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**MONTANA FOURTH JUDICIAL DISTRICT COURT
 MISSOULA COUNTY**

<p>PATTI JACQUES, Individually and as Personal Representative of the ESTATE OF ROSS ROBERTSON,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CITY OF MISSOULA and JOHN DOES 1-10,</p> <p>Defendants.</p>	<p>Cause No.</p> <p>COMPLAINT AND DEMAND FOR JURY TRIAL</p>
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Plaintiff, Patti Jacques, individually, and as Personal Representative of the Estate of Ross Robertson, for her Complaint against the Defendants, allege as follows:

PARTIES

1. The Estate of Ross Robertson is a plaintiff in this action and is seeking damages against the City of Missoula and its officers arising from the death of Ross Robertson.

2. Patti Jacques is the mother of Ross Robertson, who is seeking damages arising from the wrongful death of her son.

3. The City of Missoula is liable for the death of Ross Robertson because he was killed by City of Missoula employees or officers who were acting within the course and scope of their employment.

4. John Does 1-10 are officers or other employees of the City of Missoula or its police department or fire department, who will be substituted into this action when their identities are provided by the City. All John Does were acting within the course and scope of their employment at all times pertinent to this action.

INTRODUCTION

5. This is an action arising under 42 U.S.C. § 1983, Mont. Code Ann. § 27-1-501, Mont. Code Ann. § 27-1-513, the Fourth and Fourteenth Amendments to the United State Constitution, the Montana Constitution, and the common law, for damages arising from the death of Ross Robertson who died in the custody of the City of Missoula on May 29, 2024.

6. Under the law governing this action, the Estate is authorized to pursue claims for survivorship pursuant to Section 27-1-501, which include the pain, suffering, and emotional distress suffered by Robertson in the interval between when he was detained and his death.

7. The Estate is also authorized to pursue Patti's claims for wrongful death

pursuant to Section 27-1-513, which include the loss of her son's love, affection, protection, support, services, companionship, care, and society.

8. The Estate is also authorized to pursue claims for damages arising under Section 1983 for the violation of Robertson's constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution.

ALLEGATIONS COMMON TO ALL COUNTS

9. The Plaintiffs allege the preceding paragraphs.

10. On May 29, 2024, Robertson was residing in a mobile home owned by his mother, Patti.

11. Upon information and belief, a candle that was burning inside Robertson's home accidentally ignited some other items in his home, prompting Robertson to throw the burning material out of his home.

12. The City of Missoula responded to reports of the burning material by sending representatives from the fire department, police department, or both.

13. Although Robertson had committed no crime, representatives of the City forcibly detained Robertson.

14. During the time Robertson was being detained, representatives of the City unnecessarily used deadly force on Robertson.

15. During the time Robertson was detained, representatives of the City noticed that Robertson had become unresponsive due to their use of deadly force.

16. Representatives of the City attempted to revive Robertson, but they were unable to do so.

17. Robertson died as a result of the City's representatives use of deadly force.

COUNT I—SECTION 1983—JOHN DOE DEFENDANTS

18. The Plaintiffs allege the preceding paragraphs.

19. Under 42 U.S.C. § 1983, any agent of the government who deprives a person of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the injured party.

20. These rights include the right to be free from unreasonable searches and seizures, including a seizure in the form of the use of force during an encounter with law enforcement.

21. Law enforcement officers are liable for violation of a person's constitutional rights if the right was "clearly established," at the time of the incident.

22. A right is "clearly established," if it is sufficiently clear that every reasonable official would have understood that what she is doing violates the person's rights.

23. The John Doe Defendants violated Robertson's clearly established right to be free from excessive use of force during their interaction with Robertson.

24. Robertson posed no threat of death or serious bodily injury to any John Doe Defendant or anyone else.

25. Robertson did not threaten any John Doe Defendant or anyone else prior to

the time he was detained and killed by the John Doe Defendants.

26. Robertson was not in the possession of any weapon at the time he was detained and killed by the John Doe Defendants.

27. Robertson's right to be free from the use of deadly force under these circumstances was clearly established at the time of his detention and death.

28. The City of Missoula is liable to the Plaintiffs pursuant to Section 1983 for all of the harm suffered by the Plaintiffs as a result of Robertson's death.

29. The City of Missoula is obligated to defend and indemnify the John Doe Defendants for the Plaintiffs' claims.

COUNT II—ASSAULT AND BATTERY—CITY OF MISSOULA

30. The Plaintiffs allege the preceding paragraphs.

31. Under Montana law, the tort of battery is, "an intentional contact by one person with the person of another which is harmful or offensive."

32. The tort of assault is, "any intentional threat of harmful or offensive contact with another by force under circumstances which create a well-founded fear of such contact, coupled with the apparent present ability to carry out the threat."

33. The City is liable for the conduct of its officers which is performed during the course and scope of their employment pursuant to Mont. Code Ann. § 2-9-305.

34. The City's employees assaulted and battered Robertson, causing him to suffer serious injury and eventual death while he was being detained.

35. The City is liable for all harm arising from the John Doe Defendants' assault and battery of Robertson.

COUNT III—NEGLIGENCE—CITY OF MISSOULA

36. The Plaintiffs allege the preceding paragraphs.

37. The City's employees owed a duty to Robertson to exercise the care that a reasonable officer with similar skill, training, and experience would under the same or similar circumstances.

38. A reasonable officer would have recognized that Robertson--who had not committed any crime and whose only mistake was accidentally igniting some of his own items inside his home and then throwing those items outside of his home in an attempt to preserve his home and other belongings--did not pose any threat of death or serious bodily injury against any officer or member of the public.

39. A reasonable officer would have recognized that Robertson was not engaged in any conduct that would justify the use of deadly force.

40. The City's employees' use of deadly force while detaining Robertson was unreasonable and unjustified.

41. The Plaintiffs were harmed by the City's employees' use of deadly force during the detention of Robertson.

42. The City is required to indemnify its employees for their conduct performed during the course and scope of their employment.

43. The City is liable for its employees' negligent conduct which caused the death of Robertson.

COUNT IV—INFLECTION OF EMOTIONAL DISTRESS

44. The Plaintiffs allege the preceding paragraphs.

45. Under Montana law, the John Doe Defendants are liable to the Plaintiffs for either intentionally or negligently inflicting severe emotional distress upon the Plaintiffs by killing Robertson while he was in their custody.

46. Robertson suffered severe emotional distress in the time between the moment he was first detained and his eventual death.

47. Patti suffered severe emotional distress which has been accompanied by physical manifestations of her trauma.

48. The Defendants are liable for negligent and/or intentional infliction of emotional distress in an amount to be proven at trial.

COUNT V—WRONGFUL DEATH AND SURVIVORSHIP

49. The Plaintiffs allege the preceding paragraphs.

50. The Plaintiffs are alternatively entitled to pursue the damages available to them for wrongful death and survivorship under Mont. Code Ann. §§ 27-1-501 and 513.

51. Robertson survived the initial use of deadly force by the City's employees for an appreciable amount of time.

52. As a result, the Estate is entitled to pursue survivorship damages arising from Robertson's death, which include compensation for physical and emotional pain, suffering, and fear of death.

53. In addition, the Estate is entitled to pursue wrongful death damages for the severe emotional distress Patti suffered from the loss of her son, which were accompanied by physical manifestations of her trauma.

54. The Defendants are liable to the Estate for wrongful death and survivorship damages in an amount to be determined at trial.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request the following relief:

- A. An award of damages to compensate for the harm alleged herein;
- B. An award of attorney's fees as allowed under Montana law and federal law;
- and
- C. Such further relief as the Court deems equitable.

DEMAND FOR JURY TRIAL

Jury trial is hereby demanded on all counts so triable.

DATED this 7th day of January, 2025.

SIEFERT & WAGNER, PLLC

By: /s/ Nathan G. Wagner

Nathan G. Wagner

Attorney for Plaintiffs