

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0:16-cv-61595-MGC/Torres**

DONNETT M. TAFFE, Personal
Representative of the Estate of STEVEN
JEROLD THOMPSON, deceased

Plaintiff,

vs.

SCOTT J. ISRAEL, et. al.

Defendants.

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DEFENDANTS' JOINT STATEMENT OF MATERIAL FACTS

1. Deputy Gerald E. Wengert participated in and completed the Criminal Justice Institute ("CJI") Police Basic Academy Program in December 1999 and received an evaluation from the Class Supervisor. *See, e.g.*, CJI Transcript, attached as **Exhibit 1**.

2. Prior to being employed by the Broward County Sheriff's Office ("BSO") and prior to the merger of the Cooper City Police Department with BSO, Deputy Wengert was employed by the Cooper City Police Department where he underwent regular evaluations which detailed his continued training and supervision. *See, e.g.*, Cooper City Evaluations, attached as **Exhibit 2**.

3. Deputy Wengert was screened and interviewed and required to pass various examinations prior to being hired as a law enforcement officer which included polygraph and psychological examinations. *See, e.g.*, Polygraph Report, attached as **Exhibit 3**; Dr. Besner Qualified Letter, attached as **Exhibit 4**.

4. Prior to being hired by Cooper City Police Department, Deputy Wengert underwent an employment background investigation by the Florida Department of Law Enforcement (“FDLE”). *See* FDLE Employment Background Investigative Report, attached as **Exhibit 5**. A list of pre-employment checks were conducted as set forth in the Employment Checklist, attached as **Exhibit 6**.

5. Deputy Wengert, like all other deputies, undergoes regular and periodic evaluations as a sworn law enforcement officer. *See, e.g.*, Wengert Evaluations (examples between 1997-2016), attached as **Exhibit 7**.

6. Deputy Wengert, like all other deputies, regularly participates in training courses and in-service trainings and Deputy Wengert also completed a Florida Department of Law Enforcement Criminal Justice Professionalism Program. *See, e.g.*, Criminal Justice Professionalism Program, attached as **Exhibit 8**; Wengert Student Training History, 2004-2014, attached as **Exhibit 9**.

7. Deputy Wengert has received commendations throughout his service as a law enforcement officer. *See, e.g.*, Wengert Commendations, 2004-2011, attached as **Exhibit 10**.

8. Deputy Wengert has recently received internal commendations as well unsolicited praise from the community. *See, e.g.*, February and March 2017 Commendations (including praise from a mother regarding mentoring her son), attached as **Exhibit 11**.

9. Police Expert John J. Ryan has opined that Deputy Wengert’s actions as it involves this case were consistent with accepted standards and practice. *See* Ryan Expert Report, for example, ¶¶ 72, 76, 86, 89, 101, *passim*, attached and incorporated herein as **Exhibit 12**.

10. BSO has promulgated standard operating procedures on the use of force; the word “reasonable” was added to 6.1.2D to comply with CALEA Standards. *See* “Use of Force,” Chapter 6, Sheriff’s Policy Manual (2008 and rev. 2010), attached as **Exhibit 13**.

11. The current version of the Sheriff’s Policy Manual (“SPM”) “Use of Force,” was last updated in June 2015. *See* “Use of Force,” 6.1, SPM (2015), attached as **Exhibit 14**.

12. BSO was accredited in 2008 by The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA). This means that CALEA, an outside group of trained assessors, signed off on BSO’s Use of Force Policy as “compliant” in meeting CALEA standards and in compliance with Constitutional standards for law enforcement practice. *See* CALEA August 2008 Assessment Report; and March 21, 2009 Award Letter, attached as **Exhibit 15**. CALEA also provides an agency profile: “The BSO is the fourth largest full-service law enforcement agency in the United States and the largest fully accredited sheriff’s office in America.” *Id.* at 2 (page 2 of the Report). The CALEA Assessment Team has reviewed BSO’s incidents of misconduct and determined: “From the overall analysis it appears that this organization takes an aggressive stance on upholding the standards of the organization and does so in a proactive and positive manner.” *Id.* at 9 (page 9 of the Report).

13. In October 2008, CALEA selected BSO as a CALEA Flagship Agency which means that BSO “represents an extraordinary example of excellence in public safety and it is recognized as a potential resource for future and current CALEA clients.” *See* Oct. 23, 2008 CALEA Letter, attached as **Exhibit 16**.

14. BSO was reviewed by the Commission for Florida Law Enforcement Accreditation, Inc. (“CFLEA” or “CFA”) and accredited by the commission in 2009, reaccredited in 2012, and reaccredited in 2016. *See* CFLEA 2009 Report, 2012 Report, and

2016 Report, attached as **Composite Exhibit 17**. CFLEA is an independent agency which focuses more on Florida standards. *See* Dale Dep. 61:20-24, attached as **Exhibit 18**. In order to obtain accreditation, BSO must show that they have a policy that meets the standard and provide exemplar reports which show they are meeting (or exceeding) the standard; reviewers will also provide feedback on the policy implementation. *See* Dale Dep., 62:22-66:22.

15. In March 2009, CALEA selected the BSO as a CALEA Flagship Agency which means BSO “represents an extraordinary example of excellence in public safety and it is recognized as a potential resource for future and current CALEA clients.” *See* March 4, 2009 CALEA Letter, attached as **Exhibit 19**.

16. BSO was accredited in 2011 by CALEA which means that CALEA Assessors signed off on BSO’s Use of Force Policy as "compliant" in meeting CALEA standards and in compliance with Constitutional standards for law enforcement practice. *See* CALEA August 2011 Report; Nov. 19, 2011 Award Letter; and Nov. 19, 2011 Excellence Letter, attached as **Composite Exhibit 20**. CALEA reviewed BSO’s use of force policies and guidelines and use of force incidents for 2009 through 2011, reviewed BSO’s disciplinary actions, and BSO’s procedures for IA complaints. *See, e.g.*, Exhibit 20, CALEA August 2011 Report. CALEA advised BSO of its accreditation and recognized BSO in November 2011 by awarding it the Accreditation with Excellence Award due to its “[e]xcellence in the development and implementation of contemporary policies and procedures.” *See* Exhibit 20. CALEA has identified BSO as “currently the largest CALEA accredited Sheriff’s department in the nation.” *Id.* at 2 (page 2 of the Report).

17. In the 2014 Assessment Report, the 5th reaccreditation for BSO, CALEA detailed the efforts made by Sheriff Israel to institute a new Department of Professional

Standards, which included a new Internal Affairs Commander and a new Director of the Professional Standards Committee. See 2014 Assessment Report, attached as **Exhibit 21** at 22 (page 22 of the Report).

18. Over 1,300 pages of documents were provided to CALEA assessors as proofs of compliance for their 2014 report related to (a) use of force, (b) training, and (c) Internal Affairs, for example. These proofs were provided to the CALEA assessors prior to their onsite assessment of November 14-17, 2014. These documents give a snap shot of the span of the document review by CALEA prior to the onsite visit. *See* Accreditation Unit docs., Response to Request No. 1, attached as **Composite Exhibit 22** and Vol. 1-7 of proofs, attached as **Exhibits 22(a), (b), (c), (d), (e), (f), and (g)**.

19. BSO mandates annual in-service training (Policy 13.5.1) and roll-call training (Policy 13.5.2); advanced training is also urged (Policy 13.5.4) and supervisory employees also undergo further development training (Policy 13.5.5). *See, e.g.*, excerpts of Sheriff's Policy Manual, 13.5, attached as **Exhibit 23**. BSO requires more in-service training of its deputies than is required by the Florida Department of Law Enforcement (FDLE) (which requires 40 hours every 4 years). Compare BSO Policy with §§ 943.125(4)(d) and 943.135, Fla. Stat. (2014).

20. BSO conducts an annual analysis of its Use of Force Reports which generally supports three organizational goals: 1) assists with creating policy and developing and conducting training; 2) documents the methods and manner that deputies use when interacting with the residents and visitors to Broward County; and 3) satisfies requirements enumerated by CALEA. *See, e.g.*, Annual Reviews for 2008-2013, attached as **Composite**

Exhibit 24. These reports break down the type of force used, where it was used, and to whom it was used and concludes with recommendations.

21. When BSO has learned of better ways to act, for example in documenting use of force investigations, BSO has made changes and continues to improve as new programs and methods are discovered. *See* Dale Dep. 68:4-71:24.

22. BSO has made changes to use of force reporting so that the form is now filled out by a supervisor instead of the deputy using the force. There are now more steps taken to verify the information and a higher level of supervisory involvement. *See* Dale Dep. 79:8-13.

23. All use of force forms are sent to Internal Affairs and to Training for review. *See* Dale Dep. 84:2-3.

24. There are many layers of review of the quality of investigative work done by Internal Affairs outside of BSO. *See* Dale Dep. 98:19-100:5.

25. The 2014 Use of Force Analysis was submitted on April 3, 2015 and is an analysis of use of force incidents that occurred between January 1, 2014 and December 31, 2014 conducted by the Policy and Research Unit of BSO. *See* 2014 DLE Use of Force Analysis, attached as **Exhibit 25** at 5 (page 5 of Report). In 2014, there were 499,971 Calls for Service to BSO with a total of 272 Use of Force incidents (page 6 of Report). All 272 Use of Force incidents were reported by deputies (page 6 of Report). There were only 3 Use of Force complaints received from people other than deputies (page 6 of Report). There were no Use of Force incidents which were reported by civilians and discovered un-reported by deputies.

26. The 2015 Use of Force Analysis also highlighted a number of prior recommendations that have been or were being implemented, for example: a) Use of Force

Reporting was shifted to the supervisor. The supervisor will investigate the circumstances and appropriateness of force used and complete the Supervisor's Use of Force Review form; b) The policy was updated to require photographs to be taken in all use of force incidents effective June 8, 2016. In addition, Body Worn Cameras are beginning to be implemented throughout the agency. *See* 2015 DLE Use of Force Analysis, attached as **Exhibit 26** at 34-35 (pages 34-35 of Report).

27. When BSO has determined that their employees used excessive force, they were presented to the State Attorney's Office. *See* Dale Dep. 105:13-106:4.

28. When the Sheriff's Office had reasonable suspicion of a violation of its policies regarding controlled substances and specifically an employee's suspected use of illegal anabolic steroids, the Sheriff's Office has conducted an investigation which included drug testing of the employee for anabolic steroids. *See* e.g., Dale Aff. ¶¶ 7-11, incorporated in its entirety herein, attached as **Exhibit 27**; Fernandez Form/IA Report, attached as **Exhibit 28**.

29. An armed robbery had been committed on June 5, 2014 in the area of GG's of New York Italian Restaurant and Pizza ("GG's") and Player's Sports Bar, 5400 N. State Road 7, North Lauderdale, Florida. *See generally* Weeks Dep. 6:12-14, attached as **Exhibit 29**; *see* Hernandez Narrative and Report, attached as **Exhibit 30** at 3 (p. 3 of Reporting Officer Narrative); *See* Wengert Aff., attached as **Exhibit 31** at ¶ 3; *see* Koutsofios Dep. 37:13-20, 38:11-18, attached as **Exhibit 32**.

30. Deputies Yoder, Wengert, Koutsofios, and Clark responded to the armed robbery call with other deputies and investigators. *See* Exhibit 30 at 3; *see* Koutsofios Dep. 38:11-18; 40:3-5; Wengert Aff. ¶¶ 4-5.

31. The two robbery victims provided law enforcement the following initial descriptions of the two robbery suspects: Subject #1 was in his 20's, 5'9 to 5'10, 160-180 pounds, low cut, wearing dark shirt with dark shorts; Subject #2 was 20-30 years old, 5'8 to 5'9, 190-200 pounds, also low cut, dark shirt with dark shorts and bright shoes possibly orange. *See* Exhibit 30 at 3; *see* Koutsofios Dep. 39:5-9.

32. Deputy Yoder was able to track one of the phones stolen during the robbery and lead law enforcement to Cypress Grove Apartments in continued pursuit of the armed robbery suspects. *See* Yoder Dep. 46:18-24, 48:4-8, *passim*, attached as **Exhibit 33**; *see* Koutsofios Dep. 40:19-24, 42:5-11; Wengert Aff. ¶¶ 4-5.

33. Officer Weeks and Officer Michele, two Lauderhill Police Officers, were already at the Cypress Grove Apartments responding to a domestic call when they saw BSO Deputies arrive on scene. *See* Koutsofios Dep. 47:6-9; Weeks Dep. 6:7-14.

34. Deputies Yoder, Wengert, Koutsofios, and Clark arrived at the Cypress Grove Apartments and began searching the outside area and followed the ping from the stolen phone on the Find My iPhone application. *See* Yoder Dep. 46:18-24, 48:4-8, 51:14-21; *see* Koutsofios Dep. 48:19-25, 49:21-25; Weeks Dep. 8:6-14; Wengert Aff. ¶ 6.

35. The officers and deputies saw two people where the ping spot was and saw two people that matched the description of the armed robbery suspects. *See* Yoder Dep. 61:5-6, 62:21-63:17, 65:10-66:6; Weeks Dep. 9:6-18; Wengert Aff. ¶ 6.

36. Deputy Wengert and Deputy Clark saw the suspect (later identified as Mr. Steven Thompson) and upon making eye contact with each other, Deputy Wengert saw Mr. Thompson reaching into his pants which was perceived as checking for his firearm. Deputy Wengert announced himself as with the Sheriff's Office and commanded Mr. Thompson to

stop; Mr. Thompson ignored Deputy Wengert's orders and warnings and ran from the deputies and entered the building. *See* Yoder Dep. 66:2-6, 68:8-20, 72:12-15; *see* Koutsofios Dep. 55:5-56:2, 57:11-15; Weeks Dep. 11:2-21; 43:20-21; Wengert Aff. ¶¶ 6-8.

37. While Deputy Wengert and Deputy Clark pursued Mr. Thompson into the building, Officer Weeks followed them up until the entrance of the building and stayed back to watch their rear. *See* Yoder Dep. 71:25-72:15, 79:2-14, 80:13-22; Weeks Dep. 11:2-21.

38. Officer Weeks was taking a position parallel to the buildings in case the suspect ran out and then took a position where he could peek inside. *See* Weeks Dep. 12:1-8, 13:6-18, 14: 3-13, 15:14-17.

39. Deputy Koutsofios ran to the other side of the building based on the belief that Mr. Thompson could run out through another doorway. *See* Yoder Dep. 72:13-15; *see* Koutsofios Dep. 53:1-20; 57:11-58:24.

40. Deputy Yoder ran behind the building thinking there was another entrance, but eventually had to come back around to the side where Deputy Koutsofios had entered; Deputy Yoder and Deputy Koutsofios heard shots at that time and could not enter into the hallway until the shots stopped which were coming from the other side of the hallway. *See* Yoder Dep. 76:11-78:14; *see* Koutsofios Dep. 53:1-20, 58:19-24, 60:9-12, 61:5-14, .

41. Mr. Thompson and Deputy Wengert exchanged gun fire; Officer Weeks could "see the fire fight happening." *See* Weeks. Dep. 20:24-25; 47:20-48:2; 103:12-17; Wengert Aff. ¶¶ 9-12.

42. Officer Weeks took a position where he could see Deputy Wengert with his gun drawn and firing down the hallway and using a wall for cover and going back and forth

between standing and kneeling. *See Weeks Dep. 16:8-14, 17:7-9, 18:17-20, 19:7-20; 50:12-21; Wengert Aff. ¶ 10.*

43. Deputy Wengert saw Mr. Thompson continuously pull the trigger of his firearm and believed he was a threat and Deputy Wengert's life was in danger until Mr. Thompson released the firearm. *See Wengert Aff. ¶¶ 9-13.*

44. Mr. Thompson was alive, fully conscious, when his firearm was secured and he was taken to the hospital. *See Koutsofios Dep. 75:20-24; Weeks Dep. 55:11-24; Wengert Aff. ¶ 13.*

45. Police Expert John J. Ryan has opined "the that investigation of the armed robbery, pursuit, and engagement of Steven Thompson by Deputy Wengert and the Sheriff's Office was consistent with generally accepted policies, practices, training, and legal mandates." *See Exhibit 12, Ryan Report, for example, ¶¶ 72, 76-78, 80, 86, 89, passim.*

46. Police Expert John J. Ryan has opined "that the actions of Sheriff Israel and the Broward County Sheriff's Office were consistent with generally accepted policies, practices, training, and legal mandates." "I found no evidence in the materials to support [] a deficiency. In fact, overwhelming evidence is to the contrary and shows that with respect to policy, custom, training, hiring, supervision, and discipline, the Broward County Sheriff's Office meets or exceeds the generally accepted policies, practices, training, and legal mandates in law enforcement." *See Exhibit 12, Ryan Report, for example, ¶¶ 90-91, passim.*

Date: August 4, 2017

Respectfully submitted,

<p><u>/s/ Richard T. Woulfe</u> RICHARD T. WOULFE, ESQ. Florida Bar No. 222313 Email: pleadings.rtw@bclmr.com BILLING, COCHRAN, LYLES, MAURO & RAMSEY, P.A. Suntrust Center, 6th Floor 515 East Las Olas Boulevard Fort Lauderdale, FL 33301 Tel: 954-764-7150 Fax: 954-764-7279 <i>Attorneys for Gerald E. Wengert</i> <i>By CM/ECF</i></p>	<p><u>/s/ Louis Reinstein</u> LOUIS REINSTEIN, ESQ. Florida Bar No. 26852 Email: reinstein@kklaw.com KELLEY KRONENBERG 8201 Peters Road Suite 4000 Fort Lauderdale FL 33324 Tel: (954) 370-9970 Fax: (954) 370-9191 <i>Attorney for Defendant, Sheriff Scott J. Israel</i></p>
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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Louis Reinstein
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