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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH CENTRAL DIVISION

MARIA CALZADA, an individual;  
MANUELA ROSALES, an individual;  
and the ESTATE OF JOSE  
CALZADA, by and through its co-  
personal representatives, MARIA  
CALZADA and MANUELA  
ROSALES,

Plaintiffs,

v.

ROY CITY; WEBER COUNTY; ROY  
CITY POLICE DEPARTMENT;  
WEBER COUNTY SHERIFF'S  
DEPARTMENT; ARMANDO PEREZ,  
a SWAT Team Officer; JOHN BECK,  
a SWAT Team Officer; REID  
MACKLEY, a SWAT Team Officer;  
LT. JEFF PLEDGER, SWAT Team  
Commander; TROY WINDSOR, a  
SWAT Team Officer; WILLIAM  
FARR, a SWAT Team Officer;  
TERANCE LAVELY, a SWAT Team

COMPLANT  
AND  
JURY DEMAND

Case: 1:16cv00165  
Assigned To : Wells, Brooke C.  
Assign. Date : 12/6/2016  
Description: Calzada et al v. Roy City  
et al

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**Officer; BRANDON MILES, a SWAT Team Officer; TIM FULTON, a SWAT Team Officer, DENTON HARPER, a SWAT Team Officer; BRENT BUTLER, a SWAT Team Officer; and JOHN AND JANE DOES 1-70,**

**Defendants.**

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Plaintiffs Maria Calzada, individually, Manuela Rosales, individually, and the Estate of Jose Calzada, by and through its co-personal representatives Maria Calzada and Manuela Rosales (collectively, Plaintiffs), pursuant to Rule 8(a) Fed.R.Civ. P., complain and allege for a cause of action against Defendants as follows:

**PRELIMINARY STATEMENT**

The following allegations are based upon the undersigned's understanding of information presently available. This is a civil rights action in which Plaintiffs seek relief for the Defendants' violations of the rights of Jose Calzada, including the wrongful taking of his life, guaranteed by the United States Constitution, specifically, the Second, the Fourth, the Fifth, and/or the Fourteenth Amendments, which rights are secured by the Civil Rights Act of 1871, 42 U.S.C. §§1983 and 1988. Plaintiffs seek damages both compensatory and punitive; affirmative and equitable relief; an award of attorney's fees, costs, and interest; and other and further relief as this Court deems just and equitable. This is a further action at law to redress a deprivation under color of statute, ordinance, regulation, custom, or usage of a right, privilege, and immunity secured to Jose Calzada

and to the Plaintiffs by the Fourth Amendment of the Constitution of the United States, and arises under the law and statutes of the State of Utah.

On October 21, 2014 Jose Calzada (Jose) called a suicide helpline run by the neurological clinic at the University of Utah Medical Center. He called in at approximately 4:04 a.m. Shortly thereafter, Roy City Police were dispatched to the scene even though Jose never threatened anyone beside himself. The other occupants of Jose's home felt free to leave and exited the premises shortly after law enforcement arrived.

Jose had not broken any law, had threatened no one and was of no danger to anyone other than himself. In fact over the course of approximately five (5) hours Defendants' negotiator, Detective Vanderwarf repeatedly reassured Jose that he had done nothing wrong and that law enforcement would not enter his home

Around 8:59 a.m. Jose told Det. Vanderwarf that he was going to go to sleep. Jose had been awake all night and had consumed a large quantity of alcohol. Therefore, Defendants assumed that Jose had gone to sleep. Approximately 90 minutes later, after the police had not been in contact with Jose, the Defendants made the irrational, unreasonable, unlawful, unconstitutional and incorrect decision to have a SWAT Team enter Jose's home in violation of his rights under the United States Constitution and the Utah State Constitution.

Defendants had no search warrant and there were never any exigent circumstances necessitating a warrantless search, even from the time Jose reached out

and called the suicide hotline for help. Defendant was simply sleeping alone in his home. It is not an exigent circumstance that Jose may have been a threat to himself. All indications were that Jose was not that serious about killing himself. He had had numerous opportunities to do so over the five-hour course of negotiations if that was what he truly intended to do. Rather than going through with the suicide, Jose had reached out to the crisis hotline for help and had engaged in five hours of negotiations until the effects of a sleepless night and large amount of alcohol and prescription medication made him overwhelmingly tired and he told Defendants that he was going to sleep.

Approximately thirty minutes after Defendants entered Jose's home, they found him lying down asleep in the trunk of his car. They woke Jose up from his drunken stupor with guns drawn yelling "let me see your hands" repeatedly. Jose never said a word or made a threat to Defendants, even at that point; he never even made an attempt to sit upright. When he allegedly made a slow movement with one hand toward a rifle, Defendants opened fire and shot him twenty-two (22) times immediately killing him. Defendants' use of deadly force was unauthorized and unwarranted as deadly force is only authorized if there is an immediate threat to oneself or others, and one cannot create the threat. Here, none of the Defendants nor anyone was threatened. And if there were arguably any threat, it was one created by Defendants.

Never at any point did Jose escalate the situation. In fact, he deescalated it. He called for help as he was contemplating suicide and then, after negotiating with law

enforcement for approximately 5 hours, he told them he wanted to go to sleep and did so. It was Defendants who escalated the situation and called in the SWAT Team whose purpose was to hunt down and kill Jose. Shockingly, immediately following Jose's death, one member of the SWAT Team slapped a fellow SWAT Team member and one of the shooters who killed Jose on the left shoulder and shouted, "You're good." In effect congratulating him on successfully completing his mission.

Had the Defendants not violated Jose's rights, Jose would not have died. It's astounding and appalling that a citizen can call a suicide hotline looking for help and end up killed by police a few hours later. Plaintiffs must be compensated and Defendants punished for their horrific, unconscionable actions.

### **PARTIES**

1. Plaintiff Maria Calzada (Maria) is a resident of Weber County, Utah, and was the wife of Jose Calzada (Jose) when he was shot and killed by the Police,. Maria is also a co-personal representative of his estate and an heir of the estate.
2. Plaintiff Manuela Rosales (Manuela) is the mother of Jose Calzada. Manuela is also a co-personal representative of his estate and an heir of the estate.
3. Defendant Roy City is a political subdivision of the State of Utah.
4. Defendant Weber County is a political subdivision of the State of Utah.
5. Defendant Roy City Police Department is a governmental entity operating within the State of Utah.

6. Defendant Weber County Sheriff's Office is a governmental entity operating within the State of Utah.

7. Defendant Armando Perez, at all times relevant herein, was a SWAT Officer and Alpha squad's leader (entry team), for either Weber County SWAT and/or Ogden Metro SWAT, employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity was also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of their corporate powers, and at all times relevant herein, Defendant Perez was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity was also a contributing member to the SWAT Team at all times relevant. Plaintiffs are suing Defendant Perez in his individual capacity.

8. Defendant John Beck, at all times relevant herein, was a SWAT Officer, for either Weber County Metro SWAT and/or Ogden Metro SWAT, employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of their corporate powers, and at all times relevant herein, Defendant Beck was an employee and/or agent of Roy City Police

Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Beck in his individual capacity.

9. Defendant Reid Mackley, at all times relevant herein, was a SWAT Officer, for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Mackley was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Mackley in his individual capacity.

10. Defendant Lt. Jeff Pledger, at all times relevant herein, was a SWAT Officer and SWAT Team Commander, for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a

contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Lt. Pledger was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Lt. Pledger in his individual capacity.

11. Defendant Corporal Troy Windsor, at all times relevant herein, was a SWAT Officer and Operations Officer (assistant team commander), for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Windsor was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Windsor in his individual capacity.

12. Defendant Sgt. William Farr, at all times relevant herein, was a SWAT Officer and Logistics Officer (third in command of the team), for either Weber County Metro

SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Farr was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Farr in his individual capacity.

13. Defendant Terance Lavelly, at all times relevant herein, was a SWAT Officer and Alpha squad's assistant squad leader, for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Lavelly was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a

contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Lavelly in his individual capacity.

14. Defendant Deputy Brandon Miles, at all times relevant herein, was a SWAT Officer and Alpha squad member, for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities, and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Miles was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Miles in his individual capacity.

15. Defendant Tim Fulton, at all times relevant herein, was a SWAT Officer and Alpha squad member, for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities, and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Fulton

was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Fulton in his individual capacity.

16. Defendant Denton Harper, at all times relevant herein, was a SWAT Officer and Bravo squad's assistant squad leader, for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Harper was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Harper in his individual capacity.

17. Defendant Sgt. Brent Butler, at all times relevant herein, was a SWAT Officer and Bravo squad member, for either Weber County Metro SWAT and/or Ogden Metro SWAT, and was employed by and/or an agent of Roy City Police Department and/or Weber County Sheriff's Office, governmental entities and/or a governmental entity

deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. As part of its corporate powers, and at all times relevant herein, Defendant Butler was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team. Plaintiffs are suing Defendant Butler in his individual capacity.

18. Defendant(s) John and/or Jane Does 1-25 were police officers with Roy City Police Department at all times alleged in this Complaint who were acting within the course and scope of his or her employment, and Plaintiffs are suing him or her in his or her individual capacity. As part of its corporate powers, and at all times relevant herein, the Defendant officer was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team.

19. Defendant(s) John or Jane Does 26-50 were law enforcement officers with Weber County Sheriff's Office at all times alleged in this Complaint who was acting within the course and scope of his or her employment, and Plaintiff is suing him or her in his or her individual capacity. As part of its corporate powers, and at all times relevant herein, the

Defendant officer was an employee and/or agent of Roy City Police Department, Weber County Sheriff's Office, Roy City and/or Weber County and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team.

20. Defendant(s) DOES 51-70 is a governmental entity deriving its powers from the State of Utah which governmental entity was also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team at all times relevant to this action.

21. This action is brought against Officer Defendants Armando Perez, John Beck, Reid Mackley, Lt. Jeff Pledger, Troy Windsor, William Farr, Terance Lavelly, Brandon Miles, Tim Fulton, Denton Harper, Brent Butler and John or Jane Does 1-50 in their individual capacities. Their authority to act was derived from Utah State law and/or the commands and directives of their superiors. All of the acts of the individuals and entities listed herein were performed under color of laws, statutes, ordinances, regulations, policies, customs, and usages of Roy City Police Department, Roy City, Weber County Sheriff's Office, Weber County, and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team, and each said individual is a person liable under 42 U.S.C. § 1983. Officer Defendants Armando Perez, John Beck, Reid Mackley, Lt. Jeff Pledger, Troy Windsor, William Farr, Terance Lavelly, Brandon

Miles, Tim Fulton, Denton Harper, Brent Butler and Does 1-50 were at all relevant times employees and/or agents of Roy City Police Department and/or Weber County Sheriff's Office and/or a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team and were operating under the corporate powers of said agency/agencies.

22. This action is also brought against Defendants Roy City, Roy City Police Department, Weber County and Weber County Sheriff's Office and DOES 51-70. Plaintiffs have served notice of their pendant state claims against Defendants Roy City, Roy City Police Department, Weber County Sheriff's Office and Weber County pursuant to Utah law. These claims are present in this Complaint.

23. Plaintiffs deny that notice is required of any of the claims in this Complaint against the individual Defendants since all such claims deal with constitutional violations under 42 U.S.C. § 1983, and state law notice of such claims is not required.

#### **JURISDICTION AND VENUE**

24. This Court has jurisdiction under the United States Constitution and federal law, particularly under the provisions of the Second, Fourth, Fifth, and Fourteenth Amendments of the Constitution of the United States, and 42 U.S.C §§ 1983 and 1988.

25. This Court has jurisdiction pursuant to 28 U.S.C. §§ 331 and 1343 and supplemental jurisdiction of Plaintiffs' state law claims under 28 U.S.C. § 1367.

26. This action seeks redress for violations of the civil rights laws of the United States, and jurisdiction is therefore invoked pursuant to 28 U.S.C. § 1343 and 42 U.S.C. §1983.

27. The claims made in this Complaint occurred and arose in Weber County, State of Utah, in this District, and in the Central Division. Venue is proper under 28 U.S.C. 1391 and 28 U.S.C. § 1331.

28. Plaintiffs are seeking damages under federal law pursuant to the claims for relief specified below, in amounts to be proved at trial.

29. This Court has authority to award costs and attorney fees pursuant to 42 U.S.C. § 1988.

30. This Court also has supplemental jurisdiction over Plaintiffs' State claims under 28 U.S.C. § 1367.

#### **FACTUAL ALLEGATIONS**

31. On October 21, 2014, Jose Calzada, a 35-year-old, citizen of the United States of America and of Hispanic descent, called a suicide helpline at the neurological unit of the University of Utah Medical Center at approximately 4:04 a.m. to request help as he was contemplating suicide.

32. Jose was in his home located at 3779 West 5300 South, Roy, Utah.

33. Jose had been drinking and claimed to have one or more firearms in his possession. He was threatening to kill himself.

34. At the time Jose placed his call, three other individuals were present in the home, Donna Hotz and her two minor children.

35. Jose had not threatened any other person, including the people present in the home, and Jose was not in violation of any law. Nor at any time did Jose threaten the safety of any other person, including law enforcement officers.

36. Although Jose had called the suicide hotline seeking help, Roy City Police Department personnel were dispatched to Jose's home.

37. Upon arriving at the scene, Roy City Police officers made contact with Donna and asked if she thought she and her children could safely leave the home. Donna replied that she could because she felt no threat to her safety or the safety of her children from Jose. Donna and her children left Jose's home by approximately 4:40 a.m.

38. Donna and her children stayed nearby outside the home after exiting the home. Because of the wind, cold and a light sprinkle outside, Donna and her children were removed from the scene.

39. At approximately 4:47 a.m. after failed attempts to communicate with Jose, Roy City Police Officer Val Truscott called SWAT Team commander, Defendant Lt. Jeff Pledger, and requested help of the SWAT Team.<sup>1</sup>

40. Upon information and belief, Lt. Pledger, was the officer in charge at the time of the incident.

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<sup>1</sup> Ogden Metro SWAT is now known as Weber County SWAT and is operated by Weber County and the Weber County Sherriff's office.

41. Defendant Lt. Pledger asked Officer Truscott if Jose had made any threats to harm the other people present in the home and was told that Jose had made no threats.

42. According to Defendant Lt. Pledger's own Case Summary, he recognized that Jose was "not an immediate danger to anyone but himself, and because [he] did not want to appear confrontational to Jose rather than trying to provide help to him, [Lt. Pledger] declined to get the entire SWAT Team involved at this point, but agreed to respond to the scene and assist [himself.]" (Lt. Pledger Case Summary dated 10-21-2014 (Lt. Pledger Case Summary), at page 5 of 15. Lt. Pledger Case Summary is attached as Exhibit A to this Complaint.)

43. Defendant Lt. Pledger also requested that Officer Truscott contact the head negotiator for the SWAT team, Detective Jason Vanderwarf, and ask him to respond as well. (Id.)

44. Defendant Lt. Pledger arrived at Jose's home scene and met with Officer Truscott, Sgt. Morgan and a third officer. "[A]ll agreed that there were no criminal violations that had occurred and that [their] only reason for being [there] was the concern for Jose and the fact that he wanted to kill himself." (Id., at page 6 of 15).

45. Defendant Lt. Pledger also asked "Sgt. Morgan if he was aware of any instance where Jose had threatened or committed violence against the police, and he stated that he was not." (Id.)

46. Det. Vanderwarf and Defendant Lt. Pledger then went into Lt. Pledger's patrol car so that Det. Vanderwarf could talk with Jose over the phone. "The next several hours

were spent with [Det.] Vanderwarf and [Lt. Pledger] inside [Officer Pledger's] patrol vehicle. [Det.] Vanderwarf was talking with Jose over the cell phone, [and Lt. Pledger] could hear Jose clearly through the phone as [Det.] Vanderwarf and [Jose] conversed."

(Id.)

47. Jose, Det. Vanderwarf, and a crisis worker identified as "Denise," were on the three-way call for a couple of hours. Denise attempted a few times to take the conversation in a different direction.

48. At 6:22 a.m., Lt. Pledger called the crisis hotline on a different phone and asked that Denise remain out of the conversation with Jose and Det. Vanderwarf. The woman he spoke to stated, "Sir, you have to understand that [Denise] has already built a rapport with him, and the guy you have talking to him right now is making it worse." (Id.)

49. Denise was then put on the phone with Lt. Pledger and confirmed that "she felt that [Det.] Vanderwarf was making things worse by discussing what a nice house Jose had, nice vehicles, a job and a family who obviously loved and needed him. She said that Jose was fearful that he was losing all of that and that this was part of what was driving him to the suicidal thoughts." In spite of being made aware of these concerns, Lt. Pledger "reiterated to [Denise] that [he] needed her to stay off the line so that [they] could talk with Jose." (Id., at page 7 of 15.)

50. Det. Vanderwarf made the situation worse multiple times by calling Jose the wrong name, including calling him Juan and Josue.

51. During the phone calls between Jose and Det. Vanderwarf, Det. Vanderwarf repeatedly assured Jose that “we were not going to come in while he was armed.” (Det. Vanderwarf’s report at page 22 of 52.) Det. Vanderwarf “assured Jose that no one was in his home and that we were not going to surprise him like that. [Det. Vanderwarf] reiterated on multiple occasions that we did not want to hurt him and that he [Jose] did not want to hurt any of us. [Det. Vanderwarf] also informed [Jose] on many occasions that he had not done anything wrong and was not in any trouble and that [they] just wanted to get him the help that he initially asked for by calling the crisis line.” (Id. at page 23 of 52.)

52. At some point during the conversation, Jose told Det. Vanderwarf he no longer wanted to continue speaking with Det. Vanderwarf and wanted a different negotiator, but Det. Vanderwarf refused the request.

53. During the call, Dr. Brian Gushman, Jose’s treating psychiatrist or psychologist, was brought into a four-way conversation with Jose (Dr. Gushman, Jose, Det. Vanderwarf, and Dispatch).

54. Defendants were informed by Ms. Hotz that before calling the suicide crisis line Jose had consumed a large quantity of alcohol – approximately a gallon of Seagram’s 7. They were also informed that Jose was taking a prescription sleep aid and two anti-anxiety medications that would cause increase drowsiness. Jose’s speech was heavily slurred throughout the many hours of talking and was at times incoherent.” (Id., at page 10 of 15.)

55. At some point during these negotiations, Lt. Pledger “noted to [Det.] Vanderwarf that if [they] stopped talking with Jose altogether for a short time he may even fall asleep.” (Id., at page 8 of 15.)

56. During the final minutes of the dialogue between Dr. Gushman and Jose, Jose “stated that he was very tired because he had been up all night. He wanted to go to sleep.” (Id., at page 9 of 15.)

57. At approximately 8:59 a.m., Det. Vanderwarf and Dr. Gushman lost contact with Jose. They, together with Lt. Pledger attempted several times to regain contact with Jose, but were never able to do so. (Id., at page 10 of 15).

58. The facts that Jose had consumed approximately a gallon of Seagram’s 7, had heavily slurred, and at times incoherent, speech, and also had presumably taken prescription medications all lead Lt. Pledger to “believe that Jose had succumbed to the effects of the alcohol and possibly the medications and that he had fallen asleep.” (Id.) Lt. Pledger informed other officers that Jose “was likely passed out asleep inside the house.” (Deputy Miles’ Report at page 4 of 52, attached as Exhibit B to the Complaint.)

59. Det. Vanderwarf then confirmed with Dr. Gushman that given the amount of alcohol that Jose had consumed and if he had taken his prescription medications, this would have been enough to cause Jose to pass out. (Det. Vanderwarf’s Report at page 23 of 52.)

60. Lt. Pledger stated to the other officers that Jose had not committed any crimes and that they were on scene strictly to help take Jose into custody so he could be transported to the hospital for mental evaluation. (Id.)

61. At 10:30 a.m., Lt. Pledger made the decision for the SWAT team to enter Jose's home without a search warrant and without any exigent circumstances necessitating entry, as Jose was presumably asleep in his own home, had not violated any law, had not threatened any person, including any law enforcement officer, beside himself, thus violating Jose's constitutional rights.

62. At no time since the situation began when Jose called the suicide crisis line did exigent circumstances ever exist; and Defendants recognized that there was no exigency: (1) Defendants and their officers and agents waited over an hour and a half after losing contact with Jose before entering the home; (2) Jose never threatened anyone nor did he violate any laws; (3) There were no other persons present in the home; (4) Defendants all presumed that Jose was asleep and/or passed out due to his large consumption of alcohol and lack of sleep the night before; (5) Defendants' desire to take Jose into custody for a mental evaluation is not an exigent circumstance; (6) Jose had called a suicide crisis hotline seeking help and he had been willing to talk and negotiate for several hours without taking any action to harm himself or anyone else; and (7) Defendants' agents repeatedly assured Jose that he had not done anything wrong and that they would not enter his home.

63. Defendants and their officers and agents had no valid reason for entering Jose's home. It is not illegal to consume alcohol in one's home, to possess firearms in one's home, or to go to sleep in one's home.

64. The Officers did not have a search warrant and doubtfully could have obtained one, as Jose had not broken the law.

- a. Jose had a constitutional right to have firearms.
- b. Jose had a constitutional right to stay in his home without fear of police searching it.
- c. Jose had not broken any law by threatening to kill himself.
- d. Jose had been talked down by 9:00 a.m., and had been asleep for almost two (2) hours when officers broke into his house and killed him.
- e. No one else was present in Jose's home.

65. Jose was present in his home during the prior several hours of negotiations and had expressly stated that he did not give officers permission to come into the home without his weapons. Neither Defendants nor their agents had the right to enter Jose's home.

66. Defendants may contend that they had written consent from Ms. Hotz to enter Jose's home. Plaintiffs have requested a copy of the alleged written consent to enter, but Defendants have refused to provide such a copy.

67. Even assuming, arguendo, that Defendants had obtained written consent from Ms. Hotz, an alleged co-occupant of Jose's home, such was not valid consent to enter Jose's

home under United States Supreme Court case *Georgia v. Randall*, 547 U.S. 103 (2006) because Jose, a co-occupant and owner of his home, was present in his home and had expressly stated that he did not give the Officer Defendants permission to come into his home.

68. Lt. Pledger assembled and commanded SWAT Team members to enter and search Jose's home. The SWAT Team included: Corporal Troy Windsor, Operations Officer (assistant team commander); Sgt. William Farr, Logistics Officer (third in command of the team); Armando Perez, "Alpha" squad's leader (entry team); Terance Lavelly (Alpha's assistant squad leader); Brandon Miles, Alpha squad member; Tim Fulton, Alpha squad member, Denton Harper, Bravo Squad's assistant squad leader; Sgt. Brent Butler, Bravo squad member already on scene as part of the initial patrol response; John Beck, Bravo squad member; and Bob Stirling, Bravo squad member and leader of the team's medical component. (Lt. Pledger's Case Summary at page 11 of 16, attached as Exhibit A.)

69. "After clearing the action with Lt. Pledger, [Deputy Miles] moved forward to the external door of the garage with the breaching ram, and breached the door in one strike. ...Officer Perez gave assignments for entry into the garage and cleared the action through Lt. Pledger. Lt. Pledger approved the movement and the team entered the garage." (Deputy Miles' Incident Report, page 3 of 52, attached as Exhibit B.)

70. Thus, the Officer Defendants entered Jose's home through the garage without any probable cause, without any crime being committed, and without any exigent circumstances necessitating any entry.

71. No exigent circumstances existed which would have allowed for entering the home, including fear for Jose's life, as Jose had indicated that he was tired and wanted to sleep, and presumably went to sleep, ending communication with law enforcement.

72. There was no reason to enter the house an hour and a half after Jose said he wanted to go to sleep. The Officer Defendants had no reason to believe that he had done anything but go to sleep.

73. Once the Officer Defendants entered Jose's home through his attached garage, they began to illegally search Jose's entire home. The Officer Defendants searched Jose's garage and then stealthily "mirrored" and then searched the entire interior of Jose's home, including closets, storage spaces and under the beds; they also illegally searched the crawl space in the basement. The Officer Defendants searched Jose's tent/camp trailer and a shed in his backyard.

74. The Officer Defendants still had not located Jose. Defendant Officer Perez requested a K9 unit. Defendant Lt. Pledger was informed of the search status and agreed to locate a patrol K9 to assist the Officer Defendants in their illegal search. While waiting for the K9 to respond, Defendant Officer Perez gave out orders for secondary searches of outside buildings and trailers. Defendant Officer Beck and Defendant Deputy

Miles were tasked with locating keys to the two passenger cars in Jose's garage. (Deputy Miles' Incident Report, at page 5 of 52, attached as Exhibit B.)

75. After illegally searching for Jose for approximately a half hour, the Officer Defendants returned to perform a more thorough search of Jose's garage where the two passenger cars were parked. The first car, a Chrysler 300 sedan was searched and cleared.

76. Then the team moved to searching Jose's Honda. Defendant Deputy Miles attempted to open the trunk manually with the keys. The keys fit, but would not unlock the trunk. "[Defendant Deputy Miles] then told Officer Beck that he would try to pop the trunk from inside the car. Defendant Officer Beck agreed and [Defendant Deputy Miles] opened the driver door of the Honda." (Id.)

77. Defendant Deputy Miles located the lever to pop the trunk and asked Defendant Officer Beck if he was ready. "[Defendant Officer Beck] very said he was, and [Defendant Deputy Miles] pulled the lever for the trunk." (Id. at page 6 of 52.)

78. Defendant Officer Beck began shouting at Jose to show his hands while Defendant Deputy Miles lifted the lid of the trunk. (Id.)

79. Defendant Lt. Pledger was notified over the radio that Jose had been located. (Lt. Pledger Case Summary at page 12 of 15, attached as Exhibit A.)

80. Jose was found lying in the trunk of his car holding his pistol in his mouth with the Officer Defendants surrounding him with their firearms drawn.

81. Defendant Deputy Miles began talking to Jose. However, “Jose never spoke” nor did he ever threatened any of the Officers. (Deputy Miles’ Incident Report, at page 6 of 52, attached as Exhibit B.)

82. “Other SWAT Operators [moved] into a position of cover or support.” (Id.) Additionally, an armored vehicle was moved into position in front of the garage. The entire team was ready for action.

83. Significantly, these circumstances were never escalated by Jose. The situation was escalated by law enforcement by illegally entering and searching Jose’s home and vehicles, and upon finding him in a dazed and drunken stupor began shouting at Jose with their guns drawn. Thus, the Officers’ illegal entry and search of Jose’s home had escalated the situation beyond what was necessary and turned the situation into a life or death one.

84. Jose eventually put his hands behind his head “in a resting position”

85. Defendants allege that Jose slowly reached toward a rifle in the back of the trunk with one hand. The Officer Defendants were yelling at Jose when a single shot was fired by an Officer Defendant at 11:14 am, then brief pause followed by a firestorm of shots by Officer Defendant with at least twenty-two (22) of the shots striking and killing Jose. The Officer Defendants identified as the shooters are Defendants Officer Beck, Officer Perez, and Officer Mackley. Significantly, Jose never threatened the Officer Defendants nor pointed a weapon at the Officer Defendants nor fired a single shot. Jose never even attempted to sit up or change from his resting position.

86. The Officer Defendants improperly employed excessive deadly force. Deadly force is only authorized if there is a threat to the Officer himself or to someone else – and that threat cannot be created by the Officer or Officers. If there was any threat in this situation, it was a threat created by the Officers themselves, not by Jose.

87. Furthermore, the Defendants acted in concert to hunt down and kill Jose. They were primed and ready for action. In fact, according to Defendant Deputy Miles' own account, "[t]he round that struck Jose in the head appeared to strike him in the forehead, just to the left of center. As soon as I seen [sic] Jose go limp from that bullets [sic] impact. I slapped Officer Beck on the left shoulder and shouted 'You're good.'"

(Deputy Miles' Incident Report, at page 7 of 52, attached as Exhibit B.)

88. Defendants' reports of the incident are devoid of any expressions of shock, horror, regret or remorse for killing a man who had called a suicide crisis hotline for help.

Rather, there was exuberance and compliments for killing Jose.

89. The Office of the Medical Examiner autopsy report declares that Jose's immediate cause of death was "Multiple gunshot wounds." The report also details the twenty-two (22) gunshot wounds, excluding any exit wounds, suffered by Jose at the hands of Defendants.:

- a. Two (2) penetrating and one (1) perforating gunshot wounds of the head;
- b. Two (2) penetrating gunshot wounds of the neck;
- c. Two (2) perforating gunshot wounds and one (1) graze wound of the left chest and shoulder;

- d. Three (3) penetrating gunshot wounds of the lateral back;
- e. One (1) superficial perforating gunshot wound and two (2) penetrating gunshot wounds of the left upper arm;
- f. One (1) penetrating gunshot wound and one (1) graze wound of the left forearm;
- g. Two (2) penetrating gunshot wounds of the posterior left thigh.
- h. One (1) perforating and three (3) penetrating gunshot wounds of the lateral and posterior left lower leg.

(See Report of Examination of Jose M. Calzada of Office of the Medical Examiner, at page 1, attached to this Complaint as Exhibit C.)

90. The autopsy report also states that Jose suffered “[e]xtensive pseudostippling of the torso and extremities” caused by bullets shot by Defendants. (Id.)

91. The Defendants’ illegal entry and search of Jose’s home violated his constitutional rights, leading to his death.

92. Jose’s death was also the result of Defendants’ unauthorized and unwarranted use of excessive and deadly force.

93. According to Roy City Police Officer Kenneth Parker, “There will be video of this event on the Roy City Police Department server.” Plaintiffs have requested copies of any all such video recordings, but Defendants have refused to provide them.

**Tragic Consequences and Damages**

94. In the final moments of Jose's life, he was placed in great terror as he knew that the Officers were likely going to kill him.

95. In addition to any other damages, the Estate of Jose Calzada is entitled to damages for pain and suffering and other general damages as may be allowed by law, in an amount that is reasonable as determined by a jury.

96. In addition to any other damages, the Estate of Jose Calzada is entitled to damages for Jose's lost earnings over what should have been his lifetime.

97. Jose's mother, Manuela Rosales, and his wife, Maria Calzada, have been deprived of the society and companionship of Jose, which society and companionship they would have otherwise enjoyed for many years. Manuela and Maria are entitled to an amount for loss of society and companionship that is reasonable as determined by a jury.

98. Jose's siblings may also, under some circumstances, be entitled to compensation for Jose's loss.

99. The actions of the Defendants were the result of willful and malicious conduct, and/or manifested a knowing and reckless indifference toward, and a disregard of, the rights and very life of Jose.

**FIRST CAUSE OF ACTION**

**Unlawful Search and Seizure**

**Against Defendants Troy Windsor, William Farr, Armando Perez, Terance Lavelly, Brandon Miles, Tim Fulton, Reid Mackley, Denton Harper, Brent Butler, Lt. Jeff Pledger, John Beck and Jane or John Does 1-50  
Cognizable Under 42 U.S.C. § 1983**

100. Plaintiffs incorporate by reference all other paragraphs of this Complaint as though fully set forth herein.

101. At all times relevant hereto, and in performance of the acts set forth herein, Officer Defendants Troy Windsor, William Farr, Armando Perez, Terance Lavelly, Brandon Miles, Tim Fulton, Reid Mackley, Denton Harper, Brent Butler, John Beck, Lt. Jeff Pledger and John and/or Jane Does 1-50 (collectively, Officer Defendants), acted under color of state law.

102. At all times relevant hereto, and in performance of the acts set forth herein, Officer Defendants Troy Windsor, William Farr, Armando Perez, Terance Lavelly, Brandon Miles, Tim Fulton, Reid Mackley, Denton Harper, Brent Butler, John Beck, Lt. Jeff Pledger and John and/or Jane Does 1-50 actively and personally caused the violations of constitutional rights alleged herein and/or actively and personally authorized and ordered the violations of constitutional rights alleged herein.

103. Officer Defendants violated Jose's rights under the Fourth Amendment to the United States Constitution by (a) illegally entering and searching Jose's home illegally,

as set forth more fully above and/or by ordering or authorizing the illegal entry and search of Jose's home; and (b) by shooting Jose 22 (twenty-two) times and killing him.

104. Officer Defendants' conduct alleged herein, including his or her unlawful act of shooting of Jose as described above, subjected Jose to the deprivation of his rights of life, liberty and due process under the Fifth and Fourteenth Amendments to the United States Constitution. Among other things, Officer Defendants unlawfully shot Jose, leading to his death.

105. Officer Defendants' actions violated Jose's clearly established constitutional rights of which reasonable law enforcement officers are or should be aware.

106. As a direct and proximate result of the above-referenced unreasonable, unlawful, and malicious seizure, search and use of unauthorized excessive and deadly force by Officer Defendants, Jose suffered, pain, bodily harm and emotional distress.

107. As a direct and proximate result of the above-referenced unreasonable, unlawful, and malicious seizure, search and use of unauthorized excessive and deadly force by Officer Defendants, Officer Defendants' actions proximately caused Jose's death and the harm alleged by Plaintiffs.

108. Officer Defendants acted under the color and pretense of Utah State Law.

109. Officer Defendants knew, or reasonably should have known, that their actions violated Jose's rights to be free from unlawful search and seizure and unauthorized use of deadly force, but proceeded to violate Jose's rights anyway. The illegality of Officer Defendants' actions were well established at the time they committed them.

110. The above-described violations of Jose's rights are actionable under 42 U.S.C. § 1983, and they are entitled to judgment against Officer Defendants, jointly and severally, under that section for damages in an amount to be proven at trial.

111. Plaintiffs are entitled to attorney fees and costs against the Officer Defendants, jointly and severally, under 42 U.S.C. § 1988. Further, the acts of Officer Defendants, as set forth above, were intentional, wanton, malicious, and oppressive, thus entitling Plaintiffs to an award of punitive damages.

112. As a result of Officer Defendants' unlawful actions, and to remedy misconduct of significant importance to the public, Plaintiffs have had to retain counsel.

113. Officer Defendants' action manifested malicious, reckless, and callous indifference to the rights and the very life of Jose Calzada.

## **SECOND CAUSE OF ACTION**

### **Deprivation of Federal Constitutional Rights**

**Against Roy City, Roy City Police Department, Weber County, Weber County Sheriff's Office, and DOES 51-70  
Cognizable 42 U.S.C. 1983**

114. Plaintiffs incorporate by reference all other paragraphs of this Complaint as though fully set forth herein.

115. The actions of the individually named Officer Defendants and John and/or Jane Does 1-50 were pursuant to, and consistent with, an established policy, practice, or custom of Defendants Weber County Sheriff's Office, Weber County, Roy City Police Department and/or Roy City and/or DOES 51-70 (collectively, Governmental

Defendants), a governmental entity deriving its powers from the State of Utah which governmental entity is also a contributing member to the Ogden Metro SWAT Team and/or Weber County SWAT Team.

116. The policy, practice, or custom, consists of arming police officers with deadly weapons and condoning their use, and allowing for the use of those weapons, without proper training as to their safe, reasonable, and appropriate use.

117. The actions of the Defendants, were the proximate cause of pain and suffering to Jose, the death of Jose, and the other damages sustained by the Plaintiffs.

118. As a result of Defendants' actions, and in order to remedy this important issue of public concern, Plaintiff has had to retain legal counsel.

119. The above-described violations of Jose's rights are actionable under 42 U.S.C. § 1983, and they are entitled to judgment against Defendants, jointly and severally, under that section for damages in an amount to be proven at trial.

120. Plaintiffs are entitled to attorney fees and costs against the Defendants, jointly and severally, under 42 U.S.C. § 1988. Further, the acts of Defendants, as set forth above, were reckless and oppressive, thus entitling Plaintiffs to an award of punitive damages.

121. Defendants' action manifested malicious, reckless, and callous indifference to the rights and the very life of Jose Calzada.

**THIRD CAUSE OF ACTION**

**Authorization of Illegal Search and/or Failure to Intervene**

**Against Lt. Jeff Pledger  
Cognizable Under 42 U.S.C. § 1983**

122. Plaintiffs incorporate by reference all other paragraphs of this Complaint as though fully set forth herein.

123. Jose had a right under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unlawful searches and seizures by agents of the state.

124. Lt. Jeff Pledger was present at the scene and either ordered and/or authorized the SWAT Team's illegal search of Jose's home and/or failed to take reasonable steps to protect Jose from such a violation of his rights.

125. Such authorization of the illegal search and/or failure to intervene, as described above, further violated those rights, resulting in the death of Jose.

126. As a proximate result of that violation, Plaintiffs were injured as set forth above, and each is entitled to compensatory and punitive damages, attorney fees, court costs and all other relief deemed appropriate by the Court.

**FOURTH CAUSE OF ACTION**

**Violations of Utah Constitution, Art. I §§ 1, 6, 7, 14, 25**

**Against Roy City, Roy City Police Department,  
and Weber County, Weber County Sheriff's Office**

127. Plaintiffs incorporate by reference all other paragraphs of this Complaint as though fully set forth herein.

128. The actions of Defendants Roy City, Roy City Police Department, Weber County and Weber County Sheriff's Office, acting by and through their agents, employees, and/or officers, described herein violated Jose's rights secured by Article I, Section 1 of the Utah Constitution ("All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property[.]").

129. The actions of Defendants described herein violated Jose's rights secured by Article I, Section 6 of the Utah Constitution ("The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed[.]").

130. The actions of Defendants described herein violated Jose's rights secured by Article I, Section 7 of the Constitution of the State of Utah ("No person shall be deprived of life, liberty or property without due process of law.").

131. The actions of Defendants described herein violated Jose's rights secured by Article I, Section 14, which states in relevant part: "The right of the people to be secure in their persons, houses, papers, and effect against unreasonable searches and seizures shall not be violated."

132. The actions of Defendants described herein violated Jose's rights secured by Article I, Section 25, which states in relevant part: "This enumeration of rights shall not be construed to impair or deny others retained by the people."

133. Based upon the text and historical context, case law, and other considerations, the protections and rights afforded by Article I, Sections 1, 6, 7, 14, and 25 are broader than the interests and rights afforded by the United States Constitution.

134. There is no other adequate state law remedy for these violations.

135. Injunctive relief cannot redress Plaintiffs' injuries.

136. Defendants' actions as alleged herein were the proximate cause of pain and suffering to Jose, of Jose's death, and of the damages sustained by Plaintiffs.

137. In order to remedy Defendants' unconstitutional conduct, Plaintiffs had to retain counsel.

138. As a proximate result of Defendants', Plaintiffs were injured as set forth above, and each is entitled to compensatory and punitive damages, attorney fees, court costs and all other relief deemed appropriate by the Court.

#### **FIFTH CAUSE OF ACTION**

#### **Willful Misconduct/Wrongful Death**

**Against Roy City, Roy City Police Department,  
and Weber County, Weber County Sheriff's Office**

139. Plaintiffs incorporate by reference all other paragraphs of this Complaint as though fully set forth herein.

140. The actions of Defendants Roy City, Roy City Police Department, Weber County and Weber County Sheriff's Office, acting by and through their agents, employees, and/or officers, acted, or failed to act, through willful misconduct that resulted in the

wrongful death of Jose, by, among other things, acting with the intent to cause an unconsented harmful and/or offensive contact to Jose.

141. Defendants committed such unconsented harmful and/or offensive contact against Jose that resulted in Jose's death and other harm to Plaintiffs.

**COMPLIANCE WITH THE  
UTAH GOVERNMENTAL IMMUNITY ACT**

142. Plaintiffs' claims arising under either the Constitution of the United States, or 42 U.S.C. § 1983, and/or any other federal law or statute are not subject to the provisions of the Utah Governmental Immunity Act.

143. With respect to Plaintiffs' fourth and fifth causes of action arising under the laws of the State of Utah, Plaintiffs have complied with applicable provisions of the Governmental Immunity Act of Utah, U.C.A. Section 63G-7-101, *et seq.*, and have provided a Notice of Claim to Defendants Roy City, Roy City Police Department, Weber County and Weber County Sheriff's Office.

144. To date, no response has been received.

**JURY DEMAND**

Plaintiffs request a jury trial on all issues in this case.

**REQUEST FOR RELIEF**

**WHEREFORE, Plaintiffs demand judgment against Defendants as follows:**

1. A declaration and judgment that the actions of the individually named Defendants, John or Jane Does 1-50, Defendant Roy City Police Department's,

Defendant Roy City's, Defendant Weber County Sheriff's Office's, Defendant Weber County's, DOES' 51-70 policies and customs regarding the use of lethal force, are and were unconstitutional;

2. For general compensatory damages for each of them in an amount to be determined at trial;
3. For special damages as are shown at trial;
4. For punitive damages against named individual defendants as may be allowed by law;
5. For pre-judgment and post-judgment interest on the damages assessed by the verdict of the trial, as allowed by law;
6. For Plaintiffs' costs and reasonable attorney fees incurred herein, pursuant to 42 U.S.C. § 1988;
7. Economic and noneconomic damages as provided under applicable law and deemed appropriate by a jury;
8. Attorney fees and litigation expenses pursuant to 42 U.S.C. 1988, Utah law, and equity, to the full extent provided under applicable law;
9. All other equitable relief deemed just and appropriate by the Court, including an order (a) requiring Roy City, Roy City Police Department, Weber County, Weber County Sheriff's Office and DOES 51-70 to equip their law enforcement officers with body cameras, (b) requiring officers, employees and agents of Roy City, Roy City Police Department, Weber County, Weber

County Sheriff's Office and DOES 51-70 to receive training regarding the entering of a home, and (c) to implement other training, supervision, and policies required to meet federal and state constitutional requirements.

DATED this 6<sup>th</sup> day of December, 2016.

LEBARON & JENSEN, P.C.

/s/ L. Miles LeBaron  
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