

CIV-140707-CIV-DS1410104-CASEEN-092702



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Complaint and Party information entered



NEW FILE

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7 Attorney for
8 DIANE MERCHANT
9 ANNA THOMAS

10 **SCANNED**

11 **FILED**
12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN BERNARDINO
14 SAN BERNARDINO DISTRICT

15 JUL - 7 2014

16 BY *Leanne M. Landeros*
17 LEANNE M. LANDEROS, DEPUTY

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SAN BERNARDINO**

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24 DIANE MERCHANT AND ANNA
25 THOMAS individually and as
1 Successors-in-Interest to the Estate of
2 LARRY THOMAS,

3 Plaintiffs,

4 vs.

5 YERMO COMMUNITY SERVICES
6 DISTRICT, YERMO FIRE
7 DEPARTMENT, ROBERT "BOB"
8 SMITH, PAUL RAY, SEAN CLOUGHEN,
9 INLAND COUNTIES EMERGENCY
10 MEDICAL AGENCY, REZA VAEZAZIZI,
11 and DOES 1-30:

12 Defendants.

13 CASE NO. **CIVDS1410104**

14 COMPLAINT FOR DAMAGES

15 (Violation of Federal Civil
16 Rights Statutes; Punitive Damages &
17 Attorneys' Fees Requested; Wrongful
18 Death)

19 **DEMAND FOR JURY TRIAL**

20 *#435-00*

21 *#140709-0458-10*

22 *BY FAX \$135.00*

23 Plaintiffs DIANE MERCHANT and ANNA THOMAS (collectively "plaintiffs") individually
24 and as Decedent LARRY THOMAS's ("Larry Thomas" or "Decedent") surviving heirs
25 and successors-in-interest under CCP 377.11 for the Complaint against defendants
1 YERMO COMMUNITY SERVICES DISTRICT, YERMO FIRE DEPARTMENT,
2 ROBERT "BOB" SMITH, PAUL RAY, SEAN CLOUGHEN, INLAND COUNTIES
3 EMERGENCY MEDICAL AGENCY and REZA VAEZAZIZI (collectively "defendants")
4 allege as follows:

INTRODUCTION

1 2. Yermo is a town in San Bernardino County. The town is governed by an
2 3 elected five-member board of directors comprising the Yermo Community Services
3 4 District authored by San Bernardino County. As of November 8, 2013, Bob Smith was
4 5 the Yermo Fire Department fire chief is also the president of the board of directors.
5 6 Paul Ray, was the Yermo Fire Department fire commissioner and he also sits on the
6 7 Board of Directors. Sean Cloughen was a Yermo Fire Department fire captain. He
7 8 became a fire captain in September 2013.

9 10. On November 8, 2013 Captain Cloughen together with two other firefighter
10 11 trainees, were on-duty. At about 4:13:22 Diane Merchant, a resident of Yermo, called
11 12 911 telling the operator that her husband, Larry Thomas, was having difficulty breathing.
12 13 At 4:15:16 Cal Fire dispatch (Angie Mobius, was the dispatcher on duty) radioed Yermo
13 14 Fire Department, the nearby Marine Corps Logistics Base, Fire Station 402, Yermo
14 15 Annex ("Fire Station 402") and Desert Ambulance in Barstow that there was a "911"
15 16 emergency call from a Yermo resident with difficulty breathing. Fire Station 402 is
16 17 equipped with an Advanced Life Support (ALS) paramedic unit ambulance. Yermo Fire
17 18 Department does not even have a Basic Life Support unit. Nonetheless, upon receiving
18 19 the call Captain Cloughen ordered the Cal Fire dispatch to cancel out Fire Station 402.
19 20 At 4:16:04 Angie called Fire Station 402 to cancel their call.

20 21. Diane and Larry's home is about half a mile from the Yermo Fire Station.
21 22 In July and August of that year Captain Cloughen made two emergency trips to Larry
22 23 Thomas's house. Captain Cloughen was clearly familiar with Larry Thomas's house.
23 24 Nonetheless, at 4:21:11 Captain Cloughen called the "911" dispatch and told her that he
24 25 could not find the home in question. The dispatch operator, Angie, then called Diane
25 26

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1 back and told her that Yermo Fire Department was having difficulty finding her house.
2 Diane then, while on the phone with Angie, told her that she sees the Yermo Fire
3 Department pickup truck and was waving to them while standing in the driveway. At
4 that point Captain Clougen drove away from the house, prompting Diane to tell Angie
5 "they are now driving away". Captain Clougen eventually turned around and arrived at
6 the house at 4:24:23, nine minutes after being dispatched. The drive from the Yermo
7 Fire Department to Diane and Larry's house at 45 mph is about 40 seconds. The
8 Yermo Fire Department and Diane and Larry's house are both on the same road and
9 the road between them is straight and level, with not intersections or stop signs in
10 between. Captain Clougen is not trained nor certified as a firefighter.
11

12 4. Captain Clougen entered the house. Larry was conscious and breathing.
13 Captain Clougen left the bag-valve-mask ("BVM") in the oxygen bag without using it on
14 Larry. Then, Larry stopped breathing and lost consciousness. Captain Clougen did
15 nothing. Gary Yearsley, another firefighter who is a certified EMT arrived at the house.
16 He walked in through the front door, through the front room and into the bedroom where
17 Captain Clougen was sitting on the bed with Larry laying next to him. Captain
18 Clougen was holding Larry's wrist saying he could not get a pulse and that he was
19 talking to him just a minute ago when one of the trainees said it had been more like five
20 minutes ago. There had not been any radio traffic about that. Yearsley checked for a
21 pulse and breathing but found neither.
22

23 5. Yearsley told Captain Clougen to start compressions and told one of the
24 trainees Elser to radio Cal-Fire to recall Fire Station 402. Yearsley then used the BVM
25 with oxygen and the automatic-external-defibrillator ("AED"). After the first round of 30
26 compressions Larry's heart started to beat and he opened his eyes and looked at
27
28

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1 Yearsley. At that time Larry's beats were 50 bpm, then his heart slowed to a stop.
2 Yearsley then hooked up the AED and gave Larry the first round of shock. Larry's heart
3 started again but then started to slowly stop again. After it stopped again and while the
4 AED was assessing the patient to shock him again, it advised not to shock so they
5 started CPR again. At 4:37 Desert Ambulance #6 arrived on scene and took charge of
6 the patient and the scene. They put Larry on a long board and continued CPR. At 4:42
7 Fire Station 402 arrived on scene. Shortly thereafter Larry was taken to Barstow
8 Community Hospital where he was pronounced dead.
9

10 6. Plaintiffs assert numerous claims arising from these unsettling facts,
11 based upon both tort and statutory law, and upon both federal and state law. Plaintiffs –
12 Diane and Anna individually and on behalf of Larry – pray for damages against
13 Defendants, and hope to obtain relief from the catastrophe Defendants caused.
14

THE PARTIES

15 7. Plaintiffs Diane Merchant and Anna Thomas are residents of the State of
16 California, County of San Bernardino within this judicial district. Diane is the widow of
17 decedent Larry Thomas. Anna is the surviving daughter of decedent Larry Thomas.
18 Both Diane and Anna are Larry's successors-in-interest under CCP § 377.11.
19

20 8. Plaintiffs are informed and believe and on that basis allege that Defendant
21 Yermo Community Services District (hereinafter "YCSD") is, and at all relevant times
22 was, a public entity known as a California special district, within this judicial district, and
23 a political subdivision organized and existing under and by virtue of the laws of the State
24 of California. Plaintiffs are further informed and believe that Defendants Bob Smith,
25 Paul Ray and Sean Cloughen were, at all relevant times herein, employed by YCSD
26 and acting under color of law and within the course and scope of their employment.
27
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1 9. At all relevant times, Defendant Yermo Fire Department (hereafter "YFD")
2 was and is a fire department operated by YCSD and organized and existing pursuant to
3 California Health and Safety Code §§ 13800 et seq., and that it is headquartered within
4 this judicial district. At all relevant times, YFD was responsible for training its firefighter
5 personnel and providing emergency services to the residents of Yermo. Plaintiffs are
6 further informed and believe that Defendants Bob Smith, Paul Ray and Sean Cloughen
7 were, at all relevant times herein, employed by YFD and acting under color of law and
8 within the course and scope of their employment.
9

10 10. At all relevant times Defendants Bob Smith, the fire chief at YFD, and Paul
11 Ray, the fire commissioner at YFD, had direct responsibility for the training of YFD's
12 staff on how to manage and respond to emergencies.

13 11. At all relevant times, Defendant Inland Counties Emergency Medical
14 Agency (hereafter "ICEMA"), had direct responsibility to ensure an effective system of
15 quality care and coordinated emergency medical response by planning, implementing
16 and evaluating an effective emergency medical services system including fire
17 department and public ambulance prehospital providers and hospitals, including
18 specialty care hospitals, such as trauma and cardiac care hospitals. At all relevant
19 times, Defendant ICEMA, the established local EMS agency for San Bernardino County
20 including Yermo, had direct responsibility to regulate, train, establish and maintain
21 medical control, by assuring the development of written medical policies and procedures
22 to include requirements to be followed when it is determined that the patient will not
23 require transport to the hospital by ambulance.
24

25 12. At all relevant times, Defendant Reza Vaezazizi, a licensed medical doctor
26 in the State of California, was the medical director at Defendant ICEMA and had direct
27

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1 responsibility to regulate, train, establish and maintain medical control, by assuring the
2 development of written medical policies and procedures to include requirements to be
3 followed when it is determined that the patient will not require transport to the hospital
4 by ambulance.

5 13. Except where otherwise noted, Defendants who are natural persons, and
6 each of them, engaged in the acts and conduct complained of herein while within the
7 course and scope of their agency or employment by or for Defendant YCSD, or by or for
8 a department or office or agency of YCSD, or otherwise were acting for or on behalf of
9 Defendant YCSD, or one of its departments or offices or agencies, and under color of
10 law in doing or not doing the things complained of herein.

12 14. Plaintiffs are ignorant of the true names and capacities of Defendants
13 Does 1-30, inclusive, and therefore sue these defendants by such fictitious names.
14 Does 1-10 are other individuals or entities responsible in some way for the unsafe
15 condition Decedent was placed in by cancelling Fire Station 402. Does 11-20 are other
16 individuals responsible for the training or supervision of other persons or of any named
17 Defendant, and are somehow responsible for the violations of law alleged herein. Does
18 21-30, are other individuals responsible for the maintenance of medical control at the
19 scene of an emergency like the one Decedent was involved in. Consequently, Plaintiffs
20 sue these Defendants under the fictitious names, Does 1-30, inclusive. Plaintiffs are
21 further informed and believe, and on that basis allege, that defendants acted at all times
22 mentioned herein as the actual and/or ostensible agents, employees, servants or
23 representatives of each other and, in doing the activities alleged herein, acted within the
24 scope of their authority as agents and employees, and with the permission and consent
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26
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1 of each other. Plaintiffs will amend this Complaint to allege their true names and
2 capacities if or when ascertained.

3 15. Plaintiffs are informed and believe, and on that basis allege, that at all
4 times mentioned herein all defendants acted under color of law, statute, ordinance,
5 regulations, customs and usages of the State of California, County of San Bernardino
6 and Yermo Community Services District.

7 **JURISDICTION AND VENUE**

8 16. The jurisdiction of this Court over the subject matter of this action is
9 predicated on 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. §§ 1983 and 1988, and the
10 State Court has concurrent jurisdiction.

11 17. Venue is proper in the San Bernardino County Superior Court because
12 Plaintiffs' and Decedent's claims arose in this district and because, on information and
13 belief, all defendants are and were at all times mentioned herein residents of San
14 Bernardino County, State of California.

15 18. Plaintiffs have timely complied with all government claim requirements, as
16 set forth in California Government Code §§ 900 et seq. Plaintiffs received written
17 rejection of their claims within six months of the filing of this complaint.

18 **GENERAL ALLEGATIONS**

19 19. Plaintiffs are informed and believe that in or about 2006, Bob Smith began
20 instructing the YFD firefighters to cancel ALS paramedic units from both Desert
21 Ambulance and Fire Station 402. The cancellation of the ALS paramedic units became
22 an unwritten official policy and practice of YFD. Over the course of time several
23 firefighters with EMT certificates and/or licenses, including Gary Yearsley, Jeffrey
24 Stumbaugh and Chris Chavez complained to Bob Smith about this practice telling him
25 26 27 28

1 that is was extremely unsafe and placed patients in grave bodily danger. Bob Smith
2 ignored them. Eventually, Bob Smith terminated each firefighter who complained,
3 including Yearsley, Stumbaugh and Chavez.

4 20. Bob Smith's cancellation policy had grave consequences even before
5 Larry's death. For example, in 2009 Bob Smith cancelled a Desert Ambulance ALS
6 unit en route to a motorcycle accident scene. The motorcyclist died of her injuries
7 without the needed assistance of proper emergency medical treatment. The victim's
8 family never knew of the cancellation and therefore never sued.
9

10 21. Plaintiffs are informed and believe that Bob Smith obtained a copy of a fire
11 department employee handbook/policy manual online and simply downloaded and
12 printed it making it the YFD's Employee Handbook. According to the YFD Handbook,
13 "Yermo Fire District has the mission of providing fire and first responder medical
14 assistance to the Yermo-Calico CSD boundaries and mutual aid response to
15 surrounding communities." However, there is no first responder medical training. The
16 Handbook describes the fire chief's work to include: "Conducts periodic training in all
17 functional areas and conducts drills and exercises to ascertain the proficiency and skill
18 levels of all subordinates." Also, the Handbook lists the fire captain's job qualifications
19 as: "Current Firefighter 1 and Firefighter 2 certification." Captain Cloughen never had
20 either certification.
21

22 22. Plaintiffs are informed and believe that in September 2013 Jeffrey
23 Stumbaugh, who was at the time the fire captain of YFD, complained to Bob Smith that
24 Sean Cloughen, a firefighter at the time, was engaged in inappropriate behavior with a
25 high school student working as an intern at the fire station. One evening following a
26 Yermo community meeting, Bob Smith called Jeffrey into his office to talk to him about
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28

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1 the recent allegations against Sean Cloughen. When Jeffrey entered the office the high
2 school's father was sitting on a chair. Bob Smith said the Jeffrey, "so you have a claim
3 that Sean Cloughen was acting inappropriately with this man's daughter, right?" Jeffrey
4 said yes. Bob Smith turned to the father, who then said "I fully trust Sean." Then Bob
5 Smith told Jeffrey that the whole this is put to rest, there was no issue. Finally, Bob
6 Smith said, "oh, Jeffrey you can turn in you equipment tomorrow you will no longer be
7 needed." And just like that he was terminated. A month or so later, Captain Cloughen
8 arrived at Diane and Larry's house at 4:17 a.m. in the morning when he noticed
9 Jeffrey's car parked outside. Instead of driving to the house as quickly as possible in
10 order to assist Larry who was having difficulty breathing, Captain Cloughen first
11 cancelled the Fire Station 402 ALS paramedic unit, took his time and then lied about not
12 being able to find the house while being parked directly in front of it.

14 23. In May 2013 Larry and Diane moved from Calico to Yermo in order to be
15 near the Yermo and 402 Fire Stations because of Larry's congestive heart failure
16 ("CHF"). Gary Yearsley and Jeffrey Stumbaugh, who knew that Larry had a history of
17 CHF and decided to make a notation on the Yermo Fire Department's large white-board
18 located in the main office Larry's address with a notation that he had CHF. So in May
19 2013 they wrote in blue marker in the top left corner of the white-board:
20

21 "LARRY THOMAS, 309 E. YERMO ROAD, CHF".

22 24. Plaintiffs are informed and believe that on or about July 6, 2013 Diane
23 called "911" because Larry was having difficulty breathing. YFD, Fire Station 402, and
24 Desert Ambulance arrived. Larry was taken by ambulance to Barstow Community
25 Hospital. He was released the next day.
26

1 25. Plaintiffs are informed and believe that on or about August 31, 2013 Diane
2 called "911" because Larry was again having difficulty breathing. YFD, and Desert
3 Ambulance arrived. YFD cancelled Fire Station 402. Larry was taken by ambulance to
4 Barstow Community Hospital. He was released the next day.

5 26. Plaintiffs are informed and believe that following Larry's death Sean
6 Cloughen told Chris that he cancelled Fire Station 402 because Larry was a constant
7 complainant and that there was never anything wrong with him. Sean Cloughen walked
8 around telling people that he was the "grim reaper" because he killed Larry Thomas.

10 27. Sean Cloughen is guilty of the murder of Larry Thomas. In California
11 murder is the unlawful killing of a human being. Malice can be expressed or implied. It
12 is implied, when no considerable provocation appears, or when the circumstances
13 attending the killing show an abandoned and malignant heart. Bob Smith and Paul Ray
14 are aiders and abettors since they instituted a policy whereby the Yermo firefighters
15 were told to cancel the ALS paramedic units on each and every call.

17 28. Each of the defendants, including YFD employees Bob Smith, Paul Ray,
18 and Sean Cloughen and Does 1-30 caused Larry's death by deliberately depriving him
19 of essential emergency medical treatment. Defendants and Does 1-30 acted with
20 deliberate, willful, conscious and reckless disregard to the patients' needs during
21 emergency life threatening conditions.

22 29. Defendants and Does 1-20 were firefighters with YFD, which was not a
23 strictly volunteer fire department. In fact in 2012 YCSD Board voted to pay YFD
24 firefighters from insurance reimbursement proceeds, creating an employer-employee
25 relationship between YFD and its "volunteer" firefighters.

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1 30. Plaintiffs and Decedent's federal claims, arise under the United States
2 Constitution, and the Fourteenth Amendment thereto, and under federal law, including
3 but not limited to the Federal Civil Rights Act, Title 42 of the United States Code, §§
4 1983 and 1988 and the State Created-Danger Doctrine exception to *DeShaney v.*
5 *Winnebago County Department of Social Services*, 489 U.S. 189 (1988) outlined in
6 *Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989) and *Maxwell v. County of San Diego*,
7 697 F.3d 941 (9th Cir. 2012). The acts and omissions of Defendants and others as
8 alleged herein were committed by Defendants and others, and each of them under color
9 and pretense of the Constitution, statutes, ordinances, rules, regulations, practices,
10 customs, patterns, and usages of the State of California and/or of the YCSD, and as
11 officials, employees, or agents of Defendant YCSD or of a department or office or
12 subdivision or agency of YCSD, including but not limited to YFD.

14 31. Specifically, under California Health and Safety Code, Division 2.5,
15 Sections 1797.204 and 1798, and California Code of Regulations, Title 22, Division 9,
16 Section 100175, the cancelling or downgrading of Emergency Medical Services
17 response, whether ALS or BLS may be done by a paramedic who is staffing an ALS
18 engine, emergency ambulance or paramedic field supervisor vehicle may cancel an
19 ALS provider response if no medical problem exists, the patient is dead, or is patient
20 has a feasible alternative plan for appropriate and timely care, which will not
21 compromise the health and safety of the patient. An ALS provider response can be
22 downgraded (from Code-3 to Code-2) as appropriate by a paramedic. A BLS provider
23 firefighter personnel who arrived on-scene prior to the arrival of a paramedic on an ALS
24 engine, ambulance or field supervisor unit, may cancel ALS responders if, a patient
25 cannot be located, the patient is dead, no clear emergency medical condition exists
26
27
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1 (e.g. no shortness of breath, chest pain, altered mental status, or acute abdominal
2 pain).

3 32. Defendants, and each of them, and others, both by action and inaction,
4 created or executed or condoned or ratified policies, customs, practices, patterns of
5 conduct, and rules and regulations designed, or with the effect, to promote unsafe and
6 dangerous conditions while responding to "911" emergency calls and Defendants and
7 others acted knowingly or with deliberate indifference to the rights of Decedent and
8 Plaintiffs under the United States Constitution.

9 33. As a proximate result of the acts and omissions of defendants, and each
10 of them, Decedent has suffered loss of freedom, pain, suffering, inconvenience, mental
11 anguish, humiliation, fear, emotional distress, loss of constitutional rights, loss of
12 income, loss of earning capacity, and loss of familial relationships and Plaintiffs have
13 suffered and continue to suffer the loss of love and affection of the Decedent.

14 34. Defendants, and each of them, by acts of omission and commission, as
15 complained of herein, acted recklessly, maliciously, fraudulently, and/or oppressively
16 with respect to the rights of Decedent and Plaintiff secured to them by the United States
17 Constitution. Defendants, and each of them, actually caused the deprivation of
18 Decedent and Plaintiffs' federal civil rights and other injuries suffered by Plaintiffs.

21 **FIRST CAUSE OF ACTION**

22 **Deprivation of Civil Rights - 42 U.S.C. § 1983 – State-Created Danger,**

23 **Causing the Death of Larry Thomas**

25 **(Against Defendant Cloughen, and Does 1-10)**

26 35. Plaintiffs reallege and incorporate by reference the allegations of
27 paragraphs 1 through 34 of this Complaint, as if fully set forth at this point.

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1 36. Defendant Cloughen and Does 1-10, while acting under color of law, are
2 being sued here both in their individual and representative capacities, deprived
3 Decedent of civil rights by violating Decedent's right to life and liberty under the
4 substantive due process of the Fourteenth Amendment and the State-Created Danger
5 Doctrine.

6 37. Defendant Cloughen and Does 1-10, while acting under color of law, are
7 being sued here both in their individual and representative capacities, deprived Plaintiffs
8 of their civil rights by violating their liberty interest of companionship with Decedent
9 under the Fourteenth Amendment.

11 38. Plaintiffs are informed and believe, and on that basis allege Defendant
12 Cloughen and Does 1-10 placed Decedent in a serious and grave risk of bodily harm by
13 cancelling the Fire Statin 402 ALS paramedic unit ("ALS provider response") thereby
14 depriving Decedent of his life and liberty under the Fourteenth Amendment. Defendant
15 Clougen and Does 1-10 violated California Health and Safety Code, Division 2.5, §
16 1798.6(c) by failing to consult a health care professional prior to canceling the ALS
17 provider response when the circumstances clearly did not warrant it. Diane made the
18 "911" call for a potentially life threatening condition of difficulty breathing. Nonetheless,
19 Defendant Cloughen and Does 1-10, whom did not have the authority to cancel the ALS
20 provider response did not even wait until arriving on scene to assess the situation prior
21 to canceling the ALS provider response. Defendant Cloughen and Does 1-10 should
22 have deferred to the Fire Station 402 paramedic on duty, who was a mere minutes
23 away from Decedent's home, allowing him to assess Decedent's condition prior to
24 making any health related decisions.

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1 39. However, Plaintiffs are informed and believe, and on that basis allege
2 Defendant Cloughen and Does 1-10, decided that Decedent was faking his condition
3 and that probably nothing was really seriously wrong with him and then decided to make
4 Decedent and his family, including his son-in-law Jeffrey Stumbaugh, suffer by having to
5 wait longer then necessary prior to arriving at Decedent's home. This was Defendant
6 Cloughen and Does 1-10's way to pay back Stumbaugh for filing a complaint against
7 him with Defendant Bob Smith a moth or so before.
8

9 40. Plaintiffs are informed and believe, and on that basis allege Defendant
10 Cloughen and Does 1-10 knew that Decedent had a history of shortness of breath
11 episodes requiring transfer by ambulance to the emergency room. Nonetheless,
12 Defendant Cloughen and Does 1-10 cancelled the ALS provider response and delayed
13 arrival at Decedent's home. Defendant Cloughen's and Does 1-10 decision to cancel
14 the ALS provider response placed Decedent in grave danger to his life and eventually
15 led to his death. Such behavior amounts to deliberate indifference and a conscious
16 disregard for Decedent's safety and was a substantial factor in Decedent's death, in
17 violation of Plaintiffs' and Decedent's due process constitutional rights causing harm.
18

19 41. Defendant Cloughen and the other Doe Defendants were each jointly and
20 severally responsible not to place Decedent in a dangerous condition. Each engaged in
21 and knew of the unconstitutional conduct alleged herein and failed to prevent it, which
22 each had a responsibility to do, and each ratified, approved or acquiesced in it.
23

24 42. Plaintiffs are informed and believe, and on that basis allege, that
25 Defendant Cloughen and Does 1-10, acting under color of state law, deprived Plaintiffs
26 of the right to familial relationships in violation of the Fourteenth Amendment, by
27 deliberate indifference to those liberty interests and to Larry Thomas's medical needs,
28

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which resulted in Larry Thomas's death, in violation of the rights confirmed in the
Fourteenth Amendment to the United States Constitution.

43. As a result of the wrongful acts of Defendant Cloughen and Does 1-10, Plaintiffs have suffered and continue to suffer general damages, including grief, emotional distress, loss of companionship, care, comfort, affection and society, and special damages including loss of protection and support in an amount to be determined according to proof at trial.

44. As a result of the wrongful acts of Defendant Cloughen and Does 1-10, Decedent suffered general damages, including pain and suffering prior to his death, in an amount to be determined according to proof at trial. (See *Chaudhry v. City of Los Angeles*, 5/19/2014 holding that CCP § 377.34 denying an estates ability to recover damages for a decedent's pain and suffering not applicable to 1983 civil rights actions).

45. The aforesaid conduct of Defendant Cloughen and Does 1-10 was reckless, malicious and oppressive, warranting the award of punitive damages against each of them.

SECOND CAUSE OF ACTION

19 **Deprivation of Civil Rights - 42 U.S.C. § 1983 – Monell Violations (Failure to Train)**
20 **(Against Defendant YCSD, YFD, Bob Smith, Paul Ray , and Does 11-20)**

21 46. Plaintiffs reallege, and incorporate by reference the allegations of
22 paragraphs 1 through 45 of this Complaint, as if fully set forth at this point.

23 47. Plaintiffs are informed and believe, and on that basis allege, that
24 Defendants YCSD, YFD, Bob Smith (the "Fire Chief") and Paul Ray (the "Fire
25 Commissioner") and Does 11-20 explicitly adopted a custom or policy of vesting with
26 the firefighter in charge of an emergency response the authority to cancel an ALS
27

1 provider response, arbitrarily, prior to arriving on scene. Specifically, on many
2 occasions Defendants YCSD, YFD, Bob Smith and/or Paul Ray ordered Yermo
3 firefighters to cancel the Fire Station 402 ALS paramedic unit and/or the Desert
4 Ambulance ALS unit.

5 48. Plaintiffs are informed and believe, and on that basis allege, that
6 Defendants YCSD, YFD, Bob Smith and Paul Ray and Does 11-20 vested such
7 authority with the firefighter in charge of an emergency scene without providing
8 adequate training to recognize when it would be medically necessary for injured
9 persons at the scene of an emergency to have an ALS provider respond.

11 49. Plaintiffs are informed and believe, and on that basis allege that the
12 Defendants YCSD, YFD, Bob Smith and Paul Ray and Does 11-20 did not train Yermo
13 firefighters in when or why an ALS provider response may be cancelled.

14 50. Defendants YCSD, YFD, Bob Smith and Paul Ray and Does 11-20's
15 failure to provide adequate training was done with deliberate indifference and conscious
16 and reckless disregard to the rights, safety and security of the individuals its firefighters
17 come into contact with, including Decedent.

19 51. Defendants YCSD, YFD, Bob Smith and Paul Ray and Does 11-20's
20 failure to train the Yermo firefighters caused the Defendants and Does 11-20 who were
21 employed by the YFD to cancel the Fire Station 402 ALS paramedic unit from
22 responding to Decedent in order to provide Decedent with emergency medical
23 treatment.

25 52. Defendants YCSD, YFD, Bob Smith and Paul Ray's and Does 11-20
26 policy, custom, pattern, practice or persistent course of conduct of cancelling ALS

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1 provider responses was a direct and proximate cause of the violation of Plaintiffs and
2 Decedent's constitutional rights.

3 53. The actions and inactions of Defendants YCSD, YFD, Bob Smith and Paul
4 Ray and Does 11-20 were known or should have been known to these policy makers
5 responsible YFD and occurred with deliberate indifference to either recurring
6 constitutional violations elaborated above, and/or to the strong likelihood that
7 constitutional rights would be violated as a result of failing to train, supervise or
8 discipline in areas where the need for such training and supervision was obvious.

9 54. The actions of Defendants YCSD, YFD, Bob Smith and Paul Ray and
10 Does 11-20 set forth herein were a motivating force behind the violations of Plaintiffs'
11 and Decedent's constitutional rights as set forth in this Complaint.

12 55. As a direct and proximate result of the wrongful act of Defendants YCSD,
13 YFD, Bob Smith and Paul Ray and Does 11-20, Plaintiffs have suffered and continue to
14 suffer general damages, including grief, emotional distress, loss of care, comfort,
15 affection and society, and special damages including loss of protection in an amount to
16 be determined according to proof at trial.

17 56. As a result of the wrongful acts of Defendant Cloughen and Does 1-10,
18 Decedent suffered general damages, including pain and suffering prior to his death, in
19 an amount to be determined according to proof at trial. (See *Chaudhry v. City of Los*
20 *Angeles*, 5/19/2014 holding that CCP § 377.34 denying an estates ability to recover
21 damages for a decedent's pain and suffering not applicable to 1983 civil rights actions).
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23 57. The foregoing conduct of Defendants YCSD, YFD, Bob Smith and Paul
24 Ray's and each of them, was reckless, malicious and oppressive, warranting the award
25 of punitive damages against each of them.

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THIRD CAUSE OF ACTION

Public Entity and Employee Liability –

Failure to Perform Mandatory Duty – Gross Negligence/Bad Faith

[Govt. Code §§ 815.6, and 820.2]

(Against Defendants Bob Smith, Paul Ray, Sean Cloughen, and Does 1-20)

58. Plaintiffs reallege, and incorporate by reference as the allegations of paragraphs 1 through 57 of this Complaint, as if fully set forth at this point.

59. While Plaintiffs allege that Defendants and Does 1-20 acts and omissions detailed above amounted to deprivation of civil rights, Plaintiffs plead in the alternative that the individually named Defendants and each of them and Does 1-20, at a minimum gross negligently and in bad faith failed to properly treat Decedent in violation of California Health and Safety Code, Division 2.5, Section 1798.6. Specifically, section 1798.6(c) states that: “[p]ublic safety officials shall consult emergency medical services personnel or other authoritative health care professionals at the scene in the determination of relevant risks.” Defendants and each of them and Does 1-20 had a mandatory duty to consult emergency medical services personnel in the determination of whether or not to cancel ALS provider response and failed to do so. This failure was done in both bad faith and gross negligence.

60. Furthermore, Decedent's injury is a kind which does not ordinarily occur in the absence of someone's gross negligence, the injury was caused by an agency or instrumentality in the exclusive control of Defendants and Does 1-20, and no voluntary conduct on the Plaintiffs or Decedent's part was a responsible cause of the injury. It was foreseeable that Plaintiffs and Decedent would be harmed by the actions of the Defendants towards Decedent and each of them and that they were harmed as a

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proximate result of their actions and omissions. As it has been described above, Defendants failed to protect Decedent from the dangers of not being treated medically by an ALS provider.

61. As a proximate result of the gross negligence of the individually named Defendants, and each of them and Does 1-20, Decedent died on or about November 8, 2013. Both the public entities YCSD and YFD and the individually named public employee Defendants and Does 1-20 are liable to Plaintiffs and Decedent because their conduct amounted to bad faith and gross negligence and under Govt Code §§ 815.6 and 820.2 government entities and employees are not immune when they commit gross negligence or act in bad faith in carrying out their mandatory duties.

62. As a direct and proximate result of the wrongful act of Defendants YCSD, YFD, Bob Smith and Paul Ray and Does 11-20, Plaintiffs have suffered and continue to suffer general damages, including grief, emotional distress, loss of companionship, care, comfort, affection and society, and special damages including loss of protection in an amount to be determined according to proof at trial.

FOURTH CAUSE OF ACTION

Public Entity and Employee Liability –

Failure to Perform Mandatory Duty – Gross Negligence

[Govt. Code §§ 815.6, and 820.2]

(Against Defendants ICEMA, Vaezazizi, and Does 21-30)

63. Plaintiffs reallege, and incorporate by reference as the allegations of paragraphs 1 through 62 of this Complaint, as if fully set forth at this point.

64. Plaintiffs allege that Defendants ICEMA, Vaezazizi and Does 21-30's acts and omissions detailed above amounted to gross negligence in failing to comply with

1 California Health and Safety Code, Division 2.5, Section 1798, and California Code of
2 Regulations, Title 22, Division 9, Section 100175. Specifically, Defendants ICEMA,
3 Vaezazizi and Does 21-30's failed to regulate, train, establish and maintain medical
4 control in emergency settings; by failing to assure the development of written medical
5 policies and procedures to include requirements to be followed when it is determined
6 that the patient will not require transport to the hospital by ambulance. Furthermore,
7 pursuant to section 1798 (a) "[t]he medical direction and management of an emergency
8 medical services system shall be under the medical control of the medical director of the
9 local EMS agency. This medical control shall be maintained in accordance with
10 standards for medical control established by the authority."

12 65. Plaintiffs are informed and believe, and on that basis allege that
13 Defendants ICEMA, Vaezazizi and Does 21-30 failed to establish minimum standards
14 and policies and procedures for medical control of emergencies similar to the one
15 Decedent was in on November 8, 2013. This duty was a mandatory one, not
16 discretionary.

18 66. Furthermore, Decedent's injury is a kind which does not ordinarily occur in
19 the absence of someone's gross negligence, the injury was caused by an agency or
20 instrumentality in the exclusive control of Defendants ICEMA, Vaezazizi and Does 21-
21 30, and no voluntary conduct on the Plaintiffs or Decedent's part was a responsible
22 cause of the injury. It was foreseeable that Plaintiffs and Decedent would be harmed by
23 the actions of the Defendants ICEMA, Vaezazizi and Does 21-30 towards Decedent and
24 each of them and that they were harmed as a proximate result of their actions and
25 omissions. As it has been described above, Defendants ICEMA, Vaezazizi and Does
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1 21-30 failed to protect Decedent from the dangers of not being treated medically by an
2 ALS provider.

3 67. As a proximate result of the gross negligence of the individually named
4 Defendants ICEMA, Vaezazizi and each of them and Does 21-30, Decedent died on or
5 about November 8, 2013. Both the public entity ICEMA and the individually named
6 public employee Defendant Vaezazizi and Does 21-30 are liable to Plaintiffs and
7 Decedent because their conduct amounted to gross negligence and under Govt. Code
8 §§ 815.6 and 820.2 government entities and employees are not immune when they
9 commit gross negligence in carrying out their mandatory duties.

10 68. As a direct and proximate result of the wrongful acts of Defendants ICEMA
11 Vaezazizi and Does 21-30, Plaintiffs have suffered and continue to suffer general
12 damages, including grief, emotional distress, loss of companionship, care, comfort,
13 affection and society, and special damages including loss of protection in an amount to
14 be determined according to proof at trial.

15 WHEREFORE, plaintiffs pray for judgment as set forth below.

16 **PRAYER FOR RELIEF**

17 Plaintiffs seek judgment as follows:

18 a. Compensatory general and special damages against all Defendants, and
19 each of them, in an amount according to proof;

20 b. Punitive and exemplary damages against each of the Defendants herein sued
21 in his/her individual capacity;

22 c. Pre-judgment interest according to proof;

23 d. Reasonable attorney's fees and expenses of litigation as allowed by law,
24 including but not limited to 42 U.S.C. § 1988;

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- 1 e. Costs of suit reasonably incurred herein;
- 2 f. Such further relief as the court deems just and proper; and
- 3 g. That YCSD be required to pay any judgment pursuant to law.

4 Dated: July 6, 2014

5 LAW OFFICES OF DAVID M. FELDMAN

6 By: 

7 DAVID FELDMAN
8 ATTORNEY FOR PLAINTIFFS

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
247 West Third Street

San Bernardino, CA. 924150210

CASE NO: CIVDS1410104

NOTICE OF TRIAL SETTING CONFERENCE
and NOTICE OF CASE ASSIGNMENT

IN RE: DIANE MERCHANT ETC -V- YERMO COMMUNITY SERVICES DI

THIS CASE HAS BEEN ASSIGNED TO: DONNA GUNNELL GARZA IN DEPARTMENT S24
FOR ALL PURPOSES.

Notice is hereby given that the above-entitled case has been set for
Trial Setting Conference at the court located at 247 WEST THIRD STREET
SAN BERNARDINO, CA 92415-0210.

HEARING DATE: 01/05/15 at 8:30 in Dept. S24

DATE: 07/09/14 Christina M. Volkers, Clerk of the Court

By: NORMA ENRIQUEZ

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San
Bernardino at the above listed address. I am not a party to this
action and on the date and place shown below, I served a copy of the
above listed notice:

() Enclosed in a sealed envelope mailed to the interested party
addressed above, for collection and mailing this date, following
standard Court practices.
() Enclosed in a sealed envelope, first class postage prepaid in the
U.S. mail at the location shown above, mailed to the interested party
and addressed as shown above, or as shown on the attached listing.
() A copy of this notice was given to the filing party at the counter
() A copy of this notice was placed in the bin located at this office
and identified as the location for the above law firm's collection of
file stamped documents.

Date of Mailing: 07/09/14

I declare under penalty of perjury that the foregoing is true and
correct. Executed on 07/09/14 at San Bernardino, CA

BY: NORMA ENRIQUEZ

Notice 'NTSC' has been printed for the following Attorneys/Firms
or Parties for Case Number CIVDS1410104 on 7/09/14:

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