**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF OKLAHOMA**

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| MARGIE M. ROBINSON, as the Personal Representative of the Estate of Christina Dawn Tahhahwah, Deceased, | ) | |
| Plaintiff, | ) | Case No: CIV-16-869-F |
| vs. | ) | |
| THE CITY OF LAWTON, OKLAHOMA, et. al., | ) | |
| Defendants. | ) | |

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**DEFENDANT CITY OF LAWTON'S MOTION AND BRIEF FOR SUMMARY JUDGMENT**

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July 30th, 2018

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**DEFENDANT CITY OF LAWTON'S MOTION AND BRIEF FOR SUMMARY JUDGMENT**

Plaintiff Margie M. Robinson, as the Personal Representative of the Estate of Christina Tahhahwah (hereinafter "Christina" or "Tahhahwah") deceased, filed suit against the City of Lawton (hereinafter "City" or "Defendant City") and a number of City of Lawton Police Officers and Correctional Officers (in their individual capacities) for allegedly violating Christina's constitutional rights during the course of a citizen's arrest of Christina by her grandmother, Anna Chalepah, that occurred on November 13, 2014, and Christina's subsequent detention at the Lawton City Jail. Plaintiff alleges Defendant City failed to properly train, supervise or discipline its officers in violation of 42 U.S.C. § 1983 [Doc. 1, ¶¶ 77-82] and the actions of Defendant City's officers were "reckless and negligent" and negligent *per se* [Doc. 1, ¶¶ 84-90]. Defendant City requests that this Court grant summary judgment in its favor pursuant to Fed. R. Civ. P. 56(a).

## LCvR 56.1(b) STATEMENT

Pursuant to LCvR 56.1(b), Defendant City asserts there is no genuine issue of material fact as to the following:

1. On November 13, 2014 at approximately 1:37 a.m., Christina called City of Lawton Dispatch (hereinafter, "dispatch") on a non-emergency administrative line and asked if several officers were on duty. Christina stated she was about to kill her aunt, Anna Berry Chalepah, and when asked by the dispatcher if it had been physical, stated "yeah, but it's gonna get more physical if I gotta pull my gun on her." The dispatcher told Christina "well don't do anything like that" to which Christina responded "No, I'm not." In response to Christina's call on November 13, 2014 at approximately 1:37 a.m., Officers Daniel Harter and Jackie Long were dispatched to the residence located at 1006 SW 42nd Street, Lawton, Oklahoma. (Ex. 1 – Affidavit of Jessica Carter)
2. Officers Harter and Long arrived at the residence at approximately 1:49 a.m. Officer Harter found Christina in the garage. The garage had a mattress and a dresser and Christina appeared to be in a safe environment. Christina was coherent and did not make any statements indicating she had any intention to harm herself or anyone else and did not otherwise appear to have the means to do so. Officer Harter left the scene and purchased a hot dog and soda for Christina and brought it back to her. The officers cleared the call at approximately 2:05 a.m., advising dispatchers there was no domestic. (Ex. 1 – Affidavit of Jessica Carter; Ex. 2 – Affidavit of Daniel Harter)
3. On November 13, 2014 at approximately 3:19 a.m., Christina called a dispatch non-emergency administrative line and asked the dispatcher to find her husband, who she

identified as Officer Luis Pagan. Christina was crying and stated that her "daddy" was kicking her out of her house. Christina requested Officer Pagan be sent to pick her up. (Ex. 1 – Affidavit of Jessica Carter) Christina referred to her grandfather, Edward Jerome Tahhahwah (who lived at 1006 SW 42nd Street) as her "daddy". (Ex. 3 – Excerpts of the Deposition of Edward Tahhahwah taken on April 5, 2018, pg. 63, lines 20-23) In response to Christina's call on November 13, 2014 at approximately 3:19 a.m., Officers Chelsey Gordon and Daniel Harter were dispatched to the residence at 1006 SW 42nd Street. (Ex. 1 – Affidavit of Jessica Carter)

4. Officers Gordon and Harter arrived at the residence at approximately 3:25 a.m. Gordon and Harter made contact with Christina in the garage of the residence. Christina stated she was living in the garage, which had a bed and a dresser. Christina stated she had "gotten into it" with her grandparents and she was in the garage because her family did not want to talk to her. Gordon tried to make contact with someone inside the residence but no one answered the door. Christina made sexual advances towards Officer Harter by asking if he wanted to get in bed with her. Both Gordon and Harter observed that Christina was in a safe environment. Christina was coherent and responsive to the officers' questions. Neither Gordon nor Harter saw or heard Christina say or do anything that would indicate Christina had any intent to harm herself or anyone else or any means to do so. Gordon asked Christina if she intended to harm herself or anyone else and Christina said no. Gordon believed Christina was just having a bad night with her family. Officers Gordon and Harter

cleared the scene at approximately 3:42 a.m. (Ex. 1 – Affidavit of Jessica Carter; Ex. 2 – Affidavit of Daniel Harter; Ex. 4 – Affidavit of Chelsey Gordon)

5. On November 13, 2014, at approximately 5:18 a.m., Christina again called a dispatch non-emergency administrative line, asked for an "Officer Pagan", and asked if "Officer Pagan" could take her to Memorial (local hospital) because she was "feeling hot." Christina also asked if Officer Gordon was working and if Officer Gordon could "come see her again". In response to this call, Gordon and Harter were again dispatched to the residence located at 1006 SW 42nd Street. (Ex. 1 – Affidavit of Jessica Carter)
6. Officers Gordon and Officer Harter arrived at the residence at approximately 5:26 a.m. Gordon and Harter again made contact with Christina in the garage of the residence. Both Gordon and Harter observed that Christina was in a safe environment. Christina was coherent and responsive to the officers' questions. Gordon again attempted to make contact with someone inside the residence but, again, no one answered the door. Gordon asked Christina if she intended to harm herself and Christina said "no". Christina continued to make sexual advances at Officer Harter. Neither officer observed anything about Christina's physical appearance that indicated that Christina needed to be taken to a hospital nor did Christina ask Gordon or Harter to take her to a hospital. Christina told Gordon she "just wanted a cigarette." Christina did not make any statements or exhibit any behavior that would indicate to Gordon or Harter that Christina had any intent to harm herself or anyone else or any means to do so or that Christina otherwise needed to be taken into protective custody.

Christina was coherent, talkative, and non-violent in her communications and interactions with both Gordon and Harter. Officers Gordon and Harter cleared the call at approximately 5:42 a.m. (Ex. 1 – Affidavit of Jessica Carter; Ex. 2 – Affidavit of Daniel Harter; Ex. 4 – Affidavit of Chelsey Gordon)

7. On November 13, 2014 at approximately 7:24 a.m., Christina called a dispatch non-emergency administrative line and asked for officers to "come see her and call her." During the call, Christina put her grandfather, Edward Jerome Tahhahwah, on the phone at the request of the dispatcher. During the call, the dispatcher states: "Well sir, she's tying up 911 lines and it's actually breaking the law because she doesn't have a police, fire or medical emergency so she can actually be taken to jail or be fined" to which Mr. Tahhahwah responds "Come pick her up and take her to jail." (Ex. 1 – Affidavit of Jessica Carter; Ex. 3 – Excerpts of the Deposition of Edward Tahhahwah taken on April 5, 2018, pg. 71, lines 16-24)

8. In response to Christina's call on November 13, 2014 at approximately 7:24 a.m., Officer Lindsey Adamson and Officer Dan Breaden were dispatched to the residence located at 1006 SW 42nd Street. Adamson made contact with Christina in the garage of the house. It appeared to Adamson that Christina had been sleeping or staying in the garage because the garage had a bed in it. Christina introduced herself as "Cuda Bang" and told Adamson she used that name because she was promiscuous. Adamson observed Christina breathing heavily, but not in distress. Adamson asked Christina if she was "OK" and Christina responded something to the effect of "It's just because I'm fat." Officer Adamson observed Christina in a physically safe environment and

Christina did not make any statements indicating that she intended to harm herself or others and did not appear to have the means to do so. Christina was coherent and responsive to Adamson's questions. Christina stated she had "e.coli" in her kidneys but did not request to be taken to a hospital. (Ex. 1 – Affidavit of Jessica Carter; Ex. 5 – Affidavit of Lindsey Adamson)

9. Before Officers Adamson and Breaden could clear the call, Christina called a dispatch non-emergency administrative line and asked a dispatcher to send an "Officer Alvarez" to her house. Christina also said "Your two officers left me here. I need to go to the hospital because my kidneys still hurt." The dispatcher asked Christina if she needed and ambulance and Christina responded "Yes ma'am." The dispatcher then asked why her kidneys hurt and Christina responded "I have e.coli in my kidney." (Ex. 1 – Affidavit of Jessica Carter)

10. While Adamson was still on scene responding to the 7:24 a.m. call, Adamson was advised by dispatch that Christina called back requesting an ambulance because she had "e.coli" in her kidneys. Adamson advised the dispatcher to send Christina an ambulance to the residence. An ambulance was dispatched to the residence and Christina was taken from the residence to Comanche County Memorial Hospital. (Ex. 5 – Affidavit of Lindsey Adamson)

11. Christina arrived at Comanche County Memorial Hospital at 8:38 a.m. Christina was seen by medical professionals at the hospital for reported "abdominal pain and psychiatric history." The records state that Christina was "negative for suicidal or homicidal ideation and not hearing voices, not seeing things." The record further

indicates that Christina was "awake, alert, oriented, following commands, and cooperative." Christina was discharged from the hospital at 9:45 a.m. with instructions to fill a prescription for medication for a urinary tract infection and for her bipolar disease. (Exh. 6 – Tahhahwah Medical Records 11.13.14)

12. Christina's medical records also indicate that on November 12, 2014, prior to any of the above-listed calls, Christina presented to Comanche County Hospital's Emergency Room at 10:11 p.m. complaining of "syphilis in [her] urine." The record indicates Christina came to the hospital in a "fairly manic state" and was given 20 mg of an antipsychotic medication intramuscularly. Christina was discharged in "stable condition" and given a prescription for medication for a urinary tract infection and bipolar disease. (Ex. 7 – Tahhahwah Medical Records 11.12.14)

13. There is no record of Christina or any of her family members ever filling her prescriptions from her visits to Comanche County Memorial Hospital on November 12 or 13, 2014 as advised by hospital staff. Edward Tahhahwah states he was unaware that Christina was given any prescriptions and he did not ask any doctor or nurse at the hospital if Christina had any prescriptions to fill. (Ex. 3 – Excerpts of the Deposition of Edward Tahhahwah taken on April 5, 2018, pg. 74 lines 1-7)

14. There is no record indicating that the physicians and medical staff who came into contact with Christina at Comanche County Memorial Hospital on November 12, 2014 or November 13, 2014, tried to have Christina taken into protective custody or otherwise have her admitted for psychiatric treatment after her visits to the hospital.

(Ex. 6 – Tahhahwah Medical Records 11.13.14; Ex. 7 – Tahhahwah Medical Records 11.12.14)

15. On November 13, 2014 at approximately 1:20 p.m., Anna Chalepah (Edward Jerome Tahhahwah's wife) called dispatch and reported the following:

> Chalepah: I know you've had several reports from Christina Tahhahwah, you've had several calls from her last night and today, I guess, she came in the house rambling on, she had a cup of milk, and my husband is Jerome, I was on the bed behind him and she came in the bedroom and asked for her cell phone charger, and then she got up and I said we did not have it and she got up and she had a small cup of milk and she threw it at me.
>
> Dispatcher: Is that her in the background?
>
> Chalepah: Yes ma'am.
>
> Dispatcher: How do you know Christina?
>
> Chalepaeh: My husband, we've been together 20 years, that's her grandpa.
>
> Dispatcher: Does she have any weapons?
>
> Chalepah: Not so far, she's threatened to kill some people at the tribe. I just feel like I shouldn't have to take nothing like that, she threw that cup of milk on me.
>
> Dispatcher: We're going to have officers en route, ok? Has Christina been drinking or anything like that?
>
> Chalepah: She's on drugs, she's bipolar, and she's on drugs, I don't know what she's on…she came back worse…the officers that came last night did see two pieces of marijuana in the garage.
>
> Dispatcher: OK, alright, we have them en route OK?

(Ex. 1 – Affidavit of Jessica Carter)

16. In response to the call on November 13, 2014 at approximately 1:20 p.m., Officers Turner and Short were dispatched to the residence located at 1006 SW 42nd Street.

While Turner and Short were en route to the residence, Christina called a dispatch non-emergency line and stated that she is in trouble and her grandpa kicked her out. (Ex. 1 – Affidavit of Jessica Carter)

17. Officers Turner and Short arrived at the residence at approximately 1:30 p.m. Turner made contact with Edward Tahhahwah and Anna Chalepah inside the residence. Anna Chalepah told Turner that they wanted Christina "gone" from the residence but Christina would not leave. Turner spoke with Christina and she was alert and did not appear to be in any type of distress. Turner observed Christina sitting at a table eating food from a styrofoam container. Upon inquiry, Tahhawah confirmed she had been asked to leave the residence but stated she "had nowhere else to go." (Ex. 1 – Affidavit of Jessica Carter; Ex. 8 – Affidavit of Lawrence Turner)

18. Officer Short made contact at the residence with Edward Tahhahwah and Anna Chalepah (who he identified as "Christina's grandparents"). Edward Tahhahwah and Anna Chalepah stated Christina was there causing a problem, was not taking her medication and needed to go to Taliaferro. Officer Short did not observe Christina make any statements indicating that Christina had intent to harm herself or anyone else and Christina did not appear to have the means to do so. (Ex.9 – Affidavit of Kurt Short)

19. Based on their observations of Christina, neither Officers Turner nor Short observed or heard anything that would cause them to believe Christina was a danger to herself or anyone else, nor did she have the means to harm herself or anyone else. Neither

officer felt she met the criteria to be taken involuntarily into protective custody. (Ex.8 – Affidavit of Lawrence Turner; Ex. 9 – Affidavit of Kurt Short)

20. Anna Chalepah filled out a Citizen's Arrest Form and placed Christina under arrest for Trespassing. The form, signed by Anna Chalepah, states: Jerome Tahhahwah and Anna Chalepah invited Christina Tahhahwah to come stay with us while our house is being worked on. She came into our room asking for her charger. I said we did not have it then she got up out of the chair and threw a small cup of milk on me. It got on my clothes. We asked her to leave and she refused. The form clearly states that Anna Chalepah has arrested Christina Tahhahwah for a public offense and she delivers the arrested person to the custody of the Lawton Police Department for the purpose of taking said arrested person before a magistrate. There is no language on the form indicating that either Anna Chalepah or Edward Tahhahwah wanted Christina to be taken to Taliaferro and no language referring to Christina being in an alleged "bipolar state." (Ex. 10 –Citizens Arrest Form)

21. Edward Tahhahwah confirms that Anna Chalepah asked Christina to leave and Christina refused to leave. He also confirms that Chalepah had the right to tell people who could come and go at the house. (Ex. 3 – Excerpts of the Deposition of Edward Tahhahwah taken on April 5, 2018, pg. 82, lines 16-22 and pg. 119 lines 8-11)

22. Lawton City Code 16-3-1-316 (2016) defines Trespassing as "each and every actual entry or remaining upon the premises of another owner or person in possession of real property, whether the property is public or private, without the owner's or occupant's

consent, express or implied."(Ex. 11 - Certified copy of Lawton City Code Section 16-3-1-316)

23. After Chalepah placed Christina under arrest for Trespassing, Officer Turner assumed custody of Christina. Turner contacted another officer (Officer James Julian) to transport Christina to the jail because he did not believe that Christina would fit into either his vehicle or Short's vehicle due to her size. (Ex. 8 – Affidavit of Lawrence Turner)

24. Although Christina was placed under arrest and being transported to the jail, neither Officer Turner nor Short handcuffed Christina because of her size and because Christina was not exhibiting any behavior that led either officer to believe she was potentially violent or resistant. Christina had not been violent or resistant at any point during the officers' contact with her. (Ex.8 – Affidavit of Lawrence Turner; Ex. 9 – Affidavit of Kurt Short)

25. Christina was booked into the jail at approximately 2:13 p.m. on November 13, 2014. Jailer Daniel Hallagin was working the booking desk when Christina was booked. During the booking process, Hallagin did not get to the point of asking Christina any questions about her medical or mental health history, as required by Lawton City Jail Policy and Procedures. Hallagin was unable to complete the booking process because he felt that Christina was not responding to the questions he asked. Hallagin sent Christina to her cell and planned to complete her booking process at a later time or allow someone else to complete the booking. (Ex. 12 – Affidavit of Daniel Hallagin;

Ex. 13 – Excerpts of the Deposition of Daniel Hallagin taken on August 24, 2017, pg. 86, lines 4-16; pg. 121, lines 6-15)

26. Hallagin finished his shift at 3:00p.m., without ensuring that the intake process was complete. Hallagin had no further contact with Christina after he completed his shift. Hallagin never handcuffed Christina or observed Christina being handcuffed. Hallagin was later disciplined by the City of Lawton for his failure to complete the booking process. (Ex.12 – Affidavit of Daniel Hallagin)

27. Jailer Hallagin worked at the jail on prior occasions when Christina was in the jail. He did not recall whether or not he knew Christina had a diagnosed mental illness when he booked her in on November 13, 2014. Hallagin did not believe that Christina was delusional. (Ex. 13 – Excerpts from the Deposition of Daniel Hallagin taken on August 24, 2017, pg. 91, lines 11-25, pg. 92, lines 1-3, pg. 123, lines 4-15)

28. On November 13, 2014, at approximately 2:30 p.m., Jailer Terry Sellers was downstairs in the training room conducting training when he heard extremely loud banging coming from upstairs in the jail section. Hallagin called Sellers to the jail section and Sellers was told the individual banging might hurt herself and she is "banging pretty hard." Sellers made contact with Christina while she was in her cell and saw her standing up, facing the metal bunk bed, and banging on the center of the top bunk. Sellers asked Christina to calm down, explaining that she could hurt herself or damage property. Christina made comments such as "I'm the head bitch here. I run this show. Eff' you mother eff'ers." (Ex. 14 – Excerpts from the Deposition of Terry Sellers taken on June 7,2018, pg. 13, lines 7-16; pg. 17, lines 1-19; pg. 39, lines 20-

24)

29. Sellers asked Christina to calm down. Sellers then instructed Christina to sit on the floor with her back against the bars and after a few requests, Christina complied and sat down with her back against the bars. Sellers does not recall how Christina's hands were placed during the handcuffing or who actually handcuffed her, but knows that he would have checked the handcuffs to ensure they were not too tight. (Ex. 14 – Excerpts from the Deposition of Terry Sellers taken on June 7, 2018, pg. 20, lines 15-25; pg. 21, lines 1-11; pg. 22, lines 14-25)

30. On November 14, 2014, at approximately 1:05 a.m. and 3:10 a.m., Jailers Troy Carney and Tika Fisher observed and heard Christina banging on the metal bunk in her jail cell. Carney observed Christina yelling, kicking and slamming her hands so hard on the metal bunk bed that the corner of the top bunk lifted. Carney spoke with Christina and asked her to calm down and to stop banging. Christina would comply with Carney's instructions for a short amount of time and then begin banging again. Both Carney and Fisher assisted in handcuffing Christina to the bars of the jail cell to keep Christina from harming herself. The first handcuffing occurred at approximately 1:05 a.m. and Christina remained in handcuffs for 40 minutes. The second handcuffing occurred at approximately 3:10 a.m. and Christina was released 45 minutes later. Christina was not resistant during either handcuffing event. (Ex. 15 – Tahhahwah Booking Narrative; Ex. 16 – Affidavit of Troy Carney; Ex. 17 – Affidavit of Tika Fisher)

31. Jailer Carney has had prior contact with Christina in the jail. During the prior contacts, Christina would also bang and kick the metal bed to the point where staff was concerned she would injure herself. On those occasions, Christina was handcuffed to the cell bars for her safety without issue and the security measure was effective in curtailing her behavior. (Ex. 16 – Affidavit of Troy Carney)

32. Jailer Sellers has also had prior contact with Christina in the jail on nine occasions. Eight of those nine times, Christina caused some type of disturbance causing her to be handcuffed. Six of the nine times, Christina eventually calmed down and quit "acting out" and in Seller's opinion, became a "joy to be around." (Ex. 14 – Excerpts from the Deposition of Terry Sellers taken on June 7, 2018, pg. 165, lines 9-20)

33. On November 14, 2014 at approximately 7:25 a.m., Sellers was in the booking area when he heard Christina kicking and banging the bunk in her jail cell. Sellers went back to the cell area and observed Christina standing in the cell, facing the metal bunk bed, and hitting the bunk with her hands. At the time she was banging the bunk, Christina was yelling "Eff' this!" Sellers asked Christina to sit on the floor with her back against the bars. Christina complied, sat down and placed her hands over her shoulders, with her hands near her ears. Christina was handcuffed using two pairs of handcuffs, one for each hand. Sellers asked Christina if she was comfortable and she replied "yes". Sellers checked the handcuffs to ensure they were not too tight. (Ex.14 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 39, 1-7 and 20-24, pg. 40, lines 16-21, pg. 42, lines 10-23, pg. 58, lines 24-25, pg. 59., lines 1-7)

34. Approximately 40-50 minutes after Christina was handcuffed, Sellers was notified by

a jail trustee that Christina had twisted her hands in the handcuffs and her hands were turning purple. Sellers immediately went to the cell area and released Christina from the handcuffs. Sellers noticed that Christina had moved her body away from the bars, causing the handcuffs to pinch her right hand and causing her right hand to turn purple. Sellers released Christina from the handcuffs and rubbed Christina's hand to increase circulation and until her hand turned back to the normal color. (Ex.14 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 57, 19-25, pg. 58, lines 1-3, pg. 61, lines 4-25; Ex. 15 – Tahhahwah Booking Narrative)

35. While rubbing her hands, Sellers spoke with Christina and told her "Christina, you cannot be doing this" to which Christina responded "I understand Mr. Sellers, but these other girls are just making me mad", explaining that the other detainees were making her mad by also kicking, banging, and hitting the bunks. Any other detainee that was banging on the metal bunks during the time Christina was a detainee at the jail were either instructed to stop banging and stopped banging or was handcuffed to the bars of her cell to prevent the detainee from harming herself. (Ex. 14 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 57, lines 21-25, pg.58, 1-13)

36. On November 14, 2014, at approximately 11:48 a.m., Jailer Stacey McMillion observed Christina hitting the metal bunk so hard that the upper bunk broke. McMillion attempted to calm Christina down by talking with her and Christina responded "I want out of here, I want to go home, I own you, I could have you fired" and statements to that effect. Sellers heard the banging and yelling from the booking

area and called downstairs to the police department to request additional officers to standby while the jailers restrained Christina. (Ex.18 – Excerpts of the Deposition of Stacey McMillion taken on July 5, 2018, pg. 153, lines 16-23, pg. 154, lines 1-3, pg. 155, lines 11-25, pg. 156, lines 1-4; Ex. 14 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 71, lines 7-14, pg. 72, lines 4-12)

37. Officers Lindsey Adamson and Terry Quisenberry arrived in the jail section. Adamson and Quisenberry followed Sellers to the cell block area, where McMillion stood, still talking to Christina. Christina again sat with her back to the cell bars and put her arms over her shoulders with her hands at about ear level. McMillion then placed two sets of handcuffs on Christina's hands and connected the handcuffs to the bars of the cell. (Ex. 5 – Affidavit of Lindsey Adamson; Ex. 19 – Affidavit of Terry Quisenberry; Ex. 14 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 86, lines 1-8; Ex. 18 – Excerpts from the Deposition of Stacey McMillion taken on July 5, 2018, pg. 158, lines 6-13)

38. Officers Adamson and Quisenberry stood in the cellblock walkway while Christina was being handcuffed. Neither Adamson nor Quisenberry ever entered Christina's cell. At one point during the restraint, Quisenberry stands next to McMillion and lightly held Christina's wrist while McMillion secured the handcuff to one of Christina's wrists and the cell bar. Christina was cooperative and non-combative during the restraint. Neither Adamson nor Quisenberry observed Christina to have any cuts or bleeding and she did not appear to be in any physical distress during the restraint. Adamson and Quisenberry were in the cell block area for a total of less than

two minutes. (Ex. 5 – Affidavit of Lindsey Adamson; Ex. 19 – Affidavit of Terry Quisenberry)

39. Sellers felt that handcuffing Christina in this manner was the least restrictive position and that Christina was comfortable in this position. Sellers checked the handcuffs to ensure they were not too tight and told McMillion to double-check the handcuffs for tightness before leaving the cell block area. McMillion then double-checked the handcuffs for tightness. A jail trustee (Darla Tosta) was assigned to monitor the area. Darla Tosta had observed Christina banging hard on the metal bunk and making a loud noise with her hands prior to Christina being handcuffed as well. (Ex. 14 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 88, lines 20-25; Ex. 20 – Affidavit of Darla Tosta; Ex. 18 – Excerpts from the Deposition of Stacey McMillion taken on July 5, 2018, pg. 160, lines 12-18)

40. While Christina was handcuffed in this position, Darla Tosta could see Christina directly or out of the corner of her eye at all times. Tosta had conversations with Christina while she was handcuffed in this position. McMillion went back into the cell block area three times while Christina was handcuffed. During those times, McMillion observed Christina having a conversation with the trustee and was able to observe Christina still sitting with her back to the bars in the position in which she had been handcuffed. Christina did not appear to be in any physical distress during the times McMillion observed her and Christina did not tell McMillion the handcuffs were too tight or make any statements about being uncomfortable in the handcuffs. (Ex. 20 – Affidavit of Darla Tosta; Ex. 18 – Excerpts from the Deposition of Stacey

McMillion taken on July 5, 2018, pg. 160, lines 23-25, pg. 161, lines 1-8, pg. 163, lines 13-22, lines 164, lines 9-25, pg. 165, lines 2-9; Ex. 21 – Affidavit of Stacey McMillion)

41. The trustee massaged Christina's hands while Christina was handcuffed. The trustee then noticed that Christina's hands turned blue, or dark purple, and Christina stopped talking. The trustee immediately notified the jailers. Upon notification, Sellers went to the cell block area and found that Christina had scooted her back away from the bars and was unresponsive. McMillion's last observation of Christina occurred approximately 20 minutes before the trustee notified the jailers that Christina had stopped talking and her hands turned blue. (Ex. 20 – Affidavit of Darla Tosta; Ex. 14 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 97, lines 19 - 25, pg. 98, lines 1-3)

42. Jailers then responded to the area, attempted to find a pulse, used an AED (Automated External Defibrillator) on Christina and began chest compressions. Jailers notified fire and ambulance personnel. Christina was then transported to Comanche County Memorial Hospital. Christina died on November 17, 2017. (Ex. 15 – Tahhahwah Booking Narrative)

43. City of Lawton police officers and jailers have been trained to specifically handle mental health issues, trained to recognize symptoms of specific mental illnesses, and trained regarding use of force in connection with mentally ill individuals. Police officers are also trained regarding proper arrest procedures of mentally ill individuals. All City of Lawton police officers are required to complete a Basic Academy which

includes several hundred hours of training approved by the Council on Law Enforcement Education Training (CLEET). Officers are also required by CLEET to attend and complete a yearly minimum of twenty-five (25) hours of accredited or approved training, which includes two (2) mandatory hours on mental health. (Ex. 4 – Affidavit of Chelsey Gordon; Ex. 5 – Affidavit of Lindsey Adamson; Ex. 8- Affidavit of Lawrence Turner; Ex. 22 – Affidavit of Terry Sellers; Ex. 16 – Affidavit of Troy Carney; Ex. 17 – Affidavit of Tika Fisher; Ex. 19 – Affidavit of Terry Quisenberry; Ex. 21 – Affidavit of Stacey McMillion Ex. 9 – Affidavit of Kurt Short)

44. The training records of the individually named defendant police show that the training received by the officers on a yearly basis often doubled, and sometimes tripled the minimum CLEET requirements. None of the defendant officers have ever failed to meet any CLEET mandated training requirements. (Ex. 4 – Affidavit of Chelsey Gordon; Ex. 5 – Affidavit of Lindsey Adamson; Ex. 8- Affidavit of Lawrence Turner; Ex. 19 – Affidavit of Terry Quisenberry; Ex. 9 – Affidavit of Kurt Short)

45. The training of City of Lawton jailers is regulated by Oklahoma State Department of Health Jail Standards (hereinafter, "OSDH"), which requires twenty-four hours of training for jailers in their first year of employment, at least four (4) hours of review of required training items each year, eight (8) hours of actual training by the jail administrator each year, and the yearly completion of a test administered by OSDH. None of the individually named defendant jailers have ever failed to meet any yearly training requirements. (Ex. 22 – Affidavit of Terry Sellers; Ex. 16 – Affidavit of Troy Carney; Ex. 17 – Affidavit of Tika Fisher; Ex. 21 – Affidavit of Stacey McMillion)

46. City of Lawton jailers and officers are trained to follow policies on use of force, mental health offenders, and first aid and cardiopulmonary resuscitation (CPR) training. In addition, officers are trained to follow a policy on proper arrest procedures. CLEET Basic Academy materials include lessons on Mental Illness and Protective Custody, which specifically trains students to recognize the signs and symptoms of thought disorders, major depression, and bipolar disorder and how to identify factors to consider when assisting someone who appears to be a person requiring treatment for a mental illness. (Ex. 4 – Affidavit of Chelsey Gordon; Ex. 5 – Affidavit of Lindsey Adamson; Ex. 8 – Affidavit of Lawrence Turner; Ex. 22 – Affidavit of Terry Sellers; Ex. 16 – Affidavit of Troy Carney; Ex. 17 – Affidavit of Tika Fisher; Ex. 19 – Affidavit of Terry Quisenberry; Ex. 21 – Affidavit of Stacey McMillion Ex. 9 – Affidavit of Kurt Short; Ex. 23 – CLEET Academy Mental Illness – Protective Custody; Ex. 24 – Arrest Procedures Policy; Ex. 25 – Mental Health Offenders Policy; Ex. 26 – First Aid CPR Policy; Ex. 27 – Use of Force Policy)

47. There are several City of Lawton training records in which mental illness is not the specific topic of training, but a subtopic of discussion. For example, in a course titled "Criminal Investigations", officers are taught to handle interviews with mentally ill suspects differently than other suspects. As another example, Officer Adamson states that even in a Taser Update class, there may be training and discussion about how to handle certain situations when mental illness is involved. Ex. 28 – CLEET Criminal Investigations; Ex. 29 – Excerpts from the Deposition of Lindsey Adamson taken August 17, 2017, pg. 68, lines 7-12)

48. In addition to the above-listed training, officers have been trained to recognize and deal with mentally ill individuals, to include those suffering from bipolar disease. (Ex. 4 – Affidavit of Chelsey Gordon; Ex. 23 – CLEET Academy Mental Illness – Protective Custody; Ex. 30 – Excerpts from the Deposition of Lawrence Turner taken June 6, 2018, pg. 96, lines 5-11, Pg. 110, lines 1-8; Ex. 19 – Affidavit of Terry Quisenberry; Ex. 9 – Affidavit of Kurt Short; Ex. 2 – Affidavit of Daniel Harter)

49. There are regulations and policies contained in the jail training manual relating to use of force, classifying and appropriately segregating mentally ill detainees, and providing medical care and screening to detainees. All jailers are trained to comply with the OSDH Jail Standards, which includes topics such as providing basic standards of care and adequate medical care and health services for detainees. Jailers receive specific training on use of force in the jail setting, handcuffing detainees, jail suicide prevention, and attend courses titled "Dealing with the Mentally Ill". Jailers have been trained to recognize the symptoms of bipolar disorder and other specific mental health issues during training sessions, through the use of videos, and/or through on the job training. (Ex. 22 – Affidavit of Terry Sellers; Ex. 16 – Affidavit of Troy Carney; Ex. 17 – Affidavit of Tika Fisher; Ex. 21 – Affidavit of Stacey McMillion; Ex. 14 – Excerpts from the Deposition of Terry Sellers taken June 7, 2018, pg. 163, lines 1-16; Ex. 18 – Excerpts from the Deposition of Stacey McMillion taken July 5, 2018, pg. 85, lines 8-12; Ex. 31 – Jail Training Records)

50. In November, 2013, City of Lawton Council members met with members of the Fidelis Group, LLC (hereinafter, "Fidelis"), to discuss issues regarding the Council

members' concerns about observed diminishment of morale of the officers and employees of the Lawton Police Department (hereinafter, "LPD"). Fidelis then orally presented a plan of investigation to the City Council and commenced an investigation, which included interviews with supervisory staff, officers, and non-officer employees of LPD. The investigation concluded with the preparation and presentation of an investigative report, dated February 25, 2014. (Ex. 32 – Affidavit of John Hippard)

51. Based on the interviews and investigation, the Fidelis Report specifically noted that the LPD Training Division conducts a 23-week Academy for new officers, monthly in-service training for officers, specialized training for officers, as well as community and school related training, and that any training issues raised by officers were not directed at the Training Division. The training related issues identified in the Fidelis Report were limited to concerns that officers were unhappy with/unaware of the selection process for attending specialized schools; that training for those promoted to Lieutenant and/or Detective was limited to three weeks of on-the-job training; and a lack of a tracking method for schools an officer wants to take to enhance his/her career path. The report did not identify any training issues with the Jail Section of the Lawton Police Department. (Ex. 32 – Affidavit of John Hippard; Ex. 33 – Fidelis Report)

52. In response to the issues raised in the Fidelis Report, the City of Lawton Police Chief prepared a response report detailing the manner in which LPD would address any issues of concern raised by the Fidelis Report. The Chief's response report was submitted to the Council Committee overseeing the Fidelis matter on March 28, 2014.

(Ex. 34 – LPD Initial Response to Fidelis Investigation; Ex. 35 – Affidavit of Chief James Smith)

53. William Harris was booked into the Lawton City Jail on August 31, 2014 for domestic abuse. The jail staff completed a medical screening of Mr. Harris during the booking process at which time Mr. Harris stated that he was not suicidal but he did have back problems and a problem with alcohol. On September 4, 2014, a City of Lawton jailer discovered Mr. Harris in his cell, unresponsive, and slumped over the toilet in his cell. The City notified the Oklahoma State Department of Health Jail Inspection Division (hereinafter "OSDH") of Mr. Harris' death and on September 23, 2014, OSDH conducted an investigation into the incident and determined that "no further action [was] required." The Oklahoma Office of the Chief Medical Examiner completed an autopsy of Mr. Harris' body. The manner of death was listed as "natural" and the probable cause of death was listed as "complications of liver cirrhosis due to alcoholism." (Ex. 36 – Jail Incident Report 09.04.14; Ex. 37 – OSDH Investigation Report Re: William Harris; Ex. 38 – William Harris Autopsy – Redacted)

54. On November 17, 2014, the City of Lawton submitted a Jail Incident Report to the Oklahoma State Department of Health Jail Inspection Division (OSDH). There has been no action taken by OSDH since the submission of the report.(Ex. 39 – OSDH Jail Incident Report; Ex. 22 – Affidavit of Terry Sellers)

## ARGUMENT AND AUTHORITY

### STANDARD OF REVIEW

Under Rule 56(c), Fed.R.Civ.P., summary judgment shall be granted if the record shows that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." The moving party has the burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A genuine issue of material fact exists when "there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In determining whether a genuine issue of a material fact exists, the evidence is to be taken in the light most favorable to the non-moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). All reasonable inferences to be drawn from the undisputed facts are to be determined in a light most favorable to the non-movant. *United States v. Agri Services, Inc.*, 81 F.3d 1002, 1005 (10th Cir.1996). Once the moving party has met its burden, the opposing party must come forward with specific evidence, not mere allegations or denials, demonstrating that there is a genuine issue for trial. *Posey v. Skyline Corp.*, 702 F.2d 102, 105 (7th Cir.1983).

"[I]f the evidence is merely colorable, or not significantly probative, summary judgment may be granted." *Id.* In addition, "the mere existence of a scintilla of evidence in support of a plaintiff's position will be insufficient; there must be evidence on which a jury could reasonably find for the plaintiff." *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

242, 248 (1986)*Id.* "Even though all doubts must be resolved in (the nonmovant's) favor, allegations alone will not defeat summary judgment." *Celotex*, 477 U.S. at 324. Moreover, "(i)n response to a motion for summary judgment, a party cannot rely on ignorance of facts, on speculation, or on suspicion, and may not escape summary judgment in the mere hope that something will turn up at trial." *Conaway v. Smith*, 853 F.2d 789, 794 (10th Cir. 1988).

## PROPOSITION I
## THE CITY IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF'S FEDERAL CLAIM

### A. The City cannot be held liable if this Court rules that there is no underlying constitutional violation.

A municipality may not be held liable where there is no underlying constitutional violation by any of its employees. *City of Los Angeles v. Heller*, 475 U.S. 796, 799, 106 S.Ct. 1571, 1573, 89 L.Ed.2d 806 (1986); *Hinton v. City of Elwood*, 997 F.2d 774, 782 (10th Cir. 1993) ("[a]municipality may not be held liable where there was no underlying constitutional violation by any of its officers.") In their Motions for Summary Judgment, which are incorporated herein by reference, the individual Defendants argue that they are entitled to summary judgment and qualified immunity because they did not violate Christina's constitutional rights.

Should this Court address the individual Defendants' Motions first and rule that there is no underlying constitutional violation, summary judgment should be granted in favor of the City on Plaintiff's federal claim because the City may not be held liable where there is no underlying constitutional violation by any of its employees.

**B. Even if the Court Denies the Individual Defendant's Motions, the City is Still Entitled to Summary Judgment on Plaintiff's Failure to Train Claim.**

"[A] local government may not be sued under Section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under Section 1983." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983. *Connick v. Thompson*, 563 U.S. 51, 61, 131 S.Ct. 1350 (2011). However, a municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train. *Id* at 60.

To satisfy the statute, a municipality's failure to train its employees in a relevant respect must be so egregious as to amount to "deliberate indifference to the rights of persons with whom the [untrained employees] come into contact." *Connick* at 60, citing *Canton v. Harris*, 489 U.S. 378, 388, 109 S.Ct. 1197(1989). Only then "can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983." *Canton* at 389. [D]eliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Board of Comm'rs of Bryan Cty.*, 520 U.S. 397, 410, 117 S.Ct. 1382 (1997). Thus, when city policymakers are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens'

constitutional rights, the city may be deemed deliberately indifferent if the policymakers choose to retain that program. *Id.* at 407. The city's "policy of inaction" in light of notice that its program will cause constitutional violations "is the functional equivalent of a decision by the city itself to violate the Constitution." *Canton,* at 395. A less stringent standard of fault "would result in *de facto respondeat superior* liability on municipalities." *Id*. at 392

There are four essential elements to a failure to train claim. The plaintiff must allege facts sufficient to show the following: (1) City's officers violated Christina's constitutional rights, (2) the violations arose under circumstances that were usual and recurring situations for the City's police officers and jailers, (3) the City's inadequate training or supervision of its officers demonstrates deliberate indifference to individuals with mental illness, and (4) there is a direct causal link between the constitutional deprivations and the inadequate training or supervision. *Bryson v. Macy*, 611 F.Supp.2d 1234, 1264 (W.D. Okla. April 30, 2009).

**1. Plaintiff cannot show a pattern of similar constitutional violations which necessarily put the City on notice that its training program was inadequate.**

"A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train". *Connick,* at 61. The law requires the pattern of constitutional violations to be sufficiently "similar" to the violation in the case at hand in order to demonstrate that the [City's] officials were on notice that their training program was inadequate. *Barber v.*

*Town of La Veta*, No. 14-CV-03273-RBJ, 2015 WL 5865105, at *4 (D. Colo. Oct. 8, 2015) citing *Connick*, 131 S.Ct at 1360.

Plaintiff alleges that the "actions of the officers of the Lawton Police Department"…. "exceeded the constitutional limitation of Christina's rights to receive medical treatment in deliberate indifference to her constitutional rights as a pretrial detainee in the City of Lawton Jail." [Doc. 1, ¶ 78] However, Plaintiff fails to show a pattern of similar constitutional violations by untrained correctional officers and/or police officers which put the City on notice that its training program was inadequate as required to establish a failure to train claim.

In her Complaint, Plaintiff alleges "another inmate died because of a lack of medical care shortly before Christina's death in the fall of 2014." [Doc. 1, ¶ 79] Plaintiff then alleges "the inadequate training, supervision or discipline exhibited by the City of Lawton to its officers demonstrate a deliberate indifference on the part of the City of Lawton towards **persons such as Christina who suffered from mental illnesses** with whom they come into contact." [Doc. 1, ¶ ¶ 79-80](emphasis added). Therefore, it is clear that Plaintiff's failure to train claim is based upon a theory that City of Lawton officers (and jailers) exhibit deliberate indifference in their contact with individuals with mental illness.

Plaintiff's claim fails for a number of reasons. First, one prior incident, even if it was a constitutional violation sufficiently similar to put officials on notice of a problem, does

not describe a pattern of violations. *Coffey v. McKinley Cty.*, 504 F. App'x 715, 719 (10th Cir. 2012)(unpublished). Second, the alleged death of the prior inmate due to a "lack of medical care" is not sufficiently similar to the alleged violation in the case at bar. There is no allegation that the prior inmate suffered from a mental illness much less any evidence to prove such. Plaintiff cannot prove that the prior inmate's death was related whatsoever to any treatment that the prior inmate received or did not receive from City of Lawton officers and/or jailers.

The undisputed facts show that William Harris (the prior inmate) was booked into the Lawton City Jail on August 31, 2014 for domestic abuse. (Fact No. 53) The jail staff completed a medical screening of Mr. Harris during the booking process at which time Mr. Harris stated that he was not suicidal but he did have back problems and a problem with alcohol. (Fact No. 53) On September 4, 2014, a City of Lawton jailer discovered Mr. Harris in his cell, unresponsive, and slumped over the toilet in his cell. (Fact No. 53) The City notified the Oklahoma State Department of Health Jail Inspection Division (hereinafter "OSDH") of Mr. Harris' death and on September 23, 2014, OSDH conducted an investigation into the incident and determined that "no further action [was] required." (Fact No. 53) The Oklahoma Office of the Chief Medical Examiner completed an autopsy of Mr. Harris' body. The manner of death was listed as "natural" and the probable cause of death was listed as "complications of liver cirrhosis due to alcoholism." (Fact No. 53)

Plaintiff can show no set of facts proving that William Harris suffered from a mental health condition. Plaintiff can show no set of facts suggesting that William Harris was subjected to a false arrest (as is alleged in this case). Plaintiff can prove no set of facts showing that William Harris was subjected to any force during his contact with City of Lawton employees, much less excessive force. Plaintiff can prove no set of facts showing that William Harris failed to receive the proper care while in the Lawton City Jail.

Likewise, Plaintiff will be not be able to show that City of Lawton Police Officers have a pattern of falsely arresting suspects - in fact, Plaintiff has failed to even prove that the individual officers named in this suit falsely arrested the decedent as further discussed below. Nor can Plaintiff point to any other incident with an arrestee or pretrial detainee in which City of Lawton police officers or jailers failed to provide adequate medical and psychological care in violation of the arrestee's or detainee's constitutional rights. Therefore, Plaintiff has failed to show a pattern of similar constitutional violations by untrained correctional officers and police officers which necessarily put the City on notice that its training program was inadequate and the City of Lawton is entitled to summary judgment on any claim based upon a theory of inadequate training.

**2. Plaintiff cannot show that this case falls within the narrow range of circumstances justifying a finding of deliberate indifference absent a pattern of violations.**

A "pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference," however, the Supreme Court has suggested that "in a narrow range of circumstances, a pattern of similar violations might

not be necessary to show deliberate indifference." *Bryan Cty*. at 409. In *City of Canton, Ohio v. Harris,* 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989), the Court did not foreclose the possibility that evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger municipal liability.

The Tenth Circuit has confirmed that the deliberate indifference standard may be satisfied "when the municipality has actual or constructive notice that its action or failure is substantially certain to result in a constitutional violation, and it consciously and deliberately chooses to disregard the risk of harm." *Barney v. Pulsipher,* 143 F.3d 1299, 1307 (10th Cir.1999). "Deliberate indifference may be found absent a pattern of unconstitutional behavior if a violation of federal rights is a 'highly predictable' or 'plainly obvious' consequence of a municipality's action." *Barney,* 143 F.3d at 1307. This "highly predictable" or "plainly obvious consequence" must operate as the "moving force" behind the violation, and the plaintiff must demonstrate a "direct causal link" between the action and the right violated. *Bd. of County Comm'rs v. Brown,* 520 U.S. 397, 399, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997). That is, "[w]ould the injury have been avoided had the employee been trained under a program that was not deficient in the identified respect?" *City of Canton,* 489 U.S. at 391, 109 S.Ct. 1197.

The Supreme Court has specifically cautioned against judicial micro-management in this area. "In virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something

the city 'could have done' to prevent the unfortunate incident." *City of Canton*, 109 S.Ct. at 1206. [Thus],

> showing merely that additional training would have been helpful in making difficult decisions does not establish municipal liability. *Proving that an injury or accident could have been avoided* if an employee had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct *will not suffice*.

*Connick*, 131 S.Ct. at 1363–64 (emphasis added). The Supreme Court has made clear that the single-incident exception is premised on officers' "utter lack of an ability to cope with constitutional situations," and thus "is concerned with the substance of the training, not the particular instructional format." *Id.* at 1363. Further, "[i]n the case where a plaintiff seeks to impose municipal liability on the basis of a single incident, the plaintiff must show the particular illegal course of action was taken pursuant to a decision made by a person with authority to make policy decisions on behalf of the entity being sued." *Jenkins v. Wood*, 81 F.3d 988, 994 (10th Cir.1996).

In *Olsen v. Layton Hills Mall*, the Tenth Circuit Court of Appeals addressed the issue of whether a county manifested deliberate indifference by failing to train jail pre-booking officers to recognize obsessive-compulsive disorder ("OCD") and appropriately handle those who suffered from the condition. *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1320 (10th Cir. 2002). Because OCD was relatively common and the county had procedures in place for dealing with inmates with psychiatric disorders, the court concluded a fact question existed as to whether the county had constructive notice of the

illness' prevalence and consequences. *Id*. The Court found that "given the frequency of the disorder and Davis County's scant procedures on dealing with mental illness"…. "a violation of federal rights is quite possibly a 'plainly obvious' consequence" of Davis County's failure to train its pre-booking officers to address the symptoms of OCD. *Id*. at 1320.

First, Defendant cannot in good faith dispute that City of Lawton officers and jailers deal with individuals that suffer from mental illnesses on a frequent and recurring basis. However, unlike the plaintiff in *Olsen*, here, the Plaintiff is unable to show that the City of Lawton has "scant procedures" on dealing with mental illness.

City of Lawton police officers and jailers have been trained to specifically handle mental health issues, trained to recognize symptoms of specific mental illnesses, trained regarding use of force in connection with mentally ill individuals, and trained regarding proper arrest procedures of mentally ill individuals. All City of Lawton Police Officers are required to complete a Basic Academy which includes several hundred hours of training approved by the Council on Law Enforcement Education Training (CLEET). Officers are also required by CLEET to attend and complete a yearly minimum of twenty-five (25) hours of accredited or approved training, which includes two (2) mandatory hours on mental health. *70 O.S. 3311.4(A)* The training records of the individually named defendant police officers show that the training received by the officers on a yearly basis often **doubled**, and sometimes **tripled** the minimum CLEET requirements. None of the defendant officers have ever failed to meet any training requirements. (Fact Nos. 43-44)

The training of City of Lawton jailers is regulated by Oklahoma State Department of Health Jail Standards (hereinafter, "OSDH"), which requires twenty-four hours of training for jailers in their first year of employment, at least four (4) hours of review of required training items each year, eight (8) hours of actual training by the jail administrator each year, and the yearly completion of a test administered by OSDH. *Oklahoma Administrative Code,* Section 310: 670-5-10 (2005) The training records of the individually named defendant jailers show that all of the jailers met these training requirements. None of the defendant jailers have ever failed to meet any yearly training requirements. (Fact No. 45)

City of Lawton jailers and officers are trained to follow policies on use of force, mental health offenders, and first aid and cardiopulmonary resuscitation (CPR) training. In addition, officers are trained to follow a policy on proper arrest procedures. CLEET Basic Academy materials include lessons on Mental Illness and Protective Custody, which specifically trains students to recognize the signs and symptoms of thought disorders, major depression, and bipolar disorder and how to identify factors to consider when assisting someone who appears to be a person requiring treatment for a mental illness. (Fact No. 46) In addition to these specific lesson plans, there are several training records in which dealing with mentally ill persons is not the specific topic of training, but a subtopic of discussion. For example, in a course titled "Criminal Investigations", officers are taught to handle interviews with mentally ill suspects differently than other suspects. As another example, Defendant Officer Adamson states that even in a Taser Update class, there may be training and discussion about how to handle certain situations

when mental illness is involved. In addition to the above-listed training, officers have also received on the job training on how to recognize and deal with mentally ill suspects, to include those suffering from bipolar disease. (Fact No. 48)

Additionally, there are regulations and policies contained in the jail training manual relating to use of force, classifying an appropriately segregating mentally ill detainees, and providing medical care and screening to detainees. All jailers are also trained to comply with the OSDH Jail Standards, which includes topics such as providing basic standards of care and adequate medical care and health services for detainees. Jail training records further covers specific topics on use of force in the jail setting, handcuffing detainees, jail suicide prevention, and courses titled "Dealing with the Mentally Ill". Jailers have been trained to recognize the symptoms of bipolar disorder and other specific mental health conditions during training sessions, through the use of videos, and/or through on the job training. (Fact No. 49)

The police officers and jailers employed by the City of Lawton are well trained to handle recurring situations dealing with mentally ill pretrial detainees including proper arrest procedures, proper use of force procedures, and dealing with and recognizing mental illness, to include bipolar disease. Plaintiff will be unable to show otherwise and cannot therefore meet the single incident exception.

**3. Plaintiff will be unable to show that any city policymaker had actual or constructive notice that a particular omission in the City's training program caused city employees to violate citizens' constitutional rights as required to show deliberate indifference on the part of the City.**

In addition to the Plaintiff's inability to show that Defendant City has "scant procedures on dealing with mental illness" as required to meet the stringent single incident exception, Plaintiff will also be unable to show that any city policymaker had actual or constructive notice that a particular omission in the City's training program caused city employees to violate citizens' constitutional rights as required to show deliberate indifference on the part of the City. Plaintiff's Complaint alleges the "City of Lawton was aware that its training program for the officers was inadequate because of an Investigative Report prepared by Fidelis Group, LLC on February 25, 2014, which found that the City of Lawton's training program was inadequate." [Doc. 1, ¶ 79] This allegation is unfounded and misleading, at best.

The undisputed facts show that in November, 2013, City of Lawton Council members met with members of the Fidelis Group, LLC (hereinafter, "Fidelis"), to discuss issues regarding the council members concerns about observed diminishment of morale of the officers and employees of the Lawton Police Department (hereinafter, "LPD"). Fidelis then orally presented a plan of investigation to the City Council and commenced an investigation, which included interviews with supervisory staff, officers, and non-officer employees of LPD. The investigation concluded with the preparation and presentation of an investigative report, dated February 25, 2014. (Fact No. 50)

Based on the interviews and investigation, the Fidelis Report *did not* indicate that the current training program for City of Lawton LPD was inadequate as Plaintiff has alleged. Rather, the investigation specifically noted that the LPD Training Division conducts a 23-week Academy for new officers, monthly in-service training for officers, specialized training for officers, as well as community and school related training and that the training issues raised by officers were not directed at the Training Division. The training related issued identified in the Fidelis Report were limited to concerns that officers were unhappy with/unaware of the selection process for attending specialized schools; that training for those promoted to Lieutenant and/or Detective was limited to three weeks of on-the-job training; and a lack of a tracking method for schools an officer wants to take to enhance his/her career path. The report did not identify any training issues with the Jail Section of the Lawton Police Department. (Fact No. 51)

More importantly, in response to the issues raised in the Fidelis Report, the City of Lawton Police Chief prepared a response report detailing the manner in which LPD would address any issues of concern raised by the Fidelis Report. The Chief's response report was submitted to the Council committee overseeing the Fidelis matter on March 28, 2014. (Fact No. 52) Therefore, *even if* any issue identified by the Fidelis Report was related to inadequate training (which was not the case) – the City of Lawton has record of having quickly addressed the issue.

For all of the above-stated reasons, Plaintiff cannot establish the necessary elements of deliberative indifference with respect to any claim that Defendant City of Lawton failed to adequately train its employees. Furthermore, although Plaintiff's Complaint

states the City failed to adequately supervise its employees, the claim is nothing more than a conclusory allegation. Accordingly, the City is entitled to summary judgment on Plaintiff's federal claim.

**PROPOSITION II**
**THE CITY IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF'S STATE LAW CLAIM**

Plaintiff's Complaint states "the actions of each of the officers as described herein were reckless and negligent. Furthermore, the actions of Officer Halligan were negligent *per se* because he violated OAC 310: 670-5-1 and OAC 310:670-5-8 by failing to complete a medical screening or a medical triage and by failing to send Christina to a medical facility prior to housing her in the Lawton City Jail." [Doc.1, ¶88] The Complaint goes on to state "[a]s a direct and proximate result of the actions of the officers as described herein, Christina Dawn Tahhahwah sustained physical injuries and emotional injuries" and the "injuries sustained….in the events described herein ultimately resulted in her death." [Doc.1, ¶¶89-90] For the reasons set forth below, the City is entitled to summary judgment on Plaintiff's state law claim.

First, in *Williams*, a Tenth Circuite Court dismissed a claim for false arrest finding that false arrest is an intentional tort and therefore it cannot give rise to a claim for negligence. *Williams v. City of Norman*, No. CIV-16-1008-C, 2017 WL 4248879, at *3 (W.D. Okla. Sept. 25, 2017) citing *Broom v. Wilson Paving & Excavating, Inc.*, 2015 OK 19, ¶ 32, 356 P.3d 617, 629. In *Broom* the court found that "[n]egligence, in its generally accepted meaning, has in it no element of willfulness; but involves a state of mind which is negative; a state of mind in which the person fails to give attention to the character of

his acts or omissions or to weigh their probable or possible consequences." *Broom v. Wilson Paving & Excavating, Inc*., 2015 OK 19, ¶ 32, 356 P.3d 617, 629 (Okla. 2015) (quoting *Kile v. Kile*, 1936 OK 748, ¶ 7, 63 P.2d 753, 755). This means that "[n]egligence excludes the idea of intentional wrong and when 'a person wills to do an injury, he ceases to be negligent.'" *Id.* quoting *St. Louis & S.F.R. Co. v. Boush,* 1918 OK 367, ¶ 15, 74 P. 1036, 1040.

Second, the Oklahoma Governmental Tort Claims Act ("GTCA") provides that a "political subdivision shall be liable for loss resulting from …. the torts of its employees acting within the scope of their employment." *51 O.S.§ 153(A).* 'Scope of employment' means performance by an employee acting in good faith within the duties of the employee's office or employment …." *51 O.S. § 152(12).* Courts have recognized that this provision excludes torts that could not have been committed by an employee acting in "good faith." *See Fehring v. State Ins. Fund,* 2001 OK 11, ¶ 23, 19 P.3d 276, 283 ("when, for viability, the tort cause of action sued upon requires proof of an element that necessarily excludes good faith conduct on the part of governmental employees, there can be no liability against the governmental entity in a GTCA-based suit"). As such, to the extent Plaintiff is alleging that the City is liable in negligence for a false arrest, that claim must fail because false arrest is an intentional tort which could not have been committed by an officer in good faith performance of his duties.

Finally, as shown in Defendant officers' individual motions and from the facts set forth above, Plaintiff will be unable to establish that the officers falsely arrested

Christina. The officers were told by Christina's family members that they wanted her to leave the residence and she refused; Christina confirmed she was told to leave but stated she had nowhere to go; Edward Tahhahwah confirmed that both he and Anna Chalepah asked Tahhahwah to leave and she refused and that Chalepah had authority to do so; and Anna Chalepah filled out a citizen's arrest form arresting Christina for trespassing. It is clear the officers had ample information to support a finding that probable cause existed for Anna Chalepah to arrest Tahhahwah for trespassing. Based upon this information, Anna Chalepah placed Tahhahwah under arrest and the officers lawfully took custody of Tahhahwah and transported her to the City jail. Plaintiff's false arrest claim has no merit and the City is entitled to summary judgment on that claim. (Fact Nos. 19-24)

With respect to Plaintiff's other claims for excessive force and failure to provide adequate medical and psychological care, those claims must also fail. Under Oklahoma law, the elements of negligence are: "(1) the existence of a duty on part of defendant to protect plaintiff from injury; (2) a violation of that duty; and (3) injury proximately resulting therefrom." *Prince v. B.F. Ascher Co.*, 2004 OK CIV APP 39, ¶ 18, 90 P.3d 1020, 1027. The City does not dispute that its officers and jailers owed a duty to provide reasonable and ordinary medical care to Tahhahwah *after she was arrested* by Anna Chalepah and taken into custody and *while she was a pretrial detainee* at the City jail. However, the City is entitled to summary judgment for two reasons: First, because Plaintiff is unable to produce evidence to support the second or third elements of a negligence claim. Plaintiff will be unable to show that Defendant's employees violated any duty owed to Tahhahwah or that any such violation was the proximate cause of

Tahhahwah's injuries; and, second, because the City is exempt from liability for the actions (or inactions) of the jailers and officers that were in contact with Tahhahwah in the jail setting as set forth below.

The facts show that no police officer that came into contact with Tahhahwah prior to her arrest states that she exhibited any behavior that would require the officer to take Tahhahwah involuntarily into protective custody and to send her to a medical facility for psychological treatment. Furthermore, Defendant City can find no case suggesting that said officers had a duty to do so because at this stage, Tahhahwah was not in their custody and control. (Facts No. 2,4,6,8,17,18,19) One police officer did in fact send Tahhahwah by ambulance to the hospital after Tahhahwah requested to go to a hospital and stated she had "e.coli" in her kidneys – therefore, even if Plaintiff can establish that a duty existed in that setting, Plaintiff cannot establish that officer violated any duty to Tahhahwah. (Fact Nos.9,10)

Likewise, Plaintiff cannot show that the officers who were present when Tahhahwah was arrested by Anna Chalepah failed in any duty to take Tahhahwah to a medical facility as opposed to jail. Tahhahwah did not exhibit any behaviors that would require the officers to take her involuntarily into protective custody and if Tahhahwah was in a "bipolar state" and needed medical attention at this point, her family members could have taken her to a medical facility. Instead, they chose to tell dispatchers "come take her to jail" and to sign a citizen's complaint, arrest her, and have her taken to jail. (Fact Nos. 7, 20)

More importantly, Tahhahwah was seen by medical professionals on November 12 and 13, 2014 – and although she presented in a "fairly manic state" as described in the records, her behavior was not concerning enough for the medical professionals to send Tahhahwah involuntarily for treatment at a mental health facility. (Fact Nos. 11,14) Furthermore, there is no record of Tahhahwah's family attempting to have her involuntarily committed to mental health facility or of them even bothering to fill her prescriptions from her visits to the hospital on the 12th and 13th. Instead, the family arrested her and sent her to jail. If medical professionals treating Christina did not see a need to involuntarily commit her to a psychiatric facility, and her family members declined to take her for treatment themselves, how is it that police officers and jailers can be liable for not doing so when they were last in line to deal with Christina. Plaintiff will be unable to show that the decision of a City of Lawton employee to not take Christina for treatment was any more the proximate cause of Tahhahwah's death than the decision of medical professionals and her own family members.

With respect to Plaintiff's specific allegation that "the actions of Officer Halligan were negligent *per se* because he violated OAC 310: 670-5-1 and OAC 310:670-5-8 by failing to complete a medical screening or a medical triage and by failing to send Christina to a medical facility prior to housing her in the Lawton City Jail", [Doc.1, ¶88] this claim must also fail. Both the City and Hallagin have admitted that the medical intake process was not completed. In fact, Hallagin was disciplined for his actions. (Fact No. 26) However, based on the facts that Plaintiff has alleged in her Complaint, even if Plaintiff can establish a violation of a duty, Plaintiff fails to show that any action or

inaction by Hallagin (or any other officer or jailer for that matter) was the proximate cause of Tahhahwah's death, and Defendant City is entitled to summary judgment.

**A. The City is exempt from liability.**

Plaintiff also alleges that City of Lawton jailers (and two officers present during a handcuffing of Tahhahwah) were negligent by not providing medical and psychological care to Tahhahwah and by using excessive force in handcuffing Tahhahwah on 5 separate occasions. Plaintiff again specifically points to the actions of Jailer Hallagin by alleging he failed to complete a medical screening or a medical triage and failed to send Christina to a medical facility prior to housing her in the Lawton City Jail. As shown below, the City is exempt from liability on this type of claim under the Oklahoma Governmental Tort Claims Act ("GTCA").

Governmental immunity of a subdivision of the State of Oklahoma is waived only to the extent and in the manner provided in the Governmental Tort Claims Act (hereinafter "GTCA"). *Salazar v. City of Oklahoma City*, 1999 OK 20, 976 P.2d 1056, 1066, *quoting,* 51 O.S.1991 § 152.1(B). A political subdivision shall be liable for loss resulting from its torts or the torts of employees committed within the scope of employment where private persons or entities would be liable under the laws of this state. *Walker v. City of Moore*, 1992 OK 73, 837 P.2d 876, 878, *citing,* 51 O.S.1991 § 153(A). However, the GTCA makes certain exemptions from this liability. 51 O.S. § 155. Included therein is the following exemptions:

§ 155. Exemptions from liability

> The state or a political subdivision shall not be liable if a loss or claim results from:
>
> 4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation, or written policy.
>
> 25. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or injuries by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections. 51 O.S. § 155(25).

The City has a written policy requiring the proper intake of detainees into the Lawton City Jail. Therefore, to the extent Plaintiff is alleging the City was negligent by not requiring Hallagin (or any other jailer or officer) to follow that written policy, the City is exempt from liability. Under 51 O.S. § 155(4), the City is expressly exempt from liability under the GTCA for "enforcement of….or failure to enforce…written policy."

The City is also exempt from liability under 51 O.S. § 155(25). Assigning the ordinary meanings to the words of the statute, § 155(25) protects the state from liability for loss resulting from the actual stock of (provision) or the supplying of (equipping) all that is necessary to the functioning of a penal institution, or the process or manner of conducting (operation) the functions of a penal institution, or the process or series of acts necessary to sustaining (maintenance) the proper conditions of a penal institution. *Medina v. State*, 1993 OK 121, 871 P.2d 1379, 1382 (emphasis added). In *Hutto v. Davis*, the court held that when a duty to obtain medical treatment derives solely from a defendant's

duty as a jailer, the exemption for jail operations applies. *Hutto v. Davis*, 972 F.Supp. 1372, 1379 (W.D. Okla. 1997).

Likewise, courts have held that § 155(25) immunizes prisons and jails from a wide array of inmates' tort claims, including, failure to provide medical treatment, *Redding v. State*, 882 P.2d 61 (Okla.1994) and negligence by prison guards in their removal of a prisoner's handcuffs and leg irons. *Washington v. Barry*, 55 P.3d 1036 (Okla.2002). In *Arnold v. Smallwood*, the court concluded that plaintiff's claim for negligence was precluded by § 155(25) of the GTCA under controlling Oklahoma case law inasmuch as it arose out of plaintiff's detention in the county jail. *Arnold v. Smallwood*, No. 10-CV-070-GKF-TLW, 2012 WL 1657045, at *14–15 (N.D. Okla. May 10, 2012). Here, Plaintiff has clearly alleged that Hallagin was negligent in the manner in which he conducted the operations of the jail (i.e., the manner in which he conducted an intake process and by not sending Christina to a medical facility) and any other allegations related to the jailers' actions derive solely from their duties as jailers. The City is therefore exempt under the above-listed exemption as well.

## CONCLUSION

For the reasons set forth above, Defendant City of Lawton is entitled to summary judgment on Plaintiff's failure to train claim as well as Plaintiff's negligence and negligence *per se* claims.

Respectfully submitted this 30th day of July, 2018.

s/Kelea L. Fisher
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of July, 2018, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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