

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT CONLON and BETSY CONLON,
as the Personal Representatives of the Estate of
Michael Conlon,

Plaintiffs,

v.

NEWTON POLICE OFFICER FRANCIS
SCALTRETO, NEWTON POLICE OFFICER
RICHARD BENES, NEWTON POLICE
SERGEANT GLENN CHISHOLM,
NEWTON POLICE CAPTAIN DENNIS
DOWLING, NEWTON POLICE CAPTAIN
CHRISTOPHER MARZILLI, and
THE CITY OF NEWTON,

Defendants.

Civil Action No. _____

COMPLAINT AND DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1. On January 5, 2021, Newton Police Department (“NPD”) Officers responded to a dispatch report of a purported armed robbery at 16 Lincoln Street. The incident turned out to, instead, involve a schizophrenic and terrified twenty-eight-year-old Michael Conlon, who was previously known to the NPD to suffer from mental health challenges.

2. When the police arrived, Michael was not attempting to rob anyone but was instead exhibiting signs of significant emotional distress and intentions of self-harm at 16 Lincoln Street, next door to where he lived.

3. A cascade of actions and omissions exhibiting a callous disregard for Michael’s life and mental condition, tactical errors, mistakes in judgment, lack of communication, utter confusion regarding the chain of command, and violations of established protocol by members of the NPD, specifically, Captains Dennis Dowling and Christopher Marzilli, Sergeant Glenn Chisholm, and Officers Francis Scaltreto and Richard Benes (collectively, the “Individual Defendants”) ensued, culminating in the officers shooting Michael to death.

4. In the moments leading up to his last breaths, Michael stood in a narrow third floor hallway in his apartment building, blocked from exiting in any direction on the third floor by no fewer than five Newton Police Officers and two Massachusetts State Troopers.

5. The Defendants knew or should have known that no other civilians were in the building or in harm’s way. Seven other armed officers stood in the stairwell and landing on the second floor of the apartment building.

6. Defendant Captains Dowling and Marzilli, who gave the orders to shoot Michael, knew that an NPD social worker waited outside and Northeastern Massachusetts Law Enforcement Council (“NEMLEC”) responders, trained specifically in de-escalation and negotiation techniques with mentally ill or suicidal people, had been summoned and were en

route. Indeed, an NEMLEC officer arrived a mere six minutes after Defendant Captains Marzilli and Dowling gave the orders to shoot Michael.

7. When the Defendants were engaged with Michael, he was trapped with no physical possibility of fleeing. He was smoking a cigarette, speaking with the officers, and wielded no weapon. The knife that he had minutes earlier been pressing to his own throat and waving around while threatening to commit suicide lay on the floor beside him, as Michael had already dropped it by his own accord pursuant to the officers' instructions.

8. The Defendants wrongly and unreasonably perceived this moment of relative calm and Michael's acquiescence as an "opportunity" to shoot Michael with a "less-than-lethal" bean bag shotgun; a long gun that resembles a real firearm in every respect to the average civilian. "Less-than-lethal shotguns" are permitted by NPD General Orders to be used to neutralize a subject "ONLY when methods of force lower on the Use-of-Force Model is determined to be ineffective or inappropriate." Furthermore, "[t]he use of this weapon must be on a person who is Assaultive/Bodily Harm," a defined state of subject behavior that arises only when the "officer's attempt to gain lawful compliance has culminated in a perceived or actual attack on the officer or others."

9. Despite these conditions described in the General Orders not being present, despite the physical impossibility of Michael harming any civilians at that moment, despite the fact that Michael was *smoking a cigarette* and had dropped his knife voluntarily, despite the Defendants' knowledge that law enforcement professionals specially trained in de-escalation were on their way and expected to arrive in minutes, despite the Defendants' ability to create both a barrier and spatial separation between themselves and Michael, despite the clear indications that Michael was experiencing a mental crisis that had impacted his decision to wield

a knife in the first place, despite the fact that Michael was pleading desperately for his father (Plaintiff Robert Conlon), despite the repeated statements by the Defendants themselves that they “had all the time in the world,” despite the written protocols instructing officers in hostage or barricade situations to “await the arrival of hostage negotiation personnel,” “Slow everything down,” and “DO NOT RUSH,” Defendant Captain Dowling instructed Defendant Captain Marzilli to instruct Defendant Sergeant Chisholm to “take the shot” with the less-than-lethal shotgun.

10. The less-than-lethal shotgun was fully functional but misfired due to operator error. The operator error arose from the inexperience of Defendant Sergeant Chisholm, who fired the weapon, and the inexperience of Defendant Captain Dowling, who checked the firearm before it was fired, with less-than-lethal shotguns.

11. Michael – seeing that a firearm had been pointed at him directly in an enclosed space – picked up the knife and ran at the officers. Defendant Officers Benes and Scaltreto resorted to fatally shooting Michael at close range.

12. Michael is dead because the Defendants refused to employ any of the most basic concepts of de-escalation. The Defendants acted recklessly and unlawfully in a situation that did not require any extraordinary acts of physical heroism, bravado, or self-sacrifice, but merely competence and the lawful discharge of their duties under the laws of the United States and the Commonwealth of Massachusetts. Instead of exercising the judgment that would have given appropriately trained professionals the opportunity to effectively confront Michael, instead of simply waiting as they were required to do by express written orders squarely applicable to the situation that was presented, instead of choosing from a wide range of other reasonable responses to an evolving situation involving a mentally ill subject in distress – the Defendants rushed into a

reckless course of action that violated common sense, their own Department's regulations and training, and Michael's legal rights as a citizen of the United States and a Massachusetts resident.

13. Based upon this conduct, and as described in greater detail below, the Estate of Michael Conlon (the "Estate"), by and through the Estate's Personal Representatives Robert and Betsy Conlon (the "Plaintiffs"), has brought the present action against the Individual Defendants and the City of Newton under 42 U.S.C. § 1983 for their violations of Mr. Conlon's rights under the Fourth and Fourteenth Amendments of the United States Constitution, Title II of the Americans with Disabilities Act, the Rehabilitation Act, and Massachusetts law.

14. The Plaintiffs allege all facts in this complaint based on their personal knowledge or information and belief.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a) over the federal claims concerning violations of the Fourth and Fourteenth Amendments to the Constitution of the United States, as well as the Americans with Disabilities Act and the Rehabilitation Act. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for the state law claims. Plaintiffs seeks damages for violations of Michael's rights secured by the Fourth and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act, the Rehabilitation Act, and Massachusetts law.

16. This Court has personal jurisdiction over the Defendants because they are employed by the City of Newton, a municipality within the Commonwealth of Massachusetts, and because all Defendants reside within the Commonwealth of Massachusetts.

17. Venue is proper under 28 U.S.C. § 1391(b)(2) because "a substantial part of the events or omissions giving rise to the claim[s] occurred" in Massachusetts.

PARTIES

18. Plaintiffs Betsy and Robert Conlon are Michael’s parents. They are the duly appointed Personal Representatives of Michael’s estate. *See* Letters of Authority for Personal Representative, *In the Matter of Michael Patrick Conlon*, No. MI21P2667EA (Middlesex Cnty. Probate & Family Ct. June 4, 2021). Plaintiffs reside in Norfolk County.

19. Defendant City of Newton (the “City”) is a Massachusetts municipality located in Middlesex County and organized under the laws of Massachusetts. Its city hall is located at 1000 Commonwealth Avenue, Newton Centre, Massachusetts 02459. The City promulgated and otherwise adopted under the color of state law rules, practices, procedures, policies, and other customs to be followed by its law enforcement officers. The City receives federal funds.

20. Defendant Dennis Dowling (“Defendant Captain Dowling”) is a duly appointed officer of the NPD. At all relevant times, Defendant Captain Dowling was employed by the NPD and was acting within the scope of his employment under the color of state law. This action is brought against him in his individual capacity.

21. Defendant Christopher Marzilli (“Defendant Captain Marzilli”) is a duly appointed officer of the NPD. At all relevant times, Defendant Captain Marzilli was employed by the NPD and was acting within the scope of his employment under the color of state law. This action is brought against him in his individual capacity.

22. Defendant Glenn Chisholm (“Defendant Sergeant Chisholm”) is a duly appointed officer of the NPD. At all relevant times, Defendant Sergeant Chisholm was employed by the NPD and was acting within the scope of his employment under the color of state law. This action is brought against him in his individual capacity.

23. Defendant Richard Benes (“Defendant Officer Benes”) is a duly appointed officer of the NPD. At all relevant times, Defendant Officer Benes was employed by the NPD and was

acting within the scope of his employment under the color of state law. This action is brought against him in his individual capacity.

24. Defendant Francis Scaltreto (“Defendant Officer Scaltreto”) is a duly appointed officer of the NPD. At all relevant times, Defendant Officer Scaltreto was employed by the NPD and was acting within the scope of his employment under the color of state law. This action is brought against him in his individual capacity.

FACTS

A. Michael’s Ongoing Mental Health Struggles

25. Michael was born on July 9, 1992, in Melrose, Massachusetts, and was raised in Medfield, Massachusetts. He was the middle son of Plaintiffs Robert and Betsy Conlon.

26. Michael struggled with mental illness from a young age. He began exhibiting signs of mental illness and intentions of self-harm by the time he was in elementary school. Michael’s parents sought treatment and he was placed into various schools designed to address his emotional and learning needs during his childhood and adolescence.

27. Michael was eventually diagnosed with major depression, bipolar disorder, and schizoaffective disorder.

28. Michael’s mental health impairments limited one or more of his major life activities. Accordingly, for purposes of the Americans with Disabilities Act (“ADA”), Michael was a person with a disability.

29. Throughout his life, Michael received treatment at various hospitals and was consistently seen by psychotherapists in private practice, Massachusetts General Hospital, Newton-Wellesley Hospital, and other facilities.

30. Symptoms of Michael’s illness included delusions, suicidal ideation, suicide attempts, and irrational fears. Michael’s family members often found themselves reassuring him

that they were in fact his family and that he was not in a simulation. Michael also sometimes expressed a belief that people were robots.

31. Part of Michael's delusions made him fear the police. He believed that the FBI was coming to arrest him, and the sound of sirens caused him great fear.

32. Michael's housing at 18 Lincoln Street was provided beginning in 2019 by Advocates, a Massachusetts public charity, which supplies housing to clients who, like Michael, exhibit a willingness to attend programs and therapy.

33. Michael remained in frequent contact with his Advocates case workers while living at 18 Lincoln Street. His apartment was twenty minutes away from the Plaintiffs' home in Medfield. Michael spent nearly every weekend and holiday staying with his parents.

34. Immediately prior to January 5, 2021, Michael had stayed with his parents in Medfield from on or about December 25, 2020, until January 4, 2021, when his father dropped him off at his apartment on Lincoln Street.

B. The Defendants Knew or Had Reason to Know of Michael's History of Mental Illness

35. Members of the NPD, including but not limited to the Individual Defendants and Police Department Social Worker Sarah Eknaian, had previous contact with Michael and/or were aware of his mental health challenges. As described below, Eknaian responded to the scene of the shooting but was not permitted to intervene or speak with the officers who were confronting Michael.

36. Specifically, in 2019, the nonprofit agency Advocates, which was treating Michael, called Eknaian to request a mental health well-being check on Michael. NPD officers performed a well-being check on Michael but did not bring Eknaian or any other social worker.

37. No one from the Newton Police Department did a follow-up visit with Michael after the well-being check.

C. Newton Police Department Policies and General Orders

38. On January 5, 2021, the Newton Police Department had no specific policy in effect, written or unwritten, relating to de-escalation techniques in response to a person's mental health crisis.

39. However, by January 5, 2021, American law enforcement widely accepted standard procedures concerning de-escalation including the use of "tactical repositioning," which involves the concepts of time, distance, and barriers. In particular, by January 5, 2021, it was widely accepted in American law enforcement that:

- a. Police officers attempting to de-escalate a situation should create distance between the subject and themselves in order to provide the officer more time to respond to a threat.
- b. Police officers attempting to de-escalate a situation in a confined space should make use of available physical barriers, such as a door or a shield, in order to lengthen the amount of time that is available to respond to a threat.
- c. Police officers attempting to de-escalate a situation should employ the benefit of time, which tends to slow a situation down, allow for more or better human resources or equipment to arrive to the scene, and allow officers to formulate a cogent response to the situation.

40. On January 5, 2021, it was widely understood among professional members of law enforcement that an officer who is about to use a firearm is to check the firearm himself, rather than handing it to someone else to check for him.

41. Improper tactics can lead to a shooting that is justified at the moment it occurs but would not have been needed had proper tactics been employed.

42. The City of Newton Police Department issues General Orders to ensure that all Department personnel comply with established policies, procedures, and regulations. On January 5, 2021, General Orders in effect included, but were not limited to:

a. General Order 301, which describes a “less-than-lethal projectile shotgun” and the circumstances under which it is permitted to be used. This General Order provides that:

- i. “Less-than-lethal projectiles are intended as an option along the Use-of-Force Model in cases in which a violent or potentially violent subject cannot be subdued in any other less-than-lethal manner without the threat of death or serious bodily injury to the officer or other persons. This tool is intended to incapacitate the subject and prevent further aggressive actions.”
- ii. “Less-than-lethal projectiles do pose a threat of serious injury to a subject and, therefore, shall be used ONLY when methods of force lower on the Use-of-Force Model is determined to be ineffective or inappropriate. The blunt trauma force from a projectile has been determined to be greater than that of a thrown fastball by a major league baseball pitcher. For this reason, only those officers who have been specifically trained in the use of the less-than-lethal shotgun, and who have demonstrated proficiency in the use of this tool, will be authorized to use such. The use of this weapon must be on a person who is Assaultive/Bodily Harm. . . .”

- iii. A subject is “Assaultive (Bodily Harm)” when “[t]he officer’s attempt to gain lawful compliance has culminated in a perceived or actual attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject would not result in the officers or other’s death or serious bodily harm.”
- iv. A subject is “Assaultive (Serious Bodily Harm/Death)” when “[t]he officer’s attempt to gain lawful compliance has culminated in the perception of an attack or the potential for such an attack on the officer or others. The officer makes the reasonable assessment that such actions by the subject could result in serious bodily harm or death to the officer or others.”
- v. “[T]he use of a less-than-lethal projectile weapon that shoots ‘bean-bag like’ projectiles intended to stop a suspect through blunt, non-lethal force provides one more option of less-than-lethal force. The less than lethal projectile weapon is to be used on the subject who is assaultive/bodily harm.”
- vi. “Officers should exhaust all minimum levels of force before resorting to more severe options, except when the totality of circumstances require the immediate use of a higher level of force in order to prevent the commission of a crime, or serious bodily injury or death would result to the officer or another person.”
- vii. “Less-than-Lethal force may be used by a police officer in the performance of his or her duty: (a) When necessary to preserve the peace,

prevent crimes, to prevent suicide or self-inflicted injury; or (b) When necessary to overcome resistance to lawful arrests, searches and seizures, and to prevent escape from custody; or (c) When in self-defense or defense of another against unlawful violence to his person or property.”

- b. General Order 601 Special Operations, which “establish[es] procedure during the initial response to a high-risk emergency and to develop cooperation and coordination with the North Eastern Massachusetts Law Enforcement Council (NEMLEC), Regional Response Team (RRT) including Special Weapons and Tactics (SWAT). Special Operations shall include but not be limited to hostage situations and barricaded person situations.”
- c. General Order 601 further states that “NEMLEC Negotiators will be requested to respond to any situation where the presence of a trained negotiator is necessary. This need is determined by the O.I.C. or Incident Commander. Situations include but are not limited to: a) Suicidal Persons; b) Emotionally disturbed/distraught barricaded persons; c) Any situation that the O.I.C. determines requires a trained negotiator.”
- d. General Order 601 further states that “Responding officers should not become involved in in-depth negotiations if it can be avoided. First contact with the suspect should consist of situation assessment. Whenever possible, await the arrival of hostage negotiation personnel. Time is on your side. Slow everything down. DO NOT RUSH. Rarely will there be a necessity for making an immediate assault on the premises or hostage taken.”

- e. General Order 601 further states that “The first responding officer at any critical incident shall act as the Incident Commander until relieved by a higher ranking or more qualified authority.”

D. Events of January 5, 2021

43. On January 5, 2021, at approximately 1:43 p.m., NPD Officer Zachary Raymond was dispatched to respond to a purported armed robbery at 16 Lincoln Street in Newton Highlands.

44. Within approximately one minute, Officer Raymond arrived at Indulge!, a candy store located at 16 Lincoln Street.

45. Upon his arrival, Officer Raymond observed Michael standing outside the store and holding a small steak knife. Officer Raymond drew his service weapon and ordered Michael to drop the knife.

46. Michael refused Officer Raymond’s instructions to drop the knife, and instead turned and entered 18 Lincoln Street, the apartment building where Michael resided at the time.



47. Michael proceeded to climb the first two flights of stairs in the apartment building, stopping at the third and top floor, with Officer Raymond in pursuit.

48. While Officer Raymond continued to approach Michael and order him to drop the knife, Michael turned around and placed the knife to his throat. Michael further stated that if Officer Raymond came any closer, Michael would cut his own throat.

49. In addition to threatening to cut his own throat, Michael used the handle of the knife to bang on the door of Apartment 3. Michael repeatedly requested to speak with the resident of Apartment 3, Danielle Kalfon. Kalfon, meanwhile, had opened the back door of the building to allow Newton Police officers to enter so that they could confront Michael. Thereafter, Kalfon stood outside the front of the building and offered to at least one NPD officer to speak with Michael and assist in calming him down. None of the Defendants or any other officer made any attempt to utilize Kalfon as a Third-Party Intermediary.

50. When Michael again held the knife to his throat, Officer Raymond retreated down the stairs to the second-floor landing.

51. While Officer Raymond stood at the bottom of the stairwell, Defendant Captain Dowling, and five other NPD Officers arrived at 18 Lincoln.

52. Defendant Captain Marzilli arrived and determined with Defendant Captain Dowling and others that Michael was experiencing a mental health issue.

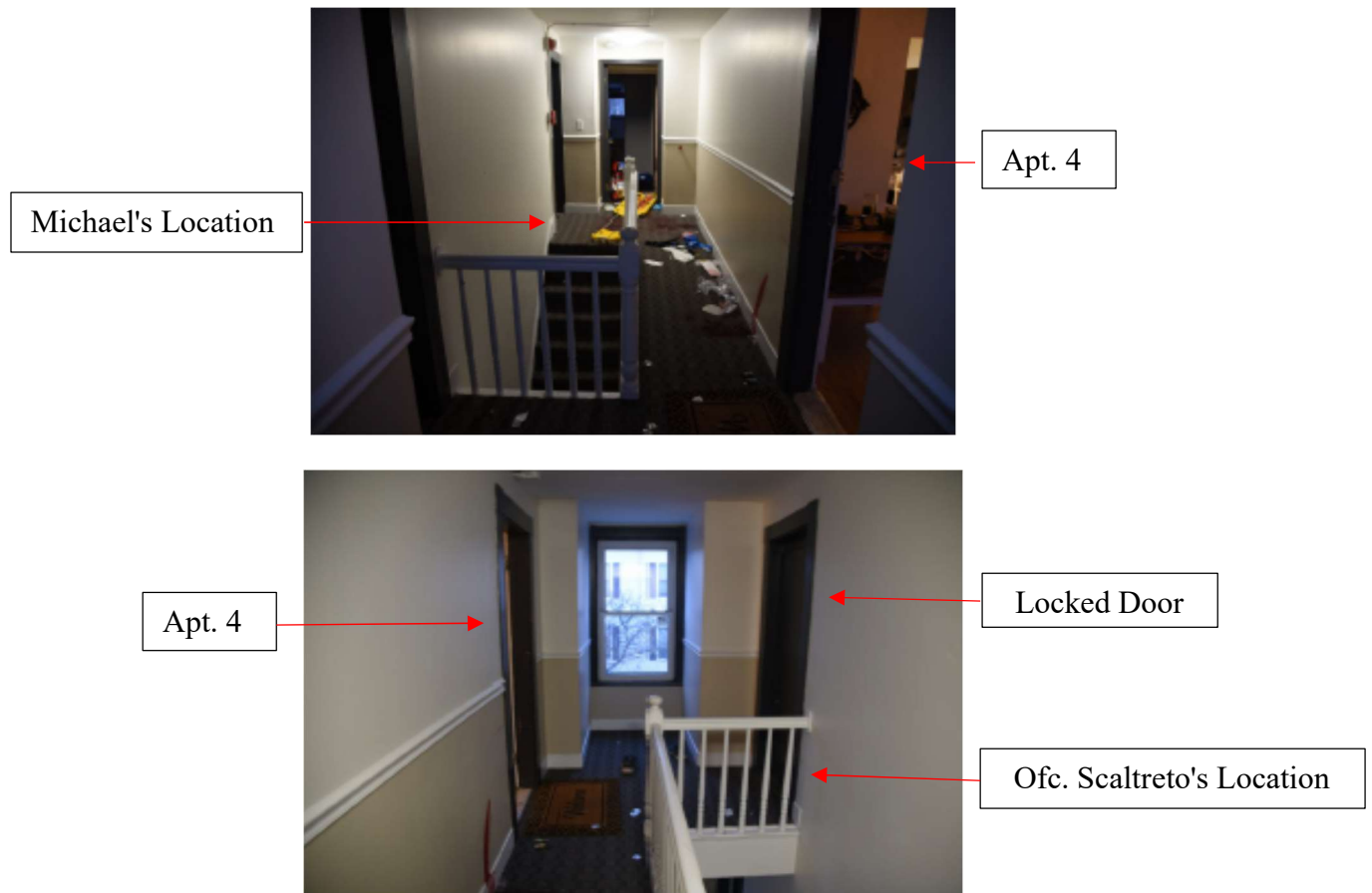
53. When Defendant Captain Dowling arrived at the stairwell, and up until the time at which Michael was shot, he was the highest-ranking officer at the scene.

54. Defendant Captain Dowling, upon arrival, stated to the other officers, "We have all the time in the world, we'll just wait it out. We'll wait him out."

55. At the instructions of Defendant Captains Dowling and Marzilli, the NPD officers on the scene positioned themselves in such a manner and at such a quantity that there were too

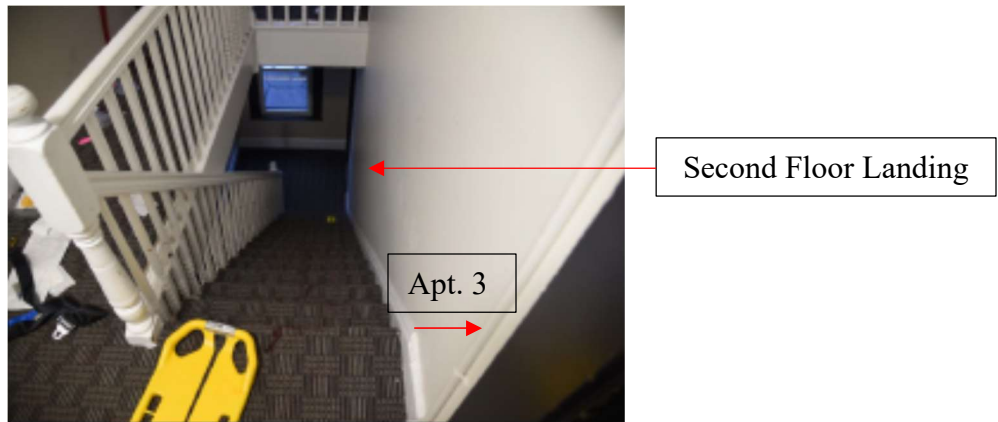
many officers to safely retreat down the stairs or reposition themselves to permit de-escalation. Specifically:

- a. Defendant Officer Scaltreto was the primary officer speaking with Michael. He was positioned on the third floor, in the hallway, approximately 12 feet from Michael. Defendant Officer Scaltreto lacked any safe manner of retreating or repositioning due to the narrow confines of the space.



- b. Defendant Officer Benes and Defendant Sergeant Chisholm stood in the open doorway to Apartment 4, less than 20 feet from Michael.
- c. Two Massachusetts State Police Officers stood inside Apartment 4 near the entry, less than 20 feet from Michael.

- d. No fewer than four NPD officers stood inside Apartment 4.
- e. No fewer than four NPD officers stood at the landing of the second floor stairwell. Their positioning prohibited the safe retreat by officers on a higher floor.



56. Michael repeatedly stated that he believed he was in a simulation and questioned whether the Defendants and other officers present were real police officers.

57. Numerous officers, including the Defendants, only offered to call Michael's father *in exchange for* Michael dropping the knife.

58. Michael was visibly spitting and drooling as he spoke.

59. Michael did not make any verbal threats that he would hurt the officers or anyone else besides himself.

60. While speaking to Michael, one of the officers opened the door to Michael's apartment and found a piece of mail bearing Michael's name. However, at no point during the encounter did the Defendants or any other officer on the scene actually attempt to contact Michael's father, who Michael repeatedly pleaded for, or any other family member of Michael's.

61. After Michael went up the stairs, NPD Officer Andrew Umina arrived in his police cruiser with NPD social worker Sarah Eknaian, whose job it was to respond with police

officers to calls involving mental health disorders or substance abuse. Upon their arrival, Officer Umina entered 18 Lincoln St., while Eknaian remained in the vehicle. Eknaian was familiar with Michael's mental health issues as she had been contacted by Advocates several months earlier regarding Michael's well-being.

62. Although at least three NPD officers knew that Eknaian was present, no one informed the officers who were engaged with Michael that there was an NPD social worker waiting outside of the building.

63. One NPD officer arrived on the scene with a "body bunker," which is a hand-held shield used for protection from projectiles and weapons. That NPD officer gave the body bunker to an NPD lieutenant, who stood with it at the bottom of the stairwell below Michael. When Defendant Captain Dowling arrived on the scene, he saw the Lieutenant standing with the body bunker but did not order him to go up the stairs to shield Defendant Officer Scaltreto from Michael. Defendant Captain Dowling repeated that "time was on their side."

64. The scene was saturated with so many officers at different locations that officers at the scene were not aware of which officer was the scene commander as the events unfolded. Some of the officers at the scene were so excited by the events, that Defendant Captain Dowling felt the need to calm everyone down.

65. As more officers continued to arrive to 18 Lincoln St., Defendant Captain Marzilli told the newly arriving officers that Michael was a "psych patient" and that the situation was "a mental health issue."

66. The Defendants knew, or had reason to know, that there were no occupants in any of the four apartments at the time of the events. Specifically, the Defendants knew, or had reason to know, that:

- a. Kalfon, who was the only resident living in Apartment 3, was outside of the building and speaking with members of the NPD during the incident.
- b. The Defendants barricaded the rear door to Apartment 3 to prevent Michael from leaving the building via Apartment 3, indicating that the Defendants knew there were no occupants inside Apartment 3.



Barricade created by Defendants against the back door to Apartment 3

- c. The resident of Apartment 4 left the apartment during the incident, and multiple officers were using the apartment as a staging area.
 - d. Michael lived alone in Apartment 1.
 - e. Apartment 2 was unoccupied.
67. While Michael spoke with the officers, NPD Lieutenant Ken D'Angelo called NEMLEC to request the assistance of a negotiator and the NEMLEC tactical team.
68. While Michael spoke with the officers, Defendant Captain Dowling instructed at least one other officer that the plan was to wait until NEMLEC arrived before making any attempt to apprehend Michael.
69. The Defendants were aware that NEMLEC officers typically require about 30 minutes to arrive at a Newton incident location after being called.

70. While Defendant Officer Scaltreto and others were speaking with Michael, Defendant Captain Marzilli instructed Defendant Sergeant Chisholm to retrieve his less-than-lethal shotgun.



Sgt.
Chisholm's
less-than-
lethal
shotgun

71. At the time that he made this instruction, Defendant Marzilli was aware that NEMLEC had been contacted.

72. Defendant Captain Marzilli was also aware, at the time he made the instruction to retrieve the less-than-lethal shotgun, that multiple officers and state troopers were blocking all exits from the hallway through which Michael could have fled.

73. Defendant Captain Dowling instructed Defendant Captain Marzilli that the plan was to wait for NEMLEC's arrival, but if necessary, shoot Michael with the less-than-lethal using the tasers of two state troopers as backup. Defendant Captain Dowling was aware that NEMLEC was en route to 18 Lincoln Street at the time that he made the order to fire at Michael.

74. Defendant Captain Dowling told Defendant Officer Benes that Defendant Officer Benes was the "lethal option" in the event that the non-lethal measures were ineffective, meaning that Defendant Officer Benes would need to shoot Michael with his firearm.

75. After Defendant Captain Dowling and Defendant Captain Marzilli communicated the plan to other officers, two Massachusetts State Police troopers armed with tasers expressed doubt to Defendant Captain Marzilli and Defendant Sergeant Chisholm as to whether the tasers would be effective due to the thick garment that Michael was wearing.

76. Despite hearing these doubts expressed by the state troopers, Defendant Captain Marzilli decided to position the troopers as part of the backup plan in the event the less-than-lethal was not effective.

77. Defendant Officer Scaltreto was the lead officer negotiating with Michael for his release of the knife. During this time, Defendant Officer Scaltreto was positioned in a location where there was no way for him to retreat if needed.

78. When speaking with Defendant Officer Scaltreto, Michael was holding the knife in one hand and a fire extinguisher in the other hand. However, at one point during the exchange, Michael dropped the fire extinguisher and smoked a cigarette with the same hand. The butt of a fully smoked cigarette was later found on the ground in the area of where Michael was standing.



Cigarette butt
outside Apt. 3
where Michael had
been standing

79. When Defendant Officer Scaltreto first began speaking with Michael, Michael asked Defendant Officer Scaltreto to call Michael's father, but also told Defendant Officer Scaltreto that he did not believe Defendant Officer Scaltreto could reach his father because Defendant Officer Scaltreto was "not really here."

80. After approximately twenty minutes of speaking with Michael, Defendant Officer Scaltreto convinced Michael to drop the knife to the floor by telling Michael that the

“simulation” would not allow Defendant Officer Scaltreto to call Michael’s father unless Michael dropped the knife.

81. After Michael placed the knife on the floor, Defendant Officer Scaltreto instructed Michael to place the fire extinguisher on the floor too. Michael complied.

82. When Michael dropped the knife, Defendant Officer Scaltreto told the officers behind him that Michael had dropped the knife and that there was “an opening.” Hearing this, Defendant Captain Marzilli stated over the radio to Defendant Captain Dowling that there was an “opening.” At the time that Defendant Marzilli made this statement to Defendant Dowling, Defendant Marzilli could not see Michael, the NPD officers or the State Troopers who were confronting him.

83. When Defendant Dowling and Defendant Marzilli made the order to fire, they were both aware that Michael was not being “assaultive/bodily harm.”

84. General Order 301 does not authorize officers to use a less-than-lethal shotgun to terminate a situation where a subject had previously been “assaultive” but was no longer being “assaultive.”

85. Neither Defendant Captain Dowling nor Defendant Sergeant Chisholm had ever fired a less-than-lethal shotgun in a live law enforcement situation prior to January 5, 2021.

86. The last recorded check of the less-than-lethal shotgun that Defendant Sergeant Chisholm fired occurred in December 2020. That check determined that the less-than-lethal shotgun was functional.

87. Defendant Captain Dowling made the order over the radio to Defendant Captain Marzilli that the less-than-lethal shotgun should be fired at Michael. No other officers on the scene heard this order on the radio line over which it was communicated.

88. Instead of loading and checking his own less-than-lethal shotgun before firing it, Defendant Sergeant Chisholm handed it to Defendant Captain Dowling, who loaded and checked it and handed it back.

89. Defendant Sergeant Chisholm was aware that there were no other civilians besides Michael in the building.

90. Upon receiving confirmation from Defendant Captain Marzilli, Defendant Sergeant Chisholm raised the less-than-lethal shotgun, pointed it at Michael, and attempted to fire it.

91. Defendant Sergeant Chisolm was aware that Michael had dropped the knife prior to firing the less-than-lethal shotgun.

92. The less-than-lethal shotgun did not fire. Defendant Sergeant Chisolm attempted to “clear” the less-than-lethal by discharging a round but was not able to properly fire the weapon due to operator error and inexperience.

93. When the less-than-lethal shotgun did not fire, Michael picked up the knife and ran at Defendant Sergeant Chisholm.

94. As Michael approached Defendant Sergeant Chisholm, Massachusetts State Trooper Dylan Finerty deployed his taser. The taser was deployed almost simultaneously with the discharge of firearms by Defendants Benes and Scaltreto.

95. A second State Trooper, Christian Howell, unholstered his taser and activated it but did not discharge it.

96. As Michael approached Defendant Sergeant Chisholm, Defendant Officers Benes and Scaltreto discharged their firearms at Michael, killing him.



97. Neither Defendant Officer Scaltreto nor Defendant Officer Benes were in a position where they could physically retreat at the time they fired at Michael.

98. The cause of death in Michael’s autopsy report was “multiple gunshot wounds,” and the manner of death was “homicide (shot by on duty law enforcement officer).” The multiple gunshot wounds were to the head, neck, and torso, and numbered approximately seven individual bullets, all fired by Defendant Officers Scaltreto and Benes. The State Police taser did not penetrate Michael’s coat.

99. After the incident, the less-than-lethal shotgun that Defendant Chisholm had attempted to discharge was tested by Lieutenant David Cahill, a ballistics specialist at the Massachusetts State Police.

100. During the test, the less-than-lethal discharged properly, and Lieutenant Cahill determined that it was fully operational and had no malfunctions.

101. At least one NEMLEC officer arrived at 18 Lincoln Street six minutes after the Defendants killed Michael.

E. The City of Newton Operated a Flawed Emergency Service System that Endangered People Suffering from Mental Illness

102. On January 5, 2021, The City and the NPD lacked adequate protocols for responding to 911 calls involving a person with mental illness.

103. The City failed to train its police officers as to how to safely and professionally confront people suffering from severe mental illness, including people with disorders that altered their perception of law enforcement.

104. The City's failure to establish protocols and train its officers on how to respond to calls concerning people with mental illness resulted in discrimination against such persons in the form of endangering them and exposing them to the use of force when such force could be avoided.

105. The City's and the NPD's absence of adequate protocols and training of its officers with regard to mental health issues was evidenced by its reliance on NEMLEC officers to respond to situations involving mentally ill persons. Notwithstanding the NPD's reliance on NEMLEC, its officers also lacked protocols and training that would enable them to safely allow time for NEMLEC officers to arrive at a scene.

106. The City's failure to train its officers introduced a high degree of risk that its officers would create dangerous and fatal encounters with mentally ill persons.

F. The Defendants' Affirmative Actions Created or Enhanced a Danger Specific to Michael

107. The Defendants' actions, as described in the foregoing paragraphs, created or enhanced a danger specific to Michael, and by those actions caused Michael harm.

108. The Defendants needlessly crowded themselves into a narrow third floor hallway with a person experiencing a significant mental health emergency. They manufactured chaos from nearly whole cloth. They rushed into a violent encounter when de-escalation was not only an available option but was actively taking place. They then chose to fire a less-than-lethal shotgun at Michael at close range, at a time when he was following their orders and had dropped the knife he had been holding.

109. These actions injected substantial and unnecessary risks to the physical safety of Michael and others. The Defendants' actions during the time period between their arrival to the scene and the shots that killed Michael were so wrong and reckless as to shock the conscience.

COUNT 1: 42 U.S.C. § 1983
Excessive Use of Force in Violation of Michael Conlon's Fourth Amendment Rights
(Against the Individual Defendants)

110. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

111. At all relevant times, Michael was a citizen of the United States.

112. At all relevant times, the Individual Defendants were persons for purposes of 42 U.S.C. § 1983.

113. At all relevant times, the Individual Defendants were acting under the color of state law in their capacities as officers of the NPD, an agency of the City, and they conducted their acts and omissions within the scope of their official duties or employment.

114. The Fourth Amendment of the United States Constitution guarantees citizens the right to be secure in their persons against unreasonable seizures of the person. At the time of the events set forth herein, Michael had a clearly established constitutional right under the Fourth Amendment to bodily integrity and to be free from unreasonable and excessive force by law enforcement officers.

115. As a result of the Individual Defendants' actions, Michael was seized within the meaning of the Fourth Amendment.

116. When Defendant Officers Benes and Scaltreto shot Michael, Michael was within the Individual Defendants' custody and control.

117. An objectively unreasonable use of deadly force by a police officer constitutes a violation of the Fourth Amendment to the United States Constitution.

118. Acts that unreasonably create a situation and risk level requiring officers to use deadly force against a seized person constitute a violation of the Fourth Amendment to the United States Constitution.

119. The Individual Defendants acted unreasonably in crowding themselves and other police officers into tight quarters in the presence of an obviously mentally ill, terrified, and suicidal Michael. The Individual Defendants needlessly created exigent circumstances, heightened physical safety risks to everyone involved, reduced the possibility of de-escalation, and unnecessarily shortened the timeframe available for the intervention of personnel qualified to speak to Michael while he was experiencing a mental health crisis.

120. Under the circumstances described in the foregoing paragraphs, Defendant Captains Dowling and Marzilli lacked a reasonable basis to order Defendant Sergeant Chisholm to fire a less-than-lethal at Michael, in contradiction of the NPD's own General Orders.

121. The Individual Defendants' actions violated Michael's Fourth Amendment right to bodily integrity and to be free from unreasonable and excessive force by law enforcement officers.

122. As a direct and proximate cause of the Individual Defendants' intentional conduct, Michael was subjected to excessive and ultimately, deadly force during a seizure.

123. An objectively reasonable law enforcement officer would have understood, throughout the encounter with Michael and up until Defendant Captains Dowling and Marzilli's order to fire the less-than-lethal shotgun, that the Individual Defendants' entire course of conduct and "plan" to address the situation at 18 Lincoln St. under the circumstances presented contravened clearly established case law and general Fourth Amendment principles and statements of law.

124. The Individual Defendants' intentional and excessive use of deadly force, and their intentional disregard of the risks associated with their actions, were such obvious and/or apparent violations of the Fourth Amendment's prohibition against unreasonable seizures that a reasonable officer would not have required prior case law on point to be on notice that his or her conduct was unlawful or unconstitutional.

125. A reasonable officer in any of the Individual Defendants' position would, or should, have understood that his conduct violated Michael's right to be free from the excessive use of deadly force.

126. The Plaintiffs are therefore entitled to damages and attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988.

COUNT 2: 42 U.S.C. § 1983
Deprivation of Due Process in Violation of Michael Conlon's Fourteenth Amendment
Rights
(Against the Individual Defendants)

127. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

128. The Fourteenth Amendment protects a person from the deprivation of life, liberty, and property without due process of law.

129. The Individual Defendants' conduct described above and herein was committed under the color of state law and reflected reckless or callous indifference to Michael's clearly established rights, in violation of Michael's Fourteenth Amendment right to life.

130. As a direct and proximate result of the Individual Defendants' reckless or callous indifference, Michael was deprived of his life without due process of law.

131. The Individual Defendants' violation of Michael's Fourteenth Amendment rights through their reckless and callous conduct was clearly established under existing case law or general Fourteenth Amendment principles and statements of law. The Individual Defendants knew that their conduct was unlawful and unconstitutional.

132. A reasonable officer would not have required prior case law on point to be on notice that the Individual Defendants' conduct violated Michael's Fourteenth Amendment rights.

133. The Plaintiffs are therefore entitled to damages and attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988.

COUNT 3: 42 U.S.C. § 1983
Deprivation of Due Process in Violation of Michael Conlon's Fourteenth Amendment
Rights (Supervisory Liability)
(Against Defendant Captains Dennis Dowling and Christopher Marzilli)

134. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

135. At all relevant times, Defendant Captains Marzilli and Dowling were acting under the color of state law in their capacity as Captains of the NPD, and they conducted their acts or omissions within the scope of their official duties or employment.

136. As the highest-ranking NPD officers at 18 Lincoln Street on January 5, 2021, Defendant Captains Marzilli and Dowling were responsible for ensuring that the other NPD officers at 18 Lincoln Street complied with NPD policies and procedures, including its General Orders.

137. Rather than act and instruct subordinates to act in accordance with applicable NPD General Orders and generally acceptable police practices, Defendant Captains Marzilli and Dowling carried out and ordered an unreasonable and inherently risky plan that contravened the NPD's own General Orders, generally acceptable police practices, and common sense. Specifically, and as described in the foregoing paragraphs, Defendant Captains Dowling and Marzilli:

138. Unnecessarily instructed an unreasonable quantity of law enforcement officers to cram themselves into tight quarters, instead of employing any type of rational tactical repositioning that would create distance and barriers between the responding officers and diminish any threat that Michael posed to the safety of others. These orders not only effectuated a seizure but led directly and proximately to Michael's death.

a. Created exigencies rather than prolonging the confrontation in order to give qualified personnel an opportunity to arrive and intervene, in accordance with General Order 601. Defendant Captains Marzilli and Dowling knew that NEMLEC was on its way and rushed to create a violent confrontation with Michael, resulting in Michael's death, mere minutes before NEMLEC's arrival.

b. Ordered Defendant Sergeant Chisholm to fire the less-than-lethal shotgun despite their knowledge that the conditions described in General Order 301 were absent, and despite Michael not being in an "assaultive/bodily harm" state at the time the order was given.

c. Defendant Captains Dowling and Marzilli acted with deliberate indifference to Michael's safety and in contravention of the Fourteenth Amendment to the United States Constitution by engaging in the above conduct, which included failing

to adequately supervise the police officers at 18 Lincoln Street. The unreasonable conduct also included failing to ensure that the NPD officers under their supervision employed available and effective means to keep Michael safe until NEMLEC personnel arrived.

139. As a direct and proximate result of Defendant Captains Dowling and Marzilli's deliberate indifference to Michael's clearly established rights as guaranteed by the Fourteenth Amendment to the United States Constitution, Michael died and the Plaintiffs suffered substantial damages.

140. Defendant Captains Dowling and Marzilli's violation of Michael's Fourteenth Amendment rights through their reckless and callous conduct was clearly established under existing case law or general Fourteenth Amendment principles and statements of law such that it was apparent to Defendant Captains Dowling and Marzilli that their conduct was unlawful and unconstitutional.

141. Defendant Captains Dowling and Marzilli's violation of Michael's Fourteenth Amendment rights through their reckless and callous conduct was such an obvious and/or apparent violation of the Fourteenth Amendment's general prohibition of the deprivation of life without due process of law that a reasonable officer would not have required prior case law on point to be on notice that his or her conduct was unlawful or unconstitutional.

142. A reasonable officer in Defendant Captains Dowling and Marzilli's position would, or should, have known that his conduct violated Michael's right to life without due process of law.

143. The Plaintiffs are therefore entitled to damages and attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988.

COUNT 4: 42 U.S.C. § 1983
Negligent Training and Supervision
(Against the City of Newton)

144. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

145. The City of Newton, through its agents, servants, and employees in the NPD, possessed the duty to train and supervise its police officers regarding:

- a. How to confront an individual experiencing a mental health emergency.
- b. How to de-escalate a situation where an individual was exhibiting suicidal ideation.
- c. The appropriate use of force during a seizure of an individual experiencing a mental health crisis.
- d. The appropriate use of a less-than-lethal, and the circumstances under which a less-than-lethal should be used.
- e. Methods of prolonging a confrontation to permit qualified personnel to arrive at a scene, where the qualifications of on-site personnel are insufficient to address the mental health and safety needs of a subject person.
- f. Methods of avoiding the use of deadly force upon a seized person, especially a person exhibiting obvious signs of a mental illness.
- g. The implementation of the concepts of time, barrier, and distance in the context of confronting a person experiencing a mental health crisis, especially where that person was located in close quarters with one or more police officers.

146. On and before January 5, 2021, the City's policymakers knew or should have known that NPD officers would be required to respond to scenes involving persons with mental illness who posed potential safety threats to themselves and others, but who could be confronted and treated in a manner that avoided the need to use deadly force.

147. On and before January 5, 2021, the City's policymakers knew or should have known that NPD officers would need to address a situation where a mentally ill person behaved erratically and irrationally, and was convinced to drop any object that could threaten his own safety or the safety of others. The City's policymakers knew or should have known that NPD officers would need to know what to do next. The City failed to train its officers what to do in that eminently foreseeable situation, which occurred on January 5, 2021, during the midst of a mental health crisis throughout the City and the Commonwealth of Massachusetts.

148. Indeed, the City demonstrated its knowledge of the need to respond to mental health emergencies by partnering with NEMLEC and hiring a full-time social worker. On and by January 5, 2021, the City knew that NPD officers were insufficiently trained and resourced to respond, without the help of specially trained personnel, to mental health crisis situations that would inevitably arise and to which NPD would inevitably need to respond. Despite this knowledge, the City persisted in its failures to adequately train NPD officers how to (a) address mentally ill persons themselves and/or (b) employ the resources of other agencies such as NEMLEC.

149. The City's failure to train and supervise NPD officers was exhibited in the pervasive failures of multiple officers, including all of the Individual Defendants (to include two officers with the rank of Captain and one with the rank of Sergeant), to act in accordance with NPD's own General Orders and generally acceptable police practices throughout the encounter with Michael on January 5, 2021. These failures exhibited far more than one-off contravention of NPD policies; rather, they revealed a systemic failure to train and supervise. Specifically, the conduct of the Defendants demonstrated that the City failed to provide adequate training in critical subject matter areas, including but not limited to:

- a. The proper and reasonable manner of confronting a mentally ill person who had already acceded to the demands of officers instructing him to drop a weapon.
- b. The proper manner of de-escalation in situations where a mentally ill person has, or recently had, a weapon in his possession.
- c. The proper and reasonable manner of physically placing officers in tight quarters in a manner that would permit de-escalation, rather than force a violent encounter.
- d. The proper and reasonable manner of ensuring that the chain of command is clear and followed. On January 5, 2021, the officers on the scene were confused as to the chain of command.
- e. The proper and reasonable procedures for taking control of an arrest scene involving multiple law enforcement officers and/or agencies and ensuring that a single officer serves as the primary supervisor giving instructions.
- f. The proper and reasonable manner of employing a less-than-lethal shotgun, including but not limited to the circumstances under which a less-than-lethal shotgun should be fired.
- g. The proper and reasonable manner of loading a less-than-lethal shotgun.
- h. The proper and reasonable manner of checking the functionality of a less-than-lethal shotgun prior to firing it.
- i. The basic principle that an officer preparing to discharge his own firearm should be the one to check and/or load it before firing.
- j. The proper and reasonable manner of employing tasers as a backup device in a potentially lethal situation. Even though NPD officers were not armed with tasers

themselves as part of NPD policy, the City was aware that NPD officers could and likely would be in a position to order State Troopers to employ the use of tasers. Despite the warnings from the State Troopers that tasers would be ineffective under the circumstances, Defendant Captains Dowling and Marzilli instructed the State Troopers to use them and relied on them as a Plan B.

k. The proper and reasonable manner of addressing the mental and emotional needs of a person who is pleading to contact a loved one, such as his father.

l. The proper and reasonable manner of communicating internally among on-scene officers and dispatch to make sure that the officers on scene are aware of the resources available and the length of time that those resources may take to arrive.

150. Proper training in one or more of the procedures listed in the preceding paragraph would have prevented Michael's death at the hands of the Defendants. The City could and should have trained the Individual Defendants in these areas prior to January 5, 2021.

151. The City's policy or custom of inadequate training and supervision of NPD officers, including the Individual Defendants, the City's failure to implement adequate policies and procedures applicable to the predictable circumstances and events of January 5, 2021, and/or the City's failure to ensure compliance with its existing policies and procedures caused Michael's death.

152. The City's training or lack thereof of NPD officers, its failure to ensure compliance with existing procedures, and its lack of appropriate procedures that would avoid needless risks to physical safety of persons confronted or seized by police, especially mentally ill persons, was reckless and/or negligent.

153. The City's custom of inadequate training and supervision of NPD officers constituted deliberate indifference of clearly established constitutional rights of others, including Michael, to be free from the use of excessive force and the deprivation of life without due process of law. The City knew of the obvious risks to the constitutional rights of persons with mental illness who would be confronted by NPD officers, and nevertheless failed to act in a manner that ensured the proper preparedness of its officers to address such situations.

154. The Plaintiffs are therefore entitled to damages and attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988.

COUNT 5: 42 U.S.C. § 1983
Unconstitutional Failure to Provide Mental Health Treatment in Violation of the
Fourteenth Amendment's Right to Due Process
(Against All Defendants)

155. The Plaintiffs incorporate by reference herein the foregoing paragraphs.

156. The Individual Defendants and the City are persons with the meaning of 42 U.S.C. § 1983.

157. At all relevant times, the Defendants were acting under the color of state law and within the scope of their employment with NPD.

158. On January 5, 2021, Michael was held in custody by the City, specifically subject to the custody of the Individual Defendants.

159. On January 5, 2021, the Individual Defendants were aware of Michael's serious mental health illness and emergency medical needs, and deliberately and unreasonably failed to obtain emergency mental health care. This failure was pursuant to the policies, practices, and customs of the City and the NPD as described above, including but not limited to its written rules and procedures, and its failure to train and supervise its officers.

160. The Defendants' failure to secure emergency mental health care for Michael led directly to his death, at the hands of Defendant Officers Benes and Scaltreto, and at the instruction of Defendant Captains Marzilli and Dowling.

161. Defendants' actions deprived Michael of his rights, privileges, or immunities secured by the U.S. Constitution and laws, including his clearly established due process rights under the Fourth Amendment to the U.S. Constitution, in violation of 42 U.S.C. § 1983.

162. Defendants' actions and omissions were taken with reckless disregard for Michael's constitutional rights.

163. The Plaintiffs are therefore entitled to damages and attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988.

**COUNT 6: AMERICANS WITH DISABILITIES ACT (ADA)
Failure to Accommodate Michael's Disability Under the ADA
(Against the City of Newton)**

164. The Plaintiffs incorporate by reference herein the foregoing paragraphs.

165. Title II of the ADA states, in pertinent part:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such entity. 42 U.S.C. § 12132.

166. At all relevant times, Michael was a "qualified individual with a disability" pursuant to Title II of the ADA. As a resident of Newton, he was qualified and entitled to participate in the programs, services, and activities of the City, including but not limited to receiving emergency services and other appropriate assistance from the NPD.

167. At all relevant times, the City was a "public entity," and the NPD was one of its "departments" pursuant to the ADA.

168. The Defendants failed to employ reasonable techniques in dealing with a person they knew or should have known to be disabled by virtue of his mental illness. This failure constituted “discrimination” under the ADA.

169. Unreasonably subjecting individuals with mental illness to threats of physical violence and otherwise ordinary police techniques can render encounters unnecessarily dangerous to both the subject and law enforcement officers.

170. At all relevant times, the Defendants knew, or should have known, of their obligation under the ADA to provide reasonable accommodations to Michael based on his disability associated with his mental illness. The NPD had received at least one previous report about Michael’s mental condition. Additionally, immediately upon Officer Raymond’s initial encounter with Michael and at all times thereafter, the NPD officers responding to the scene, including the Individual Defendants, knew that Michael was experiencing a mental health emergency.

171. The Defendants actions amounted to discrimination by excluding Michael from participation in the benefits of a public service, and by failing to make reasonable accommodations to address his mental illness. Instead of reasonably accommodating Michael’s disability, the Defendants resorted to deadly violence.

172. The Defendants’ unlawful discrimination against Michael, and their failure to accommodate Michael’s disability, caused his death.

173. The City is vicariously liable for the Individual Defendants’ unlawful discrimination against Michael.

174. As a result of Defendants' actions and omissions, Michael and the Plaintiffs lost their reasonably expected income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice.

**COUNT 7: AMERICANS WITH DISABILITIES ACT (ADA)
Failure to Train
(Against the City of Newton)**

175. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

176. The City excluded Michael from participation in or denied him the benefits of a public service or otherwise discriminated against him, on the basis of his disability, by failing to train its employees to make reasonable accommodations to serve persons with mental health disabilities.

177. Had the City trained its NPD officers to make reasonable accommodations in responding to a mental health emergency, rather than taking the unreasonable actions that they did, the Defendants would not have resorted to killing Michael.

178. As a result of the City's failure to train its employees, in violation of the ADA, the Plaintiffs suffered damages.

**COUNT 8: REHABILITATION ACT
(Against the City of Newton)**

179. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

180. Section 504 of the Rehabilitation Act provides, in pertinent part:

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance[.] 29 U.S.C. § 794(a).

181. The City is a recipient of “federal financial assistance” within the meaning of the Rehabilitation Act, and the City’s services in the form of emergency responders – including NPD – constitute a “program or activity” that the City provides.

182. The City excluded Michael from participation in or denied him the benefits of a public service, or otherwise discrimination against him, on the basis of his disability.

183. The City knew that Michael had a disability and still failed to reasonably accommodate his disability. As a result of this failure to accommodate Michael’s disability, Michael was subjected to discrimination, seized in an unreasonable manner, and unnecessarily shot and killed.

184. As a result of the City’s failure to make reasonable accommodations in violation of the Rehabilitation Act, the Plaintiffs suffered damages.

COUNT 9: MASS. G.L. c. 12, §§ 11H & 11I
Due Process
(Against the Individual Defendants)

185. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

186. On January 5, 2021, the Individual Defendants, by means of threats, intimidation, and coercion, intentionally and unlawfully used excessive deadly force against Michael, and thereby interfered with Michael’s right to life secured by Article XII of the Massachusetts Declaration of Rights and by the Fourteenth Amendment to the United States Constitution.

187. The Individual Defendants’ use of threats, intimidation, and coercion interfered with Michael’s rights and caused Michael’s death.

188. The Plaintiffs are therefore entitled to damages and attorneys’ fees pursuant to M.G.L. c. 12, §§ 11H and 11I.

COUNT 10: MASS. G.L. c. 12, §§ 11H & 11I
Excessive Force
(Against the Individual Defendants)

189. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

190. On January 5, 2021, the Individual Defendants, by means of threats, intimidation, and coercion, intentionally and unlawfully used excessive deadly force against Michael, and thereby interfered with Michael's right to be free from unreasonable seizures as protected by Article XIV of the Massachusetts Declaration of Rights and by the Fourth Amendment to the United States Constitution.

191. Michael was killed as a result of the Individual Defendants' use of threats, intimidation, and coercion to interfere with his rights.

192. The Plaintiffs are therefore entitled to damages and attorneys' fees pursuant to M.G.L. c. 12, §§ 11H and 11I.

COUNT 11: MASS. G.L. c. 229, § 2
Wrongful Death
(Against the Individual Defendants)

193. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

194. The Individual Defendants' January 5, 2021, shooting of, and the decisions directly leading to the shooting of, Michael were intentional, willful, wanton and/or reckless.

195. At the time of the shooting, Michael was unarmed, smoking a cigarette, and posed no risk of harm to any civilian. He had just moments before complied with instructions to drop the knife and fire extinguisher that he had been holding.

196. Michael's mental illness was readily apparent to the Individual Defendants.

197. Michael's death was a direct and proximate result of the Individual Defendants' unjustified conduct.

**COUNT 12: ASSAULT (MASSACHUSETTS COMMON LAW)
(Against Sergeant Glenn Chisholm)**

198. The Plaintiffs reallege and reincorporate herein the foregoing paragraphs.

199. On January 5, 2021, Defendant Sergeant Chisholm recklessly and unjustifiably used a less-than-lethal projectile shotgun to assault Michael.

200. Defendant Sergeant Chisholm's use of a less-than-lethal projectile shotgun constituted an intent to place Michael in fear of immediate physical harm.

201. The Plaintiffs suffered damages as a result of Defendant Sergeant Chisolm's assault.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment in Plaintiff's favor in such amount as will fully compensate the Estate for its losses to the greatest extent allowed by law;
2. Order such punitive damages as are allowed by law;
3. Order payment of interest, costs, and attorneys' fees as allowed by law; and
4. Order such further relief as this Court deems fair and just.

DEMAND FOR TRIAL BY JURY

Plaintiffs demands that the present case be tried before a jury.

Dated: January 5, 2023

Respectfully submitted,

PLAINTIFFS ROBERT CONLON
AND BETSY CONLON, Personal
Representatives of the Estate of
Michael Conlon,

By their attorney,

/s/ Michael J. Sullivan

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