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

COURTNIE WASHINGTON, as
administrator of the ESTATE OF
ANDREW JEROME WASHINGTON,
III

Plaintiff,

v.

THE CITY OF JERSEY CITY; and
OFFICER STEPHEN GIGANTE,
OFFICER FELIX DEJESUS, OFFICER
ANDREW ALAS, OFFICER
JASMERE L. EPPS, OFFICER
AURONNY DE LA CRUZ, OFFICER
CHRISTIAN E. ORTIZ, SERGEANT
RYAN P. FRIEND, CAPTAIN JASON
E. FIELD, DEPUTY CHIEF JOSEPH
SANTIAGO, EMT JUAN MIRANDA,

Civil Action No.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

and EMT HUNTER JACKMAN, *in their individual capacities*; and HUDSON COUNTY; JERSEY CITY MEDICAL CENTER, INC.; and RWJBARNABAS HEALTH, INC.

Defendants.

Plaintiff Courtnie Washington, as Administrator of the Estate of Andrew Jerome Washington, III, by and through her attorneys, the law firm Neufeld Scheck Brustin Hoffmann & Freudenberger, LLP, and Randy P. Davenport, Esq., files this complaint against Defendants Officer Stephen Gigante, Officer Felix DeJesus, Officer Andrew Alas, Officer Jasmere L. Epps, Officer Auronny De La Cruz, Sergeant Ryan P. Friend, Officer Christian E. Ortiz, Captain Jason E. Field, Deputy Chief Joseph Santiago, Emergency Medical Technician (“EMT”) Juan Miranda, EMT Hunter Jackman, the City of Jersey City, Hudson County, Jersey City Medical Center, Inc., and RWJBarnabas Health, Inc., and alleges as follows:

INTRODUCTION

1. Andrew Jerome Washington, III (“Drew”) should be alive today. He is dead because Jersey City Police Department (“JCPD”) officers dispatched to check on Drew’s safety during a mental health episode, instead broke down his apartment door, shot him twice, and tased him. Drew, a Black man experiencing symptoms related to a mental health disability, was unjustifiably killed by the police.

2. When JCPD officers broke down his front door, Drew was alone inside his apartment. He was suspected of no crime and was not a threat to anyone.

3. Drew's tragic death was entirely preventable. The risk that encounters between law enforcement and community members experiencing mental health crises may escalate into the unnecessary use of deadly force is well known. To avoid needless injury or death, law enforcement experts and government sources have for years emphasized the importance of using key de-escalation techniques, sending out mental health teams or joint mental health and law enforcement teams, and relying on the judgment of trained mental health professionals in these interactions.

4. The response by the JCPD and by Jersey City Medical Center, RWJ Barnabas Health, and/or Hudson County ran directly counter to these well-established principles for how to safely respond to a community member experiencing a mental health episode or crisis.

5. As an initial matter, although Drew's family had repeatedly called a mental health hotline asking for the advertised mobile outreach of trained mental health professionals, that team was never dispatched to Drew's apartment on the day he was killed. Instead, Jersey City Medical Center, RWJ Barnabas Health and/or Hudson County dispatched EMTs trained to respond to physical health emergencies (but who were unable to address a mental health crisis) and called for

JCPD officers (who were not medical professionals at all). Although the JCPD officers and the EMTs on the scene knew Drew was experiencing symptoms related to a mental health disability, the officers and EMTs failed to employ standard de-escalation techniques in their interactions with Drew.

6. For example, although standard de-escalation techniques require consulting with family members or other caregivers, JCPD Defendants actively shut out Drew's family who were on the scene asking to try to talk to Drew to diffuse the situation. Similarly, while standard de-escalation principles require putting distance and physical barriers between responders and the individual in crisis, and using the passage of time to allow the situation to de-escalate naturally so as to avoid use of force wherever possible, JCPD Defendants did the opposite, rushing headlong into a situation which led to the unlawful use of excessive force against Drew. JCPD unnecessarily deployed their Emergency Services Unit ("ESU"), a heavily armed, SWAT-like force trained to respond to armed criminal suspects and terrorism events. The ESU officers, equipped with helmets, shields, tasers, guns, and other tactical gear and weapons, stacked themselves immediately outside Drew's front door on the second-floor landing and stairwell, and broke down the door shortly after arriving.

7. Frustrated that Drew was not willing to open the door to his apartment to police and ready to move on, the ESU team, including Defendants Stephen

Gigante, Felix DeJesus, and Ryan Friend, made the decision to forcibly enter Drew's apartment despite the lack of any justification for such action at that time. At the moment Defendants broke down Drew's door, there was no appreciable change or escalation from Drew, and Drew's last words before officers breached his home indicated that he was upset police were there.

8. Unfortunately, JCPD and EMT Defendants' deviations from accepted de-escalation principles had tragic but predictable consequences. Within five seconds of breaking down Drew's door, JCPD officers shot him twice and tased him, causing his death later that day.

9. Shockingly, even though the JCPD response directly contradicted basic principles and New Jersey requirements for how to safely engage with a person experiencing a mental health episode or crisis, Jersey City officials immediately endorsed the actions of the officers and the Jersey City Medical Center in full. Jersey City Mayor Steven Fulop announced in a press conference that "We do feel those police officers acted properly, we want the public to know that" and that "You'd be hard pressed to say that the Medical Center and the Jersey City Police Department could have acted differently in this situation." Both Fulop and Public Safety Director James Shea asserted that all the actions of the responding officers and the Medical Center employees were consistent with Jersey City training, guidelines, and protocols.

10. JCPD Defendants acted with deliberate indifference to Drew's rights and engaged in shocking misconduct far short of minimally acceptable police practices. Instead of ensuring Drew's wellbeing, officers created the situation which led to Drew's death. Instead of connecting Drew with mental health services, they killed him.

11. By the very admission of Mayor Fulop and Director Shea, JCPD officers' actions were the result of and consistent with JCPD policies, practices, guidance, and training. Jersey City is responsible for the unconstitutional actions of its officers.

12. Defendants Jersey City, Hudson County, Jersey City Medical Center, and/or RWJ Barnabas Health also violated Drew's rights under the Americans with Disabilities Act ("ADA") and the Rehabilitation Act by failing to make reasonable modifications to their emergency response and law enforcement services in light of Drew's mental health disability and denying Drew an equal opportunity to benefit from their services. These Defendant entities acted with deliberate indifference to the likelihood that the pursuit of their actions and inactions would result in a violation of Drew's federally protected rights.

13. At the time of his death, Drew was 52 years old. Drew was a beloved son, brother, cousin, and nephew. Drew was part of a close-knit neighborhood in

Jersey City, and lived on the same street he grew up on. Drew had a diagnosed mental health disability for over 25 years.

14. Having a mental health disability is not a crime, and the price of asking for help during a mental health episode should not be a death sentence. Individuals experiencing a mental health episode or crisis deserve to access services without the threat of violence, and their families should be able to call for help without the fear that such a call will end in their loved one's death.

15. Tragically, Defendants' misconduct caused Drew to reasonably fear that he would be killed, which he was, and to suffer agonizing pain after he was shot twice and tased prior to his death. Drew's family were not allowed to accompany him to the hospital, and his final moments were spent alone, away from the people he loved.

16. This suit seeks to hold Defendants accountable for the failures that led to Drew's death. It also seeks to ensure Jersey City, Hudson County, Jersey City Medical Center, and RWJ Barnabas Health adopt appropriate policies for responding to and assisting individuals experiencing a mental health episode so that no one else has to suffer the way Drew and his family have.

JURISDICTION AND VENUE

17. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the United States Constitution as well as under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*, and under the Rehabilitation Act, 29 U.S.C. § 794(a).

18. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

19. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), over any and all state constitutional and state law claims that are so related to the claims within the original jurisdiction of this court that they form part of the same case or controversy.

20. Venue is properly laid in the District of New Jersey under 28 U.S.C. § 1391(b), in that this is the District in which the claim arose.

21. Plaintiff has complied with the requirements of the New Jersey Tort Claims Act ("NJTCA"), N.J. Stat. Ann. § 59:2-2(a). Plaintiff made and served notices of claim on Jersey City and the Jersey City Police Department within the time required under the NJTCA. *See* N.J. Stat. Ann. § 59:8-8(a). More than six months have elapsed since the service of those notices, and Plaintiff has not received any response. *See id.*

PARTIES

22. Decedent, Andrew Jerome Washington, III, was shot twice, tased, and killed by JCPD officers on August 27, 2023, while he was by himself inside his own home. At the time of his death, Drew had multiple mental health disabilities, including bipolar disorder, schizophrenia, and bouts of psychosis which involved auditory hallucinations. These conditions substantially limited one or more of his major life activities, including but not limited to communicating, caring for himself, and interacting with others. Drew therefore qualified as a person with a disability within the meaning of the ADA and the Rehabilitation Act.

23. **Plaintiff Courtnie Washington** is Drew's sister and the administrator of the Estate of Andrew Jerome Washington, III ("Estate"). She brings claims on behalf of the Estate.

24. At all relevant times, **Defendant Stephen Gigante** was employed as an officer of the JCPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

25. At all relevant times, **Defendant Felix DeJesus** was employed as an officer of the JCPD, acting under color of law and in his individual capacity within

the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

26. At all relevant times, **Defendant Andrew Alas** was employed as an officer of the JCPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

27. At all relevant times, **Defendant Jasmere L. Epps** was employed as an officer of the JCPD, acting under color of law and in their individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, Defendant Epps is entitled to indemnification under statute and by contract. Defendant Epps is sued in their individual capacity.

28. At all relevant times, **Defendant Auronny de la Cruz** was employed as an officer by the JCPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon

information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

29. At all relevant times, **Defendant Christian E. Ortiz** was employed as an officer by the JCPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

30. At all relevant times, **Defendant Ryan P. Friend** was employed as a Sergeant by the JCPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

31. At all relevant times, **Defendant Jason E. Field** was employed as a Captain by the JCPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

32. At all relevant times, **Defendant Joseph Santiago** was employed as a Deputy Chief by the JCPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of Jersey City and the State of New Jersey. Upon information and belief, he is entitled to indemnification under statute and by contract. He is sued in his individual capacity.

33. **Defendant City of Jersey City** is a municipality organized and existing under the laws of the State of New Jersey. At all relevant times, Jersey City was responsible for the policies, practices, and customs of the JCPD, including the appointment, training, and supervision of all JCPD personnel; enforcing the rules of the JCPD; and ensuring that JCPD personnel obey the laws of the United States and the State of New Jersey. Jersey City is also responsible for the acts of the individual JCPD Defendants while employed by the City and while acting under color of law and within the scope of their employment. Defendant Jersey City is a public entity subject to Title II of the ADA and the Rehabilitation Act. It operates the JCPD; is responsible for the discriminatory actions of its employees; and it provides programs, services, and/or activities within the meaning of Title II via police work involving the public. Jersey City receives federal funding which requires compliance with the Rehabilitation Act.

34. **Defendant Hudson County** is a political subdivision of the State of New Jersey. Hudson County is a local government, and therefore, a public entity subject to Title II of the ADA. On information and belief, at all relevant times, Hudson County was responsible for the policies, practices, and customs of the Hudson County Communications Emergency Network (“HUDCEN”), the designated public safety dispatch point for emergency medical 9-1-1 calls in greater Hudson County. Hudson County contracts with Jersey City Medical Center and/or RWJBarnabas Health to provide emergency medical services and to operate emergency dispatch.

35. **Defendant Jersey City Medical Center, Inc.** (“Medical Center”), an RWJBarnabas Health hospital, is the primary state-designated screening service for psychiatric emergencies and crisis intervention in Hudson County. It operates a 24-hour hotline for psychiatric emergencies, crisis intervention services, and information and referral as well as mobile outreach to all area residents experiencing acute psychiatric distress. It also operates HUDCEN on behalf of and in partnership with Hudson County.

36. **Defendant RWJBarnabas Health, Inc.** (“RWJBarnabas”) is New Jersey’s largest integrated health care delivery system. It is the parent company for the Medical Center, and along with the Medical Center, trains and employs dispatchers and emergency services personnel. RWJBarnabas also operates the

Behavioral Health Access Center, which provides 24/7 mental health support for callers to a hotline by providing referrals, including for emergency psychiatric services; rapid assessment and disposition planning; crisis intervention; hospital diversion services; and screening for hospitalization.

37. At all relevant times, **Defendant Juan Miranda** was employed as an EMT by the Medical Center and/or RWJBarnabas, and was acting within the scope of his employment.

38. At all relevant times, **Defendant Hunter Jackman** was employed as an EMT by the Medical Center and/or RWJBarnabas, and was acting within the scope of his employment.

FACTUAL ALLEGATIONS

Law enforcement professionals and government agencies recognize to avoid unnecessary use of force, law enforcement must employ specific de-escalation principles when interacting with individuals experiencing mental health crises.

39. Over the past several years, there has been increasing recognition of the pervasive risks posed to individuals with mental health disabilities when they interact with law enforcement. For example, recent guidance published by the federal Department of Justice and Department of Health and Human Services highlighted some of these statistics, including that up to 10% of all police calls and an estimated 17% of use of force cases involve a person with a serious mental

illness. Moreover, despite making up “only 22% of the population, individuals with disabilities may account for 30% to 50% of incidents of police use of force,” with those living with a mental illness accounting for 20–25% of people killed by law enforcement.¹

40. New Jersey reflects this national trend. In 2020, two out of every three use of force incidents by law enforcement in New Jersey, and more than half of all fatal police encounters, involved someone experiencing mental health or substance abuse issues.

41. In response to the “untenable” status quo where “the same armed officer responding to a robbery is also the government’s answer to the emergency call of a person in behavioral health crisis,” the New Jersey Department of Human Services, community stakeholders, the Office of the Attorney General, and the New Jersey State Police piloted the ARRIVE Together program in 2021. The program paired State Troopers trained in crisis intervention and de-escalation with a certified mental health screener and crisis specialist to respond to 911 calls involving behavioral health. The program was soon implemented in counties across the State. Defendant Jersey City opted not to participate.

¹ U.S. DEP’T OF JUST. & DEP’T OF HEALTH & HUM. SERV., Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities (May 2023).

42. In early 2023, the Brookings Institute published findings from its analysis of 342 police service calls demonstrating that ARRIVE Together reduced the use of force and arrests, reduced racial disparities in outcomes, and increased utilization of social services.² Brookings concluded that “ARRIVE Together has the potential to improve police-community relations, change law enforcement culture, and provide substantive assistance to people suffering from mental health symptoms.”³

43. The New Jersey Attorney General has also issued statewide directives and policies for law enforcement, including policies governing the use of force and interactions with individuals experiencing a behavioral or mental health crisis.⁴ The policies impose requirements that law enforcement agencies across the state, including the JCPD, are required to follow. The policies are guided by several core principles, including that “[o]fficers may not use or threaten to use force . . . to resolve a situation more quickly, unless delay would risk the safety of the person involved, officers, or others, or would significantly interfere with other legitimate law enforcement objectives.”

² Rashawn Ray, *New Jersey ARRIVE Together program could reform policing as we know it*, THE BROOKINGS INST. (Mar. 16, 2023), <https://www.brookings.edu/articles/new-jersey-arrive-together-program-could-reform-policing-as-we-know-it/>.

³ *Id.*

⁴ See N.J. DEP’T OF PUBLIC SAFETY, OFF. OF THE ATT’Y GEN., Attorney General Law Enforcement Directive No. 2021-14 (Dec. 2021) (updating statewide use of force policy); N.J. OFF. OF THE ATT’Y GEN., Use of Force Policy (Dec. 2021).

44. The policies also contain specific requirements for officers to engage in de-escalation techniques, including when interacting with civilians in a behavioral or mental health crisis.

45. For example, the policies instruct that officers should use time, physical distance and physical barriers where possible to avoid a direct confrontation between officers and an individual that might result in the use of force. They also instruct officers to use other strategies to help calm a non-compliant person, including communication techniques, procedural justice techniques, and strategies to lessen the emotional anger, frustration, combativeness of the person experiencing mental health symptoms. This includes avoiding the unnecessary display of weapons, eliminating or reducing sensory distractions, and using family members or caregivers who know the person to help diffuse the situation. The policies also recommend the use of specially-trained resources, such as “behavioral or mental health care providers,” to assist in resolving an incident.

46. The overall objective of these de-escalation directives is to “attempt to reduce, stabilize, or eliminate the immediacy of a threat” including by “creat[ing] the time needed to allow the situation to resolve itself or to position additional resources to resolve the situation with the least amount of force necessary.”

47. Federal guidance, the International Association of Chiefs of Police, and the widely-used Integrating Communications, Assessment, and Tactics

training guide all agree that de-escalation is a foundational principle for law enforcement interactions with individuals experiencing a mental health crisis.⁵ Federal guidance published by the Department of Justice and Department of Health and Human Services also instructs that outreach to individuals in mental health crisis should be by trained mental health professionals through, for example, mobile outreach services or crisis stabilization services, either alone or together with law enforcement.⁶ And federal guidance has warned that the failure to provide such a health response to individuals in behavioral or mental health crises—just as communities have long done to community members suffering physical health crises—may violate the ADA.

48. In 2022, the Jersey City Council adopted a plan for a “community crisis response center” with trained mental health professionals who would respond to 911 calls involving behavioral issues, instead of police. The plan was never implemented.

49. Jersey City has specific prior experience with tragic consequences that could result from JCPD responding to an individual in mental health crisis without using appropriate de-escalation techniques.

⁵ See Guidance for Emergency Responses, *supra* note 1; LAW ENF’T POL’Y CTR., INT’L ASS’N OF CHIEFS OF POLICE, Responding to Persons Experiencing a Mental Health Crisis (Aug. 2018); *ICAT: Integrating Communications, Assessment, and Tactics, A Training Guide for Defusing Critical Incidents*, CRITICAL ISSUES IN POLICING SERIES (Police Exec. Rsch. F.), Oct. 2016.

⁶ See Guidance for Emergency Responses, *supra* note 1.

50. In 2009, JCPD officers shot and killed 58-year-old Martina Brown in her apartment bathroom after her husband, Wesley Brown, called 911 for an ambulance because Ms. Brown had stopped taking her medication. Ms. Brown was not suspected of any crime.

51. JCPD officers were called to assist with someone experiencing a mental health crisis. When they arrived, however, they began preparing for a violent entry into the apartment, including by taping over the peephole on the front door. Mr. Brown objected, explaining that his wife would be less upset if she could see what was going on outside. JCPD officers ignored Mr. Brown and responded by handcuffing him and throwing him to the ground after he attempted to stop them from taping over the apartment's peephole.

52. Officers then broke down the Browns' door and ultimately shot and killed Ms. Brown. Mr. Brown regretted calling 911: "If I knew they were going to shoot my wife, I never would have called. I thought they were going to take her to the hospital." He also could not understand why officers didn't arrest Ms. Brown like they arrested him: "What they did to me they could have done to her. But when it came to her, 'pop, pop, pop.'"

On August 27, 2023, Drew's family called seeking assistance from a mental health professional for Drew, but no mental health professional was sent.

53. On August 27, 2023, Drew was alone inside of his own home when police unjustifiably broke down his apartment door, shot, tased, and killed him.

54. In the days leading up to Drew's killing, his family repeatedly called the Medical Center hotline and/or the RWJBarnabas Access Center seeking assistance from a mental health professional from the advertised mobile crisis unit⁷ because they were concerned Drew was in the midst of a mental health episode and that he was not taking his medication. Although the hotline is advertised as providing "mobile outreach to all area residents experiencing acute psychiatric distress," Drew's family was repeatedly told no mental health personnel were available to come assess Drew.

55. On August 26, 2023, given the unavailability of emergency psychiatric services, including from the Medical Center's mobile outreach/crisis unit, JCPD officers including Defendant Alas, were dispatched to Drew's home to check on Drew.

⁷ A "mobile crisis" or "mobile outreach" unit includes trained behavioral or mental health staff who respond to individuals in need of behavioral or mental health assistance wherever the person is located.

56. Drew lived by himself in a second-floor apartment in a multi-family home in Jersey City. When JCPD officers arrived on August 26, Drew was outside of his building and officers spoke to him on the porch outside.

57. The officers, including Defendant Alas, observed that although Drew was experiencing delusions and other mental health symptoms, he was not a threat to himself or anyone else and was not committing any crime. Defendant Alas and the other officers observed that Drew became angry when the police approached him, and the only thing upsetting Drew was their presence—police presence. In light of these observations, Defendant Alas and the other officers declined to take Drew to the Medical Center for evaluation or into custody.

58. On August 27, Drew's family again called the hotline and/or the Access Center who transferred the call to HUDCEN. Drew's family again requested that a mental health professional from the advertised mobile crisis unit come to Drew's home, as they continued to have concerns Drew had not been taking his medication. Instead of dispatching emergency psychiatric services or other mental health professionals, including mobile outreach, HUDCEN dispatched EMS, paramedics trained to respond to *physical* medical emergencies. HUDCEN also called JCPD officers to the scene. No one from the mobile crisis unit was dispatched to the scene.

59. On information and belief, the Medical Center and/or HUDCEN, coded the call as “EDP,” a call for an “emotionally disturbed person.” The Medical Center and/or HUDCEN therefore knew Drew was disabled or otherwise regarded him as disabled. The Medical Center and/or HUDCEN also informed JCPD that the call was in response to an “EDP.” At the time, like the day before, Drew was not suspected of any crime, nor was he a threat to anyone. He was alone in his second-floor apartment.

60. Defendant JCPD officers Alas, De La Cruz, Ortiz, and Epps and EMTs Miranda and Jackson were among the first personnel to respond to the scene. Later, they were joined by members of the JCPD Emergency Services Unit (“ESU”), including Defendant officers Gigante, DeJesus, Friend, and Field. Defendants at the scene also communicated with Defendant Santiago, a deputy chief and JCPD supervisor, regarding the situation over police radio. Each of these Defendants were in communication with one another and worked in concert as the incident unfolded at Drew’s apartment.

61. When Defendants Alas, Epps, Ortiz, De La Cruz, and Miranda first arrived at the scene, Drew’s family—who lived nearby and had been interacting with Drew over the last several days—spoke with officers outside on the sidewalk and told officers, including Defendant De La Cruz and Alas, that Drew was diagnosed with bipolar disorder. Drew’s family also shared that Drew had recently

been released from a psychiatric hospitalization and that Drew was believed to be off his medication, but that Drew was not violent. The family further informed the officers that when the family initially called for help that day, they had called for the mobile crisis unit.

Although Drew was alone inside his own home and was not a threat, Defendants unreasonably escalated an encounter with Drew, culminating in the unjustified entry into Drew's apartment, the use of excessive force, and Drew's death.

62. Defendants Alas, Ortiz, Jackman, and Miranda entered the stairwell of Drew's building and spoke to Drew through the door of his second-floor apartment. It was immediately clear to Defendants that Drew was in the midst of a mental health episode. When Defendants first spoke to Drew through the door, Drew's voice was noticeably agitated. Drew yelled statements which indicated to Defendants Drew was experiencing delusions and auditory hallucinations, similar to the day before. Drew called the Defendants ghosts. Drew also yelled statements indicating he wanted Defendants to go away. Based on these interactions alone, Defendants knew Drew had a mental health disability or otherwise regarded him as having a mental health disability.

63. Although basic de-escalation principles require calming an agitated subject in such circumstances, Defendants did the opposite. Defendants Alas,

Ortiz, Jackman, and/or Miranda laughed at Drew when he yelled out statements indicating that he was experiencing delusions.

64. Defendants understood that Drew had a mental health disability and was in the midst of a mental health episode. They also remarked to one another that Drew had been off his medication, and that Drew believed they were all ghosts. Nevertheless, none of the Defendants called for a mental health professional for assistance.

65. Instead, despite knowing that officers' presence had increased Drew's agitation just the day before, Defendants unreasonably and unnecessarily called for backup from the ESU, a heavily armed, SWAT-like police unit trained to respond to terrorism events and violent and barricaded criminal suspects. This decision further escalated the situation, increasing the likelihood of the use of force.

66. Defendants Gigante and DeJesus were among the ESU officers to respond and take control of the scene, including the police communications with Drew from the second-floor landing outside of Drew's apartment door.

67. In direct contradiction to basic de-escalation principles requiring avoidance of a direct confrontation wherever possible, from the moment they arrived, ESU officers (including Defendants Gigante and DeJesus) unnecessarily treated the situation like a dangerous standoff that could only be resolved through the use of force. They entered the stairwell of Drew's building with shields and

tactical gear, indicators that they were prepared to forcibly enter Drew's second-floor apartment and use deadly force against him. Officers taped over the peephole on Drew's door and secured the door by tying a rope around the doorknob and pulling it tight. Defendants, including Defendants Gigante and DeJesus, stood outside Drew's door with shields and weapons drawn.

68. From inside his apartment, Drew continued to express that he was agitated by the police presence: he told the ESU officers to get out and leave; stated that he did nothing wrong, did not call police, and that officers were disrespecting him; he yelled out to officers that he was not their "slave."

69. In response, Defendants continued to unreasonably and unnecessarily escalate the encounter. For example, when ESU arrived Drew immediately told Gigante to stop knocking on his door. Although New Jersey directives instruct officers to use strategies to lessen the frustration and anger of a person experiencing mental health symptoms, including by reducing or eliminating sensory distractions, Defendant Gigante continued to bang on Drew's door throughout the encounter.

70. Defendants understood that their presence was intimidating to Drew and a source of Drew's agitation. But rather than attempting to calm Drew consistent with basic de-escalation principles, Defendants spoke to one another outside Drew's door about retrieving weapons and audibly readied their tasers.

71. Although New Jersey directives instruct that law enforcement should use the assistance of family members when a mental health condition is influencing a person's response to officers, Defendants blocked Drew's family from entering the building and speaking with Drew, or learning information about the true circumstances of the ongoing police encounter taking place inside. A family member outside specifically asked Defendant Epps for permission to speak with Drew. Defendants ignored the request.

72. Although New Jersey directives instruct police to use time as a de-escalation tool to create an opportunity to calm a non-compliant person, including by disengaging the person and trying again at a later time, Defendants did the opposite. When Drew yelled out asking the officers to "[l]eave! If you don't want to bother me or disrespect me, leave." Defendants ignored Drew's requests. Although Defendant Gigante verbally acknowledged that Drew was likely feeling intimidated by police, Defendants never attempted to de-escalate the situation by disengaging for a period of time.

73. Although Drew was clearly in the midst of a mental health episode, and continued to make statements indicating he was experiencing delusions, including his belief that the officers were ghosts, Defendants became increasingly frustrated with Drew's refusal to readily open his door to police. Gigante sighed audibly. Gigante's frustration was also clear through his statements: "come on

man, just cooperate with us.” But Drew was experiencing auditory hallucinations and was unable to comprehend the statements Defendants communicated through the door. And, in any event, Drew had no obligation to cooperate with law enforcement requests while he was inside his own home and while officers lacked a warrant, probable cause, or exigent circumstances to enter.

74. Rather than allow time to pass in order to de-escalate, Defendants hastened the encounter. And rather than rely on distance or physical barriers between the individual and the officers to avoid the use of physical force (another key de-escalation principle), Defendants prepared to break down Drew’s door and enter his apartment, both eliminating the distance and destroying the physical barrier between them.

75. Within 15 minutes of ESU arriving at Drew’s door, officers Gigante and DeJesus began preparing to force entry into Drew’s apartment by putting on additional tactical gear, including helmets and gloves. Shortly thereafter Defendant Sergeant Friend, who had been standing in the stairwell of the building and giving instruction to ESU officers, gave the green light to break down Drew’s door, a decision which was also approved by Deputy Chief Santiago. Defendant Friend did not discuss a strategic plan with his team or even identify a rationale to Gigante and DeJesus for forcible entry of Drew’s apartment. Instead, Friend told Gigante to proceed if Gigante was “comfortable.”

76. There was no reason for Defendants to force entry at that time. All Defendants at the scene understood that Drew was alone in his apartment. Drew was not suspected of any crime. At the time Defendant officers broke down the door, there was no indication Drew's health was sufficiently compromised to warrant emergency entry. In fact, there was no meaningful change in Drew's behavior or condition since his interactions with ESU Defendants began. Drew's last words before Defendants broke into his apartment were expressing his specific anger with the police presence.

77. Defendant officers decided to force entry into Drew's apartment because they were frustrated the encounter with Drew hadn't resolved quickly enough.

78. Thus, in direct violation of foundational de-escalation principles, without a warrant, and lacking consent, Defendants Gigante and DeJesus violently broke down Drew's door. By doing so, Defendant officers exponentially raised the stakes and unreasonably escalated the encounter yet again.

79. Split seconds later officers found Drew, who was scared for his life, in his apartment alone holding a kitchen knife. Defendant Gigante discharged his firearm, shooting Drew twice, while Defendant DeJesus discharged his taser, tasing Drew.

80. At the time Drew was shot and tased, Drew's family was still standing outside on the sidewalk, unaware of what was happening inside. After the sound of shots rang out, Defendant officers at the scene falsely represented to Drew's family that Drew had been shot with a pellet gun, even though in reality Drew had been shot with a firearm.

81. As EMS personnel removed Drew from his apartment to the ambulance outside, JCPD officers instructed family members to step back and not to speak to Drew. Although the family requested to accompany Drew in the ambulance to the hospital, JCPD officers told them they could not do so.

82. Tragically, Drew died at the hospital with no loved ones present.

83. Although family members continuously sought information regarding Drew's condition, law enforcement officials, including the JCPD, failed to notify his family that he had been shot for hours. Drew's family only learned Drew had been shot after Drew was already dead.

84. If Defendants had followed state use of force requirements and/or reasonably accommodated Drew by following well-known de-escalation principles and/or calling and waiting for a trained mental health professional, Drew would be alive today.

Jersey City endorses unconstitutional actions and the failure to comply with federal disability law.

85. Even though Defendants' actions violated basic de-escalation principles and unnecessarily caused Drew's tragic death, the day after JCPD officers shot and killed Drew, Jersey City Mayor Steven Fulop called a press conference to announce that he fully endorsed the actions taken by JCPD officers and the Medical Center. Although Defendants' actions were in violation of the New Jersey directives on the use of force, Fulop claimed Defendants acted consistent with Jersey City policies, practice, guidance, and training: "[W]e do feel those police officers acted properly, we want the public to know that."

86. Mayor Fulop specifically endorsed not only the ultimate use of force but "[e]verything prior to that" which he said was "in line with the communications that were taught at the Jersey City Police Department." He also specifically endorsed breaking into the apartment—even though there was no legal justification for doing so—implying that if police had not broken in they would have received criticism. Public Safety Director Jeames Shea similarly endorsed all actions by JCPD officers, asserting that he believed a review would demonstrate everything JCPD officers did was "within guidelines and use of force guidelines."

87. Despite the Defendants' significant departures from basic principles for how to safely interact with individuals in mental health crisis and violation of

state directives, neither Fulop nor Shea identified that JCPD or the Medical Center had any responsibility for Drew's death. Nor did they indicate that they would examine what could be handled differently in the future to avoid this result. Indeed, Fulop declared exactly the opposite: "You'd be hard pressed to say that the Medical Center and the Jersey City Police Department could have acted differently in this situation."

88. In an attempt to justify JCPD officers' unconstitutional actions, Jersey City officials also made false statements about the circumstances of the interaction with Drew. For example, Mayor Fulop claimed JCPD officers were required to break into Drew's apartment out of concern for the safety of anyone else in the apartment with Drew, who could potentially have been "hurt or bleeding inside the apartment." But as JCPD officers expressly understood, Drew was alone in the apartment. They had no reason to believe anyone else was present and no reason to believe Drew himself was injured in any way before their unjustified entry. To further justify the officers' unconstitutional actions, City officials made false public statements that a mental health professional had been present. For example, an official spokesperson for Jersey City claimed that "a crisis intervention specialist was the first to evaluate the situation." In reality, no crisis intervention specialist ever responded to Drew's home.

89. Despite these comments, multiple Jersey City Councilmembers acknowledged that the JCPD’s response was wholly inadequate. Councilman Frank Gilmore, for example acknowledged that the City had “failed as a whole,” and he was “confident that the outcome could have been different” if crisis response services had been available. Councilman Bill O’Dea agreed, stating that if crisis response services had “been in place, this tragic death may have been avoided.”

Defendants Jersey City, Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health discriminated against Drew because of his mental health disability.

90. Federal guidance on compliance with the ADA during emergency responses involving individuals experiencing mental health crises placed Defendants on notice that the failure to dispatch an emergency mental service to assist Drew constituted discrimination.

91. Federal guidance issued by the Department of Justice and Department of Health and Human Services and in place at the time of Drew’s death makes clear that “[e]qual opportunity requires that people with behavioral health disabilities receive a health response in circumstances where others would receive a health response.”⁸ It goes on to explain that to avoid discriminating against those with mental or behavioral health disability, “[g]overnment entities should provide

⁸ Guidance for Emergency Responses, *supra* note 1.

behavioral health crisis response services in parity with the services provided to those experiencing medical emergencies.”⁹

92. In particular, the guidance instructs that an individual experiencing a mental health emergency should have an equal opportunity to receive the benefit of a health service as those experiencing a medical or physical health emergency. Thus, if call centers would dispatch a physical health response (such as EMS or a medic) rather than law enforcement to respond to a person experiencing a physical medical emergency, equal opportunity would entail dispatching an appropriate mental health response in similar circumstances involving a person with a mental health emergency.

93. The guidance also instructs that “law enforcement and dispatch should divert calls to behavioral health responders when they encounter someone demonstrating a need for behavioral health support who is not an immediate threat.”¹⁰ The guidance makes clear that call centers that dispatch emergency responses can make reasonable modifications to their usual practices to afford equal opportunity to people with behavioral health disabilities by “sending a mobile crisis team or other responder rather than law enforcement in appropriate circumstances when a call involves a person with a behavioral health disability and

⁹ *Id.*

¹⁰ *Id.*

there is no need for a law enforcement response” or, alternatively, when a law enforcement response is called for, “dispatching a co-responder team that includes a police officer and a mental health specialist.”¹¹

94. Federal guidelines also put Defendants on notice of the grave risks in dispatching law enforcement, instead of mental health professionals, as primary responders to mental health crises. For example, in 2020, the Substance Abuse and Mental Health Services Administration issued guidelines warning that it is “unacceptable and unsafe” when “local law enforcement [is] the *de facto* mental health mobile crisis system.”¹² The guidelines indicate that this practice is inappropriate because armed police presence alone has a propensity to escalate individuals in crisis.

95. In its June 2023 findings regarding an investigation into Minneapolis and its police department, the United States Department of Justice similarly emphasized that “a law enforcement-led response can cause real harm in the form of trauma, injury, and death to people experiencing behavioral health issues, as well as other impacts.”¹³ The Justice Department found that such harms may be avoided or otherwise mitigated by sending behavioral health responders instead of

¹¹ *Id.*

¹² See SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit* 33 (Feb. 2020).

¹³ U.S. DEP’T OF JUST., *Investigation of the City of Minneapolis and the Minneapolis Police Department* (June 2023).

or with law enforcement. The Justice Department reached parallel conclusions in its March 2023 findings regarding an into the Louisville Metro Police Department.¹⁴

96. Both the Minneapolis and Louisville investigations concluded that the municipalities violated the ADA by relying on police officers as the primary first responders to mental health emergencies.

97. Nevertheless, on August 27, 2023, when Drew's family called seeking emergency mental health assistance for Drew, the Hudson County, Medical Center, and/or RWJBarnabas Health emergency response service failed to dispatch a mental health response. Instead, Defendants called JCPD officers to the scene and dispatched EMS (a response team for physical health emergencies). This resulted in a law enforcement-led response to Drew ultimately ending in Drew's death.

98. When the Hudson County, Medical Center, and/or RWJBarnabas Health emergency response service receives physical-health emergency calls (e.g., a call for assistance for a heart attack), they dispatch personnel, such as paramedics and EMTs, trained to assess, stabilize, and treat emergency physical health issues at the point of contact. Defendants Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health have appropriate responses to dispatch in mental

¹⁴ U.S. DEP'T OF JUST., *Investigation of the Louisville Metro Police Department and Louisville Metro Government* (Mar. 2023).

health emergencies, such as the advertised mobile outreach unit. But when Drew’s family requested mobile outreach assistance for a mental health episode Drew was experiencing, Defendants failed to reasonably accommodate Drew by failing to dispatch personnel trained to assess, stabilize, and treat Drew’s mental health issues. In doing so, Defendants violated federal antidiscrimination law, including the ADA.

99. Similarly, Defendant Jersey City discriminated against Drew when its officers failed to reasonably modify their approach to their interactions with him in light of his known mental health disability.

100. Federal law requires municipalities to make reasonable modifications to their law enforcement services when necessary to avoid discrimination on the basis of a mental health disability. For example, in the Justice Department’s June 2024 findings regarding an investigation into the City of Phoenix and its police department, the Justice Department concluded that the City of Phoenix had engaged in discrimination in violation of the ADA.¹⁵ In reaching this conclusion, the Justice Department found that officers responding to behavioral health calls “seldom [made] reasonable modifications to their approach when appropriate” and instead “often use[d] force that could be avoided.” The Justice Department also

¹⁵ U.S. DEP’T OF JUST., *Investigation of the City of Phoenix and the Phoenix Police Department* (June 2024).

cited examples of officers failing to employ reasonable modifications such as calling in the assistance of a mobile crisis team or engaging in effective de-escalation techniques. The Justice Department cautioned that “[t]he duty to avoid ‘confrontational tactics’ and accommodate a person in crisis is not diminished when that person fails to immediately follow commands, reacts poorly to an officer’s arrival, or behaves unexpectedly.”

101. The Justice Department reached similar conclusions in its March 2023 findings regarding the Louisville Metro Police Department.¹⁶ The Justice Department found that the police department had violated the ADA by “subject[ing] many individuals to an unnecessary or overly aggressive [police] response during a behavioral health episode.” The investigation cited officers’ failure to engage in de-escalation techniques, including “fail[ing] to give people experiencing crisis time or space” and “not engag[ing] in verbal de-escalation for enough time to be successful” as examples of discriminatory practices. The findings also warned of the “increased safety risks to . . . the person in crisis and increased . . . likelihood of the use of force” when officers engage in tactics which escalate, rather than de-escalate, an interaction.

102. The JCPD officers who interacted with Drew on August 27, 2023, understood that Drew had a mental health disability, that Drew was in the midst of

¹⁶ *Investigation of the Louisville Metro Police Department*, *supra* note 14.

a mental health episode, and that the police-led interaction was ineffective and agitating Drew more. Nevertheless, no officer called and/or waited for mobile outreach, a mental health professional, a crisis negotiator, or social worker once officers realized their attempts at communication with Drew were unsuccessful. In failing to do so, Jersey City discriminated against Drew by failing to provide Drew with a reasonable modification to their police service.

103. Jersey City also discriminated against Drew by failing to make the reasonable modifications by using de-escalation techniques including but not limited to avoiding direct confrontation with Drew by using passage of time, physical barriers, and distance to avoid a confrontation, disengaging and waiting for Drew to calm down before attempting to re-engage, availing the assistance of family members and/or choosing to tactically retreat.

104. Although New Jersey state directives and federal guidance emphasize de-escalation techniques should be used during law enforcement interactions with individuals experiencing mental health symptoms, JCPD officers did the opposite. They failed to reasonably accommodate Drew by unnecessarily escalating the encounter with Drew by calling a heavily armed, SWAT-like unit to the scene, blocking Drew's door with police in heavy tactical gear with weapons drawn, breaking down Drew's door without justification, and using lethal force. The risks

these escalations could lead to use of excessive force and injury to Drew were obvious to the JCPD officers at the scene.

DAMAGES

105. Defendants' unlawful, intentional, deliberately indifferent, reckless, and/or negligent acts and omissions caused Drew's death.

106. Drew was in need of mental health services. Instead, he received a law enforcement response which ultimately killed him. Defendants acted contrary to state directive, federal guidance, and widely accepted de-escalation principles, agitating Drew and filling his final moments with fear and pain. Although Defendants knew or should have known Drew had mental health disabilities, Defendants failed to make reasonable modifications in their interactions with him which would have saved his life.

107. Drew was shot twice and tased, and suffered excruciating pain as a result of Defendants' actions. Because Defendants prohibited Drew's family from accompanying him to the hospital, Drew spent his final moments and died without loved ones by his side.

108. At the time he was killed, Drew was only 52 years old. Drew was a Jersey City native who enjoyed spending time walking in Liberty State Park, recording music, and watching football with family and friends. He was part of a close-knit immediate family, as his mother only had two children. Drew was also

resilient. Although he had diagnosed mental health disabilities for over two decades, and had experienced multiple mental health episodes and crises before, he had always recovered from them. Drew did not die because of his mental health disabilities, but rather because of the unlawful and unconstitutional actions of Defendants. By unjustifiably causing Drew's death, Defendants deprived Drew of his future and time with his loving family. Defendants deprived Drew of the opportunity to potentially get married one day and have children.

109. Damages include, without limitation, loss of life, physical pain and suffering, emotional distress, anguish, wrongful death, funeral costs, loss of companionship, loss of liberty, and violation of civil rights, for which he is entitled to monetary relief.

110. Defendants' acts and omissions described herein for which liability is claimed meet all of the standards for imposition of punitive damages.

CLAIMS

COUNT 1

Excessive Force Under 42 U.S.C. § 1983 and the Fourth Amendment (Against Defendants DeJesus and Gigante)

111. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

112. On August 27, 2023, Defendants Gigante and DeJesus deprived Drew of his clearly established constitutional rights under the Fourth Amendment of the United States Constitution to be free from the use of excessive force.

113. Defendants DeJesus and Gigante failed to engage in any de-escalation measures, and unreasonably escalated the situation. By shooting and tasing Drew while he was in the midst of a mental health episode, while he was not a threat to the safety of any other individual, and while he was not suspected of any crime, Defendants acted unreasonably and in violation of Drew's constitutional rights.

114. From the landing outside Drew's apartment, Defendant DeJesus tased Drew, and Defendant Gigante shot Drew twice—ultimately killing him. This gratuitous use of excessive and deadly force was vastly out of proportion to any danger Drew could have posed.

115. Defendants performed the above-described acts under color of state law, within the scope of their employment as JCPD officers and employees, and with deliberate indifference to Drew's clearly established constitutional rights.

116. No reasonable officer in 2023 would have believed this conduct was lawful.

117. As a direct and proximate result of Defendants' actions, Drew sustained the damages and injuries set forth above.

COUNT 2
Warrantless Entry Under 42 U.S.C. § 1983 and the Fourth Amendment
(Against Defendants DeJesus, Gigante, Friend, and Santiago)

118. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

119. On August 27, 2023, Defendants DeJesus, Gigante, Friend, and Santiago, acting individually and in concert, deprived Drew of his clearly established constitutional right, under the Fourth Amendment of the United States Constitution, to be secure in his home and free from warrantless entry.

120. Defendants deprived Drew of his right to be secure in his home and free from warrantless entry by breaking down the door to Drew’s apartment and without a warrant and absent an applicable exception to the warrant requirement, including consent or exigent circumstances, and/or by authorizing these actions.

121. Defendants performed the above-described acts under color of state law, within the scope of their employment as JCPD officers and employees, and with deliberate indifference to Drew’s clearly established constitutional rights.

122. No reasonable officer in 2023 would have believed this conduct was lawful.

123. As a direct and proximate result of Defendants’ actions, Drew sustained the damages and injuries set forth above.

COUNT 3
Civil Conspiracy Under 42 U.S.C. § 1983
**(Against Defendants Gigante, DeJesus, Alas, Epps, De La Cruz, Friend, Ortiz,
Field, Santiago, Miranda, and Jackman)**

124. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

125. Defendants Gigante, DeJesus, Alas, Epps, De La Cruz, Friend, Ortiz, Field, Santiago, Miranda, and Jackman (collectively, the “individual Defendants”), agreed among themselves to act in concert to deprive Drew of his clearly established constitutional rights as protected by the Fourth Amendment, including his right to be free from warrantless entry and/or excessive force.

126. As described in detail above, the individual Defendants engaged in and facilitated numerous overt acts in furtherance of the conspiracy, including without limitation by unreasonably calling a SWAT-like team, failing to engage in de-escalation techniques, blocking family access to Drew, and by communicating and working together as a team at the scene, culminating in the warrantless entry into Drew’s apartment and the use of excessive force.

COUNT 4
***Monell* Claim Under 42 U.S.C. § 1983**
(Against Defendant City of Jersey City)

127. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

128. JCPD officer Defendants violated Drew's constitutional rights as protected by the Fourth Amendment, including his right to be free from warrantless entry and/or excessive force.

129. The JCPD officers' violations of Drew's constitutional rights were pursuant to, the highly foreseeable result of, and caused by, official policies, practices, and/or customs of Jersey City for how to respond to community members in mental health crisis. Such policies, practices and/or customs include, but are not limited to: responding with police officers unaccompanied by trained mental health professionals, using a heavily armed, SWAT-like force to respond, escalating the situation instead of de-escalating, and breaking down the door to enter an apartment without legal justification.

130. Jersey City Mayor Fulop and Public Safety Director Shea, specifically endorsed and ratified all actions of the JCPD officers who interacted with Drew, making clear their actions were pursuant to Jersey City and JCPD policies, customs, and practices.

131. These policies, practices, and/or customs of Jersey City proximately and directly caused Drew's injuries and death.

132. Jersey City is liable pursuant to 42 U.S.C. § 1983.

COUNT 5
Discrimination Based on Disability in Violation of
Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*
(Against Defendant City of Jersey City)

133. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

134. Drew was a qualified individual with a disability protected by the ADA.

135. Title II of the ADA guarantees qualified individuals with disabilities an equal opportunity to access the services, programs, or activities of a public entity.

136. Defendant Jersey City is a public entity subject to Title II of the ADA. It operates the JCPD and is responsible for the discriminatory actions of JCPD officers.

137. Police work involving the public is a program, service and/or activity within the meaning of the ADA.

138. Discrimination under Title II of the ADA includes failure to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

139. Defendant Jersey City failed to reasonably modify its approach to its interaction with Drew when it knew or should have known that Drew had a mental health disability and was in the midst of the mental health episode.

140. Reasonable modifications under the circumstances would have included use of de-escalation techniques including, but not limited to, avoiding

direct confrontation with Drew by using passage of time, physical barriers, and distance to avoid a confrontation, disengaging and waiting for Drew to calm down before attempting to re-engage, availing the assistance of family members and/or choosing to tactically retreat. Other reasonable modifications would have included, without limitation, not calling the ESU to Drew's home and/or calling and waiting for a mobile outreach/ mobile crisis unit, mental health professional, crisis negotiator, or social worker once officers realized their attempts at communication with Drew were unsuccessful.

141. Defendant Jersey City's failure to provide Drew with reasonable modifications violated Title II of the ADA.

142. Under the ADA, a public entity must also "take appropriate steps to ensure that communications with . . . members of the public. . . with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a)(1)

143. Jersey City did not take appropriate steps to ensure that officers' communications during their interactions with Drew were equally effective as communications with other members of the public without a mental health disability. Instead of communicating in a way that could be understood by someone experiencing a mental health episode, officers antagonized Drew, pointed their weapons at Drew, and banged on his door. As a result, Drew did not have an opportunity for effective communication with JCPD officers.

144. Defendant Jersey City's violations of Title II of the ADA were taken with deliberate indifference to the likelihood that pursuit of its actions and inactions would likely result in a violation of federally protected rights.

145. Defendant Jersey City's violations of Title II of the ADA proximately and directly caused Drew to sustain severe, conscious pain and suffering and also caused Drew's death.

146. As a result, Plaintiff is entitled to damages.

COUNT 6
Discrimination Based on Disability in Violation of
Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*
(Against Defendants Hudson County, Jersey City Medical Center, and
RWJBarnabas Health)

147. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

148. Drew was a qualified individual with a disability protected by the ADA.

149. Title II of the ADA guarantees qualified individuals with disabilities an equal opportunity to benefit from the services, programs or activities of a public entity.

150. Defendant Hudson County is a local government, and therefore, a public entity subject to Title II of the ADA. Defendant Hudson County contracts

with Defendants Jersey City Medical Center and/or RWJBarnabas Health to provide emergency medical services and to operate public safety dispatch.

151. Emergency response service and dispatch is a program, service, and/or activity within Title II of the ADA.

152. Discrimination under Title II of the ADA includes failure to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of a disability.

153. Defendants Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health failed to reasonably modify their approach with respect to Drew in the dispatch of emergency service at a time when they knew or should have known Drew had a mental health disability and was in the midst of a mental health episode.

154. Reasonable modifications under the circumstances would have included dispatching the mobile outreach/ mobile crisis unit, a mental health professional, a crisis negotiator, or social worker—either independent or alongside of police—in response to calls from Drew’s family for assistance.

155. The ADA, as authoritatively construed by its implementing regulations, also provides that public entities may not provide aids, benefits, or services in such a way that qualified individuals are denied opportunities to participate or benefit, 28 C.F.R. § 35.130(b)(1); may not rely on “methods of

administration that . . . defeat[] or substantially impair[] accomplishment” of the program’s objectives, 28 C.F.R. § 35.130(b)(3); and may not “provide aids, benefits, or services in such a way that qualified individuals are not afforded “equal opportunity to obtain the same result . . . as that provided to others,” or are “otherwise limit[ed] . . . in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service,” 28 C.F.R. § 35.130(b)(1).

156. When Drew’s family called seeking emergency mental health assistance for Drew from the mobile crisis unit, Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health emergency response service failed to dispatch a mental health response. Instead, they dispatched and/or called for EMS and law enforcement to respond. These responders were not mental health professionals and not able to provide an appropriate health response to Drew.

157. Defendants Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health have appropriate, non-police responses, such as the mobile outreach unit, to dispatch to mental health emergencies.

158. Defendants discriminated against Drew by denying Drew an equal opportunity to obtain the same result provided to others who avail the same dispatch emergency response service but do not have a mental health disability.

159. Defendants' violations of Title II of the ADA were taken with deliberate indifference to the likelihood that pursuit of their actions and inactions would likely result in a violation of federally protected rights.

160. Defendants' violations of Title II of the ADA proximately caused Drew pain and suffering and Drew's death.

161. Accordingly, Plaintiff is entitled to damages.

COUNT 7
Discrimination Based on Disability in Violation of
Section 504 of the Rehabilitation Act, 29 U.S.C. § 794
(Against Defendant Jersey City)

162. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

163. Section 504 of the Rehabilitation Act of 1973 ("Section 504") prohibits discrimination against people with disabilities by any program or activity receiving federal financial assistance. Under Section 504, otherwise qualified individuals with disabilities may not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any such program.

164. Drew was a qualified individual with a disability protected by Section 504 of the Rehabilitation Act.

165. Defendants Jersey City receives federal financial assistance within the meaning of Section 504. It also operates the JCPD and is responsible for the discriminatory actions of JCPD officers.

166. Police work involving the public is a program or activity within the meaning of Section 504.

167. Discrimination under Section 504 includes failure to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.

168. Defendant Jersey City failed to reasonably modify its approach to its interaction with Drew when it knew or should have known that he had a mental health disability and was in the midst of the mental health episode.

169. Reasonable modifications under the circumstances would have included use of de-escalation techniques including but not limited to avoiding direct confrontation with Drew by using passage of time, physical barriers, and distance to avoid a confrontation, disengaging and waiting for Drew to calm down before attempting to re-engage, availing the assistance of family members and/or choosing to tactically retreat. Other reasonable modifications would have included, without limitation, calling and/or waiting for a mobile outreach/ mobile crisis unit, mental health professional, crisis negotiator, or social worker once officers realized their attempts at communication with Drew were unsuccessful and sending responders to the scene other than the ESU.

170. Defendant Jersey City's failure to provide Drew with reasonable modifications violated Section 504.

171. Defendant Jersey City’s violations of Section 504 were taken with deliberate indifference to the likelihood that pursuit of its actions and inactions would likely result in a violation of federally protected rights.

172. Defendant Jersey City’s violations of Section 504 proximately and directly caused Drew to sustain severe, conscious pain and suffering and also caused Drew’s death.

173. As a result, Plaintiff is entitled to damages.

COUNT 8
Discrimination Based on Disability in Violation of
Section 504 of the Rehabilitation Act, 29 U.S.C. § 794
(Against Defendants Hudson County, Jersey City Medical Center, and
RWJBarnabas Health)

174. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

175. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) prohibits discrimination against people with disabilities by any program or activity receiving federal financial assistance. Under Section 504, otherwise qualified individuals with disabilities may not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any such program.

176. Drew was a qualified individual with a disability protected by Section 504 of the Rehabilitation Act.

177. Defendant Hudson County is a local government, and therefore, subject to Section 504. It contracts with Defendants Jersey City Medical Center and/or RWJBarnabas Health to provide emergency medical services and to operate public safety dispatch. Defendants are responsible for the discriminatory acts of their employees.

178. Defendants Hudson County, including its emergency response service and dispatch program, receives federal financial assistance within the meaning Section 504.

179. Emergency response service and dispatch is a program or activity within the meaning of Section 504.

180. Discrimination under Section 504 includes failure to make reasonable modifications in polices, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of a disability.

181. Defendants Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health failed to reasonably modify their approach with respect to Drew in the dispatch of emergency service at a time when they knew or should have known Drew had a mental health disability and was in the midst of a mental health episode.

182. Reasonable modifications under the circumstances would have included dispatching the mobile outreach/ mobile crisis unit, a mental health

professional, a crisis negotiator, or social worker—either independent or alongside of police—in response to calls from Drew’s family for assistance.

183. Discrimination under Section 504 includes failing to “[a]fford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” or providing qualified handicapped persons with “an aid, benefit, or service that is not as effective as that provided to others.” 45 C.F.R. § 84.4(b)(1)(ii)–(iii); *see* 45 C.F.R. § 84.52(a)(2)-(3).

184. When Drew’s family called seeking emergency mental health assistance for Drew from the mobile crisis unit, Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health emergency response service failed to dispatch a mental health response. Instead, they dispatched and/or called for EMS and law enforcement to respond, who were not mental health professionals and not able to provide an appropriate health response to Drew.

185. Defendants Hudson County, Jersey City Medical Center, and/or RWJBarnabas Health have appropriate, non-police responses, such as the mobile outreach unit, to dispatch to mental health emergencies.

186. Defendants discriminated against Drew by denying Drew an equal opportunity to obtain the same result provided to others who avail the same dispatch emergency response service but do not have a mental health disability.

187. Defendants' violations of Section 504 were taken with deliberate indifference to the likelihood that pursuit of their actions and inactions would likely result in a violation of federally protected rights.

188. Defendants' violations of Section 504 proximately caused Drew pain and suffering and Drew's death.

189. Accordingly, Plaintiff is entitled to damages.

COUNT 9
Excessive Force
Under the New Jersey Civil Rights Act, NJSA 10: 6-1 *et seq.* ("NJCRA"), the
Fourth Amendment of the United States Constitution, and the New Jersey
Constitution
(Against Defendants Gigante and DeJesus)

190. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

191. On August 27, 2023, Defendants Gigante and DeJesus deprived Drew of his clearly established rights under the Fourth Amendment of United States Constitution to be free from the use of excessive force and his rights under the New Jersey Constitution, which is actionable under the NJCRA.

192. Defendants DeJesus and Gigante failed to engage in any de-escalation measures, and unreasonably escalated the situation. By shooting and tasing Drew while he was in the midst of a mental health episode, while he was not a threat to the safety of any other individual, and while he was not suspected of any crime,

Defendants acted unreasonably and in violation of Drew's constitutional rights under the United States and New Jersey Constitutions.

193. From the landing outside Drew's apartment, Defendant DeJesus tased Drew, and Defendant Gigante shot Drew twice—ultimately killing him. This gratuitous use of excessive and deadly force was vastly out of proportion to any danger Drew could have posed.

194. Defendants performed the above-described acts under color of state law, within the scope of their employment as JCPD officers and employees, and with deliberate indifference to Drew's clearly established rights.

195. No reasonable officer in 2023 would have believed this conduct was lawful.

196. As a direct and proximate result of Defendants' actions, Drew sustained the damages and injuries set forth above.

197. As a result, Plaintiff is entitled to compensatory damages, punitive damages, and reasonable attorneys' fees and costs.

COUNT 10
Warrantless Entry
Under the NJCRA and the New Jersey Constitution
(Against Defendants DeJesus, Gigante, Friend, and Santiago)

198. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

199. On August 27, 2023, Defendants DeJesus, Gigante, Friend, and Santiago, acting individually and in concert, deprived Drew of his clearly established rights under the Fourth Amendment of the United States Constitution, to be secure in his home and free from warrantless entry, as well as his rights under the New Jersey Constitution, which is actionable under the NJCRA.

200. Defendants deprived Drew of his right to be secure in his home and free from warrantless entry by breaking down the door to Drew's apartment and without a warrant and absent an applicable exception to the warrant requirement, including consent or exigent circumstances, and/or by authorizing these actions.

201. Defendants performed the above-described acts under color of state law, within the scope of their employment as JCPD officers and employees, and with deliberate indifference to Drew's clearly established constitutional rights under the United States and New Jersey constitutions.

202. No reasonable officer in 2023 would have believed this conduct was lawful.

203. As a direct and proximate result of Defendants' actions, Drew sustained the damages and injuries set forth above.

204. As a result, Plaintiff is entitled to compensatory damages, punitive damages, and reasonable attorneys' fees and costs.

COUNT 11
Assault
(Against Defendants Gigante, DeJesus, Friend, and City of Jersey City)

205. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

206. Defendants Gigante shot Drew twice and Defendant DeJesus tased Drew. Defendant Friend authorized such action. As a result of Defendants’ conduct, Drew was placed in apprehension of imminent harmful and offensive bodily contact.

207. Defendant Jersey City, as employer of the JCPD Defendants, is responsible for their negligent acts under the doctrine of *respondeat superior*.

208. As a result of Defendants’ conduct, Drew suffered physical pain and mental anguish, shock, fright, apprehension, embarrassment, and humiliation.

209. Accordingly, Plaintiff is entitled to compensatory damages, punitive damages, and reasonable attorneys’ fees and costs.

COUNT 12
Battery
(Against Defendants DeJesus, Gigante, Friend, and City of Jersey City)

210. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

211. Defendants Gigante shot Drew twice and Defendant Gigante tased Drew. Defendants Gigante and DeJesus made offensive contact with Drew without privilege or consent. Defendant Friend authorized such action.

212. Defendant City of Jersey City, as employer of the JCPD Defendants, is responsible for their negligent acts under the doctrine of *respondeat superior*.

213. As a result of Defendants' conduct, Drew suffered physical pain and mental anguish, shock, fright, apprehension, embarrassment, and humiliation.

214. Accordingly, Plaintiff is entitled to damages.

COUNT 13

False Imprisonment

(Against Defendants Gigante, DeJesus, Alas, Epps, De La Cruz, Ortiz, Friend, Field, Santiago, Miranda, Jackman, City of Jersey City, Hudson County, Jersey City Medical Center and RWJBarnabas Health)

215. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

216. Through their individual and collective actions, the individual Defendants confined and detained Drew without lawful justification, including by actively participating in, directing and/or knowing of, and acquiescing in Drew's false imprisonment.

217. Defendant City of Jersey City, as employer of the JCPD Defendants, is responsible for their negligent acts under the doctrine of *respondeat superior*.

218. Defendants Jersey City Medical Center and/or RWJBarnabas Health, as employer of the EMT Defendants, is responsible for their negligent acts under the doctrine of *respondeat superior*.

219. As a result of Defendants' conduct, Drew suffered physical pain and mental anguish, shock, fright, apprehension, embarrassment, and humiliation.

220. Accordingly, Plaintiff is entitled to damages.

COUNT 14
Negligent Training and Supervision
(Against Defendant City of Jersey City)

221. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

222. As evidenced by the failure to comply with New Jersey Attorney General's Office directives and Mayor Fulop and Director Shea's statements that JCPD Defendants' actions were consistent with their training, Defendant City of Jersey City failed to use reasonable care in the training and supervision of the JCPD Defendants, resulting in the unjustified and warrantless entry of Drew's apartment and Drew's killing.

223. As a result, Plaintiff is entitled to damages.

COUNT 15
Negligence

(Against all individual Defendants and Defendants City of Jersey City, Jersey City Medical Center, and RWJBarnabas Health)

224. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

225. Drew’s injuries and death were caused by the carelessness, recklessness, and negligence of Defendant Jersey City and its employees, JCPD Defendants, who were on duty and acting in the scope of their employment, when they engaged in the wrongful conduct described herein.

226. Defendant City of Jersey City, as employer of the JCPD Defendants, is responsible for their negligent acts under the doctrine of *respondeat superior*.

227. Drew’s injuries and death was also caused by the carelessness, recklessness, and negligence of Defendants Jersey City Medical Center, RWJBarnabas Health, and their employee EMT Defendants, who were on acting in the scope of their employment, when they engaged in the wrongful conduct described herein.

228. Defendants Jersey City Medical Center and/or RWJBarnabas Health, as employers of the EMT Defendants, is responsible for their negligent acts under the doctrine of *respondeat superior*.

229. As a result, Plaintiff is entitled to damages.

COUNT 16
Wrongful Death
(Against Defendants City of Jersey City, Gigante, DeJesus, Friend, and
Santiago)

230. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

231. The Defendants committed tortious acts against Drew as alleged above.

232. The Defendants' tortious acts caused Drew's death in violation of N.J.S.A. 2A:31-4.

233. Drew suffered severe conscious pain and suffering immediately prior to his death, which was caused by Defendants' unconstitutional and otherwise unlawful acts and omissions.

234. As a direct and proximate result of Drew's conscious pain and suffering and death, Drew's estate has suffered damages in an amount to be determined at trial.

235. The statutory distributees of Drew's estate sustained significant loss resulting from the loss of Drew's love, comfort, society, and attention.

236. As a result, Plaintiff is entitled to damages.

COUNT 17
Survival Act
(Against Defendants Jersey City, Gigante, DeJesus, Friend, and Santiago)

237. Plaintiff hereby incorporates by reference paragraphs 1–110 as if fully set forth herein and further alleges as follows:

238. Plaintiff is the beneficiary of the estate of Andrew Washington.

239. Drew suffered personal injury and damages caused by Defendants prior to his death in violation of N.J.S.A. 2A:31-1.

240. As a result, Plaintiff is entitled to damages.

WHEREFORE, Plaintiff prays that judgment be entered against Defendants as follows:

- A. That the Court award compensatory damages to Plaintiff and against all Defendants, jointly and severally, in an amount to be determined at trial;
- B. That the Court award punitive damages to Plaintiff and against all individual Defendants in their individual capacity, in an amount to be determined at trial, that will deter such conduct by defendants in the future;
- C. For a trial by jury;

- D. For pre-judgment and post-judgment interest and recovery of Plaintiff's costs, including reasonable attorneys' fees pursuant to 42 U.S.C. §§ 1988 and 12205 as well as any other applicable laws; and
- E. For any and all other relief to which Plaintiff may be entitled.

Dated: August 21, 2024

Respectfully submitted,

/s/ Nick Brustin

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