

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
C.A. NO.: _____

REGINALD WHITE, as Personal)
 Representative of the Estate of Ayesha)
 Marie Johnson,)
)
 PLAINTIFF)
)
 vs.)
)
 MAURA HEALEY, ROBBIE GOLDSTEIN,)
 BROOKE DOYLE, SUFFOLK COUNTY)
 SHERIFF'S DEPARTMENT, STEVEN)
 TOMPKINS, WILLIAM SWEENEY,)
 SYLVIA THOMAS, FRANK TAYLOR,)
 SHAUNETTE FITZPATRICK, IAN)
 O'ROURKE, JOSEPH CHIARENZA,)
 DANIEL FITZGIBBON, JOSEPH)
 KITTERICK, TESSA DORN, ROMAND)
 COOK, and JOHN THOMAS,)
)
 DEFENDANTS)

COMPLAINT

INTRODUCTION

1. This is an action by the Estate of Ayesha Marie Johnson for state and federal claims arising from egregious violations of her civil rights, including deliberate indifference to her wellbeing and her medical needs, the unambiguous failure of the Commonwealth of Massachusetts and the Suffolk County Sheriff's Department to follow the law, including Massachusetts General Laws chapter 123, § 35 and the order of the Boston Municipal Court, ordering Ms. Johnson to be transported to a designated commitment facility, the unlawful and unconstitutional policy and customs of the

Commonwealth of Massachusetts and the Suffolk County Sheriff and Sheriff's Department which allow for persons adjudged by a court to have an alcohol or substance use disorder to be admitted into Suffolk County's correctional facilities, and the recklessness and/or negligent conduct by officers of the Suffolk County Sheriff's Department who were responsible for Ms. Johnson's care and custody when she wrongfully died in a cell at the House of Correction.

2. Ms. Johnson was civilly committed, by the Boston Municipal Court, for the purpose of inpatient care to a facility that provides care and treatment for a person with alcohol use disorder, and instead of transporting her to such facility, pursuant to Massachusetts law and the court's order, officers of the Suffolk County Sheriff's Department transported her to the House of Correction, the facility utilized for persons that have been sentenced after conviction of a crime or persons that are awaiting trial because they have been charged with a crime, pursuant to the unlawful and unconstitutional policies and customs of the Commonwealth of Massachusetts and the Suffolk County Sheriff's Department.
3. Transporting Ms. Johnson to the House of Correction rather than to the appropriate treatment facility was traumatic and degrading to Ms. Johnson, who pleaded with officers of the Suffolk County Sheriff's Department about why she was being brought to jail instead of her treatment program.
4. The Commonwealth of Massachusetts and Suffolk County Sheriff's Department's policy and customs that allow officers to imprison people adjudged to have an alcohol or drug addiction is unlawful and unconstitutional, in addition to being incompatible with the purpose of a Section 35 order which is granted specifically to treat persons

with alcohol or substance abuse disorder and only when there is a likelihood of serious harm as a result of the person's alcohol or substance use disorder.

5. By permitting Ms. Johnson to be transported to the House of Correction, the Commonwealth of Massachusetts, the Governor of the Commonwealth of Massachusetts, the Commissioners of Mental Health and Public Health for the Commonwealth of Massachusetts, the Sheriff of the Suffolk County Sheriff's Department, and specific officers in the Suffolk County Sheriff's Department, stripped Ms. Johnson of her dignity, treated her with a shocking lack of humanity, were deliberately indifferent to her wellbeing and medical needs, and unlawfully and unconstitutionally stripped Ms. Johnson of her constitutional rights.
6. As a result of these substantial failures and the unambiguous departure from the statutory law allowing a person to be civilly committed, Ms. Johnson died alone in a cell at the House of Correction at the Suffolk County Sheriff's Department, never even having had the opportunity to begin her recovery.

JURISDICTION AND VENUE

7. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, the Eighth and Fourteenth Amendments to the United States Constitution, the right to substantive due process guaranteed by the Constitution of the United States, the rights secured under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA") to be free from discrimination, and the common law, Constitution and statutes of the Commonwealth of Massachusetts.

8. In particular, as to state law, Plaintiff brings claims against the Suffolk County Sheriff's Department as the public employer liable for the conduct of its public employees pursuant to the Massachusetts Tort Claims Act, M.G.L. chapter 258.
9. There is no reasonably likelihood that Plaintiff's recovery will be less than or equal to \$25,000.
10. The Superior Court has original jurisdiction of the action, pursuant to M.G.L. chapter 212, §§ 3 and 4, and it has exclusive jurisdiction of claims against Suffolk County Sheriff's Department pursuant to the Eleventh Amendment to the United States Constitution and the Massachusetts Tort Claims Act, M.G.L. chapter 258, § 3.
11. Venue in the Suffolk County Division of this Court is proper pursuant to M.G.L. chapter 223, § 2 and M.G.L. chapter 258, § 3.

PARTIES

12. Plaintiff Reginald White is a resident of Dorchester, Massachusetts, who brings this action as Personal Representative of the Estate of Ayesha Marie Johnson.
13. Plaintiff was appointed Personal Representative of the Estate of Ayesha Marie Johnson on March 7, 2022 by the Suffolk County Probate and Family Court, Docket No. SU21P1801EA.
14. At the time of her death, Ayesha Marie Johnson was the beloved mother of her two minor children: Renee Kori Marie Johnson and Stephen Cameron Kai Johnson Bullard, and a resident of Boston, Massachusetts.
15. Defendant Maura Healey ("**Healey**") is the Governor of the Commonwealth of Massachusetts, and maintains an office at the Massachusetts State House, Office of the Governor, Room 280, Boston, Massachusetts 02133.

16. Defendant Robbie Goldstein (“**Goldstein**”) is the Commissioner of the Department of Public Health for the Commonwealth of Massachusetts and maintains an office at the Department of Public Health, 250 Washington Street, Boston, Massachusetts 02108.
17. Defendant Brooke Doyle (“**Doyle**”) is the Commissioner of the Department of Mental Health for the Commonwealth of Massachusetts and maintains an office at the Department of Mental Health Central Office, 25 Staniford Street, Boston, Massachusetts 02114.
18. Defendant Suffolk County Sheriff’s Department, (“**SCSD**”) is an independent state agency of the Commonwealth of Massachusetts.
19. Defendant SCSD operates the Suffolk County House of Correction located at 20 Bradston Street in Boston, and the Suffolk County Jail, located at 200 Nashua Street in Boston.
20. Defendant SCSD’s House of Correction is primarily used for the care and custody of people who are sentenced or awaiting trial.
21. As its primary mission, the SCSD is mandated to provide the safe care of men and women who are remanded to its facilities and, also to enforce the laws of the Commonwealth of Massachusetts and to serve and protect the citizens of Suffolk County.
22. Defendant Steven Tompkins (“**Tompkins**”) was, at all times relevant to this complaint, the Sheriff of Suffolk County and held final decision-making authority over the policies and customs of the SCSD.
23. Defendant Tompkins manages all operations at the Suffolk County House of Correction, the Suffolk County Jail and the Civil Process Division, including the care,

custody and rehabilitative support of all persons in the care, custody and control of the Suffolk County Sheriff's Department. Defendant Tompkins oversees the management, security and administrative staff of the Suffolk County Sheriff's Department.

24. Defendant William Sweeney ("**Sweeney**") was, at all times relevant to this complaint, the Superintendent of the SCSD House of Correction responsible for implementing the policies and customs of the SCSD.

25. Defendant Sylvia Thomas ("**Thomas**") was, at all times relevant to this complaint, the Assistant Superintendent of the SCSD House of Correction responsible for implementing the policies and customs of the SCSD.

26. Defendant Thomas also was responsible for authorizing a cell search of an inmate that arrived on the same date as Ms. Johnson and by the same van that transported two other inmates who subsequently overdosed.

27. Defendant Frank Taylor ("**Taylor**") was, at all times relevant to this complaint, the Shift Commander of the SCSD House of Correction responsible for implementing the policies and customs of the SCSD.

28. Defendant Taylor also was responsible for notifying Sweeney and Thomas of Ms. Johnson's nonresponsive condition, ordering the House of Correction to be placed on lockdown status, and overseeing the notification of the Boston Police and the Boston Police Homicide Division.

29. Defendant Shaunette Fitzpatrick ("**Fitzpatrick**") was, at all times relevant to this complaint, the Assistant Shift Commander of the SCSD House of Correction and responsible for implementing the policies and customs of the SCSD.

30. Defendant Ian O'Rourke ("**O'Rourke**") was, at all times relevant to this complaint, an officer of the Suffolk County Sheriff's Department and assigned to the transportation team.
31. Defendant Joseph Chiarenza ("**Chiarenza**") was, at all times relevant to this complaint, an officer of the Suffolk County Sheriff's Department and assigned to the transportation team.
32. Defendant Daniel Fitzgibbon ("**Fitzgibbon**") was, at all times relevant to this complaint, an officer of the Suffolk County Sheriff's Department and the supervisor of Booking.
33. Defendant Joseph Kitterick ("**Kitterick**") was, at all times relevant to this complaint, an officer of the Suffolk County Sheriff's Department and assigned to Booking.
34. Defendant Tessa Dorn ("**Dorn**") was, at all times relevant to this complaint, an officer of the Suffolk County Sheriff's Department and assigned to Booking.
35. Defendant Romand Cook ("**Cook**") was, at all times relevant to this complaint, an officer of the Suffolk County Sheriff's Department and assigned to Booking.
36. Defendant John Thomas ("**LPN Thomas**") is a licensed practical nurse.
37. Defendant LPN Thomas was, at all times relevant to this complaint, an agent of the Suffolk County Sheriff's Department through his employer Wellpath.
38. At all times relevant to this complaint, Wellpath was the healthcare vendor for the Suffolk County Sheriff's Department.
39. At all times relevant to this complaint, Defendant LPN Thomas was present at the SCSD House of Correction for the purpose of providing medical services to persons at the SCSD House of Correction.

FACTS

Proceedings for Alcohol and Substance Use Disorders

40. General Laws chapter 123, § 35 permits the district court or any division of the juvenile court department to involuntarily commit a person that has an alcohol or substance use disorder.
41. For the purposes of § 35, alcoholic means a person who chronically or habitually consumes alcoholic beverages to the extent that (1) such use substantially injures his health or substantially interferes with his social or economic functioning, or (2) he has lost the power of self-control over the use of such beverages.
42. Upon receipt of a petition, by a “police officer, physician, spouse, blood relative, guardian, or court official,” the court schedules an immediate hearing and issues a summons to the person sought to be committed. G.L. c 123, § 35.
43. When the person appears before the court, he or she has a right to counsel, and must be examined by a qualified physician, psychologist, or social worker. See e.g., Matter of Minor, 484 Mass. 295, 296 (2020).
44. To issue the order of commitment, the judge must find, by clear and convincing evidence, that the person whose commitment is sought is an individual with an alcohol or substance use disorder, as defined by G.L. c 123, § 35, and that there is a likelihood of **serious harm** as a result of the person’s alcohol or substance use disorder, as defined in G.L. c. 123, § 1.
45. For M.G.L. chapter 123, § 35 to be constitutional as applied, hearing judges are also required to find, by clear and convincing evidence, that there are no appropriate, less

restrictive alternatives that adequately would protect a respondent from a likelihood of imminent and serious harm.

46. The analysis that there are no restrictive alternatives is constitutionally required pursuant to the Fourteenth Amendment to the United States Constitution and articles 1, 10, and 12 of the Massachusetts Declaration of Rights which establish a fundamental right to liberty and freedom from restraint that cannot be curtailed without due process of law.

47. Section 35 defines alcohol use disorder as the chronic or habitual consumption of alcoholic beverages by a person to the extent that (1) such use substantially injures the person's health or substantially interferes with the person's social or economic functioning, or (2) the person has lost the power of self-control over the use of such beverages.

48. Section 35 restricts commitments orders to a maximum period of ninety days and to a facility designated by the department of public health.

49. Section 35 defines facility as a public or private facility that provides care and treatment for a person with an alcohol or substance use disorder.

50. The SCSD House of Correction is not a facility, pursuant to M.G.L. chapter 123, § 35, that has been designated to provide care and treatment for a person with an alcohol or substance use disorder.

51. Sending a person civilly committed for treatment and recovery to a correctional facility is morally wrong, not evidence based and, counter therapeutic.

52. Massachusetts leaders have acknowledged for decades that imprisoning civilly committed persons is not consistent with proper treatment and with the correctional mission.
53. In 1989, the Governor's Special Advisory Panel on Forensic Mental Health recommended that "only individuals who are subjects of the criminal justice system" should be committed to prison under Section 35.
54. In 2005, the Governor's Corrections Advisory Council recommended against incarcerating female Section 35 patients at MCI-Framingham.
55. In 2011, an independent consultant retained by the Department of Corrections, MGT of American, Inc., recommended that Massachusetts discontinue civil commitments to MCI-Framingham "as soon as possible."
56. In 2011, the Corrections Master Plan prepared by the Division of Capital Asset Management observed that civil commitment to correctional facilities was unique to Massachusetts, and recommended that these individuals be treated in non-correctional settings.
57. In 2015, Governor Charlie Baker's Opioid Working Group recommended that the Commonwealth transfer responsibility for all Section 35 civil commitments from the Department of Correction to the Executive Office of Health and Human Services, stating: "It is important that treatment occur in a clinical environment, not a correctional setting, especially for patients committed civilly under Section 35 of chapter 123 of the General Laws."
58. In 2016, Governor Charlie Baker announced legislation ending the incarceration of female patients, and said: "Now, women with substance use disorder who are civilly

committed for substance use disorder will not be sent to MCI Framming and will get real treatment instead of jail time.”

59. Governor Charlie Baker’s administration shifted Section 35 treatment resources for women from MCI Framingham to treatment settings like the Women’s Addiction Treatment Center (WATC).

60. Despite all of the history in the Commonwealth regarding the wrongful admission of persons civilly committed to correctional settings, the Commonwealth of Massachusetts, through the Suffolk County Sheriff’s Department continues to admit persons that have been civilly committed to correctional institutions. See also, Research Division of the Suffolk County Sheriff’s Department, Statistical Report, 2016-2021 Massachusetts Suffolk County Sheriff’s Department, at 66, available electronically at <https://scsdma.org/reports2022/> (July 12, 2022) (identifying “Civil Commit” as a category of admission to SCSD).

61. An admission of a person that has been civilly committed to the SCSD’s House of Correction, subjects the person civilly committed to experience a deep sense of shame, loss of their dignity, lack of understanding why they are being taken to a correctional facility, and it unconstitutionally contravenes the clearly established procedures set forth for civil commitment pursuant to Massachusetts law.

Ms. Johnson’s Admission to the House of Correction by the Suffolk County Sheriff’s Department

62. On July 28, 2021, Ms. Johnson appeared at the Boston Municipal Court to answer a warrant apprehension that was issued under Section 35; and she was subsequently taken into custody by court officers.

63. The Boston Municipal Court ordered Ms. Johnson's civil commitment to the Women's Addiction Treatment Center. See also, Order for Commitment for Alcohol or Substance Use Disorder G.L. c. 123, § 35, 2107MH000175 (July 28, 2021).

64. The Boston Municipal Court further ordered, as follows:

I. **TRANSPORTATION TO FACILITY:** The Court ORDERS any DULY AUTHORIZED OFFICER to deliver the Respondent to the Superintendent of such treatment facility and to make return of service promptly to the Clerk-Magistrate of this court in the space provided below. Nothing in the ORDER prohibits the Sheriff from taking any action deemed necessary regarding the Respondent's health prior to delivery of the Respondent to the facility provided that the Sheriff shall maintain custody of the Respondent until said delivery is made." *Id* (emphasis in original Order for Commitment for Alcohol or Substance Use Disorder G.L. c. 123, § 35).

65. The judge's order did not authorize the Defendants to transport Ms. Johnson to the SCSD Nashua Street Jail or the SCSD House of Correction.

66. Despite that, Defendants O'Rourke and Chiarenza transported Ms. Johnson from the Boston Municipal Court to the SCSD Nashua Street Jail and then to the SCSD House of Correction.

67. Prior to transporting Ms. Johnson, Defendants O'Rourke and Chiarenza knew that Ms. Johnson was not in custody because she had been charged with a crime or had been convicted of a crime.

68. Prior to transporting Ms. Johnson, Defendants O'Rourke and Chiarenza knew that Ms. Johnson was in custody because she had been civilly committed for alcohol use disorder and was ordered to be delivered to the Women's Addiction Treatment Center.

69. Prior to transporting Ms. Johnson, Defendants O'Rourke and Chiarenza knew from court officers that Ms. Johnson had vomited at the Boston Municipal Court.

70. Then, during transport, Defendants O'Rourke and Chiarenza observed Ms. Johnson dry heaving, which is also known as retching.

71. Defendant Chiarenza observed sounds of dry heaving from Ms. Johnson and Defendant O'Rourke observed sounds of dry heaving and had to assist Ms. Johnson from the transport van.

72. Defendants O'Rourke and Chiarenza did not take any action during transport to ascertain if Ms. Johnson needed medical assistance or was suffering from a medical condition after their observations.

73. During transport, Ms. Johnson asked Defendants O'Rourke and Chiarenza how long the ride to the Women's Addiction Treatment Center would take and Defendants O'Rourke and Chiarenza told her that she was being transported to the House of Correction.

74. Ms. Johnson started to cry, and pleaded with Defendants O'Rourke and Chiarenza about why she was being brought to jail.

75. Defendants O'Rourke and Chiarenza misrepresented the court's order to Ms. Johnson and told her that she was going to the House of Correction to wait there for a ride to her Program.

76. Defendants O'Rourke and Chiarenza had no authorization in the court's order to transport Ms. Johnson to the SCSD Nashua Street Jail, and then to the SCSD House of Correction.

77. The judge's order stated that nothing in the order prohibited the Sheriff from taking **any action deemed necessary** regarding Ms. Johnson's health prior to delivery to the facility.

78. Defendants O'Rourke and Chiarenza had explicit authorization, as officers of the Sheriff's department, to take any action deemed necessary regarding Ms. Johnson's health prior to delivery to the commitment facility.
79. During transport, Defendants O'Rourke and Chiarenza also transported several other persons in the same vehicle with Ms. Johnson.
80. During transport, Defendants O'Rourke and Chiarenza went first to the Nashua Street Jail and four males were taken out of the transport vehicle.
81. At the Nashua Street Jail, Defendants O'Rourke and Chiarenza made no attempt to ascertain if Ms. Johnson needed medical assistance or was suffering from a medical condition.
82. Upon arrival at the SCSD House of Correction, Defendants O'Rourke and Chiarenza failed to take any action to alert or report to other SCSD personnel that officers of the Boston Municipal Court reported that Ms. Johnson had been vomiting at the Boston Municipal Court, and that they observed Ms. Johnson dry heaving during transport.
83. After arrival at the SCSD House of Correction, Defendant O'Rourke assisted Ms. Johnson in getting out of the vehicle and escorted her into Booking, and Defendant Chiarenza removed Ms. Johnson's handcuffs and leg irons and put her into Booking Cell # 7.
84. At 3:18PM, less than a minute later, Defendant Fitzgibbon moved Ms. Johnson from Booking Cell # 7 to Booking Cell # 8.
85. From 3:18PM forward, Defendants Fitzgibbon, Kitterick, Dorn, and Cook, as officers of the Booking area of the SCSD House of Correction were responsible for her care and custody, including her wellbeing, and Defendants Fitzgibbon, Kitterick, Dorn, and

Cook failed in their basic responsibilities and expectations of care, custody and control.

86. At 3:23PM, Ms. Johnson fell off of the cell bench and onto the floor.

87. At 3:25PM, Defendant Fitzgibbon was sitting on the left side of the Booking desk, directly in front of the computer with the Booking cells on the monitor and Defendant Kitterick was sitting on the right side of the Booking desk, and neither Defendants Fitzgibbon or Kitterick noticed Ms. Johnson was lying on the cell floor.

88. At 3:38PM, Defendants Fitzgibbon, Kitterick, Dorn, and Cook were chatting among themselves, which they continued to do for at least fifteen minutes, and none of the Defendants were concerned with the wellbeing of Ms. Johnson.

89. From 3:38PM to 3:57PM, Defendant Fitzgibbon, at times, was sitting with his feet up on the desk, and Defendant Kitterick was slouched back in his chair relaxing, and neither Defendants noticed Ms. Johnson lying on the cell floor.

90. At 3:58PM, Defendant Fitzgibbon and Defendant Kitterick both had their feet up on the booking desk, and Defendant Fitzgibbon was still sitting directly in front of the video monitors but, again, Defendants Fitzgibbon and Kitterick did not concern themselves with the wellbeing of Ms. Johnson to notice she was lying on the cell floor.

91. At 4:06PM, Defendant Kitterick moved a female detainee out of Booking Cell # 7, and Defendant Kitterick failed to check the next cell over, Booking Cell # 8, where Ms. Johnson was lying on the cell floor.

92. At 4:07PM, Defendant Fitzgibbon stared directly at the video monitor, but still Defendant Fitzgibbon failed to concern himself with Ms. Johnson's wellbeing and did not notice Ms. Johnson lying on the cell floor.

93. At 4:15PM, Defendant Fitzgibbon answered a phone call, left the Booking Station and escorted a female detainee out of the Booking area, and, subsequently, at 4:18PM, Defendant Fitzgibbon returned to the Booking Station and, again, Defendant Fitzgibbon failed to concern himself with the wellbeing of Ms. Johnson.
94. At 4:20PM, Defendants Fitzgibbon and Kitterick had their feet up on the Booking desk, again, and Defendant Fitzgibbon stared directly at the monitor, again, but still failed to concern himself with the wellbeing of Ms. Johnson.
95. At 4:26PM, a transport van entered the van room of the House of Correction, and Defendant Fitzgibbon again stared at the monitor, he then maximized one of the cells, and got up and walked to Booking Cell # 8.
96. At 4:27PM, Defendant Fitzgibbon stood outside Booking Cell # 8 and observed the cell from the window; and at this time, Defendant Fitzgibbon observed that Ms. Johnson was lying on the cell floor.
97. Defendant Fitzgibbon kicked the cell door several times, and then returned to the Booking Station.
98. At 4:28PM, Defendant Fitzgibbon opened Booking Cell # 8 and stood at the threshold as he observed Ms. Johnson lying on the cell floor.
99. Defendant Fitzgibbon then finally entered the cell; and at this time, Defendant Fitzgibbon kicked Ms. Johnson's left thigh with his foot and grabbed and shook her left foot.
100. Defendant Fitzgibbon observed that Ms. Johnson was nonresponsive and left the cell aware that she was nonresponsive.

101. Defendant Fitzgibbon then radioed a “man down” and instead of attempting to begin live-saving measures he left Ms. Johnson alone, lying nonresponsive, on the floor.
102. Defendant Fitzgibbon did not notice Ms. Johnson lying on her back on the cell floor after she was secured in Booking Cell # 8 for sixty-eight minutes.
103. Defendants Kitterick, Dorn, and Cook never noticed Ms. Johnson lying on her back on the cell floor.
104. During the sixty-eight minutes, Defendants Fitzgibbon, Kitterick, Dorn, and Cook chatted among themselves, chatted among other officers in Booking, slouched in their chairs for long periods of time and/or relaxed with their feet up on their desks.
105. During the sixty-eight minutes, Defendants Fitzgibbon, Kitterick, Dorn, and Cook failed to conduct a single security round in Booking on Ms. Johnson or conduct a wellness check on Ms. Johnson.
106. During the sixty-eight minutes, Defendants Fitzgibbon, Kitterick, Dorn, and Cook also failed to observe Ms. Johnson on the video monitor on the Booking desk, which depicts video images of all of the booking cells.
107. Defendant Fitzgibbon only noticed Ms. Johnson because a transportation van had arrived, and he needed to see what cell the new arrival could be placed into.
108. Defendants Fitzgibbon, Kitterick, Dorn, and Cook were derelict in their duties as the officers in Booking that were responsible for the care, custody and control of Ms. Johnson.

109. Defendant Fitzgibbon was the first on the scene and attempted to get a verbal and physical response from Ms. Johnson; but failed to provide, or even attempt, essential life-saving measures.

110. Defendant Kitterick entered the cell to assist Defendant Fitzgibbon, but then quickly exited the cell; and also failed to provide, or even attempt, essential life-saving measures.

111. Defendant Fitzgibbon concluded that Ms. Johnson was unresponsive and instead of beginning life-saving measures he exited the cell, supposedly to track down Defendant LPN Thomas.

112. Defendant LPN Thomas arrived in Booking Cell # 8 and determined Ms. Johnson was nonresponsive and also failed to begin life-saving measures.

113. Chest compressions were not started on Ms. Johnson until 4:33PM, five-minutes after Ms. Johnson had been discovered unresponsive on the cell floor, and seventy-five minutes after Ms. Johnson had been secured in Booking Cell # 8.

114. At approximately 5:00PM, additional medical personnel who responded to the "man down" ceased life saving measures, and Ms. Johnson was declared deceased.

Investigation of the Suffolk County Sheriff's Department

115. Pursuant to SCSD policy, after Ms. Johnson's death in the custody of SCSD, an investigator from SCSD's Investigative Division reviewed documents, incident reports, the policies and customs of the SCSD, video footage of the House of Correction, and interviewed officers of the SCSD.

116. The investigator identified a policy of the SCSD approved by Defendant Steven Tompkins, issued in January 2000, effective May 2021, applicable to civilly committed persons.
117. SCSD's policy is that civilly-committed individuals are subject to established procedures for admission, custody, and discharge.
118. SCSD's policy for inmates is that prior to being restrained in the Booking area each inmate is strip searched and then strip searched again prior to leaving the booking area.
119. SCSD's policy for pre arraignment arrestees are that they are only accepted after a medical evaluation, fingerprinting, and booking into the Offender Management System,
120. SCSD's policy for pre arraignment arrestees require rounds to be conducted by unit officers every thirty (30) minutes and recorded in a unit log.
121. Despite these supposed policies, officers of the SCSD and union attorneys representing officers of the SCSD told the investigator that 30-minute rounds are specified for pre arraignment arrestees and that they do not apply to Civil Commits.
122. During an interview on August 2, 2021 of Defendant Fitzgibbon, with Union President Jonathan Corey and Union Attorney Scott Dunlap present, Defendant Fitzgibbon was asked whether they should have checked on Ms. Johnson, and Defendant Fitzgibbon said "No, not with the policies on the civil commits. We usually don't check on them. Policy doesn't require us to do that."

123. During the interview, Defendant Fitzgibbon's union representative told the investigator that the policy of thirty (30) minute rounds to be recorded in a unit log book was not in the Booking post orders.
124. During the interview, Defendant Fitzgibbon also told the investigator that he had never had a log book in Booking.
125. During an interview on August 2, 2021 of Defendant Kitterick, with Union President Jonathan Corey and Union Attorney Scott Dunlap present, Defendant Kitterick was asked if someone in their care, custody, and control needed to be in physical or mental distress in order for a wellness check to be conducted, and Defendant Kitterick told the investigator "no not necessarily" and then "no."
126. During the interview, Union Attorney Scott Dunlap interjected and asserted that the Booking post orders cited indicate 30-minute rounds are specified for pre arraignment detainees and that they do not apply to civil commits.
127. During the interview, Defendant Kitterick was asked if that precludes rounds and wellness checks for those who don't fall under pretrial and pre arraignment detainees, such as civil commits, and Defendant Kitterick told the investigator "we do it periodically."
128. During an interview on August 4, 2021 of Defendant Dorn, with Union President Jonathan Corey present, Defendant Dorn was asked whose responsibility it is in Booking to conduct wellbeing checks, and Defendant Dorn said "I think it's a team effort with all of us that are down there."
129. Significantly, there is a lack of understanding among officers on SCSD policies, including whether policies applied to civil commits, whether policies were included

in post orders, whether policies were being enforced by officers of the SCSD, whether policies were being enforced by supervisors of the SCSD on officers of the SCSD, and whether supervisors were adequately training officers of the SCSD on policies that supposedly were applicable to civil commits.

130. Significantly, the officers union representatives took the position that officers of the SCSD are not required pursuant to policy to conduct thirty minute rounds on persons that are in the care, custody and control of the SCSD if they are civil commits.

131. Prior to Ms. Johnson's death, the Local 419 union, which represents various officers at the SCSD House of Correction, asked the SCSD, including Defendant Thomas, for specialized training on paperwork for members assigned to Booking because officers were being held accountable for things they were not trained on.

132. It is clear that the policy and custom of the SCSD is to unlawfully and unconstitutionally transport and admit civil commits into the House of Correction, but it is especially egregious that in doing so the SCSD completely failed to train and supervise officers of the SCSD, including those specifically assigned to Booking, as to their duties and responsibilities during the time a civil commit is in the SCSD's care, custody and control.

133. Defendants', including the Commonwealth of Massachusetts, the Governor of the Commonwealth of Massachusetts, the Commissioner of Public Health, the Commissioner of Mental Health, the Sheriff of the Suffolk County Sheriff's Department, the Supervisors of the Suffolk County Sheriff's Department, including the Superintendent, Assistant Superintendent, Shift Commander, and Assistant Shift Commander, and officers of the Suffolk County Sheriff's Department, unlawful and

unconstitutional conduct in allowing civil commits to be transported to the Nashua Street Jail and House of Correction, and admitted to the House of Correction pending a later transportation to a treatment facility is a travesty of justice.

STATEMENT OF CLAIMS

COUNT 1

**Violation of Substantive Due Process Guaranteed by the Fourteenth Amendment
to the United States Constitution Pursuant to 42 U.S.C. § 1983
(against all Defendants)**

134. Each of the previous paragraphs are incorporated as if fully set forth herein.
135. Defendants are persons within the meaning of 42 U.S.C. § 1983.
136. At all relevant times, Defendants have been aware that the Suffolk County Sheriff's Department fails to directly transport persons civilly committed from the Boston Municipal Courts to the court ordered treatment facility, and instead admits persons civilly committed to its own facilities and forces them to wait in jail cells for a later transport, often referred to as night transport.
137. The Fourteenth Amendment to the United States Constitution provides that "No State shall . . . deprive any person of life, liberty, or property, without due process of law."
138. Ms. Johnson had a liberty interest in not being unjustly deprived of her life, liberty or property, without due process of law.
139. By transporting Ms. Johnson to the Nashua Street Jail and then the House of Correction, Defendants deprived Ms. Johnson of her clearly established rights under the Fourteenth Amendment to the United States Constitution.

140. By admitting Ms. Johnson to the House of Correction, Defendants deprived Ms. Johnson of her clearly established rights under the Fourteenth Amendment to the United States Constitution.

141. Ms. Johnson's transport and admission to the House of Correction represents a substantial departure from G.L. c. 123, § 35 and does not bear reasonable relation to the purpose of Section 35, which allows for commitment of persons for the purpose of inpatient care for the treatment of an alcohol or substance use disorder in a facility licensed or approved by the department of public health or the department of mental health.

142. The SCSD House of Correction is not a facility, pursuant to M.G.L. chapter 123, § 35, that has been designated to provide care and treatment for a person with an alcohol or substance use disorder.

143. By their policies, practices, and actions, Defendants violated the rights of Ms. Johnson to substantive due process guaranteed by the United States Constitution, as enforceable under 42 U.S.C. § 1983.

144. Defendants' actions were taken with a reckless disregard for Ms. Johnson's constitutional rights.

145. As a result of the Defendants actions, Ms. Johnson, and her next of kin, lost reasonably expected income, services, protection, assistance, society, companionship, comfort, guidance, counsel, and advice, and Ms. Johnson lost her liberty to be free from a correctional institution, and ultimately her life.

WHEREFORE, the Plaintiff demands judgment against Defendants for all losses sustained, including but not limited to compensatory damages, interest, costs and attorneys' fees, and punitive damages.

COUNT 2
**Violation of Civil Rights Guaranteed by the Eighth Amendment to the United States Constitution Pursuant to 42 U.S.C. § 1983
(Defendants O'Rourke and Chiarenza)**

146. Each of the previous paragraphs are incorporated as if fully set forth herein.

147. The conduct of Defendants O'Rourke and Chiarenza, performed under color of state law, denied Ms. Johnson her rights under the Eighth and/or Fourteenth Amendment to the Constitution of the United States, in violation of the Civil Rights Act of 1966, as amended, 42 U.S.C. § 1983.

148. Defendants O'Rourke and Chiarenza were deliberately indifferent to Ms. Johnson's serious medical needs.

149. The conduct of Defendants O'Rourke and Chiarenza, alleged above, includes but is not limit to:

- a. Transportation of Ms. Johnson from Boston Municipal Court Dorchester to the Nashua Street Jail, and then to the House of Correction, disregarding the court's order to transport her to a treatment facility;
- b. Knowledge that Ms. Johnson was not held or transported because she was charged or convicted of a crime, but that she was civilly committed pursuant to Chapter 123, Section 35 of the Massachusetts General Laws;
- c. Understanding that the purpose of Section 35 is for inpatient care of individuals at risk of serious harm resulting from addiction;

- d. Awareness that Ms. Johnson had vomited at the Boston Municipal Court, prior to being transported to the Nashua Street Jail, and then the House of Correction;
- e. Observation that Ms. Johnson, during transport, was dry heaving, also known as retching, which occurs when a person is going through the motions and sensation of vomiting without producing any vomit;
- f. Failure, during transport of Ms. Johnson, to provide Ms. Johnson any medical treatment, or check on Ms. Johnson's well-being;
- g. Failure, upon arrival to the SCSD Nashua Street Jail, to provide Ms. Johnson any medical treatment, or check on Ms. Johnson's well-being;
- h. Failure, upon arrival to the SCSD House of Correction, to provide Ms. Johnson any medical treatment;
- i. Failure, upon arrival to the SCSD House of Correction, to inform other SCSD personnel that Ms. Johnson experienced medical symptoms at the Boston Municipal Court, and during the transport from the Boston Municipal Court;
- j. Failure, upon arrival to the SCSD House of Correction, to inform other SCSD personnel that Ms. Johnson needed assistance getting out of the transport vehicle;
- k. Restriction of emergency and/or medical treatment for reasons unrelated to proper clinical care, including the prejudiced, narrow-minded, and bigoted belief that persons who have been civilly committed are usually in way far off worse condition;

- l. Failure to appreciate the obvious need that Ms. Johnson had for medical care as a person with addiction, which is a relapsing brain disease characterized by compulsive seeking and use behaviors; and
 - m. Failure to transport Ms. Johnson from the Boston Municipal Court to the court ordered Commitment Facility unlawfully in contrast to M.G.L. chapter 123, § 35, and the court's order of commitment.
150. As a direct and proximate result of the Defendants' conduct, Ms. Johnson suffered harm and damages, described herein.

WHEREFORE, the Plaintiff demands judgment against Defendants for all losses sustained, including but not limited to compensatory damages, interest, costs and attorneys' fees, and punitive damages.

COUNT 3
Violation of Civil Rights Guaranteed by the Eighth Amendment to the United States Constitution Pursuant to 42 U.S.C. § 1983
(Defendants Fitzgibbon, Kitterick, Dorn, and Cook)

151. Each of the previous paragraphs are incorporated as if fully set forth herein.
152. The conduct of Defendants Fitzgibbon, Kitterick, Dorn, and Cook, performed under color of state law, denied Ms. Johnson her rights under the Eighth and/or Fourteenth Amendment to the Constitution of the United States, in violation of the Civil Rights Act of 1966, as amended, 42 U.S.C. § 1983.
153. Defendants Fitzgibbon, Kitterick, Dorn, and Cook were deliberately indifferent to Ms. Johnson's serious medical needs.
154. The conduct of Defendants Fitzgibbon, Kitterick, Dorn, and Cook, alleged above, includes but is not limit to:

- a. Responsibility for the care, custody, and control of Ms. Johnson after her arrival to the House of Correction from the Boston Municipal Court;
- b. Knowledge that Ms. Johnson was not held or transported because she was charged or convicted of a crime, but that she was civilly committed pursuant to Chapter 123, § 35 of the Massachusetts General Laws;
- c. Understanding that the purpose of Section 35 is for inpatient care of individuals at risk of serious harm resulting from addiction;
- d. Failure during the care, custody and control of Ms. Johnson to provide Ms. Johnson any medical treatment, or check on Ms. Johnson's well-being;
- e. Restriction of emergency and/or medical treatment for reasons unrelated to proper clinical care, including statements that persons who have been civilly committed and are in the care, custody, and control of the SCSD House of Correction do not need wellness checks and that officers in the SCSD are not required to perform wellness checks on civil commits in their care, custody, and control;
- f. Failure to appreciate the obvious need that Ms. Johnson had for medical care as a person with addiction, which is a relapsing brain disease characterized by compulsive seeking and use behaviors; and
- g. Failure to provide, or even attempt, life saving measures, skills which all officers of the SCSD are taught as first responders.

155. As a direct and proximate result of the Defendants' conduct, Ms. Johnson suffered harm and damages, described herein.

WHEREFORE, the Plaintiff demands judgment against Defendants for all losses sustained, including but not limited to compensatory damages, interest, costs and attorneys' fees, and punitive damages.

COUNT 4
Violation of Civil Rights Guaranteed by the Eighth Amendment to the United States Constitution Pursuant to 42 U.S.C. § 1983
(Defendant LPN Thomas)

156. Each of the previous paragraphs are incorporated as if fully set forth herein.
157. The conduct of Defendant LPN Thomas, performed under color of state law, denied Ms. Johnson her rights under the Eighth and/or Fourteenth Amendment to the Constitution of the United States, in violation of the Civil Rights Act of 1966, as amended, 42 U.S.C. § 1983.
158. Defendant LPN Thomas was deliberately indifferent to Ms. Johnson's serious medical needs.
159. The conduct of Defendant LPN Thomas, alleged above, includes but is not limited to:
- a. Responsibility for the medical care of Ms. Johnson after her arrival to the House of Correction from the Boston Municipal Court as the Booking Station nurse;
 - b. Knowledge that Ms. Johnson was not held or transported because she was charged or convicted of a crime, but that she was civilly committed pursuant to Chapter 123, § 35 of the Massachusetts General Laws;
 - c. Understanding that the purpose of Section 35 is for inpatient care of individuals at risk of serious harm resulting from addiction;
 - d. Failure, during the care, custody and control of Ms. Johnson, to provide Ms. Johnson life-saving measures and medical treatment;

- e. Restriction of emergency and/or medical treatment for reasons unrelated to proper clinical care;
- f. Failure to conduct any intake process on Ms. Johnson, despite knowledge that Ms. Johnson was in the care, custody, and control of the SCSD after being civilly committed due to alcohol use disorder; and
- g. Failure to provide, or even attempt, life saving measures, which are skills that are required of licensed practical nurses.

160. As a direct and proximate result of the Defendant's conduct, Ms. Johnson suffered harm and damages, described herein.

WHEREFORE, the Plaintiff demands judgment against the Defendant for all losses sustained, including but not limited to compensatory damages, interest, costs and attorneys' fees, and punitive damages.

COUNT 5

**Negligence and/or Recklessness Resulting in Ms. Johnson's Wrongful Death
Massachusetts G.L. c 258, § 2, c. 229, § 2 Laws chapter 258,
(Defendant Suffolk County Sheriff's Department)**

161. Each of the previous paragraphs are incorporated as if fully set forth herein.
162. Defendant Suffolk County Sheriff's Department's agents and employees, acting in the scope of their employment, negligently and/or recklessly failed to act with knowledge that harm could result to Ms. Johnson, as described herein.
163. Defendant Suffolk County Sheriff's Department is legally responsible for the conduct and acts of its agents and employees, and its agents and employees were responsible for the care, custody, and control of Ms. Johnson, as described herein.
164. Ms. Johnson's liberty was never restored so that she could seek or receive medical care on her own, and her injuries and death occurred while she was in the

care, custody, and control of officers of Defendant Suffolk County Sheriff's Department.

165. On or about July 13, 2023, Plaintiff gave notice and presentment, under the Massachusetts Tort Claims Act, by letter sent via electronic and certified mail return receipt requested.

166. Plaintiff has complied with all requirements of the Massachusetts Tort Claims Act and the Suffolk County Sheriff's Department did not resolve the claim.

WHEREFORE, Plaintiff demands judgment against the Suffolk County Sheriff's Department for all allowable compensatory damages.

COUNT 6
Violation of Title II of the Americans with Disabilities Act (ADA)
(Defendant Suffolk County Sheriff's Department)

167. Each of the previous paragraphs are incorporated as if fully set forth herein.

168. Title II of the American with Disabilities Act (ADA) prohibits any public entity from subjecting a person with a disability to discrimination on the basis of such disability.

169. Defendant Suffolk County Sheriff's Department is a public entity within the meaning of Title II of the ADA.

170. Under the ADA, alcohol use disorder is considered a disability when someone can no longer do major life activities because of long-term, heavy alcohol use.

171. At all relevant times, Ms. Johnson was subject to the care, custody, and control of officers of the Suffolk County Sheriff's Department and was a qualified person with a disability because she had alcohol use disorder.

172. At all relevant times, Ms. Johnson's alcohol use disorder had such a significant affect on her major life activities that the Boston Municipal Court determined that she should be civilly committed to a commitment facility for inpatient treatment of her alcohol use disorder.

173. Defendant Suffolk County Sheriff's Department discriminated against Ms. Johnson on account of her status as a civil commit and person with alcohol use disorder by failing to implement policies and train officers of the Suffolk County Sheriff's Department on methods to properly manage the care, control and custody of persons with alcohol use disorder.

174. Defendant Suffolk County Sheriff's Department discriminated against Ms. Johnson on account of her status as a civil commit and person with alcohol use disorder by failing to treat Ms. Johnson and her medical needs the same as other persons in the care, custody and control of the Suffolk County Sheriff's Department.

175. Defendant Suffolk County Sheriff's Department intentionally and unreasonably discriminated against Ms. Johnson on account of her alcohol use disorder also on account of the SCSD officers' failure to obtain an adequate medical evaluation, seek outside medical treatment, or provide medical care to Ms. Johnson.

176. Defendant Suffolk County Sheriff's Department's unlawful discrimination against Ms. Johnson contributed to and caused her death.

177. Defendant Suffolk County Sheriff's Department is viciously liable for the conduct of its officers, including their unlawful discrimination against Ms. Johnson.

WHEREFORE, Plaintiff demands judgment against the Suffolk County Sheriff's Department for all damages allowable by law.

DEMANDS FOR RELIEF

Plaintiff respectfully requests the following relief from this Court:

- A. All compensatory damages recoverable;
- B. All punitive damages recoverable;
- C. All attorney's fees, costs and expenses allowable;
- D. That Defendants be held jointly and severally liable as allowable;
- E. Any and all other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,
By Plaintiff's attorney,

Date: July 23, 2024

/s/ George J. Leontire
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