

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

THE ESTATE OF TERA ANDREA CHAVEZ,
by and through the special personal representative
of her estate, **MAUREEN A. SANDERS, ESQ.,**

Plaintiff,

v.

No.

LEVI M. CHAVEZ II, in his individual capacity and
in his official capacity as an Albuquerque Police Officer;
THE CITY OF ALBUQUERQUE;
CHIEF RAY SCHULTZ, in his official capacity
as the Chief of Police of the Albuquerque Police
Department for municipal and supervisory claims;
APD OFFICERS 'JOHN DOES' 1-3, unidentified supervisors
and trainers at the Albuquerque Police Department in their
official capacities; and
LT. SHAWN O'CONNELL, SGT. RON OLIVAS,
SGT. JAMES SILVER, AND APD OFFICERS
JOHN DOES 4-6, in their individual and official capacities as Albuquerque
Police Officers;

Defendants.

COMPLAINT FOR DAMAGES
FOR WRONGFUL DEATH,
AND FOR SPOILIATION OR TAMPERING WITH EVIDENCE

Plaintiff, by and through her attorney, for her Complaint, alleges:

I. Introduction, Parties, Jurisdiction and Venue

1. This complaint arises from the death of Tera Andrea Chavez on October 21, 2007, in Los Lunas, New Mexico.

2. Jurisdiction and venue are proper in the Second Judicial District Court.
3. Plaintiff's decedent is Tera Andrea Cordova Chavez. She is the daughter of Joseph P. Cordova and Theresa S. Cordova, who reside in Los Lunas, NM. At the time of her death, decedent's husband was current APD officer and Defendant Levi M. Chavez II, who also resided in Los Lunas with decedent and their two children. Law enforcement in Valencia County named Levi M. Chavez II, as a "person of interest" regarding the death of his wife, and made public announcements that her death is being investigated as a homicide; therefore, the Cordovas retained undersigned counsel to preserve and protect the rights of their grandchildren as beneficiaries of the estate. The Cordovas are not interested in any financial remuneration for themselves, but bring these claims through a special personal representative on behalf of Tera Andrea Chavez and her children.
4. A special personal representative of the Estate of Tera Andrea Chavez was appointed by agreement between Defendant Levi M. Chavez II, (*hereinafter*, "*Levi Chavez*"), and Joseph and Theresa Cordova (*hereinafter*, "*The Cordovas*"). As a result, Attorney Maureen A. Sanders has been duly appointed as the special personal representative of the Estate of Tera Andrea Chavez for purposes of bringing these legal claims.
5. Tera Andrea Chavez died because a gunshot was fired into her head from an Albuquerque Police Department gun, either late on Saturday, October 20th or early on Sunday, October 21st, 2007.
6. The City of Albuquerque is responsible for the hiring, retention, training, supervision and discipline of its police officers, and for the promulgation of

policies and procedures that govern conduct of its police officers. This includes conduct surrounding the safe storage and use of APD issued guns. It also includes conduct unbecoming of officers of the law. It also includes controlling fraternization between officers to the extent the fraternization deleteriously affects police work that the taxpayers pay for and deserve, and to the extent the fraternization places officers or their spouses in danger. The effects of 'unchecked sexual fraternization' include unauthorized use of APD cars, cell phones, radios, buildings, CAD's and car computers, and other city-owned property, by officers for trysts, or to cover for officers involved in trysts.

7. Chief Ray Schultz is ultimately responsible for all hiring, retention, training, and supervision of officers, as well as the implementation and promulgation of all policies, procedures, customs and usages at the Albuquerque Police Department.
8. APD Officers 'John Does' 1-3, are as yet unidentified supervisors and trainers at the Albuquerque Police Department who trained or supervised Officer Levi M. Chavez II. These supervisory Defendants trained and supervised other APD officers as well, regarding APD policies, customs, usages and procedures.
9. Lt. Shawn O'Connell, Sgt. Ron Olivas, Sgt. James Silver, and APD Officers John Does 4-6 went to the crime scene in Los Lunas from Albuquerque, where they spent two hours and forty-five minutes. The conduct of these Defendants are described more fully below, who are known in this complaint as "the APD Spoliation Defendants". They are sued only on that count.

10. At all times material hereto, Defendants were peace officers and law enforcement officers acting either in the course and scope of their 'employment', or within the course and scope of their 'duties' as defined in the Tort Claims Act, or both.
11. Some Defendants may also have been acting in their individual capacities for some claims.
12. Notice was duly given of Plaintiff's supplemental state tort claims pursuant to the New Mexico Tort Claims Act.
13. The two children of Levi Chavez and Tera Chavez are statutory beneficiaries of the estate of Tera Chavez, and should be the only beneficiaries of her estate. Defendant Levi Chavez should be barred as a matter of New Mexico statute and public policy from being a beneficiary of the Estate of Tera Chavez in the event this complaint results in any judgment or settlement against any Defendants on any theory of liability.

II. Background Facts

14. Defendant Levi Chavez met the Cordovas' only daughter when she was in high school. Tera Andrea Cordova became pregnant and gave birth to a daughter in 1998 when she was sixteen years old.
15. Defendant Levi Chavez and Tera Cordova were married in February, 2000, and the couple had their second child in October, 2001.
16. From 1997 until her death, Levi and Tera Chavez had a roller-coaster relationship marked by multiple, repeated affairs by Levi Chavez with other women, even while the young family resided in Virginia, Michigan or California in connection with him being in the Coast Guard. They returned to New Mexico

in 2004. While having multiple, constant affairs from 1997 to October, 2007, Levi Chavez also was very controlling over his wife and children, displaying extreme jealousy, and irrational controlling behaviors.

17. Defendant Levi Chavez attended the police academy in 2004 based on a contract with the City of Rio Rancho, who paid for his certification and training in exchange for his promise to work for Rio Rancho for three years. Levi Chavez worked as a Rio Rancho Police Officer for less than four months after completing his law enforcement training, and then transferred laterally into the Aviation Department at the Albuquerque Airport in 2005.
18. Meanwhile, Tera Chavez went to Barber School in 2005, and started working as a hair stylist in Los Lunas.
19. The City of Rio Rancho sued Levi Chavez for breaking his promise and leaving less than four months after certification. Defendant Levi Chavez stipulated in November, 2005, that a judgment be taken against him for breaking his promise, in the amount of \$14,400.00.
20. In late 2006, Levi Chavez was hired by the Albuquerque Police Department as a lateral transfer from the Aviation Department. He attended the 11th Lateral Class and on January 9, 2007, was issued police equipment by APD, including the gun that later killed his wife.
21. The Albuquerque Police Department does insufficient background checks on lateral transfers. Upon information and belief, in this case inadequate psychological testing occurred, inadequate additional field training was provided, and inadequate additional academic training was provided. In particular, inadequate training and supervision occurred regarding the storage

and handling of APD weapons in the homes of police officers. There was no training or supervision regarding sexual fraternization and affairs between and among police officers or their spouses, and the dangers and harm such conduct causes.

22. On July 12, 2007, Tera Chavez packed up Levi's things for him, declared her independence, and he moved out of the Los Lunas house. At about this time, an APD officer began having an affair with Tera Chavez. The APD officer that was having an affair with Tera Chavez was a friend of Levi Chavez. This APD officer began stopping by the hair salon in Los Lunas where Tera Chavez worked, and enticed her into an affair. Levi Chavez, who at that time in mid-2007 had many girlfriends, (including several APD officers or employees, and a dispatcher), was jealous and upset that another APD officer he knew at work and who was his friend, was having an affair his wife.

23. One part of the Chavez marital issues in 2006-2007 was that fraternization at APD was not discouraged as a matter of policy, custom, usage and training. In 2007, APD supervisors were aware of affairs between officers, or between officers and other officers' spouses. Such affairs put a great deal of stress and strain on officers and their families. In this case, APD supervisors knew, or should have known, that Levi Chavez was having affairs with several female APD officers at once, and that an APD officer had begun having an affair with Tera Chavez. Reasonably well-trained supervisors know that unchecked sexual fraternization and affairs are not good for the proper functioning of a police department, and create danger and harm to families of officers. Stress and danger for Tera Chavez was foreseeable.

24. A second part of their marital strife in 2006-2007 involved Levi Chavez bringing home marijuana that he said he obtained during police work, or that was supposed to be evidence in a police case, or that he said was used by "CI's" in police work. Tera Chavez told relatives that she did not want felony quantities of marijuana moving through her house from "Levi and his cop friends". It is unknown what she meant, and who the "cop friends" were. Stress and danger for Tera Chavez was exacerbated by his police misconduct, which was misconduct only possible if in uniform.
25. A third part of their marital strife involved perceived financial difficulties. By July, 2007, Levi Chavez was "upside down" on a truck loan, and other financial difficulties existed, including paying off the judgment he owed to the City of Rio Rancho. Some financial difficulties stemmed from Chavez extended-family issues, and others from over-spending by Levi Chavez. Earlier in their marriage, the young couple had also been "upside down" on a car loan; Levi Chavez approached Joseph Cordova in 2003 with the idea of having the car "stolen" to collect insurance money. Joseph Cordova was shocked by the suggestion, and instead paid off their car for them and put the title into his own name. Joseph Cordova then later traded that car in for a car to be put into his daughter's name alone. Stress and danger for Tera Chavez was exacerbated by the financial strains on this APD officer.
26. The fourth part of their marital strife in 2007 was that Tera Chavez had finally determined to leave Levi Chavez once and for all. In particular, by October, 2007, Tera Chavez was resolved to 'moving on' without Levi Chavez, other than as necessary as a co-parent, and she made that clear to him during her

last weeks alive.

27. On July 12, 2007, Tera Andrea Chavez decided to start life anew without Levi Chavez. Tera Chavez has always kept diaries and journals. She stopped writing in the diary she had been keeping to “vent” about her marriage. This old diary ends with the words: “So good-bye to the person I used to be.

Welcome New Day. Happiness!!”. Tera Chavez then began using a new diary.

28. The most recent diary of Tera Chavez disappeared at the time of her death from its usual hiding place. The older diary that ended on July 12, 2007, was taken from a specific hidden drawer where it was usually kept, and placed by someone between her mattress and her box spring. The old diary was placed between her mattresses along with two other items. Upon information and belief, these three items were placed between her mattresses shortly before or immediately after her death on October 21, 2007. Also placed between the mattresses was an old cell phone monthly bill, and some rolling papers.

According to family members, these three assorted items would never have been collected by Tera Chavez and placed between the mattresses of her bed. According to family members, the old diary that ended on July 12, 2007, was kept across the room in a specific hidden drawer, and from where the new, missing diary was apparently taken. The latest diary remains missing.

29. Plaintiff alleges that the three odd items were placed between the mattresses to initially point investigators to her affair with an APD officer, her old diary full of ‘venting’ about marital problems, and some rolling papers, as if to support a claim of ‘suicide.’ A drawer was also left open next to the bed where a small amount of marijuana was kept. One witness states that it was APD officers at

the scene who “found” the small amount of marijuana in a drawer, and the items between the mattresses.

30. The toxicology report from OMI establishes that no drugs of abuse or alcohol was in Tera’s system at the time of her death, and THC is in one’s system for at least several weeks.
31. VCSO investigators noted the arrival and presence of Officer Chavez’ father, Levi Chavez, Sr., his uncle Guadalupe County Sheriff Robert Chavez from Santa Rosa, and Gino and Rita Brito, (Levi Chavez’ mother and current husband), shortly after discovery of Tera’s body on Sunday evening.
32. On July 21, 2007, Tera Chavez told her mother and her sister-in-law, (two of her closest confidants), that “if anything ever happens to me, Levi did it”.
33. Also in late July, 2007, Tera Chavez told several friends, relatives and co-workers that ‘Levi is now telling people that I am depressed and going to hurt myself; he’s nuts, my kids are my life.’ Family members believed his comment was a pre-emptive ‘custody threat’ of some kind for the impending divorce.
34. By all accounts, Tera Chavez was an extremely devoted mother, who loved and cared for her children. According to statements, even Levi Chavez made comments to APD female sex partners that Tera was a very good mother and parent.
35. In August, September, and October 2007, Tera Chavez was making concrete plans to start her own hair salon business with financial backing from her father, and from his banks.
36. At the end of August, 2007, as her birthday approached, Levi Chavez uncharacteristically bought his wife a diamond ring, an expensive cell phone,

and an expensive writing pen as birthday gifts for her 26th birthday. These expensive gifts were all back in Levi Chavez' possession within seven weeks. She agreed he could move back into the house as house-mates; Tera Chavez told confidants that the house was on a "GI Bill type of mortgage" and they could not sell it for two years, and therefore had to work out a living arrangement of some kind. However, Tera refused to give up her plans for her own business and future marital independence.

37. Also in the fall of 2007, Tera Chavez discovered evidence that someone tried to break into the house, and/or a neighbor's house, but nothing was stolen.

Levi Chavez suggested the need to have Tera Chavez keep his gun at home, but plaintiff's decedent was uninterested in guns.

38. Tera Andrea Chavez did not know how to shoot a gun, or want to, as of mid-2007. In late September or early October, 2007, Tera Chavez told relatives and co-workers that Levi took her out to shoot his guns, and that she even shot his APD gun. Tera explained that Levi thought it was necessary for protection that she know how to shoot his APD gun.

39. On Thursday, September 27, 2007, at the hair salon, Tera Chavez told relatives, co-workers and friends (including the APD officer that she had been seeing), that Levi's truck had been "stolen". Later, Tera Chavez told co-workers and relatives that "Levi and his cop friends" stole his truck to make it look like a theft, and was pressuring her to report it to the insurance company for him.

40. Neighbors of Levi and Tera Chavez in Los Lunas state that Levi Chavez and another person drove up to his house in a marked APD unit in late September,

2007, whereupon Levi Chavez exited the APD car, and got into his truck. The APD car and Levi Chavez then left the house; neighbors also report that Levi Chavez came back to the house six hours later driving his marked APD unit, and no neighbors have ever seen the truck since.

41. Also in September, 2007, Levi Chavez obtained a life insurance policy through the Army National Guard that covered his wife, naming himself as the sole beneficiary to receive \$100,000.00, in the event of her death. Levi M Chavez II voluntarily transferred from the Air National Guard to the Army National Guard at that time, thereby providing 'suicide coverage' for his wife. The life insurance policy which covered suicide was underwritten by Prudential, and went into effect on about October 5, 2007.

42. On October 29, 2007, seven days after the death of his wife, Levi Chavez bought a new Cadillac with no money down at a large auto sales business in Albuquerque. On that same date, October 29, 2007, Levi Chavez made inquiries about filing a claim on the life insurance, but did not file a claim. On July 14, 2008, Levi Chavez did file a claim for the \$100,000.00 benefit arising from the death of Tera Andrea Chavez, claim number 10899077 OGLI. The premiums for someone only 26 years old and in good health were \$5.50 per month. The policy was in effect for about seventeen days at the time of Tera's death.

43. Upon information and belief, Tera Chavez did not know that a life insurance policy had been taken out on her by Levi Chavez. However, she did state to a co-worker and to relatives in September and October, 2007, that 'if something happens to me, Levi did it'.

44. On October 6, 2007, Tera Chavez reported to Allstate Insurance Company that her husband's truck had been stolen early that morning. This was an untrue statement. Tera Chavez told a co-worker that "Levi and his cop friends did it" to make it look like it was stolen, but that she had to make the police report.
45. The fact that Levi "and his cop friends" were allegedly involved in the truck fraud created danger, stress and pressure on the marriage, careers and lives of Tera and Levi Chavez; Plaintiff alleges that Defendant Levi Chavez recklessly placed Plaintiff's decedent in danger.
46. On October 12, 2007, Tera and Levi Chavez's son's sixth birthday party was held. Levi Chavez did not attend, but an argument with his wife ensued.
47. Their main marital issues were exacerbated in October, 2007, by the fake "stolen" truck and the fraudulent insurance claim. While Levi's multiple sexual affairs continued in October, 2007, Levi Chavez was perhaps most upset with Tera's desire to 'move on' without him. Upon information and belief, Tera Chavez told Levi Chavez, as she did several friends and relatives in her last weeks before her death, that divorce was desired, inevitable, and that she was happily looking forward to her independence. Upon information and belief, Levi Chavez threatened her with "custody" of the kids as a control device, arguing he would prove she was unfit 'because he was a cop and she was a nobody', and that no one will believe her. Tera Chavez again told two different friends that Levi was planning to say she is depressed for custody issues. Tera Chavez also told a different confidant in October, 2007, that Levi had responded in anger to her claim that it was her house, and that she and the

kids would be staying there while he moved elsewhere; his response was that *he* would stay in the Los Lunas house with the kids. The latter turned out to be true.

48. Defendant Levi Chavez states that he obtained express permission from supervisors at APD to use a personal gun at work, and to leave his APD-issued duty weapon at home. He left the APD-issued “duty weapon” in an unlocked cabinet by the bed in the master bedroom at a height that family members, including their two small children, could easily reach. The cabinet is also where Levi Chavez kept his APD vest, belt with police tools, and APD items of various kinds. The cabinet had a key welded into the door as a handle, but did not lock. Other than the gun being shot by Tera and Levi so she could learn to ‘protect’ herself, the city-owned loaded handgun was left near their bed, accessible to children, spouse, and the public at large, during the last weeks of her life.

49. Defendant Levi Chavez received inadequate training by the City of Albuquerque regarding safe storage of his APD handgun in his home. Defendant Levi Chavez did not receive trigger guards or locks from the City of Albuquerque to put on the APD handgun for storage in his home in the event that the gun was left unattended in unlocked, open furniture, (as it in fact routinely was). Upon information and belief, APD does not hand out trigger guards and locks for APD gun storage in homes with small children, even though they are free, readily available, and model police procedures recommend it.

50. On October 15, 2007, the New Mexico Insurance Fraud Bureau in Santa Fe

received a phone call inquiring about how to report insurance fraud. The female caller stated she had information regarding a 'fake stolen truck', and wanted to report the persons who had arranged to have the truck stolen. The caller gave the name "Tera" or "Sera" Lucero, and a phone number. The NM State Criminal Investigation Bureau wrote the message down as "Sara Lucero", and wrote down the phone number the caller left. The phone number turned out to be for the hair salon where Tera Chavez worked. The State criminal investigators opened an investigatory file. Before they could pay the hair salon a visit, Tera Chavez was dead. Tera Chavez' father-in-law, Levi Chavez, Sr., had worked at the NM State Insurance Fraud Bureau for several years starting in January, 2002; therefore, Tera Chavez was aware of her children's grandfather's work and home numbers, according to witness interviews, and would know of that state agency and what it did.

51. On October 17, 2007, Joseph Cordova and his daughter Tera Chavez had a lengthy business discussion about setting up her own salon. Tera ordered specific wood back bars from her father (a licensed general contractor), like the ones used in her grandfather's old barber shop in the UNM area in Albuquerque. Joseph Cordova agreed to begin making them. Tera also had located a building in Los Lunas that she was interested in possibly purchasing with her father's help after getting the divorce proceedings started, and was planning to contact the owner to make inquiries during the very next week. Tera and her father discussed ways to finance the purchase of the building. She expressed satisfaction and excitement about her future prospects to her father. According to her father, there was not a single iota of depression or

sadness of any kind in these discussions of her planned, new business venture. This was the last conversation between father and daughter.

52. No one in the entire Cordova family, (parents, twin brother, other brother, sister-in-laws, or anyone), ever heard Tera Andrea Chavez express suicidal ideation of any kind, at any time. On the contrary, Tera Chavez told two female relatives in the fall of 2007 that 'if anything happens to me, Levi did it'.

53. On October 18, 2007, Tera Chavez told two of her confidants at work, 'I screwed up and Levi will kill me if he finds out.' One co-worker believed that Tera's comment about 'screwing up and Levi will kill me' was in reference to the truck fraud issue they had been discussing intermittently at the salon since the end of September. Another co-worker believed the comment related to Tera seeing the other APD officer again, and Tera having inadvertently left a text message on her phone that Levi saw and was upset about. Either way, whatever the comment meant, two people heard it, and she was dead within about sixty hours.

54. Also on October 18, 2007, Tera Chavez called her mother, and asked her to bring the kids to the shop instead of Tera picking them up as usual at their grandmother's house. Tera explained she wanted to give them haircuts, as Levi wanted them to go to Santa Rosa for the weekend to be with his relatives. Tera explained to her mother that Levi Chavez had asked her for an uninterrupted weekend at home together, and to rent some movies so they could 'veg out' together. Tera made it sound like Levi Chavez once again wanted to have an intimate weekend to try to 'save their marriage'. Tera Chavez also told her mother that she was not interested in remaining married,

and had mentally 'moved on', but was looking forward to talking with Levi about a future of co-parenting, living in the same house until they established separate residences, and having a good weekend.

55. On October 18, after cutting her kids' hair at the salon, a co-worker digitally recorded on Tera's cell phone, the kids dancing around Tera's barber chair with Tera sitting in it, smiling. By all appearances, everyone is relaxed and happy. Tera texted this recording to her brother. Tera and the kids and her co-worker then went to Hastings to rent movies, and to Albertson's to buy groceries. Tera rented movies to watch with Levi over the weekend. She also bought groceries to re-stock cupboards, freezer and refrigerator.

56. By all accounts in witness statements, in mid-October, 2007, Tera Chavez was happy and determined about her new future coming up, being on her own, and getting ready for her business venture.

57. On Friday, October 19, 2007, Tera Chavez forwarded a video text to her brother at about ten p.m., claiming the video text was funny and to turn the volume up!! It was routine for Tera and her siblings to forward funny email and cell phone texts or video to each other. There was no hint of suicidal ideation or sadness in the communication.

58. On Saturday, October 20, 2007, Tera Chavez called in to work and said she was staying home "sick", although some co-workers knew that Levi Chavez was planning to be there, and that the kids were in Santa Rosa for the weekend.

59. On Saturday, October 20, 2007, upon information and belief, Levi Chavez worked a shift at APD, but also spent time at "home" with Tera Chavez before

his shift, and at the end of his shift.

60. Levi Chavez told VCISO investigators he was not “home” between Thursday, October 18, 2007, until he went there late Sunday evening, October 21, 2007, and “found” his wife’s body, which he immediately called in as a “suicide.
61. There was a note by the bed with a pen placed neatly across the pad that merely said “I’m sorry Levi”. The note by the bed is not considered a suicide note by any of the consulting experts, and expert hand-writing analysis is underway.
62. Friends and relatives of Tera Chavez were shocked by media reports and police reports that refer to a ‘suicide note’, and will testify that Tera was typically a very wordy writer, with ‘too-long emails, texts, and notes’.
63. Friends of Tera Chavez assert that, even assuming a sudden decision to commit suicide with no warning to anyone in the world and not a word to her children and relatives, the last person she would apologize to would be Levi Chavez, (a more-or-less absent husband who was constantly with other women). Any notes would be to her children and family members that she spent every day with, according to friends and relatives. It was her pattern and habit to ‘reach out’ throughout each day with texts and phone calls to her confidants and friends.
64. Some interviewees from Defendant Levi Chavez’ family have reported that the other APD officer Tera Chavez was seeing, along with his wife, were at Tera’s home that day, Saturday, October 20, 2007.
65. One neighbor states they backed out of a driveway on the block where Tera lived, while an APD car was backing out of the Chavez driveway, on Saturday,

- October 20, and they believed it was Levi Chavez in his APD car.
66. Tera Chavez cleaned the house on Friday night and Saturday, according to her friends and relatives that she called and texted on a regular basis throughout most days.
67. Tera Chavez was scheduled to work Sunday, October 21, as well, but did not call or show up. When the co-workers heard on Monday, October 22, that Tera Chavez had reportedly killed herself with Levi's APD handgun, they immediately rejected the idea of suicide.
68. When family members were told Tera Chavez committed suicide with an APD handgun, they immediately rejected the notion, and were very suspicious of Levi Chavez.
69. When Joseph Cordova was awakened at about 3:00 a.m. and told by VCSO officers that his daughter had committed suicide with an APD handgun, Mr. Cordova immediately and forcefully told the Detective to 'lock the house down and preserve all evidence, because she did not kill herself, Levi did it.'
70. Tera's cell phone kept making and receiving calls and texts after her death, even though her cell phone was secured in evidence at VCSO. After her birthday gift in late August, there were two phones using the same number, one being a "clone phone".
71. Within the last few hours of Tera's life or sometime after her death, someone plugged her cell phone in to charge it up, in a location in her bedroom that she did not habitually use to charge her cell phone. Alternatively, if she plugged in her phone to charge it up in this unusual location, it was because she expected her phone to be charged when she woke up in the morning.

72. Within the last few hours of Tera's life, according to the crime scene photographs, someone took a shower at her home, and left towels draped over the bedroom chair and a bathroom chair.
73. Within the last few hours of her life, according to the crime scene photographs, someone put Levi Chavez' sweat pants in the washing machine but did not turn it on. State crime lab reports indicate a mixture of DNA from both Tera and Levi Chavez on the crotch area of the sweatpants. Someone also left jogging or running shorts of Levi Chavez on the floor of the bedroom, near the bed. Friends and relatives of Tera Chavez state it is unlikely Tera would "step over" Levi's clothes on the floor for three days, while cleaning the house.
74. According to the crime scene photographs, someone brought to her house over the weekend sport drinks usually consumed by Levi Chavez.
75. According to the crime scene photographs, Tera Chavez prepared to go to sleep in her usual manner. Her dog was put up in the back yard for the night, as usual. Tera Chavez had put on pajamas that were a gift from her mother, and were her usual bedtime wear. Tera Chavez had removed her make-up and jewelry, as was her habit before going to sleep. The remote control of the Dish TV satellite was in her right hand. Her legs were crossed at the ankles, and she was propped up against some pillows against the wall where a headboard would be. By all appearances, Tera Chavez fell asleep watching TV late Saturday night or early Sunday morning, October 21, 2007.
76. When investigators arrived on Sunday evening, an APD-issued handgun was laying between her right upper arm and breast, and her body had leaned towards her right, from the position she apparently was in when the gun was

fired. Blood had flowed from the right side of her mouth down her right side, and on to the bedding between her arm and her side. The only light was from the TV screen. There was no exit wound, nor blood splatter anywhere, and her hands were clean. It appears at first glance as if she was shot in the chest due to the blood flow. However, the gun was shot far into the back of her mouth. The barrel of the gun went off on the back of her tongue; the barrel of the gun had been shoved four or five inches into her mouth. The time of death as estimated by OMI and medical personnel is somewhere between about 11:00 p.m. on Saturday, October 20, 2007, and about 4:00 a.m. on Sunday, October 21, 2007.

77. Albuquerque Police Department CAD's show Officer Levi Chavez worked Saturday, October 20, 2007, and "signed off" just before midnight. However, he took no calls for service after approximately eight p.m. on that shift. The CAD's indicate APD Officer Levi Chavez was at the APD West Side Sub-Station for those last four hours of his shift logging evidence. It is an easy drive from the West Side substation to Los Lunas in a marked APD police unit.

78. Defendant Levi Chavez claims that sometime in the early morning hours on Sunday, October 21, 2007, he crawled into the bed in Albuquerque of another APD female officer he had been having a casual sexual affair with. Her bed is about 35-45 minutes from Tera's house. This is somewhere near the time that a text message was sent from the Tera Chavez phone number to the Levi Chavez phone number, to the effect that 'I am sad and I am sooo sorry'. This text was sent at 1:42 a.m. on Sunday, October 21, 2007.

79. According to Levi Chavez and this particular APD officer "affair", they spent

Sunday, October 21, 2007, shopping at a mall, and going to a movie. The Chavez children had been expected back at Tera's house on Saturday, but in-laws from Santa Rosa contacted Tera to say the kids would be back on Sunday afternoon. After spending the day with one of his APD "affair" officers, according to Levi Chavez, he drove to Los Lunas, bought gasoline for his patrol car, went to his mother's house, and then to his house and "discovered" Tera's body on her bed.

80. Levi Chavez called 911 at 9:02 p.m., and essentially reported that his wife had committed suicide by shooting herself in the head and had been dead about a day.

81. Valencia County Deputies arrived at about 9:09 p.m.

82. The "APD Spoliation Defendants" arrived at about 11:00 p.m.

83. Levi Chavez was distraught and kept repeating 'why did she do it,' presumably referring to suicide.

84. As a professional courtesy and at their aggressive demand, the APD officers who arrived were allowed uncontrolled access to the house. There were three APD supervisors present, and several uniformed officers as well.

85. Almost everyone treated the "unattended death" as a suicide at first, since an APD officer had "called it in" as a suicide. The three 'odd items' were found between the mattresses when the body was moved, pointing to an affair and prior marijuana use. Crime scene detectives accepted the theory of suicide on face value, (at first), and the news media dutifully but inaccurately reported 'the suicide of a cop's wife with marijuana and paraphernalia near her body'.

According to witnesses, several APD officers were swarming around the room,

and one of them found the marijuana in the slightly opened drawer, and put it on the bed well after her death, where it was photographed by crime scene investigators.

86. The gun was subsequently tested for fingerprints, and there are no fingerprints of Tera Chavez on the gun, nor on the magazine clip, nor on any bullet.

87. The gun was also tested for DNA evidence and there was a mixture of DNA of Tera Chavez and Levi Chavez on one side of the grip handle, which is not surprising as it had reportedly been shot recently by both of them on the range. There is DNA from Tera Chavez on the muzzle.

88. When the Cordovas went to Tera's house to get clothes for the viewing and for the grandkids prior to the funeral, they were shocked to find that Levi Chavez and reportedly "cop friends or relatives" had already removed or packed every single thing in the house that was owned by or referred to the existence of Tera Chavez, including all photographs, clothing, furnishings, art work, wall hangings, jewelry, writings and her current diary.

89. Neighbors' statements indicate that Levi Chavez and "cop friends or relatives" had backed a truck up to the house and unceremoniously threw stuff into it, loaded it up with some of her belongings, and drove away, before funeral services occurred.

90. On October 29, 2007, Levi Chavez went to Car Max in Albuquerque and purchased a new Cadillac with no money down. Also on October 29th, 2007, Levi Chavez made inquiry regarding the military life insurance benefit of \$100,000.00 on the policy that he had just purchased, but did not submit a claim until several months later.

91. Upon information and belief, all insurance companies have refused to pay death benefits, pending further investigation.
92. Within weeks, by November 11, 2007, Levi Chavez was entertaining women in Tera's home. These included a Verizon employee and an APD officer. Levi Chavez soon sold the house on a real estate contract, and has now moved in with an APD officer girlfriend, who until recently was married to another APD officer.
93. Homeowner Levi Chavez negligently left his APD gun in an unlocked cabinet, where it was used either in a suicide or a homicide, and if the latter, was committed by the homeowner, or someone else. Even if it was a homicide, it could not have occurred with the APD gun unless that gun was negligently stored and maintained in the home. This negligence proximately caused the death of Tera Andrea Chavez, whether by suicide or homicide.
94. Levi Chavez is still officially an APD officer, but was suspended with pay after VCSO investigators declared him a 'person of interest' in the death of his wife, Tera Andrea Chavez.
95. The investigation of this case has been hampered by a custom and policy known as 'the blue line', or the 'blue code'.
96. No regular husband could call the police and claim his wife committed suicide with his gun, and have his fellow co-workers arrive on the scene to have unfettered access to the crime scene, leading to the destruction of crucial evidence, without consequence. The 'blue line' custom of closing ranks around any officer suspected of anything, is so strong, that APD has done little or no internal affairs investigation of this matter. The 'blue line' reaction to protecting

themselves from any outside scrutiny is especially strong in a case where sexual fraternization among officers and between officers and other officers' spouses is part of the fact pattern. The 'normal joe' would be *even more* suspicious to police under these circumstances if the 'normal joe' and his friends simply declared to the cops that it was "suicide", and its nobody's business who has had affairs with whom. Here, however, because of the customs and policies associated with the so-called "blue line", the declaration of 'suicide' by Levi Chavez was accepted by all investigators, (at least at the outset).

97. The City of Albuquerque has not done its own, official internal investigation of the causes of the death of Tera Chavez, and still pays Levi Chavez a police officer's salary.

III. Causes of Action

Plaintiff realleges each of the above background into each of the following counts:

COUNT I: WRONGFUL DEATH UNDER NMSA 41-4-12 (HOMICIDE)

98. Plaintiff alleges that Defendant Levi Chavez caused the wrongful death of Tera Chavez by driving to Los Lunas in his APD car and shooting her with his APD gun after she had fallen asleep watching TV. Plaintiff alleges that Levi Chavez was either in the shower when Tera Chavez fell asleep, or took a shower after shooting her, or both.

99. Plaintiff alleges that the City of Albuquerque and the supervisory Defendants, while acting within the scope of their duties as APD supervisors, negligently

screened, hired, supervised, controlled, trained, retained, directed Levi Chavez and/or entrusted a gun to him, proximately causing the murder of his wife. This is true whether or not Levi Chavez was acting within the scope of his 'duties' when he murdered his wife.

100. This and other negligence of supervisors caused the listed tort of battery and wrongful death.

101. Under the Tort Claims Act and New Mexico law, Officer Levi Chavez was acting within the scope of his 'duties' when he murdered his wife, Tera Chavez.

102. All "non-spoliation Defendants" proximately and concurrently caused the death of Plaintiff's decedent, and the harm and damages to her estate.

COUNT II: WRONGFUL DEATH UNDER NMSA 41-4-12 OR 41-4-6 (SUICIDE)

103. Alternatively, Plaintiff alleges that the non-spoliation Defendants caused the wrongful death of Tera Chavez by proximately causing her suicide.

104. Under this alternative count, the conduct of public employees ("non-spoliation Defendants") created a danger to the public and to Tera Chavez by misuse of government and police equipment. For example, there is a policy, procedure, custom and usage associated with duty weapons that requests, requires, or authorizes officers to take their service weapons home, creating a danger to the general public. At the same time, APD failed to institute or implement adequate policies and procedures regarding the safe care, storage and maintenance of service weapons.

105. Under this alternative theory, Levi Chavez knew or should have known that his wife was under great stress and possibly suicidal, since she was

insisting on divorce and keeping the house and kids together with her. When he threatened her with custody and keeping the house himself, and started telling others she was 'depressed', she responded by calling the State insurance fraud bureau to report the fake stolen truck. He then arranged to have the kids in Santa Rosa for the weekend and their plan was to "resolve" their divorce issue on the weekend of October 20, 2007. The stress, pressure, and danger to Tera Chavez was at a high level.

106. Under this alternative count, the conduct contributing to her suicide includes Plaintiff's decedent being unable to escape a police sub-culture of affairs between officers and the spouses of other officers, and the failure of APD leadership to stop sexual fraternization that deleteriously affected police work in such a manner that this suicide occurred. The pressure and stress on Tera Chavez included her husband's continual APD affairs, and her own affair with an APD officer, among other things.

107. Under this alternative count, the conduct contributing to her suicide also includes being forced into participating in a fraudulent "stolen truck" insurance scam which was facilitated by APD equipment and cars. When Tera was threatened with loss of custody of her children and home, or bodily harm, if she told anyone, Levi began telling other people she was 'depressed'; her reaction apparently was to 'turn him in'. Tera Chavez did in fact report the fraud to State criminal investigators a few days before her death. Tera Chavez also reported to others that 'Levi will kill me when he finds out what I did'. Whether her death was a homicide, or suicide under that pressure, it was

proximately caused by Levi Chavez, and through negligence, causation is shared by supervisory Defendants.

108. The City of Albuquerque and the supervisory Defendants, while acting within the scope of their duties as APD supervisors, negligently screened, hired, supervised, controlled, trained, retained, directed Levi Chavez and/or entrusted a gun to him, proximately causing the suicide of his wife. This is true whether or not Levi Chavez was acting within the scope of his duties when she allegedly used his APD duty weapon to shoot herself.

109. In short, under this alternative Count II, Decedent was driven to suicide because of the multiple, continual affairs with other APD officers by her husband and her own affair with an APD officer; because of being saddled with information about her husband and “his cop friends” committing felonies; and because of being told convincingly through the power of his position with APD that she will lose her children and home if she tells anyone about any of these things. The APD gun was negligently left unsecured and loaded by the bed. The purported suicide was only possible with the APD handgun in the manner in which it occurred, and resulted from combined causation of all non-spoliation Defendants.

110. The conduct of Levi Chavez and other APD officers and supervisors, given the failure of training and supervision regarding gun storage, fraternization, and other equipment issues, proximately caused the wrongful death, whether it occurred by suicide or homicide, and all damages to the estate.

COUNT III: NEGLIGENT HIRING AND RETENTION

**BY THE CITY OF ALBUQUERQUE
CAUSING WRONGFUL DEATH
THROUGH THE REMEDY PROVIDED IN THE
NEW MEXICO TORT CLAIMS ACT
SECTION 41-4-12 OR 41-4-6**

111. Whether decedent's death was caused by homicide or suicide, the City of Albuquerque proximately caused the death by negligently hiring and negligently retaining Levi Chavez.
112. APD negligently failed to conduct meaningful psychological exams on lateral transfers during relevant time periods.
113. APD negligently failed to conduct meaningful background checks on lateral transfers. The background check in this case would have led any investigator to raise serious questions with those responsible for hiring.
114. Without police uniforms, badges, guns, cars, and the trappings of the office, Levi Chavez had little credibility, little ability to participate in the crimes Tera Chavez reported, and little ability to maintain up to nine affairs while a City employee. However, prior to his becoming a City employee, the background in this case was discernible.
115. According to Tera's reports to friends, relatives, or co-workers, Levi Chavez was not an honest police officer. The City had a duty to discover this before hiring Levi Chavez, and had a duty to discover it during any probationary period of employment of Levi Chavez, when supervision and training should be more intense.
116. The City was also negligent in other ways with respect to the hiring and retention of Defendant Levi Chavez. For example, it is well known that financial problems without proper counseling can cause a great deal of stress

on a police officer's ability to properly do his or her job. Financial problems in the Levi Chavez family pre-date his hiring at Aviation, at APD, and this lateral transfer.

117. But for the negligence surrounding the hiring and retention of Defendant Levi Chavez, the trappings and accoutrements of police subcultures would not have been available to Defendant that proximately led to the death of his wife. These subcultures include affairs, sexual fraternization, officers' covering for each other while on duty for the purpose of such conduct, supervisors ignoring such fraternization, the use of the badge and the uniform to commit crimes and to exploit, control and threaten spouses. In this case, felonies were also allegedly being committed by Levi Chavez that involved use of his APD and equipment.

118. Decedent's knowledge of police misconduct proximately caused Defendant Chavez to cause her death with his APD gun, whether it was homicide or suicide, facilitated because he had been hired and retained by APD.

119. Negligence by supervisors applies in this case whether or not Levi Chavez, and other APD employees and officers, were acting within the scope of their duties. It was reasonably foreseeable that Levi Chavez posed a danger to his wife when supervisors knew, or should have known, of his multiple affairs even while at the Aviation Department.

120. The negligent hiring and retention of Defendant Levi Chavez proximately caused the death of Plaintiff's decedent, and all damages and harm to her estate.

**COUNT IV: NEGLIGENT TRAINING & SUPERVISION BY THE CITY OF
ALBUQUERQUE CAUSING WRONGFUL DEATH
THROUGH THE REMEDY PROVIDED IN THE
NEW MEXICO TORT CLAIMS ACT
SECTION 41-4-12 OR 41-4-6**

121. There are at least four areas where training and supervision were negligent in this case: gun issues, fraternization issues, spoliation issues, and 'blue line' issues.
122. Whether Plaintiff's decedent's death on the weekend of October 21, 2007, was caused by homicide or suicide, the APD service weapon that killed her was negligently stored and maintained at this APD officer's home, but not inconsistent with official training, supervision policies and customs at APD.
123. The APD weapon was maintained by current APD officer Levi Chavez in an unlocked cabinet by the bed just a few feet off the ground within easy reach of any visitors, all children including his own, and his spouse or any of her friends.
124. APD supervisors were aware, or should have been, that officers were negligently storing duty weapons at homes where small children, spouses and the public had access to them.
125. APD does not maintain a 'weapon storage SOP' consistent with national standards of care. APD does not treat lateral transfers and new hires consistent with national standards of care regarding weapon storage in the officers' homes.
126. APD supervisors do not require officers to put trigger locks and guards on

the handguns that APD requires their officers take to the homes they share with spouses and children. It takes mere seconds to put a trigger lock on the stored weapon, and seconds to take it off when the officer goes back on duty. No reason exists to leave a loaded city-owned weapon available to family members and the public, when it is merely being stored. Levi Chavez was using a personal gun on duty in October, 2007, and storing the city issued loaded gun in his bedroom in an unlocked cabinet.

127. Officers are not properly trained regarding the storage of city-owned deadly weapons, especially lateral transfers.

128. Officers are required to take their duty weapons to their homes, and are required to consider themselves 'on duty' regarding potential use of their weapons on a "24-7" basis.

129. But for the negligence associated with the APD gun in this case, this death would not have occurred, whether homicide or suicide.

130. Regarding the fraternization subculture at APD, upon information and belief, supervisors 'look the other way' when officers have affairs with other officers or the spouses of other officers, and do not maintain sufficient supervisory effort to control fraternization and related conduct unbecoming of officers. While it is true that private conduct and private time exists in any profession or trade, here the fraternization was having deleterious effects on police work, and the integrity of reports and documents are suspect, including, for example, CADS, radio logs, officers' covering for each other during shifts, or using police cars or government locations for trysts. In addition, a culture exists that allows "customs, patterns and practices" associated with such

conduct. Specific “radio codes” even exist to refer to time needed for trysts with boyfriends or girlfriends. Other custom and usage language exists regarding trysts among officers, or between officers and members of the public. The more it becomes customary for officers to pursue affairs with each other and their spouses or ‘significant others’, the more it crosses over into on-duty conduct, and the more likely a homicide or suicide eventually occurs within ‘the APD family’. The fact that department supervisors do not firmly address such conduct as a matter of policy, and even facilitate such conduct on occasion, amounts to negligent supervision and training. For example, upon information, some supervisors allow squad members to sometimes ‘leave early’ while communication logs show them still ‘on duty’.

131. In addition to these first two types of negligent supervision and training (associated with the storage of off-duty guns, and associated with allowing a flourishing sub-culture of sexual fraternization), one explanation for the spoliation of evidence claim in this case is negligent supervision and training. An APD lieutenant and two sergeants went to the crime scene in Los Lunas, and were in a position to ensure that no APD officer or union representatives flush away evidence, handle items in the house, enter the house which was a crime scene, or cut up and remove bedding needed for later testing.

132. In addition to the three types of negligence just described, the so-called “blue code” is negligently allowed to flourish at APD to such an extent that it amounts to negligent supervision and training. When the “blue code” creates a culture where the automatic reaction is to ‘close ranks’ to protect any officer first, (and ask questions later), then a supervisory problem exists that causes

harm to the community, and did cause harm to decedent. Rather than spoliation of evidence in an effort to 'protect' the APD officer victim of a 'family tragedy', the APD supervisors and any certified officers, whether union members or not, should have helped put up yellow ribbon around the house, secure the house, and offer Internal Affairs assistance, or homicide investigation access to APD criminalistics specialists.

133. The negligent supervision and training of Levi Chavez regarding some of these types of supervisory claims spills over into the supervision and training of at least seven other APD officers involved in this overall fact pattern, (not counting the "spoliation Defendants").

134. The APD Police Chief Defendant has ultimate supervisory responsibility, and is named only in that capacity. This ultimate responsibility exists over a number of relevant strands of causation in this case. It includes responsibility over, among other things, policies and customs leading to: the hiring and retention of Levi Chavez; his deficient training regarding gun storage and use, a flourishing sub-culture allowing sexual fraternization that plays a causation role in this death; and a 'blue code' culture that plays a role in this case. Good reason exists for strong sexual fraternization policies in corporations and government agencies, and especially large police agencies. This supervisory ultimate responsibility fails when the 'blue code' culture of professional courtesies and protection flourishes so pervasively and extensively that even crime scene preservation falls by the wayside.

135. Defendants' combined negligence in supervising and training Levi Chavez, and the seven or more other APD officers involved in the overall

fraternization facts in this case, proximately caused the death of Tera Chavez, and the damages and harm to her estate.

COUNT V: SPOILIATION OF EVIDENCE BY APD OFFICERS

136. Determining whether the APD handgun that killed the wife of APD Officer Levi Chavez was used in a homicide or suicide is problematic as a matter of physical proof and scientific evidence. While the circumstantial evidence overwhelmingly focuses on Defendant Levi Chavez, key pieces of physical evidence from the crime scene have been lost and destroyed.

137. Presumably, all APD Defendants will help Plaintiff reconstruct crime scene concerns, as they are sworn officers, and this is a wrongful death investigation.

138. APD personnel drove out to Los Lunas, and injected themselves into the crime scene after receiving a courtesy call from a Valencia County Sheriff's sergeant. The Valencia County Sergeant had informed APD that an APD officer had a death occur in his home with an APD gun. Some of the APD personnel who arrived in Los Lunas were apparently motivated by union and political concerns, others purportedly by protectionist desires to prevent family members from seeing the scene of the death, while others appear to be motivated by mere "blue code" mentality. The motives of other APD officers at the scene are unclear. Regardless of motives, grossly negligent or intentional spoliation of evidence occurred as a result of conduct by one or more of Defendants Lt. O'Connell, Sgt. Olivas, Sgt. James Silver, and Officers John Does 4-7, (*hereinafter referred to collectively as "the APD Spoliation*

Defendants”).

139. If discovery establishes that negligence occurred by union personnel not acting as sworn APD officers, then appropriate amending of this pleading will follow.
140. Levi Chavez called the 911 operator at 9:02 p.m. on Sunday evening, October 21, 2007, and essentially reported that ‘his wife had committed suicide about a day ago’. Personnel from the Valencia County Sheriff’s Office, (*hereafter*, “VCSO”), arrived at 9:09 p.m. The VCSO detectives and crime scene technicians began arriving at 9:49 p.m. The “APD Spoliation Defendants” arrived about an hour later, at approximately 11 p.m., according to the VCSO reports.
141. Over the objection of the VCSO investigators, the “APD Spoliation Defendants” entered the crime scene. The APD personnel on the scene did not leave until 1:45 a.m. on October 22, 2007. They were there for two hours and forty-five minutes. By the time they left, key pieces of evidence were destroyed and lost forever, while other evidence has been contaminated and disturbed.
142. Some of the “APD Spoliation Defendants” demanded the “professional courtesy” of being able to remove bloody bedding to protect the family of Levi Chavez from seeing it, and some of the APD “Spoliation Defendants” cut up and removed sheets and mattress material.
143. A blood sample in a toilet was flushed away by an APD officer.
144. The VCSO deputy responsible for creating a log to document persons who entered the crime scene looked at the body of the young woman lying on the

bed in a pool of blood with an APD gun laying alongside her arm, and wrote “homicide crime scene log” on the upper portion of the form. He documented the arrival and entry of the crime scene by “APD Spoliation Defendants”.

145. Because some of the “APD Spoliation Defendants” actually cut up and removed the sheets and bedding from the crime scene, it is now impossible to run any subsequent scientific testing of the bedding. The “APD Spoliation Defendants” cut the mattress and bedding, and removed parts of it from the crime scene even though it obviously contained physical evidence. Now there is no way for Plaintiff’s experts to run the necessary and needed specific scientific tests on the sheets, bedding and mattress. The negligent and intentional collection and destruction of the bedding evidence caused the total loss of that evidence to the fact-finders in this case, probably preventing learning (as a matter of science) the identity and presence of anyone during decedent’s death, or her last few days of life. For example, a photograph shows a substantial swipe of blood underneath bedding on the phone side of the bed over fifteen inches from her body, that could not have been put there by decedent (who died instantly with no blood on her hands). The substantial swipe of blood found underneath bedding and on the sheets could not have been put there by VCSO Detectives, nor OMI personnel when the body was moved (because the body was moved the other direction off of the bed without moving the bedding covering the large swipe). The large blood swipe cannot be tested for identity and whether it was put on the sheets at the time of the shooting, or at the time of the 911 phone calls, or at the time of the body’s removal, for the very odd reason that APD officers cut up and destroyed the

bedding. DNA testing of the sheets cannot occur to inform the jury whether sexual activity occurred over decedent's last weekend, or with whom, and tests cannot be performed to confirm that the sheets were washed on Friday when the house was cleaned. If DNA from a male other than Levi Chavez was on the sheets, or from Levi Chavez, it is critical information, especially since her APD husband, and the APD officer having an affair with her, both deny they were there on Saturday, while neighbors report seeing an APD car that day. A stated desire to 'protect the family' has had the effect of 'protecting APD officers'.

146. In addition, because of the spoliation of evidence, the fact-finder in this case cannot now meaningfully pursue fingerprints from several crucial items that were in the bedroom, the kitchen table area, the living room table, the fireplace mantel, and all around the house. One witness says it was APD officers who were "swarming" around the bedroom, that "found" the small amount of marijuana in a drawer in the bedroom, as well as the items between the mattresses when they were cutting up the bedding.

147. Even more critically, a Valencia County Sergeant Detective (who was the crime scene supervisor) observed blood in the toilet of the bathroom and duly documented his visual observations in his police report. His report describes a 'blood pool' about the size of a quarter or so at the bottom of the otherwise clean water in the deepest portion of the toilet bowl. After noting the sample, he left to obtain the equipment to remove the blood from the toilet for sending to the State crime lab. However, one of the "APD Spoliation Defendants" urinated in that toilet and flushed the evidence away. When the VCSO

Detective returned to collect the blood pool, it was gone forever. It has since been determined that decedent was not menstruating at the time of her death; therefore, the blood in the toilet could not have been decedent's blood after sustaining the single gun shot wound that caused her instant death on the bed. Now no one will ever know if whoever attended this death washed his or her hands, or something else, in that toilet, or removed rubber or latex gloves, or otherwise somehow left that particular physical evidence of actual blood at the scene during the last hours of decedent's life. No DNA testing of the blood in the toilet can ever occur to determine the identity of that blood donor, because an APD officer flushed it away before the crime scene investigators from VCSO could even collect the evidence. This destruction of evidence was, at the very least, and to put it mildly, "grossly negligent".

148. The gross negligence of the "APD Spoliation Defendants" caused the loss of certain physical evidence forever, leaving the fact-finder in this case to rely heavily on the substantial circumstantial evidence outlined elsewhere in this complaint.

149. But for the grossly negligent spoliation of evidence, an important body of physical and scientific evidence would exist that would address questions of whether the death was a homicide or a suicide, how many people were in the home that weekend, if any, and who they were. In turn, this physical evidence would support claims regarding liability, damages, and coverage.

150. The gross negligence or deliberate indifference to crime scene preservation by "APD Spoliation Defendants" or union representatives shocks the conscience. The deliberate indifference to a crime scene and the

intentional acts of destroying the bedding and flushing away evidence merits punitive damages.

151. Among the damages caused by the spoliation of evidence are any negative impacts on the wrongful death case, plus any negative impacts on possible insurance coverage(s), as well as separate damages.

152. The spoliation of evidence is a separate occurrence under the Tort Claims Act from any negligence by other APD officers or supervisors that proximately caused the death of Tera Chavez.

153. If it turns out that union representatives who are not APD officers or supervisors are entirely responsible for the spoliation of evidence, the Tort Claims Act does not apply to their conduct.

IV. Request for Relief

WHEREFORE, Plaintiff seeks the following relief:

- (a) compensatory damages sufficient to make the Estate of Tera Andrea Chavez whole for the wrongful death of decedent, including loss of future income and economic capacity, loss of the enjoyment of life, loss of society and companionship of her children, and all other damages allowed by law;
- (b) separate compensatory damages for the spoliation claim, including the value of any harm to the wrongful death liability case, damages claims, or coverage issues;
- (b) punitive damages in the capacities allowed by law against any of the Defendants, for the appropriate counts described above;
- (c) expenses, costs, and attorney's fees under 42 U.S.C. Section 1988;

(d) pre- and post- judgment interest;

(e) such other and further relief as the Court deems just and proper.

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