

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MAUREEN MILES, as Administratrix of
the Estate of REUBEN W. MARTINEZ, II,
deceased, and MAUREEN MILES,
individually,

Plaintiffs,

-vs-

THE TOWNSHIP OF DENVILLE, THE
DENVILLE POLICE DEPARTMENT,
PATROLMAN RICHARD
BYRNE, PATROLMAN DANIEL
FERNANDEZ, POLICE CHIEF
CHRISTOPHER WAGNER, MORRIS
COUNTY, THE MORRIS COUNTY
POLICE ACADEMY, SUPERVISORY
OFFICIALS 1 – 10, OFFICERS 1 -10,
ENTITIES 1-10 (as yet unknown and
unidentified police officers, supervisors,
governmental entities),

Defendants.

CIVIL ACTION

Civ. No. 3:09-02815

COMPLAINT AND JURY DEMAND

Plaintiff, MAUREEN MILES, as Administratrix of the Estate of REUBEN W. MARTINEZ, II and MAUREEN MILES, individually by way of Complaint against defendants THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRISCOUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 – 10, OFFICERS 1 -10, ENTITIES 1-10 (as yet unknown and unidentified police officers, supervisors, governmental entities, sets forth the following:

PARTIES

1. At all relevant times herein plaintiff **MAUREEN MILES** was and is a domiciliary and resident of Morris County in the State of New Jersey.

2. At all relevant times herein defendant **THE TOWNSHIP OF DENVILLE** was and is a public entity organized and existing pursuant to the laws of the State of New Jersey, with a place of business at 1 Saint Marys Place, Denville, New Jersey 07834.

3. At all relevant times herein defendant **THE DENVILLE POLICE DEPARTMENT** was and is a public entity and/or an agency or division of a public entity, organized and existing pursuant to the laws of the State of New Jersey, with a place of business at 1 Saint Marys Place, Denville, NJ 07834.

4. At all relevant times herein defendant **PATROLMAN RICHARD BYRNE** (hereafter "**BYRNE**") was, upon information of belief, a police officer employed by the defendant **TOWNSHIP OF DENVILLE** and the **DENVILLE POLICE DEPARTMENT**, acting in his official capacity as police officer under color of law.

5. At a all relevant times herein defendant **PATROLMAN DANIEL FERNANDEZ** (hereafter "**FERNANDEZ**") was, upon information of belief, a police officer employed by the defendant **TOWNSHIP OF DENVILLE AND DENVILLE POLICE DEPARTMENT**, acting in his official capacity as police officer under color of law.

6. At all relevant times herein, defendant **CHIEF CHRISTOPHER WAGNER** was upon information and belief, the chief supervisory official or public entity supervisor

of the aforementioned defendant entities, with complete authority and control over policymaking, supervision and training of police officers employed by the **TOWNSHIP OF DENVILLE** and the **DENVILLE POLICE DEPARTMENT**.

7. At all relevant times herein defendant **MORRIS COUNTY** was and is a public entity organized and existing pursuant to the laws of the State of New Jersey, with a place of business of 10 Court Street, Morristown, NJ 07963.

8. At all relevant times herein the defendant **MORRIS COUNTY POLICE ACADEMY** was, upon information and belief the training school or facility for training police officers in the handling of their duties including the use of excess of force, how to properly stop a vehicle, how to properly effectuate an arrest and how to a handle and conduct a police pursuit based on a traffic violation, with a place of business at 500 West Hanover Avenue, Parsippany, NJ 07054.

9. At all relevant times herein, upon informant and belief, the defendant **MORRIS COUNTY POLICE ACADEMY** was and is the facility and school responsible for the training of employees of the **DENVILLE POLICE DEPARTMENT**, including defendant Officers **BYRNE** and **FERNANDEZ**.

10. At all relevant times herein defendants **SUPERVISORY OFFICIALS 1-10**, **OFFICERS 1- 10** and **ENTITIES 1-10** are as yet unknown and unidentified officials, supervisors, agents, employees, entities or subdivisions of entities.

NATURE OF ACTION

11. On June 26, 2008 defendant police officers **BYRNE** and **FERNANDEZ**

commenced a police pursuit of plaintiff's decedent **REUBEN W. MARTINEZ, II** (hereinafter "**MARTINEZ**") based on a report of excessive speed in a neighborhood located in Denville Township, Morris County, NJ.

12. The vehicle came to a stop shortly thereafter with the opportunity and ability to disable the vehicle and/or prohibit plaintiff's decedent from attempting further flight and to effectuate a proper arrest without harm or engaging in the use of excessive and ultimately deadly force.

13. Due to the failure of officers **BYRNE** and **FERNANDEZ** to apply recognized techniques and police procedures to defuse the situation, the matter escalated into an unnecessary confrontation with **MARTINEZ**, a 21 year old man, resulting in the vehicle accelerating and moving forward with Officer **BYRNE** inside the vehicle leading to the assault, shooting and death of **MARTINEZ** by the discharge of several rounds of ammunition with multiple gunshot wounds.

14. Defendants **BYRNE** and **FERNANDEZ** were poorly trained and evidenced a reckless disregard and indifference to the likelihood of severe injury in their handling of the subject pursuit and in their failure to properly control the situation and effectuate a proper stop and arrest.

15. Defendants **THE TOWNSHIP OF DENVILLE**, the **DENVILLE POLICE DEPARTMENT**, **MORRIS COUNTY** and the **MORRIS COUNTY POLICE ACADEMY** (hereinafter the "**PUBLIC ENTITY** "defendants") failed to properly train and supervise police officers in the proper procedures to be used in the event of the failure to stop by a person fleeing or avoiding the police; whether and under what circumstances to attempt a stop by pursuit of a vehicle for a traffic infraction; when

and under what circumstances to actually enter a vehicle which has not been disabled; and how to stop a vehicle, among other failures to maintain, implement and enforce proper police procedures and protocols.

16. Plaintiffs **MAUREEN MILES**, as Administratrix of the Estate of **REUBEN W. MARTINEZ, II**, deceased, and **MAUREEN MILES**, individually institute this action for compensatory and punitive damages arising out of the unlawful actions and conduct of defendants **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 – 10, OFFICERS 1 -10, ENTITIES 1-10 (as yet unknown and unidentified police officers, supervisors or governmental entities)** who, acting under color of state and federal law and under authority, custom and usage violated the civil rights of plaintiff protected by and secured under the provisions of the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution and under the laws of the United States, particularly under the Civil Rights Act, Title 42 of the United States Code, Section 1983 and Title 43 of the United States Code, Section 1985 (2) et. seq.

17. Plaintiffs also institute this action based on racial animus arising under the Civil Rights Acts, Title 42 of the United States Code, Section 1981 et. seq.

18. Plaintiffs also institute this action pursuant to the common law and statutory laws of the State of New Jersey for damages arising by reason of assault, battery, pain and suffering, negligence, wrongful death, failure to properly hire, train and

supervise, abuse of authority, failure to intervene and failure to protect, among other acts of negligence and misconduct.

19. Plaintiff also seeks relief for violation of constitutional rights under the New Jersey Civil Rights statute, Title 10 N.J.S.A. 6-1.

JURISDICTION

20. This Court has jurisdiction pursuant to Title 28 of the United States Code, Sections 1331, 1332, 1343 (2), 1343 (4), and Title 2 of the United States Code Sections 1981, 1983, 1985 (2) as well as pendent jurisdiction to adjudicate plaintiffs' causes of action on the state and common law claims.

21. Venue is properly laid in the United States District Court of the District of New Jersey pursuant to Title 28 of the United States Code Section 1391(b) in that substantially all of the acts complained of herein occurred in the district and that the defendants are citizens of, reside in or are public entities of the State of New Jersey and domiciled within this district.

22. The matter in controversy exceeds \$75,000, exclusive of interest.

NOTICES OF CLAIMS

23. Plaintiffs served Notice of Claims for damages in the form prescribed by New Jersey Statutes Title 59:8-4 and signed by plaintiff's representative upon the **PUBLIC ENTITY** defendants within the statutorily prescribed period.

24. More than six (6) months have elapsed since service of plaintiff's Notices of Claims and the claims remain unresolved.

25. This action is commenced within two (2) years from the date of the occurrence.

FACTUAL ALLEGATIONS

26. On or about June 26, 2008 plaintiff's decedent **MARTINEZ** was in New Jersey visiting with his family on the occasion of his brother's graduation from high school.

27. On June 26, 2009 plaintiff was reported to be driving in excess of the speed limit on Franklin Road in the **TOWNSHIP OF DENVILLE**, which report resulted in an investigation by Officers **BYRNE** and **FERNANDEZ**.

28. Defendant Officers **BYRNE** and **FERNANDEZ** followed **MARTINEZ** and pulled behind him as a pursuit commenced.

29. Less than a half mile later the **MARTINEZ** vehicle came to a stop by the side of the road and partially on the sidewalk.

30. Defendant Officer **BYRNE** thereafter came to the passenger side of the **MARTINEZ** vehicle with his gun drawn, and opened the passenger side door.

31. When **MARTINEZ** failed to respond to commands, Officer **BYRNE** jumped inside the vehicle. At the same time defendant Officer **FERNANDEZ** approached the driver side of the **MARTINEZ** vehicle, grabbed **MARTINEZ'S** head and bashed it repeatedly on the door frame of the vehicle.

32. Thereafter **MARTINEZ** placed the vehicle in gear and was able to accelerate and drive away with defendant Officer **BYRNE** still in the car.

33. Ultimately Officer **BYRNE** shot plaintiff's decedent **MARTINEZ** multiple times after **MARTINEZ** failed to stop the car.

34. **MARTINEZ** was later pronounced dead in the early morning hours of

June 26, 2008. An investigation was pursued by the Morris County Prosecutor which failed to produce an indictment of either of the police officers involved.

35. The escalation of the events leading to the failure to have to vehicle disabled, being trapped in the car with plaintiff's decedent and the shooting and death of plaintiff's decedent was an abuse of process, an abuse of police power and authority, violative of proper police procedure, custom, practice and policy and constituted the use of unnecessary and unjustified force in trying to effectuate a stop based on a minor traffic infraction.

36. The escalation of the events as described and the failure to effectuate a proper stop is a direct and proximate result of the failure to properly hire, train and supervise officers and constitutes reckless and deliberate indifference to the serious likelihood of harm which in fact occurred.

37. The conduct of defendants, each and every one of them, constitutes an abuse of process, a failure to follow proper procedure, a failure to train and supervise, and the use of excessive force which deprived plaintiff's decedent of his liberty and the rights, privileges and immunities granted to him under the United States Constitution.

38. At all relevant times herein, defendants Officer **BYRNE**, Officer **FERNANDEZ** and Chief **CHRISTOPHER WAGNER**, and the various **JOHN DOE** defendants were acting under color of state law and within the scope of their authority as employees, agents and/or officers of the **PUBLIC ENTITY** defendants.

39. At all relevant times herein, the **PUBLIC ENTITY** defendants and the various **JOHN DOE** defendants, their agents, servants and/or employees acted under color of law, under the color of the constitution, statutes, laws, charter, ordinances, rules,

regulations, customs, usages and practices of the said police departments, academy, agencies and entities.

40. At all relevant times herein the **PUBLIC ENTITY** defendants and Chief **WAGNER** ratified and maintained a practice, official or unofficial custom and/or policy of failing to train, discipline and/or supervise defendants including but not limited to officers **BYRNE** and **FERNANDEZ** in conformity with clearly established constitutional principles which govern their conduct, including proscriptions against the use of excessive and deadly force in effectuating seizures of unarmed persons, and in effectuating a stop during a police pursuit.

41. At all relevant times herein the **PUBLIC ENTITY** defendants, Chief **WAGNER** and the **JOHN DOE** defendants were responsible for the conduct of the defendant officers as well as instruction, supervision and implementation of proper law enforcement procedures and oversight over the **DENVILLE POLICE DEPARTMENT** and the **MORRIS COUNTY POLICE ACADEMY**.

42. At all relevant times herein the defendants acted with deliberate and conscious indifference to **MARTINEZ'S** constitutional rights which violations arose out of a pattern of custom, policy and practice by and of defendants in allowing the use of excessive force, permitting and condoning the use of excessive force in failing to implement and enforce police procedures and protocols as well as the failure to properly hire, train and supervise police officers in the proper conduct of their duties and in the use of force, effectuating a stop and in the handling of a police pursuit.

COUNT ONE

43. Plaintiffs repeat each and every allegation contained in paragraphs one (1) through forty two (42) of the complaint as if set forth fully herein at length.

44. At all relevant times herein, defendants **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT**, through their employees, agents and servants, **PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY** through their employees, agents and servants, **SUPERVISORY OFFICIALS 1 – 10, OFFICERS 1 -10** and **ENTITIES 1-10** (as yet unknown and unidentified police officers, supervisors, governmental entities) were acting under color of law under the state and federal Constitution, statutes, laws charters, ordinances, rules, regulations customs, usages and practices of the subject governmental departments, agencies and entities and within the scope of their authority as supervisors, employees and/or officers of the **PUBLIC ENTITY** defendants.

45. At all relevant times herein the aforementioned defendants acted jointly and in concert with each other, and conspired and agreed between and amongst themselves to allow **MARTINEZ** to be placed in a position of imminent danger and harm by failing to implement and/or follow proper procedure and protocols in the handling of the subject police pursuit and stop.

46. At all relevant times herein the defendants, their agents, servants and/or employees acted with deliberate and conscious indifference to **MARTINEZ's** constitutional rights which violations arose out of a pattern or custom or policy and practice by each of the defendants, in allowing permitting and condoning the violation of

procedures and protocol, and the use of excess force, maintaining inadequate policies and protocols for use of force and the handling of a police pursuit and stopping, failing to intervene, as well as the failure to properly hire, train and supervise the **PUBLIC ENTITY** employees and Officer **BRYNE** and **FERNDANDEZ** in the proper conduct of their duties, among other acts and omissions.

47. At all relevant times herein the defendants individually as well as by their agents, servants and/or employees, by reason of their acts, omissions and deliberate and conscious indifference to the rights of **MARTINEZ**, deprived **MARTINEZ** of his rights, privileges and immunities secured by the Constitution and laws of the United States, and are liable to plaintiffs pursuant to Title 42 Sections 1981, 1983, and 1985 of the United States Code.

48. The **PUBLIC ENTITY** defendants, their agents, servants and/or employees allowed, condoned and permitted an improper and poorly handled police pursuit and stop, with deliberate indifference failed to prevent it, failed to intervene, failed to supervise, failed to monitor, failed to properly hire, train and supervise, misused their power, condoned and ratified the use of excessive and unnecessary force and subjected **MARTINEZ** to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

49. The defendants, their agents, servants and/or employees deprived **MARTINEZ** of his rights, privileges, and immunities secured by the Constitution and laws of the United States including violation of his Fourteenth and Fifth Amendment right of due process and equal protection.

50. The **PUBLIC ENTITY** defendants, their agents, servants and/or employees deprived **MARTINEZ** of his rights, privileges, and immunities secured by the Constitution and laws of the United States including violation of his Fourth Amendment right to be free of unreasonable search and seizure.

51. At all relevant times herein the aforescribed acts were committed under color of law within the authority and scope of employment of the agents, servants, and employees of the **PUBLIC ENTITY** defendants.

52. The **PUBLIC ENTITY** defendants acted pursuant to official or unofficial policy and/or custom and to deprive plaintiff's decedent of his constitutional rights under 42 U.S. Code Sections, 1981, 1983 and 1985.

53. By reason of the foregoing, defendants violated the civil rights of **MARTINEZ**.

54. By reason of the foregoing, and as a direct and proximate result of defendant's negligence and constitutional violations, plaintiff's decedent **MARTINEZ** sustained serious and severe injuries which resulted in his death.

55. The decedent left him surviving his parents, plaintiffs **MAUREEN MILES** and father Reuben Martinez, Sr., and other next of kin.

56. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff's decedent **MARTINEZ** was caused to suffer severe, painful and permanent personal injuries, emotional anguish and great physical pain.

57. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff **MAUREEN MILES** and other next of kin have been damaged

and have been permanently deprived of the services, society, care, companionship, support and guidance of plaintiff's decedent for the life expectancy of decedent.

58. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has been damaged.

59. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has suffered pecuniary losses and has been compelled to expend and incur various sums of money for funeral and burial expenses.

60. By reason of the foregoing and wrongful death plaintiff's decedent has suffered loss of enjoyment of life.

61. **WHEREFORE** plaintiffs **MAUREEN MILES**, as Administratrix of the Estate of **REUBN W. MARTINEZ, II** and **MAUREEN MILES** individually, demands judgment against defendants, **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 - 10, OFFICERS 1 -10, ENTITIES 1-10** (as yet unknown and unidentified police officers, supervisors, governmental entities jointly and severally for compensatory and punitive damages, funeral bills, together with interest, costs of suit and attorneys fees.

SECOND COUNT

62. Plaintiffs repeat and reallege each and every allegation contained in paragraph one (1) through sixty one (61) of the complaint as set forth herein at length.

63. Defendant **PUBLIC ENTITIES**, through their agents, servants and employees, and the defendants Officer **BYRNE** and Officer **FERNANDEZ**, by their deliberate indifference to the civil rights of plaintiff as previously detailed, deprived plaintiff's decedent **MARTINEZ** of his rights, privileges and immunities secured under the New Jersey State Constitution.

64. The **PUBLIC ENTITY** defendants, through their agents, servants and employees and the defendant Officer **BYRNE** and Officer **FERNANDEZ** acted pursuant to official or unofficial policy and/or custom and to deprive plaintiff's decedent of his constitutional rights under Title 10 of the New Jersey statutes, known as the New Jersey Civil Rights Act.

65. By reason of the foregoing, defendants violated the civil rights of **MARTINEZ**.

66. By reason of the foregoing, and as a direct and proximate result of defendant's negligence and constitutional violations, plaintiff's decedent **MARTINEZ** sustained serious and severe injuries which resulted in his death.

67. The decedent left him surviving his parents, **MAUREEN MILES** and father Reuben Martinez, Sr., and other next of kin kin.

68. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff's decedent **MARTINEZ** was caused to suffer severe, painful and permanent personal injuries, emotional anguish and great physical pain.

69. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff **MAUREEN MILES** and other next of kin have been damaged

and have been permanently deprived of the services, society, care, companionship, support and guidance of plaintiff's decedent for the life expectancy of decedent.

70. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has been damaged.

71. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has suffered pecuniary losses and has been compelled to expend and incur various sums of money for funeral and burial expenses.

72. By reason of the foregoing and wrongful death plaintiff's decedent has suffered loss of enjoyment of life.

73. **WHEREFORE** plaintiffs **MAUREEN MILES**, as Administratrix of the Estate of **REUBN W. MARTINEZ, II** and **MAUREEN MILES** individually, demands judgment against defendants, **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 - 10, OFFICERS 1 -10, ENTITIES 1-10** (as yet unknown and unidentified police officers, supervisors, governmental entities jointly and severally for compensatory and punitive damages, funeral bills, together with interest, costs of suit and attorneys fees.

THIRD COUNT

74. Plaintiffs repeat and reallege each and every paragraph contained in paragraphs one (1) through seventy three (73) of the Complaint as if set forth fully herein at length.

75. At all relevant times herein defendants were under a duty to act reasonably in the performance of their duties as police officers and supervisors in the handling of the subject police pursuit and stop.

76. At all relevant times herein defendants were under a duty to act reasonably in following and maintaining proper protocol, procedures, policy, rules and guidelines enacted and propounded with respect to their duties.

77. Defendants were negligent in their failure to properly hire, retain, train and supervise officers with respect to the handling of the subject police pursuit and stop and in their use of force and failure to properly implement, enact, enforce, follow and maintain proper protocol, procedures, policies, rules and guidelines and were otherwise negligent under the circumstances.

78. Defendants were negligent and careless in failing to properly discipline police officers despite knowledge of their failure to take proper action in the handling of pursuits, traffic infractions, effectuate arrest, the use of excessive force and in particular to avoid and prevent the acts complained of herein.

79. The personal injuries and damages suffered by plaintiff **MARTINEZ** were caused solely as a result of the negligence and carelessness of the defendants.

80. The acts and omissions of the defendants, each and every one of them constituting negligence included the failure to have proper policies and procedures in place for the handling of police pursuits, stops and the use of force; the failure to intervene and/or prevent the subject occurrence and, failure to properly hire, train and supervise staff; and the failure to prevent the subject occurrence among other acts of negligence.

81. By reason of the foregoing, and as a direct and proximate result of defendant's negligence, plaintiff's decedent **MARTINEZ** sustained serious and severe injuries which resulted in his death.

82. The decedent left him surviving parents **MAUREEN MILES** and father Reuben Martinez, Sr., and other next of kin.

83. As a direct and proximate result of the negligence as aforescribed, **MARTINEZ** was caused to suffer severe, painful and permanent personal injuries, sustained severe nervous shock, mental anguish and great physical pain.

84. By reason of the foregoing plaintiff has been damaged.

85. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has been damaged.

86. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has suffered pecuniary losses and has been compelled to expend and incur various sums of money for funeral and burial expenses.

87. By reason of the foregoing and wrongful death plaintiff's decedent has suffered loss of enjoyment of life.

88. **WHEREFORE** plaintiffs **MAUREEN MILES**, as Administratrix of the Estate of **REUBN W. MARTINEZ, II** and **MAUREEN MILES** individually, demands judgment against defendants, **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 - 10, OFFICERS 1 -10, ENTITIES 1-10** (as yet unknown and

unidentified police officers, supervisors, governmental entities jointly and severally for compensatory and punitive damages, funeral bills, together with interest, costs of suit and attorneys fees.

FOURTH COUNT

89. Plaintiffs repeat and reallege each and every allegation contained in paragraphs one (1) through eighty eight (88) of the complaint as if set forth fully herein at length.

90. The Defendants' unlawful acts constitute abuse of process.

91. By reason of the foregoing, and as a direct and proximate result of defendant's abuse of process, plaintiff's decedent **MARTINEZ** sustained serious and severe injuries which resulted in his death.

92. The decedent left him surviving his parents **MAUREEN MILES** and father Reuben Martinez, Sr., and other next of kin.

93. As a direct and proximate result of the abuse of process as aforescribed, plaintiff's decedent **MARTINEZ** was caused to suffer severe, painful and permanent personal injuries, emotional anguish, great physical pain and death.

94. As a direct and proximate result of the violation of constitutional rights as aforescribed, plaintiff **MAUREEN MILES** and other next of kin have been damaged and have been permanently deprived of the services, society, care, companionship, support and guidance of plaintiff's decedent for the life expectancy of decedent.

95. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has been damaged.

96. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has suffered pecuniary losses and has been compelled to expend and incur various sums of money for funeral and burial expenses.

97. By reason of the foregoing and wrongful death plaintiff's decedent has suffered loss of enjoyment of life.

98. **WHEREFORE** plaintiffs **MAUREEN MILES**, as Administratrix of the Estate of **REUBN W. MARTINEZ, II** and **MAUREEN MILES** individually, demands judgment against defendants, **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 - 10, OFFICERS 1 -10, ENTITIES 1-10** (as yet unknown and unidentified police officers, supervisors, governmental entities jointly and severally for compensatory and punitive damages, funeral bills, together with interest, costs of suit and attorneys fees.

FIFTH COUNT

99. Plaintiffs repeat and reallege each and every allegation contained in paragraphs one (1) through ninety eight (98) of the complaint as if set forth fully herein at length.

100. On June 26, 2008 defendants **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 - 10, OFFICERS 1 -10, ENTITIES 1-10** without

96. By reason of the foregoing and wrongful death of plaintiff's decedent plaintiff **MAUREEN MILES** has suffered pecuniary losses and has been compelled to expend and incur various sums of money for funeral and burial expenses.

97. By reason of the foregoing and wrongful death plaintiff's decedent has suffered loss of enjoyment of life.

98. **WHEREFORE** plaintiffs **MAUREEN MILES**, as Administratrix of the Estate of **REUBN W. MARTINEZ, II** and **MAUREEN MILES** individually, demands judgment against defendants, **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 - 10, OFFICERS 1 -10, ENTITIES 1-10** (as yet unknown and unidentified police officers, supervisors, governmental entities jointly and severally for compensatory and punitive damages, funeral bills, together with interest, costs of suit and attorneys fees.

FIFTH COUNT

99. Plaintiffs repeat and reallege each and every allegation contained in paragraphs one (1) through ninety eight (98) of the complaint as if set forth fully herein at length.

100. On June 26, 2008 defendants **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY,**

SUPERVISORY OFFICIALS 1 – 10, OFFICERS 1 -10, ENTITIES 1-10 without cause or justification or consent did place plaintiff **MARTINEZ** in fear of imminent physical harm and intentionally assaulted him.

101. As a direct and proximate result of the assault and battery plaintiff's decedent was caused to be placed in fear of physical harm, suffered severe physical injury which resolved in his death.

102. The aforescribed damages and injuries were caused solely and wholly by the intentional and willful assault and battery of the defendants.

103. The decedent left him surviving his parents **MAUREEN MILES** and father Reuben Martinez, Sr., and other next of kin.

104. As a direct and proximate result of the assault and battery as aforescribed, plaintiff **MARTINEZ** was caused to suffer severe, painful and permanent personal injuries, sustained severe nervous shock, mental anguish and great physical pain.

105. By reason of the foregoing plaintiff has been damaged.

106. By reason of the foregoing and wrongful death of plaintiff's decedent

107. By reason of the foregoing and wrongful death plaintiff's decedent has suffered loss of enjoyment of life.

108. **WHEREFORE** plaintiffs **MAUREEN MILES**, as Administratrix of the Estate of **REUBN W. MARTINEZ, II** and **MAUREEN MILES** individually, demands judgment against defendants, **THE TOWNSHIP OF DENVILLE, THE DENVILLE POLICE DEPARTMENT, PATROLMAN RICHARD BYRNE, PATROLMAN DANIEL FERNANDEZ, POLICE CHIEF CHRISTOPHER**

WAGNER, MORRIS COUNTY, THE MORRIS COUNTY POLICE ACADEMY, SUPERVISORY OFFICIALS 1 – 10, OFFICERS 1 -10, ENTITIES 1-10 (as yet unknown and unidentified police officers, supervisors, governmental entities jointly and severally for compensatory and punitive damages, funeral bills, together with interest, costs of suit and attorneys fees.

SHELLEY L. STANGLER, P.C.

Attorney for Plaintiffs

BY: 

SHELLEY L. STANGLER, ESQ.

Dated: June 14, 2010

DEMAND FOR JURY TRIAL

Plaintiffs demands a trial by jury of all issues so triable.

Dated: June 14, 2010


BY: 

SHELLEY L. STANGLER, ESQ.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:24-4, **SHELLEY L. STANGLER, ESQ.** is hereby designated as trial counsel on behalf of the plaintiff in the within matter.

Dated: June 14, 2010

BY: 

SHELLEY L. STANGLER, ESQ.

CERTIFICATION

1. SHELLEY L. STANGLER, P.C. has been retained to represent plaintiff, **MAUREEN MILES**, as Administratrix of the Estate of **REUBEN W. MARTINEZ, II**, deceased and **MAUREEN MILES**, individually in connection with the within matter. I am the attorney in charge of the case.

2. The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated by plaintiff.

3. There are no other parties who should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



SHELLEY L. STANGLER

Dated: June 14, 2010

(GENERAL RELEASE

THIS GENERAL RELEASE (hereinafter referred to as the "Release") is made by Releasor Maureen Miles (hereinafter referred to as "Miles" or "Releasor" representing herself individually and the Estate of Ruben Martinez, Jr. which includes anyone who succeeds to the rights and responsibilities of the estate of Ruben Martinez, Jr., such as his heirs or the administrator or executor of his estate who are also bound; (the Releasor specifically understands that all of the terms and conditions of the Release are for the benefit of, and binding on Ruben Martinez, Jr.'s heirs, the administrator or executor of his estate and anyone who succeeds to his rights and responsibilities); for the benefit of the Township of Denville, the Denville Police Department, Chief Christopher Wagner, former Patrolman Richard Byrne, and Patrolman Daniel Fernandez. (hereinafter collectively referred to as "Denville" including its administrators, officers, agents and employees), for the following purposes and with reference to the following background:

BACKGROUND

A. Maureen Miles was the mother of Ruben Martinez, Jr., (hereinafter referred to as "Martinez"), who died on June 26, 2008 during an encounter with Denville personnel.

B. Maureen Miles, both individually and as administratrix of Martinez's estate, brought a lawsuit against Denville in U.S. District Court alleging numerous state constitutional violations, federal constitutional violations under 42 U.S.C. § 1981, 1983, and 1985, in addition to common law claims of negligence, civil conspiracy, abuse of process, assault, and battery.

C. Denville has denied, and continues to deny any and all liability for the claims asserted by Miles and denies that Denville violated any laws or engaged in any unlawful or wrongful conduct including but not limited to the use of excessive force, negligence, assault, battery, or violation of Martinez's rights in any manner.

D. The Parties desire to make a full and final settlement of any and all of Miles' claims and potential claims against Denville, known or unknown, asserted or unasserted, based on any facts, events, acts or omissions, whether now known or unknown, occurring on or before the effective date of this Release, without any judicial, administrative, or arbitral resolution of them and without any admission with respect to any issues presented or capable of being presented.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, and intending to be legally bound, the undersigned parties agree as follows:

1. Non-Admission. This Release is not, and shall not in any way be considered or construed as, an admission by Denville of any tortious conduct, or of any violation of any law, common law, or federal, state or local statute or regulation, or of any alleged duty owed by Denville to Miles or Martinez, or of any unlawful or wrongful acts whatsoever by Denville. The payment hereunder is made solely to avoid the inconvenience and cost of litigation and to resolve completely all of Miles' claims against Denville, known or unknown, asserted or unasserted, as more fully detailed in Paragraph 7, below.

2. Cooperation. Miles agrees to cooperate fully in connection with any steps required to be taken as part of their obligations under this Release.

3. Withdrawal and Dismissal of Lawsuit and Promise Not to Sue.

Miles understands that this Release extinguishes any claims or potential claims as to Denville as defined above, and agrees not to file, revive any claims, or open a lawsuit in any way. Miles further agrees not to file any other Charges with any state or federal agency against Denville and/or any of its employees, agents or administrators.

Miles further agrees that neither she, nor any person, organization, agency, or other entity on her or the Estate's behalf, will file, charge, claim or sue, or cause to be filed, charged, claimed or sued, any lawsuit, legal proceeding, action, or claim of any nature with any court or agency (including any action for damages, attorneys fees, injunction, declaratory, monetary, equitable or other relief) against Denville, based on any matter, fact or event occurring prior to the effective date of this Release, whether now known or unknown, or involving any continuing effects of any acts or practices which may have arisen or occurred prior to the effective date of this Release, whether now known or unknown.

Miles understands and agrees that the Estate will not be considered a prevailing party under any statute, common law, or otherwise as a result of this Release.

4. Payment. In exchange for the promises, Releases, and legal releases stated herein, and other good and valuable consideration, Denville will cause to be paid to Miles the sum of Four-Hundred Thousand Dollars (\$400,000.00), on account of non-economic damages alleged, within sixty (60) days of the effective date of this Release. The effective date of this Release shall be the date upon which Denville receives Miles' signed and notarized Release, both individually and as administrator of

Martinez's estate, a W-9 form, answers to medicare interrogatories and a child support search report from her attorney.

Because the payment of \$400,000.00 is made on account of non-economic damages it will not be subject to any withholding. Payment shall be made to Shelley Stangler, P.C., to be held in trust for Maureen Miles as administrator to the Estate of Ruben Martinez, Jr., and it shall be the responsibility of counsel to distribute Miles' portion of her settlement proceeds to her.

5. Miles' Tax Indemnification. Miles agrees to indemnify and hold Denville harmless from any and all federal, state, and local tax liabilities, deficiencies, levies, interest, and penalties that may be assessed as a result of not withholding income and payroll taxes on the monies paid pursuant to this Release if she fails to properly pay any taxes to which her settlement may be subject.

6. Full and Complete Settlement. Miles agrees that the payment described in paragraph 4 will be received by Miles in full and complete settlement, as more fully detailed in paragraph 7, below, of all known or unknown claims, asserted or unasserted, of Miles allegedly arising out of any and all conduct or actions of Denville, as more fully detailed in Paragraph 7, below.

7. General Release and Waiver of all Claims by Miles. In consideration for the payment and promises described in paragraph 4, and elsewhere in this Agreement, Miles fully releases and forever discharges Denville and all of Denville's former or current directors, officers, administrators, trustees, shareholders, agents, supervisors, employees, attorneys, legal representatives, servants, insurers, any and all benefit plans, and successors and assigns, and each of them (herein "Denville" and/or

"Released Parties"), of and from any and all claims, actions, causes of action, back pay, front pay, contracts, agreements, compensation, pay, promises, charges, judgments, grievances, obligations, rights, demands, debts, sums of money, salaries, wages, benefits, physical injury, pain, suffering, emotional distress, compensatory damages, punitive damages, attorneys' fees, expenses, costs, losses liabilities, damages, or accountings of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted, in law or equity, contract or tort or otherwise (herein collectively designated "Claim" or "Claims"), through the effective date of this Agreement, including, but not limited to, any and all Claims of race, gender, sex, age and national origin discrimination, retaliation, and any and all tort Claims or contract Claims or Claims for general damages, and any and all Claims arising under, made, regarding, or involving: any federal, state or local laws or under the common law; violations of any federal, state or local fair employment practices or civil rights laws or ordinances; Claims for personal injury, defamation, wrongful conduct, wrongful death, abuse of process, false arrest, negligence, assault, battery, wrongful discharge, excessive force, or any constitutional violations; the Civil Rights Acts of 1866 and 1871, as amended, 42 U.S.C. § 1981; § 1983, § 1985, the Civil Rights Act of 1964, as amended, including Title VII; the Americans with Disabilities Act; the Age Discrimination in Employment Act, as amended; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act; the Fair Labor Standards Act; the Rehabilitation Act of 1973; Executive Order 11246; the federal Family and Medical Leave Act; state family and medical leave acts; Claims alleging retaliation under the Worker's Compensation Act; the Unemployment Compensation Law; the National Labor Relations Act, as amended; any and all state wage payment and

collection laws; Denville's policies, practices, collective bargaining agreements, contracts, benefits or understandings; any Claims arising out of any relationship, including employment relationship or other relationship, between or among Denville and the Released Parties predating the effective date of this Agreement; any and all grievances, or demands for mediation or arbitration, or Claims or demands under Denville's policies and procedures; any and all per quod claims, and any and all Claims asserted, or which could have been asserted, in a state court or federal court lawsuit referenced above, including any Claims against any current or former agents or employees of Denville.

Miles hereby specifically waives, releases and gives up all Claims and rights, as described in the preceding paragraph, whether now known or unknown, which she has or may have, against Denville and the Released Parties, based on any fact, act, event, or omission, whether now known or unknown, occurring before the effective date of this Agreement. Miles understands that she is waiving, releasing and giving up all Claims and rights that she knows about and all Claims and rights that she may not know about. This release does not apply to Claims based on facts occurring after the effective date of this Agreement.

8. Confidentiality and Non-Disclosure. Miles agrees that the terms, conditions, fact of payment, amount of payment, and underlying facts of the settlement stated in this Agreement shall be held strictly confidential by her. Miles further agrees that she shall not describe, characterize or disclose any such information in any manner whatsoever, directly or indirectly, orally or in writing to anyone not a party to this Agreement, except to the extent required by law or to say, "the matter has been resolved",

if asked, and except that Miles may disclose the terms of this Agreement to her immediate family, accountants, or financial advisors and attorneys, or when legally obligated to do so.

8. Attorneys' Fees, Costs, and Expenses. Each party shall be responsible solely for its or their own attorneys' fees, costs and expenses. Miles specifically waives all claims to attorneys' fees, costs, and expenses from Denville including all claims for reimbursement to Denville or its attorneys, agents, or family members, of any attorneys' fees, costs, and expenses she has incurred or paid, or which were paid on her behalf.

9. Applicable Law and Severability. This Release shall be governed by and construed in accordance with the laws of New Jersey, except where federal law controls. Should any provision of this Release be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Release.

10. Entire Release. This Release sets forth the entire Release between the parties and fully supersedes any and all prior Releases or understandings between the parties.

11. Miles' Certification. Miles agrees, certifies, acknowledges, and represents: (a) that she has been and is hereby advised in writing to consult with an attorney of her choice and at her expense, prior to signing this Release; (b) that she has had adequate time and opportunity to review and discuss, and has reviewed and discussed, all of the terms and sections of this Release thoroughly with her attorney; (c)

that her attorney has explained this entire Release to her; (d) that she does not waive any rights or claims that may arise after the date this Release becomes effective; (e) that she shall have and was given at least twenty-one (21) days to consider the terms and conditions of this Release before signing it; (f) that her waiver of Claims and this General Release shall not become effective until the effective date of this Release.

If Miles decides to sign this Release before the expiration of the 21-day period, Miles specifically acknowledges that she has had sufficient time and opportunity to review and understand the terms of this Release and specifically waives and gives up any rights for additional time or opportunity to review it.

12. No Waiver of Subrogation. Miles acknowledges that the settlement payment shall be made by the Municipal Excess Liability Joint Insurance Fund and/or Morris County Joint Insurance Fund on behalf of Denville. Miles further acknowledges that this Release shall not be construed to extinguish any subrogation rights which the Municipal Excess Liability Joint Insurance Fund and/or Morris County Joint Insurance Fund otherwise may have with respect to expenses incurred as a result of the events giving rise to Miles' claim.

13. Drafting and Negotiation by Counsel. The drafting and negotiation of this Release have been participated in by each of the Parties and their respective counsel and, for all purposes; this Release shall be deemed to have been drafted jointly by the Parties. No ambiguity shall be resolved against any Party based upon authorship. The Parties hereby acknowledge that they have been represented by counsel throughout the settlement agreement of the above referenced matter, throughout the negotiation of this

Release, and at the execution of this Release, and have read and consulted with counsel regarding this Release.

MILES FURTHER CERTIFIES, ACKNOWLEDGES, AND REPRESENTS THAT SHE IS ABLE TO READ AND UNDERSTAND ENGLISH, THAT SHE UNDERSTANDS ALL OF THE PROVISIONS HEREIN, WITH THE ADVICE AND ASSISTANCE OF HER ATTORNEY, AND THAT SHE MAKES THIS RELEASE KNOWINGLY AND VOLUNTARILY. MILES ACKNOWLEDGES THAT SHE HAS NO PHYSICAL OR MENTAL PROBLEM, CONDITION, OR IMPAIRMENT OF ANY KIND WHICH HAS INTERFERED WITH HER ABILITY TO READ AND UNDERSTAND THE MEANING OF THIS RELEASE OR ITS TERMS. MILES FURTHER REPRESENTS THAT IN SIGNING THIS RELEASE, SHE DOES NOT RELY ON ANY PROMISES OR REPRESENTATIONS MADE BY ANYONE OTHER THAN THOSE STATED SPECIFICALLY HEREIN.

14. Full Knowledge. Miles further warrants, represents, and agrees that in signing this Release, she does so with full knowledge of any and all rights which she may have with respect to Denville, other Released Parties, or the Lawsuit.

15. Headings. The headings of the paragraphs in this Release are for convenience only and shall not control or affect the meaning or construction of, or limit the scope or intent of, any of the provisions of this Release.

16. Effective Date. The effective date of this Release shall be the date upon which Denville receives Miles' signed and notarized Release, a W-9 form, answers to medicare interrogatories, and a child support search report from her attorney.

IN WITNESS WHEREOF, and intending to be legally bound, Maureen Miles,
both individually and administrator to the Estate of Ruben Martin, Jr., has executed this
General Release as of the dates set forth below.

By: Maureen Miles

By Maureen Miles

(Signature)

MAUREEN MILES

(Type or Print Name)

Dated: 6/10/13

STATE OF NEW JERSEY, COUNTY OF MORRIS:

I CERTIFY that on 10 JUNE, 2013, Maureen Miles personally came before me
and acknowledged under oath, to my satisfaction, that this person (or if more than one,
each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

[Signature]
(Notary Public)

(Raised seal)

JAE HUN KIM
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/29/2017

MORRIS
NJ

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