

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRUIT IUN AND  
FOR ORANGE COUNTY, FLORIDA

MARLON MARCANO and YMA SU-LING  
SCARBRIEL, as Personal Representatives of  
the Estate of MIYA MARCANO, Deceased,

Plaintiffs,

vs.

CASE NO:  
CIVIL DIVISION

ORANGE COUNTY SHERIFF'S OFFICE,  
SAMIR PAULINO and KENNETH DALE,

Defendants.

\_\_\_\_\_ /

**COMPLAINT**

COMES NOW, Plaintiffs Marlon Marciano, individually and as the Personal Representative of the Estate of Miya Marciano and Yma Su-Ling Scarbriel complaining of Defendants, Orange County Sheriff's Office ("OCSO") Samir Paulino ("Paulino") and Kenneth Dale ("Dale"), and for cause would show the Honorable Court as follow:

**I. NATURE OF THE ACTION**

1. On September 24, 2021, the parents of 19-year-old Miya Marciano, a person known to have been assaulted and kidnapped, cried out to Paulino and the OCSO for assistance and to save Miya's life. Miya died as Paulino, Dale and the OCSO failed to timely respond with assistance and experienced sheriff deputies to fully investigate the family of Miya Marciano's life-threatening call.

2. Plaintiffs allege that OCSO had a duty, but failed to implement policies, practices and procedures that respected Miya Marciano's constitutional rights to assistance, protection, medical treatment, and equal treatment under the law. Defendant OCSO's failure to implement the

necessary policies and the implementation of unconstitutional policies deprived Miya Marcano of equal protection and due process under the Fourteenth Amendment and caused her unwarranted and excruciating physical and mental anguish and death. Plaintiffs further allege that OCSO and its policy makers, specifically Mayor Jerry L. Demings (“Demings”) and Sheriff John W. Mina (“Mina”) failed to properly supervise, screen, discipline, transfer, counsel or otherwise control deputies who are known, or who should have been known, not to be adequately trained to handle the investigation of a missing person and/or a person involved in a life-threatening situation. Mayor Demings and Sheriff Mina had a duty, but failed to implement and/or enforce policies, practices and procedures for the OCSO Sheriff’s Office that respected Miya Marcano’s constitutional rights to assistance and protection under the law. Despite the wrongful and egregious actions of Paulino and Dale in their handling of the investigation regarding the disappearance of Miya Marcano, they remain employed by OCSO. Defendant OCSO, Mayor Demings and Sheriff Mina’s failure to implement the necessary policies and the implementation of unconstitutional policies caused Miya Marcano’s unwarranted and excruciating physical and mental anguish and death.

3. Defendants Paulino and Dale had a duty to fully investigate the assault and disappearance of Miya Marcano but was deliberately indifferent to a distressed situation.

4. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988; the Fourteenth Amendment to the United States Constitution; and other constitutional provisions and laws of the United States and the State of Florida, to recover damages for the death of Miya Marcano, while she sought protection, medical treatment and assistance from Defendants, and for the deprivation of her rights under color of law and in violation of federal law. For these civil rights violations and other causes of action discussed herein, Plaintiffs seek answers and compensation for their damages and the wrongful death of Miya Marcano.

## **II. PARTIES**

5. Plaintiff, Marlon Marcano, is a citizen of the United States and a resident of Florida. Plaintiff Marlon Marcano is, duly appointed, qualified, and acting Personal Representative of the Estate of Miya Marcano, deceased, and is the proper party to bring this action for Wrongful Death pursuant to Fla. Stat. §§ 768.16–26, on behalf of the decedent’s Estate.

6. Plaintiff, Yma Su-Ling Scarbriel, is a citizen of the United States and a resident of the U.S. Virgin Islands.

7. Defendant OCSO is an agency or subdivision existing under the laws of the State of Florida. OCSO is responsible for preventive, investigative, and law enforcement services and assuring safety for all citizens of Orlando, Florida. OCSO has final decision making authority over its policies and practices and the acts complained of herein occurred under OCSO’s jurisdiction and authority. OCSO is responsible for developing, implementing, promulgating, and enforcing customs, usages, practices, policies, procedures, and rules governing its employees, including deputy sheriffs.

8. Defendant Samir Paulino, is a resident of Orange County, Florida, and at all times material herein was an OCSO deputy.

9. Defendant Kenneth Dale, is a resident of Orange County, Florida and at all times material herein was an OCSO deputy.

## **III. JURISDICTION AND VENUE**

10. This is an action for damages within the original jurisdiction of this Court pursuant to state law and 28 U.S.C. §§ 1331 and 1343 as this action is brought under, inter alia, the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983, to redress the deprivation of rights, privileges and immunities guaranteed to Plaintiffs by constitutional and

statutory provisions.

11. Venue is proper in this court.
12. All conditions precedent to the filing of this action have been met.

#### **IV. FACTS**

13. On September 24, 2021, at approximately 9:23 p.m., Yma Su-Ling Scarbriel, the mother of Miya Marcano, deceased, contacted the OCSO Sheriff's Office requesting a welfare check be conducted because she was unable to contact and/or locate Miya, who was scheduled to be on a flight to Miami. At approximately 10:02 p.m., Deputy Samir Paulino arrived at Miya's apartment at the Arden Villas Luxury Apartments to conduct a welfare check. Upon arrival, Deputy Paulino allegedly knocked on the front door but did not receive a response. Deputy Paulino relayed his results to Ms. Scarbriel who pleaded with Deputy Paulino to wait for Miya's roommate to arrive home so that he could perform a proper welfare check. As Deputy Paulino was about to leave Miya's Apartments, Miya's roommate arrived. Miya's roommate was allowed to enter the apartment although it was a possible crime scene and immediately discovered Miya's bedroom door was locked, which was an immediate sign that something was wrong. Deputy Paulino then walked to the back of the apartment building and discovered that Miya's bedroom window was unlocked, so he opened it knowing he was now potentially compromising a crime scene. Deputy Paulino allowed Miya's roommate to enter the apartment through the bedroom window so that she could unlock Miya's bedroom door for Deputy Paulino to enter. Miya's roommate immediately made Deputy Paulino aware that there were several signs that made it obvious something was wrong. Despite there being a blood stain on one of Miya's pillowcases, a bookshelf propped up against the door, preventing entry into Miya's bedroom, several pieces of broken jewelry and a boxcutter on the floor, an opened bedroom window, Miya's favorite Teddy Bear left behind and a

bedroom that was in a state of disarray, Deputy Paulino failed to treat the matter as a crime scene despite the obvious warning signs. Instead, Deputy Paulino completed an initial incident report and left the scene to respond to other calls for service. Deputy Paulino did not inform anyone about the evidence of a potential crime he observed inside of Miya's apartment.

14. On September 25, 2021, at approximately 12:35 a.m., Deputy Paulino was summoned back to the Arden Villas to meet with Jacolby Coleman ("Coleman"), who worked as a security guard at the apartment complex. Mr. Coleman made Deputy Paulino fully aware that there was a serious problem, but Paulino blew him off. Mr. Coleman advised Deputy Paulino that it appeared as though someone entered through the window. Mr. Coleman also advised Deputy Paulino that he had lifted fingerprints from the scene using tape and attempted to provide the evidence to Paulino but Deputy Paulino, with a smirk on his face, told Mr. Coleman to keep the evidence in case it would be needed later. Deputy Paulino also made it clear to Mr. Coleman that Miya's case was not a priority. Deputy Paulino failed to document the call for service and did not document that Mr. Coleman lifted fingerprints and attempted to provide the evidence to law enforcement. This extremely critical information could have led to the discovery of Miya much sooner.

14. Once Miya's father, Plaintiff Marlon Marcano, Sr., and family members arrived at Miya's apartment, they immediately knew something bad happened to Miya. Mr. Marcano and his family members had a conversation with Armando Caballero ("Caballero"), who showed up at the scene. Based on conflicting statements and visible injuries to Caballero's face and hand, Mr. Marcano knew Caballero was hiding something. At approximately 3:52 a.m., Mr. Marcano called the OCSO Sheriff's office requesting a deputy to respond to conduct a "proper investigation into the disappearance of Miya." Deputy Paulino was again summoned back to Miya's apartment but

did not arrive until 4:54 a.m., over one hour later. Miya's family members and Mr. Coleman provided Deputy Paulino with critical information but as he did with Miya's roommate, he failed to consider any of the evidence or to contact anyone for assistance. Mr. Coleman, after speaking with Marc Marcano, told Deputy Paulino about a screwdriver, a cellular telephone case on the floor and a blanket in the backseat of Caballero's vehicle, but Paulino's response was "thank you" and he returned to questioning Caballero. At no time did Paulino ask for permission to search Caballero's vehicle. At one point, Caballero confronted Miya's family members leading to a heated exchange. Still, Deputy Paulino did not summon anyone out for assistance or questioned Caballero about the claims being made against him. Frustrated by Deputy Paulino's attitude, Mr. Marcano contacted the OCSO to lodge a complaint because of Paulino's failure to treat Miya's disappearance with a sense of urgency. Deputy Paulino allegedly routed what he learned to his supervisor, Corporal Dale. Deputy Paulino also discussed the case with Corporal Dale via telephone but neither Paulino nor Dale shared this extremely critical information with anyone before completing their shifts.

15. At approximately 11:22 a.m. on September 25, 2021, Deputy Angelo Thomas responded back to Miya's apartment at the request of Miya's aunt, Ms. Semone Westmaas. It was at that time that Deputy Thomas learned what Miya's family had shared earlier with Deputy Paulino and he was also made aware of the evidence that was ignored by Paulino and Dale, including the family's encounter with Caballero. At 1:39 p.m., Deputy Thomas requested that the on-call Missing Persons Detective call him. After the call, members of the Criminal Investigation Division allegedly responded and finally began an investigation into Miya's disappearance. On September 27, 2021, Caballero was located deceased at his home. On October 2, 2021, Miya was discovered deceased.

16. Deputy Paulino and Corporal Dale failed to notify the Criminal Investigations Division, despite all the evidence they had that Miya had been harmed and that Caballero was the likely suspect. Deputy Paulino and Corporal Dale's seriously impeded the investigation of Miya's disappearance by their failure to act. Defendants Paulino, Dale and OCSO had sufficient evidence that more than likely saved Miya's life or at a minimum led to the discovery of Miya much sooner. Despite the wrongful actions of Paulino and Dale, Sheriff Mina commended them for doing an excellent job.

17. As a result of Deputy Paulino and Corporal Dale's inactions, an administrative investigation was initiated by the OCSO Sheriff's Office Professional Standards Section to determine if Deputy Paulino and Corporal Dale violated any written directives during the initial investigation into the disappearance of Miya Marcano<sup>11</sup>. The following was found:

- a. Deputy Paulino failed to note in his report that jewelry on the floor of Miya's bedroom that was determined to be broken and bent provided evidence of a physical struggle.
- b. Deputy Paulino did not document his call for service with Mr. Coleman nor was there any documentation anywhere regarding Mr. Coleman lifting fingerprints or attempting to provide them to law enforcement.
- c. Deputy Paulino refused to take the fingerprint evidence from Mr. Coleman and told him to keep it in case it was needed later.
- d. Broken jewelry and a box cutter were on the floor during the previous call for service where Deputy Paulino was present.
- e. Indentation created from the weight of the bed onto the rug was visible indicating the bed had been recently moved from its original location by 2-3 inches.
- f. Despite all the information being provided to him, Deputy Paulino did not request any assistance from additional deputies or other resources and largely remained uninvolved.
- g. Deputy Paulino never conducted a search of Caballero's vehicle.
- h. At no point during this portion of the investigation did Deputy Paulino attempt to speak with Ms. Westmaas or Mr. Marcano to understand what each was trying to say. Ms. Westmaas relayed to Deputy Paulino the following facts:
  - a. There were fingerprints on Ms. Marcano's bedroom window.
  - b. The bedroom window was missing locking mechanisms installed by Mr. Marcano to prevent the bedroom window from opening. The same locking mechanism was

---

<sup>11</sup> For more details, please refer to the Administrative Investigation Report, Tracking No. 2021-VOO717, prepared by the Orange County Sheriff's Office Professional Standards Section.

- still intact in the living room window.
- c. Miya's bed was shifted from its original location as evidenced by carpet indentation.
  - d. A box cutter style blade was found under the bedroom area rug.
  - e. A bookshelf was lodged up against the bedroom door from the inside.
  - f. Broken and "busted" jewelry was found on the bedroom floor.
  - g. There was blood on a pillow on the bed.
  - h. Ms. Marcano was scheduled to board an airline flight to Fort Lauderdale, Florida and never boarded the airplane and has not been heard from since.
  - i. Deputy Paulino's statement that a detective will look at the case in the morning was incorrect due to the fact this incident occurred on a Friday night and the Criminal Investigations Section, where the report would be routed, would not receive the report until the following Monday, unless an on-call detective is contacted and requested to respond.
  - j. Testimony obtained during the administrative investigation found Deputy Paulino could not recall what he told his supervisor, Corporal Dale, on the night of the investigation. Despite Deputy Paulino's assertions to Miya's family regarding what he told his supervisor, Corporal Dale testified he was not aware of any information regarding a bedroom window or blood on the scene and the furniture up against the door was not accurately portrayed to him.
  - k. Deputy Paulino suggested for the family to call the Sheriff's Office back if they got any additional information.
  - l. Deputy Paulino told Corporal Dale *"The signal eight's [missing person] family, like, there's like 20 of them over here. They've been like raiding her room. Some real 'First 48' stuff. And then they found like a box cutter that was under her rug. It doesn't have any blood on it or anything. They're upset because I didn't fingerprint the windows, all this other stuff..."* Deputy Paulino also relayed to Corporal Dale the *"alleged suspect"* in Ms. Marcano's disappearance was at the scene and being cooperative. Deputy Paulino informed Corporal Dale he was going to collect the knife and submit it to evidence.
  - m. Deputy Paulino provided contradictory statements to Deputy Kolker and Deputy Laurent.
  - n. Although Deputy Paulino stated he saw bruising to Caballero's face and knuckles, that fact was not noted in Deputy Paulino's incident report. Deputy Paulino later testified during this administrative investigation he did not see any injuries on Caballero, and he only said that to "appease" family members.
  - o. Deputy Paulino and Corporal Dale did not relay critical information to Persons Crimes Investigations.
  - p. Mr. Coleman stated Deputy Paulino responded back to the Arden Villas Apartments. When Mr. Coleman attempted to give Deputy Paulino the fingerprints, Deputy Paulino told him *"Just keep it bro. Just keep it because I mean a week from now maybe you'll be able to use it."* Mr. Coleman questioned why he would keep the fingerprints because Mr. Coleman did not have a secure way to keep the evidence. Mr. Coleman stated Deputy Paulino told him the missing person case was not a *"top priority."* Mr. Coleman stated Deputy Paulino said the statement with a *"laugh"* or a *"smirk"* and Mr. Coleman was offended by Deputy Paulino's response because Mr. Coleman has children and

- was concerned if something happened to his own children.
- q. Mr. Coleman stated Deputy Paulino told him the missing person would need to be elderly or have a disability to make the missing case a high priority. Mr. Coleman questioned Deputy Paulino why he would not lift the fingerprints from the scene. Mr. Coleman stated Deputy Paulino again told him the case was not a top priority.
  - r. Mr. Coleman told Mr. Marcano that Deputy Paulino did not seem concerned and gave the impression the circumstances surrounding Miya's disappearance were similar to a typical college student who became intoxicated and would be found the next morning after sobering up.
  - s. After Caballero left, Deputy Paulino told Mr. Marcano there was nothing else the sheriff's office could do and to wait twenty-four hours before the case would be escalated to the next level. There is no OCSO Sheriff's Office policy which states there is a requirement for twenty-four hours to pass before a missing person investigation would be escalated.
  - t. Deputy Paulino did not request the photographs of what Miya's roommate observed be sent to him and she did not provide them to him.
  - u. There is no record of any telephone call or text message made by Corporal Dale to Sergeant Cirino after his last conversation with Deputy Paulino indicating an update on the new information obtained by Deputy Paulino does not appear to have been relayed to Sergeant Cirino.
  - v. Despite the evidence, Corporal Dale told Sergeant Cirino there was nothing suspicious about the disappearance of Miya except for the fact her bed was in disarray, and she always made her bed. Corporal Dale told Sergeant Dale there was no reason that raised suspicion. Nothing unusual that a 19-year-old wouldn't do and that's the extent of it. Sergeant Cirino told Corporal Dale if there's nothing we can do and that's explained to them, ya know, we'll take a report...we'll report her missing if that's what they want us to do and that was pretty much.
  - w. Sergeant Cirino stated that Corporal Dale did not tell him about furniture blocking Miya's bedroom door, blood on a pillow, broken jewelry on the floor or a box cutter knife found in the room. Sergeant indicated he was surprised to learn about furniture blocking Miya's bedroom door, blood on the scene, and there were signs of a struggle among other suspicious circumstances.
  - x. Captain McCollom stated "at the time, Deputy Paulino missing those cues and just writing it up, sending it up, doesn't suffice. There should have been contact with missing persons [Investigations]. Domestic crimes [Investigations]. You've got a potential subject who's of interest [Caballero] in the disappearance of this individual...You add that to the mix as well. All these cues say criminal investigations, someone should be following up and contacted so they can look into this immediately and timely." Captain McCollom confirmed he authored a memorandum to the Professional Standards Section to ask for a review of Deputy Paulino and Corporal Dale's actions.
  - y. Deputy Thomas believed there were red flags and "something was off."
  - z. Detective Bruinsma stated the facts and circumstances as they were relayed to him (missed flight, not answering the phone, the jewelry on the floor, blood on a pillowcase) would have warrant an immediate response from a detective. Detective Bruinsma believed a detective should have been contacted during Deputy Paulino's initial

- response on September 24, 2021. Detective Bruinsma agreed the first forty-eight hours of a homicide investigation are the most crucial. Detective Bruinsma indicated that the failure of Deputy Paulino and/or Corporal Dale to notify criminal investigations during Paulino's initial response inhibited the investigation into Miya's disappearance. Detective Bruinsma stated, "there's things we could have done Friday night that us finding out Saturday, we couldn't do." Detective Bruinsma specifically noted the confrontation with Caballero. Detective Bruinsma stated he did not know the timeline well enough to know if swifter action by Deputy Paulino would have saved Miya but stated, "it put us behind, for sure."
- aa. Detective Blazina stated on September 25, 2021, Deputy Thomas notified her about the disappearance of Miya and the facts and circumstances surrounding her disappearance. Detective Blazina stated what she heard warranted an immediate response from a detective. She stated, "when I got this phone call and got the initial information, the hair went up on the back of my neck...I knew it was something serious." She stated she contacted her squad and her supervisor to respond.
  - bb. Detective Blazina stated she believed Deputy Paulino should have contacted a detective at the onset of the investigation. Detective Blazina agreed the first forty-eight hours of a homicide investigation are the most crucial. Detective Blazina stated the failure of Deputy Paulino and/or Corporal Dale to notify the Criminal Investigations unit negatively affected the investigation because they had their hands on Caballero.
  - cc. Deputy Paulino was asked during the administrative investigation if it was "normal" to have furniture blocking a bedroom door and a person leaving through the window. He stated "well, I don't know... what type of person Miya was. Maybe for her it was but, there's no way for me to tell."
  - dd. After Deputy Paulino had obtained "everything", he did not contact or request Criminal Investigations Division assistance.
  - ee. A review of BWC video showed Miya's family members and Mr. Coleman all asked Deputy Paulino to lift fingerprints at the scene numerous times. Deputy Paulino did not lift any fingerprints.
  - ff. Deputy stated he did not, and to this day still does not, consider the fingerprints obtained by Mr. Coleman to be evidence.
  - gg. Deputy Paulino admitted to not searching Caballero's vehicle but looking back now, obviously it would have made sense.
  - hh. Deputy Paulino admitted that by telling his supervisor about only one suspicious item, diminished or downplayed the circumstances to his supervisor.
  - ii. Deputy Paulino was asked if, while talking to his supervisor, his tone and disposition expressed urgency to his supervisor or was his tone more dismissive about what he learned during his investigation. He stated, "it's just me, my personality." He later added, "That's just generally how I am. I am pretty much dismissive in my regular life if it doesn't involve my family."
  - jj. Corporal Dale instructed Paulino to write up the incident and send it to the Criminal Investigations Division to be reviewed in the morning. Since this incident occurred on a Friday night, detectives who would handle missing person's investigations would not review the case until Monday morning outside exigent circumstances.
  - kk. Corporal Dale stated Deputy Paulino did not tell him Miya's frequently communicates with her family members and her absence from telephone communication was highly

- unusual.
- ll. Corporal Dale was not provided with details regarding the dresser. Corporal Dales stated Deputy Paulino did not tell him about any blood being on a pillow.
  - mm. Corporal Dale stated Paulino did not mention there was broken jewelry or that it was found on the floor.
  - nn. Corporal Dale stated Deputy Paulino did not tell him anything about the bedroom window. Deputy Paulino did not tell Corporal Dale he opened the bedroom window or the fact the bedroom window should not have been able to open due to locks having been installed by Mr. Marcano, Sr. Corporal Dale was also not aware that Deputy Paulino lifted Miya's roommate into the window.
  - oo. Corporal Dale stated Deputy Paulino did not say anything during the first telephone call to him about a maintenance employee.
  - pp. Corporal Dale was not aware that Deputy Paulino responded to a second call for service at the Arden Villas Apartments on September 25, 2021.
  - qq. Corporal Dale stated if Deputy Paulino would have mentioned furniture blocking and barricading the door, that by itself would have been enough for him to determine it was not a normal missing person case, and a notification to the Criminal Investigation Division would need to be made.
  - rr. Corporal Dale stated if he were aware, it was Paulino's third time responding to the Arden Villas Apartments, he would have responded as well to investigate further. Corporal Dale was not aware the second call for service ever took place.
  - ss. The Professional Standards Section received a copy of the Agreement Pursuant to Discipline Dispute Resolution Process, which had been signed by Deputy Paulino. The agreement stated in part, "...the accused employee [Deputy Paulino] responded to a call for service and did not perform duties in a manner consistent with the highest standards of efficiency in carrying out the functions and objectives of the Sheriff's Office." Deputy Paulino acknowledged he violated OCSO Sheriff's Office Written Directives pertaining to General Order 5.1.3(3) Unsatisfactory Performance.
  - tt. Corporal Dale testified based on the information he was provided, he believed Miya was a "voluntary missing person and did not believe she was endangered, and therefore it was his belief a notification to a Domestic Crimes detective was not required by policy. Corporal Dale also testified based on the information he was provided; the situation did not warrant he or Sergeant Cirino needed to respond.
  - uu. Based upon a Preponderance of Evidence, the allegation Corporal Kenneth Dale violated the following OCSO Sheriff's Office written directives is Sustained; General Orders 5.1.3 (48) Violation of Rules (Category 10). To Wit: Corporal Dale failed to follow agency written directives when he failed to notify the on-call Domestic Crimes detective regarding the disappearance of Miya, who was nineteen years old and qualified as a missing endangered adult as outlined by agency policy.
  - vv. Sheriff Mina defended the investigation despite there being knowledge the investigation was not conducted properly. Sheriff Mina ratified the wrongful actions of Deputy Paulino and Corporal Dale and was instrumental in not locating Miya much sooner.

18. Upon information and belief, the OCSO has not implemented policies and procedures to aggressively address the lack of support from deputies or to provide prioritized responses and assistance to missing persons.

19. As a direct and proximate result of the Defendants' conduct, Plaintiffs have sustained substantial damages and pecuniary loss. For these losses, Plaintiffs seek damages in a sum in excess of the minimum jurisdictional limits of the court.

### **COUNT I – CIVIL RIGHTS VIOLATIONS – ALL DEFENDANTS**

20. Plaintiffs reallege and incorporate by reference the allegations set forth in all preceding paragraphs as if set forth fully and reiterated here in their entirety.

21. According to its website, the OCSO, in serving the people of Orlando, "is committed to excellence in law enforcement, reducing crime and the fear of crime, ensuring the safety of our residents and visitors, while enhancing trust through community engagement."

22. The Defendants, acting under color of law and acting pursuant to customs, practices and policies of OCSO deprived Miya Marcano of rights and privileges secured to her by the Fourteenth Amendment to the United States Constitution and by other laws of the United States, by failing to provide proper emergency assistance in violation of 42 U.S.C. § 1983 and related provisions of federal law and in violation of the above cited constitutional provisions.

23. With respect to the claims made the basis of this lawsuit, OCSO failed to adequately train its employees regarding responding to and conducting investigations of missing persons claims. This failure to train its employees in a relevant respect reflects a deliberate indifference to the rights of the city's inhabitants and is actionable under 42 U.S.C. § 1983.

24. OCSO failed to properly discipline its employees regarding responding to 9-1-1 calls and conducting an investigation of calls. This failure to discipline its employees in a relevant respect reflects a deliberate indifference to the rights of its inhabitants and is actionable under 42 U.S.C. § 1983. Despite Paulino's willful neglect, OCSO continues to employ him with a simple slap to the wrist.

25. Upon information and belief, the OCSO has a policy, practice, or custom of law enforcement that provides less protection (e.g. by not responding at all or purposefully delaying its response) to missing female victims than to victims of other assaults. This discrimination against women was a motivating factor in the refusal to prioritize and respond quickly to Ms. The Plaintiffs' 9-1-1 call and Miya's death was the result of the OCSO's policy, custom, or practice, as well as their inaction in response to the call.

26. Upon information and belief, the OCSO has a policy, practice, or custom of law enforcement that provides less protection to missing victims of domestic assault than to victims of other assaults. This discrimination against missing women was a motivating factor in the refusal to properly investigate the Plaintiffs' call and Miya's death was the result of the OCSO policy, custom, or practice, as well as Pauline, Dale and OCSO's inaction in response to the call.

27. Upon information and belief, the OCSO has a policy, practice, or custom of law enforcement that provides less protection or assistance to female victims in college neighborhoods than to victims in other neighborhoods. This discrimination was a motivating factor in the refusal to prioritize and respond quickly to Plaintiffs' plea for help and Miya's death was the result of the OCSO's policy, custom, or practice, as well as their inaction in response to the call.

28. Defendants responded differently to Plaintiffs' 9-1-1 call arising from her impending murder than if the call had been made by someone similarly situated but not reported

missing, of a nonminority race and/or in a more affluent neighborhood. Defendants did not respond to Plaintiffs' 9-1-1 call timely, or seriously, and conducted a shoddy investigation once the officers finally arrived at Miya Marcano's residence. This was because Defendants continually believed this emergency was less deserving of their attention. Such conduct is not at all related to any governmental purpose.

29. On information and belief, Defendant OCSO, acting through official policies, practices, and customs, and with deliberate, callous, and conscious indifference to the constitutional rights of Miya Marcano failed to implement the policies, procedures; and practices necessary to provide constitutionally adequate protection and assistance to Miya Marcano during her parents' plea for assistance and implemented policies, procedures, and practices which actually interfered with or prevented with or prevented Miya Marcano from receiving the protection, assistance and care she deserved.

30. For instance, the following conduct, policies, and customs, *inter alia*, by Defendants violated Miya Marcano's constitutional rights:

- a. The OCSO's failure to adequately train or discipline its employees;
- b. Defendants' policy of giving lower priority to missing person calls than to non-domestic violence calls;
- c. Defendants' policy of not giving deputies the green light to create a missing person report when the investigation leads to credible information;
- d. Failing to prioritize Miya Marcano's call the way Defendants would have had she not been reported as a missing person;

- e. Responding to Plaintiffs' call and arriving at Miya's residence at a time considerably in excess of the time in which Defendants would have responded to a similarly situated person in a more affluent section of the city of Orlando;
- f. Responding to Plaintiffs' call and arriving at Miya's residence at a time considerably in excess of the time in which Defendants would have responded to a similarly situated non-minority.
- g. Defendants' policy of giving less police protection or assistance to missing women;
- h. Failure to conduct the type of investigation at Miya Marcano's residence (e.g. entering the residence to look for foul play) that would have been conducted had she not been reported as missing; and
- i. Failure to get more deputies properly trained to professionally handle 9-1-1 emergencies.

31. In addition, Defendant OCSO, as applicable, failed and refused to implement customs, policies, practices or procedures, and failed to train its personnel adequately on the appropriate policies, practices or procedures regarding the handling of 9-1-1 missing person calls. In so doing, Defendant OCSO knew that it was acting against the clear dictates of current law and knew that as a direct consequence of their deliberate decisions, the very situation that occurred -- *i.e.*, death to Miya Marcano -- in all reasonable probability would occur.

32. Defendants' actions demonstrate that before her death Miya Marcano was the victim of purposeful discrimination, either because of her race and/or gender, or due to an irrational or arbitrary state classification unrelated to a legitimate state objective.

33. Additionally, no rational basis existed for the OCSO's alleged policies of affording missing person less police protection or assistance than other crime victims or giving these victims less investigative attention than other victims.

34. In addition to the conduct described above, Paulino and Dale violated Miya Marcano's rights, *inter alia*, when they refused to conduct an adequate investigation at Miya Marcano's home, and abruptly left the premises while her life lay in the balance.

35. Upon information and belief, Paulino and Dale acted independently during some of the conduct or omissions complained of herein and within the general scope of their employment during other conduct or inaction.

36. Furthermore, unlike what officers Paulino and Dale did, no reasonably prudent police officer, under similar circumstances, (a) would have arrived at the scene of a serious incident, where there was a missing person, and refused to survey the entire premises; (b) intentionally refused to look through the windows, where they would have noticed that a physical confrontation had taken place inside; (c) failed to detain the primary suspect; and (e) refused to conduct any follow-up investigation.

37. Moreover, no reasonably competent official would have concluded that the actions of the OCSO, Paulino and Dale described herein would not violate Miya Marcano's rights.

38. The actions of Defendants have forced Plaintiffs to hire the undersigned attorneys and pay them a reasonable fee, which is recoverable pursuant to 42 USC 1988.

39. As a direct and proximate result of Defendants' conduct as set forth, Plaintiffs have suffered damages, including:

**a. Estate of Miya Marcano (Survival Claim).**

1. Conscious pain and mental anguish suffered by Miya Marcano prior to his death;
2. Funeral and burial expenses;
3. Lost net accumulations.

**b. Marlon Marcano (as wrongful death beneficiary of Miya Marcano).**

1. Mental anguish—the emotional pain, torment, and suffering experienced by Marlon Marcano because of the death of Miya Marcano—that Marlon Marcano sustained in the past and that he will, in reasonable probability, sustain in the future;

2. Loss of companionship and society—the loss of the positive benefits flowing from the love, comfort, companionship, and society that Marlon Marcano would have received from Miya Marcano had she lived—that Marlon Marcano sustained in the past and that he will, in reasonable probability, sustain in the future.
  3. Loss of support and services.
- c. Yma Su-Ling Scarbriel (as wrongful death beneficiary of Miya Marcano).**
1. Mental anguish—the emotional pain, torment, and suffering experienced by Yma Su-Ling Scarbriel because of the death of Miya Marcano—that Yma Su-Ling Scarbriel sustained in the past and that she will, in reasonable probability, sustain in the future;
  2. Loss of companionship and society—the loss of the positive benefits flowing from the love, comfort, companionship, and society that Yma Su-Ling Scarbriel would have received from Miya Marcano had she lived—that Yma Su-Ling Scarbriel sustained in the past and that she will, in reasonable probability, sustain in the future.
  3. Loss of support and services

**COUNT II – NEGLIGENCE - OCSO**

40. Plaintiffs reallege Paragraphs 1-19 and incorporate them herein.
41. OCSO had a duty to Plaintiffs and the public to properly train and supervise its deputies in the exercise of their law enforcement powers; and a special duty to Miya Marcano, having encountered a potential crime scene, to act in a reasonably prudent manner and to supervise its deputies to ensure that they acted in accordance with recognized law enforcement standards.
42. OCSO failed miserably in these duties as set forth supra.
43. Had OCSO exercised the most basic care in the supervision of its deputies as set forth, Miya Marcano would likely be alive today.
44. As a direct and proximate result of OCSO's negligence as set forth, , Plaintiffs have suffered damages, including:
  - a. Estate of Miya Marcano (Survival Claim).**
    1. Conscious pain and mental anguish suffered by Miya Marcano prior to his death;
    2. Funeral and burial expenses;
    3. Lost net accumulations.

- b. Marlon Marcano (as wrongful death beneficiary of Miya Marcano).**
1. Mental anguish—the emotional pain, torment, and suffering experienced by Marlon Marcano because of the death of Miya Marcano—that Marlon Marcano sustained in the past and that he will, in reasonable probability, sustain in the future;
  2. Loss of companionship and society—the loss of the positive benefits flowing from the love, comfort, companionship, and society that Marlon Marcano would have received from Miya Marcano had she lived—that Marlon Marcano sustained in the past and that he will, in reasonable probability, sustain in the future.
  3. Loss of support and services.
- c. Yma Su-Ling Scarbriel (as wrongful death beneficiary of Miya Marcano).**
1. Mental anguish—the emotional pain, torment, and suffering experienced by Yma Su-Ling Scarbriel because of the death of Miya Marcano—that Yma Su-Ling Scarbriel sustained in the past and that she will, in reasonable probability, sustain in the future;
  2. Loss of companionship and society—the loss of the positive benefits flowing from the love, comfort, companionship, and society that Yma Su-Ling Scarbriel would have received from Miya Marcano had she lived—that Yma Su-Ling Scarbriel sustained in the past and that she will, in reasonable probability, sustain in the future.
  3. Loss of support and services.

WHEREFORE, Plaintiffs demand judgment against Defendants for money damages, court costs, reasonable attorneys' fees, and all other relief the Court sees fit to grant after trial by jury on all issues so triable.

Respectfully submitted,

FEILER LEACH & CHONG  
Local Counsel for Plaintiffs  
901 Ponce de Leon Blvd., Suite 300  
Coral Gables, FL 33134  
Tel. (305) 441-8818 Fax (305)441-8018

By: /s/ Michael B. Feiler  
Michael B. Feiler  
Board Certified Civil Trial Lawyer  
Fla. Bar No. 98477  
[mbf@flmlegal.com](mailto:mbf@flmlegal.com)  
[arlene@flmlegal.com](mailto:arlene@flmlegal.com)

AND

By: /s/ Daryl K. Washington  
DARYL K. WASHINGTON  
State Bar No. 24013714  
**WASHINGTON LAW FIRM, P.C.**  
325 N. St. Paul St., Suite 3950  
Dallas, Texas 75201  
214 880-4883  
214-751-6685 - fax

(To be admitted pro hac)

Not Official  
Court  
Document