

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

**JOHN MARTENS and PAT MARTENS,  
individually and as co-personal  
representatives of the Estate of  
VICTORIA MARTENS, deceased,**

**Plaintiffs,**

**vs.**

**CASE NO. D-202-CV-2017-05905**

**CITY OF ALBUQUERQUE,  
JOHN DOES 1-10 and JANE DOES 1-10,  
Individually.**

**Defendants.**

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

Plaintiffs, by and through their attorneys of record, Bowles Law Firm (Jason Bowles) and Gorence & Oliveros, P.C. (Robert J. Gorence and Victor E. Sanchez), bring this Complaint for injunctive relief, and relief for injuries sustained as a result of Defendants' negligence, violations of 42 U.S.C. §§ 1983 and 1988, and the Fourteenth Amendment of the United States Constitution. In support of this Complaint, Plaintiffs allege the following:

**JURISDICTION AND VENUE**

1. Plaintiffs' claims arise under 42 U.S.C. §§ 1983 and 1988, the New Mexico Tort Claims Act, NMSA 41-4-1, *et seq.* (1978) and the Fourteenth Amendment of the United States Constitution.
2. Jurisdiction and venue are proper in New Mexico pursuant to the New Mexico Tort Claims Act, NMSA 1978, §§41-4-1 through 27 (2005) and New Mexico law. All of the parties reside in New Mexico and the act complained of occurred exclusively within New Mexico.

3. Immunity granted pursuant to the New Mexico Tort Claims Act has been waived pursuant to NMSA § 41-4-12 (1978).

4. Notice has been provided within the meaning of the New Mexico Tort Claims Act.

### **PARTIES**

5. Plaintiff John Martens is the natural grandfather of Victoria Martens, deceased, and his permanent residence is in the City of Albuquerque, County of Bernalillo, State of New Mexico.

6. Plaintiff Pat Martens is the natural grandmother of Victoria Martens, deceased, and her permanent residence is in the City of Albuquerque, County of Bernalillo, State of New Mexico.

7. Plaintiffs Pat Martens and John Martens have filed a petition to be duly appointed under the New Mexico Wrongful Death Act to serve as co-personal representatives for the purpose of presenting the New Mexico Wrongful Death Act claims on behalf of the Estate of Victoria Martens.

8. Plaintiffs' Decedent, Victoria Martens (referred to as "Victoria"), a minor child, died on August 24, 2016 in Albuquerque, New Mexico, as a result of horrific physical and sexual violence she sustained by the actions of her mother, Michelle Martens, her mother's boyfriend, Fabian Gonzales, and Fabian Gonzales's cousin, Jessica Kelley.

9. Defendant City of Albuquerque (hereafter "the City") is a body politic and a corporation with the power to sue and be sued pursuant to NMSA 1978 § 3-18-1, and a governmental entity and local public body as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978 § 41-4-3(B) and (C).

10. The City is a "person" subject to suit pursuant to 42 U.S.C. § 1983.

11. The Albuquerque Police Department (hereafter "APD") is a governmental agency that is owned and operated by the City. The City is liable for its conduct and for torts committed by its

officers for which immunity is waived pursuant to NMSA 1978 § 41-4-12.

12. The City is a “person” subject to suit pursuant to 42 U.S.C. § 1983.

13. John Does 1-10 and Jane Does 1-10 (hereafter “APD Individual Defendants”) are law enforcement officers employed by APD. The APD Individual Defendants, at all material times, were duly appointed and acting law enforcement officers employed by APD and under color of law, to wit, under color of the statutes, regulations, policies, customs and usages of the State of New Mexico.

### **FACTUAL BACKGROUND**

14. Ten-year old Victoria Martens was a fourth grader who loved the color purple, gymnastics, her church, and swimming.

15. In July of 2016, Michelle Martens, Victoria’s mother, met Fabian Gonzales on the internet dating website “PlentyofFish.com” and began dating.

16. Unbeknownst to Victoria’s grandparents, Michelle Martens routinely searched for, and found, men on internet-dating websites to sexually molest her daughter for her own sexual gratification and so she could receive the money obtained through child prostitution.

17. On August 23, 2016, Victoria celebrated her 10th birthday.

18. That night, around 8:00 p.m., Fabian Gonzales and his cousin, Jessica Kelley, drove to Michelle Martens’ apartment complex and parked out front.

19. Fabian Gonzales and Jessica Kelley plied Victoria with alcohol to incapacitate her while they raped her.

20. Fabian Gonzales forcibly raped Victoria while Jessica Kelley covered Victoria’s mouth to muffle her screams.

21. As Fabian Gonzales and Jessica Kelley raped Victoria, she begged them to stop.

22. As Victoria was raped, Michelle Martens watched and “let them do it” while doing nothing to stop the unspeakable violence being committed upon her own child.
23. Fabian Gonzales then choked Victoria to death, and Jessica Kelley stabbed Victoria in her torso.
24. Jessica Kelley then held out Victoria’s arms while Fabian Gonzales cut off Victoria’s arms. Most of Victoria’s left leg was also cut off.
25. Victoria’s dismembered arms were placed in a plastic bag in a plastic hamper in the living room.
26. Victoria’s mutilated body was partially wrapped inside a towel and set on fire in the bathtub of the Arroyo Villas apartment.
27. Michelle Martens had sex with Fabian Gonzales just 20 minutes after her daughter was raped and murdered.
28. After Victoria was raped and murdered, Fabian Gonzales, Michelle Martens, and Jessica Kelley “acted like nothing ever happened,” cleaned up, and made dinner.
29. Two of Michelle Martens’ neighbors who heard screaming and yelling coming from the apartment in the early morning hours of August 24, 2016, called 911.
30. Fabian Gonzales and Michelle Martens then fled the scene.
31. When officers arrived at the scene, Jessica Kelley jumped off the balcony of the apartment into another apartment, and officers located the charred remains of Victoria’s mutilated body.
32. At the scene, there were bloodstains located on the carpet in Victoria’s bedroom floor.
33. Victoria’s panties had been placed inside a garbage can, and the crotch was soiled and dark with blood.



34. The abuse suffered by Victoria was reported to the City well before the brutal maiming and sexual violence that killed her on August 24, 2016.
35. New Mexico mandates the reporting of sexual violence and abuse against children pursuant to NMSA 1978 § 32A-4-1 *et seq.*
36. It is a crime in New Mexico to inhibit, prevent, or obstruct the investigation of a report of child abuse. *See* NMSA 1978 § 30-6-4.
37. New Mexico Children’s Code §§ 32A-4-3(A) through (C) requires that a local law enforcement agency, upon receiving a report of reasonable suspicion of child abuse take immediate steps to ensure prompt investigation of the report.
38. The New Mexico Children’s Code §§ 32A-4-3(A) through (C) requires that a local law enforcement agency, after receiving a report of reasonable suspicion of child abuse, ensure that immediate steps are taken to protect the health or welfare of the alleged abused child, as well as that of any other child under the same care who may be in danger of abuse or neglect.
39. Under the New Mexico Children’s Code §§ 32A-4-3(C), a local law enforcement officer trained in the investigation of child abuse and neglect must investigate reports of alleged child abuse.
40. On or about March 28, 2016, the New Mexico Children, Youth and Families Department (hereafter “CYFD”) received a report that one of Michelle Martens’ boyfriends had tried to kiss Victoria.
41. A CYFD employee referred the report of allegations of sexual violence to the Albuquerque Police Department, where APD Individual Defendants made the decision to not investigate the complaint regarding Michelle Martens’ boyfriend.
42. Despite law mandating that law enforcement investigate the allegation, there was

inadequate training of APD employees regarding the mandatory investigation.

43. The APD Individual Defendants who made the decision not to investigate the CYFD complaint regarding Michelle Martens' boyfriend wrongly believed that a warrant and probable cause were required to investigate the complaint.

44. Probable cause and a warrant are not required for the investigation of allegations of child abuse contained in a CYFD referral under NMSA §§ 32A-4-3(A) through (C).

45. The Albuquerque Police Department has no policies for the oversight of the APD Individual Defendants' decision to not investigate the complaint of sexual violence regarding Michelle Martens' boyfriend referred from CYFD.

46. The Albuquerque Police Department has no written policy regarding the handling of referrals of potential child abuse complaints from CYFD.

47. In December of 2016, a sergeant and a detective who work in the Crimes Against Children Unit of APD met with APD Chief Gordon Eden and told him that APD did not investigate the complaint of sexual violence against Victoria Martens by Michelle Martens' boyfriend

48. A month after the December meeting, APD spokesperson Officer Fred Duran falsely reported to the Albuquerque Journal that investigators met with Victoria and her mother but did not take action because no crime had been committed.

49. Officer Fred Duran also attempted to cover up the fact that the City failed to comply with the law by perpetrating the falsehood that no reports were made in order to protect the privacy of the child and shield the identities of the detectives.

50. Officer Fred Duran had been correctly briefed on the information concerning the CYFD complaint of sexual violence regarding Michelle Martens' boyfriend a month earlier.

51. The City's cover-up by Officer Fred Duran was advanced and carried forward by APD spokesperson Celina Espinoza.

52. APD spokespersons Officer Fred Duran and Celina Espinoza willfully misrepresented to news media and the public at large that APD had followed up on the report from CYFD and investigated the allegations of child abuse.

53. APD Spokesperson Fred Duran later wrongfully told KRQE News 13 that since there were no criminal allegations, there was nothing to investigate at the time.

54. The referral from CYFD clearly indicated that an assault had been committed against Victoria Martens, and APD had a duty to investigate the allegations of child abuse contained in the referral pursuant to NMSA §§ 32A-4-3(A) through (C).

55. APD failed to train its officers, deputies, and those responsible for investigating crimes against children and referrals from CYFD in the requirements of NMSA §§ 32A-4-3(A) through (C) and the detection of crimes against children.

56. As a direct and proximate result of the City, APD Individual Defendants, and APD's acts and omissions, Victoria, the decedent, suffered severe physical injuries, emotional trauma, distress, pain and suffering, and death.

57. As a direct and proximate result of the City, APD Individual Defendants, and APD's acts and omissions, Plaintiffs are entitled to all damages allowable under the law.

**COUNT I**  
**INJUNCTIVE RELIEF AND DAMAGES AGAINST THE CITY OF ALBUQUERQUE**  
**AND *MONELL* CLAIM PURSUANT TO 42 U.S.C. § 1983**

58. Plaintiffs incorporate and reassert the allegations as set forth in the foregoing paragraphs as though fully stated herein.

59. Defendant City created and allowed a danger to Victoria Martens to persist when it failed

to act when it had a mandatory duty to act pursuant to NMSA §§ 32A-4-3(A) through (C).

60. The City's failure to investigate and to train its officers, deputies, and those responsible for investigating crimes against children and referrals from CYFD in accordance with the requirements of NMSA §§ 32A-4-3(A) through (C) and the detection of crimes against children, including sexual violence, battery and assault, infringed upon Victoria Martens' rights as a juvenile to benefit from the protection afforded by a proper law enforcement investigation pursuant to the New Mexico Children's Code §§ 32A-4-3(A) through (C).

61. The Defendants' failure, as set forth above, constitutes a waiver under the New Mexico Tort Claims Act.

62. The conduct of the APD Individual Defendants, namely their failure to investigate the referral from CYFD regarding Michelle Martens' boyfriend, was a direct consequence of the policies, practices and customs of the City.

63. At all times relevant to this Complaint, the City had in effect policies, practices and customs that condoned and fostered the unlawful conduct of the APD Individual Defendants, and were a direct and proximate cause of Victoria Martens' damages and injuries alleged herein.

64. The City is liable for the acts and omissions of its agents and employees which were committed while in the course and scope of their duties and employment and is, therefore, liable for the actions of the APD Individual Defendants.

65. At all times relevant to this Complaint, the City failed to implement policies, practices and customs that ensured the prompt and thorough investigation of the CYFD referral regarding Michelle Martens' boyfriend, failed to place trained law enforcement officers in charge of investigations of referrals of child abuse from CYFD, failed to safeguard and protect children from attacks by pedophiles, failed to adequately and appropriately respond to requests for

assistance to ensure the safety of child, and failed to recognize symptoms of pedophilia or inappropriate conduct toward children, resulting in the death of Victoria Martens.

66. The City knew, or should have known, that such policies, practices and customs would result in constitutional violations on the part of its police officers.

67. The policies, practices and customs complained of herein demonstrate a deliberate indifference on behalf of the City to the constitutional rights of children within its jurisdiction, and were the direct and proximate cause of the violations of Victoria Martens' rights alleged herein.

68. To prevent infringement upon the constitutional rights of children within the jurisdiction of the City of Albuquerque and the Albuquerque Police Department by Defendants' failure to enforce and implement NMSA §§ 32A-4-3(A) through (C), Plaintiffs seek the following injunctive relief:

- a. That the Albuquerque Police Department be required to change its policy and implement a policy which includes 24-hour review and response by an officer to any CYFD referral involving a minor child;
- b. That the Albuquerque Police Department conduct annual training on crimes against children, to include determination of what constitutes criminal activity and the detection of signs of pedophilia, inappropriate conduct towards children, and signs of abuse in children.
- c. Following the 24-hour review by an officer, that there be a supervisory review of the incident and situation within 48 hours, to include a recommended plan of action, if any, depending upon the officer's findings;
- d. That within one week of any implemented plan of action, the Chief of Police be

informed of the case and what the plan of action is;

e. That the Albuquerque Police Department develop a tracking system of CYFD referrals so that no referral involving a child falls through the cracks.

69. Plaintiffs are likely to prevail on the merits of their case, as the City, through the APD Individual Defendants, failed to enforce and implement NMSA §§ 32A-4-3(A) through (C), and as a direct result of the acts of the APD Individual Defendants, Victoria Martens suffered physical and emotional damages, including, but not limited to, physical injury, pain and suffering, severe psychological and emotional trauma, loss of enjoyment of life, and loss of her life.

70. The City would not be harmed by the injunctive relief described above. To the contrary, such relief would require the lawful enforcement and implementation of NMSA §§ 32A-4-3(A) through (C) by the City, preventing harm and infringement upon the constitutional rights of children in Albuquerque.

71. No public policy prevents the injunctive relief described above, nor would the public interest be harmed thereby.

72. As a direct and proximate result of the City's negligent failure to protect Victoria Martens, Plaintiffs are entitled to all damages allowable under the law.

**COUNT II**  
**PROCEDURAL DUE PROCESS VIOLATIONS UNDER 42 U.S.C. § 1983**  
**AGAINST ALL DEFENDANTS**

73. Plaintiffs incorporate and reassert the allegations set forth in the foregoing paragraphs as though fully stated herein.

74. Under the New Mexico Children's Code §§ 32A-4-3(A) through (C), a local law enforcement agency, as the recipient of a report of reasonable suspicion of child abuse or

negligence, is required to take immediate steps to ensure prompt investigation of the report.

75. The Defendants' failure to take immediate steps to ensure prompt investigation of the report from CYFD of assault, molestation, and abuse of Victoria Martens was constitutionally inadequate.

76. Under the New Mexico Children's Code §§ 32A-4-3(A) through (C), a local law enforcement agency, as the recipient of a report of reasonable suspicion of child abuse or negligence, is required to ensure that immediate steps are taken to protect the health or welfare of the alleged abused child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

77. The Defendants' failure to ensure that immediate steps were taken to protect the health and welfare of Victoria Martens was constitutionally inadequate.

78. Under the New Mexico Children's Code §§ 32A-4-3(C), a local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse.

79. The Defendants' failure to create a written policy for the handling of referrals of potential child abuse from CYFD was constitutionally inadequate.

80. The Defendants' failure to create a procedure for the oversight of decisions on whether to investigate complaints referred from CYFD was constitutionally inadequate.

81. The Defendants' improper placement of a civil APD employee, instead of a local law enforcement officer, in charge of the decision on whether to investigate the complaint regarding Michelle Martens' boyfriend was constitutionally inadequate.

82. Defendants' acts as set forth above violated Plaintiffs' right to Procedural Due Process pursuant to the Fourteenth Amendment to the United States Constitution.

83. As a direct and proximate cause of the Defendants' actions, Victoria Martens suffered physical and emotional damages, including, but not limited to, physical injury, pain and suffering, severe psychological and emotional trauma, loss of enjoyment of life, and loss of her life.

84. The conduct of the APD Individual Defendants was objectively unreasonable, as well as intentional, willful, wanton, obdurate, malicious, reckless, indifferent and in gross and reckless disregard of Plaintiffs' rights so as to warrant punitive damages.

85. The City is liable under *respondeat superior* for Defendant APD and for APD Individual Defendants' acts and omissions constituting tortious negligence.

86. Defendants' actions as stated above resulted in their failure to investigate the report from CYFD of assault and abuse of Victoria Martens by her mother's boyfriend, and Defendants aided and abetted the assault and battery upon Victoria Martens in August of 2016 and infringed upon her constitutional rights as a juvenile related to a follow-up law enforcement investigation and removal from harm pursuant to the New Mexico Children's Code §§ 32A-4-3(A) through (C),

87. Defendants' immunity is waived under NMSA 1978 § 41-4-12.

88. As a direct and proximate result of Defendants' substantive due process violations, Plaintiffs are entitled to all damages allowable under the law.

**COUNT III  
LAW ENFORCEMENT OFFICER LIABILITY:  
NEGLIGENT FAILURE TO PROTECT**

89. Plaintiffs incorporate and reassert the allegations set forth in the foregoing paragraphs as though fully stated herein.

90. APD Individual Defendants had a duty pursuant to NMSA §§ 32A-4-3(A) through (C) to investigate all allegations of pedophilia and crimes committed against children brought to their



attention and to protect Victoria Martens from a known and foreseeable risk of danger presented by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley.

91. APD Individual Defendants breached their duty of care as set forth above.

92. APD Individual Defendants' negligence include, but is not limited to, failing to investigate the report from CYFD of assault and abuse of Victoria Martens by Michelle Martens' boyfriend, failing to investigate the seriousness of the threat of molestation to Victoria Martens, failing to investigate Michelle Martens' knowledge of her daughter's molestation, failing to arrest and detain all persons responsible for Victoria Martens' molestation, and the failure to ensure Victoria Martens' safety.

93. This negligence was unlawful, intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' rights.

94. As a direct result of the acts of the APD Individual Defendants, Victoria Martens suffered physical and emotional damages, including, but not limited to, physical injury, pain and suffering, severe psychological and emotional trauma, loss of enjoyment of life, and loss of her life.

95. The City is liable under *respondeat superior* for Defendant APD and APD Individual Defendants' acts and omissions constituting tortious negligence.

96. Defendants' actions as stated above resulted in their failure to investigate the report from CYFD of assault and abuse of Victoria Martens by her mother's boyfriend, and Defendants aided and abetted the assault and battery upon Victoria Martens in August of 2016 and infringed upon her constitutional rights as a juvenile to a follow-up law enforcement investigation pursuant to the New Mexico Children's Code §§ 32A-4-3(A) through (C),

97. Defendants' immunity is waived under NMSA 1978 § 41-4-12.

98. As a direct and proximate result of Defendants' negligent failure to protect Victoria Martens, Plaintiffs are entitled to all damages allowable under the law.

**COUNT IV  
NEGLIGENCE AGAINST THE CITY OF ALBUQUERQUE**

99. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

100. Defendants had a duty pursuant to §§ 32A-4-3(A) through (C) to protect Victoria Martens from the known threat of physical harm posed by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley.

101. Defendants breached their duty to protect Victoria Martens from the known threat of physical harm posed by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley through Defendants' negligence, including, but not limited to, failing to take adequate measures to protect Victoria Martens, a foreseeable victim, against a known danger presented by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley, as set forth above.

102. As a direct result of Defendants' acts and omissions, Victoria Martens suffered physical and emotional damages, including, but not limited to, physical injury, pain and suffering, severe psychological and emotional trauma, loss of enjoyment of life, and loss of her life.

103. Defendants' actions as stated above resulted in their failure to investigate the report from CYFD of assault and abuse of Victoria Martens by her mother's boyfriend, and Defendants aided and abetted the assault and battery upon Victoria Martens in August of 2016 and infringed upon her constitutional rights as a juvenile to a follow-up law enforcement investigation pursuant to the New Mexico Children's Code §§ 32A-4-3(A) through (C),

104. The City of Albuquerque is liable for the acts and omissions committed by its agents and employees while in the course and scope of their duties and employment and is, therefore, liable

for the actions of APD and the APD Individual Defendants.

105. The New Mexico Tort Claims Act waives immunity for the above-described conduct.

106. As a direct and proximate result of Defendants' negligence, Plaintiffs are entitled to all damages allowable under the law.

**COUNT V  
NEGLIGENCE PER SE  
AGAINST ALL DEFENDANTS**

107. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

108. Under the New Mexico Children's Code §§ 32A-4-3(A) through (C), a local law enforcement agency, as the recipient of a report of reasonable suspicion of child abuse or negligence, has a duty to take immediate steps to ensure prompt investigation of the report.

109. The Defendants breached their duty of care to Victoria Martens by failing to take immediate steps to ensure prompt investigation of the report from CYFD of assault, molestation, and abuse of Victoria Martens.

110. Under the New Mexico Children's Code §§ 32A-4-3(A) through (C), a local law enforcement agency, as the recipient of a report of reasonable suspicion of child abuse or negligence, has a duty to ensure that immediate steps are taken to protect the health or welfare of the alleged abused child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

111. The Defendants breached their duty of care to Victoria Martens by failing to ensure that immediate steps were taken to protect the health and welfare of Victoria Martens.

112. Under the New Mexico Children's Code §§ 32A-4-3(C), a local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse.

113. The Defendants breached their duty of care to Victoria Martens by failing to create a written policy for the handling of referrals of potential child abuse from CYFD.

114. The Defendants breached their duty of care to Victoria Martens by failing to create a procedure for the oversight of decisions on whether to investigate complaints referred from CYFD.

115. The Defendants breached their duty of care to Victoria Martens by placing a civil APD employee, instead of a local law enforcement officer, in charge of the decision on whether to investigate the complaint regarding Michelle Martens' boyfriend.

116. As a direct and proximate cause of the negligence of the Defendants, Victoria Martens suffered physical and emotional damages, including, but not limited to, physical injury, pain and suffering, severe psychological and emotional trauma, loss of enjoyment of life, and loss of her life.

117. The City is liable under *respondeat superior* for Defendant APD and for APD Individual Defendants' acts and omissions constituting tortious negligence.

118. Defendants' actions as stated above resulted in their failure to investigate the report from CYFD of assault and abuse of Victoria Martens by her mother's boyfriend, and Defendants aided and abetted the assault and battery upon Victoria Martens in August of 2016 and infringed upon her constitutional rights as a juvenile to a follow-up law enforcement investigation pursuant to the New Mexico Children's Code §§ 32A-4-3(A) through (C),

119. Defendants' immunity is waived under NMSA 1978 § 41-4-12.

120. As a direct and proximate result of Defendants' negligence per se, Plaintiffs are entitled to all damages allowable under the law.

**COUNT VI**  
**MUNICIPAL LIABILITY: FAILURE TO TRAIN AND SUPERVISE**  
**UNDER THE NEW MEXICO TORT CLAIMS ACT**

121. Plaintiffs incorporate and reassert the allegations set forth in the foregoing paragraphs as though fully set forth herein.

122. Defendant APD had a duty to adequately train its officers, including APD Individual Defendants, on existing policy, on responding to reports of sexual molestation from CYFD, on following up on reports of potential sexual molestation of children, on the placement of a trained law enforcement officer in charge of investigation of referrals of child abuse from CYFD, on the procedure for the oversight of decisions of whether to investigate complaints referred from CYFD, on the handling of referrals of potential child abuse from CYFD, on safeguarding and protecting children from attacks by pedophiles, on adequate and appropriate responses to requests for assistance to ensure the safety of children, and on the treatment of dangerous individuals exhibiting symptoms of pedophilia or inappropriate conduct toward children, as intersection with such individuals was reasonably foreseeable.

123. Defendants were aware of complaints that a boyfriend of Victoria Martens' mother, Michelle Martens, had assaulted and tried to kiss Victoria Martens five months before Victoria Martens was murdered in August of 2016.

124. CYFD reported to Defendants five months before Victoria Martens was murdered of allegations of assault and abuse of Victoria Martens by Michelle Martens' boyfriend.

125. Defendants breached their duty by negligently failing to train APD officers in responding to threats from pedophiles toward children and, similarly, by ignoring the threat posed by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley.

126. Officer Fred Duran, Chief Gordon Eden, and Celina Espinoza willfully misrepresented

that APD had investigated the report from CYFD that Michelle Martens' boyfriend had attempted to molest Victoria Martens.

127. The City is liable for the acts or omissions committed by its agents and employees while in the course and scope of their duties and employment and is, therefore, liable for the actions of APD and the APD Individual Defendants.

128. Defendants' actions as stated above resulted in their failure to investigate the report from CYFD of assault and abuse of Victoria Martens by her mother's boyfriend, and Defendants aided and abetted the assault and battery upon Victoria Martens in August of 2016 and infringed upon her constitutional rights as a juvenile to a follow-up law enforcement investigation pursuant to the New Mexico Children's Code §§ 32A-4-3(A) through (C),

129. Defendants' immunity is waived under NMSA 1978 § 41-4-12.

130. As a direct and proximate result of Defendants' failure to train and supervise, Plaintiffs are entitled to all damages allowable under the law.

**COUNT VII  
WRONGFUL DEATH  
AGAINST ALL DEFENDANTS**

131. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

132. Defendants had a duty to investigate reports of suspected child abuse from CYFD and protect Veronica Martens from the known threat of physical harm posed by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley.

133. Defendant APD and the APD Individual Defendants breached their duty to investigate reports of suspected child abuse from CYFD and protect Victoria Martens from the known threat of physical harm posed by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley through Defendants' negligence, including, but not limited to, failing to

take adequate measures to protect Victoria Martens, a foreseeable victim, against a known danger presented by Michelle Martens, Michelle Martens' boyfriends, Fabian Gonzales, and/or Jessica Kelley, as set forth above.

134. By failing to investigate the CYFD report of assault and child abuse of Victoria Martens and to take adequate steps to ensure the safety of Victoria Martens, Defendants wrongfully caused the death of Victoria Martens.

135. The conduct of Defendants was unlawful, intentional, willful, wanton, obdurate, and in gross and reckless disregard of Plaintiffs' rights.

136. As a direct result of the acts of Defendants, Victoria Martens suffered physical and emotional damages, including, but not limited to, physical injury, pain and suffering, severe psychological and emotional trauma, loss of enjoyment of life, and loss of her life.

137. Defendants' actions as stated above resulted in their failure to investigate the report from CYFD of assault and abuse of Victoria Martens by her mother's boyfriend, and Defendants aided and abetted the assault and battery upon Victoria Martens in August of 2016 and infringed upon her constitutional rights as a juvenile to a follow-up law enforcement investigation pursuant to the New Mexico Children's Code §§ 32A-4-3(A) through (C),

138. The City is liable under *respondeat superior* for Defendant APD and for APD Individual Defendants' acts and omissions constituting tortious negligence.

139. Defendants' immunity is waived under NMSA 1978 § 41-4-12.

140. As a direct and proximate result of Defendants' wrongful acts resulting in Victoria Martens wrongful death, Plaintiffs are entitled to all damages allowable under the law.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- a. Compensatory and special damages to compensate Plaintiffs' Decedent for funeral expenses, the loss of her life, and damages as alleged in Counts I-VII above to be proven at trial;
- b. Loss of consortium damages due to Plaintiffs Pat Martens and John Martens;
- c. Punitive damages;
- d. Injunctive relief as described in Count I;
- e. Attorneys' fees and costs;
- f. Pre- and post-judgment interest; and
- g. Any other relief this Court deems just and proper.

Respectfully submitted,

s/Jason Bowles

Jason Bowles  
Bowles Law Firm  
P.O. Box 25186  
Albuquerque, NM 87125-0186  
Telephone: (505) 217-2680  
Facsimile: (505) 217-2681  
Email: [jason@bowles-lawfirm.com](mailto:jason@bowles-lawfirm.com)

and

Robert J. Gorence  
Victor E. Sanchez  
Gorence & Oliveros, P.C.  
300 Central Avenue SW, Suite 1000E  
Albuquerque, New Mexico 87102  
Phone: (505) 244-0214  
Fax: (505) 244-0888  
Email: [gorence@golaw.us](mailto:gorence@golaw.us)  
[sanchez@golaw.us](mailto:sanchez@golaw.us)

*Attorneys for Plaintiffs*