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

SARA L. LACY in her Personal Capacity and
as Personal Representative of the Estate of
CECIL D. LACY, JR., deceased,

NO. 16-2-21526-2 SEA

SECOND AMENDED COMPLAINT

Plaintiff,

v.

SNOHOMISH COUNTY, a political
subdivision of the State of Washington;
MICHAEL JOHNSON, in his personal
capacity; TYLER GROSS, in his personal
capacity,

Defendants.

COMES NOW Plaintiff Sara L. Lacy, by and through her attorneys of record, Galanda Broadman, PLLC, and by way of claim alleges upon personal knowledge as to herself and her own actions, and upon information and belief upon all other matters, as follows:

I. PARTIES

1. Defendant SNOHOMISH COUNTY is a political subdivision of the State of Washington. Snohomish County has various departments including the Snohomish County Sheriff's Office. The Snohomish County Sheriff's Office is responsible for providing law enforcement services within Snohomish County. Snohomish County is, and was at all times mentioned herein, responsible for the actions or inactions, and the policies, procedures, and practices/customs of the Snohomish County Sheriff's Office and its employees, including, but

1 not limited to, Sheriff Ty Trenary and Deputy Charles Pendergrass. At all times material to this
2 lawsuit, Sheriff Ty Trenary and Deputy Charles Pendergrass were acting within the course and
3 scope of their employment during the incident that gave rise to Plaintiff's complaint.

4 2. Defendant MICHAEL JOHNSON is a Washington resident and non-member or
5 non-Indian vis-à-vis the Tulalip Tribes. Defendant Johnson is sued in his personal capacity,
6 only. The suit is brought against Mr. Johnson in his capacity as a tribal employee acting within
7 the scope of his employment but on a state right-of-way, and the judgment will not operate
8 against the Tulalip Tribes. This is not a suit against Mr. Johnson in his official capacity. It is
9 simply a suit against Mr. Johnson to recover for his personal actions, which will not require
10 action by the Tulalip Tribes or disturb the Tribes' property.

11 3. Defendant TYLER GROSS is a Washington resident and non-member or non-
12 Indian vis-à-vis the Tulalip Tribes. Defendant Gross is sued in his personal capacity only. The
13 suit is brought against Mr. Gross in his capacity as a tribal employee acting within the scope of
14 his employment but on a state right-of-way, and the judgment will not operate against the Tulalip
15 Tribes. This is not a suit against Mr. Gross in his official capacity. It is simply a suit against Mr.
16 Gross to recover for his personal actions, which will not require action by the Tulalip Tribes or
17 disturb the Tribes' property.

18 4. Plaintiff SARA L. LACY is the duly appointed Personal Representative of the
19 Estate of her husband, CECIL D. LACY, JR., and the mother of Mr. Lacy's minor daughter.
20 Plaintiff brings all claims available to the Estate of Cecil Lacy, Jr., herself in her personal
21 capacity, and all beneficiaries under state and federal law.

1 **II. JURISDICTION AND VENUE**

2 5. The acts alleged herein occurred in Snohomish County, Washington. Defendants
3 also are situated in Snohomish County.

4 6. As an action against a county, jurisdiction and venue is proper in this Court
5 pursuant to RCW 36.01.050.

6 **III. ADMINISTRATIVE CLAIM FOR DAMAGES**

7 7. On April 11, 2016, Plaintiff filed an administrative claim for damages with
8 Snohomish County. More than sixty (60) days have elapsed since the filing of that
9 administrative claim. Plaintiff has satisfied the prerequisites to the maintenance of this action
10 per Chapter 4.92 RCW.

11 **IV. STATEMENT OF FACTS**

12 8. On the evening of September 18, 2015, at approximately 2130 hours, Cecil D.
13 Lacy, Jr., left his residence at 717 Marine View Drive, Tulalip, Washington, for his nightly walk
14 along Marine Drive, which also constitutes Washington State Route 529, a state-right-of-way
15 that runs through the Tulalip Indian Reservation.

16 9. At approximately 2148 hours, SNOPAC Dispatch—a regional public safety
17 communications center that receives law enforcement, fire and medical 9-1-1 calls for 37
18 different Snohomish County jurisdictions—broadcasted a traffic hazard in the 1200 block of
19 Marine Drive along Washington State Route 529. SNOPAC Dispatch advised a male walking
20 on the roadway.

21 10. Snohomish County Deputy Charles Pendergrass responded to this dispatch.
22 Deputy Pendergrass generally works the North Beat graveyard shift Thursday through Saturday
23 and every other Wednesday from 1800 to 0600 hours.

1 11. As Deputy Pendergrass drove westbound on Marine Drive, he saw a Tulalip
2 Tribes Police Patrol vehicle parked on the shoulder near the scene. Tulalip Police Officer T.
3 Gross and Tulalip Police Sergeant M. Johnson also had responded to the dispatch. Sergeant
4 Johnson advised Officer Gross to wait to initiate contact with Mr. Lacy until Sergeant Johnson
5 arrived on the scene. When Deputy Pendergrass arrived on the scene, Officer Gross had parked
6 but not initiated contact with Mr. Lacy, and Sergeant Johnson was still *en route* to the scene.

7 12. At approximately 2206 hours, Deputy Pendergrass arrived on the scene, requested
8 a second unit for backup, and initiated first contact with Mr. Lacy. As Deputy Pendergrass
9 exited his patrol vehicle, he instructed Mr. Lacy to stop. Mr. Lacy complied. Deputy
10 Pendergrass reported that when he encountered Mr. Lacy, he was sweating profusely, talking
11 rapidly, could not stand still, and appeared to be agitated. These are all symptoms of excited
12 delirium, a serious medical need that any adequately trained law enforcement officer exercising
13 reasonable care and skill would have recognized.

14 13. Deputy Pendergrass and Mr. Lacy then began talking on the shoulder of the
15 roadway. Mr. Lacy informed Deputy Pendergrass that he was exercising. Mr. Lacy informed
16 Deputy Pendergrass that he lived at 717 Marine Drive. Mr. Lacy also informed Deputy
17 Pendergrass that he was suffering from a serious mental illness.

18 14. Mr. Lacy then told Deputy Pendergrass that he was just going to walk home.
19 Deputy Pendergrass told Mr. Lacy that he did not feel safe with Mr. Lacy walking in the
20 roadway. At this point, Deputy Pendergrass reported thinking that Mr. Lacy should be
21 involuntary committed for a mental evaluation, but that he was going to give Mr. Lacy a courtesy
22 ride home instead. Sergeant Johnson then arrived on the scene.

1 15. Deputy Pendergrass communicated to Sergeant Johnson that Mr. Lacy wanted to
2 walk home, but said that they—the officers—were going to give him a ride home due to the
3 unsafe dark and traffic hazard conditions.

4 16. After speaking with Deputy Pendergrass, Sergeant Johnson assumed the dialogue
5 with Mr. Lacy. Sergeant Johnson spoke with Mr. Lacy and they agreed that he would get a ride
6 home. Sergeant Johnson told Mr. Lacy that the officers were going to put him in handcuffs for
7 safety reasons during the ride in the patrol vehicle, and that he was going to frisk him for
8 weapons. Mr. Lacy was not under arrest and that the frisk was for safety reasons.

9 17. Sergeant Johnson walked up to Mr. Lacy to put his hands behind his back and
10 started to grab his handcuffs. Mr. Lacy pulled his hands away and communicated that he did not
11 feel comfortable being handcuffed and that he instead wanted his wife to pick him up. Sergeant
12 Johnson again explained that Mr. Lacy was not in trouble and not under arrest, and that the
13 handcuffing was for safety reasons only.

14 18. Mr. Lacy consented to be handcuffed in front of his body due to a shoulder injury.
15 Officers frisked Mr. Lacy and found no weapons. Mr. Lacy also informed officers at this time
16 that he had previously been institutionalized for mental reasons. Sergeant Johnson handcuffed
17 Mr. Lacy in the front of his body and all three officers escorted Mr. Lacy to Officer Gross's
18 Tulalip Police patrol vehicle.

19 19. Mr. Lacy initially sat down in the back seat of the Tulalip Patrol vehicle. As
20 officers closed the door, Mr. Lacy exited the vehicle, apparently changing his mind about the
21 ride and stating that he did not feel comfortable with being inside of the patrol vehicle.

22 20. Officers started to put Mr. Lacy back into the patrol vehicle and Mr. Lacy again
23 exited the car.

1 21. For no apparent reason, Deputy Pendergrass then went “hands,” attempting to
2 physically gain control of Mr. Lacy. A physical altercation ensued between Mr. Lacy and the
3 officers in a grassy area near the patrol vehicle on the shoulder of the roadway.

4 22. According to one witness, Mr. “Lacy was not trying to harm the officers and was
5 more, in effect, trying to get away from them.” Mr. Lacy had every right to walk away from the
6 officers, since, **critically, he was not under arrest. Mr. Lacy was *never* under arrest.**

7 23. At some point—and for unknown reasons since Mr. Lacy was still handcuffed at
8 this point—Deputy Pendergrass deployed his Taser in drive-stun mode to Mr. Lacy’s right
9 shoulder area—the same area that Mr. Lacy had earlier informed Deputy Pendergrass was
10 injured.

11 24. In this mode, the probe cartridge on the front of the Taser is removed and the
12 Taser is applied directly to the subject’s skin. The electrical pulse cycles automatically for five
13 seconds, longer if the trigger is held down or shorter if the Taser is turned off or removed from
14 the skin.

15 25. Deputy Pendergrass tased Mr. Lacy for the full five seconds and then continued to
16 hold down the trigger beyond that cycle, for at least an additional fifteen seconds.

17 26. After deploying his Taser to Mr. Lacy’s shoulder area, Deputy Pendergrass then
18 deployed his Taser to Mr. Lacy’s right abdomen.

19 27. As Deputy Pendergrass deployed his Taser for a second time on Mr. Lacy, the
20 Taser got pinched between Mr. Lacy and the Tulalip Patrol vehicle and bent Deputy
21 Pendergrass’s hand backward. Deputy Pendergrass reported losing his Taser at this point in the
22 struggle.

23 28. The Deputy Pendergrass and the other officers continued to struggle with Mr.
24 Lacy on the shoulder of the roadway.

1 29. The officers forced Mr. Lacy into a face down position and took control of his
2 limbs. Sergeant Johnson put his weight on Mr. Lacy's arms. **Deputy Pendergrass pinned Mr.**
3 **Lacy's body such that he was deprived of his ability to breathe.** Officer Gross controlled Mr.
4 Lacy's legs. Although, again, Mr. Lacy was not under arrest.

5 30. Mr. Lacy told the officers that he could not breathe but Deputy Pendergrass did
6 not relent in suffocating him.

7 31. Suffocated, tased, and restrained, Mr. Lacy soon became unresponsive.

8 32. Deputy Pendergrass unsuccessfully attempted to revive Mr. Lacy with CPR.

9 33. Upon information and belief, Deputy Pendergrass was not up to date on his CPR
10 training.

11 34. Mr. Lacy died at the scene.

12 35. The Snohomish County Medical Examiner's Office issued a Medical Examiner's
13 report regarding the autopsy of Mr. Lacy on November 20, 2015.

14 36. The Medical Examiner's opinion was that Mr. Lacy died of cardiac arrhythmia—
15 a not-uncommon result of Taser probe deployments, particularly when an arrestee is suffering
16 from excited delirium and restraint asphyxia.

17 37. Indeed, cardiac arrhythmia is often caused by excited delirium and restraint
18 asphyxia alone.

19 38. Again, during the entire incident, Mr. Lacy had the right to walk away from the
20 officers because he was not under arrest. Yet Deputy Pendergrass nonetheless restrained and
21 assailed Mr. Lacy, in clear violation of established law. *See, e.g., Borton v. City of Dothan*, 734
22 F.Supp.2d 1237 (M.D. Ala. 2010) (tasing a mentally disturbed patient who was not under arrest
23 three times was violation of clearly established law); *Asten v. City of Boulder*, 652 F.Supp.2d

1 1188 (D. Colo. 2009) (holding that “the unforewarned tasing of a mentally unstable woman”
2 who was not under arrest violated clearly established law).

3 **V. FIRST CLAIM FOR RELIEF: NEGLIGENCE AND GROSS NEGLIGENCE**

4 39. Plaintiff hereby incorporates all prior allegations by reference.

5 40. At all times relevant herein, Snohomish County by and through the Snohomish
6 County Sheriff’s Department was the employer of Deputy Pendergrass. At all times relevant
7 herein, Deputy Pendergrass was acting within the course and scope of his employment.
8 Snohomish County is liable for the negligence of Deputy Pendergrass.

9 41. Deputy Pendergrass, as a law enforcement agent of Snohomish County, possessed
10 a duty to act as a reasonable police officer under these circumstances.

11 42. Sergeant Johnson, as a law enforcement agent of the Tulalip Tribes, possessed a
12 duty to act as a reasonable police officer under these circumstances.

13 43. Officer Gross as a law enforcement agent of the Tulalip Tribes, possessed a duty
14 to act as a reasonable police officer under these circumstances.

15 44. Sheriff Trenary, as Snohomish County Sheriff, was responsible for supervising
16 and training the Snohomish County Sheriff’s Department officers, including Deputy
17 Pendergrass, and possessed a duty to adequately train and supervise Deputy Pendergrass.

18 45. Deputy Pendergrass breached his duty to act as a reasonable police officer by
19 restraining and combating with Mr. Lacy and by failing, neglecting and/or refusing to properly
20 and fully discharge his responsibilities. Indeed, Deputy Pendergrass was not only negligent in
21 his breach of duty, but acted with a reckless indifference to Mr. Lacy, failing to exercise even
22 slight care or slight diligence, thereby acting with gross negligence.

23 46. Sergeant Johnson breached his duty to act as a reasonable police officer by
24 restraining and combating with Mr. Lacy and by failing, neglecting and/or refusing to properly
25

1 and fully discharge his responsibilities. Indeed, Sergeant Johnson was not only negligent in his
2 breach of duty, but acted with a reckless indifference to Mr. Lacy, failing to exercise even slight
3 care or slight diligence, thereby acting with gross negligence.

4 47. Officer Gross breached his duty to act as a reasonable police officer by restraining
5 and combating with Mr. Lacy and by failing, neglecting and/or refusing to properly and fully
6 discharge his responsibilities. Indeed, Officer Gross was not only negligent in his breach of
7 duty, but acted with a reckless indifference to Mr. Lacy, failing to exercise even slight care or
8 slight diligence, thereby acting with gross negligence.

9 48. Deputy Pendergrass was acting as a law enforcement agent of Snohomish County
10 when he committed these acts.

11 49. Deputy Pendergrass breached his duty to act as a reasonable police officer by
12 using excessive force upon Mr. Lacy.

13 50. Sergeant Johnson breached his duty to act as a reasonable police officer by using
14 excessive force upon Mr. Lacy.

15 51. Officer Gross breached his duty to act as a reasonable police officer by using
16 excessive force upon Mr. Lacy.

17 52. Snohomish County and Sheriff Trenary also acted with a reckless indifference by
18 failing to properly train Deputy Pendergrass and other officers in the proper use of Tasers and
19 proper training on interactions with mentally ill persons.

20 53. Snohomish County and Sheriff Trenary also acted with a reckless indifference by
21 failing to properly supervise Deputy Pendergrass and other officers with respect to the proper use
22 of Tasers, means of restraint, and interacting with mentally ill persons.

23 54. Snohomish County and Sheriff Trenary also acted with a reckless indifference in
24 their retention of officers who have engaged in excessive force.

1 55. As a proximate cause of Deputy Pendergrass's breach of his duty to act as a
2 reasonable police officer, Mr. Lacy was killed, suffered pre-death pain and suffering, and his
3 family was deprived of the monetary support and companionship that they relied upon him for.

4 56. As a direct and proximate result of Deputy Pendergrass's negligent and grossly
5 negligent conduct, Mr. Lacy, his family, and his estate suffered harm, entitling Plaintiff to
6 damages in an amount to be proven at trial.

7 57. As a proximate cause of Sergeant Johnson's breach of his duty to act as a
8 reasonable police officer, Mr. Lacy was killed, suffered pre-death pain and suffering, and his
9 family was deprived of the monetary support and companionship that they relied upon him for.

10 58. As a direct and proximate result of Officer Gross's negligent and grossly
11 negligent conduct, Mr. Lacy, his family, and his estate suffered harm, entitling Plaintiff to
12 damages in an amount to be proven at trial.

13 59. This harm includes objectively verifiable monetary losses, such as medical
14 expenses, loss of earnings, and burial costs.

15 60. This harm also includes subjective, nonmonetary losses, including, but not
16 limited to pain, suffering, inconvenience, mental anguish, emotional distress, loss of society and
17 companionship, loss of consortium, injury to reputation and humiliation, and destruction of the
18 parent-child relationship.

19 **VI. SECOND CLAIM FOR RELIEF: FALSE IMPRISONMENT**

20 61. Plaintiff hereby incorporates all prior allegations by reference.

21 62. Through the actions described herein on September 18, 2015, Deputy Pendergrass
22 intentionally confined Mr. Lacy without lawful justification.

23 63. Through the actions described herein on September 18, 2015, Sergeant Johnson
24 intentionally confined Mr. Lacy without lawful justification.

1 64. Through the actions described herein on September 18, 2015, Officer Gross
2 intentionally confined Mr. Lacy without lawful justification

3 65. Mr. Lacy revoked his consent and did not consent to such confinement.

4 66. Because Snohomish County had notice and could have prevented this false
5 imprisonment by the exercise of due care by government employees, Snohomish County is liable
6 for its own negligence.

7 67. As a proximate result of the acts alleged herein Mr. Lacy, his family, and his
8 estate suffered harm, entitling Plaintiff to damages in an amount to be proven at trial.

9 68. This harm includes objectively verifiable monetary losses, such as medical
10 expenses, loss of earnings, and burial costs.

11 69. This harm also includes subjective, nonmonetary losses, including, but not limited
12 to pain, suffering, inconvenience, mental anguish, emotional distress, loss of society and
13 companionship, loss of consortium, injury to reputation and humiliation, and destruction of the
14 parent-child relationship.

15 **VII. THIRD CLAIM FOR RELIEF: BATTERY**

16 70. Plaintiff hereby incorporates all prior allegations by reference.

17 71. Deputy Pendergrass intentionally, and without Mr. Lacy's consent, physically
18 seized, grabbed pushed, tackles, restrained and inflicted other acts of physical violence on Mr.
19 Lacy.

20 72. Because Snohomish County had notice and could have prevented this battery by
21 the exercise of due care by government employees, Snohomish County is liable for its own
22 negligence.

1 73. Sergeant Johnson intentionally, and without Mr. Lacy's consent, physically
2 seized, grabbed pushed, tackles, restrained, and inflicted other acts of physical violence on Mr.
3 Lacy.

4 74. Officer Gross intentionally, and without Mr. Lacy's consent, physically seized,
5 grabbed pushed, tackles, restrained, and inflicted other acts of physical violence on Mr. Lacy.

6 75. As a proximate result of the acts alleged herein Mr. Lacy, his family, and his
7 estate suffered harm, entitling Plaintiff to damages in an amount to be proven at trial.

8 76. This harm includes objectively verifiable monetary losses, such as medical
9 expenses, loss of earnings, and burial costs.

10 77. This harm also includes subjective, nonmonetary losses, including, but not limited
11 to pain, suffering, inconvenience, mental anguish, emotional distress, loss of society and
12 companionship, loss of consortium, injury to reputation and humiliation, and destruction of the
13 parent-child relationship.

14 **VIII. FOURTH CLAIM FOR RELIEF: NEGLIGENT USE OF EXCESSIVE FORCE**

15 78. Plaintiff hereby incorporates all prior allegations by reference.

16 79. At all times relevant herein, Snohomish County by and through the Snohomish
17 County Sheriff's Department was the employer of Deputy Pendergrass. At all times relevant
18 herein, Defendants Pendergrass and Trenary were acting within the scope of their employment.
19 Snohomish County is liable for the negligence of Defendants Pendergrass Trenary.

20 80. Deputy Pendergrass possessed a duty to refrain from using force excessively and
21 unreasonably.

22 81. Deputy Pendergrass breached his duty when he negligently used excessive force
23 to detain Mr. Lacy.

1 82. Sergeant Johnson possessed a duty to refrain from using force excessively and
2 unreasonably.

3 83. Sergeant Johnson breached his duty when he negligently used excessive force to
4 detain Mr. Lacy.

5 84. Officer Gross possessed a duty to refrain from using force excessively and
6 unreasonably.

7 85. Officer Gross breached his duty when he negligently used excessive force to
8 detain Mr. Lacy.

9 **IX. FOURTH CLAIM FOR RELIEF: OUTRAGE**

10 86. Plaintiff hereby incorporates all prior allegations by reference.

11 87. Defendants' conduct was so outrageous in character, and so extreme in degree, as
12 to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly
13 intolerable in a civilized community.

14 88. Defendants' conduct was outrageous and extreme.

15 89. Defendants' use of force was not proportional to the need to subdue Mr. Lacy,
16 who needed no restraint because he was (1) not under arrest, (2) not violent, and (3) not
17 physically threatening to the officers.

18 90. Defendants' acts, as complained above, are intolerable in a civilized community.

19 **X. JURY DEMAND**

20 91. Plaintiff hereby demands a jury.

21 **XI. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays as follows:

23 1. For judgment against the Defendants for general, special, and punitive damages,
24 including damages for pain, suffering, terror, loss of consortium, and loss of familial relations,
25

1 and loss of society and companionship under Washington State law, in an amount to be proven at
2 trial;

3 2. For compensatory damages to include, but not restricted to, damages for
4 emotional distress and mental anguish in amounts to be proven at trial;

5 3. An award of reasonable attorneys' fees and costs;

6 4. Any and all applicable interest on the judgment; and

7 5. For such additional relief as the Court may deem just and proper.

8 DATED this 30th day of May, 2017.

9 GALANDA BROADMAN, PLLC

10 s/Gabriel S. Galanda

11 Gabriel S. Galanda, WSBA #30331

12 s/Ryan D. Dreveskracht

13 Ryan D. Dreveskracht, WSBA #42593

14 s/Bree Black Horse

15 Bree Black Horse, WSBA No. 47803

16 Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I, Wendy Foster, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Avenue NE, Ste. L1, Seattle, WA 98115.

3. Today I served the foregoing document, via e-mail and regular U.S. Mail on the following parties:

Bridget E. Casey
Miko Tempski
Snohomish County Prosecuting Attorney's Office
300 Rockefeller Ave., M/S 504
Everett, WA 98201
bcaset@snoco.org
MTempsky@snoco.org

Attorneys for Defendant Snohomish County

The foregoing Statement is made under penalty of perjury and under the laws of the State of Washington and is true and correct.

Signed at Seattle, Washington, on May 30, 2017.

s/Wendy Foster

Wendy Foster