

**EASTERN DISTRICT OF WISCONSIN**

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THE ESTATE OF JAMES FRANLIN PERRY,  
by BETTIE A. RODGERS, Special Administrator,  
and  
JAMES FRANKLIN PERRY I. (A Minor)  
Plaintiffs,

v.

CHERYL WENZEL, R.N.; DEPUTY KICKBUSH; NICOLE  
VIRGO, R.N.; TINA WATTS, R.N.; SERGEANT  
FATRENA HALE; SHERRIFF DAVID A. CLARK; KELLY  
KIECKBUSCH; ABIE DOUGLAS; ANTHONY ARNDT;  
SHEILA JEFF; DARIUS HOLMES; RICHARD E.  
SCHMDIT;

821 State Street  
Milwaukee, WI 53233;

and

RICHARD LOPEZ; FRANK SALINSKY; STEPHON BELL;  
MARGARITA DIAZ-BERG; ALEXANDER C. AYALA;  
FROILAN SANTIAGO; KARL ROBBINS; CRYSTAL  
JACKS; COREY KROES; RICK BUNGERT; LUKE LEE;  
JACOB IVY; SHANNON D. JONES; RICHARD MENZEL;  
EDWARD FLYNN; ROMAN GALAVIZ; VICTOR E.  
BEECHER

Police Administration Building  
749 West State Street, P.O. Box 531  
Milwaukee, WI 53201-0531

and

THE CITY OF MILWAUKEE, a municipal corporation  
City Hall  
200 East Wells St.  
Milwaukee, WI 53202,

and

MILWAUKEE COUNTY, a municipal corporation  
901 N. 9<sup>th</sup> Street, Room 306  
Milwaukee, WI 53223

and

WISCONSIN COUNTY MUTUAL INSURANCE  
CORPORATION

c/o Registered Agent, David Bisek  
Aegis Corporation  
18550 W. Capitol Drive  
Brookfield, WI 53045

AURORA SINAI MEDICAL CENTER  
945 N. 12<sup>th</sup> Street  
Milwaukee, WI 53233

and

PAUL J. COOGAN

**COMPLAINT**

Case No. 12-CV-0664

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Aurora Sinai Medical Center  
945 N. 12<sup>th</sup> Street  
Milwaukee, WI 53233

and

BECKY POTTERTON

Aurora Sinai Medical Center  
945 N. 12<sup>th</sup> Street  
Milwaukee, WI 53233

and

ABC INSURANCE COMPANY

and,

WISCONSIN PATIENTS COMPENSATION FUND,

Post Office Box 7873,  
Madison, Wisconsin 53707,  
Defendants.

NOW COMES the above named plaintiffs, the Estate of James Franklin Perry, and James Franklin Perry Jr. I (a minor), by their attorneys, **GENDE LAW OFFICE, S.C. AND JUDGE, LANG, & GLYNN, S.C.**, and as for their claims for relief against the above named defendants, allege and shows the Court as follows:

## I. INTRODUCTION

1. This case involves the City of Milwaukee Police Department (MPD) and the Milwaukee County Sherriff's Department's (MCSD) methods of infringing on and violating the Constitutional and statutory rights of James Franklin Perry Jr. (Perry), causing his death. Perry died on the floor of the Milwaukee County Jail after the defendants named herein acted with deliberate indifference to his serious-acute-obvious medical condition by ignoring Perry, leaving him unattended and unassisted on the floor – despite the fact that Perry was gasping for breath, rolling back and forth, moaning and groaning in pain, had defecated all over himself, and was bleeding from the mouth. Perry died while shackled at his legs and arms, a spit mask dripping with blood affixed to his face.

2. Perry was in serious-acute-obvious physical distress at the Police Administration Building, but he was offered no assistance, medical or otherwise. He had a spit mask placed over his

face, was pinned to the floor by several defendants, and then dropped in a cell where he continued to suffer, inching ever closer to death. Perry complained of an inability to breathe, but was told, “If you are talking, you are breathing.” On September 13, 2010, Defendants named herein removed Perry from a cell at the Police Administration Building, and despite his serious-acute-obvious medical condition offered him no assistance, medical or otherwise, but instead transported Perry to the Milwaukee County Jail - where he was left on the floor, bound by his arms and legs, gagged by a spit mask, to die. Despite his verbalized suffering, in clear medical distress exhibited by blood oozing from his spit mask and feces all over himself, no member of the MCSD or the MPD offered Perry any assistance. Perry was left shackled on the floor to die while MCSD and MPD personnel (Defendants named herein) simply walked away – one of which was playing solitaire on her computer.

3. Plaintiffs bring this action pursuant to Wis. Stat. §§ 895.03 & Ch. 655; Title 42 of the United States Code, Sections 1983 & 1985 for violations of the Perry's Eighth and Fourteenth Amendment rights under the United States Constitution and his rights under Article I, Sections One and Six, of the Wisconsin Constitution.

## **II. JURISDICTION**

4. This Court has subject matter jurisdiction over both the Federal and State Law Claims alleged herein.

## **III. VENUE**

5. Venue is proper in this judicial district pursuant to Wis. Stat. § 801.50(2) because most defendants reside in this district and because a substantial part of the events and omissions giving rise to the plaintiffs' claims occurred in the district.

#### IV. THE PARTIES

6. The plaintiff, the Estate of James Franklin Perry (the Estate), represents the decedent James Franklin Perry Jr., whose serious-acute-obvious medical needs were neglected while he was in the custody of MPD/MCSD and left to die while bound and gagged on the floor of the Milwaukee County Jail.

7. Bettie A. Rodgers is the administrator of the Estate with standing to bring this action on its behalf pursuant to Wisconsin Statute and Milwaukee County Case No: 2010PR002059.

8. The plaintiff, James Franklin Perry I., is the minor child of the decedent and he is a citizen of the United States and a resident of the State of Wisconsin.

9. Defendant, Cheryl Wenzel, R.N. (Defendant R.N. Wenzel) is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MCSD as a Registered Nurse and was responsible for the safe, secure, and humane treatment of all inmates at the Milwaukee County Jail, including Perry, on the evening of September 13, 2010. Defendant R.N. Wenzel was aware of and observed Perry's serious-acute-obvious medical emergency, but took no action, medical or otherwise; to assist Perry until he had stopped breathing and lay dead on the floor of the County Jail still bound by his arms and legs and gagged by a spit mask. Defendant Wenzel was deliberately indifferent to Perry's serious-acute-obvious medical needs and Constitutional Rights.

10. Defendant, Deputy Kickbush (Defendant Kickbush) is an adult citizen of the United States and a resident of the State of Wisconsin and at all times material hereto, was employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates at the Milwaukee County Jail, including Perry, on the evening of September 13, 2010. Defendant Kickbush was in the pre-booking area of the County Jail when Perry was brought in and participated in dragging an obviously distressed Perry, bound and gagged, into the pre-booking area and around

the pre-booking area, but provided no assistance, medical or otherwise to Perry, despite Perry's serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

11. Defendant, Nicole Virgo, R.N. (Defendant R.N. Virgo) is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MCSD as a R.N. and was responsible for the safe, secure, and humane treatment of all inmates at the Milwaukee County Jail, including Perry, on the evening of September 13, 2010. Defendant R.N. Virgo was the first medical personal to observe Perry bound and gagged at the County Jail and simply walked away after thirty seconds and provided no assistance, medical or otherwise, to Perry despite Perry's serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

12. Defendant, Tina Watts, R.N. (Defendant R.N. Watts) is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MCSD and was the shift nurse supervisor on September 13, 2010 and was responsible for the safe, secure, and humane treatment of all inmates at the Milwaukee County Jail, including Perry, on the evening of September 13, 2010. Defendant R.N. Watts failed to properly train and supervise Defendant R.N. Virgo and Defendant R.N. Wenzel prior to and on September 13, 2010, and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

13. Defendant, Sergeant Fatrena Hale (Defendant Hale) is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates at the Milwaukee County Jail, including Perry, on the evening of September 13, 2010. Defendant Hale was the Sergeant on duty when Perry was brought in to the pre-booking area of the County Jail and despite the fact that Defendant Hale observed Perry rolling around on the floor bound by his arms

and legs, groaning and could see blood oozing out of Perry's spit mask, as well as feces about his body, Defendant Hale provided no assistance, medical or otherwise, nor ordered her staff to provide any assistance to Perry and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

14. Defendant, Sherriff David A Clark (Defendant Clark) is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was the Sheriff of the MCSD and was ultimately responsible for the safe, secure, and humane treatment of all inmates at the Milwaukee County Jail, including Perry, on the evening of September 13, 2010. Defendant Clark, also oversaw, supervised and had direct control over the management and operations of the entire Sheriff's Department, including the Milwaukee County Jail, and was responsible for the Department's policies and procedures as well as training. Defendant Clark was aware of the County Jail's deficiencies and the lack of compliance with the Consent Decree and the Medical Monitor's suggestions, but took no action to remedy the deficiencies. Defendant Clark was deliberately indifferent to the serious medical needs and Constitutional rights of Perry by ignoring his deputies' lack of sufficient training in policies and procedures, both written and unwritten, to immediately address Perry's, and other inmates in grave danger, medical emergencies when they are suffering from serious-acute-obvious medical conditions.

15. Defendant, Kelly Kieckbusch (Defendant Kieckbusch), is an adult citizen of the United States and a resident of the State of Wisconsin at all times material hereto, was employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates, at the Milwaukee County Jail including Perry, on the evening of September, 13, 2010. Defendant Kieckbusch was assigned to coordinate medical treatment on the evening of September 13, 2010, but failed to provide Perry any attention, medical or otherwise, despite his serious-acute-obvious

medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

16. Defendant, Correctional Officer Abie Douglas (Defendant Douglas), is an adult citizen of the United States and was resident of the State of Wisconsin at all times material hereto, while employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates, at the Milwaukee County Jail including Perry, on the evening of September, 13, 2010. Defendant Douglas was aware and observed Perry's serious-acute-obvious medical emergency, but failed to provide Perry any attention, medical or otherwise, despite his serious-acute-obvious- medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

17. Defendant, Correctional Officer Anthony Arndt (Defendant Arndt), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates, at the Milwaukee County Jail including Perry, on the evening of September 13, 2010. Defendant Arndt was aware and observed Perry's serious-acute-obvious medical emergency while he lay bound and gagged on the floor, oozing blood from his spit mask and feces about his body, but failed to provide Perry any attention, medical or otherwise, despite his serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

18. Defendant, Correctional Officer Sheila Jeff (Defendant Jeff), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates, at the Milwaukee County Jail including Perry, on the evening of September, 13, 2010. Defendant Jeff was aware and observed Perry's serious-acute-obvious medical emergency while he

lay bound and gagged on the floor, oozing blood from his spit mask and feces about his body, but failed to provide Perry any attention, medical or otherwise, despite his serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

19. Defendant, Correctional Officer Darius Holmes (Defendant Holmes), is an adult citizen of the United States and was a resident of the State of Wisconsin at all times material hereto, while employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates, at the Milwaukee County Jail including Perry, on the evening of September, 13, 2010. Defendant Holmes was aware and observed Perry's serious-acute-obvious medical emergency while he lay bound and gagged on the floor, oozing blood from his spit mask and feces about his body, but failed to provide Perry any attention, medical or otherwise, despite his serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

20. Defendant, Richard Lopez, (Defendant Lopez), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Lopez transferred Perry from the Police Administration building to the floor of the Milwaukee County jail, but ignored and was deliberately indifferent to Perry's serious-acute-obvious medical emergency as Perry lay bound and gagged while dying on the floor of the Milwaukee County Jail, with blood oozing out of his spit mask and feces about his body, and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

21. Defendant, Frank Salinsky (Defendant Salinsky), is an adult citizen of the United States and a resident of the State of Wisconsin and at all times material hereto, was employed by the



MPD and was responsible for the safe, secure, and humane treatment of individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Salinsky transferred Perry from the Police Administration building to the floor of the Milwaukee County jail, but ignored and was deliberately indifferent to Perry's serious-acute-obvious medical emergency as Perry lay bound and gagged on the floor of the Milwaukee County Jail, oozing blood from his spit mask and feces about his body, and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

22. Defendant, Stephon Bell (Defendant Bell), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Bell was assigned to sit in the processing section of the Milwaukee County Jail and assist officers conveying inmates. Defendant Bell participated in dragging Perry to the processing section of the County Jail, but simply walked away and ignored and was deliberately indifferent to Perry's serious-obvious-acute medical emergency while he lay bound and gagged on the floor, oozing blood from his spit mask and feces about his body. Bell also participated in a conspiracy to cover up the actual facts surrounding Perry's death and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

23. Defendant, Margarita Diaz-Berg (Defendant Diaz-Berg), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Diaz-Berg was the assistant jailer on the night of September 13, 2010 responsible for conducting fifteen minute checks on Perry while he was placed in the Prisoner Processing Section at

the Police Administration building and despite Perry's bleeding, groans, grunts, and rolling around on the floor in his own blood and feces, Diaz Berg provided no assistance to Perry, medical or otherwise, and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

24. Defendant, Alexander C. Ayala (Defendant Ayala), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Ayala was assigned to the Prisoner Processing Section of the Police Administration Building on September 13, 2010 and assisted in pinning Perry down in the hallway of the Prisoner Processing Section while Perry groaned and screamed in pain – Ayala provided no assistance, medical or otherwise, despite Perry's serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

25. Defendant, Froilan Santiago (Defendant Santiago), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Santiago observed that Perry had urinated and defecated himself upon return from Aurora Sinai, but instead of offering or requesting medical attention for Perry, he dragged Perry to the elevator to be taken upstairs. Defendant Santiago was assigned to the Prisoner Processing Section of the Police Administration Building on September 13, 2010 and assisted in pinning Perry down in the hallway of the Prisoner Processing Section while Perry groaned and screamed in pain – Santiago provided no assistance, medical or otherwise, despite Perry's serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

26. Defendant, Karl Robbins (Defendant Robbins), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Robbins presided over the Police Processing Section at the Police Administration Building at the time of the unconstitutional treatment of Perry and therefore had supervisory control over the officers/defendants on duty. Additionally Defendant Robbins was informed that Perry was not doing well at Aurora Sinai, but instructed his officers to return Perry to the Police Administration Building anyway. Robbins took no action to assure that once Perry was returned that his serious-acute-obvious medical emergency was properly monitored. Perry told Robbins on the afternoon of September 13, 2010 that he had seizures and had not taken his medication for this condition since being in custody; Defendant Robbins ignored Perry's express medical needs and failed to take any action in regard to Perry's self reported, express medical needs. Defendant Robbins was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

27. Defendant, Crystal Jacks (Defendant Jacks), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Jacks assisted in dragging Perry to the Prisoner Processing Section of the Police Administration Building, pinning him down on the floor, applying a spit mask, and subsequently dropping Perry on the floor of a pinning cell, while providing no assistance, medical or other, despite Perry's serious-acute-obvious medical emergency. Defendant Jacks was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

28. Defendant, Corey Kroes (Defendant Kroes), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Kroes assisted in dragging Perry to the Prisoner Processing Section of the Police Administration Building, pinning him down on the floor, applying a spit mask, and dropping Perry on the floor of the holding cell, while providing no assistance, medical or other, despite Perry's serious-acute-obvious medical emergency. Defendant Kroes was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

29. Defendant, Rick Bungert (Defendant Bungert), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Bungert observed that Perry had urinated and defecated himself upon returning from Aurora Sinai, but instead of offering or requesting medical attention for Perry, he proceeded to drag Perry to the elevator to be taken upstairs. Defendant Bungert was assigned to the Prisoner Processing Section at the Police Administration Building on September 13, 2010 and assisted in pinning Perry down in the hallway of the Prisoner Processing Section while Perry groaned and screamed in pain – Defendant Bungert provided no assistance, medical or otherwise, despite Perry's serious-acute-obvious medical emergency and was deliberately indifferent to Perry's serious medical needs and Constitutional Rights.

30. Defendant, Luke Lee (Defendant Lee), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the

MPD, including Perry, on the evening of September 13, 2010. Defendant Lee was assigned to the Prisoner Processing Section at the Police Administration Building on September 13, 2010 and assisted in pinning Perry down in the hallway of the Prisoner Processing Section while Perry groaned and screamed in pain – Defendant Lee provided no assistance, medical or otherwise, despite Perry’s serious-acute-obvious medical emergency and was deliberately indifferent to Perry’s serious medical needs and Constitutional Rights.

31. Defendant Police Aide Jacob Ivy (Defendant Ivy), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Ivy assisted in removing Perry from his cell at the Prisoner Processing Section at the Police Administration Building. Defendant Ivy provided no assistance, medical or otherwise, despite Perry’s serious-acute-obvious medical emergency and was deliberately indifferent to Perry’s serious medical needs and Constitutional Rights.

32. Defendant, Shannon D. Jones (Defendant Jones), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD and was responsible for the safe, secure, and humane treatment of all inmates, including Perry, on the evening of September, 13 2010. Defendant Jones engaged in the defendants’ conspiracy to cover up the true circumstances surrounding Perry’s death; thereby violating Perry’s Constitutional Rights.

33. Defendant, Richard Menzel (Defendant Menzel), is an adult citizen of the United States and a resident of the State of Wisconsin and at all times material hereto, was employed at the MPD and was responsible for the safe, secure, and humane treatment of all inmates, including Perry, on the evening of September 13, 2010. Defendant Menzel engaged in the defendants’ conspiracy to

cover up the true circumstances surrounding Perry's death; thereby violating Perry's Constitutional Rights.

34. Defendant, Chief of Police Edward Flynn (Defendant Flynn), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was the Chief of the MPD, and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Flynn, also oversaw supervised and had direct control over the management and operations of the entire MPD, including the Police Administration Building, and was responsible for the Department's policies and procedures as well as training or lack thereof. Chief Flynn was aware of the deficiencies in the MPD's Administrative Review of in custody deaths as well as the MPD's deficient policies of allowing untrained officers to undertake medical intake screening and make decisions concerning medical care, yet was deliberately indifferent to whether these and other policies were constitutionally inadequate or whether these policies of the MPD placed inmates in MPD custody at an increased, foreseeable and unacceptable risk of substantial harm. Defendant Flynn was deliberately indifferent to the serious medical needs and Constitutional rights of Perry by perpetuating constitutionally deficient training, policies and procedures, both written and unwritten, thereby placing all inmates, including Perry, in grave danger when they suffered from serious-acute-obvious medical emergencies while in custody. Chief Flynn admitted, at least in part, that his officers were inadequately trained on medical emergencies when he espoused to media outlet(s) that his officers abided his departments unwritten policy that "if you are talking you are breathing" when those officers were presented with an inmate's, including Perry, medical emergency of an inability to breathe.

35. Defendant, Deputy Inspector of Police – Professional Standards Bureau, Roman Galaviz (Defendant Galaviz), is an adult citizen of the United States and a resident of the State of

Wisconsin, and at all times material hereto, was employed by the MPD, and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Galaviz, also oversaw supervised and had direct control over the professional standards of the entire MPD, and was responsible for the Department's policies and procedures as well as training. Defendant Galaviz was aware of the deficiencies in the Police Department's Administrative Review of in custody deaths as well as the MPD's policies of allowing untrained officers to process medical intake screening and make decisions concerning medical care, yet was deliberately indifferent as to whether these and other policies of the MPD should be changed and whether such policies placed inmates in MPD custody at an increased, foreseeable and unacceptable risk of substantial harm. Defendant Galaviz was deliberately indifferent to the serious medical needs and Constitutional rights of Perry by perpetuating constitutionally deficient training, policies and procedures, both written and unwritten, thereby placing all inmates, including Perry, in grave danger when they suffered from serious-acute-obvious medical emergencies while in custody.

36. Defendant, Captain of Police – Training Division, Victor E. Beecher (Defendant Beecher), is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MPD, and was responsible for the safe, secure, and humane treatment of all individuals in the custody of the MPD, including Perry, on the evening of September 13, 2010. Defendant Beecher, also oversaw supervised and had direct control over the training of the entire MPD, and was responsible for the Department's policies and procedures as well as training. Defendant Beecher was aware of the deficiencies in the MPD's Administrative Review of in custody deaths as well as the MPD's policy of allowing untrained officers to process medical intake screening and make decisions concerning medical care, yet was deliberately indifferent to whether these and other policies of the MPD should be changed and whether these

policies placed inmates in MPD custody at an increased, foreseeable and unacceptable risk of substantial harm. Defendant Beecher was deliberately indifferent to the serious medical needs and Constitutional rights of Perry by perpetuating constitutionally deficient training, policies and procedures, both written and unwritten, thereby placing all inmates, including Perry, in grave danger when they suffered from serious-acute-obvious medical emergencies while in custody.

37. Defendant, Inspector Richard Schmidt (Defendant Schmidt) is an adult citizen of the United States and a resident of the State of Wisconsin, and at all times material hereto, was employed by the MCSD and was responsible for the safe, secure, and humane treatment of all inmates at the Milwaukee County Jail, including Perry, on the evening of September 13, 2010. Defendant Schmidt is currently leading the Detention Services Bureau, which includes oversight of the medical, clerical, correctional officers, and sworn staff assigned to the Milwaukee County Jail. Defendant Schmidt also oversaw supervised and had control over the management and an operation of the entire Sheriff's Department, and was responsible for the Department's policies and procedures as well as training. Defendant Schmidt was aware of the County Jail's deficiencies and repeated, inexplicable failures to comply with the Consent Decree and the Medical Monitor's suggestions, but took no action to remedy the deficiencies. Defendant Schmidt was deliberately indifferent to the serious medical needs and Constitutional rights of Perry by perpetuating constitutionally deficient training, policies and procedures, both written and unwritten, thereby placing all inmates, including Perry, in grave danger when they suffered from serious-acute-obvious medical emergencies while in custody.

38. Defendant, the City of Milwaukee, with offices at 200 East Wells St. Milwaukee, WI 53202, and offices of its Corporate Counsel, Grant F. Langley, at 200 East Wells Street, 800 City Hall, Milwaukee, WI 53202-3653, at all times material hereto, was a Municipal Corporation organized under the laws of the State of Wisconsin and was at all times responsible for training and



supervising the employees of the MPD, and for the creation and implementation of policy and procedures for the MPD - an agent of the City of Milwaukee.

39. Defendant, Milwaukee County, with offices of its executive at 901 N. 9<sup>th</sup> Street, Room 306, Milwaukee, WI 53233, and offices of its Corporate Counsel, Kimberly Walker, located at 907 North 9<sup>th</sup> Street, Suite 303, Milwaukee, WI 53233, at all times material hereto, was a Municipal Corporation organized under the laws of the State of Wisconsin and was at all times responsible for training and supervising the employees of the MCSD, and for the creation and implementation of policy and procedures of the MCSD - an agent of the City of Milwaukee.

40. Defendant, Wisconsin County Mutual Insurance Corporation (Wisconsin County Mutual) is a domestic insurance company whose registered agent for service of process is David Bisek, Aegis Corporation, 18550 W. Capitol Drive, Brookfield, WI 53045, and is primarily engaged in the business of insurance. At all times relevant hereto, Wisconsin County Mutual provided insurance to Milwaukee County and Milwaukee County employees, agents, officers, and representatives, insuring against liability imposed by law arising out of negligent conduct and/or constitutional violations and further insuring the defendants against any damages they might be liable to others by virtue of the negligent conduct and/or constitutional violations; that said policy or policies of insurance were in full force and effect at the time of the incident that is the subject of this lawsuit; that in said contract(s) of insurance, Wisconsin County Mutual reserved the right to settle or adjust any claims arising thereunder and to defend any lawsuits instituted by virtue of any such claims and has a direct interest in this litigation; that by virtue of the laws of the State of Wisconsin, Wis. Stat. § 803.04(2)(a), Wisconsin County Mutual is a proper defendant herein.

41. Aurora Sinai Medical Center (“Aurora Sinai”) is a health care provider, corporation, and/or entity organized and operated in this state and under the laws of the State of Wisconsin for the purposes of providing medical treatment to patients by physicians and other health care

providers at the address above, and is responsible for the acts of the negligence of its employees and agents involved in health care services provided to patients treated therein. At all times material hereto, Aurora Sinai was a health care provider involved in the care and treatment of Perry.

42. Upon information and belief, the defendant Paul J. Coogan, M.D. (Coogan), is an adult resident of the State of Wisconsin, and a health care provider practicing medicine at the Aurora Sinai, 945 N. 12<sup>th</sup> Street, Milwaukee, WI 53233, and, upon information and belief, Coogan was a licensed medical doctor in the State of Wisconsin, Credential No. 32432-20, at the business address identified above. At all times relevant hereto, Coogan was a physician and health care provider involved in the care and treatment of Perry.

43. Upon information and belief, the defendant Becky Potterton (Potterton), is an adult resident of the State of Wisconsin, and a health care provider at the Aurora Sinai, 945 N. 12<sup>th</sup> Street, Milwaukee, WI 53233. At all times relevant hereto, Potterton was a health care provider involved in the care and treatment of Perry.

44. Defendant ABC Insurance Company (ABC) is a fictitiously named insurance corporation or corporations, authorized to conduct business in the State of Wisconsin and is engaged in the business of, among other things, issuing policies of medical malpractice and other insurance within the State of Wisconsin and said address is unknown at this time; upon information and belief, prior to and including all relevant times hereto, the defendant ABC issued a policy of liability insurance to Aurora Sinai or other responsible defendants. By the terms of said policy, ABC agreed to pay any and all sums for which Aurora or employees or agent thereof might be held legally liable for injuries or damages caused by Aurora Sinai or employees and agents thereof. Upon information and belief, said policy was in full force and effect during the occurrences hereinafter stated. Pursuant to Wis. Stat., §803.04(2), ABC is a proper party to this action.

45. Defendant Wisconsin Patients Compensation Fund (the Fund) is a medical legal liability fund mechanism created under Chapter 655 of the Wisconsin statutes for the purpose of paying the portion of medical malpractice claims in excess of limits expressed under said Chapter or the maximum liability for which the health care providers are insured, whichever limit is greater, and for paying future medical expense payments and other claims and is a proper party herein pursuant Wis. Stat., §655.27(5).

46. All of the defendants are sued in their individual and official capacities. At all relevant times, these defendants (excluding Aurora Sinai, Defendant Coogan and Defendant Potterton) were acting under the color of state law; pursuant to their authority as officials, agents, contractors or employees of the State of Wisconsin; within the scope of their employment as representatives of public entities, as defined in 42 U.S.C. §12131(1), and were deliberately indifferent to the Constitutional, civil, and statutory rights of Perry.

## V. FACTS

### **PERRY'S FIRST SEIZURE AT THE POLICE ADMINISTRATION BUILDING**

47. That on September 13, 2010, Perry was in the custody of the MPD at the Police Administration Building in the bullpen when Perry tried to stand, but fell back against the wall and went limp. "He had a blank stare for about five seconds." Perry then fell striking his head "hard" on the concrete floor, at which point he began shaking. Prior to this time, Perry had informed the MPD and its employees that he required seizure medication twice a day. Despite self reporting this need, Perry never received this medication while in custody.

48. That the Milwaukee Fire Department - EMS was contacted five minutes after the onset of Perry's Seizure.

49. That Milwaukee Fire Department personal recorded, "Upon arrival found 41 year old [Perry] lying supine on the floor of holding cell with a cushion placed under his head. **Per**

**police, patient had suffered approximately one minute long full body seizure, fell off bench and hit head on the floor.”**

50. That Perry was transferred via ambulance to Aurora Sinai by Bell Ambulance. Defendant Kroes rode in the ambulance with Perry, when Defendant Kroes attempted to speak to Perry – Perry was unresponsive and not fully alert.

51. When at Aurora Sinai Defendant Kroes observed, “Perry seemed like he was trying to say something. But he stopped talking midsentence.” Defendant Kroes explained, “[Perry] froze, like a statue, for about 10 seconds. Then his eyelids began twitching. . . . [Perry] went into a full body seizure.”

52. The seizure, referenced in ¶51, lasted five minutes.

53. After the seizure referenced in ¶51 Perry’s breathing was shallow and fast. Perry was mumbling, but Defendant Kroes could not understand him.

54. That subsequent to the seizure referenced in ¶51 Perry suffered a second seizure.

55. Perry was examined and treated by Coogan & Potterton and other Aurora Sinai staff.

56. Perry asked to use the bathroom, he seemed very tired. According to Defendant Kroes Perry had a much more difficult time walking to the bathroom; he struggled to keep his balance.

57. Perry was discharged from Aurora Sinai by Medical Staff.

58. When it was time to leave Aurora Sinai, Defendant Kroes and Jacks attempted to wake Perry, but he kept falling back asleep. Defendant Kroes put on Perry’s shoes and she and Defendant Jacks tried to bear all of Perry’s weight, but Perry just mumbled and occasionally screamed.

59. That Perry was wheeled to a squad car, at which time Defendant Kroes observed that Perry was weak.

## **PERRY'S RETURN TO THE POLICE ADMINISTRATION BUILDING**

60. Prior to Perry's return from Aurora Sinai, Defendants assigned to the Police Administration Building were made aware that Perry was on a medical run and would be returning.

61. That when Defendants Kroes and Jacks arrived at the Police Administration Building they were greeted by Defendants Santiago and Bungert, at which time Defendants Kroes and Jacks informed Defendant Santiago that Perry was not being cooperative.

62. That after ten to fifteen minutes of waiting in the garage of the Police Administration Building Defendants Kroes and Jacks decided that they were going to take Perry up to the Prisoner Processing Section because they did not have Perry's paperwork.

63. That when Perry was removed from the squad car he could not walk.

64. That Perry was dragged from the squad car to the elevator, Defendant Santiago was holding Perry's legs up by the shackles and Defendants Kroes, Jacks, and Bungert held Perry up by his arms.

65. That as Perry was dragged from the squad car to the elevator it was observed by the Defendants Kroes, Jacks, Santiago, and Bungert that Perry had urinated and defecated on himself.

66. At 6:50 p.m. Perry was dragged by officers/defendants into the elevator and placed on the floor – officers were required to hold up Perry's head and support him with their knees to assure that he did not fall backward. When the elevator stopped all four officers/defendants present were needed to carry Perry out of the elevator. Perry was offered no medical assistance at this point, despite his serious-acute-obvious medical emergency.

67. That Defendants Kroes, Jacks, Santiago, and Bungert dragged Perry out of the elevator and dropped him to the floor in the hallway of the Prisoner Processing Section where Perry remained for the next fifteen minutes, groaning and shouting in pain, waning in and out of consciousness. Several officers/defendants pinned him to the ground and placed a spit mask over

his face, despite Perry's serious-obvious-acute medical emergency. Perry was offered no assistance, medical or otherwise, while he lay dying, gagged and shackled, right in front of the defendants' eyes.

68. That while Perry lay on the floor in serious-acute-obvious medical distress, having difficulty breathing, Defendant Bungert placed him in a compression hold.

69. That while being held on the floor Perry again urinated on himself, Perry was then mocked by the defendants, but offered no medical assistance at this point, despite his serious-acute-obvious medical emergency.

70. That while being pinned to the floor Perry complained of the inability to breath, one of the MPD officers/defendants responded, "If you are talking you are breathing," but offered Perry no medical assistance nor requested any medical assistance.

71. That officers inexplicably continued to pin Perry to the ground with a spit mask in place despite his serious-acute-obvious physical distress and screams of pain, "Perry was conscious and breathing but was somewhat incoherent in his actions." Perry received no medical assistance at this point.

72. While Perry was accosted and lay in acute medical distress, Defendant Diaz-Berg played solitaire on her computer while she was supposed to be searching for Perry's paperwork during the time period he was dying in MPD's custody.

73. That Defendant Robbins observed this entire scene, but took no action to assist Perry or provide him any medical care. Investigators recorded, "Robbins stated he went out to the booking area hallway and observed the officers with Perry and that Perry was on the floor by the bench moaning, having a spit mask over his face. Robbins continued to relate that Perry was conscience and breathing but somewhat incoherent in his actions. Robbins stated he observed that Perry had defecated and urinated on himself as his clothing was soiled and an odor was emitting from him."

74. Defendant Robbins attempted to get Perry's paperwork completed and upon its completion called for a unit to convey Perry to the County Jail, but at no time did Robbins provide any care for Perry's serious-obvious-acute medical emergency, despite him being bound and gagged, while Perry lay covered in his own urine and feces.

75. That the paperwork required to transport Perry to the County Jail was allegedly not in order; therefore, defendants decided to place an obviously distressed, incoherent, bleeding, bound and gagged Perry covered in his own urine and feces in a holding cell. An unconscious Perry was carried to a cell in a hog-tied position when one of the officers dropped him; thereby, causing Perry's head to hit the floor from at least two feet up – leaving copious amounts of blood on the floor. One of the Officers told Perry that now, "They were going to treat him like prison," Perry, near death, was still not offered any medical assistance at this point still covered in his own urine and feces and now bleeding from the spit mask.

76. That inmate Tyrone Evans observed that once the Defendants: Diaz-Berg; Ayala; Kroes; Jacks; Lee; Santiago; and Bungert got to the cell door with Perry, the defendant on Perry's right side dropped Perry causing him to fall to floor and hit his face on the floor from approximately two feet above the ground.

77. That Inmate Henry L. Martin observed, "[Perry] who had the seizure earlier being held by his feet of the ground by an officer and another officer holding one of [Perry's] arms." "Martin stated that [Perry's] head was on the floor of the cell as if he was dropped by the other officer because no one was holdng onto to [Perry's] other arm."

78. Defendants Diaz-Berg, Ayala, Kroes, Jacks, Lee, Santiago, and Bungert picked Perry up off the floor and dragged him into a cell and then left him on the floor, bound and gagged, covered in his own urine and feces, gagged with blood oozing from his spit mask.

79. That Perry was dragged to the cell in the Prisoner Processing Section in a ‘hog-tied position.’”

80. That after the Defendants, Diaz-Berg, Ayala, Kroes, Jacks, Lee, Santiago, and Bungert left Perry on the floor in his cell, inmate Tyrone Evans observed blood in front of the cell where Perry was dropped and heard Perry moaning.

81. That after Perry was placed in the holding cell he did not speak any audible words “just a bunch of mumbling.”

82. Defendants, Diaz-Berg, Ayala, Kroes, Jacks, Lee, Santiago, and Bungert left Perry in the cell covered in his own urine and feces, bound and gagged, with blood oozing from the spit mask.

83. As Perry lay in his cell, bound and gagged, covered in his own urine and feces, blood oozing from his spit mask, he was moaning and banging on the wall. Despite the obvious medical emergency, he was offered, no assistance, medical or otherwise, for his serious-acute-obvious medical emergency.

84. Defendant Diaz-Berg reported she observed Perry every fifteen minutes in the previously described distressed condition, she observed “Perry was just making grunting noises and rolled around a bit.” Yet, Defendant Diaz-Berg provided Perry no assistance, medical or otherwise, despite Perry’s serious-acute-obvious medical emergency.

85. That approximately 8:20 P.M. Defendants Ayala, Diaz-Berg, Lee, Lopez, Salinsky, Robbins, and Ivy came to remove Perry from his cell, but not one of the aforementioned defendants offered Perry assistance, medical or otherwise, despite his serious-acute-obvious medical emergency. He remained bound and gagged, covered in his own urine and feces, with bleeding oozing from his spit mask.



86. That Perry was placed on the floor. Defendant Lopez stated that Perry was not resisting in any manner. Officer Salinsky reported that he never saw Perry be combative.

87. That Perry was dragged out of the holding cell by his arms and legs, “facedown with his arms behind his back, legs bent at the knees and feet in the air.”

88. Defendant Salinsky observed that Perry could not walk, and had defecated on himself. Defendant Salinsky offered no assistance, medical or otherwise to Perry, despite his serious-acute-obvious medical emergency.

89. As Perry was dragged to the elevator he would, “go limp from time to time.”

90. Defendant Lopez reported that when Perry walked he had wobbly legs as if he were intoxicated, and that Lopez could smell a strong odor of fecal matter emitting from Perry.

91. That officers tightly gripped Perry for fear that he would fall again as an obviously acutely distressed Perry was dragged to the elevator at 8:23 p.m., bound and gagged, which required officer assistance to maintain his weight.

92. After Perry was removed from the holding cell at the Prisoner Processing Section of the Police Administration Building, Defendant Diaz-Berg observed blood in the cell and outside the cell door – Defendant Diaz Berg also noted the smell of feces in Perry’s cell.

93. After Perry was removed from the cell, Andrew J. Puechner, Custodian 2, entered the cell and observed gobs of spit, blood and fecal matter on the floor.

**PERRY IS TRANSPORTED FROM THE POLICE ADMINISTRATION BUILDING  
TO THE COUNTY JAIL WHERE HE IS TREATED WITH DELIBERATE  
INDIFFERENCE UNTIL HE PASSES AWAY ON THE FLOOR**

94. That Defendants Lopez and Salinsky exited the Police Administration Building, with Perry in the rear of the conveyance van at 8:34 P.M. on September 13, 2010.

95. That Defendants Lopez and Salinsky arrived at the Criminal Justice Facility (County Jail), with Perry at 8:35 P.M. on September 13, 2010.

96. Perry was transported via police wagon. When he was removed by defendants from the wagon, Perry had emitted even more blood and feces, all to be clearly seen on the floor of the police wagon. Perry, still bound and gagged, covered with his urine and feces, oozing blood from his spit mask, was offered no assistance, medical or otherwise, at this point.

97. When Defendants Lopez and Salinsky arrived at the County Jail Defendant Salinsky entered the pre-booking area to advise the Sherriff's Department staff of "the situation" with Perry.

98. Defendants Lopez and Salinsky removed Perry from the conveyance van, Perry needed assistance to stay upright, and according to Defendant Lopez "appeared to be heavier, and needed more assistance to walk."

99. That over six minutes passed after Defendants Lopez and Salinsky arrived at the County Jail, along with Perry. After six minutes Perry, still bound and gagged, covered in his own urine and feces, blood oozing from his spit mask, was dragged into the pre-booking area of the County Jail and left on the floor in a clearly medically emergent state and near death.

100. Defendant Lopez reported that as he and Defendant Salinsky dragged Perry into the pre-booking area of the County Jail, Perry was unable to walk or stand; therefore Defendants Lopez and Salinsky placed him on the floor. No assistance, medical or otherwise was provided to Perry for his serious-acute-obvious medical emergency while he lay bound and gagged, covered in his own urine and feces, blood oozing from his spit mask and in his last throes before a miserable death on the cold floor of Milwaukee County's jail.

101. That MPD Officers Salinsky and Lopez dragged Perry into Pre-Booking Area of the County Jail in bound and gagged, "Blood was **seeping** from the spit mask." "[Defendant Hale] went out and observed Perry laying on the floor on his back rolling back and forth groaning. Defendant Hale stated that she could see **Perry bleeding through the spit mask.**" Nevertheless and at the point of his final expiration, Perry was offered no assistance, medical or otherwise.

102. That at 8:41 p.m. Perry was dragged into the Pre-Booking Area of the County Jail by several officers/defendants from the MPD and the MCSD, where he was left on the floor. An obviously distressed Perry remained on the floor, bound and gagged, covered in his own urine and feces, oozing blood from his spit mask and exhibiting his final death throes groaning in pain. That after two minutes Perry was moved by several officers /defendants to a concrete bench at which time his soiled pants were down by his ankles. A dying Perry continued to rock back and forth groaning in pain covered in urine and feces and his own blood – but he was offered no assistance, medical or otherwise, at this time, despite his serious-acute-obvious medical emergency.

103. That when Perry was left on the floor in the Pre-Booking Area of the County Jail at 8:41 p.m. over ten officers, nurses, and staff, including, but not limited to, Defendants: Lopez; Salinsky; Bell; Hale; and Kickbush, simply watched Perry rock back and forth and mumble, groan, and scream in pain, while he lay bound and gagged, covered in his own urine, feces and blood, but offered no assistance, medical or otherwise, despite Perry’s serious-obvious-acute medical emergency.

104. That Defendant Hale went out to the Pre-Booking Area of the County Jail and observed “Perry laying on the floor on his back rolling back and forth groaning.” Defendant Hale could see Perry bleeding through the spit mask. Defendant Hale provided no assistance, nor ordered anyone to provide assistance, medical or otherwise, to Perry despite Perry’s serious-acute-obvious medical emergency.

105. At 8:44 P.M., Perry still bound and gagged was picked up by four officers/defendants, including Defendants Salinsky and Lopez. Perry’s soiled pants were around his ankles, his undergarments full of urine and feces, blood oozing from his spit mask and he was doubled over squealing in pain. In spite of Perry serious-acute-obvious medical emergency seven individuals/defendants, including, but not limited to Defendants Salinsky, Lopez, Bell, and

Kickbush stood by and offered no assistance to Perry, medical or otherwise, despite Perry's serious-obvious-acute medical emergency.

106. At 8:45 p.m., ten minutes after Perry arrived at the County Jail, and over four minutes after he was dragged in and left on the floor of the Pre-Booking Area, bound and gagged by a spit mask saturated with blood, R.N. Virgo went to assess Perry. "[Defendant R.N. Virgo] asked [Perry] if his name was James Perry, [Perry] nodded yes. During this time [Defendant R.N. Virgo] asked [Perry] to say his name, and [Perry] did not verbalize. Based on Nuero assessment, [Perry's] inability to verbalize name, seeing blood to spit mask of unknown origin, soiled underpants (had BM) and recent history of seizure, [Defendant R.N. Virgo] refused [Perry]." Despite this dyer assessment, Perry was offered no assistance, medical or otherwise, at this time.

107. On the prescreening Report Defendant R.N. Virgo recorded, "[Perry] bleeding **profusely** from mouth, unsure of source as **has spit mask on**. [Perry] also seems to be having loose bowels."

108. That Defendants Salinsky, Bell, and Lopez told Defendant R.N. Virgo that Perry had come from Sinai Hospital.

109. That Defendant R.N. Virgo attempted to communicate with Perry for thirty seconds and then inexplicably walked away from a clearly distressed man in the final moments of his life, offering Perry no assistance, medical or otherwise, despite Perry's serious-acute-obvious medical emergency.

110. That as Defendant R.N. Virgo walked away from the almost dead Perry, Defendants including, but not limited to: Salinsky; Lopez; Bell; and Kickbush also walked away from Perry, offering no assistance to Perry, medical or otherwise, despite Perry's serious-acute-obvious medical emergency.

111. For nearly two minutes after Defendant R.N. Virgo refused Perry admission to the county jail, he remained on a concrete bench held in place by two MCSO officers/defendants as he rocked back and forth in pain – bound, gagged, dying, groaning, oozing blood from a spit mask saturated with blood and vomit while covered in his own urine and feces. Officers then let go of their grip and allowed Perry to crash onto to the floor where in his final moments in life rocked back and forth on the concrete groaning in pain. Perry was offered no assistance, medical or otherwise, at this point.

112. That the defendants turned their backs on Perry and just away from this human being while leaving him bound and gagged, covered in his own blood, urine, feces, and vomit, on the concrete floor for nearly four minutes with no supervision by staff and/or medical attention. Perry lay dying with his pants around his ankles. During this time period Perry rocked and back and forth moaning and groaning in pain until he just stopped moving or making any noise at all – either dead or close to it. Perry was offered no medical assistance at this point. If a dog or other animal was treated like this, the perpetrators would go to prison.

113. That during this four minute period Defendants: including but not limited to, Lopez, Salinsky; Bell, and Kickbush stood on the other end of the Pre-Booking Area and provided Perry no assistance, medical or otherwise, despite Perry serious-acute-obvious medical emergency.

114. That at 8:48 P.M. thirteen minutes after Perry arrived at the County Jail, seven minutes after he was left on the concrete floor of the Pre-Booking area, and three minutes after he was “prescreened” by Defendant R.N. Virgo the Milwaukee Fire Department was finally informed that there was an emergency situation and that “[Perry] bleeding from head.”

115. At 8:50 p.m. the Milwaukee Fire Department – EMS was “dispatched as Bleeding: Uncontrolled/Can’t be stopped.”

116. Jared Kimber of the Milwaukee Fire Department Responding Unit E-2 recorded the chief complaint was, “[Perry not breathing] **onset of event occurred five minutes prior to calling EMS.**

117. At approximately 8:51 p.m. Defendants Lopez, Salinsky, and Bell lifted Perry’s lifeless, non-breathing body off, saturated with his own blood, vomit, feces and urine, from the ground and placed him in a seating position.

118. At Approximately 8:52 p.m., over seventeen minutes after Perry arrived at the County Jail, over eleven minutes after Perry was dragged into the Pre-Booking Area of the County Jail, over six minutes after Perry was first encountered by nursing staff, and four minutes after Perry was left unassisted on the floor by himself, Defendant RN Wenzel ask Defendant Bell to remove the spit mask.

119. After the spit mask was taken off Defendant R.N. Wenzel observed: Perry’s head go back and Perry’s eyes roll back; Perry’s pupils were dilated; Perry did not have a pulse; frothy blood was coming from Perry’s nose and mouth; and that Perry was not breathing.

120. At 8:53 p.m. Perry’s lifeless body was laid flat on the floor and Perry was finally offered some minimal medical attention at this point; unfortunately far too late. Perry was pronounced dead a short time later.

121. That Milwaukee Fire Department – EMS Responding Unit E-2 made initial contact with Perry at 8:54 P.M.

122. Jared Kimber of the Milwaukee Fire Department Responding Unit E-2 recorded that cardiac arrest had occurred prior to Milwaukee Fire Department Responding Unit E-2’s arrival and was “Witnessed by Healthcare Provider.”

123. That at 8:54, over eight minutes after Defendant R.N. Virgo first assessed Perry, and over six minutes after Perry was left unassisted by himself Milwaukee County Jail Staff the Milwaukee County Fire Department Rescue Unit was informed that Perry was unresponsive.

#### **AFTER PERRY'S DEATH**

124. Detective Paul J. Formolo (Formolo) observed the scene of Perry's death and noted, "There were also ankle restraints secured to each ankle. I observed that [Perry's] boxer shorts had light red blood stains around the groin area, and that there was fecal matter inside the boxers underneath [Perry's] buttock and upper thigh areas. The cut white t-shirt also had numerous light red blood stains. . . . A blue and black face mask was lying on the floor about 5 feet, southwest from the victim's head. I observed light red blood stains on the portion of the mask that covers the mouth and nose."

125. Formolo observed blood in the transport area of the transport van used to transport Perry from the Prisoner Processing Section to the Milwaukee County Jail.

126. Identification Technician Scott Kempinski recovered blood from: the driver's side bench; and on the compartment's floor of the transport van used to transport Perry from the Prisoner Procession Section to the Milwaukee County Jail.

127. Milwaukee County Jail Nurses, Defendants R.N. Virgo and R.N. Wenzel, later told Milwaukee Fire Department Medical responder, Jarod Kimber, that they knew Perry was in trouble when he arrived, he could not walk or stand, when the spit mask was removed Perry was bleeding from his nose and left ear. Despite this knowledge, Defendants R.N. Virgo and R.N. Wenzel failed to offer Perry any assistance, medical or otherwise, for over ten minutes after his arrival at the County Jail, and waited over seven minutes to call for an ambulance, despite Perry's serious-acute-obvious medical condition.

128. The MCSD failed to undertake any review of the circumstances surrounding Perry's Death, including a debriefing or having those involved complete reports, in violation of its own policies.

129. The MPD's Criminal Investigation Bureau conducted an investigation of the circumstances involved in Perry's death, but failed to address any of the inconsistencies in evidence and the stories of those involved. Several of the officer's versions of the facts were in direct conflict with the videos of the incident, but no action was taken to address these inconsistencies or these officers untrue statements, despite the fact that presenting false information to investigators is in direct violation of the MPD's policies and procedures.

130. That Milwaukee County, and the MCSD including the personnel identified above violated James Franklin Perry's rights as protected by the United States Constitution, 42 U.S.C. § 1983, the Wisconsin Constitution, and Wisconsin Statutory law by being deliberately indifferent to the health and welfare of Perry and/or being deliberately indifferent to whether Perry lived or died and/or by working in concert to conceal the circumstances of Perry's death.

131. That the City of Milwaukee, the MPD, including the personnel identified above violated Perry's rights as protected by the United States Constitution, 42 U.S.C. § 1983, the Wisconsin Constitution, and Wisconsin Statutory law by being deliberately indifferent to the health and welfare of Perry and/or being deliberately indifferent to whether Perry lived or died and/or by working in concert to conceal the circumstances of Perry's death.

132. That the City of Milwaukee, Milwaukee County, the Milwaukee Police Department, and the Milwaukee County Sheriff's Department, and the individuals identified above, failed to properly supervise and train its staff, employees or agents.



**THE CITY OF MILWAUKEE'S PATTERN OF VIOLATING CONSITUTIONAL RIGHTS OF ITS INMATES**

133-144. Paragraphs 133.-144 have been redacted pending the Court's Decision regarding Sealing these paragraphs.

145. That Defendant Flynn has repeatedly represented that Officers comments "if you are talking you are breathing," while not written policy, is essentially policy, as officers have learned this and it's a common understanding of all officers dealing with a crises; thereby approving said policy and conduct by his officers.

**MILWAUKEE COUNTY'S PATTERN OF VIOLATING CONSITUTIONAL RIGHTS OF ITS INMATES<sup>1</sup>**

146. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

147. That Milwaukee County entered into a consent decree with a class of plaintiffs in 2001, contractual agreeing to provide an acceptable/constitutional level of healthcare, Milwaukee County continually violated said agreement and was found to be in violation by the supervising Court and/or Medical Monitor on several occasions.

148. Milwaukee County has continually and consistently violated its own consent agreement by failing to fill the positions of Medical Director, Health Services Administrator, and Chief Psychiatrist, "these vacancies preclude the possibility of achieving substantial compliance."

149. Milwaukee County was advised, "It is equally important that a Health Services Administrator be retained as quickly as possible." Milwaukee County failed to obtain a Health

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<sup>1</sup> Milwaukee County has failed to turn over: files concerning deaths at facilities under the control of the MCSD; correspondence, memos, reports, etc., from the Court Approved Medical Monitor; and correspondence, memos, reports, etc., from the National Commission on Correctional Health Care, thereby prejudicing the plaintiffs' ability to plead and incorporate those discovery materials into this complaint.

Services Administrator and the position was vacant at the time of the unconstitutional treatment suffered by Perry before, during and after his horrific death.

150. The position of Health Services Administrator has been vacant since 2004; Defendant Clark arrogantly refused to fill the position.

151. Despite the fact that the Medical Administrator Position remains in the Sherriff's Budget, the position has not been filled, the consent decree and Court appointed Monitor have continually required that a Medical Administrator be hired, but Defendant Clark has arrogantly refused to do so.

152. As a result of the lack of Health Service Administer and deficient medical services at the Milwaukee County Jail, officers often improperly attempt to substitute their untrained judgment for that of a medical professional's assessment.

153. The lack of leadership in regard to the Medical Services at the Milwaukee County Jail creates severe problems for the County's ability to respond timely and appropriately to medical emergencies and needs, which was exactly what contributed to Perry's untimely, horrific death.

154. That as a result of the lack of leadership, a Medical Administrator, and Medical Director, the Director of Nursing is constantly inserting herself where it is not professionally appropriate and taking on the role of a medical doctor.

155. That as a direct result of the lack of a Medical Administrator and Medical Director the Director of Nursing has been called upon to assume responsibilities that exceed her license; she is asked to review and authorize to a variety of clinical services for which she lacks the credentials and/or training.

156. The MCSD provides no monitoring of its advanced nurse practitioners or R.N.'s, their files are not reviewed by a medical doctor as required; therefore, they get no feedback

concerning their mistakes, thereby guaranteeing the mistakes are going to repeat themselves. Those who fail to learn from history are doomed to repeat it.

157. The MCSD failed to conduct emergency drills on a regular basis.

158. Physical Exams performed by MCSD's staff are incomplete and inadequate, often lacking a referral to an appropriate medical professional.

159. That untrained Correctional Officers are forced to make medical decisions concerning the health and welfare of prisoners.

160. That inmates with acute medical conditions have suffered for several days, failed to receive appropriate medical care or referrals and have then died in the County Jail.

161. That the Director of Nursing continually shouts at her supervisors and treats them with disrespect, creating an atmosphere of intolerance and indifference in which other MCSD Staff feel they do not have to listen to their superiors or follow the direction, while disregarding policies and procedures in place to protect the health and welfare of inmates.

162. That the Director of Nursing, not a Medical Director, is responsible for hiring most of the health care staff and responsible for most of them leaving.

163. When Medical Directors have been hired, they have not received the support of Defendant Clark making it virtually impossible to comply with provisions of the Consent Decree.

164. That the Health Services Unit at the County Jail has become hostile and inflexible.

165. That the MCSD is simply unprepared to comply with guidelines of the National Committee of Correctional Health Care, accreditation would require a cultural shift in the current business practice. Attention to detailed documentation of many facets of the Health Services Unit operation is required, but completely lacking in form or function.

166. The MCSD has exhibited a systematic deficiency in staffing for a period lasting over ten years.

167. On several occasions the Court appointed Medical Monitor found the MCSD was not performing medical emergency drills, as required by the Consent Decree.

168. The MCSD repeatedly failed to conduct investigations into deaths that occurred in there facility, thereby allowing staff to avoid being disciplined for their actions and creating an atmosphere of deliberate indifference to the health and welfare of inmates.<sup>2</sup>

## VI. VIOLATIONS OF LAW

### **COUNT ONE - CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION – AGAINST DEFENDANTS: CHERYL WENZEL; DEUTY KICKBUSH; NICOLE VIRGO; TINA WATTS; FATRENA HALE; KELLY KIECKBUSCH; ABIE DOUGLAS; ANOTHONY ARNDT; SHIELA JEFF; DARIUS HOLMES; RICHARD LOPEZ; FRANK SALINSKY; STEPHON BELL; MARGARITA DIAZ-BERG; ALEXANDER C. AYALA; FROILAN SANTIAGO; KARL ROBBINS; CRYSTAL JACKS; COREY KROES; RICK BUNGERT; LUKE LEE; JACOB IVY; and SHANNON D. JONES**

169. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

170. That defendants' deliberate indifference to and complete failure to address Perry's serious-acute-obvious medical emergency was a substantial cause of Perry's avoidable pain, suffering, embarrassment and subsequent, horrific death.

171. That defendants' policies, practices, acts, and/or omissions evidence and constitute deliberate indifference to the serious health care needs of all inmates in their custody, including Perry, and violate the cruel and unusual punishment clause of the Eight Amendment, made applicable to the States through the Fourteenth Amendment to the Unites States Constitution.

172. That defendants' policies, practices, procedures, acts, and/or omissions placed Perry at an unreasonable, continuing and foreseeable risk of substantial pain and suffering and death.

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<sup>2</sup> This allegation is made pursuant to Rule 11(b)(3).

173. That as a proximate result of defendants' unconstitutional policies, practices, procedures, acts and/or omissions, Perry unnecessarily suffered almost unspeakable physical, psychological, and emotional injury, and eventually lost his life. If a dog or other animal were treated this way, the perpetrators would go to prison.

**COUNT TWO - CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF SECTION SIX OF THE STATE OF WISCONSIN CONSTITUTION AGAINST DEFENDANTS: CHERYL WENZEL; DEUTY KICKBUSH; NICOLE VIRGO; TINA WATTS; FATRENA HALE; DAVID A. CLARKE; KELLY KIECKBUSCH; ABIE DOUGLAS; ANOTHONY ARNDT; SHIELA JEFF; DARIUS HOLMES; RICHARD E. SCHMIDT; MILWAUKEE COUNTY; RICHARD LOPEZ; FRANK SALINSKY; STEPHON BELL; MARGARITA DIAZ-BERG; ALEXANDER C. AYALA; FROILAN SANTIAGO; KARL ROBBINS; CRYSTAL JACKS; COREY KROES; RICK BUNGERT; LUKE LEE; JACOB IVY; SHANNON D. JONES; RICHARD MENZEL; EDWARD FLYNN; ROMAN GALAVIZ; VICTOR E. BEECHER; AND THE CITY OF MILWAUKEE**

174. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

175. That defendants' policies, practices, procedures, acts, and/or omissions evidence and constitute deliberate indifference to the serious health care needs of all inmates in their custody, including Perry, and violate the cruel and unusual punishment clause of Section Six of the State of Wisconsin Constitution.

176. That defendants' policies, practices, procedures, acts, and/or omissions placed Perry at an unreasonable, continuing and foreseeable risk of substantial pain and suffering and death.

177. That as a proximate result of defendants' unconstitutional policies, practices, procedures, acts and/or omissions, Perry unnecessarily suffered almost unspeakable physical, psychological, and emotional injury, and eventually lost his life. If a dog or other animal were treated this way, the perpetrators would go to prison.

### COUNT THREE - MONELL LIABILITY

#### A. Failure to Train and Adequately Supervise – The City of Milwaukee

178. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

179. That the defendants failed to adequately train officers, correctional employees, and medical employees at all times relevant to this complaint, on how to deal with inmates suffering from serious-acute-obvious medical conditions and individuals in custody in need of immediate medical care, how to perform life-saving procedures, how to recognize serious medical emergencies, how to react to serious medical emergencies, how to conduct wellness checks on individuals in custody, and how to conduct intake screenings, amongst other failures.

180. That the failure of the defendants to adequately train and supervise its correctional employees concerning several key issues such as on how to deal with inmates suffering from serious-acute-obvious medical emergencies and individuals in custody in need of immediate medical care, how to perform life-saving procedures, how to recognize serious medical emergencies, how to react to serious medical emergencies, how to conduct wellness checks on individuals in custody, and how to conduct intake screenings, demonstrated a deliberate indifference on the part of these defendants as whether the failure to adequately train and supervise its correctional employees would result in the violation of the Constitutional, Civil, and Statutory Rights, of individuals entrusted to their care, such as Perry.

181. That the above mentioned failure to adequately train and supervise correctional employees was a direct and proximate cause of the violations of the Constitutional, Civil, and Statutory Rights of Perry.

182. That the above mentioned failure to adequately train and supervise correctional employees, and the acts and omissions of these defendants, was a direct and proximate cause of injuries, damages, and eventual death suffered by Perry.

*B. Policies and Customs of Allowing Inmates to Suffer and Ordering Them Taken to the Hospital, but Providing no Medical Care to These Inmates if they are Suffering From a Serious Medical Condition – The City of Milwaukee & Edward Flynn*

183. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

184. That the actions of the defendants, correctional employees, law enforcement employees, and medical staff including ignoring individuals in custody with serious-acute-obvious medical emergencies and simply calling for an ambulance or relying on the fact that the individual had earlier visited a hospital, but taking no action to assist the individual, medically or otherwise were done in accordance with the defendants' de facto policy regulation, decision or custom condoning the use of these procedures to deal with inmates suffering from serious-acute-medical emergencies. That these de facto policies were officially adopted, expressly, or implicitly, and promulgated or practiced by the defendants, even though such custom may not have received written formal approval by the defendants, and even though such de facto policies were inconsistent with or violated written policies.

185. That this official or de facto policy and/or custom of ignoring individuals in custody with serious-acute-obvious medical emergencies and simply calling for an ambulance or relying on the fact that the individual had earlier visited a hospital, but taking no action to assist the individual, medically or otherwise, violated Perry's Constitutional, Civil, and Statutory Rights and permitted, encouraged, tolerated or ratified the actions of the defendants, MPD Staff, all in a malicious or reckless disregard or with deliberate indifference regarding the Constitutional, Civil, and Statutory Rights of Perry.

186. That the above mentioned official or de facto policy and/or custom of ignoring individuals in custody with serious-acute-obvious medical emergencies and simply calling for an ambulance or relying on the fact that the individual had earlier visited a hospital, but taking no action to assist the individual, medically or otherwise violated Perry's Constitutional, Civil, or Statutory Rights, which arose or were allowed to continue as a result of, among other things, the following acts and omissions of the defendants: failing to adequately train, supervise and control its employees; failing to provide adequate training on how to deal with serious-acute-obvious medical emergencies; allowing a correctional attitude – which allowed MPD staff to avoid dealing with serious-acute-obvious medical emergencies, and allowed untrained correctional officers to simply ignore, serious-acute-obvious medical emergencies.

187. That the widespread practice of ignoring individuals in custody with serious-acute obvious medical emergencies and simply calling for an ambulance or relying on the fact that the individual had earlier visited a hospital, but taking no action to assist the individual, medically or otherwise amongst other things, and/or violating individuals Constitutional, Civil or Statutory rights constitutes a custom or usage that, although not officially authorized, reflects practices which were so well settled that they virtually constituted official policy.

188. That the defendants had actual and/or constructive knowledge of each and every one of the above-mentioned policies and customs and were deliberately indifferent as to whether said policies and customs would change.

189. That each and every one of the above mentioned policies and customs was a direct and proximate cause of the violations of Perry's Constitutional, Civil and Statutory Rights, which eventually led to his death.



190. That the above mentioned policies and customs, as well as the acts and omissions of the defendants were a direct and proximate cause of the injuries, damages, and eventual death of Perry.

*C. Policies and Customs of the Department Failing to Formulate and Execute an Internal Administrative Review Policy of Prisoner Deaths and Discipline Those Who Have Been Found to Have Mistreated Individuals and Failed to Provide Appropriate Medical Care or Call for Medical Attention – The City of Milwaukee, Edward Flynn, Milwaukee County & David Clark*

191. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

192. The MPD and MCSD failed to formulate and execute an internal administrative review policy for prisoner deaths and discipline those who had been found to have mistreated individuals or failed to provide appropriate medical care or call for medical attention.

193. That MPD's and MCSD's policy of failing to formulate and execute an internal administrative review policy of prisoner deaths and discipline those who have been found to have mistreated individuals and failed to provide appropriate medical care or call for medical attention is contrary to accepted police practices.

194. That MPD' and MCSD's policy of failing to formulate and execute an internal administrative review policy of prisoner deaths and discipline those who have been found to have mistreated individuals and failed to provide appropriate medical care or call for medical attention authorized and created a culture of deliberate indifference to medical needs of inmates, with and without life threatening situations, which became a defacto policy of MPD and MCSD.

195. That MPD's and MCSD's policy of failing to formulate and execute an internal administrative review policy of prisoner deaths and discipline those who have been found to have mistreated individuals and failed to provide appropriate medical care or call for medical attention authorized and created a culture of deliberate indifference to medical needs of inmates, with and

without life threatening situations, which lead to de facto policy of officers not being held accountable for their failure to provide medical care and/or call for medical care.

196. That these above mentioned de facto policies of the MPD and MCSO constitute deliberate indifference against individuals in the custody of the MPD or MCSO, these defacto policies created an environment which would allow officers to ignore the medical needs of inmates and were factors that were significant and causal in the death of James Perry.

197. That the defendants had actual and/or constructive knowledge of each and every one of the above-mentioned policies and customs and were deliberately indifferent as to whether said policies and customs would change.

198. That each and every one of the above mentioned policies and customs was a direct and proximate cause of the violations of Perry's Constitutional, Civil and Statutory Rights, which eventually led to his death.

199. That the above mentioned policies and customs, as well as the acts and omissions of the defendants were a direct and proximate cause of the injuries, damages, and eventual death of Perry.

*D. Policies and Customs of Allowing Untrained Police Officers to Conduct Medical Screens and Make Decisions Concerning the Need for Medication or other Appropriate Medical Treatment – The City of Milwaukee and Edward Flynn*

200. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

201. That the actions of the defendants, correctional employees, and law enforcement employees, of allowing untrained correctional officers to conduct medical screens and make decisions concerning the need for medication or other appropriate medical care were done in accordance with the defendants' regulation, decision or custom condoning the use of these procedures to deal with all inmates. That this policy was officially adopted.

202. That this official policy of allowing untrained correctional officers to conduct medical screens and make decisions concerning the need for medication or other appropriate medical care violated Perry's Constitutional, Civil, and Statutory Rights and permitted, encouraged, tolerated or ratified the actions of the defendants, MPD Staff, all in a malicious or reckless disregard or with deliberate indifference regarding the Constitutional, Civil, and Statutory Rights of Perry.

203. That the defendants had actual and/or constructive knowledge of each and every one of the above-mentioned policies and customs and were deliberately indifferent as to whether said policies and customs would change.

204. That each and every one of the above mentioned policies and customs was a direct and proximate cause of the violations of Perry's Constitutional, Civil and Statutory Rights, which eventually led to his death.

205. That the above mentioned policies and customs, as well as the acts and omissions of the defendants were a direct and proximate cause of the injuries, damages, and eventual death of Perry.

*E. Policies and Customs of Providing No Medical Care, Emergency or Otherwise at the Police Processing Section of the Police Administration Building Where Perry and other Inmates Were Routinely Held – The City of Milwaukee & Edward Flynn*

206. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

207. That the actions of the defendants, correctional employees, and law enforcement employees, of providing no medical care, emergency or otherwise at the Police Processing Section of the Police Administration Building was done in accordance with the defendants' regulation, decision or custom condoning the use of these procedures to deal with all inmates. These policies were officially adopted and/or ratified by the MPD.

208. That this official policy of providing no medical care, emergency or otherwise at the Police Processing Section of the Police Administration Building violated Perry's Constitutional, Civil, and Statutory Rights and permitted, encouraged, tolerated or ratified the actions of the defendants, MPD Staff, all in a malicious or reckless disregard or with deliberate indifference regarding the Constitutional, Civil, and Statutory Rights of Perry.

209. That the defendants had actual and/or constructive knowledge of each and every one of the above-mentioned policies and customs and were deliberately indifferent as to whether said policies and customs would change.

210. That each and every one of the above mentioned policies and customs was a direct and proximate cause of the violations of Perry's Constitutional, Civil and Statutory Rights, which eventually led to his death.

211. That the above mentioned policies and customs, as well as the acts and omissions of the defendants were a direct and proximate cause of the injuries, damages, and eventual death of Perry.

*F. Policies and Customs of Responding to Individuals In Custody Who Complain of Difficulty Breathing with "If You Are Talking You are Breathing" and Providing the Individual no Medical Assistance – The City of Milwaukee & Edward Flynn*

212. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

213. The MPD developed a policy of responding to individuals in Custody whom faced a medical emergency documented by difficulty breathing with, "If you are talking you are breathing," and providing no medical care.

214. That MPD policy of responding to Individuals in Custody whom complained of difficulty breathing with, "If you are talking you are breathing," and providing no medical care is contrary to accept police practices.

215. That MPD unwritten policy of responding to individuals in Custody who complained of difficulty breathing with, “If you are talking you are breathing,” and providing no medical care, promulgated and created a culture of deliberate indifference to the medical needs of inmates, with and without life threatening situations, which became a de facto policy of the Milwaukee Police Department.

216. That these above mentioned de facto policies of the MPD constitutes deliberate indifference against individuals in the custody of the MPD, these de facto policies created an environment which would allow officers to ignore the medical needs of inmates and were factors that were significant and causal in the death of James Perry.

217. That the defendants had actual and/or constructive knowledge of each and every one of the above-mentioned policies and customs and were deliberately indifferent as to whether said policies and customs would change.

218. That each and every one of the above mentioned polices and customs was a direct and proximate cause of the violations of Perry's Constitutional, Civil and Statutory Rights, which eventually led to his death.

219. That the above mentioned policies and customs, as well as the acts and omissions of the defendants were a direct and proximate cause of the injuries, damages, and eventual death of Perry.

*G. Policies and Customs of Ignoring the Requirements of a Negotiated Consent Decree and Failing to Follow Recommendations of A Court Approved Medical Monitor Including Failure to Obtain a Medical Administrator for Almost Ten Years Created a Culture In Which Milwaukee County Employees were Deliberately Indifferent to the Constitutional Rights of Inmates and Disregarded Proper Policy & Procedure – Milwaukee County*  
*& David Clark<sup>3</sup>*

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<sup>3</sup> The Plaintiffs recognize the Court’s Order of 2/26/13, and as that Order did not discuss Dismissal with Prejudice the Plaintiffs submit this claim in good faith along with the additional facts plead.

220. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

221. The County of Milwaukee and the MCSD: failed to comply with a Contractual Consent Decree concerning correctional healthcare; failed to follow the recommendations of a Court Approved Medical Mentor; failed to hire a Medical Administrator; failed to work towards compliance with the standards of the National Commission on Correctional Health Care; allowed officers to substitute their judgment for that of health care staff; has allowed the Director of Nursing to insert herself where not professionally appropriate and take on the role of a Medical Doctor; provides no monitoring of advanced nurse practitioners or R.N.'s, fails to conduct emergency drills; performs inadequate and incomplete medical exams which lack appropriate referrals; allows correctional staff to make decisions about prisoner status and release; allows the Director of Nursing to fire and hire health care staff as opposed to a Medical Administrator or Director; has not provided support to Medical Directors when said Directors were actually employed; has allowed the Health Services Unit to become hostile and inflexible; and has exhibited a systematic deficiency in staffing, amongst other failures, these actions has been ratified as official policy thereby creating a culture where healthcare staff and correctional staff are indifferent to the Constitutional Rights of Inmates such as Perry.

222. Milwaukee County's policy of allowing the failures identified in the previous paragraph to continue for years are contrary to acceptable police practices.

223. Milwaukee County's policy of allowing the failures identified it the previous paragraphs became a de facto policy of Milwaukee County and the MCSD, creating a culture of indifference, which lead to de facto policy of officers and health care staff not being held accountable for their failure to provide medical care and/or call for medical care, further creating a de facto policy of Milwaukee County and the MCSD that officers and health care staff were not

required to provide a constitutional level of health care and/or follow policies and procedures in regard to medical care.

224. That these above mentioned de facto policies of Milwaukee County and the MCSD constitute deliberate indifference against individuals in the custody of the MCSD, these de facto policies created an environment which would allow officers to ignore the medical needs of inmates and were factors that were significant and causal in the death of James Perry.

225. That the defendants had actual and/or constructive knowledge of each and every one of the above-mentioned policies and customs and were deliberately indifferent as to whether said policies and customs would change.

226. That each and every one of the above mentioned policies and customs was a direct and proximate cause of the violations of Perry's Constitutional, Civil and Statutory Rights, which eventually led to his death.

227. That the above mentioned policies and customs, as well as the acts and omissions of the defendants were a direct and proximate cause of the injuries, damages, and eventual death of Perry.

**COUNT FOUR – NEGLIGENCE AGAINST DEFENDANTS: CHERYL WENZEL; DEUTY KICKBUSH; NICOLE VIRGO; TINA WATTS; FATRENA HALE; DAVID A. CLARKE; KELLY KIECKBUSCH; ABIE DOUGLAS; ANOTHONY ARNDT; SHIELA JEFF; DARIUS HOLMES; RICHARD E. SCHMIDT; MILWAUKEE COUNTY; RICHARD LOPEZ; FRANK SALINSKY; STEPHON BELL; MARGARITA DIAZ-BERG; ALEXANDER C. AYALA; FROILAN SANTIAGO; KARL ROBBINS; CRYSTAL JACKS; COREY KROES; RICK BUNGERT; LUKE LEE; JACOB IVY; SHANNON D. JONES; RICHARD MENZEL; EDWARD FLYNN; ROMAN GALAVIZ; VICTOR E. BEECHER; AND THE CITY OF MILWAUKEE**

228. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

229. That the defendants, were negligent at all times material hereto in that they, among other things, failed to provide Perry assistance, medical or otherwise, despite his serious-acute-obvious

medical emergency, failed to appropriately train MPD and MCSD employees to deal with individuals with acute-serious-obvious medical emergencies, failed to address open and obvious deficiencies in health care, failed to address open and obvious deficiencies regarding officers making medical decisions and were otherwise negligent.

230. That the negligence of the defendants was a direct and proximate cause of the injuries, damages, and eventual death of Perry.

**COUNT FIVE - WRONGFUL DEATH WIS. STAT. §§895.03 AGAINST DEFENDANTS: CHERYL WENZEL; DEUTY KICKBUSH; NICOLE VIRGO; TINA WATTS; FATRENA HALE; DAVID A. CLARKE; KELLY KIECKBUSCH; ABIE DOUGLAS; ANOTHONY ARNDT; SHIELA JEFF; DARIUS HOLMES; RICHARD E. SCHMIDT; MILWAUKEE COUNTY; RICHARD LOPEZ; FRANK SALINSKY; STEPHON BELL; MARGARITA DIAZ-BERG; ALEXANDER C. AYALA; FROILAN SANTIAGO; KARL ROBBINS; CRYSTAL JACKS; COREY KROES; RICK BUNGERT; LUKE LEE; JACOB IVY; SHANNON D. JONES; RICHARD MENZEL; EDWARD FLYNN; ROMAN GALAVIZ; VICTOR E. BEECHER; AND THE CITY OF MILWAUKEE**

231. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

232. That Perry's death was caused by defendants' wrongful acts, negligence and/or improper conduct.

233. That if Perry's death had not ensued he would have been able to bring a claim against the above named defendants for violations of Title 42 of the United States Code, Sections 1983 and 1985 for violations of his rights under the Eighth and Fourteenth Amendment to the U.S. Constitution and his rights under Article I, Sections Six of the Wisconsin Constitution; and Wisconsin Common Law.

**COUNT SIX – MEDICAL NEGLIGENCE – AGAINST AURORA SINAI MEDICAL CENTER, PAUL COOGAN & BECKY POTTERTON**

*A. Medical Negligence*

234. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein.



235. Defendants, as health care providers in the State of Wisconsin, are under a duty so bound as to require them to exercise the degree of care, skill and judgment in medical circumstances as is standard in this community.

236. On September 13, 2010, the Defendants, and each of them, failed to exercise a reasonable degree of medical care, skill and judgment in the treatment of Perry.

237. As a result of this breach in the medical standard of care, Defendants were a substantial cause of the unanticipated death of Perry.

238. By reason of the foregoing and in other respects not enumerated herein, Defendants, and each of them, committed medical negligence beneath the standard of care upon Perry.

239. As a direct and proximate result of the Defendants actions and inactions, conduct alleged above, Perry suffered pain, anguish and ultimately death.

240. As a direct and proximate result of the Defendants actions and inactions, Perry sustained emotional pain and suffering, anxiety, mental anguish and loss of enjoyment of life, past and future economic losses, and other damages not specifically enumerated herein.

241. Defendants were negligent with regard to their care and treatment of Perry as set forth above, and as follows:

- a. Failure to properly assess and treat Perry's Medical Condition
- b. Failure to appropriately assess and monitor Perry's situation before releasing him from the hospital;
- c. Failure in other respects not specifically enumerated herein.

242. As a direct and proximate result of the Defendants' negligence, Perry suffered great physical and emotional pain and suffering, economic loss, humiliation, anxiety, loss of enjoyment of life, and past medical expenses and death.

*B. Care Provider Negligence/Respondent Superior*

243. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

244. Upon information and belief, and all times relevant to the events complained of herein, Defendant Aurora Sinai was responsible for the hiring and supervision of qualified staff providing health care services to its patients including Perry.

245. Defendant Aurora Sinai was negligent in the care and treatment of Perry in several respects as follows:

- a. Failure to properly assess and treat Perry's Medical Condition
- b. Failure to appropriately assess and monitor Perry's situation before releasing him from the hospital;
- c. Failure in other respects not specifically enumerated herein.

246. As a direct and proximate result of the Aurora Sinai's negligence, Perry suffered great physical and emotional pain and suffering, economic loss, humiliation, anxiety, loss of enjoyment of life, past medical expenses and death among other damages.

**COUNT SEVEN – CONSPIRACY – AGAINST STEPHON BELL & SHANNON D. JONES**

247. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

248. "Allegations of conspiracy may form the basis of a 42 U.S.C. Sec.1983 claim." *Tonkovich v. Kansas Board of Regents*, 159 F.3d 504, 533 (10th Cir.1998); *Chimera v. Lockhart*, 2011 WL 2560286, 5 (E.D.Okla.) (E.D.Okla.2011).

249. As a direct and proximate result of the aforementioned defendants' actions perpetrating a conspiracy to cover up the unconstitutional treatment suffered by Perry, said defendants are liable for their actions under Sec.1983 for damages.

## **VII. DAMAGES**

250. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

251. That as a direct result of the unlawful acts of the defendants, Perry unnecessarily suffered loss of future enjoyment of life, loss of companionship with his family, pain and suffering, constitutional violations, and death; therefore his estate is entitled to monetary damages in an amount to be determined just by the Court.

252. That as a direct result of the unlawful acts of the defendants, James Franklin Perry I (a minor) lost the support and society and companionship of his father; therefore, he is entitled to monetary damages in an amount to be determined just by the Court.

## **VIII. CONDITIONS PRECEDENT**

253. Realleges and incorporates herein by reference the allegations of the preceding paragraphs.

254. All conditions precedent to this lawsuit have been performed or have otherwise occurred.

## **IX. PRAYER FOR RELIEF**

255. WHEREFORE, the plaintiffs demand judgment awarding compensatory damages in an amount determined by the Jury, awarding punitive damages in an amount determined by the Jury, awarding the reasonable costs and expenses of this action including a reasonable attorney's fee pursuant to 42 U.S.C. § 1985 and their out-of-pocket expenses and granting the plaintiffs such other and further relief as may be just.

256. That Milwaukee County and the City of Milwaukee are liable pursuant to Wis. Stat. §895.46 for payment of any judgment entered against the defendants in this action because said

defendants were acting within the scope of their employment when they committed the above-mentioned actions.

**X. DEMAND FOR JURY TRIAL**

257. The plaintiffs demand trial by jury.

Dated at Pewaukee, Wisconsin this 25<sup>th</sup> day of March, 2013.

**GENDE LAW OFFICE, S.C.**  
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