

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

KEVIN MICHAEL BELL

Plaintiff,

v.

CITY OF LACEY; Police Chief DUSTY
PIERPOINT individually; Police Commander
JOE UPTON individually; City Attorney
DAVID SCHNEIDER individually; Mayor
ANDY RYDER individually; City Manager
SCOTT SPENCE individually; DOEs 1-25
individually, NISQUALLY TRIBE, Nisqually
CEO JOHN SIMMONS, individually and
Nisqually CFO ELETIA TIAM individually.

Defendants.

NO. 3:18-cv-05918-RBL

COMPLAINT FOR DAMAGES and
DECLARTORY and INJUNCTIVE RELIEF

42 U.S.C. § 1983 CIVIL RIGHTS and
SUPPLEMENTAL STATE CLAIMS

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is a civil rights action brought under 42 U.S.C. §1983 and raising supplemental state law claims. Mr. Bell is an American citizen who, having been charged with a petty crime, was presumed innocent unless proven guilty. Nonetheless Mr. Bell was unlawfully deported, in

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1 accordance with official policy, by the City of Lacey into a sovereign nation where he suffered a
 2 debilitating overnight stroke in pretrial detention. The detention facility had knowledge of Mr.
 3 Bell's medical conditions and denied him various medications, ignoring also his pleas for help as
 4 he observed and predicted the familiar onset of his medical emergency.
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6 **2.** Several municipalities in Washington State forcibly incarcerate thousands of
 7 citizens within the sovereign nation each year, and the trend is growing. It could happen to anyone
 8 irrespective of citizenship, seriousness of allegations, or innocence. At least two thusly-exiled men
 9 have already died as a result. In this case, the sovereign nation is known as the Nisqually Indian
 10 Tribe, or in the native language, the "dx^wsq^wali? abš" nation. Mr. Bell entered on his feet, left in
 11 an ambulance, and has been wheelchair-bound ever since.
 12

13 **II. PARTIES**

14 **3.** Kevin Michael Bell is a non-tribal citizen of the United States residing at all relevant
 15 times in Lacey, Washington, and a third-party beneficiary to the Nisqually Jail Service Agreement
 16 ("Agreement") between Lacey and Nisqually.

17 **4.** Defendant City of Lacey ("*the City*") is a municipal corporation located in Thurston
 18 County, Washington and domiciled at 420 College Street SE Lacey, WA 98503.
 19

20 **5.** Defendant Dusty Pierpoint, named in his individual capacity, was at all relevant
 21 times the Chief of the Lacey Police Department who did and conspired to craft, implement,
 22 supervise and enforce the unconstitutional and negligent policies embodied in the Agreement.

23 **6.** Joe Upton, named in his individual capacity, is and was at all relevant times the
 24 Commander of the Lacey Police Department who did and conspired to implement, supervise and
 25 enforce the unconstitutional and negligent policies embodied in the Agreement.
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1 **7.** Defendant David Schneider, named in his individual capacity, is Lacey City
2 Attorney, and was Assistant City Attorney, at all relevant times, responsible for continuing approval
3 of the Agreement originally approved by him and his predecessor and former law partner, Kenneth
4 Ahlf (deceased). Schneider did and conspired to craft, implement, supervise and enforce the
5 unconstitutional and negligent policies embodied in the Agreement.
6

7 **8.** Defendant Andy Ryder, named in his individual capacity, was at all relevant times
8 the mayor of Lacey who did and conspired to craft, implement, supervise and enforce the
9 unconstitutional and negligent policies embodied in the Agreement.

10 **9.** Defendant Scott Spence, named in his individual capacity, is and was at all relevant
11 times the Lacey City Manager who did and conspired to craft, implement, supervise and enforce
12 the unconstitutional and negligent policies embodied in the Agreement.
13

14 **10.** Defendant DOEs 1-25, whose precise number and identities are currently unknown,
15 are the Nisqually Health Care Authority, Health Personnel, Medical Liaisons, Corrections Director,
16 and any other personnel (including "Nurse Tabitha"), employees, tribal officers, intake and
17 supervision officers, private contractors or subcontractors, responsible for crafting, administration
18 or implementation of Nisqually Jail inmate safety, health care, and/or policies thereof, or who did
19 and conspired to implement, perform, supervise or enforce the unconstitutional and negligent
20 policies embodied in the Agreement, including but not limited to parties who know or should know
21 that, but for a mistake concerning their proper identity, they would be named herein.
22

23 **11.** Defendant Nisqually Indian Tribe ("*Nisqually*") is a domestic dependent sovereign
24 nation located within Washington State whose immunity has been expressly waived and is waived
25 by operation of its conduct under color of Washington State law.
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1 **12.** Defendant John Simmons, named in his individual capacity, is the Chief Executive
2 Officer of the Nisqually Tribe who did and conspired to craft, implement, supervise and enforce
3 the unconstitutional and negligent policies embodied in the Agreement.

4 **13.** Defendant Eletta Tiam, named in her individual capacity, was the Chief Financial
5 Officer of the Nisqually Tribe who did and conspired to craft, implement, supervise and enforce
6 the unconstitutional and negligent policies embodied in the Agreement.
7

8 **III. JURISDICTION AND VENUE**

9 **14.** Jurisdiction is established by 28 USC §§ 1331, 1343 and 2201 for claims alleged
10 under 42 USC §1983.

11 **15.** Jurisdiction is established by 28 USC § 1367 and exhaustion of appropriate state
12 administrative remedies for all supplemental claims.

13 **16.** Jurisdiction over Nisqually is by express waiver of sovereign immunity found in the
14 Nisqually Jail Service Agreement, paragraph 15. Ex. A.

15 **17.** Jurisdiction over Nisqually individuals, agents, and tribal officers in equity is
16 established by Ex Parte Young, and progeny, as well as Title 25 of the United States Code and
17 related statutes. 209 U.S. 123 (1908).

18 **18.** Jurisdiction over Nisqually individuals, agents, employees, subcontractors, and
19 tribal officers in their individual capacities for acts within the scope of their authority under color
20 of state law is established by Lewis v. Clarke, 137 S. Ct. 1285, 1289 (2017).
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22 **19.** Venue is proper in the Western District under 28 USC §1391 as all defendants are
23 domiciled in the district and all claims arose therein. Additionally, all defendants acted under color
24 of Washington State law.
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IV. FACTS

Background Facts: The Agreement

20. In 2013, without the prerequisite act of Congress, the City and defendants Pierpoint, Upton, Schneider, Ryder, and Spence conspired to and did unlawfully contract with Nisqually, certain DOE defendants, Tiam, and Simmons, under the Nisqually Jail Service Agreement (“*Agreement*”), in substantially the form attached as Exhibit A. Under the Agreement, the City houses pretrial detainees and convicted inmates at the Nisqually Detention and Corrections Center (“*Nisqually Jail*”) located at 11702 Yelm Hwy SE, Olympia, WA 98513. The City reviewed only the contract and no policy, protocol, history, visual evidence, or inspection report of the Nisqually Jail before signing.

21. Nisqually Jail is located within the domestic dependent sovereign nation, Nisqually Indian Tribe. Nisqually is not bound by United States or Washington State constitutions¹ or laws, nor is it generally accountable to the Public through litigation or public disclosure laws. Without such public disclosure laws, it is unknown what evidence may have been destroyed.

22. The Agreement equates pretrial detainees with convicted persons, designating both “prisoner” and affording them equal treatment. Under the Agreement, the City is solely responsible for the nonemergency medical care of detainees and Nisqually is responsible for emergency care. The Agreement does not comply with the state or federal Constitutions and is not authorized by RCW 70.48 (as it falsely asserts) or any other federal or state interlocal, banishment, exile, or deportation authority.²

¹ Although 25 U.S.C. § 1302 prohibits tribes from making or enforcing unconstitutional laws generally, there is no enumerated bill of rights in the Nisqually constitution, nor does it reference non-natives.

² The terms, 'exile, banishment, deportation, and extradition' are used interchangeably in this pleading.

1 **23.** Under the Agreement, Nisqually may not provide emergency care without first
 2 making “the best efforts to contact the City.” As the prisoner suffers, Nisqually must attempt to
 3 solicit from the City an approval or denial of care, the latter operating to “relieve Nisqually of
 4 liability to the City for any injury resulting” from said denial. In other words, Nisqually is
 5 contractually obligated to treat captives with medical and custodial negligence, and both parties are
 6 induced to pass jeopardized prisoners back and forth in hot potato fashion.
 7

8 **24.** Treatment of “prisoners” is not subject to state or federal statutory or constitutional
 9 law but consigned to the caprice of Nisqually managerial personnel as it pertains to
 10 “overcrowding..., or health, safety or security risks.” Under the Agreement, “Care” includes only
 11 “room and board.”
 12

13 **25.** The “prisoners” are not treated as humans but as head of cattle. The City pays
 14 Nisqually over one thousand dollars per day for a guaranteed number of open beds, then around
 15 sixty-five dollars per head of booked prisoner each day. Given the historical mistreatment of Native
 16 Americans by non-natives, the arrangement is also foreseeably conducive of a racial animus
 17 observed and felt by Mr. Bell. Defendants are hereby on notice that discovery may result in an
 18 added Equal Protection claim.
 19

20 **26.** Attorneys’ access to clients is equated with police officers and investigators and is
 21 subject, not to the Sixth Amendment, but to “necessary security rules” of Nisqually. Law
 22 enforcement is guaranteed access to an interview room, but attorneys are not. Though Nisqually
 23 expressly waives sovereign immunity in its contracts with other municipalities, the Agreement
 24 contains only an equivocal “Venue and Choice of Law” clause that may, as Mr. Bell asserts, or may
 25 not functionally equate to such waiver.
 26

Facts Arising Inside Nisqually Jail: Deaths and Grievous Bodily Injuries.

27. In October of 2012, a 53-year-old Lacey man died of a heart attack in the Nisqually Jail. In April of 2016, a Yelm teenager died of a neglected heart condition in Nisqually Jail. The Lacey Police Department was tasked with investigating the death of the young man. The City's own investigation file evinces a pattern of neglect and deliberate indifference inside Nisqually Jail. On or about August 7, 2016, Mr. Bell was arrested on suspicion of petty shoplifting in The City. Officer Miller transported Mr. Bell from his homeland and the constitutional protections thereof, into the Nisqually Jail.

28. Mr. Bell languished nineteen days in this sovereign jail. During his jail intake and throughout his captivity, jail personnel were repeatedly notified of Mr. Bell's severe risk of potential stroke, his chronic CPOD, congestive heart failure, and related conditions and needs. All jail personnel were on notice of and indifferent to Mr. Bell's medical history and extensive list of medications.

29. Jail personnel admitted Mr. Bell directly to general population without medical clearance or observation, and without his medication on hand. They later refused to administer his prescribed blood thinner medication, his nitro medication, his inhaler, possibly other medications, and to provide a CPAP machine for his obstructive sleep apnea.

30. When some medications were finally administered, the dosage was well below that prescribed and the pills were only provided once daily despite their twice daily prescription requirements. No inhaler was ever provided. The pills were never administered by medical personnel, but by whatever corrections officer happened to be on shift at the time.

1 **31.** Mr. Bell made multiple requests for his medication while in Nisqually Jail, including
2 by oral demand and through the electronic 'kite' system. Mr. Bell was housed on a floor mat in a
3 general population block far from medical services and without evaluation of the risk to his health.

4 **32.** Mr. Bell repeatedly attempted to alert jail personnel that something was profoundly
5 wrong with his body. A DOE defendant nurse believed to be named "Tabitha" finally took Mr.
6 Bell's blood pressure after two weeks of demands and was never seen or heard from again. No
7 other nurse or physician was ever present.

8 **33.** Though all defendants had special relationships with Mr. Bell and actual or
9 constructive knowledge of Mr. Bell's medical history, medications, and deteriorating condition, the
10 jail never increased rotations to his cell or moved him to an observation room. On or about August
11 25, 2016, after repeatedly alerting staff of what was about to happen, Mr. Bell suffered a severe
12 stroke while he slept.

13 **34.** According to the Center for Disease Control and consensus in the medical
14 community, Mr. Bell's best chance of full recovery depended upon treatment within a three-hour
15 time window. Instead, he suffered through the entire night.

16 **35.** The following morning, Mr. Bell could not get up off the floor pad on which his
17 sovereign captors had made him sleep. Another detainee pushed the buzzer for him and corrections
18 officers finally began to take him seriously. Mr. Bell stated, "I think I'm having a stroke" and
19 demanded his nitro pill, which he knew to be in the possession of Nisqually.

20 **36.** Instead of providing the nitro, the corrections officers told Mr. Bell to "stay calm"
21 and transported him to the waiting booth in the booking area where he waited approximately 30
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1 more minutes before medics arrived. Upon admission into the emergency room, Mr. Bell's blood
2 pressure was 252/142. He suffered further damage during his stay in the hospital.

3 **37.** Mr. Bell is now substantially paralyzed and wheelchair bound. Apart from
4 "Tabitha" taking his blood pressure days before, and assuring him nothing was wrong, the medics
5 were the only medical personnel Mr. Bell ever saw in his 19-day pretrial incarceration.
6

7 **38.** Rather than kindly considering Mr. Bell's stroke-induced exodus from the sovereign
8 stockade befitting of a 'personal recognizance' release, the prosecutor placed Mr. Bell on bench
9 warrant status. He is therefore in constant fear and jeopardy of being whisked from the nursing
10 home back into Nisqually at the whim of police until the Court provides injunctive protection or
11 the City voluntarily relents.

12 **39.** Approximately two months after Mr. Bell's stroke, the City and Nisqually executed
13 another nearly identical agreement, noting there are no disadvantages. The 2016 agreement
14 contains no language designed to recognize, account for, or correct any of the horrific events that
15 have resulted in death and grievous bodily injury to Nisqually captives. The 2016 Agreement even
16 extended the jail contract period from three to four years.
17

18 **40.** Approximately five months later, City Manager Spence told the Daily Olympian that
19 there is no need to review the Agreement, and Chief Pierpoint noted that there have been no recent
20 "red flags" about the jail, nor any reason for him to ever have inspected it. The harm to Mr. Bell
21 could have been avoided with proper care by a facility operating under the protections of the
22 Washington and United States Constitutions and laws, under sufficient protocols and responsible
23 supervision.
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1 **41.** All defendants, by their acts and omissions, proximately caused Mr. Bell's injuries
 2 or his lost chance at a better outcome. Mr. Bell's injuries, and his lost chance at a better outcome,
 3 were the result of Defendants' acts and omissions, withheld medication, stress, and any other such
 4 cause as discovery may reveal. All defendants acted under color of state law pursuant to official
 5 policy.
 6

7 **V. MUNICIPAL AND TRIBAL LIABILITY**

8 **42.** The City is liable under Monell v. Dep't of Soc. Servs., and progeny because the
 9 City has a policy of depositing pretrial detainees in sovereign custody on the Nisqually Reservation
 10 without the protections of our state and federal constitutions and laws. 436 U.S. 658 (1978).
 11

12 **43.** The City is liable under Monell for all acts of its own and its accomplices, employees
 13 and supervisors, Nisqually Detention and Correction Center personnel, employees, representatives,
 14 contractors, associates, managers, and agents. By contractual agreement with the City, Nisqually
 15 also acted under color of state law and conspired with all other defendants. All defendants are liable
 16 for the acts of their co-conspirators.

17 **44.** Additionally, the City is liable for all acts and omissions committed inside Nisqually
 18 Jail per the Agreement, res ipsa loquitor, respondeat superior for state claims, as a matter of legal
 19 causation, and by equitable indemnification. If the Agreement is lawful, Mr. Bell is a third-party
 20 beneficiary.
 21

22 **45.** On May 18, 2017, a municipal tort claim was served upon the City through its city
 23 manager and city attorney at 420 College St. The City, WA 98503. More than sixty days have
 24 lapsed between service of the municipal tort claim and filing of this lawsuit, preserving all state
 25 claims.
 26

1 **46.** Nisqually is directly liable to Mr. Bell because of his status as third-party beneficiary
 2 to the Agreement between the City and Nisqually, and by operation of Nisqually acting under color
 3 of state law. Nisqually's express waiver of sovereign immunity also reaches Mr. Bell.

4 **47.** Because Nisqually is beyond the reach of the Public Records Act and because the
 5 City has not provided the necessary information in response to such requests, the time for filing any
 6 claim against DOE defendants for Medical Negligence pursuant to RCW 4.16.350 is tolled under
 7 RCW 4.16.350(3).
 8

9 **48.** Individual tribal employees are liable in equity and for damages under Lewis v.
 10 Clarke, 137 S. Ct. 1285 (2017).
 11

12 **49.** The foregoing factual allegations are made pursuant to the following and any other
 13 cognizable claims and legal doctrines and are incorporated as though pleaded therein. Mr. Bell
 14 anticipates adding claims during discovery, in accordance with information obtained from behind
 15 the sovereign veil of Nisqually.

16 **VI. FEDERAL CAUSES OF ACTION**

17 **FIRST CLAIM**

18 **Deprivation of Due Process under Fifth and Fourteenth Amendments (against The City,** 19 **Pierpoint, Schneider, Upton, Ryder, and Spence).**

20 **50.** The foregoing defendants each owed Mr. Bell due process of law before unlawfully
 21 deporting him into a jail on the soil of a domestic dependent sovereign nation. None was afforded.
 22 No amount or type of procedural due process -unless prescribed by Congress- could have justified
 23 such deportation. Clearly established laws -RCW 39.34 et seq. and related statutes and regulations,
 24 as well as Article II of the Constitution and related precedent- dictate that the City had no authority
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1 to contract with Nisqually. No warrant of commitment inside a sovereign nation was, or could have
2 been, lawfully issued.

3 **51.** All defendants were deliberately indifferent, as a matter of contractual policy, to Mr.
4 Bell's status and fundamental rights as a United States citizen and his medical needs. In his pretrial
5 capacity, Mr. Bell also had a right to be free of the punishment of deportation and treatment
6 contractually equivalent to that of convicted persons.
7

8 **52.** Clearly established federal and state laws also prohibit exile and banishment of
9 Americans and prohibit municipal interlocal agreements with Indian tribes for extradition or
10 housing prisoners. (See e.g. RCW 39.34 et seq., 43.99 et seq., 47.68 et seq., 70.48 et seq., Title 8
11 of the United States Code, 25 U.S.C. §71, and the state and federal constitutions). Even the State
12 of Washington could not have lawfully contrived such an arrangement. See Holmes v. Jennison,
13 39 U.S. 540, 570 (1840). Deportations are only permitted under Title 8 of the United States Code.
14 There is no statutory authority permitting American citizens to be deported. Similarly, exile has
15 long been prohibited as punishment.
16

17 **53.** By placing Mr. Bell in a sovereign jail, the City imposed an atypical and significant
18 hardship far greater than the ordinary incidents of pretrial detention as contemplated by the state and
19 federal constitutions. Defendants acted without authority in deporting Mr. Bell into a sovereign
20 nation, depriving him of his substantive and procedural due process rights. The unlawful
21 deportation of Mr. Bell directly and proximately caused his damages.
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SECOND CLAIM**False Imprisonment under the Fourth Amendment (against all defendants).**

54. The City and all agents thereof knew or should have known the clearly established law that municipalities may not contract with tribes for detention of non-tribal citizens, and that tribes have no jurisdiction over such citizens. Removing Mr. Bell into such unlawful captivity is tantamount to banishment, deportation, extradition or exile, which terms are used interchangeably in this and all pleadings, and none of which constitute reasonable seizure.

55. Nisqually and all agents thereof knew or should have known the clearly established law that municipalities may not contract with tribes for detention of the former's citizens, and that tribes have no lawful authority to imprison, detain, or incarcerate such citizens. All non-tribal captives in Nisqually continue to be held without legal authority.

56. Mr. Bell was lawfully seized with probable cause in the United States proper then unlawfully deposited into the Nisqually Indian Reservation Jail. The City and Nisqually did not have lawful authority to contract for housing non-tribal citizens and did not even attempt to execute terms proper for the due care of such prisoners or detainees.

57. Mr. Bell's unlawful seizure and false imprisonment directly and proximately caused his damages, which were foreseeable in light of the historical suffering and death within Nisqually Jail. If not unlawfully seized and removed to a sovereign nation, Mr. Bell would have had access to his medications, inhalers, CPAP machine, and professional medical personnel, and would not have endured the alarm and stress of knowing his sovereign captors, at whose hands he had previously suffered racial animus, were refusing to administer needed medical care and medication.

THIRD CLAIM

Deliberate Indifference to Medical Needs under Fifth and Fourteenth Amendments (against The City, Pierpoint, Upton, Schneider, Ryder, Spence, Nisqually, and DOE defendants).

58. The foregoing defendants have acted with deliberate indifference to Mr. Bell's rights and wellbeing, and without any legitimate penological purpose. Defendants City, Pierpoint, Upton, Schneider, Ryder, Tiam, and Spence created the policy mechanism by which Mr. Bell was subjected to such indifference. Defendants Nisqually, Simmons and DOEs wielded that mechanism with deliberate indifference to Mr. Bell's citizenship and life-threatening medical jeopardy.

59. By deporting Mr. Bell, overtly depriving Mr. Bell of his medications as a matter of policy, and by ignoring Mr. Bell's condition and pleas for medical assistance, the defendants punished Mr. Bell and caused or made worse his severe physical and emotional damages. Nisqually and DOE defendants ignored Mr. Bell's attempts to preempt his stroke, only reacting after Mr. Bell suffered through the night and could not pick himself up off the floor the following morning.

60. Nisqually and Nisqually supervisors failed to train any staff to recognize and react to Mr. Bell's medical symptoms. To the extent Nisqually staff may have been so trained, they chose to deliberately spurn Mr. Bell in the hours leading up to and including his severe stroke.

FOURTH CLAIM

Declaratory Judgment under 28 U.S.C. §§ 2201-2202 AND Preliminary and Permanent Injunctions enjoining tribal detention of non-tribal citizens arrested outside tribal jurisdiction (against The City, Nisqually, Simmons, and Tiam).

61. Mr. Bell has suffered irreparable physical and emotional injury at the hands of his sovereign custodians. No amount of legal remedy can compensate Mr. Bell from living in fear, as a citizen of the City and the United States, of once again landing in a sovereign jail as a pretrial -

1 presumptively innocent- detainee. Mr. Bell remains in legal jeopardy and thus under genuine threat
2 of being remanded to sovereign custody.

3 **62.** The hardship to Nisqually of missing out on a revenue stream is substantially
4 outweighed by Mr. Bell's hardship of living out his days with the knowledge that a charge, no
5 matter how baseless, or a minor technical violation of a plea agreement, could result in yet another
6 deportation into sovereign custody. If Mr. Bell's legal jeopardy from the underlying arrest continues
7 after the filing of this lawsuit, an emergency order will be sought to restrain any further deportation
8 of Mr. Bell into Nisqually.
9

10 **63.** The hardship of the City and all other municipalities and counties in complying with
11 the black letter of the law, including but not limited to the Interlocal Cooperation Act, RCW 39.34,
12 Article II of the Constitution, and the United States Code, is a nullity and not legally cognizable.
13 All Nisqually detainees held in bailment for non-tribal jurisdictions should be immediately released
14 or transferred to lawful confines. Nisqually warehouses mostly indigent low-level offenders and
15 pretrial detainees whose release will cause no clear burden on society.
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17 **64.** All citizens of the City and many other municipalities and counties would be spared
18 the potential horror that has befallen Mr. Bell and those who have been similarly injured or died
19 before him. By equating American citizens with heads of cattle in international commerce, the City
20 and Nisqually have placed them at risk of life and limb and have flouted the United States and
21 Washington State constitutions and laws. Alternatively, should an injunction not be awarded, Mr.
22 Bell seeks a declaratory judgment on the constitutionality of the Agreement and his rights vis-à-vis
23 the City and the Nisqually Tribe.
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FIFTH CLAIM

Conspiracy to violate Mr. Bell's constitutional rights (against all DOE defendants, Ryder, Schneider, Spence, Simmons, and Tiam).

65. The foregoing defendants are liable for acts undertaken pursuant to the Agreement, in concert, to violate Mr. Bells' above-pleaded constitutional rights. The scheme underlying the Agreement is set forth in writing and signed by the officials whose unconstitutional unity of purpose and common design was implemented by all other defendants.

66. Each defendant had actual or constructive knowledge of the details of the Agreement and shared the common objective of participating in the illegal exportation, trafficking, banishment, exile, extradition, and detention of United States citizens for profit and convenience. Any party not immune to suit is liable for the acts of any party held immune to suit.

VII. STATE CAUSES OF ACTION

SIXTH CLAIM

Negligent and reckless infliction of emotional distress (against all defendants).

67. All defendants consciously and recklessly disregarded Mr. Bell's rights as an American and Washingtonian citizen and his special medical needs, causing him severe emotional distress.

SEVENTH CLAIM

Negligence (against all defendants).

68. Defendants established a special relationship by involuntary detention, owed a duty of care to Mr. Bell, and created an individual danger by subjecting Mr. Bell to custody in a sovereign nation without protection of the United States and Washington State laws, lawful contractual safeguards, or adequate medical attention.

1 **69.** The City and associated defendants are also contractually liable for the Nisqually
 2 policy of depriving prisoners of care, medication, and treatment, and for failing to train its staff to
 3 assess medical needs, recognize medical emergencies, and react appropriately. The City owed its
 4 citizens a duty not to enter an unlawful contract, and one that -by its terms- ensured negligent
 5 treatment upon deportation into Nisqually Jail.
 6

7 **70.** Supervisors and policy makers were at all times on notice as to the perils of
 8 subjecting citizens to sovereign captivity. All defendants had a statutory and common law duty to
 9 keep Mr. Bell safe and medically sound. All parties breached that duty with full knowledge of Mr.
 10 Bell's special medical needs and knowledge of the various similar atrocities having previously
 11 occurred inside Nisqually Jail. Nisqually did not have adequate medical policies or staff and the
 12 City knew or should have known of these deficiencies.
 13

14 **71.** The action and inaction of all defendants, proximately caused the individual danger
 15 that resulted in Mr. Bell's deportation, stroke, heart complications, and confinement to a wheel
 16 chair. Flagrantly withheld care and medication, alone or in combination with the stress and alarm
 17 of being deported, proximately caused severe anguish, permanent physical and emotional damage,
 18 and lost chance at a better outcome.
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EIGHTH CLAIM

Breach of contract (against The City and Nisqually).

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 22 **72.** As third-party beneficiary to the Agreement, and to the extent that the Agreement is
 23 lawful, Mr. Bell alleges breach of the City's contractual duty to provide medical care and approve
 24 appropriate medical care.
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1 **73.** As third-party beneficiary to the Agreement, Mr. Bell alleges breach of Nisqually's
2 duty to provide safety and medical care. The breaches by the City and Nisqually proximately
3 caused Mr. Bell's damages.

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5 **VIII. RELIEF SOUGHT**

6 **74.** Mr. Bell hereby demands a trial by jury of claims so amenable.

7 **75.** Mr. Bell requests all available general, special, and punitive damages for past,
8 present and future injury and deprivation, as well as pre- and post-judgment interest.

9 **76.** Mr. Bell requests the foregoing compensatory and punitive damages in an amount
10 ascertained according to proof, the value of his civil rights to be determined by a jury of his peers.

11 **77.** Mr. Bell requests declaratory and injunctive relief, including but not limited to the
12 enjoining and permanent restraining of incarceration of American citizens into sovereign nations.
13 Mr. Bell requests a preliminary injunction ensuring he will not be incarcerated at Nisqually. Mr.
14 Bell reserves the right to seek an emergency injunction by motion, on behalf of himself and those
15 wrongfully and unlawfully incarcerated.
16

17 **78.** Mr. Bell requests an award of reasonable attorney fees and costs pursuant to 42
18 U.S.C. §1988, 28 U.S.C. § 2412, or any other statutory or common law basis, and for such other
19 relief to which he may be justly entitled in the wisdom of the Court.
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1 **Exhibit A: Nisqually Jail Services Agreement.**

2
3 Respectfully Submitted,

4 KEVIN M. BELL

5
6 By /s/ Jackson Millikan
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10
11 And by /s/ Kent Underwood
12 Kent Underwood, WSB# 27250
13 705 S. 9th St., Suite 205
14 Tacoma, WA 98405
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15
16
17 I, Jackson Millikan, attorney in good standing and counsel for Mr. Bell, have personal
18 knowledge that the attached Exhibit A is a true and correct copy of the Nisqually Jail Service
19 Agreement, and certify the same under penalty of perjury in accordance with 28 U.S.C. §
1746.

20 By, /s/ Jackson Millikan
21 Jackson Millikan, Esq.

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EXHIBIT A





LACEY CITY COUNCIL MEETING

December 19, 2013

SUBJECT: Nisqually Jail Service Agreement

RECOMMENDATION: Authorize City Manager to sign Jail Service Agreement with Nisqually Indian Tribe

STAFF CONTACT: Scott Spence, City Manager 
Dave Schneider, Asst. City Attorney 
Dusty Pierpoint, Chief of Police

ORIGINATED BY: Police Department

ATTACHMENTS: [Proposed Service Agreement 2014 - 2016](#)

FISCAL NOTE: Approximately \$753,000 is budgeted for jail services.

PRIOR REVIEW: Reviewed by City Attorney's Office

BACKGROUND:

The City of Lacey has contracted with the Nisqually Indian Tribe for jail services for a Number of years. Throughout this relationship, the Nisqually Jail has been the primary source for prisoner housing of misdemeanor crimes. The Nisqually Indian Tribe has built a new jail facility and plans to begin housing inmates in that facility in early 2014. The City of Lacey currently pays for 16 guaranteed beds and is increasing the guaranteed number of beds to 21 with the new service agreement. The current fee of \$50.00 per day will increase to \$65.00 per day over the term of the agreement in increments of \$5.00 per bed day per year over three years for a total increase of \$15.00 per bed day over the current rate. We are anticipating an increase in services provided by the jail with the opening of the new facility. Despite these increased rates, available jail facilities in Thurston County are limited and the agreement with the Nisqually Tribe is the best solution for housing misdemeanor inmates locally at this time.

ADVANTAGES:

1. Location and cost of facility is reasonable. No other alternative is currently available in Thurston County.

DISADVANTAGES:

1. None foreseen.

NISQUALLY JAIL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into on this ____ day of _____, 2013, by and between the Nisqually Indian Reservation, a Federally Recognized Indian Tribe, hereinafter referred to as “Nisqually” and the City of Lacey, hereinafter referred to as “Lacey.” This agreement is for the housing of inmates of Lacey in the Nisqually Detention and Corrections Center hereinafter referred to as “jail” pursuant to Chapters 39.34 and 70.48 RCW.

THE PARTIES HEREBY AGREE as follows:

1. **SERVICE.** Nisqually shall care for prisoners placed in the custody of officers of the Nisqually Jail. The term “prisoner” shall include any person arrested, sentenced by the court or held under authority of any law or ordinance of Lacey; provided, that the Nisqually Police Chief or the Nisqually Corrections Director shall have the right to refuse to accept custody if in his opinion that would result in overcrowding of the jail, or health, safety or security risks.
2. **CARE.** “Care” shall mean room and board. In addition, prisoners housed pursuant to this agreement shall be subject to the same rules and regulations required of other prisoners housed in the Nisqually jail.
3. **DURATION OF CONTRACT.** The term of this agreement shall be for three (3) years. The agreement may be terminated without cause by either party by providing the other party with thirty (30) days written notice. Notice shall be deemed proper when provided to:

Lacey: Scott Spence, Lacey City Manager
 420 College Street SE
 Lacey, WA 98503

Nisqually: Eletta Tiam, Chief Executive Officer
 4820 She-Nah-Num Dr. S.E.
 Olympia, WA 98513
4. **RELEASE.** Prisoners will only be released when they have served their full time (less any good-time credit) unless release is authorized by any other provision of this agreement or is ordered by a court of competent jurisdiction.
5. **GUARANTEED MINIMUM BED SPACE.** Nisqually guarantees that twenty-one (21) beds per day shall be dedicated to Lacey for its prisoners.
6. **GUARANTEE TO PAY FOR MINIMUM BED SPACE.** Lacey agrees to pay to Nisqually One Thousand One Hundred Fifty Five Dollars (\$1,155.00) per day in exchange for Nisqually’s guarantee of twenty-one (21) available beds per day. This rate shall increase in the amount of One Hundred Five Dollars (\$105.00) per day each calendar year beginning in 2015 for the duration of this agreement.

7. **PAYMENT.** In addition to the guarantee to pay for minimum bed space described above, Lacey shall pay to Nisqually the amount of Fifty Five Dollars (\$55.00) per day for each and every prisoner booked into the jail, for care for any and all prisoners above the guaranteed twenty one bed minimum beginning January 1, 2014. A 'day' is the twenty-four hour period beginning at 12:00 a.m. and ending at 11:59 p.m. in the Pacific Time Zone. Lacey shall only be charged the booking fee of Twenty Dollars (\$20.00) for prisoners booked on warrants with bail amounts low enough that they are subsequently released on personal recognizance with a new court date and for prisoners who bail out in anything less than two (2) hours of custody time.

Nisqually will submit a monthly invoice to Lacey within Sixty (60) days of the end of each monthly billing period for the guaranteed minimum bed spaces as well as additional prisoners housed pursuant to this agreement. Lacey shall pay such invoices within 30 days of receipt. Interest at the rate of 12% per annum shall be charged on all past due accounts.

The rate shall increase by Five Dollars (\$5.00) per day per prisoner each calendar year beginning January 1, 2015. The daily rate per prisoner will therefore be as follows:

2014	Fifty Five Dollars	(\$55.00)
2015	Sixty Dollars	(\$60.00)
2016	Sixty Five Dollars	(\$65.00)

Without prejudice to any other contract rights available to it, if Lacey does not pay the invoice with Sixty (60) days of receipt of invoice, Nisqually acting through its Police Chief, will not accept prisoners until the delinquent amount is paid in full.

8. **MEDICAL CARE.** Lacey shall be solely responsible for the medical care and medical expenses of prisoners housed pursuant to this agreement, provided that if the prisoner has his or her own medical coverage, Nisqually will coordinate with Lacey so that such insurance may be utilized.

In the event that a prisoner requests non-urgent medical care, Nisqually shall contact Lacey for approval via the Administrative Sergeant or Administrative Commander during normal business hours at 360-459-4333. Nisqually will contact the on-duty patrol supervisor outside of normal business hours via TCOMM at 360-704-2740.

Expressed refusal of Lacey to approve medical care shall relieve Nisqually of liability to Lacey for any injury resulting therefrom. In the event that Nisqually deems a prisoner to be in need of urgent or emergency care, Nisqually shall make the best efforts to contact Lacey, but may take any action it deems necessary to provide the prisoner with the needed care without obtaining prior approval.

To the extent permitted by state law, Lacey shall protect, defend, hold harmless and indemnify Nisqually from and against all claims, suits and actions relating to the medical care of prisoners housed under this agreement which result from the expressed refusal of Lacey to approve such care or for any reason other than injuries and harm resulting from the negligent or intentional acts or omissions of Nisqually or its officers.

9. **TRANSPORTATION.** Lacey shall be solely responsible for furnishing non-medical transportation for prisoners housed pursuant to this agreement.

Lacey may request that Nisqually provide necessary transportation of prisoners requiring non-emergency medical care and the guarding of prisoners while receiving said medical care, and Nisqually shall make best efforts to provide such transportation, subject to staff availability. Lacey shall reimburse Nisqually for costs incurred for transportation. Such costs shall include mileage at the rate of \$1.00 per mile, labor and overhead (.5 x labor). Nisqually will promptly notify the appropriate Lacey contact person if they are unable to provide transportation and/or guard prisoners receiving medical care.

Nisqually shall not transport any prisoner without the express agreement of Lacey unless such transportation is required by a court order or because of a medical emergency.

10. **CUSTODY TRANSFER.** Officers of Lacey placing a prisoner into the custody of Nisqually will be required to remain in the immediate presence of the prisoner at all times until relieved of custody by Nisqually Corrections Staff. Booking out and/or release of Lacey's prisoners shall be the responsibility of Lacey Officers.

11. **CITY ACCESS TO PRISONERS.** All Lacey police officers, attorneys, and investigators directed by the Lacey City Attorney shall have the right to interview the prisoner inside the confines of the Nisqually Jail subject only to necessary security rules. Interview rooms will be made available to Lacey police officers in equal priority with those of any other department, including the Nisqually law enforcement personnel.

12. **RELEASE OF LACEY PRISONERS FROM NISQUALLY.** No Lacey Prisoner confined in the Nisqually Jail shall be removed therefrom except:

- a. When requested by Lacey Police Department in writing;
- b. By Order of the Lacey Municipal Courts in those matters in which they have jurisdiction, or upon Order of the Thurston County District Court or the Thurston County Superior Court in those matters in which said courts have jurisdiction;
- c. For appearance in the court in which a Lacey prisoner is charged;
- d. In compliance with a writ of habeas corpus;
- e. For interviews by the Lacey City Attorney or member of the Lacey Police Department;

- f. If the prisoner has served his sentence or the charge pending against said prisoner has been dismissed or bail or other recognizance has been posted as required by the courts.

13. **INDEMNIFICATION.** Lacey shall protect, defend, save harmless and indemnify Nisqually, its officers, agents and employees, from and against all claims, suits and actions arising from intentional or negligent acts or omissions of Lacey in performance of this agreement.

Nisqually shall protect, defend, save harmless and indemnify the City of Lacey, its officers, agents and employees from and against all claims, suits and actions arising from intentional or negligent acts or omissions of Nisqually in performance of this agreement.

14. **INSURANCE.** Each party shall obtain and maintain occurrence based insurance that provides liability coverage in the minimum liability limits of three Million Dollars (\$3,000,000.00) per occurrence and three Million Dollars (\$3,000,000.00) in the aggregate for its conduct in creating liability exposure related to the confinement of inmates, including general liability, errors and omissions, auto liability and police professional liability. The insurance policy(ies) shall provide coverage for any liability occurrence during the policy period, regardless of when any claim or law suit is filed. Further, Nisqually will name the City, its officers and employees as *Additional Insureds*.

14.1 **CERTIFICATE OF INSURANCE.** Each party to this Agreement agrees to provide the other with evidence of insurance coverage in the form of a certificate from a solvent insurance provider confirming coverage from a solvent insurance pool which is sufficient to address the insurance obligations set forth above. A copy of the certificate shall be provided annually and for the duration of this agreement.

15. **Venue and Choice of Law.**

The Nisqually Indian Tribe is a Sovereign Nation with all immunities attendant thereto **WITH THE FOLLOWING EXCEPTION THAT THE PARTIES TO THIS AGREEMENT HAVE SPECIFICALLY NEGOTIATED:**

The Nisqually Indian Tribe does hereby expressly consent to venue in the courts of the State of Washington for any legal dispute by and between the parties to this agreement and further agrees that any such dispute shall be interpreted pursuant to the laws of the state of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on this date, the _____ day of _____, 2013.

CITY OF LACEY:

NISQUALLY TRIBE:

Scott Spence, Lacey City Manager

Eletta Tiam, Chief Executive Officer

Attest:

Approved as to legal form only:

David Schneider, Assistant City Attorney