

**COUNT XIV:
NEGLIGENT SUPERVISION AGAINST DEFENDANT STEVE SIMMONS**

126. Brandon hereby incorporate by reference all of the foregoing and further allege as follows:

127. Defendant Steve Simmons acting in his official capacity as El Paso County District Attorney, had a duty to supervise the evidence gathering and production procedures and practices of the District Attorney's office and its employees, including Assistant District Attorneys John Davis, Joe Edd Boaz and John Doe.

128. Defendant Steve Simmons breached this duty.

129. This failure to supervise directly and proximately caused Brandon to be arrested, indicted, prosecuted, convicted, and imprisoned for a crime he did not commit, and suffer severe damages.

VII. CLAIM FOR DAMAGES

130. The actions of Defendants, jointly and severally, deprived Brandon of his civil rights under the United States Constitution, various federal statutes and Texas common law.

131. As a direct and proximate result of Defendants' acts, Brandon suffered great distress, pain, anguish, fear, suffering, loss of companionship and monetary damages for which he is entitled to compensatory damages.

132. In addition, the individual Defendants' acts with respect to Brandon were intentional, malicious, deliberate, reckless, in bad faith, wanton and/or cruel such as to justify an award of punitive damages to Brandon.

VIII. BRANDON'S CLAIMS ARE NOT BARRED BY LIMITATIONS

133. None of Brandon's claims are barred by limitations. Brandon could not assert claims for damages relating to his unjust imprisonment until the order was signed invalidating his conviction on the basis of his actual innocence. *See Heck v. Humphrey*, 512 U.S. 477 (1994) (a claim for damages relating to a conviction or imprisonment that has not been invalidated is not cognizable under Section 1983). Thus, Brandon's claims against the City of El Paso and its defendant officers as well as against the County and the State did not accrue until 2005, when the Texas Court of Criminal Appeals invalidated his conviction on the grounds of actual innocence, and may be brought now.

134. Furthermore, the doctrine of fraudulent concealment and the discovery rule also toll Brandon's claims. *See* TEX. CIV. PRAC. & REM. CODE § 16.001(A)(2). Specifically, defendants' violations were ongoing throughout Brandon's involvement with the El Paso law enforcement personnel and his incarceration.

135. Accordingly, none of the claims asserted by Brandon in this lawsuit are barred by limitations.

IX. PRAYER FOR RELIEF

136. To right this horrible injustice, Plaintiff Brandon Moon requests that this Court:

- a. Award compensatory damages to Brandon and against the Defendants, jointly and severally;
- b. Award punitive damages to Brandon and against the Defendants;
- c. Award and allow Brandon costs and attorneys fees pursuant to 42 U.S.C. 1988 or any other applicable law;
- d. Award prejudgment and postjudgment interest at the highest rate allowable under the law;
- e. Award and grant such other just relief as the Court deems proper.

Respectfully submitted,

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