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Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ERIK LEE PIERCE,)	
	)	Civil Case No. CV06-1715 ST
Plaintiff,)	
)	
v.	)	AMENDED COMPLAINT
	)	(Negligence, Americans with Disabilities
CITY OF SALEM, d/b/a WILLAMETTE VALLEY	)	Act, Rehabilitation Act, ORS 659A.142;
COMMUNICATIONS CENTER, MARION	)	and Violation of Civil Rights/Fourth
COUNTY, GRANT ZAITZ and JEFFREY	)	Amendment Excessive Force)
GOODMAN,)	
	)	DEMAND FOR JURY TRIAL
Defendants.)	
)	

I. JURISDICTION AND VENUE

1.1 Plaintiff brings an action for damages against defendant Marion County for violations

of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132, and its accompanying regulations, 28 CFR §35.130; the Rehabilitation Act, as amended by the Civil Rights Act of 1991 (§ 504), 29 U.S.C. § 794; and supplemental state claims against Marion County. This court has jurisdiction over plaintiff's federal claims under 28 U.S.C. § 1331, and Plaintiff's state claims under the doctrine of supplemental jurisdiction.

1.2 Plaintiff brings an action for damages against Keizer, Oregon police officers Grant Zaitz and Jeffrey Goodman pursuant to 42 USC 1983 for violation of plaintiff's rights under the Fourth Amendment to the United States Constitution to be free of unreasonable seizures of his person. Federal jurisdiction of plaintiff's claim against defendants Zaitz and Goodman is based upon 28 USC 1331 and 1343(1), (3) and (4).

1.3 Plaintiff brings an action for damages against defendant City of Salem under state law for common law negligence. This court has jurisdiction over plaintiff's state law claim against the City of Salem under the doctrine of supplemental jurisdiction codified in 28 USC §1367(a). Plaintiff's state law claim against the City of Salem is transactionally related to Plaintiff's federal law claims against defendants Marion County and Zaitz, such that those claims form part of the same case or controversy under Article III of the United States Constitution.

1.4 Venue is proper in this district pursuant to 28 U.S.C. § 1391, in that the claims and events giving rise to this action alleged herein occurred in Marion County, Oregon.

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II. PARTIES

2.1 Plaintiff Erik Pierce is a citizen of the United States, residing in the State of Oregon.

2.2 Defendant Marion County is a local government within the State of Oregon. Marion County receives federal financial assistance for the services it provides. Defendant Marion County is a public entity within the meaning of Title II of the ADA, 42 U.S.C. § 12131(1), and its implementing regulations, 28 CFR § 35.104. Defendant Marion County is responsible for ensuring that all of its facilities and systems, including its jail systems and the employees and agents of those systems, comply with federal and state disability laws.

2.3 Defendant City of Salem is a duly organized municipal corporation under Oregon law, Chs. 221-25, and a public body liable for tortious conduct of its agents and employees pursuant to ORS 30.260(4) and 30.265(1). At all times material Defendant City of Salem operated a regional emergency communications center, Willamette Valley Communications Center, providing emergency call-taking services and police, fire and ambulance dispatch services to several local municipalities, including the City of Keizer and Marion County.

2.4 Defendant Grant Zaitz is a police officer employed by the City of Keizer, Oregon and, at all times material, was acting under color of law.

2.5 Defendant Jeffrey Goodman is a police officer employed by the City of Keizer and, at all times material, was acting under color of law. At all times material hereto, defendant Goodman was the on scene supervisor of defendant Zaitz and all other officers present and participating in the arrest of plaintiff

and had the right to and did direct and control the manner, means and circumstances of plaintiff's arrest.

III. GENERAL ALLEGATIONS

3.1 At all material times, Plaintiff is deaf, which substantially limits one or more of his major life activities. Plaintiff is an individual with a disability as defined by 42 U.S.C. § 12101, and as used in Title II of the ADA, 42 U.S.C. § 12131; 28 CFR § 35.104; the Rehabilitation Act, at 29 U.S.C. § 705(20); and ORS 659A.100. Plaintiff is an individual with a handicap, as defined in 24 CFR § 8.3 and 24 CFR § 100.201.

3.2 Notwithstanding Plaintiff's disability, Plaintiff is an otherwise qualified individual with a disability, as that term is defined in 42 U.S.C. § 12131(2). Plaintiff met the essential eligibility requirements for the receipt of services and benefits provided by Defendant Marion County in its jails.

3.3 Plaintiff communicates in American Sign Language ("ASL"). ASL is a distinct language. Individuals who communicate in ASL often have only a limited understanding of written English. Therefore, individuals whose primary communication is in ASL may not be able to effectively communicate in written notes, except on a rudimentary level. Plaintiff is such an individual and is unable to communicate effectively in written English, spoken English or by reading lips.

3.4 On December 25, 2005, Plaintiff spent the day with his family at the home of his aunt, Kim Simmons, and her partner, Christopher Betts, who reside at 323 Juedes Avenue, North, Keizer, Oregon.

3.5 At approximately 7:13 p.m. on December 25, 2005, Plaintiff left 323 Juedes Avenue North on foot.

3.6 At approximately 7:13p.m., Christopher Betts called Defendant Willamette Valley Communications Center's 911 service to report that Plaintiff had his sister's car keys, had swung at and pushed his sister, had just left their house and was believed to be walking to the location his sister's car was parked. Mr. Betts further reported that Plaintiff is "hearing impaired and has some mental health issues."

3.7 Defendant Willamette Valley Communications Center's dispatch operator, Ms. Trisha Young, received, processed and dispatched Mr. Betts' call. At all times material, Ms. Young was acting within the course and scope of her employment for Defendant City of Salem.

3.8 As a consequence of Mr. Betts's call, at approximately 7:14 p.m., Ms. Young dispatched the Keizer police, informing them, in material part, as follows:

"Caller states adult nephew just tried to hit his niece . . . Male is now on foot. . . Subject on River from Juedes Male subject has the female's car keys . . . Caller believes subject is enroute to 2615 Claxter . . . Sister's vehicle is at location .. . Caller believes subject will take vehicle."

3.9 At no time did Ms. Young inform the dispatched police officers that Plaintiff was hearing impaired or that he had mental health issues.

3.10 At approximately 7:16 p.m., defendant Zaitz located Plaintiff walking southbound on River Road towards the 7-Eleven store. Defendant Zaitz drove past Plaintiff, parked his patrol car in the parking lot of the 7-Eleven store and got out of his car to make contact with Plaintiff.

3.11 Upon seeing defendant Zaitz pull into the parking lot, plaintiff turned around and walked northbound away from defendant Zaitz. Uninformed that Plaintiff was hearing impaired, Officer Zaitz yelled numerous verbal commands to Plaintiff to stop. When Plaintiff failed to comply

defendant pursued plaintiff on foot, drew his Taser and continued yelling verbal commands.

3.12 Plaintiff stopped walking northbound within 75 feet of the point he turned around when he saw a second police car with lights activated approaching. This police car was operated by defendant Goodman. Upon stopping, plaintiff turned to find defendant Zaitz behind him, with Taser drawn and pointed at him. Plaintiff put his hands up.

3.13 As defendant Goodman brought his police car to a stop, defendant Zaitz suddenly and without warning, provocation or other justification, grabbed plaintiff by the neck and arm and attempted a physical take down of plaintiff. A physical struggle ensued in which defendant Zaitz was joined by defendant Goodman and three other Keizer police officers. During the course of the struggle, Plaintiff was punched in the face by defendant Zaitz, his right shoulder was dislocated by defendant Goodman and he was tasered multiple times at the direction of defendant Goodman.

3.14 Plaintiff was arrested and lodged in the Marion County Jail.

3.15 At all material times, Defendant Marion County knew that Plaintiff was disabled.

3.16 While in the custody of the Marion County Sheriff, Plaintiff was treated differently and less favorably because of his deafness and disabilities. The Marion County Jail failed to provide effective communication with Plaintiff and/or otherwise failed to reasonably accommodate Plaintiff's disabilities. In addition to other acts, the Marion County Jail failed or refused to provide an interpreter for Plaintiff. As a direct result, Plaintiff was incapable of communicating with the Marion County Jail's employees. Plaintiff was unable to understand the rules and unable to ask questions. Plaintiff was not provided an interpreter for his initial health screening or the taking of his medical history and physical

examination. As a result, Plaintiff was not able to effectively communicate with the persons who examined him and was unable to describe the medication that he needed to take. Plaintiff was treated differently from other non-disabled individuals at the Marion County Jail.

3.17 During Plaintiff's detention at the Marion County Jail, he was never advised of his rights as a person with a disability, including his right to request and receive reasonable accommodations while in detention. Defendant Marion County personnel never effectively communicated to Plaintiff that the County maintained Section 504/ADA Grievance Procedures as required by law, or told him how to file a grievance for disability discrimination.

3.18 As a direct and proximate result of Defendant Marion County's failure to accommodate Plaintiff's disability, Defendant failed to provide Plaintiff with adequate medical care and treatment, failed to provide Plaintiff with his basic human needs and placed him in a restraint chair, all of which caused him physical pain and discomfort, emotional distress, fear, and anxiety. As a result of Defendant Marion County's failure to provide appropriate auxiliary aids and services, Plaintiff was not afforded the same protections, benefits, and services afforded to non-disabled detainees. Plaintiff was traumatized by the fear of not knowing what was happening to him, how long he would be held, how to communicate with his family and with persons outside the jail, and by not being able to communicate with those holding him in custody.

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IV. CLAIMS

A. FIRST CLAIM FOR RELIEF

(Negligence) (As Against Defendant City of Salem)

4.1 Plaintiff realleges paragraphs 1.3, 1.4, 2.1, 2.3 and 3.1 through 3.14.

4.2 Had defendant Willamette Valley Communications Center, acting through its call taker and dispatcher Trisha Young, informed Keizer police officers that Plaintiff was hearing impaired and had mental health issues, the police officers' approach to effecting a stop of Plaintiff would have been different and, in all probability, Plaintiff would not have been injured during the course of his detention and arrest.

4.3 At all times material hereto it was reasonably foreseeable to Ms. Young that failure to inform the police at the time of dispatch that Plaintiff was hearing impaired and had mental issues would substantially distort the officer's interpretation of Plaintiff's responses to their presence and commands and thereby substantially increase the risk of serious injury to Plaintiff at the hands of the police.

4.4 Defendant Willamette Valley Communications Center, acting through its dispatcher, Young, was negligent in failing to inform the police officers at time of dispatch that Plaintiff was hearing impaired and had mental health issues and such negligence was a substantial factor in causing the Plaintiff's injuries and damages. Plaintiff reserves the right to amend his Complaint to allege additional specifications of negligence after conducting discovery during the course of these proceedings.

4.5 Plaintiff gave timely notice of his tort claim to Randall Tosh, City Attorney for the City of Salem, on June 12, 2006.

4.6 As a direct and proximate result of defendant Willamette Valley Communications Center's negligence, Plaintiff sustained multiple contusions to his face, back and legs, and a dislocated right shoulder causing plaintiff physical pain and suffering, permanent injury to his right shoulder, and mental and emotional pain, fear, humiliation, anxiety and distress, all to Plaintiff's non-economic damage in an amount to be proved at trial.

4.7 As a further direct and proximate result of defendant Willamette Valley Communications Center's negligence, Plaintiff sustained economic damages for medical and mental health care and treatment in amounts to be proved at trial.

B. SECOND CLAIM FOR RELIEF

(42 USC §1983: Fourth Amendment, Excessive Force against defendants Grant Zaitz and Jeffrey Goodman)

4.8 Plaintiff realleges paragraphs 1.2, 1.4, 2.1, 2.4, 2.5 and 3.1 through 3.16, above.

4.9 Plaintiff has a protected liberty interest under the Fourth Amendment not to be subjected to unreasonable seizures of his person nor to the use of unreasonable force in effecting his lawful detention.

4.10 Defendant Grant Zaitz violated plaintiff's Fourth Amendment rights by suddenly and without warning, provocation or lawful justification attempting a physical take down of plaintiff and, subsequently, by striking plaintiff in his face with his fist.

4.11 Defendant Jeffrey Goodman violated plaintiff's Fourth Amendment rights by forcibly dislocating plaintiff's right shoulder prior to directing the use of a taser and, subsequently, by authorizing and directing that plaintiff be tased multiple times and thereby misusing the taser as a pain compliance device.

4.12 As a direct and proximate result of defendants' use of unreasonable force, plaintiff sustained multiple contusions to his face, back and legs, and a dislocated right shoulder causing plaintiff physical pain and suffering, permanent injury to his right shoulder, and mental and emotional pain, fear, humiliation, anxiety and distress, all to Plaintiff's non-economic damage in an amount to be proved at trial.

4.13 As a further direct and proximate result of defendants' use of unreasonable force, plaintiff incurred expenses for necessary medical and mental health care and treatment and will incur expenses for necessary future medical and mental health care and treatment, all to his economic damage in an amount to be proved at trial.

4.14 Pursuant to 42 USC 1988, plaintiff is entitled to recover his reasonable attorney's fees, expert witness fees and litigation costs incurred in the prosecution of this claim.

C. THIRD CLAIM FOR RELIEF

(Negligence) (As Against Defendant Marion County)

4.15 Plaintiff realleges paragraphs 1.1, 1.4, 2.1, 2.2, 3.1 through 3.3 and 3.15 through 3.18, above.

4.16 Plaintiff gave timely notice of his tort claim to Jane Ellen Stonecipher, legal counsel for Marion Comity, on June 13, 2006.

4.17 Defendant owes Plaintiff a duty to operate its Marion County Jail in a manner free from unlawful discrimination. Specifically, Defendant has a duty to be aware of its obligations and duties under federal and state laws; to carry out its business in a manner consistent with those laws; and to hire, train, supervise and discipline its employees in a fashion that assures Defendant's compliance with those laws.

4.18 Plaintiff has a legally protected interest in not being discriminated against on account of his disability. Plaintiff's interest is protected by federal and state anti-discrimination laws.

4.19 Defendant negligently violated its duty by discriminating against Plaintiff on account of his disability. Defendant's violation of that duty is the result of negligence, including but not limited to, Defendant's failure to be familiar with state and federal anti-discrimination laws and failure to ensure that those laws are obeyed by its agents and employees.

4.20 It was foreseeable that Defendant's negligent conduct, as described in paragraphs 3.16 through 3.18, would cause Plaintiff to be discriminated against on account of his disability, and that Plaintiff would be emotionally injured as a result of Defendant's conduct.

4.21 Defendant's negligent conduct, as described in paragraphs 3.16 through 3.18 was unreasonable in light of the risk that Plaintiff would be discriminated against on account of his disability and that Plaintiff would be emotionally injured as a result of Defendant's conduct.

4.22 Defendant's negligent conduct, as described in paragraphs 3.16 through 3.18 is a substantial factor in the discrimination suffered by Plaintiff and Plaintiff's resulting emotional distress.

4.23 As a direct result of Defendant's negligence, Plaintiff has suffered, and continues to suffer, emotional distress including, but not limited to, loss of self-worth, depression, anxiety, stress and frustration, entitling him to compensatory economic and non-economic damages.

D. FOURTH CLAIM FOR RELIEF

(Title II, Americans with Disabilities Act - Disability Discrimination)

(As Against Defendant Marion County)

4.24 Plaintiff realleges paragraphs 1.1, 1.4, 2.1, 2.2, 3.1 through 3.3 and 3.15 through 3.18, above.

4.25 Defendant's conduct constitutes discrimination against Plaintiff on the basis of his disability because:

- a. Defendant intentionally refused to provide Plaintiff with an equally effective method of communication as provided to other individuals incarcerated at Defendant Marion County Jail;
- b. Defendant excluded Plaintiff from and denied him participation in the benefits of Defendant's services, programs or activities solely by reason of Plaintiff's disability; and
- c. Defendant failed to make reasonable modifications in its policies, practices or procedures to ensure Plaintiff full and equal participation in Defendant's services, programs or activities; all in violation of 42 U.S.C. § 12132 and 28 CFR § 35.130.

4.26 Defendant's conduct was carried out with wanton or reckless disregard for Plaintiff's civil rights, his mental health, and his welfare and oppressively by abuse of power and exploitation of

Plaintiff's disability. Punitive damages should be assessed to deter Defendant from such conduct in the future.

4.27 As a direct result of Defendant's conduct, Plaintiff has suffered emotional distress, including but not limited to, loss of self-worth, depression, fear, anxiety, stress, and frustration, entitling him to compensatory damages pursuant to 42 U.S.C. § 12133.

4.28 Plaintiff is entitled to attorney fees and costs pursuant to 42 U.S.C. § 12133.

E. FIFTH CLAIM FOR RELIEF

(Rehabilitation Act, § 504 - Disability Discrimination)

(As Against Defendant Marion County)

4.29 Plaintiff realleges paragraphs 1.1, 1.4, 2.1, 2.2, 3.1 through 3.3 and 3.15 through 3.18, above.

4.30 Defendant's conduct constitutes discrimination against Plaintiff on the basis of his handicap because:

- a. Defendant intentionally refused to provide Plaintiff with an equally effective method of communication as provided to other individuals incarcerated at Defendant Marion County Jail;
- b. Defendant excluded Plaintiff from participation in, denied Plaintiff the benefits of, and subjected Plaintiff to discrimination under its programs and activities receiving federal financial assistance, solely by reason of his disability; and
- c. Defendant failed to make reasonable modifications in its policies, practices or

procedures to ensure Plaintiff full and equal participation in Defendant's services, programs or activities; all in violation of Section 504, 29 U.S.C. § 794.

4.31 Defendant's conduct was carried out with wanton or reckless disregard for Plaintiff's civil rights, his mental health, and his welfare and oppressively by abuse of power and exploitation of Plaintiff's disability. Punitive damages should be assessed to deter Defendant from such conduct in the future.

4.32 As a direct result of Defendant's conduct, Plaintiff has suffered emotional distress including, but not limited to, loss of self-worth, depression, fear, anxiety, stress, and frustration, entitling him to compensatory damages pursuant to 29 U.S.C. § 794a.

4.33 Plaintiff is entitled to attorney fees and costs pursuant to 29 U.S.C. § 794a.

F. SIXTH CLAIM OF RELIEF

(ORS 659A.142) (As Against Defendant Marion County)

4.34 Plaintiff realleges paragraphs 1.1, 1.4, 2.1, 2.2, 3.1 through 3.3 and 3.15 through 3.18, above.

4.35 Defendant's conduct, as described in paragraphs 3.16 through 3.18 constitutes discrimination against Plaintiff on the basis of his disability because:

a. Defendant intentionally refused to provide Plaintiff with an equally effective method of communication as provided to other individuals incarcerated at Defendant Marion County Jail;

b. Defendant excluded Plaintiff from and denied him participation in the benefits

of Defendant's services, programs or activities solely by reason of Plaintiff's disability; and

c. Defendant failed to make reasonable modifications in its policies, practices or procedures to ensure Plaintiff full and equal participation in Defendant's services, programs or activities; all in violation of ORS 659A.142(4).

4.36 Defendant's conduct was carried out with wanton or reckless disregard for Plaintiff's civil rights, his mental health, and his welfare and oppressively by abuse of power and exploitation of Plaintiff's disability. Punitive damages should be assessed to deter Defendant from such conduct in the future.

4.37 As a direct result of Defendant's conduct, Plaintiff has suffered emotional distress including, but not limited to, loss of self-worth, depression, fear, anxiety, stress, and frustration, entitling him to compensatory damages pursuant to ORS 659A.885.

4.38 Plaintiff is entitled to attorney fees and costs pursuant to ORS 659A.885.

V. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants and requests that the Court grant relief as follows:

5.1 A jury trial to determine the factual questions raised herein;

5.2 That the Court assume jurisdiction over Plaintiff's claims;

5.3 That the Court enter an order that declares that the discriminatory practices, policies, and/or procedures of Defendant Marion County, as set forth above, violate the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and accompanying regulations 28 CFR § 35.130; the Rehabilitation Act, as amended

by the Civil Rights Act of 1991, 29 U.S.C. § 794; and ORS 659A.142;

5.4 That the Court enter an order that enjoins Defendant Marion County from all practices complained about herein and imposes affirmative injunctive relief requiring Defendant, its agents, its employees and all other persons in active concert or participation with them, to take affirmative action to provide equal access to their services for all individuals without regard to disability;

5.5 That the Court enter an order requiring Defendant Marion County to develop and implement a plan to provide equal access to its services, programs or activities when necessary for persons with disabilities to enjoy equally those services, programs or activities;

5.6 On the First Claim for Relief, Plaintiff prays for economic and non-economic damages in amounts to be proven at trial;

5.7 On the Second Claim for Relief, Plaintiff prays for economic and non-economic damages in amounts to be proven at trial;

5.8 On the Third Claim for Relief, Plaintiff prays for economic and non-economic damages in amounts to be proven at trial;

5.9 On the Fourth Claim for Relief, Plaintiff prays for a declaration that the discriminatory practices of Defendant Marion County, as set forth and alleged herein, were in violation of the Americans with Disabilities Act, and further prays for injunctive relief, compensatory damages, punitive damages, and attorneys fees and costs;

5.10 On the Fifth Claim for Relief, Plaintiff prays for a declaration that the discriminatory practices of Defendant Marion County, as set forth and alleged herein, were in violation of the

Rehabilitation Act, and further prays for injunctive relief, compensatory damages, punitive damages, and attorneys fees and costs;

5.11 On the Sixth Claim for Relief, Plaintiff prays for a declaration that the discriminatory practices of Defendant, as set forth and alleged herein, were in violation of ORS 659A.142, and further prays for injunctive relief, compensatory damages, punitive damages, and attorneys fees and costs; and

5.12 All such other relief as the interests of justice require.

DATED: September 24, 2007

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Of Attorneys for Defendants Grant Zaitz and Jeffrey Goodman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERIK LEE PIERCE,)	
)	
Plaintiff,	)	No. CV06-1715 ST
)	
v.	)	DEFENDANTS JEFFREY GOODMAN
	)	AND GRANT ZAITZ'S ANSWER TO
CITY OF SALEM, d/b/a WILLAMETTE	)	PLAINTIFF'S AMENDED COMPLAINT
VALLEY COMMUNICATIONS CENTER,	)	AND CROSSCLAIM
MARION COUNTY, GRANT ZAITZ and)	
JEFFREY GOODMAN,	)	(DEMAND FOR JURY TRIAL)
)	
Defendants.)	

Defendants Grant Zaitz and Jeffrey Goodman (hereinafter "defendants") deny each and every allegation of plaintiff's Amended Complaint, except as admitted in this Answer.

1.

Defendants admit this Court has jurisdiction and venue for the reasons set forth in paragraphs 1.1 - 1.4 of the Amended Complaint.

2.

Defendants admit paragraph 2.1.

Page 1 - DEFENDANTS JEFFREY GOODMAN AND GRANT
ZAITZ'S ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT AND CROSSCLAIM

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3.

Defendants admit so much of paragraph 2.2 as alleges that Marion County is a local government within the State of Oregon. The rest of the paragraph is denied because defendants do not have sufficient information or belief to respond to it.

4.

Defendants admit so much of paragraph 2.3 as alleges that the defendant City of Salem is a duly organized municipal corporation under Oregon law, and that it is a public body liable for the tortuous conduct of its agents and employees pursuant to ORS 30.260(4) and 30.265(1). The rest of the paragraph is denied because defendants do not have sufficient information or belief to respond to it.

5.

Defendants admit paragraph 2.4.

6.

Defendants admit so much of paragraph 2.5 as alleges that defendant Goodman is a police officer employed by the City of Keizer and was, at all times, acting under color of law. Further, defendants admit that Defendant Goodman was the supervisor of Defendant Zaitz and other officers present and participating in the arrest of plaintiff.

7.

In response to paragraph 3.1, defendants admit that plaintiff is hearing impaired, but do not have sufficient information and belief to admit or deny the remaining allegations of the paragraph.

8.

Defendants admit so much of paragraph 3.6 as alleges that Christopher Betts called Willamette Valley Communication Center's 911 service to report an incident involving plaintiff

and another relative, possibly his sister, and that plaintiff was involved in one or more acts of violence with family members, that he had just left their house or apartment, and was believed to be walking in the neighborhood. Defendants acknowledge that Mr. Betts reported that plaintiff is hearing impaired and has some mental health issues, or words to that effect, to the 911 center, but these defendants deny that that information was provided to them.

9.

Defendants admit that they received a radio dispatch from the 911 center that was similar to what is described in paragraph 3.8 of the Amended Complaint.

10.

Defendants admit paragraph 3.9.

11.

Defendants admit so much of paragraph 3.10 as alleges that Defendant Zaitz located plaintiff walking along River Road, that he parked his patrol car near plaintiff, and got out of his car to speak with plaintiff.

12.

Defendants admit so much of paragraph 3.11 as alleges that when plaintiff saw Defendant Zaitz, plaintiff turned around and walked away from Defendant Zaitz, that Defendant Zaitz gave numerous verbal commands to plaintiff to stop, with those commands being given loud enough that a person who was not hearing impaired could easily hear them. Defendants acknowledge that plaintiff failed to comply with those commands and that defendant failed to give any indication to Defendant Zaitz that plaintiff was hearing impaired. Defendant Zaitz eventually drew his TASER as he continued giving verbal commands to plaintiff as plaintiff continued to walk away.

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13.

Defendants admit so much of paragraph 3.12 that alleges plaintiff eventually stopped, turned around to face Defendant Zaitz and, at that time, the two were face to face and Defendant Zaitz had his TASER in his hand.

14.

Defendants admit so much of paragraphs 3.13 - 3.16 as alleges that a physical struggle occurred between plaintiff and the officers, although defendants deny it occurred in the manner described in the Amended Complaint. Defendants admit plaintiff was taken first to a hospital and then to the Marion County Jail where he was lodged.

FOR A FURTHER ANSWER AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE, defendants allege:

15.

Defendants are entitled to qualified immunity for those individual claims that have been brought against them.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE, defendants allege:

16.

To the extent that any common law claims have been brought against Defendants Zaitz and Goodman, then those claims are subject to the conditions, limitations and immunities of the Oregon Tort Claims Act, ORS 30.260 et. seq.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE, defendants allege:

17.

The force used by the defendants was reasonable and not excessive.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF A FOURTH
AFFIRMATIVE DEFENSE, defendants allege:

18.

Plaintiff's claim for excessive force is barred based on the doctrines of *issue preclusion*, *claimed preclusion* and what is commonly known as the *Heck doctrine*, as set forth in *Heck v. Humphrey*, 512 US 477 (1994), because plaintiff has been convicted of crimes arising out of the same facts plaintiff now claims constitutes excessive force.

FOR A COUNTERCLAIM, defendants allege:

19.

Defendants are entitled to recover their attorney fees, expert witness fees and litigation costs incurred in the defense of this claim, pursuant to 42 USC 1988.

Defendants demand a trial by jury.

DATED this 29th day of October, 2007.

HOFFMAN, HART & WAGNER, LLP

By: /s/ Steven A. Kraemer
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Steven A. Kraemer, OSB No. 882476
Of Attorneys for Defendants Grant Zaitz and
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LIST OF EXHIBITS AND WITNESSES

Case No.	Cv 06-1715-KI	Judge Garr M.King
Title	Pierce	
	vs. City of Salem et al	
Dates of Hearing/Trial	10/14/2009	
Court Reporters	Nancy Walker	
Deputy Clerks	Mary Austad	
Attorney for Govt. / Plaintiff		Attorney for Defendant
David Park and Dennis Steinman		Kenneth Montoya, Robert Peterson, Kirstin Lurtz, and Steven Kraemer,

LIST OF TRIAL EXHIBITS

Case No. Cv 06-1715-KI Pierce v. City of Salem et al

Govt/Pltf Exhibit #	Defendant Exhibit #	R	NR	OP	D	W	EXHIBIT DESCRIPTION
1		X					WVCC Audio Tape of 911 Call
2		X					WVCC Audio Tape of Radio Dispatch Communications
3		X					DVD Keizer Police Department Dash Mounted Video
4		X					Photographs of Plaintiff in Hospital taken by Keizer Police Department (11 Photographs)
5		X					Transcript of WVCC Audio Tape of Radio Dispatch Communications
6		X					Transcript of WVCC Audio Tape of Radio Dispatch Communications
7		X					WVCC Printout of Incident Details (Incident #EO5273240)
8		X					X-rays and reports of Plaintiff's Shoulder
9							Salem Hospital Emergency Department Chart
10		X					WVCC Complaint
11		X					WVCC 6-Minute Training
12							TASER Printout of Recorded Firing Data
13		X					TASER Printout of Recorded Firing Data
14		X					Keizer Police Department Policy Chapter 19.31 Use of Tasers
15		X					Excerpts from Keizer Police Department Taser Training Presentation
16		X					Marion County Sheriff's Office Intake Health Screening Form
17		X					Marion County Sheriff's Office Medication Verification Form
18		X					Marion County Sheriff's Office Authorization to Disclose Medical Records
19		X					Release Agreement
20		X					Graveyard Briefing, 12-25-05
21		X					Restraint Chair Form, 10:00
22		X					Restraint Chair Form. 20:40
23		X					Intake Medical Report
24		X					Custody and Intake Medical Report
25		X					Housing Classification Form
26		X					12/26/05 Intake Form
27		X					4/16/02 Marion County General Order 72.6.2 on Americans With Disabilities Act
28		X					12/26/05 MCCF Briefing, 12-26-05
29		X					Marion County General Order 72.8.7 Classification
30		X					4/16/02 Marion County General Order 72.8.10 Use of Restraints
31		X					Emergency Restraint Chair Instructions
32		X					4/16/02 Marion County General Order 72.9 Inmate Discipline

Govt/Pltf Exhibit #	Defendant Exhibit #	R	NR	OP	D	W	EXHIBIT DESCRIPTION
33		X					2003-2004 Inmate Handbook
34		X					Pictures inside the jail.
35		X					Photo of Stop marked by Officer Zaitz
36		X					Diagram by Jeremie Fletcher
	301	X					Housing Status Summary for Erik Lee Pierce
	302	X					Lock and Track Time Served Report for Eric Lee Pierce
	303						Housing Classification Form, dated 12/26/2005
	304						Mug Shot and General Information, dated 12/26/2005
	305						Marion County Inmate Handbook. An information rule book for individuals lodged in the Marion County Corrections Facility, 2003-2004
	306						Intake Medical Report, 12/25/2005
	307	X					Marion County Sheriff's Office, Health Services, Authorization to Disclose Medical Records, 12/26/2005
	308	X					Marion County Sheriff's Office Medication Verification Form, 12/26/2009
	309	X					Marion County Jail Progress and Observations Records, 12/26/2005 through 3/16/2007
	310	X					Medication Administration Report regarding Plaintiff, December 2005
	311	X					Marion County Corrections Physician's Orders 12/26/2005 through 12/28/2005
	312	X					Marion County Correctional Facility, Patient Physical History Sheet, 12/27/2005
	313						Impeachment Exhibit
	314	X					Diagram of the Marion County Jail
	401						White County, Arkansas Information Report and Bench Warrant, 06/13/95
	402						Pulaski County, Arkansas Sheriff's Department Information Report and Arrest Report, 06/15/95
	403						Judgment and Commitment Order, White County, Arkansas 11/08/96
	404						Intermountain Hospital, Discharge Summary, 09/02/98
	405						Intermountain Hospital, Psychiatric Intake, 07/06/00
	406						Saint Alphonsus Regional Medical Center, History and Physical, 07/12/02
	407						Ada County Idaho Order of Commitment, 07/24/02
	408						Saint Alphonsus Regional Medical Center, Discharge Summary, 08/08/02
	409						Boise Police Report and Statement Form, 01/25/03
	410						Intermountain Hospital, Psychiatric Evaluation, 01/29/03
	411						Intermountain Hospital, Discharge Summary, 02/08/03
	412						Ada County, Idaho Judgment of Conviction and Judgment Supplement, 06/25/03
	413						Intermountain Hospital, Psychiatric Evaluation, 08/11/03
	414						Northwest Human Services, Mental Health Intake Assessment, 08/10/04
	415						Salem Hospital, History & Physical, 09/04/04

Govt/Pltf Exhibit #	Defendant Exhibit #	R	NR	OP	D	W	EXHIBIT DESCRIPTION
	416						West Salem Clinic, Progress Note, 02/04/05
	417	X					West Salem Clinic, Progress Note, 02/16/05
	418						West Salem Clinic, Progress Note, 04/06/05
	419						Dr. George Suckow, Psychiatric Note, 05/16/05
	420	X					West Salem Clinic, Progress Note, 07/15/05
	421	X					West Salem Clinic, Progress Note, 09/19/05
	422						West Salem Clinic, Progress Note, 10/17/05
	423	X					West Salem Clinic, Progress Note, 11/15/05
	424						Salem Hospital, History & Physical, 11/25/05
	425						Salem Hospital, Discharge Summary, 12/01/05
	426						Salem Hospital, Emergency Department Visit, 12/25/05
	427						Salem Hospital, Emergency Department Visit, 01/01/06
	428						Northwest Human Services, Counseling Record, 02/06/06
	429						Northwest Human Services, Counseling Record, 02/27/06
	430						Northwest Human Services, Counseling Record, 06/26/06
	431						Northwest Human Services, Counseling Record, 08/28/06
	432						Salem Hospital, Mental Health Assessment, 09/17/06
	433						Northwest Human Services, Counseling Record, 10/30/06
	434						Salem Hospital, Justin Wade, MD, History & Physical, 11/04/06
	435						Salem Hospital, Clinical Services Psychosocial Assessment, 11/06/06
	436						Northwest Human Services, Counseling Record, 11/13/06
	437						Salem Hospital, Audrey Trainer, D.O., Emergency Department Record, 01/05/07
	438						Letter from Boise City Attorney's Office, 11/05/07
	439						Photo of Officer's Finger, 12/29/05 Overhead Photograph of Scene (to be submitted)
	440						Photo of Officer's Finger, 12/29/05
	441						Patrol Sign-Out Log, 12/20 – 12/25/05
	442						Taser Firing Data, Serial #X00-117329
	443						Taser Firing Data, Serial #X00-115456
	444						DPSST Public Safety Officer Records, Training History, Jeffrey Goodman
	445						DPSST Public Safety Officer Records, Training History, Jeremie Fletcher
	446						DPSST Public Safety Officer Records, Training History, Grant Zaitz
	447						Amended Judgment, Marion County, Oregon, 3/13/07
	448	X					Overhead Photograph of Scene (to be submitted)
	449						DVD of Incident (to be submitted)
	450						Overhead Photograph of Scene
	451	X					Duration of Field Application
	452						
	453						
	454						

Govt/Pltf Exhibit #	Defendant Exhibit #	R	NR	OP	D	W	EXHIBIT DESCRIPTION
	455						
	456	X					Taser International Follow up Action
	457	X					Taser International - Loud Arc = Bad Connection
	458						
	459						
	460						
	461						
	462						
	463						
	464						
	465	X					Taser International - Duration of Field Application
	466						
	467						
	468						
	469						
	470						
	471						

R=Received; NR=Not Received; OP=Offer of Proof; D=Demonstrative; W=Withdrawn

LIST OF WITNESSES

Case No.		Case Name:	
Date	Time	Witness	Called by
10/14/2009	4:15PM	Martha Smith - Direct	Ptf
10/15/2009	9:11AM	Susan Hurley - Direct	Ptf
	9:51AM	Cross by the City of Salem	Def
	9:53AM	Chris Betts - Direct	Ptf
	10:15AM	Cross by the City of Salem	Def
	10:19AM	Cross by Goodman and Zaitz	Def
	10:29AM	Cross by Marion County	Def
	10:45AM	Break	
	11:01AM	Continued Cross by Marion County	Def
	11:15AM	Redirect	Ptf
	11:16AM	Recross City of Salem	Def
	11:17AM	Susan Betts - Direct	Ptf
	11:28AM	Jeffrey Goodman - Direct	Ptf
	12:00PM	Break	
	1:30PM	Continued Direct	Ptf
	3:10PM	Break	
	3:30PM	Kathryne David - Direct	Ptf
	3:42PM	Cross by Goodman and Zaitz	Def
	3:44PM	Cross by the Marion County	Def
	3:48PM	Erik Pierce - Direct	Ptf
	5:00PM	Recess	
10/16/09	9:07AM	William Williams, PA - Direct	Ptf
	9:38AM	Cross by City of Salem	Def
	9:48AM	Cross by Goodman and Zaitz	Def
	9:55AM	Cross by Marion County	Def
	9:58AM	Redirect	Ptf

	9:59AM	Recross by Marion County	Def
	10:00AM	Susan Hurley - Direct	Ptf
	10:04AM	Cross by City of Salem	Def
	10:06AM	Cross by Goodman and Zaitz	Def
	10:10AM	Cross by Marion County	
	10:26AM	Ernest Burwell - Direct	Ptf
	11:46AM	Cross by Goodman and Zaitz	Def
	12:00PM	Break	
	1:38PM	Continued Cross by Goodman and Zaitz	Def
	2:21PM	Cross by the City of Salem	Def
	2:22PM	Redirect	Ptf
	2:36PM	Elisa Maroney, Ph.D. -Direct	Ptf
	2:39PM	Cross by Goodman and Zaitz	Def
	2:54PM	Redirect	Ptf
	4:06PM	Cross by Marion County	Def
	4:17PM	Erik Pierce - Direct	Ptf
	4:40PM	Cross by Goodman and Zaitz	Def
	5:00PM	Recess	
10/19/2009	9:15AM	Erik Pierce - Continued cross by Goodman and Zaitz	Def
	9:25AM	Cross by City of Salem	Def
	9:29AM	Cross by Marion County	Def
	9:57AM	Dan Carroll - Direct by Deposition	Ptf
	10:05AM	Millie Dezotell Hoppie - Direct	Ptf
	10:35AM	Break	
	10:50AM	Millie Dezotell Hoppie - Continued Direct	Ptf
	12:00PM	Break	
	1:29PM	Millie Dezotell Hoppie - Continued Direct	Ptf
	1:46PM	Cross by Marion County	Def
	2:37PM	Redirect	Ptf

	2:43PM	Recross by Marion County	Def
	2:55PM	Darlene Young - Direct	Ptf
	3:00PM	Cross by Marion County	Def
	3:05PM	Redirect	Ptf
	3:10PM	Scott DiNardo - Direct	Ptf
	3:29PM	Cross by Marion County	Def
	3:40PM	Break	
	3:57PM	Judith Poston - Direct	Ptf
	4:04PM	Cross by Marion County	Def
	4:08PM	Redierct	Ptf
	4:09PM	Grant Zaitz - Direct	Def
10/20/2009	9:07AM	Jeremie Fletcher - Direct	Ptf
	9:49AM	Cross by the City of Salem	Def
	9:52AM	Cross by Goodman and Zaitz	Def
	10:04AM	Redirect	Ptf
	10:15AM	Recross by Goodman and Zaitz	Def
	10:16AM	Reross by City of Salem	Def
	10:22AM	Kimberly Simmons - Direct	Ptf
	10:28AM	Break	
	10:51AM	Continued Direct	Ptf
	11:09AM	Cross by Goodman and Ziatz	Def
	11:11AM	Cross by Marion County	Def
	11:23AM	Cross by City of Salem	Def
	11:30AM	Officer Grant Zaits - Direct	Def
	11:47AM	Cross	Ptf
	12:04PM	Cross by City of Salem	Def
	12:05PM	Redirect by Goodman and Ziatz	Def
	12:06PM	Cross	Ptf
	12:20PM	Break	

	1:35PM	Sergeant Jeff Goodman - Direct	Def
	1:57PM	Cross	Ptf
	2:05PM	Cross City of Salem	Def
	2:08PM	Philip Zerzan - Direct	Def
	2:34PM	Cross	Ptf
	2:51PM	Redirect	Def
	2:53PM	Linda Fiegi - Direct Marion County	Def
	3:16PM	Cross	Ptf
	3:51PM	James Herring - Direct Marion County	Def
	4:22PM	Cross	Ptf
	4:35PM	Redirect - Marion County	Def
10/21/2009	8:16AM	Rebecca Eves - Direct	Ptf
	8:32AM	Cross by City of Salem	Def
	8:34AM	Cross by Goodman and Zaitz	Def
	8:38AM	Redirect	Ptf
	8:41AM	Brad Houck - Direct	Ptf
	9:10AM	Cross - by City of Salem	Def
	9:39AM	Cross - by Goodman and Zaitz	Def
	9:45AM	Break	
	10:00AM	Cross - by Goodman and Zaitz	Def
	10:08AM	Cross - by Marion County	Def
	10:32AM	Redirect	Ptf
	10:41AM	Christie Johnson - Direct by Marion County	Def
	10:45AM	Cross	Ptf

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Facsimile: (503) 222-2301

Of Attorneys for Defendants Grant Zaitz and Jeffrey Goodman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERIK LEE PIERCE

Plaintiffs,

No. CV06-1715 KI

v.

CITY OF SALEM, d/b/a WILLAMETTE
VALLEY COMMUNICATIONS CENTER,
MARION COUNTY, GRANT ZAITZ and
JEFFREY GOODMAN,

DEFENDANTS' GRANT ZAITZ AND
JEFFREY GOODMAN'S AMENDED
WITNESS LIST

Defendants.

Defendants Grant Zaitz and Jeffrey Goodman ("defendants") submit the following amendment to their witness list, to address concerns raised by plaintiff that the witness list did not give plaintiff sufficient detail to identify all of the subject matter and content of the proposed testimony of these witnesses to which proper objection might be made.

All areas of testimony identified in this Amended Witness List are areas covered by plaintiff during the deposition of each of these witnesses.

WITNESS

2. Sergeant Jeff Goodman

Sergeant Goodman will testify as to his training in defensive tactics and the use of the Taser, as well as his position with the Keizer Police Department as a defensive tactics training officer and Taser training officer. He will testify how the knowledge and information he

received in these classes and his role as training officer on these two subjects helped influence the decisions he made as a supervisor at the scene.

He will testify how he responded to the call after hearing the radio broadcast. He will testify to his observations as he got out of the patrol car, and how he observed plaintiff essentially manhandle Officer Zaitz, forcing him into River Road. He will testify how he rushed to Officer Zaitz's assistance, striking plaintiff multiple times with a flashlight, with no effect. He will testify how he lost the flashlight on the third strike. He will testify how the three men eventually got back to the side of the road where the fight continued. He will testify how he believes plaintiff's shoulder was dislocated, as plaintiff continued to fight and Sergeant Goodman was simply not strong enough to force plaintiff's arm behind his back.

He will testify regarding the use of the Tasers by the two officers, Zaitz and Fletcher and the commands he gave to plaintiff.

He will also testify regarding his observations at the hospital.

Depending on the court's rulings, he will also testify regarding the subject matter of the evidence and testimony at the criminal trial. Plaintiff has a copy of his testimony from that trial.

3. Officer Grant Zaitz

Officer Zaitz will testify regarding his training, with a focus on his training as it relates to use of his Taser. He will testify about receiving the radio call of the family disturbance, locating plaintiff and plaintiff's response to seeing Officer Zaitz. Officer Zaitz will testify that plaintiff appeared to be fleeing, and he so radioed to other units. He will testify plaintiff did not discontinue this action until a second patrol car (driven by Sergeant Goodman) arrived. As plaintiff was attempting to get away from Officer Zaitz, Officer Zaitz ordered him to stop but plaintiff did not do so. After he did, he was given further commands which were not obeyed.

Officer Zaitz will testify he attempted to place plaintiff on the ground and he will explain the reasons. He will testify how plaintiff became violent, essentially overpowering him, forcing him into the street. He will testify how his finger was bitten. He will testify that he was unable to control plaintiff and that Sergeant Goodman provided assistance. This assistance was nearly futile and, at best, the two officers were able to get plaintiff out of the road and on the ground in an area adjacent to the road. He will testify how the struggle continued and they were wholly ineffective in trying to get plaintiff handcuffed. He will testify how he eventually pulled away from plaintiff, took his Taser and fired one time with unknown effect. He will testify that, because of his badly injured hand, he then withdrew from the fight. At this time a couple of other officers had arrived.

He will testify that he went to the hospital where he was treated for his injury and he will testify about that treatment. He will also testify about a conversation he had with the interpreter for plaintiff.

Depending on the court's ruling regarding potential damages and the full effect of the *Heck* doctrine, he will testify about his testimony in the criminal case and he will explain to the jury how much of the altercation (all of it) was brought before the jury in the criminal trial.

5. Officer Fletcher

Officer Fletcher will testify that he arrived on the scene in response to the call that plaintiff was thought to be fleeing. He will testify that when he arrived he saw a pretty good fight going on and the officers weren't really winning. He will testify he saw the flashlight in the middle of River Road. He will testify he rushed to the aid of two officers. He will testify that he used his Taser without any prompting from anybody else. He will testify about his training as it relates to the use of the Taser. He will testify as to the number of times he believes he applied

the Taser.

He will testify that he does not believe Officer Zaitz's Taser had much, if any, effect on plaintiff because the two prongs were not embedded in him.

He will testify that throughout the time he used his Taser he gave commands to plaintiff to roll over on his stomach, as did Sergeant Goodman. He will testify plaintiff refused to obey those commands and that he continued to be a threat. He will testify that plaintiff did eventually roll over on his stomach, and no further Tasers were used at that point, at that time plaintiff was handcuffed.

Respectfully submitted this 30th day of September, 2009.

HOFFMAN HART & WAGNER, LLP

By: /s/ Steven A. Kraemer

Steven A. Kraemer, OSB No. 882476
Of Attorneys for Defendants Grant Zaitz
and Jeffrey Goodman

FILED
OCT 23 2009IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERIK LEE PIERCE,)	
)	
Plaintiff,	)	Civil Case No. 06-1715-KI
)	
vs.	)	VERDICT FORM
)	
CITY OF SALEM, doing business as)	
Willamette Valley Communications)	
Center, MARION COUNTY,)	
GRANT ZAITZ, JEFFREY)	
GOODMAN,)	
)	
Defendants.)	
_____)	

We, the jury, being first duly empaneled and sworn in the above entitled cause, do find as follows:

I. DEFENDANT CITY OF SALEM

With regard to plaintiff's negligence claim against **defendant City of Salem:**

1. Was the defendant City of Salem negligent in one or more of the

respects claimed which caused damage to the plaintiff?

YES X NO

If your answer to question 1 is "No," your verdict is for the defendant City of Salem. Do not answer any more questions as to the claims against the City of Salem. Proceed to section II below. If your answer to question 1 is "Yes," proceed to question 2.

2. Was the plaintiff negligent in one or more of the ways alleged by defendant City of Salem which caused damage to the plaintiff?

YES X NO

If you answered "Yes" to question 1 and 2, proceed to question 3. If you answered "Yes" to question 1, but "No" to question 2, proceed to section II.

3. What is the percentage of negligence for each of the parties?

Erik Pierce: 49 % ~~60 50 40 30 20 10 0~~

City of Salem: 51 % ~~10 20 30 40 50 60 70 80 90 100~~

The percentages must add up to 100 percent. If you determine that plaintiff was more than 50 percent negligent, your verdict is for defendant City of Salem. Proceed to section II below.

If you find that plaintiff's negligence was 50 percent or less, your verdict is for plaintiff. Proceed to section II.

II. DEFENDANTS ZAITZ AND GOODMAN

With regard to plaintiff's § 1983 claim against **defendants Zaitz and Goodman** for excessive use of force in violation of plaintiff's Fourth Amendment rights:

1. Did defendant Zaitz use excessive force against plaintiff in violation of the Fourth Amendment when he attempted to effect a takedown of plaintiff?

YES ☐ NO ☒

2. Did defendant Zaitz use excessive force against plaintiff in violation of the Fourth Amendment when he used his taser against plaintiff?

YES ☐ NO ☒

If you answered "Yes" to either questions 1 or 2, your verdict is for plaintiff against defendant Zaitz. Proceed to question 3 if your answer was either "Yes" or "No."

3. Did defendant Goodman use excessive force against plaintiff in violation of the Fourth Amendment when he directed or acquiesced in the application of tasers against plaintiff?

YES ☐ NO ☒

If you answered "Yes" to question 3, proceed to section III. If you

answered "No" to question 3, your verdict is for defendant Goodman. Proceed to section III below.

**III. DAMAGES, IF ANY, AGAINST DEFENDANTS CITY OF SALEM
AND/OR ZAITZ AND/OR GOODMAN**

With regard to damages, if any, to be awarded to plaintiff against
defendants City of Salem and/or defendants Zaitz or Goodman:

1. If you found that plaintiff was more than 50 percent negligent in his claim against **defendant City of Salem** and you found that neither **defendant Zaitz nor defendant Goodman** used excessive force, proceed to section IV below.
2. If you found that plaintiff's negligence was 50 percent or less in evaluating plaintiff's claim against **defendant City of Salem** (section I.3), your verdict is for plaintiff, and you must consider whether to award damages, if any, to plaintiff against **defendant City of Salem; and/or**
3. If you found that **either defendant Zaitz or defendant Goodman** used excessive force against plaintiff (sections II.1, II.2, or II.3), you must consider whether to award damages, if any, to plaintiff against **either defendant Zaitz or defendant Goodman, or both.** Proceed to question 4.

4. What are plaintiff's damages, if any?

a. Takedown by defendant Zaitz:

\$ N/A

If you did not award plaintiff damages, but you found defendant Zaitz used excessive force against plaintiff in violation of the Fourth Amendment when he attempted to effect a takedown of plaintiff (section II.1), then you must award plaintiff nominal damages. Please enter the amount of \$1.00 in the space provided below.

Nominal Damages: \$ 0 (N/A)

b. Fight between plaintiff and Keizer police officers (only applicable to plaintiff's claim against **defendant City of Salem**)

\$ 50,000.00

c. Use of Tasers:

\$ N/A

If you did not award plaintiff damages, but you found either defendant Zaitz or defendant Goodman used excessive force against plaintiff in violation of the Fourth Amendment in the application of tasers (sections II.2 or II.3), then you must award plaintiff nominal damages. Please enter the amount of \$1.00 in the space provided below.

Nominal Damages: \$ N/A

Proceed to section IV.

IV. DEFENDANT MARION COUNTY

With regard to plaintiff's claims under the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, and ORS 659A.142 against **defendant Marion County**:

1. Did defendant Marion County violate the ADA and Rehabilitation Act and did such violation result in a denial to plaintiff of Marion County's services, programs, or activities in the following ways:
 - a. Failing to provide plaintiff with the required notice of his rights?
YES X NO
 - b. Failing to provide plaintiff with effective communication?
YES X NO
 - c. Failing to provide an interpreter as a reasonable accommodation?
YES X NO

If you answered "Yes" to any part of question 1, proceed to question 2. If you answered "No" to question 1, skip question 2 and proceed to question 3.

2. Did Marion County act with deliberate indifference?
YES NO X

~~YES~~

~~NO~~

Please proceed to question 3.

3. Did Marion County discriminate against plaintiff by not providing him with an interpreter so that he could understand communications in jail, in violation of ORS 659A.142, and did that discrimination harm plaintiff?

YES ☒ NO ☐

If you answered "Yes" to either question 2 or question 3, your verdict is for plaintiff. Proceed to question 4.

If you answered "No" to both questions 2 and 3, your verdict is for defendant Marion County. Please have your foreperson sign and date this Verdict Form.

4. What are Plaintiff's damages, if any, as a result of Marion County's conduct?

\$ 7,500.00


If you answered "Yes" to question 3, proceed to question 5.

5. What amount, if any, do you award plaintiff in punitive damages on his claim under ORS 659A.142?

Punitive damages \$ 100,000.00

Please have your foreperson sign and date this Verdict Form.

Dated this 23rd day of October, 2009.


Foreperson

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ERIK LEE PIERCE,)	
)	
Plaintiff,	)	Civil Case No. 06-1715-KI
)	
vs.	)	JUDGMENT
)	
CITY OF SALEM, doing business as)	
Willamette Valley Communications Center,)	
MARION COUNTY, GRANT ZAITZ,)	
JEFFREY GOODMAN,)	
)	
Defendants.)	
_____)	

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Attorneys for Defendants

KING, Judge:

This action was tried by a jury with Judge Garr M. King presiding, and the jury has rendered a verdict.

It is ordered that:

the plaintiff Erik Pierce recover from the defendant City of Salem, doing business as Willamette Valley Communications Center, the amount of \$25,500 in non-economic damages with interest at the rate of .36%, along with costs;

the plaintiff Erik Pierce recover nothing from the defendants Grant Zaitz and Jeffrey Goodman and the claims against defendants Zaitz and Goodman are dismissed on the merits;

the plaintiff Erik Pierce recover from the defendant Marion County the amount of \$7,500 in non-economic damages and \$100,000 in punitive damages with interest at the rate of .36%, along with costs.

IT IS SO ORDERED.

Dated this 26th day of October, 2009.

/s/ Garr M. King
Garr M. King
United States District Judge