

**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 RICHARD MAGUIRE, POLICE  
OFFICER JEAN-PAUL LARA, DETECTIVE /  
PARAMEDIC SEAN FREEMAN,  
LIEUTENANT GREGORY P. ATTALIENTI,

Defendants.

**18-CV-11077(KMK)(LMS)**

**AMENDED 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 Jonathan Maldonado’s rights, privileges, and immunities secured by 42 U.S.C. § 1983, the 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 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.

7. 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.

8. 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.

9. 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.

### **FACTUAL ALLEGATIONS**

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

11. 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.

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

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

14. 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.

15. 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.

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

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

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

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

police.

20. The item alleged to have been shoplifted was display model of an iPhone, not a workable phone.

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

22. Some store employees followed Mr. Maldonado out of the store, across Central Avenue and down the block into a park – Webb Field.

23. While walking away from the employees, Mr. Maldonado lost his balance and fell down.

24. The store employees stood around Mr. Maldonado and questioned him about the phone.

25. Mr. Maldonado denied having it in his possession.

26. One of the store employees saw Defendant Maguire's police vehicle traveling towards Webb Field on Central Avenue in the direction of the store and flagged him down.

27. At this time, Defendants Lara and Freeman were also en route in response to the shoplifting call.

28. When Defendant Maguire was flagged down, Mr. Maldonado was kneeling, bent over, on the ground, not attempting to run away nor having a physical confrontation with the store employees.

29. As the Defendant police officers were approaching Webb Field, store employees saw Mr. Maldonado take what appeared to be some small envelopes out of a wallet.

30. Maguire was the first police officer to arrive, followed almost immediately by Lara and Freeman

31. As Maguire got out of his vehicle, one or more store of the store employees indicated to him that Mr. Maldonado may have put something in his mouth, possibly some type of drugs.

32. Defendant Maguire ran from his vehicle, jumped on top of Mr. Maldonado and forcefully tried to get whatever might be inside his mouth.

33. He was quickly joined by Defendants Lara and Freeman.

34. One or more of the Defendant police officers lifted Mr. Maldonado up and slammed him to the ground.

35. 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.

36. Defendant Lara Tasered Mr. Maldonado in prong mode on his back and then again, in drive stun mode on his buttock as he was being restrained face down on the ground by police officers.

37. Defendant Lara first deployed the Taser in prong mode within only 1 to 2 feet away from Mr. Maldonado.

38. The Taser was deployed too close to Mr. Maldonado's body to cause neuromuscular incapacitation.

39. At that close distance the Taser's only effect would have been to cause pain.

40. Lara then deployed the drive stun mode, by placing the Taser in direct contact with Mr. Maldonado's buttock.

41. The drive stun mode does not cause neuromuscular incapacitation.

42. The purpose of using the drive stun mode is to inflict pain.

43. While being Tasered, Mr. Maldonado groaned.

44. At no point, including when Mr. Maldonado was Tasered, was he fighting with the police officers.

45. Immediately after being restrained face down on the ground and Tasered, Mr. Maldonado became limp and unresponsive.

46. When Defendant Lt. Attalienti arrived at Webb Field he saw Mr. Maldonado on the ground with his hands behind his back with Defendant Lara kneeling beside him.

47. As Lt. Attalienti walked up, the other police Defendants were turning Mr. Maldonado over and sitting him up.

48. Defendant Lt. Attalienti ordered Defendant Lara to hold Mr. Maldonado up.

49. Mr. Maldonado was propped up in a seated position against Defendant Lara's leg.

50. The police Defendants, including Defendant Freeman who was a paramedic, could see Mr. Maldonado was not conscious.

51. Defendant Freeman left Mr. Maldonado to go to his vehicle to get NARCAN.

52. While Freeman searched his vehicle for NARCAN, Greenburgh EMT Jovan Thompson arrived in an ambulance.

53. In response to a radio call by Defendant Lara that a Taser had been deployed at Webb Field, Greenburgh EMT Thompson proceeded to the scene in an ambulance.

54. When he arrived, Thompson undertook a quick assessment of Mr. Maldonado and communicated to Freeman that he detected only a weak pulse and that there was a need to rush to provide Mr. Maldonado necessary medical treatment.

55. Defendant Freeman, as a paramedic, had seniority over Thompson in regards to deciding how to attend to Mr. Maldonado's medical condition.

56. Mr. Maldonado remained propped up in a sitting position while Freeman, assisted

by Thompson, administered multiple doses of NARCAN, a drug used to counteract drug overdoses.

57. If a drug overdose is the cause of the loss of consciousness, the positive effects of NARCAN should be almost immediately observable.

58. The multiple NARCAN doses given to Mr. Maldonado while he was still on the ground had no effect.

59. While Mr. Maldonado was still on the ground, Defendant Freeman observed that he was not breathing.

60. While Mr. Maldonado lay limp and unresponsive on the ground, Defendant Freeman did not check Mr. Maldonado's airway, provide any oxygen therapy or cardiac intervention.

61. Approximately ten minutes after being Tasered, and rendered limp and unresponsive, Mr. Maldonado was lifted off the ground, with his hands still handcuffed behind his back and placed on a gurney provided by EMT Thompson.

62. The gurney, with Mr. Maldonado lying unconscious and not breathing, was moved to the ambulance but not immediately placed inside.

63. There were still no oxygen or cardiac interventions being performed on Mr. Maldonado as he lay on the gurney outside the ambulance.

64. A second paramedic, Kenneth Mareello, arrived at the scene in another ambulance and saw Mr. Maldonado being loaded into the back of EMT Thompson's ambulance.

65. Mr. Maldonado was not moving and to Mareello did not appear responsive at all.

66. After Mareello arrived, he determined that Mr. Maldonado did not have a pulse and was not breathing.

67. It was only after Marello arrived that CPR was started on Mr. Maldonado and other potentially life-saving drugs, including epinephrine, were administered.

68. It was only after Marello arrived that Defendant Freeman took steps to visualize Mr. Maldonado's airway and insert an endotracheal tube.

69. When Defendant Freeman finally looked inside Mr. Maldonado's mouth, he observed four to five small intact plastic-like bags that he easily removed with forceps.

70. Marello arrived at the scene approximately ten minutes after Mr. Maldonado had been Tasered, and became limp and unresponsive.

71. Prior to Marello's arrival, Mr. Maldonado was not given any CPR by or at the direction of Defendant Freeman.

72. Nor did Freeman check Mr. Maldonado's airway at any time prior to Marello's arrival, even though he knew from the time he first arrived at the scene that Maldonado was thought to have placed something in his mouth.

73. After Marello arrived, Mr. Maldonado continued to be given NARCAN, including during his eventual transport to the hospital.

74. Prior to Mr. Maldonado being transported to the hospital, Defendant Maguire collected Mr. Maldonado's personal belongings from the scene.

75. The ambulance left Webb Field to transport Mr. Maldonado to White Plains hospital over 20 minutes after he was Tasered, had stopped breathing and was asystolic.

76. Defendant Lara escorted the ambulance to White Plains hospital.

77. EMT Thompson drove the ambulance and Paramedic Marello and Defendant Freeman rode in the back with Mr. Maldonado.

78. Upon arrival at the hospital Defendants Lara and Freeman 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.

79. Mr. Maldonado was officially declared dead at the hospital at 6:54 p.m.

80. Defendant Lara remained at the hospital, responsible for the body of the now deceased Mr. Maldonado and certain personal belongings collected at the hospital.

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

82. The report included false information provided by Defendant Maguire that he used physical force against Mr. Maldonado when he arrived at Webb Field because Mr. Maldonado was fighting with store employees when Maguire arrived at the scene

83. The report failed to describe accurately 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.

84. 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**

85. 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)*

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

87. By reason of the foregoing, Defendants Maguire, Lara and Freeman 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.

88. Defendant Attalenti 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 for Mr. Maldonado.

89. 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 and 42 U.S.C. § 1983)*

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

91. By reason of the foregoing, said Defendants deprived Mr. Maldonado of rights, privileges and immunities secured by the Fourteenth 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.

92. 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)*

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

94. The Defendants conspired together to deny Mr. Maldonado's rights under the Fourth and Fourteenth Amendment, pursuant to 42 U.S.C. § 1983.

95. 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 Defendants, the use of excessive force, the improper use of a Taser and denial of adequate medical attention.

96. 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.

97. 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)*

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

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

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

101. Defendant Attalienti acted with reckless disregard and deliberate indifference in knowingly allowing Defendants under his command to provide false and misleading reports and statements about the incident and directly providing false and misleading reports and statements himself about the incident.

102. As a direct and proximate result of the said Defendant's failure to supervise his subordinates, and his own direct participation in the underlying events, Mr. Maldonado sustained the damages alleged herein.

103. 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 All Defendants)*

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

105. 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.

106. 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.

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

108. 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.

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

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

111. 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.

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.

**SIXTH CLAIM FOR RELIEF**  
*(For Negligence Against All Defendants)*

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

114. Defendants, acting within the scope of their employment, negligently discharged

their duties and thereby caused Mr. Maldonado to sustain the aforementioned injuries and deprivations.

115. The acts of negligence of said Defendants, 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.

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

117. 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.

118. 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.

119. 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)*

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

121. 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, and the denial of adequate medical attention.

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

123. 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)*

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

125. 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.

126. 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 when he was thrown to the ground, the pressure exerted on his back as officers jumped on top of him, and the Taserings that he suffered while he was lying on the ground face down.

127. The suffering also includes the moments Mr. Maldonado realized he was unable to breathe and began gasping for air.

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

129. 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)*

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

131. At all times pertinent hereto, Defendants Maguire, Lara, Freeman and Attalienti 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.

132. 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.

133. 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**

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

135. 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.

136. 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  
September 23, 2019

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