



designated heir, and was the partner of Markus Middleton. Plaintiff has been appointed personal representative of Markus' wrongful death estate by the Noble County, Indiana Circuit Court.

5. Decedent is Markus Neal Middleton. Markus was a 23-year-old U.S. citizen and resident of Noble County, Indiana. Markus died in the Noble County Jail on October 4, 2017. Markus in 2017 suffered from mental disabilities and serious mental conditions including bipolar disorder and serious depression. Markus was a qualified individual within the meaning of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12133 due to impairments substantially limiting the operation of mental functions and major life activities including thinking and caring for himself. If provided with reasonable modifications, the removal of barriers, and aids and services, Markus met the essential requirements for receipt of relevant services and was eligible for participation in programs and activities provided to non-disabled individuals. 42 U.S.C. §§ 12102(2), 12131(2). Markus is survived by Plaintiff, his parents, three sisters, grandparents, uncle, and nephew.
6. Defendants are Noble County Jail Captain Shane Coney and Jane and John Does. These Defendants are named in their individual capacities for purposes of Plaintiff's constitutional and state law claims. At all times material, these Defendants acted under the color of law for purposes of Plaintiff's constitutional claims and within the scope of their employment for purposes of his tort claims. These Defendants are employees, co-employees, contractors, or agents of Defendant Sheriff.
7. Defendant is Noble County Sheriff Douglas Harp. Defendant Sheriff operates the Noble

County Jail. Defendant Sheriff is named in his official capacity for purposes of Plaintiff's disability rights claims. Defendant Sheriff as sheriff of Noble County operates a public entity within the meaning of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is subject to its implementing regulations. Defendant Sheriff is a recipient of federal financial assistance within the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; 28 C.F.R. 42.540(e)-(f), and operates services, programs, or activities within the meaning of the Americans with Disabilities Act and Rehabilitation Act. Defendant Sheriff is liable for the discriminatory acts of his agents and contractors under federal disability rights law. Defendant Sheriff is also named in his official capacity for purposes of Plaintiff's federal constitutional claims for his operation of an unlawful policy, practice, custom, or procedure or his failure to train and supervise his employees in their acts and omissions causing the death of Markus. Defendant Sheriff is also named in his representative capacity as liable for the torts his employees committed within the scope of their employment.

### **III. FACTS**

#### **A. BACKGROUND TO DISCRIMINATION AND SUICIDE AT NOBLE COUNTY JAIL**

8. On September 11, 2017, Markus Neal Middleton was taken into custody in the Noble County Jail in Albion, Indiana on conviction of one nonviolent personal possession charge.
9. At the time he entered the Noble County Jail, Markus notified Defendants of his serious mental health conditions and requested treatment during his short incarceration.
10. At the time he entered the Noble County Jail, Markus suffered from bipolar disorder and serious depression for which he had previously been receiving treatment.

11. At the time he entered the Noble County Jail, Markus also notified Defendants of his need for protection from physical danger and harm.
12. Markus was a young, gay effeminate man with a small build.
13. On or about September 11, 2017, Plaintiff was also taken into the custody of the Noble County Jail and also notified Defendants of Markus' need for mental health treatment and protection from physical danger and harm.
14. Plaintiff warned Defendants that Markus needed to be carefully monitored for his safety.
15. Plaintiff was the partner of Markus.
16. Plaintiff is Markus' designated personal representative.

**B. DISCRIMINATION AGAINST MARKUS AT NOBLE COUNTY JAIL**

17. Unfortunately, for the twenty-three days he was held in the Noble County Jail, Defendants denied Markus adequate treatment for his serious mental health conditions and denied him protection from threat of danger and harm.
18. For the twenty-three days he was held in the Noble County Jail, Defendants denied Markus access to services, care, and medication to address the needs of his mental health.
19. For the twenty-three days he was held in the Noble County Jail, Markus was repeatedly threatened with harm by fellow inmates and discriminatorily mocked and taunted by jail guards because of his sexuality.
20. Defendants Sharp and Coney failed to take active steps and institute policies to prevent and stop the discriminatory harassment Markus suffered.
21. Defendants Sharp and Coney failed to take active steps and institute policies to provide Markus adequate and basic mental health treatment and care he required.

**C. MARKUS' SUICIDE AT THE NOBLE COUNTY JAIL**

22. Due to the discrimination and denial of care he suffered while held in the Noble County Jail in September and October of 2017, Markus mentally decompensated and became actively suicidal.
23. Plaintiff and Plaintiff's family contacted Defendant Sheriff through the Noble County Sheriff's Department to warn Defendant Sheriff and his officers that Markus had mentally decompensated and his health and safety were in danger.
24. The warnings delivered from Plaintiff and his family to Defendants were ignored.
25. On October 4, 2017, Markus was actively and acutely suicidal due to the discrimination he suffered and the deliberate indifference of Defendants.
26. On the evening of October 4, 2017, Markus, despite being actively suicidal, was left alone in his cell with bedding to hang himself and razor blades to cut himself.
27. Markus was left alone and unmonitored in this state for more than one and a half hours
28. At around 8:30 p.m. on October 4, 2017, Markus was found unconscious in his cell from hanging himself.
29. Markus was pronounced dead that night shortly thereafter.

**IV. CLAIMS FOR RELIEF**

**FEDERAL CONSTITUTIONAL RIGHTS CLAIMS  
EIGHTH AMENDMENT TO THE U.S. CONSTITUTION  
FOURTEENTH AMENDMENT U.S. CONSTITUTION  
(ALL DEFENDANTS)**

30. Based upon the facts above, Markus as an inmate of the Noble County Jail was by individual Defendants subjected to denial of adequate mental health care in contradiction to the protections of the Eighth Amendment to the U.S. Constitution.

31. Based upon the facts above, Markus as an inmate of the Noble County Jail was by Defendant Sheriff through policy, practice, custom, or procedure subjected to denial of adequate mental health care in contradiction to the protections of the Eighth Amendment to the U.S. Constitution.
32. Based upon the facts above, Markus as an inmate of the Noble County Jail was by individual Defendants denied protection from known risk of danger in contradiction to the protections of the Eighth Amendment to the U.S. Constitution.
33. Based upon the facts above, Markus as an inmate of the Noble County Jail was by Defendant Sheriff by policy, practice, custom, or procedure denied protection in contradiction to the protections of the Eighth Amendment to the U.S. Constitution.
34. If at any time during his detention Markus was held as an arrestee, these claims are reviewed under the objective reasonableness standard for the Fourth Amendment to the U.S. Constitution.
35. If at any time during his detention Markus was held as a pre-trial detainee, these claims are reviewed under the objective reasonableness standard for the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. *See Miranda v. County of Lake*, No. 17-1603 at \*20-25 (7th Cir. 2018).
36. Based upon the facts above, Markus as an inmate of the Noble County Jail was by individual Defendants subjected to discrimination, harassment, and denial of services and benefits on the basis of sex stereotyping in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.
37. As a result of Defendants' willful, wanton, and intentional wrongdoing, Markus suffered

physical injury, physical pain, emotional distress, mental anguish, other damages and injury, and death.

38. As a result of Defendants' willful, wanton, and intentional wrongdoing, Plaintiff and Markus' family suffered loss of Markus' life; grief, bereavement, and trauma; loss of love, care, affection, companionship, and services; pecuniary loss of future potential earnings; loss of financial and employment benefits separate and apart from earnings; medical expenses; funeral and burial expenses; damages as the result of the severance of their familial relationship; expenses of prosecuting this action and administrating this estate; and legal costs and attorney's fees.

**FEDERAL DISABILITY RIGHTS CLAIMS**  
TITLE II OF THE AMERICANS WITH DISABILITIES ACT  
SECTION 504 OF THE REHABILITATION ACT  
(DEFENDANT SHERIFF)

39. Based upon the facts above, Markus was subjected by employees, agents, or contractors of Defendant Sheriff to intentional discrimination as a qualified individual with disabilities, denied reasonable accommodations, and excluded from the benefits of protection provided to non-mentally disabled prisoners in contradiction to the protections of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794a.

40. Defendant Sheriff is subject to the provisions of these disability rights laws as the operator of a public entity and recipient of federal financial assistance and so prohibited from discriminating against qualified individuals with disabilities by denying them reasonable accommodations and the benefits and services afforded to individuals without disabilities.

41. As a result of Defendants' willful, wanton, and intentional wrongdoing, Markus suffered physical injury, physical pain, emotional distress, mental anguish, other damages and injury, and death.

42. As a result of Defendants' willful, wanton, and intentional wrongdoing, Plaintiff and Markus' family suffered loss of Markus' life; grief, bereavement, and trauma; loss of love, care, affection, companionship, and services; pecuniary loss of future potential earnings; loss of financial and employment benefits separate and apart from earnings; medical expenses; funeral and burial expenses; damages as the result of the severance of their familial relationship; expenses of prosecuting this action and administrating this estate; and legal costs and attorney's fees.

**STATE LAW CLAIMS**  
**WRONGFUL DEATH & NEGLIGENCE**  
**(ALL DEFENDANTS)**

43. Based upon the facts above, individual Defendants negligently abandoned their duty to provide for Markus' safety and wellbeing and protect him and his life while he was in their care and custody, thereby wrongfully causing his death.

44. Defendant Sheriff is liable for the torts of his employees acting within the scope of employment under the doctrine of respondeat superior.

45. As a result of Defendants' willful, wanton, and intentional wrongdoing, Markus suffered physical injury, physical pain, emotional distress, mental anguish, other damages and injury, and death.

46. As a result of Defendants' willful, wanton, and intentional wrongdoing, Plaintiff and Markus' family suffered loss of Markus' life; grief, bereavement, and trauma; loss of love,

care, affection, companionship, and services; pecuniary loss of future potential earnings; loss of financial and employment benefits separate and apart from earnings; medical expenses; funeral and burial expenses; damages as the result of the severance of their familial relationship; expenses of prosecuting this action and administering this estate; and legal costs and attorney's fees.

47. On December 12, 2017, Plaintiff issued his Notice of Tort Claim to Defendants.

#### **V. PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests the Court:

- A. Award him compensatory damages against each Defendant;
- B. Award him punitive damages against each individual Defendant;
- C. Award his legal costs and attorney's fees pursuant to 42 U.S.C. § 1988; 29 U.S.C. § 794a(b); 42 U.S.C. § 12133, and Ind. Code § 34-23-1.
- D. Award his expert witness costs pursuant to 42 U.S.C. § 12133; and
- E. Grant all other just and proper relief.

#### **JURY DEMAND**

Mr. Jerry Middleton demands a trial by jury on all issues alleged pursuant to Rule 38(B) of the Indiana Rules of Trial Procedure.

Respectfully,

**CHRISTOPHER C. MYERS & ASSOCIATES**

/s/ David W. Frank

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Estate of Markus Middleton*

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