

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANGELA LOWE, Individually and as
Administratrix of the estate of
SEAN LEVERT
c/o David Malik, Esq.
8437 Mayfield Road
Chesterfield, OH 44026,

Plaintiff,

v.

**CUYAHOGA COUNTY/ BOARD OF
COMMISSIONERS**
1219 Ontario Street, 4th Floor
Cleveland, Ohio 44113,

and

GERALD T. MCFAUL
CUYAHOGA COUNTY SHERIFF
Cuyahoga County Corrections Center
1215 West 3rd Street
Cleveland, Ohio 44113,

and

**MIDWEST MEDICAL STAFFING,
INC.**
5273 Broadview Road
Parma, OH 44134,

and

DR. EMMANUEL O. TUFFUOR
Midwest Medical Staffing, Inc.
5273 Broadview Road
Parma, OH 44134,

and

DR. DONALD KELLON
Midwest Medical Staffing, Inc.
5273 Broadview Road

CASE NO: 1:08-CV-01339

JUDGE: Donald C. Nugent

**FOURTH AMENDED COMPLAINT
AND JURY DEMAND**

Parma, OH 44134 :

and :

DR. L. ALVARADO :

Midwest Medical Staffing, Inc. :

5273 Broadview Road :

Parma, OH 44134 :

and :

KENNETH KOCHEVAR :

Cuyahoga County Corrections Center :

1215 West 3rd Street :

Cleveland, Ohio 44113 :

and :

CHRISTINE DUBBER :

Cuyahoga County Corrections Center :

Health Care Services :

1215 West 3rd Street :

Cleveland, Ohio 44113 :

and :

JANE LAWRENCE :

Cuyahoga County Corrections Center :

Health Care Services :

1215 West 3rd Street :

Cleveland, Ohio 44113 :

and :

CHRISTINE MAIN :

Cuyahoga County Corrections Center :

Health Care Services :

1215 West 3rd Street :

Cleveland, Ohio 44113 :

and :

CYNNAMON ALI :

Cuyahoga County Corrections Center :

Health Care Services :

1215 West 3rd Street :

Cleveland, Ohio 44113,	:
	:
and	:
	:
JOHN RICHARD JANOSKO	:
Cuyahoga County Corrections Center	:
Health Care Services	:
1215 West 3rd Street	:
Cleveland, Ohio 44113,	:
	:
and	:
	:
JOE-ANNA COOPER	:
Cuyahoga County Corrections Center	:
Health Care Services	:
1215 West 3rd Street	:
Cleveland, Ohio 44113,	:
	:
and	:
	:
JOHN and JANE DOES 5-10	:
(Names and addresses unknown and	:
undiscoverable at this time),	:
	:
Defendants.	:

I. INTRODUCTION

1. Sean Levert was a successful R & B singer, husband, and father who was killed as a result of the failure of Defendants to provide medical care in the Cuyahoga County Jail. In March, 2008, Sean was sentenced to prison for a nonviolent crime. He entered the jail after sentencing and informed Defendants that he was taking Xanax for a medical condition and presented his bottle of prescription pills. It was well known that if a patient on Xanax is denied his medication then he is subject to severe withdrawal symptoms including terrifying hallucinations, disorientation, palpitations, nausea, and terrible seizures. These foreseeable symptoms are routinely avoided by tapering the patient off of the medication. Defendants terminated Mr. Levert’s medication without any tapering and failed to prevent or properly

recognize his medical crisis. Sean suffered for days and then died in a restraint chair. His wife, Angela Lowe, brings this action seeking fair compensation and in the hope that she can prevent other prisoners at the Cuyahoga County Jail from suffering such injury and death.

II. JURISDICTION

2. Jurisdiction over claims brought under the Civil Rights Act of 1871 is conferred on this Court by 28 U.S.C. §§ 1331, 1343 (3) and (4). Jurisdiction over the state law claims is conferred by 28 U.S.C. §1367. An affidavit pursuant to Ohio Rule Civ. Proc. 10(D)(2) is attached in support of the medical claims. Venue is proper in this Division.

III. PARTIES

3. Angela Lowe is the wife of Sean Levert. Mr. Levert is deceased. Ms. Lowe brings this suit individually and as the Administratrix of the Estate of Sean Levert for the benefit of his next of kin and heirs. Ms. Lowe and Sean Levert were residents of Portage County, Ohio. Sean however, died in Cuyahoga County. Ms. Lowe was appointed Administratrix of the Estate of Sean Levert on April 29, 2008. She brings this action both in her individual and fiduciary capacities.

4. Defendant Sheriff Gerald McFaul (Sheriff) is and was at all times relevant to this action the duly elected Sheriff of Cuyahoga County, Ohio. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and in his official capacity. He was a county policy maker with respect to policies and procedures at the Cuyahoga County Corrections Center (Jail).

5. Defendant Cuyahoga County (County) is a unit of local government organized under the laws of the State of Ohio. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law.

6. Defendant Kenneth Kochevar is and was at all times relevant to this action the Director of the Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and in his official capacity. He was a county policy maker with respect to jail policies and procedures.

7. Defendant Christine Dubber is and was at all times relevant to this action the Manager of Health Care Services at the Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and in her official capacity. She was a county policy maker with respect to jail policies and procedures.

8. Defendant Midwest Medical Staffing, Inc. (MMS) is a corporation and was at all times relevant to this action the medical provider under contract with Cuyahoga County, providing medical, psychiatric, dental and pharmaceutical services at the Cuyahoga County Corrections Center. MMS is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law.

9. Defendant Dr. Donald Kellon was at all times relevant to this action an agent of MMS serving as a psychiatrist at Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and in his official capacity.

10. Defendant Dr. L. Alvarado was at all times relevant to this action an agent of MMS serving as a physician at Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and in his official capacity.

11. Defendant Dr. Emmanuel O. Tuffuor was at all times relevant to this action an agent of MMS serving as the Medical Director at Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and in his official capacity.

12. Defendant Nurse Christine Main is and was at all times relevant to this action a nurse employed by the County and assigned to the Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and in her official capacity.

13. Defendant Nurse Jane Lawrence is and was at all times relevant to this action a nurse employed by the County and assigned to the Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and in her official capacity.

14. Defendant Nurse Cynnamon Ali is and was at all times relevant to this action a nurse employed by County and assigned to the Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and in her official capacity.

15. Defendant Nurse John Richard Janosko is and was at all times relevant to this action a nurse employed by the County and assigned to the Cuyahoga County Corrections Center. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is sued in his individual and in his official capacity.

16. Defendant Nurse Joe-Anna Cooper is and was at all times relevant to this action a nurse employed by the County and assigned to the Cuyahoga County Corrections Center. Defendant is

a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued in her individual and in her official capacity.

17. Defendants John and Jane Does are individuals and entities who individually or in concert with the other defendants responsible for providing medical care to Sean Levert when he was housed at the Cuyahoga County Corrections Center. At this time these persons are not known to Plaintiff but will be named when they are discovered.

IV. FACTS

A. Sean Levert

18. Sean Levert was born in Cleveland, Ohio and was the son of Eddie Levert, who sang with The O'Jays. In the 1980's Sean formed the trio LeVert with older brother Gerald Levert and childhood friend Marc Gordon. The LeVert trio recorded several hits with solid rankings on the U.S. R&B charts in the 1980s and early 1990s. In 1995, Sean launched a solo music career and was still active as a singer at his death. He was an internationally acclaimed R & B singer.

19. Sean Levert and Angela Lowe were married in 2001. They had two children from the marriage, Sean Jr. and Chad.

20. Sean also had three children born before his marriage to Angela Lowe. Sean paid child support on these three children but fell behind on his obligations. In 2008, he pled guilty to non-payment of some of his child support obligations, a nonviolent crime. Sean paid \$20,000.00 toward his outstanding bill before sentencing, but was nonetheless sentenced to a prison term of 22 months.

21. At the time of his sentencing, Mr. Levert was 39 years old. He was 5'4" tall and weighed 260 pounds. He loved his wife and children and had every intention of securing release from prison and resuming his family life and music career.

B. Conditions at Cuyahoga County Corrections Center

22. Cuyahoga County Judge Nancy Russo sentenced Sean on March 24, 2008, and he entered the Cuyahoga County Corrections Center (Jail) in Cleveland, Ohio.

23. When Judge Russo sentenced Sean, the Jail was overcrowded. At the time of Sean's sentencing, the Adult Bureau of Detention of the Ohio Department of Rehabilitation and Corrections (ODRC) had already cited the Jail for "Non-Compliance" with ODRC standards. ODRC found the Jail overcrowded, and lacking adequate inmate sleeping space.

24. On April 17, 2008 just days after Sean's death, the Jail was again inspected by the ODRC and an Annual Jail Profile (Profile-Exhibit A) was issued. That Profile, recommended that "...action must be taken, as soon as possible, to insure that all Correctional Officers receive training within the first year of assignment (Chapter 109-2-09 Administrative Code). Jail Administration must develop a plan within the next six (6) months to insure that all Correctional Officers meet this requirement."

C. Sean Levert's Prescription Medication

25. Sean had been prescribed Xanax by his family physician, Dr. Charles Webb to treat an anxiety disorder. Sean was prescribed two milligrams of Xanax to be taken three times daily. Sean had been taking prescription Xanax for several years before he was sentenced.

26. During sentencing, Judge Russo noted that Sean took Xanax. Judge Russo even mentioned Sean's Xanax medication in a personal note to the Sheriff.

27. Xanax is a medication in the class of drugs known as benzodiazepines. In March, 2008 it was well known that abruptly discontinuing benzodiazepines such as Xanax could lead to severe, painful and terrifying withdrawal symptoms, often resulting in death. It was also known that Xanax treatment for long term users could not be safely discontinued unless the medication was

tapered off in a slow and deliberate fashion while the patient was monitored by appropriate medical professionals.

D. Sean Levert's Experience at the Cuyahoga County Jail

28. On March 24, 2008, Sean brought his prescribed Xanax medication, with him to the Jail. The Defendants removed the medication from Mr. Levert and officially inventoried the medication bottle containing 37 prescribed Xanax pills (Exhibit B).

29. At no time from the moment Mr. Levert entered the Jail until his death six days later did Defendants provide Mr. Levert any of his prescribed Xanax medication.

30. On March 25, 2008, Defendant Nurse Christine Main completed Sean's Mental Health Screening/Referral Form. She noted the prescription for Xanax, and noted that he took two milligrams three times a day.

31. On March 25, 2008, Defendant Main filled out an authorization for the release of Sean's medical records and Mr. Levert signed the release. The release requested "Diagnosis, Medication and Treatment records, Discharge Summary." The Release was faxed that day to "Southpointe – Dr. Charles Webb." The authorization was not faxed to the office of Mr. Levert's primary care physician, Dr. Webb.

32. On March 26, 2008, Southpointe Hospital faxed nine pages of medical records to the Jail that involved blood tests and treatment in 2006 for conditions unrelated to Mr. Levert's treatment for anxiety with Xanax. The Southpointe fax did not verify the prescription for Xanax or even refer to the prescription for Xanax.

33. Neither Defendant Main nor any of the other defendants took any further action to verify Mr. Levert's prescription for Xanax. At all times relevant to this action the Defendants

possessed the actual Xanax pills in Mr. Levert's prescription bottle but they did not act to provide Mr. Levert any of his duly prescribed medication.

34. On information and belief, on March 25, 2008 Defendant Dr. L. Alvarado reviewed the medical intake records regarding Mr. Levert that had been prepared by Defendant Main.

35. From March 25, 2008 until Mr. Levert's death on March 30, 2008, neither Defendants Main, Alvarado nor any other Defendant diagnosed Mr. Levert as a person at risk of Xanax withdrawal. Further, Defendants failed to advise the security and medical staff interacting with Mr. Levert to be alert to signs and symptoms of Xanax withdrawal.

36. Between March 25, 2008 until Mr. Levert's death on March 30, 2008, Defendants Main, Alvarado and the other Defendants failed to take any measures to taper the Xanax medication and avoid the foreseeable withdrawal symptoms experienced by Mr. Levert.

37. Inside the Jail, Sean was given no cot or bed upon which to sleep. Sean was housed in an area that was severely overcrowded. Sean was required to sleep on a mattress on the floor of his cell. Due to the housing conditions, Sean became sleep-deprived, exacerbating his pre-existing medical conditions.

38. Soon after he arrived at the Jail, Sean Levert began to deteriorate physically. His cell-mate, Bart Roland noticed Sean was sleeping sitting up, talking and laughing to himself. Mr. Roland also reported that he could tell Sean was anxious, and that he heard Sean request his medication. Mr. Roland eventually witnessed Sean experiencing hallucinations.

39. The hallucinations suffered by Mr. Levert were foreseeable as a known symptom of Xanax withdrawal.

40. On March 27, 2008, Sean asked Corrections Officer Eric Price, for his Xanax medication. Corrections Officer Price reported Sean's request to Defendant Nurse Cynnamon Ali. Defendant

Nurse Ali told Corrections Officer Price to tell Sean there was nothing she could do for him, and that he would just have to wait. Defendant Nurse Ali failed to check Mr. Levert's medical record; take Mr. Levert's vital signs; perform a mental status exam, or take any other action to investigate the medical status of Mr. Levert.

E. Sean Levert's Deadly Medical Crisis

41. Because he did not receive his prescription Xanax medication, Sean lapsed into acute Xanax withdrawal syndrome. Sean was seen rocking from side to side and sweating profusely. Sean paced back and forth. Sean yelled repeatedly that he needed his medication. Sean began hallucinating: seeing imaginary people running around his cell; believing he had seen a correctional officer being stabbed; believing he heard a woman's voice; believing that his son had been murdered.

42. On March 30, 2008, Sean activated the call box on his cell, and told the Correction Officer on duty that he had seen his son drowning. He was subsequently interviewed by Defendant Nurse Jane Lawrence who ordered that Sean be transferred to the psychiatric floor for observation. At approximately 3:25am, Sean was removed from his cell and taken to the psychiatric floor.

43. Defendant Nurses John Richard Janosko and Joe-Anna Cooper arrived for duty on the morning of March 30th. Defendant Nurse Janosko is a Registered Nurse, and is responsible for delegating duties to Defendant Nurse Cooper, who is a Licensed Practical Nurse. Defendant Janosko is also responsible for ensuring that inmates who are newly admitted to the psychiatric unit are interviewed. Defendant Nurse Lawrence did not inform Defendant Janosko or Defendant Cooper of Sean's hallucinations or his Xanax prescription.

44. Defendants, including Defendant Nurses Lawrence, Janosko and Cooper, failed to properly diagnose or treat Sean Levert's Xanax withdrawal even when his symptoms were apparent.

45. Defendants, including Defendant Nurses Lawrence, Janosko, and Cooper failed to administer regular mental status exams while Mr. Levert was on the psychiatric floor. Defendant Janosko failed to interview or assess Mr. Levert at all. Defendant Cooper failed to administer proper mental health or physical evaluations.

46. Defendants, including Defendant Nurses Lawrence, Janosko, and Cooper failed to regularly check Mr. Levert's vital signs when he was on the psychiatric floor.

47. Defendants Janosko and Cooper failed to check Mr. Levert's chart or medical history, despite the fact that Mr. Levert had been admitted to the psychiatric floor with hallucinations and bizarre behavior only hours before Defendant Janosko and Cooper's shift began on March 30.

48. Defendant Nurse Cooper was called to Sean's cell on March 30 after dinner because Sean would not stop crying. Despite Sean's distress, Defendant Cooper never consulted Sean's chart or medical history and never conducted a mental status exam. Defendant Cooper never took Mr. Levert's vital signs.

49. For at least an hour more, Sean continued to cry and was visibly upset. Defendant Cooper spoke twice with a guard about Sean's behavior. Defendant Nurse Janosko was present during at least one of these conversations. Neither Defendant Nurses Cooper nor Janosko conducted any mental or physical assessment of Sean. Instead, Sean was locked in his cell because he was "bumming out" the other inmates.

50. Once housed on the psychiatric floor Sean continued to hallucinate and suffer from severe, classic, and terrifying withdrawal symptoms for the next 21 hours. He was never seen by a physician or psychiatrist during this time.

51. Defendant Nurse Janosko did not conduct an interview or evaluation of Sean at any time, nor did he direct Defendant Nurse Cooper to do so.

52. Defendant Dr. Donald Kellon was a physician responsible for providing assessment and diagnosis of psychiatric disorders at the Jail, and was responsible for the mental health care of Sean Levert. Dr. Kellon failed to properly diagnose or treat Sean Levert's Xanax withdrawal syndrome.

53. At approximately 10:45pm, on March 30, 2008, Sean was placed in a restraint chair by the order of Defendant Nurse Lawrence. The seizure of Sean by the use of restraints caused Sean's physical condition to worsen.

54. After Sean was placed in the restraint chair, Defendant Nurse Lawrence called Defendant Dr. Kellon. At that point, Dr. Kellon ordered that Nurse Lawrence administer an injection of haldol, ativan, and benadryl. Defendant Lawrence failed to administer the injection.

55. As a direct and proximate result of the acts set forth herein, Sean Levert died. Prior to death, Sean endured extended pre-death agony, pain within his body and horrifying mental hallucinations. The Cuyahoga Coroner's June 4, 2008 Verdict specifically listed, "Alprazolam [benzodiazepine] withdrawal" as a cause of death.

F. Policies, Practices and Culpable Conduct

56. The risk of withdrawal syndrome in Xanax users is well known in jails. The Sheriff, County, MMS, Dr. Emmanuel Tuffuor, Dr. Donald Kellon, Dr. L. Alvarado, Christine Dubber, Kenneth Kochevar and any John Doe policy makers had policies, practices, customs and usages

which caused prisoners to suffer, untreated, serious symptoms as a result of the termination of their benzodiazepine medications. Such policies are the moving force behind the injuries suffered by Mr. Levert in this case. By following such policies Defendants were deliberately indifferent to the serious medical need of Sean Levert in this case.

57. The Sheriff, County, MMS, Dr. Emmanuel Tuffuor, Dr. Donald Kellon, Dr. L. Alvarado, Christine Dubber, Kenneth Kochevar and any John Doe policy makers were also deliberately indifferent to the serious medical need of Sean Levert by failing to train staff and implement jail policies, practices, customs and usages that adequately addressed the obvious and known health and safety risks to inmates entering the Jail while taking prescribed medications in the class of benzodiazepines, and likely to go into withdrawal without proper medical treatment.

58. The Defendants acted negligently, recklessly, wantonly, willfully, knowingly, intentionally and with deliberate indifference to the serious medical need of Sean Levert.

59. As a direct and proximate result of Defendants' actions, before his death Sean Levert suffered severe emotional distress, pain, suffering, and extreme and horrifying mental hallucinations.

60. As a further direct and proximate result of Sean's wrongful death Sean, his survivors and/or heirs have suffered permanent damages, including but not limited to, the loss of his support, services, and society, including lost companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, as well as the loss of prospective inheritance.

61. As a further direct and proximate result of Sean's wrongful death Sean's survivors, next of kin and/or heirs have suffered permanent damages, including but not limited to, grief,

depression, and severe emotional distress. They have incurred funeral bills, medical bills and treatment and will incur additional medical bills and treatment in the future.

V. FIRST CAUSE OF ACTION – 42 U.S.C. §1983

62. The Defendants have, under color of state law, deprived Sean Levert of rights, privileges and immunities secured by the Fourteenth and Eighth Amendments to the U.S. Constitution including but not limited to the right to be free from cruel and unusual punishment, the right to be protected, and the right to adequate medical care when incarcerated.

63. The Sheriff, County, MMS, Dr. Emmanuel Tuffuor, Dr. Donald Kellon, Dr. L. Alvarado, Kenneth Kochevar, Christine Dubber, and John Doe Policymakers failed to adequately train and supervise the Jail corrections officers and staff in the intake, assessment and correctional and medical care of inmates who arrive at the jail while taking prescription drugs in the benzodiazepine class, including Sean Levert.

64. The rules, regulations, customs, policies and procedures of the Defendants were inadequate and unreasonable and were the moving force behind the constitutional deprivations suffered by Sean Levert.

65. Although the policymakers were on notice of the obvious need to train and supervise Jail staff in the area of day to day Jail operations, policies and procedures relating to medical and mental health assessment and follow up care of inmates, the Sheriff, County, MMS, Dr. Donald Kellon, Dr. Emmanuel Tuffuor, Dr. L. Alvarado, Kenneth Kochevar, Christine Dubber, and John Doe Policymakers failed to adequately train and supervise the individual Jail staff in that regard. The policy makers failed to develop and institute adequate reality based training programs relating to the incarceration, care and treatment of individuals such as Sean who had pre-existing medical conditions. As such the Sheriff, County, MMS, Dr. Donald Kellon, Dr. Emmanuel

Tuffuor, Dr. L. Alvarado, Kenneth Kochevar, Christine Dubber, and John Doe Policymakers were deliberately indifferent to the serious medical needs of Sean Levert.

VI. SECOND CAUSE OF ACTION – WRONGFUL DEATH

66. Defendants actions caused the wrongful death of Sean Levert resulting in damages recoverable under R.C. §2125.02

VII. THIRD CAUSE OF ACTION – MALPRACTICE BY PHYSICIANS

67. After Sean Levert was admitted to the Jail, Defendants Dr. Donald Kellon and Dr. L. Alvarado failed to use reasonable care in terminating his Xanax prescription medicine and in diagnosing and treating the symptoms experienced by Sean Levert when his Xanax medication was terminated. Defendants Dr. Donald Kellon and Dr. L. Alvarado breached their duty of care to Sean Levert.

68. Defendant Medical Director Dr. Tuffuor failed to insure that adequate policies were in place at the Jail to appropriately identify, diagnose and treat inmates entering the jail who were at risk of experiencing a medical crisis if their medication was interrupted.

69. The conduct of Defendant Dr. Emmanuel Tuffuor, Dr. Donald Kellon and Dr. L. Alvarado deviated from standard medical practice, all in violation of Ohio law. Their conduct was a proximate cause of Sean Levert's injury and death.

VIII. FOURTH CAUSE OF ACTION – MALPRACTICE BY NURSES

70. After Sean Levert was admitted to the care and custody of the Jail, Defendant Nurses Christine Main, Jane Lawrence, Cynnamon Ali, John Richard Janosko, and Joe-Anna Cooper breached their duties to provide medical care to Mr. Levert consistent with standard medical practice, all in violation of Ohio law.

71. The conduct of Defendant Nurse Christine Main, Defendant Nurse Jane Lawrence, Defendant Nurse Cynnamon Ali, Defendant Nurse John Richard Janosko, and Defendant Nurse Joe-Anna Cooper proximately caused Sean Levert's injury and death.

**IX. FIFTH CAUSE OF ACTION – NEGLIGENCE BY MMS
AND MEDICAL DIRECTOR**

72. Defendants Midwest Medical Staffing (MMS), Dr. Emmanuel Tuffuor, their employees and agents, owed a duty of reasonable care to Sean Levert.

73. Defendants MMS and Tuffuor have a duty to provide qualified personnel to perform medical services at the Jail and a duty to use reasonable care in determining the qualifications of its contractors, agents and employees who provide medical services.

74. Defendants MMS and Tuffuor have a duty to establish appropriate policies and procedures concerning the medical treatment of inmates at the Jail.

75. Defendant MMS and Tuffuor, their contractors, employees and agents breached their duty of care to Sean Levert by failing to provide appropriate medical care and treatment under the circumstances.

76. As a direct and proximate result of the negligence of MMS, Dr. Donald Kellon, Dr. Tuffuor, and Dr. L. Alvarado, Sean Levert suffered injury, pain and suffering, pre-death agony, emotional and psychological trauma, and eventually died as a result of such injury.

**X. SIXTH CAUSE OF ACTION – NEGLIGENT AND RECKLESS
BREACH OF DUTY BY SHERIFF, JAIL DIRECTOR,
HEALTH CARE MANAGER AND COUNTY**

77. Defendant Sheriff McFaul, Kenneth Kochevar, Christine Dubber and Cuyahoga County owed a duty of reasonable care to Sean Levert.

78. Defendants Sheriff, Kenneth Kochevar, Christine Dubber and Cuyahoga County has a duty to provide qualified personnel to perform medical services at the Jail and a duty to use

reasonable care in determining the qualifications of its contractors, employees and agents who provide medical services.

79. Defendants Sheriff, Kenneth Kochevar, Christine Dubber and Cuyahoga County have a duty to establish appropriate policies and procedures concerning the medical treatment of inmates at the Jail.

80. Defendants Sheriff, and Cuyahoga County and its contractors, employees and agents breached their duty of care to Sean Levert by failing to provide appropriate medical care and treatment under the circumstances.

81. Defendants Sheriff, Kenneth Kochevar, Christine Dubber and County failed to conduct audits to ensure that services by its contractors were consistent with standard medical practice.

82. The conduct of the Sheriff, Kenneth Kochevar, and Christine Dubber was negligent, reckless, wanton and willful, intentional, knowing and deliberately indifferent.

83. As a direct and proximate result of the conduct of Defendants Sheriff, Kenneth Kochevar, Christine Dubber and Cuyahoga County, Sean Levert suffered injury, pain and suffering, emotional and psychological trauma, and eventually died as a result of such injury.

XI. SEVENTH CAUSE OF ACTION – LOSS OF CONSORTIUM

84. At the time of incidents complained in Plaintiff's Complaint, the Plaintiff and Decedent were married.

85. That as a result of the wrongful acts of the Defendants, and each of them, the Plaintiff was caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship.

86. All the aforesaid injuries and damages were caused proximately by the wrongful acts of the Defendants.

XII. JURY DEMAND

87. Plaintiff hereby demands a trial by jury of all issues triable by jury.

XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. Award Plaintiff compensatory damages in an amount to be shown at trial;
- B. Award punitive damages against all Defendants except the County in an amount to be shown at trial;
- C. Equitable relief, including, without limitation, that the County and the Sheriff be made to apologize and to promulgate, adopt, train, maintain and enforce appropriate policies to prevent future instances of the type of misconduct described herein;
- D. Award Plaintiff reasonable attorney's fees, costs and disbursements;
- E. Grant Plaintiff such additional relief as the Court deems just and proper.

Respectfully submitted,

/s/ David B. Malik

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2010, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

/s/ Alphonse A. Gerhardstein
Attorney for Plaintiff