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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. _____

Plaintiff,

v.

COMPLAINT

THE CITY OF PORTLAND,

Defendant.

Plaintiff, the United States of America, brings this civil action pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, for injunctive relief, and alleges as follows:

1. This action seeks to remedy a pattern or practice of unconstitutional uses of force by officers of the Portland Police Bureau. Too frequently, persons who have or are perceived to have mental illness and are in crisis are subjected to unnecessary or excessive force by police officers. The Portland Police Bureau lacks adequate policies to guide officers in these circumstances, or training, supervision and accountability measures necessary to ensure that officers comply with the constitutional rights of people in mental health crisis.

I. JURISDICTION AND VENUE

2. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”). Under

§ 14141, the United States is authorized to bring suit against a state or local government in order to eliminate a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges or immunities secured or protected by the Constitution or federal law.

4. Injunctive relief is sought as authorized by 42 U.S.C. § 14141(b) and 42 U.S.C. § 3789d(c)(3).

5. Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391. Defendant is located or resides in Oregon, and a substantial part of the events or omissions giving rise to this claim occurred in Oregon.

II. PARTIES

6. Plaintiff is the United States of America.

7. The Defendant is the City of Portland (“City”), which is chartered within the State of Oregon, and is liable for the acts or omissions of the Portland Police Bureau (“PPB”), a law enforcement agency operated by the City.

III. FACTUAL ALLEGATIONS

A. Introduction

8. Pursuant to an extensive investigation of the Portland Police Bureau conducted by the United States Department of Justice (“DOJ”), the United States has determined that PPB engages in a pattern or practice of using unlawful force against individuals with actual or perceived mental illness, in violation of their constitutional rights.

9. Specifically, PPB officers engage in a pattern or practice of subjecting individuals with actual or perceived mental illness to excessive force in violation of the Fourth Amendment to the Constitution and other laws of the United States. This pattern or practice includes, but is

not limited to, the following: (1) police encounters with such individuals too frequently result in a higher level of force than necessary; (2) officers use electronic control weapons (“ECWs”), commonly referred to as “Tasers,” in circumstances when such force is not justified, or deploy ECWs more times than necessary on an individual; and (3) officers use a higher degree of force than justified for low level offenses.

10. PPB officers engage in this pattern or practice of constitutional violations while performing law enforcement activities within the scope of their employment. The violations arise from the City’s failure to provide adequate policies, training and supervision to PPB officers on the proper use, reporting, and investigation of force.

11. The United States seeks injunctive relief to eliminate the Defendant’s violations of the law and to ensure that PPB implements sustainable reforms that establish constitutional policing practices. Constitutional policing is an essential element of effective law enforcement. Implementation of constitutional policing practices will enhance public safety for the people of Portland, enable the police to better ensure public safety, and restore public confidence in PPB.

B. Background

12. On June 6, 2011, DOJ publicly announced its investigation, pursuant to Section 14141, to determine whether PPB was engaged in a pattern or practice of using excessive force, particularly against people with mental illness. As part of this investigation, DOJ reviewed hundreds of thousands of pages of documents, including PPB policies and procedures, training materials, internal use of force reports from a period of 18 months, public reports, internal affairs files, and various other documents related to use of force. The investigation also included hundreds of interviews and meetings with PPB officers, supervisors and command staff, as well as Portland City officials and community members. In August of 2011 and February of 2012,

DOJ conducted on-site inspections of and ride-alongs with PPB and hosted dozens of individual interviews with community members, as well as hosted a widely-attended town hall meeting.

13. The City and PPB were fully cooperative throughout the investigation. They provided free access to documents and PPB personnel.

14. On September 13, 2012, DOJ released its report (“DOJ Findings Letter”) announcing that it had found reasonable cause to believe that PPB is engaging in a pattern or practice of using excessive force in encounters involving people with actual or perceived mental illness. DOJ’s investigation also identified serious deficiencies in policies, training, and officer accountability measures that substantially contributed to the pattern or practice of excessive force.

15. Also, on September 13, 2012, DOJ and the City jointly released a signed statement declaring the parties’ mutual intent to reach a negotiated settlement agreement to resolve the United States’ findings of unconstitutional conduct.

C. PPB Engages in a Pattern or Practice of Conduct that Violates the Fourth Amendment to the Constitution.

16. The Defendant, through its acts or omissions, has engaged in a pattern or practice of conduct by PPB officers of using excessive force against individuals with actual or perceived mental illness through the following actions:

a. Encounters between PPB officers and individuals with actual or perceived mental illness result in a use of force when force is unnecessary, or in the use of a higher level of force than necessary or appropriate, up to and including deadly force. PPB officers have used excessive force against individuals who posed little or no threat and who could not, as a result of their mental illness, comply with officers’ commands. PPB officers employ practices that

escalate the use of force where there were clear earlier junctures when the force could have been avoided or minimized.

b. PPB officers use ECWs in circumstances when ECW use is not justified or use ECWs multiple times when only a single use is justified in encounters with individuals with actual or perceived mental illness. PPB officers use multiple cycles of shock without waiting between cycles to allow the suspect to comply, and fail to utilize control tactics during ECW cycles to properly handcuff subjects without having to resort to repeated ECW shocks.

c. PPB officers use more force than necessary in effectuating arrests for low level offenses involving individuals who are or appear to be in mental health crisis.

17. PPB's pattern or practice of using excessive force against people who have or are perceived to have mental illness, as described in paragraph 16 above, derives from systemic deficiencies in Defendant's policies, training, supervisory oversight, and officer accountability measures.

IV. CAUSE OF ACTION

18. The United States re-alleges and incorporates by reference the allegations set forth above.

19. Defendant engages in law enforcement practices that result in excessive force against individuals with actual or perceived mental illness in Portland.

20. Defendant's actions constitute a pattern or practice of conduct by law enforcement officers that deprives individuals of their rights, privileges, or immunities secured or protected by the Constitution (including the Fourth and Fourteenth Amendments) or the laws of the United States, in violation of 42 U.S.C. § 14141.

21. Unless Defendant is restrained by this Court, PPB will continue to engage in the illegal conduct averred herein, or other similar illegal conduct, against the people of Portland.

V. PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court:

22. Declare that Defendant has engaged in a pattern or practice of conduct that deprives individuals with actual or perceived mental illness of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States in violation of 42 U.S.C. § 14141;

23. Order the Defendant, its officers, agents, and employees to refrain from engaging in any of the predicate acts forming the basis of the pattern or practice of conduct described herein;

24. Order the Defendant, its officers, agents, and employees to adopt and implement policies and procedures to remedy the pattern or practice of conduct described herein and to prevent PPB officers from depriving individuals who have or are perceived to have mental illness of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and

25. Order such other appropriate relief as the interests of justice may require.

DATED this 17th day of December, 2012

Respectfully submitted,

<p>S. AMANDA MARSHALL United States Attorney District of Oregon</p> <p><i>s/ Adrian L. Brown</i> ADRIAN L. BROWN BILLY J. WILLIAMS Assistant U.S. Attorneys</p>	<p>THOMAS E. PEREZ Assistant Attorney General Civil Rights Division JONATHAN M. SMITH Chief, Special Litigation Section</p> <p><i>s/ Laura L. Coon</i> LAURA L. COON Special Counsel <i>s/ R. Jonas Geissler</i> R. JONAS GEISSLER <i>s/ Michelle A. Jones</i> MICHELLE A. JONES Senior Trial Attorneys</p>
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JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p>	<p style="text-align: center;">DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			PROPERTY RIGHTS	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			LABOR	
			<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY
				FEDERAL TAX SUITS
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district *(specify)*
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: _____

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**
 Example: U.S. Civil Statute: 47 USC 553
 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.