

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

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TAMMY KING,

Plaintiff,

Case No. 2:24-cv-00375-
JLB-KCD

- against -

**SECOND AMENDED
COMPLAINT**

LEE COUNTY, a political subdivision of the
State of Florida, CARMINE MARCENO, in
his official capacity as the Lee County Sheriff,
Deputy Sheriffs JAY BRETT, JASON WARD,
JOHNATHON ARMATO and MELQUIAS
OLIVO in their individual capacities,
MILLENIUUM PHYSICIAN GROUP, LLC,
FRANCISCO MARASIGAN, MD and
KRISTIN GUSTIN,

**JURY TRIAL
DEMANDED**

Defendants.

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TAMMY KING, by and through her attorney, HEUSER LAW FIRM, PA,
hereby complains of Defendants as follows:

I. PRELIMINARY STATEMENT

Ms. King brings suit to redress constitutional violations and other harms
inflicted upon her by the Lee County Sheriff's Office and Millenium Physicians
Group and employees and agents thereof. Specifically, as described in greater
detail herein, Ms. King sought medical advice and assistance regarding her
prescription regimen at the suggestion of a nurse acquaintance of hers, which set
into motion a series of events that caused her serious physical and emotional

injury, trauma, and deprivation of rights that shocks the conscience and should concern all Floridians. The flagrant disregard for the law exhibited by the Defendants herein is unacceptable in civil society. The events that unfolded are an affront to liberty and serve only to chill those desiring to seek treatment for mental health concerns and, therefore, must be dealt with swiftly and justly by this Court.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and over the pendent state law claims pursuant to 28 U.S.C. §1367.
2. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §1391(b)(1) and (2) and (c)(2) based upon defendants' place of business and residences, respectively, and the location where the events giving rise to the claim occurred.

III. PARTIES

3. Plaintiff TAMMY KING (hereinafter "Ms. King") is a 48 year old professional woman and mother. At all relevant times herein, Ms. King was a resident of Lee County, Florida.
4. Defendant LEE COUNTY is a political subdivision of the State of Florida and is sued herein pursuant *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978) in light of the official policies and customs it established, maintained, or permitted that gave rise to the constitutional

violations alleged herein. Lee County “is a ‘person’ subject to suit under section 1983.” *See, e.g., Wilk v. St. Lucie Cnty. Fla. Sheriff Off.*, 740 F. App'x 658, 662 (11th Cir. 2018).

5. Defendant CARMINE MARCENO (hereinafter referred to as “Defendant Marceno” or “the Sheriff”) is the Lee County Sheriff and is sued herein in his official capacity only. The Sheriff is a resident of Lee County, Florida.
6. Defendant JAY BRETT (hereinafter “Defendant Brett”) is a Deputy Sheriff and Corporal employed by Lee County and under the supervision of Defendant Marceno. Defendant Brett is sued herein in his individual capacity and, upon information and belief, is a resident of Lee County, Florida.
7. Defendant JASON WARD (hereinafter “Defendant Ward”) is a Deputy Sheriff employed by Lee County and under the supervision of Defendant Marceno. Defendant Ward is sued herein in his individual capacity and, upon information and belief, is a resident of Lee County, Florida.
8. Defendant JOHNATHON ARMATO (hereinafter “Defendant Armato”) is a Deputy Sheriff and Sergeant employed by Lee County and under the supervision of Defendant Marceno. Defendant Armato is sued herein in his individual capacity and, upon information and belief, is a resident of Lee County, Florida.

9. Defendant MELQUIAS OLIVO a/k/a MELQUIAS OLIVIO¹ (hereinafter “Defendant Olivio”) is a Deputy Sheriff and employed by Lee County and under the supervision of Defendant Marceno. Defendant Olivio is sued herein in his individual capacity and, upon information and belief, is a resident of Lee County, Florida.

10. Defendant MILLENIUM PHYSICIAN GROUP, LLC (hereinafter “Millenium Physician Group”) is a corporation duly organized pursuant to the laws of the State of Florida. The principal office of Millenium Physician Group is located in Lee County, Florida, as is the office of Millenium Physician Group where Ms. King was seen as a patient, then falsely arrested and assaulted, as described herein.

11. Defendant FRANCISCO MARASIGAN, MD (“Defendant Marasigan”) is a medical doctor employed by or otherwise affiliated with Millenium Physician Group. Upon information and belief, Defendant Marasigan is resident of Lee County, Florida.

12. KRISTIN GUSTIN (“Defendant Gustin”) is an Advance Practice Registered Nurse that is (or at all relevant times was) employed by or otherwise

¹ The Deputy Sheriff’s name is Melquias Olivio. He was improperly named in the original complaint as Melquias Olivo due to a typographical error.

affiliated with Millenium Physician Group. Upon information and belief, Defendant Gustin is a resident of Lee County, Florida.

**IV. BACKGROUND AND OTHER FACTS
APPLICABLE TO MULTIPLE CAUSES OF ACTION**

Defendant Gustin Lures Ms. King to Millenium Physician Group

13. Ms. King became acquainted with Defendant Gustin while the two played together in an adult kickball league in Lee County, Florida.
14. The league met once per week and participants often went out socially following the conclusion of the kickball games.
15. Defendant Gustin and Ms. King developed a casual friendship and had many conversations.
16. At times, the two discussed personal matters. In this context, Ms. King shared with Ms. Gustin that she was frustrated with the medical care in Florida because she has been unable to find a doctor willing to prescribe the medication she had been taking since her diagnosis with Attention Deficit Hyperactivity Disorder approximately seven years prior when she resided in another state.
17. Defendant Gustin advised Ms. King that she is a Nurse Practitioner and worked at the Saint James City office of Millenium Physician Group. Defendant Gustin advised Ms. King that she should come see her in the

office and that Defendant Gustin would be able to assist Ms. King in correcting her prescription regimen.

Events at Millenium Physician Group Leading Up to the Unlawful Seizure of Ms. King

18. On March 24, 2023, Ms. King went to her scheduled appointment at Millenium Physician Group.

19. Defendant Gustin took Ms. King into a room and the two of them talked about Ms. King's medical history and prescription regimen.

20. Ms. King, thinking she was talking with not only a medical professional but also a trusted friend and confidant, shared with Defendant Gustin that she had been suffering feelings of sadness and depression due to the devastation caused to her home by Hurricane Ian that was still not fully remediated and the related financial stress, the distance between she and her boyfriend who continued to reside in the State of New York, and that her adult sons had gotten into an argument with each other the night before.

21. Defendant Gustin asked Ms. King if she felt like hurting herself and Ms. King responded unequivocally "no".

22. Ms. King was getting ready to leave the appointment to go to a lunch date with a friend and a pre-scheduled dental appointment following lunch.

23. However, Defendant Gustin discouraged Ms. King from leaving and going about her day. Defendant Gustin strongly urged Ms. King to go to a nearby

facility that Defendant Gustin described as a wonderful place where they would listen to Ms. King and help restore her emotional and mental health including getting her onto the proper medication regimen.

24. Ms. King agreed. She trusted and was willing to heed her friend's advice and recommendation.

25. Ms. King prepared once again to leave the office and drive to Park Royal Hospital, but Defendant Gustin once again intervened. Defendant Gustin told Ms. King (in sum and substance): YOU HAVE BEEN CRYING AND YOU SHOULD NOT DRIVE IN THIS EMOTIONAL STATE. I CAN ARRANGE A RIDE TO THE HOSPITAL FOR YOU.

26. Ms. King felt she was capable of driving, but acquiesced to her friend's offer to arrange a car service to the facility.

Lee County Sheriff's Deputies Arrive on the Scene and Effect the Arrest of Ms. King

27. Defendant Gustin escorted Ms. King outside where the two waited and chatted. Then, a marked Lee County Sheriff's patrol car arrived.

28. Defendant Brett parked and exited the vehicle. Ms. King asked Defendant Gustin if that was the "ride" she had arranged. Defendant Gustin confirmed that it was but reassured Ms. King that this was normal and there was no need for concern. Ms. King thought it was odd that a Sheriff's Deputy was effectively providing what she understood at the time to be the equivalent of

a taxi service, but still trusted Defendant Gustin as a medical professional and friend.

29. Ms. King told Defendant Gustin and Defendant Brett that she needed to use the bathroom before the drive to the hospital and would be right back.

30. Ms. King entered the ladies room and began to unbutton and unzip her pants in preparation to sit on the toilet. Defendant Brett rushed into the bathroom behind Ms. King and demanded that Ms. King give him her purse.

31. Ms. King, confused, asked why.

32. Ms. King still at that point believed that Defendant Brett was there only to give her a courtesy ride to the hospital that she had agreed to go to upon her friend's recommendation.

33. Rather than respond to her question, Defendant Brett grabbed at Ms. King's purse and attempted to yank it away from her. Instinctively, Ms. King held on tighter to what Defendant Brett was trying to grab.

34. Defendant Brett then loudly, verbally demanded that Ms. King give him the purse. Ms. King then relented and released the purse, which, due to the force with which Defendant Brett had been tugging, caused the purse to hit Defendant Brett in the chest.

35. Seemingly enraged, Defendant Brett slammed Ms. King up against the bathroom wall, put a handcuff around her right wrist, then sprayed

something (later learned to be pepper spray) in her face three times, which caused Ms. King to be blinded and her eyes to burn and experience pain as she was pinned up against the wall by Defendant Brett.

36. Defendant Brett then handcuffed Ms. King's other wrist tightly behind her back as Ms. King cried and screamed in pain, coughing, trying to choke out a plea for help as she fell to the ground.

37. All of this commotion and shock, coupled with Ms. King's full bladder that had prompted her to go to the restroom in the first place, caused Ms. King to urinate on herself.

38. Defendant Brett then yanked Ms. King to her feet, dragged her out of the building and placed her into his patrol car.

39. Upon information and belief, the source of which is the Internal Affairs Bureau of the Lee County Sheriff's Office, Defendants Armato and Ward were present at the subject Millennium Physician Group office at some point during the events described herein. Specifically, also upon information and belief, Defendant Ward was present in a supervisory capacity.

The Seizure and Sadistic Abuse of Ms. King Continues for Over 4.5 Hours

40. Ms. King could feel someone pouring liquid onto her head but it did not cause her relief from the burning and pain because she was sweating and her

hair was in her face so the pepper spray continued to remain or return to her eye area.

41. Ms. King continued to ask, “WHAT DID I DO?” and “WHAT IS GOING ON?”, but her questions were not answered. She was confused and distraught and did not understand why her “friend” was not coming to her aid.

42. After a period of time spent handcuffed in the back of Defendant Brett’s police vehicle while hot, sweating, unable to see and suffering from the other effects of the pepper spray in the parking lot of Millenium Physician Group, the police vehicle drove off with Ms. King.

43. The vehicle came to a stop in what Ms. King – now partially, but still barely, able to see – perceived to be a grocery store parking lot on Pine Island.

44. Ms. King was extremely fearful of what further harm Defendant Brett intended to inflict upon her.

45. Still not having been informed why she had been assaulted, pepper sprayed, handcuffed and effectively arrested, Ms. King again asked Defendant Brett what was going on.

46. Defendant Brett responded to Ms. King’s earnest and tearful question by shouting at her (in sum and substance): SHUT UP BITCH! YOU ARE LUCKY I DON’T TASE YOU!

47. Ms. King pleaded with Defendant Brett stating in sum and substance:

PLEASE, WHAT DID I DO?

48. Defendant Brett exited the vehicle and proceeded to open the rear door. Ms. King willed up with fear and despair anticipating what Defendant Brett was going to do to her.

49. Seemingly taking delight in the situation, Defendant Brett mockingly stated to Ms. King: YOU HAVE SNOT HANGING OUT OF YOUR NOSE. SMILE FOR THE PICTURE! EVERYONE IN THE DOCTOR'S OFFICE WAS LAUGHING AT YOU. He proceeded to take Ms. King's picture while she was in a disheveled as he laughed.

50. Ms. King remained quiet. She is of small stature (5'2"), her hands were handcuffed behind her, her vision was severely impaired. She was petrified of what would happen next. She envisioned herself next being beaten or raped by Deputy Brett as she sat helpless in that parking lot, entirely at his mercy.

51. After spending hours in fear and pain in the parking lot with Defendant Brett and the arrival and departure of another police vehicle, a police van arrived from which another law enforcement officer emerged. Upon information and belief, this individual is Defendant Olivio.

52. Defendant Brett handed Ms. King off to Defendant Olivio, who proceeded to move Ms. King's handcuffs from the back to the front of her body and place shackles on her ankles.

53. Defendant Olivio placed Ms. King into what is believed to be a Lee County Department of Corrections van. Ms. King was absolutely petrified but had no will or wherewithal to put up any resistance whatsoever after the ordeal she had been through; she was covered in urine and vomit (likely caused by heatstroke from being in the parking lot for so long, hot, and without any water to drink) and utterly exhausted.

54. Ms. King suffered additional pain from the ankle shackles having been secured so tightly around her ankles. They dug into her bare skin.

55. Ms. King was placed into a small metal box within the van, like a caged animal. There was no seatbelt. She had no ability to brace herself since her limbs were restrained, so she was thrown about in the metal box with every movement of the van.

56. Defendant Olivio at one point during the ride asked Ms. King if she was okay. She responded that she is not okay, but no action was taken by Defendant Olivio to improve her conditions. Ms. King continued to be thrown to and fro, slammed against the metal walls with every turn of the

van. She was not given water and urinated on herself again in the van, and was left in that condition.

57. The van made a stop and picked up two men. The men heard Ms. King crying in the segregated box. The van made another stop to drop these men off.

58. There was no urgency demonstrated by Defendant Olivio (nor Defendant Brett before him) whatsoever to get Ms. King to her nearby destination. Rather, the trip was unnecessarily prolonged.

59. Ms. King was in excruciating pain. She had shoulder surgery the year prior to this event and a spinal fusion in 2015, so the slamming of her body back and forth against the walls of the metal cage and arm and leg restraints may have caused her greater pain than it would others.

Defendant Olivio Delivers Ms. King Outside of Park Royal Hospital

60. After driving around for hours with Ms. King, the van finally arrived at Park Royal Hospital.²

61. Defendant Olivio removed Ms. King's ankle shackles prior to removing her from the van.

² Based upon public records obtained from the Lee County Sheriff's Office and Park Royal Hospital, a total of approximately 4.5 hours elapsed from the time Ms. King was taken into custody by Defendant Brett until she was deposited at Park Royal Hospital by Defendant Olivio.

62. Defendant Olivio delivered Ms. King at the door of Park Royal Hospital and left.

Ms. King's Injuries and Treatment Received During Her Involuntary Confinement at Park Royal Hospital

63. Hospital staff poured milk into Ms. King's eyes, which finally began to alleviate the effects of the pepper spray that Ms. King had been experiencing for nearly five hours at that point.

64. Ms. King was admitted to the hospital and it was deemed an involuntary admission, according to hospital records.

65. Ms. King was bruised all over her body and was administered continuous Toradol injections, Robaxin, and Motrin by hospital staff for her extreme pain.

66. Ms. King was severely bruised and had lacerations and markings on her body from the wrist and ankle restraints. Ms. King and her sister requested that photographs be taken, but that request was denied by the hospital.

67. Ms. King's nose bled heavily and unrelentingly for a day and half, which Ms. King attributes to the pepper spray.

68. Ms. King was sedated and barely able to move for what she estimates to be 3-4 days in Park Royal Hospital.

69. Ms. King was denied visits with her family during her confinement at Park Royal Hospital, causing her to be deprived of the aid of loved ones, thereby prolonging her physical suffering and exacerbating her emotional distress.

Ms. King Learns of the Baker Act for the First Time, and is Released from Confinement Upon Seeking Judicial Review

70. Another patient told Ms. King that she had been “Baker Acted”, which was the first time Ms. King had ever heard that term.

71. After filing court forms that were provided to her by hospital staff but prior to any court hearing being held, Ms. King was spontaneously released from confinement.

Financial Damages Sustained by Ms. King as a Result of The Events Described Herein

72. Due to her unexplained absence from work and the refusal of Defendants Gustin, Marasigan, and Millenium Physician Group to sign off on paperwork Ms. King requested their signature on to excuse that absence pursuant to the Family and Medical Leave Act, Ms. King was terminated from her employment. Due to the post-traumatic stress she suffered following the events described herein together with the harm to her reputation, Ms. King remained unemployed for approximately six (6) months following the incident until she finally found transitory employment that is not based in the State of Florida.

Satisfaction of Statutory Notice Requirements

73. Ms. King has satisfied the pre-suit notice requirement imposed by Section 768.28, Florida Statutes.

V. CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION
UNLAWFUL SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT
TO THE U.S. CONSTITUTION (via 42 U.S.C. §1983)
Against Defendants Brett, Ward, Armato, and Olivio

74. Plaintiff repeats and realleges the facts set forth in paragraphs 6 through 9 and 18 through 72 above as though fully alleged in connection with the above-stated cause of action.

75. Public records reflect that Defendants justify their seizure of Ms. King's person based upon the Baker Act.

76. "[U]nder the Baker Act, probable cause must have existed—evidenced by Plaintiff's recent behavior—to believe that a 'substantial likelihood' existed that Plaintiff would cause 'serious bodily harm' to himself or to others in the near future. This standard is a high one: for example, a reasonable belief about 'some likelihood,' 'might cause' 'some kind of bodily harm,' 'at some point in the future' is not good enough for probable cause to deprive a person of their freedom.:" *S.P. v. State*, 331 So. 3d 883, 888 (Fla. Dist. Ct. App. 2022) quoting *Watkins v. Bigwood*, 797 Fed. Appx. 438, 442 (11th Cir. 2019).

77. Defendants will not be able to meet this high burden to survive constitutional scrutiny of their seizure of Ms. King's person as Ms. King did not pose any threat of harm to herself or others and no facts or circumstances existed at the time of her seizure to support a finding of "substantial likelihood" that she would.

78. Further, as Ms. King had voluntarily agreed to undergo examination at Park Royal Hospital, seizure of her person pursuant to the Baker Act was unwarranted and unlawful. *See* § 394.463(1), Florida Statutes.

79. Defendant Olivio's ongoing seizure of Ms. King's person was without just cause and also violated the clearly established rights of Ms. King.

AS AND FOR A SECOND CAUSE OF ACTION
EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AND
FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION
(via 42 U.S.C. §1983)
Against Defendants Brett, Ward, Armato and Olivio

80. Plaintiff repeats and realleges the facts set forth in paragraphs 6 through 9 and 18 through 72 above as though fully alleged in connection with the above-stated cause of action.

81. Defendant Brett used excessive force against Ms. King prior to and in the process of the seizure of her person as described hereinabove.

82. Defendant Brett also used excessive force against Ms. King following the seizure of her person while Ms. King was in Defendant Brett's custody.

83. Defendant Olivio also used excessive force against Ms. King during the time Ms. King spent in his custody and/or exhibited deliberate indifference to the harm and injury Ms. King suffered during that time.

84. The degree of force used by Defendant Brett and sanctioned by Defendants Ward and Armato prior to and in effectuating the seizure/arrest of Ms. King was excessive and unreasonable in that Ms. King committed no crime posed no safety threat to Defendants or herself or anyone else, and was neither resisting nor attempting to evade “arrest” or transport (to the contrary, Ms. King had voluntarily agreed to be transported by Defendant Brett).

85. There was absolutely no need for force to be used by Defendant Brett under the circumstances, and, even if one were to conclude there was a need for some degree of force, the use of pepper spray that burned and blinded Ms. King, slamming her body and head into a wall, cuffing her tightly, dragging her, and leaving her in a vehicle in a parking lot with no apparent purpose other than to inflict further suffering was excessive and caused Ms. King extreme injury and pain.

86. Defendants Ward and Armato are also culpable for the violation of Ms. King’s clearly established right described herein based upon their respective failure to intervene to protect Ms. King.

87. The use of handcuffs while being transported in the police vehicle by Defendant Brett, and later handcuffs and shackles while being transported by Defendant Olivio constitute an unreasonable and excessive use of force because Ms. King was confined alone and without access to any objects in a locked vehicle compartment on both occasions so posed no danger to anyone. *See, e.g., Lee v. Ferraro*, 284 F.3d 1188, 1197–98 (11th Cir. 2002).

88. The handcuffs re-aggravated and exacerbated Ms. King's shoulder injury. As a direct result of the handcuffing, Ms. King continues to suffer from debilitating shoulder pain today, which had previously been dormant following her surgery.

89. As described above, the ankle shackles placed on Ms. King dug into her skin and caused lacerations, bruising, and substantial pain.

90. The combination of wrist and leg restraints while being transported in a metal box in the van without a seatbelt caused bruising and extreme pain all over Ms. King's body, which she still suffers the effects of today.

91. In addition to physical injury, the psychological injury and trauma caused to Ms. King – who committed no crime and voluntarily went to the doctor's office at the suggestion of a perceived friend based upon their conversation about stressors in Ms. King's life following Hurricane Ian – by the use of force described herein was immense. This is a relevant factor that weighs in

Plaintiff’s favor in the excessive force analysis. *See, Id.; see also Digennaro v. Malgrat*, No. 4:20-cv-10094, 2021 WL 3025322 (S.D. Fla. June 14, 2021) (J. Moore).

AS AND FOR A THIRD CAUSE OF ACTION
UNLAWFUL SEARCH IN VIOLATION OF THE FOURTH AMENDMENT
TO THE U.S. CONSTITUTION (via 42 U.S.C. §1983)
Against Defendants Brett, Ward, and Armato

92. Plaintiff repeats and realleges the facts set forth in paragraphs 6 through 9 and 27 through 39 above as though fully alleged in connection with the above-stated cause of action.

93. The Fourth Amendment right of a person to be free from unreasonable searches “most frequently arises in the context of criminal investigations; but it also applies when, as here, the State's law enforcement officers are engaged in a noncriminal function.” *Caniglia v. Strom*, — U.S. —, 141 S. Ct. 1596, 1600-01, 209 L.Ed.2d 604 (2021) (Alito, J., concurring) (footnote omitted) (citations omitted) *citing City of Ontario, Cal. v. Quon*, 560 U.S. 746, 755–56, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010).

94. While Ms. King was secured in the rear of his police vehicle, Defendant Brett searched Ms. King’s purse and wallet, removed her prescription pill bottles, placed them on the hood of his police vehicle and photographed them. As a result, Ms. King’s personal medical information is now a public record and her private health matters are publicly available.

95. This unlawful search was validated by the subsequent signature of Defendants Armato and/or Ward.

96. Defendants Ward and Armato are also culpable for the violation of Ms. King's clearly established right described herein based upon their respective failure to intervene to protect Ms. King.

97. As Ms. King was not formally arrested, the search cannot be justified as a search incident to lawful arrest. *See, S.P. v. State*, 331 So. 3d 883, 889–95 (Fla. Dist. Ct. App. 2022).

98. A policy permitting such a search incident to a Baker Act seizure likewise does not justify this unconstitutional search. *Id.* quoting *Canglia, supra* (“Local law enforcement agency policies may be indicative of whether a search occasioned by a noncriminal seizure is reasonable, but they do not dictate ipso facto the parameters of the Fourth Amendment.”)

99. Nor can the search be justified on safety grounds as Ms. King was handcuffed in the back of a police vehicle at the time of the search. *Id.*

100. Defendants did not possess a warrant for the search of Ms. King's belongings.

AS AND FOR A FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTH AMENDMENT TO THE U.S.
CONSTITUTION BASED UPON OFFICIAL POLICY OR CUSTOM
(*Monell* Claim via 42 U.S.C. §1983)
Against Defendants Marceno and Lee County

101. Plaintiff repeats and realleges the facts set forth in paragraphs 3 through 12, 18 through 72, 75 through 79, 81 through 90, and 93 through 100 above as though fully alleged in connection with the above-stated cause of action.

102. Much of the conduct of the individually-named law enforcement officer Defendants described hereinabove, which violated the rights of Plaintiff secured by the Fourth Amendment to the United States Constitution, occurred pursuant to official policy and custom of the Sheriff and Lee County.

103. Upon information and belief, the source of which are public records obtained from the Lee County Sheriff's Office, the following are relevant excerpts from the Sheriff's policy on responding to calls involving a mental health issue:

- It is essential for the safety of the deputies, criminal justice personnel, and healthcare professionals that arrestees and in-custody persons are thoroughly searched for weapons or other means of inflicting injury or death.
- Deputies must conduct complete body searches to prevent the arrestee or in-custody person from hiding essential evidence, illegal contraband, or weapons that could be used to injure the deputy, health care professional, or in-custody person. Precautions must be observed to protect the deputy from undue allegations regarding an invasion of privacy or indecent conduct. Any in-custody persons who are being transported on an involuntary basis to a mental

health facility shall be handcuffed for the protection of the patient and others.

- A law enforcement deputy may require the admission of a person to a receiving facility if he or she has reason to believe that the person is mentally ill and is likely to physically injure himself or others if he/she is not immediately detained.
 1. Factors to be considered in determining the existence of these criteria include, but are not limited to:
 - A. The person has attempted, or is in the process of committing suicide.
 - B. A person is in the process of doing physical harm to himself or others by starvation, torture, or living in conditions which create a great imminent danger to the health, safety or welfare of the person.
 - C. The person is under extreme stress.
 - D. The person suffers from hallucinations.
 - E. The person is hysterical
 - F. The person requests mental health treatment.
- All in-custody persons shall be searched for weapons and contraband prior to being transported by a deputy. In-custody persons of the opposite gender of the deputy shall be searched as described below. In-custody persons shall be searched each time they come into a deputy's custody for transport, including transfers from other deputies or agencies. Deputies shall never assume that someone else has completed a search.
 1. The search shall include, but is not limited to: (CALEA 1.2.4 G, 71.1.1)
 - A. A pat-down of all body and clothing surfaces, and
 - B. An inspection of all clothing pockets, shoes, socks, purse, etc., where a weapon or contraband could readily be concealed.

- In-custody persons who are being involuntarily transported will be handcuffed prior to being searched.
- Any weapon, dangerous article or contraband discovered during a search shall immediately be seized. Contraband, weapons or dangerous articles shall be documented, entered as evidence and secured in accordance with applicable policy. All other property shall be transported with the subject and turned over to receiving facility personnel. (*CALEA 83.2.1*)
- Under no circumstances shall an in-custody person be secured to any portion of a vehicle.
- Restraints shall remain affixed to the in-custody person until secured in a holding cell.

104. These policies constitute deliberate indifference towards the constitutional (specifically, Fourth Amendment) rights of persons dealing with or perceived to be dealing with mental health issues with whom the Sheriff or Sheriff's Deputies come into contact.

105. Defendants Marceno and Lee County recognized that their policies and customs related to enforcement of Baker Act seizures, transports, and confinements led to Sheriff's Deputies routinely running afoul of the Constitution, and for that reason (upon information and belief) revised the relevant policy documents following this incident and the ensuing investigation by the Lee County Sheriff's Internal Affairs Bureau.\

AS AND FOR A FIFTH CAUSE OF ACTION
VIOLATION OF THE FOURTH AMENDMENT TO THE U.S.
CONSTITUTION BASED UPON FAILURE TO TRAIN
(*Monell* Claim via 42 U.S.C. §1983)
Against Defendants Marceno and Lee County

106. Plaintiff repeats and realleges the facts set forth in paragraphs 3 through 12, 18 through 72, 75 through 79, 81 through 90, and 93 through 100 above as though fully alleged in connection with the above-stated cause of action.

107. While some instances of the individually-named law enforcement officer Defendants' constitutionally-violative conduct was undertaken pursuant to official policy or custom of Lee County and the Sheriff, in other instances said Defendants' conduct is reflective of a lack of knowledge or adherence to established policy.

108. Upon information and belief, the deviation from policy by the individually-named law enforcement officer Defendants in their interactions with Ms. King were caused by Defendant Marceno's and Lee County's failure to properly and adequately train said Defendants.

109. For example, the (relevant) official policy of the Lee County Sheriff's Office at the time of the events described herein was:

- Seat belts shall be used to prevent injury in the event of an accident or emergency stop.
- Deputies shall maintain control of in-custody persons at all times. In-custody person transportation shall not be interrupted to render law enforcement services except in situations where there is imminent danger to third parties

and the service can be rendered with a minimum of danger to the in-custody person and/or risk of escape. The tactical situation and the safety and security of the in-custody person shall be the first concern of the transport deputy. Examples: another deputy requests help, back up is unavailable and the transporting deputy is in close proximity; the deputy comes on the scene of an accident with serious injuries or death.

110. Further, as it pertains to physician-requested transports, the official policy of the Lee County Sheriff's Office at the time of the incidents described herein includes:

- The deputy will ascertain if the doctor has seen the patient in the last 48 hours.
- If the doctor has not seen the patient within the last 48 hours, the physician will be advised that the determination to involuntarily commit will be made based on the deputy's observation. If the subject does not meet the necessary requirements, there will be no commitment.

111. The above-policies notwithstanding, the individually-named law enforcement officer Defendants did not secure Ms. King in a seatbelt, stopped multiple times and for extended periods of times with no emergent reason (or ascertainable reason whatsoever), and did not confirm that Ms. King had been seen by the doctor that had purportedly signed the Mental Health Act form. These actions by said Defendants evince a lack of training.

112. The Sheriff's and Lee County's failure to properly and adequately train law enforcement officers in protecting the constitutional rights of all people when dealing with mental health and Baker Act related calls amounts to deliberate indifference by the Sheriff and Lee County towards the

constitutional rights of persons with whom the Sheriff and his deputies come into contact.

113. The need for this type of training is or should have been evident to the Sheriff and Lee County since these types of encounters are abundant and increasing, and were heightened at the time of the incidents described herein due to the effects of Hurricane Ian on the mental health of the impacted population of Lee County.

AS AND FOR A SIXTH CAUSE OF ACTION
DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS OF LAW IN
VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U.S.
CONSTITUTION BASED UPON OFFICIAL POLICY OR CUSTOM
(*Monell* Claim via 42 U.S.C. §1983)
Against Defendants Marceno and Lee County

114. Plaintiff repeats and realleges the facts set forth in paragraphs 3 through 12, 18 through 72, 75 through 79, 81 through 90, and 93 through 100 above as though fully alleged in connection with the above-stated cause of action.

115. “[A] deprivation of liberty by commitment to a mental institution cannot be accomplished without due process of law.” *Jordan v. State*, 597 So.2d 352, 353 (Fla. 1st DCA 1992) (citing *O'Connor v. Donaldson*, 422 U.S. 563, 580, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975); *Shuman v. State*, 358 So.2d 1333 (Fla. 1978); *In re Beverly*, 342 So.2d 481 (Fla. 1977)).” *Doe v. State*, 217 So. 3d 1020, 1025 (Fla. 2017).

116. Ms. King was involuntarily confined to Park Royal Hospital without being afforded due process of law in violation of the Fourteenth Amendment to the United States Constitution.
117. This violation of Ms. King's right to due process occurred as a result of the policy and custom of Lee County and Sheriff Marceno in carrying out Baker Act seizures, transports and placements without due care for the constitutional rights of the subjects of the seizure and confinement.
118. Further, under the circumstances of Ms. King's particular situation, the post-deprivation remedy provided by the Baker Act proved insufficient.

AS AND FOR AN SEVENTH CAUSE OF ACTION
NEGLIGENCE PER SE FOR VIOLATION OF F.S. 394.463
Against Defendants Brett, Ward, Armato,
Millenium Physician Group, Marasigan, and Gustin

119. Plaintiff repeats and realleges the facts set forth in paragraphs 3 through 73 above as though fully alleged in connection with the above-stated cause of action.
120. Section 394.463, Florida Statutes, reads (in relevant part):
- (1) Criteria.**--A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:
- (a) 1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or
 - 2. The person is unable to determine for himself or herself whether examination is necessary; and
 - (b) 1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real

and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) Involuntary examination.--

(a) An involuntary examination may be initiated by any one of the following means:...

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to [s. 394.462](#) for examination...

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under [s. 464.0123](#), a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to [s. 394.462](#) for involuntary examination...

* * *

(5) Unlawful activities relating to examination and treatment; penalties.--

(a) A person may not knowingly and willfully:

1. Furnish false information for the purpose of obtaining emergency or other involuntary admission of another;
2. Cause or otherwise secure, or conspire with or assist another to cause or secure, any emergency or other involuntary procedure of another person under false pretenses; or
3. Cause, or conspire with or assist another to cause, without lawful justification, the denial to any person of any right accorded pursuant to this chapter.

(b) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in [s. 775.082](#) and by a fine not exceeding \$5,000.

121. Defendants Brett, Ward, Armato, Millenium Physician Group, Marasigan, and Gustin violated the Baker Act in that Ms. King voluntarily agreed to go to Park Royal Hospital for examination and possible treatment, so there was no basis or justification for said Defendants to coordinate with one another to effectuate the involuntary transport to and examination by the facility.
122. Notwithstanding Ms. King's voluntary consent to transport and examination, public records reveal a Certificate of Professional Initiating Involuntary Examination executed by Defendant Marasigan. Yet, Defendant Marasigan never examined, evaluated, or spoke with Ms. King.
123. The form contained false information and attributed statements, thoughts, and feelings to Ms. King that she never in fact thought or felt or communicated to Defendant Gustin.
124. Upon information and belief, Defendant Gustin wrote false information on the form and then either forged Defendant Marasigan's signature or Defendant Marasigan signed the form containing false information in violation of applicable law and ethical standards governing the practice of medicine.
125. Defendants Brett, Ward, and Armato neither independently ascertained, investigated nor concluded that Ms. King met the criteria for

involuntary examination nor ensured that the criteria for involuntary examination was adhered to by a medical professional (i.e., that the certificate for involuntary commitment was executed by a qualified medical professional that had examined Ms. King within the last 48 hours).

126. Upon information and belief, Defendant Millenium Physician Group encouraged and/or permitted its employees to engage in these deceptive and fraudulent practices to confine patients to Park Royal Hospital.

127. Defendants Brett, Ward, Armato, Marasigan, Gustin, and Millenium Physician Group conspired with or assisted one another to cause or secure the involuntary examination/commitment of Plaintiff under false pretenses in violation of Florida Statute and, in doing so, acted outside the course and scope of their employment and/or in bad faith and/or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights and safety.

128. Further, in violating the specified provisions of the Baker Act in the manner herein described, said Defendants caused the type of harm that these provisions were intended to prevent caused injury (detailed elsewhere in this Complaint) to Ms. King who is a member of the class of persons intended to be protected by these provisions of law.

129. The “involuntary commitment procedures [of the Baker Act] do not involve the rendering of medical care or services, [so a plaintiff alleging violation of this provision of law] is not required to comply with the medical malpractice screening requirements...” *Liles v. P.I.A. Medfield, Inc.*, 681 So. 2d 711, 712 (Fla. Dist. Ct. App. 1995).

AS AND FOR AN EIGHTH CAUSE OF ACTION
FALSE IMPRISONMENT BASED ON BAKER ACT
Against Defendants Marceno, Brett, Ward, Armato, Olivio, Millenium
Physicians Group, Gustin, and Marasigan

130. Plaintiff repeats and realleges the facts set forth in paragraphs 3 through 73 and 119 through 128 above as though fully alleged in connection with the above-stated cause of action.

131. Ms. King was deprived of her liberty when unlawfully taken into custody for involuntary Baker Act examination as described hereinabove. This constitutes false imprisonment. *See, e.g., Thuan Viet Doan v. United States*, No. 18-21841-CIV, 2018 WL 4953353, at *3 (S.D. Fla. Oct. 12, 2018).

132. In carrying out the false imprisonment of Ms. King, Defendants acted in bad faith and/or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights and safety.

AS AND FOR A NINTH CAUSE OF ACTION
NEGLIGENT HIRING
Against Millenium Physician Group

133. Plaintiff repeats and realleges the facts set forth in paragraphs 10 through 28, 40 through 41, 70 through 72 and 119 through 128 above as though fully alleged in connection with the above-stated cause of action.

134. Defendant Millenium Physician Group knew or should have known at the time of hiring of Defendants Marasigan and Gustin of their unfitness to serve in the medical profession including lack of practical knowledge and lack of adherence to ethical standards.

135. Millenium Physician Group owed a duty of care to all of its patients and prospective patients to ensure that its employees and independent contractors it engages to provide medical services on its behalf were fit to do so.

136. Upon information and belief, Millenium Physician Group failed to ensure that Defendant Marasigan and Defendant Gustin were trained, competent, and ethical medical professionals that would adhere to the prescribed standard of care in all instances while carrying out the duties of their employment.

137. Millenium Physician Group's negligent hiring practices resulted in Ms. King sustaining serious physical injuries and severe emotional trauma as described elsewhere in this Complaint.

AS AND FOR AN TENTH CAUSE OF ACTION
NEGLIGENT RETENTION AND SUPERVISION
Against Millenium Physician Group

138. Plaintiff repeats and realleges the facts set forth in paragraphs 10 through 28, 40 through 41, 70 through 72 and 119 through 128 above as though fully alleged in connection with the above-stated cause of action.

139. Defendant Millenium Physician Group owed a duty of care to all of its patients and prospective patients to ensure that its employees and independent contractors it engages to provide medical services on its behalf were fit to do so. This duty existed not only at the time of hiring but at all times during the employment of any given employee or independent contractor.

140. Millenium Physician Group knew or should have known of Defendant Marasigan's and Defendant Gustin's respective unfitness as employees due to their repeated unethical conduct and lackadaisical attitude towards standards of care governing the medical profession.

141. In spite of this, Defendant Millenium Physician Group failed to take action to sufficiently reprimand either Defendant Marasigan or Defendant Gustin to rectify their misconduct or terminate their employment.

142. Instead, Millenium Physician Group left Defendant Marasigan and Defendant Gustin to run the entire Saint James City office without adequate supervision.

143. Millenium Physician Group's failure to adequately or properly supervise Defendants Marasigan or Gustin and/or its failure to terminate the employment of these Defendants resulted in the serious physical and psychological harm and trauma caused to Ms. King described elsewhere in this Complaint.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
Against Defendants Marceno, Brett, Ward, Armato, Olivio,
Millenium Physicians Group, Gustin, and Marasigan

144. Plaintiff repeats and realleges the facts set forth in paragraphs 3 through 73, 88 through 91, and 120 through 128 above as though fully alleged in connection with the above-stated cause of action.

145. In the manner described herein, Defendants deliberately or recklessly caused Ms. King severe mental suffering.

146. None of the Defendants had any regard for the impact their actions would have upon Ms. King and her mental or emotional state.

147. Ms. King exhibited sadness that was reasonable and expected under the circumstances of her life at the time, and she sought and was receiving treatment for her mental health. Defendants' conduct purportedly in response to this relatively mild condition was extreme, outrageous, and utterly intolerable in civilized society.

148. Rather than aid in the improvement of her mental health or promoting the health, safety, and welfare of Ms. King or the community, Defendants' actions have caused Ms. King severe emotional distress and caused her mental health to markedly deteriorate.

149. To be clear, at all relevant times herein, Defendants acted outside the course and scope of their employment and/or in bad faith and/or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights and safety.

150. As a result of Defendants' actions, Ms. King suffered worsened depression, fear, anxiety, nightmares, sleeplessness, loss of hope, loss of trust in law enforcement and medical professionals, and to suffer from ongoing symptoms of post traumatic stress disorder for which she is under the care of a mental health professional.

VI. RELIEF SOUGHT

WHEREFORE, Plaintiff respectfully requests that this Court issue an Order awarding the following relief:

- (i) Declaring that Defendants Lee County, Marceno, Brett, Ward, Armato and Olivio violated the Fourth and Fourteenth Amendment of the United States Constitution by their unlawful search and seizure of Ms. King and deprivation of liberty without due process of law; and,
- (ii) Ordering Defendants Lee County and Marceno to overhaul their training materials and policies as it pertains to implementation of the Baker Act, and monitoring and regulating the Sheriff's (and his deputies') compliance therewith; and,
- (iii) Two Million Dollars (\$2,000,000.00) in compensatory damages to Plaintiff on each of the First through Sixth Causes of Action, for a total of Twelve Million Dollars (\$12,000,000.00) on those causes of action; and,
- (iv) One Hundred Million Dollars (\$100,000,000.00) to Plaintiff in punitive damages on the First through Sixth causes of action; and,
- (v) Two Hundred Thousand Dollars (\$200,000.00) in total damages to Plaintiff against Defendant Marceno collectively on the causes of action emanating from state law; and,

- (vi) Two Hundred Thousand Dollars (\$200,000.00) in total damages to Plaintiff against Defendant Lee County collectively on the causes of action emanating from state law; and,
- (vii) Ten Million Dollars (\$10,000,000.00) in compensatory damages to Plaintiff against Defendant Millenium Physician Group; and,
- (viii) One Million Dollars (\$1,000,000.00) in compensatory damages to Plaintiff against Defendant Gustin; and,
- (ix) One Million Dollars (\$1,000,000.00) in compensatory damages to Plaintiff against Defendant Marasigan; and,
- (x) Ten Million Dollars (\$10,000,000.00) in punitive damages to Plaintiff against Millenium Physician Group; and,
- (xi) Attorney's fees and costs to Plaintiff pursuant to 42 U.S.C. §1988; and,
- (xii) Such other and further relief as this Court may deem just and proper.

Dated: Naples, Florida
July 12, 2024

Respectfully Submitted,

HEUSER LAW FIRM, PA

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