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6 KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
7 INQUEST PROGRAM

8 IN RE INQUEST INTO THE DEATH OF
9 ALBERT WAYNE FREDERICKS JR.

No. 17IQ427069

10 **CITY OF SEATTLE’S MOTION FOR
11 CONTINUANCE**

12 The City of Seattle requests a continuance of the Inquest hearing. The Family’s recent
13 introduction of two new experts has created significant additional work for the parties in preparing
14 for the Inquest hearing. The Family provided the report of its forensic pathologist, Dr. Quinn, just
15 this week, and has not yet provided the report, demonstrative video, and the video’s narrative or
16 explanatory PowerPoint slide deck from its audio-visual expert, Joshua Cohen. There is simply not
17 enough time before the start of the inquest hearing for the City and/or the Involved Officers (“IOs”)
18 to absorb the new information and evidence being proposed by the Family, and properly address it
19 for purposes of presenting evidence to the Inquest jury. To illustrate, following is a non-exhaustive
20 list of tasks that now need to be accomplished prior to the Inquest hearing start date, which is only
21 three weeks away:

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- 23 • Family’s disclosure of Mr. Cohen’s report, narrative or explanatory PowerPoint Deck, and demonstrative video evidence

- 1 • Retention of appropriate expert by City and/or IO's to review Mr. Cohen's report and demonstrative video evidence
- 2 • City and/or IO's expert's analysis of video evidence and consultation therewith
- 3 • Interview of Mr. Cohen
- 4 • Possible preparation of report and video by City's and/or IO's audio-visual expert
- 5 • Interview of City's and/or IO's audio-visual expert
- 6 • Possible briefing on the admissibility of the expert videos and testimony
- 7 • Evaluation of the newly-disclosed report of Family's forensic pathology expert, Dr. Quinn
- 8 • Consultation with forensic pathologist to serve as a rebuttal expert by City and/or IO's
- 9 • City and/or IO's expert's review and analysis of Dr. Quinn's report and materials relevant to the opinion
- 10 • Interview of Dr. Quinn
- 11 • Obtaining tissue slides from KCMEO and having them analyzed by forensic pathology expert
- 12 • Possible preparation of rebuttal report by City's and/or IO's forensic pathology expert
- 13 • Interview of City's and/or IO's forensic pathology expert
- 14 • Briefing and hearing on expert issues – ER 702, 703 and *Frye*
- 15 • Policy and training designee interview
- 16 • Briefing on *Garrity* issues

17 The Family has yet to provide Mr. Cohen's report, PowerPoint slide deck that explains or
18 narrates his video exhibit, or the proposed demonstrative video exhibit. The Family represents that
19 Mr. Cohen is synchronizing multiple police body worn videos and will be zooming in on certain
20 aspects of them to better show the takedown and restraint of Mr. Fredericks. Similarly, the Family
21 represents that there will be a PowerPoint Deck that explains what the synched videos allegedly
22 depict, including but not limited to, the IO's takedown and/or handcuffing of Mr. Fredericks.
23 Although the video itself has not been provided, based on the Family's description of the video

1 alone, the City anticipates wanting it to be analyzed by its own audio-visual expert to determine if
2 the synchronizing, splicing, and zooming was performed accurately and competently, and whether it
3 accurately depicts the events it purports to depict. Similarly, the City anticipates needing to review
4 the PowerPoint slide deck accompanying the video to determine whether it is accurate or one-sided
5 and prejudicial. The City and/or the Involved Officers may need to have their expert provide a
6 declaration or testify on these subjects, and the admissibility of the video and PowerPoint slide deck
7 may need to be briefed. The City and/or the Involved Officers may also have their expert create an
8 alternative or rebuttal demonstrative video, to address anything that is missing or portrayed in a
9 potentially one-sided or incomplete manner in the Family's video.

10 Regarding Dr. Quinn's opinions on Mr. Fredericks' cause and manner of death, the City
11 and/or IO's need to consult with their forensic pathology expert and provide him or her time to
12 complete a review of the materials in the case and analyze the opinion. The City and/or IO's will
13 need time to consult with their expert and then interview Dr. Quinn. After the interview, there will
14 likely need to be briefing on ER 702, 703 and *Frye* issues. The City and/or IO's forensic pathology
15 expert will need time to provide a report and be interviewed as well. Additionally, it is currently
16 unclear whether or how the Inquest Attorney plans to handle new forensic pathology opinion(s)
17 with Dr. Mazrim, whether Dr. Mazrim will be testifying on those opinions, and whether he will
18 need to be interviewed a second time. The City would note that Dr. Quinn's opinion appears to be
19 largely inconsistent with that of Dr. Mazrim on cause and manner of death.

20 Dr. Quinn's report inserts new issues into this matter which may require additional expert
21 testimony. Dr. Quinn's report suggests for the first time that Mr. Fredericks' death was directly
22 caused by the actions of the Involved Officers, specifically, the officers' alleged compression of Mr.
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1 Fredericks' chest and his allegedly impaired ability to breathe. It appears medical causation will
2 now be a central issue in the case, assuming Dr. Quinn's opinions are allowed. There is evidence
3 that Mr. Fredericks was breathing and had a pulse at the time AMR responders arrived on scene and
4 took over his medical care. The jury may need to hear from an emergency medical response expert
5 on whether the acts or omissions of the AMR responders could have been an alternate or
6 contributing cause of Mr. Fredericks' death. The AMR responders assumed responsibility for Mr.
7 Fredericks' medical care and condition when they arrived on scene, which was after SPD requested
8 they respond and only moments after the handcuffing was complete. Whether AMR's acts or
9 omissions were causal factors in Mr. Fredericks' death, and whether this is a proper issue for the
10 jury's consideration, may also require briefing.¹

11 Given the significant number of issues that need to be addressed and the number of tasks
12 that remain to be accomplished, it is not possible for this matter to be ready to be presented to a jury
13 three weeks from now, on November 7, 2022. Accordingly, the City reached out to the parties
14 about stipulating to a continuance of the Inquest hearing. The Involved Officers agreed to a
15 continuance; the Family declined. The Family provided no reasons for declining to stipulate to the
16 continuance, stating only that they understood the City's position "but won't be able to do a joint
17 agreed continuance at this time." (Email from counsel for Family to counsel for City and IO's
18 dated 10/13/22). This response by the Family was surprising, given that their counsel's stated
19 availability for interviews and other events that need to happen in this case over the next three
20 weeks is extremely limited and considering both the City and IOs have worked to accommodate the
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22 ¹ The Inquest Jury is obligated to render a verdict as to who died, when they died, where they died, by what means they
23 died, and if their "death was occasioned by the act of another by criminals means, who is guilty thereof, if known." RCW
36.24.070; *see also* RCW 36.24.040, .090-.100. The statute does not restrict the inquiry into members of law enforcement.
The Inquest Jury could determine the AMR EMT's conduct caused or contributed to Mr. Fredericks' death.

1 Family's counsel's trial schedules. The City would note that its own availability is somewhat
2 limited between now and the current Inquest hearing date: the City's attorneys are unavailable for
3 scheduling purposes from October 20th through October 25th. The unavailability of counsel in the
4 coming weeks puts a further strain on completing the many tasks that need to be accomplished
5 before the start of the Inquest hearing. Further, the City anticipates that many of the experts would
6 be unavailable for scheduling interviews in the upcoming weeks due to their own already busy
7 schedules.

8 If this were a civil case, the parties would have many months to evaluate and develop the
9 facts and evidence to present to a jury. The disclosure of experts and expert discovery would be
10 conducted according to established procedures and timelines. The City understands that this is not a
11 civil case and that there are no established timelines or rules for expert disclosures and discovery.
12 However, expecting the City and IOs to absorb, analyze, and develop evidence countering the
13 opinions of two new experts in this proceeding, just three weeks before the Inquest hearing is set to
14 begin, is unfair and significantly impedes the City and IOs' ability to defend their clients. The
15 Inquest was already proceeding on an ambitious schedule. Given the substantial new evidence that
16 has been injected into the proceedings, essentially at the last minute, a continuance is necessary to
17 ensure all parties have a fair opportunity to address the new issues and evidence raised.

18 The City is unavailable the entire week of November 21st (Thanksgiving week), which
19 means continuing the Inquest hearing to December 5th will functionally only provide the parties an
20 additional two weeks. It is the City's position that an additional two weeks is not enough time to
21 complete the tasks mentioned above, and therefore requests the new Inquest hearing date be set in
22 January or February. The City is available for all dates in December, January, and February except
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1 December 26th through January 4th, January 12th through January 16th, and February 16th through
2 February 22nd.

3 For the foregoing reasons, the City requests that the Inquest hearing be continued to a date
4 in January or February 2023, to ensure the parties have time to prepare their respective cases in light
5 of the newly disclosed expert report of Dr. Quinn and the expected report and video from Joshua
6 Cohen, and all pre-hearing issues and motions can be resolved.

7 DATED this 14th day of October, 2022.

8 ANN DAVISON
9 Seattle City Attorney

10 By: /s/ Rebecca S. Widen
11 Alison Markette, WSBA# 46477
12 Ghazal Sharifi, WSBA# 47750
13 Rebecca Widen, WSBA#57339
14 Assistant City Attorneys
15 E-Mail: Alison.Markette@seattle.gov
16 E-mail: Ghazal.Sharifi@seattle.gov
17 E-Mail: Rebecca.Widen@seattle.gov

18 Seattle City Attorney's Office
19 701 Fifth Avenue, Suite 2050
20 Seattle, WA 98104
21 Phone: (206) 684-8200

22 *Attorneys for Defendant City of Seattle*
23

CERTIFICATE OF SERVICE

I certify that on the 14th day of October, 2022, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Claire Thornton Matthew Anderson Attorney	(x) Via Email Only Claire.Thornton@kingcounty.gov Matt.Anderson@kingcounty.gov
Dee Sylve Inquest Program Manager DES-Dept. of Executive Services 401 5 th Ave., Suite 131 Seattle, WA 98104 Mailstop: CNK-DES-135	(x) Via Email Only Dee.Sylve@kingcounty.gov
La Rond Baker Northwest Defenders Division, King County Department of Public Defense 710 2 nd Ave, Suite 250 Seattle, WA 98104	(x) Via Email Only Lbaker@kingcounty.gov
Rebecca Boatright Executive Director of Legal Affairs, SPD	(x) Via Email Only Rebecca.Boatright@seattle.gov
Cherie Getchell Deputy Police Counsel, SPD	(x) Via Email Only Cherie.Getchell2@seattle.gov
Susan Sobel, WSBA# 52579 Mahalia Kahsay, WSBA# 55594 Associated Counsel for the Accused Division King County Department of Public Defense 710 Second Avenue, Suite 1000 Seattle, WA 98104	(x) Via Email Only Susan.Sobel@kingcounty.gov mkahsay@kingcounty.gov mcardengreen@kingcounty.gov
Ted Buck, WSBA #22029 Karen Cobb, WSBA #34958 Delaney DiGiovanni, WSBA #56851 Frey Buck, P.S. 1200 5 th Ave., Ste. 1900 Seattle, WA 98101	(x) Via Email Only tbuck@freybuck.com kcobb@freybuck.com ddigiovanni@freybuck.com rziemer@freybuck.com

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/s/ Jay Beck
Jay Beck, Legal Assistant