

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Margaret HOWE, administratrix of the estate
of KENNETH HOWE; and

C.A. No. _____

Margaret HOWE;

A. H.;

D. H.;

R. H.;

By their natural guardian, Margaret HOWE,

Plaintiffs

v.

TOWN OF NORTH ANDOVER;

Mark DELANEY; Edward C. DOWNER, Jr.;

Debra A. SIMON; Stephen WALSH;

Richard W. EUBANKS; Frank PUOPOLO;

Daniel GRIFFIN; William ROBERTSON;

Kevin D. EMMETT; Michael COOK;

Michael CURRIER; Kevin O'NEILL;

Scott MACKENZIE; Patrick J. CANDELIERE;

Bryan W. ERICKSON; Sean MCGARRY;

Jodi A. GERARDI; Dan CIARDIELLO;

Michael J. MISKELL; Lawrence KIELY; and

Richard STANLEY; John CARNEY; Charles;

GRAY; William BRUSH III; Eric SEWADE;

Robert HOLLAND; Michael WILSON; Gregory

BROWN; Michael REARDON; Robert

BARTER; Seal DALEY; Jay STAUDE;

Robert HILLNER; and

Frank G. COUSINS, Jr.; Richard "DAJORY";

Bret GRAHAM

Defendants

COMPLAINT

INTRODUCTION

1. This is a civil rights action in which the plaintiff, Margaret Howe (hereinafter “Margaret”), as administratrix of the decedent Kenneth Howe’s estate (hereinafter “Kenneth”), seeks relief for the Defendants’ violation of Kenneth’s rights secured by the laws of the United States and Commonwealth of Massachusetts.
2. This is a civil action in which the plaintiffs Margaret, A. H. (hereinafter “A. H.”), D. H. (hereinafter “D. H.”), and R. H. (hereinafter “R. H.”) seek relief for the Defendants’ violation of rights secured by the laws of the United States and Commonwealth of Massachusetts.
3. On or about November 25, 2009, officers operating a sobriety checkpoint in North Andover, Massachusetts stopped the vehicle in which decedent Kenneth was a front seat passenger. A collaborative effort of the North Andover Police Department, the Massachusetts State Police, and the Essex County Sheriff’s Department was conducting and overseeing the checkpoint. Kenneth was physically removed out of the vehicle, forced to the ground, beaten, handcuffed and placed in leg irons, and dragged to the police cruiser. As a result of the physical beatings and/or the delayed calling for medical services, Kenneth died in North Andover Police and/or Massachusetts State Police custody on or about November 26, 2009. The Office of the Chief Medical Examiner has ruled that Kenneth’s death is a homicide, caused by a “blunt impact of head and torso with compression of chest.”

JURISDICTION

4. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Title 28 U.S.C. §§ 1331, 1343 provide federal question jurisdiction over all federal claims.
5. Title 28 U.S.C. § 1367 provides supplemental jurisdiction over state law claims.

PARTIES

6. Plaintiff Margaret Howe was the wife of the deceased, Kenneth, and has been appointed as the administratrix of his estate. She is a citizen of the Commonwealth of Massachusetts and resides at [REDACTED] MA [REDACTED]. Margaret brings this suit in both her representative capacity and individual capacity.
7. Plaintiff A. H. was the daughter of the deceased, a citizen of the Commonwealth of Massachusetts and resides [REDACTED] [REDACTED] MA [REDACTED]. A. H. is a minor, age fifteen (15), and was dependent on Kenneth Howe.
8. Plaintiff D. H. was the daughter of the deceased, a citizen of the Commonwealth of Massachusetts and resides [REDACTED] [REDACTED] MA [REDACTED]. D. H. is a minor, age ten (10), and was dependent on Kenneth Howe.
9. Plaintiff R. H. was the daughter of the deceased, a citizen of the Commonwealth of Massachusetts and resides [REDACTED] [REDACTED] MA [REDACTED]. R. H. is a minor, age thirteen months (13 mos.), and was dependent on Kenneth Howe.

10. Defendant Town of North Andover (hereinafter “North Andover”) is a municipality established under the General Laws of Massachusetts with its town hall located at 120 Main St., North Andover, Massachusetts, Essex County, 01845. North Andover was at all times material to this Complaint the employer of Defendants Stanley, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, and Hillner. North Andover promulgated and otherwise adopted under the color of state law rules, practices, procedures, polices, and other customs for use by its law enforcement officers.
11. Defendant Mark Delaney, (“Colonel Delaney”), whose true address is unknown to the Plaintiffs, was a duly appointed colonel of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Colonel Delaney was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as colonel supervisor of the Massachusetts State Police (hereinafter “MSP”).
12. Defendant Edward C. Downer, Jr., (“Lieutenant Downer”), whose true address is unknown to the Plaintiffs, is a duly appointed lieutenant, No. 0925, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Lieutenant Downer was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as a lieutenant supervisor in the MSP.
13. Defendant Debra A. Simon, (“Lieutenant Simon”), whose true address is unknown to the Plaintiffs, is a duly appointed lieutenant, No. 0481, of the Commonwealth of Massachusetts Department of State Police. At all times

material to this Complaint, Lieutenant Simon was acting within the scope of her employment under the color of state law. She is sued in her individual capacity and as a lieutenant supervisor in the MSP.

14. Defendant Stephen Walsh, (“Lieutenant Walsh”), whose true address is unknown to the Plaintiffs, is a duly appointed lieutenant, No. 2040, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Lieutenant Walsh was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as a lieutenant supervisor in the MSP.
15. Defendant Richard W. Eubanks, (“Sergeant Eubanks”), whose true address is unknown to the Plaintiffs, is a duly appointed sergeant, No. 0968, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Sergeant Eubanks was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as a sergeant supervisor in the MSP.
16. Defendant Frank Puopolo, (“Sergeant Puopolo”), whose true address is unknown to the Plaintiffs, is a duly appointed sergeant, No. 1763, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Sergeant Puopolo was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as a sergeant supervisor in the MSP.
17. Defendant Daniel Griffin, (“Sergeant Griffin”), whose true address is unknown to the Plaintiffs, is a duly appointed sergeant, No. 1121, of the Commonwealth of

Massachusetts Department of State Police. At all times material to this Complaint, Sergeant Griffin was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as a sergeant supervisor in the MSP.

18. Defendant William Robertson, (“Sergeant Robertson”), whose true address is unknown to the Plaintiffs, is a duly appointed sergeant, No.18_8¹, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Sergeant Robertson was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as a sergeant supervisor in the MSP.

19. Defendant Kevin D. Emmett, (“Sergeant Emmett”), whose true address is unknown to the Plaintiffs, is a duly appointed sergeant, No. 0963, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Sergeant Emmett was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as a sergeant supervisor in the MSP.

20. Defendant Michael Cook, (“Sergeant Cook”), whose true address is unknown to the Plaintiffs, is a duly appointed sergeant, No. 2146, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Sergeant Cook was acting within the scope of his employment under the color of

¹ The sole information that has been provided to the plaintiffs regarding the identity of law enforcement present during the November 25, 2009 sobriety checkpoint is a two-paged form entitled “Massachusetts State Police Sobriety Checkpoint Duty Assignments.” The names and ID numbers of many officers are hand-written, not typed, and are difficult to correctly discern and/or spell correctly.

state law. He is sued in his individual capacity and as a sergeant supervisor in the MSP.

21. Defendant Michael Currier, (“Trooper Currier”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 0862, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper Currier was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

22. Defendant Kevin O’Neill, (“Trooper O’Neill”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 1674, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper O’Neill was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

23. Defendant Scott Mackenzie, (“Trooper Mackenzie”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 2216, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper Mackenzie was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

24. Defendant Patrick J. Candelieri, (“Trooper Candelieri”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 3397, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper Candelieri was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

25. Defendant Bryan W. Erickson, (“Trooper Erickson”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 3251, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper Erickson was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.
26. Defendant Sean McGarry, (“Trooper McGarry”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 3313, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper McGarry was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.
27. Defendant Jodi A. Gerardi, (“Trooper Gerardi”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 3115, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper Gerardi was acting within the scope of her employment under the color of state law. She is sued in her individual capacity.
28. Defendant Dan Ciardiello, (“Trooper Ciardiello”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. 2964, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper Ciardiello was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.
29. Defendant Michael J. Miskell, (“Trooper Miskell”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. “2234” or “2274”², of the Commonwealth of Massachusetts Department of State Police. At all times

² Supra FN 1.

material to this Complaint, Trooper Miskell was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

30. Defendant Lawrence Kiely, (“Trooper Kiely”), whose true address is unknown to the Plaintiffs, is a duly appointed trooper, No. “2542” or “2592”³, of the Commonwealth of Massachusetts Department of State Police. At all times material to this Complaint, Trooper Kiely was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

31. Defendant Richard Stanley, (“Chief Stanley”), whose true address is unknown to the Plaintiffs, is the duly appointed police chief of the North Andover Police Department (hereinafter “NAPD”). At all times material to this Complaint, Chief Stanley was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity, and as the chief supervisor of the NAPD.

32. Defendant John Carney, (“Lieutenant Carney”), whose true address is unknown to the Plaintiffs, is a duly appointed lieutenant of the NAPD. At all times material to this Complaint, Lieutenant Carney was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity, and as a lieutenant supervisor in the NAPD.

33. Defendant Charles Gray, (“Sergeant Gray”), whose true address is unknown to the Plaintiffs, is a duly appointed sergeant, No. 446, of the NAPD. At all times material to this Complaint, Sergeant Gray was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity, and as a sergeant supervisor in the NAPD.

³ Supra FN 1.

34. Defendant William Brush III, (“Officer Brush”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 531, of the NAPD. At all times material to this Complaint, Officer Brush was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.
35. Defendant Eric Sewade, (“Officer Sewade”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 460, of the NAPD. At all times material to this Complaint, Officer Sewade was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.
36. Defendant Robert Holland, (“Officer Holland”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 468, of the NAPD. At all times material to this Complaint, Officer Holland was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.
37. Defendant Michael Wilson, (“Officer Wilson”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 466, of the NAPD. At all times material to this Complaint, Officer Wilson was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.
38. Defendant Gregory Brown, (“Officer Brown”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 470, of the NAPD. At all times material to this Complaint, Officer Brown was acting within the scope of his

employment under the color of state law. He is sued in his official and individual capacity.

39. Defendant Michael Reardon, (“Officer Reardon”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 472, of the NAPD. At all times material to this Complaint, Officer Reardon was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.

40. Defendant Robert Barter, (“Officer Barter”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 450, of the NAPD. At all times material to this Complaint, Officer Barter was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.

41. Defendant Sean Daley, (“Officer Daley”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 457, of the NAPD. At all times material to this Complaint, Officer Daley was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.

42. Defendant Jay Staude, (“Officer Staude”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 403, of the NAPD. At all times material to this Complaint, Officer Staude was acting within the scope of his employment under the color of state law. He is sued in his official and individual capacity.

43. Defendant Robert Hillner, (“Officer Hillner”), whose true address is unknown to the Plaintiffs, is a duly appointed officer, No. 441, of the NAPD. At all times material to this Complaint, Officer Hillner was acting within the scope of his

employment under the color of state law. He is sued in his official and individual capacity.

44. Defendant Frank G. Cousins, Jr., (“Sheriff Cousins”), whose true address is unknown to the Plaintiffs, is a duly elected Sheriff of the Essex County Sheriff’s Department (hereinafter “ECSD”). At all times material to this Complaint, Sheriff Cousins was acting within the scope of his employment under the color of state law. He is sued in his individual capacity and as the sheriff supervisor of the ECSD.

45. Defendant Richard “DaJory,” (“Deputy ‘DaJory’”), whose true address and correct spelling of last name is unknown⁴ to the Plaintiffs, is a duly appointed deputy of the ECSD. At all times material to this Complaint, Deputy “DaJory” was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

46. Defendant Bret Graham, (“Deputy Graham”), whose true address is unknown to the Plaintiffs, is a duly appointed deputy of the ECSD. At all times material to this Complaint, Deputy Graham was acting within the scope of his employment under the color of state law. He is sued in his individual capacity.

FACTS

47. On Wednesday, November 25, 2009, Kenneth and two of his friends, Michael Garbaskas (hereinafter “Garbaskas”) and Michael Barbour (hereinafter “Barbour”), traveled from Worcester, Massachusetts to North Andover, Massachusetts to purchase a speedboat from a seller who posted its sale on Craig’s List web site.

⁴ Supra FN 1.

48. Kenneth, Garbauskas, and Barbour were traveling in a gray Chevrolet Silverado truck.
49. After the purchase of the boat, the three men began their return to Worcester, with the boat in tow on the truck. The route for their return to Worcester was to take Route 114 to I-495.
50. Between about 10:50 p.m. and 11:15 p.m., Kenneth, Garbauskas, and Barbour went to Stop & Shop, 757 Turnpike St. (Rte. 114), North Andover, to purchase some food for the next day's Thanksgiving dinner.
51. At 11:06 p.m., Kenneth, Garbauskas, and Barbour purchased items totaling one hundred and twenty-nine dollars and forty-five cents (\$129.45).
52. Kenneth, Garbauskas, and Barbour continued traveling northwest on Route 114 to return to Kenneth's home in Worcester, Massachusetts.
53. MSP Colonel Mark Delaney created a state police sobriety checkpoint, which was positioned on Route 114 on November 25, 2009.
54. The sobriety checkpoint was jointly enforced by the Massachusetts State Police, the North Andover Police Department, and Essex County Sheriff's Department.
55. The "Massachusetts State Police Sobriety Checkpoint Duty Assignments" listed the following assignments:
 - a. Officer-In-Charge: Lieutenant Downer
 - b. Officer-In-Charge of Diversion Area: Lieutenant Simon
 - c. Diversion Area Statistics Officer: Sergeant Eubanks
 - d. Initial Diversion/Screening Point Officer: Sergeant Puopolo
 - e. Traffic Monitor/Setup Officer: Trooper Carrier

- f. MSP Safety Vehicle Officers: Trooper O'Neill
- g. MSP Screeners/Greeters: Trooper O'Neill
Trooper Mackenzie
Trooper Candelieri
Trooper Erickson
Trooper McGarry
Trooper Gerardi
Trooper Ciardiello
Sergeant Emmett
Sergeant Cook
Trooper Miskell
- h. State Police Traffic Programs: Lieutenant Walsh
Sergeant Griffin
Trooper Kiely
Sergeant Robertson
- i. Local Police Supervisor: Lieutenant Carney
- j. Local Police Safety Vehicle Officer: Officer Brush
- k. Local Police Screeners/Greeters: Sergeant Gray
Officer Sewade
Officer Holland
Officer Wilson
Officer Brown
Officer Reardon
Officer Barter
Officer Daley
Officer Staude
Officer Hillner
- l. Sheriff's Supervisor: Richard "DaJory"
- m. Sheriff's Transportation: Bret Graham

56. Defendant Chief Stanley was also present at the 11/25/09 sobriety checkpoint.

57. As the Chevrolet truck approached the checkpoint, Garbauskas was the driver, Kenneth was the front seat passenger, and Barbour was the back seat passenger.

58. Kenneth did not have his seatbelt on and had lit a marijuana cigarette and was smoking it in the truck.

59. The truck came upon the checkpoint and reduced speed appropriately.
60. Kenneth, seeing the police, tried to put out his cigarette and fasten his seatbelt.
61. Trooper Jodi Gerardi, who was assigned as a "MSP Greeter," approached the front passenger side of the truck.
62. A male officer, whose name is unknown at the time of filing this Complaint, approached the driver's side of the truck.
63. Kenneth and Garbauskas were ordered out of the truck.
64. Kenneth held both hands up and tried to explain that the cigarette was all he had in his hands.
65. Kenneth was unarmed with any weapons or objects that could be used as weapons.
66. Pursuant to Trooper Gerardi's police report, no weapons were recovered from the truck or from either of the other two occupants.
67. Trooper Gerardi forcefully removed Kenneth from the truck and screamed, "He assaulted me!"
68. Kenneth never struck Trooper Gerardi.
69. At that point, between approximately ten (10) and twenty (20) law enforcement officers swarmed on Kenneth.
70. Kenneth was a man of slight build, approximately five feet, eight inches tall (5'8") and approximately one hundred and sixty-five pounds (165 lbs.).
71. Kenneth's pet pit bull, a docile family dog, had been riding in the vehicle. The dog was never commanded to attack officers, nor was it intentionally "released."

According to Trooper Gerardi's report, "The dog was controlled without incident."

72. These altercations occurred in close proximity to the offices of The Eagle-Tribune, a local newspaper office, located at 100 Turnpike St. (Rte. 114), North Andover, Massachusetts.
73. A photographer from The Eagle-Tribune, Carl Russo (hereinafter "Russo"), was leaving the office for the evening to return home and heard a commotion. He immediately grabbed his camera out of the trunk of his car, which was parked in the rear of The Eagle-Tribune, proceeded to the front of the building, and took photos of the incident.
74. Russo took forty-three (43) photos of the police incident involving Kenneth. All photos were taken between exactly 11:20 p.m. and 11:31 p.m. on November 25, 2009, according to the time stamps on the digital photos.
75. The photos show, among other things:
 - a. Kenneth face-down on the ground beginning at 11:20 p.m. and remaining there until 11:30 p.m.
 - b. Between seven (7) and twelve (12) enforcement officers standing in very close proximity to Kenneth from 11:20 p.m. to 11:31 p.m.
 - c. Between one (1) and at least four (4) enforcement officers physically laying on top of Kenneth and restraining him from 11:20 p.m. to 11:30 p.m.
 - d. Leg shackles on Kenneth at the time of 11:25 p.m.

- e. A law enforcement officer with his left leg raised about one foot (1') off the ground and cocked back at the time of 11:27 p.m.
 - f. Kenneth on his knees being held up by several police officers at the time of 11:31 p.m.
 - g. Officers surrounding the back, right door of State Police Cruiser number 961 at the time of 11:31 p.m.
76. Garbauskas was physically removed from the truck by a male enforcement officer and slammed up against the hood of the truck, where he remained and observed the police swarm on Kenneth.
77. Kenneth was never seen moving on his own again at the checkpoint area that night.
78. Between two (2) and seven (7) officers picked up Kenneth from the ground and dragged him to the cruiser.
79. A cruiser transported Kenneth to the MSP barracks.
80. The approximate distance from the checkpoint to the MSP barracks is four miles and ninety-five hundredths of a mile (4.95 mi.) for an approximate travel time of seven (7) minutes.
81. Kenneth was never booked at the MSP barracks.
82. The Andover Fire Department responded to the MSP barracks to treat Kenneth at the time of approximately 12:05 a.m. on November 26, 2009.
83. Kenneth arrived at the Lawrence General Hospital at approximately 12:17 a.m. on November 26, 2009.

84. The approximate distance from the MSP barracks to Lawrence General is eight miles and fifty-five hundredths of a mile (8.55 mi.) for an approximate travel time of fifteen (15) minutes.
85. The approximate distance from the checkpoint to Lawrence General is three miles and fifty-three hundredths of a mile (3.53 mi.) for an approximate travel time of seven (7) minutes.
86. The time that elapsed between the detention of Kenneth in the cruiser at the sobriety checkpoint and the arrival of Kenneth at Lawrence General was approximately forty-six (46) minutes.
87. If Kenneth was taken directly from the checkpoint to Lawrence General hospital, the time that would have elapsed would have been approximately seven (7) minutes.
88. Kenneth was “dead on arrival” upon being admitted to Lawrence General. He had no blood pressure and no pulse.
89. The Office of Chief Medical Examiner (hereinafter “OCME”) conducted an autopsy of Kenneth’s body.
90. On January 21, 2010, the OCME released a document “For Changing Death Certificates” for decedent Kenneth. The document states the following:
- a. the “cause of death” is “blunt impact of head and torso with compression of chest;”
 - b. the “interval” was “minutes;”
 - c. the “manner of death” was “homicide;”

d. the injury occurred on November 25, 2009 at approximately 11:15 p.m. in a “struggle[] with police.”

91. As of the date of this Complaint, counsel for the Plaintiffs has not received the toxicology report or the autopsy report from the OCME.
92. Extensive photos have been taken of Kenneth’s body. The photos show severe and multiple facial, head, torso, and limb abrasions, bruising, cuts, swelling, and other bodily damage.
93. At the time of contact with Trooper Gerardi, Kenneth was not suffering any visible injuries to his body, including his head, face, neck, torso, and limbs.
94. At the time of contact with Trooper Gerardi, Kenneth was in perfect physical health, but for a minor, prior wrist injury.
95. Trooper Gerardi filed an arrest report regarding this incident.
96. No supervisor signed off on the blank entitled “Supervisor” on Trooper Gerardi’s report.
97. As of the date of this Complaint, the only police report provided to the Plaintiffs has been Trooper Gerardi’s report.

FEDERAL CLAIMS

COUNT I:

42 U.S.C. § 1983

**VIOLATION OF FOURTH, EIGHTH, AND FOURTEENTH AMENDMENTS
BY DEFENDANT LAW ENFORCEMENT OFFICERS**

98. The Plaintiffs incorporate by reference paragraphs 1 through 97 of this Complaint and state further as follows.
99. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry,

Gerardi, Ciardiello, Miskell, Kiely, Stanley, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham directly and proximately caused the following by acting either alone or in concert with one another:

- a. Violation of Kenneth’s clearly established Fourth and Fourteenth Amendment right to be free from unreasonable seizure by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed.
- b. Violation of Kenneth’s clearly established Eighth and Fourteenth Amendment right to be free from cruel and unusual punishment by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to provide timely and adequate medical services.
- c. Violation of Kenneth’s clearly established Fourteenth Amendment right to due process of law by a deprivation of life and liberty without fair procedure by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed; and/or
 - iii. failing to provide timely and adequate medical services.

d. Other tortious activity that rises to the level of constitutional violations.

COUNT II:
42 U.S.C. § 1983
SUPERVISORY LIABILITY
BY DEFENDANT LAW ENFORCEMENT SUPERVISORS

100. The Plaintiffs incorporate by reference paragraphs 1 through 99 of this Complaint and state further as follows.

101. Defendant Delaney, by virtue of his rank as MSP Colonel, was the supervisor of defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, and Kiely.

102. While under the supervision of defendant Delaney, the defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, and Kiely committed clearly established constitutional violations against Kenneth as outlined in this Complaint above.

103. Defendant Delaney knew or should have known that the use of excessive force, the failure to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed, and the failure to provide timely and adequate medical services would result in the contravention of Kenneth's constitutional rights.

104. Based on this actual/constructive knowledge, Defendant Delaney encouraged, condoned, and acquiesced to the deprivations of Kenneth's

constitutional rights. This deliberate indifference to the subordinates' unconstitutional conduct was the affirmative link to Kenneth's death.

105. Defendants Downer, Simon, and Walsh, by virtue of their ranks as MSP lieutenants and/or their 11/25/09 sobriety checkpoint assignments outlined in this Complaint above, were supervisors of defendants Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, and Kiely.

106. While under the supervision of defendants Downer, Simon, and Walsh, the defendants Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, and Kiely committed clearly established constitutional violations against Kenneth as outlined in this Complaint above.

107. Defendants Downer, Simon, and Walsh knew or should have known that the use of excessive force, the failure to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed, and the failure to provide timely and adequate medical services would result in the contravention of Kenneth's constitutional rights.

108. Based on this actual/constructive knowledge, defendants Downer, Simon, and Walsh encouraged, condoned, and acquiesced to the deprivations of Kenneth's constitutional rights. This deliberate indifference to the subordinates' unconstitutional conduct was the affirmative link to Kenneth's death.

109. Defendants Eubanks, Puopolo, Griffin, Robertson, Emmett, and Cook, by virtue of their ranks as MSP sergeants and/or their 11/25/09 sobriety checkpoint

assignments as outlined in this Complaint above, were supervisors of defendants Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, and Kiely.

110. While under the supervision of Defendants Eubanks, Puopolo, Griffin, Robertson, Emmett, and Cook, the defendants Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, and Kiely committed clearly established constitutional violations against Kenneth as outlined in this Complaint above.

111. Defendants Eubanks, Puopolo, Griffin, Robertson, Emmett, and Cook knew or should have known that the use of excessive force, the failure to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed, and the failure to provide timely and adequate medical services would result in the contravention of Kenneth's constitutional rights.

112. Based on this actual/constructive knowledge, defendants Eubanks, Puopolo, Griffin, Robertson, Emmett, and Cook encouraged, condoned, and acquiesced to the deprivations of Kenneth's constitutional rights. This deliberate indifference to the subordinates' unconstitutional conduct was the affirmative link to Kenneth's death.

113. Defendant Stanley, by virtue of his rank as NAPD Chief, was the supervisor of defendants Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, and Hillner.

114. While under the supervision of Defendant Stanley, the defendants Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, and Hillner committed clearly established constitutional violations against Kenneth as outlined in this Complaint above.
115. Defendant Stanley knew or should have known that the use of excessive force to apprehend unarmed suspects, the failure to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed, and the failure to provide timely and adequate medical services would result in the contravention of Kenneth's constitutional rights.
116. Based on this actual/constructive knowledge, Defendant Stanley encouraged, condoned, and acquiesced to the deprivations of Kenneth's constitutional rights. This deliberate indifference to the subordinates' unconstitutional conduct was the affirmative link to Kenneth's death.
117. Defendant Carney, by virtue of his rank as a lieutenant for the NAPD and/or his 11/25/09 sobriety checkpoint assignment as outlined in this Complaint above, was a supervisor of Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, and Hillner.
118. While under the supervision of Defendant Carney, defendants Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, and Hillner committed clearly established constitutional violations against Kenneth as outlined in this Complaint above.
119. Defendant Carney knew or should have known that the use of excessive force to apprehend unarmed suspects, the failure to intervene and/or ameliorate

the physical attack upon Kenneth when an opportunity to do so existed, and the failure to provide timely and adequate medical services would result in the contravention of Kenneth's constitutional rights.

120. Based on this actual/constructive knowledge, Defendant Carney encouraged, condoned, and acquiesced to the deprivations of Kenneth's constitutional rights. This deliberate indifference to the subordinates' unconstitutional conduct was the affirmative link to Kenneth's death.
121. Defendant Gray, by virtue of his rank as sergeant for the NAPD and/or his 11/25/09 sobriety checkpoint assignment as outlined in this Complaint above, was a supervisor of defendants Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, and Hillner.
122. While under the supervision of Defendant Gray, defendants Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, and Hillner committed clearly established constitutional violations against Kenneth as outlined in this Complaint above.
123. Defendant Gray knew or should have known that the use of excessive force to apprehend unarmed suspects, the failure to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed, and the failure to provide timely and adequate medical services would result in the contravention of Kenneth's constitutional rights.
124. Based on this actual/constructive knowledge, Defendant Gray encouraged, condoned, and acquiesced to the deprivations of Kenneth's constitutional rights.

This deliberate indifference to the subordinates' unconstitutional conduct was the affirmative link to Kenneth's death.

125. Defendant Cousins, by nature of his rank as ESCD Sheriff, was the supervisor of defendants "DaJory" and Graham.
126. While under the supervision of Defendant Cousins, defendants "DaJory" and Graham committed clearly established constitutional violations against Kenneth as outlined in this Complaint above.
127. Defendant Cousins knew or should have known that the use of excessive force to apprehend unarmed suspects, the failure to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed, and the failure to provide timely and adequate medical services would result in the contravention of Kenneth's constitutional rights.
128. Based on this actual/constructive knowledge, Defendant Cousins encouraged, condoned, and acquiesced to the deprivations of Kenneth's constitutional rights. This deliberate indifference to the subordinates' unconstitutional conduct was the affirmative link to Kenneth's death.
129. Defendant supervisors Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Carney, and Gray were all present at the 11/25/09 sobriety checkpoint as outlined in the "Massachusetts State Police Sobriety Checkpoint Duty Assignments."
130. Defendant Stanley was also present at the 11/25/09 sobriety checkpoint.
131. Defendant supervisors Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Stanley, Carney, and Gray were direct participants and

primary violators in the constitutional violations of Kenneth's clearly established rights by:

- a. using a degree of force that was unreasonable under the circumstances; and/or
- b. failing to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed; and/or
- c. failing to provide timely and adequate medical services.

COUNT III:
42 U.S.C. § 1983
MONELL LIABILITY
BY DEFENDANT TOWN OF NORTH ANDOVER

132. The Plaintiffs incorporate by reference paragraphs 1 through 131 of this Complaint and state further as follows.

133. The conduct of North Andover police officers, as described above, demonstrates that North Andover engaged in a pattern of discrimination and unconstitutional conduct in violation of 42 U.S.C. § 1983. A total of twelve (12) NAPD police officers were operating the sobriety checkpoint. The occurrence of the constitutional violations as mentioned above in this Complaint within the presence of such a large number of police officers illustrates an inadequately trained and/or supervised police force on the policies, protocols, and customs of the use of reasonable force to apprehend unarmed suspects, the intervention of officers when such excessive force is used, and the provision of adequate and timely medical services.

134. While acting under color of law, the Town authorized, approved, knowingly acquiesced or participated directly in its individual officers'

misconduct as its official policy or practice reflecting a deliberate indifference to constitutional rights and making it substantially certain that police officers would deprive Kenneth of civil rights, privileges and immunities secured by federal statutes and the United States Constitution including, but not limited to the:

- a. Violation of Kenneth's clearly established Fourth and Fourteenth Amendment right to be free from unreasonable seizure by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed.
- b. Violation of Kenneth's clearly established Eighth and Fourteenth Amendment right to be free from cruel and unusual punishment by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to provide timely and adequate medical services.
- c. Violation of Kenneth's clearly established Fourteenth Amendment right to due process of law by a deprivation of life and liberty without fair procedure by:
 - i. using a degree of force that was unreasonable under the circumstances; and/or
 - ii. failing to intervene and/or ameliorate the physical attack upon Kenneth when an opportunity to do so existed; and/or
 - iii. failing to provide timely and adequate medical services.

- d. Other tortious activity that rises to the level of constitutional violations.
135. On information and belief, the Town itself caused the violations by the following acts and omissions:
- a. Negligent training of officers arising to the level of deliberate indifference to the constitutional rights of individuals;
 - b. Negligent supervision of officers arising to the level of deliberate indifference to the constitutional rights of individuals;
 - c. Negligent and/or deliberate failure to discipline prior violations arising to the level of deliberate indifference to the constitutional rights of individuals.
136. As a direct and proximate result of the Town's deliberate indifference and gross negligence, Kenneth was deprived of his rights as above described.
137. These violations of rights caused Plaintiffs great damage.

COUNT IV:
CONSPIRACY IN VIOLATION OF 42 U.S.C. § 1983
BY DEFENDANT LAW ENFORCEMENT OFFICERS AND TOWN OF NORTH
ANDOVER

138. The Plaintiffs incorporate by reference paragraphs 1 through 137 of this Complaint and state further as follows.
139. By having engaged in the conduct described above, Defendants Delaney, Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Stanley, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, Cousins, "DaJory," Graham, and the

Town of North Andover conspired to deprive plaintiff of the equal protection of the law or of the equal privileges and immunities under the law.

140. Said acts in furtherance of the conspiracy resulted in the injury to Kenneth.

STATE CLAIMS

COUNT V: **VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT** **BY DEFENDANT LAW ENFORCEMENT OFFICERS**

141. The Plaintiffs incorporate by reference paragraphs 1 through 140 of this Complaint and state further as follows.

142. For the purposes of this count only, Count V, Plaintiffs sue Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham solely in their individual capacities.

143. As a direct and proximate result of engaging in the conduct described above, including threats, intimidation, and coercion, Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham violated Massachusetts General Laws ch. 12 § 11I through interfering and depriving Kenneth of his exercise and enjoyment of his civil rights secured under the laws of the Commonwealth of Massachusetts.

COUNT VI:
ASSAULT AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

144. The Plaintiff incorporates by reference paragraphs 1 through 143 of this Complaint and states further as follows.

145. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham attacked Kenneth, as described above, and intentionally placed Kenneth in anticipation of an imminent unwanted and harmful touching, which constituted an assault on Kenneth.

146. As a direct and proximate result of the Defendants’ assault, Kenneth sustained injuries described above which resulted in his untimely death.

COUNT VII:
BATTERY AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

147. The Plaintiff incorporates by reference paragraphs 1 through 146 of this Complaint and states further as follows.

148. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham attacked Kenneth, as described above, and intentionally and unlawfully hit, kicked, and otherwise beat Kenneth. The Defendants’ unwanted and unprovoked beating constituted unlawful battery.

149. As a direct and proximate result of the Defendants' battery, Kenneth sustained injuries described above.

COUNT VIII:
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

150. The Plaintiff incorporates by reference paragraphs 1 through 149 of this Complaint and states further as follows.

151. When Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham assaulted and beat Kenneth, as described above, they intended to inflict emotional distress, or they knew or should have known that emotional distress was the likely result of their conduct.

152. The acts the defendants engaged in were extreme and outrageous, beyond all bounds of decency and utterly intolerable in a civilized community.

153. The beating of Kenneth by the Defendants caused Kenneth to suffer emotional distress so severe that no reasonable person would be expected to endure it.

154. As a direct and proximate result of Defendants' conduct, Kenneth suffered extreme emotional distress in the moments before he died.

COUNT IX:
LOSS OF CONSORTIUM BY PLAINTIFF MARGARET HOWE
AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

155. The Plaintiffs incorporate by reference paragraphs 1 through 154 of this Complaint and state further as follows.

156. As the direct and proximate result of the acts and omissions of Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham, as set forth and described above, Plaintiff Margaret has suffered great emotional pain and distress, and has been deprived, and continues to be deprived, of the expected and normal affection, conjugal fellowship, care, assistance, society, companionship, comfort, guidance, services and counsel of her husband, Kenneth.

COUNT X:
LOSS OF CONSORTIUM BY PLAINTIFF A. H.
AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

157. The Plaintiffs incorporate by reference paragraphs 1 through 156 of this Complaint and state further as follows.

158. As the direct and proximate result of the acts and omissions of Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham, as set forth and described above, Plaintiff A. H. has suffered great emotional pain and distress, and has been deprived, and continues to be deprived, of the expected and normal affection,

parental fellowship, care, assistance, society, companionship, comfort, guidance, services and counsel of her father, Kenneth.

COUNT XI:
LOSS OF CONSORTIUM BY PLAINTIFF D. H.
AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

159. The Plaintiffs incorporate by reference paragraphs 1 through 158 of this Complaint and state further as follows.

160. As the direct and proximate result of the acts and omissions of Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham, as set forth and described above, Plaintiff D. H. has suffered great emotional pain and distress, and has been deprived, and continues to be deprived, of the expected and normal affection, parental fellowship, care, assistance, society, companionship, comfort, guidance, services and counsel of her father, Kenneth.

COUNT XII:
LOSS OF CONSORTIUM BY PLAINTIFF R. H.
AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

161. The Plaintiffs incorporate by reference paragraphs 1 through 160 of this Complaint and state further as follows.

162. As the direct and proximate result of the acts and omissions of Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon,

Barter, Daley, Staude, Hillner, “DaJory,” and Graham, as set forth and described above, Plaintiff R. H. has suffered great emotional pain and distress, and has been deprived, and continues to be deprived, of the expected and normal affection, parental fellowship, care, assistance, society, companionship, comfort, guidance, services and counsel of her father, Kenneth.

**STATEMENT WITH RESPECT TO COUNTS XIII THROUGH XVII, WHICH
ARE BROUGHT PURSUANT TO M.G.L. CHAPTER 258**

Plaintiffs state that a Notice Claim was provided to Mark Rees, Town Manager of the Town of North Andover, and Martha Coakley, Attorney General of the Commonwealth of Massachusetts (hereinafter “AG”), under M.G.L. ch. 258 § 4 on the date of this Complaint. Pursuant to M.G.L. ch. 258 § 4, Plaintiffs make no claim for relief until an appropriate response is received from the Town or the AG, or six months pass from this date without a response from the Town or the AG. Upon such time as their claims ripen, Plaintiffs will move pursuant to Mass. R. Civ. P. Rule 15 to amend this Complaint to allege the following Counts XIII, XIV, XV, XVI, and XVII.

**COUNT XIII:
NEGLIGENCE
AGAINST DEFENDANT POLICE OFFICERS**

163. The Plaintiffs incorporate by reference paragraphs 1 through 162 of this Complaint and state further as follows.

164. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candeliere, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham owe a duty to citizens, including criminal suspects, to use only

reasonable force to apprehend suspects and to refrain from using excessive force when doing so.

165. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham breached this duty when they used unreasonable and excessive force when they stopped, subdued, and detained Kenneth.

166. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham owe a duty as police officers to intervene and stop the use of excessive force by other police officers.

167. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham breached this duty by their failure to intervene to stop the beating of Kenneth.

168. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade,

Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham owe a duty as police officers to summon timely and adequate medical service for injured citizens and suspects who have been injured in the course of being stopped, subdued, and detained by police officers.

169. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O’Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, “DaJory,” and Graham breached this duty when they failed to summon timely and adequate medical service to treat Kenneth.

170. As a direct and proximate result of the negligence of the defendants, Kenneth died.

COUNT XIV:
NEGLIGENCE
AGAINST DEFENDANT TOWN OF NORTH ANDOVER; COMMONWEALTH
OF MASSACHUSETTS DEPARTMENT OF STATE POLICE; and ESSEX
COUNTY SHERIFF’S DEPARTMENT

171. The Plaintiffs incorporate by reference paragraphs 1 through 170 of this Complaint and state further as follows.

172. The Town of North Andover, the Commonwealth of Massachusetts Department of State Police, and the Essex County Sheriff’s Department owe a duty to citizens to properly train and supervise police officers in the use of reasonable force of apprehension, the intervention to stop the use of excessive force, and the rendering of adequate and timely medical service for injured citizens.

173. The Town of North Andover, the Commonwealth of Massachusetts Department of State Police, and the Essex County Sheriff's Department breached this duty by their failure to train and supervise defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Stanley, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham on proper use of reasonable force of apprehension, the proper intervention to stop the use of excessive force, and to summon adequate and timely medical service for injured citizens.
174. As a direct and proximate result of the negligence of Town of North Andover, the Commonwealth of Massachusetts Department of State Police, and the Essex County Sheriff's Department, Kenneth died.

COUNT XV:
WRONGFUL DEATH
AGAINST DEFENDANT POLICE OFFICERS

175. The Plaintiffs incorporate by reference paragraphs 1 through 174 of this Complaint and state further as follows.
176. Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham, through conduct described above, negligently, willfully, wantonly, and/or recklessly caused the death of Kenneth.

177. Kenneth was only forty-five (45) years old at the time of his death, and had a reasonable life expectancy of more than forty (40) years.

178. As a direct and proximate result of this conduct, Kenneth lost more than forty (40) years of his life and the enjoyment of life over those years.

179. Plaintiffs claim damages for the loss and enjoyment of these lost forty-plus years of life.

COUNT XVI:
WRONGFUL DEATH
AGAINST DEFENDANT TOWN OF NORTH ANDOVER; COMMONWEALTH
OF MASSACHUSETTS DEPARTMENT OF STATE POLICE; and ESSEX
COUNTY SHERIFF'S DEPARTMENT

180. The Plaintiffs incorporate by reference paragraphs 1 through 179 of this Complaint and state further as follows.

181. Defendant Town of North Andover, the Commonwealth of Massachusetts Department of State Police, and the Essex County Sheriff's Department, through conduct described above, negligently, willfully, wantonly, and/or recklessly caused the death of Kenneth.

182. Kenneth was only forty-five (45) years old at the time of his death, and had a reasonable life expectancy of more than forty (40) years.

183. As a direct and proximate result of this conduct, Kenneth lost more than forty (40) years of his life and the enjoyment of life over those years.

184. Plaintiffs claim damages for the loss and enjoyment of these lost forty-plus years of life.

COUNT XVII:
CONSCIOUS PAIN AND SUFFERING
AGAINST DEFENDANT LAW ENFORCEMENT OFFICERS

185. The Plaintiffs incorporate by reference paragraphs 1 through 184 of this Complaint and state further as follows.

186. Between the time of approximately 11:20 p.m. and 12:05 a.m., Kenneth was in the custody of the MSP, NAPD, and/or the ECSD.

187. As a direct and proximate result of the acts or omissions of Defendants Downer, Simon, Walsh, Eubanks, Puopolo, Griffin, Robertson, Emmett, Cook, Currier, O'Neill, Mackenzie, Candelieri, Erickson, McGarry, Gerardi, Ciardiello, Miskell, Kiely, Carney, Gray, Brush, Sewade, Holland, Wilson, Brown, Reardon, Barter, Daley, Staude, Hillner, "DaJory," and Graham, Kenneth suffered severe trauma and conscious pain and suffering from the moment he encountered the defendants, until the time he died.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs, Margaret, A. H., D. H., and R. H., respectfully request that this Honorable Court:

1. Order judgment in Plaintiffs' favor in such amount as will fully compensate them for their 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;
4. Order such further relief as this Court deems fair and just.

DEMAND FOR TRIAL BY JURY

The Plaintiffs demand that their case be tried before a jury.

RESPECTFULLY SUBMITTED,
For the Plaintiffs,
By their attorney,

_____/s/ Frances A. King_____
Frances A. King
Law Office of Frances A. King
10 Tremont St., Suite 3
Boston MA 02108
(617) 523-0161
BBO#: 546907

Date: January 26, 2010