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2
3 KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES
4 INQUEST PROGRAM

5 INQUEST INTO THE DEATH OF:

6 Jason Seavers,

7
8 Deceased.

NO. 18IQ61954

FAMILY OF JASON SEAVERS
REPLY TO THE CITY OF
SEATTLE'S AND INVOLVED
OFFICER'S MOTION RE:
FAMILY'S EXPERT

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11 It is undisputed that the Family's expert, Captain Ashley Heiberger, is qualified as
12 an expert in Police Practices, Use of Force (including De-Escalation concepts,
13 principles, and techniques), Police Policy, and in Police Training. Captain Heiberger's
14 expertise focuses on the core issues at the heart of the King County Inquest program.
15 One would be pressed to find a more appropriate expert witness and in fact two of the
16 King County Inquest Program Attorneys had vetted and approved Captain Heiberger
17 to be an expert for this program. Captain Heiberger's lengthy experience is detailed
18 in the Family's recently submitted brief and submission of this expert's CV.
19 Additionally, a two-hour interview was scheduled to accommodate the parties to
20 interview Captain Heiberger on April 7, 2023. The interview lasted an hour longer than
21 anticipated, for over three hours, and ceased when opposing counsel indicated they
22 had no further questions of this expert. At that point, the family wished to ask follow-
23 up questions, it was then that opposing counsel dismissively suggested that the family
24 address any follow up questions by email.
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27 The City of Seattle's brief, right out of the gate, in the first sentence states, "The

1 City of Seattle ("City") has consistently objected to the employment of Use of Force or
2 Police Practices experts in inquests generally, and in the instant case specifically (p. 1
3 City of Seattle's Motion in Limine). If the inquest only allowed for this scenario, this
4 would mean that the only person testifying as to SPD policy and training would be one
5 of its very own SPD department designees, in this case, SPD Captain Caylor. There
6 is an inherent bias that could be perceived and which could occur which deviates from
7 the King County Executive Order calling for a "full, fair, and transparent review." (PHL-
8 7-1-5-EO paragraph 2.2). The City's constant objection to the family having an expert
9 blatantly violates the King County Executive Order governing these inquests. As
10 mentioned in the Family's previously submitted brief, the Executive Order specifically
11 addresses this point stating, "Each party, including the administrator, through the
12 inquest program attorney, may proffer its own witness to provide testimony that aids
13 the panel in the understanding of the facts, including factual areas of experts (PHL-7-
14 1-5-EO paragraph 12.1). Additionally, the feedback from recent King County Inquest
15 jurors has been that they would have desired to hear expert testimony from an
16 independent use of force expert. It is hoped that everyone involved would support a
17 common goal of learning from past incidents to improve officer force performance in
18 the future, i.e., reducing police shootings. Sadly, the City of Seattle is taking a narrow
19 perspective by attempting to limit independent analysis of this incident by an outside
20 expert. Unfortunately, the City is creating an unnecessary obstacle for the Family by
21 attempting to limit the expert's role in the proceeding. Also, the City mischaracterizes
22 events relating to any delay. As they know, the delay was initially caused by
23 thousands of pages of discovery provided by a non-party that caused an on-track
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1 inquest to be delayed by a series of events that occurred thereafter stemming from
2 that unexpected barrage of materials at an untimely point in the process. The Family
3 actually worked incredibly hard to overcome that obstacle and has faced other hurdles
4 such as this unwarranted motion.

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6 The Seattle Police Department will have SPD Captain Caylor testifying regarding
7 police policy, training, and compliance. The Inquest Program Attorneys have retained
8 their own expert, Geoffrey Alpert, an academic, with no law enforcement experience
9 who will testify from a different perspective. His opinions will be based upon generally
10 accepted principles. "Generally accepted principles" refer to those concepts and
11 theories that are widely known, acknowledged, and relied upon in the field" (Alpert
12 report p. 1). The Family's expert, Captain Ashley Heiberger, clearly based his review
13 and analysis of this case involving the death of Jason Seavers on Seattle Police
14 Department policy and training. This analytical framework is specifically required by
15 the Executive Order and RCW 36.24 in that the "inquest analysis is to be focused on
16 whether the law enforcement member acted pursuant to policy and training." The
17 Family's expert is an independent expert, not one who has potential for being bias as
18 a command-level officer in the same agency as Officer Schickler.
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21 Simply speaking, Captain Ashley Heiberger's analysis focuses on Seattle
22 Police Department Policy and Training. This is clear from his report dated April
23 3, 2023 and from his interview on April 7, 2023. On the first page of Captain
24 Heiberger's report in bold print he stated:

- 25
26 **1. Based on the material reviewed and subsequent analysis, it is my**
27 **opinion that Officer Schickler's use of deadly force under the**
totality of these circumstances did not comply with Seattle Police

1 **Department Policy.....**

2 **2. Based on the material reviewed and subsequent analysis, it is my**
3 **opinion that Officer Schickler’s use of deadly force under the**
4 **totality of these circumstances did not comply with Seattle Police**
5 **Department training.....**

6 Captain Heiberger again reiterates his focus of analysis on SPD policy and
7 training per the inquest guidelines when he states in his April 7th interview:
8 “It is my opinion that his (Officer Schickler) actions did not comply with Seattle
9 Police Department Policy nor did they comply with Seattle Police Department
10 training (See Recording at 20:16). Captain Heiberger continues to state that
11 policy and training were his frame of analysis for this work. He based his
12 opinions on training regarding the decision of Officer Schickler to approach the
13 vehicle. Capt. Heiberger discussed the de-escalation opportunities available for
14 cover, shielding, de-escalation (20:35). Captain Heiberger refers to page 12 of
15 his written report in the interview, reviewing the SPD sanctity of life policy, the
16 SPD recognition of pre-seizure conduct analysis and the officer-created
17 jeopardy doctrine, and de-escalation. Further, in the first three paragraphs of p.
18 13, he noted how SPD policy focused on de-escalation by providing numerous
19 examples. It should be noted that these concepts were not introduced to this
20 process from outside sources such as professional organizations, think tanks,
21 or policing scholars. To its credit, SPD had previously adopted them, and
22 Captain Heiberger cited their inclusion in SPD policy and training. Put more
23 simply, Captain Heiberger did not discuss them as abstract concepts or
24 aspirational ideals. Rather, he clearly demonstrated how SPD has made these
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1 concepts the foundation of the policy setting out the agency's requirements
2 regarding officers' force performance, and a major component of SPD training.

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4 When asked if Officer Schickler's approach to the vehicle was
5 unreasonable, Captain Heiberger indicated it was unreasonable. He clearly
6 answered this question repeatedly because SPD 's policy indicates Officer
7 Schickler should have taken cover under policy and training. (3rd paragraph on
8 p.13).

9
10 Opposing counsel is using smoke and mirrors to cloud Captain Heiberger's
11 very easily understood analysis. He is consistent with this analysis in both his
12 report and his interview. Per SPD policy and training, "It is clear that the SPD
13 provided its officers with training on using both cover and de-escalation. As
14 noted above, Officer Schickler approached Mr. Seaver's vehicle despite the
15 increased risk. By failing to utilize cover or de-escalation techniques, he did
16 not act in accordance with SPD training. There was no compelling reason for
17 the officer to approach the vehicle at that time. Had the officer taken cover at
18 an appropriate distance, he almost certainly would have gained the advantage
19 of time. Instead, the officer decided on a course of action that deviated from his
20 training, and drove a confrontation that resulted in the use of deadly force."
21 (Heiberger report p. 16).

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23 Below are responses to specific line numbers in the City's Motion:

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25 **Page 1 lines 15-16**-This is simply not true. Captain Heiberger repeatedly
26 states in his report that his analytical framework for the review of this case was
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1 SPD policy and training (Heiberger report p.1, 6, 11-16). Additionally, he
2 repeatedly mentions in his interview that he reviewed SPD policy and training
3 (20:16, 20:35, 21:05, 24:51,...). Even the involved officers' attorneys conceded
4 in their brief that "Mr. Heiberger reviewed SPD's de-escalation and cover
5 training (referring to Heiberger's report citation 3 p. 15-16.), to form his
6 disclosed opinions..."

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8 **Page 1 lines 21-22**-This statement is not true. Captain Heiberger discusses in
9 his report and in the interview the facts that Officer Schickler violated police
10 policy and training when he approached the vehicle. Capt. Heiberger cites a
11 doctrine from expert Alpert's book regarding "officer created jeopardy"
12 (Heiberger report p. 12). Simply put, "an officer cannot cause a problem and
13 then shoot their way out of it.)(Quoting Capt. Heiberger in his report). In
14 applying SPD Use of Force Policy to this doctrine, Capt. Heiberger cited SPD
15 policy 8.1-De-escalation focusing on the totality of the circumstances
16 (Heiberger report p. 13 footnote). Heiberger wrote, "the agency clearly requires
17 de-escalation under appropriate conditions by directing that "when safe and
18 feasible under the totality of the circumstances, officers shall attempt to slow
19 down or stabilize the situation so that more time, options, and resources are
20 available for incident resolution (Heiberger, p. 13 citing SPD policy 8.1,
21 interview 24:51, 26:03).

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26 **Page 2 lines 9-12**-The City is incorrect. The jury will need to answer over 65
27 interrogatories many of which concern officer Schickler's use of force. Captain

1 Heiberger's experience and testimony will assist the trier of fact in answering
2 these very important questions. Here are examples of proposed interrogatories
3 pertaining to this case showing that use of force and police practices are clearly
4 within the scope of this inquest:
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6 71. Was the force used by Officer Schickler objectively reasonable, proportional to the
7 threat or urgency of the situation, when necessary, to achieve a law enforcement
8 objective? (contingent)

9 72. Did Officer Schickler assess and modulate his use of force as Jason Seavers
10 resistance change? (contingent)

11 73. At the time that Officer Schickler fired his handgun was there an imminent threat
12 of death or serious physical injury to Officer Schickler or others? (contingent)

13 74. Did Officer Schickler issue a verbal warning that he was going to shoot to Jason
14 Seavers and fellow officers prior to shooting his firearm?

15 75. Was it feasible for Officer Schickler to issue a verbal warning to Jason Seavers
16 and fellow officers prior to shooting his firearm?

17 76. Were Officer Schickler's actions consistent with the SPD Policy 8.200 USE OF
18 FORCE (Sections 1, 3, and 4), and 8.300-POL-4 Use of Force – FIREARMS (Section
19 7)

20 77. Were Officer Schickler's actions consistent with the SPD training he received on
21 use of force?

22 **Page 2 lines 17-20, Page 3 lines 1-2-** Of course, all kinds of experts can testify at
23 a hearing or trial, it obviously depends upon the issues germane to the case.
24 Moreover, regarding admissibility of expert testimony, Courts are to ***“interpret
25 possible helpfulness to the trier of fact broadly and favor admissibility in
26 doubtful cases.”*** *State v. King Cty. Dist. Ct. W. Div.*, 175 Wash. App. 630, 638, 307
27 P.3d 765, 769 (2013)(emphasis added);(citing *Miller v. Likins*, 109 Wash.App. 140,
148, 34 P.3d 835 (2001)). The Washington State Supreme Court has repeatedly
held that an expert's testimony and opinion may be based upon personal or
professional experience alone. See e.g. *Katara v. Katara*, 175 Wash. 2d 23, 38, 283
P.3d 546 (2012); see also *Johnston-Forbes v. Matsunaga*, 181 Wash. 2d 346, 355,
333 P.3d 388, 393 (2014). “ Practical experience is sufficient to qualify a witness as

1 an expert.' " *Acord v. Pettit*, 174 Wash. App. 95, 111, 302 P.3d 1265, 1273
2 (2013)(citing *State v McPherson*, 111 Wn.App. 747, 761-62, 46 P.3d 284
3 (2002)(quoting *State v. Ortiz*, 119 Wash.2d 294, 310, 831 P.2d 1060 (1992)). Again,
4 the past inquest juries have made it clear they want to hear from independent
5 experts not just experts associated with the Seattle Police Department. Dr. Alpert will
6 presumably be testifying for the Inquest Administrator and therefore, the same
7 latitude should be provided to the Family in the interest of fairness and due process.

8 **Page 3 lines 6-18**-This paragraph is false and misleading. Captain Heiberger
9 specifically states in his report on page 6 that he reviewed SPD Force Investigation
10 Unit Report prepared by SPD Det. David Simmons, SPD Policy Manual, SPD
11 Training Materials on Advanced Rapid Intervention, Firearms and less lethal
12 certification, Firearms Tactics, Vehicular Close Quarter Shootings, Small Team
13 Tactics, Tactical de-escalation, video clips, and other relevant discovery. He has
14 provided an independent opinion in this case, not from the lens of an SPD Captain. It
15 is common-place for different experts to look at the same set of facts, provide an
16 independent analysis, and end up with different conclusions. This happens all the
17 time across the country and certainly occurs on a daily basis in our own legal
18 community here in King County. It will be the jury who decides the ultimate facts in
19 this case based on the different information and different viewpoints presented to
20 them at the upcoming inquest. Moreover, an expert need not just be local. The
21 Administrator has retained a use of force expert, Dr. Alpert, who is based in South
22 Carolina and who is opining on this case. It can be argued that there is an inherent
23 bias that SPD Captain Caylor would have in assessing compliance of one of his own
24 SPD officers. Captain Heiberger provides another perspective. He has reviewed
25 use of force cases at a very high level, i.e., federal oversight (See Heiberger CV).

26 **Page 4 lines 9-15**-The City is well aware of the reasons for the retention of a new
27 expert. This case was on track for the scheduled inquest hearing date until
thousands of pages of new discovery were sprung upon the family as the original
inquest date was soon approaching. This caused a domino effect of issues that
arose and it was ultimately in the best interest of the inquest program that the family
received a continuance to obtain a new expert. Considering the short postponement

1 of the inquest date of approximately only one month and considering the voluminous
2 new discovery and issues that arose therefrom, the Family has worked tirelessly to
3 keep this inquest on track. There was no undue delay and to the contrary, Captain
4 Heiberger was able to do a comprehensive review of SPD policy, training, and
5 review the discovery and provide a detailed and comprehensive report in a very
6 timely manner.

7 **Page 4 line 15**-This allegation is not mentioned on page 12.

8 **Page 4 lines 17-20**-This is a mischaracterization of what was stated. Captain
9 Heiberger indicated he was not retained to give an opinion regarding other SPD
10 officers' performances in this case; his opinion is only regarding Officer Schickler's
11 (the only involved officer who shot and killed Mr. Seavers) compliance with SPD
12 policy and training. In his analysis, Captain Heiberger used SPD policy which clearly
13 indicates that a shooting is not just the moment the trigger is pulled. This incident
14 began when Officer Schickler arrived at the scene and from the very moment he
15 rushed the vehicle, he violated policy and training. This is "officer created jeopardy"
16 and SPD policy directs us to look at pre-seizure conduct when it states,

17 **"Officers should recognize that their conduct prior to the use of force, including the display of a weapon, may be a factor which can influence the level of force necessary, Officers should take reasonable care that their actions do not precipitate an unnecessary, unreasonable, or disproportionate use of force, by placing themselves or others in jeopardy, or by not following policy or training, Officers should continually assess the situation and changing circumstances, and modulate the use of force appropriately."** SPD Policy 8.00(3) and cited in Heiberger report p. 12.

18 To this effect, Dr. Alpert states, "when an officer fails to use reasonable tactics given
19 the situation or otherwise contributes to the creation of a threat to a governmental
20 interest in a way that violates professional norms-what some policing scholars have
21 referred to as 'officer-created jeopardy'-the officer's role in unreasonably bringing
22 about the threatening situation should generally be understood to render
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1 unreasonable an otherwise reasonable use of force.” *Stoughton, S. Noble, J., &*
2 *Alpert G. (2020). Evaluating Police Uses of Force. New York University Press, p.55.*

3 **Page 5 lines 1-3**-Captain Heiberger answered numerous hypotheticals posed in the
4 April 7th interview. These hypotheticals became convoluted and answers could
5 easily have been misinterpreted. It is hypocritical that this issue is being raised by
6 the City since the City requested in its motions in limine, “6. Motion to exclude
7 testimony or evidence eliciting speculation about non-event hypothetical
8 scenarios.”(City’s Motions in Limine 6).

10 **Below are responses to the SPD Involved Officers Motions in Limine RE**
11 **Family’s Expert:**

12 **Page 2 lines 3-13**-Captain Heiberger has repeatedly opined that Officer Schickler’s
13 actions did not comply with SPD policy and training under the totality of
14 circumstances dictated by SPD policy, specifically, **“Officers should recognize**
15 **that their conduct prior to the use of force, including the display of a weapon,**
16 **may be a factor which can influence the level of force necessary, Officers**
17 **should take reasonable care that their actions do not precipitate an**
18 **unnecessary, unreasonable, or disproportionate use of force, by placing**
19 **themselves or others in jeopardy, or by not following policy or training,**
20 **Officers should continually assess the situation and changing circumstances,**
21 **and modulate the use of force appropriately.”** SPD Policy 8.00(3) and cited in
22 Heiberger report p. 12. Also, see Capt. Heiberger’s report footnote on page 12
23 referencing the totality of circumstances whereby the officer is not simply reviewed
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1 only when the gun is fired but the totality of circumstances and SPD policy mandate
2 looking at pre-seizure conduct.

3 **Page 2 lines 14-20**-Captain Heiberger highlights the importance of de-escalation in
4 his report and even elaborates about examples of de-escalation tactics that officers
5 can utilize to reduce the likelihood of force being necessary such as placing barriers
6 between an uncooperative subject and officer, containing a threat, moving from a
7 position that exposes officers to potential threats to a safer position, using distance,
8 cover, concealment, communication, warnings, etc. Capt. Heiberger reviewed the
9 SPD de-escalation policies and trainings and repeatedly makes mention of this in his
10 report and interview (Heiberger report p. 13).

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12 **Page 4 lines 4-7** Attorney Ted Buck put forth a leading statement during the April 7th
13 interview, telling Captain Heiberger in the interview that he was using 20/20
14 hindsight, Captain Heiberger then corrected Mr. Buck and stated, "I don't think that
15 correctly characterizes what I said. (interview time stamp 16:35 second part). It
16 appears that the attorney for Involved Officer misunderstands the 20/20 hindsight
17 prohibition, which is part of the federal constitutional standard. The prohibition simply
18 means that we do not impute knowledge gained after the incident to an officer in the
19 moment. It does not mean that an officer's use of force should not be reviewed,
20 evaluated, or criticized if necessary. SPD has adopted this perspective, as
21 evidenced by its review of officer actions by the Force Investigation Unit and Force
22 Review Board. These SPD functions are closely related to Captain Heiberger's role
23 in this case, in which he does not engage in 20/20 hindsight. It was entirely
24 appropriate for Captain Caylor, Dr. Alpert, and Captain Heiberger to analyze Officer
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1 Schickler's actions. If there were no review of police officers' actions, then we
2 certainly would have greater problems. Captain Heiberger did not engage in 20/20
3 hindsight. He simply conducted an objective review of the officer's use of force using
4 agency policy and training as the analytical framework as required by the Inquest
5 Program.

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7 **Page 6 lines 8-13** "Monday morning quarterback[ing]" is a derisive and dismissive
8 way to describe the vitally important function of evaluating officer performance.
9 Every law enforcement agency has an obligation to ensure officers are complying
10 with policy and training. Supervisors, as representatives of the agency, look to policy
11 and training, evaluate officer performance against those standard, and criticize if
12 necessary. In general, this assessment process is an essential aspect of
13 supervision. Specifically regarding use of force at SPD, there is a Force Investigation
14 Unit and Force Review Board to carry out this process. So long as those evaluating
15 officer conduct are not engaging in 20/20 hindsight by imputing knowledge gained
16 after an incident to an officer in the moment, reviewing officer performance against
17 agency standards, i.e., policy and training, is entirely appropriate.

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19 **Page 6 20-23 and Page 7 line 2-18** Captain Heiberger acknowledged that there did
20 not appear to be any SPD training specifically addressing a vehicle. However, he did
21 not admit that he had no basis to opine as to the actual training officers received to
22 address a *similar* incident, and there is no citation to this assertion. It is impossible
23 for policy and training to address every situation that officers may encounter. So,
24 policy sets forth general rules which restrict officer action, and training demonstrates
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1 ways in which these rules may be applied. The SPD training material referenced by
2 Captain Heiberger provided several non-exhaustive examples.

3 **Conclusion**

4 The Family of Jason Seavers requests that Captain Heiberger be allowed to
5 testify as an expert on behalf of the Family to the same extent as Captain Caylor on
6 behalf of the Seattle Police Department and Dr. Alpert as an expert on behalf of the
7 IA. This request is made pursuant to due process and fundamental fairness to the
8 Family of Jason Seavers.
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11 DATED this 12th day of April, 2023.

Respectfully submitted,

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15 By: /s/ Deborah Alexander

16 Deborah Alexander, WSBA #21505
17 Attorney for the Seavers Family
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