2013 | 750 | Gastro-intestinal Services | 0.400 | $3,153.00 | $1,261.20 |

| | | | | | |
|---|---|---|---|---|---|
| 12/9/2013 | 510 | Clinic | 0.400 | $173.00 | $69.20 |
| 3/24/2014 | 510 | Clinic | 0.400 | $104.00 | $41.60 |
| 10/26/2015 | 250 | Pharmacy | 0.249 | $14.00 | $3.49 |
| 10/26/2015 | 301 | Laboratory | 0.160 | $104.00 | $16.64 |
| 10/26/2015 | 301 | Laboratory | 0.160 | $84.00 | $13.44 |
| 10/26/2015 | 305 | Laboratory | 0.160 | $95.00 | $15.20 |
| 10/26/2015 | 306 | Laboratory | 0.160 | $98.00 | $15.68 |
| 10/26/2015 | 307 | Laboratory | 0.160 | $39.00 | $6.24 |
| 10/26/2015 | 352 | CT Scan | 0.039 | $7,156.00 | $279.08 |
| 10/26/2015 | 450 | Emergency Room | 0.127 | $318.00 | $40.39 |
| 10/26/2015 | 450 | Emergency Room | 0.127 | $660.00 | $83.82 |
| 10/26/2015 | 450 | Emergency Room | 0.127 | $1,635.00 | $207.65 |
| 10/26/2015 | 636 | Drugs | 0.249 | $77.55 | $19.31 |
| 10/26/2015 | 636 | Drugs | 0.249 | $125.00 | $31.13 |
| 10/26/2015 | 636 | Drugs | 0.249 | $108.90 | $27.12 |
| 10/26/2015 | 636 | Drugs | 0.249 | $77.85 | $19.38 |
| 10/27/2015 | 302 | Laboratory | 0.160 | $176.00 | $28.16 |
| 10/27/2015 | 402 | Other Imaging | 0.222 | $905.00 | $200.91 |
| **TOTAL** | | | | **$20,727.30** | **$3,831.25** |

Table 5 shows the billed charges and corresponding reasonable charges for the second admission on February 12, 2014. As shown, the total billed charge was $69,827.40. The reasonable charge is **$20,255.33.**

Table 5. Estimated Cost of Inpatient Care Provided by Tacoma General Hospital for Admission on February 12, 2014

| Revenue Code | Description | Cost-to-Charge Ratio or Per Diem Cost | Billed Charge | Reasonable Charge |
|---|---|---|---|---|
| 120 | Room & Board,9 days @$2,029 per day | $1,097.91 | $18,261.00 | $9,881.19 |
| 250 | Pharmacy | 0.218 | $2,845.25 | $620.26 |
| 272 | Medical/Surgical Supplies | 0.643 | $3,313.00 | $2,130.26 |
| 300 | Laboratory | 0.156 | $1,643.00 | $256.31 |

| | | | | |
|---|---|---|---|---|
| 360 | Operating Room | 0.149 | $28,940.00 | $4,312.06 |
| 370 | Anesthesia | 0.200 | $4,360.00 | $872.00 |
| 420 | Physical Therapy | 0.317 | $374.00 | $118.56 |
| 430 | Occupational Therapy | 0.281 | $726.15 | $204.05 |
| 510 | Clinic | 0.774 | $126.00 | $97.52 |
| 636 | Drugs | 0.218 | $4,985.00 | $1,086.73 |
| 710 | Recovery Room | 0.159 | $4,254.00 | $676.39 |
| **TOTAL** | | | **$69,827.40** | **$20,255.33** |

Table 6 provides a summary of the aggregate billed charges and corresponding reasonable charges for Tacoma General Hospital. As shown, the aggregate billed charge was $706,999.15. The corresponding reasonable charge is **$196,198.91.**

Table 6. Summary of Charges for Tacoma General Hospital

| Date of Service | Billed Charge | Reasonable Charge |
|---|---|---|
| 6/29/13-8/22/13 | $616,444.45 | $172,112.34 |
| 2/12/14-2/21/14 | $69,827.40 | $20,255.33 |
| Outpatient Services | $20,727.30 | $3,831.25 |
| **TOTAL** | **$706,999.15** | **$196,198.91** |

**Western State Hospital:** Cesar Beltran was hospitalized in Western State Hospital on February 12, 2014. The billed charges and corresponding reasonable charges are shown in Table 7. As shown, the total billed charge was $49,715.49. The reasonable charge is **$44,710.47.** I made only a limited adjustment to the billed charge for Western State Hospital. The reason for this is that the billing practices of Western State are quite different from those of Tacoma General. Almost all of the charges for Western State represent Room & Board (R&B) charges, and there was only a small mark-up for these charges over per-diem R&B costs, as reported on the hospital Federal Cost Report. This should make clear the extent of my adjustment for billed charges is solely a function of the degree to which hospitals mark up charges over costs. Tacoma General

Hospital has high mark-ups, so my adjustment of billed charges to estimate reasonable value was greater as compared to Western State Hospital.

Table 7. Estimated Cost of Care Provided by Western State Hospital for Admission on February 12, 2014

| Revenue Code | Description | Cost-to-Charge Ratio or Per Diem Cost | Billed Charge | Reasonable Charge |
|---|---|---|---|---|
| 120 | Room & Board, 56 days @$541 per day | $518.38 | $30,296.00 | $29,029.28 |
| 120 | Room & Board, 26 days @$549 per day | $518.38 | $14,274.00 | $13,477.88 |
| 300 | Laboratory | 0.581 | $660.77 | $383.91 |
| 320 | Radiology | 0.433 | $773.22 | $334.80 |
| 900 | Psychiatry | 0.400 | $938.86 | $375.54 |
| 920 | Other Diagnostic | 0.400 | $2,772.64 | $1,109.06 |
| **TOTAL** | | | **$49,715.49** | **$44,710.47** |

## SUMMARY AND CONCLUSION

Medical expenses are economic damages, providing these expenses are reasonable. As discussed earlier, billed charges do not represent the reasonable value of economic loss arising from medical care. I provided an alternative method of estimating that value. In the prior tables, I presented estimates of the reasonable value of economic loss for hospital medical care services received by Cesar Beltran after June 29, 2013.

A summary of the estimates of reasonable value generated by my analysis is presented below in Table 8. As shown, the total (aggregate) billed amount for the care analyzed in this report is $756,714.64. The adjusted reasonable value of this care is **$240,909.38.** My estimate does not incorporate a profit margin one might argue hospitals deserve in considering the reasonable value of care. Bazolli et al. (2014) recently analyzed hospital profit margins, based on a national sample of hospitals. The researchers found hospital profit margins to range from roughly two

percent for non-profit hospitals to six-percent for for-profit hospitals. For the purpose of this report, I make the liberal assumption Tacoma General Hospital and Western State Hospital had a profit margin of 5%. I therefore increased my reasonable value estimate from $240,909.38 to **$252,954.85** ($240,909.38 X 1.05).

Table 8. Summary of Hospital Charges

| Provider | Billed Charge | Reasonable Charge |
|---|---|---|
| Tacoma General Hospital | $706,999.15 | $196,198.91 |
| Western State Hospital | $49,715.49 | $44,710.47 |
| **TOTAL** | **$756,714.64** | **$240,909.38** |

My estimate of reasonable value ($252,954.85) represents 33.4% of total billed charges ($756,714.64), a figure almost as high as what hospitals across the nation accept (38%) as payment for medical care services. To restate a principal theme of this report, billed charges bear little relationship to the value of services provided to patients. A "market test" of this assertion is what hospitals accept from payers (38% of charges) as payment in full for services provided to patients.

Three other points, discussed earlier in this report, should be emphasized: (1) virtually nobody pays full billed charges for hospital care; (2) the mark-ups of billed charges over costs for some services at Tacoma General Hospital, which accounted for the great majority of all billed charges, exceeded 500%, a mark-up few, if any, informed persons would consider reasonable; and (3) even within the Puget Sound area, hospital billed charges exhibit substantial variation for patients with the same diagnosis, raising further questions about the validity of using billed charges as a measure of "reasonable value."

Based on the information provided in this report, it is my opinion the figure generated from my analysis (**$252,954.85**), which includes a profit margin of 5 percent, is fully consistent with the concept of reasonable value as applied by Washington State courts in legal cases such as Beltran v City of Tacoma.

Thomas Wickizer, PHD

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PIERCE COUNTY, WASHINGTON

August 25 2017 10:53 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**PLAINTIFF'S REPLY TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS** |

## I. INTRODUCTION

Plaintiff has met his burden of establishing that the medical bills that were incurred as a result of the ballistic injuries are reasonable. *Hayes v. Wieber Enterprises, Inc.,* 105 Wn. App. 611, 616, 20 P.3d 496, 499 (2001) ("The question is whether the sums requested for medical services are reasonable."); WPI 30.07. This is based on more than the medical bills. It is based on expert testimony establishing the reasonableness of the charges for the treatment that was required from the ballistic injuries sustained by Cesar Beltran.

In response to Plaintiff's motion for summary judgment on the reasonableness of plaintiff's past medical bills, Defendant has disclosed for the first time a report from Thomas



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Wickizer, Ph.D., wherein he challenges the reasonableness of the medical bills charged by local providers including Tacoma General Hospital. The court should exclude the testimony of Dr. Wickizer because he does not qualify as an expert under the *Frye* test and he does meet not the requirements of ER 702 and 703. In particular, Dr. Wickizer should be excluded for the following reasons:

1. No aspect of Dr. Wickizer's methodology and theory is generally accepted by the relevant scientific community; and
2. His testimony would not be helpful or reliable under ER 702 and 703; and
3. Dr. Wickizer has only used Medicare's reimbursement rate, one group's discounted reimbursement scheme, rather than what consumers actually pay for such services, in reaching his conclusion; and
4. Dr. Wickizer's opinions implicate the collateral source rule and invite speculation from the jury about insurance coverage.

In an order as recent as June 2017, Judge McDermott of King County Superior Court excluded the opinions and testimony of Dr. Wickizer, ruling:

> The use of Wickizer would require a change in the rules of evidence. This is too difficult for the jury to determine reasonableness of every billing. Plaintiff should not be forced to argue re: discount of insurance "breaks" in the billings.[1]

Plaintiff respectfully urges this Court to likewise exclude Dr. Wickizer.

## II. LEGAL AUTHORITY & ARGUMENT

The Court should exclude the testimony of Thomas Wickizer on the basis that he does not qualify as an expert under the *Frye* test set forth in *Frye v. United States*, 293 F. 1013, 34 A.L.R. 145 (D.C. Cir. 1923) and on the basis that his testimony violates Washington's

[1] Order on Plaintiff's Motion in Limine, King County Superior Court, No. 15-2-25974-1 (June 8, 2017), attached as Exhibit A to LeBank Decl., see also Plaintiff's Primary Motions in Limine, Exhibit B to LeBank Decl.,



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collateral source rule. For expert testimony to be admissible, it first must satisfy the *Frye* standard and then must meet the other criteria in ER 702 and 703. *See Anderson v. Akzo Nobel Coatings, Inc*., 172 Wn.2d 593, 603 (2011). In his report, Dr. Wickizer opines regarding the reasonable value of medical bills based on an unknown and undisclosed formula based on published data regarding Medicare reimbursement rates. He then adjusts the amounts billed by Mr. Beltran's health care providers to amounts to which he has no basis that any reasonable health care provider would accept for the services provided. There is no sound basis for this type of reduction in the cost of Cesar Beltran's medical care, the reduction of which will be borne by Cesar Beltran. Cesar Beltran did not have the opportunity to select his hospital when he was emergently rushed to the hospital after being shot. The City of Tacoma does not get to reduce the cost of care retroactively. For the reasons discussed below, this basis of his opinion should be excluded under *Frye*, ER 702 and 703 and because it violates the collateral source rule.

**A. Dr. Wickizer's opinion should be excluded under *Frye* because his theory and methodology are not reliable or based on principles generally accepted by the relevant scientific community.**

The methodology used by Dr. Wickizer is flawed because he fails to consider what amounts patients actually pay for the medical services and treatments they receive. As explained in *Anderson v. Akzo Nobel Coatings, Inc*., the primary goal is to determine "whether the evidence offered is based on established scientific methodology." *Id.* (citing *State v. Gore*, 143 Wn.2d 288, 302, 21 P.3d 262 (2001)). Both the scientific theory underlying the evidence and the technique or methodology used to implement it must be generally accepted in the scientific community for evidence to be admissible under Frye. *Id*. "If there is a significant dispute among qualified scientists in the relevant scientific community, then the evidence may not be admitted," but scientific opinion need not be unanimous. *Id*. If the testimony is not


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grounded in generally accepted principles or theories, the expert's testimony should be excluded. *Id. (*citing *State v. Martin,* 101 Wn.2d 713, 719, 684 P.2d 651 (1984)). The *Frye* test is not implicated if the theory and the methodology relied upon and used by the expert to reach an opinion on causation is generally accepted by the relevant scientific community. *Id*.

Dr. Wickizer's methodology is not based on "appraising" the medical goods and services in question here. During his deposition in *Fogle v. Clark County*, Dr. Wickizer admitted that his opinion as to the "reasonable value" of the medical services in his report was essentially equivalent to the "fair market value" of the services provided.[2] Under Washington law, "[fair market value is what a willing buyer not under duress is willing to pay a willing seller also not under duress when both have adequate information." *See Coast to Coast Stores, Inc. v. Gruschus,* 100 Wn.2d 147, 163, 667 P.2d 619 (1983); *see also Premera v. Kreidler,* 133 Wn. App. 23, 45 n. 12, 131 P.3d 930 (2006). The determination of the fair market value of a service requires an appraisal by a qualified appraiser. In order to appraise an asset, an expert must determine the price what consumers have paid for the good or service, not what it costs to create the good or service.

Dr. Wickizer's report is based entirely on what he perceives to be the cost of creating the medical service, not what a willing consumer and a willing health care provider are willing to exchange for the service.[3] Dr. Wickizer also admitted in a prior case that he did not do any

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[2] Q. First, you've now done what I would have done which is you have equated the term reasonable value as used in this case to the term fair market value, and that's your intent, is it not?
Q. Do you understand the question?
A. So, you are saying is reasonable value synonymous with fair market value?
Q. Yes.
Deposition of Thomas Wickizer in *Fogle v. Clark County*, 2012 WL 8466003 (Wash.Super.) ("Wickizer Dep. I") at p. 29 attached as Ex. C to LeBank Decl.

[3] Q. I want you to answer yes or no, whether you can tell me the reasonable value of any product or services without knowing who it is, who the buyer is? Yes or no?

A. The answer is yes, but as I said before, reasonable value does not, does not pertain to a given individual. The example I used before, people have different preferences, people have different incomes, so people are willing to pay different amounts for goods and service. How an economist approaches reasonable value, how I tried to approach it in this report *was on the basis of cost of producing the services*. Wickizer Dep. I at 82-83, Ex. C to LeBank Decl. [Emphasis added]



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review of what patients actually pay for healthcare services and treatments.[4] Because Dr. Wickizer does not make an effort to review or determine what consumers pay for medical services compared to the amount billed, Dr. Wickizer's opinions fail to follow the generally accepted protocols and methods that appraisers of goods and services follow in determining the reasonable value. Without expertise and knowledge in what medical consumers *actually pay* in relation to the amount billed for health care services and treatments, Dr. Wickizer is not qualified to testify as an expert witness regarding the "reasonable value" of such services and treatments. Furthermore, his opinions rely on a methodology based entirely on speculation and conjecture regarding *the cost to produce the service,* not its reasonable value or fair market value.

The only other methodology employed by Dr. Wickizer is that the reasonable value of any medical good or service is the amount listed by hospitals in their Medicare Cost Reports.[5] Plaintiffs can find no other experts that support or promulgate the "Medicare Cost Report methodology" for determining the reasonable value of medical goods and services and no

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[4] Q. Did you ever go down to the courthouse and find what judgments against people, the amount of the judgments against people for unpaid medical bills were?

A. No.

Q. Did you ever go out and do a survey of what the average person was actually paying combined between their health insurance, their co-pay for payment of medical bills?

A. Did I do a survey of that?

Q. Yes.

A. No.

Q. Did you ever do any research on that?

A. Not directly. Wickizer Dep. I at 120, Ex. C to LeBank Decl..

Q. And you don't have any research whatsoever as to what the average amount paid to a hospital medical provider, anybody, is in terms of versus their list price and what they actually put in their pocket, do you? Wickizer Dep. I at 124 attached as Ex. C to LeBank Decl.

Q. You have no research in front of you that you have used in this case, relied on in this case that will tell you what the average payment total is from all sources to medical providers versus the list price, correct? You said it was 40 percent but you don't know that, do you?

A. Correct.

Q. You have no idea what the number was?

A. And it would vary from hospital to hospital and clinic to clinic. Wickizer Dep. I at 125, Ex. C to LeBank Decl.

[5] *See* Analysis of Damages for Medical Expenses of Thomas Wickizer, Ph.D, *Theoharis v. Rongen*, 4, 2014 WL 5788386 (W.D.Wash.).



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evidence that this methodology is generally accepted in the field of healthcare economics.

In fact, Dr. Wickizer has admitted that this type of reduction of the actual cost of medical bills is solely designed for litigation – with the purpose of reducing the price of medical bills.

> A: And wouldn't you agree that the methodology that you've used in this report for your calculations is specifically geared towards determining the reasonable value of medical services as it relates to a litigation context."
>
> A: Yes.[6]

In addition, a determination of fair market value, reasonableness of value, must be made based upon what a consumer is willing to pay in a free market for those services. Dr. Wickizer applies a group discount (the Medicare reimbursement rate) to a consumer not eligible for such rate, is ignoring established principles of fair market value.[7] Cesar Beltran, like virtually every other consumer of medical services, lacks the purchasing power of Medicare. Because individuals like Cesar Beltran lack Medicare's purchasing power, the wholesale rate that Medicare reimburses should not dictate the "reasonable value" of those medical services to individuals who are not similarly situated. In contrast, Medicare is a government agency, with not only the power of unparalleled purchasing power, but also the power and laws of the federal government to coerce hospitals and medical providers to accept its reimbursement rates. Such rate has no relationship to what a free market buyer and sell would exchange such services.

Accordingly, Dr. Wickizer must be excluded as an expert witness in this case because he does not meet the criteria of *Frye.*

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[6] See Wickizer Dep. II, p.41:11-16, attached as Ex. D to LeBank Decl.

[7] Q. So the greater your purchasing power, like Medicare has, the less you pay?
A. The less you pay versus some small insurance company?
Q. That would be one example.
A. In general, yes. Wickizer Dep. I at 104-105, Ex. C to LeBank Decl.



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### B. Dr. Wickizer's testimony is not helpful under ER 702 or based on facts and information typically relied upon by experts under ER 703

"Once a methodology is accepted in the scientific community, then application of the science to a particular case is a matter of weight and admissibility under ER 702, which allows qualified expert witnesses to testify if scientific, technical, or other specialized knowledge will assist the trier of fact." *Id*. (citing *State v. Gregory,* 158 Wash.2d 829–30, (2006)). Specifically, our courts consider "(1) whether the underlying theory is generally accepted in the scientific community and (2) whether there are techniques, experiments, or studies utilizing that theory which are capable of producing reliable results and are generally accepted in the scientific community." *Id*. (citing *State v. Riker*, 123 Wn.2d 351, 359, 869 P.2d 43 (1994).

In this case, Dr. Wickizer fails to satisfy either prong of ER 702. Dr. Wickizer's testimony will not be helpful to the jury because he has no experience as to what consumers, other than Medicare, pay for medical services. Because he lacks experience in the amounts that medical consumers pay for health care services and treatments, Dr. Wickizer's testimony will not be helpful to jurors in determining the "reasonable value of such services and treatments. In addition, under ER 703, the factual basis for the expert's opinion must be based on the expert's first-hand knowledge or on information generally relied on in the field of expertise. *See* ER 703. As discussed under the *Frye* analysis, Plaintiffs believe Dr. Wickizer will rely on what the Medicare reimbursement rate is rather than what patients pay for medical goods and services. His opinion should be excluded because it is based on a public policy analysis as to the cost of producing goods as opposed the what is actually charged for them.

### C. Dr. Wickizer's opinion should be excluded because his methodology is based on principles implicating the collateral source rule.

"The very essence of the collateral source rule requires exclusion of evidence of other money received by the claimant so the fact finder will not infer the claimant is receiving a windfall and nullify the defendant's responsibility." *See Johnson v. Weyerhaeuser*, 134 Wn.2d 795, 803, 953 P.2d 800 (1998). Even when it is otherwise relevant, proof of such collateral



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payments is usually excluded, lest it be improperly used by the jury to reduce the plaintiff's damage award. *Boeke v. International Paint Co.*, 27 Wn.App. 611, 618, 620 P.2d 103 (1980) (quoting *Reinan v. Pacific Motor Trucking Co.,* 270 Or. 208, 213, 527 P.2d 256 (1974)). In this respect, courts generally follow a policy of strict exclusion.

The defense argues that a plaintiff in a negligence suit may only recover the reasonable value of medical services received, not necessarily the total of all bills paid. *Patterson v. Horton,* 84 Wn.2d 531, 543, 929 P.2d 1125 (1997). The *Patterson* case cited a case entitled *Torgeson v. Hanford*, 79 Wn. 56, 58-59, 139 P. 648 (1914) which dealt with an entirely different set of circumstances than those that are currently presented to the Court. In *Torgeson*, the plaintiff wholly failed to present any evidence with respect to the medical expenses which had been awarded, other than a copy of a judgment entered against the injury victim's father who, prior to trial, had been separately sued by the physician. In *Torgeson*, the Court found that such evidence alone was insufficient to establish the reasonableness and necessity of the claimed bill. That was not what occurred here where not only has the plaintiff submitted the medical bills, but also testimony from qualified experts establishing the requisite standard of reasonableness and necessity of such billing and treatment.

The plaintiff's proof is sufficient to meet the rather de minimus requirements/proof, despite the defense's efforts to the contrary. Under Washington law, proof of medical expenses need not be unreasonably exacting and may come from any witness who evidences sufficient knowledge and experience respecting the type of services rendered and the reasonable value thereof. *See Kennedy v. Monroe*, 115 Wn. App. 39, 49, 547 P.2d 899 (1976). Plaintiff has presented testimony from physicians regarding the necessity of the treatment and from Mr. Choppa who is more than qualified to testify regarding the reasonableness of the medical bills. He has testified that they are consistent with the charges billed in the medical community.

Consistent with the above analysis, typically whether or not a medical bill is "reasonable" has been traditionally interpreted in favor of the accident victim. For example, in



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*Hayes v. Weiber Enterprises, Inc*., 105 Wn.App. 611, 616, 20 P.3d 496 (2001) the court rejected the notion that a factfinder could reduce the plaintiff's medical bills because his insurance carrier was able to pay such bills at a reduced rate. The court rejected the submission of such evidence as being violative of the collateral source rule even though as a matter of fact, no actual payment was ever made for the actual amount of bills accrued. *See Cox v. Spangler,* 141 Wn.2d 431, 439, 5 P.3d 1265 (2000) (extensively discussing the collateral source rule and its relationship to proof of reasonableness of medical billing). Similarly, in *Hernandez v. Stender*, 182 Wn.App. 52, 60, 358 P.3d 1169 (2014), the court had little difficulty upholding the trial court's decision to exclude the fact that one of plaintiff's treatment providers waived payment of his bill in its entirety. The court reasoned under *Hayes*, the fact that a doctor accepted less for his services than billed, is not dispositive of the reasonableness of the original charges. The guiding principles of both *Hayes* and *Hernandez* is the proposition that "an amount billed or paid is not itself determinative" of the reasonableness of the bills. Both *Hernandez* and *Hayes* indicate that such a proposition must be construed favorably toward the plaintiff and full payment of the billed amount.

Reading *Hayes, Spangler*, and *Hernandez* in combination strongly suggests that our appellate courts will find the collateral source rule bars any effort on the part of the tortfeasor defendant to introduce into evidence the fact that medical bills can be subject to reduction when paid by government entities such as Labor & Industries, Medicare, or insurance carriers with economic bargaining power or event subject to waiver and/or charity.

Dr. Wickizer's entire theory is based on the assumption that Medicare's reimbursement rate is the reasonable value of medical goods and services. Such repetitive and frequent reference to Medicare may invite speculation by members of the jury regarding Cesar Beltran's insurance coverage in violation of the collateral source rule. Because the methodology for Dr. Wickizer's opinions will only invite speculation regarding Cesar Beltran's insurance coverage and implicate the collateral source rule, he should be excluded from provide expert testimony.



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The very nature of the testimony offered by Dr. Wickizer is designed to interject "collateral sources" into the proceedings which is forbidden. Given the flaws in the entire approach taken by this defense witness, the Court should find that such proffered testimony fails to meet the requirements of ER 702 because such testimony will not assist the trier of fact. Expert testimony will only be deemed helpful to the trier of fact if its relevancy can be established. *See In Re Morris,* 176 Wn.2d 157, 169-70, 288 P.3d 1, 140 (2012). This witness will add nothing to this case other than confusion and impermissible speculation regarding collateral sources. The Court should have no trouble excluding his testimony under ER 702 & 703.

**D. Dr. Wickizer's opinions should be excluded based on public policy.**

In addition to the fact that they do not meet the evidentiary basis for admissibility, Dr. Wickizer's opinions should be excluded on public policy grounds. The plaintiff has no control as to what his healthcare providers charge. He was shot four times and was emergently taken to Tacoma General Hospital in order for them to save his life. The charges incurred for that care simply is what it is. Dr. Wickizer's "theories" are nothing more than a poorly disguised effort to shift the collateral source rule to the defendant's benefit by indirectly seeking to discount plaintiff's medical bills because entities such as Medicare and health insurers ultimately can pay less. The defendant should not be allowed to do indirectly what it cannot do directly.

It is the public policy of the State of Washington that innocent victims of tortfeasors should be fully and adequately compensated for their losses. *See, Thiringer v. American Motors Ins. Co.*, 99 Wn.2d 1,215, 1220 (1978); *Brown v. Snohomish County Physicians Corp.*, 120 Wn.2d 747, (1993) (rule in *Thiring*er applies outside subrogation issues). Yet, despite this rule, according to the defense, Mr. Beltran should be only partially compensated for his medical bills which he accrued as a direct result of Defendant's negligence. Defendant's attempt to reduce the cost of the care provided by Cesar Beltran's medical providers should be



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rejected by the Court. It is responsible for the full amount of harm that it inflicted when its officer negligently shot Mr. Beltran.

**E. Dr. Wickizer's opinions should be excluded because he was not disclosed in accordance with the Pierce County Local Rules.**

Finally, the Court should exclude the testimony of Dr. Wickizer because it was not disclosed in accordance with the Pierce County Local Rules. Under PLCR 26 provides for the disclosure of expert witnesses. Dr. Wickizer was not disclosed in accordance with the case schedule and is not a proper witness in this case.

## IV. CONCLUSION

Based on the foregoing, Plaintiff requests that the Court exclude the testimony of Thomas Wickizer and grant Plaintiff's motion for partial summary judgment that he has incurred $712,719.99 in past medical expenses as a result of the injuries sustained in the shooting on June 29, 2013 and that this amount is not a subject of dispute at trial and should be included in the jury's verdict should they find for the plaintiff.

DATED this 25th day of August, 2017.

CONNELLY LAW OFFICES, PLLC

By_____

John R. Connelly, Jr. WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
Attorneys for Plaintiffs



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PIERCE COUNTY, WASHINGTON

August 25 2017 10:53 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**DECLARATION OF MICAH R. LEBANK IN SUPPORT OF PLAINTIFF'S REPLY TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS** |

MICAH R. LEBANK declares and states as follows:

1. I am an attorney for the Plaintiff in the above-captioned case. I make this declaration in Support of Plaintiff's Reply to Motion for Partial Summary Judgment on Past Medical Specials. I am above the age of eighteen and am competent to testify to the matters described herein and do so based on my own personal knowledge information and belief.

2. Attached hereto as Exhibit A is a true and correct excerpt of Judge McDermott's Order on Plaintiff's Motion in Limine, King County Superior Court, No. 15-2-25974-1 (June 8,



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2017).

3. Attached as Exhibit B is a true and correct excerpt of Plaintiff's Primary Motions in Limine and Supporting Memorandum, King County Superior Court, No. 15-2-25974-1 (May 29, 2017).

4. Attached as Exhibit C is a true and accurate excerpt of the deposition of Thomas Wickizer in *Fogle v. Clark County*, 2012 WL 8466003 (Wash.Super) (Wickizer Dep. I).

5. Attached hereto as Exhibit D is a true and correct excerpt of the deposition of Thomas Wickizer in *Martinez v. City of Tacoma*, Case No. 15-2-11861-2 (Pierce County Superior Court) (Wickizer Dep. II).

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed this 2nd day of August 2017 at Tacoma, WA.

CONNELLY LAW OFFICES, PLLC

Micah R. LeBank, WSBA No. 38047



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EXHIBIT A

EXHIBIT A

The Honorable Judge Richard McDermott
Trial Date: June 5, 2017

JUN 08 2017

SUPERIOR COURT CLERK
BY Kim Dunnett-Graham
DEPUTY

THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING

| | |
|---|---|
| KIMBERLY J. GERLACH,<br><br>Plaintiff,<br><br>vs.<br><br>THE COVE APARTMENTS, LLC, A Washington corporation; and WEIDNER APARTMENT HOMES, A Washington business entity, dba The Cove Apartments, and WEIDNER PROPERTY MANAGEMENT LLC, A Washington corporation, and WEIDNER ASSET MANAGEMENT LLC, A Washington Corporation,<br><br>Defendants. | **NO: 15-2-25974-1 KNT**<br><br>**ORDER ON PLAINTIFF'S MOTIONS IN LIMINE** |

THIS MATTER having come on to be heard before the Court on Plaintiffs' Motions in Limine her attorneys of record, *Ben F. Barcus* of *The Law Offices of Ben F. Barcus & Associates, P.L.L.C.*, and *Simon H. Forgette* of *The Law Offices of Simon H. Forgette*, and the defendants being represented by *Pauline Smetka* of *Helsell Fetterman, LLP* and the Court being duly advised does hereby enter the following Order on Plaintiff's Motions in Limine:



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ORIGINAL

## 5.4 HYPOTHETICAL MEDICAL CONDITIONS

Granted: XX
Denied: _____
Reserved:
Limitations: _____

## 5.5 COLLATERAL SOURCE IS IN GENERALLY INADMISSIBLE, AND THE DEFENDANT CANNOT BE ALLOWED TO PRESENT INCONSISTENT ARGUMENTS AT TRIAL, CONTRARY TO ITS PREVIOUS ADMISSIONS.

Granted: XX____
Denied: _____
Reserved:
Limitations: RE: unemployment benefits -- ok to inquire as to Plaintiff's skills or lack of skills, but ~~no mention of unemployment benefits forms~~. Ok to ask employer if they said [blank] under oath. More prejudicial than probative re unemployment compensation. "Employment Security Dept/Department" must be redacted from any evidence shown to the jury.

## 5.6 THE COURT SHOULD EXCLUDE, PURSUANT TO ER 402, ER 403 AND ER 702, THE PROPOSED TESTIMONY OF DEFENSE EXPERT THOMAS WICKIZER, PH.D

Granted: XX
Denied:
Reserved: _____
Limitations: The use of Wickizer would require a change in the rules of evidence. This is too difficult for the jury to determine reasonableness of every billing. Plaintiff should not be forced to argue re: discount of insurance "breaks" in the billings.

## 5.7 TO PROHIBIT NEGATIVE REFERENCES AS TO HOW PLAINTIFFS MIGHT USE THE PROCEEDS OF ANY JUDGMENT

Granted: XX
Denied:
Reserved: _____
Limitations: No prejudicial arguments about how proceeds will be used.



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EXHIBIT B

EXHIBIT B

The Honorable Judge Richard McDermott
Trial Date: June 5, 2017

THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING

| | |
|---|---|
| KIMBERLY J. GERLACH,<br><br>Plaintiff,<br><br>vs.<br><br>THE COVE APARTMENTS, LLC, A Washington corporation; and WEIDNER APARTMENT HOMES, A Washington business entity, dba The Cove Apartments, and WEIDNER PROPERTY MANAGEMENT LLC, A Washington corporation, and WEIDNER ASSET MANAGEMENT LLC, A Washington Corporation,<br><br>Defendants. | **NO: 15-2-25974-1 KNT**<br><br>**PLAINTIFF'S PRIMARY MOTIONS IN LIMINE AND SUPPORTING MEMORANDUM** |

The following Memorandum and Points of Authorities is respectfully submitted on behalf of Plaintiff, in support of their Primary Motions in Limine.

## I. INTRODUCTION

A Motion in Limine is properly used "to exclude incompetent or prejudicial evidence." 5 K. Tegland, Wash. Prac., § 9, 14 (1982):



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*Co.*, 123 Wash. 604, 213 Pac. 7 (1923), *Engstrom v. Seattle*, 92 Wn. 568, 159 P. 816 (1916); *Reutenik v. Gibson Packing Co.*, 132 Wn. 108, 231 P. 773 (1924). The fact that a Plaintiff may have received collateral source benefits from insurance coverage, public assistance, or gratuitous payments or benefits "does not operate to lessen the damages recoverable from the wrongdoing." Annot. 7 ALR 3rd 516, sec. 1(a), at 518 (1966).

Reference to Plaintiff's benefits of any kind, as well as any mention of insurance reimbursements or reductions of billed rates should be deemed irrelevant, inadmissible and should be excluded under ER 401, 402 and 403. Any mention of reductions, of billed amounts or reimbursement rates has no relationship to the medical procedure that was performed, it only relates to a benefit the Plaintiff received as a result of paying for insurance or a governmental benefit. Such mention of insurance benefits would only confuse and prejudice the jury. This is the kind of prejudicial waste of time ER 403 is designed to preclude.

**5.6 THE COURT SHOULD EXCLUDE, PURSUANT TO ER 402, ER 403 AND ER 702, THE PROPOSED TESTIMONY OF DEFENSE EXPERT THOMAS WICKIZER, PH.D.**

Dr. Wickizer is an Economist who recently has become a "frequent flyer" defense expert in personal injury cases where there is a significant amount of medical bills. Dr. Wickizer is used by the defense in an effort to establish that the medical bills accrued by the plaintiff were "unreasonable". (Dr. Wickizer's testimony also will be subject to a separately filed motion to strike.) According to Mr. Wickizer, such bills are "unreasonable" because the charges provided by healthcare providers, such as Harborview Medical Center – a state-run hospital, – are unreasonably inflated and do not accurately reflect the actual costs for such services. He will likely opine that such a proposition is "evidenced" by the fact that healthcare insurance companies and Medicare either contractually, or under the law, can pay less than the amounts



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billed to uninsured patients and the like. According to such a theory, the defendant should not be held responsible for paying what Mr. Wickizer views as being "inflated" medical bills on public policy grounds, which never have been embraced by any appellate court. For a wide variety of reasons, such an effort on the part of the defense should be rejected as being analytically unsound and violative of the public policies reflected within the above-discussed collateral source rule.

The plaintiff has no control as to what her healthcare providers charge. The fact that she ultimately may not have had to pay the face amount of her bill is irrelevant given the fact that she had healthcare coverage, and her insurer was able to pay at a reduced rate. As reflected above, if anybody is to receive a "windfall," it is the plaintiff under the collateral source rule. Dr. Wickizer's "theories" are nothing more than a poorly disguised effort to shift the collateral source rule to the defendant's benefit by indirectly seeking to discount plaintiff's medical bills because entities such as Medicare and health insurers ultimately can pay less. The defendant should not be allowed to do indirectly what it cannot do directly.

Additionally, Dr. Wickizer's theory would apply whether or not the innocent victim of tort such as Ms. Gerlach, was or was not insured. A tortfeasor should not be allowed to further injure an innocent victim of tort by leaving her responsible for a portion of her medical bills, particularly when she personally had no control over the identity of the provider, the amount billed, or for that matter what services were needed.[1]

---

1 A large portion of plaintiff's bill relate to her stay at Harborview following her catastrophic injuries. After that bills were accrued, she followed the recommendations of her healthcare providers regarding follow up care. Had she not done so, the defendants likely would argue that she failed to "mitigate her damages" by failing to follow medical advice.



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It is the public policy of the State of Washington that innocent victims of tortfeasors should be fully and adequately compensated for their losses. See, *Thringer v. American Motors Ins. Co.*, 99 Wn. 2d 1,215, 1,220, 588 P.2d 191 (1978); *Brown v. Sonhomish County Physicians Corp.* 120 Wn. 2d 747, 843 P.2d 334 (1993) (rule in *Thiringer* applies outside subrogation issues). Yet despite this general rule, according to the defense Ms. Gerlach should be only partially compensated for her accident-related bills which she accrued as a direct result of defendants' negligence.[2]

In any event, according to the defense despite the fact that such bills potentially can be outstanding, the defendant should be exonerated from responsibility and Ms. Gerlach should be left to fend for herself as she is potentially hounded by her healthcare providers' debt collectors.

It is respectfully suggested that such notions violate the public policy of the State of Washington. Further the position taken by the defense violates Washington's well-established rules relating to "proximate cause". It has long been established in the State of Washington that when a negligent actor is liable for another's bodily injury, he is also subject to liability for any additional harms resulting from the normal efforts of third persons to render aid which the injuries reasonably require. See, *Lindquist v. Dengel*, 92 Wn. 2d 257, 262, 595 P.2d 294 (1979). This rule applies even when the accident victim, during the course of accident-related care is also a victim of medical malpractice. *Id.*, citing to Restatement (2nd) of Torts § 457 (1965). The basis for this rule is the notion that even negligent or harmful medical treatment is within the scope of the risk created by the original negligent conduct. *Id.*

---

2 It is understood that the Court has denied, at least for now, plaintiff's motion for summary judgment on the issue of comparative fault. Naturally, should the plaintiff be found "comparatively at fault" by some percentage, her damages would be discounted accordingly. That being said, there is simply no basis for the defendants to attempt to apply a "double discount" of plaintiff's medical specials.



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It is respectfully suggested that there is simply no reason why such a rule should not apply when the allegation is that plaintiff's healthcare providers have "overbilled", as opposed to having engaged in medical negligence. Under both sets of circumstances, it is implied within the risk created by the underlying negligence that sets an event could occur. See, *McLeod v. Grant County School District*, 42 Wn. 2d 316, 323, 255 P.2d 360 (1958).

Even if we assume, for the sake of argument, that a portion of Ms. Gerlach's incident-related medical bills were at a premium, the Court nevertheless should view such a fact as being a reasonable-and-foreseeable consequence of defendant's antecedent negligence and a matter upon which the defendant should be fully and completely legally responsible. Under such circumstances, even if we assume that Ms. Gerlach's medical care could have been more-efficiently delivered and/or could have been purchased at a lower price, such facts are simply not a matter of consequence, are immaterial and thus inadmissible. See, *Hoskins v. Reich*, 142 Wn. App. at 569. (When proffered evidence addresses facts which have no consequence in the determination of liability or damages, it is subject to exclusion under the basic relevance provisions set forth within ER 401 and ER 402). Washington law relating to medical bills is not contrary to the above principles.

As the defense will point out, a plaintiff in a negligence suit may only recover the reasonable value of medical services received, not necessarily the total of all bills paid. *Patterson v. Horton* 84 Wn.2d 531, 543, 929 P.2d 1125 (1997). The *Patterson* case cited to a case entitled *Torgeson v. Hanford* 79 Wn. 56, 58-59, 139 P.648 (1914) which dealt with an entirely different set of circumstances than those that are currently presented to the Court. In *Torgeson,* the plaintiff wholly failed to present any evidence with respect to the medical expenses which had been awarded, other than a copy of a judgment entered against the injury



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victim's father who, prior to trial, had been separately sued by the physician. In *Torgeson,* the Court found that such evidence alone was insufficient to establish the reasonableness and necessity of the claimed bill. That is not what occurred here where not only has the plaintiff submitted the medical bills, but also will prevent testifying at trial from a qualified physician attesting to the reasonableness and necessity of such billings and treatment.

Under *Patterson,* a plaintiff cannot rely **solely** on medical records and bills to establish the costs were reasonable.[3] The plaintiff's proof, standing alone should be sufficient to meet the rather diminimus requirements/proof, despite the defense's efforts to the contrary. Under Washington law, proof of medical expenses need not be unreasonably exacting and may come from any witness who evidences sufficient knowledge and experience respecting the type of services rendered and the reasonable value thereof. See, *Kennedy v. Monroe*, 115 Wn.App. 39, 49, 547 P.2d 899 (1976). Plaintiff, at the time of trial will present testimony from her physicians that her bills were reasonable and necessary, and consistent with those charged within our local community.

Consistent with the above analysis, typically whether or not a medical bill is "reasonable" has been traditionally interpreted in favor of the accident victim. For example, in *Hayes v.Wieber Enterprises, Inc.* 105 Wn.App. 611, 616 20 P.3d 496 (2001) the Court rejected the notion that a factfinder could reduce the plaintiff's medical bills because his insurance carrier was able to pay such bills at a reduced rate. The Court rejected the submission of such

---

3 In other words medical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and the bills were both necessary and reasonable. "Reasonableness" relates to the amount charged for the medical services and "necessity" describes a degree of causal connection between the accident in question and the medical services. See, *Gorostita v. Parkinson* 17 P.3d 1110, 1117-18 (Utah 2000). That alone should be deemed sufficient.



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evidence as being violative of the collateral source rule even though as a matter of fact, no actual payment was ever made for the actual amount of bills accrued. See, *Cox v. Spangler* 141 Wn.2d 431, 439, 5 P.3d 1265 (2000). (Extensive discussion of collateral source rule and its relationship to proof of reasonableness of medical billings). Similarly in *Hernandez v. Stender* 182 Wn.App. 52, 60 358 P.3d 1169 (2014), the Appellate Court had little difficulty in upholding a trial court's decision to exclude the fact that one of plaintiff's treatment providers waived payment of his bill in its entirety. The Court reasoned that under *Hayes*, the fact that a doctor accepted less for his services than billed, is not dispositive of the reasonableness of the original charges.[4] The guiding principle of both *Hayes* and *Hernandez* is the proposition that "an amount billed or paid is not itself determinative" of the reasonableness of the bills. Both *Hernandez* and *Hayes* indicate that such a proposition must be construed favorably toward the plaintiff and full payment of the billed amount.

Reading *Hayes, Spangler*, and *Hernandez* in combination strongly suggests that our Appellate Courts will find the collateral source rule bars any effort on the part of a tortfeasor defendant to introduce into evidence the fact that medical bills can be subject to reduction when paid by governmental entities such as Labor & Industries, insurance carriers with economic bargaining power, or even subject to waiver and/or charity.

Beyond the above-referenced infirmities, of course such testimony by its very nature interjects "collateral sources" into the proceedings which is forbidden.

Given the flaws in the entire approach taken by this defense witness, the Court should find that such proffered testimony fails to meet the requirements of ER 702 because such

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4 In *Hernandez* it noted that a "waiver is merely a reduction taken to its limits".



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testimony will not assist the trier of fact. Expert testimony will only be deemed helpful to the trier of fact if its relevancy can be established. See, *In Re Morris,* 176 Wn. 2d 157, 169-70, 288 P.3d 1,140 (2012). As noted above the above-referenced testimony is simply not relevant.

### 5.6.1 Mr. Wickizer's Proffered Opinion/testimony Fails to Meet the *Frye* Standard and the Standards Set Forth Within our Evidentiary Rules.

Clearly the approach taken by this defendant witness is "novel", and inconsistent with Washington law. Washington courts apply the test set forth within *Frye v. United States*, 293 F. 1,013 (D.C. Cir., 1923). In *Frye*, at 1,013 the court formulated what has become known as the "general acceptance" test.

*Frye* requires expert testimony to be grounded in theories or principles generally accepted by experts in the field. If the testimony is not grounded in generally accepted principles or theories, the expert's testimony should be excluded (*State v. Martin* 101 Wn.2d. 713, 719 (1984) emphasis added)):

Our Supreme Court in *Reese v. Stroh,* 128 Wn.2d 300, 306-307 (1995), described how Washington Courts apply *Frye* as follows:

> When the admissibility of *novel* scientific evidence is at issue, Washington courts initially turn to the general acceptance test derived from *Frye*. The general acceptance standard serves as a shorthand method for judges in deciding whether novel scientific evidence, or evidence which is the "twilight zone" between the "experimental and demonstrable stages," has a valid scientific basis. See, *Cauthron,* 120 Wash. 2d at 887, 846 P.2d 502 (citing *Frye*, 293 F. at 1014). Once novel scientific evidence has been deemed admissible under *Frye*, the trial court must analyze whether that testimony is proper expert testimony under ER 702. *Cauthron,* 120 Wash. 2d at 889-90, 846 P.2d 502.

Under *Frye* and our court rules, the Court has a duty to act as a "gatekeeper" when it comes to expert testimony, particularly that which is "novel" or in a developing field. See, *Moore v. Harley-Davidson Motor Co., Group, Inc.* 156 Wn.App. 407, 418, 241 P.3d 808



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(2010). Under the terms of ER 702, the Court is obligated to determine whether or not the proffered evidence will be "helpful" to the finder of fact. Further, under ER 703 proffered expert testimony can be excluded if it does not have a proper factual basis and it is conclusory and/or speculative. In engaging in such an analysis, a court should take great care when addressing even somewhat speculative testimony because of the danger that the jury may be overly impressed with a witness possessing "the aura of an expert". See, *Miller v. Likins* 109 Wn.App. 140, 148, 34 P.3d 835 (2001).

Further, under the terms of ER 403 Dr. Wickizer's opinion should be excluded because of the potential for jury confusion and waste of time. Other than the terms of ER 403, the Court has broad discretion to exclude evidence that ultimately could lead to collateral "mini trials". See, *In Re Detention of West*, 171 Wn. 2d 383, 401, 256 P.3d 302 (2011).

This witness adds nothing to this case but confusion and impermissible collateral source considerations. The Court, under the terms of ER 702/703 should exclude his testimony as irrelevant and not helpful to this trier of fact.

## 5.7 TO PROHIBIT NEGATIVE REFERENCES AS TO HOW PLAINTIFFS MIGHT USE THE PROCEEDS OF ANY JUDGMENT

Defense Counsel should be instructed not to make any negative reference as to the manner in which the plaintiff might use the proceeds of any judgment she will receive in this case. There is absolutely no relevance of such inquiry to any of the issues in this case, namely the nature and extent of the plaintiffs' injuries and the amount of her damages. How the plaintiff might spend any recovery is not material to the issues in this case, and would only invite the jury to improperly tailor its verdict to its agreement or disagreement with the plaintiffs' intentions for spending, etc. Such references are irrelevant and impermissible under ER 403.



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EXHIBIT C

EXHIBIT C

1 SUPERIOR COURT FOR THE STATE OF WASHINGTON

2 IN THE COUNTY OF CLARK

3 - - -

4 Chantelle Tristina Fogle, :
an Incapacitated Single :
5 Person, through her :
Guardian, Beagle Burke :
6 and Associates of :
Washington, :
7 :
Plaintiff, :
8 :
vs. :Case No. 10-2-00209-3
9 :
Clark County, Clark :
10 Public Utilities, a :
Municipal Corporation of :
11 the State of Washington; :
Brother Enterprises, Inc.:
12 an Oregon Company; :
Bradford Conrad and Jane :
13 Doe Conrad, and their :
Marital Community; :
14 Michael Hopkins, :
:
15 Defendants. :

16 - - -

17 DEPOSITION

18 of Thomas M. Wickizer, Ph.D., taken before me,

19 Iris I. Dillion, Notary Public in and for the

20 State of Ohio, at the offices of Armstrong &

21 Okey, Inc., 222 East Town Street, Columbus,

22 Ohio, on Thursday, March 22, 2012, at 9:00 a.m.

23 - - -

24

1 APPEARANCES:

2 Johnson Law Office
By Mr. Gordon S. Johnson, Jr.
3 212 Whitetail Run Lane
Sheboygan, Wisconsin 53081
4
On behalf of the Plaintiffs.
5
Carney, Badley, Spellman, PS
6 By Mr. Nicholas P. Scarpelli, Jr.
701 Fifth Avenue, Suite 3600
7 Seattle, Washington 98104-7010

8 On behalf of Defendant Clark Public
Utilities.
9
Davis, Rothwell, Earle & Xochihua
10 By Mr. William A. Davis (via phone)
U.S. Bancorp Tower
11 111 SW Fifth Avenue, Suite 2700
Portland, Oregon 97204-3650
12
On behalf of Defendant Brother
13 Enterprises, Inc., and Bradford
Conrad.
14

15 ALSO PRESENT:

16 Mr. John Eldridge (via phone)

17
- - -
18

19

20

21

22

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INDEX TO REQUESTS

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1 - Syllabus for Health Economics Class taught at University of Washington approximately 1990 to 2008 20


- - -

1 market value.
2 Q. First, you've now done what I would
3 have done which is you have equated the term
4 reasonable value as used in this case to the
5 term fair market value, and that's your intent,
6 is it not?
7 MR. SCARPELLI: I'm going to object
8 to the form of the question.
9 Q. Do you understand the question?
10 A. So, you are saying is reasonable
11 value synonymous with fair market value?
12 Q. Yes.
13 A. In general.
14 Q. When is it not? Because you used it
15 synonymously in your answer.
16 A. It's -- it is synonymous, I thought I
17 said this earlier, when markets exhibit a fair
18 degree of competition. When they don't, then
19 oftentimes prices do not represent the fair
20 market value.
21 Q. Did the price that your students had
22 to pay for a new book in 1998 reflect fair
23 market value?
24 A. Well, I don't know how to answer that

1 something is reasonable you put an asterisk by
2 it.
3 MR. SCARPELLI: Object to the form of
4 the question. It's argumentative, and I don't
5 think there is a question.
6 A. Well --
7 MR. SCARPELLI: Wait a minute.
8 There's not a question. Go ahead. Ask him a
9 question.
10 Q. Can you give me a reasonable value of
11 anything without putting an asterisk, it depends
12 on who's paying for it?
13 A. Well, let me restate.
14 Q. No, it's yes or no. I don't want you
15 to restate anything. I want you to answer yes
16 or no, whether you can tell me the reasonable
17 value of any product or services without knowing
18 who it is, who the buyer is? Yes or no?
19 MR. SCARPELLI: Object to the form of
20 the question.
21 Q. And if you can, then I'll ask you
22 what.
23 MR. SCARPELLI: Object to the form of
24 the question. You don't have to answer it yes

1 or no. Go ahead.
2 A. The answer is yes, but as I said
3 before, reasonable value does not, does not
4 pertain to a given individual. The example I
5 used before, people have different preferences,
6 people have different incomes, so people are
7 willing to pay different amounts for goods and
8 services. How an economist approaches
9 reasonable value, how I tried to approach it in
10 this report was on the basis of cost of
11 producing the services. So to say, you know,
12 what's the reasonable value, does that just
13 represent what a given individual under a given
14 set of circumstances pays for something for that
15 individual? I guess they made the decision to
16 pay for whatever it is. So clearly that good or
17 service must have some intrinsic value to them
18 or they wouldn't have paid for that. But that
19 value depends on their preference, that value
20 depends on their income, and that value depends
21 on what alternatives exist.
22 The medical care markets are not, for
23 reasons that I stated in the report, they don't
24 approach competition. Hospitals sign all kinds

1 a group rate discount; is that correct?
2 MR. SCARPELLI: Object to the form of
3 the question.
4 A. Well, the only experience -- no,
5 because I said I taught health economics for 18
6 some years, and in that course I discussed that
7 question.
8 Q. Did you ever go down to the
9 courthouse and find what judgments against
10 people, the amount of the judgments against
11 people for unpaid medical bills were?
12 A. No.
13 Q. Did you ever go out and do a survey
14 of what the average person was actually paying
15 combined between their health insurance, their
16 co-pay for payment of medical bills?
17 A. Did I do a survey of that?
18 Q. Yes.
19 A. No.
20 Q. Did you ever do any research on that?
21 A. Not directly.
22 Q. You're unable, as you sit here today,
23 to tell me what the average percentage is of
24 what -- the difference between paid and list

him finish. For 2006 what?

A. For 2006 it was about 28 percent.

Q. Again, that's for Medicare; that's not what's actually been paid on average.

A. That's for Medicare.

Q. And you don't have any research whatsoever as to what the average amount paid to a hospital medical provider, anybody, is in terms of versus their list price and what they actually put in their pocket, do you?

A. Well, that information is included in my report for Southwest Hospital, whatever it is. There was $568,000 of charges and I think -- or thereabouts, and I think out of that 562,000, my estimate was --

Q. You are not answering the question. I want her to read it back because we're now after 12:00 so it is not a good time for you to go off on tangents.

A. I'm trying to answer your question. Can you read it again?

(Question read.)

Q. You define list price, you use the term "list price" in your report.

1 A. Correct.
2 Q. I think I understand what you mean by
3 that. I think most people understand what you
4 mean by that. You have no research in front of
5 you that you have used in this case, relied on
6 in this case that will tell you what the average
7 payment total is from all sources to medical
8 providers versus the list price, correct? You
9 said it was 40 percent but you don't know that,
10 do you?
11 A. Correct.
12 Q. You have no idea what the number was?
13 A. And it would vary from hospital to
14 hospital and clinic to clinic.
15 Q. Why did you not discount the Volt
16 Rehabilitation Bill?
17 A. For the same reasons as the Highland
18 Terrace because the free-standing in-patient
19 rehab centers don't file cost reports, so I
20 didn't have any strong basis to do that, and so
21 I decided not to do it.
22 Q. So the only time that you were able
23 to say that a price in this case wasn't
24 reasonable was in a situation where you could

1 actually determine its cost, something a
2 consumer could never do. Agreed?
3 A. Correct.
4 MR. JOHNSON: That's all I have got.
5 MR. SCARPELLI: We'll read it.
6 - - -
7 Thereupon, at 12:10 p.m. the
8 deposition was concluded.
9 - - -
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24

1 State of Ohio :
SS:
2 County of Franklin :

3 I, Thomas M. Wickizer, do hereby
certify that I have read the foregoing
4 transcript of my deposition given on March 22,
2012; that together with the correction page
5 attached hereto noting changes in form or
substance, if any, it is true and correct.
6
7
8 _____
Thomas M. Wickizer
9
I do hereby certify that the
10 foregoing transcript of the deposition of Thomas
M. Wickizer was submitted to the witness for
11 reading and signing; that after he had stated to
the undersigned Notary Public that he had read
12 and examined his deposition, he signed the same
in my presence on the _____ day of
13 _____, 2012.
14
15 _____
Notary Public
16
My commission expires _____.
17
- - -
18
19
20
21
22
23
24

1
CERTIFICATE
2
State of Ohio :
3 SS:
County of Franklin :
4
I, Iris I. Dillion, Notary Public in
5 and for the State of Ohio, duly commissioned and
qualified, certify that the within named Thomas
6 M. Wickizer was by me duly sworn or affirmed to
testify to the whole truth in the cause
7 aforesaid; that the testimony was taken down by
me in stenotypy in the presence of said witness,
8 afterwards transcribed upon a computer; that the
foregoing is a true and correct transcript of
9 the testimony given by said witness taken at the
time and place in the foregoing caption
10 specified.
11 I certify that I am not a relative,
employee, or attorney of any of the parties
12 hereto, or of any attorney or counsel employed
by the parties, or financially interested in the
13 action.
14 IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my seal of office at
15 Columbus, Ohio, on this 2nd day of April, 2012.
16
_____
17 Iris I. Dillion
Registered Professional
18 Reporter and Notary Public
in and for the State of Ohio.
19
20 My commission expires February 4, 2013.
21 - - -
22
23
24

EXHIBIT D

EXHIBIT D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

- - - - -

| | | |
|---|---|---|
| Aaron Martinez, an individual, | : | |
| Plaintiff, | : | |
| vs. | : | Case No. 15-2-11861-2 |
| City of Tacoma, a municipal corporation, City of Tacoma Public Works and Utilities, | : | |
| Defendants. | : | |

- - - - -

DEPOSITION OF THOMAS WICKIZER, Ph.D.

- - - - -

Taken at Spectrum Reporting LLC
333 East Stewart Avenue
Columbus, OH 43206
April 28, 2017, 4:03 p.m.

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

Connelly Law Offices
2301 North 30th Street
Tacoma, WA 98403
By Evan T. Fuller, Esq.
(Via videoconference)

ON BEHALF OF DEFENDANTS:

Tacoma City Attorney - Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402
By Margaret A. Elofson, Esq.
(Via videoconference)

THOMAS WICKIZER, Ph.D.

being first duly sworn, testifies and says as follows:

CROSS-EXAMINATION

BY MR. FULLER:

Q. Good afternoon, Dr. Wickizer.

A. Yeah, okay, good afternoon.

Q. My name is Evan Fuller. Yeah, we might have a little delay here, so if you could wait just like a couple seconds before answering, that would be great.

A. Okay, sure.

Q. Yeah, could you just start by stating your full name and spelling your last name for the record.

A. Yeah. Thomas Wickizer. It's W-I-C-K-I-Z-E-R.

Q. Okay. Mr. Wickizer, you've been retained as an expert in this case; is that correct?

A. Yes, that's correct.

Q. Okay. And where are you currently employed?

A. Pardon me?

I have no knowledge of that and that's not relevant for what I do.

Q. Okay. Why is it not relevant?

A. Well, simply because that's -- I use -- I use a different method. I don't need that information on what's paid for care to generate this table three.

Q. Okay. Well, why is that?

A. Well, I'll take another run at it. As I've explained, you know, I take the billed charge, those are listed in the third column here for the various services, pharmacy and ultrasound and physical therapy and whatnot. And then I apply these cost-to-charge ratios or the per diem costs that we discussed earlier and -- and those two pieces of information have nothing to do whatsoever with what the patient pays or what Medicare might have paid if Mr. Martinez was a Medicare patient. I don't know if he is -- I guess he's a veteran, so he -- you know, because he got his care paid for by the Veteran's Administration. And then I come up with the numbers in the right-hand column.

Q. Okay. So I want you to kind of work --

run me through your -- your calculation and methodology process step by step. And let's use -- looking at table three, let's use item 360 as an example. So the operating room?

A. Okay. Right.

Q. So starting with -- yeah, let's just start from the beginning. What would your process be for just determining the reasonable value of that amount?

A. Yeah. Sure. So the billed charge on the St. Joseph bill for that -- for Mr. Martinez for his admission on August 2nd was 145,155. And the cost-to-charge ratio for the operating room was .093. And I multiplied the 145,000, which is the billed charge. By the .093 to derive the estimate in the right-hand column, which represents the cost as accounted for by the hospital's accounting system, the cost of providing that service, which is 13,499.

Q. Okay. And that cost-to-charge ratio is from the Medicare cost reports, correct?

A. That's correct.

Q. Okay. And do you know how the -- and so in -- I just want to make sure, in the Medicare

use the term reasonable value if you like, not in a strict legal sense that brings us here today, but the value of resources used by hospitals to treat patients, it is widely known that billed charges don't begin to approach that standard. And that's why people use the same basic methodology that I've used to adjust these billed charges to reflect the costs of care, which bear a much closer relationship to the value of resources used to treat hospital patients.

Q. Okay. And wouldn't you agree that the methodology that you've used in this report for your calculations is specifically geared towards determining the reasonable value of medical services as it relates to a litigation context?

A. Yes.

MS. ELOFSON: Object to form.

Q. Okay. Dr. Wickizer, do you have any type of training or education with respect to appraising the fair market value of medical services?

A. Well, so my training is --

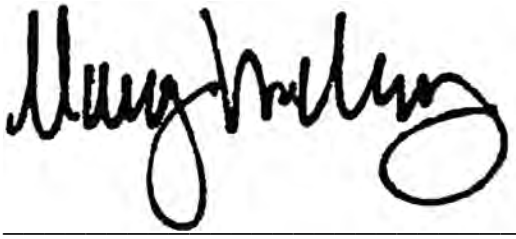
MS. ELOFSON: Object to form. Go ahead.

State of Ohio : C E R T I F I C A T E
County of Franklin: SS

I, Mary Bradley, RPR, a Notary Public in and for the State of Ohio, do hereby certify the within named Thomas Wickizer, Ph.D. was by me first duly sworn to testify to the whole truth in the cause aforesaid; testimony then given was by me reduced to stenotypy in the presence of said witness, afterwards transcribed by me; the foregoing is a true record of the testimony so given; and this deposition was taken at the time and place as specified on the title page.

I do further certify I am not a relative, employee or attorney of any of the parties hereto, and further I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on May 10, 2017.



_____
Mary Bradley, Notary Public - State of Ohio
My commission expires September 19, 2019.

Witness Errata and Signature Sheet
Correction or Change Reason Code
1-Misspelling 2-Word Omitted 3-Wrong Word
4-Clarification 5-Other (Please explain)

| Page/Line | Correction or Change | Reason Code |
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I, Thomas Wickizer, Ph.D., have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date_____Signature_____

The witness has failed to sign the deposition within the time allowed.

Date_____Signature_____

Ref: Mb24454tw S-mb P-bw

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PIERCE COUNTY, WASHINGTON

August 25 2017 3:08 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**DECLARATION OF ANTHONY J. CHOPPA, M.Ed., CRC, CDMS, CCM IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** |



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1 ANTHONY J. CHOPPA, M.Ed., CRC, CDMS, CCM declares and states as follows:

2 1. I am the owner and founding partner of OSC Vocational Systems, Inc., retained by
3 the Plaintiffs in this case. I make this declaration in support of Plaintiff's Motion and Reply on
4 Motion for Partial Summary Judgment regarding past medical specials, specifically in support of
5 the exclusion of the opinions of Thomas Wickizer, PhD. I am above the age of eighteen and am
6 competent to testify to the matters described herein and do so based on my own personal
7 knowledge information and belief. The opinions herein are provided on a more probable than not
8 basis.

9 2. I am the owner and founding partner of OSC Vocational Systems, Inc. I have over
10 thirty-eight years of experience in the fields of Rehabilitation Counseling, Vocational
11 Rehabilitation, Case Management, and Life Care Planning. I am a Certified Rehabilitation
12 Counselor, Registered Private Rehabilitation Counselor with the Washington State Department of
13 Labor and Industries, Certified Disability Management Specialist, Certified Case Manager,
14 Veterans Administration Certification, Certified Rehabilitation Counselor with the State of
15 Oregon Workers' Compensation Division, and Registered Vocational Rehabilitation Counselor
16 with the State of Alaska, Department of Labor, Workers' Compensation Division. In addition to
17 my work as a rehabilitation counselor and case manager, I also provide expert testimony and life
18 care planning services. As a case manager and life care planner, I have had the opportunity to
19 research and become familiar with the amounts charged by medical providers and medical
20 institutions in this region. I have been qualified to offer testimony regarding both past and future
21 medical and vocational expenses in personal injury and workers compensation cases. I have
22 authored numerous publications which are listed in my CV a copy of which is attached as Exhibit
23



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A.

3. Medical bill reviews and opinions regarding the reasonableness of costs is within the purview of the Case Manager/Life Care Planner. The historical, legal and academic foundations, coupled with methodologies that are peer reviewed and generally accepted in the profession combined with the clinical judgment, "experience understood" of the professional is the foundation relied upon by Case Managers in determining the reasonableness of the costs.

4. Relevant publications for further information on the practice of Case Managers/Life Care Planners includes the Rehabilitation Consultant's Handbook by Weed and Field (2001); An Introduction to the Vocational Rehabilitation Process by McGowan and Porter (1967); Guide to Rehabilitation by Deutsch and Sawyer (1999); Life Care Planning and Case Management by Weed (2010); Pediatric Life Care Planning and Case Management by Grisham (2006) and Life Care Planning in Light of Daubert and Kuhmo by Weed and Johnson (2006).

5. Life Care Planning is a longstanding tool of Case Management used to coordinate current and future medical and rehabilitation needs and associated costs for people who experience a serious injury or illness. A Life Care Plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research which provides an organized, concise plan for current and future needs with associated costs, for individuals who have experienced catastrophic injury or have chronic health care needs.

6. A life care plan is a tool of case management used for many purposes and in many venues (Weed & Riddick, 1992). A life care plan is based on a proper medical, psychological, case management, and/or rehabilitation foundation (Deutsch & Sawyer, 1985; Zasler, 1994, Johnson et al 2009). Life care planning is a transdisciplinary specialty practice which has evolved



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over time for multiple purposes, including the identification of damages in civil cases involving liability (Deutsch & Raffa, 1981).

7. The basics of case management/life care planning were initiated by several pieces of legislation that began in 1917 with the Smith-Hughes Act, and continued into the 1960s and 1970s with major legislation that provided services for all people with disabilities (McGowan & Porter, 1967; Weed & Field, 2001). McGowan and Porter (1967) note that the range of modern day rehabilitation services include full evaluation, counseling and guidance, medical services and care, prosthetics, vocational training, services through rehabilitation facilities, maintenance and transportation, tools and equipment, and placement services. The current specialty practice of life care planning is comprised of rehabilitation counselors, nurses, physicians, occupational, physical and speech therapists, psychologists and others. From 1981 until 2017, subgroups have emerged within this specialty practice, forming their own professional identities, standards of practice, ethical codes and sometimes certifications. These groups have expanded upon the earliest life care planning standards of practice (International Association of Life Care Planners, 2000) and have produced their own bodies of work.

8. Case Managers/Life Care Planners have thorough training and experience in the medical aspects of disability and associated costs involving medical/rehabilitation care, services, supplies, equipment, etc. Through certification, education, and clinical experience, knowledge of costs for specific medical evaluations, treatments, diagnostics, medications, durable medical equipment, orthotics, prosthetics, wheelchairs, surgical procedures, etc. are a routine part of their clinical (day to day) work.

9. Through contacts with vendors and providers as part of their ongoing clinical



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work, specialized knowledge of the costs associated with medical care is acquired by Case Managers/Life Care Planners. This training, experience and specialized knowledge applied to the review of medical bills and records also serves as the foundation for determining both past and future costs of care.

10. The International Academy of Life Care Planners (IALCP) is the umbrella association for all life care planners. Beginning in 2000, the IALCP developed and published Standards of Practice for Life Care Planners. Standards of Practice for Life Care Planners (SOP) - Third Edition is the most recent published material in the Journal of Life Care Planning a peer reviewed publication. In the SOP the definition of a life care is cited as : "The life care plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with **associated costs** for individuals who have experienced catastrophic injury or have chronic health care needs." The life care plan's associated costs are the fundamental piece which is the basis for identifying the reasonableness of the past medical charges. In performing a review of the past costs, the life care planner brings specialized knowledge, training and experience combined with their clinical judgment in identifying reasonableness of past charges.

11. The SOP describes the following:

***Historical Perspective***

*"...An integrated plan that includes all disciplines and **specific costs** of care has become an increasingly important aspect of the health care process due to rapid growth in medical technology and an increased emphasis on the **cost** of care. This process of developing an integrated plan and delineating costs has evolved..."*



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***Section IV. STANDARDS OF PRACTICE***

*4. STANDARD: The life care planner uses a consistent, valid and reliable approach to research, data collection, analysis, and planning.*

***MEASUREMENT CRITERIA:***

*b. Researches appropriate options and **charges** for recommendations, using sources that are reasonably available to the evaluee.*

*d. Uses a consistent method to determine available choices and **charges**.*

*6. **STANDARD:** The life care planner uses a planning process.*

***MEASUREMENT CRITERIA:***

*a. Follows a consistent method for organizing data, creating a narrative life care plan report, and projecting **costs**.*

*b. Develops and uses written documentation tools for reports and **cost projections**.*

*c. Develops recommendations for content of the life care plan **cost projections** for each evaluee and a method for validating inclusion or exclusion of content.*

***Section 10. STANDARD**: The life care planner may engage in forensic applications. MEASUREMENT CRITERIA: If the life care planner engages in practice that includes participation in legal matters, the life care planner:*

*a. Acts as a consultant to legal proceedings related to determining care needs and **costs** in the role of an impartial advisor to the court.*

12. Further, Life Care Planners have conducted international Summits since 2000 which have resulted in best practices, as well as generally accepted and peer reviewed Majority and Consensus Statements (Johnson 2015; Preston and Johnson, 2012). These serve as



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reinforcement for the work of the life care planner. Summits are unique, in that their proceedings are developed by practicing life care planners, for life care planners and about life care planning in the day to day practice and are not solely focused on litigation.

//

13. **The Consensus Statements related to Costs include:**

*59. Life Care Planners shall research condition, resources, services and* ***costs.***

*76. Life Care Planners shall utilize protocols for* ***cost*** *research.*

*77. Life Care Planners shall gather* ***geographically relevant & representative prices.***

*78. Life Care Planners shall utilize protocols for using local versus national resources.*

*88. Life Care Planners shall evaluate the* ***cost effectiveness*** *of life care plans.*

*95. The* ***cost of private-hire*** *home care includes caregiver compensation and associated expenses, and*

***98. Best practices for identifying costs in Life Care Plans include:***

- *Verifiable data from appropriately referenced sources*
- *Costs identified are geographically specific when appropriate and available*
- *Non-discounted/market rate prices*
- *More than one cost estimate, when appropriate*

14. When the need for substantiating the reasonableness and accuracy of past medical expenses is required, Case Managers/Life Care Planners are the professionals who work directly with medical and rehabilitation providers; who are researching the costs for current and future medical/rehabilitation treatment and services, equipment and other needs. These professionals are knowledgeable about what goods/services cost. It is usual and customary for them to have been



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retained on the case to provide life care plan coordination with associated costs. They have the ability, qualifications and utilize accepted methodologies to present this type of information to the Court.

15. With regard to the Beltran matter, in performing this work I have followed accepted methodologies and standards of practice. As a Case Manager, I have looked to the medical community to define the necessity of the medical/rehabilitation treatment and services, equipment and other items. I have then ascertained the reasonableness of the costs associated. My opinions are based upon my knowledge, training and experience combined with my clinical judgment. This methodology defines how our day to day clinical work is performed. It is not created for litigation purposes in isolation.

16. Part of my job duties and clinical practice as a Rehabilitation Counselor/Case Manager and Life Care Planner involves knowledge and assessment of the reasonable value and costs for various medical and rehabilitation goods and services. This requires that I keep current on the costs for such goods and services in this region. I use my knowledge and clinical experience when approving or recommending various medical/goods and equipment for the Veterans Administration, other governmental agencies and private corporations and clients. I am also retained to provide my expertise on the reasonable value of medical goods, services and equipment in the forensic arena, and have been qualified and accepted as an expert on this subject by multiple courts.

17. Experts in my field routinely rely upon our day-to-day work including clinical communications with the billing departments of local providers, regional data and publications, as well as a particular patient's medical records, bills, bill summaries and testimony of medical



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personnel in formulating opinions on the reasonable value of medical services in a particular case and time period.

18. **Background**: In 1976 the Court in *Kennedy v. Monroe* (15 Wn. App. 39, 547 P.2d 899) noted that:

> "Testimony regarding the necessity for and reasonableness of charges for medical services given an injured party may be presented by any person who has sufficient knowledge and experience in such matters. Whether a particular witness has such qualifications is within the trial court's discretion.
>
> Proof of such special damages need not be unreasonably exacting and may come from any witness who evidences sufficient knowledge and experience respecting the type of service rendered and the reasonable value thereof. The witness need not be the attending physician or a physician at all, for that matter, so long as he demonstrates the requisite qualifications within the sound discretion of the trial court, at which point the issue becomes one of the weight to be attached to his testimony."

19. In reviewing this opinion, it is readily apparent that experts already involved in determining current and future care costs in the preparation of life care plans, are also likely to possess the requisite expertise to address the reasonableness of past medical bill costs.

20. In many cases disputes arise regarding the reasonableness of past treatments and the costs associated. While physicians often define the reasonableness of the treatments, the reasonableness of the costs is often beyond the scope of their practice and/or knowledge. A thorough medical bill review, performed by an experienced and qualified Case Manager/Life Care



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Planner will establish the reasonableness of past medical costs, while the physician opines on the reasonableness of the past medical care.

21. In this case the medical bills were reviewed and analyzed to ensure the costs associated with each treatment/service was reasonable. This methodology has been accepted by the Court in other cases.

22. A Case Manager/Life Care Planner is much more intimately involved on a day to day basis with the costs of specific medical treatment, equipment, procedures and therapies than is a typical physician, much less a healthcare economist. A Case Manager/Life Care Planner obtains costs and reviews bills as part of their daily work outside of litigation.

23. In 1967 the publication by McGowan and Porter identified the "coordinator" role of rehabilitation professionals. In 1984 Deutsch and Raffa further clarified the coordinator role and utilization of these services as life care planners in the litigation setting. Decades of clinical practice were the underpinning of my professional specialized knowledge of the costs of medical and rehabilitation services and goods. Currently there are credentials available for individuals in the area of Case Management/Life Care Planning.

24. There does not however appear to be credentials or generally accepted or peer reviewed literature to support the health economist's opinions or methodology. In reviewing Dr. Wickizer's testimony, in the Case No. 15-2-11861-2 Deposition of Thomas Wickizer, there does not appear to be expertise required to merely pull a ratio from a federal table and multiply a hospital's charge by that ratio to arrive at a reduced number. Specifically on page 10 lines 1 – 6 "What I do is look at billed charges for hospital costs, just the bills that are sent out by the hospital, and then I use the federal cost report to adjust those billed charges to come up with estimates that I believe reflect



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reasonable value." And lines 17- 22 "And part of that report on what's called schedule C lists the cost-to-charge ratios, and I -- as I wrote in my report, I used those figures to adjust the billed charges to derive my estimates of reasonable costs."

25. In his report, Dr. Wickizer using his "methodology" describes the reasonable value of an EKG/ECG on page 12 as "$11.87." Clearly, this has no relation to a patient's ability to access care. A patient can not walk into any facility or physician's office and demand an EKG/ECG for $11.87 because Dr. Wickizer says it is the reasonable value. Supposed value that does not permit real access to care or service does not equate to true value of any service or good for a patient.

26. This purported methodology is inconsistent and contradictory to the daily work of a Case Manager/Life Care Planner. In fact, Rebecca Bellereive, RN, the defendant's life care planner, when asked about the reasonableness of the costs for future care in my life care plan states in her deposition on page 40, lines 1 – 6 "Q Okay. Why were you to address the issue of the home care rates? A Well, I believe I had indicated to her that, you know, my only disagreement, as far as the costing of those components set out by Tony Choppa in his life care plan, was the issue of how the home care was costed out." It is notable that the reasonableness of future costs equates to the reasonableness of past costs.

27. Further, in his report, Dr. Wickizer suggests that receiving life saving emergency medical care as a consumer is equal to purchasing a pair of reading glasses. On page 4 he states, "To give a simple example, consider the purchase of reading glasses available in most drugstores. In general, prices of reading glasses are around $15 to $20. A knowledgeable buyer would not pay $50 to $60 (a mark-up on the order of 300%) for conventional reading glasses. If a drug store attempted to sell reading glasses for $60, most buyers would decline to pay that price and would go to the another



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drugstore to shop for a cheaper pair of glasses they considered to represent the "reasonable value" of reading glasses."

28. This analogy is devoid of reality suggesting that Mr. Beltran and first responders had the luxury of "shopping."

29. I have reviewed the charges associated with the above listed medical care. It is my opinion that the charges incurred are customary of the amounts charged by hospitals and medical providers in the medical community and are therefore reasonable.

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed this 25 day of August, 2017 at Bothell, WA.

Anthony J. Choppa



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August 28 2017 1:42 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT<br><br>Noted for:<br>September 1, 2017 |

## I. The instant motion is directed at legal issues and the facts underlying this case are not relevant.

In response to the instant motion, plaintiff devotes a significant portion of the brief arguing the facts. Additionally, plaintiff has provided the court with a great deal of material directed at establishing the facts, none of which is relevant to the instant motion.

Plaintiff has asserted two basic claims – negligence and assault and battery. The assault and battery claim is based on plaintiff's contention that Officer Volk's use



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of deadly force was excessive. The City recognizes that there is a material question of fact on the issue of whether the force used was excessive, and that is why the instant motion does not address plaintiff's assault and battery claim.

The instant motion addresses plaintiff's negligence claims and whether such claims are cognizable. These are questions of law. The factual materials submitted by plaintiff are simply not relevant.

## II. Plaintiff did not respond to the motion on the issue of negligent training and supervision, implicitly conceding that the motion has merit.

As outlined in the City's opening memorandum, plaintiff's claims of negligent training and supervision are not cognizable as Officer Volk was acting within the scope of her employment as a Tacoma police officer at all times relevant to this litigation. Evans v. Tacoma Sch. Dist. No. 10, 195 Wn. App. 25, 47, 380 P.3d 553 (2016). Plaintiff did not respond to the instant motion on these claims, thereby conceding that the motion has merit. See CR 56 (e). Because the City has demonstrated that summary judgment is appropriate and because plaintiff did not respond to the motion or adduce any evidence to establish a negligent training or supervision claim, these claims must be dismissed.

## III. Plaintiff's reliance on California law to support a negligent application of force claim is misplaced, since Washington does not have a similar body of jurisprudence.

Plaintiff expends a great deal of time in his brief arguing that California law should be persuasive to the Court's analysis and that the Court should expand the scope of a law enforcement officer's duty while exercising a traditional governmental



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function. See Plaintiff's Response to Motion for Partial Summary Judgment, pp. 12-13; pp. 21-24. Plaintiff's reliance on California law is misplaced. California recognizes negligence claims against police officers in their individual capacity[1], because California law specifically recognizes that law enforcement officers have an affirmative duty to use deadly force in a reasonable manner[2]. See, e.g., Hayes v. County of San Diego, 57 Cal.4th 622, 120 Cal. Rptr.3d 684, 305 P.3d 252 (2013)(applying long standing state law holding that "liability can arise if the tactical conduct and decisions leading up to a use of deadly force show, as part of the totality of circumstances, that the use of deadly force was unreasonable."). However, plaintiff has failed to produce any Washington authority which would support his argument that such a duty has been recognized and is established in Washington under a negligence theory. Moreover, no Washington court has ever even cited to Hayes, let alone rely upon or adopt the analysis outlined therein by the California Supreme Court.

In Washington, an officer's use of excessive and unreasonable force sounds in assault and battery, not in negligence[3]. Boyles v. Kennewick, 62 Wn. App. 174, 813 P.2d 178 (1991); McKinney v. Tukwila, 103 Wn. App. 391, 13 P.3d 631 (2000).

---

[1] Note that in Washington, officers *can* be subject to the same duties as a private individual, such as a duty to exercise due care in the operation of a motor vehicle, as driving is not a traditional governmental function.

[2] Plaintiff also cites to Reed v. District of Columbia, 474 F. Supp.2d 163 (D.C. 2007), trying to argue that D.C. law is applicable herein. Again, plaintiff cites to no Washington case law to support the proposition advanced by Reed.

[3] Moreover, the "totality of circumstances" that plaintiff' attempts to bootstrap into a negligence analysis claim is relevant to the determination of whether the force was excessive, and if so, whether the officer would be liable for assault and battery. See Boyles, *supra*. See also Graham v. Connor, 490 U.S. 386, 396-397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).



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Plaintiff has already pleaded an assault and battery cause of action, which is not the subject of the instant motion.

Further, contrary to plaintiff's assertion, it is well-established in Washington that a plaintiff may not base a claim of negligence on an intentional act, like the use of excessive force:

> To state a claim for negligence, the underlying complaint must allege facts that support a conclusion that the conduct was negligent. *See McLeod v. Grant County Sch. Dist. No. 128*, 42 Wn.2d 316, 319, 255 P.2d 360 (1953) ("In order to state a cause of action for negligence, it is necessary to allege facts which would warrant a finding that the defendant has committed an unintentional breach of a legal duty, and that such breach was a proximate cause of the harm.").

Grange Ins. Ass'n v. Roberts, 179 Wn. App. 739, 769, 320 P.3d 77 (2013). See also Brutsche v. City of Kent, 164 Wn.2d 664, 679, 193 P.3d 100 (2008)(declining to address negligence claim where officer's act of breaching the door on plaintiff's property was intentional, not accidental); Tegman v. Accident & Med. Investigations, Inc., 150 Wn.2d 102, 75 P.3d 497 (2003) ("fault" within the meaning of RCW Chapter 4.22, which encompasses liability for negligence, does not include intentional acts or omissions); Roufa v. Constantine, 2017 U.S. Dist. LEXIS 4966, at *30-31 (W.D. Wash. Jan. 11, 2017) (plaintiff cannot base a claim of negligence on alleged intentional actions, such as excessive force or unlawful arrest); Lawson v. City of Seattle, 2014 U.S. Dist. LEXIS 55883, at *37-40 (W.D. Wash. Apr. 21, 2014)(dismissing negligent infliction of emotional distress and negligence claims because a plaintiff cannot base claims of negligence on intentional acts and because the public duty doctrine applies to law enforcement activities); Willard v. City of Everett, 2013 U.S. Dist. LEXIS 126409, 2013 WL 4759064 at *4-5 (W.D. Wash. Sept. 4, 2013)(no cognizable claim



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for negligent where claim is based on intentional act and where police owed no individualized duty to plaintiff pursuant to the public duty doctrine)[4].

Under controlling Washington authority, plaintiff cannot premise a negligence claim on an intentional application of force by a police officer.

## IV. The public duty doctrine does apply to law enforcement activities.

In response to the instant motion, plaintiff argues that the public duty doctrine does not apply in the instant case for a variety of reasons. First, plaintiff argues that the public duty doctrine only applies where the duty is imposed by statute. Second, plaintiff argues that the doctrine only applies to cases of nonfeasance (inaction) and not to cases involving misfeasance (negligent action). Lastly, plaintiff points to a number of cases decided under Restatement (Second) of Torts, §302B, and such a duty can support a negligence claim in this case. As outlined herein, none of these arguments are persuasive.

### A. The concurrence in Munich does not change the analysis as to whether the public duty doctrine applies to law enforcement activities.

As outlined in the City's opening memorandum, in a concurring opinion, Justice Chambers asserted that the public duty doctrine only applied to functions required by statute (as opposed to functions that have been deemed to be governmental, instead of proprietary). Munich v. Skagit Emergency Comm'n Center, 175 Wn.2d 871, 879, 288 P.2d 328 (2012). While later courts have continued to analyze the application of the public duty doctrine by reference to governmental versus proprietary functions (and without reference to statutorily imposed duties) (see, e.g., Sunshine Heifers, LLC

[4] Copies of the unpublished federal opinions cited herein were attached as an appendix to the defendants'' opening memorandum in accordance with GR 14.1 and 32.1



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v. Dep't of Agric., 188 Wn. App. 960, 966-68, 355 P.3d 1204, 1208-09 (2015) ; Fabre v. Town of Ruston, 180 Wn. App. 150, 159-60, 321 P.3d 1208, 1213 (2014)), this distinction is of no import when analyzing application of the doctrine to law enforcement activities[5].

Law enforcement is a uniquely governmental function, one specifically authorized by constitution and mandated by statute. See Fourth Amendment to the United States Constitution; Article XI, section 11 of the Washington Constitution; RCW §35.22.280(35)(2015) (tasking first class cities with duty and authority to enforce the laws and keep the peace). Further, Washington courts have consistently held that the duties owed by police "are owed to the public at large and are unenforceable as to individual members of the public." Chambers-Castanes v. King County, 100 Wn.2d 275, 284, 669 P.2d 451 (1983). "The relationship of police officer to citizen is too general to create an actionable duty. Courts generally agree that responding to a citizen's call for assistance is basic to police work and not special to a particular

[5] Plaintiff also relies upon an unpublished opinion from Division I, Mancini v. City of Tacoma, 2015 Wash. App. LEXIS 1196 (Wash. Ct. App., June 8, 2015). In addition to having no precedential value, the Mancini opinion is an outlier that cannot be reconciled with controlling Washington or federal precedence. In Mancini, officers sought and obtained a search warrant for Apartment B1, based on information provided by a confidential informant. When the warrant was executed, officers discovered that Apartment B1 was the home of plaintiff Kathleen Mancini, and not the home of Matthew Logstrom, the subject of the narcotics investigation. In reversing the grant of summary judgment, Division I reasoned that because – under the common law - Ms. Mancini's neighbors did not have the authority to invade her home, the police similarly did not have such authority. Mancini, 2015 Wash. App. LEXIS 1196, at *17. This assertion flies in the face of long standing, controlling authority. "As long as the government searched the house they intended to search, and the information they obtained convinced a magistrate that there was probable cause to search the house they in fact searched, minor errors on the face of the warrant do not create fourth amendment violations." Garza v. Lett, 1988 U.S. Dist. LEXIS 8853, at *17-18 (N.D. Ill. Aug. 9, 1988)(citing United States v. Turner, 770 F.2d 1508 (9th Cir. 1985), cert. denied, 475 U.S. 1026 (1986); United States v. McCain, 677 F.2d 657 (8th Cir. 1982); United States v. Gitcho, 601 F.2d 369 (8th Cir.), cert. denied, 444 U.S. 871 (1979)).



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individual." Torres v. City of Anacortes, 97 Wn. App. 64, 74, 981 P.2d 891 (1999), rev. denied, 140 Wn.2d 1007 (2000).

Additionally, plaintiff's reliance on Garnett v. City of Bellevue, 59 Wn. App. 281, 796 P.2d 782 (1990) is not helpful to the court's analysis of this issue. In Garnett, the Washington Court of Appeals held that the public duty doctrine did not bar the plaintiff's claim against a police officer for negligent infliction of emotional distress, which was based on the officer's verbal abuse of the plaintiff, wherein the officer called the plaintiff a prostitute and a hooker. Garnett, which is factually inapposite to the instant matter, should be considered an outlier in the realm of public duty doctrine jurisprudence, if no other reason that the trial court recognized that the facts did not fit an established exception to the public duty doctrine. It noted that "this case, although it doesn't fit under any of the four [exceptions to the public duty doctrine], presents a situation in which the doctrine should not be applied.... I suppose one could term it as a fifth exception, or a variation on the special relationship exception." Garnett, 59 Wn. App. at 284-285.

Indeed, a subsequent Court of Appeals decision established just how little value Garnett carries holds in relation to a negligence analysis. In Keates v. Vancouver, 73 Wn. App. 257, 869 P.2d 88 (1994), plaintiff sued the city and police officers alleging that they failed to properly investigate his wife's murder and that the failure resulted in premature and overly aggressive interrogation, which caused his posttraumatic stress disorder. Id. at 261-262. Plaintiff's reliance on Garnett was rejected by the Court:



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> The sole issue in *Garnett* was whether the public duty doctrine immunized the police officers from liability in negligence. The court held it did not, reasoning that the officers' direct contact with the two women established a "special relationship", which allowed them to sue the officers under the "special relationship" exception to the public duty doctrine….Our courts have, heretofore, required plaintiffs to pass a 3-pronged test to qualify under this exception. The plaintiffs must show: (1) there is direct contact or privity between the public official and the injured plaintiff which sets the latter apart from the general public, and (2) there are express assurances given by a public official, which (3) give rise to justifiable reliance on the part of the plaintiff. [internal citations omitted]… In *Garnett*, the police gave the plaintiffs no express assurances. Thus, the plaintiffs would have failed the test had the court applied it. We need not decide whether the court correctly decided to abrogate sovereign immunity without satisfaction of all three prongs of the test.

Keates, 73 Wn. App. at 269-270 (noting that Division One, after Garnett, ruled in a later case that in a claim for negligent investigation there was no special relationship giving rise to a duty to an arson suspect by a municipality's arson investigator where the suspect was eventually cleared of all charges in Dever v. Fowler, 63 Wn. App. 35, 816 P.2d 1237 (1991)).

B. There is no legal basis for plaintiff's contention that the public duty doctrine only applies to cases involving nonfeasance outside the context of §302B.

Plaintiff argues that the public duty doctrine only applies to cases involving inaction (or nonfeasance) but does not apply to cases involved misfeasance. In support of this argument, plaintiff cites to Coffel v. Clallam County, 58 Wn. App. 517, 794 P.2d 513 (1990), and Staats v. Brown, 139 Wn.2d 757, 760-61, 991 P.2d 615 (2000). Neither of these cases, however, discuss the concepts of misfeasance or nonfeasance. Coffel involved the application of the failure to enforce exception to the public duty doctrine, and Staats involved the application of common law qualified



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immunity to intentional torts, such as false arrest, false imprisonment and assault and battery.

The cases in which the court discusses the distinction between misfeasance and nonfeasance all involve application of §302B of the Restatement (Second) of Torts. See, e.g., Robb v. City of Seattle, 176 Wn.2d 427, 439-40, 295 P.3d 212 (2013). As discussed in the next section, the cases involved §302B have no bearing on the instant case.

C. As this case does not involve a crime against plaintiff by a third person, cases involving §302B have no application to the instant case.

In response to the instant motion, plaintiff also cites to and relies upon Robb v. Seattle, *supra*, Washburn v. City of Federal Way, 178 Wn.2d 732, 310 P.3d 1275 (2013), and Parrilla v. King County, 138 Wn. App. 427, 157 P.3d 879 (2007). None of these cases are instructive on the issues pending before this court, as all involve the scope and application of the §302B of the Restatement (Second) of Torts.

§302B of the Restatement (Second) of Torts is limited to situations where there is a duty to protect the plaintiff from the criminal acts of a third party[6]. See, e.g., Robb v. City of Seattle, 176 Wn.2d 427, 439-40, 295 P.3d 212 (2013). In the instant case, there is no allegation that plaintiff was harmed by the intentional or criminal acts of a third person. Instead, plaintiff alleges that he was harmed by the intentional acts of

[6] §302B provides: "An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal." The comments to this section indicate that this section imposes a duty in some situations where an actor's own affirmative act has created or exposed the plaintiff to a recognized high degree of risk of harm through the misconduct or criminal act of third person.



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the defendant. The very nature of plaintiff's claim renders cases involving §302B inapplicable.

## V. Conclusion

As outlined in the City's opening memorandum, plaintiff's negligence claims fall into three main camps: a failure to have appropriate policies; a negligent application of force; and a failure to train or supervise Officer Volk. Plaintiff failed to address the negligence training and supervision claims, thereby conceding that the claims are not cognizable and should be dismissed. With respect to the negligent application of force claim, Washington law – which controls on this issue – clearly holds that a negligence claim cannot be premised on an intentional act, plaintiff's reliance on California law notwithstanding. Finally, all of plaintiff's negligence claims – to the extent those claims are based upon law enforcement activities – fail due to the absence of an actionable duty owed to the plaintiff. Law enforcement activities are unique governmental functions, and both constitutional and state law imposes a duty on the City to enforce the law and keep the peace. Consequently, as outlined by the Washburn court, law enforcement functions are the kinds of duties that are not legal duties within the meaning of tort law. Because plaintiff did not adduce evidence to establish one of the exceptions to the public duty doctrine, any negligence claim in this case fails, as a matter of law.

For these reasons, the City respectfully moves for an order granting the instant motion and dismissing plaintiff's negligence claims, in their entirety and with prejudice.



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DATED this 28 day of August, 2017.

WILLIAM FOSBRE, City Attorney

By: /s/ Jean Homan
JEAN P. HOMAN
WSB #27084
Deputy City Attorney
Attorney for Defendant

**DECLARATION OF SERVICE**

I hereby certify that on August 28, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Counsel for Plaintiffs**
John R. Connelly, Jr.
Micah R. LeBank
Connelly Law Offices, PLLC
2301 North 30th Street
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jconnelly@connelly-law.com
mlebank@connelly-law.com
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/s/ Gisel Castro
Gisel Castro, Legal Assistant
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15-2-11618-1 49866669 ORGPSJ 09-06-17

FILED
DEPT. 14
IN OPEN COURT
SEP 01 2017
Pierce County Clerk
By..... DEPUTY

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO<br>Plaintiff,<br>v.<br>CITY OF TACOMA, a political subdivision of the State of Washington;<br>Defendant. | NO. 15-2-11618-1<br>ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS |

THIS MATTER came on for hearing upon Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials, including the materials submitted in support of the Motion and in opposition thereto, specifically:

1. Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials;
2. Declaration of Micah R. LeBank in Support of Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials and exhibits thereto;



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3. Declaration of Anthony Choppa, M.Ed., CRC and exhibits thereto;
4. Defendant's Response to Plaintiff's Motion for Partial Summary Judgment;
5. Declaration of Jean P. Homan in Support of Defendant's Response and exhibits thereto;
6. Plaintiff's Reply to Plaintiff's Motion for Partial Summary Judgment; and
7. Declaration of Micah R. LeBank in Support of Plaintiff's Reply to Motion for Partial Summary Judgment and exhibits thereto.

~~The Court, having heard arguments of counsel and having reviewed all of the materials filed in support of and in opposition to Plaintiff's Motion, finds that Thomas Wickizer, PhD. and his opinions and testimony are excluded. The use of Dr. Wickizer would violate the collateral source rule and require a change in the rules of evidence. This is too difficult for the jury to determine reasonableness of every billing. Plaintiff should not be forced to argue re: discount of insurance "breaks" in the billings.~~

Further, the Court finds Plaintiff Cesar Beltran has incurred $712,719.99 in past medical specials as a result of the injuries sustained in the shooting on June 29, 2013. FURTHER, the court finds that Plaintiff's past medical specials, in the amount of $712,719.99, were reasonable and necessary and as a result of the injuries sustained by the plaintiff on June 29, 2013.

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials is **GRANTED**.

~~FURTHER, it is hereby ORDERED, ADJUDGED, and DECREED that, Thomas~~



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~~Wiekizer, PhD and his opinions and testimony are excluded.~~ JPH MMD

FURTHER, it is hereby ORDERED, ADJUDGED, and DECREED that, should the jury find for the Plaintiff in this matter, the verdict should include, but not be limited to, an award for past medical specials in the amount of $712,719.99.

DONE IN OPEN COURT this 1 day of September, 2017.

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HONORABLE SUSAN K. SERKO

FILED
DEPT. 14
IN OPEN COURT
SEP 01 2017
Pierce County Clerk
By..... DEPUTY

Presented by:

CONNELLY LAW OFFICES, PLLC

Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
Attorneys for Plaintiff

Approved as to form and copy received:

ELIZABETH A. PAULI, City Attorney

Jean Homan, WSBA No. 27084
Deputy City Attorney
Attorney for Defendant



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15-2-11618-1 49866747 ORGPSJ 09-06-17

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017

FILED
DEPT. 14
IN OPEN COURT
SEP 01 2017
Pierce County Clerk
By..... DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | NO. 15-2-11618-1<br><br>[~~PROPOSE~~D]<br><br>ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT |

THIS MATTER having come on regularly to be heard before the undersigned judge of the above-entitled court upon Defendant's Motion for Partial Summary Judgment; defendant being represented by Deputy City Attorney Jean P. Homan; and plaintiff being represented by John R. Connelly, Jr., Micah LeBank and Meaghan Driscoll, and the Court having reviewed the files and records herein, including the following documents:

1. Defendant's Motion for Partial Summary Judgment;



ORIGINAL



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2. Affidavit of Jean P. Homan in Support of Defendant's Motion for Partial Summary Judgment;

3. Plaintiff's Response on Opposition to Defendant's Motion for Partial Summary Judgment;

4. Declaration of Micah LeBank in Opposition to Defendant's Motion for Partial Summary Judgment;

5. Reply in Support of Defendant's Motion for Partial Summary Judgment.

plus all attachments and exhibits thereto; and being fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion for Partial Summary Judgment of All Claim is hereby GRANTED; it is further

ORDERED, ADJUDGED and DECREED that plaintiff's negligence claims are hereby DISMISSED, in their entirety, and with prejudice.

DATED this 1 day of Sept., 2017.

HONORABLE SUSAN K. SERKO

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DEPT. 14
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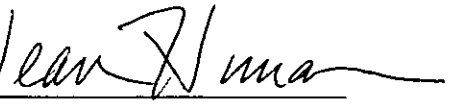
9/6/2017 1985 0183

Presented by:

WILLIAM C. FOSBRE,
City Attorney

By: 
Jean Homan, WSBA #27084
Attorney for Defendants

Approved as to form,
Notice of presentment waived:

CONNELLY LAW OFFICES, PLLC

By: _____
JOHN R. CONNELLY, JR., #12183
MICAH LEBANK, #38047
MEAGHAN DRISCOLL, #49863
Attorneys for Plaintiff



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9/6/2017 1:55 0154

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PIERCE COUNTY, WASHINGTON

September 07 2017 4:18 PM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**PLAINTIFF'S MOTION TO CERTIFY ISSUE FOR DISCRETIONARY REVIEW UNDER RAP 2.3(b)(4) AND STAY PROCEEDINGS** |

## I. RELIEF REQUESTED

Plaintiff respectfully requests that the Court certify this case for appellate review pursuant to RAP 2.3(b)(4). On September 1, 2017, the Court granted the City of Tacoma's Motion for Partial Summary Judgment and dismissed the Plaintiff's negligence claims. This ruling involved controlling issues of law on which there is substantial ground for difference of opinion, and because these issues impact the claims that will be submitted to the jury at trial, certification will materially advance the termination of the litigation. Trial is scheduled to



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commence October 9, 2017. Plaintiff's respectfully request the Court stay the proceedings and certify this case for appellate review.

## II. EVIDENCE RELIED UPON

This motion is based on the Court's ruling of September 1, 2017, the Order entered thereon, and the pleadings, briefing, exhibits, the Declaration of Meaghan M. Driscoll in support of this motion and exhibits thereto, and other material on file with the Court.

## III. ISSUE PRESENTED

The following issue should be certified for discretionary review under RAP 2.3(b)(4):

Whether a police officer owes a duty of reasonable care to act reasonably when using deadly force and whether the reasonableness of an officer's conduct is determined in light of the totality of the circumstances as articulated by the California Supreme Court in *Hayes v. County of San Diego*, 57 Cal.4th 622, 160 Cal.Rptr.3d 684, 305 P.3d 252 (2013).

## IV. BACKGROUND FACTS

The Court is familiar with the facts and procedural history of this case. This is a police shooting case involving Tacoma police officer Michel Volk shooting Cesar Beltran four times.

On August 3, 2017, Defendant City of Tacoma filed a motion for summary judgment on Plaintiff's negligence claims. This motion argued that the claims should be dismissed as a matter of law because there was no duty owed to the Plaintiff and because the shooting was an intentional act, not an act of negligence. The motion also argued plaintiff's negligent training and supervision claims should be dismissed.

On September 1, 2017, subsequent to oral argument, the Court ruled Plaintiff's negligence claims be dismissed with prejudice.



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This ruling involves controlling issues of law that significantly impact the method and has the potential to impact the manner in which this case can be presented to the jury. This issue also has been the subject of division among the lower courts' interpretation and application of the public duty doctrine to negligence claims. Certification at this juncture will both materially advance the ultimate resolution of this case on the merits and will avoid the waste of both time and resources by reducing the potential for duplicative motions and discovery after this issue is resolved on appeal.

## V. ANALYSIS & DISCUSSION

The issue of whether an officer's conduct leading up to and including the use of deadly force gives rise to negligence liability under Washington law is a controlling question of law that broadly impacts and shapes the future course of this litigation. As discussed in further detail below, this is exactly the type of question and situation that the certification mechanism contained in RAP 2.3(b)(4) was designed to address: a threshold question that presents substantial ground for a difference of opinion, and that controls substantial aspects of the remaining claims and litigation such that its immediate resolution will materially advance an ultimate and economical resolution of the litigation.[1]

Plaintiffs therefore respectfully move this Court to certify the issue under RAP 2.3(b)(4) in order to achieve these goals.

### *1. Standard for Certification of an Issue Under RAP 2.3(b)(4)*

RAP 2.3(b)(4) is a mechanism that allows a trial court to facilitate early appellate review of difficult or controlling legal questions determined in an interlocutory order:

---

[1] Plaintiff has submitted the Declaration of Meaghan M. Driscoll and attached exhibits with eight orders where the trial court certified an issue for discretionary review. These orders are submitted as examples in similar cases where, just as here, it was appropriate for the trial court to certify the issues.



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**Considerations Governing Acceptance of Review.** Except as provided in section (d), discretionary review may be accepted only in the following circumstances:

> (b)(4) The superior court has certified, or all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

There is no case law expressly interpreting RAP 2.3(b)(4), nor have Washington courts enunciated a specific test for certification. However, guidance on these issues is provided by cases in which discretionary review has been granted after superior court certification. For example, in *Hale v. Wellpinit School Dist. No. 49*, 165 Wn.2d 494, 500, 198 P.3d 1021 (2009), our Supreme Court accepted review of the certified issue of whether an amendment to the Washington Law Against Discrimination ("WLAD") applied retroactively to revive a claim. Similarly, in *State Owned Forests v. Sutherland,* 124 Wn.App. 400, 101 P.3d 880 (2004), the court certified the issue of whether DNR's decision fell within the definition of "agency action" under the APA so as to even qualify for judicial review. And in *Antonius v. King Cnty.,* 153 Wn.2d 256, 260, 103 P.3d 729, 732 (2004), the court certified the issue of what statute of limitations applied in a discrimination lawsuit under RCW 49.60. Recently, the Washington Supreme Court accepted discretionary review of a case involving a question regarding the duty to defend. *Expedia, Inc. v. Steadfast Ins. Co.,* 180 Wn.2d 793, 797, 329 P.3d 59, 61-62 (2014).

These cases have several common threads. First, each involved a legal question on which the parties presented no definitive appellate authority, or only conflicting or inferential authority. Second, these legal questions were addressed early in the litigation, and answering them materially impacted how further litigation in the cases would proceed. It is thus difficult legal questions that present the potential for a substantial waste of judicial and party resources



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and resultant prejudice from allowing the litigation to continue that provide natural issues for certification. The interrelated issues recently decided by this Court qualify on both counts.

Although there is no Washington state case law expressly interpreting RAP 2.3(b)(4), the rule was adapted from its federal counterpart, 28 U.S.C. § 1292(b). 2A Karl B. Tegland, *Wash. Practice: Rules Practice* at 161 (6th Ed. 2004). The Court's analysis should therefore be informed by cases interpreting the federal certification mechanism under 28 U.S.C. § 1292(b), on which RAP 2.3(b)(4) is modeled. *Am. Mobile Homes of Wash., Inc. v. Seattle-First Nat'l Bank*, 115 Wn.2d 307, 313, 796 P.2d 1296 (1990). And like the decisions by Washington state courts discussed in the preceding paragraph, federal courts addressing 28 U.S.C. § 1292(b) have indicated that the principal focus of the rule is institutional efficiency and economy. *Forsyth v. Kleindeinst*, 599 F.2d 1203 (3rd Cir. 1979.

The rule is intended to materially advance the disposition of a case by facilitating immediate appellate review of a threshold legal ruling that will control the course of further litigation, and thus provide early guidance on an issue that will result in a more efficient disposition of the case and avoid the potential for substantial waste, delay and prejudice. *Ford Motor Credit Co. v. S.E. Barnhart & Sons, Inc.*, 664 F.2d 377, 380 (3rd Cir. 1981). For example, the Fourth Circuit granted review under 28 U.S.C. § 1292(b) to address the legal question presented on a motion to disqualify a district court judge, recognizing that it was the type of threshold and controlling question that carried the inherent risk of waste, delay and prejudice if litigation continued without receiving a definitive resolution. *Virginia Elec. & Power Co. v. Sun Shipbuilding & Dry Dock Co.*, 539 F.2d 357, 363-64 (4th Cir. 1976).

The primary purpose of certification and early discretionary review is thus to avoid continuing protracted and expensive litigation and trail after a ruling on a controlling issue,



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especially where little or conflicting appellate authority on the issue exists and the entirety of the litigation must be revisited if the ruling on the issue was later overturned. *United States v. Am. Soc'y of Composers, Authors & Publishers*, 333 F.Supp.2d 215, 221 (S.D.N.Y. 2004) (quoting *German v. Fed Home Loan Mortgage Corp.*, 896 F.Supp. 1385, 1398 (S.D.N.Y. 1995)); *c.f. Robbins Co. v. Lawrence Mfg. Co*., 482 F.2d 426, 429-30 (9th Cir. 1973).

This is particularly on point in this case, where a resolution of the issue presented will determine the existence of plaintiff's negligence claim and the resultant ability for Plaintiff to put on evidence related to that claim at trial. The jury will be instructed on assault and battery claims but will not be instructed regarding negligence. It is possible that a jury could find that Officer Volk was negligent but that she did not commit a battery. This was the reason why the City of Tacoma moved to dismiss the plaintiff's negligence claim. It would be an incredibly expensive endeavor to have to try this case a second time if the Court's decision regarding the negligence claims was reversed.

***2. Certification for Discretionary Review Under RAP 2.3(b)(4) Is Appropriate.***

There is a three-prong test for certification: (1) a controlling issue of law, (2) presenting substantial ground for difference of opinion, and (3) an early resolution of which will materially advance the ultimate termination of the litigation. The three prongs are distinct, and must be addressed separately, as authority interpreting an analogous federal rule makes clear. *E.g., In re Cement Antitrust Lit. (MDL No. 296),* 673 F.2d 1020 (9th Cir. 1982).

(a) Controlling Question of Law

The question posed in this motion is a controlling question of law. Whether and to what extent Defendant City of Tacoma owed a duty to Plaintiff Beltran is determinative of Plaintiff's



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negligence claims. This question is controlled by the Court's September 1st ruling and thus the issue presented for certification in this motion.

There can be no real dispute that the issues presented are controlling questions of law.

(b) Substantial Ground for Difference of Opinion

Regarding the second element of the certification test, "substantial ground for difference of opinion," this Court is the arbiter of whether there is substantial ground for a difference of opinion on these issues. *See Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave*, 921 F.2d 21, 25 (2nd Cir. 1990) (refusing to reverse trial court's reasoning supporting certification because there was "no persuasive reason" to reject it). Questions that are difficult and issues of first impression fall into this category, as are issues on which no controlling authority or only conflicted authority is presented. *Id.*

Defendant City of Tacoma contends that the public duty doctrine immunizes Officer Volk from owing a duty to Plaintiff Beltran. Whether the public duty doctrine is applicable in situations like this, where an officer has made affirmative steps in dealing with a member of the public, is a critical question that has been the topic of rich discussion and confusion among the courts. In 2012, Justice Tom Chambers noted:

> [T]here is great confusion about what our public duty doctrine jurisprudence means. We (and I include myself) have not been careful in what we have said in past cases. This has given rise to deeply held and greatly divergent views on the doctrine. Some think the public duty doctrine is a tort of its own imposing a duty on any government that gives assurances to someone. Some view it as providing some sort of broad limit on all governmental duties so that governments are never liable unless one of the four exceptions to the public duty applies, thus largely eliminating duties based on the foreseeability of avoidable harm to a victim. In fact, the public duty doctrine is simply a tool we use to ensure that governments are not saddled with greater liability than private actors as they conduct the people's business.

*Munich v. Skagit Emergency Comm. Cntr.*, 175 Wn.2d 871, 885-86, 288 P.3d 328 (2012)



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(Chambers, J.) (five-justice majority concurrence).

However, despite this acknowledgement, the lower courts are nevertheless vague as to when the public duty doctrine is at issue and part of the analytical framework. Furthermore, despite Justice Chamber's attempt to clarify the doctrine, there is some dispute about whether his opinion is binding precedent since it is a concurrence opinion, not part of the core case holding. Defendant recognized the lack of clarity in the *Munich* decision in footnote 2 to its Motion for Partial Summary Judgment, stating:

> [I]n a concurring opinion, Justice Chambers asserted that the public duty doctrine only applied to functions required to statute (as opposed to functions that have been deemed to be governmental, instead of proprietary). While later courts have continued to analyze the application of the public duty doctrine by reference to governmental versus proprietary functions (and without reference to statutorily imposed duties) (*see, e.g., Sunshine Heifers, LLC v. Dep't of Agric.*, 188 Wn. App. 960, 966-68, 355 P.3d 1204, 1208-09 (2015).

While as recently as 2012 this confusion was acknowledged, it still has not been resolved head-on by the Supreme Court.

Furthermore, in oral argument, this Court asked counsel for a case where a Washington court has decided the narrow issue of whether a plaintiff may bring a negligence claim against a police officer in a deadly force case. While Plaintiff's believe that *Coffel, Robb*, and *Washburn* answer this question both the defense and the Court took the opposite view. *Coffel v. Clallam County*, 47 Wn.App. 397, 735 P.2d 686 (1987); *Robb v. City of Seattle*, 176 Wn.2d 427, 295 P.3d 212 (2013); *Washburn v. City of Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013).

The substantial ground for difference of opinion is perhaps best illustrated by the competing cases cited by Defendant in its Motion for Partial Summary Judgment and in Plaintiff's opposition thereto. For example, Plaintiff contends that Officer Volk owed a duty



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because when an officer does act, he or she has the duty to act reasonably. *Coffel v. Clallam County*, 47 Wn.App. 397, 403, 735 P.2d 686, *review denied,* 108 Wn.2d 1014 (1987) (if the officers do act, they have a duty to act with reasonable care"). In contrast, Defendant cites to *Chambers-Castanes v. King County*, 100 Wn. 275, 284, 669 P.2d 451 (1983), for the proposition that the public duty doctrine absolves a police officer of any duty to a specific individual.

In *Robb v. City of Seattle*, the Supreme Court held the public duty doctrine did not preclude liability in a case involving police officer misfeasance. 176 Wn.2d 427, 295 P.3d 212 (2013). However, lower courts are still uncertain as to when the public duty doctrine is at issue, and more specifically whether police officers owe a duty to the specific individuals they interact with. *See e.g., Fabre v. Town of Ruston*, 180 Wn.App. 150, 159-160, 321 P.3d 1208 (2014). Those decisions are being made daily and will be clouded with uncertainty until this issue is finally resolved on appeal.

Additionally, there is no published decision answering the second question posed by the City of Tacoma's motion as to whether a plaintiff may bring both a negligence claim along with an intentional tort claim. While the court allowed both claims to proceed in *Mancini,* the City of Tacoma claimed that this case was an outlier and continues to argue that this serves as a basis to dismiss the plaintiff's negligence claim.

(c) Materially Advance Ultimate Termination of the Litigation.

Finally, resolution of these issues now will materially advance termination of the litigation. As noted, conserving judicial resources and reducing the burdens on the parties going forward, as well as receiving definitive answers on issues that in large part control a number of the remaining claims in the lawsuit, materially advances ultimate termination of the



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litigation. *In re Kashani*, 190 B.R. 875, 883 (9th Cir. 1995). Saving this Court and the parties "unnecessary effort" and expense is an appropriate use of interlocutory appeal. *Id*. Indeed, certification now will materially advance the termination of the litigation because it will determine what law governs the claims in this case and what evidence will be presented at trial. In short, once the threshold and controlling legal questions are resolved on appeal, it will guide the course of trial in this lawsuit.

If this issue is not certified at this point, there will likely be additional battles over the scope of trial, with neither side having clarity on, for example, whether the actions taken by Officer Volk leading up to the final assault and battery can be presented.

Moving forward on the remaining claims will thus needlessly burden the Court and the parties while these threshold issues have not yet been resolved. Without a definitive resolution of these issues, there is an inherent potential that all of the litigation in this case will need to be revisited, which would result in substantial waste of the Court's time and resources, delay, and prejudice to the parties. All of this will be averted by an early and definitive answer to the controlling legal questions, and will be of benefit to both the Court and the parties.

**3. A Stay of Proceedings Should be Granted if the Court Certifies these Issues**

In the event this Court certifies these issues as requested, Plaintiff's further request the Court stay the proceedings until either the Supreme Court denies discretionary review or issues an opinion. The court has inherent power to stay its proceedings where the interest of justice so requires. *King v. Olympic Pipeline Co.*, 104 Wn.App. 338, 350, 16 P.3d 45 (2000). A stay is appropriate in this case as there are no issues in this case that are not intricately interrelated to the issues that would be on appeal. Specifically, the issue of whether Officer Volk owed a duty to Cesar Beltran upon initial contact with him is intricately tied to each and every subsequent



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act Officer Volk took, culminating in her shooting him four times. As has previously been argued before this Court, it would be a tremendous waste of both the parties' time and of judicial resources and would require a duplication of work to allow this case to continue before a ruling is provided by the Washington Supreme Court.

## VI. CONCLUSON

The Court should grant certification under RAP 2.3(b)(4). The issue presented is narrow and specific and is one to which the parties have asserted substantial ground for difference of opinion. Certification here will advance the policy reasons for that procedure. Simply put, absent appellate review, if the Court erred in its ruling on these issues, the remainder of the case would be irreparably tainted by that decision. It would be a great waste of judicial resources and result in unnecessary expense and efforts by the parties if the case goes forward. As is evidenced by all of the cases cited above, this is the type of situation where certification is appropriate. Plaintiff respectfully request that the Court certify this question for discretionary review.

DATED this 7th day of September, 2017.

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By_____

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Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
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PIERCE COUNTY, WASHINGTON

September 13 2017 9:43 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017 @ 9:00 am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO CERTIFY ISSUE FOR DISCRETIONARY REVIEW AND STAY PROCEEDINGS |

On September 1, 2017, the Court granted two motions for partial summary judgment – one brought by the City moving for dismissal of plaintiff's negligence claims, and one brought by the plaintiff seeking a finding that the amount billed for past medical specials was reasonable as a matter of law. Plaintiff has moved this court for an order staying the proceedings and seeking certification of the court's order on the City's motion for summary judgment pursuant to RAP 2.3.



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While the parties do not agree on the controlling legal analysis for the underlying substantive claims, the parties do agree that it would be appropriate to stay the proceedings in the trial court and to certify both orders on summary judgment for interlocutory review pursuant to all applicable grounds under RAP 2.3.

With respect to the court's order on plaintiff's motion for partial summary judgment, the rule in Washington for past medical expenses is that "[a] plaintiff in a negligence[1] case may recover only the reasonable value of medical services received, not the total value of all bills paid." Patterson v. Horton, 84 Wn. App. 531, 543, 929 P.2d 1125 (1997). See also Hayes v. Wieber Enterprises, Inc., 105 Wn. App. 611, 616, 20 P.3d 496 (2001)("…the amount billed or paid is not itself determinative. The question is whether the sums requested for medical services are reasonable."); WPI 30.07.01 (allowing recovery of "[t]he reasonable value of necessary medical care, treatment, and services received to the present time"). In carrying this burden, plaintiff "*cannot rely solely on the medical records and bills.*" (emphasis added) Patterson, 84 Wn. App. at 543. "Medical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and bills were both necessary and reasonable." Id. "Proof of [medical expenses] need not be unreasonably exacting and may come from any witness who evidences sufficient knowledge and experience respecting the type of service rendered and the reasonable value thereof." Kennedy v. Monroe, 15 Wn. App. 39, 49, 547 P.2d 899 (1976).

[1] The fact that the instant case involves an intentional tort – assault & battery – does not change the Patterson court's analysis.



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In response to the plaintiff's motion, the City offered evidence from a healthcare economist as to the reasonable value of the past medical expenses. The City's expert's opinion was based on the actual cost (to Tacoma General) of providing the specific services to Mr. Beltran received and on the average profit margin accepted by for-profit hospitals, as established by peer reviewed literature. The court rejected this evidence and found, as a matter of law, that the billed charges were reasonable. While Washington law does allow for evidence as to what constitutes "reasonable charges" for medical services rendered, there is no case law on what that evidence can or should be. Therefore, the issue of what evidence can be offered as to the reasonable value of medical services is a issue for which there is a substantial ground for difference of opinion. Moreover, given the nature of the claims in this case, resolving this issue prior to trial is necessary to avoid the waste of scarce judicial resources and increased expense to the parties. The damage issue in this case involves multiple experts on each side and retrial of the damage question (if required) would involve significant expense to both parties.

For these reasons, the City joins in plaintiff's motion to stay the case and to certify both orders on summary judgment for interlocutory review.

DATED this 13 day of September, 2017.

WILLIAM FOSBRE, City Attorney

By: */s/ Jean Homan*
JEAN P. HOMAN
WSB #27084
Deputy City Attorney
Attorney for Defendant



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## DECLARATION OF SERVICE

I hereby certify that on September 13, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED: September 13, 2017

*/s/ Gisel Castro*
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IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

September 14 2017 11:41 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017
Time: 9:00a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

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| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**PLAINTIFF'S REPLY TO MOTION FOR CERTIFICATION OF NEGLIGENCE ISSUE AND TO STAY PROCEEDINGS** |

## I. INTRODUCTION

Plaintiff requests the Court's September 1, 2017 Order dismissing Plaintiff's negligence claims (and only negligence claims) be certified by this Court. Whether a police officer owes a duty of reasonable care to act reasonably when using deadly force and whether the reasonableness of an officer's conduct is determined in light of the totality of the circumstances are legal questions prone to substantial ground for difference of opinion.



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Conversely, the Court's Order granting partial summary judgment on past medical specials is not an appropriate issue for certification because it concerns an area of well settled law and was soundly within the Court's discretion to grant or deny. In Defendant's Response to Plaintiff's Motion to Certify and Stay, Defendant mischaracterizes and grossly misquotes any sort of "agreement" between the parties as to certification of the Court's September 1, 2017 Orders. Critically, Plaintiff has not agreed to stipulation of the Court's partial summary judgment order on medical specials dated September 1, 2017.[1]

## II. BRIEF FACTUAL BACKGROUND

The instant motion is strictly for certification of the Court's September 1, 2017 ruling dismissing Plaintiff's negligence claims.

## III. ANALYSIS AND DISCUSSION

### i. Certification for Discretionary Review of the Court's Order Dismissing Plaintiff's Negligence Claims Under RAP 2.3(b)(4) Is Appropriate.

Whether Plaintiff can present negligence claims to the jury in this case involving police officer use of deadly force is an important and critical question of law that will impact the course of trial. Certification of this issue directly serves the purposes of RAP 2.3(b)(4), including resolving disputed issues of law and conserving judicial resources.

In the event this issue is not certified and review not granted by the appellate court, trial will proceed on Plaintiff's remaining claims of assault and battery. If an appellate Court later decides that Plaintiff was entitled to bring a negligence claim, a second trial will occur. These

[1]While there was initially an apparent misunderstanding between the parties, immediately upon learning of the misunderstanding by way of reading Defendant's Response, Plaintiff's counsel clarified that Plaintiff did not agree to the stipulation of the medical special Order. See September 13, 2017 12:06 p.m. email correspondence attached to Homan Declaration, p.1. It is likely the miscommunication arose from the word "rulings" in Defense counsel's September 13, 2017 8:14 a.m. email, which Plaintiff's counsel took to mean the two rulings dismissing Plaintiff's two negligence claims. Id. at p. 3, 8:14 a.m. email.



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two scenarios involve different issues of proof, evidence presented at trial, experts, jury instructions, and defenses that could determine the ultimate outcome of the case. *See e.g., Lam v. City of San Jose et al*, No. 16-16052 (slip. op.), 2017 WL 3902466 (9th Cir. 2017). In *Lam*, the plaintiff was shot in the back two times by a police officer. *Id*. The jury found defendant liable for negligence, but not liable for battery. *Id*. at *4. Certification of this issue will materially advance an ultimate and economical resolution of the litigation.

While judicial economy would be served by certification, a more significant interest that would be furthered is the resolution of an area of law where there is substantial grounds for a difference of opinion. *See e.g., Adair v. City of Federal Way*, No. 09-2-35947-4 KNT, 2011 WL 7574822 (King County Sup. Crt., November 23, 2011) (trial court ruled plaintiff's negligence claim remained as to actions of police officer); *but see also Estate of Mohamad-Imad Nazir Dmitri Harb v. King County Sheriff Office*, No. 08-2-35934-4-SEA, 2009 WL 10658558 (King County Sup. Crt., (November 23, 2009) (trial court ruled negligence claim against sheriff barred by public duty doctrine). While Plaintiffs take the position that the long line of common law negligence law, as well as case law in *Robb* and *Coffell* establish a duty on the part of law enforcement, this Court and the Defendant take the opposition position. Trial courts throughout Washington are struggling with related questions, and need guidance.

**ii. The Court's Order Granting Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials**

Certification should not be granted on this Court's Order granting partial summary judgment of Plaintiff's past medical specials. In stark contrast to the above issues of negligence actions against law enforcement, the questions of medical specials are well established law and not grounds for substantial difference of opinion. The law regarding past medical specials is



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well settled. When the plaintiff presents sufficient evidence establishing the reasonableness and necessity of his or her medical treatment and expenses, and the defendant elicits no controverting evidence, the reasonableness and necessity of plaintiff's medical expenses are not a matter of legitimate dispute. *Palmer*, 132 Wn.2d at 199-200; *Ide v. Stoltenow*, 47 Wn.2d 847, 851, 289 P.2d 1007 (1955). The Court excluded Defendant's expert opinion for purposes of summary judgment and the plaintiff provided evidence which was "more than the medical bills" from Mr. Choppa. This merely presents a factual question for which there is not substantial ground for difference of opinion and is not the type of issue to be certified. The Court made an evidentiary ruling that is within the court's discretion on a motion for summary judgment.

## IV. CONCLUSION

Plaintiff respectfully requests that the Court certify the September 1, 2017 Order dismissing Plaintiff's negligence claims for discretionary review and stay the proceedings.

DATED this 14th day of September, 2017.

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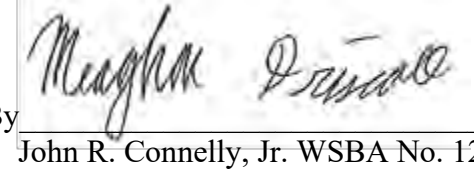

By_____
John R. Connelly, Jr. WSBA No. 12183
Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
Attorneys for Plaintiffs



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15-2-11618-1 49940122 CME 09-18-17

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IN OPEN COURT
SEP 15 2017
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By ..... DEPUTY

# IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

CESAR BELTRAN-SERRANO
Plaintiff(s)

vs

CITY OF TACOMA
Defendant(s)

Cause Number: 15-2-11618-1
**Memorandum of Journal Entry**

Judge/Commissioner: SUSAN K. SERKO
Court Reporter: Lanre Adebayo
Judicial Assistant: Heather Wynne

| | | |
|---|---|---|
| BELTRAN-SERRANO, CESAR | Micah R LeBank | Attorney for Plaintiff/Petitioner |
| BELTRAN-SERRANO, CESAR | John Robert Connelly JR | Attorney for Plaintiff/Petitioner |
| BELTRAN, BIANCA | Micah R LeBank | Attorney for Plaintiff/Petitioner |
| BELTRAN, BIANCA | John Robert Connelly JR | Attorney for Plaintiff/Petitioner |
| CITY OF TACOMA | JEAN P HOMAN | Attorney for Defendant |

Proceeding Set: Motion
Proceeding Outcome: Motion Held
Resolution:

**Proceeding Date: Sep 15, 2017 9:30 AM**

**Clerk's Code: MTHRG**
Proceeding Outcome code: **MTHRG**
Resolution Outcome code:
Amended Resolucton code:

0145
2166
9/19/2017

# IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

CESAR BELTRAN-SERRANO
vs
CITY OF TACOMA

Cause Number: 15-2-11618-1
**Memorandum of Journal Entry**

Judge/Commissioner: SUSAN K. SERKO

MINUTES OF PROCEEDING

**Start Date/Time: Sep 15, 2017 9:25 AM**

Judicial Assistant: Heather Wynne
Court Reporter: Lanre Adebayo

**September 15, 2017 09:25 AM -**

This matter comes on record for Motion to Certify Issue and Stay Proceedings. Atty Meaghan Driscoll present for Plaintiff. Atty Jean Homan present for Defendant. Court has reveiwed and addresses counsel. Atty Driscoll argument. **09:27 AM** - Atty Homan response. **09:28 AM** - Court gives ruling; Court will certify both and signs order.

**End Date/Time: Sep 15, 2017 9:30 AM**

15-2-11618-1 49940128 ORSP 09-18-17

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017 @ 9:00 am

FILED
DEPT. 14
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SEP 15 2017
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By.....
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>ORDER ON PLAINTIFF'S MOTION TO CERTIFY ISSUE FOR DISCRETIONARY REVIEW AND STAY OF PROCEEDINGS |

THIS MATTER having come before the Court on Plaintiff's Motion to Compel Inspection and Testing of Ballistic Evidence in the above referenced cause; the City of Tacoma appearing by and through its attorney of record, Jean P. Homan, Deputy City Attorney, and plaintiff, Cesar Beltran-Serrano, appearing through his attorneys of record, John R. Connelly, Jr., Micah LeBank and Meaghan Driscoll, and the Court having reviewed the records and following:

1. Plaintiff's Motion to Certify Issue for Discretionary Review under RAP 2.3(b)(4) and Stay Proceedings;



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9/19/2017 2166 0146

2. Declaration of Meaghan Driscoll in Support of Plaintiff's Motion to Certify and Stay Proceedings with exhibits thereto;

3. Defendant's Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings;

4. Affidavit of Jean P. Homan in Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings, and exhibits thereto; and

5. Plaintiff's Reply to Motion for Certification of Negligence Issue and Stay Proceedings.

The Court finds as follows: The issue of whether a police officer owes a duty of reasonable care to act reasonably when using deadly force is an issue appropriate for certification. Further, in the interests of judicial economy, certification of both orders on partial summary judgment is appropriate.

JPH
MMD



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9/19/2017 2166 0147

9/19/2017 2166 0148

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Order Granting Defendant's Motion for Partial Summary Judgment, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further

ORDERED, ADJUDGED and DECREED that the Order Granting Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further

ORDERED, ADJUDGED and DECREED that this matter is stayed until such time as the appellate proceedings on these issues are concluded.

DONE IN OPEN COURT this 15 day of September, 2017.

HONORABLE SUSAN K. SERKO

FILED
DEPT. 14
IN OPEN COURT
SEP 15 2017
Pierce County Clerk
By..... DEPUTY

WILLIAM FOSBRE, City Attorney

By: JEAN P. HOMAN
WSB #27084
Attorney for Def. City of Tacoma

CONNELLY LAW OFFICES, PLLC

By: JOHN R. CONNELLY, JR., #12183
MICAH LEBANK, #38047
MEAGHAN DRISCOLL, #49863
Attorneys for Plaintiff



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

15-2-11618-1 49986833 ORSP 09-26-17

9/27/2017 2310 0117

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017 @ 9:00 am

DEPT. 14
IN OPEN COURT
SEP 25 2017
Pierce County Clerk
By CM
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**AMENDED** ORDER ON PLAINTIFF'S MOTION TO CERTIFY ISSUE FOR DISCRETIONARY REVIEW AND STAY OF PROCEEDINGS<br>NUNC PRO TUNC to 9/15/2017 |

## *NUNC PRO TUNC* ORDER

This matter is before the Court on the parties' petition to correct an error in the order entered by this Court on September 15, 2017, on Plaintiff's Motion to Certify Issue for Discretionary Review Under RAP 2.3(b)(4) and Stay Proceedings. The order incorrectly identified the motion as "Plaintiff's Motion to Compel Inspection and Testing of Ballistic Evidence." The Court's Order is hereby amended, *nunc pro tunc*, to read as follows:



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

THIS MATTER having come before the Court on Plaintiff's Motion to Certify Issue for Discretionary Review Under RAP 2.3(b)(4) and Stay Proceedings in the above referenced cause; the City of Tacoma appearing by and through its attorney of record, Jean P. Homan, Deputy City Attorney, and plaintiff, Cesar Beltran-Serrano, appearing through his attorneys of record, John R. Connelly, Jr., Micah LeBank and Meaghan Driscoll, and the Court having reviewed the records and following:

1. Plaintiff's Motion to Certify Issue for Discretionary Review under RAP 2.3(b)(4) and Stay Proceedings;
2. Declaration of Meaghan Driscoll in Support of Plaintiff's Motion to Certify and Stay Proceedings with exhibits thereto;
3. Defendant's Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings;
4. Affidavit of Jean P. Homan in Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings, and exhibits thereto; and
5. Plaintiff's Reply to Motion for Certification of Negligence Issue and Stay Proceedings.

The Court finds as follows: The issue of whether a police officer owes a duty of reasonable care to act reasonably when using deadly force is an issue appropriate for certification. Further, in the interests of judicial economy, certification of both orders on partial summary judgment is appropriate.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Order Granting Defendant's Motion for Partial Summary Judgment, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755



9/27/2017 2310 0118

ORDERED, ADJUDGED and DECREED that the Order Granting Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further

ORDERED, ADJUDGED and DECREED that this matter is stayed until such time as the appellate proceedings on these issues are concluded.

DONE IN ~~OPEN~~ COURT this 25 day of September, 2017.
DATED

HONORABLE SUSAN K. SERKO

WILLIAM FOSBRE, City Attorney

By: JEAN P. HOMAN
WSB #27084
Attorney for Def. City of Tacoma

FILED
DEPT. 14
IN OPEN COURT
SEP 25 2017
Pierce County Clerk
By DEPUTY

CONNELLY LAW OFFICES, PLLC

By: JOHN R. CONNELLY, JR., #12183
MICAH LEBANK, #38047
MEAGHAN DRISCOLL, #49863
Attorneys for Plaintiff



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755



9/27/2017 2310 0119

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

September 29 2017 10:22 AM

KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>NOTICE OF DISCRETIONARY REVIEW TO COURT OF APPEALS, DIVISION II |

COMES NOW the Defendant, City of Tacoma, and hereby seeks review by the designated appellate court of the Order Granting Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials, entered on September 1, 2017.

A copy of the decision is attached to this notice.

DATED this 29th day of September, 2017.

WILLIAM FOSBRE, City Attorney

By: */s/ Jean P. Homan*
JEAN P. HOMAN, WSB #27084
Deputy City Attorney
Attorney for Defendant



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

Attorneys for Plaintiffs:

John R. Connelly, Jr., WSBA #12183
Micah R. LeBank, WSBA #38047
Meaghan Driscoll, WSBA #49863
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403
253-593-5100
253-593-0380



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

15-2-11618-1 49866669 ORGPSJ 09-06-17

FILED
DEPT. 14
IN OPEN COURT
SEP 01 2017
Pierce County Clerk
By..... DEPUTY

HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017
Time: 9:00 a.m.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO<br>Plaintiff,<br>v.<br>CITY OF TACOMA, a political subdivision of the State of Washington;<br>Defendant. | NO. 15-2-11618-1<br>ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PAST MEDICAL SPECIALS |

THIS MATTER came on for hearing upon Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials, including the materials submitted in support of the Motion and in opposition thereto, specifically:

1. Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials;
2. Declaration of Micah R. LeBank in Support of Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials and exhibits thereto;



CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax



9/6/2017 1985 0179

3. Declaration of Anthony Choppa, M.Ed., CRC and exhibits thereto;
4. Defendant's Response to Plaintiff's Motion for Partial Summary Judgment;
5. Declaration of Jean P. Homan in Support of Defendant's Response and exhibits thereto;
6. Plaintiff's Reply to Plaintiff's Motion for Partial Summary Judgment; and
7. Declaration of Micah R. LeBank in Support of Plaintiff's Reply to Motion for Partial Summary Judgment and exhibits thereto.

~~The Court, having heard arguments of counsel and having reviewed all of the materials filed in support of and in opposition to Plaintiff's Motion, finds that Thomas Wickizer, PhD. and his opinions and testimony are excluded. The use of Dr. Wickizer would violate the collateral source rule and require a change in the rules of evidence. This is too difficult for the jury to determine reasonableness of every billing. Plaintiff should not be forced to argue re: discount of insurance "breaks" in the billings.~~

Further, the Court finds Plaintiff Cesar Beltran has incurred $712,719.99 in past medical specials as a result of the injuries sustained in the shooting on June 29, 2013. FURTHER, the court finds that Plaintiff's past medical specials, in the amount of $712,719.99, were reasonable and necessary and as a result of the injuries sustained by the plaintiff on June 29, 2013.

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials is **GRANTED**.

~~FURTHER, it is hereby ORDERED, ADJUDGED, and DECREED that, Thomas~~



CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

~~Wiekizer, PhD and his opinions and testimony are excluded.~~ JPH MMD

FURTHER, it is hereby ORDERED, ADJUDGED, and DECREED that, should the jury find for the Plaintiff in this matter, the verdict should include, but not be limited to, an award for past medical specials in the amount of $712,719.99.

DONE IN OPEN COURT this 1 day of September, 2017.

//
//

HONORABLE SUSAN K. SERKO

FILED
DEPT. 14
IN OPEN COURT
SEP 01 2017
Pierce County Clerk
By..... DEPUTY

Presented by:

CONNELLY LAW OFFICES, PLLC

Micah R. LeBank, WSBA No. 38047
Meaghan M. Driscoll, WSBA No. 49863
Attorneys for Plaintiff

Approved as to form and copy received:

ELIZABETH A. PAULI, City Attorney

Jean Homan, WSBA No. 27084
Deputy City Attorney
Attorney for Defendant



CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax



9/6/2017 1985 0181

## DECLARATION OF SERVICE

I hereby certify that on September 29, 2017, I emailed a true and accurate copy of the Notice of Discretionary Review to the Court of Appeals, Division II in Pierce County Cause No. 15-2-11618-1 to the following parties pursuant to the parties Electronic Service Agreement and electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Counsel for Plaintiffs**
John R. Connelly, Jr.
Micah R. LeBank
Meaghan Driscoll
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403
jconnelly@connelly-law.com
mlebank@connelly-law.com
mdriscoll@connelly-law.com

Original e-filed with filing fee with:

Pierce County Superior Court Clerk's Office
County-City Building
930 Tacoma Avenue South
Tacoma, WA 98402

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: September 29, 2017, at Tacoma, Washington.

*/s/ Staci Black*
Staci Black, Paralegal
Tacoma City Attorney's Office
747 Market Street, Suite 1120
Tacoma, WA 98402
(253) 591-5268
Fax: (253) 591-5755
sblack@ci.tacoma.wa.us



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

September 29 2017 11:00 AM
KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

The Honorable Susan K. Serko

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO,<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington,<br><br>Defendant. | No. 15-2-11618-1<br><br>NOTICE OF DISCRETIONARY REVIEW TO THE WASHINGTON SUPREME COURT |

Plaintiff Cesar Beltran-Serrano seeks discretionary review by the Washington Supreme Court of the Order Granting Defendant's Motion for Partial Summary Judgment, entered on September 1, 2017. This order was certified by the trial court for review pursuant to RAP 2.3(b)(4) by an order entered on September 15, 2017.

A copy of both orders is attached to this notice.



Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

DATED this 29th day of September, 2017.

Philip A. Talmadge

Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

John R. Connelly, Jr., WSBA #12183
Micah R. LeBank, WSBA #38047
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403
(206) 382-2600

Attorneys for Plaintiff
Cesar Beltran-Serrano

Attorneys for Defendant
Jean P. Homan, WSBA #27084
Deputy City Attorney
Tacoma City Attorney
747 Market Street, Room 1120
Tacoma, WA 98402-3767

15-2-11618-1 49886747 ORGPSJ 09-06-17

9/6/2017 1985 0182

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 1, 2017

FILED
DEPT. 14
IN OPEN COURT
SEP 01 2017
Pierce County Clerk
By ..... DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | NO. 15-2-11618-1<br><br>[~~PROPOSE~~D]<br><br>ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT |

THIS MATTER having come on regularly to be heard before the undersigned judge of the above-entitled court upon Defendant's Motion for Partial Summary Judgment; defendant being represented by Deputy City Attorney Jean P. Homan; and plaintiff being represented by John R. Connelly, Jr., Micah LeBank and Meaghan Driscoll, and the Court having reviewed the files and records herein, including the following documents:

1. Defendant's Motion for Partial Summary Judgment;



ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885/ Fax 591-5755

2. Affidavit of Jean P. Homan in Support of Defendant's Motion for Partial Summary Judgment;

3. Plaintiff's Response on Opposition to Defendant's Motion for Partial Summary Judgment;

4. Declaration of Micah LeBank in Opposition to Defendant's Motion for Partial Summary Judgment;

5. Reply in Support of Defendant's Motion for Partial Summary Judgment.

plus all attachments and exhibits thereto; and being fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion for Partial Summary Judgment of All Claim is hereby GRANTED; it is further

ORDERED, ADJUDGED and DECREED that plaintiff's negligence claims are hereby DISMISSED, in their entirety, and with prejudice.

DATED this 1 day of Sept., 2017.

HONORABLE SUSAN K. SERKO

FILED
DEPT. 14
IN OPEN COURT
SEP 01 2017
Pierce County Clerk
By ..... DEPUTY



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885/ Fax 591-5755



9/6/2017 1985 0183

Presented by:

WILLIAM C. FOSBRE,
City Attorney

By: _____
Jean Homan, WSBA #27084
Attorney for Defendants

Approved as to form,
Notice of presentment waived:

CONNELLY LAW OFFICES, PLLC

By: _____
JOHN R. CONNELLY, JR., #12183
MICAH LEBANK, #38047
MEAGHAN DRISCOLL, #49863
Attorneys for Plaintiff



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885/ Fax 591-5755



9/6/2017 1985 0194

0146
9/19/2017 2166

15-2-11618-1 49940128 ORSP 09-18-17

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017 @ 9:00 am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>ORDER ON PLAINTIFF'S MOTION TO CERTIFY ISSUE FOR DISCRETIONARY REVIEW AND STAY OF PROCEEDINGS |

THIS MATTER having come before the Court on Plaintiff's Motion to Compel Inspection and Testing of Ballistic Evidence in the above referenced cause; the City of Tacoma appearing by and through its attorney of record, Jean P. Homan, Deputy City Attorney, and plaintiff, Cesar Beltran-Serrano, appearing through his attorneys of record, John R. Connelly, Jr., Micah LeBank and Meaghan Driscoll, and the Court having reviewed the records and following:

1. Plaintiff's Motion to Certify Issue for Discretionary Review under RAP 2.3(b)(4) and Stay Proceedings;



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

2. Declaration of Meaghan Driscoll in Support of Plaintiff's Motion to Certify and Stay Proceedings with exhibits thereto;

3. Defendant's Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings;

4. Affidavit of Jean P. Homan in Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings, and exhibits thereto; and

5. Plaintiff's Reply to Motion for Certification of Negligence Issue and Stay Proceedings.

The Court finds as follows: The issue of whether a police officer owes a duty of reasonable care to act reasonably when using deadly force is an issue appropriate for certification. Further, in the interests of judicial economy, certification of both orders on partial summary judgment is appropriate.

JPH
MMD



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755



9/19/2017 2166 0147

9/19/2017 2166 0148

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Order Granting Defendant's Motion for Partial Summary Judgment, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further

ORDERED, ADJUDGED and DECREED that the Order Granting Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further

ORDERED, ADJUDGED and DECREED that this matter is stayed until such time as the appellate proceedings on these issues are concluded.

DONE IN OPEN COURT this 15 day of September, 2017.

HONORABLE SUSAN K. SERKO

FILED
DEPT. 14
IN OPEN COURT
SEP 15 2017
Pierce County Clerk
By DEPUTY

WILLIAM FOSBRE, City Attorney

By: JEAN P. HOMAN
WSB #27084
Attorney for Def. City of Tacoma

CONNELLY LAW OFFICES, PLLC

By: JOHN R. CONNELLY, JR., #12183
MICAH LEBANK, #38047
MEAGHAN DRISCOLL, #49863
Attorneys for Plaintiff



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Notice of Discretionary Review to the Washington Supreme Court*** in Pierce County Superior Court Cause No. 15-2-11618-1 to the following parties:

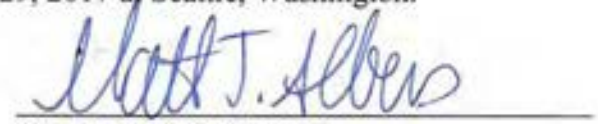
John R. Connelly, Jr., WSBA #12183
Micah R. LeBank, WSBA #38047
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403

Jean P. Homan, WSBA #27084
Deputy City Attorney
Tacoma City Attorney
747 Market Street, Room 1120
Tacoma, WA 98402-3767

Original E-filed with filing fee:
Pierce County Superior Court
Clerk's Office
930 Tacoma Avenue South, Room 110
Tacoma, WA 98405

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: September 29, 2017 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

October 02 2017 1:22 PM
KEVIN STOCK
COUNTY CLERK
NO: 15-2-11618-1

The Honorable Susan K. Serko

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO,<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington,<br><br>Defendant. | No. 15-2-11618-1<br><br>AMENDED NOTICE OF DISCRETIONARY REVIEW TO THE WASHINGTON SUPREME COURT |

On September 28, 2017, plaintiff Cesar Beltran-Serrano seeks discretionary review by the Washington Supreme Court of the Order Granting Defendant's Motion for Partial Summary Judgment, entered on September 1, 2017. This order was certified by the trial court for review pursuant to RAP 2.3(b)(4) by an order entered on September 15, 2017.

Pursuant to RAP 2.4(g), plaintiff Cesar Beltran-Serrano amends his notice of discretionary review to include the Amended Order on Plaintiff's Motion to Certify Issue for Discretionary Review and Stay of Proceedings Nunc Pro Tunc to 9/15/2017, entered on September 25, 2017.

A copy of the order is attached to this notice.



Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

DATED this 21 day of October, 2017.

Philip A. Talmadge

Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

John R. Connelly, Jr., WSBA #12183
Micah R. LeBank, WSBA #38047
Connelly Law Offices, PLLC
2301 North 30th Street
Tacoma, WA 98403
(206) 382-2600

Attorneys for Plaintiff
Cesar Beltran-Serrano

Attorneys for Defendant
Jean P. Homan, WSBA #27084
Deputy City Attorney
Tacoma City Attorney
747 Market Street, Room 1120
Tacoma, WA 98402-3767

15-2-11618-1 49986833 ORSP 09-26-17

9/27/2017 2310 0117

THE HONORABLE SUSAN K. SERKO
Hearing Date: September 15, 2017 @ 9:00 am

DEPT. 14
IN OPEN COURT
SEP 25 2017
Pierce County Clerk
By CM
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| CESAR BELTRAN-SERRANO, an incapacitated person, individually, and BIANCA BELTRAN as guardian *ad litem* of the person and estate of CESAR BELTRAN-SERRANO;<br><br>Plaintiff,<br><br>v.<br><br>CITY OF TACOMA, a political subdivision of the State of Washington;<br><br>Defendant. | No. 15-2-11618-1<br><br>**AMENDED** ORDER ON PLAINTIFF'S MOTION TO CERTIFY ISSUE FOR DISCRETIONARY REVIEW AND STAY OF PROCEEDINGS<br>NUNC PRO TUNC to 9/15/2017 |

## *NUNC PRO TUNC* ORDER

This matter is before the Court on the parties' petition to correct an error in the order entered by this Court on September 15, 2017, on Plaintiff's Motion to Certify Issue for Discretionary Review Under RAP 2.3(b)(4) and Stay Proceedings. The order incorrectly identified the motion as "Plaintiff's Motion to Compel Inspection and Testing of Ballistic Evidence." The Court's Order is hereby amended, *nunc pro tunc*, to read as follows:



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

9/27/2017 2310 0118

THIS MATTER having come before the Court on Plaintiff's Motion to Certify Issue for Discretionary Review Under RAP 2.3(b)(4) and Stay Proceedings in the above referenced cause; the City of Tacoma appearing by and through its attorney of record, Jean P. Homan, Deputy City Attorney, and plaintiff, Cesar Beltran-Serrano, appearing through his attorneys of record, John R. Connelly, Jr., Micah LeBank and Meaghan Driscoll, and the Court having reviewed the records and following:

1. Plaintiff's Motion to Certify Issue for Discretionary Review under RAP 2.3(b)(4) and Stay Proceedings;
2. Declaration of Meaghan Driscoll in Support of Plaintiff's Motion to Certify and Stay Proceedings with exhibits thereto;
3. Defendant's Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings;
4. Affidavit of Jean P. Homan in Response to Plaintiff's Motion to Certify Issue for Discretionary Review and Stay Proceedings, and exhibits thereto; and
5. Plaintiff's Reply to Motion for Certification of Negligence Issue and Stay Proceedings.

The Court finds as follows: The issue of whether a police officer owes a duty of reasonable care to act reasonably when using deadly force is an issue appropriate for certification. Further, in the interests of judicial economy, certification of both orders on partial summary judgment is appropriate.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Order Granting Defendant's Motion for Partial Summary Judgment, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

9/27/2017 2310 0119

ORDERED, ADJUDGED and DECREED that the Order Granting Plaintiff's Motion for Partial Summary Judgment on Past Medical Specials, entered by this Court on September 1, 2017, is hereby certified for interlocutory appeal pursuant to RAP 2.3; it is further

ORDERED, ADJUDGED and DECREED that this matter is stayed until such time as the appellate proceedings on these issues are concluded.

DONE IN OPEN COURT this 25 day of September, 2017.

DATED

HONORABLE SUSAN K. SERKO

WILLIAM FOSBRE, City Attorney

By: JEAN P. HOMAN
WSB #27084
Attorney for Def. City of Tacoma

FILED
DEPT. 14
IN OPEN COURT
SEP 25 2017
Pierce County Clerk
By DEPUTY

CONNELLY LAW OFFICES, PLLC

By: JOHN R. CONNELLY, JR., #12183
MICAH LEBANK, #38047
MEAGHAN DRISCOLL, #49863
Attorneys for Plaintiff



Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, WA 98402-3767
(253) 591-5885 / Fax 591-5755

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Amended Notice of Discretionary Review to the Washington Supreme Court*** in Pierce County Superior Court Cause No. 15-2-11618-1 to the following parties:

John R. Connelly, Jr., WSBA #12183
Micah R. LeBank, WSBA #38047
Connelly Law Offices, PLLC
2301 North 30th Street
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jconnelly@connelly-law.com
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Original E-filed with:
Pierce County Superior Court
Clerk's Office
930 Tacoma Avenue South, Room 110
Tacoma, WA 98405

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 2, 2017 at Seattle, Washington.

Tammy Sendelback, Legal Assistant
Talmadge/Fitzpatrick/Tribe

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Appendix to Motion for Discretionary Review*** in Supreme Court Cause No. 95062-8 to the following parties:

John R. Connelly, Jr., WSBA #12183
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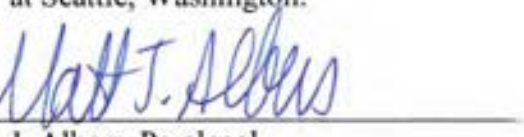
Original E-filed with:
Washington Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 17, 2017 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

## TALMADGE/FITZPATRICK/TRIBE

## October 17, 2017 - 11:35 AM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 95062-8 |
| **Appellate Court Case Title:** | Cesar Beltran-Serrano v. City of Tacoma |
| **Superior Court Case Number:** | 15-2-11618-1 |

**The following documents have been uploaded:**

- 950628_Motion_20171017112011SC794438_1862.pdf
  This File Contains:
  Motion 1 - Overlength Motion
  *The Original File Name was Motion for Leave to File Overlength Motion for Discretionary Review.pdf*
- 950628_Motion_Discretionary_Review_20171017112011SC794438_3015.pdf
  This File Contains:
  Motion for Discretionary Review - Discretionary Review Superior Ct.
  *The Original File Name was Motion for Discretionary Review.pdf*
- 950628_Other_20171017112011SC794438_6977.pdf
  This File Contains:
  Other - Appendix to Motion for Discretionary Review
  *The Original File Name was Appendix to Motion for Discretionary Review.pdf*
- 950628_State_of_Grounds_for_Direct_Rvw_20171017112011SC794438_4691.pdf
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- matt@tal-fitzlaw.com
- mdriscoll@connelly-law.com
- mlebank@connelly-law.com
- sblack@ci.tacoma.wa.us
- sblack@cityoftacoma.org

**Comments:**

Documents to be filed: (1) Statement of Grounds for Direct Review; (2) Motion for Discretionary Review; (3) Appendix to Motion for Discretionary Review; (4) Motion for Leave to File Overlength Motion for Discretionary Review PLEASE NOTE: As part of the Appendix to the Motion for Discretionary Review, a video on CD will be send to the Supreme Court via US Mail. Thank you.

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com
**Filing on Behalf of:** Philip Albert Talmadge - Email: phil@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

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