

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALAN MURPHY, as Administrator of the
Estate of Arthur J. Murphy, Deceased,

Plaintiff,

-vs-

MIDDLESEX COUNTY, WARDEN
EDMUND CICCHI, OFFICER
CHRISTOPHER BELINSKY, OFFICER
BRIAN FOGARTY, OFFICER DANIEL
MARCINKO, LT. MICHAEL
DOMANOSKI, OFFICER EUGENE
MARRA, SGT. JASON TURNER,
OFFICER ANTHONY PORCELLA,
OFFICER TOBY METGZER, OFFICER
JOHN BARTLINSKI, JR., POLICE
OFFICER BRIAN FAVRETTO, POLICE
OFFICER DOUGLAS TURNER and
JOHN DOES 1-10,

Defendants.

Civil Action No.:

JURY TRIAL DEMANDED

COMPLAINT

The Plaintiff, Alan Murphy, as general administrator and administrator ad prosequendum of the Estate of Arthur J. Murphy, by way of complaint against the Defendants says:

INTRODUCTORY STATEMENT

1. The Plaintiff brings this action to recover damages for the unlawful seizure and the utilization of excessive force which caused the death of Arthur Murphy while in the custody of the Defendants. This is an action for violation of the Plaintiff's federal constitutional and civil rights

guaranteed under 42 U.S.C. Section 1983, or violation of Plaintiff's rights under the United States Constitution and for violation of the Plaintiffs rights otherwise guaranteed under the laws and Constitution of the State of New Jersey. The Plaintiff seeks monetary damages for the wrongful death and for the deprivation of Arthur Murphy's constitutional and civil rights, which caused him to suffer great pain, mental anguish and ultimately caused his death.

JURISDICTION & VENUE

2. The Plaintiff bring this action under 42 U.S.C. §1983 which provides a civil action against persons who under color of law deprive a citizen of federal constitutional rights. This Court has jurisdiction over all counts in this matter pursuant to 28 U.S.C. §§1331 and 1343.

3. Plaintiff further invokes the pendent jurisdiction of this Court, pursuant to 28 U.S.C. §1367 to hear and decide claims brought pursuant to the New Jersey Constitution and the common law of the State of New Jersey.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that all Defendants either reside in or are political subdivisions of, the State of New Jersey, and a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in the State and District of New Jersey.

THE PARTIES

5. The Plaintiff, ALAN MURPHY, is the general administrator and administrator ad prosequendum of the Estate of Arthur Murphy and a resident of the State of New Jersey.

6. At the time of his death, ARTHUR MURPHY ("Mr. Murphy") was a pre-trial detainee, and was involuntarily committed to the care and custody of the Middlesex Adult

Correction Center on November 26, 2013. At all times hereinafter referenced Mr. Murphy was a citizen of the United States.

7. At all times relevant hereto, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 were duly appointed Correctional Officers employed by the Middlesex County Department of Corrections at the Middlesex Adult Correction Center located on US-130 in the Township of North Brunswick, County of Middlesex, State of New Jersey. As corrections officers, these individuals were acting under the color of state law and were responsible for the care, custody, safety and well-being of Plaintiff and all inmates incarcerated at the Middlesex Adult Correction Center. These Defendants are sued individually and in their official capacities.

8. At all times relevant hereto, Defendant, EDMOND CICCHI was the Director of the Middlesex County Department of Corrections and the duly appointed Warden of the Middlesex County Adult Correctional Facility. In said capacity EDMOND CICCHI was responsible for the care and management of the Middlesex Adult Correction Center prisoners and for the training, supervision, discipline and conduct of its corrections officers and staff. Defendant EDMOND CICCHI was also, at all times, responsible for the placement of security and/or surveillance equipment, including but not limited to video/audio cameras, to monitor and ensure the security, safety and proper handling of all inmates by corrections officers at said facility. He was also responsible for enforcing the rules and regulations of the Middlesex County Department of Corrections and the rules and regulations promulgated through the Middlesex County Prosecutor's Office and the Office of the Attorney General of the State of Jersey. At all relevant times,

EDMOND CICCHI was acting in such capacity as the agent, servant and employee of the Defendants, Middlesex County and the Middlesex County Department of Corrections. He is sued individually and in his official capacity.

9. Defendant, MIDDLESEX COUNTY, was at all times mentioned herein, and is, a County government organized and chartered under the laws of the State of New Jersey. Defendant, MIDDLESEX COUNTY, is an independent regional governing body created and authorized under the laws of the State of New Jersey to maintain, control and/or supervise the Middlesex County Department of Corrections. MIDDLESEX COUNTY is vested with the creation, development and implementation of policies and procedures utilized by the Middlesex County Department of Corrections. This Defendant is at all times responsible for the management, administration and conduct of its employees, agents and servants who work at the Middlesex Adult Correction Center, including the above officers, as it relates to the care and custody of individuals incarcerated therein.

10. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

11. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to security measures, cameras, and devices to ensure safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

12. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the screening, hiring and training of corrections officers, including Defendants OFFICER

CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

13. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight of the Middlesex Adult Correction Center, including the implementation of its policies, procedures and/or guidelines and decision-making of Defendant EDMOND CICCHI.

14. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight of disciplinary actions taken by Defendant EDMOND CICCHI as it relates to the utilization of excessive force on inmates by corrections officers, to ensure the protection of inmates and removal or sanctioning of corrections officers who violate the policies and procedures of the jail.

15. Defendant MIDDLESEX COUNTY is and was, at all times, responsible to not only train its corrections officers in matters relating to mental illness and the utilization of excessive force against inmates, but also to actively devise and implement a system of supervision to prevent future instances.

16. At all times relevant hereto, Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were duly appointed Officers employed by the Edison Township Police Department located in the County of Middlesex, State of New Jersey. Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were acting under the color of state law and responsible for not violating the constitutional rights of citizens, including:

- a. effecting an arrest only upon a warrant or upon probable cause that the crime charged has been committed;
- b. utilizing criminal proceedings to act maliciously or for a purpose other than bringing a person to justice; or
- c. unlawfully seizing and/or falsely imprisoning a citizen without probable cause.

These Officers are sued individually and in their official capacities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Arrest and Seizure of Murphy

17. On November 26, 2013, Edison Police responded to a report of a person inside an abandoned and uninhabited building located at 1642 Oak Tree Road, Edison, New Jersey.

18. Upon arrival at the property, Officers Brian Favretto and Douglas Turner immediately observed that the property had been previously deemed uninhabitable by the Township and was painted with a red spray paint box with an "x" through it indicating such.

19. An investigation of the inside of the building by Officers Favretto and Turner revealed that the dwelling contained no furniture, electricity or running water and was in poor condition.

20. Mr. Murphy was observed inside the abandoned and uninhabited structure. Officers Favretto and Turner initiated conversation with Mr. Murphy.

21. At no point did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

22. At no time did probable cause exist to suspect Mr. Murphy entered the structure with a purpose to commit any offense therein.

23. The structure at issue was readily identifiable to be abandoned within the meaning ascribed by N.J.S.A. 2C:18-3(d)(1).

24. At no time did probable cause exist to suspect Mr. Murphy committed the offense of Criminal Trespass (N.J.S.A. 2C:18-3(a)).

25. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that probable cause existed of an indictable offense.

26. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that Mr. Murphy presented a risk of harm to himself or others. In particular, on November 26, 2013, a court order did not exist for the involuntary commitment of Mr. Murphy. On November 26, 2013, a mental health screener did not certify on a form prescribed by the Division that, based on a screening outreach visit, Mr. Murphy was in need of involuntary commitment.

27. On November 26, 2013, Officers Favretto and Turner did not request a crisis worker conduct an evaluation of Mr. Murphy.

28. Officers Favretto and Turner's detention of Mr. Murphy on November 26, 2013, was a seizure within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

29. On November 26, 2013, Officers Favretto and Turner advised Mr. Murphy that there was a bed available for him at the Perth Amboy Shelter. Mr. Murphy declined transport to the facility. In retaliation of his refusal to be transported to the Shelter, Mr. Murphy was advised that he was being charged with Criminal Trespass(N.J.S.A. 2C:18-3(a)).

30. At no point while at the facility of the Edison Police Department did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

31. Police officers from the Edison Police Department then transported Mr. Murphy to the Middlesex Adult Correction Center.

Events at the Middlesex Adult Correction Center

32. On November 26, 2013, at approximately 8:43 p.m., Mr. Murphy arrived at the Receiving and Discharge Unit of the Middlesex Adult Correction Center.

33. Upon arrival Mr. Murphy answered general intake questions but refused to be fingerprinted.

34. In retaliation for being uncooperative with fingerprinting, it was decided that Mr. Murphy would undergo a strip search.

35. Under the guise of conducting a strip search, various corrections officers escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance.

36. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

37. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', Mr. Murphy was violently taken to the ground and into the prone position by the surrounding officers.

38. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited his vulnerable and defenseless position by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes to various portions of his body, oleoresin capicum (OC) spray to his eyes, compliance holds to his extremities and the placement of a 'spit mask' over his face.

39. On the apparent basis that Mr. Murphy was face down with nine officers on and

around his body, yet able to 'swing his arms, punch and kick the officers', force continued to be utilized until Mr. Murphy was eventually unresponsive.

40. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

41. During each infliction of force against Mr. Murphy, the Defendant Corrections Officers would either act directly in concert or match or surpass each other's violence with further unnecessary escalation by the other.

42. In less than one hour after first arriving at the Middlesex County Adult Correctional Facility, Arthur Murphy was lifelessly lying on the floor of a small 'change out' room with no cameras; his pants were removed, his heart was not beating, blood was flowing from his mouth and head and Mr. Murphy was not breathing.

43. At no point thereafter would Mr. Murphy regain a pulse or breathe again.

44. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

45. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

46. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

47. Within hours of the incident, the above corrections officers and jail staff/administration completed various incident reports, use of force forms and provided statements,

which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

48. At no point while at the Middlesex County Prison did the Decedent display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

49. The utilization of force against Mr. Murphy ultimately caused his death.

50. The Middlesex County Medical Examiner, Andrew Falzon, M.D., determined the manner of Arthur Murphy's death to be "homicide".

COUNT I: UNLAWFUL ARREST/SEIZURE, DEPRIVATION OF LIBERTY
(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

51. Plaintiffs incorporate by reference paragraphs 1 – 50 as though fully set forth herein.

52. Plaintiff has a right to be secure in his person and property against unreasonable seizure as guaranteed under the Fourth Amendment to the United States Constitution and has a right not to be deprived of life, liberty, or property without due process of law and to be accorded the equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

53. The Fourth Amendment to the United States Constitution prohibits a police officer from arresting and/or incarcerating a citizen except upon probable cause.

54. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

55. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free

from an unlawful detention, to be secure in his person and property and to due process and equal protection of the law under the Constitution of the United States, in particular, the Fourth and Fourteenth Amendments thereof and 42 U.S.C. § 1983.

56. That as a result of the deprivation of Plaintiff's constitutional rights, he suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT II: MALICIOUS PROSECUTION

(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

57. Plaintiffs incorporate by reference paragraphs 1 – 56 as though fully set forth herein.

58. Plaintiff has a right guaranteed under the Fourteenth Amendment to the United States Constitution to be free from malicious prosecution.

59. The Fourth Amendment to the United States Constitution prohibits a police officer from initiating a criminal proceeding against a citizen, without probable cause, maliciously or for a purpose other than bringing the accused to justice.

60. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

61. Officers FAVRETTO and TURNER initiated criminal charges against Mr. Murphy for a purpose other than justice; namely in retaliation for his refusal to be transported to a homeless shelter.

62. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from malicious prosecution under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

63. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

COUNT III: DUE PROCESS

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

64. Plaintiffs incorporate by reference paragraphs 1 – 63 as though fully set forth herein.

65. Plaintiff, as a pre-trial detainee, may not be punished prior to an adjudication of guilt in accordance with due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution.

66. The Fourteenth Amendment to the United States Constitution prohibits a corrections officer from utilizing force which is unreasonable in light of the facts and circumstances presented at the time.

67. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not rationally related to a legitimate non-punitive governmental purpose, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

68. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL

DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from punishment without due process of the law under the Constitution of the United States, in particular, the Fourteenth Amendment thereof and 42 U.S.C. § 1983.

69. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT IV: EXCESSIVE FORCE

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

70. Plaintiffs incorporate by reference paragraphs 1 – 69 as though fully set forth herein.

71. Plaintiff has a right to be secure in his person and property against excessive force as guaranteed under the Fourth Amendment to the United States Constitution.

72. The Fourth Amendment to the United States Constitution prohibits a corrections officer from utilizing force against a pre-trial detainee which is unreasonable in light of the facts and circumstances confronting them.

73. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore

discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not objectively reasonable in light of the facts and circumstances presenting them, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

74. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

75. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT V: CONSPIRACY

**(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty,
Marcinko, Domanoski, Marra, Turner, Porcella,
Metzger, and Bartlinski)**

76. Plaintiffs incorporate by reference paragraphs 1 – 75 as though fully set forth herein.

77. On November 25, 2013, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., planned and/or

otherwise agreed to conspire to violate Mr. Murphy's Fourth and Fourteenth Amendment rights to be free from the use of excessive force and pre-conviction punishment.

78. The conspiracy formed or began when Mr. Murphy was deemed 'uncooperative' during portions of the intake process such as fingerprinting and answering certain intake questions. In retaliation for being uncooperative, the Defendants escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance, for the purpose of conducting a strip search. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

79. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', he was violently taken to the ground and into the prone position. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited the vulnerable and defenseless position of Mr. Murphy by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes, oleoresin capsicum (OC) spray, compliance holds and the placement of a 'spit mask' over his face.

80. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick officers', force continued to be utilized until Mr. Murphy was unresponsive.

81. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

82. During each infliction of force against Mr. Murphy, the defendant corrections

officers would either act directly in concert or match each other's violence with further unnecessary escalation by the other.

83. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

84. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

85. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

86. Within hours of the incident, the above corrections officers completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

87. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., in violation of 42 U.S.C. § 1983, conspired and acted with deliberate indifference to Mr. Murphy's Fourth and Fourteenth Amendment rights to be free the use of excessive force and punishment prior to an adjudication to guilt.

88. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John &

Jane Does 1-10, conspiratorial conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from the infliction of excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and his right to be free punishment prior to an adjudication of his guilt under the Constitution of the United States, in particular, the Fourteenth Amendment thereof.

89. That solely as a result of the conspiracy to deprive Plaintiff of his constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT VI: ASSAULT/BATTERY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

90. Plaintiffs incorporate by reference paragraphs 1 – 89 as though fully set forth herein.

91. The conduct of Defendants, OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, as described above were carried out intentionally for the express purpose of interfering with Mr. Murphy's personal integrity and resulted in an unpermitted harmful and offensive contact with Mr. Murphy, and thus constitute assault and battery.

92. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John &

Jane Does 1-10, conduct, Mr. Murphy was contacted in a harmful and offensive manner.

93. That as a result of the assault/battery of Plaintiff, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

**COUNT VII: COUNTY AND SUPERVISORY LIABILITY FOR
DEPRIVATION OF CONSTITUTIONAL RIGHTS**

(Murphy v. Middlesex County and Warden Edmund Cicchi)

94. Plaintiffs incorporate by reference paragraphs 1 – 93 as though fully set forth herein.

95. Upon information and belief, Defendants MIDDLESEX COUNTY and Warden EDMUND CICCHI have repeatedly and knowingly failed to enforce the laws of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, thereby creating within the Middlesex County Adult Correctional Facility an atmosphere of lawlessness in which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by their superiors.

96. At the time of the incidents described above, MIDDLESEX COUNTY and Warden EDMUND CICCHI had developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of inmates in Middlesex County Adult Correctional Facility, which caused Mr. Murphy's rights to be violated.

97. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately, improperly and fraudulently investigate inmates' complaints of misconduct on the part of corrections officers. These instances of misconduct were instead tolerated and/or covered-up by the MIDDLESEX COUNTY and Warden EDMUND CICCHI. The officers engaged in the misconduct would also not be reprimanded or disciplined for their misconduct.

98. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. regarding the lawful use of force, thereby failing to discourage further constitutional violations on the part of its officers and sergeants. MIDDLESEX COUNTY and Warden EDMUND CICCHI did not require appropriate in-service training or retraining of officers who were known to have previously engaged in misconduct.

99. Defendants, EDMOND CICCHI, Warden of the Middlesex County Adult Correctional Facility, and MIDDLESEX COUNTY, authorized and tolerated such conduct as an institutionalized practice, and by such action ratified the misconduct hereinabove detailed by:

- a. Failing to properly discipline, restrict and control employees including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 and other employees, correctional personnel known to be irresponsible in their dealings with citizens;
- b. Failing to take adequate precautions in the hiring, promotion and retention of personnel;
- c. Failing to train personnel;
- d. Failing to abide by the rules and regulations set down by the office of the Attorney General of the State of New Jersey and the Middlesex County Prosecutor's Office on matters relating to oversight, supervision and discipline of police and corrections personnel; and

- e. Failing to establish and/or assure the functioning of a bona fide and meaningful departmental system for addressing complaints of correctional employees and/or police misconduct and failing to properly oversee and regulate the conduct of department's affairs through its Warden.

100. Defendants EDMOND CICCHI and MIDDLESEX COUNTY knew of corrections officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Specifically, there were prior beating incidents by corrections officers against helpless inmates who, in some instances, were restrained in hand cuffs/shackles and, in some instances, resulted in death. However, EDMOND CICCHI and others in charge of the policies of the jail attempted to justify and/or cover-up these instances instead of enforcing policies against the excessive use of force.

101. Defendant EDMOND CICCHI and MIDDLESEX COUNTY knew of correctional officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Indeed other similar lawsuits have been filed as a result of the continuing pattern of excessive force and abuse at the Middlesex County Adult Correctional Facility which was permitted under the policies of Defendant EDMOND CICCHI and MIDDLESEX COUNTY. Thus, Defendant EDMOND CICCHI and MIDDLESEX COUNTY engaged in a pattern of acquiescence and even communicating a message of approval for the excessive force and abuse of inmates by corrections officers and other staff.

102. These prior attacks against inmates by corrections officers at the Middlesex County Adult Correctional Facility were not in compliance with its own use of force policy.

103. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY failed to adopt a practice of disciplining officers for violations of the use of force policy.

104. On information and belief, Defendant EDMOND CICCHI's and MIDDLESEX COUNTY's failure to adopt a practice of disciplining officers for violations of the use of force policy was deliberately indifferent to the risk of physical harm to the inmates of Middlesex County Adult Correctional Facility, including Mr. Murphy.

105. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to enforce the use of force policy.

106. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to discipline officers for violating the use of force policy.

107. As a result of the above-described policies, practices and customs, corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be condoned.

108. As a result of the above-described policies, practices and customs, supervisory personnel such as LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA and SGT. JASON TURNER, not only failed to intervene to stop the misconduct of the corrections officers, but rather joined concertedly with the officers and participated in the use of excessive force against Mr. Murphy.

109. On information and belief, Defendant OFFICER CHRISTOPHER BELINSKY,

OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 attack of Mr. Murphy resulted from EDMOND CICCHI 's and MIDDLESEX COUNTY's failure to enforce the use of force policy and/or failure to discipline officers for violating the use of force policy.

110. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the County of Middlesex to the constitutional rights of Mr. Murphy alleged herein.

111. It was also the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other staff to identify inmates with mental health problems and to address the medical needs of these inmates.

112. As a result of the above-described policies, practices and customs, corrections and other custody officers of the Middlesex Adult Correctional Facility, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., failed to identify and address the mental health needs of Mr. Murphy.

113. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the MIDDLESEX COUNTY and Warden EDMUND CICCHI to the constitutional rights of Mr. Murphy alleged herein.

114. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden

EDMUND CICCHI to inadequately supervise and train its corrections officers and other employees and agents on the appropriate methods of restraining inmates, thereby exhibiting deliberate indifference to the constitutional rights of inmates in their custody, including Mr. Murphy.

COUNT VIII: WRONGFUL DEATH / SURVIVORSHIP ACT

(Estate of Murphy v. All Defendants)

115. Plaintiffs incorporate by reference paragraphs 1 – 114 as though fully set forth herein.

116. The conduct of Defendants, as described above subjects them to liability to the Plaintiff for the emotional trauma, including conscious pain and suffering until he expired on November 26, 2013, pursuant to the dictates of the New Jersey Survivor's Act N.J.S.A. 2A:15-3, *et. seq.*

117. The Defendants are also liable to the Plaintiff due to the wrongful death of the Decedent by the State of New Jersey's Wrongful Death Act, known and designated as N.J.S.A. 2A:31-1, *et. seq.*

118. The harmed inflicted upon Mr. Murphy was the result of the Defendants' acts and/or omissions, and such acts and/or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of the foreseeable risk to Mr. Murphy's health and safety. Therefore, the Defendants are liable to the Plaintiff pursuant to the dictates of the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, *et seq.*

DEMAND FOR JUDGMENT

119. WHEREFORE, the Estate of Arthur J. Murphy, requests the following relief:

A. Compensatory damages from all defendants for the injuries, humiliation,

pain and suffering, emotional distress, psychiatric, psychological, mental anguish and/or wrongful death as a result of the November 26, 2013 incident;

B. Compensatory damages from all defendants for legal bills, medical bills, funeral expenses and/or other expenses that Plaintiff incurred or will incur in the future as a result of the November 26, 2013 incident;

C. Compensatory damages from all defendants for the value of the federal constitutional rights invaded to Arthur Murphy;

D. Punitive damages from defendants sued in their individual capacity;

E. Reasonable attorneys' fees from all defendants pursuant to 42 U.S.C. §1988;

and

F. Such other and further relief that the Court may deem just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues of the within matter.

RUSSO LAW OFFICES, LLC

By: s/ BRAD M. RUSSO
BRAD M. RUSSO
Attorney for Plaintiff
633 Belvidere Road
Phillipsburg, NJ 08865
(908)454-0806

Dated: 9/24/15

CIVIL COVER SHEET

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ALAN MURPHY, as General Administrator and Administrator ad Prosequendum of the Estate of Arthur J. Murphy

(b) County of Residence of First Listed Plaintiff Middlesex

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Brad M. Russo, Esq., Russo Law Offices LLC
333 Belvidere Road
Phillipsburg, NJ 08865
(908)454-0806

BradRusso@RussoLawLLC.com

DEFENDANTS

MIDDLESEX COUNTY, WARDEN EDMUND CICCHI,
OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN

County of Residence of First Listed Defendant Middlesex

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE 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 (Excl. 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 PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 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	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee ☐ 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	☐ 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 ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutional 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 ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☒ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition		

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
☐ 7 Appeal to District Judge from Magistrate Judgment

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. § 1983

Brief description of cause:

Civil Rights - Excessive Force, Due Process, Unlawful Arrest, Wrongful Death

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

09/24/2015

SIGNATURE OF ATTORNEY OF RECORD

s/ Brad M. Russo, Esq.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALAN MURPHY, as Administrator of the
Estate of Arthur J. Murphy, Deceased,

Plaintiff,

-vs-

MIDDLESEX COUNTY, WARDEN
EDMUND CICCHI, OFFICER
CHRISTOPHER BELINSKY, OFFICER
BRIAN FOGARTY, OFFICER DANIEL
MARCINKO, LT. MICHAEL
DOMANOSKI, OFFICER EUGENE
MARRA, SGT. JASON TURNER,
OFFICER ANTHONY PORCELLA,
OFFICER TOBY METGZER, OFFICER
JOHN BARTLINSKI, JR., POLICE
OFFICER BRIAN FAVRETTO, POLICE
OFFICER DOUGLAS TURNER and
JOHN DOES 1-10,

Defendants.

Civil Action No.: 15-7102 (FLW-TJB)

JURY TRIAL DEMANDED

COMPLAINT

The Plaintiff, Alan Murphy, as general administrator and administrator ad prosequendum of the Estate of Arthur J. Murphy, by way of complaint against the Defendants says:

INTRODUCTORY STATEMENT

1. The Plaintiff brings this action to recover damages for the unlawful seizure and the utilization of excessive force which caused the death of Arthur Murphy while in the custody of the Defendants. This is an action for violation of the Plaintiff's federal constitutional and civil rights

guaranteed under 42 U.S.C. Section 1983, or violation of Plaintiff's rights under the United States Constitution and for violation of the Plaintiffs rights otherwise guaranteed under the laws and Constitution of the State of New Jersey. The Plaintiff seeks monetary damages for the wrongful death and for the deprivation of Arthur Murphy's constitutional and civil rights, which caused him to suffer great pain, mental anguish and ultimately caused his death.

JURISDICTION & VENUE

2. The Plaintiff bring this action under 42 U.S.C. §1983 which provides a civil action against persons who under color of law deprive a citizen of federal constitutional rights. This Court has jurisdiction over all counts in this matter pursuant to 28 U.S.C. §§1331 and 1343.

3. Plaintiff further invokes the pendent jurisdiction of this Court, pursuant to 28 U.S.C. §1367 to hear and decide claims brought pursuant to the New Jersey Constitution and the common law of the State of New Jersey.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that all Defendants either reside in or are political subdivisions of, the State of New Jersey, and a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in the State and District of New Jersey.

THE PARTIES

5. The Plaintiff, ALAN MURPHY, is the general administrator and administrator ad prosequendum of the Estate of Arthur Murphy and a resident of the State of New Jersey.

6. At the time of his death, ARTHUR MURPHY ("Mr. Murphy") was a pre-trial detainee, and was involuntarily committed to the care and custody of the Middlesex Adult

Correction Center on November 26, 2013. At all times hereinafter referenced Mr. Murphy was a citizen of the United States.

7. At all times relevant hereto, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 were duly appointed Correctional Officers employed by the Middlesex County Department of Corrections at the Middlesex Adult Correction Center located on US-130 in the Township of North Brunswick, County of Middlesex, State of New Jersey. As corrections officers, these individuals were acting under the color of state law and were responsible for the care, custody, safety and well-being of Plaintiff and all inmates incarcerated at the Middlesex Adult Correction Center. These Defendants are sued individually and in their official capacities.

8. At all times relevant hereto, Defendant, EDMOND CICCHI was the Director of the Middlesex County Department of Corrections and the duly appointed Warden of the Middlesex County Adult Correctional Facility. In said capacity EDMOND CICCHI was responsible for the care and management of the Middlesex Adult Correction Center prisoners and for the training, supervision, discipline and conduct of its corrections officers and staff. Defendant EDMOND CICCHI was also, at all times, responsible for the placement of security and/or surveillance equipment, including but not limited to video/audio cameras, to monitor and ensure the security, safety and proper handling of all inmates by corrections officers at said facility. He was also responsible for enforcing the rules and regulations of the Middlesex County Department of Corrections and the rules and regulations promulgated through the Middlesex County Prosecutor's Office and the Office of the Attorney General of the State of Jersey. At all relevant times,

EDMOND CICCHI was acting in such capacity as the agent, servant and employee of the Defendants, Middlesex County and the Middlesex County Department of Corrections. He is sued individually and in his official capacity.

9. Defendant, MIDDLESEX COUNTY, was at all times mentioned herein, and is, a County government organized and chartered under the laws of the State of New Jersey. Defendant, MIDDLESEX COUNTY, is an independent regional governing body created and authorized under the laws of the State of New Jersey to maintain, control and/or supervise the Middlesex County Department of Corrections. MIDDLESEX COUNTY is vested with the creation, development and implementation of policies and procedures utilized by the Middlesex County Department of Corrections. This Defendant is at all times responsible for the management, administration and conduct of its employees, agents and servants who work at the Middlesex Adult Correction Center, including the above officers, as it relates to the care and custody of individuals incarcerated therein.

10. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

11. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to security measures, cameras, and devices to ensure safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

12. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the screening, hiring and training of corrections officers, including Defendants OFFICER

CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

13. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight of the Middlesex Adult Correction Center, including the implementation of its policies, procedures and/or guidelines and decision-making of Defendant EDMOND CICCHI.

14. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight of disciplinary actions taken by Defendant EDMOND CICCHI as it relates to the utilization of excessive force on inmates by corrections officers, to ensure the protection of inmates and removal or sanctioning of corrections officers who violate the policies and procedures of the jail.

15. Defendant MIDDLESEX COUNTY is and was, at all times, responsible to not only train its corrections officers in matters relating to mental illness and the utilization of excessive force against inmates, but also to actively devise and implement a system of supervision to prevent future instances.

16. Defendant, MIDDLESEX COUNTY PROSECUTOR'S OFFICE, was at all times mentioned herein, and is, a division of County government organized and chartered under the laws of the State of New Jersey. The MIDDLESEX COUNTY PROSECUTOR'S OFFICE is the chief law enforcement office for the County of Middlesex. As a constitutional officer charged with the broad obligation "to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws," the Prosecutor has wide-ranging authority over the law

enforcement community in Middlesex county. Pursuant to New Jersey Attorney General Guidelines, this Defendant is responsible for conducting mandatory internal affairs investigations when County law enforcement personnel utilize force which results in serious bodily injury or death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

17. Defendant MIDDLESEX COUNTY PROSECUTOR'S OFFICE is and was at all times material herein responsible for the implementation of the New Jersey Attorney General directives relating to internal affairs investigations when County law enforcement personnel utilize force which results in serious bodily injury or death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

18. Defendant MIDDLESEX COUNTY PROSECUTOR'S OFFICE did conduct an internal affairs investigation regarding the altercation involving ARTHUR MURPHY on November 26, 2013, at the Middlesex County Adult Correctional Center, as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.19. At all times relevant hereto, Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were duly appointed Officers employed by the Edison Township Police Department located in the County of Middlesex, State of New Jersey. Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were acting under the color of state law and responsible for not violating the constitutional rights of citizens, including:

- a. effecting an arrest only upon a warrant or upon probable cause that the crime charged has been committed;
- b. utilizing criminal proceedings to act maliciously or for a purpose other than bringing a person to justice; or
- c. unlawfully seizing and/or falsely imprisoning a citizen without probable cause.

These Officers are sued individually and in their official capacities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Arrest and Seizure of Murphy

19. On November 26, 2013, Edison Police responded to a report of a person inside an abandoned and uninhabited building located at 1642 Oak Tree Road, Edison, New Jersey.

20. Upon arrival at the property, Officers Brian Favretto and Douglas Turner immediately observed that the property had been previously deemed uninhabitable by the Township and was painted with a red spray paint box with an "x" through it indicating such.

21. An investigation of the inside of the building by Officers Favretto and Turner revealed that the dwelling contained no furniture, electricity or running water and was in poor condition.

22. Mr. Murphy was observed inside the abandoned and uninhabited structure. Officers Favretto and Turner initiated conversation with Mr. Murphy.

23. At no point did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

24. At no time did probable cause exist to suspect Mr. Murphy entered the structure with a purpose to commit any offense therein.

25. The structure at issue was readily identifiable to be abandoned within the meaning ascribed by N.J.S.A. 2C:18-3(d)(1).

26. At no time did probable cause exist to suspect Mr. Murphy committed the offense of Criminal Trespass (N.J.S.A. 2C:18-3(a)).

27. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis

that probable cause existed of an indictable offense.

28. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that Mr. Murphy presented a risk of harm to himself or others. In particular, on November 26, 2013, a court order did not exist for the involuntary commitment of Mr. Murphy. On November 26, 2013, a mental health screener did not certify on a form prescribed by the Division that, based on a screening outreach visit, Mr. Murphy was in need of involuntary commitment.

29. On November 26, 2013, Officers Favretto and Turner did not request a crisis worker conduct an evaluation of Mr. Murphy.

30. Officers Favretto and Turner's detention of Mr. Murphy on November 26, 2013, was a seizure within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

31. On November 26, 2013, Officers Favretto and Turner advised Mr. Murphy that there was a bed available for him at the Perth Amboy Shelter. Mr. Murphy declined transport to the facility. In retaliation of his refusal to be transported to the Shelter, Mr. Murphy was advised that he was being charged with Criminal Trespass(N.J.S.A. 2C:18-3(a)).

32. At no point while at the facility of the Edison Police Department did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

33. Police officers from the Edison Police Department then transported Mr. Murphy to the Middlesex Adult Correction Center.

Events at the Middlesex Adult Correction Center

34. On November 26, 2013, at approximately 8:43 p.m., Mr. Murphy arrived at the Receiving and Discharge Unit of the Middlesex Adult Correction Center.

35. Upon arrival Mr. Murphy answered general intake questions but refused to be fingerprinted.

36. In retaliation for being uncooperative with fingerprinting, it was decided that Mr. Murphy would undergo a strip search.

37. Under the guise of conducting a strip search, various corrections officers escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance.

38. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

39. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', Mr. Murphy was violently taken to the ground and into the prone position by the surrounding officers.

40. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited his vulnerable and defenseless position by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes to various portions of his body, oleoresin capsicum (OC) spray to his eyes, compliance holds to his extremities and the placement of a 'spit mask' over his face.

41. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick the officers', force continued to be utilized until Mr. Murphy was eventually unresponsive.

42. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing

from his mouth.

43. During each infliction of force against Mr. Murphy, the Defendant Corrections Officers would either act directly in concert or match or surpass each other's violence with further unnecessary escalation by the other.

44. In less than one hour after first arriving at the Middlesex County Adult Correctional Facility, Arthur Murphy was lifelessly lying on the floor of a small 'change out' room with no cameras; his pants were removed, his heart was not beating, blood was flowing from his mouth and head and Mr. Murphy was not breathing.

45. At no point thereafter would Mr. Murphy regain a pulse or breathe again.

46. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

47. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

48. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

Subsequent Investigation

49. Within hours of the incident, the above corrections officers and jail staff/administration completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

50. The Middlesex County Prosecutor's Office conducted an internal affairs investigation into this matter.

51. This matter involved the use of force by law enforcement involving death or serious injury to a person.

52. The investigation was required to be conducted in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

53. Eventually the Internal Affairs Investigation was closed and no wrongdoing was found regarding any law enforcement officer involved.

54. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that “[w]here the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury”.

55. Despite the direct requirement to do so, the Middlesex County Prosecutor’s Office failed to submit this matter for grand jury review or obtain prior approval from the Division of Criminal Justice.

56. Instead the Middlesex County Prosecutor’s Office closed the investigation without grand jury review and cleared the officers involved of any wrongdoing. In so doing, the Middlesex County Prosecutor’s Office did not allow for any public transparency, oversight or independent review into their investigation of the incident and ensured that the corrections officer’s conduct would not be disciplined.

57. At no point while at the Middlesex County Prison did the Decedent display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

58. The utilization of force against Mr. Murphy ultimately caused his death.

59. The Middlesex County Medical Examiner, Andrew Falzon, M.D., determined the manner of Arthur Murphy's death to be "homicide".

COUNT I: UNLAWFUL ARREST/SEIZURE, DEPRIVATION OF LIBERTY
(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

60. Plaintiffs incorporate by reference paragraphs 1 – 59 as though fully set forth herein.

61. Plaintiff has a right to be secure in his person and property against unreasonable seizure as guaranteed under the Fourth Amendment to the United States Constitution and has a right not to be deprived of life, liberty, or property without due process of law and to be accorded the equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

62. The Fourth Amendment to the United States Constitution prohibits a police officer from arresting and/or incarcerating a citizen except upon probable cause.

63. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

64. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from an unlawful detention, to be secure in his person and property and to due process and equal protection of the law under the Constitution of the United States, in particular, the Fourth and Fourteenth Amendments thereof and 42 U.S.C. § 1983.

65. That as a result of the deprivation of Plaintiff's constitutional rights, he suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT II: MALICIOUS PROSECUTION

(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

66. Plaintiffs incorporate by reference paragraphs 1 – 65 as though fully set forth herein.

67. Plaintiff has a right guaranteed under the Fourteenth Amendment to the United States Constitution to be free from malicious prosecution.

68. The Fourth Amendment to the United States Constitution prohibits a police officer from initiating a criminal proceeding against a citizen, without probable cause, maliciously or for a purpose other than bringing the accused to justice.

69. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

70. Officers FAVRETTO and TURNER initiated criminal charges against Mr. Murphy for a purpose other than justice; namely in retaliation for his refusal to be transported to a homeless shelter.

71. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from malicious prosecution under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

72. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

COUNT III: DUE PROCESS

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

73. Plaintiffs incorporate by reference paragraphs 1 – 72 as though fully set forth herein.

74. Plaintiff, as a pre-trial detainee, may not be punished prior to an adjudication of guilt in accordance with due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution.

75. The Fourteenth Amendment to the United States Constitution prohibits a corrections officer from utilizing force which is unreasonable in light of the facts and circumstances presented at the time.

76. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not rationally related to a legitimate non-punitive governmental purpose, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

77. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his

constitutional right to be free from punishment without due process of the law under the Constitution of the United States, in particular, the Fourteenth Amendment thereof and 42 U.S.C. § 1983.

78. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT IV: EXCESSIVE FORCE

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

79. Plaintiffs incorporate by reference paragraphs 1 – 78 as though fully set forth herein.

80. Plaintiff has a right to be secure in his person and property against excessive force as guaranteed under the Fourth Amendment to the United States Constitution.

81. The Fourth Amendment to the United States Constitution prohibits a corrections officer from utilizing force against a pre-trial detainee which is unreasonable in light of the facts and circumstances confronting them.

82. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not objectively reasonable in light of the facts and circumstances presenting them, but rather objectively excessive in relation to any

justifiable governmental purpose beyond the desire to punish.

83. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

84. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT V: CONSPIRACY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, Bartlinski and the Middlesex County Prosecutor's Office)

85. Plaintiffs incorporate by reference paragraphs 1 – 84 as though fully set forth herein.

86. On November 25, 2013, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and the Middlesex County Prosecutor's Office planned and/or otherwise agreed to conspire to violate Mr. Murphy's Fourth and Fourteenth Amendment rights to be free from the use of excessive force and pre-conviction punishment and also conspired to cover-up, not fully investigate and/or

violate mandatory investigatory protocol to ensure those involved would not be disciplined.

87. The conspiracy formed or began when Mr. Murphy was deemed 'uncooperative' during portions of the intake process such as fingerprinting and answering certain intake questions. In retaliation for being uncooperative, the Defendants escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance, for the purpose of conducting a strip search. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

88. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', he was violently taken to the ground and into the prone position. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited the vulnerable and defenseless position of Mr. Murphy by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes, oleoresin capicum (OC) spray, compliance holds and the placement of a 'spit mask' over his face.

89. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick officers', force continued to be utilized until Mr. Murphy was unresponsive.

90. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

91. During each infliction of force against Mr. Murphy, the defendant corrections officers would either act directly in concert or match each other's violence with further unnecessary

escalation by the other.

92. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

93. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

94. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

95. Within hours of the incident, the above corrections officers completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

96. Within hours of the incident, members of the Middlesex County Prosecutor's Office began conducting an investigation into the incident as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.

97. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that "[w]here the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury".

98. Despite the direct requirement to do so, the Middlesex County Prosecutor's Office failed to submit this matter for grand jury review or obtain prior approval from the Division of

Criminal Justice.

99. Instead the Middlesex County Prosecutor's Office closed the investigation without grand jury review and cleared the officers involved of any wrongdoing. In so doing, the Middlesex County Prosecutor's Office did not allow for any public transparency, oversight or independent review into their investigation of the incident.

100. The decision to violate required investigative protocol was for the purpose of shielding the officers involved from exposure to discipline and/or criminal liability.

101. The decision to violate required investigative protocol was pursuant to an inferred agreement with the officers involved in shielding them from exposure to discipline and/or criminal liability.

102. The decision to violate required investigative protocol was in furtherance of the overall conspiratorial objective to violate the Decedent's constitutional rights and cover-up the wrongdoing of the officers involved. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and the Middlesex County Prosecutor's Office in violation of 42 U.S.C. § 1983, conspired and acted with deliberate indifference to Mr. Murphy's Fourth and Fourteenth Amendment rights to be free the use of excessive force and punishment prior to an adjudication to guilt.

103. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., the Middlesex

County Prosecutor's Office and John & Jane Does 1-10, conspiratorial conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from the infliction of excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and his right to be free punishment prior to an adjudication of his guilt under the Constitution of the United States, in particular, the Fourteenth Amendment thereof.

104. That solely as a result of the conspiracy to deprive Plaintiff of his constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT VI: ASSAULT/BATTERY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

105. Plaintiffs incorporate by reference paragraphs 1 – 104 as though fully set forth herein.

106. The conduct of Defendants, OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, as described above were carried out intentionally for the express purpose of interfering with Mr. Murphy's personal integrity and resulted in an unpermitted harmful and offensive contact with Mr. Murphy, and thus constitute assault and battery.

107. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY

PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, Mr. Murphy was contacted in a harmful and offensive manner.

108. That as a result of the assault/battery of Plaintiff, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

**COUNT VII: COUNTY AND SUPERVISORY LIABILITY FOR
DEPRIVATION OF CONSTITUTIONAL RIGHTS**

**(Murphy v. Middlesex County, The Middlesex County Prosecutor's Office
and Warden Edmund Cicchi)**

109. Plaintiffs incorporate by reference paragraphs 1 – 108 as though fully set forth herein.

110. Upon information and belief, Defendants MIDDLESEX COUNTY and Warden EDMUND CICCHI have repeatedly and knowingly failed to enforce the laws of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, thereby creating within the Middlesex County Adult Correctional Facility an atmosphere of lawlessness in which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by their superiors.

111. Upon information and belief, Defendant MIDDLESEX COUNTY PROSECUTOR'S OFFICE, has repeatedly and knowingly failed to enforce the laws and requirements of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, in particular – the required investigative protocol for ensuring a full and transparent investigation and discipline of law enforcement where warranted. As a result, this Defendant created an environment whereby County law enforcement officials, including those within the Middlesex County Adult Correctional Facility, operated without fear of discipline and in an atmosphere in which corrections officers employ excessive and illegal force and violence, and

such acts are condoned and justified by the County investigative officials.

112. In addition, the failure of the Middlesex County Prosecutor's Office to fully investigate and provide accountability in the utilization of force by law enforcement in past instances, including by not submitting the matters for independent review by a grand jury, condoned past instances of abuse and encouraged law enforcement that the future utilization of excessive force would not result in reprimands, discipline, termination or a full investigation.

113. Accordingly, in failing to fully investigate 'matters involving the use of force by law enforcement involving death or serious injury to a person' the Middlesex County Prosecutor's Office directly contributed to the constitutional violations upon the decedent.

114. At the time of the incidents described above, MIDDLESEX COUNTY, the MIDDLESEX COUNTY PROSECUTOR'S OFFICE and Warden EDMUND CICCHI had developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of inmates in Middlesex County Adult Correctional Facility, which caused Mr. Murphy's rights to be violated.

115. It was the policy, practice and/or custom of MIDDLESEX COUNTY, the MIDDLESEX COUNTY PROSECUTOR'S OFFICE and Warden EDMUND CICCHI to inadequately, improperly and fraudulently investigate inmates' complaints of misconduct on the part of corrections officers. These instances of misconduct were instead tolerated and/or covered-up by the MIDDLESEX COUNTY, the MIDDLESEX COUNTY PROSECUTOR'S OFFICE and Warden EDMUND CICCHI. The officers engaged in the misconduct would also not be reprimanded or disciplined for their misconduct.

116. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers, including

Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. regarding the lawful use of force, thereby failing to discourage further constitutional violations on the part of its officers and sergeants. MIDDLESEX COUNTY and Warden EDMUND CICCHI did not require appropriate in-service training or retraining of officers who were known to have previously engaged in misconduct.

117. Defendants, EDMOND CICCHI, Warden of the Middlesex County Adult Correctional Facility, and MIDDLESEX COUNTY, authorized and tolerated such conduct as an institutionalized practice, and by such action ratified the misconduct hereinabove detailed by:

- a. Failing to properly discipline, restrict and control employees including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 and other employees, correctional personnel known to be irresponsible in their dealings with citizens;
- b. Failing to take adequate precautions in the hiring, promotion and retention of personnel;
- c. Failing to train personnel;
- d. Failing to abide by the rules and regulations set down by the office of the Attorney General of the State of New Jersey and the Middlesex County Prosecutor's Office on matters relating to oversight, supervision and discipline of police and corrections personnel; and
- e. Failing to establish and/or assure the functioning of a bona fide and meaningful departmental system for addressing complaints of correctional employees and/or police

misconduct and failing to properly oversee and regulate the conduct of department's affairs through its Warden.

118. Defendants EDMOND CICCHI, the MIDDLESEX COUNTY PROSECUTOR'S OFFICE and MIDDLESEX COUNTY knew of corrections officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Specifically, there were prior beating incidents by corrections officers against helpless inmates who, in some instances, were restrained in hand cuffs/shackles and, in some instances, resulted in death. However, EDMOND CICCHI and others in charge of the policies of the jail attempted to justify and/or cover-up these instances instead of enforcing policies against the excessive use of force.

119. Defendant EDMOND CICCHI and MIDDLESEX COUNTY knew of correctional officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Indeed other similar lawsuits have been filed as a result of the continuing pattern of excessive force and abuse at the Middlesex County Adult Correctional Facility which was permitted under the policies of Defendant EDMOND CICCHI and MIDDLESEX COUNTY. Thus, Defendant EDMOND CICCHI and MIDDLESEX COUNTY engaged in a pattern of acquiescence and even communicating a message of approval for the excessive force and abuse of inmates by corrections officers and other staff.

120. These prior attacks against inmates by corrections officers at the Middlesex County Adult Correctional Facility were not in compliance with its own use of force policy.

121. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY failed to adopt a practice of disciplining officers for violations of the use of force policy.

122. On information and belief, Defendant EDMOND CICCHI 's and MIDDLESEX COUNTY's failure to adopt a practice of disciplining officers for violations of the use of force

policy was deliberately indifferent to the risk of physical harm to the inmates of Middlesex County Adult Correctional Facility, including Mr. Murphy.

123. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to enforce the use of force policy.

124. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to discipline officers for violating the use of force policy.

125. As a result of the above-described policies, practices and customs, corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be condoned.

126. As a result of the above-described policies, practices and customs, supervisory personnel such as LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA and SGT. JASON TURNER, not only failed to intervene to stop the misconduct of the corrections officers, but rather joined concertedly with the officers and participated in the use of excessive force against Mr. Murphy.

127. On information and belief, Defendant OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY

PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 attack of Mr. Murphy resulted from EDMOND CICCHI's and MIDDLESEX COUNTY's failure to enforce the use of force policy and/or failure to discipline officers for violating the use of force policy.

128. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the County of Middlesex and the policymakers of the Middlesex County Prosecutor's Office, to the constitutional rights of Mr. Murphy alleged herein.

129. It was also the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other staff to identify inmates with mental health problems and to address the medical needs of these inmates.

130. As a result of the above-described policies, practices and customs, corrections and other custody officers of the Middlesex Adult Correctional Facility, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., failed to identify and address the mental health needs of Mr. Murphy.

131. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the MIDDLESEX COUNTY, the MIDDLESEX COUNTY PROSECUTOR'S OFFICE and Warden EDMUND CICCHI to the constitutional rights of Mr. Murphy alleged herein.

132. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other employees

and agents on the appropriate methods of restraining inmates, thereby exhibiting deliberate indifference to the constitutional rights of inmates in their custody, including Mr. Murphy.

COUNT VIII: WRONGFUL DEATH / SURVIVORSHIP ACT

(Estate of Murphy v. All Defendants)

133. Plaintiffs incorporate by reference paragraphs 1 – 132 as though fully set forth herein.

134. The conduct of Defendants, as described above subjects them to liability to the Plaintiff for the emotional trauma, including conscious pain and suffering until he expired on November 26, 2013, pursuant to the dictates of the New Jersey Survivor's Act N.J.S.A. 2A:15-3, *et. seq.*

135. The Defendants are also liable to the Plaintiff due to the wrongful death of the Decedent by the State of New Jersey's Wrongful Death Act, known and designated as N.J.S.A. 2A:31-1, *et. seq.*

136. The harmed inflicted upon Mr. Murphy was the result of the Defendants' acts and/or omissions, and such acts and/or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of the foreseeable risk to Mr. Murphy's health and safety. Therefore, the Defendants are liable to the Plaintiff pursuant to the dictates of the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, *et seq.*

DEMAND FOR JUDGMENT

137. WHEREFORE, the Estate of Arthur J. Murphy, requests the following relief:

A. Compensatory damages from all defendants for the injuries, humiliation, pain and suffering, emotional distress, psychiatric, psychological, mental anguish and/or wrongful

death as a result of the November 26, 2013 incident;

B. Compensatory damages from all defendants for legal bills, medical bills, funeral expenses and/or other expenses that Plaintiff incurred or will incur in the future as a result of the November 26, 2013 incident;

C. Compensatory damages from all defendants for the value of the federal constitutional rights invaded to Arthur Murphy;

D. Punitive damages from defendants sued in their individual capacity;

E. Reasonable attorneys' fees from all defendants pursuant to 42 U.S.C. §1988;

and

F. Such other and further relief that the Court may deem just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues of the within matter.

RUSSO LAW OFFICES, LLC

By: s/ BRAD M. RUSSO
BRAD M. RUSSO
Attorney for Plaintiff
633 Belvidere Road
Phillipsburg, NJ 08865
(908)454-0806

Dated: 4/21/17

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALAN MURPHY, Administrator of the	:	
Estate of Arthur J. Murphy, Deceased	:	
	:	Civil Action No.: 3:15-cv-07102-FLW-TJB
Plaintiff,	:	
	:	
-vs-	:	
MIDDLESEX COUNTY, WARDEN	:	
EDMUND CICCHI, OFFICER	:	
CHRISTOPHER BELINSKY, OFFICER	:	
BRIAN FOGARTY, OFFICER DANIEL	:	
MARCINKO, LT. MICHAEL	:	
DOMANOSKI, OFFICER EUGENE	:	
MARRA, SGT. JASON TURNER,	:	
OFFICER ANTHONY PORCELLA,	:	
OFFICER TOBY METZGER, OFFICER	:	
JOHN BARTLINSKI, JR., POLICE	:	
OFFICER BRIAN FAVRETTO, POLICE	:	
OFFICER DOUGLAS TURNER and	:	
JOHN DOES 1-10	:	
	:	
Defendants.	:	
	:	

CERTIFICATION OF SERVICE

I hereby certify that in addition to electronically filing same with the Court on this day, I caused a copy of Plaintiff's Amended Complaint upon the following parties via electronic filing:

Patrick J. Bradshaw, Esquire
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New Brunswick, NJ 08901

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RUSSO LAW OFFICES, LLC

By: /s/ BRAD M. RUSSO
BRAD M. RUSSO
Attorney for Plaintiffs

Dated: 4/21/17

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALAN MURPHY, as Administrator of the Estate of Arthur J. Murphy, Deceased,	:	
	:	Civil Action No.: 15-7102
Plaintiff,	:	
	:	
-vs-	:	
	:	JURY TRIAL DEMANDED
MIDDLESEX COUNTY, WARDEN	:	
EDMUND CICCHI, OFFICER	:	
CHRISTOPHER BELINSKY, OFFICER	:	
BRIAN FOGARTY, OFFICER DANIEL	:	
MARCINKO, LT. MICHAEL	:	SECOND AMENDED COMPLAINT
DOMANOSKI, OFFICER EUGENE	:	
MARRA, SGT. JASON TURNER,	:	
OFFICER ANTHONY PORCELLA,	:	
OFFICER TOBY METGZER, OFFICER	:	
JOHN BARTLINSKI, JR., POLICE	:	
OFFICER BRIAN FAVRETTO, POLICE	:	
OFFICER DOUGLAS TURNER,	:	
ANDREW C. CAREY, MICHAEL	:	
DANIEWICZ, and JOHN DOES 1-10,	:	
	:	
Defendants.	:	
	:	
	:	

COMPLAINT

The Plaintiff, Alan Murphy, as general administrator and administrator ad prosequendum of the Estate of Arthur J. Murphy, by way of complaint against the Defendants says:

INTRODUCTORY STATEMENT

1. The Plaintiff brings this action to recover damages for the unlawful seizure and the utilization of excessive force which caused the death of Arthur Murphy while in the custody of the Defendants. This is an action for violation of the Plaintiff’s federal constitutional and civil rights

guaranteed under 42 U.S.C. Section 1983, or violation of Plaintiff's rights under the United States Constitution and for violation of the Plaintiffs rights otherwise guaranteed under the laws and Constitution of the State of New Jersey. The Plaintiff seeks monetary damages for the wrongful death and for the deprivation of Arthur Murphy's constitutional and civil rights, which caused him to suffer great pain, mental anguish and ultimately caused his death.

JURISDICTION & VENUE

2. The Plaintiff bring this action under 42 U.S.C. §1983 which provides a civil action against persons who under color of law deprive a citizen of federal constitutional rights. This Court has jurisdiction over all counts in this matter pursuant to 28 U.S.C. §§1331 and 1343.

3. Plaintiff further invokes the pendent jurisdiction of this Court, pursuant to 28 U.S.C. §1367 to hear and decide claims brought pursuant to the New Jersey Constitution and the common law of the State of New Jersey.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that all Defendants either reside in or are political subdivisions of, the State of New Jersey, and a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in the State and District of New Jersey.

THE PARTIES

5. The Plaintiff, ALAN MURPHY, is the general administrator and administrator ad prosequendum of the Estate of Arthur Murphy and a resident of the State of New Jersey.

6. At the time of his death, ARTHUR MURPHY ("Mr. Murphy") was a pre-trial detainee, and was involuntarily committed to the care and custody of the Middlesex Adult Correction Center on November 26, 2013. At all times hereinafter referenced Mr. Murphy was a citizen of the United States.

7. At all times relevant hereto, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 were duly appointed Correctional Officers employed by the Middlesex County Department of Corrections at the Middlesex Adult Correction Center located on US-130 in the Township of North Brunswick, County of Middlesex, State of New Jersey. As corrections officers, these individuals were acting under the color of state law and were responsible for the care, custody, safety and well-being of Plaintiff and all inmates incarcerated at the Middlesex Adult Correction Center. These Defendants are sued individually and in their official capacities.

8. At all times relevant hereto, Defendant, EDMOND CICCHI was the Director of the Middlesex County Department of Corrections and the duly appointed Warden of the Middlesex County Adult Correctional Facility. In said capacity EDMOND CICCHI was responsible for the care and management of the Middlesex Adult Correction Center prisoners and for the training, supervision, discipline and conduct of its corrections officers and staff. Defendant EDMOND CICCHI was also, at all times, responsible for the placement of security and/or surveillance equipment, including but not limited to video/audio cameras, to monitor and ensure the security, safety and proper handling of all inmates by corrections officers at said facility. He was also responsible for enforcing the rules and regulations of the Middlesex County Department of Corrections and the rules and regulations promulgated through the Middlesex County Prosecutor's Office and the Office of the Attorney General of the State of Jersey. At all relevant times, EDMOND CICCHI was acting in such capacity as the agent, servant and employee of the Defendants, Middlesex County and the Middlesex County Department of Corrections. He is sued

individually and in his official capacity.

9. Defendant, MIDDLESEX COUNTY, was at all times mentioned herein, and is, a County government organized and chartered under the laws of the State of New Jersey. Defendant, MIDDLESEX COUNTY, is an independent regional governing body created and authorized under the laws of the State of New Jersey to maintain, control and/or supervise the Middlesex County Department of Corrections. MIDDLESEX COUNTY is vested with the creation, development and implementation of policies and procedures utilized by the Middlesex County Department of Corrections. This Defendant is at all times responsible for the management, administration and conduct of its employees, agents and servants who work at the Middlesex Adult Correction Center, including the above officers, as it relates to the care and custody of individuals incarcerated therein.

10. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

11. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to security measures, cameras, and devices to ensure safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

12. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the screening, hiring and training of corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER

ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR.
and John & Jane Does 1-10, relating to the care, custody, safety and well-being of inmates
incarcerated at the Middlesex Adult Correction Center.

13. Defendant MIDDLESEX COUNTY is and was at all times responsible for
oversight of the Middlesex Adult Correction Center, including the implementation of its policies,
procedures and/or guidelines and decision-making of Defendant EDMOND CICCHI.

14. Defendant MIDDLESEX COUNTY is and was at all times responsible for
oversight of disciplinary actions taken by Defendant EDMOND CICCHI as it relates to the
utilization of excessive force on inmates by corrections officers, to ensure the protection of inmates
and removal or sanctioning of corrections officers who violate the policies and procedures of the
jail.

15. Defendant MIDDLESEX COUNTY is and was, at all times, responsible to not only
train its corrections officers in matters relating to mental illness and the utilization of excessive
force against inmates, but also to actively devise and implement a system of supervision to prevent
future instances.

16. At all times relevant herein, Defendant ANDREW C. CAREY was the Middlesex
Prosecutor and the chief law enforcement officer for the County of Middlesex. As a constitutional
officer charged with the broad obligation "to use all reasonable and lawful diligence for the
detection, arrest, indictment and conviction of offenders against the laws," the Prosecutor has wide-
ranging authority over the law enforcement community in Middlesex county. Pursuant to New
Jersey Attorney General Guidelines, this Defendant is responsible for conducting mandatory
internal affairs investigations when a Middlesex County law enforcement officer utilizes force
which results in serious bodily injury or death, in accordance with New Jersey Attorney General

Law Enforcement Directive No. 2006-5. This Defendant is sued in his individual capacity as to Count V; in his official capacity as to the claim for declaratory relief contained in Count VII, and in his individual capacity for all other claims for relief contained in Count VII.

17. Defendant ANDREW C. CAREY is and was at all times material herein responsible for the implementation of the New Jersey Attorney General directives relating to internal affairs investigations when Middlesex County law enforcement personnel utilize force which results in serious bodily injury or death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

18. Defendant ANDREW C. CAREY had final policy and oversight authority for internal affairs investigations conducted by the Middlesex County Prosecutor's Office.

19. Pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5, when a law enforcement officer employed by a municipal or county agency is involved in any use of force involving death or serious bodily injury or where a firearm is used, the County Prosecutor's Office in the county of occurrence will conduct the investigation.

20. The Middlesex County Prosecutor's Office did conduct an internal affairs investigation regarding the altercation and death of ARTHUR MURPHY on November 26, 2013, at the Middlesex County Adult Correctional Center, as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.

21. Defendant MICHAEL DANIEWICZ, was, at all times material herein, a Sergeant in the Middlesex County Prosecutor's Office. Sergeant DANIEWICZ was the "investigator assigned" to conduct the internal affairs investigation into the death of Arthur Murphy at the Middlesex County Adult Correctional Facility. In conducting the internal affairs investigation, Sergeant DANIEWICZ, was bound by the procedures set forth by the New Jersey Attorney General Law

Enforcement Directive No. 2006-5. Upon completing the investigation into the death of Arthur Murphy, Sergeant DANIEWICZ recommended the following disposition on the “Investigation Close-Out Report”: “Close File”. Sergeant DANIEWICZ did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, Sergeant DANIEWICZ closed the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his individual capacity.

22. Defendant John Doe #1, was, at all times material herein, a Sergeant in the Middlesex County Prosecutor’s Office, whose identity is unknown to the Plaintiff. Defendant John Doe #1 was the “immediate supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “immediate supervisor”, John Doe’s signature represents his/her “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. John Doe #1 did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, John Doe #1 allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his/her individual capacity.

23. Defendant John Doe #2, was, at all times material herein, a Sergeant in the Middlesex County Prosecutor’s Office, whose identity is unknown to the Plaintiff. Defendant John Doe #2 was the “2nd level supervisor” who signed the June 16, 2014, “Investigation Close-Out

Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “2nd level supervisor”, John Doe’s signature represents his/her “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. John Doe #2 did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, John Doe #2 allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his/her individual capacity.

24. Defendant John Doe #3, was, at all times material herein, an employee/agent with an unknown title in the Middlesex County Prosecutor’s Office, whose identity is unknown to the Plaintiff. Defendant John Doe #3 was the “AP Supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “AP Supervisor”, John Doe’s signature represents his/her “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. John Doe #3 did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, John Doe #3 allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his/her individual capacity.

25. At all times relevant hereto, Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were duly appointed Officers employed by the Edison Township Police Department located in the County of Middlesex, State of New Jersey. Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were acting under the color of state law and responsible for not violating the constitutional rights of citizens, including:

- a. effecting an arrest only upon a warrant or upon probable cause that the crime charged has been committed;
- b. utilizing criminal proceedings to act maliciously or for a purpose other than bringing a person to justice; or
- c. unlawfully seizing and/or falsely imprisoning a citizen without probable cause.

These Officers are sued individually and in their official capacities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Arrest and Seizure of Murphy

26. On November 26, 2013, Edison Police responded to a report of a person inside an abandoned and uninhabited building located at 1642 Oak Tree Road, Edison, New Jersey.

27. Upon arrival at the property, Officers Brian Favretto and Douglas Turner immediately observed that the property had been previously deemed uninhabitable by the Township and was painted with a red spray paint box with an "x" through it indicating such.

28. An investigation of the inside of the building by Officers Favretto and Turner revealed that the dwelling contained no furniture, electricity or running water and was in poor condition.

29. Mr. Murphy was observed inside the abandoned and uninhabited structure. Officers

Favretto and Turner initiated conversation with Mr. Murphy.

30. At no point did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

31. At no time did probable cause exist to suspect Mr. Murphy entered the structure with a purpose to commit any offense therein.

32. The structure at issue was readily identifiable to be abandoned within the meaning ascribed by N.J.S.A. 2C:18-3(d)(1).

33. At no time did probable cause exist to suspect Mr. Murphy committed the offense of Criminal Trespass (N.J.S.A. 2C:18-3(a)).

34. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that probable cause existed of an indictable offense.

35. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that Mr. Murphy presented a risk of harm to himself or others. In particular, on November 26, 2013, a court order did not exist for the involuntary commitment of Mr. Murphy. On November 26, 2013, a mental health screener did not certify on a form prescribed by the Division that, based on a screening outreach visit, Mr. Murphy was in need of involuntary commitment.

36. On November 26, 2013, Officers Favretto and Turner did not request a crisis worker conduct an evaluation of Mr. Murphy.

37. Officers Favretto and Turner's detention of Mr. Murphy on November 26, 2013, was a seizure within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

38. On November 26, 2013, Officers Favretto and Turner advised Mr. Murphy that there was a bed available for him at the Perth Amboy Shelter. Mr. Murphy declined transport to the

facility. In retaliation of his refusal to be transported to the Shelter, Mr. Murphy was advised that he was being charged with Criminal Trespass (N.J.S.A. 2C:18-3(a)).

39. At no point while at the facility of the Edison Police Department did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

40. Police officers from the Edison Police Department then transported Mr. Murphy to the Middlesex Adult Correction Center.

Events at the Middlesex Adult Correction Center

41. On November 26, 2013, at approximately 8:43 p.m., Mr. Murphy arrived at the Receiving and Discharge Unit of the Middlesex Adult Correction Center.

42. Upon arrival Mr. Murphy answered general intake questions but refused to be fingerprinted.

43. In retaliation for being uncooperative with fingerprinting, it was decided that Mr. Murphy would undergo a strip search.

44. Under the guise of conducting a strip search, various corrections officers escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance.

45. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

46. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', Mr. Murphy was violently taken to the ground and into the prone position by the surrounding officers.

47. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited his vulnerable and

defenseless position by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes to various portions of his body, oleoresin capicum (OC) spray to his eyes, compliance holds to his extremities and the placement of a 'spit mask' over his face.

48. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick the officers', force continued to be utilized until Mr. Murphy was eventually unresponsive.

49. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

50. During each infliction of force against Mr. Murphy, the Defendant Corrections Officers would either act directly in concert or match or surpass each other's violence with further unnecessary escalation by the other.

51. In less than one hour after first arriving at the Middlesex County Adult Correctional Facility, Arthur Murphy was lifelessly lying on the floor of a small 'change out' room with no cameras; his pants were removed, his heart was not beating, blood was flowing from his mouth and head and Mr. Murphy was not breathing.

52. At no point thereafter would Mr. Murphy regain a pulse or breathe again.

53. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

54. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

55. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

Subsequent Investigation

56. Within hours of the incident, the above corrections officers and jail staff/administration completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

57. The Middlesex County Prosecutor's Office conducted an internal affairs investigation into this matter.

58. This matter involved the use of force by law enforcement, resulting in death or serious injury to a person.

59. The investigation was required to be conducted in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

60. Eventually the Internal Affairs Investigation was closed in or about June of 2014 and no wrongdoing was found regarding any law enforcement officer involved.

61. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that "[w]here the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury".

62. Despite the direct requirement to do so, the Defendant ANDREW C. CAREY failed

to submit this matter for grand jury review or obtain prior approval from the Division of Criminal Justice.

63. Instead Defendant ANDREW C. CAREY closed the investigation without grand jury review and cleared the officers involved of any wrongdoing. In so doing, Defendant ANDREW C. CAREY violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers' conduct would not be disciplined.

64. Defendant MICHAEL DANIEWICZ was the "investigator assigned" to conduct the internal affairs investigation into the death of Arthur Murphy at the Middlesex County Adult Correctional Facility. In conducting the internal affairs investigation, Sergeant DANIEWICZ, was bound by the procedures set forth by the New Jersey Attorney General Law Enforcement Directive No. 2006-5. Upon completing the investigation into the death of Arthur Murphy, Sergeant DANIEWICZ recommended the following disposition on the "Investigation Close-Out Report": "Close File". Sergeant DANIEWICZ did not recommend or require any other disposition, including "Refer to Grand Jury" on the close-out report. Thereafter, Sergeant DANIEWICZ closed the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the "undisputed facts indicate that the use of force was justifiable under the law" pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5.

65. Defendant John Doe #1 was the "immediate supervisor" who signed the June 16, 2014, "Investigation Close-Out Report" pertaining to the internal affairs investigation into the death of Arthur Murphy. As the "immediate supervisor", John Doe's signature represents his/her "concurrence" and approval of the recommended disposition on the "Investigation Close-Out

Report”: “Close File”. John Doe #1 did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, John Doe #1 allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. In so doing, Defendant John Doe #1 violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers’ conduct would not be disciplined.

66. Defendant John Doe #2 was the “2nd level supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “2nd level supervisor”, John Doe’s signature represents his/her “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. John Doe #2 did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, John Doe #2 allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. In so doing, Defendant John Doe #2 violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers’ conduct would not be disciplined.

67. Defendant John Doe #3 was the “AP Supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “AP Supervisor”, John Doe’s signature represents his/her “concurrence”

and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. John Doe #3 did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, John Doe #3 allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. In so doing, Defendant John Doe #3 violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers’ conduct would not be disciplined.

68. At no point while at the Middlesex County Prison did the Decedent display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

69. The utilization of force against Mr. Murphy ultimately caused his death.

70. The Middlesex County Medical Examiner, Andrew Falzon, M.D., determined the manner of Arthur Murphy’s death to be “homicide”.

COUNT I: UNLAWFUL ARREST/SEIZURE, DEPRIVATION OF LIBERTY
(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

71. Plaintiffs incorporate by reference paragraphs 1 – 70 as though fully set forth herein.

72. Plaintiff has a right to be secure in his person and property against unreasonable seizure as guaranteed under the Fourth Amendment to the United States Constitution and has a right not to be deprived of life, liberty, or property without due process of law and to be accorded the equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

73. The Fourth Amendment to the United States Constitution prohibits a police officer from arresting and/or incarcerating a citizen except upon probable cause.

74. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

75. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from an unlawful detention, to be secure in his person and property and to due process and equal protection of the law under the Constitution of the United States, in particular, the Fourth and Fourteenth Amendments thereof and 42 U.S.C. § 1983.

76. That as a result of the deprivation of Plaintiff's constitutional rights, he suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT II: MALICIOUS PROSECUTION

(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

77. Plaintiffs incorporate by reference paragraphs 1 – 76 as though fully set forth herein.

78. Plaintiff has a right guaranteed under the Fourteenth Amendment to the United States Constitution to be free from malicious prosecution.

79. The Fourth Amendment to the United States Constitution prohibits a police officer from initiating a criminal proceeding against a citizen, without probable cause, maliciously or for a purpose other than bringing the accused to justice.

80. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

81. Officers FAVRETTO and TURNER initiated criminal charges against Mr. Murphy for a purpose other than justice; namely in retaliation for his refusal to be transported to

a homeless shelter.

82. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from malicious prosecution under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

83. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

COUNT III: DUE PROCESS

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

84. Plaintiffs incorporate by reference paragraphs 1 – 83 as though fully set forth herein.

85. Plaintiff, as a pre-trial detainee, may not be punished prior to an adjudication of guilt in accordance with due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution.

86. The Fourteenth Amendment to the United States Constitution prohibits a corrections officer from utilizing force which is unreasonable in light of the facts and circumstances presented at the time.

87. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In

addition, the use and degree of force applied to Mr. Murphy was not rationally related to a legitimate non-punitive governmental purpose, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

88. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from punishment without due process of the law under the Constitution of the United States, in particular, the Fourteenth Amendment thereof and 42 U.S.C. § 1983.

89. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT IV: EXCESSIVE FORCE

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

90. Plaintiffs incorporate by reference paragraphs 1 – 89 as though fully set forth herein.

91. Plaintiff has a right to be secure in his person and property against excessive force as guaranteed under the Fourth Amendment to the United States Constitution.

92. The Fourth Amendment to the United States Constitution prohibits a corrections officer from utilizing force against a pre-trial detainee which is unreasonable in light of the facts and circumstances confronting them.

93. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN

FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not objectively reasonable in light of the facts and circumstances presenting them, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

94. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

95. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT V: CONSPIRACY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, Bartlinski, Michael Daniewicz, John Doe #1, John Doe #2, John Doe #3 and Andrew C. Carey)

96. Plaintiffs incorporate by reference paragraphs 1 – 95 as though fully set forth herein.

97. On November 25, 2013, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL

DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., MICHAEL DANIEWICZ, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3 and ANDREW C. CAREY planned and/or otherwise agreed to conspire to violate Mr. Murphy's Fourth and Fourteenth Amendment rights to be free from the use of excessive force and pre-conviction punishment and also conspired to cover-up, not fully investigate and/or violated mandatory investigatory protocol to ensure those involved would not be disciplined.

98. The conspiracy formed or began when Mr. Murphy was deemed 'uncooperative' during portions of the intake process such as fingerprinting and answering certain intake questions. In retaliation for being uncooperative, the Defendants escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance, for the purpose of conducting a strip search. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

99. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', he was violently taken to the ground and into the prone position. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited the vulnerable and defenseless position of Mr. Murphy by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes, oleoresin capicum (OC) spray, compliance holds and the placement of a 'spit mask' over his face.

100. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick officers', force continued to be utilized until Mr. Murphy was unresponsive.

101. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

102. During each infliction of force against Mr. Murphy, the defendant corrections officers would either act directly in concert or match each other's violence with further unnecessary escalation by the other.

103. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

104. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

105. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

106. Within hours of the incident, the above corrections officers completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

107. Within hours of the incident, members of the Middlesex County Prosecutor's Office began conducting an investigation into the incident as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.

108. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that "[w]here the undisputed facts indicate that the use of force was justifiable

under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury”.

109. Despite the direct requirement to do so, Defendant ANDREW C. CAREY failed to submit this matter for independent grand jury review or obtain prior approval from the Division of Criminal Justice.

110. Instead the Middlesex County Prosecutor’s Office closed the investigation without grand jury review and cleared the officers involved of any wrongdoing. In so doing, Defendants MICHAEL DANIEWICZ, John Doe #1, John Doe #2, John Doe #3 and ANDREW C. CAREY violated required investigative protocol and did not allow for any public transparency, oversight or independent review into their investigation of the incident.

111. The decision to violate required investigative protocol was for the purpose of shielding the officers involved from exposure to discipline and/or criminal liability.

112. The decision to violate required investigative protocol was pursuant to an inferred agreement with the officers involved in shielding them from exposure to discipline and/or criminal liability.

113. The decision to violate required investigative protocol was in furtherance of the overall conspiratorial objective to violate the Decedent’s constitutional rights and cover-up the wrongdoing of the officers involved. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., MICHAEL

DANIEWICZ, John Doe #1, John Doe #2, John Doe #3 and ANDREW C. CAREY in violation of 42 U.S.C. § 1983, conspired and acted with deliberate indifference to Mr. Murphy's Fourth and Fourteenth Amendment rights to be free the use of excessive force and punishment prior to an adjudication to guilt.

114. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., MICHAEL DANIEWICZ, John Doe #1, John Doe #2, John Doe #3, ANDREW C. CAREY and John & Jane Does 4-10, conspiratorial conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from the infliction of excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and his right to be free punishment prior to an adjudication of his guilt under the Constitution of the United States, in particular, the Fourteenth Amendment thereof.

115. That solely as a result of the conspiracy to deprive Plaintiff of his constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

116. As to Count V, Defendants MICHAEL DANIEWICZ, John Doe #1, John Doe #2, John Doe #3 and ANDREW C. CAREY are sued in their individual capacities.

COUNT VI: ASSAULT/BATTERY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

117. Plaintiffs incorporate by reference paragraphs 1 – 116 as though fully set forth herein.

118. The conduct of Defendants, OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, as described above were carried out intentionally for the express purpose of interfering with Mr. Murphy's personal integrity and resulted in an unpermitted harmful and offensive contact with Mr. Murphy, and thus constitute assault and battery.

119. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, Mr. Murphy was contacted in a harmful and offensive manner.

120. That as a result of the assault/battery of Plaintiff, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

**COUNT VII: COUNTY AND SUPERVISORY LIABILITY FOR
DEPRIVATION OF CONSTITUTIONAL RIGHTS**

**(Murphy v. Middlesex County, Andrew C. Carey
and Warden Edmund Cicchi)**

121. Plaintiffs incorporate by reference paragraphs 1 – 120 as though fully set forth herein.

122. Upon information and belief, Defendants MIDDLESEX COUNTY and Warden EDMUND CICCHI have repeatedly and knowingly failed to enforce the laws of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, thereby creating within the Middlesex County Adult Correctional Facility an atmosphere of lawlessness in

which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by their superiors.

123. Upon information and belief, Defendant ANDREW C. CAREY, has repeatedly and knowingly failed to enforce the laws and requirements of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, in particular – the required investigative protocol for ensuring a full and transparent investigation and discipline of law enforcement where warranted. As a result, this Defendant created an environment whereby County law enforcement officials, including those within the Middlesex County Adult Correctional Facility, operated without fear of discipline and in an atmosphere in which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by the County investigative officials.

124. In addition, the failure of Defendant ANDREW C. CAREY to require full investigations and accountability in the utilization of force by law enforcement in past instances, including by not submitting the matters for independent review by a grand jury, condoned past instances of abuse and encouraged law enforcement that the future utilization of excessive force would not result in reprimands, discipline, termination or a full transparent investigation.

125. In violating required investigative protocol, namely the vital step of submitting investigations involving death or serious bodily for independent grand jury review, Defendant ANDREW C. CAREY structured the internal affairs investigative policies and customs to curtail disciplinary action and stifle investigations into law enforcement officers in the County of Middlesex.

126. In violating required investigative protocol, namely the vital step of submitting investigations involving death or serious bodily for independent grand jury review, Defendant

ANDREW C. CAREY relegated the internal affairs investigative policies and customs to cover the violent behavioral patterns of law enforcement under investigation, to protect them from disciplinary action, and thereby perpetuate the County's custom of acquiescing in the excessive use of force by its law enforcement officers.

127. Accordingly, in failing to follow mandatory Attorney General Directives and fully investigate previous 'matters involving the use of force by law enforcement involving death or serious injury to a person' the Defendant ANDREW C. CAREY directly contributed to the constitutional violations upon the decedent.

128. At the time of the incidents described above, MIDDLESEX COUNTY, Prosecutor ANDREW C. CAREY and Warden EDMUND CICCHI had developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of inmates in Middlesex County Adult Correctional Facility, which caused Mr. Murphy's rights to be violated.

129. It was the policy, practice and/or custom of MIDDLESEX COUNTY, Prosecutor ANDREW C. CAREY and Warden EDMUND CICCHI to inadequately, improperly and fraudulently investigate inmates' complaints of misconduct on the part of corrections officers. These instances of misconduct were instead tolerated and/or covered-up by the MIDDLESEX COUNTY, Prosecutor ANDREW C. CAREY and Warden EDMUND CICCHI. The officers engaged in the misconduct would also not be reprimanded or disciplined for their misconduct.

130. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN

BARTLINSKI, JR. regarding the lawful use of force, thereby failing to discourage further constitutional violations on the part of its officers and sergeants. MIDDLESEX COUNTY and Warden EDMUND CICCHI did not require appropriate in-service training or retraining of officers who were known to have previously engaged in misconduct.

131. Defendants, EDMOND CICCHI, Warden of the Middlesex County Adult Correctional Facility, and MIDDLESEX COUNTY, authorized and tolerated such conduct as an institutionalized practice, and by such action ratified the misconduct hereinabove detailed by:

- a. Failing to properly discipline, restrict and control employees including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 and other employees, correctional personnel known to be irresponsible in their dealings with citizens;
- b. Failing to take adequate precautions in the hiring, promotion and retention of personnel;
- c. Failing to train personnel;
- d. Failing to abide by the rules and regulations set down by the office of the Attorney General of the State of New Jersey and the Middlesex County Prosecutor's Office on matters relating to oversight, supervision and discipline of police and corrections personnel; and
- e. Failing to establish and/or assure the functioning of a bona fide and meaningful departmental system for addressing complaints of correctional employees and/or

police misconduct and failing to properly oversee and regulate the conduct of department's affairs through its Warden.

132. Defendants EDMOND CICCHI, ANDREW C. CAREY and MIDDLESEX COUNTY knew of corrections officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Specifically, there were prior beating incidents by corrections officers against helpless inmates who, in some instances, were restrained in hand cuffs/shackles and, in some instances, resulted in death. However, EDMOND CICCHI and others in charge of the policies of the jail attempted to justify and/or cover-up these instances instead of enforcing policies against the excessive use of force.

133. Defendant EDMOND CICCHI and MIDDLESEX COUNTY knew of correctional officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Indeed other similar lawsuits have been filed as a result of the continuing pattern of excessive force and abuse at the Middlesex County Adult Correctional Facility which was permitted under the policies of Defendant EDMOND CICCHI and MIDDLESEX COUNTY. Thus, Defendant EDMOND CICCHI and MIDDLESEX COUNTY engaged in a pattern of acquiescence and even communicating a message of approval for the excessive force and abuse of inmates by corrections officers and other staff.

134. These prior attacks against inmates by corrections officers at the Middlesex County Adult Correctional Facility were not in compliance with its own use of force policy.

135. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY failed to adopt a practice of disciplining officers for violations of the use of force policy.

136. On information and belief, Defendant EDMOND CICCHI 's and MIDDLESEX COUNTY's failure to adopt a practice of disciplining officers for violations of the use of force

policy was deliberately indifferent to the risk of physical harm to the inmates of Middlesex County Adult Correctional Facility, including Mr. Murphy.

137. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to enforce the use of force policy.

138. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to discipline officers for violating the use of force policy.

139. As a result of the above-described policies, practices and customs, corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be condoned.

140. As a result of the above-described policies, practices and customs, supervisory personnel such as LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA and SGT. JASON TURNER, not only failed to intervene to stop the misconduct of the corrections officers, but rather joined concertedly with the officers and participated in the use of excessive force against Mr. Murphy.

141. On information and belief, Defendant OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY

PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 attack of Mr. Murphy resulted from EDMOND CICCHI's and MIDDLESEX COUNTY's failure to enforce the use of force policy and/or failure to discipline officers for violating the use of force policy.

142. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the County of Middlesex and the policymakers of the Middlesex County Prosecutor's Office, to the constitutional rights of Mr. Murphy alleged herein.

143. It was also the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other staff to identify inmates with mental health problems and to address the medical needs of these inmates.

144. As a result of the above-described policies, practices and customs, corrections and other custody officers of the Middlesex Adult Correctional Facility, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., failed to identify and address the mental health needs of Mr. Murphy.

145. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the MIDDLESEX COUNTY, ANDREW C. CAREY and Warden EDMUND CICCHI to the constitutional rights of Mr. Murphy alleged herein.

146. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other employees and agents on the appropriate methods of restraining inmates, thereby exhibiting deliberate

indifference to the constitutional rights of inmates in their custody, including Mr. Murphy.

147. As to Count VII, Defendant ANDREW C. CAREY is sued in his official capacity for declaratory relief and in his individual capacity for all other relief.

COUNT VIII: WRONGFUL DEATH / SURVIVORSHIP ACT

(Estate of Murphy v. All Defendants, except Brian Favretto, Douglas Turner, Andrew Carey, Michael Daniewicz and John Does 1-3)

148. Plaintiffs incorporate by reference paragraphs 1 – 147 as though fully set forth herein.

149. The conduct of Defendants, as described above subjects them to liability to the Plaintiff for the emotional trauma, including conscious pain and suffering until he expired on November 26, 2013, pursuant to the dictates of the New Jersey Survivor's Act N.J.S.A. 2A:15-3, *et. seq.*

150. The Defendants are also liable to the Plaintiff due to the wrongful death of the Decedent by the State of New Jersey's Wrongful Death Act, known and designated as N.J.S.A. 2A:31-1, *et. seq.*

151. The harmed inflicted upon Mr. Murphy was the result of the Defendants' acts and/or omissions, and such acts and/or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of the foreseeable risk to Mr. Murphy's health and safety. Therefore, the Defendants are liable to the Plaintiff pursuant to the dictates of the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, *et seq.*

DEMAND FOR JUDGMENT

152. WHEREFORE, unless otherwise set forth above, the Estate of Arthur J. Murphy, requests the following relief:

A. Compensatory damages from all defendants for the injuries, humiliation, pain and suffering, emotional distress, psychiatric, psychological, mental anguish and/or wrongful death as a result of the November 26, 2013 incident;

B. Compensatory damages from all defendants for legal bills, medical bills, funeral expenses and/or other expenses that Plaintiff incurred or will incur in the future as a result of the November 26, 2013 incident;

C. Compensatory damages from all defendants for the value of the federal constitutional rights invaded to Arthur Murphy;

D. Punitive damages from defendants sued in their individual capacity;

E. Reasonable attorneys' fees from all defendants pursuant to 42 U.S.C. §1988; and

F. Such other and further relief that the Court may deem just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues of the within matter.

RUSSO LAW OFFICES, LLC

By: s/ BRAD M. RUSSO
BRAD M. RUSSO
Attorney for Plaintiff
633 Belvidere Road
Phillipsburg, NJ 08865
(908)454-0806

Dated: 1/11/18

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALAN MURPHY, Administrator of the	:	
Estate of Arthur J. Murphy, Deceased	:	
	:	Civil Action No.: 3:15-cv-07102-FLW-TJB
Plaintiff,	:	
	:	
-vs-	:	
	:	
MIDDLESEX COUNTY, WARDEN	:	
EDMUND CICCHI, OFFICER	:	
CHRISTOPHER BELINSKY, OFFICER	:	
BRIAN FOGARTY, OFFICER DANIEL	:	
MARCINKO, LT. MICHAEL	:	
DOMANOSKI, OFFICER EUGENE	:	
MARRA, SGT. JASON TURNER,	:	
OFFICER ANTHONY PORCELLA,	:	
OFFICER TOBY METGZER, OFFICER	:	
JOHN BARTLINSKI, JR., POLICE	:	
OFFICER BRIAN FAVRETTO, POLICE	:	
OFFICER DOUGLAS TURNER,	:	
ANDREW C. CAREY, MICHAEL	:	
DANIEWICZ, and JOHN DOES 1-10,	:	
	:	
Defendants.	:	

CERTIFICATION OF SERVICE

I hereby certify that in addition to electronically filing same with the Court on this day, I caused a copy of Plaintiff's Second Amended Complaint upon the following parties via electronic filing:

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RUSSO LAW OFFICES, LLC

By: /s/ BRAD M. RUSSO
BRAD M. RUSSO
Attorney for Plaintiffs

Dated: 01/12/2018

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALAN MURPHY, as Administrator of the
Estate of Arthur J. Murphy, Deceased,

Plaintiff,

-vs-

MIDDLESEX COUNTY, WARDEN
EDMUND CICCHI, OFFICER
CHRISTOPHER BELINSKY, OFFICER
BRIAN FOGARTY, OFFICER DANIEL
MARCINKO, LT. MICHAEL
DOMANOSKI, OFFICER EUGENE
MARRA, SGT. JASON TURNER,
OFFICER ANTHONY PORCELLA,
OFFICER TOBY METGZER, OFFICER
JOHN BARTLINSKI, JR., POLICE
OFFICER BRIAN FAVRETTO, POLICE
OFFICER DOUGLAS TURNER,
ANDREW C. CAREY, MICHAEL
DANIEWICZ, GEORGE TRILLHAASE,
PAUL MILLER, SHEREE PITCHFORD
and JOHN DOES 1-10,

Defendants.

Civil Action No.: 15-7102

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT

COMPLAINT

The Plaintiff, Alan Murphy, as general administrator and administrator ad prosequendum of the Estate of Arthur J. Murphy, by way of complaint against the Defendants says:

INTRODUCTORY STATEMENT

1. The Plaintiff brings this action to recover damages for the unlawful seizure and the utilization of excessive force which caused the death of Arthur Murphy while in the custody of the Defendants. This is an action for violation of the Plaintiff's federal constitutional and civil rights

guaranteed under 42 U.S.C. Section 1983, or violation of Plaintiff's rights under the United States Constitution and for violation of the Plaintiffs rights otherwise guaranteed under the laws and Constitution of the State of New Jersey. The Plaintiff seeks monetary damages for the wrongful death and for the deprivation of Arthur Murphy's constitutional and civil rights, which caused him to suffer great pain, mental anguish and ultimately caused his death.

JURISDICTION & VENUE

2. The Plaintiff bring this action under 42 U.S.C. §1983 which provides a civil action against persons who under color of law deprive a citizen of federal constitutional rights. This Court has jurisdiction over all counts in this matter pursuant to 28 U.S.C. §§1331 and 1343.

3. Plaintiff further invokes the pendent jurisdiction of this Court, pursuant to 28 U.S.C. §1367 to hear and decide claims brought pursuant to the New Jersey Constitution and the common law of the State of New Jersey.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that all Defendants either reside in or are political subdivisions of, the State of New Jersey, and a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in the State and District of New Jersey.

THE PARTIES

5. The Plaintiff, ALAN MURPHY, is the general administrator and administrator ad prosequendum of the Estate of Arthur Murphy and a resident of the State of New Jersey.

6. At the time of his death, ARTHUR MURPHY ("Mr. Murphy") was a pre-trial detainee and was involuntarily committed to the care and custody of the Middlesex Adult Correction Center on November 26, 2013. At all times hereinafter referenced Mr. Murphy was a citizen of the United States.

7. At all times relevant hereto, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 were duly appointed Correctional Officers employed by the Middlesex County Department of Corrections at the Middlesex Adult Correction Center located on US-130 in the Township of North Brunswick, County of Middlesex, State of New Jersey. As corrections officers, these individuals were acting under the color of state law and were responsible for the care, custody, safety and well-being of Plaintiff and all inmates incarcerated at the Middlesex Adult Correction Center. These Defendants are sued individually and in their official capacities.

8. At all times relevant hereto, Defendant, EDMOND CICCHI was the Director of the Middlesex County Department of Corrections and the duly appointed Warden of the Middlesex County Adult Correctional Facility. In said capacity EDMOND CICCHI was responsible for the care and management of the Middlesex Adult Correction Center prisoners and for the training, supervision, discipline and conduct of its corrections officers and staff. Defendant EDMOND CICCHI was also, at all times, responsible for the placement of security and/or surveillance equipment, including but not limited to video/audio cameras, to monitor and ensure the security, safety and proper handling of all inmates by corrections officers at said facility. He was also responsible for enforcing the rules and regulations of the Middlesex County Department of Corrections and the rules and regulations promulgated through the Middlesex County Prosecutor's Office and the Office of the Attorney General of the State of Jersey. At all relevant times, EDMOND CICCHI was acting in such capacity as the agent, servant and employee of the Defendants, Middlesex County and the Middlesex County Department of Corrections. He is sued

individually and in his official capacity.

9. Defendant, MIDDLESEX COUNTY, was at all times mentioned herein, and is, a County government organized and chartered under the laws of the State of New Jersey. Defendant, MIDDLESEX COUNTY, is an independent regional governing body created and authorized under the laws of the State of New Jersey to maintain, control and/or supervise the Middlesex County Department of Corrections. MIDDLESEX COUNTY is vested with the creation, development and implementation of policies and procedures utilized by the Middlesex County Department of Corrections. This Defendant is at all times responsible for the management, administration and conduct of its employees, agents and servants who work at the Middlesex Adult Correction Center, including the above officers, as it relates to the care and custody of individuals incarcerated therein.

10. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

11. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to security measures, cameras, and devices to ensure safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

12. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the screening, hiring and training of corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER

ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

13. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight of the Middlesex Adult Correction Center, including the implementation of its policies, procedures and/or guidelines and decision-making of Defendant EDMOND CICCHI.

14. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight of disciplinary actions taken by Defendant EDMOND CICCHI as it relates to the utilization of excessive force on inmates by corrections officers, to ensure the protection of inmates and removal or sanctioning of corrections officers who violate the policies and procedures of the jail.

15. Defendant MIDDLESEX COUNTY is and was, at all times, responsible to not only train its corrections officers in matters relating to mental illness and the utilization of excessive force against inmates, but also to actively devise and implement a system of supervision to prevent future instances.

16. At all times relevant herein, Defendant ANDREW C. CAREY was the Middlesex Prosecutor and the chief law enforcement officer for the County of Middlesex. As a constitutional officer charged with the broad obligation "to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws," the Prosecutor has wide-ranging authority over the law enforcement community in Middlesex county. Pursuant to New Jersey Attorney General Guidelines, this Defendant is responsible for conducting mandatory internal affairs investigations when a Middlesex County law enforcement officer utilizes force which results in serious bodily injury or death, in accordance with New Jersey Attorney General

Law Enforcement Directive No. 2006-5. This Defendant is sued in his individual capacity as to Count V; in his official capacity as to the claim for declaratory relief contained in Count VII, and in his individual capacity for all other claims for relief contained in Count VII.

17. Defendant ANDREW C. CAREY is and was at all times material herein responsible for the implementation of the New Jersey Attorney General directives relating to internal affairs investigations when Middlesex County law enforcement personnel utilize force which results in serious bodily injury or death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

18. Defendant ANDREW C. CAREY had final policy and oversight authority for internal affairs investigations conducted by the Middlesex County Prosecutor's Office.

19. Pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5, when a law enforcement officer employed by a municipal or county agency is involved in any use of force involving death or serious bodily injury or where a firearm is used, the County Prosecutor's Office in the county of occurrence will conduct the investigation.

20. The Middlesex County Prosecutor's Office did conduct an internal affairs investigation regarding the altercation and death of ARTHUR MURPHY on November 26, 2013, at the Middlesex County Adult Correctional Center, as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.

21. Defendant MICHAEL DANIEWICZ, was, at all times material herein, a Sergeant in the Middlesex County Prosecutor's Office. Sergeant DANIEWICZ was the "investigator assigned" to conduct the internal affairs investigation into the death of Arthur Murphy at the Middlesex County Adult Correctional Facility. In conducting the internal affairs investigation, Sergeant DANIEWICZ, was bound by the procedures set forth by the New Jersey Attorney General Law

Enforcement Directive No. 2006-5. Upon completing the investigation into the death of Arthur Murphy, Sergeant DANIEWICZ recommended the following disposition on the “Investigation Close-Out Report”: “Close File”. Sergeant DANIEWICZ did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, Sergeant DANIEWICZ closed the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his individual capacity.

22. Defendant GEORGE TRILLAASE, was, at all times material herein, a Sergeant in the Middlesex County Prosecutor’s Office. Defendant GEORGE TRILLAASE was the “immediate supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “immediate supervisor”, GEORGE TRILLAASE ’s signature represents his “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. GEORGE TRILLAASE did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, GEORGE TRILLAASE allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his individual capacity.

23. Defendant PAUL MILLER, was, at all times material herein, a Sergeant in the Middlesex County Prosecutor’s Office. Defendant PAUL MILLER was the “2nd level supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs

investigation into the death of Arthur Murphy. As the “2nd level supervisor”, PAUL MILLER’s signature represents his “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. PAUL MILLER did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, PAUL MILLER allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his individual capacity.

24. Defendant SHEREE PITCHFORD, was, at all times material herein, an Assistant Prosecutor in the Middlesex County Prosecutor’s Office. Defendant SHEREE PITCHFORD was the “AP Supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “AP Supervisor”, SHEREE PITCHFORD’s signature represents her “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. SHEREE PITCHFORD did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, SHEREE PITCHFORD allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in her individual capacity.

25. At all times relevant hereto, Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were duly appointed Officers employed by the Edison Township Police Department located in the County of Middlesex, State of New Jersey.

Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were acting under the color of state law and responsible for not violating the constitutional rights of citizens, including:

- a. effecting an arrest only upon a warrant or upon probable cause that the crime charged has been committed;
- b. utilizing criminal proceedings to act maliciously or for a purpose other than bringing a person to justice; or
- c. unlawfully seizing and/or falsely imprisoning a citizen without probable cause.

These Officers are sued individually and in their official capacities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Arrest and Seizure of Murphy

26. On November 26, 2013, Edison Police responded to a report of a person inside an abandoned and uninhabited building located at 1642 Oak Tree Road, Edison, New Jersey.

27. Upon arrival at the property, Officers Brian Favretto and Douglas Turner immediately observed that the property had been previously deemed uninhabitable by the Township and was painted with a red spray paint box with an "x" through it indicating such.

28. An investigation of the inside of the building by Officers Favretto and Turner revealed that the dwelling contained no furniture, electricity or running water and was in poor condition.

29. Mr. Murphy was observed inside the abandoned and uninhabited structure. Officers Favretto and Turner initiated conversation with Mr. Murphy.

30. At no point did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

31. At no time did probable cause exist to suspect Mr. Murphy entered the structure with a purpose to commit any offense therein.

32. The structure at issue was readily identifiable to be abandoned within the meaning ascribed by N.J.S.A. 2C:18-3(d)(1).

33. At no time did probable cause exist to suspect Mr. Murphy committed the offense of Criminal Trespass (N.J.S.A. 2C:18-3(a)).

34. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that probable cause existed of an indictable offense.

35. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that Mr. Murphy presented a risk of harm to himself or others. In particular, on November 26, 2013, a court order did not exist for the involuntary commitment of Mr. Murphy. On November 26, 2013, a mental health screener did not certify on a form prescribed by the Division that, based on a screening outreach visit, Mr. Murphy was in need of involuntary commitment.

36. On November 26, 2013, Officers Favretto and Turner did not request a crisis worker conduct an evaluation of Mr. Murphy.

37. Officers Favretto and Turner's detention of Mr. Murphy on November 26, 2013, was a seizure within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

38. On November 26, 2013, Officers Favretto and Turner advised Mr. Murphy that there was a bed available for him at the Perth Amboy Shelter. Mr. Murphy declined transport to the facility. In retaliation of his refusal to be transported to the Shelter, Mr. Murphy was advised that he was being charged with Criminal Trespass (N.J.S.A. 2C:18-3(a)).

39. At no point while at the facility of the Edison Police Department did Mr. Murphy

display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

40. Police officers from the Edison Police Department then transported Mr. Murphy to the Middlesex Adult Correction Center.

Events at the Middlesex Adult Correction Center

41. On November 26, 2013, at approximately 8:43 p.m., Mr. Murphy arrived at the Receiving and Discharge Unit of the Middlesex Adult Correction Center.

42. Upon arrival Mr. Murphy answered general intake questions but refused to be fingerprinted.

43. In retaliation for being uncooperative with fingerprinting, it was decided that Mr. Murphy would undergo a strip search.

44. Under the guise of conducting a strip search, various corrections officers escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance.

45. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

46. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', Mr. Murphy was violently taken to the ground and into the prone position by the surrounding officers.

47. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited his vulnerable and defenseless position by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes to various portions of his body, oleoresin capicum (OC) spray to his eyes, compliance holds to his extremities and the placement of a 'spit mask'

over his face.

48. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick the officers', force continued to be utilized until Mr. Murphy was eventually unresponsive.

49. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

50. During each infliction of force against Mr. Murphy, the Defendant Corrections Officers would either act directly in concert or match or surpass each other's violence with further unnecessary escalation by the other.

51. In less than one hour after first arriving at the Middlesex County Adult Correctional Facility, Arthur Murphy was lifelessly lying on the floor of a small 'change out' room with no cameras; his pants were removed, his heart was not beating, blood was flowing from his mouth and head and Mr. Murphy was not breathing.

52. At no point thereafter would Mr. Murphy regain a pulse or breathe again.

53. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

54. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

55. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

Subsequent Investigation

56. Within hours of the incident, the above corrections officers and jail staff/administration completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

57. The Middlesex County Prosecutor's Office conducted an internal affairs investigation into this matter.

58. This matter involved the use of force by law enforcement, resulting in death or serious injury to a person.

59. The investigation was required to be conducted in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

60. Eventually the Internal Affairs Investigation was closed in or about June of 2014 and no wrongdoing was found regarding any law enforcement officer involved.

61. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that "[w]here the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury".

62. Despite the direct requirement to do so, the Defendant ANDREW C. CAREY failed to submit this matter for grand jury review or obtain prior approval from the Division of Criminal Justice.

63. Instead Defendant ANDREW C. CAREY closed the investigation without grand

jury review and cleared the officers involved of any wrongdoing. In so doing, Defendant ANDREW C. CAREY violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers' conduct would not be disciplined.

64. Defendant MICHAEL DANIEWICZ was the "investigator assigned" to conduct the internal affairs investigation into the death of Arthur Murphy at the Middlesex County Adult Correctional Facility. In conducting the internal affairs investigation, Sergeant DANIEWICZ, was bound by the procedures set forth by the New Jersey Attorney General Law Enforcement Directive No. 2006-5. Upon completing the investigation into the death of Arthur Murphy, Sergeant DANIEWICZ recommended the following disposition on the "Investigation Close-Out Report": "Close File". Sergeant DANIEWICZ did not recommend or require any other disposition, including "Refer to Grand Jury" on the close-out report. Thereafter, Sergeant DANIEWICZ closed the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the "undisputed facts indicate that the use of force was justifiable under the law" pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5.

65. Defendant GEORGE TRILLHAASE was the "immediate supervisor" who signed the June 16, 2014, "Investigation Close-Out Report" pertaining to the internal affairs investigation into the death of Arthur Murphy. As the "immediate supervisor", GEORGE TRILLHAASE's signature represents his "concurrence" and approval of the recommended disposition on the "Investigation Close-Out Report": "Close File". GEORGE TRILLHAASE did not recommend or require any other disposition, including "Refer to Grand Jury" on the close-out report. Thereafter, GEORGE TRILLHAASE allowed closure of the file without submitting the investigation for

independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. In so doing, Defendant GEORGE TRILLHAASE violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers’ conduct would not be disciplined.

66. Defendant PAUL MILLER was the “2nd level supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “2nd level supervisor”, PAUL MILLER’s signature represents his “concurrence” and approval of the recommended disposition on the “Investigation Close-Out Report”: “Close File”. PAUL MILLER did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, PAUL MILLER allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. In so doing, Defendant PAUL MILLER violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers’ conduct would not be disciplined.

67. Defendant SHEREE PITCHFORD was the “AP Supervisor” who signed the June 16, 2014, “Investigation Close-Out Report” pertaining to the internal affairs investigation into the death of Arthur Murphy. As the “AP Supervisor”, SHEREE PITCHFORD’s signature represents her “concurrence” and approval of the recommended disposition on the “Investigation Close-Out

Report”: “Close File”. SHEREE PITCHFORD did not recommend or require any other disposition, including “Refer to Grand Jury” on the close-out report. Thereafter, SHEREE PITCHFORD allowed closure of the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the “undisputed facts indicate that the use of force was justifiable under the law” pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5. In so doing, Defendant SHEREE PITCHFORD violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers’ conduct would not be disciplined.

68. At no point while at the Middlesex County Prison did the Decedent display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

69. The utilization of force against Mr. Murphy ultimately caused his death.

70. The Middlesex County Medical Examiner, Andrew Falzon, M.D., determined the manner of Arthur Murphy’s death to be “homicide”.

COUNT I: UNLAWFUL ARREST/SEIZURE, DEPRIVATION OF LIBERTY
(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

71. Plaintiffs incorporate by reference paragraphs 1 – 70 as though fully set forth herein.

72. Plaintiff has a right to be secure in his person and property against unreasonable seizure as guaranteed under the Fourth Amendment to the United States Constitution and has a right not to be deprived of life, liberty, or property without due process of law and to be accorded the equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

73. The Fourth Amendment to the United States Constitution prohibits a police officer from arresting and/or incarcerating a citizen except upon probable cause.

74. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

75. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from an unlawful detention, to be secure in his person and property and to due process and equal protection of the law under the Constitution of the United States, in particular, the Fourth and Fourteenth Amendments thereof and 42 U.S.C. § 1983.

76. That as a result of the deprivation of Plaintiff's constitutional rights, he suffered harm including sustained pain and emotional distress, loss of liberty including incarceration and, based on the degree of the improperly offense charged, subjected him to a strip search at the Middlesex County Adult Correctional Facility.

COUNT II: MALICIOUS PROSECUTION

(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

77. Plaintiffs incorporate by reference paragraphs 1 – 76 as though fully set forth herein.

78. Plaintiff has a right guaranteed under the Fourteenth Amendment to the United States Constitution to be free from malicious prosecution.

79. The Fourth Amendment to the United States Constitution prohibits a police officer from initiating a criminal proceeding against a citizen, without probable cause, maliciously or for a purpose other than bringing the accused to justice.

80. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

81. Officers FAVRETTO and TURNER initiated criminal charges against Mr. Murphy for a purpose other than justice; namely in retaliation for his refusal to be transported to a homeless shelter.

82. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from malicious prosecution under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

83. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm, including pain and emotional distress, loss of liberty including incarceration and, based on the degree of the improperly offense charged, subjected him to a strip search at the Middlesex County Adult Correctional Facility.

COUNT III: DUE PROCESS

**(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty,
Marcinko, Domanoski, Marra, Turner, Porcella,
Metzger, and Bartlinski)**

84. Plaintiffs incorporate by reference paragraphs 1 – 83 as though fully set forth herein.

85. Plaintiff, as a pre-trial detainee, may not be punished prior to an adjudication of guilt in accordance with due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution.

86. The Fourteenth Amendment to the United States Constitution prohibits a corrections officer from utilizing force which is unreasonable in light of the facts and circumstances presented at the time.

87. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN

FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not rationally related to a legitimate non-punitive governmental purpose, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

88. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from punishment without due process of the law under the Constitution of the United States, in particular, the Fourteenth Amendment thereof and 42 U.S.C. § 1983.

89. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT IV: EXCESSIVE FORCE

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

90. Plaintiffs incorporate by reference paragraphs 1 – 89 as though fully set forth herein.

91. Plaintiff has a right to be secure in his person and property against excessive force

as guaranteed under the Fourth Amendment to the United States Constitution.

92. The Fourth Amendment to the United States Constitution prohibits a corrections officer from utilizing force against a pre-trial detainee which is unreasonable in light of the facts and circumstances confronting them.

93. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not objectively reasonable in light of the facts and circumstances presenting them, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

94. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

95. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT V: CONSPIRACY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, Bartlinski, Michael Daniewicz, George Trillhaase, Paul Miller, Sheree Pitchford and Andrew C. Carey)

96. Plaintiffs incorporate by reference paragraphs 1 – 95 as though fully set forth herein.

97. On November 25, 2013, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., MICHAEL DANIEWICZ, GEORGE TRILLHAASE, PAUL MILLER, SHEREE PITCHFORD and ANDREW C. CAREY planned and/or otherwise agreed to conspire to violate Mr. Murphy's Fourth and Fourteenth Amendment rights to be free from the use of excessive force and pre-conviction punishment and also conspired to cover-up, not fully investigate and/or violated mandatory investigatory protocol to ensure those involved would not be disciplined.

98. The conspiracy formed or began when Mr. Murphy was deemed 'uncooperative' during portions of the intake process such as fingerprinting and answering certain intake questions. In retaliation for being uncooperative, the Defendants escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance, for the purpose of conducting a strip search. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

99. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', he was violently taken to the ground and into the prone position. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited the vulnerable and defenseless position of Mr. Murphy by utilizing various forms of force upon his body, including slamming his head to the concrete

floor, closed hand strikes, oleoresin capicum (OC) spray, compliance holds and the placement of a 'spit mask' over his face.

100. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick officers', force continued to be utilized until Mr. Murphy was unresponsive.

101. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

102. During each infliction of force against Mr. Murphy, the defendant corrections officers would either act directly in concert or match each other's violence with further unnecessary escalation by the other.

103. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

104. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

105. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

106. Within hours of the incident, the above corrections officers completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

107. Within hours of the incident, members of the Middlesex County Prosecutor's Office began conducting an investigation into the incident as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.

108. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that "[w]here the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury".

109. Despite the direct requirement to do so, Defendant ANDREW C. CAREY failed to submit this matter for independent grand jury review or obtain prior approval from the Division of Criminal Justice.

110. Instead the Middlesex County Prosecutor's Office closed the investigation without grand jury review and cleared the officers involved of any wrongdoing. In so doing, Defendants MICHAEL DANIEWICZ, GEORGE TRILLHAASE, PAUL MILLER, SHEREE PITCHFORD and ANDREW C. CAREY violated required investigative protocol and did not allow for any public transparency, oversight or independent review into their investigation of the incident.

111. The decision to violate required investigative protocol was for the purpose of shielding the officers involved from exposure to discipline and/or criminal liability.

112. The decision to violate required investigative protocol was pursuant to an inferred agreement with the officers involved in shielding them from exposure to discipline and/or criminal liability.

113. The decision to violate required investigative protocol was in furtherance of the

overall conspiratorial objective to violate the Decedent's constitutional rights and cover-up the wrongdoing of the officers involved. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., MICHAEL DANIEWICZ, GEORGE TRILLHAASE, PAUL MILLER, SHEREE PITCHFORD and ANDREW C. CAREY in violation of 42 U.S.C. § 1983, conspired and acted with deliberate indifference to Mr. Murphy's Fourth and Fourteenth Amendment rights to be free the use of excessive force and punishment prior to an adjudication to guilt.

114. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., MICHAEL DANIEWICZ, GEORGE TRILLHAASE, PAUL MILLER, SHEREE PITCHFORD, ANDREW C. CAREY and John & Jane Does 4-10, conspiratorial conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from the infliction of excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and his right to be free punishment prior to an adjudication of his guilt under the Constitution of the United States, in particular, the Fourteenth Amendment thereof.

115. That solely as a result of the conspiracy to deprive Plaintiff of his constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

116. As to Count V, Defendants MICHAEL DANIEWICZ, GEORGE TRILLHAASE,

PAUL MILLER, SHEREE PITCHFORD and ANDREW C. CAREY are sued in their individual capacities.

COUNT VI: ASSAULT/BATTERY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

117. Plaintiffs incorporate by reference paragraphs 1 – 116 as though fully set forth herein.

118. The conduct of Defendants, OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, as described above were carried out intentionally for the express purpose of interfering with Mr. Murphy's personal integrity and resulted in an unpermitted harmful and offensive contact with Mr. Murphy, and thus constitute assault and battery.

119. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, Mr. Murphy was contacted in a harmful and offensive manner.

120. That as a result of the assault/battery of Plaintiff, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

**COUNT VII: COUNTY AND SUPERVISORY LIABILITY FOR
DEPRIVATION OF CONSTITUTIONAL RIGHTS**

**(Murphy v. Middlesex County, Andrew C. Carey
and Warden Edmund Cicchi)**

121. Plaintiffs incorporate by reference paragraphs 1 – 120 as though fully set forth herein.

122. Upon information and belief, Defendants MIDDLESEX COUNTY and Warden EDMUND CICCHI have repeatedly and knowingly failed to enforce the laws of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, thereby creating within the Middlesex County Adult Correctional Facility an atmosphere of lawlessness in which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by their superiors.

123. Upon information and belief, Defendant ANDREW C. CAREY, has repeatedly and knowingly failed to enforce the laws and requirements of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, in particular – the required investigative protocol for ensuring a full and transparent investigation and discipline of law enforcement where warranted. As a result, this Defendant created an environment whereby County law enforcement officials, including those within the Middlesex County Adult Correctional Facility, operated without fear of discipline and in an atmosphere in which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by the County investigative officials.

124. In addition, the failure of Defendant ANDREW C. CAREY to require full investigations and accountability in the utilization of force by law enforcement in past instances, including by not submitting the matters for independent review by a grand jury, condoned past instances of abuse and encouraged law enforcement that the future utilization of excessive force

would not result in reprimands, discipline, termination or a full transparent investigation.

125. In violating required investigative protocol, namely the vital step of submitting investigations involving death or serious bodily for independent grand jury review, Defendant ANDREW C. CAREY structured the internal affairs investigative policies and customs to curtail disciplinary action and stifle investigations into law enforcement officers in the County of Middlesex.

126. In violating required investigative protocol, namely the vital step of submitting investigations involving death or serious bodily for independent grand jury review, Defendant ANDREW C. CAREY relegated the internal affairs investigative policies and customs to cover the violent behavioral patterns of law enforcement under investigation, to protect them from disciplinary action, and thereby perpetuate the County's custom of acquiescing in the excessive use of force by its law enforcement officers.

127. Accordingly, in failing to follow mandatory Attorney General Directives and fully investigate previous 'matters involving the use of force by law enforcement involving death or serious injury to a person' the Defendant ANDREW C. CAREY directly contributed to the constitutional violations upon the decedent.

128. At the time of the incidents described above, MIDDLESEX COUNTY, Prosecutor ANDREW C. CAREY and Warden EDMUND CICCHI had developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of inmates in Middlesex County Adult Correctional Facility, which caused Mr. Murphy's rights to be violated.

129. It was the policy, practice and/or custom of MIDDLESEX COUNTY, Prosecutor ANDREW C. CAREY and Warden EDMUND CICCHI to inadequately, improperly and fraudulently investigate inmates' complaints of misconduct on the part of corrections officers.

These instances of misconduct were instead tolerated and/or covered-up by the MIDDLESEX COUNTY, Prosecutor ANDREW C. CAREY and Warden EDMUND CICCHI. The officers engaged in the misconduct would also not be reprimanded or disciplined for their misconduct.

130. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. regarding the lawful use of force, thereby failing to discourage further constitutional violations on the part of its officers and sergeants. MIDDLESEX COUNTY and Warden EDMUND CICCHI did not require appropriate in-service training or retraining of officers who were known to have previously engaged in misconduct.

131. Defendants, EDMOND CICCHI, Warden of the Middlesex County Adult Correctional Facility, and MIDDLESEX COUNTY, authorized and tolerated such conduct as an institutionalized practice, and by such action ratified the misconduct hereinabove detailed by:

- a. Failing to properly discipline, restrict and control employees including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 and other employees, correctional personnel known to be irresponsible in their dealings with citizens;
- b. Failing to take adequate precautions in the hiring, promotion and retention of

- personnel;
- c. Failing to train personnel;
 - d. Failing to abide by the rules and regulations set down by the office of the Attorney General of the State of New Jersey and the Middlesex County Prosecutor's Office on matters relating to oversight, supervision and discipline of police and corrections personnel; and
 - e. Failing to establish and/or assure the functioning of a bona fide and meaningful departmental system for addressing complaints of correctional employees and/or police misconduct and failing to properly oversee and regulate the conduct of department's affairs through its Warden.

132. Defendants EDMOND CICCHI, ANDREW C. CAREY and MIDDLESEX COUNTY knew of corrections officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Specifically, there were prior beating incidents by corrections officers against helpless inmates who, in some instances, were restrained in hand cuffs/shackles and, in some instances, resulted in death. However, EDMOND CICCHI and others in charge of the policies of the jail attempted to justify and/or cover-up these instances instead of enforcing policies against the excessive use of force.

133. Defendant EDMOND CICCHI and MIDDLESEX COUNTY knew of correctional officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Indeed, other similar lawsuits have been filed as a result of the continuing pattern of excessive force and abuse at the Middlesex County Adult Correctional Facility which was permitted under the policies of Defendant EDMOND CICCHI and MIDDLESEX COUNTY. Thus, Defendant EDMOND CICCHI and MIDDLESEX COUNTY

engaged in a pattern of acquiescence and even communicating a message of approval for the excessive force and abuse of inmates by corrections officers and other staff.

134. These prior attacks against inmates by corrections officers at the Middlesex County Adult Correctional Facility were not in compliance with its own use of force policy.

135. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY failed to adopt a practice of disciplining officers for violations of the use of force policy.

136. On information and belief, Defendant EDMOND CICCHI's and MIDDLESEX COUNTY's failure to adopt a practice of disciplining officers for violations of the use of force policy was deliberately indifferent to the risk of physical harm to the inmates of Middlesex County Adult Correctional Facility, including Mr. Murphy.

137. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to enforce the use of force policy.

138. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to discipline officers for violating the use of force policy.

139. As a result of the above-described policies, practices and customs, corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be condoned.

140. As a result of the above-described policies, practices and customs, supervisory personnel such as LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA and SGT. JASON TURNER, not only failed to intervene to stop the misconduct of the corrections officers, but rather joined concertedly with the officers and participated in the use of excessive force against Mr. Murphy.

141. On information and belief, Defendant OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 attack of Mr. Murphy resulted from EDMOND CICCHI 's and MIDDLESEX COUNTY's failure to enforce the use of force policy and/or failure to discipline officers for violating the use of force policy.

142. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the County of Middlesex and the policymakers of the Middlesex County Prosecutor's Office, to the constitutional rights of Mr. Murphy alleged herein.

143. It was also the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other staff to identify inmates with mental health problems and to address the medical needs of these inmates.

144. As a result of the above-described policies, practices and customs, corrections and other custody officers of the Middlesex Adult Correctional Facility, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER,

OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., failed to identify and address the mental health needs of Mr. Murphy.

145. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the MIDDLESEX COUNTY, ANDREW C. CAREY and Warden EDMUND CICCHI to the constitutional rights of Mr. Murphy alleged herein.

146. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other employees and agents on the appropriate methods of restraining inmates, thereby exhibiting deliberate indifference to the constitutional rights of inmates in their custody, including Mr. Murphy.

147. As to Count VII, Defendant ANDREW C. CAREY is sued in his official capacity for declaratory relief and in his individual capacity for all other relief.

COUNT VIII: WRONGFUL DEATH / SURVIVORSHIP ACT

(Estate of Murphy v. All Defendants, except Brian Favretto, Douglas Turner, Andrew Carey, Michael Daniewicz, George Trillhaase, Paul Miller and Sheree Pitchford)

148. Plaintiffs incorporate by reference paragraphs 1 – 147 as though fully set forth herein.

149. The conduct of Defendants, as described above subjects them to liability to the Plaintiff for the emotional trauma, including conscious pain and suffering until he expired on November 26, 2013, pursuant to the dictates of the New Jersey Survivor's Act N.J.S.A. 2A:15-3, *et. seq.*

150. The Defendants are also liable to the Plaintiff due to the wrongful death of the Decedent by the State of New Jersey's Wrongful Death Act, known and designated as N.J.S.A. 2A:31-1, *et. seq.*

151. The harmed inflicted upon Mr. Murphy was the result of the Defendants' acts

and/or omissions, and such acts and/or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of the foreseeable risk to Mr. Murphy's health and safety.

Therefore, the Defendants are liable to the Plaintiff pursuant to the dictates of the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, et seq.

DEMAND FOR JUDGMENT

152. WHEREFORE, unless otherwise set forth above, the Estate of Arthur J. Murphy, requests the following relief:

A. Compensatory damages from all defendants for the injuries, humiliation, pain and suffering, emotional distress, psychiatric, psychological, mental anguish and/or wrongful death as a result of the November 26, 2013 incident;

B. Compensatory damages from all defendants for legal bills, medical bills, funeral expenses and/or other expenses that Plaintiff incurred or will incur in the future as a result of the November 26, 2013 incident;

C. Compensatory damages from all defendants for the value of the federal constitutional rights invaded to Arthur Murphy;

D. Punitive damages from defendants sued in their individual capacity;

E. Reasonable attorneys' fees from all defendants pursuant to 42 U.S.C. §1988; and

F. Such other and further relief that the Court may deem just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues of the within matter.

RUSSO LAW OFFICES, LLC

By: s/ BRAD M. RUSSO
BRAD M. RUSSO
Attorney for Plaintiff
633 Belvidere Road
Phillipsburg, NJ 08865
(908)454-0806

Dated: 3/28/18

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALAN MURPHY, Administrator of the	:	
Estate of Arthur J. Murphy, Deceased	:	
	:	Civil Action No.: 3:15-cv-07102-FLW-TJB
Plaintiff,	:	
	:	
-vs-	:	
	:	
MIDDLESEX COUNTY, WARDEN	:	
EDMUND CICCHI, OFFICER	:	
CHRISTOPHER BELINSKY, OFFICER	:	
BRIAN FOGARTY, OFFICER DANIEL	:	
MARCINKO, LT. MICHAEL	:	
DOMANOSKI, OFFICER EUGENE	:	
MARRA, SGT. JASON TURNER,	:	
OFFICER ANTHONY PORCELLA,	:	
OFFICER TOBY METGZER, OFFICER	:	
JOHN BARTLINSKI, JR., POLICE	:	
OFFICER BRIAN FAVRETTO, POLICE	:	
OFFICER DOUGLAS TURNER,	:	
ANDREW C. CAREY, MICHAEL	:	
DANIEWICZ, and JOHN DOES 1-10,	:	
	:	
Defendants.	:	

CERTIFICATION OF SERVICE

I hereby certify that in addition to electronically filing same with the Court on this day, I caused a copy of Plaintiff's Third Amended Complaint upon the following parties via electronic filing:

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RUSSO LAW OFFICES, LLC

By: /s/ BRAD M. RUSSO
BRAD M. RUSSO
Attorney for Plaintiffs

Dated: 3/28/18

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALAN MURPHY, as Administrator of the
Estate of Arthur J. Murphy, Deceased,

Plaintiff,

-vs-

MIDDLESEX COUNTY, WARDEN
EDMUND CICCHI, OFFICER
CHRISTOPHER BELINSKY, OFFICER
BRIAN FOGARTY, OFFICER DANIEL
MARCINKO, LT. MICHAEL
DOMANOSKI, OFFICER EUGENE
MARRA, SGT. JASON TURNER,
OFFICER ANTHONY PORCELLA,
OFFICER TOBY METGZER, OFFICER
JOHN BARTLINSKI, JR., POLICE
OFFICER BRIAN FAVRETTO, POLICE
OFFICER DOUGLAS TURNER,
BRUCE KAPLAN, ANDREW CAREY
and JOHN DOES 1-10,

Defendants.

Civil Action No.: 15-7102

JURY TRIAL DEMANDED

FOURTH AMENDED COMPLAINT

COMPLAINT

The Plaintiff, Alan Murphy, as general administrator and administrator ad prosequendum of the Estate of Arthur J. Murphy, by way of complaint against the Defendants says:

INTRODUCTORY STATEMENT

1. The Plaintiff brings this action to recover damages for the unlawful seizure and the utilization of excessive force which caused the death of Arthur Murphy while in the custody of the Defendants. This is an action for violation of the Plaintiff's federal constitutional and civil rights

guaranteed under 42 U.S.C. Section 1983, or violation of Plaintiff's rights under the United States Constitution and for violation of the Plaintiffs rights otherwise guaranteed under the laws and Constitution of the State of New Jersey. The Plaintiff seeks monetary damages for the wrongful death and for the deprivation of Arthur Murphy's constitutional and civil rights, which caused him to suffer great pain, mental anguish and ultimately caused his death.

JURISDICTION & VENUE

2. The Plaintiff bring this action under 42 U.S.C. §1983 which provides a civil action against persons who under color of law deprive a citizen of federal constitutional rights. This Court has jurisdiction over all counts in this matter pursuant to 28 U.S.C. §§1331 and 1343.

3. Plaintiff further invokes the pendent jurisdiction of this Court, pursuant to 28 U.S.C. §1367 to hear and decide claims brought pursuant to the New Jersey Constitution and the common law of the State of New Jersey.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that all Defendants either reside in or are political subdivisions of, the State of New Jersey, and a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in the State and District of New Jersey.

THE PARTIES

5. The Plaintiff, ALAN MURPHY, is the general administrator and administrator ad prosequendum of the Estate of Arthur Murphy and a resident of the State of New Jersey.

6. At the time of his death, ARTHUR MURPHY ("Mr. Murphy") was a pre-trial detainee and was involuntarily committed to the care and custody of the Middlesex Adult Correction Center on November 26, 2013. At all times hereinafter referenced Mr. Murphy was a citizen of the United States.

7. At all times relevant hereto, Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 were duly appointed Correctional Officers employed by the Middlesex County Department of Corrections at the Middlesex Adult Correction Center located on US-130 in the Township of North Brunswick, County of Middlesex, State of New Jersey. As corrections officers, these individuals were acting under the color of state law and were responsible for the care, custody, safety and well-being of Plaintiff and all inmates incarcerated at the Middlesex Adult Correction Center. These Defendants are sued individually and in their official capacities.

8. At all times relevant hereto, Defendant, EDMOND CICCHI was the Director of the Middlesex County Department of Corrections and the duly appointed Warden of the Middlesex County Adult Correctional Facility. In said capacity EDMOND CICCHI was responsible for the care and management of the Middlesex Adult Correction Center prisoners and for the training, supervision, discipline and conduct of its corrections officers and staff. Defendant EDMOND CICCHI was also, at all times, responsible for the placement of security and/or surveillance equipment, including but not limited to video/audio cameras, to monitor and ensure the security, safety and proper handling of all inmates by corrections officers at said facility. He was also responsible for enforcing the rules and regulations of the Middlesex County Department of Corrections and the rules and regulations promulgated through the Middlesex County Prosecutor's Office and the Office of the Attorney General of the State of Jersey. At all relevant times, EDMOND CICCHI was acting in such capacity as the agent, servant and employee of the Defendants, Middlesex County and the Middlesex County Department of Corrections. He is sued

individually and in his official capacity.

9. Defendant, MIDDLESEX COUNTY, was at all times mentioned herein, and is, a County government organized and chartered under the laws of the State of New Jersey. Defendant, MIDDLESEX COUNTY, is an independent regional governing body created and authorized under the laws of the State of New Jersey to maintain, control and/or supervise the Middlesex County Department of Corrections. MIDDLESEX COUNTY is vested with the creation, development and implementation of policies and procedures utilized by the Middlesex County Department of Corrections. This Defendant is at all times responsible for the management, administration and conduct of its employees, agents and servants who work at the Middlesex Adult Correction Center, including the above officers, as it relates to the care and custody of individuals incarcerated therein.

10. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the care, custody, safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

11. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to security measures, cameras, and devices to ensure safety and well-being of inmates incarcerated at the Middlesex Adult Correction Center.

12. Defendant MIDDLESEX COUNTY is and was at all times responsible for the writing, establishment and implementation of policies, procedures and/or guidelines relating to the screening, hiring and training of corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER

ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR.
and John & Jane Does 1-10, relating to the care, custody, safety and well-being of inmates
incarcerated at the Middlesex Adult Correction Center.

13. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight
of the Middlesex Adult Correction Center, including the implementation of its policies, procedures
and/or guidelines and decision-making of Defendant EDMOND CICCHI.

14. Defendant MIDDLESEX COUNTY is and was at all times responsible for oversight
of disciplinary actions taken by Defendant EDMOND CICCHI as it relates to the utilization of
excessive force on inmates by corrections officers, to ensure the protection of inmates and removal
or sanctioning of corrections officers who violate the policies and procedures of the jail.

15. Defendant MIDDLESEX COUNTY is and was, at all times, responsible to not only
train its corrections officers in matters relating to mental illness and the utilization of excessive force
against inmates, but also to actively devise and implement a system of supervision to prevent future
instances.

16. From 2002 to May of 2013, Defendant BRUCE KAPLAN was the Middlesex
County Prosecutor and the chief law enforcement officer for the County of Middlesex. As a
constitutional officer charged with the broad obligation "to use all reasonable and lawful diligence
for the detection, arrest, indictment and conviction of offenders against the laws," the Prosecutor has
wide-ranging authority over the law enforcement community in Middlesex County. As of
December 13, 2006, this Defendant was responsible for conducting mandatory internal affairs
investigations when a law enforcement officer utilizes force which results in serious bodily injury or
death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.
This Defendant is sued in his individual capacity.

17. From December 13, 2006 to May of 2013, Defendant BRUCE KAPLAN was responsible for the implementation of the New Jersey Attorney General directives relating to internal affairs investigations when municipal or county law enforcement officials in Middlesex County utilize force which results in serious bodily injury or death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

18. From December 13, 2006 to May of 2013, Defendant BRUCE KAPLAN had final policy and oversight authority for internal affairs investigations conducted by the Middlesex County Prosecutor's Office.

19. From May 2013 through September 2019, Defendant ANDREW C. CAREY was the Middlesex Prosecutor and the chief law enforcement officer for the County of Middlesex. As a constitutional officer charged with the broad obligation "to use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws," the Prosecutor has wide-ranging authority over the law enforcement community in Middlesex county. Pursuant to New Jersey Attorney General Guidelines, this Defendant was responsible for conducting mandatory internal affairs investigations when a Middlesex County law enforcement officer utilizes force which results in serious bodily injury or death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5. This Defendant is sued in his individual capacity.

20. From May 2013 through September 2019, Defendant ANDREW C. CAREY was responsible for the implementation of the New Jersey Attorney General directives relating to internal affairs investigations when municipal or county law enforcement officials in Middlesex County utilize force which results in serious bodily injury or death, in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5..

21. From May 2013 through September 2019, Defendant ANDREW C. CAREY had

final policy and oversight authority for internal affairs investigations conducted by the Middlesex County Prosecutor's Office.

22. Pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5, when a law enforcement officer employed by a municipal or county agency is involved in any use of force involving death or serious bodily injury or where a firearm is used, the County Prosecutor's Office in the county of occurrence will conduct the investigation.

23. The Middlesex County Prosecutor's Office did conduct an internal affairs investigation regarding the altercation and death of ARTHUR MURPHY starting on November 26, 2013, at the Middlesex County Adult Correctional Center, as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.

24. MICHAEL DANIEWICZ, was, at all times material herein, a Sergeant in the Middlesex County Prosecutor's Office. Sergeant DANIEWICZ was the "investigator assigned" to conduct the internal affairs investigation into the death of Arthur Murphy at the Middlesex County Adult Correctional Facility. In conducting the internal affairs investigation, Sergeant DANIEWICZ, was bound by the procedures set forth by the New Jersey Attorney General Law Enforcement Directive No. 2006-5. Upon completing the investigation into the death of Arthur Murphy, Sergeant DANIEWICZ recommended the following disposition on the "Investigation Close-Out Report": "Close File". Sergeant DANIEWICZ did not recommend or require any other disposition, including "Refer to Grand Jury" on the close-out report. Thereafter, Sergeant DANIEWICZ closed the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the "undisputed facts indicate that the use of force was justifiable under the law" pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5.

25. At all times relevant hereto, Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were duly appointed Officers employed by the Edison Township Police Department located in the County of Middlesex, State of New Jersey. Defendants OFFICER BRIAN FAVRETTO, OFFICER DOUGLAS TURNER and John & Jane Does 1-10 were acting under the color of state law and responsible for not violating the constitutional rights of citizens, including:

- a. effecting an arrest only upon a warrant or upon probable cause that the crime charged has been committed;
- b. utilizing criminal proceedings to act maliciously or for a purpose other than bringing a person to justice; or
- c. unlawfully seizing and/or falsely imprisoning a citizen without probable cause.

These Officers are sued individually and in their official capacities.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Arrest and Seizure of Murphy

26. On November 26, 2013, Edison Police responded to a report of a person inside an abandoned and uninhabited building located at 1642 Oak Tree Road, Edison, New Jersey.

27. Upon arrival at the property, Officers Brian Favretto and Douglas Turner immediately observed that the property had been previously deemed uninhabitable by the Township and was painted with a red spray paint box with an "x" through it indicating such.

28. An investigation of the inside of the building by Officers Favretto and Turner revealed that the dwelling contained no furniture, electricity or running water and was in poor condition.

29. Mr. Murphy was observed inside the abandoned and uninhabited structure. Officers

Favretto and Turner initiated conversation with Mr. Murphy.

30. At no point did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

31. At no time did probable cause exist to suspect Mr. Murphy entered the structure with a purpose to commit any offense therein.

32. The structure at issue was readily identifiable to be abandoned within the meaning ascribed by N.J.S.A. 2C:18-3(d)(1).

33. At no time did probable cause exist to suspect Mr. Murphy committed the offense of Criminal Trespass (N.J.S.A. 2C:18-3(a)).

34. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that probable cause existed of an indictable offense.

35. Officers Favretto and Turner's decision to detain Mr. Murphy was not on the basis that Mr. Murphy presented a risk of harm to himself or others. In particular, on November 26, 2013, a court order did not exist for the involuntary commitment of Mr. Murphy. On November 26, 2013, a mental health screener did not certify on a form prescribed by the Division that, based on a screening outreach visit, Mr. Murphy was in need of involuntary commitment.

36. On November 26, 2013, Officers Favretto and Turner did not request a crisis worker conduct an evaluation of Mr. Murphy.

37. Officers Favretto and Turner's detention of Mr. Murphy on November 26, 2013, was a seizure within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution.

38. On November 26, 2013, Officers Favretto and Turner advised Mr. Murphy that there was a bed available for him at the Perth Amboy Shelter. Mr. Murphy declined transport to the

facility. In retaliation of his refusal to be transported to the Shelter, Mr. Murphy was advised that he was being charged with Criminal Trespass (N.J.S.A. 2C:18-3(a)).

39. At no point while at the facility of the Edison Police Department did Mr. Murphy display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

40. Police officers from the Edison Police Department then transported Mr. Murphy to the Middlesex Adult Correction Center.

Events at the Middlesex Adult Correction Center

41. On November 26, 2013, at approximately 8:43 p.m., Mr. Murphy arrived at the Receiving and Discharge Unit of the Middlesex Adult Correction Center.

42. Upon arrival Mr. Murphy answered general intake questions but refused to be fingerprinted.

43. In retaliation for being uncooperative with fingerprinting, it was decided that Mr. Murphy would undergo a strip search.

44. Under the guise of conducting a strip search, various corrections officers escorted Mr. Murphy to a small room 'change out' room, devoid of video surveillance.

45. Approximately seven (7) corrections officers were dispatched and congregated in the small 'change out' room to observe the strip search of Mr. Murphy.

46. Without any provocation beyond the apparent contention that Mr. Murphy 'clenched his fists', Mr. Murphy was violently taken to the ground and into the prone position by the surrounding officers.

47. While face first on the ground, approximately nine (9) corrections officers positioned themselves on top of and alongside Mr. Murphy and exploited his vulnerable and

defenseless position by utilizing various forms of force upon his body, including slamming his head to the concrete floor, closed hand strikes to various portions of his body, oleoresin capsicum (OC) spray to his eyes, compliance holds to his extremities and the placement of a 'spit mask' over his face.

48. On the apparent basis that Mr. Murphy was face down with nine officers on and around his body, yet able to 'swing his arms, punch and kick the officers', force continued to be utilized until Mr. Murphy was eventually unresponsive.

49. It was not until the officers physically removed Mr. Murphy's pants and were physically installing a prison jumpsuit that Mr. Murphy was determined to be 'unresponsive'. At this point, Mr. Murphy was fully secured with handcuffs and blood was reported to be flowing from his mouth.

50. During each infliction of force against Mr. Murphy, the Defendant Corrections Officers would either act directly in concert or match or surpass each other's violence with further unnecessary escalation by the other.

51. In less than one hour after first arriving at the Middlesex County Adult Correctional Facility, Arthur Murphy was lifelessly lying on the floor of a small 'change out' room with no cameras; his pants were removed, his heart was not beating, blood was flowing from his mouth and head and Mr. Murphy was not breathing.

52. At no point thereafter would Mr. Murphy regain a pulse or breathe again.

53. At no point on November 25, 2013, did any officer involved attempt to prevent or curtail the other officers' utilization of excessive force.

54. At no point on November 25, 2013, did any officer involved attempt to protect Mr. Murphy from the violent attacks of each respective officer.

55. On November 25, 2013, the above defendants acted in concert with the specific intent and general conspiratorial objective of utilizing excessive force and punishing Mr. Murphy for being 'uncooperative'.

Subsequent Investigation

56. Within hours of the incident, the above corrections officers and jail staff/administration completed various incident reports, use of force forms and provided statements, which, individual and jointly, were in furtherance of concealing the excessive force utilized and depriving Mr. Murphy of his constitutional rights to be free from excessive force and punishment.

57. The Middlesex County Prosecutor's Office conducted an internal affairs investigation into this matter.

58. This matter involved the use of force by law enforcement, resulting in death or serious injury to a person.

59. The investigation was required to be conducted in accordance with New Jersey Attorney General Law Enforcement Directive No. 2006-5.

60. Eventually the Internal Affairs Investigation was closed in or about June of 2014 and no wrongdoing was found regarding any law enforcement officer involved.

61. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that "[w]here the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury".

62. Despite the direct requirement to do so, the Defendant ANDREW C. CAREY failed

to submit this matter for grand jury review or obtain prior approval from the Division of Criminal Justice.

63. Instead Defendant ANDREW C. CAREY closed the investigation without grand jury review and cleared the officers involved of any wrongdoing. In so doing, Defendant ANDREW C. CAREY violated required procedure and did not allow for any public transparency, oversight or independent review into the investigation of the incident and ensured that the corrections officers' conduct would not be disciplined.

64. MICHAEL DANIEWICZ was the "investigator assigned" to conduct the internal affairs investigation into the death of Arthur Murphy at the Middlesex County Adult Correctional Facility. In conducting the internal affairs investigation, Sergeant DANIEWICZ, was bound by the procedures set forth by the New Jersey Attorney General Law Enforcement Directive No. 2006-5. Upon completing the investigation into the death of Arthur Murphy, Sergeant DANIEWICZ recommended the following disposition on the "Investigation Close-Out Report": "Close File". Sergeant DANIEWICZ did not recommend or require any other disposition, including "Refer to Grand Jury" on the close-out report. Thereafter, Sergeant DANIEWICZ closed the file without submitting the investigation for independent grand jury review, or review and prior approval from the Division of Criminal Justice that the "undisputed facts indicate that the use of force was justifiable under the law" pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5.

65. At no point while at the Middlesex County Prison did the Decedent display aggression, a propensity for violence or exemplify behavior indicating that he was a danger to himself or others.

66. The utilization of force against Mr. Murphy ultimately caused his death.

67. The Middlesex County Medical Examiner, Andrew Falzon, M.D., determined the manner of Arthur Murphy's death to be "homicide".

COUNT I: UNLAWFUL ARREST/SEIZURE, DEPRIVATION OF LIBERTY
(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

68. Plaintiffs incorporate by reference paragraphs 1 – 67 as though fully set forth herein.

69. Plaintiff has a right to be secure in his person and property against unreasonable seizure as guaranteed under the Fourth Amendment to the United States Constitution and has a right not to be deprived of life, liberty, or property without due process of law and to be accorded the equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

70. The Fourth Amendment to the United States Constitution prohibits a police officer from arresting and/or incarcerating a citizen except upon probable cause.

71. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

72. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from an unlawful detention, to be secure in his person and property and to due process and equal protection of the law under the Constitution of the United States, in particular, the Fourth and Fourteenth Amendments thereof and 42 U.S.C. § 1983.

73. That as a result of the deprivation of Plaintiff's constitutional rights, he suffered harm including sustained pain and emotional distress, loss of liberty including incarceration and, based on the degree of the improperly offense charged, subjected him to a strip search at the Middlesex County Adult Correctional Facility.

COUNT II: MALICIOUS PROSECUTION

(Estate of Murphy v. Edison Township Police Officers Favretto and Turner)

74. Plaintiffs incorporate by reference paragraphs 1 – 73 as though fully set forth herein.

75. Plaintiff has a right guaranteed under the Fourteenth Amendment to the United States Constitution to be free from malicious prosecution.

76. The Fourth Amendment to the United States Constitution prohibits a police officer from initiating a criminal proceeding against a citizen, without probable cause, maliciously or for a purpose other than bringing the accused to justice.

77. Officers FAVRETTO and TURNER lacked probable cause to arrest, incarcerate, or otherwise prosecute Mr. Murphy for the offense of burglary and/or criminal trespass.

78. Officers FAVRETTO and TURNER initiated criminal charges against Mr. Murphy for a purpose other than justice; namely in retaliation for his refusal to be transported to a homeless shelter.

79. That as a direct result of the Defendants', FAVRETTO and TURNER, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from malicious prosecution under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

80. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm, including pain and emotional distress, loss of liberty including incarceration and, based on the degree of the improperly offense charged, subjected him to a strip search at the Middlesex County Adult Correctional Facility.

COUNT III: DUE PROCESS

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

81. Plaintiffs incorporate by reference paragraphs 1 – 80 as though fully set forth herein.

82. Plaintiff, as a pre-trial detainee, may not be punished prior to an adjudication of guilt in accordance with due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution.

83. The Fourteenth Amendment to the United States Constitution prohibits a corrections officer from utilizing force which is unreasonable in light of the facts and circumstances presented at the time.

84. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not rationally related to a legitimate non-punitive governmental purpose, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

85. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John &

Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from punishment without due process of the law under the Constitution of the United States, in particular, the Fourteenth Amendment thereof and 42 U.S.C. § 1983.

86. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT IV: EXCESSIVE FORCE

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

87. Plaintiffs incorporate by reference paragraphs 1 – 86 as though fully set forth herein.

88. Plaintiff has a right to be secure in his person and property against excessive force as guaranteed under the Fourth Amendment to the United States Constitution.

89. The Fourth Amendment to the United States Constitution prohibits a corrections officer from utilizing force against a pre-trial detainee which is unreasonable in light of the facts and circumstances confronting them.

90. Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, application of deadly force against Mr. Murphy was not applied in a good faith effort to maintain or restore discipline, but rather was maliciously and sadistically applied for the purpose of causing harm. In addition, the use and degree of force applied to Mr. Murphy was not objectively reasonable in light

of the facts and circumstances presenting them, but rather objectively excessive in relation to any justifiable governmental purpose beyond the desire to punish.

91. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, committed under color of law, Mr. Murphy was deprived of his constitutional right to be free from excessive force under the Constitution of the United States, in particular, the Fourth Amendment thereof and 42 U.S.C. § 1983.

92. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

COUNT V: ASSAULT/BATTERY

(Estate of Murphy v. Middlesex County Correction's Officers Belinsky, Fogarty, Marcinko, Domanoski, Marra, Turner, Porcella, Metzger, and Bartlinski)

93. Plaintiffs incorporate by reference paragraphs 1 – 92 as though fully set forth herein.

94. The conduct of Defendants, OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, as described above were carried out intentionally for the express purpose of interfering with Mr. Murphy's personal integrity and resulted in an unpermitted harmful and offensive contact with Mr. Murphy, and thus constitute assault and battery.

95. That as a direct result of the Defendants', OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10, conduct, Mr. Murphy was contacted in a harmful and offensive manner.

96. That as a result of the assault/battery of Plaintiff, Mr. Murphy suffered harm, including pain and emotional distress, physical injury and ultimately death.

**COUNT VI: COUNTY AND SUPERVISORY LIABILITY FOR
DEPRIVATION OF CONSTITUTIONAL RIGHTS**

**(Murphy v. Middlesex County, Bruce Kaplan, Andrew C. Carey
and Warden Edmund Cicchi)**

97. Plaintiffs incorporate by reference paragraphs 1 – 96 as though fully set forth herein.

98. Upon information and belief, Defendants MIDDLESEX COUNTY and Warden EDMUND CICCHI have repeatedly and knowingly failed to enforce the laws of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force, thereby creating within the Middlesex County Adult Correctional Facility an atmosphere of lawlessness in which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by their superiors.

99. Upon information and belief, Defendants BRUCE KAPLAN and ANDREW C. CAREY, have repeatedly and knowingly failed to enforce the laws and requirements of the United States, the State of New Jersey and the regulations of the County pertaining to the use of force of municipal and County law enforcement officers, in particular – the failure to conduct required investigative protocol for ensuring a full and transparent internal affairs investigation and discipline of law enforcement where warranted. As a result, these Defendants created an environment

whereby law enforcement officials in Middlesex County, including those within the Middlesex County Adult Correctional Facility, operated without fear of discipline and in an atmosphere in which corrections officers employ excessive and illegal force and violence, and such acts are condoned and justified by the County investigative officials.

100. Pursuant to New Jersey Attorney General Law Enforcement Directive No. 2006-5, “when a law enforcement officer employed by a municipal or county agency is involved in...any use of force ... involving death or serious bodily injury to a person, or where deadly force is employed with no injury, or where any injury to a person results from the use of a firearm ... the County Prosecutor’s Office in the county of occurrence will conduct the investigation.”

101. Within hours of the incident involving Arthur Murphy, members of the Middlesex County Prosecutor’s Office began conducting an investigation into the incident as required by New Jersey Attorney General Law Enforcement Directive No. 2006-5.

102. Paragraph 9 of the New Jersey Attorney Law Enforcement Directive No. 2006-5, in relevant part, states that “[w]here the undisputed facts indicate that the use of force was justifiable under the law, a grand jury investigation and/or review will not be required, subject to review by and prior approval of the Division of Criminal Justice, except under Paragraphs 5 and 6 where the final decision will be made by the Attorney General or his designee. In all other circumstances, the matter must be presented to the grand jury”.

103. Despite the direct requirement to do so, Defendant ANDREW C. CAREY failed to submit this matter for independent grand jury review or obtain prior approval from the Division of Criminal Justice.

104. Instead the Middlesex County Prosecutor’s Office closed the investigation without grand jury review and prematurely cleared the officers involved of any wrongdoing. In so doing,

Defendant ANDREW C. CAREY violated required investigative directives and did not allow for any public transparency, oversight or independent review into the investigation of the deadly use of force against Arthur Murphy.

105. The decision to violate required investigative protocol was for the purpose of shielding the officers involved from exposure to discipline and/or criminal liability.

106. The failure to submit the Murphy investigation for independent grand jury review or obtain prior approval from the Division of Criminal Justice was not an isolated omission or outlying mistake. Literally every investigation conducted by the Middlesex County Prosecutors Office into the use of force by law enforcement which resulted in 'death' or 'serious bodily injury', from the effective date of New Jersey Attorney Law Enforcement Directive No. 2006-5 (December 13, 2006) through the filing of this lawsuit (September 24, 2015), was prematurely closed without submission of the matter for independent grand jury review or the independent review and approval from the Division of Criminal Justice to not submit the matter to a grand jury. Each such failure to comply with Directive 2006-5 also resulted in the respective law enforcement officials being prematurely cleared of any wrongdoing by the Middlesex County Prosecutor without the required independent scrutiny or oversight from a grand jury or the Division of Criminal Justice.

107. The complete failure of Defendants BRUCE KAPLAN and ANDREW C. CAREY to require full investigations and accountability in the utilization of force by law enforcement in past instances, including by not submitting the matters for compulsory independent review by a grand jury, condoned past instances of abuse and encouraged law enforcement that the future utilization of excessive force would not result in reprimands, discipline, termination or a full transparent investigation.

108. To be clear, from the effective date of New Jersey Attorney Law Enforcement

Directive No. 2006-5 (December 13, 2006) through the end of his tenure as Middlesex County Prosecutor (May 2013), Defendant BRUCE KAPLAN failed to submit a single investigation for mandatory grand jury review (or approval of the Division of Criminal Justice) prior to closing each such investigation and clearing the law enforcement official of any wrongdoing.

109. Similarly, from his appointment as Middlesex County Prosecutor in May 2013 through the filing of this lawsuit (September 24, 2015), Defendant ANDREW C. CAREY also failed to submit a single investigation for mandatory grand jury review (or approval of the Division of Criminal Justice) prior to closing each such investigation and clearing the law enforcement official of any wrongdoing.

110. In violating required investigative protocol, namely the vital step of submitting investigations involving death or serious bodily for independent grand jury review, Defendants BRUCE KAPLAN and ANDREW C. CAREY inappropriately structured the internal affairs investigative policies and customs to curtail disciplinary action and stifle investigations into law enforcement officers in the County of Middlesex.

111. In violating required investigative protocol, namely the vital step of submitting investigations involving death or serious bodily for independent grand jury review, Defendants BRUCE KAPLAN and ANDREW C. CAREY relegated the internal affairs investigative policies and customs to cover the violent behavioral patterns of law enforcement under investigation, to protect them from disciplinary action, and thereby perpetuate the County's custom of acquiescing in the excessive use of force by its law enforcement officers.

112. Accordingly, in failing to follow mandatory Attorney General Directives and fully investigate previous 'matters involving the use of force by law enforcement involving death or serious injury to a person' the Defendants BRUCE KAPLAN and ANDREW C. CAREY directly

contributed to the constitutional violations upon the decedent.

113. At the time of the incidents described above, MIDDLESEX COUNTY, Prosecutors BRUCE KAPLAN and ANDREW C. CAREY and Warden EDMUND CICCHI had developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of inmates in Middlesex County Adult Correctional Facility, which caused Mr. Murphy's rights to be violated.

114. It was the policy, practice and/or custom of MIDDLESEX COUNTY, Prosecutors BRUCE KAPLAN and ANDREW C. CAREY and Warden EDMUND CICCHI to inadequately, improperly and fraudulently investigate inmates' complaints of misconduct on the part of corrections officers. These instances of misconduct were instead tolerated and/or covered-up by the MIDDLESEX COUNTY, Prosecutors BRUCE KAPLAN and ANDREW C. CAREY and Warden EDMUND CICCHI. The officers engaged in the misconduct would also not be reprimanded or disciplined for their misconduct.

115. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. regarding the lawful use of force, thereby failing to discourage further constitutional violations on the part of its officers and sergeants. MIDDLESEX COUNTY and Warden EDMUND CICCHI did not require appropriate in-service training or retraining of officers who were known to have previously engaged in misconduct.

116. Defendants, EDMOND CICCHI, Warden of the Middlesex County Adult

Correctional Facility, and MIDDLESEX COUNTY, authorized and tolerated such conduct as an institutionalized practice, and by such action ratified the misconduct hereinabove detailed by:

- a. Failing to properly discipline, restrict and control employees including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 and other employees, correctional personnel known to be irresponsible in their dealings with citizens;
- b. Failing to take adequate precautions in the hiring, promotion and retention of personnel;
- c. Failing to train personnel;
- d. Failing to abide by the rules and regulations set down by the office of the Attorney General of the State of New Jersey and the Middlesex County Prosecutor's Office on matters relating to oversight, supervision and discipline of police and corrections personnel; and
- e. Failing to establish and/or assure the functioning of a bona fide and meaningful departmental system for addressing complaints of correctional employees and/or police misconduct and failing to properly oversee and regulate the conduct of department's affairs through its Warden.

117. Defendants EDMOND CICCHI, BRUCE KAPLAN, ANDREW C. CAREY and MIDDLESEX COUNTY knew of corrections officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Specifically, there were

prior beating incidents by corrections officers against helpless inmates who, in some instances, were restrained in handcuffs/shackles and, in some instances, resulted in death. However, EDMOND CICCHI and others in charge of the policies of the jail attempted to justify and/or cover-up these instances instead of enforcing policies against the excessive use of force.

118. Defendant EDMOND CICCHI and MIDDLESEX COUNTY knew of correctional officer attacks against inmates at the Middlesex County Adult Correctional Facility prior to the attack against Mr. Murphy. Indeed, other similar lawsuits have been filed as a result of the continuing pattern of excessive force and abuse at the Middlesex County Adult Correctional Facility which was permitted under the policies of Defendant EDMOND CICCHI and MIDDLESEX COUNTY. Thus, Defendant EDMOND CICCHI and MIDDLESEX COUNTY engaged in a pattern of acquiescence and even communicating a message of approval for the excessive force and abuse of inmates by corrections officers and other staff.

119. These prior attacks against inmates by corrections officers at the Middlesex County Adult Correctional Facility were not in compliance with its own use of force policy.

120. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY failed to adopt a practice of disciplining officers for violations of the use of force policy.

121. On information and belief, Defendant EDMOND CICCHI's and MIDDLESEX COUNTY's failure to adopt a practice of disciplining officers for violations of the use of force policy was deliberately indifferent to the risk of physical harm to the inmates of Middlesex County Adult Correctional Facility, including Mr. Murphy.

122. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to enforce the use of force policy.

123. On information and belief, Defendant EDMOND CICCHI and MIDDLESEX COUNTY was aware of the risk of physical harm to inmates from his failure to discipline officers for violating the use of force policy.

124. As a result of the above-described policies, practices and customs, corrections officers, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be condoned.

125. As a result of the above-described policies, practices and customs, supervisory personnel such as LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA and SGT. JASON TURNER, not only failed to intervene to stop the misconduct of the corrections officers, but rather joined concertedly with the officers and participated in the use of excessive force against Mr. Murphy.

126. On information and belief, Defendant OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR. and John & Jane Does 1-10 attack of Mr. Murphy resulted from EDMOND CICCHI 's and MIDDLESEX COUNTY's failure to enforce the use of force policy and/or failure to discipline officers for violating the use of force policy.

127. The above-described policies, practices and customs demonstrated a deliberate

indifference on the part of policymakers of the County of Middlesex and the policymakers of the Middlesex County Prosecutor's Office, to the constitutional rights of Mr. Murphy alleged herein.

128. It was also the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other staff to identify inmates with mental health problems and to address the medical needs of these inmates.

129. As a result of the above-described policies, practices and customs, corrections and other custody officers of the Middlesex Adult Correctional Facility, including Defendants OFFICER CHRISTOPHER BELINSKY, OFFICER BRIAN FOGARTY, OFFICER DANIEL MARCINKO, LT. MICHAEL DOMANOSKI, LT. EUGENE MARRA, SGT. JASON TURNER, OFFICER ANTHONY PORCELLA, OFFICER TOBY METZGER, OFFICER JOHN BARTLINSKI, JR., failed to identify and address the mental health needs of Mr. Murphy.

130. The above-described policies, practices and customs demonstrated a deliberate indifference on the part of policymakers of the MIDDLESEX COUNTY, BRUCE KAPLAN, ANDREW C. CAREY and Warden EDMUND CICCHI to the constitutional rights of Mr. Murphy alleged herein.

131. It was the policy, practice and/or custom of MIDDLESEX COUNTY and Warden EDMUND CICCHI to inadequately supervise and train its corrections officers and other employees and agents on the appropriate methods of restraining inmates, thereby exhibiting deliberate indifference to the constitutional rights of inmates in their custody, including Mr. Murphy.

132. That as a result of the deprivation of Plaintiff's constitutional rights, Mr. Murphy suffered harm including sustained pain and emotional distress, physical injury and ultimately death.

133. As to Count VI, Defendants BRUCE KAPLAN and ANDREW C. CAREY are sued in their individual capacities for all relief.

COUNT VII: WRONGFUL DEATH / SURVIVORSHIP ACT

(Estate of Murphy v. All Defendants, except Brian Favretto, Douglas Turner, Bruce Kaplan and Andrew Carey)

134. Plaintiffs incorporate by reference paragraphs 1 – 147 as though fully set forth herein.

135. The conduct of Defendants, as described above subjects them to liability to the Plaintiff for the emotional trauma, including conscious pain and suffering until he expired on November 26, 2013, pursuant to the dictates of the New Jersey Survivor's Act N.J.S.A. 2A:15-3, *et. seq.*

136. The Defendants are also liable to the Plaintiff due to the wrongful death of the Decedent by the State of New Jersey's Wrongful Death Act, known and designated as N.J.S.A. 2A:31-1, *et. seq.*

137. The harmed inflicted upon Mr. Murphy was the result of the Defendants' acts and/or omissions, and such acts and/or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of the foreseeable risk to Mr. Murphy's health and safety. Therefore, the Defendants are liable to the Plaintiff pursuant to the dictates of the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.9, *et seq.*

DEMAND FOR JUDGMENT

138. WHEREFORE, unless otherwise set forth above, the Estate of Arthur J. Murphy, requests the following relief:

A. Compensatory damages from all defendants for the injuries, humiliation, pain and

suffering, emotional distress, psychiatric, psychological, mental anguish and/or wrongful death as a result of the November 26, 2013 incident;

B. Compensatory damages from all defendants for legal bills, medical bills, funeral expenses and/or other expenses that Plaintiff incurred or will incur in the future as a result of the November 26, 2013 incident;

C. Compensatory damages from all defendants for the value of the federal constitutional rights invaded to Arthur Murphy;

D. Punitive damages from defendants sued in their individual capacity;

E. Reasonable attorneys' fees from all defendants pursuant to 42 U.S.C. §1988; and

F. Such other and further relief that the Court may deem just.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury as to all issues of the within matter.

RUSSO LAW OFFICES, LLC

By: s/ BRAD M. RUSSO
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Dated: 11/27/19