

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
SECOND JUDICIAL DISTRICT

2010 APR -5 PM 3:57

JOVAN LOVATO, Individually, and
as Personal Representative of
THE ESTATE OF VERA ANN HASKELL

Juanita M. Duran

JL

LINDA A. LOPEZ

Plaintiff,

vs.

Cause No. CV-2010-04117

ALBUQUERQUE POLICE OFFICER
SERGEANT ANDREW GALLEGOS,
IN HIS INDIVIDUAL CAPACITY AND
IN HIS OFFICIAL CAPACITY AS AN
EMPLOYEE OF THE CITY OF ALBUQUERQUE,
THE CITY OF ALBUQUERQUE,
THE CITY OF ALBUQUERQUE POLICE DEPARTMENT,
AND PS COWBOY INCORPORATED d/b/a SIDEWINDERS RANCH

Defendants.

**FIRST AMENDED COMPLAINT TO RECOVER DAMAGES FOR
WRONGFUL DEATH**

Plaintiffs, by and through their counsel, Vigil Law Firm, P.A., bring this complaint under the New Mexico Wrongful Death Statute, the New Mexico Tort Claims Act, the New Mexico Alcoholic Licensee's Liability Act, NMSA § 41-11-1 (2009), and 42 U.S.C. § 1983 and 1988, including claims for negligent hiring, retention, supervision, training. For their Complaint against the above named Defendants, Plaintiffs state:

JURISDICTION AND VENUE

1. The Defendants and Jovan Lovato, as Personal Representative for the Estate of Vera Haskell, reside in New Mexico and the acts complained of occurred exclusively within New Mexico. Personal jurisdiction and venue pursuant to NMSA § 41-4-14(B) is also proper in the District Court of Bernalillo County and is otherwise appropriate as the

incident for which this claim is based arose in the City of Albuquerque, County of Bernalillo, State of New Mexico. Jurisdiction and venue are proper in state court.

PARTIES

2. Plaintiff, Jovan Lovato, brings this action individually and as the Personal Representative of the Estate of Vera Haskell, under the New Mexico Wrongful Death Act.
3. At all material times herein, Plaintiff Vera Haskell was a resident of the City of Albuquerque, State of New Mexico.
4. At all material times herein, Defendant Andrew Gallegos was a resident of the City of Albuquerque, County of Bernalillo, State of New Mexico.
5. Defendant Gallegos is named in both his individual and official capacity as an individual employed by the City of Albuquerque as an Albuquerque Police Department police officer.
6. Defendant Albuquerque Police Department (hereinafter referred to as "APD") is a governmental entity and local public body which may be sued with regard to any act or omission to act on the part of an officer, employee or agent pursuant to the New Mexico Tort Claims Act, NMSA § 41-4-1.
7. The City of Albuquerque is the municipal corporation and governmental entity in whose name APD, including but not limited to APD Sergeant Gallegos, performed all acts and omissions alleged herein.
8. At all material times herein, Defendant PS Cowboy Incorporated d/b/a Sidewinders Ranch (Hereinafter referred to as "Sidewinders") was a foreign for-profit corporation with its principal New Mexico office located at 8900 Central Avenue Southeast, Albuquerque, NM 87123-2506.

9. At all material times herein, Defendant PS Cowboy Incorporated d/b/a Sidewinders Ranch owned and operated Liquor License #2642 at 8900 Central Avenue Southeast, Albuquerque NM 87123-2506.
10. At all material times herein, Defendant PS Cowboy Incorporated d/b/a Sidewinders Ranch was operating as an alcohol establishment selling alcohol and liquor to the public.
11. The incident complained of herein occurred in the City of Albuquerque, County of Bernalillo, State of New Mexico.

FACTUAL ALLEGATIONS

12. On April 6, 2008 at 9:59 p.m., APD Officer F. Mock # 2552 and APD Officer F. Cobos #2481 were dispatched to Sidewinders located at 8900 Central Avenue SE, Albuquerque, NM, in reference to a fatal hit and run. Upon arrival, Officer Mock was briefed by APD Officer T. Steward #2376 and was informed that Vera Haskell was struck and run over by a maroon colored Ford truck in the parking lot of Sidewinders. That same evening, Vera Haskell was pronounced dead at UNMH hospital due to multiple blunt force injuries.
13. Very early in their investigation, Officer Mock contacted an employee of Sidewinders, Gary Pineau who operated the camera equipment and was able to secure the surveillance video of the hit and run. Officers Mock and Cobos watched the video and recognized their supervisor, Sergeant Andrew Gallegos as a patron in the Sidewinders Bar. The maroon colored truck also resembled that belonging to their supervisor, Sergeant Andrew Gallegos.
14. Despite the obvious conflict of interest, Defendant APD proceeded to "investigate" the subject incident and report to Sergeant Gallegos instead of immediately calling in outside police authorities, such as the FBI, New Mexico State Police or Bernalillo County

Sheriff's Department.

15. Sidewinder's manager Dan Johnson recognized Sergeant Gallegos from the surveillance video and informed APD that Sergeant Gallegos was sold or served or procured or aided in the procurement of alcoholic beverages on April 6, 2008 from approximately 8:25 p.m. to 9:41 p.m.
16. Sergeant Gallegos consumed alcohol that he purchased from Kelly Liquors located at 5850 Eubank Bd. NE on April 6, 2008 before arriving at Sidewinders and claims to have been functioning in a "black out" state while on duty. Sergeant Gallegos was intoxicated when he arrived at Sidewinders at approximately 8:25 p.m. on April 6, 2008.
17. The visibly intoxicated Sergeant Gallegos sat at the bar and proceeded to have a romantic encounter with a male customer while drinking alcohol served by Sidewinders and Sidewinders knew or should have known that Sergeant Gallegos was visibly intoxicated.
18. According to Sidewinder's surveillance video, at approximately 9:41 p.m. on April 6, 2008, Sergeant Andrew Gallegos left Sidewinders and walked to his maroon Ford truck in the Sidewinder's parking lot.
19. According to Sidewinder's surveillance video, Sergeant Gallegos sat in his maroon Ford truck for a few minutes.
20. According to Sidewinder's surveillance video, Sergeant Gallegos struck Vera Haskell with his vehicle dragging her and repeatedly running her over in his maroon Ford truck in the Sidewinders parking lot and then left the scene without rendering her assistance.
21. APD Officer spokesperson Nadine Hamby advised the public that "you would think that once somebody hits something that they would stop and at least go outside and look at what they struck or if they ran over something."

22. Dan Johnson, General Manager of Sidewinders, advised APD that the incident was “totally shocking to us in terms of somebody actually doing that and then departing the scene” and questioned “how anybody could not respond to that or at least come out and find out if the person is ok.”
23. After running over Vera Haskell, Sergeant Gallegos fled the scene without rendering aide to Ms. Haskell.
24. APD Sergeant Andrew Gallegos was intoxicated and admits that he was in a “black out” state at the time of the fatal hit and run at approximately 9:41 p.m. on April 6, 2008.
25. APD Sergeant Andrew Gallegos was acting in the course and scope of his employment with the Albuquerque Police Department when he struck Vera Haskell with his vehicle.
26. Sergeant Andrew Gallegos was in possession of his department issued firearm when he ran over Vera Haskell.
27. Sergeant Andrew Gallegos was in possession of his Albuquerque Police Department badge when he struck Vera Haskell.
28. Sergeant Andrew Gallegos was in possession of his Albuquerque Police Department identification when he struck Vera Haskell.
29. Sergeant Andrew Gallegos was in possession of his Albuquerque Police Department issued cell phones or radios when he struck Vera Haskell.
30. Sergeant Andrew Gallegos was on-call or on duty in his capacity as an Albuquerque Police Department Sergeant when he struck Vera Haskell.
31. The fatal “investigation” was conducted with limited supervision by Sergeant Gallegos. As the fatal team coordinator, he was not present for the on-scene investigation having fled his own fatal crime scene after striking Vera Haskell.

32. On April 7, 2008, at approximately 3:06 a.m., APD Officer Mock called his supervisor, APD Sergeant Andrew Gallegos, Fatal Team Coordinator and lone suspect, to update him on the investigation. Sergeant Gallegos directed that the investigation cease until 8:00 am. Having some concern about his conversation with Sergeant Gallegos, APD Officer Mock contacted another supervisor and informed him of his concerns. The APD supervisors chose not to act or investigate the concerns.
33. Sergeant Gallegos was supervising and directing the fatal investigation even after he was APD's primary suspect. This conduct shocks the conscience.
34. At approximately 3:30 p.m. on April 7th, 2008, APD Officer Mock called APD Sergeant Gallegos again to inform him of the status of the investigation. Officer Mock further tipped off Sergeant Gallegos that he highly resembled the driver/suspect in the maroon Ford truck involved in the fatal traffic accident.
35. Between 6:40 p.m. and 7:00 p.m. Sergeant Gallegos called Officer Mock seeking further information about the surveillance video and the degree to which he resembled the driver/suspect. Approximately 5 minutes later, Sergeant Gallegos called Officer Mock again and asked to see the surveillance video.
36. Sergeant Gallegos was allowed to view the surveillance video on April 7, 2008 even given his status as the sole suspect. This conduct shocks the conscience.
37. Sergeant Gallegos admitted that he went to a "party" on the night of April 6th, 2008 and that he "blacked out" due to intoxication from alcohol and could not give further details as to his whereabouts that evening.
38. Sergeant Gallegos claimed to remember arriving home at approximately 9:45 p.m. Sergeant Gallegos purported that his girlfriend, Regina Ortega, would be able to

corroborate his story. This turned out to be false.

39. While APD was "investigating" the fatal incident, Sergeant Gallegos was personally gathering information from the investigation, from the surveillance video, and from his APD subordinates. He was able to ascertain what clothing and shoes the driver/suspect [Sergeant Gallegos] was wearing, that the surveillance video captured his truck, tri-fold wallet and that he was not wearing a wrist watch on the evening of April 6, 2008. All this inside information was used by Sergeant Gallegos to concoct an alibi and defense after assessing the case against him and retaining an attorney. He later pled the 5th Amendment Privilege against self incrimination even though he was not in custody or subjected to custodial interrogation.
40. APD Sergeant Gallegos admitted to owning a maroon colored Ford F-150 with a gray stripe on both sides of the vehicle matching the description in the fatal hit and run accident but claims to be uncertain about the vehicle's condition.
41. On April 7, 2008 at approximately 10:45 p.m., and over 24 hours after Sergeant Gallegos was recognized as the driver involved in the fatal accident and permitted to supervise his own fatal hit and run investigation, APD transferred investigation of the matter internally to the Criminal Investigations Division, where the investigation continued under the cover of APD.
42. Not until April 8th, 2008 at approximately 6:02 a.m., two days after Sergeant Gallegos was initially suspected of being the driver/suspect, was a search warrant executed at his residence located at 2006 Erbee NE, Albuquerque, New Mexico.
43. Not until April 8th, 2008 at approximately 8:26 a.m., did APD invite Sergeant Gallegos for an interview after warning him of the impending interview. APD Sergeant Gallegos

was never taken into custody by APD despite being the primary and sole suspect. This conduct shocks the conscience.

44. On April 8th, 2008 at approximately 10:02 a.m., Detective Flores conducted a formal interview with Regina Ortega, Sergeant Gallegos's girlfriend. Contrary to Sergeant Gallegos' asserted alibi, Ms. Ortega stated that she did not see Sergeant Gallegos during the hours of 4:00 p.m. on April 6, 2008 to 12:00 a.m. on April 7, 2008 and was unable to corroborate Sergeant Gallegos's story that they were together. She advised APD that Sergeant Gallegos was aware of his status as a suspect and resemblance to the driver/suspect in the fatal accident on the previous evening because his subordinate and fellow police officers had provided him with investigative information.
45. On April 8th, 2008, APD Detective A. Ortiz and Agent M. Bengston of the New Mexico State Police conducted a formal interview with Lawrence Martinez, an employee of Sidewinders. Mr. Martinez believed that the driver/suspect involved in the fatal accident was APD Sergeant Gallegos and identified him as a person sitting at the bar with a regular customer, Johnny DeVore.
46. As a direct and proximate cause of the above named Defendants, Vera Haskell sustained extensive bodily injuries and death.

STATE CLAIMS

47. At the time of the incident, there were in force and effect New Mexico statutes and Federal Regulations which were violated by Defendant Gallegos, including, but not limited to, the following which constitute negligence per se:
 - a. NMSA 1978 § 66-7-201 *et al* Accidents involving death or personal injuries including Leaving the Scene of an Accident involving Fatal

Injuries;

- b. NMSA 1978 § 66-7-202 Accidents involving damage to vehicle;
- d. NMSA 1978 § 66-8-113 Reckless Driving;
- e. NMSA 1978 § 66-8-114 Careless driving.
- f. NMSA 1978 § 66-8-102 *et al* DWI.
- g. NMSA 1978 § 66-8-101 (B)(C) Great bodily injury by vehicle.
- h. NMSA 1978 § 66-8-101(A)(C) Homicide by vehicle.
- i. NMSA 1978 § 30-22-5 Tampering with Evidence

48. Defendant Gallegos's negligence was a direct and proximate cause of Vera Haskell's death. In addition to the above, Defendant Gallegos acted negligently in failing to give his full time and attention to the operation of his vehicle, failing to keep a proper lookout, failing to exercise due care, failing to operate a vehicle in a safe and reasonable manner and driving a vehicle in violation of existing statutes.
49. Defendant Gallegos failed to render aide to Vera Haskell after running her over in violation of NMA § 66-7-203 which was a direct and proximate cause of Vera Haskell's death.
50. Defendant Gallegos failed to notify the proper authorities after running over Vera Haskell in violation of NMSA § 66-7-206 which was a direct and proximate cause of Vera Haskell's death.
51. At the time of the subject accident, Sergeant Andrew Gallegos was operating his vehicle after having willfully and negligently consumed alcohol and Plaintiffs' believe, was illegally under the influence of alcohol at the time of the subject accident. Plaintiffs believe Sergeant Andrew Gallegos was also operating his vehicle in a reckless and

negligent fashion.

52. Defendant Gallegos's exhibited grossly negligent conduct as well as a wanton, willful and reckless disregard for the rights of the Plaintiffs.
53. As a result of Defendant Gallegos's grossly negligent, wanton, willful and reckless conduct and as well as driving intoxicated, Plaintiffs are entitled to punitive damages.
54. Defendant Gallegos is also individually responsible, by and through his private automobile insurance policy, for damages proximately caused by his negligent operation of his vehicle resulting in Vera Haskell's death.
55. Defendant Gallegos should be held accountable for the wrongful death of Vera Haskell and the damages that flow therefrom as well as the loss of consortium damages and loss of guidance and counseling suffered by her son, Jovan Haskell.
56. Sidewinders and/or their agents sold or served alcoholic beverages to or procured or aided in the procurement of alcoholic beverages to an intoxicated Sergeant Andrew Gallegos. Sidewinders, and/or their agents, knew or had reason to know that Sidewinders was selling, serving, procuring or aiding in the procurement of alcoholic beverages for Sergeant Gallegos who was intoxicated on April 6, 2008.
57. Dan Johnson, general manager of Sidewinders admits that he recognized Sergeant Gallegos as a repeat customer as of his appearance at Sidewinders Bar on April 6, 2008.
58. Dan Johnson also admits that Sergeant Gallegos purchased and was served alcohol on the evening of April 6, 2008, just before the fatal incident.
59. As a direct and proximate cause of Defendant Sidewinders' negligence, Vera Haskell sustained extensive bodily injuries and later died.
60. Sidewinders and/or its agents and employees conduct in selling or otherwise providing

alcohol to Defendant Andrew Gallegos was malicious, willful, reckless and wanton, giving rise to a claim by Plaintiff for punitive damages.

61. Sidewinders and/or its agents knew there was potential for a lawsuit from their conduct, actions and involvement in the death of Vera Haskell on the evening of April 6, 2008. As a result, Sidewinders disposed of, destroyed, mutilated or significantly altered potential evidence, including but not limited to the "Card Reader" which would have identified Sergeant Gallegos as the driver, and by its conduct, Sidewinders' sole intent was to disrupt or defeat a potential lawsuit. As such, Sidewinders is liable for damages resulting from the spoliation of said evidence.

62. Defendants City of Albuquerque, APD, and Sergeant Gallegos, performed the following acts and omissions, which shock the conscience and were undertaken intentionally and in reckless disregard and callous indifference to Plaintiff's rights, including the following:

(1) Deliberately and intentionally undertaking a fraudulent fatal traffic "investigation" that grossly deviated from the Defendants' usual and standard operating procedures and practices applicable to a fatal hit and run and leaving the scene of an accident investigation.

(2) Intentionally choosing not to secure the Card Reader as evidence at the scene in order to shield themselves from criminal and civil liability.

(3) Intentionally shielding Sergeant Gallegos by failing to put out an "all points bulletin" on his Ford truck.

(4) "Investigating" the fatal accident without the presence of a supervising Sergeant as per standard operating procedure.

(5) Intentionally shielding themselves from public scrutiny by ordering the media to stop showing the surveillance video which identified APD Sergeant Gallegos as the perpetrator.

(6) Intentionally and deliberately shielding Sergeant Gallegos from investigation and arrest to provide him with an alibi and shield him from criminal and civil liability.

(7) Deliberately choosing not to question or take a statement from Sergeant Gallegos within 36 hours even though he was the primary suspect and identified as such within one hour of the fatal accident in flagrant departure from their standard operating practices applicable to fatal traffic investigations.

(8) Deliberately choosing not to arrest Sergeant Gallegos after recognizing him as the primary suspect of a fatal accident in flagrant departure from their standard operating practices.

(9) Deliberately choosing to allow Sergeant Gallegos time to alter or destroy potential evidence, including evidence from his Ford truck in manifest deviation from their standard operating practices applicable to fatal traffic investigations.

(10) Deliberately choosing not to attempt to locate Sergeant Gallegos in order to perform sobriety tests or secure blood or breath alcohol samples of any form from Sergeant Gallegos who APD knew was their sole suspect involved in a fatal traffic incident after leaving an alcohol establishment.

(11) Intentionally maintaining control over their "investigation" instead of asking a separate policing agency without a conflict of interest to investigate.

(12) Intentionally issuing a false and fraudulent traffic accident report that

grossly departed from Defendants usual and standard reporting procedures and practices applicable to driving under the influence arrest reports and fatal traffic accident reports;

(13) Intentional spoliation of evidence.

(14) Concealing and validating the fraudulent fatal traffic collision

investigation and thwarting full scrutiny by other law enforcement agencies through a sham internal affairs investigation of the underlying fatal traffic investigation and report.

The internal affairs investigation was designed and conducted in such a manner to further the conspiracy to protect APD, the City of Albuquerque, and APD Sergeant Gallegos from civil and criminal liability, to impair and impede Plaintiffs' rights, and to thwart inquiry from other law enforcement agencies.

63. As a direct and proximate result of negligence and negligence per se of the Defendants as set forth herein, Plaintiffs incurred and seek the following general and special damages, including damages for wrongful death:

(y) Pain and suffering;

(z) Reasonable and necessary medical and non-medical care, treatment and services;

(aa) Funeral and burial expenses;

(bb) Loss of society and companionship to Jovan Haskell;

(cc) Loss of guidance and counseling, to Jovan Haskell;

(dd) The value of Vera Haskell's life;

(ee) The aggravating circumstances attending the wrongful acts and neglect of Defendants;

(l) Any appropriate punitive damages;

- (m) Any other losses and damages sustained including costs, pre- and post-judgment interest, and attorney's fees.

**42 U.S.C. §1983 AND CONSTITUTIONAL DEPRIVATIONS UNDER THE
FOURTEENTH AMENDMENT: DEPRIVATION OF LIFE, LIBERTY AND
PROPERTY**

64. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 61 above as fully set forth herein.
65. This civil action seeks damages under the Constitution of the United States of America, the New Mexico Constitution, New Mexico State Laws, and Title 42 U.S.C.A. Section 1983.
66. Sergeant Andrew Gallegos, acting under color of state law, deprived Vera Haskell of life, liberty and property without due process when he hit her with his vehicle on April 6, 2008 and fled the scene. He further sabotaged the investigation by destroying evidence while supervising his own hit and run with knowledge and acquiescence by other APD supervisors.
67. Plaintiffs are members of a class of persons involved in traffic incidents or criminal incidents with members or family members of the Albuquerque Police Department or City of Albuquerque.
68. Defendants City of Albuquerque, APD, and Sergeant Gallegos, while clothed with authority as police officers and acting under color of state law, covered up true facts of Sergeant Gallegos's involvement in order to protect themselves from criminal and civil liability. Defendants, through their actions, inaction, and acquiescence, used their power and position to violate Plaintiffs' constitutional rights by covering up the facts

surrounding Sergeant Gallegos's true involvement in the death of Vera Haskell.

69. The facts alleged above are in keeping with longstanding practices and customs within both APD and the City of Albuquerque including a failure to develop and maintain policies, procedures, and protocols for the referral to other agencies of criminal investigations involving their own police officers or employees. The instant conspiracy and cover-up represent but one example of the Defendants' custom and practice of protecting fellow police officers from civil and criminal liability. Under the "code of silence" or "blue shield" APD Officers do not supply adverse information against fellow officers. The customs and practices, were a moving force behind the violations of Plaintiffs constitutional rights, including, but not limited to:

- (1) Internally investigating traffic and criminal incidents involving APD law enforcement officers instead of immediately referring such incidents to outside law enforcement agencies;
- (2) Conducting sham or fraudulent investigations of criminal and civil misconduct involving fellow law enforcement officers in order to cover-up and protect fellow Officers from disciplinary, criminal and civil actions;
- (3) Covering up and concealing the criminal and/or tortuous conduct of fellow law enforcement officers and their immediate family members through false reporting, fraudulent investigations, obstruction of justice, concealment, cover-up and conspiracies;
- (4) Utilizing the Internal Affairs Bureau and the reports issues by the Internal Affairs Bureau to further to conceal misconduct by fellow officers and to protect fellow officers from civil and criminal liability;

- (5) Negligently retaining, training, re-training, supervising, reprimanding and/or disciplining law enforcement officers who engage in criminal or tortuous conduct whether on or off duty;
- (6) Negligently hiring, supervising, and retaining law enforcement officers who engage in criminal or tortuous conduct whether on or off duty;
- (7) Penalizing those few officers who choose to expose the corruption within APD and the City of Albuquerque;
- (8) The APD investigating Police Officers and supervisors had substantial training and experience in the administration of field sobriety tests and performing chemical blood alcohol tests and yet none took action to determine Sergeant Gallegos's sobriety or level of intoxication in blatant departure from their standard practices applicable to driving under the influence enforcement. They thereby permitted Sergeant Gallegos to metabolize the most incriminating evidence of his crime thereby permitting the alteration or destruction of potential evidence;
- (9) Failing to administer adequate and standard field sobriety tests to law enforcement officers who have been drinking alcohol, in flagrant departure from their standard operating practices applicable to driving under the influence enforcement; in effect, giving preferential treatment to fellow Police Officers, including those involved in fatal traffic accidents;
- (10) Failing to enforce the laws, rules, regulations and procedures when an investigation is conducted of a fellow law enforcement officer's misconduct, and therefore, denying Plaintiffs and similarly situated citizens equal protection of the

laws and meaningful and unimpaired access to the courts as provided in the U.S. Constitution;

(11) Inadequately and negligently training and supervising Police Officers with respect to the investigation of the misconduct by fellow law enforcement officers;

(12) Refusing to implement procedures and policies to compel law enforcement officers to impartially investigate misconduct, including criminal, traffic, and fatal traffic incidents by fellow law enforcement officers in the face of a conflict of interest when investigating one of their own officers.

(13) Tacitly approving of Police Officers using their power and position to protect fellow law enforcement officers through preferential treatment resulting in interference with other citizens' rights, including the right to meaningful access to courts and due process;

(14) Tacitly approving of Police Officers using their power and position to influence "investigations" into their own criminal and/or tortuous conduct, resulting in interference with other citizens' rights, including the right to meaningful access to courts and due process;

(15) Failing to administer standard and adequate field sobriety tests and chemical tests to fellow law enforcement officers who have been drinking alcohol, in flagrant departure from their standard operating practices applicable to driving under the influence enforcement, in effect giving preferential treatment to fellow police officers.

70. The City of Albuquerque and APD exhibited a pattern and practice of tolerating on-call officers to drink alcohol while on-call which was a direct and proximate cause of Vera

Haskell's death and is a basis for punitive damages.

71. The City of Albuquerque and APD exhibited a pattern and practice of tolerating Sergeant Gallegos and others to work without substance abuse education, support, or assistance which was a direct and proximate cause of Vera Haskell's death and is a basis for punitive damages.
72. The City of Albuquerque Police Department was aware of their lack of policies and procedures for investigating officer involved incidents and exhibited a pattern and practice of allowing officer involved incidents to be investigated within their own department and without referral to an unbiased agency and is a basis for punitive damages.
73. The City of Albuquerque and APD were aware of Sergeant Gallegos's involvement in the death of Vera Haskell and lacked policies and procedures for referring the investigation to outside, unbiased law enforcement institutions. As a result of the City of Albuquerque Police Department's lack of policies and procedures, Sergeant Gallegos was allowed to lead the investigation of which he was the primary suspect.
74. The City of Albuquerque Police Department negligently trained, supervised, and retained Sergeant Gallegos and this negligence was a direct and proximate cause of Vera Haskell's death.
75. Each of the Defendants, including the Sergeant Gallegos, the City of Albuquerque and APD, separately and in concert, acted willfully, knowingly, with reckless disregard and deliberate indifference, and purposefully with the intent to deprive Plaintiffs of their constitutional rights and privileges. In particular, the above named Defendants denied Plaintiffs:

(1) Rights to meaningful, adequate, unimpaired and effect access to the courts as protected by Article 4 of the Constitution and the Fourteenth Amendment;

(2) Rights to petition the government for redress of grievances without interference from governmental actors, as protected by the First Amendment right to petition;

(3) Rights to present to the judiciary allegations concerning violations of fundamental constitutional rights without impairment or interference from governmental actors, as protected by the Due Process Clause of the Fifth and Fourteenth Amendment;

(4) Rights to prosecute, without impairment or interference from governmental actors, this wrongful death suit for the death of Vera Haskell;

(5) Rights to substantive due process of law, including the right to be free of arbitrary and abusive assertion of governmental power, to be treated with fundamental fairness by governmental authorities, and to maintain their personal integrity and dignity as Plaintiffs, citizens, and as the son of Vera Haskell.

(6) Rights to equal protection of the law, including the right to be treated as other citizens involved in traffic incidents with non-law enforcement persons, and to have the laws equally applied to them.

76. All of the above rights and privileges are secured to Plaintiffs by the provisions of the First Amendment and the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States and by Title 42, United States Code, Section 1983.

77. The above acts, omissions, customs, patterns, practices and/or decisions of the Defendants, while carried out under color of state law, have no justification or excuse in the law and instead constitute a gross abuse of governmental authority and power. The

alleged acts described in this Complaint shock the conscience, are fundamentally unfair, arbitrary and oppressive, and are unrelated to any activity in which law enforcement officers may appropriately and legally engage. The acts, conduct, omissions, decisions, customs, patterns, practices, or policies described in this Complaint were consciously chosen from among various alternatives and are a basis for punitive damages.

78. Despite the fact that they knew or should have known of the fact that these acts, omissions, decisions, practices, patterns, customs and policies, both formal and informal, were being carried out by their agents and employees, the City of Albuquerque and APD have taken no steps or efforts to order a halt to this course of conduct, to make redress to Plaintiffs or other citizens injured thereby, or to take appropriate disciplinary action against fellow law enforcement officers, such as Sergeant Gallegos. In effect, Defendants City of Albuquerque and APD have authorized, participated in, or ratified the wrongful conduct, pattern, custom and practice of Defendants resulting in violations of Plaintiffs' civil rights and are a basis for punitive damages.
79. The City of Albuquerque and APD cloaked Sergeant Gallegos with special discretionary or policy making authority which Sergeant Gallegos used to manipulate his investigation.
80. Because of the Defendants' willful and intentional actions and omissions, critical evidence to prove Plaintiffs' wrongful death claims were forever impaired, compromised, destroyed, or intentionally withheld. Such evidence includes, but is not limited to: the results of a standard field sobriety test; the alcohol content of APD Sergeant Gallegos's blood; the presence and levels of alcohol and other substances in APD Sergeant Gallegos's blood at the time of the collision; whether there were open containers of alcohol in APD Sergeant Gallegos's vehicle; a contemporaneous statement from APD

Sergeant Gallegos regarding his activities and actions immediately prior to and at the time and afterward to the fatal traffic collision.

81. Each of the allegations above was a direct and proximate cause of the death of Vera Haskell.

CONSPIRACY TO VIOLATE 42 U.S.C. 1983

82. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 81 above as fully set forth herein.

83. This cause of action is to redress the deprivation by conspiracy under the color of statute, ordinance, regulation, policy, custom, pattern, practice or usage of a right, privilege and immunity secured to Plaintiffs by the First and Fourteenth Amendment to the Constitution of the United States. Participants in the conspiracy include, but are not limited to APD, Sergeant Gallegos, individually and in his capacity as an employee of APD, Sidewinders, and the City of Albuquerque.

84. During all times mentioned herein, APD, City of Albuquerque and Sergeant Gallegos, separately and in concert, acted under color and pretense of law, under color of the statutes, ordinances, regulations, polices, patterns, practices, customs and usages of the State of New Mexico, the County of Bernalillo and City of Albuquerque. Defendants, separately and in concert, engaged in the illegal conduct mentioned herein to the injury of Plaintiffs and deprived Plaintiffs of the rights, privileges, and immunities secured to Plaintiffs by the First, Fifth and Fourteenth Amendments to the Constitution of the United States and the laws of the United States, as identified above.

85. On April 6, 2008, Defendants APD and the City of Albuquerque consciously, willfully, maliciously, and intentionally conspired to protect fellow Sergeant Andrew Gallegos,

from civil and criminal liability by covering up his true involvement in Vera Haskell's death.

86. Defendants overtly acted in furtherance of this conspiracy by undertaking the acts described herein and continue to do so to this date.
87. This conspiracy stems from the longstanding practices and customs within the City of Albuquerque and APD, as outlined in detail herein. The Sergeant Gallegos conspiracy and cover-up represents but one example of the Defendants' enforcement of the so-called "code of silence" or "blue shield".
88. Defendant City of Albuquerque and Defendant APD clothed their employees and officers with the power and authority of the City of Albuquerque and State of New Mexico, respectively, to make decisions on behalf of these public entities. By virtue of this delegated power and authority, these Defendants furthered the conspiracy in such fashion that the conspiracy became an informal decision, practice, pattern, or policy of the City of Albuquerque and State of New Mexico and is a basis for punitive damages.
89. Defendants consciously, intentionally, willfully, and deliberately conspired and continue to conspire to damage Plaintiffs by consciously, intentionally, willfully, and deliberately destroying, altering, fabricating and/or failing to note and/or record evidence, in furtherance of the conspiracy to violate Plaintiffs' civil rights.
90. Defendants consciously, intentionally, willfully, and deliberately conspired and continue to conspire to damage Plaintiffs by consciously, intentionally, willfully, and deliberately giving Sergeant Gallegos extra time to concoct an alibi and which Sergeant Gallegos used to tamper with evidence by ridding his vehicle of crucial evidence after causing Vera Haskell's death on April 6, 2008, and to sober up and evade a sobriety test or blood

or breath alcohol sample in furtherance of the conspiracy to violate Plaintiffs' civil rights.

91. Defendants' conspiracy was executed pursuant to the customs and policies described herein resulting violations of Plaintiffs' constitutional rights.

92. The acts, omissions, customs, practices, patterns, and/or decisions of the City of Albuquerque and APD, while carried out under color of state law, have no justification or excuse in law, and instead constitute a gross abuse of governmental authority and power. These actions and omissions shock the conscience, are fundamentally unfair, arbitrary and oppressive, and are unrelated to any activity in which Police Officers may appropriately and legally engage. The acts, omissions, decisions, customs, patterns, practices, or policies were consciously chosen from among various alternatives and are a basis for punitive damages.

93. The City of Albuquerque Police Department acted with deliberate indifference in failing to implement policies and procedures to safeguard the public as well as their own employees.

94. Plaintiffs submit that discovery will uncover additional examples of conspiracy and cover-up similar to the instant matter.

95. Each of the allegations above was a direct and proximate cause of the death of Vera Haskell.

WHEREFORE, Plaintiff prays for the following:

(1) All damages set forth previously herein, including but not limited to paragraph 62 of this Complaint;

(2) An award of compensatory damages fixed by the trier of fact in a reasonable amount,

- (3) An award for emotional distress, aggravated grief and related damages;
- (4) For economic losses including expenses relating to uncovering the conspiracy and cover-up;
- (5) For attorney's fees and costs, including but not limited to, investigation fees, and expert witness fees incurred herein;
- (6) For costs of suit incurred herein;
- (7) For prejudgment and post judgment interest according to proof;
- (8) Special damages to be determined at trial;
- (9) For exemplary or punitive damages in an amount to be determined at trial; s
- (10) And for such other and further relief as this Court deems just and proper and for with Plaintiff may be legally entitled.

Respectfully submitted,

VIGIL LAW FIRM, P.A.
2014 Central Ave., S.W.
Albuquerque, New Mexico 87104
(505) 243-1706

By: _____

JACOB G. VIGIL
ADRIAN O. VEGA
Attorneys for Plaintiff