KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES INQUEST PROGRAM

IN RE INQUEST INTO THE DEATH OF ROBERT LIGHTFEATHER, DECEASED.	INQUEST NO. 17IQ16588 CITY OF FEDERAL WAY, AUSTIN ROGERS, AND TYLER TURPIN'S OBJECTIONS TO ADDITIONAL PROPOSED INTERROGATORIES AND THE FAMILY'S PROPOSED STATEMENT AND PHOTOGRAPHS

The City of Federal Way, its Police Department, Austin Rogers, and Tyler Turpin ("the City and IOs") submit the following brief in opposition to the Administrator's proposed changes to the Interrogatories to be submitted to the inquest jury. The City and IOs also object to the Family's proposed statement and photographs.

I. Objections to Additional Interrogatories Proposed on August 29, 2022.

The proposed additional interrogatories are unnecessarily duplicative of each other and other interrogatories, improperly call for jurors to give opinions (i.e., whether the officers' fear of death or serious bodily harm was "reasonable"), and exceed the permissible scope of the inquest by going beyond factual inquiry and into fault-finding. Each one of these factors prejudices the City and the involved officers.

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

a. The New Interrogatories are Duplicative and Confusing.

The IA's proposal to ask the newly proposed interrogatories (numbers 27-31) based on selected portions of the Use of Force policy opens the door for inconsistent inquest jury answers, is unfairly prejudicial, and improperly emphasizes certain portions of the policy over others. In the *Inquest into the Death of Damarius Butts* and the *Inquest into the Death of Charleena Lyles*, Administrator Spearman properly asked the inquest jury two questions about policy: (1) did the policy apply, and (2) if so, did the officers comply with that policy? Given the limited scope of PHL-7-1-5-EO as set forth in Appendix 1, paragraphs 2.1-2.3, those are the only appropriate questions to submit to the jury with respect to policy. By submitting the proposed new interrogatories, the Administrator will be inviting juror confusion and potentially inconsistent answers to the detriment of the City and Involved Officers.

1. Interrogatories Nos. 27-31.

Here, the proposal to ask factually specific questions about portions of the policy is inappropriate. First, the questions the Administrator proposes relate to the Federal Way Manual of Standards and the corresponding testimony of Deputy Chief Sumpter and will necessarily be addressed by the broader, simpler question of whether the officers complied with those portions of Federal Way's policies presented to the inquest jury. By asking granular questions about compliance with certain, singular policy provisions, and then asking the broader (and more appropriate) question of whether the officers complied with policy, the Administrator is creating a cognizable and avoidable risk of obtaining inconsistent answers. The interrogatories suggest that even if the jury answers "no" to the *Garner* exception questions drawn from Policy Section 1.3.2.A.2, that the officers did not comply with the policy, even though the fact is they did comply

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

as long as they complied with Section 1.3.2.A.1. Further compounding this risk, the jury could feasibly answer "yes" to Proposed Interrogatories 27-31, but then answer "no" to 33. By asking the same questions twice, the opportunity for confusion and inconsistent responses is needlessly increased to the prejudice of the involved officers and the Family.

Moreover, asking specific questions related to specific portions of the policy unfairly and unnecessarily emphasizes the relative importance of those portions of the policy over others and inviting heighten scrutiny. This only compounds the unfair prejudice these unnecessary questions pose.

2. Interrogatories No. 37-40.

The unnecessarily duplicative nature of the proposed additional criminal means interrogatories is also extremely prejudicial to the involved officers. Proposed Interrogatories 37-40 go beyond the scope of the criminal means questions, which are driven by the statute and errantly conflate the FWPD's policies with criminal means. The instructions specifically recognize that failure to comply with policy or training are ***not*** dispositive of whether an officer acted without good faith or with malice. Yet, by injecting questions that refer back to policy and training in the Criminal Means section of the interrogatories, the Administrator would be suggesting that these topics are directly relevant and perhaps even the most relevant in considering the criminal mean questions. This would be incredibly confusing and would serve as an invitation for the inquest jurors to disregard the instruction that a failure to comply with policy or training is not dispositive of an officers' intentions. Adding these additional interrogatories is unnecessary, they do not belong under the criminal means section, and they are confusing and unfairly prejudicial.

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

b. The New Interrogatories Improperly Call for Juror Opinion and Go to Fault, Not Facts.

The Administrator's new proposed Interrogatories 27(a) and (b), 28, 29, 39, and 40 improperly ask the jury to opine on the "reasonableness" of the officers' conduct. Such an inquiry exceeds the factual inquiry set forth in the Executive Order, calls for improper opinions from the jury, and impermissibly injects questions of fault and liability into the inquest in direct violation of PHL-7-1-5-EO, Appx. 1, Paragraphs 2.2 and 2.3. Whether an officer's perception or decision was reasonable is an opinion, not a fact. Therefore, such an inquiry is not contemplated by the Executive Order and exceeds the parameters of the inquest. The Executive Order only allows the jury to issue findings of *fact* – who, what, where, when, why, how. *See*, PHL-7-1-5-EO, Appx. 1, Paragraph 2.2 (purpose of the inquest is to ensure a full, fair, and transparent review of any such death, and to issue ***findings of fact*** regarding the *facts* and circumstances surrounding the death).

Further compounding the prejudice to the officers, the newly proposed interrogatories also violate Appendix 1, Paragraph 2.3 of the Executive Order, which expressly states, "[t]he purpose of the inquest is to investigate a death, not to make adjudicative determinations of civil or criminal liability." However, by asking the jury if the officers "reasonably believed" they were in imminent threat of death or serious bodily harm or that they had probable cause, the Administrator is asking the jury to adjudicate issues of civil liability.

The concept of reasonableness is drawn from the Fourth Amendment's test under *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865 (1989), which sets the standard for evaluating civil claims brought for alleged Fourth Amendment violations. Under Graham and its progeny, civil excessive force claims are evaluated under a reasonableness standard, and the court considers (1)

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight.'" *Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005). So, by submitting interrogatories that ask for the jury to opine on whether the officers acted reasonably in various aspects of the incident, the Administrator is asking questions of opinion that go to civil liability, not facts. That is expressly forbidden under the Executive Order.

That the FWPD Use of Force Policy sets forth the *Graham* standard's requirement of reasonable belief does not dictate that the jury should be asked to opine on that aspect of the use of force. To the contrary, the policy is a guideline that sets forth the relevant legal standard for officers to follow.

c. The Newly Proposed Interrogatories Misstate Criminal Means and the Issue of Justifiable Force.

Newly Proposed Interrogatories 28, 29, 37, 38, 39, and 40 improperly inject components of federal law and Washington law that are either incomplete or inapplicable to the incident at-hanmd. The officers here unequivocally state that they used deadly force because they feared that Mr. Lightfeather was going to shoot them and/or others. Period. A factual inquiry into the secondary justification for using deadly force – to apprehend a dangerous fleeing felon in accordance with *Tennesse v. Garner* – is inappropriate and unfairly prejudicial. There is no evidence to support the issuance of interrogatories on that subject and doing so would work a grave injustice by inviting the inquest jury to answer in the negative about inapplicable legal theories. While this situation could easily have evolved into one in which Mr. Lightfeather fired at officers then fled on foot, thus falling into a *Garner* situation where the officers deploy deadly force to stop

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

him and protect the public, that never happened. That is why DC Sumpter stated in his interview that the Section1.3.2.A.2 was less relevant than the preceding section. Crucially, DC Sumpter never stated that Section1.3.2.A.2 applied to this situation. The officers' *Garrity* statements make clear that they used deadly force to stop the imminent threat Mr. Lightfeather posed to them and others on the scene.

The prejudice that will result is particularly accentuated when the questions are asked under the heading of "Criminal Means." By setting up those inapplicable interrogatories in the Criminal Means section, the Administrator would be telling the jury that "no" answers to those interrogatories will, by sequential inference, mean the officers acted with criminal means. Not only is that factually incorrect, it is legally incorrect and untenable. It is the equivalent of instruction a jury on an unpled affirmative defense in a civil case. As in *Butts* and *Lyles,* the only questions that should be asked in the Criminal Means section should be questions 41 through 44. Those are the proper questions for determining criminal means without unnecessarily tainting that determination with immaterial and confusing questions about a justification for the use of deadly force (to arrest a dangerous fleeing felon) that does not apply to these facts and circumstances. For all of these reasons, the Administrator should not include the newly proposed additional interrogatories.

II. The Family's Proposed Statement and Photos Impermissibly Comment on Fault, Attempt to Explain His Conduct, and Seek Juror Sympathy.

The Family's proposed statement regarding Mr. Lightfeather improperly appeals to juror sympathy and uses inflammatory language that suggests wrongdoing and fault. Additionally, the Family's proposal of submitting three photographs is also an improper emotional plea to the jury

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

and prejudices the City and involved officers. The statement also shifts from third person to first person, making it confusing and overly personal.

The City and the IOs object to the following sentences or phrases in the Family's statement as impermissible character evidence under ER 404, irrelevant under ER 401 and 402, and/or as overly emotional and inflammatory:

- He was the oldest of his 5 brothers and numerous step brothers and sisters and took on the responsibility of setting a good example for them.
- He endured alot of trauma in his youth in Minnesota and worked for years to heal from that. (ER 401, 402, 403.)
- He had a loving soul and cared for all of his friends and family never wanting to see anything bad happen. (ER 401, 402, 403, 404(a).)
- Our baby had just turned one 3 days before Robert was killed, yet she loved hearing him sing and was always at his side. Our youngest was robbed of not being able to have any memories of him. (ER 401, 402, 403; casts blame/fault; impermissible appeal to juror emotions.)
- The loss of her father has taken a toll on our oldest daughter...No one should ever experience seeing their child collapsing in the mud and snow sobbing on top of their Dad's grave. (ER 401, 402, 403; casts blame/fault; impermissible appeal to juror emotions.)
- Robert shouldn't have lost his life. (ER 401, 402, 403; casts blame/fault; impermissible appeal to juror emotions.)
- I shouldn't have had to tell my 5-year-old her Dad was dead. We shouldn't be here alone. (ER 401, 402, 403; casts blame/fault; impermissible appeal to juror emotions.)
- Without him we struggle to carry on the heaviness this loss brings. (ER 401, 402, 403; casts blame/fault; impermissible appeal to juror emotions.)

The City and Officers do not object to short, factual statement about Mr. Lightfeather. But the Administrator should not allow improper character evidence, emotional pleas, or opinions on

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

the propriety of the shooting. Similarly, the Administrator should not allow more than one photograph of Mr. Lightfeather, as multiple photos unfairly appeal to the jury's emotions. The involved officers, Mr. Kangethe, and Mr. Nyanjui also have families, and to emphasize Mr. Lightfeather's family over theirs is simply not fair and would taint the proceedings against the officers.

DATED this 6th day of September, 2022.

CHRISTIE LAW GROUP, PLLC

By /s/ *Thomas P. Miller*

THOMAS P. MILLER, WSBA #34473
Attorney for the City of Federal Way, Austin Rogers, and Tyler Turpin
2100 Westlake Avenue N., Suite 206
Seattle, WA 98109
Tel: 206-957-9669
Fax: 206-352-7875
Email: tom@christielawgroup.com

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2022, a true and correct copy of the foregoing document was served upon the parties listed below via the method indicated:

Matthew W. Anderson
King County Department of Executive Services-Inquest Program
401 Fifth Avenue, Suite 131
Seattle, WA 98104
Via Email: Matt.anderson@kingcounty.gov

Teri Rogers Kemp
Via Email: *kemplegalresearch@gmail.com*

J. Ryan Call, WSBA #32815
City Attorney – City of Federal Way
33325 8th Avenue South
Federal Way, WA 98003
Via Email: Ryan.call@cityoffederalway.com

/s/ *Thomas P. Miller*
THOMAS P. MILLER

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669