

1 CENTER FOR JUSTICE
2 BREEAN L. BEGGS WSBA # 20795
3 JEFFRY FINER, WSBA # 14610
4 35 West Main, Ste. 300
5 Spokane, WA 99201
6 (509) 835-5211
7 Attorney for Plaintiffs

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

ESTATE OF OTTO ZEHM,)
deceased, Genevieve Mann) **Case No.: CV 09-80-LRS**
Personal Representative; and)
ANN ZEHM, in her personal) **SECOND AMENDED COMPLAINT**
capacity,) **FOR DAMAGES FOR VIOLATION OF**
) **CIVIL RIGHTS AND STATE-BASED**
) **CLAIMS**
)
) **JURY DEMANDED**
Plaintiffs,)
vs.)
CITY OF SPOKANE, JIM)
NICKS, KARL THOMPSON,)
STEVEN BRAUN, ZACK)
DAHLE, ERIN RALEIGH, DAN)
TOROK, RON VOELLER,)
JASON UBERAGA, and)
THERESA FERGUSON, each in)
their personal and representative)
capacities.)
Defendants.)

I. PARTIES

1.1 Plaintiff ESTATE OF OTTO ZEHM was created on April 17, 2006. Prior to his death Otto Zehm was at all times pertinent to this litigation a resident of

1 Spokane County. On May 13, 2009, Genevieve Mann substituted in as the Personal
2 Representative for the Estate, replacing Ann Zehm.

3
4 1.2 Plaintiff ANN ZEHM is and has been at all times pertinent to this litigation
5 a resident of the State of Washington, residing in the Eastern District of
6 Washington. Plaintiff ANN ZEHM is the natural mother of Otto Zehm, deceased.
7 ANN ZEHM brings on her own behalf.

8
9 1.3 Defendant CITY OF SPOKANE is a municipality in the State of
10 Washington and employer/principal of the individuals responsible for determining
11 custom and policy for its Police Department's use of force and investigations.

12
13 1.4 Defendant JIM NICKS, at all times pertinent to this complaint was the
14 Acting Chief of Police for the City of Spokane and a municipal policy maker. Jim
15 Nicks is sued in his personal and representative capacity.

16
17 1.5 Defendant KARL THOMPSON, at all times pertinent to this complaint
18 was a law enforcement officer employed by the City of Spokane. Officer
19 Thompson is sued in his personal and representative capacity.

20
21 1.6 Defendant STEVEN BRAUN, at all times pertinent to this complaint was a
22 law enforcement officer employed by the City of Spokane. Officer Braun is sued in
23 his personal and representative capacity.

1 1.7 Defendant JASON UBERAGA at all times pertinent to this complaint was
2 a law enforcement officer employed by the City of Spokane. Officer Walker is
3 sued in his personal and representative capacities.
4

5 1.8 Defendant ZACK DAHLE at all times pertinent to this complaint was a
6 law enforcement officer employed by the City of Spokane. Officer Dahle is sued in
7 his personal and representative capacities
8

9 1.9 Defendant ERIN RALEIGH at all times pertinent to this complaint was a
10 law enforcement officer employed by the City of Spokane. Officer Raleigh is sued
11 in her personal and representative capacities.
12

13 1.10 Defendant DAN TOROK at all times pertinent to this complaint was a law
14 enforcement officer employed by the City of Spokane. Officer Torok is sued in his
15 personal and representative capacities.
16

17 1.11 Defendant RON VOELLER at all times pertinent to this complaint was a
18 law enforcement officer employed by the City of Spokane. Officer Voeller is sued
19 in his personal and representative capacities.
20

21 1.12 Defendant THERESA FERGUSON at all times pertinent to this complaint
22 was a law enforcement officer employed by the City of Spokane. Officer Ferguson
23 is sued in her personal and representative capacities.
24

25 **II. JURISDICTION AND VENUE**

2.1 All acts complained of occurred in the Eastern District of Washington.

1 2.2 Venue is proper in the United States District Court for the Eastern District
2 of Washington.

3 2.3 Jurisdiction is proper in the United States District Court pursuant to Title
4 42, United States Code § 1988; Title 28 USC § 1331; and 28 USC § 1343(a)(3).

5 2.4 This court has personal and subject matter jurisdiction.
6

7 **SUPPLEMENTAL JURISDICTION**

8 2.5 As amended, this complaint seeks relief for state law claims.
9

10 2.6 On February, 17, 2009, Plaintiffs presented a non-judicial notice of claim
11 to the City of Spokane alleging solely state-law claims.

12 2.7 Over 60 days have passed since the presentment of the non-judicial notice
13 of claim. The claim has not been satisfied.
14

15 **III. FACTS**

16 **Introduction: SPOKANE POLICE TRAINING & POLICIES**

17 3.1 Spokane Police are trained to follow the Police Department's rules,
18 regulations, and policies regarding seizure of suspects.
19

20 3.2 This training includes the proper use of force against individuals being
21 seized.
22

23 3.3 The training requires proportionate responses and prohibits the use of
24 disproportionate force.
25

1 3.4 The Spokane Police Department’s use of force policy prohibits the use of
2 weapons against passive resistance.

3 3.5 The Spokane Police Department’s use of force policy prohibits the use of
4 deadly force against passive resistance. Deadly force, in part, includes an officer
5 using his or her baton to strike a detainee in the head.
6

7 3.6 Spokane Police are also given instruction — as part of their initial and
8 on-going training — regarding the civil rights of individuals detained, seized and
9 arrested.
10

11 3.7 Spokane Police are instructed that federal law prohibits police from
12 unreasonable seizures of persons, including the unreasonable use of force to
13 effectuate a seizure.
14

15 3.8 Spokane Police are instructed that an unreasonable seizure of a person
16 may subject them to civil and criminal liability.
17

18 3.9 Spokane Police are instructed that an unreasonable seizure of a person’s
19 private papers, including their confidential medical records, may subject them to
20 civil and criminal liability.
21

22 3.10 The Spokane Police Department employs senior police officers to
23 conduct internal investigations of incidents involving questionable use of force by
24 a member of the Department. These officers have additional training in the
25 methods of investigation appropriate to internal reviews.

1 3.11 The City of Spokane has agreed to permit investigators from other law
2 enforcement agencies to investigate use of force incidents involving City of
3 Spokane Police Department Officers.
4

5 3.12 The Spokane Police Department had, at the time of the incidents
6 described below, written policies and procedures in place to reduce the risk of in-
7 custody death related to the condition known variously as “excited delirium”
8 “manic delirium”, etc.
9

10 3.13 The Spokane Police Department had, at the time of the incidents
11 described below, written policies and procedures in place to reduce the risk of in-
12 custody death related to the use of four-point restraints.
13

14 **911 CALL, DISPATCH & POLICE RESPONSE**

15 3.14 On March 18, 2006, two women at an ATM located on North Division,
16 in Spokane, Washington, called 911 to report that they believed an unknown male
17 interrupted their transaction and may have removed money from their ATM
18 account. The 911 operator advised police dispatch who radioed to officers to
19 respond to a suspicious circumstance.
20

21 3.15 The 911 caller described the suspect’s physical appearance. Based on the
22 copy of the 911 call released by the Spokane Police Department, the caller stated
23 that the suspect was “messing with [the ATM] forever” and “he had like a big wad
24
25

1 of something so I think it was money and then he put it in his jacket because when
2 we started driving to see where he was going, uh, he ran.”

3
4 3.16 The female complaintant stated to the 911 operator that her companion
5 believed she had cancelled her ATM transaction.

6 3.17 The City of Spokane Police Dispatcher, whose identity at this time is
7 unknown, falsely advised responding officers that the complaintant thought the
8 suspect “appears to be high.”
9

10 3.18 The City of Spokane Police Dispatcher erroneously stated that the
11 complaintants advised that they had left their card in the ATM machine and that
12 the suspect had their money. The 911 caller’s only reference to the ATM card
13 specifically stated that her companion “has her card” but that they saw a wad in the
14 suspect’s hand and “I think it was money.”
15

16 3.19 At no time did the complaintants state that the card was left in the
17 machine.
18

19 3.20 At no time did the complaintants confirm that money was taken.

20 3.21 Officer Thompson heard the dispatch broadcasts, knew Officer Braun
21 declared he would respond, and chose to respond to the area ahead of Officer
22 Braun.
23
24
25

1 3.22 Officer Thompson observed Zehm enter the Zip Trip located at 1721
2 North N. Division, at approximately 18:25 and 57 seconds as shown on the Zip
3 Trip Surveillance recordings.
4

5 3.23 There were no objective signs that Otto Zehm was suffering from a state
6 that the City of Spokane has since described as “excited delirium” prior to Officer
7 Thompson’s engaging Zehm.
8

9 3.24 Thompson was able to observe Zehm before Zehm entered the store.
10 Thompson did not note Zehm behaving in a disoriented manner. Thompson did not
11 observe Zehm exhibiting any evidence that he was in a hyperthermic state, that he
12 had shed his clothing, that he had shed his clothing, that he was moving with a
13 staggered gait, nor acting in a manner that showed gross agitation. Thompson had
14 no reason to believe that Zehm was blocking traffic. Thompson had no reason to
15 believe that Zehm posed any threat to himself or others. Thompson had no reason
16 to believe that Zehm was armed with a weapon.
17
18

19 3.25 Officer Thompson asked the City of Spokane Police Dispatch whether
20 the complaintants confirmed that Zehm had taken money. The City of Spokane
21 Police Dispatch advised Officer Thompson that the 911 complaintants confirmed
22 that Zehm had taken money.
23

24 3.26 Based on the 911 and dispatch tapes released by the Spokane Police
25 Department it does not appear that the complaints were asked by the 911 operator

1 to confirm the loss of money or that the complainants ever alleged that their money
2 was in fact taken.

3 3.27 Within moments of confirming that money was taken, the City of
4
5 Spokane Police Dispatch Officer alerted Officer Thompson and other responding
6 officers that the complaintants were “not entirely certain” that money was taken.

7 3.28 At the point in time that Officer Thompson stepped into the Zip Trip —
8
9 at 18:26 and 8 seconds, as shown on the Zip Trip surveillance recording — he had
10 reasonable suspicion that Zehm may have removed money from an ATM that
11 belonged to someone else’s account, that the complaining witness believed Zehm
12 was “high” and that he had run from the complaining witnesses after they began
13 following him.
14

15 3.29 Officer Thompson carries his baton in hand or on his duty belt on most of
16 the calls and contacts he has. Officer Thompson considers himself proficient in the
17 use of his baton and admits he has had extensive training in its use, beginning in
18 1969, with the Los Angeles Police Academy.
19

20 3.30 Based on his training and experience and under the circumstances known
21 to him, Officer Thompson believed that had the authority to detain Zehm in order
22 to investigate whether there was a basis to arrest Zehm. Officer Thompson entered
23 the store for that purpose. Officer Thompson did not believe he had probable cause
24 for an arrest.
25

1 3.31 Officer Thompson also knew that Officer Braun was in the area
2 responding to the same call. Instead of waiting for Officer Braun to arrive Officer
3 Thompson decided to enter the store alone.
4

5 3.32 As soon as Officer Thompson stepped inside the store he knew that there
6 were a number of customers in the store.
7

8 3.33 Based on his training and experience and under the circumstances known
9 to him, Officer Thompson knew that he was to consider the safety of his suspect,
10 the nearby customers, and his own safety in detaining Zehm
11

12 3.34 In a later statement, Officer Thompson claimed that his intention on
13 entering the Zip Trip was to handcuff Zehm and detain him while he investigated
14 whether Zehm was subject to arrest
15

16 3.35 Entering the Zip Trip, Officer Thompson knew the store was well lit.
17

18 3.36 Officer Thompson identified Zehm and accelerated his pace toward
19 Zehm, drawing his police baton from his left side and passing the baton to his right
20 hand. Officer Thompson had no evidence that Zehm was armed or dangerous when
21 he drew the baton and accelerated toward Zehm
22

23 3.37 Officer Thompson can be seen to raise his baton shoulder level or higher
24 in preparation to strike Zehm after Zehm had selected a soda pop in a plastic bottle
25 with his back to the officer

1 3.38 Zehm turned around and faced Officer Thompson at 18:26 and 12
2 seconds on the Zip Trip video.

3 3.39 Officer Thompson has alleged in his reports that when Zehm turned to
4 face him, Zehm was holding a bottle of soda pop.

5 3.40 Officer Thompson has alleged in his reports that when he saw Zehm's
6 hands, he stopped his advance and ordered Zehm to drop the soda pop.
7

8 3.41 According to Officer Thompson, Zehm stated, "Why?"
9

10 3.42 Officer Thompson has stated that he issued a second forceful command
11 to drop the soda pop and that Zehm replied, "No."
12

13 3.43 Witnesses in the immediate area do not report hearing this alleged
14 exchange and on information and belief Plaintiffs allege that Officer Thompson did
15 not stop in his rush towards Zehm and did not issue two orders to Zehm to drop the
16 soda pop.
17

18 3.44 According to Officer Thompson's training — even if Zehm had queried
19 "Why?" and then responded, "No," — a verbal refusal to follow his command is
20 considered passive resistance.
21

22 3.45 According to Spokane Police policy and procedure, passive resistance
23 does *not* authorize an officer to use deadly force, nor use a weapon against the
24 passively resisting suspect. At the point Officer Thompson rounded the corner and
25

1 was in the rear aisle of the Zip Trip facing Zehm the following was known to

2 Officer Thompson:

- 3
- 4 a. Zehm was approximately 15 feet or more away;
- 5 b. Wearing clothing appropriate to the season;
- 6 c. in full view;
- 7 d. in the well-lit Zip Trip convenience store;
- 8 e. in the presence of a number of customers;
- 9 f. Officer Braun was responding to the scene;
- 10 g. there was no indication at the time Officer Thompson entered the Zip
- 11 Trip and saw Zehm in the southwest corner that Zehm was fleeing or
- 12 attempting to leave the scene;
- 13
- 14
- 15 h. there was no basis to believe that Zehm was armed with a weapon;
- 16 nor any information upon which a reasonable officer could conclude
- 17 that Zehm posed a safety risk to the public; nor any basis to believe
- 18 that the incident under investigation involved violence or the threat of
- 19 violence.
- 20
- 21
- 22
- 23
- 24
- 25

1 **FACTS RELATING TO OFFICER THOMPSON’S PRE-EMPTIVE**
2 **ASSAULT AND USE OF DEADLY FORCE**

3 3.46 Officer Thompson decided to respond to Zehm’s alleged query, “Why”
4 and “No” with a pre-emptive physical attack and use a weapon to strike Zehm to
5 the ground.
6

7 3.47 Officer Thompson immediately rushed Zehm intending to strike him with
8 his baton.

9 3.48 On information and belief, Officer Thompson’s purpose, namely to strike
10 Zehm to the ground, was not justified under the circumstances and facts known to
11 the officer but was substantially motivated by a purpose to punish or inflict
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

112 3.49 In the alternative, Office Thompson acted with deliberate indifference to
113 Zehm’s rights in deciding to strike Zehm to the ground.

114 3.50 Apart from his purpose, Officer Thompson’s conduct in deciding to
115 strike Zehm to the ground was done intentionally, wantonly, and without
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

112 3.51 Officer Thompson could see that Zehm was observing Officer Thompson
113 rush towards Zehm with his baton raised.

114 3.52 Officer Thompson could see Zehm back away.

1 3.53 Officer Thompson knew that Zehm was not actively resisting, knew that
2 Zehm was not threatening the officer verbally, knew that Zehm was not taking a
3 fighting stance, nor turning to run. Officer Thompson knew that Zehm was backing
4 away from Officer Thompson and from Thompson's brandished baton.
5

6 3.54 The attack by Thompson was not in compliance with Department training
7 and written policy regarding the use of weapons against passively resisting
8 suspects. Thompson's baton assault was not a proper response to Zehm's
9 indications of passive resistance under Departmental written policy or the Fourth
10 and/or First Amendments.
11

12 3.55 Officer Thompson, by his preemptive and unlawful attack, created the
13 risk that Zehm would lawfully defend himself.
14

15 3.56 But for Officer Thompson's preemptive and unlawful attack, Zehm
16 would not have needed to defend himself.
17

18 3.57 Officer Thompson knew or should have known that the settled law,
19 called the "danger creation" doctrine, holds officers liable for their unreasonable
20 acts as well as for the natural consequences of those misdeeds.
21

22 3.58 As Zehm backpedaled away from Thompson's charge and raised baton,
23 Zehm raised his hands to protect his face and head.
24

25 3.59 Zehm never threw the soda pop bottle at Officer Thompson but used the
bottle to protect his own face and head from Officer Thompson's attack.

1 3.60 Officer Thompson struck Zehm's leg with the police baton, intending
2 that the pain of the blow would bring Zehm to the ground.

3
4 3.62 A struggle followed during which Officer Thompson deployed his taser
5 against Zehm and struck Zehm with his police baton six or more times in rapid
6 succession.

7
8 3.63 Witnesses to Officer Thompson's initial assault against Zehm have stated
9 to investigators that Officer Thompson struck Zehm in the head with his police
10 baton.

11 3.64 The county medical examiner's findings regarding a wound above Otto
12 Zehm's eye is consistent with a blow from an object the same shape as Officer
13 Thompson's police baton.

14
15 3.65 The county medical examiner's findings regarding a wound under Otto
16 Zehm's scalp do not rule out the cause of that wound arising from a blow by
17 Officer Thompson's police baton.

18
19 3.66 Officer Thompson's training forbids the use of baton strikes to the head
20 except when deadly force is justified.

21 3.67 Officer Thompson's use of deadly force, i.e., striking Otto Zehm in the
22 head with his police baton, was unjustified by the officer's experience and training
23 and under the facts and circumstances known to the officer at the time.
24
25

1 3.68 Zehm reasonably defended himself, struggling to ward off Officer
2 Thompson's baton blows and regain his feet. Zehm's self-defense, lawful under
3 well-established rules governing the limits of legitimate police use of force, merely
4 resulted in Thompson's further escalation of force in retaliation.
5

6 **FACTS RELATING TO OFFICERS'**
7 **RESTRAINT OF ZEHM**

8 3.69 At 18:26 and 44 seconds, as shown on the Zip Trip surveillance cameras,
9 Officer Braun entered the store from the south door and ran to where Officer
10 Thompson was attacking Zehm, tasing Zehm. Within minutes of Braun's arrival,
11 Officers Raleigh, Voeller, Uberagua, Dahle and Torok came to the scene and they
12 assisted one another to restrain Zehm's arms behind his back.
13

14 3.70 Zehm's legs were restrained as well. Officers attached the leg restraint to
15 the wrist restraint per Spokane Police custom and policy.
16

17 3.71 Spokane Police are trained to place detainees in four-point restraint, such
18 as Zehm was in, onto their sides or in a sitting position to reduce the risk of
19 detainees suffering respiratory distress, including death.
20

21 3.72 The officers restraining Zehm did not follow their training.

22 3.73 Spokane Police Department has a policy requiring that detainees in four-
23 point restraint, such as Zehm was in, be placed onto their sides or in a sitting
24
25

1 position to reduce the risk of detainees suffering respiratory distress, including
2 death.

3
4 3.74 The officers restraining Zehm did not follow the City's policy.

5 3.75 Contrary to policy, Zehm was positioned onto his stomach for the next 13
6 of 16 minutes during which time he ceased to struggle. Videos taken from the
7 store's surveillance cameras show that Zehm's feet, though strapped loosely to his
8 wrists, were periodically physically pinned back by an officer who was positioned
9 at Zehm knees, thus increasing the pressure on Zehm's diaphragm.
10

11 **FIRE DEPARTMENT CALLED TO SCENE**

12 3.76 Officers notified the City of Spokane Fire Department that Zehm had
13 been tasered and a team responded to the scene to remove the barbed taser darts
14 from Zehm's abdomen. The Fire Department team retrieved the darts, and removed
15 themselves from the immediate scene.
16

17 3.77 Defendant Erin Raleigh requested the medical responders to provide a
18 medical mask to cover Zehm's mouth. The Firefighter's notes reflect that the
19 police officer was concerned that Zehm "might" spit and that the mask was to
20 reduce the health risk of pathogens or bites.
21

22 3.78 Examination of the uniforms of each officer following the episode did
23 not reveal any residue showing that Zehm spat on an officer.
24
25

1 3.79 In any event, a non-rebreather mask was given to Officer Raleigh, who
2 placed it over Zehm's nose and mouth and secured the mask with straps behind
3 Zehm's head.
4

5 3.80 The mask was not connected to oxygen; air was only available through a
6 nickel-sized hole in the mask.

7 3.81 The hole, however, can be blocked or occluded by clothing or any
8 surface coming into contact with the mask.
9

10 3.82 This mask is not designed for use without an oxygen hose connected to it
11 with oxygen flowing, nor for use with the wearer in a prone position.
12

13 3.83 This mask is known to cause wearers, even in a hospital setting with
14 oxygen attached and flowing, to experience a sensation that their breathing is being
15 compromised and mask manufacturers routinely advise medical personnel to
16 reassure patients that the mask, properly used, will permit full breathing.
17

18 3.84 This mask is not designed to fully clear carbon dioxide from the space
19 trapped over the subject's nose and mouth if the hole is blocked.

20 3.85 The use of the non-rebreather mask without oxygen is not part of the
21 training and policy of the Spokane Police Department, nor are members of the
22 Department told that medical responders are trained to use the mask in this fashion.
23

24 3.86 Defendant Officers did not seek advice from the Fire Department team
25 on the use of the mask as a spit barrier. One or more of the officers simply directed

1 the Fire Department team to provide the mask with deliberate indifference to
2 Zehm's safety and the effect the mask would have on his mental state.

3
4 3.87 No officer on the scene objected to the use of the mask.

5 3.88 No member of the Fire Department team monitored Zehm after the mask
6 was placed over his nose and mouth.

7 3.89 While restrained face-down with one or more officers placing their
8 weight on his neck, shoulders, abdomen and hips during his struggle with the
9 officers, Zehm's ability to breath was already compromised.

10
11 3.90 His risk for heightened anxiety, suffocation, and/or cardio-pulmonary
12 arrest was increased by the placement of the unconnected non-rebreather mask
13 over Zehm's face as the mask can, when improperly used, cause carbon dioxide to
14 build up in the volume trapped against the wearer's face, resulting in acidosis or
15 other disorder, and elevating the risk of serious harm or death.

16
17 3.91 Zehm ceased breathing while in four-point restraint on his stomach with
18 the non-rebreather mask over his mouth and nose.

19
20 3.92 Officers, once they noticed that Zehm had stopped breathing, asked the
21 Fire Department team to return inside the Zip Trip and examine Zehm.

22
23 3.93 The Fire Department team was unable to revive him and he was
24 transported by ambulance to the hospital.

1 3.94 Otto Zehm died at a local hospital on March 20, 2006, at which point in
2 time his organs were recovered for transplantation.

3 3.95 His temperature at admission to the hospital was not elevated.

4 3.96 He had no pre-existing heart disease.

5 3.97 Photos disclose that Zehm had multiple bruises and bone fractures, taser
6 burns, and petechiae inside his eyelids.

7 3.98 The medical examiner concluded that “it is likely in this case, and in
8 similar cases, that restraint itself placed the decedent at risk for cardio-pulmonary
9 arrest.” The examiner ruled that Otto Zehm’s death was a homicide because it
10 would have been unlikely but for the prone restraint while in total appendage
11 restraint position.
12
13
14

15 3.100 Upon completion of the Autopsy Report by the Medical Examiner, the
16 City of Spokane arranged a press conference and Chief Nicks intentionally
17 disclosed privileged portions of the Autopsy Report and other privileged and
18 private information to the public with the intent that news organizations republish
19 the information. Upon belief the City illegally published this information on its
20 website continuously from May 31, 2006 through at least September 29, 2009.
21 Upon belief the Chief’s illegal disclosures continue to be republished on accessible
22 websites as intended through the present day.
23
24
25

1 3.101 Prior to the above disclosure, the City had requested that Plaintiff agree
2 to the entry of a mutual non-disclosure order that would have covered confidential
3 investigatory information in the possession of the police.
4

5 3.102 The City and Chief Nicks knew that when this non-disclosure order was
6 entered on May 30, 2006, prior to the news conference, it created its own set of
7 rights in favor of the Plaintiff in addition to rights established by statute and
8 common law.
9

10 3.103 Prior to releasing the privileged and/or confidential information, Chief
11 Nicks or subordinates in the Department's media relations position stated that:

- 12 a. Zehm had lunged at Officer Thompson, and
- 13 b. Zehm had been kept on his side for the majority of the time he was
14 restrained.
15

16 3.104 Both statements are false.

17 3.105 Chief Nicks' false statements placed Zehm in a negative light.

18 3.106 Chief Nicks made the false statements after having viewed the security
19 camera videotape of Officer Thompson's confrontation with Zehm.
20

21 3.107 Chief Nicks made the false statements knowing them to be false.

22 3.108 Under Washington Law at the time of Zehm's death, all pre-conviction
23 criminal proceedings were abated *ab initio*.
24
25

1 3.109 A reasonable officer would know that a dead person cannot be charged
2 with a crime.

3
4 3.110 Despite Zehm's death, Officer Ferguson, acting under color of state law,
5 presented a sworn affidavit to a local magistrate requesting access to confidential
6 medical and employment records for the alleged purpose of investigating the crime
7 of third degree assault of a police officer.

8
9 3.111 A reasonably well-trained officer would know, and Officer Ferguson —
10 upon information and belief — did know that the warrant authorizing her seizure
11 of Zehm's private medical and employment papers was based on a wholly invalid
12 affidavit.

13
14 3.112 A reasonably well-trained officer would know, and Officer Ferguson did
15 know that her acquisition of private papers without proper authority was
16 unreasonable under federal and state law and an invasion of privacy.

17
18 3.113 Upon belief, the above invasion of privacy was substantially and/or
19 causally motivated in order to pre-emptively prepare against Zehm's estate for his
20 in-custody death and in retaliation for exercise of federal rights.

21 **FACTS RELATING TO RATIFICATION BY CITY**

22
23 3.114 The City of Spokane, through its Mayors and Police Chiefs, has, since
24 the assault on Zehm and continuing to the present date, ratified the misconduct of
25 the Defendants Officers, agents of the City, and Defendant Chief Nicks.

1 3.115 The City of Spokane has publicly defended the individual officers' and
2 the Chief's violations of federal and state law and Departmental policies.

3
4 3.116 The City of Spokane has publicly defended the individual officers' and
5 the Chief's conduct that led to the deprivation of Otto Zehm's and his mother's
6 civil rights.

7
8 3.117 Where actions taken by the individual defendants in violating civil rights
9 were taken in accordance with the City's policies and procedures, the City is liable
10 for the actions of their agents — the individual Officers and the Chief — in
11 depriving Otto Zehm's and his mother of the federal civil rights.

12
13 3.118 Where actions taken by individual officers, agents and Chief Nicks
14 leading to the deprivation of Otto Zehm's and his mother's civil rights were taken
15 contrary to written policies and procedures, the City has failed to supervise and
16 discipline its subordinates, failed to conduct an adequate investigation, and has
17 affirmatively endorsed Defendants' conduct. These failures and affirmative acts,
18 alone and in combination, effectively ratified the individual Defendants'
19 misconduct.
20

21 **FACTS RELATING TO CONSPIRACY**

22
23 3.119 Tacitly or otherwise, one or more of the Defendants entered into an
24 agreement to violate Plaintiffs' civil rights and committed an overt act in
25 furtherance of that agreement.

1 3.120 Initial police statements, including releases by both subordinates on
2 behalf of the Department and by acting Chief of Police Nicks, falsely portrayed
3 Otto Zehm as the aggressor. On multiple occasions officials for the Police stated
4 that Otto Zehm “lunged” at Officer Thompson, causing Thompson to justifiably
5 strike Zehm his with his baton.
6

7 3.121 Review of the surveillance video tape shows that Zehm never moved
8 toward Officer Thompson. Zehm’s movement was plainly a retreat from the
9 onrushing baton-brandishing officer.
10

11 3.122 Evidence from the scene included the non-rebreather mask placed over
12 Otto Zehm’s mouth and nose.
13

14 3.123 No officer at the scene, nor senior officer reviewing Zehm’s death,
15 advised the medical examiner that the non-rebreather mask was used.
16

17 3.124 The non-rebreather mask was not provided to the medical examiner for
18 her first review.
19

20 3.125 Until the issue of the non-rebreather mask was raised by third parties, the
21 City, its Chief of Police, investigators, and the officers on the scene took no steps
22 to preserve the mask.
23

24 3.126 At least one internal interview of Officer Thompson was conducted off
25 the record. Following the initial interview Officer Thompson was interviewed by

1 Officer Ferguson on tape and lead through a series of questions oriented toward
2 exonerating his conduct.

3
4 3.127 Officer Ferguson prepared and submitted a facially invalid affidavit
5 seeking personal and privileged information for the purpose of investigating a dead
6 person for an unprosecutable crime.

7 **FACTS RELATING TO DAMAGES FOR FEDERAL CLAIMS**

8
9 3.128 As a proximate cause of the Officers' deprivation of Otto Zehm's federal
10 civil rights, Otto Zehm suffered substantial general damages in anticipation of
11 death, including pain and suffering in an amount to be proven at trial

12
13 3.129 As a proximate cause of Officers' deprivation of Otto Zehm's federal
14 civil rights, his Estate suffered a loss of earnings in an amount to be proven at trial.

15
16 3.130 As a proximate cause of Officers' deprivation of Otto Zehm's federal
17 civil rights, his Estate incurred medical and funeral expenses in an amount to be
18 proven at trial

19
20 3.131 Officers deprived Otto Zehm's and Ann Zehm's federal civil rights with
21 deliberate disregard of the rights of Otto Zehm and his family or for the purpose of
22 harming Plaintiffs without legal justification.

23
24 3.132 Accordingly, under the Fourteenth Amendment's due process clause,
25 Ann Zehm has suffered general damages related to the interference in the parent
child relationship due to the homicide of her son while in police custody,

1 Defendants' invasion of privacy in Otto Zehm's confidential records, and
2 Defendants' Nicks and City of Spokane's false allegations regarding Otto Zehm, in
3 an amount to be proven at trial.
4

5 **FACTS RELATING TO DAMAGES FOR STATE-BASED CLAIMS**

6 3.133 As a proximate cause of the City of Spokane's agents and employees'
7 negligence, Otto Zehm suffered substantial general damages in anticipation of
8 death, including pain and suffering in an amount to be proven at trial
9

10 3.134 As a proximate cause of the City of Spokane's agents and employees'
11 negligence the Estate suffered a loss of earnings in an amount to be proven at trial.
12

13 3.135 As a proximate cause of the City of Spokane's agents and employees'
14 negligence the Estate incurred medical and funeral expenses in an amount to be
15 proven at trial.

16 3.136 As a proximate cause of the City of Spokane's agents and employees'
17 negligence, Ann Zehm suffered the loss of support, companionship and
18 interference with the parent-child relationship in an amount to be proven at trial.
19

20 3.137 As a proximate cause of the City of Spokane's agents and employees'
21 disclosures to the public, the Estate and Ann Zehm's statutory and common law
22 rights to privacy in Otto Zehm's medical records, including portions of Otto
23 Zehm's autopsy report, was violated.
24
25

1 3.138 Accordingly, under the common law of negligence, wrongful death, and
2 the statutory provisions of RCW 4.20.010 and -.020 (wrongful death statutes),
3 RCW 4.20.060 (special survival statute) and -.046 (general survival statute), and
4 RCW 4.24.010 (death of a child) the Estate and Ann Zehm have suffered special and
5 general damages related to Otto Zehm's homicide while in police custody, the
6 Defendants' interference in the parent child relationship, and Defendants' Nicks
7 and City of Spokane's false allegations regarding Otto Zehm, in an amount to be
8 proven at trial.
9

10
11 3.139 Accordingly, under the state law governing the release of confidential
12 autopsy information, the Estate and Ann Zehm have suffered special and general
13 damages related to the unauthorized release of portions of Otto Zehm's autopsy.
14

15 3.140 Under the state law governing the intentional violation of a court order,
16 RCW 7.21 et seq., the Estate and Ann Zehm have suffered special and general
17 damages related to the unauthorized release of portions of Otto Zehm's
18 confidential records.
19

20 **FACTS RELATING TO OTTO ZEHM AND ANN ZEHM**

21 3.141 Otto Zehm was a gainfully employed, single male at the time of his
22 death, aged 36.
23
24
25

1 3.142 He was a financial provider for his disabled aged mother, Ann Zehm, to
2 whom he regularly contributed some of his earnings in the form of cash or specific
3 goods.
4

5 3.143 Other than his mental illness, Zehm was in good health.

6 3.144 Otto provided significant emotional support and enjoyment to his mother
7 in addition to personal services and financial support.
8

9 **FACTS RELATING TO PUBLIC RECORDS VIOLATIONS**

10 3.145 Beginning on or about March 29, 2006, and continuing for many months
11 thereafter, Plaintiffs, through counsel, submitted requests for disclosure of public
12 records relating to the homicide of Otto Zehm, including a copy of the 911 call.
13

14 3.146 Throughout that period of time, the City of Spokane responded to the
15 public records request, providing Plaintiffs with documents and electronic records
16 as such became available for release.
17

18 3.147 Among the materials disclosed in response to Plaintiffs' public records
19 request, in early May, 2006, the City produced a digital copy of the 911 call
20 referenced in facts 3.14, et seq, above.
21

22 3.148 Plaintiffs have compared the released 911 recording to the recording
23 provided to other public media who obtained a copy of the 911 recording.
24

25 3.149 Plaintiffs believe that the 911 recordings provided to them in early May,
2006 is identical to copies provided to the media.

1 3.150 On or about the date of the City’s Answer, in 2009, Plaintiffs were
2 provided a partial transcript of the 911 call directly from the City of Spokane by
3 way of the City’s Answer to this Complaint. The City of Spokane’s transcript of
4 the 911 call contains a statement *not* included in the electronic version provided in
5 2006 in response to the public records act request. The missing statement
6 specifically relate to allegations set forth in paragraph 3.17, above.
7

8
9 3.151 On or about September 30, 2009, Plaintiffs advised the City of Spokane
10 that the 911 recording released in 2006 does not match the 911 transcript set forth
11 in the City’s Answer. The City did not provide any explanation for the existence of
12 two versions of the 911 recording.
13

14 3.152 Plaintiffs were led to believe that they had true and correct copies of all
15 releaseable records. For example, on or about May 30, 2006, following the its
16 initial response to Plaintiffs’ public records request, the City made the following
17 statement: “Please note, while the enclosure is complete to date, the investigation
18 is not completed.”
19

20 3.153 Notwithstanding the assurances given in May 30, 2006, on or about
21 September 24, 2009, documents filed by the United States Attorney in the related
22 case of *United States v. Thompson* show that disclosure was not complete.
23

24 3.154 Taken as a whole, the United States’s disclosures portray an aggressive
25 hands-on oversight and control by the City’s risk managers.

1 3.155 Among the documents filed by the United States is a notebook in which
2 Defendant Nicks kept contemporaneous commentary and progress notes.

3 3.156 Defendant Nicks' notebook was not provided in response to the
4 Plaintiff's 2006 public records request.

5 3.157 Defendant Nicks' notebook was not identified as an unreleased document
6 under any of the State's public records exemptions.

7 3.158 The existence of Defendant Nicks's notebook was simply not disclosed
8 to Plaintiffs as part of the City's 2006 releases.

9 3.159 Given the City's formal assurances to Plaintiffs that it had complied with
10 the State's required releases of public records, and the City's risk management's
11 hands-on oversight governing the disclosure of documents to the United States, the
12 City's failure to disclose the Nicks notebook was knowing and deliberate.

13 **FEDERAL CLAIMS FOR RELIEF**

14 **Violations of Title 42, United States Code § 1983**

15 4.1 Defendants' conduct constitutes the deprivation of Otto Zehm's
16 federally protected rights under color of law, i.e., unreasonable seizure,
17 deadly force, and in-custody homicide of Otto Zehm in violation of the
18 Fourth Amendment to the Constitution of the United States. As a result of
19 this conduct Defendants caused Otto Zehm to experience fear, great physical
20
21
22
23
24
25

1 pain during his struggle with police, and ultimately loss of his life. This claim
2 is made on behalf of the Estate of Otto Zehm.

3
4 4.2 Defendants' conduct constitutes a conspiracy to deprive Otto Zehm
5 of his federally protected rights under color of law, i.e., a plan or agreement
6 between more than one person to violate Otto Zehm and Ann Zehm's civil
7 rights, with at least one overt act in furtherance of that plan. . As a result of
8 this conduct Defendants caused Otto Zehm to experience fear, great physical
9 pain during his struggle with police, and ultimately loss of his life. This claim
10 is made on behalf of the Estate of Otto Zehm.

11
12
13 4.3 Defendants' conduct constitutes a deprivation of federally protected
14 rights under color of law, i.e., unreasonable seizure, deadly force, and resulting
15 in-custody homicide of Otto Zehm in violation of the Fourth Amendment to the
16 Constitution of the United States. As a result of this conduct, Defendants caused
17 Plaintiff Ann Zehm to suffer the loss of financial and emotional support and
18 association of her son Otto Zehm. This claim is made on behalf of Ann Zehm
19 under the Fourteenth Amendment's due process clause.

20
21
22 4.4 Defendants' conduct deprived Otto Zehm and his Estate of federal
23 constitutional and statutory privacy rights regarding his medical condition and
24 treatment.

1 4.5 Defendants deprived Otto Zehm, his Estate, and his mother important
2 property/privacy interests secured by state law regarding confidential employment,
3 medical, autopsy and police investigatory records without due process of law
4 secured by the Fourteenth Amendment.
5

6 4.6 All of Defendants actions deprived Otto Zehm, his estate, and his mother
7 of their rights to liberty, privacy, the right to petition for governmental redress of
8 grievances and due process were made either intentionally, recklessly and/or with
9 deliberate indifference subjecting defendants to liability under 42 USC § 1983
10 and/or § 1985.
11

12 4.7 Defendants' actions in depriving or seeking to interfere with the rights set
13 forth in Paragraphs 4.1 through 4.6 were substantially motivated and/or caused by
14 Defendants' retaliatory motives that sought to punish or chill the exercise of said
15 rights by Plaintiff Otto Zehm and/or his mother Ann Zehm.
16

17 4.8 Defendants' actions in violating the federal civil rights set forth in
18 Paragraphs 4.1 through 4.6 were done intentionally, maliciously, wantonly,
19 oppressively, and/or with reckless indifference subjecting the non-municipal
20 defendants to liability for punitive damages in an amount to be proven at trial.
21

22 4.9 Defendants acted with a common purpose with knowledge of what they
23 were each doing and contributed to legal injuries that are often difficult to divide
24
25

1 and Defendants are therefore jointly and severally liable for all remedies except for
2 punitive damages.

3 **STATE-BASED CLAIMS FOR RELIEF**

4
5 4.10 Defendants' conduct constitutes negligence, culminating in
6 personal injury to and wrongful death of Otto Zehm. This claim is made
7 under common law negligence; RCW 4.20.010 and -.020 (wrongful death
8 statutes); RCW 4.20.060 (special survival statute) and -.046 (general survival
9 statute); and RCW 4.24.010 (parent-child consortium statute).
10

11 4.11 Defendants' wrongful conduct caused Plaintiff Ann Zehm to suffer the
12 loss of love, affection, care, service, companionship, society, and consortium of
13 her son Otto Zehm. This claim is made on behalf of Ann Zehm.
14

15 4.12 Defendants' wrongful conduct deprived Otto Zehm and his Estate of
16 statutory privacy and dignitary rights of the deceased under RCW 68.50.105.
17

18 4.13 Defendants Nicks and City of Spokane's conduct intentionally violated
19 a lawful order of a court of competent jurisdiction pursuant to RCW 7.21 et seq.
20

21 4.14 Defendants Nicks and City of Spokane's conduct in breaching the
22 terms of the non-disclosure agreement constitutes a breach of contract.
23

24 4.15 Defendant City of Spokane's failure to provide both sets of 911
25 recordings and its failure to identify and provide Chief Nicks's notes, as

1 described in paragraphs 3.145 through 3.159, constitutes a violation of the
2 Washington State Public Records Act, RCW 42.17.250.

3
4 4.16 The State-based claims for relief are brought only against Defendant
5 City of Spokane, which is liable for all the acts of individual defendants and
6 other agents and employees acting within the scope of their duties under the
7 doctrine of *respondeat superior*.

8 **PRAYER FOR RELIEF**

9
10 Plaintiffs respectfully demands a jury trial and further, that Plaintiffs be
11 awarded:

12 5.1 Economic and non-economic damages in an amount to be proven at trial;

13
14 5.2 Punitive damages against the non-municipal Defendants to the extent
15 authorized by law in an amount to be proven at trial;

16 5.3 Plaintiffs' reasonable attorneys fees and costs, pursuant to 42 USC § 1988,
17 or as otherwise provided by law.

18
19 5.4 Daily penalties of between \$5 and \$100 per day for each day of
20 withholding of records that were responsive to plaintiffs' public records request
21 pursuant to RCW 42.17.340 as recodified at RCW 42.56.550.

22 5.5 Plaintiffs' reasonable attorneys fees and costs, pursuant to RCW 42.17.340
23 as recodified at RCW42.56.550.

24
25 5.6 For such other and further relief as the court deems just and equitable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DATED this 23rd day of October, 2009.

s/Jeffry K. Finer

Jeffry K. Finer, WSBA #14610
Breean L. Beggs WSBA #20795
CENTER FOR JUSTICE
35 W. Main Ave. Ste. #300
Spokane, WA 99201
Telephone: (509) 835-5211

1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that on October 23, 2009, I presented the foregoing Second
4 Amended Complaint to the Clerk of the Court for filing and uploading to the
5 CM/ECF system, which will send notification of such filing to the following:
6

7 Breean L. Beggs

8 Jeffry K. Finer

9

10 Howard F. Delaney

11 Rocco N. Treppiedi

12 Ellen M. O'Hara

13 Carl J. Oreskovich

14

15

16

17

18 s/Cathy Johnson
19 CENTER FOR JUSTICE
20 35 W. Main, Suite 300
21 Spokane, WA 99201
22 Telephone: (509) 835.5211
23 Fax: (509) 835.3867
24