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DISTRICT OF NEW JERSEY
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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

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LEE KENWORTHY as the Administrator for the
ESTATE OF SHAYLING KENWORTHY and
LEE KENWORTHY, individually,

Cv. 18-12822

Plaintiffs,

MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

-against-

LYNDHURST POLICE DEPARTMENT;
OFFICER PHILIP REINA, in his individual
capacity; POLICE OFFICER HAGGERTY,
in his individual capacity, LYNDHURST CHIEF
OF POLICE JAMES O' CONNOR, in his
individual capacity; SERGEANT RICHARD
PIZZUTI, in his individual capacity; LYNDHURST
TOWNSHIP AMBULANCE SQUAD; TOWNSHIP
OF LYNDHURST; ROBERT MARTIN; ANN MARTIN;
RICHARD ANDERSON; LAUREN ANDERSON;
HOUSING AUTHORITY OF BERGEN COUNTY;
ADAPT PHARMA, and Jamie Romano,

Defendants.

PRELIMINARY STATEMENT

Plaintiffs, LEE KENWORTHY (“Plaintiff” or “Lee”) and the Estate of Shayling Kenworthy hereby seek leave pursuant to L. Civ. R. 15.1, New Jersey Rules of Civil Procedure, to file an Motion for Leave to File an Amended Complaint (“Amended Complaint”). The Court being vested with authority pursuant to 28 U.S.C. §-2071 and Rule 15 and 83 of the Federal Rules of Civil Procedure to make and amend local rules.

STATEMENT OF FACTS

This case arises out of one of the greatest tragedies that could have been avoided yet, ended in the death of one of the Plaintiffs. The Plaintiffs Shayling Kenworthy and Lee Kenworthy had rented an apartment for them and their two children. The Plaintiff at the time of rental thought that they were dealing with law-abiding citizens who were Defendant Landlords, which are ROBERT MARTIN AND ANN MARTIN (“Martins”) and RICHARD ANDERSON AND LAUREN ANDERSON (“Andersons”). The Defendant Robert Martin was a part of the law enforcement in the State of New Jersey and currently believed the US Marshall’s Office. The apartment was in need of repair. There was mold, old carpet soaked with feces and a variety of other health violations. At the time the Plaintiffs rented the apartment, they were told that they

the repairs would be made. The Plaintiffs and the Defendant Landlords went back and forth regarding the repairs that were never done. The Plaintiffs even offered to pay rent in advance, \$2,000 extra so that the landlord could have the money to fix the apartment. The Defendant Landlords turned down the Plaintiff's offer whom preferred to put it in writing in a lawyer's office. The Defendant Landlord instead started to intimidate and threaten the Plaintiff that if they did not just pay their rent and shut up. The Defendant Robert Martin even waived his gun on the Plaintiff Lee Kenworthy in an attempt to intimidate the Plaintiffs even more. The apartment was never repaired. When the Plaintiff asserted their rights, there were threats made regarding taking their children being taken away by DCP&P and even them being locked in jail on false charges. The reality was that the threats happened because of the Defendant Landlords. The Plaintiff was sent to jail on false charges. There was an investigation by the New Jersey Child Protective Services opened, which was based on the false allegations by the Defendant Landlords and Defendant Jamie Romano. The Plaintiffs attempted to go to the Lyndhurst Police in order to file charges against the Defendant Landlord Robert Martin. The Lyndhurst Police refused to do anything. Even the Chief of Police for Lyndhurst Police failed to do anything but encouraged the Plaintiffs to drop the matter.

The heinous circumstance that occurred was the false arrest of the Plaintiff Lee Kenworthy, his wife became ill due to the actions of both Defendant Landlords and the Defendant Lyndhurst Police Department. The Lyndhurst Police Department delayed in having the Lyndhurst Township Ambulance Squad respond to the Plaintiff Shayling Kenworthy's ailment. When the Lyndhurst Police Department administered a lethal dose of Narcan by the Defendant Adapt Pharma ("Adapt Pharma"). Rather than allowing the Plaintiff Shayling Kenworthy oxygen or any given treatment by the medical personnel that the Lyndhurst police officers restrained

from immediately investigating the Medical 911 call and performing life saving/sustaining procedures. Narcan can have a deadly reaction when administered to patients with asthma. The Plaintiff Lee Kenworthy while being subdued and falsely detained by the Lyndhurst Police was watching as he begged for them to save his wife's life. The tragedy is that the Plaintiff had to see his wife take her last breath due to the inaction of the Lyndhurst Police Department. The Plaintiff filed the initial Complaint based on Wrongful Death. The Motion for Leave to File an Amended Complaint is so that additional causes of actions made to add are seen regarding the Defendants' liability. The Amended Complaint is filed so that justice may be served not only for the Plaintiff, but also for the estate of the Plaintiff Shayling Kenworthy. The Amended Complaint is attached as Exhibit A.

LEGAL ARGUMENT

I. MOTIONS FOR LEAVE TO AMEND ARE LIBERALLY GRANTED BY COURTS AND SHOULD BE GRANTED

Generally, the courts liberally grant motions for leave to amend. Citing Fed. R. Civ. P. 15(a)(2) which states: "a party may amend its pleading only with the opposing party's written consent or the court's leave," Plaintiffs assert that they should be allowed to amend their Complaint. Plaintiffs state the decision whether to grant leave to amend a pleading is within the sound discretion of the District Court emphasizing that "this discretion is strictly circumscribed by the proviso that leave [should] be freely given when justice so requires." (Id.) (citing *Florida Foundation Seed Producers, Inc. v. Georgia Farms Services, LLC*, No. 1:10-CV-125, 2012 WL

4840809, at 21)(quoting *Gramegna v. Johnson*, 846 F.2d 675, 678 (11th Cir. 1988)). Plaintiffs contend that ‘due to significant factual and procedural developments there is good cause for amending the Complaint. The Amended Complaint provides a complete detail of all of the facts as they happen in the case.

While FED.R.CIV.P. 15(a), provides that leave to amend the pleadings is generally granted liberally, See *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Alvin v. Suzuki*, 227 F.3d 107, 121 (3d Cir. 2000), the Court may deny a motion to amend where there is “undue delay, bad faith . . . repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment.” *Id.* In the present case, the Plaintiff is amended not for any undue delay or bad faith. The Plaintiff is bringing this Amendment so that justice may be served.

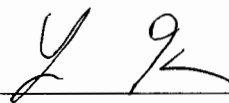
Additionally, relying on *Foman*, Plaintiffs assert that, where there is an absence of undue delay, bad faith, prejudice, and futility, a request to amend the pleadings should be liberally granted. *Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004). Plaintiffs argue that here, none of these factors exist and, as such, their motion should be granted.

The Plaintiffs asserts in their Amended Complaint, ten legal theories in which they seek redress: (1) violation of constitutional rights; (2) conspiracy; (3) negligent hiring and retention; (4) deliberate indifference to Decedent’s medical needs; (5) wrongful death; (6) violations of decedents’ civil rights; (7) RICO; (8) negligence; (9) gross negligence; and (10) intentional infliction of emotional distress. Through their motion, Plaintiffs seek permission to amend the Complaint to satisfy the pleading requirements under the Federal Rules of Civil Procedure by adding a short and plain statement of the grounds for relief. Therefore, the court should grant the Motion to Amended the Complaint.

CONCLUSION

For the reasons stated above, Plaintiffs' motion seeking leave to file an Amended Complaint to more specifically plead as requesting relief against Defendants on the basis of: 1) violation of constitutional rights; (2) conspiracy; (3) negligent hiring and retention; (4) deliberate indifference to Decedent's medical needs; (5) wrongful death; (6) violations of decedents' civil rights; (7) RICO; (8) negligence; (9) gross negligence; and (10) intentional infliction of emotional distress. The Plaintiff would respectfully ask the court to the grant the Motion to File an Amended Complaint should be granted and for such other relief as this Court deems proper.

Dated: January 14, 2019,



Lee Kenworthy, PLAINTIFF

127 Walton Street
Englewood, NJ 07631
(347) 549-0020.

VERIFICATION OF MOTION FOR AMENDED COMPLAINT
FOR DEPRIVATION OF RIGHTS UNDER COLOR OF STATE AUTHORITY &
CONSPIRACY TO DEPRIVE ANOTHER OF RIGHTS PROTECTED BY THE
CONSTITUTION OF THE UNITED STATES

I, Lee Kenworthy, am the Plaintiff in the within Civil Action. I have read the foregoing Motion to Amend Complaint, and I know the contents thereof. The contents are true to my own knowledge, except as to the matters stated to be alleged upon information and belief and, as to those matters, I sincerely believe them to be true.

Dated: 1-18-2019



Lee Kenworthy, PLAINTIFF & AFFIANT