

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GLORIA FELIX as Administrator of the Estate of
MIGDALIA ORTEGA, and GLORIA FELIX,
Individually and on behalf of all Distributees,

Case No.:

Plaintiff,

COMPLAINT

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, THE NEW YORK
CITY POLICE DEPARTMENT, THE FIRE
DEPARTMENT OF NEW YORK, POLICE
OFFICERS "JOHN DOE I-X" (whose names are
fictitious, and identities are not currently known)
and FIRST RESPONDERS "JOHN DOE I-X"
(whose names are fictitious and identities are not
currently known),

Defendants.

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PARTIES TO THIS COMPLAINT

Plaintiffs' Names and Addresses

Gloria Felix
20-33 Greene Avenue
Queens, New York 11385

Migdalia Ortega (deceased)
66-17 Fresh Pond Road, #3
Queens, New York 11385

Defendants' Names and Addresses

The City of New York
1 Centre Street
New York, New York 10007

The New York City Police Department
1 Police Plaza
New York, New York 10038

The Fire Department of New York
9 Metrotech Center
Brooklyn, New York 11201

Police Officers John Doe I-X, employees of The New York City Police Department, whose names are fictitious and identities are not currently known

First Responders John Doe I-X, employees of The Fire Department of New York, whose names are fictitious and identities are not currently known.

JURISDICTION

This Honorable Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343; 42 U.S.C. §§ 1983 and 1988. This Honorable Court has supplemental jurisdiction over all state laws claims pursuant to 28 U.S.C. § 1367.

FACTUAL ALLEGATIONS

1. At the time of the commencement of this action, plaintiff GLORIA FELIX was and still is a resident of the State of New York, County of Queens.
2. This action falls within one or more of the exemptions set forth in CPLR 1602.
3. That on May 9, 2022, Plaintiff's decedent, MIGDALIA ORTEGA, died intestate at Elmhurst Hospital Center in the State of New York, County of Queens.
4. That the plaintiff, GLORIA FELIX, was granted Limited Letters of Administration with by the Surrogate's Court of Queens County, on June 27, 2023, with regards to the estate of the decedent, MIGDALIA ORTEGA.
5. At all times mentioned, Defendant CITY OF NEW YORK was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. At all times mentioned, the defendant CITY OF NEW YORK owned, operated, managed, maintained, controlled, organized, kept, hired, trained, retained, monitored, and supervised THE NEW YORK CITY POLICE DEPARTMENT (hereinafter, NYPD).

7. POLICE OFFICERS "JOHN DOE I-X", said names being fictitious and whose identities are presently unknown by Plaintiff, were employed by the defendants' CITY OF NEW YORK and NYPD, and at all times hereinafter mentioned, were acting within the scope of and in the course of their employment and under authority and color of State Law.

8. At all times mentioned, the defendant CITY OF NEW YORK owned, operated, managed, maintained, controlled, organized, kept, hired, trained, retained, monitored, and supervised THE FIRE DEPARTMENT OF NEW YORK (hereinafter, FDNY).

9. FIRST RESPONDERS "JOHN DOE I-X", said names being fictitious and whose identities are presently unknown by Plaintiff, were employed by the defendants' CITY OF NEW YORK and FDNY, and at all times hereinafter mentioned, were acting within the scope of and in the course of their employment and under authority and color of State Law.

10. All defendants were acting within the scope of and in the course of their employment and under authority and color of State Law.

11. Defendants, including but not limited to the NYPD AND FDNY, their agents, servants and employees, shall properly protect the rights of all persons, and shall follow and obey all laws with respect to the search, seizure, detention, arrest, confinement, use of force, use of deadly physical force, and prosecution and assistance in the prosecution of all persons.

12. Defendants, including but not limited to the NYPD AND FDNY, through its employees, agents, servants, shall not without reasonable, proper and due cause, detain, search,

seize, arrest, confine and prosecute and assist in the prosecution of persons nor use unnecessary, or excessive force.

13. The NYPD and FDNY, through its employees, agents, servants, shall not delay, deny or obstruct medical care to prisoners or those under its care and custody.

14. On or about August 4, 2022, a Notice of Claim was timely and properly served upon the defendants, CITY OF NEW YORK, THE FIRE DEPARTMENT OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT.

15. More than 30 days have elapsed since the presentment of this claim and the City has failed or refused to adjust the claim and all conditions precedent has been satisfied.

16. That on March 28, 2023, pursuant to General Municipal Law 50(h), plaintiff appeared for, and hearings were held at the Offices of the Attorneys for the City.

17. That this action is being commenced within one (1) year and ninety (90) days after accrual of this cause of action, or within the time allowed by law.

18. That on May 9, 2022, at approximately 8:15 A.M., decedent, MIGDALIA ORTEGA, was lawfully within the residential building located at 66-17 Fresh Pond Road.

19. At the aforementioned time and place, decedent MIGDALIA ORTEGA was shot by her boyfriend, Pedro Cintron.

20. At the aforementioned time and place the Defendants responded to a shooting at the aforementioned location.

21. At the aforementioned time and place the Defendants seized control and/or custody of the aforementioned premises.

22. After seizing control of the premises, Defendants entered the aforementioned residence in search of victims.

23. Defendants were aware that decedent, MIGDALIA ORTEGA, was critically injured at the aforementioned location.

24. Despite decedent, MIGDALIA ORTEGA's serious and/or life-threatening injuries, there was an unreasonable delay in her receiving medical and/or lifesaving care.

25. Decedent, MIGDALIA ORTEGA, was pronounced dead at Elmhurst Hospital Center on May 9, 2022.

**AS AND FOR A FIRST CAUSE OF ACTION: NEGLIGENCE AGAINST DEFENDANTS
THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT AND
POLICE OFFICERS "JOHN DOE I-X"**

26. Plaintiff repeats and re-alleges each and every previous allegation with the same force and effect as hereinafter set forth at length.

27. At the above place and date and time Defendants, their agents, representatives, servants and/or employees were negligent, careless, grossly negligence, joint and severally liable and reckless in preventing and/or inhibiting were negligent with respect to their improper movement of plaintiff's body; negligent performance of duties; police misconduct; negligent infliction of emotional distress; denial, delay and obstruction of medical care and treatment; failure to properly secure the scene of the incident; negligent hiring, training, supervision, monitoring and retention of agents, servants and employees; failed to detect and/or respond in an appropriate manner to scene where decedent had been gravely wounded.

28. As a result of the foregoing, plaintiff's decedent, MIGDALIA ORTEGA, was adversely affected in her health, well-being and was caused to sustain her loss of liberty and freedom, personal injuries, conscious pain and suffering and loss of enjoyment of life and loss of freedom, shock and fright, fear of impending death, mental anguish and her Estate has been damaged in a sum of two million dollars (\$2,000,000.00).

**AS AND FOR A SECOND CAUSE OF ACTION: NEGLIGENCE AGAINST
DEFENDANTS THE FIRE DEPARTMENT OF NEW YORK AND
FIRST RESPONDERS "JOHN DOE I-X"**

29. Plaintiff repeats and re-alleges each and every previous allegation with the same force and effect as hereinafter set forth at length.

30. At the above place and date and time Defendants, their agents, representatives, servants and/or employees were negligent, careless, grossly negligence, joint and severally liable and reckless in preventing and/or inhibiting were negligent with respect to their improper movement of plaintiff's body; negligent performance of duties; police misconduct; negligent infliction of emotional distress; denial, delay and obstruction of medical care and treatment; failure to properly secure the scene of the incident; negligent hiring, training, supervision, monitoring and retention of agents, servants and employees; failed to detect and/or respond in an appropriate manner to scene where decedent had been gravely wounded.

31. As a result of the foregoing, plaintiff's decedent, MIGDALIA ORTEGA, was adversely affected in her health, well-being and was caused to sustain her loss of liberty and freedom, personal injuries, conscious pain and suffering and loss of enjoyment of life and loss of freedom, shock and fright, fear of impending death, mental anguish and her Estate has been damaged in a sum of one million dollars (\$1,000,000.00).

**AS AND FOR A THIRD CAUSE OF ACTION: CIVIL RIGHTS CLAIMS AGAINST
DEFENDANTS THE CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT AND POLICE OFFICERS "JOHN DOE I-X"**

32. Plaintiff repeats and re-alleges each and every previous allegation with the same force and effect as hereinafter set forth at length.

33. At the above place and date and at other locations and times, known by defendants, Defendants were acting under color of state law; defendants deprived Plaintiff's decedent of the right protected by the Constitution of the United States or a Federal or State or City statute, and said conduct caused the injuries and damages claimed by Plaintiffs.

34. By reason of the defendants conduct under color of state law, Plaintiff's decedent was deprived of Federal, State and City rights, including but not limited to the right to be free from the right to be free of cruel and unusual punishment, the right to due process, the right to equal protection under the law, the right to the fourteenth (14th) Amendment and that Plaintiff's decedent's liberty was restrained; the defendants, delayed denied, and obstructed the plaintiff's access to urgently needed medical care, was and sustained damages, punitive damages, and is entitled to Attorneys' Fees in this action.

35. Defendants, through their inadequate training and/or inadequate monitoring and supervision of their agents, servants and employees, and/or due to their the condoning of prior incidents and acts against others, defendants evidenced a pattern of deliberate indifference to the individual, civil and constitutional rights of other so as to ratify such conduct and violate the rights of others, and violated Plaintiff's Civil and Constitutional rights, as guaranteed by the Constitution of the State of New York and the United States of America, 42 USC1981 -2000(e) *et seq.*, and the New York State Civil Rights Law, and as set forth herein, and as otherwise recognized by the courts.

36. Defendants violated decedent's local, State and Federal civil rights, including but not limited 42 USC§ 1981, 42 USC§ 1983, 42 U.S.C. §§ 12101 *et seq.* (ADA); Title VII;

violated the 1st, 4th, 5th, 6th, 8th, 9th and 14th Amendment to the US Constitution; the New York State Constitution and civil rights law of the State of New York, acted in a discriminatory manner; delayed, denied and obstructed proper medical care and treatment; acted in a discriminatory manner on the basis of decedent's race/ethnicity; decedent was deprived of her civil rights by defendants their agents/servants/employees, and others acting under color of state law; supervisors/superiors condoned or ratified improper conduct or a pattern of improper conduct or of deliberate indifference to decedent's rights and were otherwise negligent.

37. As a result of the foregoing, plaintiff's decedent, MIGDALIA ORTEGA, was adversely affected in her health, well-being and was caused to sustain her loss of liberty and freedom, personal injuries, conscious pain and suffering and loss of enjoyment of life and loss of freedom, shock and fright, fear of impending death, mental anguish and her Estate has been damaged in a sum of one million dollars (\$1,000,000.00).

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS-
WRONGFUL DEATH**

38. Plaintiff repeats and re-alleges each and every previous allegation with the same force and effect as hereinafter set forth at length.

39. As a result of the foregoing, Plaintiff's Estate was so grievously and seriously injured, that decedent MIGDALIA ORTEGA died as a result of her injuries.

40. That at the time of her death, Plaintiff's decedent left surviving family, kin, and heirs at law for whose benefit this action is commenced.

41. That prior to her death, Decedent MIGDALIA ORTEGA was a healthy woman, who attended and was able to perform her usual duties, and vocation and who contributed to the

support of her family, and by virtue of her wrongful death her family was deprived of her comfort and society and of her support, they have been otherwise peculiarly damaged as a result of the aforesaid wrongful death of the decedent MIGDALIA ORTEGA.

42. By reason of the death of Plaintiff's decedent, it became necessary to bury her remains, and Plaintiff incurred the obligation therefore, and she will incur additional administration expenses and other expenses in the settlement of the estate of decedent MIGDALIA ORTEGA.

43. By reason of the foregoing, the next of kin of the Decedent have been damaged, economically, and otherwise, in the sum of three million dollars (\$3,000,000.00), together with costs and disbursements of this action and with such other and further relief as the Court may deem just and proper.

44. WHEREFORE, PLAINTIFF demands judgment against all defendant as follows:

For the First Cause of Action – in the sum of two million dollars (\$2,000,000.00);

For the Second Cause of Action – in the sum of one million dollars (\$1,000,000.00);

For the Third Cause of Action – in the sum of one million dollars (\$1,000,000.00);

For the Fourth Cause of Action - sum of three million dollars (\$3,000,000.00); together with interest, costs and disbursements of this action and such other and further relief as the


Court may deem just and proper.

JURY DEMAND

45. The plaintiffs hereby demand a trial by jury on all counts of their complaint against the Defendants.

Dated: New York, New York
July 17, 2023

Yours, etc.
THE LAMBROU LAW FIRM, P.C.

By: 
Lambros Y. Lambrou, Esq.
Attorneys for Plaintiff
45 Broadway, Suite 3150
New York, New York 10006
(212)285-2100

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GLORIA FELIX as Administrator of the Estate of MIGDALIA ORTEGA, and GLORIA FELIX, Individually

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

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

THE LAMBROU LAW FIRM, PC 45 BROADWAY SUITE 3150 NY, NY 10006

DEFENDANTS

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, THE FIRE DEPARTMENT OF NEW YORK

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 625 Drug Related Seizure, 710 Fair Labor Standards, 820 Copyrights, 870 Taxes, etc.

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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1331 and 1343; 42 U.S.C. §§ 1983 and 1988. Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 3000000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 7/17/2023 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.