UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM H. DAVIS, IN HIS CAPACITY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JASON H. DAVIS, PLAINTIFF v. DEVAL L. PATRICK, MARTHA COAKLEY, IN THEIR PERSONAL CAPACITIES FOR ACTIONS AND OMISSIONS ENGAGED IN BY THEM, UNDER COLOR OF STATE LAW, WHILE ACTING AS THE DULY ELECTED GOVERNOR AND ATTORNEY GENERAL, RESPECTIVELY, OF THE COMMONWEALTH OF MASSSACHUSETTS, DEFENDANTS	CIVIL ACTION NO. **COMPLAINT AND JURY CLAIM**

SUBJECT MATTER JURISDICTION

This Court has subject matter jurisdiction under 28 U.S.C. §1331, 28 U.S.C. §1343 and 42 U.S.C. §1983.

VENUE AND PERSONAL JURISDICTION

Venue is proper and personal jurisdiction exists in the Eastern Division of this District, in accord with LR (D. Mass) 40.1 (C)(1), 28 U.S.C. §1391 (c)(1) and the Due Process Clause of the Fourteenth Amendment, since the Plaintiff Estate is a citizen of Middlesex County, Massachusetts, the Defendant, Deval Patrick, resides in Milton, Norfolk County, Massachusetts, the Defendant, Martha Coakley, resides in Medford, Middlesex County, Massachusetts and the

incident, which gives rise to the instant action, occurred in Boston, Suffolk County, Massachusetts. Thus, all parties reside in this Division of this District and specific and general personal jurisdiction exists in it as well in accord with the cited authorities.

FACTS COMMON TO ALL COUNTS

1. The Plaintiff ("Plaintiff", "Davis Estate" or "Estate of Jason Davis") incorporates herein by reference all paragraphs hereinbefore and hereinafter set forth as if specifically set forth herein.

2. Each of the contemporaneously filed twenty-six (26) exhibits are expressly incorporated into all paragraphs of this Complaint and shall be referenced by the pertinent exhibit number and page, e.g. (25/1-4).

3. The Plaintiff, William H. Davis, in his capacity as the Personal Representative of the Estate of Jason Davis, is a male person who resides in Scranton, Lackawanna County, Commonwealth of Pennsylvania.

4. William H. Davis is the biological father of Jason Davis.

5. The Estate of Jason Davis is a citizen of Middlesex County, Massachusetts.

6. The Defendant, Deval L. Patrick, is the Chief Executive Officer of the Executive Branch within the Commonwealth of Massachusetts under and pursuant to the Massachusetts Constitution.

7. The Defendant, Deval L. Patrick, is the sitting and duly elected Governor of the Commonwealth of Massachusetts under and pursuant to the Massachusetts Constitution.

8. The Defendant, Deval L. Patrick, has been the Governor of the Commonwealth of Massachusetts since on or about January, 2007.

9. The Defendant, Deval L. Patrick, has been continuously employed by the Commonwealth of Massachusetts since on or about January, 2007.

10. The Defendant, Deval L. Patrick, resides in Milton, Norfolk County, Massachusetts.

11. The Defendant, Deval L. Patrick, has been a licensed attorney since on or about 1983.

12. On or about 1994 the Defendant, Deval L. Patrick, was nominated by President Clinton and confirmed by the United States Senate as the United States Assistant Attorney General for the Civil Rights Division within the Department of Justice.

13. The Defendant, Deval L.Patrick, is a civil rights attorney.

14. The Defendant, Martha Coakley, is the sitting and duly elected Attorney General for the Commonwealth of Massachusetts under and pursuant to the Massachusetts Constitution.

15. The Defendant, Martha Coakley, is an elected official within the Executive Branch for the Commonwealth of Massachusetts under and pursuant the Massachusetts Constitution.

16. The Defendant, Martha Coakley, has been the Attorney General for the Commonwealth of Massachusetts since on or about 2007.

17. The Defendant, Martha Coakley, has been continuously employed by the Commonwealth of Massachusetts since no later than on or about 2007.

18. The Defendant, Martha Coakley, resides in Medford, Middlesex County, Massachusetts.

19. The Defendant, Martha Coakley, is a licensed Massachusetts attorney.

20. The Defendants are employed in Boston, Suffolk County, Massachusetts.

21. The Defendant, Martha Coakley, has continuously practiced law in Massachusetts since no later than on or about 1979.

22. The Defendant, Martha Coakley, practiced law as an Assistant District Attorney in Massachusetts.

23. The Defendant, Martha Coakley, was elected and practiced law as a District Attorney in Massachusetts.

24. The Defendant, Martha Coakley, was elected, practiced law as and is practicing law as the sitting Attorney General for the Commonwealth of Massachusetts.

25. The Defendant, Martha Coakley, in her capacity as Attorney General, has been the lead law enforcement official for the Commonwealth of Massachusetts, pursuant to and under the Massachusetts Constitution, since on or about 2007.

26. The Defendant, Martha Coakley, in her capacity as Attorney General, operates a civil rights division which litigates civil rights cases in the United States Supreme Court amongst other courts.

27. Throughout her legal career the Defendant, Martha Coakley, has litigated legal issues attendant to the First, Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

28. Throughout her legal career the Defendant, Martha Coakley, has been a civil rights attorney insofar as she has continuously litigated issues attendant to the recited amendments to the United States Constitution.

29. At all times material herein the Defendants acted for and on behalf of the Commonwealth of Massachusetts.

30. Jason Davis (“Jason Davis”) was born on August 10, 1965.

31. Jason Davis died on June 14, 2004 at age 38.

32. At all times material herein Jason Davis suffered from a variety of acute psychiatric disorders including Schizoaffective Disorder which disorder is characterized by auditory and visual hallucinations, psychosis and acutely delusional thought patterns.

33. At all times material herein Jason Davis was acutely ill from a psychiatric standpoint.

34. Jason Davis had been periodically institutionalized for his psychiatric disorders for nearly all of his adult life.

35. On May 12, 1993 Jason Davis purportedly "voluntarily" admitted himself to the Westborough State Hospital in Westborough, Massachusetts ("Hospital") for the purposes of psychiatric care and treatment.

36. At all times material herein the Hospital was a public mental health care facility subject to the supervision and control of the Massachusetts Department of Mental Health.

37. The Massachusetts Department of Mental Health ("DMH") is subject to the supervision and control of the Massachusetts Secretary of Health and Human Services.

38. The Massachusetts Secretary of Health and Human Services is one of ten (10) Cabinet positions of the Massachusetts Chief Executive Officer (Governor).

39. The Massachusetts Secretary of Health and Human Services is an Executive Branch Officer.

40. In a reported opinion this Court, through Senior District Judge Morris E. Lasker, ruled that when Jason Davis purportedly sought to "voluntarily" admit himself to the Hospital:

    A. He was paranoid, psychotic, delusional and hallucinogenic. Davis v. Rennie, 997 F. Supp. 137 – 140 (D. Mass. 1998).

    B. He was legally and medically incompetent to do so. Id.

C. The medical doctor, who "voluntarily admitted" Jason Davis to the Hospital, knew he was paranoid, psychotic, delusional, hallucinogenic and thus without the ability to exercise informed consent from a legal and medical standpoint. Id., at 138 -139.

D. The recited psychiatric evidence was uncontroverted. Id., at 139.

E. Since he "was incompetent to exercise informed consent as a voluntary admission…[this]…demonstrated that his presence in the institution was involuntary." Id., at 140.

41. The Commonwealth, through its then Attorney General, Scott Harshbarger, adamantly contended that Jason Davis was still a "voluntarily admitted" mental health inpatient at the Hospital notwithstanding the aforementioned uncontroverted psychiatric evidence. Davis, 997 F. Supp., at 137 – 140.

42. Under governing Supreme Court authority, which has existed since prior to 1993, voluntarily admitted inpatients in State operated mental health care facilities cannot assert, much less prevail upon, federal civil rights claims for deprivations of personal security.

43. From May 12, 1993 to August 12, 1993 Jason Davis was an acutely mentally ill, involuntarily committed inpatient at the Hospital. Davis, 997 F. Supp., at 137 – 140; Davis, v. Rennie, 264 F. 3d 86, 91-92 (1st Cir. 2001).

44. When Jason Davis was an involuntarily committed inpatient at the Hospital the Commonwealth of Massachusetts, in particular its Executive Branch, had a federal constitutional obligation to insure that he was not subject to punishment, not held in unsafe conditions, provided with reasonable non-restrictive conditions of confinement, provided with the right to be free from unjustified intrusions on his personal security and provided with the right to be free from unreasonable bodily restraints.

45. On August 12, 1993 Jason Davis was beaten bloody by one mental health care worker (collectively "Mental Health Care Worker Defendants") while five (5) other Mental Health Care Worker Defendants pinned him to the floor to perpetuate the beating and while, yet still, a charge nurse ("Charge Nurse" or "Charge Nurse Joyce Weigers") looked on and actually encouraged the beating (collectively "Davis Case Defendants"). Id., at 92- 95, 86 – 116; (1/1-8; 6/105).

46. The Mental Health Care Worker Defendants consisted of Phillip Bragg, Paul Rennie, Richard Gillis, Michael Hanlon, Leonard Fitzpatrick and Nicholas L. Tassone. Id., at 92 - 96; (14/1-3).

47. On August 2, 1996 Jason Davis filed a complaint ("Davis Complaint") in this Court which asserted, *inter alia*, a civil rights action though 42 U.S.C. §1983 for intent based federal civil rights claims (hereinafter "Davis Case"). Ibid., at 95-96.

48. The trial of the Davis Case commenced in this Court on September 30, 1998 and concluded on October 29, 1998. Id., at 96.

49. The Davis Case spawned a total of three (3) reported opinions, a citation to the United States Reports and a Certiorari Denial. See Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001); Davis v. Rennie, 997 F. Supp. 137 (D. Mass. 1998); Davis v. Rennie, 553 U.S. 1053 (2002); Davis v. Rennie, 178 F. Supp. 2d 28 (D. Mass. 2001). (collectively "Davis Case Reported Cases") (2/1).

50. Evidence introduced during the course of the month long Federal Civil Rights trial demonstrated that two of the principal aggressors, Phillip Bragg and Paul Rennie, who

beat Jason Davis bloody, were convicted violent felons upon hire at the DMH which the DMH knew at hire and throughout their employment. (3/1-4; 4/1-2; 5/1-6).

51. Both Phillip Bragg and Paul Rennie had been hired by the DMH at the Hospital to work in a direct patient care capacity following their convictions and incarcerations for violent felonies. Davis, 264 F. 3d, at 92-96; (3/1-4; 4/1-2; 5/1-6).

52. Phillip Bragg had been indicted for assault with intent to murder and assault and battery with a dangerous weapon (gun) prior to commencing employment for the DMH at the Hospital in a direct patient care capacity. (3/1-4; 4/1-2).

53. Phillip Bragg plead guilty to assault and battery with a dangerous weapon (gun) and was sentenced to 10 years of incarceration in a Massachusetts prison (one (1) served) prior to commencing employment for the DMH at the Hospital. (3/3-4).

54. Phillip Bragg's felony prison sentence resulted from his having shot a 16 year old boy in the eye with a gun at short range.

55. Phillip Bragg was released from prison only a short time before he actually began employment for the DMH at the Hospital. (3/3-4; 4/1-2).

56. Phillip Bragg had a history of employment related violence and abuse upon patients, prior to the incident involving Jason Davis on August 12, 1993, as numerous Davis Case trial exhibits proved.

57. A former DMH Commissioner, Eileen P. Elias, testified at the trial in the Davis Case that Phillip Bragg should not have been employed as a Mental Health Care Worker in 1992, which was one (1) year before the Davis incident, given his violent tendencies.

58. Paul Rennie had been indicted for two counts of armed robbery and one count of assault

and battery with a dangerous weapon (pipe) prior to commencing employment for the DMH at the Hospital in a direct patient care capacity. (5/1-6).

59. Paul Rennie sought to steal a car from one victim by striking him with a metal pipe and to rob money from yet another victim at gunpoint. (5/3-6).

60. Paul Rennie plead guilty to these two counts of armed robbery and the one count of assault and battery with a dangerous weapon and was incarcerated in a Massachusetts prison for one (1) year. (5/1-6).

61. Phillip Bragg's and Paul Rennie's employment by the DMH at the Hospital constituted an extreme risk of harm to all mentally ill inpatients subject to their "care" including Jason Davis.

62. Phillip Bragg's and Paul Rennie's conduct on August 12, 1993 came as a surprise to nobody given their extensive histories of violence and recidivism rates amongst convicted violent felons.

63. Special State Police Officer Greg Plesh, who came upon the scene and stopped the attack upon Jason Davis on August 12, 1993, testified at trial that he was initially alerted to the physical onslaught upon Jason Davis by virtue of what he felt through his feet. (6/102-103).

64. Special State Police Officer Greg Plesh said he felt "thuds" in the concrete slab floor while Phillip Bragg was pummeling Jason Davis' head. (6/102-103).

65. That one would feel these thuds through a concrete floor demonstrates the ferocity of the beating which took place.

66. Through its reported opinion the United States Court of Appeals for the First Circuit ("First Circuit") recounted the brutalization of Jason Davis through the trial testimony of Special State Police Officer Greg Plesh, Jason Davis and Nicholas Tassone:

> He recounted: 'Jason is lying down the hallway, head is away from me, feet are towards me. Staff is encircling him. And it's not what I saw, it's what I felt. I initially felt the thud through the [concrete] floor and then heard a thud.' Plesh said he looked up and saw Bragg punch Davis in the head four to five times. Plesh continued: I turned to Joyce Wiegers who was on my right shoulder. When I saw Jason Davis being punched, I said, 'Did you see that? Are you going to do anything about this? Are you going to allow this to happen?.' She didn't say anything, and I really wasn't waiting at that point. Some more was occurring and at that point I decided to intervene. As the MHWs began rolling the patient onto his stomach, Bragg twisted Davis's neck to the side and Plesh climbed over the other MHWs to push Bragg away. Davis testified about the punching: 'It was over and over and over and over again. It was like it would never stop. And then I was calling for help and nobody was stopping them and they kept hitting me. I felt the blood; it was, you know, it was coming down my face.' Plesh said that Davis's 'eyes were rolling out of his head,' that '[t]here was swelling, bruising all in his face,' and that he checked to make sure that Davis's neck had not been broken. Tassone said that Davis's face was cut and bloody. (brackets supplied).

Davis, 264 F. 3d, at 94 (brackets supplied).

67. Jason Davis was lying in his own blood following the attack.

68. Employees at the Hospital wiped up the blood on the floor following the attack.

69. Special State Police Officer Greg Plesh testified at trial about the condition of Jason Davis' face in the midst of the attack:

> The twist was so severe I at that point went around the pile, around Phillip Bragg, pushed Phillip Bragg off Jason Davis' head with my shoulder and then instantly went to his neck. And at that point, I noticed that his eyes were rolling out of his head. You could see the whites of his eyes. The eyes were up to the top. He was in a, what I would call a semiconscious state. There was some bleeding on the floor. There was swelling, bruising all in his face noticeable at that time... (6/106).

70. Special State Police Officer Greg Plesh filed an arrest report which included the following paragraph:

> As many as eight staff members were on top of Jason. Phillip Bragg was up by Jason's head and this officer observed him punch Jason Davis five or six times with extremely hard blows. This officer could hear every impact and instantly the client started to bleed and swell in the area of the eyes, forehead and temple area. I moved into stop the staff member but before I could get there Phillip used a head twist technique that I did have to stop. Extreme force was used, Jason’s neck was being twisted to its limit. Phillip put a knee on Jason’s head and the (sic) with both hands was forcing Jason’s head down into the floor. (Push up position). Jason could not stop resisting the other nursing staff at this point. This is an automatic defense response. This officer moved Phillip off Jason’s head and checked his neck to make sure it had not been broke. Jason calmed down as soon as his head was released. While Phillip was holding Jason’s head down the officer observed him say to Jason, this is what you wanted, so this is what you got. (7/2-3; parentheses in original).

71. One of the Mental Health Care Worker Defendants found liable in the Davis Case, Nicholas L. Tassone, testified that Jason Davis looked like "a fighter looks after they get out of the ring, how sometimes they get cut on their eye, and they have blood dripping down their face." (8/62).

72. Nicholas Tassone observed a “puddle” of Jason Davis’ blood on the floor after the attack and indicated that he was “bleeding profusely”. (8/60).

73. Next following the attack Charge Nurse Joyce Weigers told Jason Davis that "[t]his is what you get when you act –this is what you get when you act like this." Davis, 264 F. 3d, at 94-95; (6/105).

74. The First Circuit recounted the acute psychiatric injuries sustained by Jason Davis, as per his treating psychiatrist, within its reported opinion:

> Davis presented additional medical evidence at trial from Dr. R. Amos Zeidman, his treating psychiatrist for periods beginning in 1991. In late 1996 or early 1997, Dr. Zeidman diagnosed Davis with Post Traumatic Stress Disorder (PTSD) as a result of the physical restraint at Westborough. He said that Davis 'was horrified' by the event because **'[h]e thought he was going to die.'** Dr. Zeidman said that Davis's PTSD symptoms included insomnia, anxiety, panic states, flashbacks, nightmares, and an inability to concentrate. He said that Davis was having difficulty making progress in therapy because he was afraid to trust anyone and that '[t]he quality of his life has suffered terribly for this.' Here, the evidence supports a finding of significant actual and potential harm. According to Dr. Zeidman, the psychological harm Davis has suffered from the incident has seriously affected his quality of life, causing a range of PTSD symptoms, demonstrating the reasonable relationship between the injury and the amount of the award. (emphasis supplied).

Id., at 95, 116 (emphasis supplied).

75. Following the attack a cover up by some of the Davis Case Defendants ensued which included false allegations of impropriety against Special State Police Officer Greg Plesh and the falsification of medical records by Charge Nurse Joyce Weigers. Id., at 115-116.

76. The Massachusetts Attorney General, Scott Harshbarger, represented five of the seven Davis Case Defendants found liable at the Davis Case trial.

77. The Davis Case jury returned a verdict in favor of Jason Davis against the six (6) Mental Health Care Workers Defendants and Charge Nurse Joyce Weigers. Id., at 91, 96; (14/1-3; 15/1-9).

78. The jury assessed $100,000 in compensatory damages and $1.55 million in punitive damages against the seven Davis Case Defendants found liable. Id., at 91, 96. (14/1-3; 15/1-9).

79. Following the return of the jury verdict Senior District Judge Morris E. Lasker entered a remittitur in the amount of $525,000 to which no objection was lodged by Jason Davis. Id., at 96.

80. Judicial notice can be taken of the fact that in 1998 the venerable Senior District Judge Morris E. Lasker was then a renowned civil rights jurist of national repute and a 30 year veteran of the federal bench he having served on both this Court and in the United States District Court for the Southern District of New York (Manhattan, New York).

81. Senior District Judge Morris E. Lasker was appointed by President Johnson in 1968 upon then Senator Robert F. Kennedy's recommendation.

82. The third amended judgment ("Third Amended Judgment"), entered upon the Davis Case jury verdict, now stands at approximately $2.1 million dollars ("$2.1 million dollars") with a per diem of $139.40. (14/1-3).

83. The judgment was renewed in 2010. (14/1-3).

84. The jury found that the Mental Health Care Worker Defendants and Charge Nurse were liable for intent based federal civil rights violations based upon excessive force, unreasonable bodily restraint and their failure to have intervened and they awarded punitive damages. Id., at 86 – 116; (14/1-3; 15/1-9).

85. Each of these claims had been based upon the Due Process Clause of the Fourteenth Amendment to the United States Constitution ("Due Process Clause") as asserted through 42 U.S.C. §1983. Id., at 86-116; (14/1-3; 15/1-9).

86. The Davis Case involved no less than two "restraints" each one of which which went horribly awry.

87. None of the Davis Case Defendants that were found liable were Massachusetts Constitutional Officers as that term is used, defined and employed within M.G.L. c. 258, § 9, the Massachusetts State Constitution and other Massachusetts State authorities. (“Constitutional Officer”). Id., at 86-116.

88. Following the entry of judgment upon the Davis Case jury verdict the Commonwealth of Massachusetts, through Attorney General Thomas Reilly, appealed to the United States Court of Appeals for the First Circuit on behalf of six of the seven Davis Case Defendants found liable at trial. Davis, 264 F. 3d, at 86 – 116.

89. Throughout the appellate process the Commonwealth, through Attorney General Thomas Reilly, represented Charge Nurse Joyce Weigers in addition to the five (5) Mental Health Care Worker Defendants the Commonwealth represented at trial. (2/1); Id, at 86 – 116.

90. The Commonwealth had not represented Charge Nurse Joyce Weigers during the Davis Case trial.

91. Attorney General Thomas Reilly agreed to represent Charge Nurse Joyce Weigers in all appellate proceedings notwithstanding the “evil” and “ill willed” conduct which the Davis Case jury found her to have committed at trial. Id., at 91-96, 115-116; (16/15; 15/1-9).

92. The Commonwealth, through Attorney Generals Scott Harshbarger and Thomas Reilly, represented convicted violent felon Paul Rennie at the Davis Case trial, in the First Circuit and in the United States Supreme Court. (2/1; 5/1-6); Id., at 86-116.

93. Every person whom the Commonwealth represented in the First Circuit and in the United States Supreme Court had been found by the Davis Case jury to have engaged in “evil”

and “ill willed” conduct toward Jason Davis. Id., at 91-96, 115-116; (16/15; 15/1-9).

94. Every person whom the Commonwealth represented in the First Circuit and in the United States Supreme Court had been found by the Davis Case jury to have intended to harm Jason Davis. Id., at 91-96, 115-116; (16/15; 15/1-9).

95. Every person whom the Commonwealth represented in the Davis Case trial had been found to have engaged in intent based civil rights violations. Id., at 91-96, 115-116; (16/15; 15/1-9).

96. The Commonwealth, acting through Attorney Generals Scott Harshbarger and Thomas Reilly, had no legal or ethical obligation to represent any person in the Davis Case.

97. Massachusetts legal authority, as codified in its case law, actually informed the Attorneys General that they should not engage in the legal representation of any public employee if such representation could result in the creation of law which would be disadvantageous to the general public at large.

98. The judgment of this Court in the Davis Case was affirmed, in its entirety, by the First Circuit in 2001. Id., at 86, 116.

99. When the judgment of this Court was affirmed by the First Circuit the Commonwealth of Massachusetts, acting through Attorney General Thomas Reilly, filed a Petition for a Writ of Certiorari in the United States Supreme Court. (2/1)

100. The United States Supreme Court denied the Petition for a Writ of Certiorari. (2/1).

101. The principal constitutional contention made by the Commonwealth of Massachusetts in the context of the Davis Case, through Attorneys General Scott Harshbarger and Thomas Reilly, was that it was constitutionally permissible for State employed Mental Health Care

Workers and Charge Nurses to stand idly by while their fellow employees savagely beat bloody an involuntarily committed mentally ill inpatient housed in a State operated mental health facility. ("Principal Constitutional Contention"). Id., at 86-116.

102. The Principal Constitutional Contention was espoused by Attorneys General for the Commonwealth of Massachusetts, Scott Harshbarger or Thomas Reilly, in this Court, in the First Circuit and in the United States Supreme Court.

103. This Court, through Senior District Judge Morris E. Lasker, rejected the Principal Constitutional Contention.

104. The First Circuit rejected the Principal Constitutional Contention. Id., at 86-116.

105. Through its denial of the Attorney General's, Thomas Reilly's, Petition for a Writ of Certiorari the United States Supreme Court rejected even the possibility of entertaining the legal viability of the Principal Constitutional Contention. (2/1).

106. The Principal Constitutional Contention was a barbaric "civil rights" position to assert and evidenced a "win at any cost" mentality by the Commonwealth.

107. Had the Principal Constitutional Contention been adopted as law, the personal security of our involuntarily committed mentally ill inpatients would have been in peril in Massachusetts and in all States within this Circuit.

108. On the very day that the Petition for a Writ of Certiorari was denied Massachusetts' Attorney General Thomas Reilly withdrew his appearance on behalf of the losing parties and never represented any one of them again. (2/1; 9/1); Davis, 178 F. Supp. 2d, at 28-30.

109. Jason Davis prevailed against the Massachusetts Attorneys General in three federal courts.

110. Jason Davis was acutely suicidal throughout his trial and the appellate process which

caused his family and loved ones to themselves sustain acute stress throughout this four (4) year period.

111. Jason Davis' life spiraled downward after the events of August 12, 1993 and he died in 2004, at age 38, a mere six (6) years after his trial.

112. During 2008 the Estate of Jason Davis sought the assistance of the Defendant, Deval L. Patrick, relative to the payment by the Commonwealth of Massachusetts of the judgment entered upon the Davis Case jury verdict.

113. Four letters were exchanged between the Plaintiff and the Defendant, Deval L. Patrick, relative to this proposed payment. (10/1-9; 11/1-2; 12/1-6; 13/1).

114. The letters authored by the Plaintiff recount the grotesque attack upon Jason Davis, his proximately caused injuries and the Davis Case reported opinions. (10/1-9; 12/1-6).

115. On June 11, 2008 the Defendant, Deval L. Patrick, informed the Plaintiff that:

> I have reviewed the materials that you have provided and researched the applicable law. Section 9 of Chapter 258 of the General Laws governs the Commonwealth's ability to pay judgments arising out of intentional tort or civil rights actions filed against individual state employees. The statute prohibits the Commonwealth from indemnifying an employee for civil rights violations involving grossly negligent, willful or malicious conduct. (11/1).

116. On June 20, 2008 the Defendant, Deval L. Patrick, informed the Plaintiff that:

> You are correct that the Legislature could pass legislation authorizing the Commonwealth to pay the punitive damages that the jury awarded against the individual defendants. Absent such legislation, Mass. Gen. L. ch. 258, § 9 precludes the Commonwealth from paying those damages. (13/1).

117. Through the express terms of the June 20, 2008 letter the Defendant, Deval L. Patrick, informed the Plaintiff that it could avoid the dictate of M.G.L. c. 258, § 9 if it only filed a legislative bill seeking payment of the Davis Case judgment directly. (13/1).

118. On June 20, 2008 the Defendant, Deval L. Patrick, again informed the Plaintiff that indemnification under Massachusetts State law would not be permissible since the claims upon which Jason Davis had prevailed were intent based civil rights claims. (13/1).

119. The text of M.G.L. c. 258, §9 ("Indemnification Statute") reads as follows:

> **Section 9: Indemnity of Public Employees**
>
> Section 9. Public employers may indemnify public employees, and the commonwealth shall indemnify persons holding office under the constitution, from personal financial loss, all damages and expenses, including legal fees and costs, if any, in an amount not to exceed $1,000,000 arising out of any claim, action, award, compromise, settlement or judgment by reason of an intentional tort, or by reason of any act or omission which constitutes a violation of the civil rights of any person under any federal or state law, if such employee or official or holder of office under the constitution at the time of such intentional tort or such act or omission was acting within the scope of his official duties or employment. No such employee or official, other than a person holding office under the constitution acting within the scope of his official duties or employment, shall be indemnified under this section for violation of any such civil rights if he acted in a grossly negligent, willful or malicious manner. For purposes of this section, persons employed by a joint health district, regional health district or regional board of health, as defined by sections twenty-seven A and twenty-seven B of chapter one hundred and eleven, shall be considered employees of the city or town in which said incident, claim, suit, or judgment is brought pursuant to the provisions of this chapter.

120. Indemnification is purportedly foreclosed under M.G.L. c. 258, §9, on its face, relative to intent based civil rights claims asserted against State employees who are not constitutional officers.

121. The text of M.G.L. c. 258, §2 ("Indemnification Statute") reads, in part, as follows:

> **Section 2: Liability, exclusiveness of remedy; cooperation of public employee; subsequent actions; representation by public attorney**
>
> **Section 2.** Public employers shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or

> omission of any public employee while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual under like circumstances, except that public employers shall not be liable to levy of execution on any real and personal property to satisfy judgment, and shall not be liable for interest prior to judgment or for punitive damages or for any amount in excess of $100,000; provided, however, that all claims for serious bodily injury against the Massachusetts Bay Transportation Authority shall not be subject to a $100,000 limitation on compensatory damages.

122. The cap on negligence based damages actions against public employers, under M.G.L. c. 258, §2 and in the context of this matter, is one hundred thousand ($100,000) dollars.

123. The Plaintiff concedes that the 1998 Davis Case federal jury verdict was rendered relative to intent based civil rights claims which purportedly are, on their face, not subject to indemnification under M.G.L. c. 258, §9. (15/1-9); Davis, 264 F. 3d, at 86-116.

124. For no less than six (6) years the Commonwealth of Massachusetts has asserted that the intent based civil rights claims, upon which Jason Davis prevailed, are not subject to indemnification under M.G.L. c. 258, §9 since these claims are based upon grossly negligent, willful or malicious conduct. (10/1-9; 11/1-2; 12/1-6; 13/1).

125. On and prior to May 4, 2009 Joshua K. Messier was an acutely psychiatrically ill inpatient housed at the Bridgewater State Hospital for the purposes of psychiatric observation.

126. On May 4, 2009 Joshua K. Messier was murdered during the course of a four point mechanical restraint which went horribly awry.

127. On said date he was 23 years old, having been born on July 16, 1985.

128. A duly recorded and authorized death certificate was generated on May 22, 2009 by the Commonwealth of Massachusetts and same was executed by Mindy J. Hull, M.D. who also performed the autopsy upon Joshua K. Messier. (18/1; 19/1-11).

129. Joshua K. Messier's death certificate ("Death Certificate") lists "homicide" as his "manner of death". (18/1).

130. Joshua K. Messier's death certificate lists his "cause of death" as "cardiopulmonary arrest during physical restraint, with blunt impact of head and compression of chest, while in agitated state." (18/1).

131. Joshua K. Messier's duly recorded and authorized report of autopsy ("Report of Autopsy") was generated on February 2, 2010 by Mindy J. Hull, M.D. (19/1-11).

132. The autopsy was performed upon Joshua K. Messier on May 5, 2009 by Mindy J. Hull, M.D. (19/1-11).

133. Joshua K. Messier's Report of Autopsy lists "homicide" as his "manner of death". (19/2).

134. Joshua K. Messier's Report of Autopsy lists his "cause of death" as "cardiopulmonary arrest during physical restraint, with blunt impact of head and compression of chest, while in agitated state." (19/2).

135. Joshua K. Messier's Report of Autopsy depicts, with exactitude and precision, numerous blunt force trauma injuries to Joshua K. Messier's head, brain, neck, torso and extremities. (19/3-4).

136. Joshua K. Messier suffered brain bleeding as a result of the attempt to implement the four point mechanical restraint upon him on May 4, 2009. (19/3-4).

137. The videotaped death of Joshua K. Messier, made publicly available via the internet ("Messier Video"), dictates that he was murdered as a result of intentional, willful and malicious excessive force having been employed upon him.

138. The Death Certificate, Report of Autopsy, Messier Video and numerous State generated

documents prove and depict the fact that the lethal, illegal and psychiatrically proscribed "suitcasing" or "hog-tieing" technique was employed upon Joshua K. Messier on May 4, 2009.

139. The "suitcasing" or "hog-tieing" technique consisted of placing Joshua K. Messier on a restraint table (back down), securing his legs in the two leg restraints and then folding his person over onto his knees like one would fold a suitcase or tie a hog.

140. The Messier Video, Death Certificate and Report of Autopsy demonstrate that on May 4, 2009 Joshua K. Messier was subjected to the "suitcasing" or "hog-tieing" technique which caused him to suffocate, sustain cardiopulmonary arrest and die. (19/1-11; 18/1).

141. In the aftermath of the purported four point mechanical restraint it was evident, as per the Messier Video, that Joshua K. Messier was both lifeless and seriously injured but yet no "red alert", cardiac pulmonary resuscitation or other emergency medical treatment was rendered for approximately ten (10) minutes.

142. The text of M.G.L. c. 265, §1 (First and Second Degree Murder under Massachusetts law) reads as follows:

> Section 1. Murder committed with deliberately premeditated malice aforethought, **with extreme atrocity or cruelty**, or in the commission or attempted commission of a crime punishable with death or imprisonment for life, is murder in the first degree. Murder which does not appear to be in the first degree is murder in the second degree. Petit treason shall be prosecuted and punished as murder. The degree of murder shall be found by the jury. (emphasis supplied).

143. Murder committed with "extreme atrocity and cruelty" under M.G.L. c. 265, §1 only requires proof of "one" of seven applicable factors under Massachusetts law.

Commonwealth v. Sarmanian, 426 Mass. 405, 408 (1998).

144. "Factors the jurors are to consider in determining whether a murder was committed with extreme atrocity or cruelty are: the defendant's indifference to or taking pleasure in the victim's suffering, consciousness and degree of suffering of the victim, extent of physical injuries, number of blows, manner and force with which they were delivered, instrument employed, and disproportion between the means needed to cause death and those employed." Commonwealth v. Hunter, 427 Mass. 651, 656 n. 8 (1998) (citing Commonwealth v. Cunneen, 389 Mass. 216, 227, 449 N.E.2d 658 (1983)). ("Atrocity Factors").

145. "Proof of malice aforethought is the only mental intent requirement for a conviction of murder in the first degree based on extreme atrocity or cruelty." Commonwealth v. Semedo, 422 Mass. 716, 722 (1996).

146. "[M]alice aforethought may be inferred if, in the circumstances known to the Defendant, a reasonably prudent person would have known that according to common experience there was a plain and strong likelihood that death would follow the contemplated act." Sarmanian, 426 Mass., at 409 & n. 2.

147. In prosecutions for first degree murder, based upon cruel and atrocious conduct, it need not be proven that a defendant had "subjective knowledge that his conduct was cruel and atrocious" or that he acted with "premeditation". Commonwealth v. Sinnot, 399 Mass. 863, 879 (1987); Commonwealth v. Campbell, 393 N. E. 2d 820, 825-826 (1979).

148. The nine (9) correctional officers at the scene of the Messier murder acted with "extreme atrocity and cruelty" since:

A. The officers were indifferent to Joshua's K Messier's suffering given that they undertook no emergency medical procedures or had others do so in the ten (10) minute period next following their attempt to implement the four point mechanical restraint notwithstanding the fact that it was obvious that Joshua K. Messier was lifeless, seriously injured and in acute distress.

B. The officers were indifferent to Joshua's K Messier's suffering given that they employed the lethal, illegal and psychiatrically proscribed "suitcasing" technique which is a barbaric "instrument" to subdue a person insofar as it is known to perpetuate suffocation, cardiac arrest and death as it did in Joshua K. Messier's case.

C. The Messier Video depicts the fact that Joshua K Messier was initially conscious and subject to acute suffering as is the case with any suffocation victim who is subjected to the "suitcasing" technique and violent excessive force.

D. The extent of physical injuries sustained by Joshua K. Messier, as per the Death Certificate, Report of Autopsy and Messier Video, was acute as evidenced by blunt force trauma to his head, brain, neck, torso, extremities and the brain bleeding which he sustained.

E. The number of blows to which Joshua K. Messier was subjected was obviously excessive since he sustained blunt force trauma injuries to his head, brain, neck, torso and extremities coupled with brain bleeding.

F. The "manner and force" and "instrument" with which the "blows" were delivered was through the "suitcasing" technique and excessive physical force and violence.

G. There was an acute disproportion between the "means needed to cause death and those employed".

149. Each of the seven Atrocity Factors have been met in the context of Joshua K. Messier's murder although only one need be proved.

150. There was a "plain and strong likelihood that death would follow" numerous blunt force trauma injuries to Joshua K. Messier's head, brain, neck, torso and extremities. Sarmanian, 426 Mass., at 409 & n.2.

151. Cruel and atrocious murder one convictions in Massachusetts have been upheld premised upon but a "single blow". Campbell, 393 N. E. 2d, at 826.

152. There was a "plain and strong likelihood that death would follow" the use of the lethal, illegal and psychiatrically proscribed "suitcasing" technique which was employed to "restrain" Joshua K. Messier. Ibid.

153. There was a "plain and strong likelihood that death would follow" the failure to undertake emergency medical measures for the ten (10) minute period next following that point in time when it was readily apparent that Joshua K. Messier was lifeless, seriously injured and in acute distress. Id.

154. The correctional officers who implemented the purported four point mechanical restraint upon Joshua K. Messier committed first degree murder under Massachusetts law, based upon extreme atrocity and cruelty, with malice aforethought. See M.G.L. c. 265, §1.

155. The text of 18 U.S.C. §242 reads as follows:

> **18 U.S.C § 242 - DEPRIVATION OF RIGHTS UNDER COLOR OF LAW**
>
> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any

term of years or for life, or both, or may be sentenced to death.

156. The nine (9) correctional officers at the scene of the Messier murder and their supervisors acted willfully and in violation of 18 U.S.C. §242 since the uncontroverted evidence dictates that:

A. Joshua K. Messier, although held in a prison, was actually an involuntarily committed mentally ill inpatient at the Bridgewater State Hospital since he was being held there for psychiatric observation and not pursuant to a criminal conviction.

B. The Massachusetts Department of Correction, which operates the Bridgewater State Hospital, has conceded that Joshua K. Messier was an involuntarily committed inpatient at said prison on May 4, 2009.

C. In such capacity the Constitution forbade him from being punished for symptomology of his psychiatric disorders or from being subjected to bodily restraints which were unreasonable, not approved by a medical clinician or implemented as a form of punishment given the 1982 decision in Youngberg v. Romeo, 457 U.S. 307 (1982) and the 2001 decision in Davis v. Rennie, 264 F. 3d 86 - 116 (1st Cir. 2001) ("decisions").

D. The patient was suffering from a symptom of one of his psychiatric disorders when he initially assaulted one of the prison guards after a visit with his Mother.

E. When one of the prison guards then actually engaged the patient in a fist fight he not only exacerbated his then psychiatric state he also necessarily "punished" the patient in violation of the Constitution and the decisions.

F. This exacerbated psychiatric state was then employed, at least in part, as a premise upon which to implement the four point mechanical restraint upon Joshua K. Messier which restraint violated the Constitution and the decisions.

G. The patient was calm just before the four point mechanical restraint was implemented which dictates that the restraint was psychiatrically and constitutionally prohibited under the Constitution and the decisions.

H. Since the patient had been in the midst of a schizophrenic seizure, when the prison guards sought to place him in the four point mechanical restraint, the implemented restraint was psychiatrically and constitutionally prohibited under the Constitution and the decisions.

I. No constitutionally required professional judgment was exercised by a Doctor or other qualified medical practitioner relative to the implementation of the four point mechanical restraint which dictates that such restraint was constitutionally prohibited under the Constitution and the decisions.

J. Although the patient's body was lifeless, in the aftermath of the attempts to implement the four point mechanical restraint through the use of intentional and willful excessive force, no "red alert", cardiac pulmonary resuscitation or other emergency medical procedures were initiated for a protracted period of time.

K. The Constitution forbids provoking a patient and then employing this provoked behavior as the basis to restrain which is precisely what occurred in the Messier Case. Davis, 264 F. 3d, at 110 – 111, 115.

L. Joshua K. Messier's death was "willfully" and "intentionally" caused as a result of constitutional deprivations, which were violative of 18 U.S.C. §242, given the clarity and long established nature of the constitutional rights articulated in both Youngberg v. Romeo, 457 U.S. 307 (1982) and Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001).

M. The excessive force induced blunt force trauma injuries, the implementation of the "suitcasing" technique and being left to die on the restraint table, in the aftermath of the purported four point mechanical restraint, violated Youngberg v. Romeo, 457 U.S. 307 (1982), Davis v. Rennie, 264 F. 3d 86 - 116 (1st Cir. 2001) and Ingraham v. Wright, 430 U.S. 651, 673 (1977) amongst other authorities.

N. None of the correctional officers had any meaningful training relative to the implementation of four point mechanical restraints upon acutely ill, involuntarily committed psychiatric inpatients.

O. None of the correctional officers had even have a crude understanding of the most common psychiatric disorders, attendant symptomolgy or pertinent de-escalation techniques to be employed in order to ameliorate symptomology and avoid unreasonable and unconstitutional restraints.

P. All supervisors of the correctional officers are liable under a theory of supervisory liability since there was an "affirmative link" between Joshua K. Messier's murder, the violation of his constitutional rights and the utter failure to train the correctional officers in a manner which would have prevented Joshua K. Messier's murder. See Evelyn Ramierz-Lluveras v. Rivera-Merced, United States Court of Appeals for the First Circuit, Slip. Op. at p. 38 (July 14, 2014)

157. First degree murder charges under M.G.L. c. 265, §1 and criminal civil rights charges under 18 U.S.C. §242 are actionable in the context of Joshua K. Messier's murder given the empirical and uncontroverted evidence set forth in the Death Certificate, Report of Autopsy, Messier Video, numerous State documents and the dictate of the law.

158. When the Messier case was thrust into the public eye in the winter of 2014 it was reported that the Defendant, Deval L. Patrick, had characterized it as an "awful", "horrible", "tragic" and "disgusting" case. (Source: Boston Globe).

159. Following his murder, the Estate of Joshua K. Messier ("Messier Estate" or "Messier Plaintiff") filed a civil complaint ("Messier Complaint") in the Suffolk Division of the Superior Court Department of the Trial Court ("Suffolk Superior Court") for the Commonwealth of Massachusetts ("Messier Case"). (20/1-18).

160. The Messier Complaint lists nine (9) individuals as Defendants ("Messier Individual Defendants") all of whom are "correctional officers" and none of whom are Constitutional Officers. (20/1-18).

161. At all times material herein the Messier Individual Defendants acted under color of state law and were employed by the Commonwealth of Massachusetts.

162. The two remaining Messier Case defendants are the Department of Correction and the Bridgewater State Hospital ("Public Employer Defendants"). (20/1-18).

163. The Defendant, Martha Coakley, had represented all but one of the Messier Individual Defendants and each of the two Public Employer Defendants.

164. The first five words of the Messier Complaint read as follows: "[t]his is a civil rights action…" (20/1).

165. The first three counts of the Messier Complaint are expressly premised upon the State and Federal civil rights statutes and assert intent based civil rights claims. (20/7-10).

166. Counts IV, V and VI of the Messier Complaint sound in Assault, Battery and Intentional Infliction of Emotional Distress which claims are intent based claims. (20/11).

167. Negligence based claims were asserted in the Messier Complaint, in the alternative, but they are collectively capped at $100,000 under M.G.L. c. 258, §2,9. (20/11).

168. The Messier Case sought remuneration for Joshua K. Messier's death on May 4, 2009 while he was an involuntarily committed inpatient at the Bridgewater State Hospital. (20/1-18).

169. The Messier Case has not been tried before a judge or a jury.

170. No verdict was rendered in the Messier Case.

171. No judgment was entered in the Messier Case.

172. The Messier Case has not been appealed.

173. No reported opinions were generated in the Messier Case.

174. The Messier Plaintiff was never relegated to filing a legislative bill in the Massachusetts House of Representatives or the Massachusetts Senate as a precursor to obtaining a monetary settlement for the claims asserted in the Messier Complaint.

175. The Messier Plaintiff was never informed by the Defendants that any settlement monies which it would receive, relative to the Messier Case, would be subjected to liens for prior treatment of Joshua K. Messier in a Massachusetts State facility.

176. The Death Certificate, Report of Autopsy, Messier Video and an assortment of State investigatory documents dictate that "homicide" was the cause of Joshua K. Messier's

death and that actions undertaken by those who murdered him (Messier Individual Defendants) could not have been subject to indemnification, on the face of the Massachusetts Indemnification Statute, since this conduct was at least grossly negligent, willful or malicious in nature.

177. When murder in the first degree is committed in violation of an M.G.L. c. 265, § 1 by State employees who were not Constitutional Officers, as it was in Joshua Messier's case, indemnification under M.G.L. c. 258 is prohibited since murder in the first degree consists of conduct which is at least grossly negligent, willful or malicious in nature.

178. When an individual dies in the manner in which Joshua K. Messier did, in violation of 18 U.S.C. § 242, indemnification under M.G.L. c. 258 is prohibited since this death resulted from intent based civil rights violations under the Due Process Clause.

179. On June 25, 2014, while speaking at a Mental Health Public Forum, the Defendant, Martha Coakley, informed the general public that she would herself be reviewing all pertinent Messier Case documents to discern whether or not a criminal prosecution could be commenced against the Messier Individual Defendants, whom she had represented in the Messier Case, relative to the events which occurred on May 4, 2009 at the Bridgewater State Hospital.

180. Only mere "negligent" acts are subject to indemnification under the facial dictate of M.G.L. c. 258 §2, 9 in the context of public employees who are not constitutional officers.

181. A tortious act or series of tortious acts cannot, at once and as a matter of law, be both "negligently" and "intentionally" inflicted.

182. A tortious act which is committed with gross negligence, willfulness or malice is not

transformed into a mere "negligent" act as a result of the execution of settlement documents, by impacted parties, which either deny liability altogether or suggest that the harm occasioned was only "negligently" inflicted. (26/1-11).

183. The Executive Branch, acting by and through its duly elected Governor and Attorney General, the Defendants, Deval L. Patrick and Martha Coakley, was foreclosed from indemnifying the Messier Individual Defendants on the face of the Indemnification Statute, relative to the conduct undertaken by the Messier Individual Defendants, since: (i) their conduct constituted Murder in the first degree under M.G.L. c. 265 §1 and willful violations of 18 U.S.C. §242; (ii) their conduct was at least grossly negligent, willful or malicious in nature; (iii) these Defendants were not Constitutional Officers; and (iv) their conduct was intentional.

184. The Defendants, acting in concert, after consultation and pursuant to an express agreement between them, agreed to remit a $2,000,000 settlement offer ("Settlement Offer") to the Messier Estate in proposed settlement of the conduct referenced in the Messier Complaint.

185. The Settlement Offer was made on or about March 25, 2014.

186. The Defendants agreed that the Defendant, Martha Coakley, would actually communicate the $2,000,000 Settlement Offer to the Messier Estate.

187. The Messier Estate accepted the Settlement Offer on or about July 31, 2014. (26/1-11).

188. On or about July 31, 2014 the Commonwealth of Massachusetts contractually obligated itself to indemnify the Messier Individual Defendants, relative to the grossly negligent, willful or malicious conduct which they engaged in upon Joshua K. Messier, via its execution of a settlement agreement ("Settlement Agreement") and two releases ('Two

Releases") (collectively "Settlement Documents"). (26/1-11).

189. The Settlement Documents indemnify the Messier Individual Defendants for the damages proximately caused by their grossly negligent, willful or malicious conduct. (26/1-11).

190. The Settlement Documents effectuate a full, final and conclusive settlement ("Settlement" or "Messier Settlement") between the Messier Individual Defendants, the Commonwealth of Massachusetts and the Messier Estate relative to the grossly negligent, willful and malicious conduct engaged in by the Messier Individual Defendants. (26/1-11).

191. The Settlement Agreement contains the following provision:

> The **Commonwealth of Massachusetts** shall pay the Plaintiff Two Million Dollars ($2,000,000) as full and final settlement of all claims arising out of the facts raised in the complaint in the [Messier Case] Litigation or in any other forum, or which could have been raised or asserted in the [Messier Case] Litigation or in any other forum. The Commonwealth of Massachusetts shall forwith initiate the process to issue payment to the Plaintiff. (26/2; brackets supplied; emphasis supplied).

192. The $2,000,000 Settlement Offer, the Settlement Documents and the Settlement itself, together with the Defendants' raw power to effect and implement same as they did in the context of the Messier Case, violated the facial dictate of the Indemnification Statute since the Messier Individual Defendants: (i) engaged in conduct which constituted Murder in the first degree under M.G.L. c. 265 §1 and willful violations of 18 U.S.C. §242; (ii) engaged in conduct that was at least grossly negligent, willful or malicious in nature; (iii) were not Constitutional Officers; and (iv) engaged in conduct that was intentional.

193. The Settlement constituted a complete nullification of the facial dictate, meaning and impact of the State Indemnification Statute since said Settlement will "indemnify" Massachusetts State employees, none of whom were "constitutional officers", for

conduct (murder in the first degree under State law and willful acts causing death under 18 U.S.C. §242) which was at least grossly negligent, willful or malicious in nature.

194. The Defendants, through their direct and personal actions, contractually obligated the Commonwealth of Massachusetts to pay the $2,000,000 Settlement to the Messier Estate, from State funds, even though such payment is barred by the facial dictate of the Indemnification Statute.

195. The Defendants' ability to contractually obligate the Commonwealth of Massachusetts to pay the $2,000,000 Settlement to the Messier Estate, from State funds, results from the exercise of their inherent power within the Executive Branch, as Governor, as Attorney General, under State law and under State statutes, usages and customs including M.G.L. c. 258.

196. The Defendant, Martha Coakley, perpetuated and was the driving force behind the Settlement as observed by counsel for the Messier family itself, Benjamin R. Novotny ("Messier's Attorney"), who indicated on March 25, 2014 that the Defendant, Martha Coakley, said "[r]ather than delay justice for the family, let's take a run at getting it settled now." (Source: Boston Globe, March 26, 2014)

197. On the day before the Settlement was even announced by the Massachusetts' media the Defendant, Deval L. Patrick, stated that "[t]he death of Joshua Messier was a horrible tragedy. No settlement can fill that void. Meanwhile, there are lessons here to be learned about how better to treat people with mental illness in DOC care." (Source: Boston Globe, March 26, 2014).

198. It was reported that the Defendant, Martha Coakley, observed, on the day that the

Settlement was announced, that “[w]hile nothing can bring back Joshua Messier to his family, we believe this will be a fair resolution to a sad case...” (Source: Boston Globe, March 26, 2014).

199. In the 21 years since the Davis attack no Massachusetts Executive Branch official has ever acknowledged the tragedy that is the Davis Case.

200. In the 21 years since the Davis attack no Massachusetts public official has ever worried about “delay[ing] justice for the family” of Jason Davis.

201. In the 21 years since the Davis attack no Massachusetts public official has ever put forth “a fair resolution to a sad case…”

202. On the very day that the Messier Settlement Offer was announced by the Massachusetts media (March 26, 2014) the Plaintiff in the present action, through its lawyer, forwarded an email to the Defendant, Martha Coakley, which reads as follows (21/10):

> Dear Attorney General Coakley:
>
> I read with great interest today's article in *The Boston Globe* by Michael Rezendes regarding the settlement in the Joshua Messier case. As you know, the Davis v. Rennie case mirrors the tragedy that occurred in the Joshua Messier case. Jason Davis obtained a judgment in 1998 from the Federal District Court here in Boston which now stands at nearly $2.1M which judgment was upheld by the the First Circuit Court of Appeals in 2001 and then the U.S. Supreme Court in 2002 through its denial of certiorari. We humbly expect and would respectfully request, given the swift resolution by your office of the Messier case, that you immediately move to pay the judgment on the State's behalf in the Davis v. Rennie case. I would like to meet with you as soon as possible to discuss specifically how this matter could be resolved in the short term. I sincerely appreciate your attention to this matter. (21/10).

203. On April 3, 2014 the Plaintiff, through its lawyer, forwarded the Defendant, Martha Coakley, the Phillip Bragg Indictments and Plea Dispositions (3/1-4), the Paul Rennie

Indictments and Plea Dispositions (5/1-6), the Arrest Report (7/1-3), the Nicholas Tassone Deposition Transcript (8/57-65) and the reported opinions from the First Circuit and this Court. (21/13-14).

204. On June 7, 2014 the Plaintiff, through its lawyer, forwarded an email to the Defendant, Martha Coakley, which reads as follows (21/16):

> Mr. Bedrosian and Attorney General Coakley:
>
> I still await your call Mr. Bedrosian. I still would very much like to meet with you both in regard to the Davis case. The Davis family has suffered for 17 years. It is time the Commonwealth did the right thing. It is in the process of 'doing the right thing' for the Messier family, relative to intent based civil rights claims asserted against individuals who are not constitutional officers, and it should do the same for the Davis family. It is respectfully submitted that there is no basis to treat similarly circumstanced Estates in an acutely disparate manner. The law simply does not support such a proposition. I thank you both and I look forward to meeting each of you. It is time to close one of the most sordid chapters in the history of the Department of Mental Health. The Davis family needs your help to do so.

205. No meeting was held or proposed by the Defendant, Martha Coakley, in the aftermath of the Plaintiff's March 26, 2014 and June 7, 2014 emails, and she simply failed to even respond to said emails.

206. On June 10, 2014 the Plaintiff forwarded the Defendant, Martha Coakley, an eight (8) page constitutional demand letter ("AG Coakley Constitutional Demand Letter") with exhibits. (21/1-18).

207. The AG Coakley Constitutional Demand Letter was sent via email and certified mail return receipt requested and was delivered on June 10, 2014 and June 12, 2014, respectively. (22/1; 21/18).

208. The AG Coakley Constitutional Demand Letter set forth with exactitude the legal and factual grounds in support of the proposition that the Settlement effectuated disparate treatment, as between the Messier and Davis Estates, which violated the Constitution. (21/1-18).

209. The AG Coakley Constitutional Demand Letter sought the payment of the entire Third Amended Judgment in the Davis Case ($2.1 million dollars). (21/1, 7; 14/1-3).

210. The Defendant, Martha Coakley, never responded to the AG Coakley Constitutional Demand Letter notwithstanding the ten (10) day response period set forth therein. (21/1-18).

211. On June 10 and 12, 2014 the Defendant, Deval L. Patrick, had constructive notice of the AG Coakley Constitutional Demand Letter.

212. On July 11, 2014 the Plaintiff forwarded to the Defendant, Deval L. Patrick, an eleven (11) page constitutional demand letter ("Governor Constitutional Demand Letter") with exhibits. (23/1-36).

213. The Governor Constitutional Demand Letter was sent via federal express priority and certified mail return receipt requested and was delivered on July 14, 2014. (23/34-36).

214. The Governor Constitutional Demand Letter set forth with exactitude the legal and factual grounds in support of the proposition that the Settlement effectuated disparate treatment, as between the Messier and Davis Estates, which violated the Constitution. (23/1-11).

215. The Governor Constitutional Demand Letter sought the payment of the entire Third Amended Judgment in the Davis Case ($2.1 million dollars). (23/10).

216. The Defendant, Deval L. Patrick, never responded to the Governor Constitutional Demand Letter notwithstanding the ten (10) day response period set forth therein. (23/1-36).

217. Previously and on or about March 1, 2014 the Plaintiff had a legislative amendment ("First Davis House Amendment") pending in the Massachusetts House of Representatives which called for the payment of the entire Third Amended Judgment entered in Davis Case. (17/1-5).

218. The Defendant, Martha Coakley, directly or through one or more subordinates acting for and in her behalf, informed at least one legislator in the Massachusetts State House that the First Davis House Amendment should be defeated. (17/1-5).

219. The Defendant, Martha Coakley, actually designated an employee to respond to inquiries from legislators relative to the First Davis House Amendment.

220. The Defendant, Martha Coakley, had no constitutional, legal or equitable right to interfere with the legislative process attendant to the First Davis House Amendment but she did so anyway.

221. The Defendant, Martha Coakley, had a dire conflict of interest, regarding the First Davis House Amendment and all other legislative actions pertaining to the Davis Case, since her office and two of her predecessors were on the losing side, in three federal courts, in the Davis Case.

222. There was a "note" on the official version of the First Davis House Amendment which reads as follows:

> Note: The payments ordered hereunder are so ordered because: (i) the litigant in Davis v. Rennie, et al. prevailed on a novel issue of substantial

> federal constitutional significance to the entire citizenry of the Commonwealth of Massachusetts; (ii) this substantial issue of federal constitutional significance was the subject matter of a precedential (reported) opinion which binds all State and Federal Courts in Massachusetts, Rhode Island, Maine, New Hampshire and Puerto Rico; and (iii) the litigant in Davis v. Rennie, et al. was required to defend the propriety of this constitutional issues (sic) in no less than three (3) federal courts wherein he prevailed in each such proceeding. ("novelty factors") (17/5).

223. None of the novelty factors apply to the Messier Case.

224. The First Davis House Amendment was withdrawn in the aftermath of the Defendant, Martha Coakley, having sought to defeat it. (17/4).

225. On or about June 1, 2014 the Plaintiff had a second legislative amendment ("Second Davis House Amendment") pending in the Massachusetts House of Representatives which was approved by the Massachusetts House of Representatives in the amount of $500,000. (17/6).

226. This Second Davis House Amendment called for a payment of less than twenty-five percent ($500,000) of the Davis Case Third Amended Judgment (2.1 million dollars). (17/6; 14/1-3).

227. The sum of $500,000 was actually the identical amount of the offer made by then Attorney General Scott Harshbarger during a 1998 mediation conducted in the Davis Case before Senior District Judge David A. Mazzone.

228. There is at least one attorney (Howard Meshnick, Esquire) still employed by the Attorney General's Office who attended the Davis Case mediation on behalf of the Attorney General's Office.

229. Then Attorney General Scott Harshbarger insisted that the mediation offer of $500,000

would be subject to liens which the DMH would have had, relative to Jason Davis' prior care and treatment in DMH facilities, which liens would have actually resulted in monies being remitted only to Jason Davis' lawyers with no monies being remitted to Jason Davis himself.

230. This mediation offer by Attorney General Scott Harshbarger was made only in relation to the intent based claims set forth in the Davis Complaint they being the only kind of claims which remained in it at that juncture.

231. Jason Davis rejected Attorney General Scott Harshbarger's mediation offer of $500,000.

232. Following the filing of the Second Davis House Amendment on or about June 1, 2014 Senator Spilka, who is the Majority Whip of the Massachusetts State Senate, filed an amendment in the Massachusetts Senate ("Senate Amendment") which sought the payment of the entire Third Amended Judgment in the Davis Case ($2.1 million dollars). (17/7).

233. The Senate Amendment was rejected by the Massachusetts Senate. (17/7).

234. Senator Spilka has expressly endorsed the Defendant's, Martha Coakley's, adversary (Steven Grossman) in the Defendant's, Martha Coakley's, ongoing gubernatorial campaign.

235. The Defendant, Martha Coakley, is and has been publicly touted as the putative favorite to win the Governor's race in the Commonwealth of Massachusetts in the Fall of 2014.

236. The Massachusetts House of Representatives and Senate thereafter agreed to jointly appropriate $500,000 ("Joint Appropriation") toward the payment of the Third Amended Judgment of $2.1 million dollars. (17/12).

237. On July 11, 2014 the Defendant, Deval L. Patrick, in his capacity as the sitting Governor of the Commonwealth of Massachusetts, vetoed (“Veto” or “Vetoed”) the Joint Appropriation of $500,000. (17/17).

238. When the Defendant, Deval L. Patrick, Vetoed the Joint Appropriation on July 11, 2014 the Defendant, Martha Coakley, had been in possession of her Constitutional Demand Letter for more than one month. (21/1-18; 22/1; 21/18).

239. The Defendant, Deval L. Patrick, knew and had constructive knowledge of the fact that that the Defendant, Martha Coakley, possessed the AG Coakley Constitutional Demand Letter on the date and time when he Vetoed the Joint Appropriation. (21/1-18; 22/1; 21/18).

240. Within the Veto documents the Defendant, Deval L. Patrick, indicated, relative to the Joint Appropriation, that “I am vetoing this item because state law [M.G.L. c. 258, §9] prohibits indemnifying employees under these circumstances.” (17/17; 13/1; 11/1-2; brackets supplied).

241. The Defendants did not deem “State law” to prohibit them from “indemnifying employees” in the Messier Case “under… [the same]…circumstances…” which purportedly foreclosed it in the Davis Case. (17/17; brackets supplied).

242. The basis upon which the Joint Appropriation was vetoed by the Defendant, Deval L. Patrick, should have concurrently foreclosed any payment from being promised by the Defendants to the Messier Plaintiff or remitted by them to said Plaintiff.

243. Six (6) years ago (June 20, 2008) the Defendant, Deval L. Patrick, informed the Davis Estate to file legislation as a mechanism to sidestep the very authority (M.G.L. c. 258, §9)

which he employed on July 11, 2014 to defeat its legislation. (13/1; 11/1-2; 17/5, 12, 17).

244. On June 20, 2008 the Plaintiff provided the Defendant, Deval L. Patrick, with authority which demonstrated that a Massachusetts Legislative Bill can be employed to pay intent based civil rights claims notwithstanding the purported dictate of M.G.L. c. 258, §9 since said statute does not exert a preclusive effect upon other payment modalities. (12/ 2, 3, 6).

245. In 2005 the Massachusetts House, Senate and Governor Romney utilized a Massachusetts Legislative Bill to pay intent based civil rights claims which were ostensibly not subject to payment as a result of the facial dictate of M.G.L. c. 258, §9. (12/2, 3, 6).

246. The Veto of the Joint Appropriation, premised upon the very authority which the Defendant, Deval L. Patrick, informed the Plaintiff would become irrelevant upon the filing of the legislation, was arbitrary, capricious, whimsical and vexatious conduct by said defendant. (17/7; 13/1; 11/1-2).

247. The Defendants' legislative activities evidence an acute bias against and ill will toward the Davis Case which is consistent with the historical treatment of it by the Executive Branch for the last 21 years.

248. The Defendants' legislative activities evidence their arbitrary and intent based discrimination against the Plaintiff.

249. On or before July 31, 2014 the Massachusetts House of Representatives and Senate overrode the Veto of the Joint Appropriation by the Governor.

250. The Joint Appropriation has not been paid or funded.

251. There is no indication that the Joint Appropriation will be paid forthwith, in the short term and no funding plan has been provided for it.

252. Since 2000 no less than seven Massachusetts Executive Branch Officials, consisting of three Governors, three Attorneys General and one Commissioner of the Department of Mental Health, have expressly rejected requests for assistance from Jason Davis and his family relative to the payment of the Davis Case judgments.

253. The decades old disdain for the Davis Case has been evinced by no less than three Executive Branch administrations including the present one through the Defendants.

254. The Davis Case has been a source of embarrassment, scorn and humiliation for the Executive Branch, the Office of the Governor, the Office of the Attorney General and Department of Mental Health since the date on which Jason Davis was beaten bloody by violent convicted criminals while other workers pinned him to the floor, failed to stop the beating and encouraged it.

255. The Davis Case is a continuing source of embarrassment, scorn and humiliation to the Executive Branch, the Defendants, the Office of the Governor, the Office of the Attorney General and Department of Mental Health insofar as Joshua K. Messier would still be alive today if "lessons" had actually been learned from the Davis Case and remedial measures had been implemented following the Davis attack in 1993.

256. The reported cases, court filings, trial exhibits, trial transcripts, appellate court filings, press reports and the Writ of Certiorari denial, generated in relation to the Davis Case, are a continuing source of embarrassment, scorn and humiliation to the Executive Branch, the Defendants, the Office of the Governor, the Office of the Attorney General and Department of Mental Health since they portray the Executive Branch in a poor light relative to its hiring policies, training policies, the parties it represented, the failure to

commence criminal prosecutions against these parties, the manner in which it conducted itself, its clear objective to "win at any cost" even if "bad law" had to be made along the way, the barbaric civil rights "positions" it took, its failure to indemnify the Davis Defendants, errors in the proceedings and its withdrawal of representation on the very day when the Supreme Court denied the Writ of Certiorari.

257. A March 11, 2014 Boston Globe article about the Davis Case by Adrian Walker portrays the Commonwealth of Massachusetts in an extremely poor light.

258. The News Stand version of this article is titled **"State of Denial"** while the electronic version is titled "Jason Davis case a missed opportunity for Mass." the articles otherwise being identical in all respects. (24/1-5).

259. On March 12, 2014 WCVB (Janet Wu) ran a news story about the Davis Case that portrays the Commonwealth of Massachusetts in an extremely poor light.

260. The reported opinion by the First Circuit is a landmark federal civil rights case since it expressly held, for the first time in our nation's history, that nurses and health care workers employed at state operated mental institutions have a constitutional obligation, under the Fourteenth Amendment's Due Process Clause, to intervene and curtail physical abuse by fellow staff upon involuntarily committed mentally ill inpatients. Davis, 264 F. 3d, at 86 - 116.

261. The landmark nature of this reported case by the First Circuit constitutes a further source of embarrassment, scorn and humiliation for the Executive Branch, the Office of the Governor, the Office of the Attorney General, the Defendants and Department of Mental Health since it highlights a series of egregious legal errors by the Commonwealth, its

manifestly barbaric treatment of Jason Davis and the grotesque nature of the civil rights "positions" which the Commonwealth took.

262. The landmark nature of the Davis Case reported opinion by the this Court also constitutes a further source of embarrassment, scorn and humiliation for the Executive Branch, the Office of the Governor, the Office of the Attorney General, the Defendants and Department of Mental Health since it highlights the manifestly barbaric treatment of Jason Davis consisting of DMH's attempt to not only "voluntarily admit" him to the Hospital, when he was legally and medically incompetent to consent to such an admission, but to concurrently deprive him of his constitutional rights as a result of such "voluntary admission".

263. The Davis Case has publicly exhibited the manifestly shameful and clearly barbaric conduct of the Commonwealth of Massachusetts for 21 years.

264. On June 22, 2014 William H. Davis emailed a letter to the Defendant, Martha Coakley, which sought to have the Davis Estate and the Messier Estate treated in an equal fashion under the law; the Defendant failed to respond. (25/1-4).

265. The actions and omissions undertaken by the Defendants were not taken in good faith nor were any such actions within any permissible range of discretion.

COUNT I - 42 U.S.C. § 1983

DUE PROCESS AND EQUAL PROTECTION CLAUSES
FOURTEENTH AMENDMENT
UNITED STATES CONSTITUTION

[WILLIAM H. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JASON DAVIS, PLAINTIFF v. DEVAL L. PATRICK, MARTHA COAKLEY, DEFENDANTS]

266. The Plaintiff incorporates herein by reference all paragraphs hereinbefore and hereinafter set forth as if specifically set forth herein.

267. At all times material herein the Defendants were State actors.

268. At all times material herein the Defendants were clothed with the authority of State law.

269. At all times material herein the Defendants engaged in State action.

270. At all times material herein the Defendants acted under color of State law.

271. At all times material herein the Defendants were Constitutional Officers and State employees.

272. At all times material herein the Defendants were Constitutional Officers acting for and in behalf of the Executive Branch of the Commonwealth of Massachusetts.

273. All claims asserted herein by the Plaintiff against the Defendant, Deval L. Patrick, have been asserted against him in his individual or personal capacity for conduct, actions, inactions and omissions engaged in by him, under color of State law, in his official capacity as the Governor of the Commonwealth of Massachusetts.

274. The claims asserted herein by the Plaintiff against the Defendant, Martha Coakley, have been asserted against her in her individual or personal capacity for conduct, actions, inactions and omissions engaged in by her, under color of State law, in her official capacity as the Attorney General for the Commonwealth of Massachusetts.

275. At all times material herein the Plaintiff was a “person” under and pursuant to 42 U.S.C. § 1983 and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. (“Equal Protection Clause”)

276. At all times material herein the Defendants were "persons" under and pursuant to 42 U.S.C. § 1983 and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

277. In the context of this matter the Indemnification Statute perpetuates a statutory mechanism which provides for the payment, in United States currency, of claims asserted by those injured by the negligent actions or omissions of non-constitutional officer State employees ("State Employee" or "State Employees").

278. The face of the Indemnification Statute technically indemnifies the State employee for his negligent conduct by satisfying the claimant's claim against said employee.

279. United States currency, in the form of a draft, is directly remitted to the claimant when indemnification is provided under the Indemnification Statute.

280. United States currency (money) is a property interest under the Due Process Clause of the Fourteenth Amendment.

281. United States currency (money) is a property interest under the State Indemnification Statute at M.G.L. c. 258, Section 2, 9 *et. seq.*

282. Property interests, under the Due Process Clause of the Fourteenth Amendment, include property interests which are protected and recognized by State law.

283. The monetary remuneration provided for through the Indemnification Statute is a protected and recognized property interest under both State law (Indemnification Statute) and the Due Process Clause of the Fourteenth Amendment.

284. The administration of the Indemnification Statute must be accomplished in compliance with both the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

285. The administration of the Indemnification Statute, in the context of this matter, was performed by the Defendants in a manner which violated both the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

286. The property interest at issue here, consisting of financial remuneration for indemnified legal claims, constitutes a fundamental right under and pursuant to the dictate of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

287. The face of the Indemnification Statute bars any indemnification for conduct, undertaken by State Employees, which is grossly negligent, willful or malicious.

288. The Death Certificate, Report of Autopsy, Messier Video and an assortment of State investigatory documents dictate that "homicide" was the cause of Joshua K. Messier's death and that actions undertaken by those who murdered Joshua k. Messier (Messier Individual Defendants) could not have been subject to indemnification, on the face of the Massachusetts Indemnification Statute, since the Messier Individual Defendants acted in at least a grossly negligent, willful or malicious fashion.

289. When murder in the first degree is committed in violation of an M.G.L. c. 265, § 1 by State Employees who were not Constitutional Officers, as it was in Joshua Messier's case, indemnification under M.G.L. c. 258 is prohibited since murder in the first degree consists of conduct which is at least grossly negligent, willful or malicious in nature.

290. When an individual dies in the manner in which Joshua K. Messier did, in violation of 18 U.S.C. § 242, indemnification of State Employees under M.G.L. c. 258 is prohibited since this death resulted from intent based civil rights violations under the Due Process Clause.

291. Only mere negligent acts and omissions are subject to indemnification under the facial

dictate of M.G.L. c. 258 §§ 2, 9 in the context of public employees who are not Constitutional Officers.

292. The Defendants, acting in concert, after consultation and pursuant to an express agreement between them, agreed to remit the $2,000,000 Settlement Offer to the Messier Estate in settlement of the conduct referenced in the Messier Complaint.

293. The Defendants agreed that the Defendant, Martha Coakley, would actually communicate the $2,000,000 Settlement Offer to the Messier Estate.

294. The $2,000,000 Settlement Offer, the Settlement Documents and the Settlement itself, together with the Defendants' raw power to effect and implement same as they did in the context of the Messier Case, violated the Equal Protection Clause, Due Process Clause and the facial dictate of the Indemnification Statute since the Messier Individual Defendants: (i) engaged in conduct which constituted Murder in the first degree under M.G.L. c. 265 §1 and willful violations of 18 U.S.C. §242; (ii) engaged in conduct that was at least grossly negligent, willful or malicious in nature; (iii) were not Constitutional Officers; and (iv) engaged in conduct that was intentional.

295. The Defendants contractually obligated the Commonwealth to pay the $2,000,000 Settlement, with State funds, even though such payment is barred by the facial dictate of the Indemnification Statute.

296. The Defendants' ability to contractually obligate the Commonwealth to pay the $2,000,000 Settlement, with State funds, results from the exercise of their inherent power within the Executive Branch, as Governor, as Attorney General, under State law and under State statutes, usages and customs including M.G.L. c. 258.

297. The Defendants' ability to contractually obligate the Commonwealth to pay the $2,000,000 Settlement from State funds to the Messier Estate, relative to claims not subject to indemnification on the face of the Indemnification Statute, constitutes an Executive Branch custom ("Executive Branch Custom") which it has employed since no later than 1998.

298. The Executive Branch Custom is a "custom" under 42 U.S.C. 42 U.S.C. §1983.

299. From 1998 to and including the present date Executive Branch Officials, including the Defendants from 2007 to present date, have arbitrarily, capriciously, whimsically, intentionally, willfully and invidiously decided to indemnify certain State employees to benefit themselves and certain third parties, for certain conduct not subject to indemnification under the Indemnification Statute, while denying indemnification to other similarly circumstanced individuals to the detriment of other third parties.

300. The Executive Branch Custom perpetuates and has perpetuated autocratic behavior by the Defendants and other Executive Branch Officials.

301. The Messier Estate and the Davis Estate are similarly circumstanced estates, in the context of this matter, since each of them: (i) is an Estate; (ii) has sought indemnification of State Employee conduct, which caused injury to an involuntarily committed mentally ill decedent, which conduct was at least grossly negligent, willful or malicious in nature; (iii) sought a memorialized indemnification commitment through the Executive Branch; and (iv) sought payment of the indemnification commitment.

302. For no less than six (6) years the Commonwealth, acting by and through the Defendants, has intentionally refused to indemnify the Davis Case judgment because the conduct

complained of was intent based and, thus, purportedly not subject to indemnification on the face of the Indemnification Statute.

303. The Defendants' ability to contractually obligate the Commonwealth to pay the Settlement to the Messier Estate, while concurrently depriving the Davis Estate of indemnification of their intent based claims under the Indemnification Statute, plainly and simply implements intentional, willful, malicious, callous, arbitrary, capricious, whimsical, deliberately indifferent and invidious discrimination ("Discrimination") by the Defendants, relative to two similarly circumstanced Estates, which discrimination deprives the Plaintiff of its rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment and proximately causes injury to it.

304. The Defendants exercised raw, unbridled and concerted State power relative to making the Settlement Offer, having the Settlement Documents drawn and executed by State officials and implementing the Settlement, regarding conduct which was not even subject to indemnification on the face of the Indemnification Statute (conduct of Messier Individual Defendants), while depriving a similarly circumstanced estate (Davis Estate) of these same rights and privileges.

305. This raw, unbridled and concerted power to indemnify claims, which are not subject to indemnification on the face of the Indemnification Statute, violates the Constitution unless similarly circumstanced claimants are treated equally.

306. The denial of equal treatment and "injury in fact" exists, in the present context, due to the creation of this "legal framework" and the indemnification by the Commonwealth of all claims in the Messier Case.

307. The Discrimination, which violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, deprived the Plaintiff of property rights which are recognized and protected under the Due Process Clause including, to wit, remuneration under the Indemnification Statute in the amount of $2.1 million dollars.

308. The Discrimination, which violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, was directly perpetuated by the Defendants and each of them through their actions and omissions undertaken in relation to the Messier and Davis Estates.

309. The only manner in which to constitutionally rectify the Discrimination is have the Defendants remit remuneration to the Plaintiff from their personal funds, under and pursuant to the Executive Branch Custom, in the amount of $2.1 million dollars.

310. The Discrimination perpetuates and proximately results in the Plaintiff's possession of an absolute, unqualified and impenetrable claim of entitlement, under and pursuant to the Indemnification Statute, in the amount of $2.1 million dollars.

311. In the absence of this absolute, unqualified and impenetrable claim of entitlement the Discrimination would perpetuate itself and never be subject to amelioration.

312. In the absence of this absolute, unqualified and impenetrable claim of entitlement the Defendants would be provided with a perpetual license to discriminate and to continue to act in an arbitrary, capricious and whimsical fashion to suit their own personal needs and/or political expediencies.

313. One of the purposes of the Equal Protection Clause is to protect every person in every state from intentional and arbitrary discrimination resulting from either the plain text of a statute or its discriminatory execution by State agents.

314. This purpose of the Equal Protection Clause prohibits the Discrimination and the proximately caused property deprivation.

315. Though the text of the Indemnification Statute is plain, fair and facially impartial it has been applied here by the Defendants with an evil eye and an unequal hand.

316. This application of the Indemnification Statute by the Defendants directly and proximately caused intentional and arbitrary Discriminations between the Davis and Messier Estates which, in turn, deprived the Plaintiff of fundamental property rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

317. The Discrimination deprived the Plaintiff of his fundamental right to and liberty interest in the just, fair, impartial, neutral, equal and even handed application of state law, relative to all those with whom it is similarly circumstanced, under and pursuant to the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

318. One of the fundamental purposes of the Due Process Clause of the Fourteenth Amendment is to protect the individual from the arbitrary actions and discriminations of the government as undertaken by those acting for it.

319. The Discrimination and its proximately caused property deprivation were arbitrary, capricious, whimsical, intentional, willful and invidious in nature and same violated the Due Process Clause of the Fourteenth Amendment.

320. The Discrimination constitutes actions and omissions by the Defendants which were purely personal, arbitrary and political.

321. The Defendant, Martha Coakley, announced her candidacy for Governor of the Commonwealth of Massachusetts on or about 2013.

322. On information and belief the Defendant, Deval L. Patrick, has aspirations for other elected offices after his current gubernatorial term ends in January, 2015, having declined to seek a third term.

323. Both of the Defendants are mindful of their respective political aspirations, political legacies and are cognizant of the fact that the Messier Case has been a highly charged "political" circumstance since the Winter of 2014.

324. The "political" nature of the Messier Case, the Settlement and the implemented remedial activities are evidenced by the following facts:

A. Joshua K. Messier was murdered on May 4, 2009 which was some 5 years ago.

B. Both Defendants were elected to and serving in their current Executive Branch Offices well before the date when Joshua K. Messier was murdered.

C. It was not until February, 2014 that the Defendants even made reference, in the public eye, to the atrocity that is the Messier Case.

D. These references were perpetuated only by a series of extensive press accounts of the Messier Case.

E. The Defendants were not made aware of Joshua K. Messier's death during May, 2009.

F. The Defendants were not made aware of Joshua K. Messier's death for several years.

G. From 2007 to present date neither of the Defendants required any State employee to notify them, at any point, when an institutionalized person was killed, murdered or died an unnatural death in a Massachusetts institution.

H. No corrective or remedial measures were implemented by the Defendants in the five (5) year period following Joshua K. Messier's death even though many remedial measures were needed as evidenced by the implementation of some of them in 2014.

I. From 2009 to 2014 the unconstitutional institutional conditions, which prevailed at the Bridgewater State Hospital and proximately caused Joshua K. Messier's murder, went unchecked.

J. The 1993 Davis attack, together with the 2001 Davis Case reported opinion, put Executive Branch officials, including the Defendants from 2007 to May 3, 2009, on notice that substantial remedial measures were necessary to avoid further unconstitutional restraints in Massachusetts State institutions of the type that were implemented upon Jason Davis on August 12, 1993 but this notice was ignored and no such remedial measures were implemented as of date (May 4, 2009) when Joshua K. Messier was murdered.

K. The letters forwarded by the Plaintiff to the Defendant, Deval L. Patrick, in 2008 put him on notice that substantial remedial measures were necessary to avoid further unconstitutional restraints in Massachusetts State institutions of the type that were implemented upon Jason Davis on August 12, 1993 but this notice was ignored and no such remedial measures were implemented as of date (May 4, 2009) when Joshua K. Messier was murdered.

L. The Defendants' conduct was purely reactionary in nature.

M. The series of extensive and detailed press accounts, concerning the Messier Case, made it a very substantial "political issue" for both Defendants and a "political firestorm" has swirled around the Messier case since February, 2014.

325. The Messier Settlement effected by the Defendants was politically motivated and was effectuated to serve their own personal, political agendas and to escape from the public outcry that ensued once the facts surrounding Joshua K. Messier's brutal death came to light.

326. The Messier Settlement was effectuated by the Defendants to protect their political futures and legacies and to quell the ongoing political firestorm.

327. The Defendants discussed these political ramifications with each other before the Settlement Offer was even remitted to the Messier Estate by the Defendant, Martha Coakley.

328. The Messier Settlement was not proposed by the Defendants for pure hearted reasons, such as justice and honor, because such reasons would have concurrently commanded a payment to the Davis Estate as well and, indeed, to all victims of intent based civil rights violations committed by State Employees.

329. The political basis and genesis for the indemnification effected in the Messier Case dictates that the denial of indemnification in the Davis Case, because of the absence of a "political firestorm" around it and the absence of any "public outcry" of the type implicated in the Messier Case, both effectuated the Discrimination and proves that it was intentional, willful, malicious, callous, arbitrary, capricious, whimsical, deliberately indifferent and invidious.

330. Although the Davis and Messier Estates are similarly circumstanced, the Davis Estate has been intentionally treated in a disparate manner from the Messier Estate by the Defendants because, in part, of pure and unadulterated spite.

331. Spite is evidenced by the above facts which depict the manner in which Jason Davis and his family have been treated by the Executive Branch, within and outside of the courtroom, for the last 21 years continuing to this day.

332. The Defendants' spite is also evidenced by the following actions:

A. The Veto of the Joint Appropriation by the Defendant, Deval L. Patrick, based upon the very Indemnification Statute which the Defendant informed the Plaintiff would become wholly inapplicable when the Plaintiff filed legislation seeking to have the Third Amended Judgment paid in full.

B. The Defendant's, Martha Coakley's, attempt to defeat the First Davis House Amendment.

C. The baseless and wholly irrational Discrimination effected by the Defendants.

D. The historical and continuing disdain by the Executive Branch, including the Defendants, for the Davis Case and Plaintiff.

E. The refusal by the Defendants to publicly acknowledge the horrific and gruesome tragedy that is the Davis Case.

F. The refusal by the Defendants to provide justice to the Davis family much less provide it quickly.

G. The refusal by the Defendants to themselves meet with the Davis family.

H. The refusal by the Defendants to treat the Davis family with the respect and dignity accorded to the Messier family.

I. The refusal by the Defendants to indemnify the Davis family.

J. The need to even file this Complaint and the instant case against the Defendants.

K. The "win at any cost" mentality of the Commonwealth of Massachusetts from 1993 to present.

L. The embarrassment, scorn and humiliation suffered by the Executive Branch for the last 21 years as a result of the Davis Case.

M. The portrayal in the media of the Davis Case as a series of lessons which were not "learned" thus causing Joshua K. Messier's death on May 4, 2009. (24/1-5).

N. The clear desire of the Executive Branch to protect itself, its reputation and its prior Constitutional Officers through the proverbial ***"blue wall".***

333. Defendants' spite is motivated and perpetuated by the fact that the Davis Case has publicly exhibited the manifestly shameful and clearly barbaric conduct of the Commonwealth of Massachusetts, as recounted above, through its Executive Branch, the Defendants, the Office of the Attorney General and Department of Mental Health.

334. The spite is motivated and perpetuated by the fact that the Davis Case has portrayed the Commonwealth of Massachusetts and, in particular the Office of the Attorney General, in a poor light for 21 years relative to the parties it represented in the Davis Case, its failure to have commenced criminal prosecutions against these parties, the manner in which it conducted itself, its clear objective to "win at any cost" even if law that clearly derogated from the public interest had to be made along the way, the barbaric civil rights positions it took, its failure to indemnify Jason Davis, errors in the proceedings and its withdrawal of representation on the very day that the Supreme Court denied the Writ of Certiorari.

335. Although the Davis and Messier Estates are similarly circumstanced the Davis Estate has been intentionally treated in a disparate manner from the Messier Estate by the Defendants because, in part, of the Defendants' intent to act arbitrarily, capriciously and whimsically relative to the Davis Estate and their own personal interests in furthering their political careers.

336. Although the Davis and Messier Estates are similarly circumstanced the Davis Estate has been placed in a different "group" of indemnification eligible candidates, in terms of the Indemnification Statute and the Executive Branch Custom, because: (i) there is no "political firestorm" around the Davis Case; (ii) there is no "public outcry" around the Davis Case; (iii) the Davis Case has brought great shame upon the Commonwealth of Massachusetts; (iv) the Plaintiff has been without the ability to curtail the Defendants' arbitrary, capricious and whimsical discriminations toward it; (v) Executive Branch officials, including the Defendants, are spiteful towards the Davis Case; and (vi) the Davis Case is politically disfavored (hereinafter collectively "Eligibility Criteria").

337. The Eligibility Criteria constitute invidiously discriminatory disqualification predicates.

338. The Eligibility Criteria violate the Due Process and Equal Protection Clauses and cannot be constitutionally employed as a basis to disqualify eligible claimants for indemnification under the Indemnification Statute or the Executive Branch Custom.

339. The Eligibility Criteria were employed by the Defendants, in violation of the Due Process and Equal Protection Clauses, to disqualify the Davis Estate as an eligible claimant for indemnification, such disqualification both effecting intentional, arbitrary and invidious discrimination and proximately causing the Davis Estate to sustain property deprivations violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

340. The Discrimination effectuates no compelling or any other governmental interest.

341. The Discrimination cannot be justified premised upon the contention that only the Messier Case was an “awful”, “horrible”, “tragic” and “disgusting” case because the Davis Case was as well.

342. The Defendants intentionally, willfully, maliciously, callously, arbitrarily, capriciously, whimsically, recklessly, deliberately indifferently and invidiously engaged in the aforesaid actions and omissions which deprived the Plaintiff of the recited privileges, rights and immunities, as secured and guaranteed by the Constitution and the laws of the United States, and proximately caused the Plaintiff to be damaged thereby in the aforesaid manner.

Wherefore, it is demanded that:

A. This Honorable Court enter judgment for the Plaintiff on all of its claims for the amount owed under the Third Amended Judgment, accumulated interest and all other damages sustained by the Plaintiff;

B. This Honorable Court hold, determine and find that the Defendants acted jointly and severally;

C. The Plaintiff be awarded compensatory damages in the amount of approximately $2.1 million dollars together with per diem interest of $139.40 per day;

D. The Plaintiff be awarded prejudgment and postjudgment interest;

E. The Plaintiff be awarded attorneys' fees, costs, taxable costs, taxable expenses and expenses pursuant to 42 U.S.C. § 1988 and applicable federal rules of civil procedure;

F. The Plaintiff be awarded punitive damages against each Defendant in an amount no less than $10,000,000; and

G. The Plaintiff be awarded punitive damages in an amount which is at the outer most limit of permissibility under the Due Process Clause of the Fourteenth Amendment.

COUNT II - 42 U.S.C. § 1983

DUE PROCESS AND EQUAL PROTECTION CLAUSES
FOURTEENTH AMENDMENT
UNITED STATES CONSTITUTION

[WILLIAM H. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JASON DAVIS, PLAINTIFF v. DEVAL L. PATRICK, MARTHA COAKLEY, DEFENDANTS]

343. The Plaintiff incorporates herein by reference all paragraphs hereinbefore and hereinafter set forth as if specifically set forth herein.

344. The Settlement consisted of and resulted from, in fact and effect, an executive fiat ("Executive Fiat") promulgated by and between the Defendants which perpetuates autocratic behavior on behalf of said Defendants.

345. The Executive Fiat nullified the plain meaning, dictate and effect of the Indemnification Statute since it provided, in the context of the Settlement, indemnification for conduct

which is actually precluded from being indemnified under the plain meaning of the Indemnification Statute.

346. The Executive Fiat is a "custom" under 42 U.S.C. 42 U.S.C. §1983.

347. The Death Certificate, Report of Autopsy, Messier Video and an assortment of State investigatory documents dictate that homicide was the cause of death and that actions undertaken by those who murdered Joshua K. Messier could not have been subject to indemnification, on the face of the Massachusetts Indemnification Statute, since they acted in, at the least, a grossly negligent, willful or malicious fashion.

348. The Defendants, acting in concert, after consultation and pursuant to an express agreement between them, agreed to remit the $2,000,000 Settlement to the Messier Estate.

349. The $2,000,000 Settlement is in accord and consistent with the Executive Fiat.

350. The Defendants have contractually obligated the Commonwealth to pay the $2,000,000 Settlement to the Messier Estate, with State funding and in accord with the Executive Fiat, as a result of the exercise of their inherent power within the Executive Branch, as Governor, as Attorney General, under State law and under State statutes, usages and customs including M.G.L. c. 258.

351. The Executive Fiat perpetuates a mechanism which provides for the payment, in United States currency, of claims asserted by those injured by the grossly negligent, willful, malicious or intent based conduct of State Employees who are not constitutional officers.

352. The Executive Fiat indemnifies State employees for their grossly negligent, willful, malicious or intent based conduct by satisfying the claimant's claim against said employee.

353. United States currency, in the form of a draft, will be directly remitted to the claimant when indemnification is provided under the Executive Fiat.

354. United States currency (money) is a property interest under the Due Process Clause of the Fourteenth Amendment.

355. United States currency (money) is a property interest under the Executive Fiat.

356. Property interests, under the Due Process Clause of the Fourteenth Amendment, include property interests which are protected and recognized by State law.

357. The monetary remuneration provided for through the Executive Fiat is a protected and recognized property interest under both State law (Executive Fiat) and the Due Process Clause of the Fourteenth Amendment.

358. The administration of the Executive Fiat must be accomplished in accord and in compliance with both the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

359. The administration of the Executive Fiat, in the context of this matter, was performed in a manner which violated both the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

360. The property interest at issue here, consisting of financial remuneration for indemnified legal claims under the Executive Fiat, constitutes a fundamental right under and pursuant to the dictate of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

361. Given the circumstances under which the Messier Case was indemnified and the Davis Case was refused indemnification, the Executive Fiat indemnification (“Executive Fiat Indemnification”) eligibility criteria were as follows:

   A. The indemnified conduct must be grossly negligent, willful, malicious or intentional in nature and not just negligent.

B. The victim must be an acutely mentally ill person who has been an involuntarily committed to a Massachusetts institution.

C. The indemnified State employees cannot be Constitutional Officers.

D. The indemnified amount, sought to be obtained through the Executive Fiat indemnification, must be reasonable.

E. The underlying facts in the subject case must be "awful", "horrible", "tragic" and "disgusting".

F. There must be a "political firestorm" around the conduct sought to be indemnified.

G. There must be a "public outcry" around the conduct sought to be indemnified.

H. The conduct sought to be indemnified cannot emanate from circumstances which have brought great shame to the Massachusetts Executive Branch for more than two decades.

I. The conduct sought to be indemnified cannot be such that Executive Branch officials would like to refuse indemnification due to their arbitrary, capricious and whimsical ability to do so.

J. No prior or current Executive Branch officials can have a spiteful attitude relative to the case in which indemnification is sought.

K. The case in which indemnification is sought cannot be politically disfavored.

362. The first five (5) factors apply to the Davis Case since: (i) it is intent based conduct which is sought to be indemnified by the Plaintiff; (ii) the victim was an acutely mentally ill person who had been an involuntarily committed to a Massachusetts institution; (iii) the pertinent State employees were not Constitutional Officers; (iv) the amount sought to be indemnified was reasonable; and (v) the Davis Case facts were "awful", "horrible", "tragic" and "disgusting".

363. Two triers of fact, consisting of a federal jury and a nationally renowned civil rights jurist (Senior District Judge Morris E. Lasker) who had served on the federal bench for 30 years when the Davis Case was tried, determined that the damages awarded in the Davis Case were reasonable.

364. The Davis Case federal jury initially made this determination through its verdict; verdicts long being held in our judicial system to be not only sacred but inherently reasonable as well.

365. Senior District Judge Morris E. Lasker, who sat on the Davis Case trial, insured further "reasonableness" of the verdict damages by reducing them by $525,000. Davis, 264 F. 3d, at 96.

366. The First Circuit then held that there was a "reasonable relationship between the injury and the amount of the award." Davis, 264 F. 3d, at 116, 95.

367. The disparity in treatment, as between the Davis and Messier Estates, cannot be justified premised upon the contention that payment of the Messier Settlement is more "reasonable" than a payment of the Davis judgment since no trier of fact actually found any fact or made any determination of the reasonableness of the "damages" obtained in the Messier Case via Settlement.

368. The Davis Case, unlike the Messier Case, was tried before a jury for one month, a jury verdict was rendered, a remittitur of $525,000 was entered, three judgments were entered upon the jury verdict, two appeals were filed, three reported opinions were generated and a Writ of Certiorari was denied.

369. The Davis Case damages are reasonable.

370. The previously recited facts dictate that the attack on Jason Davis at the Westborough State Hospital and the string of appeals which he had to endure, together with the collective conduct of the Executive Branch from the date it hired Phillip Bragg and Paul Rennie to present date, was and is “awful”, “horrible”, “tragic” and “disgusting”.

371. That the Davis Case was “awful”, “horrible”, “tragic” and “disgusting” is also evidenced by the First Circuit reported opinion which held that “[t]here was sufficient evidence to support the jury’s verdict that the appellants acted with ‘evil motive’ toward Davis.” Davis, 264 F. 3d, at 115.

372. The second six (6) eligibility factors for Executive Fiat Indemnification remuneration, consisting of a “political firestorm”, a ”public outcry”, the absence of “shame”, the ability to escape from the arbitrary, capricious and whimsical decisions of the Defendants, the absence of “spite” and the absence of “political disfavor”, constitute invidiously discriminatory disqualification predicates. (“Six Factors”).

373. The Six Factors violate the Due Process and Equal Protection Clauses and cannot be constitutionally employed as a basis to disqualify eligible claimants for Executive Fiat Indemnification.

374. The Six Factors were employed by the Defendants, in violation of the Due Process and Equal Protection Clauses, to disqualify the Davis Estate as an eligible claimant for Executive Fiat Indemnification, such disqualification both effecting intentional, arbitrary and invidious discrimination and proximately causing the Davis Estate to sustain a property deprivation violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

375. If the Defendants contend that none of the Six Factors were applied to the Davis Estate then, in that event, there would have been no basis upon which to deny Executive Fiat Indemnification to it given the compliance with the first five (5) factors.

376. Although the Davis and Messier Estates are similarly circumstanced the Davis Estate has been placed in a different "group" of indemnification eligible candidates, in terms of the Executive Fiat Indemnification determination, because: (i) there is no "political firestorm" around the Davis Case; (ii) there is no "public outcry" around the Davis Case; (iii) the Davis Case has brought shame on the Massachusetts Executive Branch for 21 years and counting; (iv) the Plaintiff has been without the ability to curtail the Defendants' arbitrary, capricious and whimsical discriminations toward it; (v) Executive Branch Officials, including the Defendants, are spiteful toward the Davis Case; and (vi) the Davis Case is politically disfavored.

377. For no less than six (6) years the Commonwealth, acting by and through the Defendants, has intentionally, willfully, maliciously, callously, arbitrarily, capriciously, whimsically, recklessly and invidiously refused to indemnify the Davis Case judgment because the complained of conduct was intent based and, thus, purportedly not subject to indemnification under the Indemnification Statute.

378. The Settlement effectuated by the Defendants' pursuant to the Executive Fiat and from State funds, while concurrently depriving the Davis Estate of indemnification of their intent based claims under the Executive Fiat, plainly and simply implements intentional, willful, malicious, callous, arbitrary, capricious, whimsical, deliberately indifferent and invidious discrimination ("Executive Fiat Discrimination") by the Defendants, relative to

two similarly circumstanced Estates, which discrimination deprives the Plaintiff of its rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment and proximately causes injury to it.

379. The Executive Fiat Discrimination, which violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, was directly perpetuated by the Defendants and each of them through their actions and omissions undertaken in relation to the Messier and Davis Estates.

380. The Executive Fiat Discrimination, which violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, deprived the Plaintiff of property rights which are recognized and protected under the Due Process Clause including, to wit, remuneration under the Executive Fiat in the amount of $2.1 million dollars.

381. The only manner in which to constitutionally rectify the Executive Fiat Discrimination is to have the Defendants remit remuneration to the Plaintiff from their personal funds, under and pursuant to the Executive Fiat, in the amount of $2.1 million dollars.

382. The Executive Fiat Discrimination proximately results in the Plaintiff's possession of an absolute, unqualified and impenetrable claim of entitlement, under and pursuant to the Executive Fiat, in the amount of $2.1 million dollars.

383. In the absence of this absolute, unqualified and impenetrable claim of entitlement the Executive Fiat Discrimination would perpetuate itself and never be subject to amelioration.

384. In the absence of this absolute, unqualified and impenetrable claim of entitlement the Defendants would be provided with a perpetual license to discriminate through the use of and resort to the Executive Fiat.

385. In the absence of this absolute, unqualified and impenetrable claim of entitlement the Defendants would be permitted to use the Executive Fiat for the benefit of only one person (Messier Estate).

386. The Executive Fiat Discrimination, which violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment, deprived the Plaintiff of its fundamental right to and liberty interest in the just, fair, impartial, neutral, equal and even handed application of State law, relative to all those with whom it is similarly circumstanced, under and pursuant to the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

387. The Executive Fiat Discrimination and its proximately caused property deprivation were arbitrary, capricious, whimsical, intentional, willful and invidious in nature.

388. The Executive Fiat Discrimination constitutes actions and omissions by the Defendants which were purely personal, arbitrary and politically motivated.

389. The Executive Fiat Discrimination effectuates no compelling or any other governmental interest.

390. The Defendants intentionally, willfully, maliciously, callously, arbitrarily, capriciously, whimsically, recklessly, deliberately indifferently and invidiously engaged in the aforesaid actions and omissions which deprived the Plaintiff of the recited privileges, rights and immunities, as secured and guaranteed by the Constitution and the laws of the United

States, and proximately caused the Plaintiff to be damaged thereby in the aforesaid manner.

Wherefore, it is demanded that:

A. This Honorable Court enter judgment for the Plaintiff on all of its claims for the amount owed under the Third Amended Judgment, accumulated interest and all other damages sustained by the Plaintiff;

B. This Honorable Court hold, determine and find that the Defendants acted jointly and severally;

C. The Plaintiff be awarded compensatory damages in the amount of approximately $2.1 million dollars together with per diem interest of $139.40 per day;

D. The Plaintiff be awarded prejudgment and postjudgment interest;

E. The Plaintiff be awarded attorneys' fees, costs, taxable costs, taxable expenses and expenses pursuant to 42 U.S.C. § 1988 and applicable federal rules of civil procedure;

F. The Plaintiff be awarded punitive damages against each Defendant in an amount no less than $10,000,000; and

G. The Plaintiff be awarded punitive damages in an amount which is at the outer most limit of permissibility under the Due Process Clause of the Fourteenth Amendment.

COUNT III - 42 U.S.C. § 1983

DUE PROCESS CLAUSE AND EQUAL PROTECTION CLAUSES
FOURTEENTH AMENDEMENT
UNITED STATES CONSTITUTION

SUPERVISORY LIABILITY CLAIM

[WILLIAM H. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JASON DAVIS, PLAINTIFF v. DEVAL L. PATRICK, DEFENDANT]

391. The Plaintiff incorporates all paragraphs hereinbefore and hereinafter set forth as if specifically set forth herein.

392. The Defendant, Martha Coakley, herself intentionally, willfully, maliciously, callously, arbitrarily, capriciously, whimsically, recklessly, deliberately indifferently and invidiously engaged in the aforesaid actions and omissions, including the Discrimination and Executive Fiat Discrimination, which deprived the Plaintiff of the recited privileges, rights and immunities, secured and guaranteed by the Constitution and the laws of the United States, and proximately caused it to be damaged in the aforesaid manner. ("Constitutional Deprivations").

393. The Defendant, Deval L. Patrick, is the Chief Executive Officer of the Executive Branch in the Commonwealth of Massachusetts and has been since 2007.

394. The Defendant, Deval L. Patrick, is the sitting Governor of the Commonwealth of Massachusetts and has been since 2007.

395. The Defendant, Martha Coakley, is the sitting Attorney General for the Commonwealth of Massachusetts and she operates and controls the Office of the Attorney General in this capacity.

396. The Attorney General's Office is itself an Office within the Massachusetts Executive Branch.

397. The Office of the Attorney General and the Attorney General are subject to the control and supervision of the Defendant, Deval L. Patrick, in his capacity as Chief Executive Officer of the Executive Branch and the Governor of the Commonwealth of Massachusetts.

398. The Defendant, Deval L. Patrick, is and has been since 2007 responsible for creating, promulgating, supervising and controlling the implementation of Massachusetts

Executive Branch policies relative to the indemnification of tortious activities ("Indemnification") undertaken by Executive Branch public employees employed by Executive Branch public employers in the Commonwealth of Massachusetts.

399. From 2007 to present date the Defendant, Deval L. Patrick, has possessed ultimate and final Executive Branch authority to create, promulgate and enforce statutes, regulations, customs, usages, policies, practices, rules, directives and procedures relative to Indemnification.

400. The Defendant's, Deval L. Patrick's, callous, reckless and deliberately indifferent policies of omission and inaction, which directly and proximately caused the Defendant, Martha Coakley, to violate the Plaintiff's constitutional rights, were as follows:

A. Failing to adequately supervise and control the Attorney General and her subordinates so as to insure that Indemnification was provided to claimants in a manner consistent with the Due Process Clause.

B. Failing to adequately supervise and control the Attorney General and her subordinates so as to insure that Indemnification was provided to claimants in a manner consistent with the Equal Protection Clause.

C. Failing to adequately supervise and control the Attorney General and her subordinates so as to insure that Indemnification was provided to claimants in the absence of conduct which was arbitrary, capricious, whimsical and vexatious.

D. Failing to create, implement, enforce, supervise and control the enforcement of adequate Indemnification polices which would have insured compliance with each of the above parameters.

E. Failing to adequately supervise, train and control the Attorney General and her subordinates so as to insure that Indemnification, in the context of the Davis Case itself, was provided in accord with the Constitution.

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401. The Defendant, Deval L. Patrick, not only turned a blind eye and a deaf ear to the elevated risk of harm to which the Plaintiff was subjected but he personally participated

in the Constitutional Deprivations himself in conjunction with the Defendant, Martha Coakley.

402. The Constitutional Deprivations suffered by the Plaintiff were easily preventable and would have been prevented had the Defendant, Deval L. Patrick, supervised his subordinate, the Defendant, Martha Coakley, in the manner set forth above.

403. The Defendant, Deval L. Patrick, failed to take obvious measures to address the unusual and elevated risks of harm to which the Plaintiff was subjected.

404. The Defendant, Deval L. Patrick, had direct, actual, personal and constructive knowledge of the Defendant's, Martha Coakley's, Constitutional Deprivations of the Plaintiff's constitutional rights resulting from her indemnification posture relative to the Plaintiff.

405. The Defendant, Deval L. Patrick, had direct, actual, personal and constructive knowledge of the Defendant's, Martha Coakley's, Constitutional Deprivations of the Plaintiff's constitutional rights no later than July 14, 2014.

406. The Defendant, Deval L. Patrick, had direct, actual, personal and constructive notice of the Constitutional Deprivations which the Defendant, Martha Coakley, perpetuated and proximately caused by virtue of his receipt (July 14, 2014) of the Governor Constitutional Demand Letter and the Defendant's, Martha Coakley's, prior receipt (June 10 and 12, 2014) of the AG Coakley Constitutional Demand Letter. (21/1-18; 22/1; 23/1-36).

407. The Defendant, Deval L. Patrick, had direct, actual, personal and constructive knowledge of the Defendant's, Martha Coakley's, systematic indemnification of intent based claims in violation of the Indemnification Statute.

408. The Defendant's, Deval L. Patrick's, conduct, actions, inactions and omissions as delineated above, coupled with the Discrimination and Executive Fiat Discrimination, constituted the official policies of the Chief Executive Officer of the Massachusetts Executive Branch and Governor ("policies").

409. The policies were inadequate.

410. The Defendant's, Deval L. Patrick's, conduct, actions, inactions and omissions, as depicted above, constituted reckless, callous and deliberately indifferent conduct undertaken in relation to the constitutional rights of the Plaintiff.

411. There was an affirmative link between the misconduct of the Defendant, Martha Coakley, and the actions and omissions of the Defendant, Deval L. Patrick.

412. The Defendant's, Deval L. Patrick's, actions and omissions, in this regard, inexorably led to the Constitutional Deprivations perpetuated by the Defendant, Martha Coakley.

413. This affirmative link directly and proximately caused both the Constitutional Deprivations and the resultant damages sustained by Plaintiff.

414. The Defendant's, Deval L. Patrick's, concurrent personal participation in the Constitutional Deprivations provided him with direct, actual, personal and constructive knowledge that his subordinate was violating the Plaintiff's constitutional rights.

415. The Defendant, Deval L. Patrick, acted deliberately indifferent to Plaintiff's constitutional rights insofar as: (i) he had personal and constructive knowledge of

pertinent facts which demonstrated that the Defendant, Martha Coakley, was actually violating the Plaintiff's constitutional rights; (ii) he knew, given these facts, that there was a substantial risk of serious harm to or outright deprivation of the Plaintiff's constitutional rights; and (iii) he did nothing to insure that these constitutional rights were not violated.

416. Since the Defendant, Deval L. Patrick, personally participated, with his subordinate, the Defendant, Martha Coakley, in depriving the Plaintiff of its constitutional rights he acted in a deliberately indifferent fashion in both the personal participation deprivation context and in the supervisory deprivation context.

417. The Defendant, Deval L. Patrick, is liable for all foreseeable consequences of his supervisory actions and omissions proximately causing, as they did, the Constitutional Deprivations by the Defendant, Martha Coakley, and the proximately caused damages.

418. There was a grave risk of harm that the Plaintiff would suffer the Constitutional Deprivations at the hands of the Defendant, Martha Coakley, the Defendant, Deval L. Patrick, had direct, actual, personal and constructive knowledge of that grave risk of harm and the Defendant, Deval L. Patrick, failed to take easily available measures which could have prevented the Constitutional Deprivations caused by the Defendant, Martha Coakley.

419. Not later than July 14, 2014 the Defendant, Deval L. Patrick, had direct, actual, personal and constructive knowledge that the Defendant, Martha Coakley, caused the Constitutional Deprivations but did nothing.

420. Not later than July 14, 2014 the Defendant, Deval L. Patrick, tacitly approved, acquiesced in and purposefully disregarded the conduct of the Defendant, Martha Coakley, which caused the Constitutional Deprivations.

421. The Defendant, Deval L. Patrick, had the power, authority and ability to ameliorate the conduct of the Defendant, Martha Coakley, which caused the Constitutional Deprivations but did nothing.

422. The Defendant, Deval L. Patrick, set into motion a series of acts by the Defendant, Martha Coakley, which the Defendant knew or reasonably should have known would cause the Plaintiff to proximately suffer the Constitutional Deprivations.

423. Through his actions and omissions the Defendant, Deval L. Patrick, implemented and effectuated a further policy of not taking adequate and reasonable steps to ensure that adequate policies, addressing the subjects delineated above, were created, promulgated and enforced.

424. The actions and omissions of the Defendant, Deval L. Patrick, were the principal and moving force which proximately caused the Constitutional Deprivations and all associated damages.

425. An intentional, conscious and deliberate choice was made by the Defendant, Deval L. Patrick, not to create, promulgate and enforce adequate policies and such choice was among numerous alternatives which could have been selected by him.

426. That an intentional, conscious and deliberate choice was made by the Defendant, Deval L. Patrick, not to create, promulgate and to enforce adequate policies, is manifested by his failure to have responded to his Constitutional Demand Letter or insure that his

subordinate, the Defendant, Martha Coakley, responded to hers. (21/1-18; 22/1; 23/1-36).

427. It was manifest that the inadequacies of the policies were likely to result in the Constitutional Deprivations and they did.

428. The Defendant's, Deval L. Patrick's, supervisory related actions and omissions proximately caused both the Constitutional Deprivations effected by the Defendant, Martha Coakley, and all associated damages and injuries.

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Wherefore, it is demanded that:

A. This Honorable Court enter judgment for the Plaintiff on all of its claims for the amount owed under the Third Amended Judgment, accumulated interest and all other damages sustained by the Plaintiff;

B. The Plaintiff be awarded compensatory damages in the amount of approximately $2.1 million dollars together with per diem interest of $139.40 per day;

C. This Honorable Court rule, determine and hold that the Defendant's, Deval L. Patrick's, supervisory related actions and omissions proximately caused both the Constitutional Deprivations effected by the Defendant, Martha Coakley, and all associated damages and injuries;

D. The Plaintiff be awarded prejudgment and postjudgment interest;

E. The Plaintiff be awarded attorneys' fees, costs, taxable costs, taxable expenses and expenses pursuant to 42 U.S.C. § 1988 and applicable federal rules of civil procedure;

F. The Plaintiff be awarded punitive damages against the Defendant in an amount no less than $10,000,000; and

G. The Plaintiff be awarded punitive damages in an amount which is at the outer most limit of permissibility under the Due Process Clause of the Fourteenth Amendment.

COUNT IV - 42 U.S.C. § 1983

PUNITIVE DAMAGES

**DUE PROCESS CLAUSE AND EQUAL PROTECTION CLAUSES
FOURTEENTH AMENDEMENT
UNITED STATES CONSTITUTION**

[WILLIAM H. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JASON DAVIS, PLAINTIFF v. DEVAL L. PATRICK, MARTHA COAKLEY, DEFENDANTS]

429. The Plaintiff incorporates herein by reference all paragraphs hereinbefore and hereinafter set forth as if specifically set forth herein.

430. This count is parasitical to and actually a sub-claim of Counts I - III as set forth above.

431. Prior to, upon and following their receipt of their respective Constitutional Demand Letters the Defendants knew that the Messier Settlement violated the Due Process and Equal Protection Clause rights of the Plaintiff and would continue to do so if Defendants did not forthwith cause the Davis Case Third Amended Judgment to be paid in full.

432. Prior to, upon and following their receipt of their respective Constitutional Demand Letters the Defendants knew that the Messier Settlement proximately damaged the Plaintiff in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

433. The Equal Protection and Due Process Clause violations, set forth in the respective Constitutional Demand Letters, are extremely crude in nature and easily discernible.

434. The Defendants' subjective, actual and personal knowledge of their violations of the Due Process and Equal Protection Clause rights of the Plaintiff emanated from the clarity of the facts and legal principles, as set forth within the Constitutional Demand Letters,

coupled with the Defendants' ability to comprehend the substantive principles set forth in the Constitutional Demand Letters given their status as attorneys and civil rights attorneys. (21/1-18; 23/1-36).

435. The Defendants acted outrageously, maliciously, intentionally, willfully, callously, evilly and recklessly relative to their deprivations the Plaintiff's constitutional rights.

436. The Defendants' conduct was extreme and outrageous.

437. The Defendants' conduct was motivated by an evil motive, intent and eye.

438. The Defendants' conduct was motivated by an unequal hand.

439. The Defendants had a malicious design and intent to deprive the Plaintiff of the privileges, rights and immunities, which were secured and guaranteed to it by the Constitution and the laws of the United States, such design and intent being implemented by them.

Wherefore, it is demanded that:

A. This Honorable Court enter judgment for the Plaintiff on all of its claims for the amount owed under the Third Amended Judgment, accumulated interest and all other damages sustained by the Plaintiff;

B. This Honorable Court hold, determine and find that the Defendants acted jointly and severally;

C. The Plaintiff be awarded compensatory damages in the amount of approximately $2.1 million dollars together with per diem interest of $139.40 per day;

D. The Plaintiff be awarded prejudgment and postjudgment interest;

E. The Plaintiff be awarded attorneys' fees, costs, taxable costs, taxable expenses and expenses pursuant to 42 U.S.C. § 1988 and applicable federal rules of civil procedure;

F. The Plaintiff be awarded punitive damages against each Defendant in an amount no less than $10,000,000; and

G. The Plaintiff be awarded punitive damages in an amount which is at the outer most limit of permissibility under the Due Process Clause of the Fourteenth Amendment.

JURY CLAIM

The Plaintiff demands a trial by jury on all counts, claims and issues so triable.

THE PLAINTIFF,
WILLIAM H. DAVIS, IN HIS CAPACITY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF JASON DAVIS,
BY HIS ATTORNEYS,

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