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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

SHERRI BLACK, individually and as
Personal Representative for the Estate of
Thomas Anthony Black,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, UNITED
STATES DEPARTMENT OF INTERIOR,
BUREAU OF INDIAN AFFAIRS,
SUQUAMISH INDIAN TRIBE,
SUQUAMISH TRIBAL POLICE, PORT
GAMBLE S'KLALLAM INDIAN TRIBE,
PORT GAMBLE S'KLALLAM TRIBAL
POLICE, GREG GRAVES AND DOES 1-25,
agents of the Bureau of Indian Affairs.

Defendants.

No.

**COMPLAINT FOR WRONGFUL
DEATH AND 28 U.S.C. § 2671 and
42 U.S.C. § 1983, and 28 U.S.C § 1346(b)**

COMES NOW the Plaintiff, SHERRI BLACK, by and through her attorney, Thomas S. Olmstead, and for claims against defendants, states and alleges as follows:

I. JURISDICTION AND VENUE

1.1 This Court has subject matter jurisdiction over Plaintiff's claims under RCW 2.08.010, 25 U.S.C. § 450(a), 28 U.S.C. § 1346(b), 28 U.S.C. § 2671, 28 U.S.C. § 1367, 28 U.S.C. § 1331, 28 U.S.C. §1343 and 42 U.S.C. § 1983, and on the pendant jurisdiction of this court to entertain claims

1 arising under state law.

2 1.2 The acts which amount to the alleged causes of action occurred in Kitsap County,
3 Washington.

4 1.3 Pursuant to 28 U.S.C. § 2675(a) the claim set forth herein was presented to the United
5 States Department of Interior, the Office of the Solicitor on September 7, 2012.

6 1.4 The agency denied the claim on January 3, 2013.

7 1.5 Venue is proper in this court because the acts alleged herein occurred within the
8 Western District of Washington.

9 1.6 The acts which amount to the alleged causes of action will challenge any claim of lack
10 of jurisdiction for Sovereign Immunity because defendants conduct is alleged to have been acting in
11 contravention of federal law.

12 1.7 That the above named Defendant's acted outside the scope of its immunity and, thus, is
13 subject to liability.

14 1.8 That the acts which amount to the alleged causes of action is conduct that is outside the
15 scope of the tribe's sovereign powers.

16 1.9 That the above named Tribal Defendants acted in concert with other police defendants,
17 or state police officers whose actions are held to be "under color of state law", thus their actions cannot
18 be said to have been authorized by tribal law.

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23 **II. PARTIES**

24 2.1 Plaintiff SHERRI BLACK, is the Administratrix of the Estate of Thomas Anthony
25 Black. Letters of Administration were granted to her by the Kitsap County Superior Court on January
26 23, 2013 pursuant to RCW 11.28.110 and RCW 11.68.011 An order authorizing commencement &
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1 maintenance of a legal action was also signed by the court on January 22, 2012 pursuant to RCW
2 11.48.010.

3 2.2 Plaintiff SHERRI BLACK, an individual, is a citizen of the United States and
4 resides in the County of Kitsap, State of Washington, which is in this judicial district.

5 2.3 Defendant SUQUAMISH TRIBE is a federally recognized tribe in the State of
6 Washington, performing specific duties of law enforcement and acting jointly with, or under authority
7 of an agency of Washington State government in Kitsap County, Washington.

8 2.4 Defendant SUQUAMISH TRIBAL POLICE is a department of government within the
9 tribe, in the State of Washington, performing specific duties of law enforcement and acting jointly
10 with, or under authority of an agency of Washington State government in Kitsap County, Washington.

11 2.5 Defendant PORT GAMBLE S'KLALLAM INDIAN TRIBE is a federally recognized
12 tribe, in the State of Washington, performing specific duties of law enforcement and acting
13 jointly with , or under authority of an agency of Washington State government in Kitsap County,
14 Washington.

15 2.6 Defendant PORT GAMBLE S'KLALLAM TRIBAL POLICE is a department of
16 government in the tribe, in the State of Washington, performing specific duties of law enforcement and
17 acting jointly with , or under authority of an agency of Washington State government in Kitsap
18 County, Washington.

19 2.7 The true names and capacities, whether individual, corporate, associate, or otherwise, of
20 DOES 1 through 25, inclusive, are unknown to Plaintiff, who therefore sues the DOE defendants by
21 fictitious names. These Defendants may have caused the damage to Plaintiff by their own tortious
22 conduct, including acts or failures to act in concert with other Defendants, or vicariously. Plaintiffs
23 will amend this complaint to show their true names and capacities when they have been ascertained.
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1 warrant unconstitutionally in violation of Plaintiff's 4th Amendment right to be free from unreasonable
2 search and seizure, then entered the Black residence located at 18636 Second Avenue NE, Suquamish,
3 Washington 98392.

4 3.3 Immediately, the officers pushed Sherri to the ground causing her physical injury and
5 without incident officer GREG GRAVES shot and killed Thomas Black who lay in bed appearing to
6 be bewildered by the intrusion. The intrusion occurred just seconds before the killing, Thomas Black
7 appeared as if he were waking from sleep. Sherri Black was then handcuffed behind her back and held
8 down on the ground by a plain clothed officer. Sherri was then told to stand but was unable to do so.
9 The officer then grabbed her left arm and dragged her approximately twenty yards. This officer then
10 pulled Sherri Black to her feet and pushed her into a patrol car. Ms. Black was injured to her thigh and
11 left arm and wrists.
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14 3.4 Ms. Black, having committed no crime and not aware that Mr. Callihoo had an
15 outstanding misdemeanor warrant was released from custody.
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17 3.5 Thomas Black died from two gunshot wounds. Although no gun was ever seen by
18 Sherri Black in her home, the police now claim that they shot Thomas Black as a reaction to him
19 having a pistol. A toy gun was later located somewhere within the Black residence. It is now thought
20 to have been strategically placed as a cover up for the bad shooting.
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22 3.6 The Suquamish police officers were equipped with body cameras which recorded the
23 entire entry, shooting and killing of Thomas Black. There was no gun seen in Thomas Blacks hands in
24 the video footage while Thomas Black was being shot to death.
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26 3.7 Defendants after shooting Thomas Black for unknown reasons, exited the home and
27 left Thomas Black to bleed to death not rendering any emergency assistance to him. Thomas Black
28 bled to death from a wound to his femoral artery.

1 3.8 Police then for unknown reasons began a standoff outside the Black residence until
2 several hours later when they captured and arrested Mr. Callihoo who was hiding inside terrified for
3 his life.

4 3.9 Defendant Greg Graves Port Gamble S'Klallam Tribe detective shot Thomas S. Black
5 who is not a Native American.
6

7 3.10 Defendant Greg Graves a Port Gamble S'Klallam Tribe detective shot Thomas S. Black
8 outside the geographical boundaries of the Port Gamble S'Klallam Reservation.

9 3.11 Defendant Greg Graves a Port Gamble S'Klallam Tribe detective was acting outside the
10 scope of his geographical jurisdiction and authority when he entered the home of Thomas S. Black
11 which is located outside the boundaries of the Port Gamble S'Klallam Reservation.
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13 3.12 Defendant Greg Graves entered the home without a search warrant then killing Thomas
14 Black in cold blood. Such ultra vires actions are not protected by the tribe's cloak of sovereign
15 immunity.
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17 3.13 Defendant Greg Graves was acting within the scope of his employment while acting as
18 an employee of a Federally recognized Indian Reservation.

19 3.14 Defendant Greg Graves was acting outside the scope of the tribe's sovereign powers.

20 3.15 Defendant Greg Graves was acting outside the scope of tribal law.
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22 3.16 The Port Gamble S'Klallam tribe did not delegate to Defendant Greg Graves the power
23 to enter a residence off tribal land and shoot a non-native person in their home, and that the exercise of
24 that power and Defendant's conduct violates the Constitution.

25 3.17 Defendant Greg Graves has exercised a power that his sovereign was powerless to
26 convey to him and incapable of bestowing, an exception to the doctrine of sovereign immunity is
27 hereby invoked.
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1 3.18 Defendant Greg Graves acted beyond the valid authority of the tribe, an exception to the
2 doctrine of sovereign immunity is hereby invoked.

3 3.19 Defendant Greg Graves acted in violation of Federal Law, an exception to the doctrine
4 of sovereign immunity is hereby invoked.

5 3.20 The above alleged facts support causes of action by Sherri Black for wrongful death and
6 excessive force and 42 U.S.C. §1983.

7 3.21 The above alleged facts support causes of action by the Estate of Thomas Black for
8 wrongful Death, excessive force and 42 U.S.C. §1983.

9 3.22 The above alleged facts support causes of action by Sherri Black for violations of the
10 provisions of the Federal Tort Claim Act 28 U.S.C. § 2671-2680.

11 3.23 The above alleged facts support causes of action by Sherri Black with respect to the
12 Indian Self Determination Contracts Act pursuant to 25 U.S.C. § 450(a). The Act provides that tribes
13 may enter into "self-determination contracts" with the Secretary of the Interior and the Secretary of
14 Health and Human Services to administer programs or services that otherwise would have been
15 administered by the federal government. See 25 U.S.C. § 450f(a) (1994). Such programs include
16 education, medical services, construction, and law enforcement.

17 3.24 That Defendants Port Gamble S'Klallam Tribe and Suquamish Indian Tribe are agencies
18 who receives funding from the United States Department of Interior to administer certain programs
19 such as law enforcement.

20 3.25 That Defendants Port Gamble S'Klallam Tribe and Suquamish Indian Tribe are agencies
21 who receives funding from the United States Department of Justice to administer, fund, and employ
22 certain programs such as law enforcement.

1 4.5 The conduct of Defendants was willful, malicious, oppressive, negligent and/or
2 reckless, and was of such a nature that punitive damages should be imposed in an amount
3 commensurate with the wrongful acts alleged herein.
4

5 **V. SECOND CAUSE OF ACTION-**
6 **VIOLATION OF 42 U.S.C. § 1983: EXCESSIVE FORCE**

7 5.1 Plaintiff incorporated by reference paragraphs 1.1 through 4.5 above, and re-alleges the
8 information contained therein, and further alleges as follows:

9 5.2 During the attempt to detain Stacy Stanley Callihoo, police used excessive force on
10 Sherri Black when they seized and detained her at the residence. Sherri was forced to the ground,
11 handcuffed and drug twenty some feet. She was injured to her thigh, left arm, and wrist. Police used
12 excessive force also when shooting and killing Thomas Black as he lay in his bed.
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14 **VI. THIRD CAUSE OF ACTION-**
15 **VIOLATION OF 42 U.S.C. § 1983: WRONGFUL DEATH**

16 6.1 Paragraphs 1.1 through 5.2 are incorporated herein by reference as though fully set
17 forth.
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19 6.2 Plaintiff Sherri Black claims damages for the wrongful death of Thomas Anthony Black
20 and for her loss of his income, services, protection, care, assistance, society, companionship, comfort,
21 guidance, counsel and advice, under 42 U.S.C. §1983 and the Washington State Wrongful Death
22 Statutes RCW 4.20.010, RCW 4.20.020, and RCW 4.20.046.

23 6.3 The use of deadly force to arrest the criminal suspects, whatever the circumstances, is
24 constitutionally unreasonable. Mere possibility of flight alone without more is not sufficient to warrant
25 deadly force. Without some implied threat of harm to officers or others, it is unreasonable and
26 unconstitutional to perform deadly force to subdue a suspect.
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1 8.4 As a result of those breaches, which were the proximate cause of the Plaintiff's death.

2 **IX. SIXTH CAUSE OF ACTION-**
3 **VIOLATION OF 28 U.S.C. § 2671-2680**

4 9.1 Paragraphs 1.1 through 8.4 are incorporated herein by reference as though fully set
5 forth.

6 9.2 Plaintiff Sherri Black claims damages for the wrongful death of Thomas Anthony Black
7 and for her loss of his income, services, protection, care, assistance, society, companionship, comfort,
8 guidance, counsel and advice, under 28 U.S.C. § 2671-2680 and the Washington State Wrongful Death
9 Statutes RCW 4.20.010, RCW 4.20.020, and RCW 4.20.046.

11 9.3 Defendant's committed a negligent or wrongful act or omission.

12 9.4 The Defendant's were acting within the scope of their employment.

13 9.5 The act was the proximate cause of the death of Thomas Anthony Black.

14 9.6 The act was the proximate cause of Sherri Anthony Blacks emotional distress.

15 9.7 Plaintiff sustained damages as a result of Defendant's negligent acts.

16 9.8 If Defendants were a private person, it would be liable to the Plaintiff in accordance
17 with the laws of the State of Washington.

18 9.9 Defendants actions as stated in the facts amount to conduct that is alleged to be outside
19 the scope of a tribe's sovereign powers.

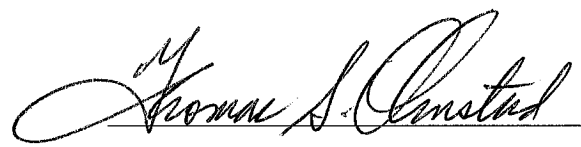
22 WHEREFORE, Plaintiff prays for judgment as follows:

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- 24 1. For Special Damages in an amount to be proven at trial.
 - 25 2. For General Damages in an amount to be proven at trial.
 - 26 3. For Punitive Damages in an amount to be proven at trial.
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- 4. For Plaintiffs costs and reasonable attorney's fees.
- 5. For such further relief as the court deems just and reasonable.
- 6. With respect to the 42 U.S.C. § 1983 actions Plaintiff demands a jury trial.
- 7. With respect to the 28 U.S.C. § 2671 actions Plaintiff demands judgment against the defendants in the sum of \$3,000,000 and costs.

Dated this 30 day of May, 2013.



THOMAS S. OLMSTEAD, WSBA #8170
Attorney for Plaintiffs