



FEITLIN, YOUNGMAN, KARAS & GERSON, LLC

COUNSELLORS AT LAW

Heritage Plaza II

65 Harristown Road, Suite 207

Glen Rock, New Jersey 07452

(201)791-4400

Fax (201)791-5659

GARY R. FEITLIN *

JEFFREY R. YOUNGMAN

KATHY KARAS-PASCIUCCO**

FREDERICK E. GERSON

JONATHAN M. ETTMAN**

* ALSO MEMBER OF FLORIDA BAR

** ALSO MEMBER OF NEW YORK BAR

Email: JYoungman@fykglaw.com

June 8, 2016

Via Regular & Certified Mail/RRR

7012 0470 0000 3055 9058

City of Hackensack

65 Central Avenue

Hackensack, NJ 07601

Re: The Estate of Elvin Diaz

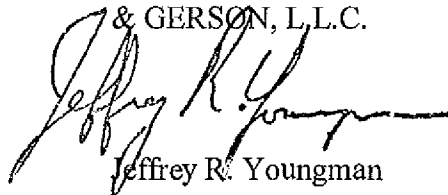
Civil Action No.: 2:16-cv-03270-JLL-JAD

Dear Sir/Madam:

Enclosed please find a copy of the Complaint, two (2) copies of a Waiver of Service of Summons and two (2) copies of a Notice of Lawsuit and Request to Waive Service of a Summons. I have also enclosed a self addressed stamped envelope for you to return the signed waiver.

Very truly yours,

FEITLIN, YOUNGMAN, KARAS
& GERSON, L.L.C.



Jeffrey R. Youngman

JRY:aa

Enclosures

cc: Cecilia Diaz

FEITLIN, YOUNGMAN, KARAS & GERSON, L.L.C.

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(201) 791-4400

(201) 791-5659 fax

Attorneys for Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased and Cecilia Luna-Diaz, Kelvi Diaz, Individually, and Julian Diaz, Individually

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY - NEWARK VICINAGE**

CECILIA LUNA-DIAZ, Administratrix Ad
Prosequendum of the Estate of ELVIN DIAZ,
Deceased, CECILIA LUNA-DIAZ and KELVI
DIAZ, Individually, and JULIAN DIAZ,
Individually,

Plaintiff(s),

v.

CITY OF HACKENSACK POLICE
DEPARTMENT, CITY OF HACKENSACK,
SERGEANT MIGUEL MOLINA, OFFICER
ERVIN HERNANDEZ, JOHN/JANE DOE 1-
10 (Police Officers with the Hackensack Police
Department),

Defendant(s).

Civil Action No.:

CIVIL ACTION

COMPLAINT AND JURY DEMAND

NATURE OF ACTION

1. This Complaint arises out of a tragic incident whereas Elvin Diaz was shot and killed by officers employed by the Hackensack Police Department, Hackensack, New Jersey and the City of Hackensack, specifically, Sergeant Miguel Molina and Officer Ervin Hernandez.
2. The incident occurred on or about May 21, 2015, when members of the Hackensack Police Department illegally entered the residence of the deceased, Elvin Diaz, without a warrant. The

members of the Hackensack Police Department thereafter fatally shot Elvin Hernandez.

3. This is a Federal Civil Rights action brought on behalf of the Estate of Elvin Diaz and by Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988 and the Fourth, Eighth and Fourteenth Amendments to the United States Constitution.

4. Plaintiffs are also making claims pursuant to the United States Constitution and common law claims including: N.J.S.A. 10:6-1; common law negligence; excessive force; false imprisonment; infliction of emotional distress; negligent supervision; negligent hiring and retention; and failure to implement appropriate policies.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all of the plaintiffs' federal claims, pursuant to 28 U.S.C. § 1331.

6. This Court has jurisdiction over the plaintiffs' Federal Civil Rights claims, pursuant to 28 U.S.C. § 1343.

7. This Court has jurisdiction over the plaintiffs' state claims, pursuant to 28 U.S.C. § 1367.

8. The venue is proper in this Court under 28 U.S.C. § 1391 because all or a substantial part of the events given rise to plaintiffs' claims occurred in this judicial district and because several if not all of the defendants reside in this judicial district.

9. The amount in controversy exclusive of interest and cost exceeds the sum of \$75,000.00.

THE PARTIES

10. Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, is a citizen of the United States and a resident of the State of New Jersey, residing in the City of

Hackensack, State of New Jersey.

11. Plaintiff, Kelvi Diaz, is the brother of the decedent, Elvin Diaz, and is a citizen of the United States and a resident of the State of New Jersey, residing in the City of Hackensack.

12. Plaintiff, Julian Diaz, is the father of the decedent, Elvin Diaz, and is a citizen of the United States and a resident of the State of New Jersey, residing in the City of Hackensack.

13. Plaintiff, Cecilia Luna-Diaz, individually, is the mother of the decedent, Elvin Diaz, and is a citizen of the United States and a resident of the State of New Jersey, residing in the City of Hackensack.

14. Defendant, Hackensack Police Department is an entity duly organized under the constitution and laws of the State of New Jersey.

15. Defendant, City of Hackensack, is a city duly organized under the constitution and laws of the State of New Jersey.

16. Defendants, Police Sergeant Miguel Molina and Officer Ervin Hernandez and/or other unidentified members of the Hackensack Police Department were involved in either/or the shooting of Elvin Diaz and/or the events leading to the shooting of Elvin Diaz and are being sued in their individual and in their official capacity.

17. The aforesaid Hackensack police officers' actions were taken under the color of State law. Each defendant described herein was acting in his/hers official and individual capacity, and acting under color of State law as a police officer and/or chief of police, captain or sergeant, and/or probation officer, and, in such capacity, as the agent, servant and employee of the Hackensack Police Department in the City of Hackensack.

18. Defendants, John and Jane Does 1-10 (unidentified police officers), are police officers

employed by Hackensack Police Department and/or the City of Hackensack were acting in the course and scope of their employment and acting in the their individual capacity. Each defendant herein was acting under the color of the State law and participated in the illegal and unjustified shooting of Elvin Diaz.

FACTUAL ALLEGATIONS

19. On or about May 21, 2015, at approximately 1:30 p.m., Sgt. Molina and Officer Hernandez arrived at the home of the decedent, Elvin Diaz, 10 Temple Avenue, Hackensack, New Jersey.

20. Elvin Diaz lived at the above address with his mother, Cecilia Luna-Diaz, his brother, Kelvi Diaz, and his father, Julian Diaz.

21. Prior to the incident, defendant, Sgt. Molina, was in a relationship with Cecilia Luna-Diaz. After Cecilia Luna-Diaz ended their relationship, Sgt. Molina made several attempts to resume the relationship and sent several texts in an attempt to resume the relationship.

22. At the time of the incident, the decedent, Elvin Diaz, was on probation for minor violation. Under the subterfuge of arriving at 10 Temple Avenue, Hackensack, New Jersey for a welfare check on behalf of the Bergen County Probation Department, Sgt. Molina and Officer Hernandez arrived at the aforesaid location.

23. Upon arrival at the location, Sgt. Molina and Officer Hernandez asked a neighbor if they knew where Cecilia Luna-Diaz was. After the neighbor said that she did not know, Sgt. Molina and Officer Hernandez illegally entered, without a warrant, 10 Temple Avenue, Hackensack, New Jersey.

24. Upon entering the premises Sgt. Molina and Officer Hernandez saw the plaintiff, Kelvi Diaz, and Sgt. Molina asked Mr. Diaz where Cecilia Luna-Diaz was. Thereafter, the officers asked

where Elvin was. The officers thereafter saw decedent, Elvin Diaz. Mr. Diaz backed into the kitchen. The officers allege that Elvin Diaz had taken a knife from the kitchen. The officers refused to allow Kelvi Diaz in the kitchen and forced him into a side room.

25. At this time, Cecilia Luna-Diaz, arrived at the premises. She asked to be able to speak to her son, Elvin. Rather than allowing Cecilia to speak to her son, Elvin, she too was forced into the side room with her son, Kelvi Diaz. Despite several requests, the officers refused to allow Kelvi Diaz or Cecilia Luna-Diaz to speak to Elvin Diaz.

26. Rather, both officers repeatedly shot and killed Elvin Diaz. The shooting continued, even after Elvin Diaz was on the ground. This incident was witnessed by Cecilia Luna-Diaz and Kelvi Diaz.

27. This shooting was without sufficient cause and was unjustified. The entire tragedy occurred because Sgt. Molina was attempting to contact his former girlfriend, Cecilia Luna-Diaz, and, thereafter, illegally entered the premises under the guise of welfare check on Elvin Diaz.

COUNT I

Violation of 42 U.S.C. §1983 and N.J.S.A. 10:6-1

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the above paragraphs 1 through 28.

2. On or about May 21, 2015, Elvin Diaz was brutally shot by defendants, Sgt. Molina and Officer Hernandez.

3. Sgt. Molina and Officer Hernandez acted individually and in their capacity as Hackensack police officers.

4. The shooting occurred without provocation, justification or excuse.

5. Defendants, Sgt. Molina, Officer Hernandez, the City of Hackensack, Hackensack Police Department, John/Jane Does 1-10 (said names being fictitious) violated plaintiffs' Federal and State constitutional rights, including, but not limited to 42 U.S.C. §1983 and N.J.S.A. 10:6-1, et seq.

6. Defendants' actions were willful, wanton, malicious, done with conscience indifference to decedent's rights. Defendants were acting under color of State law.

7. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(1); and such further relief which the Court may deem just and equitable.

COUNT II

Civil Rights Violation and Common Law Negligence

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz,

deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.

2. Defendants, City of Hackensack and the Hackensack Police Department owed a duty to the plaintiffs to properly train, hire, supervise and/or retain competent police officers.

3. Defendants Hackensack Police Department and the City of Hackensack improperly hired, trained, supervised and/or retained the individual defendants named herein.

4. Defendants Hackensack Police Department's and the City of Hackensack's training, hiring, supervision and/or retention policies were deliberately indifferent.

5. Defendants Hackensack Police Department and the City of Hackensack failed to adopt and/or follow necessary policies and procedures in reference to training, hiring, supervising and/or retaining police officers.

6. Defendants Hackensack Police Department and the City of Hackensack failed to implement appropriate policies, customs and practices to ensure that the incident described herein would not occur.

7. In addition, the defendants, Sgt. Miguel Molina and Officer Hernandez, and John/Jane Does 1-10 (unknown police officers), failed to implement the proper procedures and acted with indifference to the civil rights of the plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, to be free from the deprivation of liberty without due process, the right to be free from false arrest, unreasonable search and seizure pursuant to the Fourth and the Fourteenth Amendments to the United States constitution.

8. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

9. The aforesaid incident constitutes negligence and a violation of 42 U.S.C. §1983 and N.J.S.A. 10:6-1, et seq.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT III

Violation of Due Process Rights

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.

2. The conduct of each and every defendant named herein violated plaintiffs' clearly established rights under the Fourteenth Amendment of the United States Constitution to due

process by intentionally and with deliberate indifference utilizing excessive force and killing the plaintiff in violation to 42 U.S.C. §1983.

3. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT IV

Violation of 42 U.S.C. §1983 (Excessive Force)

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.

2. Each defendant violated plaintiff's clearly established rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from excessive and unjustified

use of force in violation of 42 U.S.C. §1983.

3. Defendants' use of excessive force was unreasonable under the circumstances of the case.

4. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT V

Violation of the Fourth and Eighth Amendment Rights and violation of New Jersey Constitution 1947 Article 1, §7

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.

2. On or about May 21, 2015, defendants, Sgt. Miguel Molina and Officer Ervin Hernandez, illegally entered the home of Elvin Diaz for an improper purpose.

3. The aforesaid employees of the Hackensack Police Department and the City of Hackensack entered the premises without justification and without a warrant. Upon entering the premises, the officers shot and killed the decedent, Elvin Diaz.

4. The aforesaid conduct violated plaintiffs' due process rights under the Fourth Amendment of the United States constitution and violated the plaintiffs' rights under the New Jersey Constitution 1947 Article 1, §7 and in violation of 42 U.S.C. §1983.

5. The aforesaid conduct also violated plaintiffs' Eighth Amendment rights pursuant to the United States Constitution and was a violation of 42 U.S.C. §1983.

6. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(1); and such further relief which the Court may deem just and equitable.

COUNT VI

Violation of 42 U.S.C. §1983

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.

2. Each and every defendant named herein, and John and Jane Does 1-10 (unidentified police officers), acted under color of the State law by falsely and improperly entering the decedent's residence and shooting the plaintiff with no probable cause or exigent circumstances. The defendants denied the decedent, Elvin Diaz, of the right secured to him by the United States constitution by depriving him of his life and liberty without due process of law, by shooting and killing the decedent, Elvin Diaz. The defendants also violated the rights of the plaintiffs, Cecilia Luna-Diaz and Kelvi Diaz of their liberty without due process of law, by forcing them into a side room and holding them in that room against their will.

3. The aforesaid constitutes a violation of 42 U.S.C. §1983.

4. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz and Kelvi Diaz, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, and Kelvi Diaz, Individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for

reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT VII

Assault

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.

2. On or about May 21, 2015, defendants, Sgt. Miguel Molina and Officer Ervin Hernandez, severely assaulted and killed decedent, Elvin Diaz.

3. As a result of the severe assault, Elvin Diaz suffered severe pain and suffering and died.

4. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation

expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT VIII

**Violation of Civil Rights pursuant to 42 U.S.C. §1983
(Improper Detention and Confinement)**

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.
2. Each and every defendant named herein intentionally and without justification confined the plaintiffs, Cecilia Luna-Diaz and Kelvi Diaz, to a side room in that home and would not allow them to speak to Elvin Diaz.
3. The aforesaid actions were without legal justification and the action of each and every defendant was an intentional and deliberate act and imbued with the character of outrage.
4. Plaintiffs were aware and harmed by the confinement.
5. Each and every defendant named herein acted maliciously and without probable cause.
6. The aforesaid action were done intentionally, wrongfully and negligently without probable cause.
7. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the

Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT IX

Negligent Infliction of Emotional Distress ("Portee" Claim)

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased and Cecilia Luna-Diaz and Kelvi Diaz, Individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.
2. Kelvi Diaz is the brother of the decedent, Elvin Diaz, and Cecilia Luna-Diaz is the mother of the decedent, Elvin Diaz.
3. Cecilia Luna-Diaz and Kelvi Diaz personally observed the death of Elvin Diaz and were at the scene of the incident.
4. As a result of observing the incident described above, Cecilia Luna-Diaz and Kelvi Diaz suffered severe emotional distress and physical injury as a result of witnessing the aforesaid conduct.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased and Cecilia Luna-Diaz and Kelvi Diaz, Individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant

Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT X

Intentional Infliction of Emotional Distress

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.
2. Each defendant named herein acted with extreme and outrageous conduct towards each plaintiff.
3. The conduct was intentional and in a fashion intended to produce emotional distress or with reckless and deliberate disregard of the high degree of probability that the emotional distress would follow.
4. The conduct described herein caused the plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, emotional distress and the emotional distress was so severe that no reasonable person could be expected to endure it.
5. As a result of the defendants' intentional infliction of emotional distress, plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered severe physical, psychological and emotional injuries.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT XI

Negligence

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.
2. As a result of the conduct described herein, each and every defendant was negligent in the performance of their duties.
3. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and

Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT XII

Conspiracy

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.
2. Each and every defendant named herein acted in concert to commit an unlawful act, specifically, entering the premises under the false pretense, without probable cause, depriving each and every plaintiff of their civil rights and shooting and killing the decedent, Elvin Diaz.
3. The defendants herein agreed to illegally enter the home and agreed to inflict severe punishment upon decedent, Elvin Diaz.
4. As a result of the aforesaid conspiracy, the decedent, Elvin Diaz was killed and the plaintiffs suffered severe damages.
5. The damages were caused by an overt act, specifically, agreeing to violate plaintiffs' civil rights, illegally entering the premises and killing Elvin Diaz.
6. As a result, thereof, Elvin Diaz suffered pain and suffering and died and plaintiffs, Cecilia

Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, suffered serious damages, including permanent damages, suffered pain and suffering, suffered emotional distress, and will continue to suffer emotional distress, and will continue to expanded expenses.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT XIII

Respondent Superior

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.
2. Each and every individual defendant named herein and John and Jane Does 1-10 (unidentified police officers) were at all times acting with the scope of their employment as employees of the City of Hackensack and the Hackensack Police Department.
3. While acting within the scope of their employment, each and every police officer named herein and John and Jane Does 1-10 (unidentified police officers) were negligent in the

performance and/or failure to perform their duties.

4. Under respondeat superior, the City of Hackensack and the Hackensack Police Department are liable for the acts of the named defendants herein.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

COUNT XIV

Fictitious Defendants

1. Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, repeat each and every allegation set forth in the prior paragraphs herein as if fully set forth at length herein.

2. At all times herein, defendants John and Jane Does 1-10 (said names being fictitious) were police officers and other unknown persons who were involved in the illegal entry of the decedent's premises, the illegal detention of the plaintiffs, Cecilia Luna-Diaz and Kelvi Diaz, and excessive force, i.e., shooting and killing the decedent, Elvin Diaz, and the deprivation of each plaintiff's civil rights.

3. Defendants John and Jane Does 1-10 (said names being fictitious) have violated plaintiffs' civil right and due process rights pursuant to the New Jersey and the United States constitution.

WHEREFORE, Plaintiffs, Cecilia Luna-Diaz, Administratrix Ad Prosequendum of the Estate of Elvin Diaz, deceased, Cecilia Luna-Diaz, individually, Kelvi Diaz, Individually, and Julian Diaz, individually, demand judgment against the defendants, Hackensack Police Department, City of Hackensack, Sergeant Miguel Molina, Officer Ervin Hernandez, John/Jane Does 1-10, jointly and severally, and seek pecuniary damages against all defendants, punitive damages against all defendants and for reasonable attorneys' fees, including expert fees, litigation expenses and costs of suit against all defendants pursuant to 42 U.S.C. §1983 and N.J.S.A. 10:6-1(f); and such further relief which the Court may deem just and equitable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment be entered against Defendants as follows:

Awarding Plaintiffs damages, including but not limited to compensatory damages, including economic and non-economic damages, specifically damages for emotional distress, mental anguish and personal injury;

Awarding Plaintiffs punitive damages for Defendants' willful, knowing and deliberate violations of Plaintiffs' constitutional and statutory rights;

All reasonable attorney's fees as may be provided by all pertinent laws and statutes, including under 42 U.S.C. §1983, 42 U.S.C. §1988, Title IX and the IDEA, the LAD, the NJCRA, and all fee shifting provisions of those statutes and related case law; and

For any such other, further, additional and different relief as this Court deems just and proper.

FEITLIN, YOUNGMAN, KARAS
& GERSON, L.L.C.



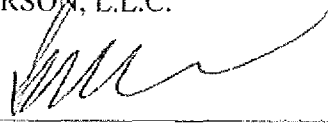
FREDERICK E. GERSON

Dated: June 7, 2016

JURY DEMAND

The plaintiffs hereby demand a jury trial as to each and every issue in this action so triable.

FEITLIN, YOUNGMAN, KARAS
& GERSON, L.L.C.



FREDERICK E. GERSON

Dated: June 7, 2016

E:\WP\MATTERS\Diaz\Pleadings\Complaint.wpd

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Cecilia Luna-Diaz, Administratrix As Prosequendum of the Estate of Elvin Diaz, et al

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Feldin, Youngman, Karas & Gerson, LLC
Heritage Plaza II, 65 Harristawon Road, Suite 207, Glen Rock, NJ 07452
T: 201-791-4400

DEFENDANTS

City of Hackensack Police Department, City of Hackensack, et al

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS ☐ Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty ☐ Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. 1981, 1983, 1985, 1986, 1988 and 4th and 14th Amendments to the U.S. Constitution
 Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE
06/07/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT

for the
District of New Jersey

CECILIA LUNA-DIAZ, et al

Plaintiff

v.

CITY OF HACKENSACK POLICE DEPT., et al

Defendant

Civil Action No. 2:16-cv-03270-JLL-JAD

WAIVER OF THE SERVICE OF SUMMONS

To: Jeffrey R. Youngman, Esq.

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 06/08/2016, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

City of Hackensack

Printed name of party waiving service of summons

Printed name

65 Central Avenue
Hackensack, NJ 07601

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT

for the
District of New Jersey

CECILIA LUNA-DIAZ, et al

Plaintiff

v.

CITY OF HACKENSACK POLICE DEPT., et al

Defendant

)
)
) Civil Action No. 2:16-cv-03270-JLL-JAD
)
)

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(Name of the plaintiff's attorney or unrepresented plaintiff)

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UNITED STATES DISTRICT COURT

for the
District of New Jersey

CECILIA LUNA-DIAZ, et al

Plaintiff

v.

CITY OF HACKENSACK POLICE DEPT., et al

Defendant

Civil Action No. 2:16-cv-03270-JLL-JAD

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: City of Hackensack

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

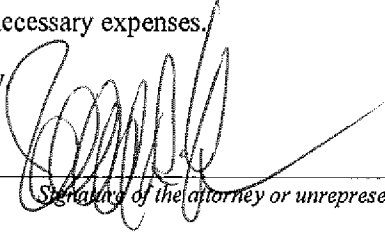
If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below

Date: 06/08/2016


Signature of the attorney or unrepresented party

Jeffrey R. Youngman, Esq.

Printed name

Heritage Plaza II, 65 Harristown Road, Suite 207
Glen Rock, New Jersey 07452

Address

JYoungman@fykgllaw.com

E-mail address

201-791-4400

Telephone number

UNITED STATES DISTRICT COURT

for the
District of New Jersey

CECILIA LUNA-DIAZ, et al

Plaintiff

v.

CITY OF HACKENSACK POLICE DEPT., et al

Defendant

Civil Action No. 2:16-cv-03270-JLL-JAD

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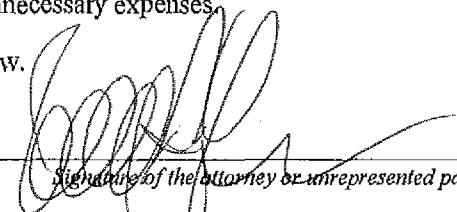
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Telephone number