

C 14-368

Notice of Claim

December 17, 2014

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CITY RECORDER

To:

Cindi Mansell  
City Recorder  
451 South State Street RM 415  
Salt Lake City, Utah 84111  
**By U.S. Mail**

RECEIVED  
DEC 18 2014

Cindi Mansell  
City Recorder  
451 South State Street RM 415  
Salt Lake City, Utah 84111  
**By Certified Mail, Return Receipt Requested**

Salt Lake City Attorney

Cindi Mansell  
City Recorder  
451 South State Street RM 415  
Salt Lake City, Utah 84111  
**By hand-delivery**

Salt Lake City Police Department  
c/o Cindi Mansell  
City Recorder  
451 South State Street RM 415  
Salt Lake City, Utah 84111  
**By hand-delivery**  
and  
c/o Chris Burbank  
Chief of Police  
Salt Lake City Police Department  
475 South 300 East  
Salt Lake City, Utah 84111  
**By U.S. Mail**

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Gentlemen/Ladies:

Pursuant to Utah Code Ann. §63G-7-401, Sean Kendall ("Kendall"), individually and as next friend of a Weimaraner dog named Geist ("Geist"), hereby notifies you of his and Geist's claims against (1) Salt Lake City Police Officer Brett Olsen ("Olsen"), employed at all material times by Salt Lake City Corporation ("SLC"); (2) Salt Lake City Police Officer Lt. Brian Burvis ("Burvis"), employed at all material times by SLC; (3) Salt Lake City Police Officer Joseph Allen Everett ("Everett"), employed at all material times by SLC; (4) Salt Lake City Police Officer Tom Edmundson ("Edmundson"), employed at all material times by SLC; (5) Salt Lake City Police Officer George S. Pregman ("Pregman"), employed at all material times by SLC; (6) Salt Lake City Corporation ("SLCC"); and (7) Salt Lake City Police Department ("SLCPD"). The claims against the individual police officers are based upon acts and omissions occurring during the performance of their duties, within the scope of their employment, and under color of authority.

### **Brief Statement of the Facts**

In 2011 and 2012, Kendall carefully researched options he had regarding the opportunities of having a dog in his life. From what he had heard from his parents and what he had learned from his research, he determined that a Weimaraner would be an ideal pet and prospective best friend. He then researched sources of Weimaraners and found a registered breeder in Grand Junction, Colorado. He had discussions with the breeder, reviewed information about available puppies (including photographs), and picked the full-bred, papered puppy he would eventually bring home and name Geist, with plans to breed him in the future.

Kendall travelled several hours and approximately 500 miles to pick up Geist and brought him home to build lives together, including having Geist accompany him at work and many other activities in which he engaged. Kendall's decisions about living arrangements, vacations, and recreation were all made with Geist in mind, similar, if not identical, to what parents do in connection with their young children. He also spent a great deal of time training and working with Geist, who, as a result, became a happy, friendly, well-behaved, beloved dog.

On June 18, 2014, Kendall lived with Geist, who was then 2 1/3-years old, at 2465 South 1500 East, Salt Lake City, Utah. Adjacent to Kendall's and Geist's home was a shed and a fenced yard, both of which were included within the curtilage of the home.

On that date, a three year-old boy (" 'missing' boy") was reported as missing from his family's home at 2511 South Filmore Street, Salt Lake City (the "Filmore Street home"), one entire street and over 662 feet (approximately 1/8 mile) away from Kendall's and Geist's home.

Salt Lake City Police Officers Everett, Edmundson, and Pregman undertook to search through the Filmore Street home, but negligently, and contrary to SLCPD policy and procedures, failed to thoroughly and competently search the home, thereby failing to find the "missing" boy, who was sleeping soundly in the basement of the home.

As a result of the failures by Everett, Edmundson, and Pregman to thoroughly and competently search the Filmore Street home and find the "missing" boy, several other Salt Lake City Police officers were instructed to search for the boy at other properties. The Watch Commander, Burvis, instructed officers, including Olsen, to search homes and properties "beginning on Filmore moving north," according to a report filed by Olsen. Further, according to Olsen's report, the officers "would have to actually look everywhere [they] could for the boy." Burvis did not make it clear that police officers were not to enter yards or search any structures within the curtilage of homes without the permission of the residents or unless there was reasonable cause to believe that there was some connection between the specific property to be searched and the "missing" boy or the circumstances under which he was missing. His instruction to search properties, including going inside yards without the permission of residents, led to the unlawful, unconstitutional, tragic killing of Geist by Olsen.

Olsen and Detective Worsencroft ("Worsencroft") approached Kendall's and Geist's home, which was approximately 1/8 of a mile from the Filmore Street home. Worsencroft approached the front door to contact a resident. No one, including Kendall, was present at the home when these events occurred. Without waiting even for Worsencroft to knock on the front door, or for someone to respond to Worsencroft's knock on the front door, and, according to Olsen's

report, apparently without noticing or recognizing all the obvious signs that a dog was, or could have been, in the yard,<sup>1</sup> including dog food and water dishes and dog toys within inches of where Olsen walked and stood, Olsen opened a gate on the north side of the backyard and, without reasonably first determining if a dog was present in the backyard, without a warrant, and without any reasonable cause to believe there was any connection between Kendall, Geist, or Kendall's and Geist's home (including the curtilage of the home) with the "missing" boy or any of the circumstances in connection with the boy supposedly being missing, he negligently, intentionally, and unconstitutionally entered the backyard, intentionally and unconstitutionally opened the door to a shed adjacent to the house, and negligently, intentionally, and unconstitutionally shot Geist dead because Geist simply did what such dogs do (i.e. he barked and ran toward Olsen) – and what Geist harmlessly and characteristically did many times when others had entered the backyard to Kendall's and Geist's home.

At some point, the "missing" boy was found sleeping soundly by a lounge chair in the basement of the Filmore Street home. There is no evidence that the boy had been outside of the home at all on June 18, 2014, prior to the unconstitutional entry into the yard and search of the shed at Kendall's and Geist's home, and the unlawful, unjustified, outrageous killing of Geist.

Olsen left the area of Kendall's and Geist's home without ever notifying or meeting face-to-face with Kendall.

Geist, a healthy, intact, full-bred, papered dog, had a life span of an additional eight to ten years. He was loved and well cared for, living a happy life with Kendall. Kendall loved and cared for Geist as a best friend. Geist was robbed of the vast majority of his life, and Kendall was robbed of Geist's continued life with him, which cannot be replaced any more than a child or other family member can be replaced. Also, Kendall has suffered, and continues to suffer, severe and intense emotional pain, anguish, grief, and trauma. All of those injuries and damages occurred, and continue to occur, as a result of the absolutely unnecessary, negligent, reckless, intentional, criminal, and

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<sup>1</sup> Olsen's report indicates he was unaware of Geist being in the backyard until Olsen opened and shut the shed door. That account is very doubtful inasmuch as at least two other police officers, while searching the home next to Kendall's and Geist's home, saw Geist and heard him barking loudly prior to Olsen's illegal entry into the curtilage of Kendall's and Geist's home. Also, a neighbor has indicated that he or she saw and heard Geist barking loudly in the backyard of Kendall's and Geist's home prior to Olsen illegally entering the yard.

unconstitutional shooting by Olsen, who did not receive any training and had no guidance from policies or procedures by the Salt Lake City Police Department or any of his supervisors concerning all of the criteria necessary to search a home and its curtilage; how to determine if a dog is present in premises to be, or being, searched; how to recognize whether a dog poses a risk of serious harm; or how to best avoid the use of lethal force against a dog when it is unknown whether it poses a risk of serious harm and regardless of a police officer's subjective concerns about safety.

In any consideration of the facts surrounding the tragic, negligent, reckless, intentional, criminal, and unconstitutional killing of Geist, one should take particular note that Geist was a well-behaved, kind, playful, loving, non-violent dog who greeted almost all who came into the yard with an approach that was viewed by all who knew him, or who are aware in the slightest of his breed,<sup>2</sup> as friendly, playful, and attention-seeking. Never during Geist's life was he mean, violent, or harmful in any way, nor did he ever indicate to anyone any intention or threat of causing any harm, let alone serious bodily harm. The idea that Geist would ever harm anyone entering his yard is absurd to anyone who knew Geist or who is knowledgeable about his breed. A loudly barking Weimaraner, running toward someone unknown in a backyard, cannot reasonably be said by anyone with the least amount of training or study to constitute a reasonable threat of injury, let alone serious injury.

### **Nature of Claims Asserted**

#### **Claims Against Officer Brett Olsen -**

Officer Brett Olsen, acting under color of law, violated (1) Kendall's and Geist's rights under the Fourth and Fourteenth Amendments to the United States Constitution, and under Article I, Section 14 of the Utah Constitution, by engaging in the above-described objectively unreasonable and unconstitutional search of the yard and shed adjacent to Kendall's and Geist's home; (2) Kendall's and Geist's rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and under Article I, Section 14 of the Utah Constitution, by

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<sup>2</sup> According to one source, there has been only one lethal attack by a Weimaraner in the United States during a 31 year period -- the same as for St Bernards, Great Pyreneeses, and Collies.  
<http://17barks.blogspot.com/2013/06/dog-attack-report-by-breed-june-2013.html>

engaging in the above-described objectively unreasonable and unconstitutional seizure of Geist by wrongfully, intentionally, unreasonably, and unconstitutionally killing him; (3) Kendall's and Geist's rights under the Fifth Amendment to the United States Constitution, and under Article I, Section 7 of the Utah Constitution, by engaging in the killing of Geist without due process and without just compensation. Olsen is therefore liable to Kendall, individually and as next friend of Geist, under 42 U.S.C. § 1983 and under the Utah Constitution and Utah common law for all damages sustained, plus punitive damages and all attorneys' fees and costs, pursuant to 42 U.S.C. § 1988 and Utah law, including Utah Code Ann. § 78B-3-104(3).

Olsen is also liable to Kendall, individually and as next friend of Geist, for the damages and injuries proximately resulting from Olsen's (1) trespass to land (insofar as he intentionally entered onto the curtilage of Kendall's and Geist's home without a privilege to do so), (2) trespass to chattels (insofar as he intentionally dispossessed Kendall of Geist and his companionship), (3) conversion (insofar as he willfully interfered with Kendall's property, which Kendall was entitled to possess at the time of the conversion, without lawful justification, depriving Kendall of the use, enjoyment, and possession of Geist), (4) negligence (insofar as he breached his duty to exercise the care and diligence of a reasonable police officer under similar circumstances in failing to determine if a dog was in the yard, in entering the yard and opening the shed without permission, without a warrant, and without having reasonable cause to believe there was some connection between Kendall's and Geist's home and the curtilage thereof with the "missing" boy or the circumstances under which he was missing, and in failing to reasonably determine if Geist actually posed a danger – which, to any reasonable observer, he did not), and (5) intentional infliction of emotional distress (insofar as Olsen's conduct was outrageous and intolerable, offending against the generally accepted standards of decency and morality; Olsen intended to cause, and acted in reckless disregard of the likelihood of causing, emotional distress to Kendall; Kendall suffered, and continues to suffer, severe emotional distress; and Olsen's conduct proximately caused, and continues to cause, Kendall's emotional distress), as well as punitive damages and attorneys' fees and costs, pursuant to Utah Code Ann. § 78B-3-104(3).

#### **Claims Against Officer Lt. Brian Burvis –**

Lt. Brian Burvis, acting under color of law, violated (1) Kendall's and Geist's rights under the Fourth and Fourteenth Amendments to the United States Constitution, and under Article I, Section 14 of the Utah Constitution, by instructing Salt Lake City police officers, including Olsen, to engage in objectively unreasonable and unconstitutional searches of properties, which Olsen foreseeably understood included the curtilage adjacent to Kendall's and Geist's home, leading to the outrageous, unconstitutional killing of Geist by Olsen; (2) Kendall's and Geist's rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and under Article I, Section 14 of the Utah Constitution, by instructing police officers to illegally and unconstitutionally search properties, which led to the above-described objectively unreasonable and unconstitutional seizure of Geist by wrongfully, intentionally, and unconstitutionally killing him; (3) Kendall's and Geist's rights under the Fifth Amendment to the United States Constitution, and under Article I, Section 7 of the Utah Constitution, by instructing police officers to illegally and unconstitutionally search properties, which led to the above-described killing of Geist without due process and without just compensation. Burvis is therefore liable to Kendall, individually and as next friend of Geist, under 42 U.S.C. § 1983 and under the Utah Constitution and Utah common law for all damages sustained, plus all attorneys' fees and costs, pursuant to 42 U.S.C. § 1988 and Utah law, including Utah Code Ann. § 78B-3-104(3).

By reason of his instruction to Salt Lake City police officers, including Olsen, to engage in objectively unreasonable and unconstitutional searches of properties, which Olsen foreseeably understood included the curtilage adjacent to Kendall's and Geist's home, leading to the outrageous, unconstitutional killing of Geist by Olsen, Burvis is liable to Kendall, individually and as next friend of Geist, for the damages and injuries proximately resulting (1) from Burvis's negligence (insofar as he breached his duty to exercise the care and diligence of a reasonable police officer under similar circumstances by instructing police officers, including Olsen, to engage in objectively unreasonable and unconstitutional searches, and in failing to instruct police officers to refrain from entering the homes and curtilages thereof without permission, without a warrant, and without reasonable cause to believe there was a connection between the property to be searched and the "missing" boy or the circumstances under which he was missing), (2) from Olsen's trespass to land (insofar as he intentionally entered onto the curtilage of Kendall's and Geist's home without a privilege to do

so, pursuant to the negligent, reckless, and unconstitutional instructions of Burvis), trespass to chattels (insofar as Olsen intentionally dispossessed Kendall of Geist and his companionship as a consequence of the negligent, reckless, and unconstitutional instructions of Burvis), and conversion (insofar as Olsen, as a consequence of the negligent, reckless, and unconstitutional instructions of Burvis, willfully interfered with Kendall's property, without lawful justification, depriving Kendall of the use, enjoyment, and possession of Geist, to which Kendall was entitled at the time of the conversion), as well as punitive damages and attorneys' fees and costs, pursuant to Utah Code Ann. § 78B-3-104(3).

**Claims Against Officers Joseph Allen Everett, Tom Edmundson, and George S. Pregman –**

Salt Lake City Police Department Policy and Procedure for Missing Persons (III-510), which was in effect at all relevant times, provides, in part, as follows:

When a juvenile is reported missing, an officer will be assigned to investigate the situation. If the investigating officer is unable to locate the juvenile or there is an obvious endangerment to the juvenile, the initial officer will notify records division to have the juvenile entered on NCIC and the Detective Division Lieutenant must be notified. . . .

If the call involves a child five years-of-age or younger, two patrol units will be dispatched. *The assigned officer will respond to the complainant's location to thoroughly search the location from which the child is missing, and to obtain further descriptive information that may aid in locating the child. The assisting officer will immediately begin an area search for the missing child, concentrating on hazards such as swimming pools and areas that would attract children such as parks and playgrounds. (Emphasis added.)*

Everett was the "reporting officer", with a duty to thoroughly search the Filmore Street home for the "missing" boy. He negligently and recklessly breached his duty, both under the explicit terms of the relevant SLCPD Policy and Procedure and under the controlling standard of care for a police officer in his situation by undertaking to search the home, but negligently and recklessly failing to locate the "missing" boy, who was sound asleep in the basement of the home



and who would have been immediately located by Everett during the course of a competent and thorough search of the home by Everett. Following Everett's inadequate, negligent, and reckless search of the Filmore Street home, Edmundson and Pregman also undertook to search the home, but they negligently and recklessly breached their duty to thoroughly search the home for the "missing" boy and, as a result, failed to locate the boy, who was at all material times sound asleep in the basement of the home and who would have been immediately located by Edmundson and Pregman during the course of a competent and thorough search of the home by them. As a proximate and foreseeable result of the negligent and reckless searches of the Filmore Street home by Everett, Edmundson, and Pregman, the "missing" boy was not found until several police officers, including Olsen, were instructed to, and did, search properties, leading to the blatantly negligent, unreasonable, and unconstitutional search of the curtilage of Kendall's and Geist's home and the outrageous and unconstitutional killing of Geist by Olsen. By reason of the negligence and recklessness of Everett, Edmundson, and Pregman, Kendall, personally and as next friend of Geist, is entitled to recover for all injuries and damages sustained by Kendall and Geist, as well as attorneys' fees and costs pursuant to Utah Code Ann. § 78B-3-104(3).

**Claims Against Salt Lake City Corporation and Salt Lake City Police Department –**

SLCC and SLCPD are liable to Kendall, personally and as next friend of Geist, under the principle of respondeat superior and pursuant to the waiver of governmental immunity for the negligence of employees provided under Utah Code Ann. § 63G-7-301(4), for all injuries and damages proximately caused by the negligent acts of Olsen, Burvis, Everett, Edmundson, and Pregman as described above, plus costs and attorneys' fees, pursuant to Utah Code Ann. § 78B-3-104(3).

SLCC and SLCPD are liable for their negligence, and for the negligence of responsible employees, as follows:

1. SLCC and SLCPD owed a duty to Kendall, Geist, and other residents in Salt Lake City to observe, protect, and vindicate their federal and state constitutional rights, and to protect against the wrongful entry upon the curtilage of Kendall's and Geist's home

and the outrageous and wholly unnecessary killing of Geist. In breach of those duties, SLCC and SLCPD:

- a. Promulgated an incomplete and misleading Policy and Procedure relating to “Warrantless Entry in Exigent Circumstances,” which, at all material times, read, in relevant part, “An officer may enter a home or building without a warrant when the following exigent circumstances exist: . . . Imminent danger or risk of harm to police officers and others . . .” That Policy and Procedure (under “Search and Seizure” under section III-730 of SLCPD Policies and Procedures) negligently, recklessly, and unconstitutionally led Olsen to negligently, unreasonably, and unconstitutionally enter the yard of Kendall’s and Geist’s home and to open a shed in that yard, leading to the outrageous and unconstitutional killing of Geist, insofar as the Policy and Procedure could be read as justifying warrantless searches of homes and the curtilages thereof solely because someone might be at risk of harm, as one reasonably could believe the “missing” boy was. SLCC and SLCPD recklessly and negligently failed to note in the Policy and Procedure that in order to engage in a warrantless search of a home (including the curtilage) with a justification that someone was at risk of harm, **there must be a reasonable basis for believing that there was a connection between the specific property to be searched and the emergency situation (e.g. that there was cause to believe that the missing person was in or on the property to be searched or that there was some other association between the place to be searched and the emergency).** At all material times, it was clearly established law that **a police officer, in search of a missing child, cannot simply walk and search through homes or the curtilages thereof throughout a neighborhood or region without a warrant and without a reasonable basis for believing that the specific property to be searched was connected with the missing child or the circumstances under which he/she was missing.**
- b. SLCC and SLCPD negligently and unconstitutionally failed to train police officers that if they sought to search a home or the

curtilage thereof because a child was missing and they sought to do so without a warrant because they believed the missing person was at risk of harm, they could not lawfully or constitutionally do so without a reasonable basis for believing that the specific property to be searched was associated in some material way with the missing person or the circumstances under which the person was missing.

- c. SLCC and SLCPD negligently and unconstitutionally failed to promulgate a Policy and Procedure setting forth, and to train police officers regarding, the clearly established law that equates the curtilage of a home with the home itself for purposes of constitutional searches and seizures under the U.S. and Utah Constitutions. Specifically, SLCC and SLCPD failed to adequately train SLCPD police officers that if they could not enter homes constitutionally without a warrant, neither could they enter adjoining yards or sheds if within the home's curtilage.
- d. SLCC and SLCPD failed, in contravention of clearly established law, to properly supervise officers to ensure they would not engage in unconstitutional searches under the circumstances leading to the outrageous and unconstitutional killing of Geist.
- e. SLCC and SLCPD negligently, recklessly, and unconstitutionally condoned the searches of the homes and/or the curtilages of homes in violation of the prohibitions in the U.S. and Utah Constitutions against unreasonable searches and seizures, by allowing and engaging in a pattern of such searches, particularly warrantless searches under the guise of "exigent circumstances" relative to missing children, when there was no reasonable cause to believe there was any connection between the particular properties to be searched and the emergency. Such condonation is reflected by the fact that the SLCPD found that a complaint about Olsen's search leading to the killing of Geist was "not sustained" simply because the search was conducted while a young child was, at least according to what was known by Olsen, at risk of harm. Because of the negligence of SLCC and SLCPD and the condoning by SLCC and SLCPD of searches clearly established

by existing law as being unconstitutional, that finding did not take into account the requirement under the U.S. and Utah Constitutions that there must have been reasonable cause to believe there was a relationship between the particular property to be searched and the missing person or the circumstances under which the person was missing. Likewise, the Administrator of the Salt Lake City Police Civilian Review Board (“CRB”), at all material times employed by SLCC, with the advice of the City Attorney, also at all material times employed by SLCC, negligently provided an inaccurate and misleading standard to be applied by the CRB, failing to inform the CRB panel that for a warrantless search of a home’s curtilage to be constitutional, when there was a belief that there was a risk of harm to a young boy thought by police officers to be missing, there must be reasonable cause to believe there is a connection between the particular property to be searched and the missing child or the circumstances under which the child was missing. As a result, the CRB erroneously ruled that Olsen was “exonerated” of his clearly unconstitutional search.

- f. SLCC and SLCPD negligently, recklessly, and unconstitutionally, in violation of the prohibitions in the U.S. and Utah Constitutions against unreasonable searches and seizures, failed in their duties to promulgate policies and procedures, and to appropriately train police officers, regarding (1) the need to determine, and the means of determining, if dogs are present in yards to be searched; (2) how to recognize if dogs on premises to be searched, or elsewhere, pose a danger of serious harm; (3) how to avoid situations where dogs may pose a threat of serious harm; (4) how to deal with dogs who harmlessly bark and run toward police officers without harming or killing the dogs; (5) non-lethal means to secure dogs who are believed to pose a safety risk; and (6) how to formulate and execute a plan to restrain dogs using non-lethal means.

2. SLCC and SLCPD are liable under 42 U.S.C. §1983, the United States Constitution (the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> amendments) , the Utah Constitution (Article I, sections 7 and 14) , and the common law for their gross negligence in the training and supervision of Olsen, Burvis, Everett, Edmundson, and Pregman and for the development of policies, practices and customs that proximately caused the negligent, reckless, and unconstitutional conduct described above, which led to the unconstitutional search of the curtilage of Kendall's and Geist's home and the outrageous, unnecessary killing of Geist.

Accordingly, Kendall, individually and as next friend of Geist, seeks to recover damages for the violations of civil rights by Olsen, Burvis, SLCC and SLCPD under 42 U.S.C. § 1983, the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 7 and 14 of the Utah Constitution, for the trespass to land, trespass to chattels, conversion by, or caused by, Olsen and Burvis, the intentional infliction of emotional distress by Olsen, and the negligence and recklessness of Olsen, Burvis, Everett, Edmundson, Pregman, SLCC, and SLCPD.

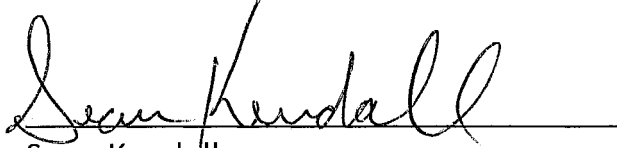
### **The Damages Incurred by the Claimant So Far as They Are Known**

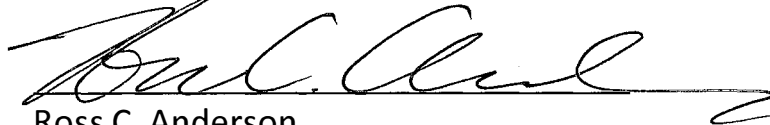
The misconduct of Olsen, Burvis, Everett, Edmundson, Pregman, SLCC, and SLCPD proximately caused (1) the outrageous and tragic death of Geist; (2) the loss and destruction of Kendall's property interest, past, present, and future, in Geist; (3) the loss of the investment, in time, money, effort, and emotions by Kendall in Geist, as well as the loss of future value in Geist; (4) the violation of Kendall's federal and state constitutional rights; and (5) continuing extreme mental and emotional anguish and distress suffered by Kendall, therapy expenses, and lost income, for which Kendall is entitled to compensation from, or on behalf of, Olsen, Burvis, Everett, Edmundson, Pregman, SLCC, and SLCPD in the total amount of at least \$1,500,000, plus punitive damages, to the extent allowed by law. Pursuant to 42 U.S.C. § 1988 and Utah Code Ann. § 78B-3-104(3), Kendall is further entitled to an award of costs and attorneys' fees incurred in this action.

**Names of Employees Against Whom Claims Will be Pursued Individually**

Employees against whom some claims will be pursued individually are Brett Olsen and Brian Burvis.

Dated this 17th day of December, 2014.

  
Sean Kendall

  
Ross C. Anderson  
Of counsel  
Winder & Counsel, P.C.  
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