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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 SHERRI BLACK, individually and as
11 Personal Representative for the Estate of
12 Thomas Anthony Black,

13 Plaintiffs,

14 vs.

15 UNITED STATES OF AMERICA,
16 SUQUAMISH INDIAN TRIBE,
17 SUQUAMISH TRIBAL POLICE, PORT
18 GAMBLE S'KLALLAM INDIAN TRIBE,
19 PORT GAMBLE S'KLALLAM TRIBAL
20 POLICE, GREG GRAVES AND DOES 1-25,
21 agents of the Bureau of Indian Affairs. KITSAP
22 COUNTY, a municipal corporation of the State
23 of Washington, and KITSAP COUNTY
24 SHERIFF'S OFFICE, a divisional member of
25 Kitsap County.

26 Defendants.

No. C13-5415-RBL

**FIRST AMENDED COMPLAINT FOR
WRONGFUL DEATH AND 42 U.S.C. §
1983**

27 COMES NOW the Plaintiff, SHERRI BLACK, by and through her attorney, Thomas S.
28 Olmstead, and for claims against defendants, states and alleges as follows:

I. JURISDICTION AND VENUE

1.1 This Court has subject matter jurisdiction over Plaintiff's claims under RCW 2.08.010,
25 U.S.C. § 450(a), 28 U.S.C. § 1346(b), 28 U.S.C. § 2671, 28 U.S.C. § 1367, 28 U.S.C. § 1331,

First Amended Complaint - 1

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1 28 U.S.C. §1343 and 42 U.S.C. § 1983, and on the pendant jurisdiction of this court to entertain claims
2 arising under state law.

3
4 1.2 The acts which amount to the alleged causes of action occurred in Kitsap County,
5 Washington.

6 1.3 Pursuant to 28 U.S.C. § 2675(a) the claim set forth herein was presented to the United
7 States Department of Interior, the Office of the Solicitor on September 7, 2012.

8
9 1.4 The agency denied the claim on January 3, 2013.

10 1.5 Venue is proper in this court because the acts alleged herein occurred within the
11 Western District of Washington.

12 1.6 The acts which amount to the alleged causes of action will challenge any claim of lack
13 of jurisdiction for Sovereign Immunity because defendants conduct is alleged to have been acting in
14 contravention of federal law.

15
16 1.7 That the above named Defendant's acted outside the scope of its immunity and, thus, is
17 subject to liability.

18
19 1.8 That the acts which amount to the alleged causes of action is conduct that is outside the
20 scope of the tribe's sovereign powers.

21 1.9 That the above named Tribal Defendants acted in concert with other police defendants,
22 or state police officers whose actions are held to be "under color of state law", thus their actions cannot
23 be said to have been authorized by tribal law.

24
25 1.10 That Plaintiff SHERRI BLACK filed a claim form with Kitsap County Risk
26 Management, who acknowledged receipt of the claim on May 1, 2013. The agency neither admitted or
27
28

denied the claim and more than 60 days have elapsed since the filing of the claim as required by RCW 4.92.110.

II. PARTIES

2.1 Plaintiff SHERRI BLACK, is the Administratrix of the Estate of Thomas Anthony Black. Letters of Administration were granted to her by the Kitsap County Superior Court on January 23, 2013 pursuant to RCW 11.28.110 and RCW 11.68.011. An order authorizing commencement & maintenance of a legal action was also signed by the court on January 22, 2013 pursuant to RCW 11.48.010.

2.2 Plaintiff SHERRI BLACK, an individual, is a citizen of the United States and resides in the County of Kitsap, State of Washington, which is in this judicial district.

2.3 Defendant SUQUAMISH TRIBE is a federally recognized tribe in the State of Washington, performing specific duties of law enforcement and acting jointly with, or under authority of an agency of Washington State government in Kitsap County, Washington.

2.4 Defendant SUQUAMISH TRIBAL POLICE is a department of government within the tribe, in the State of Washington, performing specific duties of law enforcement and acting jointly with, or under authority of an agency of Washington State government in Kitsap County, Washington.

2.5 Defendant PORT GAMBLE S'KLALLAM INDIAN TRIBE is a federally recognized tribe, in the State of Washington, performing specific duties of law enforcement and acting jointly with, or under authority of an agency of Washington State government in Kitsap County, Washington.

2.6 Defendant PORT GAMBLE S'KLALLAM TRIBAL POLICE is a department of government in the tribe, in the State of Washington, performing specific duties of law enforcement and acting jointly with, or under authority of an agency of Washington State government in Kitsap

County, Washington.

2.7 The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 25, inclusive, are unknown to Plaintiff, who therefore sues the DOE defendants by fictitious names. These Defendants may have caused the damage to Plaintiff by their own tortious conduct, including acts or failures to act in concert with other Defendants, or vicariously. Plaintiffs will amend this complaint to show their true names and capacities when they have been ascertained.

2.8 At such a time and place the Government Employees and other law enforcement officers named above were acting within the scope of their employment under the authority of an agency of the United States of America or under color of state law.

2.9 The above named Defendants hold a position within a department of government in the State of Washington, performing specific duties of law enforcement and acting jointly with, or under authority of an agency of Washington State government in Kitsap County, Washington.

2.10 Defendant GREG GRAVES, named in his individual and official capacities, was at the time of the alleged incident below and all material times hereto a duly appointed Detective employed by the PORT GAMBLE S'KLALLAM TRIBAL POLICE, acting jointly with, or under authority of an agency of Washington State government in Kitsap County, Washington.

2.11 Defendant KITSAP COUNTY is the proper party-defendant for Plaintiff's state law claims relating to the tortuous conduct of its employees as provided in RCW 4.96, RCW 36.01.010, RCW 36.01.020, and RCW 36.32.120(b).

2.12 Defendant KITSAP COUNTY SHERIFF'S OFFICE is a department of government of the State of Washington, performing specific duties of law enforcement in Kitsap County, Washington.

III. STATEMENT OF FACTS

3.1 That on December 8, 2011, Police officers for the Port Gamble S'Klallam and Suquamish Indian Tribes acting jointly with, or under authority of an agency, specifically Kitsap County Sheriff's office deputies, went to the home of Thomas Anthony Black with a misdemeanor arrest warrant for Stacy Stanley Callihoo. Mr. Callihoo was not a resident at Mr. Black's home but was visiting at the time the officers arrived.

3.2 Upon arrival of the police, Ms. Sherri Black, who resided with her brother Thomas, answered the door. The police ordered Ms. Black out of her home. Officers then without a search warrant unconstitutionally in violation of Plaintiff's 4th Amendment right to be free from unreasonable search and seizure, then entered the Black residence located at 18636 Second Avenue NE, Suquamish, Washington 98392.

3.3 Immediately, the officers pushed Sherri to the ground causing her physical injury and without incident officer GREG GRAVES shot and killed Thomas Black who lay in bed appearing to be bewildered by the intrusion. The intrusion occurred just seconds before the killing, Thomas Black appeared as if he were waking from sleep. Sherri Black was then handcuffed behind her back and held down on the ground by a plain clothed officer. Sherri was then told to stand but was unable to do so. The officer then grabbed her left arm and dragged her approximately twenty yards. This officer then pulled Sherri Black to her feet and pushed her into a patrol car. Ms. Black was injured to her thigh and left arm and wrists.

3.4 Ms. Black, having committed no crime and not aware that Mr. Callihoo had an outstanding misdemeanor warrant was released from custody.

3.5 Thomas Black died from two gunshot wounds. Although no gun was ever seen by Sherri Black in her home, the police now claim that they shot Thomas Black as a reaction to him

1 having a pistol. A toy gun was later located somewhere within the Black residence. It is now thought
2 to have been strategically placed as a cover up for the bad shooting.

3 3.6 The Suquamish police officers were equipped with body cameras which recorded the
4 entire entry, shooting and killing of Thomas Black. There was no gun seen in Thomas Blacks hands in
5 the video footage while Thomas Black was being shot to death.
6

7 3.7 Defendants after shooting Thomas Black for unknown reasons, exited the home and
8 left Thomas Black to bleed to death not rendering any emergency assistance to him. Thomas Black
9 bled to death from a wound to his femoral artery.
10

11 3.8 Police then for unknown reasons began a standoff outside the Black residence until
12 several hours later when they captured and arrested Mr. Callihoo who was hiding inside terrified for
13 his life.

14 3.9 Defendant Greg Graves Port Gamble S'Klallam Tribe detective shot Thomas A. Black
15 who is not a Native American.
16

17 3.10 Defendant Greg Graves a Port Gamble S'Klallam Tribe detective shot Thomas A. Black
18 outside the geographical boundaries of the Port Gamble S'Klallam Reservation.

19 3.11 Defendant Greg Graves a Port Gamble S'Klallam Tribe detective was acting outside the
20 scope of his geographical jurisdiction and authority when he entered the home of Thomas A. Black
21 which is located outside the boundaries of the Port Gamble S'Klallam Reservation.
22

23 3.12 Defendant Greg Graves entered the home without a search warrant then killing Thomas
24 Black in cold blood. Such ultra vires actions are not protected by the tribe's cloak of sovereign
25 immunity.
26

27 3.13 Defendant Greg Graves was acting within the scope of his employment while acting as
28 an employee of a Federally recognized Indian Reservation.

1 3.14 Defendant Greg Graves was acting outside the scope of the tribe's sovereign powers.

2 3.15 Defendant Greg Graves was acting outside the scope of tribal law.

3 3.16 The Port Gamble S'Klallam tribe did not delegate to Defendant Greg Graves the power
4 to enter a residence off tribal land and shoot a non-native person in their home, and that the exercise of
5 that power and Defendant's conduct violates the Constitution.
6

7 3.17 Defendant Greg Graves has exercised a power that his sovereign was powerless to
8 convey to him and incapable of bestowing, an exception to the doctrine of sovereign immunity is
9 hereby invoked.
10

11 3.18 Defendant Greg Graves acted beyond the valid authority of the tribe, an exception to the
12 doctrine of sovereign immunity is hereby invoked.

13 3.19 Defendant Greg Graves acted in violation of Federal Law, an exception to the doctrine
14 of sovereign immunity is hereby invoked.

15 3.20 The above alleged facts support causes of action by Sherri Black for wrongful death and
16 excessive force and 42 U.S.C. §1983.
17

18 3.21 The above alleged facts support causes of action by the Estate of Thomas Black for
19 wrongful Death, excessive force and 42 U.S.C. §1983.
20

21 3.22 That Kitsap County was involved in the planning of the raid on the Black residence,
22 were present and failed to secure a search warrant prior to the entry of the home, as well as failed to
23 render medical assistance to Thomas Anthony Black.
24

25 **IV. FIRST CAUSE OF ACTION-**
26 **VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. §1983**
27 **(General Allegations)**

28 4.1 Plaintiff incorporates by reference paragraphs 1.1 through 3.22 above, and re-alleges the
information contained therein, and further alleges as follows:

1 4.2 In committing the acts complained of herein, Defendants acted under color of state law
 2 to deprive Plaintiff of certain constitutionally protected rights under the Fourth, Fifth, Eighth and
 3 Fourteenth Amendments to the Constitution of the United States including, but not limited to:
 4 a) the right to be free from unreasonable searches and seizures; b) the right not to be deprived of liberty
 5 without due process of law; c) the right to be free from excessive use of force by persons acting under
 6 color of state law.
 7

8 4.3 Each of the Defendants, individually, and in concert with the others, acted under color
 9 of law in his/their official capacity, to deprive Plaintiff Sherri Black and Thomas Anthony Black of
 10 their constitutional rights.
 11

12 4.4 As a direct and proximate result of multiple violations of Sherri Black and Thomas
 13 Anthony Blacks constitutional rights by the Defendants, Plaintiff suffered general and special damages
 14 as alleged in this complaint and is entitled to relief under 42 U.S.C. §1983.
 15

16 4.5 The conduct of Defendants was willful, malicious, oppressive, negligent and/or
 17 reckless, and was of such a nature that punitive damages should be imposed in an amount
 18 commensurate with the wrongful acts alleged herein.
 19

20 **V. SECOND CAUSE OF ACTION-**
 21 **VIOLATION OF 42 U.S.C. § 1983: EXCESSIVE FORCE**

22 5.1 Plaintiff incorporated by reference paragraphs 1.1 through 4.5 above, and re-alleges the
 23 information contained therein, and further alleges as follows:

24 5.2 During the attempt to detain Stacy Stanley Callihoo, police used excessive force on
 25 Sherri Black when they seized and detained her at the residence. Sherri was forced to the ground,
 26 handcuffed and drug twenty some feet. She was injured to her thigh, left arm, and wrist. Police used
 27 excessive force also when shooting and killing Thomas Black as he lay in his bed.
 28

VI. THIRD CAUSE OF ACTION-
VIOLATION OF 42 U.S.C. § 1983: WRONGFUL DEATH

6.1 Paragraphs 1.1 through 5.2 are incorporated herein by reference as though fully set forth.

6.2 Plaintiff Sherri Black claims damages for the wrongful death of Thomas Anthony Black and for her loss of his income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice, under 42 U.S.C. §1983 and the Washington State Wrongful Death Statutes RCW 4.20.010, RCW 4.20.020, and RCW 4.20.046.

6.3 The use of deadly force to arrest the criminal suspects, whatever the circumstances, is constitutionally unreasonable. Mere possibility of flight alone without more is not sufficient to warrant deadly force. Without some implied threat of harm to officers or others, it is unreasonable and unconstitutional to perform deadly force to subdue a suspect.

6.4 Under color of law, Defendants executed the use of deadly force, without the threat of imminent harm to themselves or others and in doing so caused irreparable harm and death to Thomas Anthony Black.

VII. FOURTH CAUSE OF ACTION-
VIOLATION OF 42 U.S.C. §1983: SURVIVAL ACTION

7.1 Paragraphs 1.1 through 6.4 are incorporated herein by reference as though fully set forth.

7.2 Thomas Anthony Black was forced to endure great conscious pain and suffering. He was left by police without any medical assistance to bleed to death.

7.3 Thomas Anthony Black filed no action during his lifetime, but under the laws of the State of Washington RCW 4.20.046 this action survives and may be asserted by his Estate.

7.4 Plaintiff Sherri Black claims damages for the conscious pain and suffering of Thomas

1 Anthony Black, under 42 U.S.C. §1983.

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3 **VIII. FIFTH CAUSE OF ACTION-**
4 **VIOLATION OF 42 U.S.C. §1983: NEGLIGENCE**

5 8.1 Paragraphs 1.1 through 7.4 are incorporated herein by reference as though fully set
6 forth.

7 8.2 Defendants and their official representatives owed a duty to act according to the
8 standard of ordinary care in their official capacities, to wit, to use only such force which is necessary to
9 safely enforce federal warrants without use of excessive force except in situations of imminent threat
10 of serious bodily harm or death.

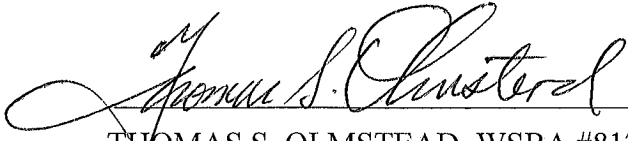
11 8.3 Defendant Greg Graves in his individual or official capacity, and other individuals,
12 including Kitsap County Sheriff's deputies breached their duties by failing to perform their duties.
13 Defendants failed to render medical assistance to Thomas Anthony Black leaving him to bleed to
14 death.
15

16 8.4 As a result of those breaches, which were the proximate cause of the Plaintiff's death.
17

18 WHEREFORE, Plaintiff prays for judgment as follows:
19

- 20 1. For Special Damages in an amount to be proven at trial.
21 2. For General Damages in an amount to be proven at trial.
22 3. For Punitive Damages in an amount to be proven at trial.
23 4. For Plaintiffs costs and reasonable attorney's fees.
24 5. For such further relief as the court deems just and reasonable.
25 6. With respect to the 42 U.S.C. § 1983 actions Plaintiff demands a jury trial.
26
27
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Dated this 15th day of January 2014.


THOMAS S. OLMSTEAD, WSBA #8170
Attorney for Plaintiff