

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Civil Action No. 1:15-cv-00417 JB/LF

OLGA SALAZAR, Personal Representative
of the Estate of JESUS MARQUEZ and INDIVIDUALLY,

Plaintiffs,

v.

BOARD OF COUNTY COMMISSIONERS FOR SAN JUAN COUNTY, a/k/a
San Juan County and San Juan County Detention Center,
SAN JUAN REGIONAL MEDICAL CENTER,
THOMAS C. HAVEL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AS ADMINISTRATOR OF SJCDC,
DR. ERIC KETCHAM, INDIVIDUALLY,
CINDY KETCHAM, INDIVIDUALLY,
KATIE MOORE, RN, INDIVIDUALLY,
YVONNE VALLES, RN, INDIVIDUALLY,
RAMONA HOWARD, RN, INDIVIDUALLY,
COURTNEY NYMAN, LPN, INDIVIDUALLY,

Defendants.

FIRST AMENDED COMPLAINT

COME NOW the Plaintiffs, by and through their attorneys, and complain as follows:

I. INTRODUCTION

1. Jesus Marquez was an inmate at the San Juan County Detention Center who suffered injuries and death on March 3, 2015 as a result of the deliberate indifference of Defendants.

2. Mr. Marquez died of strep throat, a treatable infection, which was allowed to ravage his body until it shut down.

3. Mr. Marquez suffered for over 30 hours, struggling to breathe and begging to go to the Emergency Room. He was so ill that he was observed repeatedly in and out of consciousness.

4. As can be seen through many correctional officer incident reports, quoted in part below, involved correctional officers were sure something was seriously wrong with Mr. Marquez and they fought for medical staff's attention, insisting over their objections that an ambulance be called.

5. Tragically, it was too late.

6. Mr. Marquez finally succumbed to this egregious disregard of his medical crisis, coding just after the ambulance left the jail and was pronounced dead at the hospital.

II. JURISDICTION AND VENUE

7. This action arises under the Constitution and laws of the United States and is being brought pursuant 42 U.S.C. § 1983.

8. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331, 1343 and 1367. Jurisdiction supporting Plaintiffs' claim for attorneys' fees and costs is conferred by 42 U.S.C. § 1988.

9. Venue is proper in the District of New Mexico pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of New Mexico, and all of the parties were residents of the State at the time of the events giving rise to this litigation.

10. Supplemental pendent jurisdiction is based on 28 U.S.C. § 1367 because the violations of federal law alleged are substantial and the pendent causes of action derive from a common nucleus of operative facts.

11. Notice was given to the County under the Tort Claims Act.

III. PARTIES

12. At all times pertinent hereto, the decedent, Jesus Marquez was a citizen of the United States of America and a resident of San Juan County, New Mexico. He was the father to a young son named Omar Marquez.

13. At all times relevant hereto, Plaintiff Olga Salazar was a citizen of the United States of America and a resident of the State of New Mexico. Ms. Salazar is the mother of Mr. Marquez, and is suing individually and as personal representative of his estate.

14. Defendant San Juan Regional Medical Center (“SJPMC”) is a New Mexico corporation doing business in New Mexico pursuant to a contract with San Juan County to provide incarcerated inmates with in house medical care at the San Juan County Detention Center since February 17, 2014 to present. This Defendant’s principal place of business is 801 W. Maple Street, Farmington, New Mexico.

15. SJPMC is a proper entity to be sued under 42 U.S.C. § 1983 for its deliberately indifferent policies, practices, habits, customs, procedures, training and supervision of staff, including of individual nursing Defendants, with respect to the provision of medical care and treatment for inmates.

16. At all relevant times, SJPMC and its staff were acting under color of state law and performing a central function of the County.

17. SJPMC is also properly sued for negligence, as it is a private corporation and not entitled to immunity under the Torts Claims Act.

18. SJPMC is sued directly and vicariously for negligence, negligent supervision,

negligent training of their staff, for failing to ensure the provision of appropriate care in the treatment of Mr. Marquez, and for the acts and omissions of their agents and/or employees while acting within the scope and course of their employment.

19. At all times relevant hereto, Defendant Eric Ketcham, M.D. was a citizen of the United States and a resident of New Mexico. Dr. Ketcham was the medical director for the medical care provided at the jail, employed by SJRMC and acting under color of state law.

20. At all times relevant hereto Defendant Cindy Ketcham, R.N. was a citizen of the United States and a resident of New Mexico. Defendant Ketcham was the Health Services Administrator for SJRMC and the Director of Nursing for the jail's medical care, employed by SJRMC and acting under color of state law.

21. At all times relevant hereto, Defendant Katie Moore, R.N., was a citizen of the United States and a resident of New Mexico. Defendant Nurse Moore was an employee of SJRMC and acting under color of state law.

22. At all times relevant hereto, Defendant Yvonne Valles, R.N. was a citizen of the United States and a resident of New Mexico. Defendant Nurse Valles was an employee of SJRMC and acting under color of state law.

23. At all times relevant hereto, Defendant Ramona Howard, R.N. was a citizen of the United States and a resident of New Mexico. Defendant Nurse Howard was an employee of SJRMC and acting under color of state law.

24. At all times relevant hereto, Defendant Courtney Nyman, L.P.N., was a citizen of the United States and a resident of New Mexico. Defendant Nurse Nyman, was an employee of SJRMC and acting under color of state law.

25. Defendant Board of County Commissioners for San Juan County (“San Juan County”) is the public entity responsible for the San Juan County Detention Center (“SJCDC” or “the jail”) and a proper party to be sued under §1983. This Defendant is also known as, and has been identified thus far in the litigation as, San Juan County and San Juan County Detention Facility.

26. Defendant Thomas Havel is the Administrator of SJCDC and the proper individual to be sued under 42 U.S.C. § 1983 for customs, practices, policies and ratification of deliberate indifference and reckless disregard for inmates’ care. He is sued in his official capacity as the final decision maker responsible for the administration of the jail, and in his individual capacity for deliberately indifferent policies, practices, customs, habit and training.

27. Defendant San Juan County, San Juan County Detention Facility and Defendant Havel are collectively referred to as “San Juan County” or the “County Defendants.”

28. The County Defendants are properly sued under 42 U.S.C. § 1983 with respect to the hereinafter challenged deliberately indifferent policies and practices for the care and treatment of persons detained at the SJCDF, as well as for the policies and practices of SJRMC Defendants acting as the contractual final delegated decision makers.

29. San Juan County is liable under the non-delegable duty doctrine for the deliberately indifferent policies of SJRMC.

IV. STATEMENT OF FACTS

30. Jesus Marquez was a 35-year-old inmate at San Juan County Detention Center in 2015.

31. He had been previously treated for an infection in early February 2015.

32. At some prior to March 2015, Mr. Marquez developed strep throat.

33. This infection was untreated and as a result became very serious, developing into chest pain, trouble breathing, changes in level of consciousness and eventually death.

34. Mr. Marquez died on March 3, 2015 at 3:00 p.m.

35. The Office of the Medical Examiner determined that Mr. Marquez died of necrotizing tracheitis and bronchopneumonia, caused by untreated strep throat.

36. Dr. Ross Zumwalt, Chief Medical Investigator for the Office of the Medical Investigator found: “Mr. Marquez had evidence of a severe pharyngitis (ie: “Strep throat”, colloquially), which untreated exacerbated into pneumonia, and likely sepsis ... Severe infection and sepsis causes end organ failure, and ultimately death.”

37. Medical staff were made aware many times on March 2nd and March 3rd of the seriousness of Mr. Marquez’s condition, yet consciously chose to withhold known needed medical attention, refusing to transfer him to a higher level of acuity.

38. At some point on March 2, 2015, Mr. Marquez was seen by mental health services. His therapist referred him to medical for evaluation because he was having chest pains and she was concerned about him.

39. Also on March 2nd, Mr. Marquez called his mother, Olga Salazar, asking her to help him get medical care and telling her he was very sick.

40. As can be heard on the call, he was terrified and having serious trouble breathing.

41. Mr. Marquez described his intense pain, telling his mother that the nurses refused to take him seriously or do anything other than give him cold medicine and ibuprofen.

42. He begged his mother to call the nurses and get them to take him seriously.

43. An alarmed Ms. Salazar called the medical area, pleading with them to take her obviously very ill son who she told them was struggling to breathe to the Emergency Room.

44. A nurse named Courtney told Ms. Salazar that they couldn't talk to her without a medical release.

45. This nurse is believed to be Courtney Nyman based on record review, SJRMC's initial disclosures, and conferral with Counsel for SJRMC.

46. Ms. Salazar responded that she didn't need them to tell her any private health information about her son, but rather, she needed them to take seriously the critical information about his serious medical condition she was giving them, which they actually knew themselves.

47. Ms. Salazar heard Defendant Nyman and another nurse in the background laughing as they refused to talk to her.

48. They again told Ms. Salazar she would need a release, callously refusing to acknowledge the information she was giving them about her son.

49. In another phone conversation on March 2, 2015, Ms. Salazar told her son that she was working on getting a release to him so she could try to help him.

50. In this recorded call, Mr. Marquez, who can be heard having labored breathing, coughing, and clearly struggling to get adequate air, told his mother: "my chest hurts so bad;" "when I lay down it hurts worse," asking to go to the hospital, saying repeatedly "I can't breathe."

51. Mr. Marquez also told his mother that the nurses "don't do shit."

52. Shortly before he got off the phone, he said: "I feel like I am going to die" and told his mother that he loved her.

53. That day (March 2nd), Mr. Marquez signed a release authorizing his mother to receive his medical information and asked them to fax it to her office.

54. Despite having a signed release and knowing of Ms. Salazar's desperate attempts to help her son, Defendant Nyman intentionally chose not to send the release.

55. No one communicated with Ms. Salazar again until notifying her that her son was dead a few hours after he died.

56. Also on March 2nd, Mr. Marquez sent an Inmate Health Service Request form stating: "I am real sick having bad cough which also my chest hurts real bad and having trouble breathing."

57. At 14:00 on March 2nd, Mr. Marquez was seen in response to this Request by a member of the nursing staff, whose signature is illegible, but may be Courtney Nyman, LPN. She notes that he has a cough, chest pain, and that nursing will perform an assessment on a form called a Problem Oriented Record.

58. At 14:29, the Correctional Officers' log states that Mr. Marquez was "complaining about chest pain & fucking dizzy like he's going to pass out. Medical was informed & they said Medical Mona and Medical Courtney both said they each saw him & said he has to wait to be seen later, his medical kite is in Medical Office & he's just going to have to wait."

59. At around 15:00 on March 2nd, Mr. Marquez was seen by Ramona Howard, RN for a "sore throat."

60. Nurse Howard completed a Problem Oriented Record for Mr. Marquez, charting that he had a sore throat, a cough, an earache, fever and chills, muscle pain, and what appears to be redness in his throat. She noted that he was wearing four shirts.

61. At this visit, Nurse Howard gave Mr. Marquez a Rapid Strep Test, which was positive.

62. It is well known and obvious to lay people, as well as registered nurses, that strep throat is a serious bacterial infection requiring antibiotics.

63. Despite this positive strep test and accompanying serious symptoms, Nurse Howard consciously disregarded the known and obvious risk of harm and refused to secure treatment or call a doctor.

64. Instead, Nurse Howard recklessly followed the standing orders on the Problem Oriented Record for mere non-bacterial colds, giving him cold medicine, salt-water gargles, and Tylenol, all unrelated interventions that don't require doctor approval.

65. She also uselessly recommended that Mr. Marquez wash his hands frequently and wear fewer shirts.

66. In engaging in the deliberate indifference and negligence complained of herein, Defendants were also consciously aware of Jesus Marquez's diabetic condition, which made him more susceptible to serious problems from untreated infection. Further, Defendants had a history of recklessly mismanaging and acting with deliberate indifference with respect to Mr. Marquez's diabetic needs.

67. In engaging in the deliberate indifference and negligence complained of herein, Defendants were also consciously aware that Mr. Marquez had recently been treated for an infection.

68. At 16:08, Mr. Marquez was prescribed ibuprofen by Nurse Practitioner Ann Palmer, again not a treatment for bacterial Strep infection known to be causing emergent symptoms.

69. At 16:45, correctional officers note that Mr. Marquez was asking to see medical again, expressing pain.

70. According to correctional officers' logs, "Medical Courtney" saw Mr. Marquez.

71. LPN Nyman told him to rest and that "he has already been given medications for his complaints." Nurse Nyman decided to not even bother making a nursing note about this contact or his complaints.

72. According to correctional officers' logs, at 19:15, "Medical Yvonne" came to see Mr. Marquez, gave him "some more cold medication," and told him to relax and rest.

73. Later on the 2nd, Mr. Marquez completed another Inmate Health Service Request Form, this time pleading, "my chest hurts really really bad."

74. Yvonne Valles, RN saw Mr. Marquez in response to this request at 19:25. Presumably this is the same visit as was logged by correctional officers at 19:15.

75. Nurse Valles charted that Mr. Marquez was "clutching chest," had a cough, and that he groans when he coughs.

76. She charted on the 2nd that Mr. Marquez told her that "he needs to go to the E.R. 'right fucking now.'"

77. She also charted him saying “I am fucking sick,” and “I have never been this sick before.”

78. Nurse Valles also falsely charted that he was negative for strep throat, despite his known recent positive strep throat test.

79. Despite these serious complaints, a known positive strep throat test, and multiple attempts from correction officers to secure effective medical intervention, Nurse Valles again gave him only ibuprofen, completely failing to advocate for his urgent transfer for medical care or the provision of antibiotics.

80. Correctional officers made a log entry at 21:00 on March 2nd, reporting that Mr. Marquez is stating that he is “having a heart attack.”

81. Also at 21:00, Nurse Valles saw Mr. Marquez again because, as she recorded it, a correctional officer contacted her and reported that “IM is c/o severe chest pain + SOB [shortness of breath]. IM able to speak in full sentences. Begging to go to ER. Unable to auscultate breath sounds due to pain.”

82. Despite these very serious complaints and known obvious risk to Mr. Marquez’s health and well being, these involved nurses refuse to call a doctor or make a plan for emergency care.

83. Mr. Marquez was sent back to his cell.

84. At 21:17 on March 2nd, correctional officers report that, according to Nurse Valles, there “is no medical reason to send him to the hospital.”

85. On March 3rd at 3:51 a.m., Officer W. Jackson found Mr. Marquez rubbing his chest, still saying “I can’t breathe.” He noticed that Mr. Marquez’s voice was slurred and hard to understand. He issued a Medical Response.

86. A Medical Response is an emergency procedure correctional officers can use which causes medical personnel to respond to the inmate at his location, rather than in the Medical Unit.

87. According to various officer reports, these Medical Responses are filmed.

88. Mr. Marquez was seen in response to the Medical Response between 3:51 and 4:30 am on the morning of March 3, 2015.

89. Nurse Valles charted that she was called to the cell because Mr. Marquez was complaining of difficulty breathing.

90. According to Nurse Valles’s notes, when she arrived he would not “answer to verbal stimuli.” She had to use “noxious stimuli” to “arouse” Mr. Marquez.

91. Noxious stimuli are used in a neurological assessment when a patient is not responding to verbal stimuli to assess whether they are arousal.

92. Nurses are all trained and aware that not being arousal without noxious stimuli is a serious sign of a medical emergency, the evaluation and treatment plan for which is outside the scope of practice for nurses, requiring emergency treatment.

93. This decrease in consciousness is an obvious sign of medical emergency, even to lay people, as evidenced by the numerous correctional officers’ futile attempts to get medical to help their patient.

94. In response to the noxious stimulus, Mr. Marquez opened his eyes, reported trouble breathing and inability to take a deep breath because of pain.

95. Nothing was done in response to these serious complaints.

96. Again, Nurse Valles did not call an ambulance or even a doctor to assess why his level of consciousness had decreased to the point of having to be aroused through noxious stimulus.

97. He was given insulin because he had a very high blood sugar of 437 and given ice chips.

98. A high blood sugar reading can be a sign of infection in a diabetic person.

99. According to correctional officers, Mr. Marquez was told he could have ice to eat, but that he was “maxed out on meds.”

100. Nurse Valles obviously understood the urgent seriousness of this medical emergency as she looked in on him at 5:00 am and 5:30 am on March 3, 2015, charting that she can still see that his chest is rising and falling.

101. Essentially, she was looking in on him to see if he was dead.

102. At 9:10 a.m. on March 3rd, Mr. Marquez is seen by a nurse, believed to be LPN Carlene O’Hara.

103. According to Officer Lansing’s Incident Report, Mr. Marquez seemed ill so she brought the Med Pass nurse in to look at him. He was slurring his words and was not understandable.

104. Nurse O'Hara notes that Mr. Marquez had a respiratory rate of 24 and slightly labored breathing. She notes that his skin was pale, his heart rate was irregular, and that he was moaning.

105. Nurse O'Hara stopped her medication pass and talked to the 'charge nurse' [Defendant Moore], who instructed her to bring medical for evaluation. The correctional officers brought him for evaluation by wheelchair.

106. Officer Lansing "yelled for Bougeant to help Officer Arviso and [her] lift Marquez into the wheelchair."

107. At 9:30 a.m. on March 3rd, Defendant Nurse Moore charted that she was notified by LPN Carly of concerns over Mr. Marquez's condition, which prompted him to be brought to the procedure hallway by wheelchair.

108. Defendant Nurse Moore assessed Mr. Marquez.

109. Officer Brandon Crockett and Officer Robert Arviso were present during this assessment.

110. Defendant Nurse Moore charted that Mr. Marquez was "slightly pale on first observation."

111. Officer Crockett observed that Mr. Marquez's "lips and eyelids (as his eyes were closed) were light blue in color."

112. She noted that Mr. Marquez's speech was "garbled" and "mumbling" and that she was "unable to make out any reply beyond 'my breathing.'"

113. Officer Crockett also observed that Mr. Marquez was "very lethargic and unable to communicate verbally."

114. Defendant Nurse Moore took Mr. Marquez's vitals.

115. According to Officer Crockett's Incident Report, he observed that Mr. Marquez's vitals included a low oxygen level of 75 and a high pulse rate of 125, however, during this same assessment, Defendant Nurse Moore charted that Mr. Marquez's oxygen level was 96% and he had a pulse rate of 116.

116. Defendant Nurse Moore changed Mr. Marquez's abnormal and much worse readings which needed evaluation and diagnosis by a doctor to much more normal numbers.

117. Officer Crockett also reported that Defendant Nurse Moore tried several times, seven that he counted, to get a blood pressure reading, before she falsely announced that it was 130/90.

118. Defendant Nurse Moore actually admitted her conscious shocking deliberate indifference to Mr. Marquez's serious medical needs by revealing her reckless improper diagnosis that he was faking his illness.

119. Thus, according to Officer Crockett's Incident Report, she actually said to Officer Crockett during this interaction things like "[h]e's acting, he is a good actor."

120. Throughout her own nursing notes, Defendant Moore frequently implies that Mr. Marquez is faking his illness.

121. For example, in charting that Mr. Marquez stated that he couldn't breathe, she skeptically charted that Mr. Marquez was not grabbing his chest or giving other indication of pain.

122. Defendant Nurse Moore also charted that Mr. Marquez is “*displaying* decreased LOC [level of consciousness] by slouching posture, hanging head, closed eyes, *reluctant* responses to verbal stimuli.” [Emphasis supplied.]

123. Nurse Moore again used noxious stimulus in the form of ammonia salts to arouse this very sick Mr. Marquez, to which she noted that he “became very alert, pushed this RN’s hands away, and covered his mouth [and] nose [with] his hands saying, ‘No.’”

124. When Defendant Nurse Moore used the ammonia inhalant on Mr. Moore, Officer Crockett observed: “Inmate Marquez then attempted to move the inhalant away from his face with his hand, however there was not any strength behind this movement.”

125. According to Officer Crockett, Defendant Moore then stated: “That’s what I want, that was a positive purposeful reaction.” Nurse Moore further stated: “inmate Marquez was stable and could go back, there was not [sic] medical reason for her to keep him there.”

126. Rather than calling a doctor or ambulance, she practiced outside her nursing scope and recklessly diagnosed him with faking his illness, telling correctional officers that he could return to his cell and go to Court.

127. When Officer Crockett suggested that Officer Juan Marquez (the transporting officer) “utilize the wheelchair to assist in transporting inmate Marquez to the sally port, due to him not being able to walk,” Defendant Nurse Moore “interrupted stating ‘[t]here is no medical reason for him to have a wheelchair, he could walk.’”

128. Officer Marquez determined that this seriously ill inmate needed a wheelchair, regardless of Defendant Nurse Moore’s callous instruction that everyone should continue to refuse to help her dying patient.

129. Officer Arviso and Officer Crockett then decided to detailedly document what they were witnessing from medical staff.

130. Officer Crockett told Defendant Nurse Moore that he was very familiar with Mr. Marquez and that he was “very concerned because he was not acting normal.”

131. He further “expressed to her that [he] felt like he should be sent to the ER.”

132. Defendant Nurse Moore responded, “once again that inmate Marquez was stable, and there was no medical reason for him to go to the ER.”

133. Defendant Nurse Moore told Officer T. Lansing that Marquez was “fine and that he just needed to try and drink lots of water due to believing he was dehydrated.”

134. On March 3rd at 10:00 a.m., while Mr. Marquez was being transported to the van for Court, Defendant Nurse Moore informed Defendant Dr. Ketcham of Mr. Marquez’s condition.

135. According to her nursing notes, Defendant Nurse Moore told Dr. Ketcham of Mr. Marquez’s “hx [history] of status over past 12 hours” and sent him the EKG taken the night before.

136. Mr. Marquez’s history included a positive strep test, passing out and twice having to be aroused by noxious stimuli, repeatedly stating and demonstrating he couldn’t properly breathe, being unable to walk, having abnormal vitals, was incoherent, begging to go to the E.R. and all of the other above alleged serious symptoms, but Dr. Ketcham recklessly and with deliberate indifference did not act on such information, instead ordering Defendant Nurse Moore to repeat vital signs and assessment after court.

137. To the extent that Defendant Nurse Moore didn't relay all of this critical information about Mr. Marquez's worsening condition and medical crisis to Dr. Ketcham, it was yet another false reporting and outrageous and egregious abandonment of Mr. Marquez by Nurse Moore in this medical crisis.

138. Officer Marquez also completed a report about his observations.

139. According to Officer Marquez's report, when he arrived at 09:52 to take Mr. Marquez to Court:

Medical Mona and Katie were checking his vitals. Medical Katie said that he was able to go to Court. I then brought Inmate Marquez out in a wheelchair because the inmate couldn't walk. I got Inmate Marquez to transport and secured him with restraints. Officer Gonzalez helped me help Inmate Marquez into the transport Unit, after Inmate was in transport unit Inmate Marquez was being incoherent and [illegible] Officer Gonzales went into booking to have Inmate Marquez Sugar level check out. Medical Katie came out and check his sugar level and Medical Katie state that it was at 97 and he was ok. I then called Gina [illegible] and told her that Inmate Marquez was not going to be able to go so myself and Officer Castillo got Inmate Marquez back into the wheelchair and took him back to Medical Cell #5 ... Officer Arviso then helped me get Inmate Marquez out of the wheelchair and into his bed.

140. Mr. Marquez was so weak that when officers tried to get him in the van to go to Court, he "could hardly crawl into the transport truck" and fell between the seats.

141. Officers took his restraints off and dragged him out of the van.

142. After being called to the transport van to see Mr. Marquez again, Defendant Nurse Moore charted that correctional officers were stating that: "Jesus is acting nutty."

143. Despite officers describing Mr. Marquez as "incoherent" and "unable to walk", Defendant Nurse Moore continued to treat Mr. Marquez as though he were faking.

144. She intentionally continued to under-chart his condition, further revealing her reckless ongoing faking diagnosis.

145. Thus, she charted that he was: “alert and responding to commands, though continues *appearance* of lethargy by slumping shoulders dragging feet, *yet* able to spontaneously take off outer orange shirt without prompting or assistance. *Able to promptly put shirt back on* when advised by officer to do so.” [Emphases supplied.]

146. Defendant Nurse Moore sent him back to his cell.

147. Around 11:00 am, Officer T. Lansing, as stated in her Incident Report, observed that Mr. Marquez was slurring and incomprehensible and was rubbing his chest area. He was “extremely pale, his eye lids and all around his eyes were a dark grey/blue color and his lip area was the same color, his whole body was pale and I was very worried.”

148. Officer T. Lansing told Defendant Nurse Moore that she was concerned about Mr. Marquez because he “didn’t look well and he says that his chest really hurts.”

149. She also told Defendant Nurse Moore “that Marquez said something is wrong with him but I can’t understand what he is saying because he keeps slurring.”

150. Defendant Nurse Moore continued her egregious and reckless disregard of these known serious medical signs, stating “oh! He’s fine. We will check on him every 30 minutes,” and closed the office door on Officer Lansing.

151. Officer Lansing “was bothered by her attitude and response to me when I was very worried about Marquez’s health.”

152. For the next hour, Officer Lansing waited for someone to check on Marquez but all she saw was a med pass nurse peek in his cell “for no more than two seconds and turn right back around.”

153. At some point around these medical contacts, Officer R. Ham reports that he was told by “medical Carlie” something to the effect of “Marquez is faking it so he don’t have to go to court.”

154. At around noon on March 3, 2015, Officer Marable, Officer Bougeant, and Officer Fonseca entered Mr. Marquez’s cell.

155. Officer Lansing, who was already in the area with Mr. Marquez, reported that by noon Mr. Marquez was looking worse, he “was paler than earlier and his lips and eyes were getting greyer ... There was clearly something no [sic] ok with Marquez.”

156. As soon as Officer Marable entered the cell, she also “quickly noticed Marquez was in a very abnormal state.”

157. As Officer Marable reported: Mr. Marquez “was very pale and grey in color; his skin was cold and clammy. He was drooling with gray/pale lips and the color of his tongue was a grey-ish white color, there was dark coloring around his eyes and eye lids.”

158. Officer Lansing stated that “I have notified medical all day multiple times and they don’t seem to be checking on him thoroughly.”

159. According to Officer Lansing, medical staff repeatedly responded that they would come in thirty minutes, but thirty minutes came and went many times without intervention.

160. As recorded in their Incident Reports, Officer Marable exclaimed to the other officers: “No! This is bullshit and something is wrong. Call a medical response then they have to show up!!”

161. The Officers called a Medical Response to force medical staff to attend to Mr. Marquez.

162. Thus, Officer R. Ham reported at this point, there “was clearly something not ok with Marquez ... [w]e all then decided to call a Medical Response at 1216 to ‘make’ medical come check on Marquez.”

163. At 12:30 p.m. on March 3, 2015, Defendant Nurse Moore assessed Mr. Marquez in response to the correctional officers forcing her hand.

164. Defendant Nurse Moore actually appeared irritated to be emergently called by correctional officers to help Mr. Marquez.

165. Officer Ham reported that when Defendant Nurse Moore responded to the Medical Response, she “rolled her eyes.”

166. Officer Marable observed that Mr. Marquez was “in a serious state of discomfort and seem [sic] to be getting worse.”

167. She heard him keep saying: ‘I can’t breathe!’” during the assessment by Defendant Nurse Moore.

168. Officer Ham observed that Mr. Marquez was “white as a ghost and his lips and tongue were gray and I could not understand him clearly. He was complaining he couldn’t breathe.”

169. As Officer R. Ham reported, “Medical Katie, Medical Andrea and Medical Carlie” were “ignoring the fact that Marquez kept saying he can’t breathe and his chest was hurting.”

170. Defendant Nurse Moore told these desperate officers that Mr. Marquez just needed some water, however, Mr. Marquez was unable to even find his mouth with a cup.

171. Mr. Marquez was so out of control from raging illness and being near death that while Nurse Moore was with him, Officers had to: “continuously keep control of him from falling back and hitting his head or falling forward off of the boat. He kept trying to lie down then sit up over and over again. He was in and out of it and couldn’t put his cup of water to his mouth in order to take a drink.”

172. Defendant Moore falsely charted that he is “alert and able to answer questions”.

173. Officer Marable heard a nurse informing Nurse Moore that Mr. Marquez’s blood pressure was 60/40, which is dangerously low.

174. Defendant Nurse Moore stated that she wanted to take the blood pressure herself.

175. Officer Ham similarly to Officer Marable heard a very low number for Mr. Marquez’s blood pressure.

176. Officer Ham and Officer Marable observed that Defendant Nurse Moore: “had inmate Marquez cough, which he could not do until ammonia was put under nose then barely, because she could not get a reading on oximeter. When he coughed it went to 81 and then went blank again. Katie said he was stable.”

177. Defendant Nurse Moore again intentionally falsely charted that Mr. Marquez had only slightly declining vital signs, reporting he was complaining of difficulty breathing with O2 sats of 90-91%, blood pressure of 96/60, and pale skin.

178. She also again outrageously tried to use ammonia salts to arouse him.

179. Ammonia salts had by then been used at least three times on Mr. Marquez.

180. Using noxious stimuli over and over to try to prove Mr. Marquez was faking, and to prop him up enough to abandon him again in his cell instead of getting him obviously urgently required medical care so callous, reckless, and deliberately indifferent.

181. Defendant Moore continued to refuse to do anything to help this obviously dying man and would not send him to the hospital to save his life.

182. Correctional officers tried to save his life by insisting an ambulance be called.

183. Thus, Officer Marable reported: “Medical staff didn’t think his condition and state was enough to send him on transport to the ER. Sergeant Martinez over-ruled it and called for an ambulance so that Marquez could be taken to the Hospital. We all felt and knew something was wrong and serious. The medical response was cleared Medical (all of the medical staff) then retreated to their office.”

184. Even after being overruled by correctional staff that an ambulance was necessary, Defendant Moore reported in her notes that after being over-ruled by Sergeant Martinez she and Dr. Ketcham decided to send Mr. Marquez to the hospital only by non-emergent transport during his profound medical crisis in which his death had become an imminent danger.

185. She specifically and outrageously told dispatch that Mr. Marquez was “not emergent but not stable enough to go by squad car to the hospital.”

186. She also falsely and outrageously said to them that he was “awake,” “breathing normally,” “completely alert,” and that he had “no pain.”

187. Mr. Marquez next began bleeding from his mouth while officers waited with him for the transport.

188. Blood was actually observed dripping from him onto the floor.

189. According to officers, he was then fading in and out and “was trying to force his body to stay alert to his surroundings.”

190. Officer Marable reported: “Marquez slumped forward and lightly bumped his head on the wall then blood (quite a bit) starting coming out of his mouth. Leaving 3 big blood droplets on the cell room floor and a strain of blood from his mouth down his orange shirt. I immediately asked where the hell medical staff was and that they need to be present to monitor him and brief the medics for any other changes.”

191. Officers called Defendant Nurse Moore back again when he started bleeding from his mouth.

192. Officer Marable heard Mr. Marquez speaking in a garbled, slurred, faint voice saying “are they coming? Please hurry.”

193. Nurse Moore outrageously and depravedly told correctional officers she didn’t need to be there since it was “non-emergent.”

194. She also told officers that he probably just bit his tongue as the reason for why there was blood dripping from his mouth.

195. Finally Emergency Medical Services arrived. Mr. Marquez had to be dragged to the gurney.

196. It was too late, however, and he ‘coded’ minutes into the ambulance transport, *i.e.* his heart stopped.

197. Because Nurse Moore falsely reported to dispatch that Mr. Marquez’s condition was “non-emergent”, only Medic 7 responded instead of an Emergency Medical Services team.

Medic 7 then had to call dispatch and have another emergency ambulance sent, causing yet further urgent skilled treatment delay.

198. Meanwhile, Officer Lee started chest compressions to resuscitate until he could be relieved by the trained EMS team.

199. Medic 7 personnel reported that Nurse Katie told them that Mr. Marquez had been complaining of “generalized malaise for 38 hours” with a “recent change in mentation within past 4 hours.”

200. To provide cover for her and the co-defendants egregious aggravated derelictions, she told emergency workers that he was suspected of drug usage and that he had been refusing medications and water.

201. Upon autopsy, no drugs were found in his system because, as Defendant Moore knew, Mr. Marquez did not die from a drug overdose. .

202. Rather, he died from her and individual Defendants’ imposed death sentence and barbaric treatment of Mr. Marquez.

203. The complained of conduct is so shocking, it offends not only the Constitution – it offends basic human decency.

204. All resuscitation efforts were unsuccessful and Mr. Marquez was pronounced dead at 3:00 p.m. on March 3, 2015.

205. Jesus Marquez was much loved by his mother and son who along with his estate have suffered severe emotional harm and damages.

206. Jesus Marquez had a substantial work history for various employers as a pipeliner, laborer, performing on workover rigs and other jobs including at EESI in 2010 and Electrical Energy Services, Inc before that.

Allegations Relating to *Monell* Liability

207. It was well known by entity level Defendants prior to Mr. Marquez's death that there was a widespread pattern of deliberately indifferent medical care in the jail, which included: refusing to let inmates see higher level medical providers, even when obviously necessary to prevent serious injury or death; hiring and retaining unqualified staff; allowing and training nurses to practice outside their nursing scope; refusing to provide medications; refusing to transfer inmates or detainees to a higher level of acuity even where necessary to prevent serious injury or death, and; a widespread custom and tolerated practice and habit of treating all inmate or detainee illnesses as faked until an inmate/detainee can prove otherwise, often to save money on providers and testing.

208. Mr. Marquez's entirely preventable and inhumane death happened *after* Sheriff investigations revealed that two other inmates had recently died in the same jail after nurses and jail staff also treated their medical complaints as faked.

209. Sharon Jones died on January 5, 2015 and Billy Carter died on February 13, 2015, both after begging for medical help to no avail.

210. Mr. Carter and Ms. Jones were also openly treated as if they were faking, with nursing staff again telling jail staff that the complaints were faked and not serious and that they couldn't take all complaints, even potentially life threatening ones like these two who were begging to go to the hospital, seriously.

211. The Sheriff Investigation into Mr. Carter's death revealed that Mr. Carter had been complaining of deficient medical care for his serious medical needs.

212. Correctional Officer B. Crockett told Sheriff investigators that Nurse Ramona Howard had been "dealing with Mr. Carter all morning long. She said he was faking dizziness and he attempted to fall face first towards the bunk, when she grabbed his oranges to stop him. She said he did not need not be in medical, that there was nothing they could do for him."

213. Officer Crockett reported that when shown the stack of medical requests by Mr. Carter, Nurse Mona said "OH great!" He reported, "she just flipped through them quickly, saying she already addressed them and was not reading the requests or taking them seriously."

214. This same officer then stated to the Sheriff Office investigators into Carter's death: **"this is an ongoing issue with the medical staff at the jail, not taking medical requests seriously and talking about inmates faking their illness ... the medical staff appears bothered by the inmates, and their relentless requests."** [Emphases supplied].

215. Officer Crockett also told investigators that Mr. Carter "was not taken seriously when he was complaining about medical matters."

216. Nurse Ramona Howard told investigators that Mr. Carter, who died of an untreated Chronic Obstructive Pulmonary Disorder, "does not have a problem breathing."

217. Sheriff investigators into the January 2015 death of Sharon Jones revealed that Ms. Jones was likewise told she was pretending, and that she was unable to get meaningful medical attention, even as inmates in her pod tried to get medical staff to pay attention.

218. Multiple inmates reported to Sheriff's investigators that they pushed emergency call buttons repeatedly on the night she died to get her urgent medical care but no one responded

and they believed the call button had actually been turned off so the inmates couldn't call for help.

219. Even after these other two inmates died in the two months before Mr. Marquez's death, and even after officers reported in investigations into their deaths that nurses treat the inmates as if they are faking and ignore their complaints, this pattern and practice of egregious deliberate indifference continued unchecked, leading directly to the death of Mr. Marquez.

220. Similarly, throughout the living Plaintiffs in the *Berkey* matter, inmates were all told again and again that they were faking their serious injuries or illnesses, that they didn't need medical attention, and were also ultimately denied access to higher-level staff or transfer to the hospital.

221. Specifically, in the *Berkey* consolidated cases, and the testimony in the injunction hearing, inmate patients of SJRMC allege, *inter alia*, deliberately indifferent failures to respond or provide higher level assessment to serious medical complaints, and persistent and reckless disregard for inmate care, including their prescription medication needs. Thus:

- a. Marvin Veneno, a retired police officer, is a diabetic who had a heart attack in October 2015 after medical staff repeatedly denied him his known prescription medications. He had suffered a previous heart attack in 2014, for which he was prescribed about 13 pills daily for his heart condition. As he testified at the Injunction hearing, while in the jail in October 2015, medical staff knew but did not give him his necessary prescription medications, which included Lisinopril, Carvedilol, Liopitor, and Brillanta and insulin. He also did not receive his insulin or diabetic meals while he was in the jail despite repeated requests and telling staff that they were urgently needed for his heart condition. He "begged" for these medications. His son even brought his medicines to jail but they would not give them to Mr. Veneno. He testified he was just repeatedly "ignored." He developed major chest pain and reported that his chest was "really hurting." His arms and forearms "were turning black and blue." When he finally saw a nurse, they gave him a TB shot. He was "begging for his life." They made him work without medications, which made him feel "much worse." He got so dizzy he

fainted and fell and woke up in the hospital in a pool of blood. He had a “severe massive heart attack” that required “five stints in my right artery”;

- b. Joseph Gutierrez was not given his medications for his serious medical needs causing advancement of disease and significant suffering. Mr. Gutierrez also alleges that he needed oral surgery but the medical team refused to provide it or arrange for it despite many requests, resulting in his teeth falling out, ultimately requiring him to get dentures;
- c. Paul Matamoros was in the jail in the summer of 2015. He testified at the injunction hearing that he filed multiple health requests regarding medical issues with his penis, complaining orally and in writing to medical staff “that he had a problem down there.” The skin on his penis was coming off and he had pain and burning sensations. While the nurses promised to assess him, they would not even look at his penis for days, irrelevantly defending their deliberate indifference by saying they were females, despite his telling several nurses it was “getting serious.” When he was finally seen by a doctor at the jail on August 26th, the doctor actually asked him “how could you let this get this bad.” The doctor told him to fill out a kite and he would send him to the emergency room. His send out was delayed after that. At the hospital on August 28th, after his condition had gotten “dramatically worse from within them eight days”, going from a blister to the point where it was “starting to eat my flesh”, and he could “pretty much see my urethra”, he was given antibiotics and a cream. Mr. Matamoros was brought back to the jail where his condition worsened. Because his skin was not properly healing, he sought further care. Many days later, he spoke again with his doctor and Defendant Havel who stated he would be taken to a urologist for deformation and numbness and leaking urine out of his urethra. He repeatedly told medical staff in September that the skin under his penis was not healing correctly, begging to be seen. He made numerous oral complaints as well, mostly to DON and SJRMC HSA Ketcham, and is continuing to suffering from preventable sequelae of this extreme deliberate indifference including deformity and numbness in his penis;
- d. Jesse Ray Berkey alleges that he was denied seriously needed anti anxiety medications, causing extreme anxiety and a major seizure with physical injuries including broken teeth. He specifically informed medical staff that he felt he would have a seizure without receiving consistent medication and treatment. Medical staff then refused to treat his broken teeth for over 48 hours;
- e. Aaron Eaton alleges that he had an appendicitis, that he complained repeatedly to medical and jail staff of pain in the right side of his stomach which was ignored and that his mother had to come down to the jail and beg for medical attention twice before he was sent to the hospital and had surgery for appendicitis with perforation. This is alleged to have caused a more serious status of the

appendicitis, adhesions and infection, requiring more extensive surgery and risk of complications;

- f. Aurelio Marquez alleges that he had a known and serious ear infection that raged untreated, including a significant delay in obtaining appropriate treatment and, even when finally an order for antibiotics was made, he was not given them timely and usually only given 1 of 3 doses a day. His multiple kites were not taken seriously in a timely fashion. This led to a grave cellulitis infection and deformity and permanent hearing loss in one of his ears. Mr. Marquez also repeatedly sent inmate requests requesting to be seen by psych and given his anti anxiety meds, but it took over a month of requests to get medications causing increased anxiety;
- g. Calvin Finch's upper dentures were lost in a shake down raid of his cell and as a result he couldn't eat very much. His multiple kites were not taken seriously in a timely fashion. He lost weight and begged for new teeth through repeated inmate requests, yet it took over six months for him to receive a new pair of teeth;
- h. Rudy Martinez alleges that he got a terrible rash on his body and that was blown off resulting in significant delay in treatment, that nurses repeatedly downplayed the seriousness of the situation, and that he now has scarring and repeat outbreaks as a result;
- i. Mark Hinojos alleges that he had a broken thumb for which medical treatment was significantly delayed despite repeated requests finally requiring him to splint his thumb himself causing avoidable permanent deformity;
- j. Jason Trujillo alleges that he came into jail with a post surgical boot on his foot, which was taken away, causing him to have to sit in a wheelchair rather than be able to walk. He further alleges that he suffered major pain because his surgical wound was not properly taken care of despite repeated requests, that he was denied proper follow up, and that he was actually told when he requested to go to the hospital initially to "tough it out" because it "cost too much";
- k. David Page alleges that he had a fracture to his thumb, which was not timely treated, causing preventable infection and deformity as his requests for care were blown off. He also alleges that he made multiple requests for anxiety medications but was unable to obtain any medication or treatment for over a month;
- l. Gordon Douglas Derrick alleges ongoing significant problems of not giving him his medications despite repeated requests for medical intervention causing significant damaging side effects;

- m. Angelo Martinez alleges that he told repeatedly booking officers and caregivers that he had a condition that required him to have frequent water and his medication because of an inability to produce saliva and that he was cruelly and recklessly denied both for 24 hours until he was able to bond out;
- n. Like Mr. Carter, Adam Schuessler alleges that he was denied his inhalers or given them sporadically for his COPD causing significant difficulty breathing and distress;
- o. Steve Valerio was put in solitary confinement for refusing to take medication that turned out ultimately to be prescribed for a different inmate with a similar name.

222. That these and many other inmates have alleged that their serious medical needs were ignored and the risk to them consciously disregarded supports the claim that there is a pattern and practice of deliberate indifference to serious medical needs here causing serious injury and death.

223. Cindy Ketcham as the HSA and Director of Nurses for the jail medical unit was responsible for discipline and training of nurses in the jail and for ensuring adequate qualified staffing patterns with proper licensures.

224. Her ongoing toleration of the recklessly substandard and deliberately indifferent care through failing to provide obviously needed training on not dismissing patient complaints as faked, on not providing medical diagnoses outside nursing scope, on involving higher level providers when assessment findings are abnormal, and on responding appropriately to emergency symptoms was a proximate cause of the injuries complained of herein.

225. Her ongoing toleration of recklessly substandard staffing was deliberately indifferent.

226. This knowledge is all especially egregious against the backdrop of recklessly underfunding the medical services at the jail in such a way as to practically guarantee the unconstitutional treatment of the serious medical needs of inmates.

227. At all times relevant hereto, with deliberate indifference, the San Juan County Detention Center was knowingly underfunded and understaffed with unqualified health professionals by both the County Defendant and SJRMC.

228. Prior to these deaths from deliberate indifference, the former jail correctional care company, CHC, pulled out of its contract.

229. CHC, who has itself been repeatedly sued for providing inadequate including fatal deliberately indifferent care to inmates in jails, told the County that it would require at least 2.4 million dollars to continue and to be able to provide adequate health services to the jail's inmate population.

230. Preceding their termination notice on November 18, 2013, CHC, through Don Houston, advised San Juan County that it was willing to continue if a new contract could be negotiated "on mutually acceptable terms," however the only way the company could continue providing inmate medical care was to charge at least 2.4 million dollars.

231. Thus, to the conscious awareness of final County decision makers, including County Commissioners, Thomas C. Havel, and, around the same time, of the heads of San Juan Regional Medical Center including Chief Administrative Officer, Tom Dean, CHC pulled out of its contract because the County was so insufficiently funding medical care that the company did not believe it could safely serve the County's inmate health care needs.

232. Knowing that health care was underfunded, and without demanding a substantial increased in the contract budget, SJRMC determined to take over this program for around the same amount that CHC reported was insufficient, but which was all the Defendant County Defendants were willing to provide.

233. County related Defendants determined to hire SJRMC, as the “lowest bidder” to replace CHC, contracting for somewhere between \$1.3 to \$1.5 million at all times relevant hereto.

234. At all times relevant hereto, SJRMC was consciously aware that it was not able to provide sufficient services to inmates because of the low ball bid they submitted which was knowingly offered, approved, tolerated, ratified and acquiesced in by the County.

235. On information and belief, SJRMC kept many of the former CHC staff to run the jail.

236. SJRMC thus continued to operate this jail on this knowingly grossly substandard, underfunded, and deliberately indifferent basis from February 2014 to July 2015 when a new contract for much more money was negotiated.

237. Subsequent to the three deaths described herein, and the revelation of the existence of a routine and deliberately indifferent unconstitutional widespread habit, practice and custom, which had the force of an unwritten jail law to treat inmates as faking their illnesses and thereby avoid the costs of providing them with timely medical care to meet their serious medical needs by avoiding hospitalizations or even access to on call physicians or nurse practitioners, SJRMC and the County Defendant announced in June 2015 that the contract would almost double from the \$1.3 million dollar contract it had in fiscal year 2014.

238. SJRMC's Thomas Dean told county officials in 2015 that the vast majority of the increase was necessary because "CHC was using unqualified staff to perform services that New Mexico requires nurses to perform."

239. Thomas Dean further publicly stated, and further shockingly admitted in a letter he wrote in *January 2015* to County Chief Operations Officer Mike Stark that the Defendant "hospital discovered in *February 2014*" that the jail was using "uncertified medical assistants" and "emergency medical technicians" to "perform duties at the jail that, by state law, only nurses are qualified to perform." (Emphases supplied.)

240. Mr. Dean further stated that those personnel had to be replaced with "qualified staff".

241. On June 9, 2015, despite the foregoing actual knowledge of woefully insufficient budgeting, SJRMC asked the County Commissioners for the first time to approve "an increase of more than \$600,000 in its contract" so that, in its own words, it could begin "to hire qualified individuals, including a registered nurse to work nights at the jail."

242. Minutes for the San Juan County Regular Meeting of June 9, 2015 document that Defendant SJRMC asked for "an increase of \$2.1 million effective July 1, 2015."

243. This request was made "to ensure appropriate licensure for medical staff", additional call expenses for a Nurse Practitioner and to have a Registered Nurse at night.

244. At all times relevant hereto, SJRMC, the County, and Tom Havel were all consciously aware and deliberately indifferent to the fact that they were jointly allowing medical staff to unlawfully perform tasks they were not qualified to perform.

245. The County approved this request on or about June 9, 2015.

246. The County exerts pressure on contractors to save money. For example, County RFPs for its jail health care contractors including CHC and SJRMC expressly included requiring these contractors to describe how they will save the County money through “proposed staffing initiatives that would result in cost containment for the County. . .”

247. Thus, the contractual agreement between the County and SJRMC provides multiple financial and other disincentives to the timely provision of medical care to meet the serious medical needs of inmates, including decedent.

248. Section 1.7 of the contract between SJRMC and the County provides that on call doctor coverage is limited to \$25,000 dollars a year.

249. The Contract also expressly requires that nurses who transfer patients to the hospital shall have each and every such occurrence retrospectively assessed for appropriateness by the Medical Director and Director of Nursing as follows:

ON-CALL AVAILABILITY: Professional on-call coverage shall be provided by StatDoctors, an online provider contracted by the County. In the event that the County is unable to obtain services through Stat Doctors, SJRMC will provide on-call coverage with a physician assistant or other midlevel provider and will bill the County at actual cost, not to exceed Twenty-Five Thousand Dollars and No Cents (\$25,000) per year. San Juan County will contract directly with Stat Doctors. If the RN on duty assesses an inmate and determines the need for life-saving, emergency intervention in the local emergency room or urgent care center, the RN shall have the authority to have the inmate transported and contact the on-call physician afterwards to relay information. Each occurrence shall be assessed retrospectively by the Medical Director and Director of Nursing to determine the appropriateness of the assessment and to evaluate whether additional training may be indicated or other follow-up action necessary.

250. Nurses with the temerity to transfer a patient are subject to mandatory second guessing which puts out a clear system wide message that avoiding hospital care for inmates prevents reviews of nurse decision making on pain of being subjected to additional training or other follow-up action, thereby discouraging hospitalizations for serious medical needs, exactly

as occurred in this case to save the County money since the County must pay for all such hospitalizations.

251. The long standing culture of fakery described herein by numerous medical staff was also in full blown operation at all times relevant hereto, was also well known to top officials.

252. There is a pronounced tendency of medical professionals in correctional settings to be on the lookout and often overly suspicious that an inmate is faking a medical problem. This is fostered because of cost containment concerns as faked complaints are expensive.

253. Chronic deliberately indifferent understaffing like that at this jail is also well known to lead to worker burn out and increased levels of apathy toward patients, as it did here.

254. Entity Defendants dealt with this issue by knowingly and/or recklessly tolerating, and ratifying such understaffing and encouraging nurses to presume faking before calling a medical provider or hospitalizing, dismissing entirely those symptoms that are subjectively reported, or those that could be faked, as insufficient to even trigger a call to a provider, and to thereby save the County money which it was obviously loathe to spend despite actual notice of the need to do so.

255. The lack of qualified and sufficient staffing explains the kind of overwhelmed indifference described by the deputies in these cases as overworked nurses threw inmate kites in the air and rejected them as unworthy of consideration.

256. Instead Defendants' nurses adopted a reckless, deliberately indifferent wait and see approach for inmate after inmate without even obtaining meaningful evaluations by high level medical providers as were mandatory.

257. Financial and other motivations to keep costs down, for nurses to avoid being second guessed together with an equally deliberately indifferent widespread habit and custom of treating inmates as faking their symptoms, played a causal role in Defendants not providing timely health that would have prevented the deaths of Mr. Marquez, Ms. Jones and Mr. Carter.

258. In addition to the express policies in place, Defendants failed to adequately train and supervise their nursing staff, amounting to deliberate indifference to the serious medical needs of inmates presenting with medical crises like these.

259. Defendants also ratified the constitutional violations by individual Defendants by consciously deciding to not discipline, re-train or provide any meaningful response to address these utter unconstitutional failures in care.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of 42 U.S.C. § 1983

Deliberately Indifferent Medical Care

(Plaintiff Estate against All Individual Defendants)

260. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

261. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

262. Jesus Marquez was a citizen of the United States and Defendants to this claim are persons for the purposes of for purposes of 42 U.S.C. § 1983.

263. Mr. Marquez had a clearly established right under the Fourteenth or Eighth Amendment to be free from deliberate indifference and reckless disregard for known serious medical needs.

264. Mr. Marquez was a pre-trial detainee and thus protected from deliberate indifference to his known serious medical needs by the Fourteenth Amendment. To the extent he was under any conviction, he had a co-equal protection under the Eighth Amendment.

265. All individual Defendants to this claim, at all times relevant hereto, were acting under color of state law.

266. Individual Defendants as willful participants in a joint activity actually knew of Mr. Marquez's serious medical needs and deteriorating condition and nonetheless, with deliberate indifference, decided not to report the symptoms or provide him with obviously necessary urgent medical care. They did so despite being expressly aware of Plaintiff's known serious medical needs and recklessly disregarding a substantial risk of physical harm and death to Plaintiff.

267. Individual Defendants continued to act in bad faith and with deliberate indifference to Mr. Marquez's serious medical needs and constitutional rights when they willfully ignored his repeated requests for medical attention and intentionally denied and/or delayed his access to medical care.

268. Individual Defendants are not entitled to qualified immunity.

269. Each of the individual Defendants is liable to the Plaintiff for violation of 42 U.S.C. § 1983.

270. The acts or omissions of Defendants as described herein intentionally deprived Mr. Marquez of his constitutional rights and were moving forces and substantial significant contributing proximate causes of Mr. Marquez's death.

271. As a direct result of Defendants' unlawful conduct, Mr. Marquez suffered extreme physical and mental pain and suffering while he was in Defendants' custody for over 36 hours until his death.

272. These intentional actions and inactions of each individual Defendant as described herein intentionally deprived Mr. Marquez of due process and of rights, privileges and liberties secured by the Constitution of the United States of America causing him and his estate damages.

273. As a proximate result of Defendant's unlawful conduct, Plaintiff Estate has suffered injuries and losses, including the death of Mr. Marquez, entitling it to recover his compensatory and special damages, including for loss of constitutional rights, loss of enjoyment of life, and his herein described horrific and terrifying pain and suffering during and leading up to this fatal event, permanent lost earnings and earnings capacity for the expected productive working lifetime of Mr. Marquez under the mortality tables and other special damages, all in amounts to be proven at trial.

274. Plaintiffs are entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law.

275. In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against individual Defendants, in that the actions were taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

SECOND CLAIM FOR RELIEF
Violation of 42 U.S.C. § 1983
Deliberately Indifferent Policies
(Plaintiff Estate against County Defendants and SJRMC)

276. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

277. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

278. Mr. Marquez was a citizen of the United States and the Defendants to this claim are persons for the purposes of 42 U.S.C. §1983.

279. Mr. Marquez had a clearly established right under the Fourteenth or Eighth Amendment to be free from deliberate indifference to his known serious medical needs.

280. Mr. Marquez was a pre-trial detainee and thus protected from deliberate indifference to his known serious medical needs by the Fourteenth Amendment. To the extent he was under any conviction, he had a co-equal protection under the Eighth Amendment.

281. SJRMC, at all times relevant hereto, was acting under color of state law, as the functional equivalent of a municipality providing medical care to inmates.

282. County Defendants, at all times relevant hereto, were acting under the color of state law and had a non-delegable duty to provide constitutionally adequate medical care for inmates.

283. County Defendants are directly liable for their own policies that were moving forces in this constitutional injury under the contract between the County and the private Defendant, their own ongoing toleration and/or ratification of the widespread pattern and practice of deliberate indifference, and are non-delgably liable for the deliberately indifferent failures in training and supervising of medical care providers in the jail.

284. Defendants are sued herein for their deliberately indifferent policies, practices, habits, customs and widespread usages as described with particularity above with respect to the serious medical needs of inmates like Mr. Marquez and their deliberately indifferent failures in training and supervising its employees, including individual Defendants.

285. The contract between these Defendants constitutes a policy action for § 1983 analysis as it reflects a written understanding for a fixed plan to provide medical care for all inmates at the jail.

286. The policy decision to grossly underfund medical care in the jail despite actual knowledge that such underfunding deprived inmates of adequate qualified medical staff violates the County's constitutional obligation to provide medical care under the Eighth Amendment and was a moving force in the deliberate indifference complained of herein.

287. Defendants' hereto deliberately indifferent failures to train, supervise, or create coherent relevant policies, are all actionable policy decisions and moving forces and substantial significantly contributing proximate causes of the violation of Mr. Marquez's constitutional rights.

288. It was well known by Defendants prior to Mr. Marquez's death that there was a widespread pattern of deliberately indifferent medical care in the jail, which included: refusing to

let inmates see higher level medical providers, even when obviously necessary to prevent serious injury or death; hiring and retaining unqualified staff; allowing and training nurses to practice outside their nursing scope; refusing to provide medications; refusing to transfer inmates or detainees to a higher level of acuity even where necessary to prevent serious injury or death, and; a widespread custom and tolerated practice and habit of treating all inmate or detainee illnesses as faked until an inmate/detainee can prove otherwise, often to save money on providers and testing.

289. Defendants hereto were on actual notice that their deliberately indifferent policies, which include the deliberately indifferent failures to train and supervise, would result and had resulted in a pattern of not providing desperately needed care to inmates with serious medical needs causing injury and death.

290. The failures in training and supervision were so obvious that the failure to provide the same was deliberately indifferent to the rights of the relevant public and a moving force in the complained of injuries.

291. Defendants, through policy makers and final delegated decision-makers, ratified the employees and subordinates unconstitutional conduct by approving their decisions and the basis for them, including ongoing toleration of the known widespread culture of treating inmates as faking to save money and decision to not sufficiently fund jail medical care or provide staffing by qualified personnel.

292. Defendants were willful participants in a joint activity.

293. These Defendants knew that potentially serious or fatal consequences could be suffered by such individuals (including Mr. Marquez) by their challenged policies and practices

and by their failures to properly train and supervise medical care and/or develop adequate policies.

294. Defendants' actions were moving forces in individual Defendants' and other staffs' repeated decisions to deny and delay treatment and hospitalization of Mr. Marquez during a medical crisis.

295. As a proximate result of Defendant's unlawful conduct, Plaintiff Estate has suffered injuries and losses, including the death of Mr. Marquez and his horrific and terrifying experience in the events leading up to and during his death, entitling it to recover his compensatory and special damages, including loss of constitutional rights, loss of enjoyment of life, pain and suffering during this event, permanent lost earnings and earnings capacity for the expected productive working lifetime of Mr. Marquez under the mortality tables and other special damages, all in amounts to be proven at trial.

296. Plaintiffs are entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law.

297. Plaintiffs are entitled to punitive damages against the private entity Defendant SJRMC, in that its actions were taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

THIRD CLAIM FOR RELIEF
Violation of 42 U.S.C. § 1983
Fourteenth Amendment Due Process Right to Familial Association
(Plaintiff Olga Salazar against Courtney Nyman)

298. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

299. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

300. Plaintiff is a citizen of the United States and the Defendant is a person for purposes of 42 U.S.C. § 1983.

301. Plaintiff had a clearly established right under the Fourteenth Amendment to familial association.

302. Defendant, at all times relevant hereto, was acting under the color of state law.

303. Defendant hereto is sued herein for her deliberately indifferent actions with respect to the rights of Ms. Salazar to her intimate family relationship.

304. Plaintiff tried desperately to give emergency medical information to Courtney Nyman to save her son, and was not allowed to even give that information.

305. Mr. Marquez executed a release so that nurses would communicate and update Ms. Salazar with respect to his condition, but Defendant intentionally refused to send her that release or act on their expressed wishes to involve her in his medical care.

306. Other medical staff may have been involved in refusing to provide this release to Ms. Salazar.

307. Instead, she was laughed at and ignored while her son died.

308. Plaintiff was not even contacted until hours after her son died, preventing her from further knowing about her son's condition, acting, and advocating on his behalf.

309. As a result of Defendant's deliberate indifference, Plaintiff Salazar was intentionally and specifically denied her right of continuing intimate family association and to

participate in securing care for that family member in an emergency and to advocate and act on his behalf while he was in a medical crisis.

310. Jesus Marquez was denied the right to have his intimate family members be allowed to assist in medical decision making and participate in his care, when he was unable to do so fully on his own behalf.

311. This intentional interference with their familial relationship has caused Ms. Salazar significant emotional distress in amounts to be determined at trial.

312. She has lost much weight, lives in a state of emotional upset, can't stop crying and can't sleep or concentrate. She lives in a state of upset and anger at nurses that just let him die and accused him of faking instead of getting him to the hospital as she begged them for help.

313. As a direct result of Defendant's, unlawful conduct, Plaintiff has suffered injuries, damages and losses as described herein entitling her to compensatory and special damages in amounts to be determined at trial.

314. Plaintiff is entitled to punitive damages in that these actions were taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

315. Plaintiff is entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law.

FOURTH CLAIM FOR RELIEF

Negligence Resulting in Wrongful Death with Loss of Consortium

(Plaintiff Salazar, individually and on behalf of the Estate, against SJRMC, Katie Moore, Yvonne Valles, Ramona Howard, and Cindy Ketchum)

316. Plaintiffs incorporate all other paragraphs of this Complaint as if fully set forth herein.

317. Defendants to this claim are private companies and individuals, none of whom is entitled to immunities under the New Mexico Tort Claim Act.

318. At all times relevant hereto, Mr. Marquez was under the care and treatment of SJRMC and its staff, including individual Defendants, through their contractual relationship with the County.

319. SJRMC is vicariously liable for the negligent acts and omissions of its agents and/or employees, and directly liable for their own negligent failures in training, policies, and practices.

320. Defendants hereto had a duty to provide reasonable medical care and treatment to inmates at the jail, including Mr. Marquez, and to exercise reasonable care in the training and supervision of their employees.

321. These duties of care are informed by state law.

322. These duties are also informed by the relevant practice standards and the NCCHC standards.

323. Individual Defendants and other employees, including other involved LPNs and RNs, while acting within the scope of their employment, variously committed negligent acts and omissions with respect to the care and treatment of Mr. Marquez.

324. Individual Nursing Defendants hereto all had nurse-patient relationships with Mr. Marquez and all owed a duty of due care to Mr. Marquez.

325. Individual Defendants hereto and other caregivers were acting within the scope of their employment with SJRMC at the times pertinent to this complaint and breached their duty of care and were negligent in their treatment of Mr. Marquez, causing his death.

326. SJRMC owed a duty of care to Mr. Marquez to establish appropriate protocols in the management and assessment of inmates presenting with serious medical conditions.

327. Involved caregivers at the jail grossly deviated and breached their duties to properly care for and treat Mr. Marquez' by *inter alia*: negligently and recklessly failing to properly assess Mr. Marquez, in recklessly and negligently treating him as though he was faking his conditions, in knowingly acting outside the scope of their licenses and making medical diagnoses, in recklessly and negligently treating his condition as non-emergent, and denying and delaying access to necessary medical care, causing his death.

328. Defendants, directly, and/or through their agents and employees had at least a tacit understanding and consciously conspired and deliberately pursued a common plan or design to commit a tortious act.

329. This negligence caused Mr. Marquez's death and losses and damages to him and his Estate, all damages permitted and listed by New Mexico's Wrongful Death Statute and jury instructions pertaining thereto, which are incorporated by this reference, including but by no means limited to: Jesus Marquez's own horrific and terrifying pain and suffering experiences before and leading up to his death; pain and suffering and emotional distress of his child and mother; loss of consortium and companionship; lost future earnings and earning capacities for the useful working life of Mr. Marquez who had a substantial work history and history of earnings and support; as well as funeral and burial related expenses; and other special damages, including all charges for his final illness and death; all in amounts to be proven at trial.

330. As a result of the aforementioned negligence and breach of duties on the part of Defendants, Plaintiff has suffered the loss of consortium of her son and is also individually

entitled to all such damages as are permissible by New Mexico consortium common law due to the loss of companionship resulting from the death of Mr. Marquez.

331. Plaintiff Salazar enjoyed a close, life long and intimate familial relationship of son and mother with Mr. Marquez.

332. Ms. Salazar visited Mr. Marquez frequently and was in frequent phone contact with him during his incarceration as well.

333. Ms. Salazar and Mr. Marquez were dependent on each other and made contributions to each others' lives and emotionally relied on each other.

334. So too has Mr. Marquez's young son, Omar, who he loved very much and with whom he was very close and had been very involved in his care prior to his incarceration.

335. These defendants are jointly and severally liable for all compensatory and also punitive damages for this egregious conduct.

FIFTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(Plaintiff Salazar individually against SJRMC, Katie Moore, Yvonne Valles, Ramona Howard, and Courtney Nyman)

336. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

337. Defendants to this claim, by extreme and outrageous conduct, recklessly caused severe emotional distress to Plaintiff Salazar.

338. The nursing conduct toward Mr. Marquez was so reckless and unconscionable as to be outrageous.

339. This conduct was undertaken in reckless disregard of Plaintiff as a close family member of Mr. Marquez.

340. The conduct was reckless in that the acts were done with utter indifference to the consequences.

341. This conduct caused severe emotional distress to his mother, Olga Salazar.

342. The extreme and outrageous character of Defendants' conduct arises from the identified abuse by these actors of their positions of power, which gave them all actual or apparent authority over Jesus Marquez, and abuse of their power to affect the vital rights and interests of Jesus Marquez and Ms. Salazar.

343. The extreme and outrageous character of Defendant Neyman's conduct also arises from her communications and relationship with Olga Salazar, which gave her power to affect the vital rights and interests Ms. Salazar.

344. Plaintiff Olga Salazar is entitled to recover damage for severe emotional distress and punitive damages against defendants.

345. These defendants are jointly and severally liable for all compensatory and also punitive damages for this egregious conduct.

PRAYER FOR RELIEF

Plaintiffs pray that this Court enter judgment for the Plaintiffs and against each of the Defendants and enter the following relief:

- (a) All appropriate relief at law and equity;
- (b) Economic losses on all claims allowed by law;

- (c) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (d) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (e) Attorneys' fees and costs associated with this action, including expert witness fees, on all claims allowed by law;
- (f) Pre- and post-judgment interest at the highest lawful rate; and
- (g) Any further relief that this Court deems just and proper.

PLAINTIFFS RESPECTFULLY REQUEST TRIAL BY JURY.

Respectfully submitted this 29th day of February, 2016.

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