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18 MAR 23 PM 4:20

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CASE NUMBER: 17-2-23731-1 SEA

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

Commissioner Eric Watness, as Personal Representative of the Estate of Charleena Lyles; Karen Clark, as Guardian Ad Litem on behalf of the four minor children of decedent,

Plaintiffs,

v.

The City of Seattle, a Municipality; Jason M. Anderson and Steven A. McNew, individually; Solid Ground, A Washington non-profit corporation,

Defendants.

NO. 17-2-23731-1 SEA

DEFENDANT SOLID GROUND'S  
MOTION TO DISMISS SECOND  
AMENDED COMPLAINT

**I. INTRODUCTION AND RELIEF REQUESTED**

Charleena Lyles's death was a tragedy. Shot in her home on June 18, 2017 by the police officers she called to assist her, Ms. Lyles's death shook the Solid Ground community to the core. But while Solid Ground is deeply sympathetic to Ms. Lyles's family's desire for justice, Solid Ground vehemently disagrees that it should be held responsible for her death.

Solid Ground is a non-profit agency whose mission is to end poverty and eliminate racism and oppression in the Greater Seattle region by serving people living on low incomes and communities of color. Solid Ground does this work by providing short- and long-term affordable housing, emergency resources, case management and life skills training, as well as by linking

1 people to the resources they need in the community. Central to this mission is approaching  
2 residents with dignity and respect for the individual’s self-determination. Ms. Lyles and her four  
3 children lived at Brettler Family Place, one of the buildings on Solid Ground’s Sand Point Housing  
4 campus. At the time of her death, Ms. Lyles and her children had lived at Brettler Family Place  
5 for about 18 months after many years of homelessness.

6 Solid Ground believes that more can and should be done to help people like Ms. Lyles,  
7 who are struggling with poverty, mental illness, and the significant barriers and effects of racism.  
8 But a belief and a desire to do more to help those in need does not mean that Solid Ground should  
9 be held responsible for circumstances that it does not have the ability or duty to control.

10 This Court should dismiss Plaintiffs’ suit against Solid Ground for two reasons. *First*,  
11 Solid Ground did not have a legal duty to protect Ms. Lyles against harms beyond its control,  
12 including deterioration of her mental health and police violence. Plaintiffs suggest Solid Ground’s  
13 contract with Ms. Lyles establishes this duty, but Washington law is clear that contractual duties  
14 do not give rise to the tort liability Plaintiffs seek. Nor can Plaintiffs identify any statutory or  
15 common-law duties that obligated Solid Ground to prevent the tragedy.

16 The question of tort duty turns on considerations of public policy—ultimately, in their  
17 effort to hold Solid Ground responsible for Ms. Lyles’s well-being, Plaintiffs risk imperiling the  
18 very services they fault Solid Ground for allegedly not providing. Burdening affordable housing  
19 providers like Solid Ground with the duty to protect its tenants against all manner of harms—  
20 including their own mental decompensation and resulting impacts—would substantially raise the  
21 cost to provide these types of housing and support services to vulnerable populations, leading to a  
22 reduction of services available to an already-underserved population.

23 *Second*, Plaintiffs are unable to show that, of all the many people and entities that interacted  
24 with Ms. Lyles, Solid Ground bears responsibility for her mental decompensation and ultimate  
25 shooting death by Seattle Police. Charleena Lyles struggled with more obstacles than most people

1 could imagine—including poverty, mental illness, domestic violence, racism, a disabled child, and  
2 chronic homelessness. As the Second Amended Complaint (“SAC”) acknowledges, during the  
3 time-period leading up to her death, Ms. Lyles’s life touched almost every aspect of the regional  
4 support system for vulnerable individuals:<sup>1</sup>

- 5 • *CASA Services*—her children were part of the Dependency CASA Program (SAC ¶ 4.22);
- 6 • *Court Protection*—she obtained a no-contact order against the physically abusive father of  
7 two of her children (*Id.* ¶ 4.27);
- 8 • *Mental Health Treatment*—she received professional outpatient mental health treatment  
9 from Sound Mental Health (*Id.* ¶ 4.28);
- 10 • *Police Interactions*—between January 2017 and June 2017, she called police or police were  
11 called against her 23 times, including 10 domestic disturbances, four domestic assaults,  
12 three reports of burglary, two reports of child abuse/neglect, one threat, one welfare check,  
13 one missing child, and one follow-up (*Id.* ¶ 4.29);
- 14 • *County Jail Services*—on June 6, 2017, she was booked into King County jail where she  
15 may have received mental health treatment or other mental health intervention. (*Id.* ¶ 4.41);
- 16 • *Public Defender*—she was represented by a public defender who could raise the issue of  
17 her competence and recommend civil commitment (*Id.* ¶ 4.40);
- 18 • *Medical Services*—on June 9, 2017, she was treated at Harborview Medical Center (*Id.*  
19 ¶ 4.41);
- 20 • *Mental Health Court*—on June 13, she appeared in Mental Health Court and was ordered  
21 released from jail with conditions (*Id.* ¶ 4.42); and
- 22 • *Mental Health Court Day Reporting Program*—on June 13, five days before her death,  
23 Ms. Lyles agreed to a conditional release by the Mental Health Court, with a requirement  
24 that she report to Day Reporting Program every Tuesday and Thursday for status checks,  
25 including a requirement that she report two days after her release (*Id.*)

21 Amidst all these interventions, singling out one or two or even three of the above actors as  
22 the “cause” of her death is an almost impossibly fraught exercise. Even if it were possible, here,  
23 there is simply no basis for alleging that *Solid Ground* proximately caused the harms Ms. Lyles

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24 <sup>1</sup> In addition, her own family members were aware of the recent sudden and rapid decline in her mental health. (SAC  
25 ¶ 4.34)

1 suffered. Plaintiffs claim that Solid Ground is the cause of Ms. Lyles’s declining mental health  
2 status and ultimate death because it did not provide her a housing case manager from September  
3 2016 to March 2017 and because it allegedly did not report her threatening behavior toward a child  
4 on or about May 28, 2017.<sup>2</sup> Their allegation that *Solid Ground’s* alleged omissions led to her  
5 death is pure speculation, particularly in light of all the other services she was receiving (or not  
6 receiving) from other agencies, courts, law enforcement, and service providers. Moreover,  
7 Plaintiffs have no basis for holding Solid Ground liable because the ultimate cause of Ms. Lyles’s  
8 death—a police shooting—was, as a matter of law, an unforeseeable, superseding cause that broke  
9 the chain of causation. The complaint fails to allege proximate cause as a matter of law.

10 Solid Ground wants justice for Ms. Lyles. To that end, Solid Ground has joined with the  
11 De-Escalate Washington campaign in their efforts to ensure that police have the training,  
12 understanding, and tools they need to respond to dangerous situations without resorting to force.  
13 Solid Ground will continue these and other efforts to work towards a future in which what  
14 happened to Ms. Lyles does not happen to others like her. But Solid Ground is not to blame for  
15 this tragedy. Plaintiffs’ complaint against Solid Ground should be dismissed.

## 16 II. STATEMENT OF FACTS

### 17 A. Solid Ground Provided Housing and Supportive Services to Charleena Lyles.

18 Defendant Solid Ground is a non-profit agency dedicated to combatting poverty, racism,  
19 and oppression in the Greater Seattle Area. Charleena Lyles was one of Solid Ground’s residents.  
20 SAC ¶ 4.11. In November 2015, Ms. Lyles and her four children moved into Solid Ground’s  
21 Brettler Family Place, a supportive housing facility on Solid Ground’s Sand Point Housing  
22 campus. *Id.* At the time of her death, Ms. Lyles and her children had lived at Brettler Family  
23 Place for about 18 months following many years of homelessness. *Id.*

24 \_\_\_\_\_  
25 <sup>2</sup> For purposes of this motion to dismiss only, Solid Ground accepts the facts as pleaded in Plaintiffs’ Second Amended  
Complaint.

1 Solid Ground’s relationship with Ms. Lyles was contractual in nature. As part of her lease,  
2 Ms. Lyles signed a lease agreement and addenda with Solid Ground. SAC ¶ 4.13; Declaration of  
3 Andrea Delgadillo Ostrovsky (“Ostrovsky Decl.”), Exs. A–C. Among other things, the lease  
4 agreement and addenda documented that Ms. Lyles would work with a Solid Ground case manager  
5 to help her maintain stable housing. In particular, the agreement stated that Ms. Lyles’s “case  
6 manager will provide support services; resources, referrals, and access to on-site activities which  
7 will help you achieve your goals and maintain stable housing while living here.” Ostrovsky Decl.,  
8 Ex. B at 2. As the agreement explained, the purpose of providing a case manager was to empower  
9 Solid Ground clients to achieve independence and maintain stable housing: “Our goal is to help  
10 you become more self-reliant and independent so that you and your family outgrow the need for  
11 supportive housing and exit into permanent non-subsidized housing on your own.” *Id.*  
12 Meanwhile, Ms. Lyles “agree[d] to meet with [her] Case Manager to develop a housing stability  
13 plan, and to participate in ongoing service planning as needed to identify problems, take action  
14 steps, find any resources [she] may need and measure progress.” *Id.* at 1. Likewise, Ms. Lyles  
15 agreed to “work with [her] case manager to identify [her] family strengths, and areas of need, and  
16 work to increase [her] education and improve life skills that will result in a better quality of life  
17 for [her]self and [her] family.” *Id.* at 2.

18 Plaintiffs allege Solid Ground temporarily failed to provide Ms. Lyles with a case manager  
19 as required by the lease agreement. According to the complaint, Ms. Lyles worked with a case  
20 manager from November 2015, when Ms. Lyles first moved into Brettler Place, until September  
21 28, 2016. SAC ¶¶ 4.13, 4.16. Plaintiffs allege that Ms. Lyles then went without a case manager  
22 for several months until March 29, 2017, when another case manager began working with her.  
23 SAC ¶ 4.17. Importantly, Plaintiffs’ complaint *does not* allege that Solid Ground stopped  
24 providing any services to Ms. Lyles between October 2016 and March 2017—only that Solid  
25 Ground did not provide her a case manager during that time. SAC ¶¶ 4.15-4.16. In fact, the SAC

1 alleges that “[i]n about September 2016,” Ms. Lyles was “referred . . . to Solid Ground’s  
2 counseling center where she was paired with a child and family therapist.” SAC ¶ 4.15. And, as  
3 the SAC notes, Ms. Lyles and her family were also receiving services from multiple other sources  
4 while living at Brettler Family Place. For example, Ms. Lyles received professional outpatient  
5 mental health treatment from Sound Mental Health (SAC ¶ 4.28) and her children were receiving  
6 services as part of the Dependency CASA Program (SAC ¶ 4.22).

7 **B. Ms. Lyles’s Mental Health Declined Around May 2017, and She Was Referred to**  
8 **Mental Health Court.**

9 According to the complaint, around May 2017, approximately two months *after* Ms. Lyles  
10 was assigned a new Solid Ground case manager, “she . . . experienced a . . . sudden and rapid  
11 decline in her mental health.” SAC ¶ 4.34; *see also* ¶ 4.20. The complaint alleges that around  
12 May 28, 2017, Ms. Lyles showed a knife to a child on the Brettler Family Place playground and  
13 asked, “do you want to die the way my ex-boyfriend died?” SAC ¶ 4.21. Plaintiffs allege that  
14 Solid Ground received a report of this “playground incident” and fault Solid Ground for not  
15 reporting it to law enforcement or other authorities. SAC ¶ 4.21, 4.24. Plaintiffs assert that “[i]f  
16 Solid Ground had properly reported the May 30, 2017 incident, it is probable that Charleena Lyles  
17 would have been the subject of a police and/or mental health intervention at that time including  
18 but not limited to being placed under a 72[-]hour hold (in addition to the weekend) so that she  
19 could be fully evaluated pursuant to RCW 71.05.153; 71.05.180.” SAC ¶ 4.25.

20 But as Plaintiffs’ complaint concedes, on June 5, 2017, just one week later, police were  
21 called to Ms. Lyles’s apartment, and that incident *did* result in a significant mental health  
22 intervention and evaluation. SAC ¶¶ 4.33, 4.37, 4.42. In that incident, Ms. Lyles threatened police  
23 officers with “extra-long[] metal shears” in front of her four-year-old daughter, while talking about  
24 “morph[ing] into a wolf” and “cloning her daughter,” and she insisted that the police officers were  
25 devils or KKK members. SAC ¶ 4.33. As Plaintiffs note, “[i]t was apparent to the officers that

1 she had a mental health condition.” *Id.* The officers in that case employed de-escalation  
2 techniques to safely resolve the situation. *Id.*

3         Following that incident, Ms. Lyles was arrested and booked into King County Jail on  
4 charges of harassment and obstruction. SAC ¶¶ 4.37, 4.39. She may have received mental health  
5 treatment or evaluation at the jail. SAC ¶ 4.41. She appeared before Seattle Municipal Court  
6 Judge Catherine McDowall on June 6. Judge McDowall refused to release Ms. Lyles on her own  
7 personal recognizance, instead setting bail at \$7,500 “because of a substantial likelihood that the  
8 defendant will commit a violent crime.” Ostrovsky Decl., Ex. D. Judge McDowall also scheduled  
9 a Mental Health Pre-Trial Hearing for June 13. *Id.*, Exs. E–F. Three days later, Ms. Lyles was  
10 treated at Harborview and released back to jail. SAC ¶ 4.41. One week later, on June 13, Ms.  
11 Lyles appeared in Mental Health Court before the Honorable Edward McKenna. SAC ¶ 4.42;  
12 Ostrovsky Decl., Exs. G–I. Mental Health Court is “a specialized court where the judge, defense,  
13 prosecution, probation counselors, and a mental health clinician all work as a team to improve the  
14 life and outcomes for the client.” *See* Seattle Municipal Court, Mental Health Court,  
15 <https://www.seattle.gov/courts/programs-and-services/specialized-courts/mental-health-court>  
16 (last visited March 20, 2018). As part of that program, “[a] clinical mental health expert . . .  
17 assess[es] the client’s needs and provide[s] a treatment plan.” *Id.* The Mental Health Court  
18 ordered Ms. Lyles released to the Mental Health Court Day Reporting Program. SAC ¶ 4.42;  
19 Ex. G–I. Ms. Lyles agreed to the conditions imposed by the Court, including the requirements to  
20 (1) report to the Day Reporting office every Tuesday, and Thursday; (2) attend scheduled  
21 appointments with Valley Cities Behavioral Health Care; (3) submit to drug and alcohol testing;  
22 and (4) possess no weapons. SAC ¶ 4.42; Ostrovsky Decl., Ex. G. Plaintiffs do not allege that  
23 Solid Ground participated in either of these court proceedings, nor do they allege that Solid Ground  
24 had an obligation to participate in the proceedings or the conditions of Ms. Lyles’s release. The  
25

1 court orders do not mention Solid Ground, and Ms. Lyles was not ordered to notify Solid Ground  
2 of the conditions of her release. Ostrovsky Decl., Exs. D–I.

3 Five days later, Charleena Lyles called 911 to report a burglary, threatened officers with a  
4 knife, and was shot and killed by two SPD officers. SAC ¶¶ 4.44, 4.56, 4.63.

5 **C. Seattle Police Department Officers Shot and Killed Ms. Lyles.**

6 On June 18, the day Ms. Lyles called 911 to report a burglary, SAC ¶ 4.44, the Seattle  
7 Police Department was on notice of her mental health issues. Indeed, Ms. Lyles had threatened  
8 two other officers with shears less than two weeks earlier. SAC ¶¶ 4.33, 4.37. The officers who  
9 had responded to that incident knew Ms. Lyles had a mental health condition. SAC ¶ 4.33.  
10 Moreover, as Plaintiffs allege, “[b]etween January 2017 and June 2017, twenty three (23) calls  
11 were made [to police] from Charleena Lyles’ apartment”—an “extraordinary” number that “placed  
12 the Seattle Police Department . . . on notice that Charleena Lyles and her children were in an  
13 at[-]risk situation.” SAC ¶¶ 4.29–4.30. And, according to the SAC, the specific officers who  
14 responded to Ms. Lyles’s June 18th 911 call were well aware of Ms. Lyles’s mental health issues  
15 and previous threats to police. SAC ¶¶ 4.45–4.47, 4.49, 4.51, 4.55.

16 Shortly after police arrived at Ms. Lyles’s unit, her behavior turned erratic. She threatened  
17 the officers with knives. SAC ¶¶ 4.55–4.56. Unlike how officers had responded just two weeks  
18 earlier to a very similar incident, these officers did not engage in de-escalation techniques or use  
19 tasers or other non-lethal means to subdue Ms. Lyles. SAC ¶¶ 4.58–4.60. Instead, they drew their  
20 guns on Ms. Lyles and ordered her to “get back.” SAC ¶¶ 4.61–4.62. When she allegedly failed  
21 to do so, the officers opened fire, shooting Ms. Lyles seven times and killing her. SAC ¶ 4.64.

22 **III. EVIDENCE RELIED ON**

23 This motion relies on the allegations in Plaintiffs’ Second Amended Complaint, as well  
24 as matters of public record, of which this Court may take judicial notice, *Jackson v. Quality Loan*  
25 *Service Corp.*, 186 Wn. App. 838, 844 (2015), and “[d]ocuments whose contents are alleged in

1 [Plaintiffs’] complaint,” *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726, 189 P.3d 168  
2 (2008). Specifically, in addition to the SAC, Solid Ground relies on the following documents:

- 3 1. Solid Ground lease and addenda (SAC ¶ 4.13-4.14), Ostrovsky Decl., Exs. A–C.
- 4 2. Court orders in *City of Seattle v. Lyles*, Case No. 625215, Ostrovsky Decl., Exs. D–I.

5 Should this Court conclude that any of the foregoing are not properly considered under CR  
6 12(b)(6), Solid Ground hereby withdraws its reliance thereon.

#### 7 **IV. AUTHORITY**

##### 8 **A. Legal Standard**

9 Under CR 12(b)(6), a complaint should be dismissed if it fails to state a claim upon which  
10 relief can be granted. *Yurtis v. Phipps*, 143 Wn. App. 680, 689, 181 P.3d 849 (2008). Although  
11 the factual allegations in the complaint are presumed to be true, the court need not accept the  
12 complaint’s legal conclusions. *Rodriguez*, 144 Wn. App. at 717–18. A motion to dismiss should  
13 be granted if “it appears beyond doubt that the plaintiff can prove no set of facts, consistent with  
14 the complaint, which would entitle the plaintiff to relief.” *Yurtis*, 143 Wn. App. at 689 (quotation  
15 omitted). “[A]llegations [that] are wholly speculative in nature . . . are insufficient to  
16 preclude dismissal.” *Hoffer v. State*, 110 Wn.2d 415, 435, 755 P.2d 781 (1988). Dismissal is also  
17 appropriate if the complaint “includes allegations that show on the face of the complaint that there  
18 is some insuperable bar to relief.” *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)  
19 (quotation omitted).

20 Plaintiffs appear to allege two negligence-based theories of liability against Solid Ground.  
21 *First*, Plaintiffs allege Solid Ground had a duty to provide Ms. Lyles with a case manager but failed  
22 to do so, and as a result, Ms. Lyles’s mental health deteriorated, leading to her death. *Second*,  
23 Plaintiffs allege Solid Ground had a duty to report the May 28 playground incident in which Ms.  
24 Lyles threatened a child with a knife, but failed to do so, and as a result Ms. Lyles did not receive  
25 the mental health treatment she otherwise would have received, thus leading to her death. To plead

1 a claim for negligence, Plaintiffs must allege four basic elements: “(1) the existence of a duty  
2 owed, (2) breach of that duty, (3) a resulting injury, and (4) a proximate cause between the breach  
3 and the injury.” *Tincani v. Inland Empire Zoological Soc.*, 124 Wn.2d 121, 127–28, 875 P.2d 621  
4 (1994). In this case, dismissal is appropriate because Plaintiffs have not alleged facts showing that  
5 Solid Ground owed a duty to prevent the harms that befell Ms. Lyles or that her injuries were  
6 proximately caused by Solid Ground’s actions or inactions.

7 **B. Solid Ground Did Not Owe Ms. Lyles a Legal Duty to Protect Her from the Police or**  
8 **Herself.**

9 “The existence of a legal duty is a question of law and depends on mixed considerations of  
10 logic, common sense, justice, policy, and precedent.” *Christensen v. Royal Sch. Dist. No. 160*,  
11 156 Wn.2d 62, 67, 124 P.3d 283 (2005) (internal quotation omitted). Similarly, “[a] duty’s scope  
12 involves a question of law.” *Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.*, 170 Wn.2d  
13 442, 455, 243 P.3d 521 (2010). Because Plaintiffs bear the burden of proof on all elements of  
14 negligence, it is up to them to show that Solid Ground had a legally enforceable duty to protect  
15 Ms. Lyles against mental decompensation and police violence, and that her particular injuries fall  
16 within the scope of that duty. Plaintiffs’ complaint is vague about the source and scope of this  
17 alleged duty. The SAC alleges generally that Solid Ground had “contractual, statutory, and other  
18 duties to provide services, and assistance to Charleena Lyles and her four minor children[.]” SAC  
19 ¶ 5.24. Solid Ground addresses these sources—contract, statute, and common law—in turn.

20 **1. Plaintiffs Cannot Rely on Contractual Terms to Create a Tort Duty.**

21 The only specific “duty” Plaintiffs cite are the obligations set forth in Ms. Lyles’s lease  
22 with Solid Ground. SAC ¶¶ 4.13-4.14; *see also* SAC ¶ 5.25 (“Defendant Solid Ground breached  
23 its contractual duties.”). But under the independent duty doctrine, contract duties cannot give rise  
24 to a tort claim. *See Landstar Inway Inc. v. Samrow*, 181 Wn. App. 109, 129, 325 P.3d 327 (2014)  
25 (“Generally an injury will sound in either contract or tort, and the plaintiff must seek remedies

1 appropriate to the injury.”). Rather, for an injury to be remediable in tort, the duty must “aris[e]  
2 independently of the terms of the contract.” *Eastwood v. Horse Harbor Found., Inc.*, 170 Wn. 2d  
3 380, 402, 241 P.3d 1256 (2010). Put another way, even if Plaintiffs are correct that Solid Ground  
4 had a contractual duty to provide Ms. Lyles a case manager, Plaintiffs cannot allege that Solid  
5 Ground was *negligent* because it failed to carry out its contractual duties. *See Alejandre v. Bull*,  
6 159 Wn.2d 674, 682, 153 P.3d 864 (2007) (“The rule prohibits plaintiffs from recovering in tort  
7 economic losses to which their entitlement flows only from contract because tort law is not  
8 intended to compensate parties for losses suffered as a result of a breach of duties assumed only  
9 by agreement.”) (internal quotations omitted). Plaintiffs simply cannot rely on the agreements  
10 between Solid Ground and Ms. Lyles as the source of any tort duty.

11 **2. Solid Ground Did Not Owe Ms. Lyles or her Children Any Statutory**  
12 **Duty of Care.**

13 Plaintiffs generally allege that Solid Ground owed Ms. Lyles and her children “statutory ...  
14 duties” (SAC ¶ 5.24), but do not specify the statutes that give rise to such duties. Given the  
15 allegations in Plaintiffs’ complaint, Solid Ground’s best guess is that Plaintiffs believe Solid  
16 Ground had a statutory duty to report the May 2017 playground incident. *See* SAC ¶¶ 4.23–4.25.  
17 Washington law is clear, however, that Plaintiffs cannot rely on the mandatory reporter statute to  
18 infer any duty owed by Solid Ground to Ms. Lyles or her children.

19 The mandatory reporter statute, RCW 26.44.030, provides that “[w]hen any . . . social  
20 service counselor . . . has reasonable cause to believe that a child has suffered abuse or neglect, he  
21 or she shall report such incident, or cause a report to be made, to the proper law enforcement  
22 agency or to the department.” Even assuming for purposes of this motion that there were victims  
23 and that Solid Ground had a statutory obligation to report the playground incident—which, to be  
24 clear, Solid Ground does not concede—Solid Ground’s obligation does not give rise to a duty  
25 towards *Ms. Lyles or her children*.

1 To show that Solid Ground owed *Ms. Lyles* a duty under the mandatory reporting statute,  
2 Plaintiffs would need to show Ms. Lyles was “within the class for whose ‘especial’ benefit the  
3 statute was enacted.” *Bennett v. Hardy*, 113 Wn.2d 912, 920, 784 P.2d 1258 (1990). But the  
4 Washington Supreme Court has explicitly held that abusers are not among the class of people  
5 protected by the statute. *State v. Warner*, 125 Wn.2d 876, 891, 889 P.2d 479 (1995). In *Warner*,  
6 the Court explained:

7 Even under the old negligence per se doctrine, a person can only borrow a statutory  
8 duty of care to show negligence if the harm that occurs is the type of harm that  
9 statute is designed to prevent and the person claiming it is in the class of persons  
10 the statute is designed to protect. That is not the case here. The reporting statute is  
designed to secure prompt protection and/or treatment for the *victims* of child abuse.  
The class of persons it is designed to protect is *the victims*, not the abusers. Thus,  
[plaintiff] cannot use the statute to establish negligence on the part of the State.

11 *Id.* (citation omitted) (emphasis added). Thus, the mandatory reporter statute does not support a  
12 cause of action on behalf of the individual who committed the alleged abuse—such as Ms. Lyles  
13 in this case.<sup>3</sup>

14 Nor can Plaintiffs argue that Solid Ground owed a duty to Ms. Lyles’s *children* to report  
15 the playground incident. As the *Warner* Court noted, “[t]he class of persons [the mandatory  
16 reporting statute] is designed to protect is the victims.” *Id.*; see also *Beggs v. State, Department*  
17 *of Social & Health Services*, 171 Wn.2d 69, 77, 247 P.3d 421 (2011) (“[V]ictims of child abuse  
18 are certainly within the class for whose ‘especial’ benefit the legislature enacted the reporting  
19 statute[.]”); see also *Evans v. Tacoma Sch. Dist. No. 10*, 195 Wn. App. 25, 43–44, 380 P.3d 553  
20 (2016), *review denied*, 186 Wn.2d 1028, 385 P.3d 124 (2016) (holding that statute benefits minor  
21 victims and their non-abuser parents). Ms. Lyles’s children were not the alleged victims of the  
22 playground incident. SAC ¶ 4.21. Nor does the SAC allege that Ms. Lyles’s children suffered  
23 “the type of harm that statute is designed to prevent,” *i.e.*, abuse. *Warner*, 125 Wn.2d at 891. The  
24

25 \_\_\_\_\_  
<sup>3</sup> No disrespect is intended in referring to Ms. Lyles as the “abuser” in the playground incident.

1 SAC therefore does not and cannot allege that Solid Ground owed the children a duty to report the  
2 playground incident.

3 **3. Solid Ground Did Not Owe Ms. Lyles a Common-Law Duty to Protect her**  
4 **from Police Violence or Mental Decompensation.**

5 Unable to rely on contract or statute, Plaintiffs must instead articulate a common-law duty  
6 to avoid dismissal. They cannot do so, however, because Washington law does not impose any  
7 common-law duty on a housing provider like Solid Ground to protect its residents from mental  
8 decompensation or police shootings.

9 In analyzing whether Solid Ground had a common-law duty to protect Ms. Lyles (or her  
10 children) from mental decompensation and police violence, it is imperative first to recognize that  
11 Plaintiffs' claims do not arise from allegations that Solid Ground *acted* in ways that endangered  
12 Ms. Lyles, but rather that Solid Ground *failed to act* in ways that supposedly could have prevented  
13 injury to Ms. Lyles. *See Robb v. City of Seattle*, 176 Wn.2d 427, 437, 295 P.3d 212 (2013).<sup>4</sup> This  
14 distinction is critical because “[t]he common law of torts has long distinguished between ‘acts’  
15 and ‘omissions,’ refusing to impose liability for the latter[.]” *Brown v. MacPherson’s, Inc.*, 86  
16 Wn.2d 293, 300, 545 P.2d 13 (1975) (citing W. Page Keeton, et al., *Prosser and Keeton on the*  
17 *Law of Torts* § 56, at 339–40 (4th ed. 1971)). Outside of a statute-imposed duty, “[I]iability for  
18

19 \_\_\_\_\_  
20 <sup>4</sup> The Washington Supreme Court has described the difference between misfeasance and nonfeasance as follows:

21 [M]isfeasance [refers to] circumstances where an actor exposes another to danger by creating a  
22 situation of peril. Misfeasance involves active misconduct resulting in positive injury to  
others. Misfeasance necessarily entails the creation of a new risk of harm to the plaintiff. On the  
other hand, through nonfeasance, the risk is merely made no worse. Nonfeasance consists of passive  
inaction or failure to take steps to protect others from harm.

23 *Robb*, 176 Wn.2d at 437 (internal quotations omitted); *see also Washburn v. City of Fed. Way*, 178 Wn.2d 732, 760,  
24 310 P.3d 1275 (2013) (holding that defendant’s conduct was misfeasance because “he had created a new and very real  
25 risk to [decendent’s] safety”). Plaintiffs do not, and cannot, allege that Solid Ground created a new risk of mental  
decompensation or police violence by briefly failing to provide Ms. Lyles a case manager or by declining to report  
the playground incident to law enforcement. “Simply put, the situation of peril in this case existed before” Solid  
Ground’s alleged inaction “and the danger was unchanged by [Solid Ground’s] actions.” *Robb*, 176 Wn.2d at 438.

1 nonfeasance (or omissions) . . . is largely confined to situations where a special relationship exists.”  
2 *Robb*, 176 Wn.2d at 436.

3 As a general rule, a party has no duty to act for the protection of others. Restatement  
4 (Second) of Torts § 314 (1965). Moreover, “the law provides no general duty to protect others  
5 from self-inflicted harm.” *Webstad v. Stortini*, 83 Wn. App. 857, 866, 924 P.2d 940 (1996).  
6 Washington recognizes an exception to this general rule in cases “where ‘a special relationship  
7 exists between the defendant and either the third party or the foreseeable victim of the third party’s  
8 conduct.’” *Lauritzen v. Lauritzen*, 74 Wn. App. 432, 438, 874 P.2d 861 (1994) (quoting *Hutchins*  
9 *v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 227, 802 P.2d 1360 (1991)). Thus, to prove that  
10 Solid Ground owed a duty to protect Ms. Lyles or her children, Plaintiffs must show that Solid  
11 Ground had a legally recognized special relationship with them.

12 Plaintiffs have not and cannot allege Solid Ground owed such a special relationship duty  
13 of care to Ms. Lyles or her children. No Washington court has ever held that a housing provider  
14 like Solid Ground owed its residents a similar duty of care. “Washington courts have recognized  
15 a ‘special relationship’ between a defendant and a foreseeable victim . . . in circumstances that are  
16 protective in nature, historically involving an affirmative duty to render aid.” *Webstad*, 83 Wn.  
17 App. at 869 (quoting *Lauritzen*, 74 Wn. App. at 439 and *Hutchins*, 116 Wn.2d at 228, 802 P.2d  
18 1360). For example, Washington courts have recognized special relationships between school  
19 districts and students, *McLeod v. Grant County Sch. Dist. No. 128*, 42 Wn.2d 316, 319–22, 255  
20 P.2d 360 (1953); innkeepers and guests, *Miller v. Staton*, 58 Wn.2d 879, 883, 365 P.2d 333 (1961);  
21 common carriers and passengers, *Hutchins*, 116 Wn.2d at 228; employers and employees, *Bartlett*  
22 *v. Hantover*, 9 Wn. App. 614, 621, 513 P.2d 844 (1973); prisons and prisoners, *Shea v. City of*  
23 *Spokane*, 17 Wn. App. 236, 241–42, 562 P.2d 264 (1977); and nursing homes and patients, *Niece*

1 *v. Elmview Grp. Home*, 131 Wn.2d 39, 50, 929 P.2d 420 (1997).<sup>5</sup> Critically, “in all cases imposing  
2 a duty based on a ‘special relationship,’ the courts have found that the relationship involved an  
3 element of “‘entrustment’”; *i.e.*, one party was, in some way, entrusted with the well-being of the  
4 other party.” *Webstad*, 83 Wn. App. at 870. Put another way, the duty arises where “the victim is  
5 placed under the control and protection of the other party . . . with resulting loss of control to  
6 protect himself or herself.” *Hutchins*, 116 Wn.2d at 228 (emphasis added).

7 Unlike the cases in which Washington courts have found a special relationship, Plaintiffs  
8 have not and cannot allege facts to show Ms. Lyles or her children entrusted their well-being to  
9 Solid Ground’s care. Nothing in the SAC indicates that Ms. Lyles’s relationship with Solid  
10 Ground rendered her unable to provide for her own (or her children’s) well-being. Instead,  
11 Plaintiffs allege only that Solid Ground had an obligation to provide her certain services, not that  
12 she was dependent on Solid Ground for her general well-being. Her situation is thus readily  
13 distinguishable from, for example, a prisoner, who is dependent on the prison for providing  
14 healthcare (*Shea*, 17 Wn. App. at 241–42), a student who “is compelled to attend school” in which  
15 “the protective custody of teachers is mandatorily substituted for that of the parent” (*McLeod*, 42  
16 Wn.2d at 319), or a nursing home patient who is “total[ly] [unable] to take care of herself” and  
17 entrusts the nursing home with “every aspect of her well[-]being” (*Niece*, 131 Wn.2d at 50). Nor  
18 can Plaintiffs allege Ms. Lyles’s relationship with Solid Ground exposed her to certain risks she  
19 otherwise would not have faced (*Bartlett*, 9 Wn. App. at 621), or that the circumstances of her

21 \_\_\_\_\_  
22 <sup>5</sup> To be sure, there is caselaw suggesting that a landlord may have a special relationship duty to protect a tenant from  
23 criminal activity in common areas under the landlord’s control. See *Faulkner v. Racquetwood Vill. Condo. Ass’n*, 106  
24 Wn. App. 483, 486–87, 23 P.3d 1135 (2001) (assuming without deciding such a duty exists). Such a duty “arises  
25 because the tenant entrusts to the landlord the responsibility to deal with issues that arise from the landlord’s control  
of the common areas of the premises.” *Griffin v. W. RS, Inc.*, 97 Wn. App. 557, 570, 984 P.2d 1070 (1999), *rev’d on*  
*other grounds*, 143 Wn.2d 81, 18 P.3d 558 (2001). But Plaintiffs do not allege that Ms. Lyles’s injuries stemmed  
from Solid Ground’s failure to safely maintain common areas. To the contrary, Plaintiffs allege she was injured by  
police officers whom she called to the premises. Moreover, the shooting occurred in Ms. Lyles’s apartment, an area  
not subject to Solid Ground’s control.

1 relationship with Solid Ground reasonably induced her to forego self-protection (*see Mita v.*  
2 *Guardsmark, LLC*, 182 Wn. App. 76, 88–89, 328 P.3d 962 (2014)).

3           Indeed, as the SAC and incorporated materials show, Ms. Lyles maintained the ability and  
4 obligation to provide for her own mental well-being. Plaintiffs *specifically allege* that Ms. Lyles  
5 was receiving mental health services from a third-party, Sound Mental Health, while a resident at  
6 Solid Ground and that she had recently gone through, and was being monitored by, the Mental  
7 Health Court just days before her death. SAC ¶¶ 4.28, 4.42. The Court’s conditions of release  
8 also show that Ms. Lyles was receiving treatment from Valley Cities at the time of her release, and  
9 ordered her to attend all appointments with Valley Cities. Ostrovsky Decl., Ex. G. Solid Ground  
10 was not a party to the Mental Health Court action, nor was Ms. Lyles’s release conditioned on  
11 Solid Ground’s participation in her conditions of release or her mental health treatment. Because  
12 Plaintiffs’ complaint demonstrates on its face that Ms. Lyles’s mental health was not specifically  
13 entrusted to Solid Ground, Plaintiffs cannot, as a matter of law, show that Solid Ground owed Ms.  
14 Lyles a special relationship duty to protect her from mental decompensation.

15           Solid Ground was trying to help Ms. Lyles turn her life around by providing her shelter  
16 and supportive services. That does not mean Solid Ground should be held legally responsible for  
17 her mental decompensation or shooting death. Solid Ground is one of a handful of local  
18 organizations committed to assisting an underserved population of low-income, at-risk  
19 individuals. These individuals are often dealing with a host of challenges in their lives, and the  
20 odds against them can at times feel insurmountable. Solid Ground, however, believes in its  
21 residents’ resiliency, and it gives them shelter and stable housing from which they may regain their

1 footing and find a better future for themselves and their families.<sup>6</sup> To the extent its resources  
2 allow, it also provides residents with access to services. These efforts further Washington’s strong  
3 public policy of combatting homelessness. *See* RCW 43.185C.005 (“Despite laudable efforts by  
4 all levels of government, private individuals, nonprofit organizations, and charitable foundations  
5 to end homelessness, the number of homeless persons in Washington is unacceptably high. . . .  
6 The legislature finds that the fiscal and societal costs of homelessness are high for both the public  
7 and private sectors, and that ending homelessness should be a goal for state and local  
8 government.”). Given that strong public policy, it defies reason to hold organizations like Solid  
9 Ground responsible when the odds prove insurmountable. Such a holding would dissuade Solid  
10 Ground and similarly situated organizations from offering any assistance in the first place.

11 Solid Ground’s attempts to provide Ms. Lyles and her family with housing and support did  
12 not create a legal duty to protect her from mental decompensation or police violence.

13 **C. Plaintiffs Cannot Allege Solid Ground Proximately Caused Any Harm.**

14 Dismissal is also appropriate because Plaintiffs cannot show that Solid Ground proximately  
15 caused them any harm. To hold Solid Ground responsible for Ms. Lyles’s killing by SPD officers,  
16 Plaintiffs must plead (and ultimately prove) that Solid Ground proximately caused her death.  
17 *Schooley v. Pinch’s Deli Mkt., Inc.*, 134 Wn.2d 468, 474, 951 P.2d 749 (1998).  
18 “Proximate causation has two elements: cause in fact and legal causation.” *Id.* While cause-in-  
19 fact is usually a question of fact, “[l]egal causation, on the other hand, rests on policy  
20 considerations as to how far the consequences of defendant’s acts should extend. It involves a  
21 determination of whether liability *should* attach as a matter of law given the existence of cause in

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22  
23 <sup>6</sup> For example, as Plaintiffs’ complaint notes, police were called to Ms. Lyles’s apartment 23 separate times between  
24 January 2017 and June 2017. SAC ¶ 4.29. Solid Ground staff believed that Ms. Lyles was engaging in substance  
25 abuse and were aware that she was involved in angry outbursts and arguments with neighbors. SAC ¶ 4.20. Despite  
numerous lease violations, Solid Ground did not evict Ms. Lyles, as would have been permitted under her lease  
agreement, instead continuing to provide her a home and access to services in the hope that she could turn her life  
around.

1 fact.” *Hartley v. State*, 103 Wn.2d 768, 779, 698 P.2d 77 (1985) (emphasis in original). “[W]here  
2 the facts are not in dispute, legal causation is for the court to decide as a matter of law.” *N.L. v.*  
3 *Bethel Sch. Dist.*, 186 Wn.2d 422, 437, 378 P.3d 162 (2016) (citations and internal quotation marks  
4 omitted; alteration in original).

5 Ms. Lyles was shot in her home by two SPD police officers. For obvious reasons, those  
6 officers and the City of Seattle are the primary defendants in this suit. But Plaintiffs also allege  
7 Solid Ground caused this tragedy. Even if Solid Ground did owe some legal duty to Plaintiffs, the  
8 particular harms that befell Ms. Lyles—mental decompensation and an intentional police  
9 shooting—are not within the scope of any duty owed by Solid Ground. In addition, Plaintiffs’  
10 claims that Solid Ground proximately caused harm to Ms. Lyles and her children fail because they  
11 are entirely and fundamentally speculative. And Plaintiffs’ claims fail because superseding events  
12 break the causal chain between Solid Ground’s alleged inactions and Ms. Lyles’s death.

13 **1. Plaintiffs’ Claims Cannot Support an Inference that Solid Ground Should be**  
14 **Held Responsible for Ms. Lyles’s Mental Decompensation and Death by**  
15 **Police.**

16 To establish proximate cause, Plaintiffs must show that Solid Ground *ought to* be held  
17 legally responsible for Ms. Lyles’s mental deterioration and shooting death. *See Hartley*, 103  
18 Wn.2d at 779. They cannot.

19 *First*, the question of legal causation asks whether the connection between a particular  
20 defendant and a particular injury “is too remote or insubstantial to impose liability.” *Id.* at 781.  
21 Here, there is simply no common-sense or principled connection between the alleged failures—  
22 not providing a housing case manager from October–February and not reporting the May 28  
23 playground incident—and the alleged harms—mental decompensation and intentional police  
24 shooting. Where, as here, the alleged harms are not within the scope of the alleged duty, legal  
25 causation is missing.

1           *Second*, Plaintiffs offer only speculation to support their claim that Solid Ground  
2 contributed to Ms. Lyles’s injuries by declining to call police following the playground incident.  
3 Simply put, there are no facts alleged from which this Court can infer that Ms. Lyles would be  
4 alive today if only Solid Ground had reported her to the police in May. The closest the SAC comes  
5 is an allegation that “[i]f Solid Ground had properly reported the May 30, 2017 incident, it is  
6 probable that Charleena Lyles would have been the subject of a police and/or mental health  
7 intervention at that time including but not limited to being placed under a 72[-]hour hold (in  
8 addition to the weekend) so that she could be fully evaluated pursuant to RCW 71.05.153;  
9 71.05.180.” SAC ¶ 4.25. But Washington courts have repeatedly rejected similar arguments,  
10 particularly where, as here, the ultimate incident occurred *after* the hypothetical detention would  
11 have ended. *See Smith v. Washington State Dep’t of Corr.*, 189 Wn. App. 839, 852, 359 P.3d 867  
12 (2015) (“[I]t is pure speculation that if DOC had reported Goolsby’s violations before April 10  
13 that he would have been in jail almost four months later when he murdered James Smith.”);  
14 *Hungerford v. State Dep’t of Corr.*, 135 Wn. App. 240, 245, 139 P.3d 1131 (2006) (“[A]ssuming  
15 the court had revoked Davis’s suspended misdemeanor sentence, Hungerford cannot prove that  
16 Davis would have been in jail on the date of his sister’s murder.”). In this case, Ms. Lyles was  
17 shot well after any hypothetical 72-hour hold would have expired. Plaintiffs have not and cannot  
18 allege that Ms. Lyles would have been detained and out of harm’s way on June 18 if the playground  
19 incident had been reported.

20           Nor can Plaintiffs allege that calling the police regarding the playground incident would  
21 necessarily have resulted in Ms. Lyles getting more effective mental health intervention when she  
22 was in fact arrested just a week later, on June 5, after a similar incident in which she threatened  
23 police officers. SAC ¶¶ 4.33, 4.37–4.38. Upon her arrest on June 5, Ms. Lyles was taken to jail  
24 (SAC ¶ 4.39), where she was subject to the same mental health evaluation she allegedly would  
25 have received after the playground incident. Following that arrest, Ms. Lyles was sent to Mental

1 Health Court, the specialized court set up to address criminal activity arising from mental illness.  
2 In that court, “the judge, defense, prosecution, probation counselors, and a mental health clinician  
3 all work as a team to improve the life and outcomes for the client.” *See* Seattle Municipal Court,  
4 Mental Health Court, [https://www.seattle.gov/courts/programs-and-services/specialized-](https://www.seattle.gov/courts/programs-and-services/specialized-courts/mental-health-court)  
5 [courts/mental-health-court](https://www.seattle.gov/courts/programs-and-services/specialized-courts/mental-health-court) (last visited March 20, 2018). The Mental Health Court determined it  
6 was appropriate to conditionally release Ms. Lyles from detention, despite the fact that she had  
7 just threatened police with metal shears and claimed she was morphing into a wolf. SAC ¶ 4.42.  
8 The Court ordered Ms. Lyles to report to the Court’s Day Reporting Program twice per week and  
9 to continue receiving treatment at Valley Cities. SAC ¶ 4.42; Ostrovsky Decl., Exs. G–I. It is  
10 wholly speculative to assume that a different result would have occurred one week earlier, or  
11 during the Mental Health Court proceedings, if the earlier playground incident had been reported.

12 Any claim that the June 18 incident would have ended differently had police been advised  
13 of the playground incident is similarly speculative. Indeed, Plaintiffs’ complaint alleges that police  
14 knew Ms. Lyles was mentally ill—and had previously threatened police officers—even without  
15 Solid Ground reporting the playground incident. ¶¶ 4.49, 4.51, 4.55. Given what police already  
16 knew, there is no basis for Plaintiffs to claim that the police would have acted differently had Solid  
17 Ground reported the playground incident. Furthermore, according to the Complaint, “[b]etween  
18 January 2017 and June 2017, twenty-three (23) calls were made from Charleena Lyles’ apartment”  
19 to the Seattle Police Department. SAC ¶ 4.29. The suggestion that a 24th call would have  
20 somehow made all the difference is pure speculation.

21 Plaintiffs’ claim that Ms. Lyles was killed because she went six months without a case  
22 manager is equally speculative. Plaintiffs make no effort to connect Solid Ground’s alleged failure  
23 to provide a case manager with Ms. Lyles’s death. Plaintiffs make the bare allegation that the gap  
24 “contributed to” her “becoming disconnected from the program” (SAC ¶ 4.18), but nothing in the  
25 complaint bridges this “disconnection” with either her mental decompensation or her death.

1 Moreover, nothing *can* connect this claim beyond conjecture. Indeed, the speculative nature of  
2 this allegation is underscored by Plaintiffs’ allegation that Ms. Lyles’s mental health apparently  
3 did not decline until around May 2017 (SAC ¶¶ 4.21, 4.34), two months **after** Ms. Lyles resumed  
4 her relationship with a Solid Ground caseworker (¶ 4.17). During the relevant period of time, Ms.  
5 Lyles was receiving mental health treatment from Sound Mental Health and Valley Cities, and was  
6 participating in the Mental Health Court program. If those interventions were unable to stabilize  
7 her mental health, there is no non-speculative basis for Plaintiffs to argue that an active housing  
8 case manager, several months earlier, would have made the difference.

9 Plaintiffs have not adequately alleged causation and will never be able to prove causation.  
10 No amount of discovery and factual development will enable them to prove what *would have*  
11 *happened* had Solid Ground continuously provided Ms. Lyles a case manager or had they reported  
12 the playground incident to police. Arguing causation here will necessarily involve piling inference  
13 upon conjecture upon speculation. This kind of speculation is insufficient, as a matter of law, to  
14 establish negligence. Dismissal is therefore appropriate. *Hoffer v. State*, 110 Wn.2d 415, 435, 755  
15 P.2d 781 (1988) (“[A]llegations [that] are wholly speculative in nature . . . are insufficient to  
16 preclude dismissal under CR 12(b)(6).”).

17 **2. The Police Officers’ Shooting of Ms. Lyles Is a Superseding Cause**  
18 **of Her Death.**

19 Finally, Plaintiffs’ efforts to hold Solid Ground responsible for Ms. Lyles’s tragic death  
20 fail because a separate superseding event interrupts any potential chain of causation. “An act  
21 generally is a proximate cause of an injury if it produces the injury. However, if a new,  
22 independent act breaks the chain of causation, it supersedes the original act, which thus is no  
23 longer the proximate cause of the injury.” *Riojas v. Grant Cty. Pub. Util. Dist.*, 117 Wn. App.  
24 694, 697, 72 P.3d 1093 (2003). Intervening or superseding acts are acts that are not foreseeable,  
25

1 and that bring about a different kind of harm and operate independently of the situation created by  
2 the actor's negligence. *Herberg v. Swartz*, 89 Wn.2d 916, 928, 578 P.2d 17, 24 (1978).

3 Under Washington law, the police officers' shooting of Ms. Lyles was a superseding cause  
4 of her injuries unless it was reasonably foreseeable by Solid Ground. *Id.* at 927. Put another way,  
5 to hold Solid Ground liable, Plaintiffs must prove that the police shooting was a legally foreseeable  
6 consequence of Solid Ground's failure to provide case management services several months earlier  
7 or its failure to report the playground incident. It does not appear that any Washington court has  
8 addressed the precise issue, but at least two other courts have held that police shootings are not  
9 foreseeable as a matter of law. In *Torbit v. Baltimore City Police Department*, the estate of two  
10 decedents sought to hold a nightclub liable after a melee inside the club spilled out into the streets,  
11 a plainclothes officer fired shots, and two people, including the officer, died. *Torbit v. Baltimore*  
12 *City Police Dep't*, 231 Md. App. 573, 580-581, 153 A.3d 847 (2017), *cert. denied*, 453 Md. 30,  
13 160 A.3d 557 (2017). The Maryland Court of Appeals rejected the claim, holding in no uncertain  
14 terms that the club could not be held liable because the police shooting was an unforeseeable cause  
15 of the deaths. *Id.* at 586. A New York appellate court reached the same conclusion in *Salichs v.*  
16 *City of New York*, 127 A.D.3d 406, 8 N.Y.S.3d 268 (N.Y. App. Div. 2015). In that case, an off-  
17 duty police officer was attacked inside a White Castle restaurant, and, following a tragic mix-up,  
18 was subsequently shot outside the restaurant by a uniformed police officer. The decedent's estate  
19 sued the restaurant, alleging that its security was inadequate, but the court dismissed the suit,  
20 reasoning that the shooting by the uniformed officer was a superseding cause:

21 Dismissal of the complaint as against White Castle is warranted because decedent's  
22 death was not a foreseeable result of any lapse in White Castle's security. Even  
23 assuming that the security monitoring system employed by White Castle was  
24 inadequate to prevent the initial assault, it is speculative to assume that any other  
25 measures could have prevented . . . the police shooting thereafter. Since the  
subsequent independent acts of decedent and the police were extraordinary and not  
foreseeable or preventable in the normal course of events, White Castle's purported  
security failures were not a proximate cause of decedent's injuries.

1 *Id.* at 406–07 (citation omitted).

2 As these cases hold, police shootings are, as a rule, extraordinary and unforeseeable events  
3 that break any preceding chain of causation leading to a decedent’s death. To hold otherwise  
4 would have bizarre and potentially troubling consequences. On the most basic level, holding  
5 police violence legally foreseeable would fundamentally alter the relationship between police and  
6 citizens, including by potentially creating liability for individuals who choose to call the police in  
7 response to a crisis. Moreover, a rule that police misconduct is legally foreseeable could lead to  
8 situations where people are held liable for calling the police to assist in dangerous situations.<sup>7</sup> Tort  
9 law should not discourage people from seeking police assistance. *See Bruns v. PACCAR, Inc.*, 77  
10 Wn. App. 201, 890 P.2d 469 (1995) (“Legal causation rests on policy considerations as to how far  
11 the legal consequences of a defendant’s act should extend”).

12 Notwithstanding the legal and policy arguments arrayed against them, Plaintiffs may try to  
13 raise a factual argument as to why *this* police shooting was foreseeable, namely, that Solid Ground  
14 was aware Ms. Lyles had earlier threatened police officers on June 5, and that this threat resulted  
15 in police officers drawing their guns in the presence of her young children, SAC ¶ 4.33. This  
16 argument should again fail as a matter of law, as Solid Ground should not have inferred from the  
17 June 5 incident that it was likely the police would shoot Ms. Lyles. Indeed, Plaintiffs themselves  
18 allege that during the June 5 incident the “[t]he officers engaged in de-escalation techniques” and  
19 then “arrested Charleena Lyles after recognizing that she was suffering from a mental health  
20 crisis.” SAC ¶¶ 4.33, 4.37. Police also responded 23 other times without using excessive force  
21 against Ms. Lyles. There is no factual basis to assert that Solid Ground should have assumed that  
22 the police would respond differently during a subsequent interaction. Further, the June 5, 2017  
23 threats occurred well *after* either of the events that Plaintiffs claim give rise to liability—a failure

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24 <sup>7</sup> To the extent Plaintiffs try to argue that police violence is *foreseeable*, there is irreconcilable tension between that  
25 position and Plaintiffs’ claim that Solid Ground was negligent for *not* calling the police on Ms. Lyles following the  
playground incident.

1 to provide a case manager in early 2017 and a failure to report an incident on May 28—again  
2 highlighting the lack of any connection between any Solid Ground omission and the fatal event.

3 In this case, even if Plaintiffs could argue that Solid Ground breached a duty to Ms. Lyles  
4 or her children, their complaint conclusively establishes that the officers' shooting of Ms. Lyles  
5 was a superseding cause that breaks any potential chain of causation between Solid Ground's  
6 alleged inactions and Ms. Lyles's death. The SAC therefore fails to allege proximate cause as a  
7 matter of law.

### 8 V. CONCLUSION

9 Solid Ground respectfully requests that this Court dismiss Plaintiffs' claims against it.

10 DATED this 23<sup>rd</sup> day of March, 2018.

11 I certify that this memorandum contains 8,374 words, in compliance with the Local Civil  
12 Rules.

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that on March 23, 2018, I electronically filed the  
3 foregoing Defendant Solid Ground’s Motion to Dismiss Second Amended Complaint with the  
4 Clerk of the Court using the King County E-filing system, which will send notification of such  
5 filing to the CM/ECF participants as follows: I also sent for service a copy of this document on  
6 all parties below via the method designated:

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9 *Attorneys for Defendants McNew and Anderson*

10 I declare under penalty of perjury under the laws of the state of Washington that the  
11 foregoing is true and correct.

12 DATED this 23<sup>rd</sup> day of March, 2018, at Seattle, Washington.

13 \_\_\_\_\_  
14 *s/Mary Klemz*

15 Mary Klemz

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

Commissioner Eric Watness, as Personal  
Representative of the Estate of Charleena  
Lyles; Karen Clark, as Guardian Ad Litem  
on behalf of the four minor children of  
decedent,

Plaintiffs,

v.

The City of Seattle, a Municipality; Jason M.  
Anderson and Steven A. McNew,  
individually; Solid Ground, A Washington  
non-profit corporation,

Defendants.

NO. 17-2-23731-1 SEA

[PROP] ORDER GRANTING DEFENDANT  
SOLID GROUND'S MOTION TO DISMISS  
SECOND AMENDED COMPLAINT

This matter came before the Court on Defendant Solid Ground's Motion to Dismiss Second Amended Complaint. The Court has considered Defendant's motion, Plaintiffs' response if any, Defendant's reply if any, any papers filed with any of the foregoing, and the allegations set forth in Plaintiffs' Second Amended Complaint. Having considered the material submitted by the parties, heard oral argument, and being otherwise fully advised, the Court GRANTS Defendant Solid Ground's motion. Plaintiffs' claims against Defendant Solid Ground are DISMISSED WITH PREJUDICE.

1 DATED this \_\_\_\_\_ day of \_\_\_\_\_.

2  
3  
4 \_\_\_\_\_  
5 HONORABLE JULIE SPECTOR  
KING COUNTY SUPERIOR COURT JUDGE

6 Presented by:

7 CALFO EAKES & OSTROVSKY PLLC

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16 *Attorneys for Defendant Solid Ground*

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I caused true and correct copies of the foregoing [Proposed]  
3 Order Granting Defendant Solid Ground’s Motion to Dismiss Second Amended Complaint, to be  
4 served on the following parties and/or counsel of record in the manner shown:

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*Attorneys for Defendant City of Seattle*

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 Dated this 23<sup>rd</sup> day of March, 2018 at Seattle, Washington.  
4

5 *s/Mary J. Klemz*

6 Mary J. Klemz  
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