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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

NELDA ADKINS, JANEL SHOWERS, FRED
RICHARDSON, MARLA SEESE, AND DENISE NORRIS,

PLAINTIFFS,

VS.

CITY OF PHOENIX POLICE DEPARTMENT AND JEFFREY
PRICE,

DEFENDANTS.

Case No.

COMPLAINT
(NEGLIGENT INVESTIGATION; TORTIOUS
INTERFERENCE WITH A CORPSE; NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS; INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS)

JURY TRIAL DEMANDED

PRAYER: \$2,200,000.00
FEE AUTHORITY: ORS 21.160(1)(d)

Plaintiffs allege,

1.

At all times material, Plaintiffs Nelda Adkins, Janel Showers, Marla Seese, and Denise Norris are residents of California.

2.

At all times material, Plaintiff Fred Richardson is a resident of Douglas County, Oregon.

3.

At all times material, Defendant City of Phoenix Police Department is a department of the City of Phoenix in Jackson County, Oregon.

4.

At all times material, Defendant Jeffrey Price is a Lieutenant employed by Defendant City of Phoenix Police Department in Phoenix, Oregon and is a resident of Jackson County, Oregon.

5.

Plaintiffs are the surviving heirs of Dennis Day ("Day"), an alleged victim of second degree



ERIN E. GOULD, LLC
800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

1 manslaughter and negligent homicide in open Jackson County Circuit Court Case No. 19CR44452,
2 *State v. Burda*.

3 6.

4 At the time of his death, Mr. Day resided at 510 North Pine Street in Phoenix, Oregon.

5 7.

6 The Phoenix Police Department is located at 114 2nd Street in Phoenix, Oregon,
7 approximately a three block distance from Mr. Day's residence.

8 8.

9 On or about July 17, 2018, one of Defendant's officers visited the home of Mr. Day and
10 his now deceased husband, Ernie Caswell, after a representative from a local hospital requested
11 Defendant perform a welfare check. Mr. Caswell had been taken to the hospital on July 13, 2018
12 after a fall, and the hospital was attempting to contact Mr. Day to take Mr. Caswell home.

13 9.

14 At all times material, Mr. Caswell had diminished mental capacity, a fact known to
15 Defendants and Plaintiffs at all times material.

16 10.

17 On or about July 18, 2018 outside Mr. Day's home, one of Defendant's officers
18 confronted and questioned Daniel Burda, a man who had been staying at Mr. Day's home for
19 a period of months. The officer told Mr. Burda to leave the premises, but did not arrest him.

20 11.

21 On or about July 19 through July 20, neighbors of Mr. Day and Mr. Caswell called
22 Defendant's office to report Mr. Burda was still on the Pine Street premises.

23 12.

24 On or about July 21, Defendant's officers questioned Mr. Burda near the premises again,
25 but did not arrest him. At that encounter, Mr. Burda displayed battle wounds on his hands and



ERIN E. GOULD, LLC
800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

1 forearms.

2 13.

3 On or about July 24, 2018, Defendant Price officially trespassed Mr. Burda from the Pine
4 Street property, but did not arrest him or take him into custody.

5 14.

6 On or about July 27, 2018, Defendant Price opened a missing person report for Mr. Day,
7 after a Meals on Wheels delivery person notified Defendant that no one at the Pine Street house
8 had picked up meals for a week. Defendant Price was in charge of the investigation.

9 15.

10 During the months of July, 2018 and August, 2018, Defendant's officers visited the Pine
11 Street house three times. During one or more of those searches, officers stepped on Mr. Day's
12 deceased body, which was hidden under a pile of clothing, causing multiple post-mortem
13 skeletal fractures.

14 16.

15 On August 8, 2018, Defendant confiscated Mr. Day's ATM card from Mr. Burda, but did
16 not take Mr. Burda into custody as a suspect in the disappearance of Mr. Day.

17 17.

18 For a period of six months from Mr. Day's disappearance, Defendants never contacted
19 Plaintiffs regarding the disappearance of Mr. Day despite receiving information that Mr. Day had
20 a sister named Nelda in California. Mr. Day's family learned of his disappearance after a news
21 story ran on January 8, 2019.

22 18.

23 For a period of nine months from Mr. Day's disappearance, Defendants failed to arrest
24 Mr. Burda in connection with Mr. Day's disappearance despite substantial evidence that Mr.
25 Burda was involved.



ERIN E. GOULD, LLC
800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

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19.

For a period of nine months from Mr. Day’s disappearance, Defendants failed to adequately search the Pine Street premises despite substantial evidence that a dead body was inside, including multiple complaints from neighbors and the Meals on Wheels delivery person that a smell of death was emanating from inside the house.

20.

On or about January 30, 2019, Plaintiff Adkins spoke with Defendant Price, she was told by Defendant Price that the Pine Street house had been searched with cadaver dogs, which was a false statement.

21.

In late January, 2019, Plaintiffs sought assistance from the Oregon State Police and the Jackson County Sheriff’s Department. Plaintiffs were told by both agencies that their services were available upon request from Defendant Price and Phoenix Police Department, which had not occurred.

22.

On or about February 13, 2019, Defendant Price told Plaintiff Showers that the family should not to come to Oregon to assist with the search of their uncle.

23.

On or about February 13, 2019, Defendant Price told Plaintiff Showers that he would seek assistance from Oregon State Police and the Jackson County Sheriff’s Department.

24.

Defendant Price did not transfer the case to the Oregon State Police until April, 2019.

25.

Once Oregon State Police took over the investigation, cadaver dogs were immediately brought to the Pine Street residence and Mr. Day’s body was found on April 6, 2019 under a pile



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800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

1 of clothes in a room with a door that opened to the outside of the house.

2 26.

3 Mr. Day's body was so badly decomposed that it was sent to a lab for identification. His
4 body was identified on June 6, 2019 based on circumstantial evidence.

5 27.

6 On or about July 8, 2019, Mr. Burda was arrested and charged with second degree
7 manslaughter and criminally negligent homicide, abuse of a corpse, and identity theft of Mr.
8 Day.

9 28.

10 On or about August, 6, 2020, Judge Mejia, ruled that much of the state's evidence against
11 Mr. Burda was inadmissible because the state could not link the evidence to Mr. Day's cause of
12 death. Mr. Day's cause of death is unknown because his body was so badly decomposed when
13 it was found.

14 29.

15 Mr. Burda's case is currently pending appeal on Judge Mejia's ruling.

16 **FIRST CLAIM FOR RELIEF - TORTIOUS INTERFERENCE WITH A CORPSE**

17 30.

18 Plaintiffs reallege and incorporate paragraphs 1-29 herein.

19 31.

20 Defendants damaged and interfered with the deceased body of Mr. Day by stepping on
21 him and creating post mortem fractures.

22 32.

23 Defendants damaged and interfered with the deceased body of Mr. Day by taking no
24 action when faced with clear and obvious evidence of its whereabouts, thereby causing the
25 deceased body to decompose to an unidentifiable state.



ERIN E. GOULD, LLC
800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

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33.

Plaintiff Nelda Adkins had a legal right to the control and disposition of Mr. Day’s deceased body.

34.

As a result of Defendants’ tortious interference with Mr. Day’s corpse, Plaintiff Nelda Adkins is damaged for emotional distress resulting in physical pain, shock, mental anguish, an inability to seek full justice under the law in the case against Mr. Burda, unwanted media attention and negative public comment and scrutiny, painful thoughts and feelings associated with the knowledge that her brother’s corpse decayed under a pile of clothes for nine months, all to her non-economic damages of \$500,000.00.

SECOND CLAIM FOR RELIEF - NEGLIGENT INVESTIGATION

35.

Plaintiffs reallege and incorporate the allegations of paragraphs 1-29 herein.

36.

Defendants City of Phoenix Police Department and Jeffrey Price were negligent in their investigation of Mr. Day’s disappearance in the following particulars:

- a. Taking no action to locate and notify next of kin that a missing person report had been filed for Mr. Day;
- b. Failing to re-search the Pine Street residence for Mr. Day’s body despite substantial evidence that it was in the house, including complaints by neighbors of smells of death emanating from the house;
- c. Taking no action on the case from August, 2018 through January, 2019 despite multiple complaints from neighbors and the Meals on Wheels delivery person that a smell of death was emanating from inside the house;
- d. Failing to turn over the investigation to the Oregon State Police or the Jackson



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800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

- 1 County Sheriff's Department in a timely manner;
- 2 e. Stepping on Mr. Day's deceased body, causing post-mortem skeletal fractures
- 3 during an initial search of the house;
- 4 f. Discouraging Plaintiffs from traveling to Oregon to participate in the search
- 5 efforts;
- 6 g. Failing to arrest Mr. Burda in August, 2018 despite substantial evidence of his
- 7 involvement in Mr. Day's disappearance.

8 37.

9 Defendant City of Phoenix Police Department was negligent in their investigation in the

10 following particulars:

- 11 a. Failure to establish policies, protocols and procedures for missing persons cases;
- 12 b. Failure to follow guidelines and procedures established by the Oregon State
- 13 Police Department and other jurisdictions;
- 14 c. Failure to turn the investigation over to the Oregon State Police Department or
- 15 Jackson County Sheriff's Department in a timely fashion.

16 38.

17 As a result of Defendants' negligent investigation, Plaintiffs did not have control over

18 disposition of Mr. Day's deceased body.

19 39.

20 As a result of Defendants' negligent investigation, Plaintiffs may not seek adequate

21 justice under the law for the loss of life of Mr. Day.

22 40.

23 As a result of Defendants' negligent investigation, Plaintiff Nelda Adkins is damaged for

24 emotional distress resulting in physical pain, shock, mental anguish, an inability to seek full

25 justice under the law in the case against Mr. Burda, unwanted media attention and negative



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1 public comment and scrutiny, painful thoughts and feelings associated with the knowledge that
2 her brother's corpse decayed under a pile of clothes for nine months, all to her non-economic
3 damages of \$500,000.00.

4 41.

5 As a result of Defendants' negligent investigation, all other Plaintiffs are damaged by way
6 of emotional distress, shock, mental anguish, an inability to seek full justice under the law in the
7 case against Mr. Burda, unwanted media attention and negative public comment and scrutiny,
8 painful thoughts and feelings associated with knowing their uncle's body decayed under a pile
9 of clothes in his house for nine months, all to their non-economic damages of \$300,000.00 each,
10 or \$1,200,00.00 in total.

11 **THIRD CLAIM FOR RELIEF - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

12 42.

13 Plaintiffs reallege and incorporate the allegations of paragraphs 1-29 herein.

14 43.

15 Defendants were negligent in a manner foreseeable to cause harm to Plaintiffs in the
16 following particulars:

- 17 a. Taking no action to locate and notify next of kin that a missing person report had
18 been filed for Mr. Day;
- 19 b. Failing to re-search the Pine Street residence for Mr. Day's body despite
20 substantial evidence that it was in the house, including complaints by neighbors
21 that smells of death were emanating from inside the house;
- 22 c. Taking no action on the case from August, 2018 through January, 2019 despite
23 multiple complaints from neighbors and the Meals on Wheels delivery person
24 that a smell of death was emanating from inside the house;
- 25 d. Failing to turn over the investigation to the Oregon State Police or the Jackson



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800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

- 1 County Sheriff's Department in a timely manner;
- 2 e. Stepping on Mr. Day's deceased body, causing post-mortem skeletal fractures
- 3 during an initial search of the house;
- 4 f. Discouraging Plaintiffs from traveling to Oregon to participate in the search
- 5 efforts;
- 6 g. Failing to arrest Mr. Burda in August, 2018 despite substantial evidence of his
- 7 involvement in Mr. Day's disappearance.

8 44.

9 As a result of Defendants' negligence, Plaintiff Nelda Adkins is damaged for emotional
10 distress resulting in physical pain, shock, mental anguish, an inability to seek full justice under
11 the law in the case against Mr. Burda, unwanted media attention and negative public comment
12 and scrutiny, painful thoughts and feelings associated with the knowledge that her brother's
13 corpse decayed under a pile of clothes for nine months, all to her non-economic damages of
14 \$500,000.00.

15 45.

16 As a result of Defendants' negligent investigation, all other Plaintiffs are damaged by way
17 of emotional distress, shock, mental anguish, an inability to seek full justice under the law in the
18 case against Mr. Burda, unwanted media attention and negative public comment and scrutiny,
19 painful thoughts and feelings associated with knowing their uncle's body decayed under a pile
20 of clothes in his house for nine months, all to their non-economic damages of \$300,000.00 each,
21 or \$1,200,00.00 in total.

22 **FOURTH CLAIM FOR RELIEF - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

23 46.

24 Plaintiffs reallege and incorporate the allegations of paragraphs 1-29 herein.

25 ///



ERIN E. GOULD, LLC
800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

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47.

Defendants acted intentionally and with reckless disregard in the following particulars:

- a. Taking no action to locate and notify next of kin that a missing person report had been filed for Mr. Day;
- b. Failing to re-search the Pine Street residence for Mr. Day’s body despite substantial evidence that it was in the house, including complaints by neighbors that smells of death were emanating from the house;
- c. Taking no action on the case from August, 2018 through January, 2019 despite multiple complaints from neighbors and the Meals on Wheels delivery person that a smell of death was emanating from inside the house;
- d. Failing to turn over the investigation to the Oregon State Police or the Jackson County Sheriff’s Department in a timely manner;
- e. Stepping on Mr. Day’s deceased body, causing post-mortem skeletal fractures during an initial search of the house;
- f. Discouraging Plaintiffs from traveling to Oregon to participate in the search efforts;
- g. Failing to arrest Mr. Burda in August, 2018 despite substantial evidence of his involvement in Mr. Day’s disappearance.

48.

Defendants’ conduct was outrageous and outside the bounds of socially tolerable norms.

49.

As a result of Defendants’ outrageous conduct, Plaintiff Nelda Adkins is damaged for emotional distress resulting in physical pain, shock, mental anguish, an inability to seek full justice under the law in the case against Mr. Burda, unwanted media attention and negative public comment and scrutiny, painful thoughts and feelings associated with the knowledge that



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800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395

1 her brother's corpse decayed under a pile of clothes for nine months, all to her non-economic
2 damages of \$500,000.00.

3 50.

4 As a result of Defendants' outrageous conduct, all other Plaintiffs are damaged by way
5 of emotional distress, shock, mental anguish, an inability to seek full justice under the law in the
6 case against Mr. Burda, unwanted media attention and negative public comment and scrutiny,
7 painful thoughts and feelings associated with knowing their uncle's body decayed under a pile
8 of clothes in his house for nine months, all to their non-economic damages of \$300,000.00 each,
9 or \$1,200,00.00 in total.

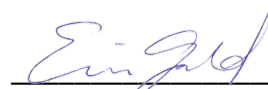
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for a judgment against Defendants jointly and severally as
12 follows:

- 13 1. Judgment in favor of Plaintiff Nelda Adkins in the amount of \$500,000.00 on
14 Plaintiffs' First Claim for Relief, together with their costs and disbursements; and
15 2. Judgment in favor of Plaintiffs in the amount of \$1,700,000.00 on Plaintiffs'
16 Second, Third, and Fourth Claims for Relief, together with their costs and disbursements.

17 DATED this 24th day of March, 2021.

18 ERIN E. GOULD, LLC

19 

20 _____
21 Erin E. Gould, OSB 103935
22 Attorney for Plaintiffs



25 ERIN E. GOULD, LLC
800 Willamette Street
Suite 530
Eugene, OR 97401
Phone 541.485.1088
Fax 541.414.6395