

CIVIL COVER SHEET

JS 44 (Rev. 12/12)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS
TREAVOR EIMERS, as Personal Representative of the Estate of Charles Eimers, Deceased,

(b) County of Residence of First Listed Plaintiff **Emmett (Michigan)**
(SEE EPT IN U.S. PLAINTIFF CASES)

DEPENDANTS

CITY OF KEY WEST; GABRIEL HUMBERTO GARRIDO; GUSTAVO ADOLFO MEDINA; KATHYANN WANCIJAK; GARY LEE LOVETTE; MATTHEW JOHNSON; FRANCISCO ZAMORA, et al.

County of Residence of First Listed Defendant **Monroe**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN-LAND CONDENAATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorney's (if known)

(c) **Attorneys (Firm Name, Address and Telephone Number)**
BRILL & RINALDI, THE LAW FIRM (954) 876-4344
17150 Royal Palm Blvd., Suite 2
Weston, FL 33326

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question Plaintiff *(U.S. Government Not a Party)*
- 2 U.S. Government Defendant 1 Diversity Defendant *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)*
- Citizen of This State 1 1 PTF DEF 1 1 Incorporated or Principal Place of Business in This State
- Citizen of Another State 2 2 Incorporated and/or Principal Place of Business in Another State 5 5
- Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FOREIGN RE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Marine Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Maritime Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Trench or Landfill <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Fretraction of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Tenants Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Tossing/ Accommodations <input type="checkbox"/> 445 Aimer w/Disabilities - Employment <input type="checkbox"/> 446 Aimer w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 FIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DINC/DI/VW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 25 USC 7609
REAL PROPERTY		CIVIL RIGHTS		PRISONER PETITIONS	
LABOR		IMMIGRATION		FEDERAL TAX SUITS	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding State Court
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District *(As-Of-Right)*
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. §1983

Brief description of cause of action:
Excessive force causing the death of deceased

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P.

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE:

DOCKET NUMBER

DATE
 04/11/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

JUDGE

MAG JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Key West Division

Case No.: 14-CV-10028

TREAVOR EIMERS, as Personal Representative of
the Estate of Charles Eimers, Deceased,

Plaintiff,

vs.

CITY OF KEY WEST, a Florida municipality;
GABRIEL HUMBERTO GARRIDO, an Officer
with the City of Key West's Police Department;
GUSTAVO ADOLFO MEDINA, an Officer with
the City of Key West's Police Department;
KATHYANN WANCIAK, an Officer with the
City of Key West's Police Department; **GARY
LEE LOVETTE**, an Officer with the City of Key
West's Police Department; **MATTHEW
JOHNSON**, an Officer with the City of Key West's
Police Department; **FRANCISCO ZAMORA**, an
Officer with the City of Key West's Police
Department; **THADDEUS CALVERT**, an Officer
with the City of Key West's Police Department;
DEREK WALLIS, an Officer with the City of Key
West's Police Department; **NICHOLAS GALBO**,
an Officer with the City of Key West's Police
Department; **JANETH CALVERT**, an Officer
with the City of Key West's Police Department;
PABLO RODRIGUEZ, an Officer with the City of
Key West's Police Department; and **TODD
STEVENS**, an Officer with the City of Key West's
Police Department,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, **TREAVOR EIMERS**, as Personal Representative of the Estate of Charles

Eimers, Deceased sues Defendants, **CITY OF KEY WEST**, a Florida municipality; **GABRIEL**

HUMBERTO GARRIDO, an Officer with the City of Key West's Police Department;

GUSTAVO ADOLFO MEDINA, an Officer with the City of Key West's Police Department; **KATHYANN WANCIAK**, an Officer with the City of Key West's Police Department; **GARY LEE LOVETTE**, an Officer with the City of Key West's Police Department; **MATTHEW JOHNSON**, an Officer with the City of Key West's Police Department; **FRANCISCO ZAMORA**, an Officer with the City of Key West's Police Department; **THADDEUS CALVERT**, an Officer with the City of Key West's Police Department; **DEREK WALLIS**, an Officer with the City of Key West's Police Department; **NICHOLAS GALBO**, an Officer with the City of Key West's Police Department; **JANETH CALVERT**, an Officer with the City of Key West's Police Department; **PABLO RODRIGUEZ**, an Officer with the City of Key West's Police Department; and **TODD STEVENS**, an Officer with the City of Key West's Police Department.

JURISDICTION AND VENUE

1. This action is a wrongful death action brought under 42 U.S.C. §1983 and Florida's Wrongful Death Act, Fla. Stat. §768.16 *et seq.* against Defendants to redress the deprivation, under color of law, statute, custom or usage, of rights, privileges and immunities secured to **CHARLES EIMERS** by the Fourth and/or Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, and under Florida's Wrongful Death Act, when the Defendant Officers used excessive force during their arrest of **CHARLES EIMERS**, killing him.
2. This Court has jurisdiction pursuant to 42 U.S.C. §1983, 28 U.S.C. §1331, 28 U.S.C. §1343(a). Venue is proper in the Southern District of Florida under 28 U.S.C. §1391(b) because all of the actions described herein were committed in Key West, Monroe County, Florida.

THE PARTIES

3. The Decedent CHARLES EIMERS was a Michigan resident who is survived by four (4) adult children. The potential beneficiaries of a recovery in the instant wrongful death action are the Decedent's Estate and his children, to wit: TYSON EIMERS, born December 12, 1973, Plaintiff TREAVERN EIMERS, born December 11, 1975, ERICA EIMERS, born December 26, 1977, and JOSHUA EIMERS, born May 27, 1980.
4. Plaintiff TREAVERN EIMERS has been authorized by his siblings to serve as the Personal Representative of the Estate of their father and as of this filing TREAVERN EIMERS has been or will be the duly appointed Personal Representative of CHARLES EIMERS' Estate.
5. Defendant CITY OF KEY WEST is a Florida municipality in Monroe County.
6. At all material times, Defendants GABRIEL HUMBERTO GARRIDO, GUSTAVO ADOLFO MEDINA, KATHYANN WANCIAK, GARY LEE LOVETTE, MATTHEW JOHNSON, FRANCISCO ZAMORA THADDEUS CALVERT, DEREK WALLIS, NICHOLAS GALBO, JANETH CALVERT, PABLO RODRIGUEZ and TODD STEVENS were and are police officers employed by the City of Key West Police Department, and were acting within the course and scope of their employment and under the color of state law.
7. Plaintiff sues Defendants, GABRIEL HUMBERTO GARRIDO, GUSTAVO ADOLFO MEDINA, KATHYANN WANCIAK, GARY LEE LOVETTE, MATTHEW JOHNSON, FRANCISCO ZAMORA THADDEUS CALVERT, DEREK WALLIS, NICHOLAS GALBO, JANETH CALVERT, PABLO RODRIGUEZ and TODD STEVENS in their individual capacity and in their capacity as employees of the City of

Key West Police Department.

ALLEGATIONS AS TO ALL COUNTS

8. On November 27, 2013 CHARLES EIMERS was fulfilling his dream of spending a winter in beautiful Key West, Florida. At 61 years of age, CHARLES EIMERS had lived his entire life in Michigan, and after raising four children and nurturing grandchildren, working his entire adult life at General Motors, saving his money, and receiving a full pension and health benefits, had more than earned a few months' of relaxation in the comforting warmth and beauty of The Keys.
9. On November 28, 2013 – Thanksgiving Day morning – Defendants attempted to lawfully arrest 61 year-old CHARLES EIMERS while he was lying face-down on the sand on South Beach in Key West, purportedly for a number of traffic violations.
10. After stopping his car at South Beach, CHARLES EIMERS complied with Defendants' instructions in every way, including Defendant HENRY DELVALLE'S command, made with his service weapon drawn, for EIMERS to drop to his stomach on the sand and put his hands to his side to allow one of the Defendants to handcuff him.
11. Defendant GABRIEL HUMBERTO GARRIDO moved in and on CHARLES EIMERS to place handcuffs on MR. EIMERS' wrists. Officer GARRIDO pulled CHARLES EIMERS' left arm to his back and snapped the cuff on so tightly that GARRIDO's own finger accidentally got stuck in the cuff causing Officer GARRIDO to cry out in pain.
12. Defendants GUSTAVO ADOLFO MEDINA and KATHYANN WANCIAK moved in and on CHARLES EIMERS to assist Defendant GARRIDO in extricating his finger and securing MR. EIMERS' hands behind his back while forcing MR. EIMERS' face into the sand.

13. CHARLES EIMERS' wrists were chewed up, totally lacerated and bloodied from the ordeal.
14. While Officers GARRIDO, MEDINA and WANCIAK exerted their force on CHARLES EIMERS' back and head, Defendant GARY LEE LOVETTE stuck a Taser on MR. EIMERS' back or neck and screamed at MR. EIMERS.
15. Defendant WANCIAK heard one of her Defendant OFFICERS yell for a "hobble." (A hobble is a strap device that ties a suspect's legs together and links to the handcuffs, bending the suspect's legs backwards at the knees. *See, e.g., www.policehobble.com*.)
16. Officer WANCIAK quickly got up and ran to get her hobble. While returning, she saw Defendant MATTHEW JOHNSON and told JOHNSON that the officers holding MR. EIMERS in the sand wanted the hobble and she asked Officer JOHNSON to run her hobble over to the other officers.
17. Officer JOHNSON ran the hobble over to the other officers and placed it around MR. EIMERS' legs while other officers pinned MR. EIMERS' chest and face in the sand.
18. During this time, Defendant SGT. FRANCISCO ZAMORA had his knee pressed into MR. EIMERS' back and shoulder.
19. Defendant THADDEUS CALVERT grabbed MR. EIMERS' left foot and twisted it to prevent MR. EIMERS from turning his body, further pinning MR. EIMERS' chest and face in the sand.
20. Defendants' actions forced sand into CHARLES EIMERS' nostrils and mouth; in fact, sand caked CHARLES EIMERS' face.
21. According to certain witnesses on the scene, at least one of the Defendants (upon information and belief, Officer LOVETTE) actually used a Taser or stun gun on

CHARLES EIMERS.

22. Upon information and belief, the following Defendant officers were on the scene and may have participated in the use of excessive force on CHARLES EIMERS and failed to take reasonable steps to protect MR. EIMERS from the Defendant officers' use of excessive force and thus must be held liable for their respective nonfeasance: DEREK WALLIS; NICHOLAS GALBO; JANETH CALVERT; PABLO RODRIGUEZ; and TODD STEVENS.
23. A short time after the Defendant officers smothered MR. EIMERS by forcing his face into the sand, CHARLES EIMERS stopped breathing, turned blue and went limp. Only after they realized this did the Defendant officers remove the cuffs and hobble and request that a defibrillator be brought to the scene. It was to no avail as CHARLES EIMERS was never brought back to consciousness.
24. CHARLES EIMERS was transported to Lower Keys Memorial Hospital and put on life support.
25. CHARLES EIMERS was pronounced dead six days later when he was disconnected from a ventilator at the hospital. Plaintiff TREA VOR EIMERS related such fact to Defendant Officer TODD STEVENS.
26. Notwithstanding the horrible police actions and inactions giving rise to CHARLES EIMERS' "in custody" death, and notwithstanding the mandates set forth in *Fla. Stat.* §406.11 that the district medical examiner shall perform an investigation and autopsy when a person dies "in police custody," and *Fla. Stat.* §406.12 establishing a duty on persons who become aware of the death of any person occurring "in police custody" to report such to the district medical examiner, none of the Defendants, including Officer

TODD STEVENS, reported MR. EIMERS' death to the medical examiner.

27. On account of Defendants' singular or collective failure to comply with *Fla. Stat.* §406.12 by notifying the Monroe County Medical Examiner of the "in custody" death and hence the requirement to do an autopsy, CHARLES EIMERS' body was taken directly from the hospital to a local funeral home for cremation.

28. Defendants' failure to comply with *Fla. Stat.* §406.12 was part of Defendants' calculated plan to allow the destruction by cremation of key evidence of Defendants' excessive force, reckless conduct and bad faith, to wit: CHARLES EIMERS' body.

29. By sheer good fortune, the local funeral home had not yet cremated MR. EIMERS' body when, several days after receiving it, a public inquiry spurred action and attention into precisely who sent CHARLES EIMERS' deceased remains to the funeral home instead of the Monroe County Medical Examiner and why.

30. It is grossly apparent that the Defendants asphyxiated CHARLES EIMERS by forcing his face into the sand, causing him to inhale sand and thereby depriving him of life sustaining oxygen. As of the time of the drafting of this Complaint, a preliminary autopsy of CHARLES EIMERS was performed by Monroe County Medical Examiner E. Hunt Scheuerman, M.D., which report buttresses this conclusion: CHARLES EIMERS was in relative good cardiac health; the cerebral arteries were patent with only mild arteriosclerosis of less than 25 percent in the basilar artery, and no acute myocyte necrosis, inflammation or significant myofiber disarray found in the heart tissue. The anterior aspects of the right 2nd through 7th and left 2nd through 5th ribs were fractured, and these fractures are associated with a moderate degree of extravasated blood into the surrounding soft tissues. These are more and more severe rib fractures than would result

from resuscitative efforts; plainly some or all of the fractures are from the extreme forces the Defendant Officers placed on CHARLES EIMERS' torso as he lay face down in the sand. The neurons in CHARLES EIMERS' brain had turned red from lack of oxygen, and his trachea likewise showed abnormal reddening. The airways within the lungs exhibited linings of tan exudate. Exudate is a liquid produced by the body in response to tissue damage. In this instance, the damage was likely caused by beach sand CHARLES EIMERS inhaled.

31. As further indication of Defendants' plan and artifice, the first reports made by one or more of the officers at the scene were that CHARLES EIMERS exited his vehicle combative and resisting arrest.

32. Within days of the attempted arrest, a video was located showing that MR. EIMERS obeyed all instructions.

33. The video of Defendants' attempt to arrest CHARLES EIMERS evidences that Defendants, individually and together, used and/or permitted to be used excessive force which resulted in the death of CHARLES EIMERS.

34. The Fourth Amendment's prohibition against unreasonable seizures provides protection against the use of excessive force by law-enforcement officers during the course of a lawful arrest, investigatory stop, or 'other 'seizure' of a free citizen.'" See *Graham v. Connor*, 490 U.S. 386, 395 (1989); *Zwojnovich v. Barner*, 525 F.3d 1059, 1071-73 (11th Cir. 2008). "When properly stated, an excessive force claim presents a discrete constitutional violation relating to the manner in which an arrest was carried out, and is independent of whether law enforcement had the power to arrest." *Bashir v. Rockdale*

City, Ga., 445 F.3d 1323, 1332 (11th Cir. 2006).

35. The inquiry into whether any given use of force is “reasonable” under the Fourth Amendment is an objective one that requires a careful balancing of “the nature and quality of the intrusion” and the “countervailing governmental interests at stake.” *Graham*, 490 U.S. at 396-97 (citations and internal quotation marks omitted). Evaluating an excessive-force claim requires “careful attention to the facts and circumstances of each particular case,” including, among other things, the relationship between the need for force and the amount used and the extent of the injury inflicted. *Crenshaw v. Lister*, 556 F.3d 1283, 1290 (11th Cir. 2009) (citing *Hadley v. Gutierrez*, 526 F.3d 1324, 1329 (11th Cir. 2008)).
36. Furthermore, the Eleventh Circuit Court held in *Danley v. Allen*, 540 F.3d 1298, 1307 (11th Cir. 2008) *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), in pertinent part as follows:

Whether a [defendant’s] use of force is excessive, and thus violates the [arrestee’s] Fourteenth Amendment right to be free from cruel and unusual punishment, depends on whether the [defendant’s] act “shocks the conscience,” *Cockrell v. Sparks*, 510 F.3d 1307, 1311 (11th Cir.2007), and it necessarily will if the force “ ‘was applied ... maliciously and sadistically for the very purpose of causing harm.’ ” *Id.* (quoting *Whitley v. Albers*, 475 U.S. 312, 320–21, 106 S.Ct. 1078, 1085, 89 L.Ed.2d 251 (1986)).

When [officers] continue to use substantial force against [an arrestee] who has clearly stopped resisting-whether because he has decided to become compliant, he has been subdued, or he is otherwise incapacitated-that use of force is excessive. *See Bozeman*, 422 F.3d at 1272 (giving special weight to the fact that the jailers “continued [to] use ... force in a manner that was severe enough to render [the plaintiff], at the very least, unconscious after [he] had surrendered”); *Sritich*, 280 F.3d at 1303 (“[G]overnment officials may not use gratuitous force against a prisoner who has been already subdued or, as in this case, incapacitated.”); *see also Harris v. Chapman*, 97 F.3d 499, 505–06 (11th Cir.1996); *Davis v. Locke*, 936 F.2d 1208, 1212–13 (11th Cir.1991); *Williams v. Cash-C.O.I.*, 836 F.2d 1318, 1320 (11th Cir.1988); *Perry v. Thompson*, 786 F.2d 1093, 1093–95 (11th Cir.1986); *cf. Vinyard*, 311 F.3d at 1348. Once a[n arrestee] has stopped resisting there is no longer a need for force, so the use of force thereafter is disproportionate to the need.

37. The Eleventh Circuit held in *Storich v. Thomas*, 280 F.3d 1295, 1300–1301 (11th Cir. 2002):

Under the Eighth Amendment [and under the Fourteenth Amendment for non-prisoner arrestees like MR. EIMERS], force is deemed legitimate in a custodial setting as long as it is applied “in a good faith effort to maintain or restore discipline [and not] maliciously and sadistically to cause harm.” *Whitley v. Albers*, 475 U.S. 312, 320–21, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986) (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2nd Cir.1973)); *see also Hudson v. McMillian*, 503 U.S. 1, 8, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). To determine if an application of force was applied maliciously and sadistically to cause harm, a variety of factors are considered including: “the need for the application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response.” *Hudson*, at 7–8, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156; *see also Whitley*, 475 U.S. at 321, 106 S.Ct. 1078, 89 L.Ed.2d 251; *Harris v. Chapman*, 97 F.3d 499, 505 (11th Cir.1996). From consideration of such factors, “inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur.” *Whitley* 475 U.S. at 321, 106 S.Ct. 1078, 89 L.Ed.2d 251 (quoting *Johnson*, 481 F.2d at 1033).

38. The type of handcuffing procedure to which the Defendant Officers subjected MR. EIMERS, whereby the subject is lying on his belly while being handcuffed, is known as the “prone restraint.” The prone restraint method is well known to be a dangerous method of restraint even when implemented on a hard surface. The manner and location where the Defendant Officers implemented the “prone Restraint” of MR. EIMERS was extraordinarily and unreasonably dangerous.

39. As recently reported in a local publication:
- this method has become increasingly controversial since studies have found it has been responsible for numerous deaths from “positional asphyxiation.” A survey released in February 2010 by the Federal Department of Education found that several states have already banned state employees from using the prone restraint method in educational and mental health institutions while others have severely restricted its use. In

England after a series of highly controversial deaths, prone restraint was banned nationwide, even for police departments unless the suspect presents an immediate danger to himself or others. When prone restraint is necessary, the suspect's condition must be monitored constantly.

The police procedure in Kent, England was amended in June of this year adding a requirement that a safety officer “[monitor] the person’s position continually whilst being restrained, as death can occur suddenly and develop beyond the point of viable resuscitation within seconds rather than minutes.” In the U.S. certain states, like Colorado, have issued state-wide bans on the use of “prone restraint” for any non-emergency situation not involving an immediate threat of injury. There is an abundance of information as well as visual demonstrations on YouTube explaining the risk of asphyxiation associated with the method of restraint used on Eimers. One factor is particularly striking: Even the best demonstrations of the ‘prone restraint’ method, videos created by police officers for police officers, show the suspect on his belly on a mat or on a hard floor. But, what happens when the “suspect” has his head in the sand; when every movement brings more sand into the nose and mouth?

40. In killing CHARLES EIMERS, the Defendant Officers forced his head into the sand and every movement brought more sand into his nose and mouth.
41. To the extent that one or more of the Defendant Officers did not discharge a Taser or stun gun on EIMERS, careful attention to the facts and circumstances of this particular case, including, among other things, the relationship between the need for force and the amount used and the extent of the injury inflicted, leaves no doubt that the force used by the Defendant officers was excessive.
42. Specifically, the Defendant officers utilized the “prone restraint” to effectuate an arrest of an unarmed man for traffic violations, in deep sand, with multiple officers pressing down on EIMERS’ body to facilitate securing the handcuffs and the hobble, thereby greatly exacerbating the asphyxiation dynamic. The Defendant Officers killed CHARLES EIMERS in a horrifying way.
43. To the extent one or more of the Defendants indeed discharge a Taser or stun gun, the asphyxiation of CHARLES EIMERS takes on greater significance from an excessive

force standpoint and, again, leaves no doubt that the Defendants' force was excessive.

Significantly, the amount of time needed for fatal asphyxiation to occur is remarkably shorter when a Taser or stun gun is used than when a Taser or stun gun is not used.

44. Studies have shown that the body requires rapid and deep breathing after being Tased or stunned.

45. The Defendant Officers' unconstitutional excessive force implemented or executed a policy statement, ordinance, regulation, or decision officially adopted and promulgated by the Defendant CITY OF KEY WEST, or was visited pursuant to governmental "custom" even though such custom has not received formal approval through the City of Key West's official decision-making channels.

46. To the extent that the Defendant Officers' unconstitutional force was visited pursuant to such a "custom," this "custom" was a persistent and wide-spread practice, a permanent and well settled practice, and a deeply embedded traditional way of carrying out policy; it was created by those affiliated with the CITY OF KEY WEST whose edicts or acts may fairly be said to represent official policy; and it thus has become so settled and permanent as to have the force of law.

47. Regardless of whether the use of such excessive force was an officially promulgated policy or an unofficially adopted custom, it was the moving force behind the Defendant Officers' constitutional deprivation of MR. EIMERS' constitutional rights. Thus, the CITY OF KEY WEST not only established or tolerated the custom or policy, but there existed a causal link between the custom or policy and the Officers' deprivation of MR. EIMERS' constitutional rights.

48. This policy or custom of the Defendant CITY OF KEY WEST included adoption or

approval or tolerance of the “prone restraint” to which the Defendant Officer subjected MR. EIMERS.

49. As a proximate result of the Defendant Officers’ conduct, CHARLES EIMERS died, as indicated, and his Estate and each of his four surviving children have suffered and will continue to suffer damages as follows:

A. The Estate:

- a. Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value; and
- b. Medical and funeral expenses due to the decedent’s injury or death that have become a charge against her or his estate or that were paid by or on behalf of the decedent.

B. Each Survivor:

- a. The loss of support and services from the date of the decedent’s injury to his death, with interest, and future loss of support and services from the date of death and reduced to present value; and
- b. Lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury.

**COUNT I
CLAIM UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT CITY OF KEY WEST**

50. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
51. At all material times the Decedent CHARLES EIMERS was denied his clearly

established constitutional rights in violation of 42.U.S.C. 1983. In particular, MR. EIMERS' was, as indicated above, subjected to excessive use of force during his arrest on South Beach in Key West of the Defendant Police Officers acting in the course and scope of their employment and under color of state law, which excessive force was implemented or executed a policy statement, ordinance, regulation, or decision officially adopted and promulgated by the Defendant CITY OF KEY WEST, or was visited pursuant to governmental "custom" even though such custom has not received formal approval through the City of Key West's official decision-making channels.

52. The Defendant Officers' use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
- b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
- c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;
- d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's

Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and

e. Other facts as may become known during discovery.

53. Moreover, some of Defendant's Officers present at the scene of the arrest failed to take reasonable steps to protect CHARLES EIMERS from the other Officers' use of excessive force and as such subject the Defendant to liability for their non-feasance.

54. Defendant's Officers DEREK WALLIS, NICHOLAS GALBO, JANETH CALVERT, PABLO RODRIGUEZ and TODD STEVENS were in a position to intervene yet failed to so do or do anything to stop the excessive forces being exerted upon MR. EIMERS.

55. Defendant's Officers DEREK WALLIS, NICHOLAS GALBO, JANETH CALVERT, PABLO RODRIGUEZ and TODD STEVENS singularly or collectively could have stopped the excessive forces being exerted upon MR. EIMERS and prevented MR. EIMERS' death.

56. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against Defendant CITY OF KEY WEST under 42 U.S.C. § 1983 for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT II
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
GABRIEL HUMBERTO GARRIDO

57. Plaintiff reavers paragraphs 1-4 as if fully alleged herein.

58. The Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:
- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
 - b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
 - c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;
 - d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
 - e. Other facts as may become known during discovery.
59. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against Defendant GABRIEL HUMBERTO GARRIDO individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

**COUNT III
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT GABRIEL HUMBERTO GARRIDO**

60. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
61. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.
62. At all material times Defendant breached this duty of care in one, more or all of the following respects:
- a. Engaging in the prone restraint of MR. EIMERS on sand;
 - b. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
 - c. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.
63. The acts, events, or omissions of action which the Defendant GABRIEL HUMBERTO GARRIDO committed in the course and scope of his employment with the Key West

Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

64. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT IV
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
KATHYANN WANCIAK

65. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

66. The Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
- b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
- c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at

some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;

- d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
 - e. Other facts as may become known during discovery.

- 67. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant KATHYANN WANCIAK individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death, for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT V
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT KATHYANN WANCIAK

- 68. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
- 69. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.

70. At all material times Defendant breached this duty of care in one, more or all of the following respects:
- a. Engaging in the prone restraint of MR. EIMERS on sand;
 - b. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing; turned blue, lost consciousness and ultimately died; and/or
 - c. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.
71. The acts, events, or omissions of action which the Defendant KATHYANN WANCIAK committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.
72. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.
- WHEREFORE**, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT VI
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
GARY LEE LOVETTE

73. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

74. The Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;

b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;

c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;

d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and

e. Other facts as may become known during discovery.

75. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant GARY LEE LOVETTE individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

**COUNT VII
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT GARY LEE LOVETTE**

76. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
77. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.
78. At all material times Defendant breached this duty of care in one, more or all of the following respects:
- a. Engaging in the prone restraint of MR. EIMERS on sand;
 - b. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
 - c. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.
79. The acts, events, or omissions of action which the Defendant GARY LEE LOVETTE committed in the course and scope of his employment with the Key West Police

Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

80. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT VIII
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
MATTHEW JOHNSON

81. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

82. The Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
- b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
- c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at

some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;

- d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
- e. Other facts as may become known during discovery.

- 83. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant MATTHEW JOHNSON individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT IX
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT MATTHEW JOHNSON

- 84. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
- 85. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.
- 86. At all material times Defendant breached this duty of care in one, more or all of the following respects:

- d. Engaging in the prone restraint of MR. EIMERS on sand;
- a. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
- b. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.

87. The acts, events, or omissions of action which the Defendant MATTHEW JOHNSON committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

88. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above. **WHEREFORE**, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT X

**CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
FRANCISCO ZAMORA**

89. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

90. The Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:
- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
 - b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
 - c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;
 - d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
 - e. Other facts as may become known during discovery.

91. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant FRANCISCO ZAMORA individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death, for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

**COUNT XI
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT FRANCISCO ZAMORA**

92. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
93. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.
94. At all material times Defendant breached this duty of care in one, more or all of the following respects:
- c. Engaging in the prone restraint of MR. EIMERS on sand;
 - a. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
 - b. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.
95. The acts, events, or omissions of action which the Defendant FRANCISCO ZAMORA committed in the course and scope of his employment with the Key West Police

Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

96. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XII
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
THADDEUS CALVERT

97. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

98. The Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
- b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
- c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at

some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;

- d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
- e. Other facts as may become known during discovery.

99. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant THADDEUS CALVERT individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XIII
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT THADDEUS CALVERT

100. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

101. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.

102. At all material times Defendant breached this duty of care in one, more or all of the following respects:
- c. Engaging in the prone restraint of MR. EIMERS on sand;
 - a. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
 - b. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.
103. The acts, events, or omissions of action which the Defendant THADEUS CALVERT committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.
104. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.
- WHEREFORE**, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XIV
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
DEREK WALLIS

105. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

106. To the extent the Defendant participated in the use of force, the Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
- b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
- c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;
- d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
- e. Other facts as may become known during discovery.

107. Minimally, Defendant was present at the scene of the arrest and failed to take reasonable steps to protect CHARLES EIMERS from the other Officers' use of excessive force and as such Defendant is subject to liability for his non-feasance.
108. Defendant was in a position to intervene yet failed to so do or do anything to stop the excessive forces being exerted upon MR. EIMERS.
109. Defendant could have stopped the excessive forces being exerted upon MR. EIMERS and prevented MR. EIMERS' death.
110. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above. **WHEREFORE**, Plaintiff, demands judgment against the Defendant DEREK WALLIS individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XV
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT DEREK WALLIS

111. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
112. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.
113. At all material times Defendant breached this duty of care in one, more or all of the following respects:
- c. Engaging in the prone restraint of MR. EIMERS on sand;
 - a. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or

sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or

b. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.

114. The acts, events, or omissions of action which the Defendant DEREK WALLIS committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

115. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above. **WHEREFORE**, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XVI
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
NICHOLAS GALBO

116. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

117. To the extent the Defendant participated in the use of force, the Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
 - b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
 - c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;
 - d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
 - e. Other facts as may become known during discovery.
118. Minimally, Defendant was present at the scene of the arrest and failed to take reasonable steps to protect CHARLES EIMERS from the other Officers' use of excessive force and as such Defendant is subject to liability for his non-feasance.
119. Defendant was in a position to intervene yet failed to so do or do anything to stop the excessive forces being exerted upon MR. EIMERS.

120. Defendant could have stopped the excessive forces being exerted upon MR. EIMERS and prevented MR. EIMERS' death.

WHEREFORE, Plaintiff, demands judgment against the Defendant NICHOLAS GALBO individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XVII
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT NICHOLAS GALBO

121. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

122. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.

123. At all material times Defendant breached this duty of care in one, more or all of the following respects:

- a. Engaging in the prone restraint of MR. EIMERS on sand;
- b. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
- c. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.

124. The acts, events, or omissions of action which the Defendant NICHOLAS GALBO committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

125. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above. **WHEREFORE**, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XVIII
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
JANETH CALVERT

126. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

127. To the extent the Defendant participated in the use of force, the Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
- b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;

c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;

d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and

e. Other facts as may become known during discovery.

128. Minimally, Defendant was present at the scene of the arrest and failed to take reasonable steps to protect CHARLES EIMERS from the other Officers' use of excessive force and as such Defendant is subject to liability for his non-feasance.

129. Defendant was in a position to intervene yet failed to so do or do anything to stop the excessive forces being exerted upon MR. EIMERS.

130. Defendant could have stopped the excessive forces being exerted upon MR. EIMERS and prevented MR. EIMERS' death.

WHEREFORE, Plaintiff, demands judgment against the Defendant JANETH CALVERT individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XIX
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT JANETH CALVERT

131. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.
132. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.
133. At all material times Defendant breached this duty of care in one, more or all of the following respects:
 - c. Engaging in the prone restraint of MR. EIMERS on sand;
 - a. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
 - b. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.
134. The acts, events, or omissions of action which the Defendant JANETH CALVERT committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.
135. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XX
CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
PABLO RODRIGUEZ

136. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

137. To the extent the Defendant participated in the use of force, the Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:

a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;

b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;

c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;

d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to

turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and

e. Other facts as may become known during discovery.

138. Minimally, Defendant was present at the scene of the arrest and failed to take reasonable steps to protect CHARLES EIMERS from the other Officers' use of excessive force and as such Defendant is subject to liability for his non-feasance.

139. Defendant was in a position to intervene yet failed to so do or do anything to stop the excessive forces being exerted upon MR. EIMERS.

140. Defendant could have stopped the excessive forces being exerted upon MR. EIMERS and prevented MR. EIMERS' death.

WHEREFORE, Plaintiff, demands judgment against the Defendant PABLO RODRIGUEZ individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XXI
CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT PABLO RODRIGUEZ

141. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

142. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.

143. At all material times Defendant breached this duty of care in one, more or all of the following respects:

- a. Engaging in the prone restraint of MR. EIMERS on sand;
- b. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or
- c. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.

144. The acts, events, or omissions of action which the Defendant PABLOS RODRIGUEZ committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

145. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XXII

**CLAIM OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983 AGAINST DEFENDANT
TODD STEVENS**

146. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

147. To the extent the Defendant participated in the use of force, the Defendant's use of force was objectively unreasonable, extreme, disproportionate, gratuitous and/or applied maliciously and sadistically for the purpose of causing harm because, as previously alleged:
- a. 61 year old MR. EIMERS was unarmed and complied with the all instructions given to him by the police officers on the scene, including laying down on his stomach on the beach with his hands out to the side;
 - b. MR. EIMERS was handcuffed, hobbled, physically pinned by multiple officers, screamed at and intimidated, threatened with drawn fire arms and a Taser, and possibly Tased despite all of the above;
 - c. MR. EIMERS' was on the ground, bloodied and bleeding from his head and wrists, had his airway passages obstructed by sand and inhaled sand, had at some point from the sand or forces forcibly exerted upon his chest and head, stopped breathing, turned blue and then went limp;
 - d. MR. EIMERS' inability to expand his lungs and inhale oxygen normally due to several officers' body weight pressure on his back and chest, his body's Taser response and increased need for respiration and oxygen, his attempts to turn and free his blocked airways from the unforgiving sand which he was being forced to ingest and each would, as a matter of common sense, cause the human body to move and push against the limiting forces exerted upon it; and
 - e. Other facts as may become known during discovery.

148. Minimally, Defendant was present at the scene of the arrest and failed to take reasonable steps to protect CHARLES EIMERS from the other Officers' use of excessive force and as such Defendant is subject to liability for his non-feasance.

149. Defendant was in a position to intervene yet failed to so do or do anything to stop the excessive forces being exerted upon MR. EIMERS.

150. Defendant could have stopped the excessive forces being exerted upon MR. EIMERS and prevented MR. EIMERS' death.

WHEREFORE, Plaintiff, demands judgment against the Defendant TODD STEVENS individually under 42 U.S.C. § 1983 for violating CHARLES EIMERS' civil rights and causing CHARLES EIMERS' death for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

COUNT XXIII

**CLAIM OF WRONGFUL DEATH UNDER FLORIDA'S WRONGFUL DEATH ACT
AGAINST DEFENDANT TODD STEVENS**

151. Plaintiff reavers paragraphs 1-49 as if fully alleged herein.

152. At all material times Defendant had a duty to CHARLES EIMERS to exercise reasonable care in the manner, method and means of effecting his arrest.

153. At all material times Defendant breached this duty of care in one, more or all of the following respects:

d. Engaging in the prone restraint of MR. EIMERS on sand;

a. Participating in the pinning, cuffing, hobbling, and immobilizing of MR. EIMERS such that he could not fully expand his lungs, could not take in air or sufficient air into his lungs and could not inhale air without ingesting or inhaling sand; causing MR. EIMERS' airways to become blocked and become

blocked for such a length of time that he stopped breathing, turned blue, lost consciousness and ultimately died; and/or

b. Failing to act to stop other officers from using excessive force upon MR. EIMERS while he was prone and restrained on the sand.

154. The acts, events, or omissions of action which the Defendant TODD STEVENS committed in the course and scope of his employment with the Key West Police Department, as described above, were in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, proximately causing the death of Decedent.

155. As a direct and proximate result of the foregoing actions and inactions MR. EIMERS' died and his Estate and Survivors suffered the damages set forth in Paragraph 49, above.

WHEREFORE, Plaintiff, demands judgment against the Defendant under Florida's Wrongful Death Act for compensatory damages, punitive damages, attorney's fees and costs, and further demands trial by jury for all issues so triable.

Submitted this 11th day of April, 2014,

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