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FOR MULTNOMAH COUNTY, OREGON
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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Portland Division

CYRUS ANDREW SULLIVAN,

Plaintiff,

v.

MULTNOMAH COUNTY, et al,

Defendants.

No. 3:19-cv-00995-JGZ

DECLARATION OF MATTHEW
INGRAM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

I, Matthew Ingram, under penalty of perjury, declare as follows:

1) I am a named defendant in this lawsuit. I work for the Multnomah County Sheriff's Office, and I am making this declaration for use of evidence in this case. I have personal knowledge of everything in this declaration, and am competent to testify to anything in this declaration as needed.

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MOTION FOR SUMMARY JUDGMENT

2) I am a Sergeant Deputy Sheriff for the Multnomah County Sheriff's Office, and I work in the Corrections Division. I have worked for Multnomah County since 1997, and have been a Deputy with the Multnomah County Sheriff's Office since 1999. I held the rank of Deputy Sheriff from 1999 until 2014 when I was promoted to Sergeant. I hold Supervisory, Advanced, Intermediate, and Basic Corrections Officer certifications from the Oregon Department of Safety, Standards, and Training. I have worked as a Deputy at the Multnomah County Detention Center in a variety of roles.

3) I am familiar with the policies and procedures of the Multnomah County Sheriff's Office including but not limited to use of force policy, incident reporting, inmate rules, classification, and discipline, and recordkeeping. I also regularly train with the Sheriff's Office on a variety of topics in corrections. As a Sergeant, I am charged with supervision of deputies working on shift with me and ensuring the facility is operated consistent with policy and in a manner that safeguards the well-being of inmates and of the staff working in the facility.

4) I am familiar with the lawsuit Plaintiff filed against me and the County and other County staff. On June 28, 2019 at approximately 8:30 p.m., I was working at a Sergeant assigned to the Multnomah County Detention Center ("MCDC"). I was working that night when I heard a radio call requesting Sergeant assistance at dorm 5-D as there was an inmate refusing to move. I responded to the call and when I got to the dorm, the dorm Deputy Uwe Pemberton told me Plaintiff Cyrus Sullivan had refused to return Gatorade to the medical aid, had run to his cell and closed the door after telling the medical aid that he would put her on his website and put a hit on her. I could see several deputies outside a cell on the upper tier, so I walked up to the cell and made verbal contact with staff and with Plaintiff.

5) I let staff continue to talk to Plaintiff and try to build rapport with him through conversation and the passage of time, hoping things would de-escalate and Plaintiff would ultimately agree to transport. I also introduced myself to Plaintiff, telling him who I was and explained I wanted to help him and staff through this situation. Plaintiff explained to me his view of the incident, and I talked with him hoping to establish a rapport and allow time to pass which I know can often allow a tense situation to diffuse without incident. I also presented Plaintiff several options for moving forwards. I first asked him if he would be willing to come out of his cell to talk, and he refused. I then asked him to place his hands out the food port to cuff them for transport and he said no. Throughout our interaction Plaintiff was not cooperative, but was not visibly angry or agitated, and did not pose a threat to staff or myself or himself while locked in his cell.

6) Sergeant Timothy Barker, the floor Sergeant who supervised dorm 5 specifically that night, arrived at about the time I was trying unsuccessfully to have Plaintiff agree to cuff through the food port. I stepped aside and let Sergeant Barker take the lead on communicating with Plaintiff to see if a different person might have more success in getting Plaintiff to agree to a move. Sergeant Barker said something to the effect of never having had any issues in the past with Plaintiff, and asking Plaintiff to please agree to be handcuffed so deputies could move him out of the dorm. Plaintiff told Sergeant Barker he would not agree to being handcuffed through the food port and told Sergeant Barker that staff should come into the cell to handcuff him.

7) I did not perceive Plaintiff's verbal tone to be aggressive. However, given the past history of noncompliance, the threats, and Plaintiff's insistence that deputies come into the cell with Plaintiff unsecured and with his hands free, I perceived Plaintiff had shown at least an

intent to resist and also that he would have an opportunity to resist or attack physically if staff

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opened the door. Because of this, I directed Deputy Simpson to stand at the ready with his Taser when the door opened.

8) With the door still closed, Sergeant Barker said to Plaintiff “You want us to come in and place you in handcuffs?” and Plaintiff responded “Yes.” Sergeant Barker then said “We can do that, I need you [Plaintiff] to turn around and place your hands behind your back.” Plaintiff finally complied with a direction from staff, turning around and placing his hands behind his back. After Plaintiff put his hands behind his back, Sergeant Barker told Plaintiff we were coming in, and asked Deputy Pemberton to open the door from the officer station panel. The door opened, and we began the process of moving in to handcuff Plaintiff. I went into the cell first, with Sergeant Barker behind me and Deputies Simpson and Muth standing by outside.

9) As I stepped into the cell, Plaintiff suddenly turned and threw a powdered substance into my face, striking my face and hitting my glasses. This took me by surprise and distracted me, and almost immediately after he threw the powder, Plaintiff threw a closed fist punch in the direction of my face. Plaintiff had rapidly changed from calm and compliant to a violent attack towards me and my fellow deputies, creating a risk of direct injury from the powder hitting someone’s eye, or injury from a blow from one of his arms or legs which were uncontrolled. Plaintiff was uncontrolled and an immediate threat to my safety and that of the other deputies, with the intent, means, and opportunity to continue his assaultive, resistive behavior.

10) Additionally, I was carrying on my belt a taser, cuffs, OC canister and keys, as was Sergeant Barker, and as was the deputies behind me. Plaintiff had already shown an intention to be assaultive, and had the means and opportunity to continue to attack or grab at me or other deputies since he was not controlled by a locked cell or handcuffs. If Plaintiff were to

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get ahold of me or another deputy and get control of a taser or OC or handcuffs, it would present an extreme danger to the safety of staff or inmates. It was absolutely vital to get control of Plaintiff to eliminate the immediate threat of injury that Plaintiff clearly posed to the other deputies and to me.

11) I was able to block Plaintiff's punch and grabbed Plaintiff's right arm, spinning Plaintiff counter-clockwise until Plaintiff faced away from me. Sergeant Barker was on Plaintiff's left side, and I was on Plaintiff's right with my left hand on his right shoulder, and forcing Plaintiff to bend over towards the counter in his cell. Plaintiff started mule kicking at me, striking me in the leg, and pulled his right arm forcefully away from me, pulling his arm under his torso to take my right arm underneath his body as well. I could not use my right arm with Plaintiff pulling it under his body and putting weight on it.

12) I used my left arm to strike Plaintiff's right arm in the triceps area three times with a closed fist, weakening Plaintiff's grip on my right arm, and allowing me to pull Plaintiff's right arm out to his side away from his body, all while giving verbal orders to Plaintiff to put his arm behind his back. I was then able to get Plaintiff's right wrist into the small of Plaintiff's back and get a handcuff around his right wrist.

13) Sergeant Barker was to my left, trying to get Plaintiff's left arm to the small of Plaintiff's back for cuffing, and I could see Plaintiff was still strongly resisting Sergeant Barker's attempts. Both Sergeant Barker and I were giving verbal commands to Plaintiff to stop resisting and give us his left arm for cuffing, but Plaintiff was clearly continuing to try to pull his left arm away from Sergeant Barker.

14) I heard a popping sound during this struggle and then saw Plaintiff's left arm go to the middle of his back, where I was able to get handcuffs around his left wrist, getting both Plaintiff's arms secured behind his back in cuffs and controlling his arms. Plaintiff violently struggled against both Sergeant Barker and myself the entire time we were in the cell trying to get him secured in handcuffs, continuing to ignore repeated commands and directions.

15) After securing Plaintiff in handcuffs, Sergeant Barker and I began the process of walking Plaintiff down to disciplinary housing on the fourth floor. I was on Plaintiff's right side, Sergeant Barker on his left. During the walk from his cell out of 5-D, Plaintiff repeatedly resisted by trying to pull away from us, twisting and turning, as well as going dead weight and slumped down, forcing us hold him up by his arms and upper body. We both gave Plaintiff repeated directions to stand up and walk under his own power so that Plaintiff would not fall down the stairs.

16) We were able to get Plaintiff out of Dorm 5D, down to the fourth floor and into the disciplinary dorm unit despite his persistent resistance. Plaintiff repeatedly twisted and turned his body in what I perceived to be an attempt to break loose from Sergeant Barker and myself. He repeatedly twisted his torso and his hips from side to side despite my clear orders to Plaintiff to walk and to stop struggling.

17) Once we reached Plaintiff's assigned cell in the disciplinary unit, Sergeant Barker and I walked him into the cell, and lowered Plaintiff face down onto the mattress in the middle of his cell, as Plaintiff continued to struggle against us and ignore my direction to stop resisting so we could uncuff him. Once he was down on the mattress, I gave Plaintiff another direction to calm down and stop resisting the attempts to uncuff him.

18) All inmates going into the disciplinary unit on level three or higher are subject to a strip search before celling into their new dormitory cell. This is because inmates of this classification level have exhibited behavior suggesting a heightened threat to safety of staff or other inmates, and MCSO personnel perform a visual strip search to ensure the inmate has not hidden contraband during transport. Level 3 and above inmates also wear a white jumpsuit as their jail-issued clothing. Given Plaintiff's earlier actions, we were planning to cell Plaintiff after strip searching him and putting him in a jumpsuit.

19) Because Plaintiff remained defiant, had recently assaulted several deputies and violently resisted attempts to control him, and was now alternatively throwing his body around in a resistive fashion, I had concerns that uncuffing Plaintiff to allow him to change clothes would create a safety risk, leaving Plaintiff's arms uncontrolled until deputies could get out of the cell to let Plaintiff change clothes. To minimize this risk, I decided to cut Plaintiff's clothing off his body, visually strip searching him while Plaintiff remained handcuffed, and then uncuffed plaintiff and gave him the jumpsuit to dress in.

20) While I was waiting for the clothes cutters and a white jumpsuit, near Plaintiff's torso, Plaintiff said to me that he could not breathe. To check on Plaintiff, I grabbed him by his left side and rolled him slightly to his right side to aid/assist. Plaintiff appeared to be inhaling and exhaling without effort, and was raising his voice at us. We told Plaintiff what we were going to do, and were able to cut the clothing off of Plaintiff without incident. After we made sure Plaintiff did not have any contraband anywhere under his clothing, we told Plaintiff Sergeant Barker would be removing Plaintiff's handcuffs. Plaintiff told us he understood, and Sergeant Barker stepped in to remove the handcuffs.

21) As Sergeant Barker was removing the handcuffs, Plaintiff complained his left arm was broken and that he could not move his arm. Once the handcuffs were off, we covered Plaintiff with a jumpsuit to keep warm and covered, and helped him up to a seated position and covered him with a sheet for additional warmth while we awaited medical staff. Medical staff checked Plaintiff out in the dorm, and then I arranged an ambulance call to transport him out to get further treatment at medical staff's direction.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated this 24th day of August, 2020.

/s/ Matthew Ingram

Matthew Ingram

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020, I arranged for service of the foregoing
**DECLARATION OF MATTHEW INGRAM IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT** on:

Cyrus Andrew Sullivan
PO Box 86653
Portland, OR 97286
Email: sullivan Cyrus@hotmail.com

by the following method or methods as indicated:

- () by **mailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- () by **e-mailing** to said person(s) a true copy thereof in Word format, at the email address as shown above, pursuant to L.R. 5.2(b).
- () by **facsimile** to said person(s) a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said person(s) on the date set forth above. A copy of the confirmation report is attached hereto.
- (**X**) by **email** to said person(s) at their last known email address(es) shown above and through the Court’s efilings system.

/s/ Ona Davis

Ona Davis
Paralegal for B. Andrew Jones

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON
B. Andrew Jones, OSB 091786
Senior Assistant County Attorney
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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Portland Division

CYRUS ANDREW SULLIVAN,

Plaintiff,

v.

MULTNOMAH COUNTY, et al,

Defendants.

No. 3:19-cv-00995-JGZ

DECLARATION OF UWE
PEMBERTON IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

I, Uwe Pemberton, under penalty of perjury, declare as follows:

1) I am a named defendant in this lawsuit. I work for the Multnomah County Sheriff's Office, and I am making this declaration for use of evidence in this case. I have personal knowledge of everything in this declaration, and am competent to testify to anything in this declaration as needed.

Page 1 – DECLARATION OF UWE PEMBERTON IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Multnomah County Attorney
501 S.E. Hawthorne Blvd., Ste. 500
Portland, Oregon 97214
(503) 988-3138

2) I am a Deputy Sheriff for the Multnomah County Sheriff's Office, and I work in the Corrections Division. I have worked for Multnomah County for thirty-three (33) years, and before that I worked in law enforcement in Arizona. I have worked in corrections and law enforcement for more than forty years. I hold Intermediate and Advanced corrections certifications from the Oregon Department of Safety, Standards, and Training. I have worked as a Deputy at the Multnomah County Detention Center in a variety of roles, and have worked other assignments at the Multnomah County Inverness Jail, as well as eight (8) years in the Court Services Unit. I am familiar with the policies and procedures of the Multnomah County Sheriff's Office including but not limited to use of force policy, incident reporting, inmate rules, classification, and discipline, and recordkeeping. I also regularly train with the Sheriff's Office on a variety of topics in corrections.

3) I am familiar with the lawsuit Plaintiff filed against me and the County and other County staff. On June 28, 2019, I was on duty working at the Multnomah County Detention Center, and at about 8:25 p.m. I was in Dorm 5D while Erika Barker, a medical technician from Multnomah County Corrections Health, entered to do rounds to give medications to inmate patients.

4) Dorm 5-D has an open main area, with two tiers of cells in a ring around the outside of the open area. During these rounds, I saw an inmate hand a red plastic cup to Plaintiff and I heard Plaintiff say something like "Wow, Gatorade." I heard Ms. Barker say to Plaintiff several times to give the Gatorade back to her, and heard her say to Plaintiff that the Gatorade was only for medical use. I know medical staff gives Gatorade in powdered form to some of their inmate patients, and that the inmates mix the powder with water themselves. Plaintiff refused to give the Gatorade to Ms. Barker.

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MOTION FOR SUMMARY JUDGMENT

5) It is a major rule violation at MCDC for inmates to disobey direction from jail staff, and an inmate who fails to do as ordered can be immediately moved to the disciplinary housing unit on the 4th floor to await a hearing on the violation. After Plaintiff refused to give the Gatorade to Ms. Barker as she directed, I verbally ordered Plaintiff to give the Gatorade to her. Plaintiff did not follow my direction. Instead, after I told him to return the Gatorade, Plaintiff instead dumped the Gatorade into Plaintiff's water cup and attempted to drink it. Plaintiff's failure to follow my direction is a violation of the facility rules. During this time, the other inmates in the dorm module were out of their cells in the open module for medication rounds and unsecured.

6) It is important in a maximum security facility like MCDC that inmates follow direction of medical and corrections staff. The jail has a variety of inmates with various pending charges, including violent crimes and person felonies, so it is important staff know inmates are complying with the rules and not a risk to disobey orders in place for safety and security of staff and inmates, or to escalate a minor rule violation to something more serious. Additionally, rule violations by inmates in the presence of other unsecured inmates create a risk of escalating behavior and causing a disturbance with multiple inmates. It is vital to make sure inmates are following all rules and directions of staff to avoid these risks. Because of Plaintiff's rule violation, I planned to de-escalate the situation by taking him out of the module, to cite him for a rule violation, and to take him to the disciplinary housing unit pending the disciplinary process.

7) To start the process of moving Plaintiff, I gave him another verbal order, telling him to step into the sally port of the dorm, where he would wait in isolation until staff could safely escort him to the new dorm. Once again, Plaintiff did not follow my direction, instead throwing his water cup into the garbage and running up the stairs to the top tier of cells. From

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MOTION FOR SUMMARY JUDGMENT

the top tier, Plaintiff yelled down in Ms. Barker's direction, saying something about putting her name on the internet and "put a hit out on you." Plaintiff had not only refused to follow direction again, but had escalated to making verbal threats towards Ms. Barker, another major rule violation.

8) At this point, I decided I would need additional deputies to help me move Plaintiff out of the dorm. MCSO Corrections will often use extra deputies when available to assist with inmates who are not following directions, as often the mere presence of multiple uniformed deputies, without more is effective in getting uncooperative inmates to comply with directions and de-escalate the situation. I carry a radio with me, so I radioed to request escort deputies to come to the module to assist in moving Plaintiff out of the dorm. After I radioed for backup, I gave Plaintiff another verbal direction to come down from the top tier and move into the sally port. Plaintiff once again refused to follow my order, instead running to his cell, cell 23 on the upper tier, and closing the door.

9) Sergeants Timothy Barker and Matthew Ingram responded to my call for assistance along with Deputies Paul Simpson, Matt Dilger, Phillip Hubert and Wendy Muth. The Sergeants and Deputies walked to the upper tier and stood outside Plaintiff's cell, and the Sergeants started speaking with Plaintiff, telling him that he was being transferred, that he would need to be placed in handcuffs for that transfer, and asking Plaintiff to come to the cell door so that deputies could cuff Plaintiff through the food port in the door. It is Sheriff's Office practice to make sure inmates are handcuffed when being escorted out of the dormitories, and it is routine practice to have inmates in cells place their hands out the door's food port to allow deputies to put the handcuffs on the inmate's wrists. Plaintiff refused to come to the door to be handcuffed

through the port. Plaintiff's continued refusal to follow direction or comply with orders gave me concerns about his willingness to comply when he was out of his cell for the escort.

10) After the Sergeants spoke to Plaintiff for some time, one of the Sergeants told me and the other Deputies that deputies would go into the cell to handcuff Plaintiff for transport. I stood at the officer station on the main floor below while the Sergeants and escort Deputies stood by on the second tier outside Plaintiff's cell. You can see the officer's station in the center of the first floor on **Exhibit 1**. When a Sergeant gave me the verbal okay, I opened Plaintiff's cell door using the remote panel at the officer's station. After the door opened, I saw deputies go into the room and almost immediately saw something fly out of the cell door into the face area of the deputies entering the room. I found out later from conversations with other deputies that Plaintiff had crushed some spicy chips and thrown them towards the faces of deputies, which creates a risk of injury to the deputies, both from the projective and a risk presented by an uncooperative, uncontrolled inmate who is escalating his behavior.

11) I saw multiple deputies enter the room after I saw the chips fly out of the door. I could not see what was happening in the room, but I could hear deputies giving verbal orders to Plaintiff to stop resisting and to put his hands behind his back. I do not know precisely how long deputies were in the room before they came out, but after approximately a minute I saw deputies emerge from the room with Plaintiff in handcuffs.

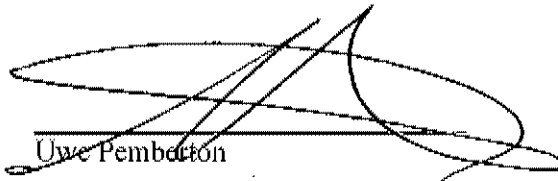
12) I watched deputies escort Plaintiff from his cell, along the upper tier, down the stairs, and out the module for transport. I saw Plaintiff appearing to struggle against the deputies while he walked with them. I saw Plaintiff appear to go limp or dead weight, forcing the deputies escorting him to grab him and support him and hold him up until Plaintiff resumed walking under his own power. Plaintiff appeared to be non-compliant and resistive towards the

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MOTION FOR SUMMARY JUDGMENT

deputies trying to escort him out of the room. Plaintiff and the deputies left my dorm module and I did not have any further interactions with him that day.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated this 10 day of August, 2020.


Uwe Pemberton



CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020, I arranged for service of the foregoing
**DECLARATION OF UWE PEMBERTON IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT** on:

Cyrus Andrew Sullivan
PO Box 86653
Portland, OR 97286
Email: sullivancyrus@hotmail.com

by the following method or methods as indicated:

- () by **mailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- () by **e-mailing** to said person(s) a true copy thereof in Word format, at the email address as shown above, pursuant to L.R. 5.2(b).
- () by **facsimile** to said person(s) a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said person(s) on the date set forth above. A copy of the confirmation report is attached hereto.
- (**X**) by **email** to said person(s) at their last known email address(es) shown above and through the Court's efilings system.

/s/ Ona Davis

Ona Davis
Paralegal for B. Andrew Jones

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON
B. Andrew Jones, OSB 091786
Senior Assistant County Attorney
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E-mail: andy.jones@multco.us
Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Portland Division

CYRUS ANDREW SULLIVAN,

Plaintiff,

v.

MULTNOMAH COUNTY, et al,

Defendants.

No. 3:19-cv-00995-JGZ

DECLARATION OF PAUL SIMPSON
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

I, Paul Simpson, under penalty of perjury, declare as follows:

1) I am a named defendant in this lawsuit. I work for the Multnomah County Sheriff's Office, and I am making this declaration for use of evidence in this case. I have personal knowledge of everything in this declaration, and am competent to testify to anything in this declaration as needed.

Page 1 – DECLARATION OF PAUL SIMPSON IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

2) I am a Deputy Sheriff for the Multnomah County Sheriff's Office, and I work in the Corrections Division. I have worked for Multnomah County since 1995, and have been a Corrections Deputy since 1997. I hold Advanced, Intermediate, and Basic Corrections Officer certifications from the Oregon Department of Safety, Standards, and Training. I have worked as a Deputy at the Multnomah County Detention Center in a variety of roles. I am familiar with the policies and procedures of the Multnomah County Sheriff's Office including but not limited to use of force policy, incident reporting, inmate rules, classification, and discipline, and recordkeeping. I also regularly train with the Sheriff's Office on a variety of topics in corrections.

3) I am familiar with the lawsuit Plaintiff filed against me and the County and other County staff. On June 28, 2019 at approximately 8:32 p.m., I was working on the fifth floor of MCDC when I heard a radio call from Deputy Pemberton requesting two escort deputies to come to 5D, and I and Deputy Philip Hubert responded and reported to 5D. The dorm Deputy Uwe Pemberton told Deputy Hubert and I that the inmate in cell 5D23 needed to go to the disciplinary housing unit. Deputy Hubert and I went up to cell 5D23 where we made verbal contact with the inmate, Plaintiff Cyrus Sullivan.

4) I opened the food port in the door of the cell and asked Plaintiff to come to the door so Deputy Hubert and I could handcuff Plaintiff for transport. Deputies always handcuff inmates moving between dorms, and it is common practice to apply handcuffs through the food port in order to keep the inmate in their cell and controlled until cuffs are in place. This is particularly common when an inmate has recently refused to follow orders or is giving signs of being a potential threat to staff or other inmates.

5) When I asked Plaintiff to come to the door to cuff up, Plaintiff responded “Fuck you, come in and get me.” He also told me that he was going to find my home address and publish my address on his website “cop blaster,” which I perceived as a threat. I radioed my Sergeant, Timothy Barker, to come to the dormitory to help with Plaintiff given his demeanor and our interactions. We kept Plaintiff inside the cell until the Sergeant could arrive to assist with a plan, as Plaintiff was secured inside the cell and not an immediate physical threat to myself or anyone outside his cell.

6) After the Sergeants arrived, they took the lead on talking to Plaintiff. They spoke with him for some time, and Plaintiff told Sergeant Barker that he would agree to being handcuffed if we would open the cell door. One of the Sergeants told Deputies Hubert, Muth, and I that they would open the door and go in to handcuff Plaintiff, and told me to unholster my Taser that I carry on my duty belt and have it ready in case Plaintiff became violently resistive. I did as directed, the door opened, and the Sergeants moved into the cell.

7) Almost as soon as the Sergeants entered the cell, I felt something hit my chest and some sort of powder hit my right eye as I stood behind Sergeants Ingram and Barker. Immediately the Sergeants grabbed at Plaintiff and forced his body down onto a shelf/counter in the cell, giving Plaintiff verbal directions to stop resisting and give up his hands so that he could be handcuffed. Plaintiff was physically resisting the Sergeants, and also kicking his legs back in the direction of the Sergeants. Because both Sergeants were in the cell working to control Plaintiff, I could not safely use the Taser to get Plaintiff under control, so I re-holstered the Taser.

8) Deputy Muth and I decided to control Plaintiff's kicking legs so that Plaintiff could not kick one of the Sergeants or either of us. I used my body weight to press down on Plaintiff's left leg and foot, and Deputy Muth did the same on his right foot. We held Plaintiff's legs down until we were certain the Sergeants had secured Plaintiff's hands in cuffs.

9) After Sergeant Barker and Sergeant Ingram handcuffed Plaintiff, they escorted him out of the cell, where Plaintiff appeared to go dead weight. I helped Sergeant Barker and Sergeant Ingram get Plaintiff up to his feet, and they escorted him out of the dorm. I stayed behind to run the control panel in 5D and did not have further contact with Plaintiff that day.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated this 25TH day of August, 2020.

A handwritten signature in black ink, appearing to read "Paul Simpson", written over a horizontal line.

Paul Simpson

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020, I arranged for service of the foregoing
**DECLARATION OF PAUL SIMPSON IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT** on:

Cyrus Andrew Sullivan
PO Box 86653
Portland, OR 97286
Email: sullivan Cyrus@hotmail.com

by the following method or methods as indicated:

- () by **mailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- () by **e-mailing** to said person(s) a true copy thereof in Word format, at the email address as shown above, pursuant to L.R. 5.2(b).
- () by **facsimile** to said person(s) a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said person(s) on the date set forth above. A copy of the confirmation report is attached hereto.
- (**X**) by **email** to said person(s) at their last known email address(es) shown above and through the Court's e-filing system.

/s/ **Ona Davis**

Ona Davis
Paralegal for B. Andrew Jones

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON
B. Andrew Jones, OSB 091786
Senior Assistant County Attorney
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E-mail: andy.jones@multco.us
Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Portland Division

CYRUS ANDREW SULLIVAN,

Plaintiff,

v.

MULTNOMAH COUNTY, et al,

Defendants.

No. 3:19-cv-00995-JGZ

DECLARATION OF TIMOTHY
BARKER IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

I, Timothy Barker, under penalty of perjury, declare as follows:

1) I am a named defendant in this lawsuit. I work for the Multnomah County Sheriff's Office, and I am making this declaration for use of evidence in this case. I have personal knowledge of everything in this declaration, and am competent to testify to anything in this declaration as needed.

Page 1 – DECLARATION OF TIMOTHY BARKER IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Multnomah County Attorney
501 S.E. Hawthorne Blvd., Ste. 500
Portland, Oregon 97214
(503) 988-3138

2) I am a Deputy Sheriff for the Multnomah County Sheriff's Office, and I work in the Corrections Division. I have worked for Multnomah County as a Deputy Sheriff for twenty-two (22) plus years. I hold Advanced, Intermediate and Basic Corrections Officer certifications from the Oregon Department of Safety, Standards, and Training. I have worked as a Deputy at the Multnomah County Detention Center in a variety of roles. I do not hold the permanent rank of Sergeant, but often serve as Acting Sergeant for shifts on an as-needed basis. I am familiar with the policies and procedures of the Multnomah County Sheriff's Office including but not limited to use of force policy, incident reporting, inmate rules, classification, and discipline, and recordkeeping. I also regularly train with the Sheriff's Office on a variety of topics in corrections. As a Sergeant, I am charged with supervision of deputies working on shift with me and ensuring the facility is operated consistent with policy and in a manner that safeguards the well-being of inmates and of the staff working in the facility.

3) I am familiar with the lawsuit Plaintiff filed against me and the County and other County staff. On June 28, 2019 at approximately 8:30 p.m., I was working as Acting Sergeant assigned to the Multnomah County Detention Center ("MCDC"). I was working on the fifth floor of the Multnomah County Detention Center when I heard a radio call requesting escort assistance at dorm 5-D. Before I got to the elevator to respond, I heard a second radio call for me to come specifically because the inmate was refusing to be handcuffed. I responded to the call and when I got to the dorm, the dorm Deputy Uwe Pemberton told me Plaintiff Cyrus Sullivan had refused to return Gatorade to the medical aid, had run to his cell and closed the door and was refusing to be handcuffed. I could see several deputies outside a cell on the upper tier, so I walked up to the cell and made verbal contact with staff and with Plaintiff.

4) When I got to the cell, Sergeant Matthew Ingram asked me if I would talk to Plaintiff to see if I could get Plaintiff to agree to be cuffed. I had prior interactions with Plaintiff when he was housed on the fourth floor, and all our prior interactions were cordial. I opened the food port in his cell door to talk with him and try to de-escalate the situation verbally, asking him if he would come to the door and place his hands out the food port to be cuffed. He responded that he would not agree to be handcuffed through the door. While it is safer for staff to handcuff through the port, I have handcuffed inmates in their cells when they have agreed and been compliant. Plaintiff was not yelling or showing any other signs of agitation at the time we were speaking, and was safely secure in the cell at that time with the door closed.

5) I decided, based on Plaintiff's demeanor, it would be safe to open the door to handcuff Plaintiff inside the cell for transport. Before we opened the door, I announced to Plaintiff that we would be coming into the cell to handcuff him, and Plaintiff nodded in agreement. I directed Plaintiff to turn his back to the cell door and to place his hands behind his back, and Plaintiff turned away from us at the door and began to place his hands behind his back. At this point, Plaintiff looked to be complying with directions and did not pose an immediate threat to anyone's safety, and appeared to be de-escalating the standoff to allow staff to proceed safely.

6) In my experience in corrections facilities, inmate behavior can rapidly change from compliant to resistive or dangerous, and given Plaintiff's behavior in the dorm towards Deputy Pemberton and the other staff, I still had some concern about Plaintiff's behavior changing once the door was opened. Once we opened the door, Plaintiff would have an opportunity to become physically resistive towards staff until we secured his hands with handcuffs. When a person in Plaintiff's position becomes physically resistive and non-compliant

in their cell with deputies, there is a substantial risk of serious injury to both staff and the inmate while deputies regain control.

7) Because of this, before opening the door, I coordinated with Sergeant Ingram and Deputy Simpson to make sure we had a plan in place in the event Plaintiff became physically resistive. Sergeant Ingram confirmed that Deputy Simpson had his Taser unholstered and in a ready low position – meaning Deputy Simpson was pointing his Taser towards the ground and holding it below his waist – and that both of them were ready to assist with regaining control over Plaintiff if he suddenly became violent or resistive. After I confirmed this plan with Sergeant Ingram and Deputy Simpson, I told Plaintiff we were coming in. Deputy Pemberton unlocked and opened the door from the officer station below, and we started to enter the cell. As we began to enter the cell, I saw Plaintiff look back in our direction over his left shoulder.

8) Exhibit 1 is a photograph of the interior of the cell taken from the doorway where we entered. Plaintiff was standing facing the bunk on the far side of the cell from the door, at approximately where the “X” is on the photograph. He was approximately 10 feet away from the door as we began to enter.

9) Sergeant Ingram went into the cell ahead of me, with Deputies Muth, Hubert, and Simpson standing by outside of the cell. Almost immediately after Sergeant Ingram entered the cell, Plaintiff suddenly turned and threw a red powder substance into Sergeant Ingram’s face. After he threw the powder at Sergeant Ingram, Plaintiff threw another handful that struck me in the face.

10) Plaintiff had rapidly changed from calm and compliant to a violent attack towards Sergeant Ingram at the very least, creating a risk of direct injury from the powder hitting someone’s eye, or injury from a blow from one of his arms or legs which were uncontrolled.

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Plaintiff was uncontrolled and an immediate threat to my safety and that of the other deputies, with the intent, means, and opportunity to continue his assaultive, resistive behavior.

Additionally, I was carrying on my belt a taser, pepper spray canister, a heavy radio module, and keys, as was Sergeant Ingram, and as were the deputies behind me. Plaintiff had already shown an intention to be assaultive, and had the means and opportunity to continue to attack or grab at me or other deputies since he was not controlled by a locked cell or handcuffs. If Plaintiff were to get ahold of me or another deputy and get control of a taser or OC or keys or a radio, all could be used as weapons against staff or other inmates, and it would present an extreme danger to the safety of staff or inmates. It was absolutely vital to get control of Plaintiff to eliminate the immediate threat of injury that Plaintiff clearly posed to the other deputies and to me.

11) Sergeant Ingram and I moved into the cell to grab Plaintiff and try to turn him away from us in order to try to take away Plaintiff's opportunity to punch at one of us again. As I stood near Plaintiff's left side trying to get control, Plaintiff was looking over his left shoulder and throwing his left elbow at my face and neck, making contact with the left side of my face and neck, and my left arm. I was trying, after Plaintiff had already struck me with his elbow, to get ahold of his left arm with my left hand somewhere on his forearm. I could feel resistive tension in Plaintiff's left arm and could feel him strongly pulling his left arm in an apparent attempt to get it away from me. This entire time I was yelling verbal commands to Plaintiff to stop resisting, giving the command over and over in an attempt to get Plaintiff to stop and allow us to get him back under control.

12) I was able after struggling with Plaintiff for some time to get my right hand underneath Plaintiff's left arm and grab it somewhere around his left wrist. I continued to tell Plaintiff to stop resisting and give me his hand to be cuffed, which he did not do. I was trying to

forcibly move Plaintiff's hand behind him to the small of his back, pulling his arm back towards me while Plaintiff was trying to pull his arm the other direction away from me. As I was pulling his arm back and Plaintiff was pulling against me with his arm and weight, I heard a popping sound, though Plaintiff did not immediately react like he was injured. I was able to get his left arm behind him and Sergeant Ingram was able to cuff Plaintiff's left arm after I heard the popping sound.

13) After we secured the handcuffs, Sergeant Ingram and I began walking Plaintiff out of his cell to move him out of module 5-D down to the disciplinary unit on the fourth floor. I was on Plaintiff's left side, and Sergeant Ingram was on his right side. During the walk from his cell out of 5-D, Plaintiff repeatedly resisted by trying to pull away from us, twisting and turning, as well as going dead weight and slumped down, forcing Sergeant Ingram and I to hold him up by his arms and upper body. Before we got to the stairs, Sergeant Ingram and I gave him repeated directions to stand up and walk, and we also told him to please walk down the stairs under his own power so that Plaintiff would not fall down the stairs.

14) We were able to get Plaintiff out, down the stairs, into the elevator and down to the disciplinary unit, all the while Plaintiff was resistive and combative. We put Plaintiff face down in his cell on his belly on a mattress to allow uncuffing and changing him into his jumpsuit. After Sergeant Ingram cut off Plaintiff's clothing, I was the person who took off the cuffs to prepare Plaintiff for dressing in and to allow us to leave the cell.


15) I undid the right cuff first and told Plaintiff to take his free right hand and place it underneath his stomach so that I could safely remove the left cuff without Plaintiff's right arm in a place he could easily flail or strike at me. Plaintiff would not comply with my direction, so I rolled him to the left a few inches, and then moved his arm under his belly. I then told Plaintiff I

would be doing the same thing on his left side, and removed his left cuff. I told Plaintiff to move his left arm under his body, and Plaintiff told me he could not move his left arm.

16) I gave a second direction to Plaintiff to move his left arm, and Plaintiff repeated he could not move his left arm and told me that he believed his left arm was broken. Sergeant Ingram and I moved Plaintiff to a seated position and covered him with a jumpsuit and sheet to await medical staff coming to check him out, as Plaintiff was calm and non-combative at that point. After medical saw Plaintiff, Sergeant Ingram coordinated a call to an ambulance and getting Plaintiff removed from the cell for treatment.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated this 26 day of August, 2020.


Timothy Barker



CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020, I arranged for service of the foregoing
**DECLARATION OF TIMOTHY BARKER IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT** on:

Cyrus Andrew Sullivan
PO Box 86653
Portland, OR 97286
Email: sullivancyrus@hotmail.com

by the following method or methods as indicated:

- () by **mailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.
- () by **e-mailing** to said person(s) a true copy thereof in Word format, at the email address as shown above, pursuant to L.R. 5.2(b).
- () by **facsimile** to said person(s) a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said person(s) on the date set forth above. A copy of the confirmation report is attached hereto.
- (**X**) by **email** to said person(s) at their last known email address(es) shown above and through the Court's efilings system.

/s/ **Ona Davis**

Ona Davis
Paralegal for B. Andrew Jones