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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARILYN COVARRUBIAS, in her Personal
Capacity and as Personal Representative of the
Estate of Daniel Covarrubias, deceased;
YGNACIO COVARRUBIAS; DESIREE
COVARRUBIAS; ELIJAH COVARRUBIAS;
DANIEL COVARRUBIAS; JULIAN
COVARRUBIAS; ALYCIA COVARRUBIAS;
JALYCKA COVARRUBIAS; ISAAC
COVARRUBIAS, by and through his *guardian
ad litem*, MICHAEL B. SMITH,

NO.

COMPLAINT

Plaintiffs,

v.

CITY OF LAKEWOOD, a Washington State
municipality; DAVID BUTTS; RYAN
HAMILTON; MIKE ZARO; PAUL OSNESS;
VIENGSAVANH SIVANKEO; JASON
CANNON; JOHN DOES 1 - 16,

Defendants.

I. STATEMENT OF THE CASE

1. On April 21, 2015, Daniel Covarrubias, an unarmed Native American man, was
shot to death by the Lakewood Police Department (“Lakewood PD”).¹ At the time he was killed,
Daniel was disoriented and in the midst of a mental health crisis. Daniel had climbed upon of a

¹ The term “Lakewood Police Department” or “Lakewood PD” shall herein refer to Defendant City of Lakewood.

1 rack of wood at a lumberyard, and appeared to not know how to get down. The only crime he
2 was suspected of committing was trespass. He did not pose a threat of harm to lumberyard
3 employees, to Lakewood PD, or to anyone else. He simply needed help. Instead of helping
4 Daniel, Lakewood PD shot him dead within seconds of their arrival.

5 2. Because of a pervasive militarist culture at Lakewood PD, this is a common
6 practice. Indeed, because Lakewood PD's officers are trained to use excessive force in defensive
7 tactics trainings,² this is not the first fatal police shooting involving Lakewood PD. Roughly
8 two years prior to Daniel's death, aggressive tactics similar to those used on Daniel resulted in
9 Lakewood PD shooting and killing an unarmed African American man, Leonard Thomas.³
10 Racial bias likely played a role in both incidents, as supervisors at the Lakewood PD allow racial
11 bias to persevere.⁴

12 3. Also a common practice at Lakewood PD—and, disturbingly, across the Nation—
13 is the practice of using after-the-fact justifications for officers' shoot-first-ask-questions-later
14 tactics. Cell phones do not look like guns. Indeed, witnesses to Daniel's murder—average
15 citizens without police training, standing much further away from Daniel than the Lakewood PD
16 officers—have confirmed that what Daniel was holding in his hand when he was killed by
17 Lakewood PD was rather obviously a cell phone, not a gun.

18 4. What is even more disturbing is the individual officers' reliance upon private
19 legal counsel to fabricate a pretext for their deadly use of force—also an unsettling trend. As in
20 the killing of Leonard Thomas, Lakewood PD officers met with union-provided counsel for
21 extended periods of time before giving any statement to investigators. Lakewood PD officers
22 did so pursuant to a policy of meeting with legal counsel before issuing any statement about a

23 _____
24 ² *Shadow v. City of Lakewood*, No. 16-2-08405-8 (Pierce Cnty. Super. Ct.).

³ *Thomas v. City of Lakewood*, No. 15-5346 (W.D. Wash.).

⁴ *See, e.g., Burgess v. City of Lakewood*, No. 09-5584 (W.D. Wash. Mar. 29, 2013), ECF No. 31-1.

1 fatality police shooting, and having counsel review any statement before an officer signs it under
2 penalty of perjury. Upon information and belief, the same was done here, pursuant to the same
3 policy.

4 5. Lakewood PD's unnecessary use of deadly force has left Daniel's seven children
5 without a father, and his parents without a child. This result easily could have been prevented
6 had Lakewood PD had the slightest amount of regard for Daniel's life.

7 II. PARTIES

8 6. Plaintiff MARILYN COVARRIBUAS is the duly-appointed Personal
9 Representative of the Estate of her son, Daniel Covarrubias, and is the grandmother of Daniel's
10 seven children. She brings all claims on her own behalf, including the violation of her
11 constitutionally protected liberty interest under the Fourteenth Amendment in the companionship
12 and society of her child, as well as those on behalf of Daniel's Estate.

13 7. Plaintiff YGNACIO COVARRUBIAS was Daniel's father. He brings all claims
14 available to himself, in his personal capacity, including the violation of his constitutionally
15 protected liberty interest under the Fourteenth Amendment in the companionship and society of
16 his child.

17 8. Plaintiffs DESIREE COVARRUBIAS, ELIJAH COVARRUBIAS, DANIEL
18 COVARRUBIAS, JULIAN COVARRUBIAS, ALYCIA COVARRUBIAS, JALYCKA
19 COVARRUBIAS, and ISAAC COVARRUBIAS are Daniel's children. They bring all claims
20 available to themselves, in their personal capacity, including the violation of their
21 constitutionally protected liberty interest under the Fourteenth Amendment in the companionship
22 and society of their father. ISAAC COVARRUBIAS brings his claims by and through his
23 *guardian ad litem*, MICHAEL B. SMITH.

1 9. Defendant CITY OF LAKEWOOD is a municipality within the State of
2 Washington and employed each individually named Defendant. The civil rights violations
3 delineated herein were proximately caused by the customs, policies, and usages that it
4 implemented and maintained.

5 10. Defendant DAVID BUTTS is a law enforcement officer employed by the City of
6 Lakewood. Defendant Butts was acting under the color of law and within the course and scope
7 of his employment at all times relevant hereto.

8 11. Defendant PAUL OSNESS is a law enforcement officer employed by the City of
9 Lakewood. Defendant Osness was acting under the color of law and within the course and scope
10 of his employment at all times relevant hereto.

11 12. Defendant RYAN HAMILTON is a law enforcement officer employed by the
12 City of Lakewood. Defendant Hamilton was acting under the color of law and within the course
13 and scope of his employment at all times relevant hereto.

14 13. Defendant MIKE ZARO is Lakewood PD's Police Chief. Defendant Zaro was
15 working under color of law and within the course and scope of his employment at all relevant
16 times herein. The civil rights violations delineated herein were proximately caused by the
17 customs, policies, and usages that he implemented and maintained.

18 14. Defendant VIENGSAVANH SIVANKEO is a law enforcement officer employed
19 by the City of Lakewood. Defendant Sivankeo was acting under the color of law and within the
20 course and scope of his employment at all times relevant hereto.

21 15. Defendant JASON CANNON is a law enforcement officer employed by the City
22 of Lakewood. Defendant Cannon was acting under the color of law and within the course and
23 scope of his employment at all times relevant hereto.

1 16. Defendants JOHN DOES 1 - 16 (hereinafter “Defendants Doe”) are employees,
2 and/or agents of the City of Lakewood. Each Defendant Doe was within the scope of his/her
3 employment at all times relevant hereto. It is believed most, if not all, of the Defendants Doe are
4 residents of Washington. Each Defendant Doe’s acts and omissions caused Daniel Covarrubias’
5 death. Their identities are unknown at this time and will be named as discovery progresses.

6 17. Plaintiffs are informed and believe, and thus allege, that each of the above-named
7 Defendants are responsible for the pattern and practice of events herein alleged, or are necessary
8 parties for obtaining appropriate relief. In performing each of he acts alleged herein and below,
9 each Defendant acted jointly or individually as agents for each other and for all other
10 Defendants. The injuries and damages inflicted upon Plaintiffs were caused by the acts and
11 omissions of Defendants.

12 **III. JURISDICTION AND VENUE**

13 18. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983, 42 U.S.C. § 1988, and 42
14 U.S.C. §§ 12101-213, as well as the Fourth and Fourteenth Amendments to the United States
15 Constitution.

16 19. Plaintiffs invoke this Court’s supplemental jurisdiction over their state law claims
17 of negligence, negligent supervision, and negligent and intentional infliction of emotional
18 distress.

19 20. This Court possesses jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §
20 1343. Plaintiffs’ claims present federal questions because they arise under the Constitution and
21 laws of the United States, and because Defendants have acted under color of state law.

22 21. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
23 1391(b)(2). Defendants are situated in this judicial district and a substantial portion of the events
24

1 and omissions giving rise to these claims occurred in Pierce County, Washington, which lies
2 within the Western District of Washington.

3 **IV. STATUTORY COMPLIANCE**

4 22. On January 30, 2018, Plaintiffs filed an administrative claim for damages with the
5 City of Lakewood and has satisfied the prerequisites to the maintenance of this action per Wash.
6 Rev. Code § 4.92.100. More than thirty days have elapsed since Plaintiffs presented their claims
7 with notice of intention to sue and the Defendants have failed, refused and/or neglected to pay
8 them.

9 **V. STATEMENT OF FACTS**

10 23. Daniel had previously been diagnosed with serious mental illnesses, including
11 psychosis and bipolar disorder. Over the years, he had numerous interactions with the Pierce
12 County Mobile Outreach Crisis Team and other state, local, and private mental health
13 professionals, including Defendant Lakewood PD.

14 24. On or about April 18, 2015, Daniel began spiraling into a mental health crisis.
15 Early in the morning on April 21, 2015, Daniel’s delusions amplified to the point that he needed
16 to check himself into the hospital. According to medical records, he came in “mumbling to
17 himself” and “report[ed] that he has ‘cameras’ in his eyes and would like them taken out.”

18 25. While Daniel met the diagnostic criteria for “unspecified nonpsychotic mental
19 disorder,” it was determined that his mental disorder did not cause him to pose a threat of serious
20 harm to himself or others, so he could not be involuntarily detained. Daniel was discharged from
21 the hospital at 11:50 a.m.

22 26. At approximately 1:15 p.m., a Pinnacle Lumber employee saw Daniel running
23 away from something the employee did not perceive in the back area of the lumberyard. The
24 employee reported to 911 a man running through the yard on foot carrying a black hoodie, and

1 described the man as a dark-skinned male with black curly hair in a ponytail. The employee
2 made no mention of a gun.

3 27. Defendants Butts and Johnson were nearby, responding to an unrelated trespass
4 call at a Wendy's Restaurant across the street.

5 28. Several Pinnacle Lumber employees confronted and cornered Daniel as he ran
6 through the yard. Daniel then proceeded to climb up one of the lumber racks. These racks stand
7 approximately thirty feet tall and contain unwrapped lumber. Pinnacle Lumber employees
8 attempted to talk Daniel down so he would not get hurt. These employees described Daniel as
9 scared, startled, frightened, and agitated. None of these employees mentioned a gun.

10 29. Defendants Butts, Johnson, Hamilton, and Osness responded to the 911 call.

11 30. While en route, Defendant Hamilton advised over the radio that an "anonymous
12 citizen" had flagged him down from the previous call and informed Officer Hamilton that a
13 person matching Daniel's description had attempted to sell him narcotics in the area a few
14 minutes earlier. Officer Hamilton could not provide investigators with the name or description
15 of this "anonymous citizen." No narcotics or other illegal substances were found on Daniel's
16 body. The anonymous citizen did not mention a gun.

17 31. At approximately 1:20 p.m., Defendants Hamilton, Butts, and Osness arrived at
18 the Pinnacle Lumber Yard. Defendant Hamilton entered the yard in his patrol vehicle while
19 Defendant Butts entered the yard on his patrol motorcycle. Defendant Osness drove to the
20 nearby Wendy's parking lot located just north of Pinnacle Lumber, where he was able to see
21 Daniel on the lumber rack.

22 32. Upon entering the yard, Pinnacle Lumber employees pointed out Daniel's
23 location to Defendant Hamilton and informed Defendant Hamilton that Daniel was acting bizarre
24 and appeared to be paranoid, disoriented, panicked, and delusional. As the lumberyard

1 employees put it in post-incident interviews, Daniel was “mentally not there” and “obviously on
2 another plane.” The employees also informed the officers that they did not feel threatened by
3 Daniel or feel that he was dangerous. The employees did not mention a gun.

4 33. In fact, the employees feared for *Daniel’s* life. It appeared he may be injured
5 were he to jump from the rack, which he was obviously contemplating. They also noticed that
6 Daniel had a white bracelet on and likely had been just released from the hospital (or, as one
7 witness put it, “the looney bin”).

8 34. After reaching Daniel’s location, Defendant Hamilton exited his vehicle and
9 approached Daniel on foot. Defendant Hamilton told Daniel not to jump and asked what he was
10 doing up on the rack, while aiming his firearm at him. Daniel likely did not hear Defendant
11 Hamilton, however. According to a lumberyard employee, “there’s a lot of noise . . . where he
12 was at, way up high, [next to] th[e] Steele Street overpass on the freeway.”

13 35. After not getting a response from Daniel, Defendant Hamilton went to his car and
14 got a rifle, pointed it at Daniel and made a bobbing and weaving motion to see if he could get a
15 shot at him from near the vehicle. Not being able to get a clear shot, Defendant Hamilton then
16 re-approached Daniel and aimed his rifle at him from below the rack.

17 36. At this point, Defendant Butts arrived on the scene. Defendant Butts sped
18 through the lot on his motorcycle, screeched to a halt, jumped off, and ran to the rack while
19 simultaneously drawing his firearm and pointing it at Daniel.

20 37. Within seconds of Butts’ arrival, Defendants Hamilton and Butts opened fire on
21 Daniel, killing him.

22 38. While Defendant Butts was running to the rack, Daniel looked over the edge of
23 the rack and saw Defendant Hamilton pointing the rifle at him. Daniel then repositioned to move
24

1 flat, to be shielded by the stack of wood, at which point his arms came out of his pocket. In one
2 of his hands was a cell phone. Daniel was immediately shot.

3 39. Everyone—from employees standing by the officers to persons across the street at
4 the Wendy’s—saw that the item that Daniel pulled out of his pocket was a cell phone. The same
5 witnesses did not see Daniel make an aggressive or threatening gesture. Because he did not
6 make such a gesture.

7 40. The idea of Daniel pointing his cell phone like a gun, and that his cell phone was
8 construed by the Defendants Hamilton and Butts as a gun, was an after-the-fact justification for
9 the murder of yet another unarmed Native American man, completely concocted by the
10 Defendants and their union-appointed counsel.

11 41. After Daniel collapsed onto the rack, Defendant Hamilton continued to point his
12 gun at the lumber rack.

13 42. Defendant Mark Eakes arrived on the scene shortly after Defendants Butts and
14 Hamilton had opened fire on Daniel. Defendant Eakes spotted Daniel facedown on the rack,
15 exhibiting labored breathing and bleeding profusely. Instead of rendering aid, Defendant Eakes
16 returned to his vehicle to retrieve his rifle and bullhorn. Defendant Eakes then took up a position
17 with his rifle and used the bullhorn to give Daniel instructions. Other officers instructed Daniel
18 to show his hands. Defendant Eakes told Daniel to move if he could hear him, but as Daniel was
19 bleeding out unconscious on the rack, gasping for his final breaths, he did not respond.

20 43. SWAT officers then conferred with West Pierce Fire Department (“WPF”) units
21 on the scene and eventually decided to use a ladder to reach Daniel and a Pinnacle Lumber
22 forklift to lower Daniel’s body down from the rack. SWAT officers then had to locate their gear
23 and a ladder before attending to Daniel’s wounds.

1 44. Lakewood PD Officers Sivankeo and Cannon, together with WPFDF staff, then
2 climbed the ladder with a shield and discovered Daniel on the lumber rack, face down on top of
3 his arms in a large pool of his own blood. The four bullet wounds Daniel sustained did not
4 instantly kill him, but his breathing was labored. Before rendering Daniel medical aid or
5 allowing WPFDF staff to intervene, Defendants Sivankeo and Cannon attempted to handcuff
6 Daniel by each pulling an arm out from underneath Daniel’s limp body. After handcuffing
7 Daniel, Defendants Sivankeo and Cannon frisked Daniel for weapons—they found none on his
8 person or around his body on the rack.

9 45. Defendants Sivankeo and Cannon called for a forklift to lower them and Daniel
10 down. Once Daniel’s body was on the ground, Defendant Cannon again searched Daniel for
11 weapons. Again, no weapons of any kind were found on Daniel. Defendant Cannon did find a
12 wallet and from his tribal identification card, was able to identify him. Defendant Cannon then
13 removed the handcuffs and *finally* permitted WPFDF to render medical aid.

14 46. Daniel was transported by ambulance to St. Joseph’s Hospital for treatment of his
15 four bullet wounds. Physicians determined that Daniel had sustained a non-treatable and
16 inoperable head wound along with extensive internal injuries.

17 47. Lakewood Police Mental Health Contact Team was not notified until after Daniel
18 had passed away.

19 48. The above acts and omissions all were sanctioned by Defendants Zaro and
20 Lakewood PD and were taken pursuant to established customs and policies maintained by
21 Defendants Zaro and Lakewood PD. This includes Defendants Zaro and Lakewood PD’s failure
22 to appropriately train officers on identifying and interacting with the mentally ill, de-escalation
23 techniques, the use of excessive force, suspect apprehension, and rendering aid.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION – 42 U.S.C. § 1983

48. By virtue of the facts set forth above, all Defendants are liable for the deprivation of civil rights of Plaintiff Marilyn Covarrubias, as Personal Representative of the Estate of Daniel Covarrubias, guaranteed by the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983, to be free from unreasonable seizures of his person.

49. By virtue of the facts set forth above, all Defendants are liable for the deprivation of civil rights of Plaintiff Marilyn Covarrubias, as Personal Representative of the Estate of Daniel Covarrubias, guaranteed by the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983, to be free from the deprivation of Daniel’s liberty interest in a family relationship with his mother, father, and children without due process of law.

50. By virtue of the facts set forth above, all Defendants are liable for the deprivation of civil rights of all Plaintiffs, in their individual capacities, guaranteed by the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. § 1983, to be free from the deprivation of their liberty interest in a familial relationship with Daniel without due process of law.

SECOND CAUSE OF ACTION – AMERICANS WITH DISABILITIES ACT

51. By virtue of the facts set forth above, Defendants Butts, Oness, Hamilton, Sivankel, Cannon, and Does 1-16 failed to provide reasonable accommodations for Daniel’s serious mental illness, thus subjecting him to discrimination. These Defendants did so with knowledge that Daniel was in the midst of a mental health crisis—because it was obvious—and with indifference to the harm that their failure to accommodate his mental illness would, and did, instigate.

1 52. By virtue of the facts set forth above, Defendants City of Lakewood and Zaro
2 maintained established customs and polices that failed to provide reasonable accommodations
3 for Daniel's serious mental illness, thus subjecting him to discrimination. These policies were
4 maintained with knowledge that citizens experiencing a mental health crisis would be put at a
5 serious risk of harm or death, but maintained nonetheless. This risk of harm was both obvious
6 and experienced by Defendants City of Lakewood and Zaro in past occurrences of injuries like
7 Plaintiffs,' which were widespread.

8 **THIRD CAUSE OF ACTION – NEGLIGENT INFLICTION OF EMOTIONAL**
9 **DISTRESS**

10 53. By virtue of the facts set forth above, Defendants owed a duty to Plaintiffs to act
11 as reasonable, prudent persons. This duty includes an obligation to act in a careful, lawful, and
12 prudent manner and in full compliance with applicable law.

13 54. Defendants' conduct towards Plaintiffs resulted in a breach of Defendants' duties
14 to act in a careful, lawful, and prudent manner and in full compliance with applicable law.

15 55. Emotional distress was a field of danger that Defendants should have reasonably
16 anticipated and guarded against.

17 56. As a direct and proximate result of Defendants conduct, Plaintiffs suffered legally
18 compensable emotional distress damages, all of which has resulted in general damages for pain
19 and suffering in an amount to be proven at trial.

20 **FOURTH CAUSE OF ACTION – INTENTIONAL INFLICTION OF**
21 **EMOTIONAL DISTRESS**

22 57. By virtue of the facts set forth above, Defendants' conduct towards Plaintiffs was
23 extreme and outrageous. Defendants intentionally caused Plaintiffs' emotional distress.

24 58. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered
25 legally compensable emotional distress damages.

FOURTH CAUSE OF ACTION – NEGLIGENCE

59. At all times relevant herein, the City of Lakewood was the employer of all individually-named Defendants. At all times relevant times herein, all individually-named Defendants were acting within the course and scope of their employment. The City of Lakewood is liable for the negligence of the individually-named Defendants.

60. Defendants, as a law enforcement agents of the City of Lakewood, possessed a duty to act as reasonable law enforcement officers under these circumstances.

61. Defendants were acting as a law enforcement agents and agents of the City of Lakewood when they committed the acts detailed in this Complaint.

62. By virtue of the facts set forth above, Defendants breached their duty to act as reasonable law enforcement officers by failing, neglecting and/or refusing to properly and fully discharge their responsibilities.

63. As a proximate cause of Defendants’ breach of their duty to act as reasonable law enforcement officers, Plaintiffs have suffered harm, entitling Plaintiffs to damages in an amount to be proven at trial, including, but not limited to, loss of income, loss of liberty, shock, extreme emotional distress, anxiety, and humiliation, all of which has resulting in general damages for pain and suffering in an amount to be proven at trial.

FIFTH CAUSE OF ACTION: NEGLIGENT SUPERVISION AND TRAINING

64. Defendants were responsible for training and supervising the individually-named defendants and possessed a duty to adequately train and supervise those Defendants.

65. By virtue of the facts set forth above, despite the fact that Defendants knew or should have known that the individually-named Defendants were engaged in the unlawful and outrageous conduct alleged herein, Defendants failed to take reasonable actions to prevent the individually-named Defendants from engaging in such conduct.

1 66. Defendants acted negligently by failing to adequately and properly train and
2 supervise the individually-named Defendants with respect to the discharge of their
3 responsibilities and duties.

4 67. By the actions alleged herein, Defendants breached their duty to adequately and
5 properly train and supervise the individually-named Defendants, and to ensure that these
6 Defendants were not engaging in conduct that posed a risk to and harmed others.

7 68. As a direct and proximate cause of Defendants' breach of their duty to adequately
8 and properly train and supervise the individually-named Defendants, Plaintiffs have suffered
9 harm, entitling Plaintiffs to damages in an amount to be proven at trial, including, but not limited
10 to, loss of income, loss of liberty, shock, extreme emotional distress, anxiety, and humiliation, all
11 of which has resulting in general damages for pain and suffering in an amount to be proven at
12 trial.

13 **VII. JURY DEMAND**

14 69. Plaintiffs hereby demand a jury.

15 **VIII. PRAYER FOR RELIEF**

16 70. Damages have been suffered by Plaintiffs and to the extent any state law
17 limitations on such damages are purposed to exist, they are inconsistent with the compensatory,
18 remedial, and/or punitive purposes of 42 U.S.C. § 1983, and therefore any such alleged state law
19 limitations must be disregarded in favor of permitting an award of the damages prayed for
20 herein.

21 WHEREFORE, Plaintiffs request a judgment against all Defendants:

22 (a) Fashioning an appropriate remedy and awarding general, special, and punitive
23 damages, including damages for pain, suffering, terror, loss of consortium, and loss
24

1 of familial relations, and loss of society and companionship in an amount to be
2 proven at trial;

3 (b) Awarding reasonable attorneys' fees and costs;

4 (c) Declaring Defendants jointly and severally liable;

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

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

7 DATED this 10th day of April, 2018.

8 GALANDA BROADMAN, PLLC

9 s/Gabriel S. Galanda

10

Gabriel S. Galanda, WSBA #30331

11 s/Ryan D. Dreveskracht

12

Ryan D. Dreveskracht, WSBA #42593

13 s/Bree R. Black Horse

14

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