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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JAMES P. CHASSE, JR.; et al.,

Case No. CV-07-0189-HU

Plaintiffs,

PLAINTIFFS' RESPONSE AND
STATEMENT OF MATERIAL FACTS IN
OPPOSITION TO DEFENDANTS
HUMPHREYS AND NICE'S
STATEMENTS OF FACTS

vs.

CHRISTOPHER HUMPHREYS; et al.,

Defendants.

Plaintiffs submit the following in opposition to Defendants Humphreys and Nice's
statement of facts:

- A. Facts in Humphreys and Nice's SF Which Plaintiffs Accept:** ¶¶ 1-2, 4, 11, and 15-16.
- B. Facts in Humphreys and Nice's SF Which Plaintiffs Deny, at Least in Part:** ¶¶ 3, 5-10, 12-14, and 17.
- C. Facts in Humphreys and Nice's SF Which Plaintiffs Deny Being Material, at Least in Part:** ¶ 5.

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D. Additional Material Facts Placing Humphreys and Nice's SF in Dispute:

1. On 9/17/06, Humphreys and Burton were assigned to uniform patrol for the Transit Police Div. ("TPD") in the Tri-Met area in downtown Portland. Plaintiffs' Exhibit^{1, 2} ("PE") 4, pp 2-3.³
2. The PPB's foot pursuit policy ("directive") authorizes and directs PPB officers, under certain circumstances, to engage in foot pursuits and to use a "knock-down" technique to take someone to the ground and physically terminate a foot pursuit. PE 1.
3. Officers must follow the PPB's policy directives, such as foot pursuits. PE 6, pp 149-150.
4. Based upon his training and experience, Nice *claims* he is pretty capable of identifying people that may be suffering from mental illness. PE 9, pp 30-32.
5. Prior to 9/17/06, Humphreys and Nice were trained in first aid and certified in CPR, and Humphreys is also a first responder. PE 6, pp 101-102; PE 9, pp 51-52; *see* PE 6us, p 276, PE 49us, PE 50us, .
6. At 5:09 p.m.,⁴ Humphreys and Burton parked at NW 18th & Everett to assist Nice with an intoxicated person who had stumbled and fallen. *Id.*, pp 3-4; PE 7, p 3.
7. Humphreys saw Chasse standing 10 feet to the north of NW 18th & Everett, somewhat bent

¹Unless otherwise indicated, all referenced "Pls' Exhs" in each of plaintiffs' statements of facts are attached to the two declarations of plaintiffs' counsel filed in opposition to Defendants Humphreys and Nice's motion for summary judgment (one under seal and one not).

²Plaintiffs do not concede the accuracy or truthfulness of any of the statements made by the defendants, or their agents or employees, or any other witnesses referenced in each of plaintiffs' statements of facts.

³When necessary for context in each of plaintiffs' statements of facts, particular lines of deposition testimony or interviews are cited. Otherwise, the citation to the page only is intended to include the entire page, with the exception of any portions that have been redacted (by being lined out).

⁴Unless otherwise indicated, all referenced times herein are approximate times taken from a PPB homicide detectives timeline and a jail surveillance tape. PEs 13, 15, 83.

over, appearing “disheveled” and “transient,” and observed him for about 5 secs. Chasse

“... was really strange, he was doing...like a stepping side to side movement with his feet. Stiffed legged, very rhythmic, side to side movement with his feet ... like if somebody, if the ground was hot and they were trying to lift their feet up... thought [he] is probably an intoxicated subject waitin’ for [a] bus...”

PE 4, pp 4-5; *see* PE 3*us*, pp 2-3. Chasse reminded Humphreys of Tom Hanks in his movie role as autistic, or at least low intelligence, Forrest Gump. PE 5*us*, p 10; PE 67. According to Humphreys, when he looked back at Chasse 30 seconds or so later,

“...[h]is head [was] kinda bent down and he’s still doin’ this side to side straight leg...his upper body really wasn’t moving so much but it was this straight leg like his lower body was just rocking from side to side but his feet were actually coming up off the ground...”

PE 4, p 5; *see* PE 3*us*, p 3. Then, according to Humphreys, after Chasse turned and saw him, he

“went straight and stopped...[then] very rhythmic stepping back and forth and...his whole body stopped and then he spun and then this rapid walk across the street ... heading eastbound [on Everett]...”

Humphreys *claims* he thought Chasse was “gonna get hit” but then realized “he timed it with the light” when he crossed eastbound across the intersection on Everett. PE 4, p 7; *see* PE 3*us*, pp 2, 3. Humphreys believed Chasse walked rapidly away because “he probably didn’t want police contact.” PE 4, p 7. Humphreys told Burton and Nice that if they “get a chance” to “stop and talk to that guy,” they probably should. *Id.*, p 7; *see* PE 3*us*, p 4. They had so little concern about Chasse that they decided to go get some food. Exh B (City’s submissions [“subs”]), p 207.

8. Humphreys admits that “rhythmic shuffling,” a rapid walk away, and the fear of being around people, are all consistent with mental illness. *Id.*, p 204, ln 22 - p 205, ln 12; *see* PE 81*us*. He also admits that people suffering from mental illness often evidence the same kind of behavior as people who are under the influence of drugs, including having seizures, being

incoherent or unintelligible, acting in strange ways, and having abnormal strength. PE 6, p 98, lns 9-13 - p 99. In Humphreys' official "Use of Force Report" on Chasse, he checked the box for "mental illness." PE 29.

9. When Burton observed Chasse's "peculiar behavior", *i.e.*, his shuffling, gesturing, maybe talking to no one...by himself on a corner," he thought he might be "intoxicated"⁵ or "mentally ill." PE 10, p 41; *see* PE 3*us*, pp 2-3. Burton says Chasse looked "disheveled," like "he'd been wearing the same clothes for a while," and "maybe hadn't bathed for a while." Exh A (City subs), p 75, lns 13-24. In Burton's official "Hazard Report" on Chasse, he checked "mental," and not drugs or intoxication. PE 70.

10. After Nice let the intoxicated person walk home, Humphreys and Nice talked for about 30 secs. about "other stuff and...were in no hurry." PE 4, pp 4, 8. At 5:16 p.m., Humphreys and Burton drove away without lights or siren on, eastbound on NW Everett, to "look for this guy ... sort of a casual search...gonna stop him just to chat him up...see what he had to say." PE 10, p 8.

11. Humphreys, 6' and 2" and 240 lbs., with all of his gear on weighed about 280 lbs. PE 6, pp 184-186. Chasse, "of extremely thin build" at 5' 10" and 145 lbs (PE 21, pp 3-4), prior to 9/17/06 was in good physical health. *Id.*, pp 11-13.

12. An eyewitnesses saw Chasse standing on the sidewalk, mid-block on NW 13th, with a backpack on his shoulder, a bag of some sort in one of his hands, and his right hand above his head by the tree where he was standing. PE 42, p 49. "It looked like he was...looking for money inside the coin meter." *Id.*, p 63, lns 1-8). Another confirms that Chasse was "just standing

⁵There was no drug paraphernalia on or about Chasse (PE 6, p 84), and the toxicology results were negative as to alcohol or any drugs in Chasse's system (PE 17).

there,” maybe with a shopping bag. PE 37, p 11.

13. Humphreys and Burton drove east on NW Everett and spotted Chasse between NW 13th and NW 14th. Humphreys saw Chasse standing on the sidewalk, hunched over by a tree, with his back to the street, his backpack down by his foot, and with his hands, which Humphreys could not see (PE 6, p 216), in front of him by his waistband. Humphreys thought he was possibly “pissin” in his pants – “I thought ... he couldn’t get his penis out of his pants or something, he just urinated on himself right there.”^{6,7} PE 4, p 9; *see* PE 6, p 222; *see* PE 3*us*, p 4. The sidewalk where Chasse was standing was not wet (PE 6, p 250), and Chasse’s jeans were completely buttoned. PE 21, p 3.

14. Chasse, apparently unaware of the police, started walking eastbound on the sidewalk, with a “stiffed legged gait.” PE 4, p 10. Humphreys *claims* Chasse’s pants were wet and thought “he just recently pee’d on himself” but could see no exposed body parts.⁸ PE 6, p 222. Humphreys did not know how or when he had *allegedly* gotten wet. *Id.*, p 215. Even if he urinated in his pants or on himself, Humphreys concedes it was not causing public disorder or alarm. *Id.* Then, according to Humphreys, Burton “either yells hey or whistles or says hey you” to get his attention (PE 4, pp 9-10; PE 10, pp 8-9; PE 12, pp 153-154; *see* PE 3*us*, p 5) and Chasse:

“turns his upper body and looks over his shoulder...sees me and we make this direct eye contact as he’s lookin’ over his right shoulder...and [after making] eye contact...the only way I can describe it is just absolute sheer terror. On his face,

⁶Humphreys could see nothing to suggest drug or alcohol use by Chasse, and there was none. PE 6, p 216; PE 17 (toxicology results).

⁷PE 28 is a photo of Humphreys taken during his deposition wherein he is demonstrating the position he *claims* Chasse was in when he saw him standing with his back to Humphreys.

⁸There is no evidence that Nice or Burton observed anything that gave them a reason to suspect Chasse was urinating.

his eyes go wide and...when he sees me, it's just sheer terror...And he starts running...going eastbound." PE 4, p 11; *see* PE 3*us*, pp 2, 5; PE 6, pp 217-218.

15. Immediately, Humphreys started to pursue Chasse. Burton does not recall Humphreys or Nice saying anything to Chasse during the pursuit. PE 12, pp 157, 165.

16. Nice stopped and got out of his car, parallel to Chasse who Nice *claims* was running eastbound on the sidewalk. Chasse slowed when Nice turned to cut him off him. PE 7, pp 3-4.

17. Eyewitnesses state: Chasse wasn't really running, but galloping and "going more up and down as he went forward" and screaming like "Ewrrrrrr," something like a "Wookiee," a character from the movie Star Wars, and looked "panic-stricken" (PE 42, pp 63-64); he never ran at all (PE 48); and with the officers behind him, he was "yelling and it sounded to me as though he was saying don't kill me, don't kill me, don't kill me....[in] a high-pitched kind of wailing [and] immediately got our attention" (PE 36, pp 16-18).

18. Eyewitnesses describe Chasse hitting the concrete: landing on "the front part of his body" (*id.*, p 85, ln 24 - p 86); the PPB officer who tackled Chasse (PE 37, p 14; PE 43, pp 25-26) "landed directly on top of him" and Chasse "ended up face down" (PE 37, pp 15-16), landing on his back (PE 42, pp 15, 50); "pretty violent and there was excessive force used to bring him down" (PE 40, p 39); "he wasn't very big and they took him down...very hard" (*id.*, p 40, lns 19-20; PE 41, p 47; PE 35, p 53, ln 18).

19. Even Nice told the homicide detectives that Humphreys "tackled" Chasse," using a "straight bear hug type tackle," hitting him in the "mid-chest, mid-back" area, and taking him to the pavement. PE 7, pp 4, 19; *see* PE 3*us*, p 6. Nice *claims* he saw Humphreys land "[k]ind of half on his [Chasse's] right side and half on the ground." PE 7, p 19; *see* PE 3*us*, p 6.

20. Minutes later at the jail, Humphreys told County deputies he “tackled” Chasse and took him down “hard,” while Burton demonstrated Humphreys’ bear hug type tackle of Chasse and imitated Chasse’s animalistic noises and flailing arms. PE 13 (18:13:00-18:15:00); PE 14, ¶¶ 2-4.

21. To PPB homicide detectives three days later, Humphreys denied tackling or landing on Chasse,⁹ instead *claiming* he ran eastbound on the sidewalk for about 10-15 feet and that

“as I’m kinda matching his speed I gave him a really hard shove with my forearms on his back...I think maybe he took one step after I hit him and he went down and I went right past him about one step...and then I just went boom, down right on the ground...right over and past him.”

PE 4, p 12; PE 6, p 219, lns 9-11. Humphreys gave no thought to any other option than taking Chasse down to the concrete. *Id.*, p 219, ln 12 - p 220. He told the detectives he rolled over, going past Chasse and did not land on him. PE 4, p 14.

22. Chasse struck the pavement face-front on his stomach and chest. PE 12, p 162; *see also* PE 8us, p 12; PE 19us, pp 1037, 1044.

23. In response to being tackled, taken down “hard,” and being injured, Chasse was obviously in pain as the officers were trying to handcuff him – a “lot of screaming by Chasse” and “ow, ow, ow, and no, no, no...just saying that over and over” as his “arms twisted behind his back” by the officers. PE 22, pp 179-180; PE 40, p 22; *see also* PE 13.

24. Eyewitnesses state: “because of the look on his face and the noises he was making...grunts and noises,” it was obvious Chasse was not “understanding anything” the officers were saying to him when he was on the concrete; he “was using his voice to imply that he wanted it to stop”

⁹Humphreys has been interviewed more recently by a PPB homicide detective. He admits “tackling” in police parlance means wrapping someone up but again denies tackling Chasse, *claiming* whatever he may have said in the jail about tackling Chasse was just banter. PEs 86, 87.

during the time the officers were struggling with him; he wasn't resisting – “resisting isn't the right word either...he's not on the same planet. It's not connecting...what they want him to do....he seems confused” (PE 33, pp 15, 17); he was “crying for help” and screaming before he was tasered; his screaming “was pitiful,” “clearly frightened” and “not dangerous” (PE 35, pp 18-19, 27); before he was handcuffed, he was “yelling mercy, mercy, mercy” and “screaming” in a “really loud guttural...it just seemed animalistic” (PE 38, p 22); and once on the concrete, Chasse's screaming become “more of a whimpering, moaning, distressful sound” with him repeatedly saying “no” and “ow” and “it hurts” (PE 40, pp 41-42, 77).

25. Eyewitnesses state: Chasse's screaming and the way he ran indicated he was “mentally challenged” or “mentally retarded” (PE 42, pp 18-19, 63, lns 9-23); Chasse's “fear” indicated he had a disability; “assumed he might have been homeless or had maybe a bipolar or some type of a problem like that” (PE 44, p 37); Chasse “seemed really frightened,” in “an altered state,” which “could have been ... from a mental state” (PE 35, pp 57-58); and “he's not on the same planet. It's not connecting...what they want him to do....he seems confused” (PE 33, p 17).

26. Eyewitnesses describe the force used after Chasse was down: “manhandling him” (*id.*, p 21, ln 20); “I think he kicked [Chasse] more than once” and “[t]he kick I saw most vividly was in the side,” with the officer standing “in the position one might get in to for a kick,” and it “alarmed [the eyewitness] because it might be injurious” (*id.*, pp 20-22, ln 1, pp 33-34); he “didn't seem to understand anything,” making “grunts and groans...maybe there was a no and a stop...using his voice to imply that he wanted it to stop...wasn't “resisting” (*id.*, pp 15-17); his only communication was “primitive” (*id.*, p 16); “two or three kicks to the mid body, the back or mid body rib cage area” and “a slap up side the head” (PE 35, p 13); “excessive” use of force; he

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seemed “frightened...not dangerous” (*id.*, p 27); he “hit the pavement hard” with his arms twisted behind him,...”slapped...kicked” (*id.*, p 53); “hope this isn’t the next Rodney King episode...seemed so brutal [and] so extreme...everyone...in shock at how this was all unfolding” (PE 36, pp 45-46); with the “manhandling [by] three big burly officers” when he only “appeared to...be unbalanced littler guy, little wiry guy or unstable at any rate” (*id.*, pp 46-47), and force used “seemed excessive,” especially because “he seemed like he was either mentally unstable or on drugs” and “obviously...terrified...like a scared animal” (*id.*, pp 30, 32); lifted up by the officers 2-3 feet into the air and slammed onto the concrete on his back about 2-3 times (PE 41, pp 53-54, 56); a red spot on Chasse’s face, probably from a kick by one of the officers (*id.*, p 58), and “extreme force was used” by the officer who had Chasse’ left wrist in a wrist lock, including punching him in the face and the chest, several times (at least 3), and kicking him more than once with his boot in the back of the head and in the chest, which made him “more frightened” (*id.*, pp 60-65); the kick to the chest was “more like a stomp” (*id.*, p 66); “fists being thrown, fisticuffs, as well as kicking” and sounds of open-hand slaps which caused a large red gash and a large bruise on one of his arms (PE 43, pp 45, 50); 2 of the fists thrown by the younger officer in the blue uniform (Humphreys) land between the “waist and neck” and that officer also kicked him at least three times (*id.*, pp 42-44), and, while being struck, he was “crying,” using the word “mercy” and continuing to say “no, no, no” (*id.*, p 47); the officer who tackled him had his knees on him and was sitting on him (PE 42, pp 53-54, lns 1-5); an officer had his foot on his back (*id.*, p 54, lns 22-24); after being struck repeatedly by that officer (probably Humphreys) he became even “more frightened” and had a “frightened look in his eye” (PE 41, pp 63, 68); one officer “was kneeling him in the back” and another officer was using his knees to restrain him with

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“obviously pressure and putting their whole bodies behind” it (PE 40, pp 25-26, 28); one officer said don’t bite me and then punched him, probably in the torso, 3 different times (*id.*, pp 26, 87); “he was fighting the restraint because he was in pain...you could see him trying to get away from the pressure of it” and “trying to curl into the fetal position” and “to bring his knees to his chest” (*id.*, pp 29, 31); “pretty violent...excessive force...appeared they were hurting him” (*id.*, p 39); “[h]e appeared to try to crawl into that fetal position...trying to pull himself in kind of almost a protective mode” (*id.*, p 42); even after he stopped writhing, the officers “continued to apply pressure to his back with their knees” (*id.*, p 63); “his arms were continuing to be wrenched behind his back...that was the part that I thought was really excessive, too...he was not moving his arms at all because they were...so pulled behind...and up...a very unnatural position for your arm to be in” (*id.*, p 64); and, right after he is tasered, he becomes very still and “goes unconscious” (PE 41, pp 72-73).¹⁰

27. The officers admit to virtually no use of force after Chasse was down: Humphreys saw Nice strike Chasse with a closed fist in the shoulder/head area (PE 4, p 15); Humphreys admits hitting Chasse in the face two or three strikes with his forearm, fist and an open palm (*id.*, p 16); Nice saw Humphreys strike Chasse with a closed fist at least once, after Nice *claims* Chasse tried to bite Humphreys (PE 9, p 240); Nice was standing over Chasse and in a good position to deliver a hard blow to Chasse (*id.*, p 256, lns 3-6); Nice admits one or two strikes, including a kick of Chasse with his foot, and placing a knee onto Chasse’s scapula area (Exh D [City subs], p 215, lns 16-17, p 216, lns 5-14); and Burton repeatedly tasered Chasse (Burton Decl [County and

¹⁰After a minute or so, Chasse was handcuffed behind his back with his feet hobbled and tied to his hands (maximum restraints). *See* PE 13.

Burton subs], ¶¶ 17-19.

28. Chasse suffered massive physical injuries and trauma, including:

a. Multiple contusions and abrasions around his eyes, mouth, jaw and nose. A large contusion on the back of his head. Contusions over his chest, back, abdomen and right hip. Internal hemorrhaging of the posterior left and right chest wall. PE 21, pp 5-11; PEs 23-25 (photos of Chasse's bruised, contused and lacerated face at time of autopsy).

b. Multiple fractures of his ribs, with associated hemorrhaging, including fractures to 11 of 12 ribs in his posterior left chest wall, many of which were multiple and comminuted. *Id.*, p 10.

c. Perforation and penetration of his left lung posteriorly by the comminuted posterior rib fractures. Contusion and hemorrhaging into the soft tissue of his left and right lung and chest wall. *Id.*

d. The fractures to his ribs caused intense pain.¹¹ PE 13; PE 22, pp 179-180.

29. According to Medical Examiner (Dr.) Karen Gunson, excluding the blows which broke Chasse's ribs, he was struck as many as 46 separate times, including 6 times in the head and 19 times in the torso. PE 21, pp 5-9; PE 22, pp 94-96, 98-99, 115-117. Since there is no evidence that Chasse landed on his back when he was taken down to the concrete, and if he was struck in the left side, Gunson opines it is more probable that his posterior left ribs were broken by a violent kick or knee drop rather than during the fall. *Id.*, pp 136, 140, 143, lns 1-11.

30. After being handcuffed, eyewitnesses state: before the strap (hobble) was put on his legs, one eyewitness describes a "hyped up" Portland police officer, the one who tackled Chasse,

¹¹At trial, plaintiffs' medical evidence will establish that Chasse also suffered multiple fractures of his distal left clavicle (shoulder) which caused intense pain.

pointing at Chasse, telling him to stop (Chasse was squirming), and poked him repeatedly in the shoulder or head (PE 42, pp 20-21, 66); then “he stopped moving, stopped talking, and wasn’t conscious” (PE 35, p 13, ln 22- p 14); “he was unconscious for four or five minutes” following the handcuffing and until the paramedics arrived....[b]ecause he was unconscious when they arrived” (*id.*, p 20, ln 25 - p 22); “he looked perfectly still...I didn’t see him breathing” (PE 33, p 22); “[h]e was just kind of laying like a rag doll...no movement, no nothing...unresponsive” (PE 38, p 48, lns 11-13); “he was lying on the ground and then it was just like life just went out of him. I didn’t know if he was sick or he had been hurt and was unconscious, but he was just still” (*id.*, p 48); and Chasse’s forehead “quite gray and blue while the EMTs and officers are circled around him with no response” (PE 43, pp 53-54). Even Humphreys admits that after the officers got off the top of Chasse, he stopped breathing or was unconscious for 30 secs. to a min. PE 6, p 279, lns 2-11. Burton wasn’t sure if Chasse was breathing or how long he might not have been, but it could have been as long as 1 ½ mins. PE 12, p 207, lns 11-25.

31. None of the officers asked Chasse any questions about his medical condition or provided him any medical assistance, such as CPR, at NW 13th. *Id.*, pp 37-38, p 85, lns 4-6, p 86, ln 15 - p 92, pp 207-208.

32. Shortly before 5:23 p.m., Nice made a Medical Code-3 request for emergency medical assistance stating Chasse was “unconscious.” PE 55, p 2. By 5:26 p.m., responding to a “UN1” call regarding a “life threatening emergency” (PE 66), or someone who is unconscious or not breathing, the paramedics along with Portland firefighters/paramedics had arrived. PE 61, p 35;

PE 65; Hergert Decl,¹² ¶ 3.

33. Hergert was told by Nice when she arrived and asked if he wanted Chasse transported, “No – If the patient’s vital signs are okay, he is going to jail.” Hergert Decl, ¶ 6; *see* PE 19*us*, p 1045; Hergert Decl, ¶ 5 (just “check for life threatening vital signs”); *see* PE 76*us*, p 1019.

34. Hergert was not told by the officers how long Chasse had been unconscious or if he had stopped breathing even though dispatched for that reason. PE 61, pp 21-22, 54, lns 7-18. The story Hergert *claims she* got when she asked Nice what happened did not “suggest he had stopped breathing” (*id.*, pp 23-24); Nice only told her that “the patient had run from police and when they caught him he continued to struggle until he suddenly stopped fighting” (Hergert Decl, ¶ 6) and he “went quiet.” Stucker was told by Humphreys that “they had taken him down to the ground” and “they tried to use the Taser.” Stucker Decl, ¶ 10; *see* PE 19*us*, pp 1046, 1047; PE 62, pp 152-153. Stucker was also told there was a chase and a tackle or a takedown – the officer had “grabbed him...around his chest” and took him down controlled, kind of pulling him down to the ground. PE 62, p 65, ln 22 - p 66, p 150. According to what Stucker was told, “there would be no mechanism for there to have been any injury to his chest” because he was told by Humphreys that it was a “controlled takedown” where “nobody landed on [Chasse].” As Humphreys “described it to me it didn’t sound to be forceful.” *Id.*, pp 141-142. Stucker also was told the officer taking Chasse down landed on his right shoulder. *Id.*, pp 152-153.

35. After the arrival of the paramedics: Humphreys publicly and untruthfully announced for paramedics and eyewitnesses to hear that he had found drugs belonging to Chasse when

¹²“Herg Decl” and “Stucker Decl” refer to AMR Paramedic Hergert’s and AMR Paramedic Stucker’s respective declarations filed by the AMR defendants in support of their motion for summary judgment.

Humphreys knew what he had found and *bagged* as evidence was not “two pebbles of crack and was actually bread crumbs. PE 6, p 97 - p 98, ln 8, p 256 - p 257. As described by eyewitnesses, Humphreys yelled, “It looks like crack, Sarge.” PE 42, pp 26, 56-57. Nice also *claims* Burton showed him a “drug bindle” which Burton told him he had found. PE 9, pp 132-134. According to Burton, what Humphreys found was nothing more than bread crumbs and denies ever seeing a “drug bindle” or showing Nice anything like that. PE 12, p 82, lns 2-9, pp 196-197, 201. An eyewitness saw Humphreys remove a “piece of bread” from Chasse’s backpack. PE 43, p 70. Humphreys later admitted in an MDT message that what he found “wasn’t rock.” PE 69, p 3.

36. While the paramedics were on scene, several eyewitnesses initially describe Chasse’s condition as: unconscious for a total of 4-5 mins., including at least a few mins. after the paramedics arrived (PE 35, pp 20-22; PE 41, p 82); the paramedics didn’t do anything for a few mins., apparently “waiting until he woke up” (PE 35, p 22); when the paramedics first arrived, “he looked still like he was unconscious,” making no movements at all, and in “the very same state of stillness” (PE 36, pp 55, 57); when approached by Hergert, he went “limp” and began “to change color...with the color draining from [his hands]” and “[a]fter about two to three minutes they were “quite blue gray,” during which time the paramedics and officers were circled around Chasse doing nothing (PE 43, pp 52-54); there were signs of his breathing having stopped, discoloration of his skin, and no movement by him (*id.*, p 99); there was no rise or fall of Chasse’s chest or back (*id.*, p 107); “he was pale ... looked ill....may have been bleeding from the mouth” (PE 35, p 47); he was lying on the ground “passed out” with “blood on the ground ... right underneath his face, like he was laying in it,” and “was unconscious,” with his visible eye closed, “still” with “no movement,” didn’t seem to be breathing because he couldn’t see his chest

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move, and his skin “looked pretty pale” (PE 39, pp 23-25, 56, 66); during the time Chasse looked dead, a PPB officer nudged Chasse with his foot (*id.*, p 72); when the officer nudged him “to see if he was dead or alive,” Chasse “kind of squirmed and kind of yelled like he was scared with a ‘wild cry’” (PE 44, pp 19, 23); the paramedics and officers acted like they were “just hanging out like they were on lunch break” (*id.*, p 21); “I didn’t see anyone attending to him....he was just lying there and they were kind of milling” (PE 32, pp 24-25, 37); the people standing around didn’t appear to be watching him (*id.*, p 37); initially he “did not appear to be moving or breathing;” “seemed like he was passed out or unconscious” (*id.*, pp 49, 51); wasn’t breathing for about two mins. while an officer stood by and did nothing (PE 41, p 104); he was not moving for about three mins., and some of that time was after the paramedics arrived (*id.*, p 82); no movement whatsoever for quite awhile; he looked “dead” as opposed to just being unconscious (PE 34, p 23, lns 6-23); and his skin changed color while the “EMTs and the officers...[we]re circled around him” with no reaction, other than officers standing and looking “tall and proud”(PE 43, pp 53-54, 95; *see* PE 26 [photo of everyone standing around Chasse in a circle]).

37. Eyewitnesses further describe: he was limp for two to four minutes, after which “[h]e reanimate[d] slowly, fingers first, color in fingers first“ and became vocal immediately saying “help me, help me;” while he was looking at Hergert, who is kneeling next to him at the time and makes eye contact with him; when she stands up to leave, “he screams mightily for her don’t leave, don’t leave” and “there was a great need in his voice” (PE 43, pp 54-57, 85); after a while [he] kind of came to and started screaming...It sounded like he was saying please help me ... loud and guttural...like he was in extraordinary pain...very animalistic” (PE 32, p 26); Chasse said something like “please help me” more than once (*id.*, p 50); he “was obviously in great distress”

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and “fighting the restraint because he was in pain” (PE 40, p 29); after a while, he moaned in a “[l]oud, uncomfortable” way (PE 34, pp 22-23, ln 2); the eyewitness wondered “once he was still moving later on,...why weren’t they treating him” (*id.*, p 25); the people who stood around did not appear to be watching Chasse even though he said “please help me” more than once (PE 32, pp 37, 50); in reaction to the contact from the ambulance people, another eyewitness states “he was moaning a lot and he was apparently...in great distress...he sounded like he was hurt...when we saw him go down we thought he had hit his head. We didn’t know if he had a concussion. I was sure his arm was dislocated because they had it so wrenched behind his back. So I thought that’s where the pain was coming from” (PE 40, p 35); surprised he went with the police because “to my eye, he was hurt” (*id.*, pp 38-39); Chasse asked Hergert what’s going on, what’s happening, to which the paramedic did not respond (PE 41, pp 84-85); later, his chest started moving (rise and fall with respirations), he became conscious, was upset and was yelling something “garbled” (PE 39, pp 29-30); he was “kind of wailing...almost kind of crying” (PE 36, p 37); “it surprised me that...not more attention was being given or that there wasn’t something wrong with him that required attention” (*id.*, p 28, lns 4-10); “they were spending more time talking with each other than to him” (*id.*, p 28, ln 18 - p 29, ln 1); and when Hergert started to walk away from Chasse, “Chasse started to scream, Don’t leave me, don’t leave me. No, no, don’t leave me”...to which there was no response and right after that he was picked up by the police and taken away (PE 41, pp 87-88); Chasse yelled “don’t leave me” (PE 43, p 85 “very” surprised that the paramedics left and the police took him away because “he wasn’t walking away so...thought he must surely need more attention than just being taken to jail...were all surprised by that” (PE 36, pp 33-34); “he just didn’t seem to be in good shape...either mentally, physically”

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(*id.*, p 34, lns 15-18); “I was surprised that...he was taken to jail instead of the hospital” (PE 38, pp 34-35); he should have been given medical treatment because he was “beaten and bleeding” (PE 43, pp 115-116); when he woke up, he seemed to be in a lot of pain when he was “squealing,” and “I was surprised...that the ambulance seemed not to get involved more...if he’s in that kind of shape where he can’t stand him up and put him in the car, why didn’t he go in the ambulance?” (PE 45, pp 22, 29-30); and “he had to be hurt to be laying in the street like that and not to move. I thought he was dead...the gurney should have been brought down,” and “he should have been transported to a hospital” (PE 44, pp 43-44).

38. Hergert was told by Nice to give Humphreys the “refusal form” to sign.” PE 61, pp 249-250; PE 31. No PPB officer has signed or been asked to sign an “Info Form” like Humphreys did. PE 59, pp 56-57.

39. While the officers and paramedics stood around Chasse doing nothing for him (PE 26), Humphreys spoke by phone with one of the TPD supervisors, Gresham Police Dept. Sgt. O’Keeffe (PE 6, pp 48-49). During the phone call, Humphreys must have told the sergeant that they were okay and Chasse was in bad shape, because minutes later in a MDT message to Humphreys and Burton, O’Keeffe said – “GLAD U R OK N HE ISNT.” PE 69, p 4. None of the officers sent a text message telling O’Keeffe that Chasse was “OK.” PE 83, ¶ 8.

40. Stucker saw Chasse dragged before being fully picked up, during which time Chasse started to scream. PE 62, p 158, ln 24 - p 159. Stucker remembers Chasse being relatively calm before the officers lifted Chasse up by the chain and his arms to be carried away and agrees the screaming could have been a reaction to Chasse’s damaged ribs and excruciating pain. *Id.*, pp 133, 159-160; *see* PE 13 (how Chasse was carried in pain).

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41. As Chasse was picked up and carried away, eyewitnesses describe: his reaction was “like he was in pain” because “he continued screaming” (PE 32, p 29); he was carried face down “like a dead deer” (PE 35, pp 49-50; PE 43, p 62 - p 63, ln 3); carrying him like that “seemed an inappropriate way to carry a human who was probably injured” (PE 35, pp 49-50); “he was still saying, with remarkable energy, no, no, what have I done, no, don’t touch me, mercy” (PE 43, pp 62-63); one of the firefighters “made fun of James’ cries” of pain and helplessness by trying to copy the noise he was making (PE 35, p 31; PE 43, pp 67, ln 19 - p 68); and Chasse looked like a “bag of bones” when carried away and before “dumped...in the...police car.” PE 45, p 12.

42. With Chasse’s broken ribs, carrying him like that “would cause pain” and “if he was screaming it could be from pain.” PE 69, p 115.

43. After Chasse was taken away, his blood on the concrete in a circle about 8-12 inches in diameter was cleaned up by one of the firefighters. PE 41, pp 90-91; PE 43, p 67, lns 3-18.

44. According to Dr. Gunson, the cause of Chasse’s death was “blunt force chest injuries.” PE 21, p 1.

45. According to PPB Sgt. Gonzalez, on 9/17/06 an officer had an obligation under the PPB directives and policy statements to tell emergency medical personnel: (a) about the type of force that had been used on a person in their custody (PE 59); and (b) about their observations of significant medical problems someone in their custody was having (*id.*, p 40).

46. PPB Directive # 1051.00 (Conditions and Behaviors Requiring Medical Treatment After Deployment [of Taser]) required Humphreys and Nice to at least ask, if not require, AMR to transport Chasse to the hospital because he was exhibiting some of the conditions and behaviors described in the Directive. PE 53.

unreasonable and inconsistent with generally accepted police practices. *Id.*

47. According to Humphreys, even though he recognized that Chasse had “some mental health issues,” he threatened Chasse in the back of the police car before leaving NW 13th – “I want you to understand if you try to bite me or kick me...it’s gonna be really, really bad.” PE 4, pp 27-28.

48. At 5:46 p.m., instead of transporting or allowing the transport of Chasse to the hospital, Humphreys and Burton left NW 13th with Chasse to take him to jail. They ran a name check on Chasse through the PPB’s Mobile Data Terminal (“MDT”) system. PE 12, pp 237-238; PE 69, pp 2-3. “Allegedly mental” appeared on the Portland Police Data System (“PPDS”) “Complete Name Record” display for Chasse. PE 12, pp 246-247; PE 60, p 102018; PE 69, pp 2-3. “Mental cared for 1/5/90” was another notation that appeared on the PPDS info for Chasse. PE 12, p 264; PE 60, p 102018.

49. They transported Chasse to the Mult. Co. Detention Center (“jail”) and, before arriving, stopped in a parking lot, where Humphreys filled out paperwork which charged Chasse with crimes. PE 4, pp 30-31; PE 30. He listed Chasse as a “transient” in his report, despite having Chasse’s NW Broadway address from his Oregon ID card. PE 30; PE 54.

50. After arriving at the jail at 6:04 p.m., Humphreys and Burton covered Chasse’s head and face, which was beaten and bloody (PEs 23-25), with a gauze “spit sock.” PE 13. Before the spit sock was put on, Burton could see Chasse still bleeding from the mouth and the blood was going onto the seat. PE 12, p 249, lns 8-16. Humphreys knew the spit sock would limit the ability of someone to assess the color and condition of his face.¹³ PE 6, p 296.

¹³At trial, plaintiffs’ trauma expert will opine that the “spit sock” further complicated Chasse’s breathing because the blood flowing from his mouth congealed on the sock, around his mouth and nose.

51. At 6:06 p.m., Chasse was carried into the jail's reception area, "with his face facing down, upside-down" (PE 12, p 249, lns 17-25), and put in a cell by Humphreys and Burton. While carried, he screamed, moaned, cried out, and squirmed in pain. PE 13 (18:06:30-18:0700).

Gayman has never seen someone carried like Chasse was. PE 57, p 99.

52. After being placed on the floor in the cell, Humphreys noticed Chasse had stopped breathing again. Rather than provide medical assistance to Chasse, Humphreys left the spit sock on Chasse and stepped out of the cell. PE 6, pp 288-290; PE 56, p 32. Burton stayed in the cell with Chasse, helped the corr. deputies remove the handcuffs and the hobble, then left the cell, and did not remove the spit sock. Neither Humphreys nor Burton gave CPR to Chasse in the cell. PE 12, p 228; PE 13; PE 16, p 21; PE 18. While Chasse was lying on the floor, a corr. deputy overheard one of the officers (Humphreys) who had carried Chasse in say "he's not breathing." PE 16, p 21, ln 22 - p 22, ln 14; PE 18; PE 46; PE 56, p 32.

53. Humphreys and Burton were well aware of the life-threatening danger associated with positional asphyxia and someone being placed on his stomach. PE 6, p 302; PE 12, pp 105, 166; PE 52.

54. At the jail, Humphreys and Burton:

- a. Did not disclose the force they had used (PE 13);
- b. Did not disclose the symptoms of Chasse's injuries, such as him having stopped breathing and/or been unconscious for at least 30 secs. to a min., or their suspicions that Chasse was mentally ill (*id.*);
- c. Did not disclose that Nice directed the paramedics to only check Chasse's life-threatening vital signs because he was going to jail (*id.*);

d. Continued to misrepresent that Chasse was involved with drugs or under the influence of drugs, *e.g.*, Humphreys *claimed* he “found drugs right by him” (*id.* [18:11:30-18:12:00]);

e. Covered Chasse’s head and face with a “spit sock” which concealed his facial and head injuries as he continued to bleed from his mouth (*id.*; PE 18);

f. Caused medical personnel in the jail believe Chasse was dangerous by virtue of the “spit sock” on his head and him being placed in an isolation cell (PE 57, pp 90-91);

g. Failed to remove the blood-covered gauze “spit sock” from his head when he stopped breathing and went into convulsions (PE 13; PE 18; PE 56, pp 49-50);

h. Ignored Chasse’s moans and cries of intense pain (PE 13; PE 16, p 21, lns 7-21; Exh B (Nurses subs), p 17; PE 58); and

I. Failed to call 911/summon paramedics after he stopped breathing and convulsed (*id.*; PE 18).

55. Humphreys tried to get a jail deputy to accept Chasse, even after nurses had rejected him, further delaying Chasse’s transport to a hospital. PE 13 (18:12:00-18:12:30).

56. After the nurses determined Chasse could not be kept at the jail, Humphreys and Burton had handcuffs and leg chains put on Chasse, and carried him out of the jail handcuffed behind his back, with his feet tied together, face down, and still with the “spit sock” over his head for transport to Portland Adventist Hospital (“PA”). *Id.* (18:18:00-18:19:00). While carried, Chasse continued to moan, cry out, writhe in intense pain, and was hypoxic and panicky. *Id.*

57. In MCSO Sgt. Martinez’s experience, the police do not like transporting “sick people, they just want to get to the jail...and let the medical dept. [at the jail] decide what they want to do....we feel that we are being dumped on most of the time by the Portland Police” (Exh B (Nurses subs),

pp 51-52). PE 63, p 49 (“We always dream and wish that the arresting deputy would be there...Most of the time they will drop people off and just run.”).

58. After leaving the jail at 6:22 p.m, Humphreys and Burton:

a. Did not call 911 and request immediate emergency medical services even though Chasse was “breathing very rapidly...hard...like he was trying to catch [his] breath” in the back of their police car before they drove away from the jail (PE 58; PE 59, pp 21-24);

b. Did not disclose to Gonzalez the force used on Chasse or his repeated breathing problems (PE 58; PE 59, pp 21-24, 29-32);

c. Left the jail to take Chasse to a distant hospital (PA) with no increased speed, lights, or siren (*id.*, p 29, lns 1-15);

d. Transported Chasse alone in the back of the police car with a blood-covered gauze “spit sock” over his head and face, when they knew or should have known they could not assess the color of condition of his face or monitor his level of consciousness this way and that it would make breathing even more difficult for Chasse (PE 6, p 296);

e. As they entered the I-84 freeway at 6:24 p.m., noticed that Chasse had stopped breathing again and failed to immediately remove the spit sock, provide any medical care, call for emergency medical services, or drive him to a hospital close by (Exh B [City subs], pp 307, 461, 463; instead, they drove 30 blocks, took an exit ramp off I-84 at NE 33rd, parked, got out of the car, put on gloves, got Chasse out of the car, and, at 6:29 p.m., requested medical help (PE 12, pp 274-275, ln 4; PE 15); and thus violated PPB Directive #1010 (Post Use of Force Medical

Attention (PE 51)¹⁴ - requiring *immediate* call for emergency medical services);

f. Failed to even start CPR until 6:32 p.m. and failed to provide continual compressions and respirations – only three sets of five compressions and no respirations were done (PE 6, pp 313-315); and

g. Failed to disclose info to paramedics the force used on Chasse or that he had stopped breathing or been unconscious on two prior occasions; all they said was that “the patient had been involved in some sort of altercation and...evaluated initially by EMS in NW before transport” (PE 73, p 1).

59. Chasse did not regain consciousness, was pulse less, and not breathing when paramedics arrived at NE 33rd where resuscitation attempts were unsuccessful. He was transported to the Provid. Med. Center at 6:48 p.m., and pronounced dead at 7:04 p.m.¹⁵ PE 73.

60. Humphreys and Burton told an AMR paramedic at NE 33rd that Chasse was in an “altercation” and nothing else. PE 86.

61. Plaintiffs’ police practices expert opines that (a) Humphreys, Burton, and Nice did not follow generally accepted police practices and the training they had received regarding those who are at least suspected of being mentally ill insofar as they confronted Chasse and escalated the encounter rather than taking a reasonable, calming, defusing approach to their interaction with him (*see* PE 71 [“Use of Force Standards for Peace Officers Dealing with Emotionally or

¹⁴In part, the directive states: “The member shall monitor the subject for changes in their skin and/or lip color, breathing and levels of consciousness. If any significant changes in any of these areas are observed, the member shall notify EMS *immediately*.” (Emphasis added.)

¹⁵At trial, plaintiffs’ trauma expert will opine that the injuries to Chasse’s ribs and the penetration of his left lung significantly decreased his ability to breathe, causing hypoxia, anxiety, fear and panic, leading to cessation of breathing, respiratory arrest, seizure, and, finally, cardiac arrest.

Mentally Disturbed Threats” by Mult. Co Assistant County Attorney Susan Dunaway]); and (b), the use of force by Humphreys to take Chasse down to the concrete pavement, either using the PPB approved “knock-down” technique or by tackling him, was unreasonable and not consistent with generally accepted police practices, the training he had received from the PPB, and the PPB Policy and Proced. Manual Directive # 630.15 - Foot Pursuits (PE 1). PE 84.

62. Plaintiffs’ police practices expert opines that once Chasse was on the concrete pavement, the use of force by Humphreys, Burton and Nice, especially the impact strikes consisting of the kicking and any use of knees, was unreasonable and not consistent with generally accepted police practices, the training they had received from the PPB, and the applicable PPB use of force policies. *Id.*

63. Plaintiffs’ police practices expert opines that it was unreasonable for Humphreys, Burton, and Nice not to have fully disclosed the force they had used, including the impact strikes and the taser, to the medical personnel. This is a requirement consistent with generally accepted police practice to ensure that subjects in police custody receive reasonable medical care. PE 84.

64. Plaintiffs’ police practices expert opines that it was unreasonable and contrary to generally accepted police practice for Humphreys, Burton, and Nice not to have fully disclosed to medical personnel the medical problems they observed Chasse having, including, but not limited to, their observations of him not breathing and/or being unconscious, the length of time he was not breathing and/or unconscious, and the color of his skin. *Id.*

65. There is no evidence suggesting any reason to use any force on Chasse once he was hobbled and carried to their police car at NW 13th. Therefore, plaintiffs’ police practices expert opines that any force they may have used on Chasse after leaving NW 13th, would have been

unreasonable and inconsistent with generally accepted police practices.

66. Additional facts opposing Humphreys and Nice's statement of facts are summarized/incorporated/relied upon by reference in Plaintiffs' Response and Statement of Material Facts in Opposition to Defendants Humphreys and Nice's Statement of Facts (*filed under seal*).

Dated this 1st day of July 2009.

s/ Tom Steenson
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Of Attorneys for Plaintiffs
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