

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NANCY MALDONADO, AS THE
ADMINISTRATRIX OF THE ESTATE OF
JONATHAN MALDONADO,

Plaintiff,

vs.

THE TOWN OF GREENBURGH, POLICE
OFFICER JEAN-PAUL LARA, LIEUTENANT
GREGORY P. ATTALIENTI, POLICE OFFICER
S.H. DEASTIS, POLICE OFFICER S.M.
HARDING, POLICE OFFICER B.P. DOHERTY,
POLICE OFFICER M.C. COLE, POLICE
OFFICER A. MARZELLA, POLICE OFFICER
R.L. DAVIS, POLICE OFFICER A.B. PREISER,
POLICE OFFICER RICHARD MAGUIRE
DETECTIVE / PARAMEDIC SEAN FREEMAN,
EMT F/N/U THOMPSON, PARAMEDIC
KENNETH MORELLO,

Defendants.

Civ. No.

COMPLAINT

JURY TRIAL DEMANDED

By and through her attorneys, Newman Ferrara LLP, Plaintiff alleges upon knowledge, information, and/or belief as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action in which Plaintiff Nancy Maldonado, as the Administratrix of the Estate of Jonathan Maldonado, (“Plaintiff”), seeks relief for the Defendants’ violation of Mr. Maldonado’s rights, privileges, and immunities secured by 42 U.S.C. § 1983, the First, Fourth and Fourteenth Amendments of the United States Constitution, and the Constitution and laws of the State of New York.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343. Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. § 1367 to hear and decide claims arising under state law.

3. Venue in the Southern District of New York is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred within the district.

PARTIES

4. Plaintiff Nancy Maldonado is the Administratrix of the Estate of Jonathan Maldonado. At the time of his death, her son Jonathan Maldonado was a 21-year-old man of Hispanic and Jordanian background.

5. Defendant Town of Greenburgh (“Town”) is a duly constituted municipal corporation of the State of New York, located in Westchester County. It is authorized under the laws of the State of New York to maintain a police department, the Greenburgh Police Department (“GPD”), which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The Town assumes the risks incidental to the maintenance of a police force and the employment of police officers. Employees of the Town and members of the GPD also act as its agents in the area of emergency medical care.

6. Defendant Police Officer Jean-Paul Lara is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

7. Defendant Lieutenant Gregory P. Attalienti is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color

of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

8. Defendant Police Officer S.H. Deastis is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

9. Defendant Police Officer S.M. Harding is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

10. Defendant Police Officer B.P. Harding is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

11. Defendant Police Officer M.C. Cole is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

12. Defendant Police Officer A. Marzella is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

13. Defendant Police Officer R.L. Davis is a police officer employed by the Town. At

all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

14. Defendant Police Officer A.B. Preiser is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

15. Defendant Police Officer Richard Maguire is a police officer employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

16. Defendant Detective / Paramedic Sean Freeman is a police officer and paramedic employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

17. Defendant EMT F/N/U Thompson is an emergency medical technician employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

18. Defendant Paramedic Kenneth Morello is a paramedic employed by the Town. At all times relevant to the facts of the Complaint, said Defendant was acting under color of law and within the scope of his employment by the Town. Said Defendant is sued in his individual and official capacities.

FACTUAL ALLEGATIONS

19. In November 2017, 21-year old Jonathan Maldonado worked as a school aide for the Yonkers Public Schools.

20. On November 29, 2017, Mr. Maldonado finished work at approximately 2:30 p.m. and went home to the house he shared with his parents and two brothers.

21. His mother, Plaintiff Nancy Maldonado, arrived home from work a couple of hours later.

22. She saw that Jonathan was preparing to go out and asked him where he was going.

23. He told her that he was going to drive his grandmother to Central Avenue to do an errand and would also be stopping at the bank to deposit his paycheck.

24. When Jonathan left the house at 4:58 p.m. his mother made a mental note of the time and told him not to be late.

25. She did not know then that this was the last time she would see her son alive.

26. At approximately 5:45 p.m., Jonathan Maldonado walked out of a store located on Central Avenue, in Hartsdale, New York.

27. Around the time Mr. Maldonado was leaving the store, an alarm went off.

28. Store employees called 911 to report a suspected shoplifting to the Greenburgh police.

29. Prior to the arrival of police, store employees were observing and following customers they suspected could be a shoplifter.

30. Some store employees followed Mr. Maldonado out of the store, down the block and into a neighboring park – Webb Field.

31. A few minutes later, Greenburgh police officers arrived at the store in response to the call they had received regarding a possible shoplifting.

32. Some police officers went to the park where Mr. Maldonado and some store employees were waiting.

33. Almost immediately after the police officers arrived, one or more of Defendant police officers lifted Mr. Maldonado up in the air and slammed him to the ground.

34. As Mr. Maldonado lay on his stomach on the ground, one or more of the Defendant police officers jumped on his back and held him down.

35. Defendant Lara tased Mr. Maldonado on his back and then again, in drive stun mode, on the back of his leg as he was being restrained face down on the ground by police officers.

36. When Mr. Maldonado was tased he was not resisting the police officers.

37. After being restrained face down on the ground and tased, Mr. Maldonado became limp and unresponsive.

38. The police officers and Greenburgh EMTs, and paramedics (hereinafter “the Greenburgh Defendants”) at the scene observed Mr. Maldonado’s condition.

39. Despite observing Mr. Maldonado’s serious medical condition, they failed, for several minutes, to initiate CPR or other appropriate emergency medical procedures necessary to revive him.

40. Instead, their only medical response for several minutes was limited to injecting Mr. Maldonado with NARCAN.

41. NARCAN is used to reverse the effects of an overdose of certain drugs.

42. The NARCAN did not revive Mr. Maldonado because his unresponsiveness was

not caused by an overdose of drugs.

43. Mr. Maldonado's unresponsiveness, and death, were the result of a fatal cardiac arrhythmia caused by the use of excessive force, the improper use of the Taser, and the manner in which he was restrained by the Defendants.

44. One or more of the Defendants used excessive force when they threw Mr. Maldonado to the ground, physically restrained him by putting pressure on his back-- preventing him from being able to breathe, and misused a Taser.

45. After Mr. Maldonado became unresponsive the Defendants delayed starting CPR.

46. Only the immediate application of CPR could have revived Mr. Maldonado.

47. However, no such CPR resuscitation efforts were made until after Mr. Maldonado was put in an ambulance on a stretcher several minutes after he had become unresponsive.

48. Mr. Maldonado was taken to White Plains hospital.

49. He was lifeless when he arrived there.

50. Upon arrival at the hospital, Greenburgh police provided White Plains Hospital personnel with false information regarding their actions during the incident.

51. Greenburgh police provided the hospital with false information regarding the sequence of events leading up to Mr. Maldonado's loss of consciousness, the failure of the Greenburgh Defendants to render adequate medical attention, how Mr. Maldonado was restrained, and the manner of use and observable effects of the Taser.

52. The failure of the Greenburgh Defendants to provide accurate information compromised the ability of hospital staff to assess and treat Mr. Maldonado.

53. At the hospital Mr. Maldonado was given more NARCAN and CPR efforts were made.

54. He was declared dead at the hospital at 6:54 p.m.

55. Defendant Lieutenant Attalienti was on the scene during the entire incident after Greenburgh police arrived and was directly responsible for directing and supervising the actions of the Greenburgh police officers involved.

56. Defendant Attalienti failed to issue orders or intervene to prevent Greenburgh Defendants under his supervision from using unnecessary and excessive force on Mr. Maldonado in his presence.

57. Defendant Attalienti failed to issue orders or intervene to provide adequate medical attention to Mr. Maldonado when the seriousness of his condition was or should have been apparent to him.

58. On December 2, 2017, Defendant Attalienti filed an Incident/Investigation Report that contained false and misleading information.

59. The report failed to accurately describe the sequence of events leading up to Mr. Maldonado's loss of consciousness, the failure the Greenburgh Defendants to render adequate medical attention, how Mr. Maldonado was restrained, and the manner of use and observable effects of the Taser.

60. The failure of Defendant Attalienti to provide accurate information in the Incident/Investigation report compromised the investigation of the cause and circumstances of Mr. Maldonado's death and impeded his family from obtaining accurate information.

61. Further impeding the truth-seeking process, the Greenburgh Defendants failed to identify and interview witnesses who they observed at the scene when the incident occurred.

62. As a remedy for the violations alleged herein, Plaintiff seeks compensatory damages, punitive damages, and an award of the costs and expenses of this action including, but

not limited to, attorneys' fees to the Plaintiff pursuant to 42 U.S.C. § 1988; and any such other and further relief as this Court may deem appropriate.

NOTICE OF CLAIM

63. A Notice of Claim on behalf of Plaintiff, pursuant to New York General Municipal Law § 50-e, was timely served upon Defendant Town on April 26, 2018. More than thirty days have elapsed without the matter being resolved by the Town. The Notice of Claim provided detailed information regarding the actions that the officers took during the incident with Mr. Maldonado, the injuries and subsequent death he suffered, and was sufficient to put the officers, medical personnel, and the Town on notice of the conduct in which they are alleged to have engaged in.

FEDERAL CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Rights Secured under the Fourth Amendment and 42 U.S.C. § 1983)

64. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

65. By reason of the foregoing, said Defendants deprived Mr. Maldonado of rights, privileges and immunities secured by the Fourth Amendment of the United States Constitution, pursuant to 42 U.S.C. § 1983, including without limitation the rights to be free from (a) unreasonable search and seizure, including the use of excessive force; (b) unnecessary and wanton infliction of pain; and (c) the denial of adequate medical attention.

66. Individual Greenburgh Defendants failed to intervene to protect Mr. Maldonado's Fourth Amendment rights from being violated by fellow Defendants at the scene.

67. The Defendant police officers and/or medical personnel observed Mr. Maldonado while he was being injured and denied medical attention, yet failed to intervene and/or provide

and/or request adequate and timely medical attention to Mr. Maldonado.

68. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

(Violation of Rights Secured Under the Due Process Clause of the Fourteenth Amendment, the First Amendment and 42 U.S.C. § 1983)

69. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

70. By reason of the foregoing, said Defendants deprived Mr. Maldonado of rights, privileges and immunities secured by the Fourteenth Amendment and the First Amendment of the United States Constitution, pursuant to 42 U.S.C. § 1983, to be free from deprivation of life, liberty or property without due process of law. The rights, privileges and immunities deprived by the Defendants included, but are not limited to (a) the denial of adequate medical attention; (b) denial of equal justice and access to the courts; and (c) deprivation of life and liberty without due process of law.

71. Individual Greenburgh Defendants failed to intervene to protect Mr. Maldonado's Fourteenth Amendment rights from being violated by other Defendants at the scene.

72. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

(Conspiracy to Violate Rights Secured under the Fourth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983)

73. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

74. The Greenburgh Defendants conspired together to deny Mr. Maldonado's rights

under the Fourth and Fourteenth Amendment, pursuant to 42 U.S.C. § 1983.

75. Said conspiracy included, but is not limited to, the filing of false or misleading reports regarding the circumstances of Mr. Maldonado's death and the issuance of inaccurate statements by the Town or its employees regarding the circumstances of Mr. Maldonado's seizure and search by the Greenburgh Defendants, the use of excessive force and the improper use of a Taser.

76. Said conspiracy was designed to prevent the family and the public from learning the true circumstances regarding Mr. Maldonado's death and constituted a cover-up.

77. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

(Supervisory Liability against Defendant Attalienti for Violation of the Rights Secured under the Fourth and Fourteenth Amendments and 42 U.S.C. § 1983)

78. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

79. Defendant Attalienti directly and personally participated in the violations against Mr. Maldonado.

80. Defendant Attalienti acted with reckless disregard and deliberate indifference in the supervision of the Greenburgh police officers and EMTs on the scene under his command.

81. As a direct and proximate result of the said Defendant's failure to supervise his subordinates, Mr. Maldonado sustained the damages alleged herein.

82. As a direct and proximate result of said violations, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

STATE LAW CLAIMS FOR RELIEF

FIFTH CLAIM FOR RELIEF

(For Assault and Battery Against Greenburgh Police Defendants)

83. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

84. Defendants without just cause, or provocation, used excessive force against Mr. Maldonado. The use of such force was not justified or warranted under the circumstances and constituted unreasonable and unnecessary force.

85. The use of such force caused Mr. Maldonado to suffer and experience fear and imminent apprehension of physical harm, pain and suffering, serious physical injuries, severe emotional distress, and death.

86. The actions of said Defendants were intentional, malicious, and were committed with wanton disregard for the rights of Mr. Maldonado.

87. The actions of said Defendants were unjustified and unnecessary in the performance of their duties as police officers and were unreasonable, unwarranted and constituted excessive use of force.

88. The actions aforesaid constituted unlawful assaults and/or batteries upon Mr. Maldonado.

89. As a direct result of the aforementioned conduct of said Defendants, Mr. Maldonado suffered serious harm and was killed.

90. Defendant Town is responsible under *respondeat superior* for the actions of said Defendants, as the acts were committed within the scope of their employment as police officers.

91. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF
(For Negligence Against All Defendants)

92. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

93. Defendant Town's police officers and medical personnel, acting within the scope of their employment, negligently discharged their duties and thereby caused Mr. Maldonado to sustain the aforementioned injuries and deprivations.

94. The acts of negligence of said Individual Defendant police officers and/or medical personnel include, but are not limited to: the use of excessive force in effectuating Mr. Maldonado's seizure; the deliberate indifference to Mr. Maldonado's medical needs; the failure of all Defendants to take reasonable steps to intervene to prevent the excessive use of force, and; the denial of proper medical care, despite having ample, realistic opportunity to provide it.

95. Defendant Town is responsible under *respondeat superior* for the negligence of its police officers and medical personnel committed within the scope of their employment.

96. Defendant Town was negligent by failing to supervise and/or train its employees in the use of physical force and a Taser, in failing to provide and/or procure immediate and adequate medical care, despite being aware that Mr. Maldonado was seriously injured.

97. By the actions described above, each and every Defendant, jointly and severally, has committed the foregoing wrongful acts against Mr. Maldonado, which are tortious under the laws of the State of New York.

98. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF
(For Wrongful Death Against All Defendants)

99. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

100. Defendants, acting within the scope of their employment, caused and/or contributed to the death of Mr. Maldonado by their use of force, without cause or justification.

101. Defendant Town is responsible for its employees' actions taken in the scope of their employment as employees, police officers, and medical personnel.

102. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

EIGHTH CLAIM FOR RELIEF
(For Conscious Pain and Suffering Against All Defendants)

103. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

104. Defendants, without just cause, or provocation, used force and/or deadly physical force against Mr. Maldonado. The use of such force was not justified or warranted under the circumstances and constituted unreasonable and unnecessary force.

105. The use of such force did not immediately cause Mr. Maldonado's death. As a result, he suffered and experienced a fear of impending death, severe emotional distress, and conscious pain and suffering. This suffering was exacerbated by the excessive uses of force used against Mr. Maldonado from when he was thrown to the ground, the pressure exerted on his back as officers jumped on top of him, and the tasings that he suffered while he was lying on the ground face down.

106. The suffering also includes the moments Mr. Maldonado realized he was unable

to breathe and began gasping for air.

107. Defendant Town is responsible for its employees' actions taken in the scope of their employment as employees, police officers, and medical personnel.

108. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

NINTH CLAIM FOR RELIEF

(Respondeat Superior Liability Against Defendant Town of Greenburgh)

109. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

110. At all times pertinent hereto, Defendants Lara, Attalienti, Deastis, Harding, Doherty, Cole, Marzella, Davis, Preiser, Maguire, Freeman, Thompson, and Morello were acting within the scope of their employment as police officers and/or medical personnel for the Defendant Town, through its agents, expressly or implicitly authorized the Individual Defendants to violate Mr. Maldonado's constitutional rights, as described above.

111. Defendant Town is thus liable under the doctrine of *respondeat superior*, for the intentional and negligent torts of the Individual Defendants herein, which were committed within the scope of their employment.

112. As a direct and proximate result of said violation, Mr. Maldonado suffered the injuries and damages described above in an amount to be determined at trial.

PUNITIVE DAMAGES

113. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

114. The acts of the Individual Defendants were willful, wanton, malicious, and oppressive and were motivated solely by a desire to harm Mr. Maldonado without regard for his

well-being and were based on a lack of concern and ill-will towards him. Such acts therefore warrant an award of punitive damages.

115. Defendant Town is responsible for the actions of its employees as complained of herein under the doctrine of *respondeat superior*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief against the Defendants as follows:

- a. Compensatory damages in an amount of twenty million dollars (\$20,000,000);
- b. Punitive damages in an amount to be determined at trial;
- c. An award of the costs and expenses of this action including attorneys' fees to the Plaintiff pursuant to 43 U.S.C. §1988; and
- d. Any such other and further relief as this Court may deem appropriate.

A JURY TRIAL IS DEMANDED

DATED: New York, New York
November 28, 2018

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