

Fill in this information to identify the case:

Debtor 1 Tehum Health Services

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Southern District of Texas ▼

Case number 23-90086

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor? Angela Branum and the Estate of Justin Branum
 Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else? No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>c/o Attorney Joy Bertrand</u>	_____
	Name _____	Name _____
	<u>502 W. Roosevelt St.</u>	_____
	Number Street _____	Number Street _____
	<u>Phoenix AZ 85003</u>	_____
	City State ZIP Code _____	City State ZIP Code _____
Contact phone <u>602-374-5321</u>	_____	Contact phone _____
Contact email <u>joy@joybertrandlaw.com</u>	_____	Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		

4. Does this claim amend one already filed? No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
 MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim? No
 Yes. Who made the earlier filing? _____



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 Page 1

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 8,000,000. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

Wrongful death, violation of 8th Amend. See attached complaint.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/06/2023
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name Joy Malby Bertrand
First name Middle name Last name

Title Attorney for Angela Branum

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 502 W. Roosevelt St.
Number Street

Phoenix, AZ 85003
City State ZIP Code

Contact phone 602-374-5321 Email joy@joybertrandlaw.com

1 **JOY BERTRAND, ESQ.**
2 P.O. Box 2734
3 Scottsdale, Arizona 85252
4 Office: 602-374-5321
5 Fax: 480-361-4694
6 joyous@mailbag.com
7 Arizona State Bar No. 024181

8 Attorney for: Plaintiffs

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 **The Estate of Justin Branum and**)
12 **Angela Branum,**)

13 **Plaintiffs,**)

14 **v.**)

15 **City of Phoenix, Arizona;**)
16 **Paul Penzone, Maricopa County**)
17 **Sherriff, in his official capacity,**)
18 **Arizona;**)
19 **Jeffrey Alvarez, Director, Maricopa**)
20 **County Correctional Health**)
21 **Services, in his official capacity;**)
22 **Sarah Kalkbrenner, Chief, Phoenix**)
23 **Fire Department, in her official**)
24 **capacity;**)
Jeri Williams, Chief, Phoenix Police)
Department, in her official capacity;)
State of Arizona;)
Phoenix Police Detective Ramirez)
(Badge # 8159) in his individual and)
official capacities;)
DPS John/Jane Does I-X, in their)
individual and official capacities;)

Case No. CV-21-357-RM

THIRD AMENDED
COMPLAINT¹
(Jury Trial Requested)

¹ Changes from the Second Amended Complaint are indicated in blue font.

1 PFD John/Jane Does I-X, in their)
2 individual and official capacities;
3 PPD John/Jane Does I-X, in their
4 individual and official capacities;
5 Maricopa County Does I-X in their
6 individual and official capacities;
7 David Shinn, Director, Arizona
8 Department of Corrections, in his
9 official capacity;
10 Heston Selbert, Director, Arizona
11 Department of Public Safety, in his
12 official capacity;
13 ADC John/Jane Does I-X, in their
14 individual and official capacities;
15 Corizon Correctional Healthcare,
16 Inc.;

17 ABC Corporations I-X;
18 Black And White Partnerships I-X;
19 and Sole Proprietorships Or Trusts
20 I-X,
21
22 **Defendants.**

23 NOW COME, the Estate of Justin Branum and his surviving wife, Angela
24 Branum, their Counsel, to file Complaint against the Defendants. In support
thereof, they submit the following:

PARTIES TO THE CASE

I. The Plaintiffs

1. Angela Branum currently lives in Illinois; she is is the widow of Justin Branum.
2. Ms. Branum has been appointed the executor of the Estate of Justin Branum (deceased), Pima County Probate Court Number PB20210880.

1 **II. The Defendants**

2 A. *The Municipal and State Agency Defendants*

3 1. Defendant City of Phoenix is a municipality and a political subdivision of
4 the State of Arizona, organized and existing under the laws of the State of
5 Arizona. The City of Phoenix is “state actor,” as that term is used under the
6 jurisprudence of 42 U.S.C. § 1983.
7

8 2. Defendant Maricopa County is a municipality and a political subdivision
9 of the State of Arizona, organized and existing under the laws of the State of
10 Arizona. Maricopa County is a “state actor,” as that term is used under the
11 jurisprudence of 42 U.S.C. § 1983.
12

13 3. Defendant State of Arizona is a governmental entity organized under the
14 Constitution of the United States.

15 4. The State of Arizona’s subdivision and agencies include the Arizona
16 Department of Public Safety (DPS) and the Department of Corrections
17 (hereinafter, ADC).
18

19 5. Defendant State of Arizona is liable for the acts or omissions of its
20 employees within the scope of their employment, including the Director, officers,
21 and other employees of ADC under the doctrine of *respondeat superior*.
22
23
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1 6. Pursuant to A.R.S. 31-201.01(F), any and all causes of action which may
2 arise out of tort caused by a Director, prison officers, or employees of ADC run
3 only against the State.

4 *B. Individual Defendants*

5
6 7. At all times relevant to this Complaint, Defendant Jeri Williams has been
7 the Chief of the Phoenix Police Department. She is the final policy maker for the
8 Department and is named in her official capacity.

9 8. At all times relevant to this Complaint, Defendant Kalkbrenner has been
10 the Chief of the Phoenix Fire Department. She is the final policy maker for the
11 Department and is named in her official capacity.

12
13 9. At all times relevant to this Complaint, Defendant Jeffrey Alvarez, has
14 been the medical director of Maricopa County Correctional Services;

15 10. At all times relevant to this Complaint, David Shinn has been the director
16 of the Arizona Department of Corrections;

17 11. At all times relevant to this Complaint, Heston Silbert has been the director
18 of the Arizona Department of Public Safety;

19
20 12. Maricopa County Jane Doe Officers and Johns Doe Officers are either
21 Maricopa County Sheriff's Deputies, Maricopa County Corrections Officers, or
22 otherwise employees of Maricopa County or Maricopa County's contractor to be
23 identified in the course of discovery. At all times material herein, MCSO Doe
24

1 Defendants acted within the scope of their employment and under color of law.
2 These Defendants engaged in wrongful conduct that allowed, caused, and/or
3 contributed to the cause of the violations of the Plaintiff's rights. Their actions
4 and/or inactions constitute actions of Sheriff Penzone, MCSO, and/or Maricopa
5 County.
6

7 13. Sheriff Penzone, MCSO, and/or Maricopa County are vicariously and
8 directly liable for their wrongful conduct.

9 14. The true names, capacities, and relationships, whether individual,
10 corporate, partnership, or otherwise of all John and Jane Doe Defendants are
11 unknown at the time of the filing of this Amended Complaint and are being
12 designated pursuant to Ariz. R. Civ. Pro. § 10(f) and all applicable federal and
13 state law.
14

15 15. Plaintiffs further allege that all of the factiously named Defendants were
16 jointly responsible for the actions, events, and circumstances underlying this
17 lawsuit, and that they proximately caused the damages stated in this Complaint.
18 Plaintiff will amend this Complaint to name the unidentified individuals, once
19 she has learned, through discovery, the identities and acts, omissions, roles,
20 and/or responsibilities of such Defendants sufficient for Plaintiff to discovery
21 claims against them.
22
23
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1 16. On information and belief, Defendant Ramirez is a resident of Maricopa
2 County, Arizona.

3 17. At all times alleged in this Complaint, Phoenix Detective Ramirez (PPD
4 Badge Number 8159) is or was a police officer employed by the City of Phoenix,
5 acting within the course and scope of his employment, and under color of state
6 law. Defendant Ramirez is a “state actor” as that term is used under the
7 jurisprudence of 42 U.S.C. § 1983. The Plaintiff will supplement this information
8 when Detective Ramirez’ full name becomes available through discovery.
9

10 18. At all times alleged in this Complaint, DPS DOES I-X were police officers
11 and supervisors employed by the State of Arizona Department of Public Safety,
12 acting within the course and scope of his employment, and under color of state
13 law. They are “state actors,” as that term is used under the jurisprudence of 42
14 U.S.C. § 1983.
15

16 19. At all times alleged in this Complaint, PPD DOES I-X were police officers
17 employed by the City of Phoenix, acting within the course and scope of his
18 employment, and under color of state law. At all times material herein, PPD Doe
19 Defendants acted within the scope of their employment and under color of law.
20 PPD Does are “state actors,” as that term is used under the jurisprudence of 42
21 U.S.C. § 1983. These Defendants engaged in wrongful conduct that allowed,
22 caused, and/or contributed to the cause of the violations of the Plaintiff’s rights.
23
24

1 Their actions and/or inactions constitute actions of Chief Williams, PPD and/or
2 the City of Phoenix.

3 20. At all times alleged in this Complaint, PFD DOES I-X were fire fighters
4 employed by the City of Phoenix, acting within the course and scope of his
5 employment, and under color of state law. At all times material herein, PFD Doe
6 Defendants acted within the scope of their employment and under color of law.
7 They are “state actors,” as that term is used under the jurisprudence of 42 U.S.C.
8 § 1983. These Defendants engaged in wrongful conduct that allowed, caused,
9 and/or contributed to the cause of the violations of the Plaintiff’s rights. Their
10 actions and/or inactions constitute actions of Defendant Kalkbrenner, PFD,
11 and/or the City of Phoenix.
12

13
14 21. At all times alleged in this Complaint, MCSO DOES I-X were employees
15 employed by Maricopa County, acting within the course and scope of their
16 employment, and under color of state law. They are “state actors,” as that term
17 is used under the jurisprudence of 42 U.S.C. § 1983.
18

19 22. At all times alleged in this Complaint, ADC DOES I-X were employees
20 employed by the Arizona Department of Corrections, acting within the course
21 and scope of their employment, and under color of state law. They are “state
22 actors,” as that term is used under the jurisprudence of 42 U.S.C. § 1983.
23
24

1 23. Corizon Correctional Health, Inc. (hereinafter “Corizon”) was formed in a
2 2011 merger of Correctional Medical Services and Prison Health Services (PHS).

3 24. Effective March 4, 2013, Corizon contracted with ADC to provide full
4 service medical, mental health, and dental care to the inmates housed at ASPC-
5 Douglas, ASPC-Phoenix, ASPC-Eyman, ASPC-Safford, ASPC-Florence, ASPC-
6 Tucson, ASPC-Lewis, ASPC-Winslow, ASPC-Perryville, and ASPC-Yuma.

7 25. On information and belief, Corizon was, and is, a for-profit corporation.

8 26. Corizon was, and is, a state actor, as that term is used within the
9
10 jurisprudence of federal civil rights law.

11 27. Defendant State of Arizona retained monitoring responsibility for
12 Defendant Corizon’s provision of health care to inmates within the ADC prison
13 system.

14 28. Defendant State of Arizona requires inmates to be provided opportunities
15 for reasonable and appropriate access to a community standard of health care
16 and appropriate referrals for inmates who present for treatment.

17 29. Defendant State of Arizona remains ultimately liable for the acts and
18 omissions of Defendant Corizon in providing healthcare to inmates within the
19 ADC system.

20 30. Corizon’s responsibility to ADC inmates extends to ensuring “all efforts
21 are taken to maintain the inmate’s life while on the prison complex.”
22
23
24

1 31. Inmates retain the right to refuse treatment, but if the inmate's decision is
2 life-threatening, Corizon must follow Department Order Sect. 1101.11 (1.2.1),
3 which initiates the chain of command to ensure that the inmate is mentally
4 competent and makes a knowing, fully-informed decision, including seeking
5 court authority for treatment.
6

7 32. ADC policy requires notification to the Facility Health Warden
8 Administrator (FHA), the ADC Contract Monitor, and the Warden. A significant
9 incident report must be completed, and the Department's General Counsel must
10 be contacted. Contact with General Counsel initiates the involvement of the
11 Office of the Attorney General in petition for court-mandated treatment.
12

13 33. Even if an inmate refuses needed medical treatment, Corizon's
14 responsibility extends to ensuring "that every possible avenue is explored to
15 encourage cooperation by inmates in completion of their own care."
16

17 34. ADC policy also requires Corizon to initiate a multi-disciplinary panel, in
18 the event that there is a life-threatening failure of treatment.

19 35. On information and belief, Defendant Corizon was, at all times relevant to
20 this Complaint, subject to potential civil penalties for non-compliance with
21 certain performance measures related to staffing and referral of inmates for
22 medically-indicated care to non-employee ("outside") medical providers,
23 specialists, and hospitals.
24

1 36. On information and belief, at all times relevant to this Complaint,
2 Defendant Corizon was subject to potential penalties for non-compliance with
3 certain performance measures related to staffing and referral of inmates for
4 medically indicated referrals to non-employee medical providers, specialists, and
5 hospitals.

6
7 37. On information and belief, the potential for such penalties has created a
8 financial disincentive for Corizon to initiate policy-mandated procedures.

9 38. At all times alleged herein, Defendants JOHN DOE I-X; JANE DOE I-X;
10 ABC CORPORATIONS I-X; BLACK AND WHITE PARTNERSHIPS I-X OR
11 SOLE PROPRIETORSHIPS OR TRUSTS are persons, partnerships, corporations,
12 or unincorporated associates subject to a suit in a common name whose names
13 are unknown to the Plaintiffs and who are, therefore, designated by Rule 10(f),
14 Rules of Civil Procedure.

15
16 39. Each of these Defendants contributed to Justin Branum's nearly two years
17 of extreme suffering and eventual death.

18 **JURISDICTION AND VENUE**

19
20 40. All previous paragraphs are incorporated.

21 41. This Court has Personal Jurisdiction over the Estate of Justin Branum,
22 because his last residence was in Pima County; and his Estate is open in the
23 Pima County Probate Court, case number PB20210800.

1 42. This Court has Personal Jurisdiction over each fictitiously-named entity, as
2 each such entity either resides or has transacted business in the County of Pima
3 in the State of Arizona.

4 43. The events, acts, and/or omissions as described more fully throughout the
5 paragraphs of this Complaint are not within the Exclusive Jurisdiction of any
6 other Court.²

7 44. The events, acts, and/or omissions as described more fully throughout the
8 paragraphs of this Complaint state claims valued in excess of \$1,000.00, exclusive
9 of interest and costs.³

10 45. Venue is properly the Superior Court for the State of Arizona in Pima
11 County, as at least one Defendant resides in Pima County, Arizona, and the
12 events, acts, and/or omissions which give rise to the causes of action asserted
13 herein occurred in Maricopa County, Arizona.⁴

14 46. As to Plaintiffs' claims under Arizona state law, Plaintiffs served a timely
15 notice of claim under A.R.S. § 12-821.01 upon the Defendants. The notice of
16 claim was denied outright or by operation of law.

17
18
19
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21 _____
22 ² See Ariz. Const. Art. VI § 14.

23 ³ *Id.*

24 ⁴ See A.R.S. § 12-401 *et seq.*

1 **FACTUAL ALLEGATIONS IN SUPPORT OF THE PLAINTIFFS’ CLAIMS**

2 47. When the State takes a person into its custody and holds him there against
3 his will, the Constitution imposes upon it a corresponding duty to assume some
4 responsibility for his safety and general well-being.”⁵

5
6 **DPS’ Beating of Justin Branum, Permanently Damaging his Intestines and
Kidneys.**

7 48. Defendants DPS Does arrested Mr. Branum on September 19, 2017 at 1501
8 W. McDowell Road, Phoenix, Arizona.

9
10 49. Before arresting Mr. Branum, Defendants DPS Does rammed the back of
11 the truck in which he was seated.

12 50. The officers then pulled Mr. Branum from the truck and beat him only on
13 his body, not his face.

14 51. The DPS DOES I-X deliberately avoided Mr. Branum’s face, to prevent
15 documentation of the beating in booking photos.

16
17 52. On information and belief, the truck in which Mr. Branum was found at
18 the Circle K was not moving when DPS officers approached it.

19 53. Additionally on information and belief, Mr. Branum did not attempt to flee
20 the officers and did not resist arrest.

21
22
23 ⁵ *DeShaney v. Winnebago County Dpmt. of Social Svcs.*, 489 U.S. 189, 199-20 (1989)
24 citing *Estelle v. Gamble*, 429 U.S. 97 (1976) (Eighth Amendment) and *Youngberg v.*
Romeo, 457 U.S. 307 (1982) (Fourteenth Amendment)).

1 54. Yet, the officers beat him so viciously that Mr. Branum lost the function of
2 his kidneys.

3 55. DPS DOES transported Mr. Branum to the Phoenix Police Department,
4 where Phoenix officers took custody of Mr. Branum.

5 56. During the transport to Phoenix Police Department, Mr. Branum stated
6 repeatedly that he was in pain and needed medical assistance.

7 57. DPS DOES ignored and mocked his pleas for help.

8
9 **The Denial and Delay of Emergency Medical Care by Phoenix Fire**
10 **Department and Phoenix Police Department.**

11 58. Finally, when the DPS Does and Mr. Brannum arrived at the Phoenix
12 Police Department, the Phoenix Fire Department was summoned.

13 59. Based on information and belief, the PFD DOES examined Mr. Branum in
14 the back of the squad car and one of the DPS DOES I-X stated, "See? He's
15 breathing. He's fine."

16 60. Also on information and belief, PFD Does conducted no further exam of
17 Mr. Branum and left the scene.

18 61. DPS DOES then presented Mr. Branum to the Phoenix Police Department
19 building, where Defendant Ramirez and PPD DOES held him and interrogated
20 for approximately fifteen hours, with no medical care.

21 62. On information and belief, Mr. Branum told the PPD Does and Defendant
22 Ramirez that he was in pain and needed medical assistance.
23
24

1 63. Also on information and belief, at one point, when Mr. Branum told the
2 officers he was in pain, because the DPS DOES beat him. They responded, “You
3 should have complied.”

4 64. Defendant Ramirez and PPD DOES sought no medical assistance for him
5 during the fifteen hours he was detained at the Phoenix Police Department.
6

7 65. When Defendant Ramirez and PPD DOES finished with Mr. Branum, they
8 transported him to Maricopa County Fourth Avenue Jail.

9 66. On information and belief, Mr. Branum presented to the jail having sweat
10 through his clothes and repeatedly stating he needed medical help.

11 67. Rather than provide him medical help or tell the jail intake staff about Mr.
12 Branum’s injuries, the PPD DOES lied to jail intake, stating that he was “just
13 coming down [off of drugs].”
14

15 **Further Delay of Mr. Branum’s Medical Care in the Maricopa County Jail**

16 68. The kidney is the most common urinary tract organ susceptible to trauma.⁶

17 69. Injury to the kidney/s can be caused by blunt force trauma.⁷
18
19
20

21 ⁶ Urology Care Foundation, “What is Kidney (Renal) Trauma?” available at
22 [https://www.urologyhealth.org/urology-a-z/k/kidney-\(renal\)-trauma](https://www.urologyhealth.org/urology-a-z/k/kidney-(renal)-trauma) (last
visited October 15, 2021).

23 ⁷ *Id.*
24

1 70. This trauma can include a car accident, a direct hit, or a kick to the back.⁸

2 71. Blunt trauma to the kidneys may not show outward signs, such as
3 bruising.⁹

4 72. Blunt trauma to the kidneys can be detected through microscopic
5 examination of a urine sample using a simple dipstick test.¹⁰

6 73. The symptoms of a bruised kidney include, but are not limited to: pain on
7 the sides of the abdomen and into the flank; a dull ache; tenderness; skin
8 bruising or discoloration; nausea; vomiting; muscle spasms; and blood in the
9 urine.¹¹

10 74. Untreated, a bruised kidney can lead to serious medical complications.¹²

11 75. Upon booking Mr. Branum, MCSO Does did nothing for several hours.

12 76. Mr. Branum sat in “the toms,” for several hours, with no medical care,
13 while his kidneys continued to fail.
14
15
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17

18 ⁸ Healthline, “Bruised Kidney (Kidney Contusion),” available at
19 <https://www.healthline.com/health/bruised-kidney> (last visited October 15,
20 2021).

21 ⁹ “What is Kidney (Renal) Trauma,” *supra*, note 5.

22 ¹⁰ *Id.*

23 ¹¹ *Id.*

24 ¹² “Bruised Kidney (Kidney Contusion),” *supra* note 7.

1 77. On information and belief, Mr. Branum PPD Defendants presented Mr.
2 Branum to the jail with fresh abrasions and bruising on his torso and shoulders.

3 78. On information and belief, Mr. Branum was seen by jail staff several times
4 between intake and his eventual transport to the hospital.

5 79. On information and belief, Mr. Branum expressed to jail staff that he was
6 sick and needed to go to the hospital.

7 80. On information and belief, the jail staff ignored his pleas for medical
8 assistance and, instead, treated him as if he was simply detoxing from narcotics.

9 81. The MCSO Does did nothing to provide medical support for these
10 purported withdrawal symptoms.

11 82. Rather, on information and belief, MCSO Does gave Mr. Branum an over-
12 the-counter pain medication such as ibuprofen or acetaminophen, which would
13 have exacerbated Mr. Branum's kidney failure.¹³

14 83. The MCSO Does did not conduct any blood or urine testing to determine
15 whether or not Mr. Branum was actually detoxing or was otherwise ill.

16
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20
21
22 _____
23 ¹³ National Kidney Foundation, "Watch Out for Your Kidneys When You Use
24 Medicines for Pain," August 12, 2014, available at
<https://www.kidney.org/news/kidneyCare/winter10/MedicinesForPain> (last
visited October 15, 2021).

1 84. Approximately 90 hours after being booked into the Fourth Avenue Jail –
2 more than 105 hours after Mr. Branum was presented at the Phoenix Police
3 Department -- MCSO finally summoned medical assistance for Mr. Branum.

4 85. Mr. Branum was transported by ambulance to the Maricopa Medical
5 Center, where he was placed in a medically-induced coma.
6

7 86. Days later, Mr. Branum woke up from the coma missing a portion of his
8 intestines, relying on an ostomy bag, and, for the rest of his life, and requiring
9 dialysis.

10 **Mr. Branum's Fifteen Months in Arizona Department of Corrections Custody**
11 **that Ended in his Death.**

12 87. Mr. Branum entered the custody of the Arizona Department of Corrections
13 on March 28, 2018.

14 88. When he entered ADC custody on March 28, 2018, he weighed 160 pounds
15 and was five-feet, six inches tall.

16 89. During his less than fifteen months in ADC, Mr. Branum had repeatedly
17 pleaded for treatment, to include kidney dialysis.
18

19 90. Mr. Branum required a kidney transplant to survive.

20 91. He never received that transplant.

21 92. Mr. Branum died on May 12, 2019.

22 93. At the time of his death, he weighed 61 pounds.
23
24

1 94. The Pima County coroner's office determined that Mr. Branum's primary
2 cause of death was renal failure.

3 95. On information and belief, representatives of Corizon and ADC stated
4 falsely to the coroner that Mr. Branum had refused dialysis.
5

6 96. Defendant Corizon regularly delayed or denied Mr. Branum this necessary
7 medical care.

8 97. Mr. Branum did not have any kidney issues before this arrest.

9 98. Mr. Branum did not require the removal of part of his intestines and the
10 placement of an ostomy bag before this arrest.

11 99. Mr. Branum's post-arrest death is attributable to the individual
12 defendants, the Arizona Department of Public Safety, the Phoenix Fire
13 Department, the Phoenix Police Department, the Maricopa County Sheriff's
14 office, the Arizona Department of Corrections, and Corizon Health Care.
15

16 100. Mr. Branum's injuries and death are substantially attributable to the
17 beating the officers gave him and their denial of medical care immediately after
18 the beating.
19

20 101. Mr. Branum's death also is substantially attributable to the denial of
21 medical care by the Arizona Department of Corrections and its contractor,
22 Defendant Corizon.
23
24

1 102. Each of these agencies demonstrated in this course of events a failure to
2 properly hire, retain, and train its personnel.

3 103. A reasonable consideration of the conduct of each of these agencies shows
4 assault and battery, gross negligence, deliberate violations of the United States
5 and Arizona constitutions, and reckless indifference to Mr. Branum's serious
6 medical needs.
7

8 **Actual and Constructive Notice to the State of Arizona and Corizon of Wholly**
9 **Ineffective Health Care in Arizona State Prisons**

10 104. Mr. Branum is one of thousands of Arizona Department of Corrections
11 inmates, who has been subject to grossly inadequate medical care while
12 incarcerated.

13 105. In 2018, an Arizona federal court held Arizona prison officials in contempt
14 because, despite their having fined Corizon \$1.4 million, it continued to provide
15 substandard health care in the state's prisons.
16

17 106. In or about February 2019, the State of Arizona terminated Corizon's DOC
18 contract, effective July 1, 2019.

19 107. The Arizona Department of Corrections paid Corizon a "per inmate per
20 day" rate, according to the company's contract with the state, which amounted to
21 roughly \$189 million last year.
22

23 108. The flat fee rate creates an incentive for Corizon to minimize inmates'
24 medical care; the less it spends per inmate, the more it retains for profit.

1 109. In 2012, the ACLU of Arizona, ACLU National Prison Project, Prison Law
2 Office, and Arizona Center for Disability Law sued ADC, which was then
3 providing healthcare internally, for allegedly failing to supply adequate
4 healthcare to the state’s prisoners.¹⁴

5
6 110. The next year, Corizon contracted with the Arizona Department of
7 Corrections.

8 111. In 2015, the United States District Court for the District of
9 Arizona approved a class-action settlement between the Arizona Department of
10 Corrections and 33,000 inmates in the class that mandated a number of changes,
11 including timely responses to patients’ medical requests and healthcare
12 grievances. The lawsuit implicated the State’s contractor, Corizon Health for
13 ongoing failures to provide Arizona Department of Corrections inmates with
14 proper health care, resulting in unnecessary suffering and death of inmates.¹⁵

15
16 112. In an October 2017 email provided to United States District Court in that
17 class action, former Corizon Health employee Angela Fischer provided an email
18 from Regional Director of Mental Health Dr. Lynn Calcote that said, “The sad
19 circumstance is that we are faced with the choice of ‘who do we decide to help?’
20

21
22 _____
¹⁴ *Parsons v. Ryan*, Arizona District Court Number 12CV0601.

23 ¹⁵ *Id.*

1 because we cannot give all of them what we wish we could. Resources are
2 limited and the more we focus on raising the bar on how we provide treatment,
3 the less able we are to help all who need it.”¹⁶

4
5 113. Fischer quit her job at Corizon to blow the whistle on what she saw as poor
6 health care conditions in the prison. Fischer provided emails to the Arizona U.S.
7 District Court where she had recounted a Corizon board chairman positing that
8 the company had been “too aggressive in its bid” for a contract with the State of
9 Arizona.¹⁷

10 114. In June 2018, U.S. Magistrate Judge David Duncan fined the Department of
11 Corrections approximately \$1.4 million for not complying with terms of the
12 agreement – \$1,000 per violation – finding that, “The Court must place a clear
13 and focused light on what is happening here: the State turned to a private
14 contractor which has been unable to meet the prisoner’s health care needs.”¹⁸

16 **City of Phoenix’s Patterns, Practices, and Policies**

17
18
19 ¹⁶ Jimmy Jenkins, “Health Care Concerns Remain in Arizona Prisons as
20 Settlement Process Drags On,” Fronterasdesk.org, April 8, 2020, available at
21 <https://fronterasdesk.org/content/695945/health-care-concerns-remain-arizona-prisons-settlement-process-drags> (last visited August 18, 2021).

22 ¹⁷ *Id.*

23 ¹⁸ *Parsons v. Ryan*, Arizona District Court Number 12CV601, ECF Doc. 2898 at 20.
24

1 115. Civil rights claims and a pending federal investigation against the City of
2 Phoenix for delaying and denying medical care to persons in its custody paint a
3 pattern and practice of deliberate indifference to serious medical needs.

4 116. For example, in 2020, Dion Humphrey filed a notice of claim with the City
5 of Phoenix, alleging that City of Phoenix police officers denied for seven hours
6 medical care for injuries he sustained from a flash-bang grenade.¹⁹

7 117. The United States Department of Justice also has launched an investigation
8 into the Phoenix Police Department's patterns and practices regarding the
9 treatment of persons with disabilities.²⁰

10 118. Chief Williams is responsible, as the head of an agency that persistently
11 fails to provide proper medical care to its inmates.

12 119. The City of Phoenix is responsible for its own failures to recognize and put
13 an end to the abuses it was or should have been aware of, and for the
14 irresponsible, reckless, negligent, and unconstitutional conduct of its agents,
15
16
17

18 ¹⁹ Emily Davis, "Black Teen Misidentified as Robbery Suspect Files \$10 Million
19 Claim Against Phoenix Police" Arizona Republic, June 8, 2020, available at
20 <https://www.azcentral.com/story/news/local/phoenix/2020/06/08/teen-dion-humphrey-misidentified-as-robbery-suspect-kahlil-thorton-files-claim-vs-phoenix-police/5321879002/> (last visited October 15, 2021).

21 ²⁰ United States Department of Justice Press Release, "Justice Department
22 Announces Investigation of the City of Phoenix and the Phoenix Police
23 Department," August 5, 2021, available at
24 <https://www.justice.gov/opa/pr/justice-department-announces-investigation-city-phoenix-and-phoenix-police-department> (last visited October 15, 2021).

1 officers, divisions, and employees, as alleged herein. The City of Phoenix failed
2 to provide proper oversight, training, supervision, and policies and procedures,
3 with respect to inmate screening, recognizing when inmates are in obvious crisis,
4 in providing proper medical care to inmates, as required by its officers, officials,
5 agents, employees, and policymakers.
6

7 120. The above-described incidents (among others and without limitation)
8 show that Defendants' actions - or inactions - toward Mr. Branum were more
9 than the aberrational consequence of simple neglect; they were the product of a
10 long standing pattern and practice of refusing adequate health care to persons in
11 the custody of the Phoenix Police Department.
12

13 121. The Defendants' pattern and practice, as shown through the above-
14 described acts and through other conduct that will be shown at trial, was
15 reflective of a pervasive, systemic policy of denying inmates care to save money
16 and out of a lack of regard for in custody persons' civil rights.
17

18 **Maricopa County's Patterns, Practices, and Policies**

19 122. A sheriff may be responsible for training officers to recognize and respond
20 to prisoners' medical needs.²¹

21 _____
22 ²¹ *Braillard v. Maricopa Cty.*, 224 Ariz. 481, 491-92 ¶¶ 27, 29 (App. 2010) (stating
23 that the sheriff could be liable for correctional officers' failure to seek medical
24 assistance for an inmate suffering severe symptoms, because evidence showed
that the officers were not properly trained to respond to inmate illness).

1 123. “Deliberate indifference to serious medical needs of prisoners” is
2 unconstitutional, whether exhibited by prison doctors responding to a prisoner's
3 need or by prison guards “intentionally denying or delaying access to medical
4 care.”²²

5
6 124. This deliberate indifference can form the basis for a § 1983 claim.

7 125. A constitutional claim may arise if a prisoner has experienced discomfort
8 associated with physical pain “even in the absence of any serious bodily injury to
9 the plaintiff.”²³

10 126. When Mr. Branum went through the jail’s intake in September 2017, the
11 systemic failures in Maricopa County’s initial intake process were extensively
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21
22 ²² *Id.*, quoting *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976) .

23 ²³ *Wilkie v. State*, 161 Ariz. 541, 545 (App. 1989).
24

1 documented.²⁴ In fact, they were subject to a consent decree issued by the
2 Arizona District Court.²⁵

3 127. In or about September 2008, the Maricopa County jails lost their
4 accreditation from the National Commission on Correctional Health Care.

5
6 128. Regarding medical care in Maricopa County jails, The Honorable Neil V.
7 Wake has found that, despite 24-hour mental health staff at the Fourth Avenue
8
9
10

11 ²⁴ See, e.g., *Graves v. Penzone*, Arizona District Court Number 77CV479-NVW,
ECF Doc. 2352 at 3:

12
13 If a remedy requires pretrial detainees with serious acute and chronic
14 medical conditions to be evaluated face-to-face by a medical provider and
15 receive an initial health assessment within 24 hours after the receiving
16 screening, compliance with the order will be judged by whether those
17 identified during the receiving screening as having a serious acute and/or
18 chronic medical condition were timely evaluated and assessed. To
19 determine compliance with the order, the Court will not assess whether
20 the face-to-face evaluation or initial health assessment was clinically
21 appropriate to the patient's medical concerns. If a remedy requires that
22 medical providers develop plans for treatment and monitoring of certain
23 pretrial detainees, at this point the Court will evaluate whether such plans
24 were developed and whether they were developed by medical providers,
but not whether the plans are adequate. The Court expects Defendants to
employ a sufficient number of medical and mental health providers,
nurses, assistants, and other staff who are qualified and equipped to
competently perform their jobs.

22 *Id.*

23 ²⁵ See Docket *Graves v. Penzone*, Arizona District Court Number 77CV479-NVW.
24

1 Jail, many pretrial detainees with serious mental illness are not identified and
2 assessed by a mental health clinician during the intake process.²⁶

3 129. Judge Wake also found in that case, “Systemic deficiencies in the [medical
4 screening] process significantly impair continuity of care and result in failure to
5 identify pretrial detainees with immediate medical needs.”²⁷

6
7 130. On December 15, 2011, the United States Department of Justice issued the
8 findings of the investigation it began in June 2008 in a letter addressed to then-
9 Maricopa County Attorney William Montgomery.²⁸

10 131. With regard to jail practices, the Justice Department found:

11
12 MCSO fosters and perpetuates discriminatory police and jail practices by
13 failing to operate in accordance with basic policing and correctional
14 practices and by failing to develop and implement policing and
supervision, and accountability systems.²⁹

15 132. Defendant Penzone is responsible, as the head of an agency that
16 persistently fails to provide proper medical care to its inmates. [Defendant](#)

17
18
19 ²⁶ *Graves v. Arpaio*, Arizona District Court Number 77CV479, ECF Doc. 1634 at
[41](#).

20 ²⁷ *Id.*

21 ²⁸ Available at
22 http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf (last visited October 15, 2021).

23 ²⁹ *Id.* at 4.

1 Alvarez is responsible, as the head of the agency specifically tasked with
2 providing medical care to Maricopa County's jail inmates.

3 133. The County – through Defendants Penzone and Alvarez -- is responsible
4 for its own failures to recognize and put an end to the abuses it was or should
5 have been aware of, and for the irresponsible, reckless, negligent, and
6 unconstitutional conduct of its agents, officers, divisions, and employees, as
7 alleged herein. The County – through Defendants Penzone and Alvarez and
8 MCSO Does -- failed to provide proper oversight, training, supervision, and
9 policies and procedures, with respect to inmate screening, recognizing when
10 inmates are in obvious crisis, in providing proper medical care to inmates, as
11 required by its officers, officials, agents, employees, and policymakers.
12

13
14 134. The above-described incidents (among others and without limitation)
15 show that Defendants' actions – or inactions – toward Mr. Branum were more
16 than the aberrational consequence of simple neglect; they were the product of a
17 long standing pattern and practice of refusing adequate health care to Maricopa
18 County jail inmates.

19
20 135. The Defendants' pattern and practice, as shown through the above-
21 described acts and through other conduct that will be shown at trial, was
22 reflective of a pervasive, systemic policy of denying inmates care to save money
23 and out of a lack of regard for inmates' civil rights.
24

1 **CAUSES OF ACTION**

2 136. Plaintiffs are entitled to maintain an action for wrongful death against
3 Defendants for such losses and injuries suffered by all statutory beneficiaries of
4 decedent. As a result of the wrongful acts of Defendants as set forth above.
5 Plaintiffs and other statutory beneficiaries suffered damages including loss of
6 love, companionship, and support. Their causes of action are as follows:
7

8 **COUNT ONE**
9 **42 U.S.C. § 1983**
10 **Violation of Fourteenth Amendment Right to Familial Society and**
11 **Companionship**
12 **(All Defendants)**

13 137. The foregoing paragraphs are incorporated as if fully set forth herein.

14 138. The reckless, intentional, and deliberate acts and omissions of the
15 Defendants were the direct legal cause of the deprivation of Angela Branum's
16 constitutionally protected rights under the Fourteenth Amendment to the care,
17 companionship, and familial society of her husband, Justin Branum.

18 139. The acts and omissions of the Defendants were committed knowingly,
19 intentionally, and maliciously, and for the purpose of causing harm.

20 **COUNT TWO**
21 **42 U.S.C. § 1983**
22 **Violation of Fourth Amendment Right to be Free from Unlawful Seizures and**
23 **Excessive Force**
24 **(DPS DOES Defendants and Defendant Selbert)**

140. The foregoing paragraphs are incorporated as if fully set forth herein.

1 147. State actors affirmatively place a person in danger by leaving her “in a
2 situation that [is] more dangerous than the one in which they found him.”³⁰

3 148. Impeding access to a person’s medical care amounts to leaving a victim in
4 a more dangerous situation.³¹

5
6 149. By denying and delaying medical care for Mr. Branum, the Phoenix Fire
7 Department, Phoenix Police Department Does, and MCSO Does contributed to
8 Mr. Branum’s injuries and death.

9 150. The PFD DOES failed to render care, taking the arresting officers’
10 representation that Mr. Branum was “fine,” because he was breathing.

11 151. The PFD DOES failed to independently evaluate Mr. Branum.

12 152. The Phoenix Police Department’s refusal to provide medical care to Mr.
13 Branum for fifteen hours – despite his pleas for help -- further contributed to his
14 injuries and death.

15
16 153. The PPD DOES’ misrepresentation to the Maricopa County jail intake staff
17 regarding the source of Mr. Branum’s injuries, attributing them to Mr. Branum in
18 drug withdrawal, further constitutes a deliberate indifference to Mr. Branum’s
19 serious medical needs.
20

21
22 ³⁰ *Munger v. City of Glasgow Police Dep't*, 227 F.3d 1082, 1086 (9th Cir. 2000).

23 ³¹ *Penilla v. City of Huntington Park*, 115 F.3d 707, 710 (9th Cir. 1997).
24

1 154. The MCSO DOES' delay in conducting independent medical exam of Mr.
2 Branum, who presented at the Fourth Avenue Jail extremely ill, when he first
3 arrived at the jail, constitutes a deliberate indifference to Mr. Branum's serious
4 medical needs.

5
6 155. The failure of the MCSO DOES to provide medical care for Mr. Branum for
7 hours, forcing him, instead to languish in "the tombs," while his kidneys
8 continued to fail, constitutes a deliberate indifference to Mr. Branum's serious
9 medical needs.

10 156. As a proximate result of the above Defendants' deliberate indifference to
11 Mr. Branum's serious medical needs, Mr. Branum sustained horrific pain,
12 suffering, emotional distress, and death.

13
14 157. As a proximate result of the City of Phoenix, PPD DOES, PFD DOES,
15 MCSO DOES, Defendant Kalbrenner, Defendant Williams, and MCSO/[Penzone](#)
16 [and Alvarez](#)' actions, Mr. Branum suffered immediate and irreparable injury,
17 including physical, psychological and emotional injury, and eventual death and
18 Ms. Branum lost her husband.

19
20 158. Because the City of Phoenix, PPD DOES, PFD DOES, MCSO DOES, and
21 MCSO's actions were done knowingly, intentionally, and maliciously, Plaintiffs
22 are entitled to recover compensatory and punitive damages.

23 **COUNT FOUR**
24 **MONELL LIABILITY**

1 **(City of Phoenix Through Defendants Kalkbrenner and Williams and Maricopa**
2 **County Through Defendants Penzone and Alvarez)**

3 159. The foregoing paragraphs are incorporated as if fully set forth herein.

4 160. As a proximate result of the City of Phoenix's and Maricopa County's
5 unconstitutional policies, practices, acts and omissions, to include failures to
6 train and supervise its officers, Mr. Branum suffered immediate and irreparable
7 injury, including physical, psychological and emotional injury, and eventual
8 death. Ms. Branum lost her husband.³²

9 **City of Phoenix Policies and Practices**

10 **City of Phoenix Fire Department**

11 161. The Plaintiff realleges all Paragraphs, above, as if fully realleged herein.

12 162. Defendant Kalkbrenner is an official policy maker for the Phoenix Fire
13 Department and the City of Phoenix. She has the authority and responsibility to
14 establish policy for Phoenix Fire Department and the City of Phoenix, and to
15 properly supervise and train the officers, agents, and employees of Phoenix Fire
16 Department. Her actions are the actions of the City and her office.

17 163. Taken charitably, the failure of the Phoenix Fire Department personnel to
18 independently evaluate Mr. Branum, as he sat - injured - in the back of a DPS
19 vehicle, demonstrates an egregious lack of training.
20
21
22

23 _____
24 ³² See *Monell v. New York City Dept. of Social Svcs.*, 436 U.S. 658 (1978).

1 164. The Phoenix Fire Department personnel's accepting the DPS Does'
2 representations that Mr. Brannum did not need care and was fine, because Mr.
3 Branum was still breathing, demonstrates an egregious lack of training.

4 **City of Phoenix Police Department**

5
6 165. Defendant Williams is an official policy maker for the Phoenix Police
7 Department and the City of Phoenix. She has the authority and responsibility to
8 establish policy for Phoenix Police Department and the City of Phoenix, and to
9 properly supervise and train the officers, agents, and employees of Phoenix
10 Police Department. Her actions are the actions of the City and her office.

11
12 166. Defendants Williams and/or the City of Phoenix have oversight and
13 supervisory responsibility over the welfare of persons in the custody of the
14 Phoenix Police Department.

15 167. Defendants Williams and/or the City of Phoenix knew or should have
16 known that unconstitutional policies, practices, customs, and training existed
17 with respect to providing timely and effective medical assistance and the
18 monitoring of the welfare of persons in the custody of the Phoenix Police
19 Department.

20
21 168. Defendant Williams and/or the City of Phoenix permitted the
22 implementation of inappropriate, unconstitutional, *de facto* policies that
23 authorized, approved, condoned, and/or ratified unconstitutional practices and
24

1 failed to adequately train and supervise their personnel in these and other
2 relevant areas.

3 **Maricopa County Policies and Practices**

4 169. The Plaintiff realleges all Paragraphs, above, as if fully realleged herein.

5
6 170. Defendant Penzone is an official policy maker for MCSO and Maricopa
7 County. Defendant Penzone has the authority and responsibility to establish
8 policy for MCSO and Maricopa County, and to properly supervise and train the
9 officers, agents, and employees of MCSO. His actions are the actions of the
10 County and his office.

11 171. Defendant Alvarez is an official policy maker for Maricopa County
12 Correctional Health Services (CHS). Defendant Alvarez has the authority and
13 responsibility to establish policy for CHS and Maricopa County, and to properly
14 supervise and train the officers, agents, and employees of CHS. His actions are
15 the actions of the County and his office.

16
17 172. Defendants Penzone and Alvarez acted under color of law at all times
18 material hereto.

19
20 173. Defendants Penzone and Alvarez are named in their official capacity,
21 pursuant to 42 U.S.C. Sect. 1983 supervisory and direct liability, for their conduct
22 as alleged herein.

1 174. Defendants Penzone, Alvarez, and/or Maricopa County have oversight
2 and supervisory responsibility over the medical care – and a non-delegable duty
3 to provide medical care to inmates in Maricopa County’s custody.

4 175. Defendants Penzone, Alvarez, and/or Maricopa County knew or should
5 have known that unconstitutional policies, practices, customs, and training
6 existed with respect to the screening of incoming inmates to the jail and the
7 monitoring of the health of inmates in their jail cells.

8 169. Defendants Penzone, Alvarez, and/or Maricopa County permitted the
9 implementation of inappropriate, unconstitutional, *de facto* policies that
10 authorized, approved, condoned, and/or ratified unconstitutional practices and
11 failed to adequately train and supervise their personnel in these and other
12 relevant areas.

13 176. The wrongful conduct of these Defendants alleged herein this Complaint
14 constitutes violations of 42 U.S.C. § 1983, in that they deprived the Plaintiffs of
15 their rights, privileges, and immunities secured to her by the Constitution and
16 laws of the United States and their wrongful conduct was the moving force
17 behind the violations of Plaintiffs’ rights by their agents, employees, officers, and
18 personnel.
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1 177. The wrongful conduct of these Defendants alleged herein constitutes
2 violations of the United States Constitution Amendments V, VIII, and XIV, in
3 that the Mr. Branum was subjected to cruel and unusual punishment.

4 178. As a direct and proximate cause of the Defendants' wrongful conduct, Mr.
5 Branum's constitutional rights were violated and he suffered great harm and,
6 ultimately, death.

7 179. The acts and omissions of Defendant Penzone acting in his official capacity
8 for supervisory liability, as alleged herein, was malicious or reckless in disregard
9 of the rights of the Plaintiffs.
10

11
12 **COUNT FIVE**
13 **Violations of the Eighth and Fourteenth Amendments**
14 **42 U.S.C. 1983 and 1986**
15 **Deliberate Indifference to Serious Medical Needs**
16 **(Defendants State of Arizona (Through Defendant Shinn and DOC DOES)**
17 **and Corizon)**

18 180. Plaintiffs incorporates by reference the allegations of the foregoing
19 paragraphs, as if specifically set forth herein.

20 181. A prison that deprives prisoners of basic sustenance, including adequate
21 medical care, is incompatible with the concept of human dignity and has no
22 place in civilized society."³³

23
24 ³³ *Brown v. Plata*, 563 U.S. 493 (2011).

1 182. The failure to provide a convicted inmate prudent and necessary health
2 care violates the Eight Amendment.

3 183. [Defendant Shinn](#), the ADC DOES, and Corizon Health had a duty to
4 Mr. Branum to act as reasonably prudent health care providers acting under
5 the same or similar circumstances.
6

7 184. They ignored this duty repeatedly not only with Mr. Branum, but also
8 with the more than thirty thousand Arizona inmates who were subject to the
9 *Parsons v. Ryan* consent decree in the Arizona District Court.

10 185. The State of Arizona's and Corizon Health's repeated violations of that
11 consent decree demonstrate a deliberate agreement [and conspiracy](#) to continue
12 to deny inmates timely, prudent health care.
13

14 186. Their refusal to provide this care to Mr. Branum and his fellow inmates
15 constitutes a deliberate agreement between the State of Arizona - [through](#)
16 [Defendant Shinn and DOC Does](#) -- and Corizon Health to violate the inmates'
17 Eight Amendment rights to be free of cruel and unusual punishment.
18

19 **COUNT SIX**
20 **Wrongful Death**
21 **A.R.S. 12-611**
(Defendant Corizon Health)

22 187. The foregoing paragraphs are incorporated as if fully set forth herein.
23
24

1 188. Pursuant to A.R.S. § 12-611, *et seq.*, liability for wrongful death exists if a
2 person's death is caused by "wrongful act, neglect or default." In this matter,
3 Defendants' "wrongful act, neglect or default" includes wrongful acts and
4 negligence as set forth above.
5

6 189. Defendant Corizon Health, Inc. has a duty to provide reasonable
7 healthcare in accordance with the community standard of care by appropriately
8 licensed medical personnel acting within the scope of their respective licenses.

9 190. Defendant Corizon Health, Inc. breached that duty by failing to provide
10 necessary medical care to Plaintiffs' decedent within the community standard of
11 care.
12

13 191. Defendant Corizon Health, Inc. and its employees and agents failed to
14 properly recognize, assess, diagnose or treat Plaintiffs' decedent's serious
15 medical condition resulting in his death.

16 192. Defendant Corizon Health, Inc. and its employees and agents failed to
17 exercise that degree of care that a reasonable provider would exercise under the
18 same or similar circumstances.
19

20 193. Defendant Corizon Health, Inc. created policies and procedures that
21 resulted in its employees failing to practice within the scope of their respective
22 licenses.
23
24

1 194. Defendant Corizon Health, Inc.'s wrongful conduct includes, but is not
2 limited to:

3 a. Failing to properly assess Plaintiffs' decedent after he made his
4 medical needs known;

5 b. Failing to establish proper policy, procedures, custom and practice
6 for identifying inmates who require a higher level of care than can be
7 provided at the prison complex;

8 c. Failing to provide appropriate personnel and to train that personnel
9 in the recognition of conditions requiring a higher level of medical care
10 than can be provided at the prison complex;

11 d. Failing to properly assess Plaintiffs' decedent when his medical
12 condition had obviously deteriorated;

13 e. Failing to investigate Plaintiffs' decedent's declining medical
14 condition and waiting until his condition was life-threatening before
15 taking action;

16 f. Failing to ascertain the source of Plaintiffs' decedent's complaints;

17 g. Failing to act on objective signs of an increasingly serious medical
18 condition until it was too late for effective treatment;

19 h. Even if Mr. Branum was refusing treatment, which the Plaintiffs
20 deny, Corizon violated the policies and procedures of the State of Arizona
21 with respect to inmates who are refusing medical treatment;

22 i. Had Corizon complied with the policies and procedures dictated to
23 it by the State of Arizona, Justin Branum would have received the critical
24 medical treatment he needed to prevent his death.

RULE 26.2(c)(3)(A)

25 195. Pursuant to Rule 26.2(c)(3)(A), Arizona Rules of Civil Procedure, this case
26 is properly assigned to Tier 3.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2021, I caused the foregoing document to be filed electronically with the Clerk of the Court through the CM/ECF System for filing; and served opposing counsel of record via the Court's CM/ECF system.

s/Joy Bertrand
Attorney for Plaintiffs