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11 Attorneys for Plaintiffs

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF OREGON

14 SAMIRA KAADY, Personal Representative)
15 for the ESTATE OF FOUAD KAADY,)
16 SAMIRA KAADY, RACHID KAADY,)
17 VANIA KAADY, ANDREA KAADY,)
18 Plaintiffs,)
19 v.)
20 CITY OF SANDY, a municipal corporation)
21 of the State of Oregon. CLACKAMAS)
COUNTY, by and through the Clackamas)
County Sheriff's Office, a political)
subdivision of the State of Oregon,)
WILLIAM BERGIN, DAVID WILLARD,)
JOHN DOES 1-10, in their individual and)
official capacities.)

No. **CV'06 1269 PK**

COMPLAINT
(Civil Rights: Excessive Force,
Unconstitutional Arrest, Wrongful
Death)

42 U.S.C. §1983

Jury Trial Demanded

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11289

Defendants.)
)

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys, Gerry L. Spence, Kent W. Spence, Tyson E. Logan, THE SPENCE LAW FIRM, LLC, and Michelle Burrows, Attorney at Law, bring their complaint herein and state and allege as follows:

INTRODUCTORY STATEMENT

This is an action brought by all Plaintiffs pursuant to 42 U.S.C. §1983 and ORS 30.265 for the events occurring on September 8, 2005, in which Fouad Kaady, a 27 year old man, was wrongfully and unreasonably tased, shot and killed by Defendants Deputy Dave Willard and Officer William Bergin. This is an action for money damages brought by the Estate of Fouad Kaady and his parents against the two officers who shot and killed Fouad Kaady, the local governmental entities who employed, trained and supervised the officers, Clackamas County and the City of Sandy for the tortious acts of the officers as well as the unconstitutional policies and practices which resulted in the unlawful death of Fouad Kaady.

1.

This action is filed by Plaintiffs under 42 U.S.C. §1983 for violations of due process in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

2.

This court has jurisdiction over Plaintiffs' claims of violations of federal Constitutional Rights under 28 U.S.C. §§1331 and 1343.

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3.

Venue is proper under 28 U.S.C. §1391(b), in that one or more of the defendants reside in the District of Oregon and Plaintiffs' claims for relief arose in this district.

4.

The court has supplemental jurisdiction over Plaintiffs' pendent state law claims under 28 U.S.C. § 1367.

PARTIES

5.

■ Fouad Kaady was 27 years old when he died on September 8, 2005, in the State of Oregon. He was a resident of the State of Oregon and a citizen of the United States.

6.

Plaintiff Samira Kaady is the Personal Representative for the Estate of Fouad Kaady. The Estate for Fouad Kaady was created in the Circuit Court for the County of Multnomah.

7.

Plaintiffs Samira Kaady and Rachid Kaady are the parents of decedent, Fouad Kaady.

8.

Plaintiffs Vania Kaady and Andrea Kaady are the siblings of decedent, Fouad Kaady.

9.

At all material times Defendant William Bergin was a law enforcement officer working under color of law for the Sandy Police Department, an entity of Sandy Oregon. Defendant Bergin is sued in his individual and official capacity.

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10.

At all material times Defendant Dave Willard was a law enforcement officer working under color of law for the Clackamas County Sheriff's Office, an entity of Clackamas County Oregon. Defendant Willard is sued in his individual and official capacity.

11.

1. At all material times Sandy Oregon was a municipal corporation within the State of Oregon. As a local governmental entity, Defendant City is a suable person under 42 U.S.C. § 1983. At all times relevant to this Complaint, Defendant City of Sandy, Oregon [hereinafter "City"] employed Defendant Officer William Bergin and John Does I-X, of the Sandy Police Department. Upon information and belief, at all times relevant to this Complaint, Defendant Bergin and John Does I-X were acting pursuant to Defendant City's laws, customs, and/or policies, resulting in the wrongful death of Fouad Kaady. As the employer of Defendant Officer William Bergin and John Does I-X, Defendant City is vicariously liable for all of the tortious acts and omissions of Defendants Bergin and John Does I-X committed within the course and scope of their employment, pursuant to ORS § 30.265.

12.

At all material times Clackamas County Oregon was a political subdivision of the State of Oregon. As a local governmental entity, Defendant County is a suable person under 42 U.S.C. § 1983. At all times relevant to this Complaint, Defendant Clackamas County, Oregon [hereinafter "County"] employed Defendant Deputy Dave Willard and John Does I-X, of the

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1 Clackamas County Sheriff's Office. Upon information and belief, at all times relevant to this
2 Complaint, Defendant Willard and John Does I-X were acting pursuant to Defendant County's
3 laws, customs, and/or policies, resulting in the wrongful death of Fouad Kaady. As the employer
4 of Defendant Deputy Dave Willard and John Does I-X, Defendant County is vicariously liable
5 for all of the tortious and unconstitutional acts and omissions of Defendants Willard and John
6 Does I-X committed within the course and scope of their employment, pursuant to ORS §
7 30.265.

8
9 13.

10 ▪ Defendant John Does are entities or individuals whose exact identities are unknown to
11 Plaintiffs. John Does may be employees, agents or employees of Defendant City or County. At
12 all times relevant Defendant John Does were acting under color of law and are sued in their
13 official and individual capacities. At such times as the identity of the John Does are known to
14 Plaintiffs they will substitute the real party in interest for the named John Does.

15 14.

16 All incidents described herein occurred while Defendants Willard and Bergin were in
17 uniform and on duty as police officers.

18 15.

19 All Defendants have acted under color of state law at all times relevant to this complaint.

20 16.

21 Plaintiffs are entitled to an award of attorneys fees and costs, pursuant to 42 U.S.C.
§1988.

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STATEMENT OF FACTS

17.

On or about September 8, 2005 Fouad Kaady, (hereinafter, "Fouad") was involved in an accident and was consequently severely burned on his upper torso, arms, head and face areas. The resulting injuries caused Fouad to wreck his car, become confused and disoriented; and to eventually remove his clothing. Fouad was seriously injured in the explosion causing large sections of skin to peel from his body and significant bleeding.

18.

▪ At or near the time of the fire Fouad started driving erratically resulting in some minor collisions and multiple calls were made to law enforcement emergency dispatch, 911.

19.

At some point Fouad ran his car off the road where it caught fire and started a brush fire in rural Clackamas County. The Sandy Police, Clackamas County Sheriff and Oregon State Police were dispatched to investigate. The Clackamas County fire department was called to contain the fire.

20.

Upon arrival at the scene Deputy Willard received reports of a man leaving the scene of the fire and that he might be acting in an irrational manner. Deputy Willard secured the scene so the fire department could contain the fire. While securing the scene of the crash Deputy Willard heard dispatch report a naked, bleeding man running down SE 362nd near his location. He advised dispatch he would respond.

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21.

At approximately 2:00 p.m. a motorist observed Fouad walking down the street naked, bleeding and she observed pieces of his skin falling off. She called 911 and reported her observations and asked for an ambulance advising dispatch that the man appeared to be severely injured and in shock. The witness advised the Clackamas County Dispatch that the man was unarmed and naked.

22.

While the officers were en route to the location of Fouad, other calls came to dispatch with similar descriptions of the injured Fouad. There were no reports of any violent or alarming behavior from Fouad to any individual or witness.

23.

Upon arrival at Fouad's location, the officers observed him sitting in the middle of the street, cross legged, naked, bleeding, skin peeling off. The officers did not see any weapons. They got out of their vehicles with weapons drawn. Fouad remained seated, calm and non-responsive. The officers refused to allow a responding ambulance with emergency personnel to approach.

24.

The officers could see that Fouad was seriously injured and was in need of medical care. It was also obvious that Fouad was in significant pain. The officers withdrew a shotgun from the vehicle. The officers ordered Fouad to lie on his stomach on the hot asphalt. He was then ordered to move to the grass near the roadside and get on his stomach. Fouad was then told by

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1 Officer Bergin to “get on his stomach or he’d be tased.” Bergin then told him again to lay on his
2 stomach or be tased. Fouad was non-responsive to all commands.

3
4 25.

5 While Fouad sat non-responsive, calm and non-resistant, Officer Bergin shot his taser
6 weapon into Fouad’s back with both prongs penetrating, causing Fouad to fall onto his back.
7 Again, he was told to get onto his stomach, on the hot asphalt, or he would be tased. Officer
8 Bergin tased him again. Deputy Willard also fired his taser weapon at Fouad.

9 26.

10 Rather than speaking calmly and reassuringly to Fouad, explaining to him that medical
11 help was on the way and trying to help Fouad with his severe injured state, the law enforcement
12 officers instead treated him in a hostile manner, ordering him to lay on the hot pavement on the
13 burned skin that was hanging off his torso, shooting him in the back with the high charges of
14 electric shock from the taser weapons and still ordering him to lay on his stomach and injured
15 skin.

16 27.

17 At the time the law enforcement officers first saw Fouad sitting on the pavement there
18 was no need to restrain him. All he needed was medical help. Yet the officers, by treating
19 Fouad in an aggressive manner and attacking Fouad left the young man with no choice but to
20 flee from the assaulting officers.

21 28.

At no time did the two officers try to restrain Fouad without the use of a taser weapon or

1 other weapons. The officers observed that Fouad was bleeding and severely injured and rather
2 than touch him they elected to taser and shoot him.

3
4 29.

5 Fouad responded to the pain and the unprovoked assault by standing and trying to
6 remove himself from the officer's line of fire. Fouad begged the officers to stop. All the actions
7 were observed by at least two civilian witnesses.

8 30.

9 Fouad stood up and started running around the area in a dazed and confused state, finally
10 stepping up to the top of the patrol car. At no time did Fouad run at the officers directly, attack
11 them or threaten them in any way. At no time did he try to run from the area.

12 31.

13 While standing naked and obviously unarmed on top of the patrol vehicle both officers,
14 in acts of extreme use of excessive and unwarranted force, shot multiple rounds, hitting Fouad's
15 body seven (7) times. Fouad, fatally injured, fell from the top of the patrol car to the ground,
16 dying from the gunshot wounds.

17 **FIRST CLAIM FOR RELIEF: Unconstitutional Use of Excessive Force**
18 **42 U.S.C. §1983 Violation of 4th Amendment by Defendants Willard & Bergin**
19 **Unlawful Seizure of person—Unreasonable Use of Taser weapon**

20 32.

21 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
fully set forth herein.

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33.

Fouad Kaady was entitled to be free and is protected from unlawful seizure of his person by and pursuant to the parameters of the 4th and 14th Amendments to the United States Constitution.

34.

The acts and omissions of Defendants Willard and Bergin violated Fouad Kaady's protected rights and were an extreme and excessive seizure of his person without probable cause, were objectively unreasonable based on the totality of circumstances and violated the rights held by Fouad Kaady, to his life and the integrity of his person, those rights fully protected by the 4th and 14th Amendments to the United States Constitution.

35.

The specific acts of Defendants Willard and Bergin, individually and in concert with each other, that Plaintiff claims were objectively unreasonable are more particularly set forth below:

1. Both Defendants failed to use an objectively reasonable assessment of the facts when they decided to use their taser weapons against Fouad, even after observing that Fouad was severely burned, bleeding, naked, obviously disoriented, and was not then presenting any objective danger to others or themselves and was unarmed.

2. Both Defendants made a choice to unreasonably order Fouad onto the injuries on his front torso and to use force instead of speaking compassionately and assuredly to Fouad, radioing EMS to drive in and give proper assessment and medical treatment to Fouad; this decision to use force did not relate in any way to a proper and conscious assessment of danger

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1 and was objectively unreasonable under the circumstances.

2
3 3. Neither Defendant attempted to use a degree of force (and the circumstances
4 called for no use of force) less than taser weapon or gun and that choice was objectively
5 unreasonable under the circumstances.

6 36.

7 All Defendants' conduct was well defined by law and each defendant knew or
8 reasonably should have known that their conduct was below the standard prescribed by law
9 herein.

10 37.

11 As a result of the violations of the Constitutional standards set forth herein, Fouad Kaady
12 was treated inhumanely and incurred extreme pain and injury when he was wrongfully tasered
13 by the officers.

14 38.

15 As a result of these Constitutional violations to Fouad and the injuries he incurred, Plaintiffs
16 seek compensation set forth more specifically in the section of this Complaint entitled
17 "Damages".

18 **SECOND CLAIM FOR RELIEF: Unconstitutional Use of Deadly Force**
19 **42 U.S.C. §1983 Violation of 4th Amendment by Defendants Willard & Bergin**
20 **Unlawful Seizure of Person—Unreasonable Use of Deadly Force—Shooting**

21 39.

21 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
fully set forth herein.

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40.

Fouad Kaady was entitled to be free from unlawful seizure of his person pursuant to the parameters of the 4th and 14th Amendments to the United States Constitution. Plaintiff is also entitled to be safe and secure from undue and unreasonable deadly force.

41.

The acts and omissions of Defendants Willard and Bergin violated Fouad Kaady's protected rights and were an excessive seizure of his person and were objectively unreasonable based on the totality of circumstances. There existed no objectively reasonable facts which would have supported any belief that Fouad presented a danger to themselves or others. Defendants violated the requirements of the 4th and 14th Amendments and the rights held by Plaintiff, as they related to his life and the integrity and safety of his person and amounted to an unconstitutional use of force.

42.

The specific acts of Defendants Willard and Bergin individually and in concert with each other alleged to be objectively unreasonable are more particularly set forth below:

1. Both Defendants, failing to utilize an objectively reasonable assessment of the facts, attacked Fouad with taser weapons, discharged high levels of electric shock into his body, caused him to flee for his own safety, and ultimately used deadly force against Fouad, even after observing that he was severely burned, bleeding, naked, obviously disoriented, unarmed and not then presenting any objective danger to others or themselves.

1
2 2. Both Defendants made a choice to use the highest level of force, deadly force,
3 against Fouad when he presented no danger to themselves or others and the use of such force
4 was objectively unreasonable under the circumstances;

5 3. Neither Defendant attempted to use a degree of force less than a taser weapon
6 or gun and the choice to use such lesser degree of force was objectively reasonable under the
7 circumstances, especially considering that there was no need for any level of force, with Fouad
8 sitting still in the road way and not acting hostile or resistant in any manner. Fouad was simply
9 in need of immediate medical assistance, as was recognized by a number of witnesses, including
10 a woman who was in contact with dispatch when she called 911. She called 911 for medical
11 assistance for Fouad, not because she felt Fouad was a threat to herself or others.

12 4. Neither Defendants had reason to believe that Fouad presented any danger to
13 themselves or others and as a consequence the decision to use a taser weapon or to shoot Fouad
14 was objectively unreasonable under the circumstances.

15 5. Both Defendants made a choice for their own personal reasons to use deadly
16 force, instead of allowing medical treatment and assessment of Fouad; these reasons had nothing
17 to do with an assessment of danger or establishment of probable cause and such use of deadly
18 force was objectively unreasonable under the circumstances.

19 43.

20 As a result of these Constitutional violations to Fouad and the injuries he incurred and his
21 death that resulted, Plaintiffs seek compensation set forth more specifically in the section of this
Complaint entitled "Damages".

1
2 **THIRD CLAIM FOR RELIEF: *Monell Claim***
3 **42 U.S.C. § 1983 4th and 14th Amendment Violations—Clackamas County**
4 **Unconstitutional Municipal Policy**

5 44.

6 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
7 fully set forth herein.

8 45.

9 At all times herein the Clackamas County, by and through Clackamas Sheriff's Office,
10 had an official written policy governing the use of deadly force.

11 46.

12 The Clackamas County Sheriff's office policy on the use of deadly force allows officers
13 to use deadly force when an officer reasonably believes there to be an immediate threat of death
14 or serious physical injury to themselves or others

15 47.

16 The Clackamas County Sheriff's Office policy on the Use of Deadly force violates
17 constitutional requirements on the use of deadly force and as a direct result of the use of the
18 policy Defendant Willard caused the death and unconstitutional seizure of Fouad Kaady. The
19 Clackamas County Sheriff's Office Policy on the Use of Deadly Force violates constitutional
20 standards as it allows the officer to use their own reasonable subjective belief as to whether any
21 situation creates danger to themselves or others rather than an objective probable cause belief.

48.

The use of deadly force by Deputy Willard was a direct consequence of the Use of

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Deadly Force Policy in effect at the Clackamas County Sheriff's Office at the time of the Fouad Kaady shooting and contributed to the shooting and resulting death of Kaady.

49.

As a result of these Constitutional violations to Fouad and the injuries he incurred and his death that resulted, Plaintiffs seek compensation set forth more specifically in the section of this Complaint entitled "Damages."

FOURTH CLAIM FOR RELIEF: *Monell* Claim
42 U.S.C. § 1983 4th and 14th Amendment Violations—Clackamas County
Unlawful Policy by Acts of Official Policy Maker

50.

Plaintiffs incorporate and adopt by reference all the facts and allegations above as though fully set forth herein.

51.

The actions of Defendants alleged in the First and Second Claim for Relief were endorsed and approved by the Clackamas County Sheriff.

52.

The Sheriff of Clackamas County is an official policymaker and his actions in endorsing the illegal actions of his officers including allowing and endorsing the tasing and shooting of obviously injured (burned, bleeding and incoherent) and non-resisting victims, arrestees and/or detainees constitutes official municipal policy of Clackamas County. The endorsement of the actions of subordinate staff creates and enforces an unconstitutional and illegal policy.

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53.

The policy endorsed by the Clackamas County Sheriff which includes allowing the use of tasing and shooting of obviously injured (burned, bleeding and incoherent) and non-resisting victims, arrestees and/or detainees violates the 4th and 14th Amendment protections held by Fouad Kaady and are unconstitutional per se.

54.

The official policy endorsed and created by the Sheriff amounting to Constitutional violations to Fouad and resulting in the injuries he incurred and his death, Plaintiffs seek compensation set forth more specifically in the section of this Complaint entitled “Damages.”

FIFTH CLAIM FOR RELIEF: *Monell* Claim
42 U.S.C. § 1983 4th and 14th Amendment Violations—Clackamas County
Informal Custom and Policy

55.

Plaintiffs incorporate and adopt by reference all the facts and allegations above as though fully set forth herein.

56.

Clackamas County has an informal custom, practice or policy regarding the use of force and deadly force. The custom, practice or policy includes:

a. Training officers to use taser weapons, in situations where the officers would prefer not to physically restrain detainees, or as in this case, where restraint was not called for, and

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2 instead using a calming encounter with immediate medical help was in order;

3 b. Training officers to use taser weapons in lieu of physical restraint and proper
4 detention techniques;

5 c. Training officers to use taser weapons as a first resort rather than other less
6 confrontational and less harmful methods to deal with an injured person such as providing
7 medical assistance or if necessary (and it was not necessary in this situation until Fouad was
8 shocked by a taser weapon) restrain a person with physical restraint.

9 d. Improper training and supervision of officers in the use deadly force, including
10 without limitation, training to use deadly force as a first resort rather than training officers to
11 assess the totality of circumstances in an objectively reasonable manner.

12 e. The treatment and/or detention of severely injured persons;

13 f. The use of interrogation and good arrest procedures;

14 g. The management, detention and arrest of those with mental impairments;

15 57.

16 As part of the culture, custom and practice of the Clackamas County Sheriff's office,
17 officers are trained to assess situations in what is referred to as an "action/reaction" motive.
18 Officers are trained and expected to use excessive or deadly force before a person has a chance
19 to act and consequently Clackamas County Sheriff's Office relies on deadly force as a primary
20 law enforcement tool when faced with a person who may be acting in any unusual way.

21 58.

The culture inherent in the Clackamas County Sheriff's Office which encourages the use

1 of deadly force is so ingrained that officers will automatically and primarily begin to analyze
2 situations toward the use of taser weapons and/or deadly force without being physically present,
3 without individually evaluating the scene and often with virtually no collateral data upon which
4 to make an objectively reasonable assessment and decision; many times an unreasonable
5 assessment will be made in isolation, in spite of other compelling reasons and evidence which
6 would produce a non-hostile approach an a result free of injury or death.
7

8 59.

9 As a consequence of the informal culture, practice and custom of Clackamas County
10 Sheriff's Office to taser and/or "shoot first", a pattern of repeated serious violations of the
11 Constitutional Rights of citizens has formed. Fouad lost his life and suffered the deprivations
12 alleged herein as a direct and proximate result of this long standing practice, custom and culture
13 by the Clackamas County's use of deadly force as more particularly alleged above.

14 60.

15 As a direct cause and result of these Constitutional violations by Clackamas County of
16 Fouad's rights and the injuries he incurred and his death that resulted, Plaintiffs seek
17 compensation set forth more specifically in the section of this Complaint entitled "Damages."

18 **SIXTH CLAIM FOR RELIEF: Monell Claim**
19 **42 U.S.C. §1983 Violations of 4th and 14th Amendments—City of Sandy**
20 **Unconstitutional Municipal Policy**

21 61.

Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
fully set forth herein.

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62.

At all times herein the City of Sandy, by and through the Sandy Police Department, had an official written policy governing the use of deadly force.

63.

The Sandy Police Department's office policy on the use of deadly force allows officers to use deadly force when an officer reasonably believes there to be an immediate threat of death or serious physical injury to themselves or others.

64.

- The Sandy Police Department's policy on the Use of Deadly force violates constitutional requirements on the use of deadly force and as a direct result of the use of the policy Defendant Bergin caused the death and unconstitutional seizure of Fouad Kaady. The Sandy Police Department's Policy on the Use of Deadly Force violates constitutional standards as it allows the officer to use their own reasonable subjective belief as to whether any situation creates danger to themselves or others rather than an objective probable cause belief.

65.

The use of deadly force by Officer Bergin was a direct consequence of the Use of Deadly Force Policy in effect at the Sandy Police Department at the time of the Fouad Kaady shooting and contributed to the shooting and resulting death of Fouad.

66.

As a result of these Constitutional violations to Fouad and the injuries he incurred and his death that resulted, Plaintiffs seek compensation set forth more specifically in the section of this

1
2 Complaint entitled “Damages.”

3 **SEVENTH CLAIM FOR RELIEF: *Monell* Claim**
4 **42 U.S.C. § 1983 Violations of 4th and 14th Amendments—City of Sandy**
5 **Unlawful Policy by Acts of Official Policy Maker**

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8 67.

9 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
10 fully set forth herein.

11
12 68.

13
14 • The actions of Defendants alleged in the First and Second Claims for Relief were
15 endorsed and approved by the Sandy Police Department, specifically the Sandy Chief of Police
16 and the City of Sandy.

17
18 69.

19 The Sandy Police Chief is an official policymaker and his actions in endorsing the illegal
20 actions of its officers including allowing and endorsing the tasing and shooting of obviously
21 injured (burned, bleeding and incoherent) and non-resisting victims, arrestees and/or detainees
constitutes official municipal policy of the City of Sandy Police Department. The endorsement
of the actions of subordinate staff creates and enforces an unconstitutional and illegal policy.

70.

The policy endorsed by the Sandy Chief of Police which includes allowing the use of
tasing and shooting of obviously injured (burned, bleeding and incoherent) and non-resisting
victims, arrestees and/or detainees violates the 4th and 14th Amendment protections held by

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1 Plaintiff and are unconstitutional per se.

2
3 71.

4 The official policy endorsed and created by the City of Sandy Police Department
5 amounting to Constitutional violations to Fouad and resulting in the injuries he incurred and his
6 death, Plaintiffs seek compensation set forth more specifically in the section of this Complaint
7 entitled "Damages."

8 **EIGHTH CLAIM FOR RELIEF: Monell Claim**
9 **42 U.S.C. §1983 Violations of 4th and 14th Amendments—City of Sandy**
10 **Informal Custom and Policy**

11
12 72.

13 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
14 fully set forth herein.

15 73.

16 The City of Sandy has an informal custom, practice or policy regarding the use of force
17 and deadly force. The custom, practice or policy includes:

18 a. Training officers to use taser weapons, in situations where the officers would prefer
19 not to physically restrain detainees, or as in this case, where restraint was not called for, and
20 instead using a calming encounter with immediate medical help was in order;

21 b. Training officers to use taser weapons in lieu of physical restraint and proper
detention techniques;

c. Training officers to use taser weapons as a first resort rather than other less
confrontational and less harmful methods to deal with an injured person such as providing

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1 medical assistance or if necessary (and it was not necessary in this situation until Fouad was
2 shocked by a taser weapon) restrain a person with physical restraint.

3 d. Improper training and supervision of officers in the use deadly force, including
4 without limitation, training to use deadly force as a first resort rather than training officers to
5 assess the totality of circumstances in an objectively reasonable manner.

6 e. The treatment and/or detention of severely injured persons;

7 f. The use of interrogation and good arrest procedures;

8 g. The management, detention and arrest of those with mental impairments

9
10 ▪ 74.

11 As part of the culture, custom and practice of the Sandy Police Department officers are
12 trained to assess situations in what is referred to as an “action/reaction” motive. Officers are
13 trained and expected to use excessive or deadly force before a person has a chance to act and
14 consequently the Sandy Police department relies on deadly force as a primary law enforcement
15 tool when faced with a person who may be acting in any unusual way.

16 75.

17 The culture inherent in the Sandy Police Department which encourages the use of deadly
18 force is so ingrained that officers will automatically and primarily begin to analyze situations
19 toward the use of taser weapons and/or deadly force without being physically present, without
20 individually evaluating the scene and often with virtually no collateral data upon which to make
21 an objectively reasonable assessment and decision; many times an unreasonable assessment will
be made in isolation, in spite of other compelling reasons and evidence which would produce a

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1 non-hostile approach an a result free of injury or death.

2
3 76.

4 As a consequence of the informal culture, practice and custom of the Sandy Police
5 Department to use a taser weapon and/or “shoot first”, a pattern of repeated serious violations of
6 the Constitutional Rights of citizens has formed. Fouad lost his life and suffered the
7 deprivations alleged herein as a direct and proximate result of this long standing practice, custom
8 and culture by the Sandy Police Department’s use of deadly force as more particularly alleged
9 above.

10 77.

11 As a direct cause and result of these Constitutional violations by the City of Sandy of
12 Fouad’s rights and the injuries he incurred and his death that resulted, Plaintiffs seek
13 compensation set forth more specifically in the section of this Complaint entitled “Damages.”

14 **NINTH CLAIM FOR RELIEF: OREGON WRONGFUL DEATH**
15 **Defendants Willard and Clackamas County**

16 78.

17 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
18 fully set forth herein.

19 79.

20 At all times material Defendant Willard was an employee of the County of Clackamas
21 and was at all times relevant acting within the scope of his employment. He was on duty and all
acts which resulted in harm to Fouad Kaady were a natural consequence of the performance of

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1 his duties as a law enforcement officer.

2
3 80.

4 Oregon law mandates that all public employees be sued through their employer the
5 public entity. Oregon law mandates that the real party in interest in such actions is the public
6 employer. Plaintiff may also sue the individual officer.

7 81.

8 The act of shooting Fouad by Defendant Willard was a breach of the duty owed to Fouad
9 and was a forcible act committed with the intent to cause serious bodily injury or death which
10 was not warranted under the circumstances then and there existing. Defendant Willard, by and
11 through Clackamas County, caused the wrongful death of Fouad by shooting, individually or in
12 combination with others, a total of seven times, when Fouad was naked, burned, bleeding,
13 unarmed and not presenting any danger to himself or others justifying the wrongful and
14 avoidable taking of his life.

15 82.

16 The shooting of Fouad which resulted in his death caused economic and noneconomic
17 damages to all Plaintiffs to include a loss of companionship, loss of potential future earnings,
18 loss of life, pain, suffering, depression, anger, sadness and severe emotional trauma. The Estate
19 incurred losses for funeral expenses in addition to the other list of damages set forth herein. The
20 total loss to the Estate and the other plaintiffs will be more fully determined at trial.

21 83.

As a direct cause and result of the acts and omissions of Defendants Willard and

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1 Clackamas County, amounting to negligence, Fouad incurred injuries and ultimately died.
2 Plaintiffs seek compensation for this death as set forth more specifically in the section of this
3 Complaint entitled "Damages".
4

5 **TENTH CLAIM FOR RELIEF: OREGON WRONGFUL DEATH**
6 **Defendants Bergin and City of Sandy**

7 84.

8 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
9 fully set forth herein.

10 • 85.

11 At all times material Defendant Bergin was an employee of the City of Sandy and was at
12 all times relevant acting within the scope of his employment. He was on duty and all acts which
13 resulted in harm to Fouad Kaady were a natural consequence of the performance of his duties as
14 a law enforcement officer.

15 86.

16 Oregon law mandates that all public employees be sued through their employer the
17 public entity. Oregon law mandates that the real party in interest in such actions is the public
18 employer. Plaintiff may sue the individual employee individually.

19 87.

20 The act of shooting Fouad was forcible and was committed with the intent to cause
21 serious bodily injury. Defendant Bergin, by and through the City of Sandy, caused serious
physical injury and death to Fouad Kaady in the following manner: Defendant Bergin shot

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1 Fouad no less than two times.

2
3 88.

4 The act of shooting Fouad by Defendant Bergin was forcible and was committed with the
5 intent to cause serious bodily injury. Defendant Bergin, by and through the City of Sandy,
6 caused the wrongful death of Fouad by shooting, individually or in combination with others, a
7 total of seven times when Fouad was naked, unarmed, not presenting any danger to himself or
8 others justifying the wrongful and avoidable taking of his life..

9 89.

10 ■ The shooting of Fouad which resulted in his death caused economic and noneconomic
11 damages to all Plaintiffs to include a loss of companionship, loss of potential future earnings,
12 loss of life, pain, suffering, depression, anger, sadness and severe emotional trauma. The Estate
13 incurred losses for funeral expenses in addition to the other list of damages set forth herein. The
14 total loss to the Estate and the other plaintiffs will be more fully determined at trial.

15 90.

16 As a direct cause and result of the acts and omissions of Defendants Willard and
17 Clackamas County, amounting to negligence, Fouad incurred injuries and ultimately died.
18 Plaintiff's seek compensation for this death as set forth more specifically in the section of this
19 Complaint entitled "Damages."
20
21

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1
2 **DAMAGES**

3 91

4 Plaintiffs incorporate and adopt by reference all the facts and allegations above as though
5 fully set forth herein.

6 92.

7 The Defendants' actions and omissions related to this Complaint were tortious, wrongful,
8 objectively unreasonable, deliberately indifferent, negligent, grossly negligent, oppressive,
9 malicious, reckless and outrageously indifferent to a highly unreasonable risk of harm,
10 consciously indifferent to Fouad Kaady's health, safety, and welfare, in reckless disregard of
11 Fouad Kaady's rights, motivated by evil motive or intent, and recklessly or callously
12 indifferent to Fouad Kaady's federally protected rights; said actions and omissions directly
13 and proximately caused Fouad Kaady's injuries and death.

14 93.

15 This cause of action is brought to recover damages for the injuries sustained, including but
16 not limited to the wrongful death of Plaintiff's decedent, and the damages Plaintiffs suffered
17 as a direct result of the deprivation of Fouad's civil rights, under the terms and provisions of
18 the laws and statutes of the United States, and the State of Oregon.

19 94

20 At the time of his death, Fouad Kaady was 27 years old, and had a life expectancy subject to
21 proof at trial. Fouad Kaady was a kind, affectionate and devoted son and brother. Fouad

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1 was interested in the welfare of his family. Fouad Kaady was in excellent health and had his
2 entire future in which to look forward.

3 95

4 Fouad Kaady supported his family and provided them with love, care, comfort, and society.
5 In all probability Fouad Kaady would have continued to aid, support, comfort, advise and
6 counsel his family. It is reasonably probable that during the remaining years of his life,
7 Fouad Kaady would have contributed substantially toward the support of his family, had it
8 not been for his tragic death.

9
10 96

11 As the Personal Representative of the Estate of Fouad Kaady, deceased, Plaintiff Samira
12 Kaady is entitled to collect, on behalf of the heirs of the Estate for appropriate distribution,
13 the following damages:

- 14 a. Burial services and memorial service expenses;
- 15 b. General damages for the deprivation of Fouad's civil rights, including his right to life;
- 16 c. Pecuniary loss to the Estate of Fouad Kaady, including loss of earnings based upon the
17 probable duration of the victim's life had the injury not occurred, in an amount to be
18 proved at trial;
- 19 d. Pain and suffering damages that Fouad suffered between the time of his injuries and his
20 death, in an amount to be proved at trial;
- 21 e. Loss of consortium damages for Fouad's loss of consortium of his family members, in an
amount to be proved at trial;

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- 1 f. Punitive damages in a reasonable amount sufficient to adequately punish Defendants
2 Bergin and Willard in their individual capacities, and to deter future conduct of the type
3 alleged in this pleading, as allowed by law in 42 U.S.C. § 1983, in an amount to be
4 proved at trial;
- 5 g. Deterrence damages in a reasonable amount sufficient to deter these types of acts and
6 omissions in the future by the parties involved and others similarly situated.
- 7 h. Attorneys' fees, as allowed by law in 42 U.S.C. § 1988; and
- 8 i. Costs of this action, and for any other further relief as this Court deems equitable and
9
10 ▪ proper.

11 97

12 As a direct and proximate result of Defendants' deprivations of Fouad Kaady's federal civil
13 rights, Plaintiffs Samira Kaady, Rachid Kaady, Vania Kaady, and Andrea Kaady suffered
14 the loss of their son and brother. Plaintiffs each are entitled to be compensated for their loss
15 that is the direct result of Defendants' tortious actions in depriving Fouad Kaady of his civil
16 rights: each of the Plaintiffs are entitled to collect the following damages:

- 17 1. Loss of the society, companionship and services of Fouad Kaady, their deceased
18 son and brother, in an amount to be proved at trial;
- 19 2. Pecuniary loss in an amount to be proved at trial;
- 20 3. Attorneys' fees, as allowed by law in 42 U.S.C. § 1988; and
- 21 4. Costs of this action, and for any other further relief as this Court deems equitable
and proper.

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WHEREFORE Plaintiff Samira Kaady, in her capacity as the duly appointed and qualified Personal Representative of the Estate of Fouad Kaady, and Plaintiffs Samira Kaady, Rachid Kaady, Vania Kaady, and Andrea Kaady, request that this Court grant judgment as follows:

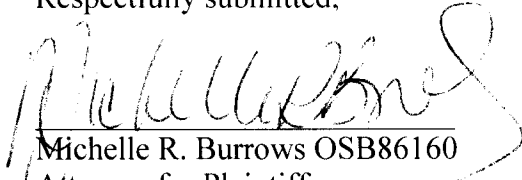
1. Judgement against the Defendants for economic damages in an amount consistent with the allegations contained herein and to be proven at trial;
2. Judgement against the Defendants for non-economic damages in an amount consistent with the allegations contained herein and to be proven at trial.
3. Judgement against the Defendants for punitive damages in a fair and reasonable amount to be proven at trial.
4. Judgement against the Defendants for deterrence damages in a fair and reasonable amount to be proven at trial.
5. Judgement for costs, interest, attorney fees and such other and further relief as the Court deems just and equitable.

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DATED this 5th day of September, 2006.

Respectfully submitted,



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