

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF WASHINGTON
6 PROBATE DEPARTMENT

7 In the Matter of the Estate of
8 Jacob R Macduff,
9 Deceased.

Case No. 21PB01585

DECLARATION OF SCOTT LEVIN IN
SUPPORT OF APPROVAL OF
WRONGFUL DEATH SETTLEMENT
AND PAYMENT OF ATTORNEY
FEES

10
11 I, Scott Levin, declare as follows:

12 1.

13 I am one of the attorneys for Maria Macduff, the duly appointed Personal
14 Representative of the Estate of Jacob R. Macduff and make this declaration pursuant to ORS
15 114.447(2) in support of Personal Representative's Petition for Approval and Authority to
16 Settle Wrongful Death Claim and Pay Attorney Fees and Costs (hereinafter "Petition").

17 2.

18 I was retained to represent the Personal Representative in connection with the
19 wrongful death claim arising out of the death of the Decedent herein, Jacob R. Macduff. I
20 associated attorney David D. Park, OSB #803358, Elliott & Park, P.C., a lawyer with significant
21 experience and reputation in the evaluation, litigation and trial of police misconduct and police
22 deadly force cases. The claim being settled is a wrongful death claim. ORS 114.447(2)(a).

23 3.

24 This claim stems from the use of deadly force on Jacob R. Macduff, a person suffering
25 from a mental health crisis, by on-duty officers of the Tigard Police Department on the
26 evening of January 6, 2021. Jacob had a history of hospitalizations for mental health

1 disorders that manifested in the form of psychosis and psychotic behaviors. In the two-day
2 period preceding January 6, 2021, Tigard Police had been dispatched to Jacob's apartment on
3 three separate occasions on reports of domestic disturbance/welfare check that included
4 information that Jacob was suffering from mental illness. On January 6, 2021, Tigard Police
5 were again dispatched to Jacob's apartment on a domestic disturbance call. After developing
6 probable cause to arrest Jacob for domestic harassment, Jacob was located by Tigard Police
7 officers sitting inside his Nissan truck that was parked in its assigned parking space at the
8 apartment complex. The doors to Jacob's truck were locked and Jacob was unwilling to
9 unlock the doors. Jacob did not possess a firearm and Tigard officers had no reason to
10 believe that Jacob possessed a firearm. Their only information regarding weapons was that
11 Jacob might be in possession of a knife. Tigard officers spoke with Jacob for approximately 1
12 hour and 14 minutes. During that period Jacob remained calm and never threatened harm to
13 anyone nor displayed any weapons. During that period Tigard officers, without summoning
14 officers training in mental health crisis intervention, devised a plan to remove Jacob by force
15 from his truck that involved breaking his driver's door window and pulling him from his
16 vehicle through the window or the door and taking him into custody. When the plan was
17 initiated, one of the officers, Mastrich, fired less-lethal shotgun rounds through the windshield
18 of Jacob's truck without prior warning to anyone present, triggering Maldonado, the officer
19 who used deadly force, to commence firing at Jacob. Eight rounds were fired by Maldonado
20 at close range through the shattered driver's door of Jacob's truck, one of which missed, and
21 seven of which entered Jacob through his back, killing him. ORS 114.447(2)(b).

22 4.

23 According to decedent's death certificate, decedent's cause of death was multiple
24 gunshot wounds. ORS 114.447(2)(c).

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

5.

No claim amount was stated because the claim was settled through pre-filing confidential settlement negotiations. ORS 114.447(2)(d).

6.

The parties identified as subject to liability for decedent’s death, City of Tigard and Tigard Police Officers Gabriel Maldonado, Brent Mastrich, Caleb Phillips, Nathaniel Will, Gabriel Stone, Kaci Mace (hereinafter referred to collectively as “City of Tigard”). The City of Tigard has agreed to settle this case for \$3,800,000.00 in addition to the affirmative relief that is outlined in the Settlement Agreement and Release which is attached as Exhibit 1 to the Petition. ORS 114.447(2)(e).

7.

The Personal Representative, Maria Macduff, entered into a contingent fee agreement with my firm and agreed to pay one-third of the amount recovered through a settlement as attorney fees. The total attorney fees due and payable pursuant to that agreement are \$1,266,666.67, of which \$633,333.34 is payable to Levin and Levine, and \$633,333.33 is payable to Elliott & Park, P.C. In addition, the Personal Representative has advanced costs and expenses from the estate in pursuing a settlement in the wrongful death claim in the amount of \$12,000.00, Levin and Levine has advanced costs and expenses in the amount of \$19,907.36 and Elliott & Park, P.C. has advanced costs and expenses in the amount of \$284.19. ORS 114.447(2)(f).

The costs are itemized as follows:

Costs Advanced by Maria Macduff	
Postage	\$5.21
Private Investigator	\$1,405.80
Las Vegas Police Department Reports	\$20.00
Medical Examiner Records	\$25.00

1	Probate Filing Fee	\$278.00
2	Media Consultant	\$1,675.00
3	Graphic Arts, Video/Audio, and IT Services	\$7,412.50
4	Transcription Services	\$714.00
5	Vehicle Storage Unit	\$464.49
6	TOTAL	\$12,000.00

8	Costs Advanced by Levin and Levine	
9	Postage	\$3.82
10	Washington County Sheriff 3D Scans	\$16.50
11	Media Consultant	\$2,675.00
12	Vehicle Towing	\$327.00
13	Vehicle Storage Unit	\$2,592.03
14	Graphic Arts, Video/Audio, and IT Services	\$4,585.00
15	Crime Scene Reconstructionist	\$9,708.01
16	TOTAL	\$19,907.36

18	Costs Advanced by Elliott & Park, P.C.	
19	Photocopies	\$53.40
20	WCCCA (911/dispatch audio)	\$75.00
21	Westlaw Legal Research	\$155.79
22	TOTAL	\$284.19

24 ///

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8.

I have requested and reviewed information regarding all expenses and charges for which reimbursement is required under ORS 30.030(3), and there are no payments or reimbursement which has not been previously authorized. ORS 114.447(2)(g).

9.

The Personal Representative is entitled to a fee attributable to the wrongful death claim, but she has waived her right to compensation. ORS 114.447(2)(h).

10.

To the best of my knowledge and the knowledge of my co-counsel, the amount of this settlement is among the top five largest settlements in Oregon against a police agency for excessive deadly force. The reasons for the settlement are that the result achieves the objectives of Maria Macduff, sole beneficiary of the wrongful death claim (the decedent's mother) in bringing a measure of public accountability to the City of Tigard and the officers involved in the shooting through the significant dollar amount of the settlement, the changes in policy and training identified in the settlement agreement that were fast tracked and/or initiated by the City following Jacob's death and the City's agreement to cooperate in an independent critical incident review of the circumstances surrounding her son's death, the results of which Ms. Macduff intends to and will make public by a release of same to the local media. Such independent review provides the City and the public with necessary information and opportunity to further improve the City's policies, procedures and training when responding to incidents involving mentally ill subjects in crisis. We also believe that the terms of this settlement, in aggregate, are likely to reduce the risk of injury and death to similarly situated persons in crisis to whom Tigard officers respond in the future and, in that respect, will give Jacob's death some purpose and serve the greater good.

1 Further, the grief and emotional stress of Jacob's death weighs heavily on Maria Macduff
2 and her surviving children and, with this settlement Ms. Macduff and Jacob's siblings can
3 continue the long process of healing without the added stress and burden of the litigation.

4 To maximize recovery, Mr. Park and I performed a thorough, comprehensive
5 investigation and analysis of the facts, legal issues and liability in this matter. Through
6 subpoenas issued out of this Probate case, we obtained the complete and unredacted files and
7 records of the Washington County District Attorney's investigation of the shooting and the
8 Medical Examiner's Report, Autopsy Report and related x-ray images and autopsy photos. We
9 also obtained all historical medical and mental health records of Jacob. With this information
10 in hand, a draft complaint was prepared, experts in crime scene reconstruction, graphic imaging,
11 video and audio analysis and police practices were retained and/or consulted and confidential
12 settlement communications were prepared that included a written settlement demand and an
13 interactive settlement webpage setting forth our reconstruction of the shooting and a portion of
14 our liability analysis. ORS 114.447(2)(i).

15 11.

16 Mr. Park and I made a thorough examination of the Medical Examiner's investigation
17 and autopsy reports and the decedent's medical and mental health treatment records that
18 preceded his death, which are the sole applicable medical records. ORS 114.447(2)(j).

19 12.

20 It is appropriate to settle this case because the proposed settlement is a just resolution
21 the estate's claim for the wrongful death of Jacob Macduff and it accomplishes the objectives
22 of Maria Macduff in bringing the claim. Mr. Park and I further believe the proposed settlement
23 is reasonable, appropriate and in the best interests of the estate relative to the risks and
24 uncertainties of trial. ORS 114.447(2)(k).

25 ///

26 ///

1 I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY
2 KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THEY ARE MADE FOR USE AS EVIDENCE
3 IN COURT AND ARE SUBJECT TO PENALTY FOR PERJURY.

4 DATED: July ____, 2022.

5 _____
6 Scott Levin OSB #077088
Attorney for Personal Representative

7 PERSONAL REPRESENTATIVE
8 MARIA MACDUFF
6296 STOW CANYON RD.
9 GOLETA, CA 93117
TELEPHONE: 805-698-8282

ATTORNEY FOR PERSONAL REPRESENTATIVE
LINDSAY KEARL
OSB #161313
LEGACY PRESERVATION LAW
4915 NE 42ND AVENUE
PORTLAND, OR 97218
TELEPHONE: 503-224-6611
EMAIL: LINDSAY@MCVITTIE-LAW.COM