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IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH W. FERDERBAR, Adminis- )  
trator of the Estate of )  
LINDA FERDERBAR, Deceased, )  
Plaintiff, )

vs. )

COUNTY OF ALLEGHENY, NORTHWEST )  
REGIONAL COMMUNICATIONS, )  
ALLEGHENY COUNTY 9-1-1 f/k/a )  
NORTHWEST REGIONAL COMMUNICA- )  
TIONS, DANIEL NUSSBAUM, )  
DANIELLE TUSH, BRIAN CRAIG, )  
LEONARD DEUTSCH, RYAN GING, )  
SUSAN ZURCHER and PHILLIP )  
CESTRA, )

Defendants. )

CIVIL ACTION NO.

05 1518

JURY TRIAL DEMANDED

20051027 - 2 AM 9:07  
U.S. DISTRICT COURT  
CLERK

CIVIL COMPLAINT

Plaintiff, Joseph W. Ferderbar, Administrator of the Estate of Linda Ferderbar, Deceased, by her undersigned attorneys, Michael Balzarini, Esquire and Balzarini & Watson, files the within civil complaint against the Defendants and in support thereof avers as follows:

1. The plaintiff, Joseph W. Ferderbar, is the Administrator of the Estate of Linda Ferderbar, Deceased.

2. Plaintiff, Joseph W. Ferderbar, was duly appointed Administrator of the Estate of Linda Ferderbar, Deceased, by the Register of Wills of the Court of Common Pleas of Allegheny County on November 1, 2005, at No. 020506519 of 2005.

3. Plaintiff, Joseph W. Ferderbar, is the natural father and surviving parent of the decedent, Linda Ferderbar and currently resides at 202 Chipper Drive, Glenshaw, Allegheny County, Pennsylvania, 15116.

4. The Defendant, County of Allegheny (Allegheny County), is a political subdivision of the Commonwealth of Pennsylvania, with its principal place for the transaction of government business located at Room 101, County Courthouse Building, Pittsburgh, Allegheny County, Pennsylvania, 15219.

5. The Defendant, Northwest Regional Communications (Northwest), is a Pennsylvania corporation with a principal place of business located at 400 North Lexington Street, Pittsburgh, Allegheny County, Pennsylvania, 15208, and at all times relevant hereto was actively engaged in business operations which included the operation of an emergency/911 call and dispatch center.

6. The Defendant, "Allegheny County 9-1-1" f/k/a Northwest Regional Communications (Allegheny County 911), is a political subdivision of the Commonwealth of Pennsylvania with a principal place of business located at 400 North Lexington Street, Pittsburgh, Allegheny County, Pennsylvania, 15208.

7. At all times relevant hereto, the Defendants, Allegheny County, Northwest Regional Communications, and Allegheny County 911 acted, or failed to act by and through their agents, servants workmen and employees with respect to the matters more specifically described below.

8. The Defendant, Daniel Nussbaum (Nussbaum), at all relevant times, was the Communications Director for and employed by Allegheny County, Northwest Regional Communications and/or Allegheny County 911 (hereinafter collectively referred to as the "911 Call Center") and therefore is a state actor. Mr. Nussbaum is sued in his individual capacity.

9. The Defendant, Danielle Tush (Tush), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. Ms. Tush is sued in her individual capacity.

10. The Defendant, Brian Craig (Craig), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. Mr. Craig is sued in his individual capacity.

11. The Defendant, Leonard Deutsch (Deutsch), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. Mr. Deutsch is sued in his individual capacity.

12. The Defendant, Ryan Ging (Ging), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. Mr. Ging is sued in his individual capacity.

13. The Defendant, Susan Zurcher (Zurcher), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. Ms. Zurcher is sued in her individual capacity.

14. The Defendant, Phillip Cestra (Cestra), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. Mr. Cestra is sued in his individual capacity.

15. At all relevant times, Defendants Allegheny County, Northwest Regional Communications, Allegheny County 911, Nussbaum, Tush, Craig, Deutsch, Ging, Zurcher and Cestra were state actors and acting under the color of law.

16. This action arises under 42 U.S.C. §1983, and this Court has jurisdiction pursuant to 28 U.S.C. §1331 and §1343 and supplemental jurisdiction over related state law claims pursuant to 18 U.S.C. §1367.

17. On or about October 12, 2003, Michael Michalski (Michalski), a dispatcher employed by the Defendants, Allegheny County, or, by the defendant, Northwest Regional Communications, or by Allegheny County 911, or by each of them, used his position as a dispatcher to gain access to and utilize the facility of the 911 Call Center to obtain information as to the whereabouts of his former girlfriend, Gretchen Ferderbar.

18. On a date not later than October 19, 2003, Defendant Nussbaum, Director of the 911 Call Center, was aware of Michalski's actions, and as a result of those activities placed Michalski on a deferred, one-week suspension, to take effect on October 27, 2003.

19. At the time Nussbaum suspended Michalski, Michalski informed Nussbaum that other dispatchers were also engaging

in the widespread practice of the unauthorized access of people's personal information using the 911 Call Center's computer networks and databases.

20. On October 26, 2003, Michalski again utilized the 911 Call Center's facility to conduct searches of the 911 Call Center's computer networks and databases to gain access to personal information regarding decedent's sister, Gretchen Ferderbar.

21. In the late evening of October 28, 2003 and the early morning of October 29, 2003, while on suspension, Michalski made numerous telephone calls to the 911 Call Center, speaking with co-workers and fellow dispatchers, Tush and Craig.

22. During those occasions, Michalski requested information that would assist him in locating Gretchen Ferderbar.

23. Defendants Tush and Craig actively and intentionally assisted Michalski knowing that they were accessing unauthorized personal information that had no relationship to their function as dispatchers and a 9-1-1 emergency call center.

24. At all relevant times, Defendants were aware that the relationship between Gretchen Ferderbar and Michalski had recently ended and that Michalski was distraught over the termination of the relationship.

25. At all relevant times, Defendants were not only aware of Michalski's distress, but that his distress was the

impetus and cause of him accessing unauthorized information that resulted in his suspension.

26. Defendant Nussbaum, acting in his capacity as director of the 911 Call Center, learned of Michalski's continued unauthorized access to information on October 29, 2003, and terminated his employment at that time.

27. At the time of termination of Michalski's employment, Defendant Nussbaum received information that Michalski was likely to engage in acts of violence against Gretchen Ferderbar and other members of her household.

28. Despite knowledge and recognition of Michalski's propensity for violence and the likelihood that violence would be directed against Gretchen Ferderbar and those associated with her, and knowledge that the facilities of the 911 Call Center had been utilized to gain information as to the whereabouts of Gretchen Ferderbar, Defendant Nussbaum failed to take action to protect Gretchen Ferderbar and the members of her household.

29. On October 29, 2003, Michalski again contacted many of the 911 Call Center's dispatchers, including Defendants Tush, Craig, Deutsch, Ging, Zurcher and Cestra explaining the circumstances of his termination, indicated that he had nothing left to live for, and that Gretchen Ferderbar and members of her household would pay for putting him in his present situation.

30. Defendants Tush, Craig, Deutsch, Ging, Zurcher and Cestra, each, and collectively failed to make any effort to protect or warn Gretchen Ferderbar or the members of her

household of the imminent danger to their health and safety posed by Michalski.

31. On October 29, 2003, Michalski used a handgun to shoot plaintiff's decedent, Linda Ferderbar, together with Gretchen Ferderbar and Gretchen Ferderbar's boyfriend, Mark Phillips.

32. The plaintiff's decedent herein, Linda Ferderbar, died of injuries sustained in the shooting on November 3, 2003.

COUNT ONE

Plaintiff v. Allegheny County, Northwest  
Regional Communications and Allegheny County 911  
42 U.S.C. §1983

33. Plaintiff incorporates by reference the allegations of paragraphs 1 through 32 as if fully restated.

34. As previously set forth, Defendants' actions, individually and/or jointly, created a situation where it was foreseeable that Linda Ferderbar would suffer injury and harm.

35. The actions of Defendants were intentional and/or constitute willful disregard, gross recklessness and deliberate indifference for Linda Ferderbar's right to privacy and personal safety, as well as her right of well-being and right to life, in derogation of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution.

36. Further, Defendants' actions resulted in the seizure of Linda Ferderbar's person and life in derogation of the Fourth Amendment of the United States Constitution.

37. Defendants' conduct, their position and authority as state actors facilitated, enabled and created a dangerous situation and made plaintiff's decedent vulnerable to harm by the ex-state employee, Michalski.

38. Defendants further, through their deliberate and conscious indifference and utter disregard with respect to the training and monitoring of their agents and employees, fostered and created the atmosphere, custom and practice whereby Linda Ferderbar's personal, private information, was not protected.

39. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions and/or failure to act of the Defendants, Linda Ferderbar was deprived of her right of privacy, and deprived of her life and liberty without Due Process and in violation of her Equal Protection rights as guaranteed by the Fourteenth Amendment of United States Constitution.

40. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions and/or failure to act of the Defendants, Linda Ferderbar was unreasonably seized in violation of Linda Ferderbar's rights under the Fourth Amendment of the United States Constitution.

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, for all available damages including punitive damages, in addition to attorney fees and costs pursuant to 42 U.S.C. §1983.



COUNT TWO

Plaintiff v. Nussbaum, Tush, Craig, Deutsch,  
Ging, Zurcher and Cestra, in their individual capacity  
42 U.S.C. §1983

41. Plaintiff incorporates by reference the allegations of paragraphs 1 through 40 as if fully restated.

42. As previously set forth, Defendants' actions, individually and/or jointly, created a situation where it was foreseeable that Linda Ferderbar would suffer injury and harm.

43. The action of Defendants were intentional and/or constitute willful disregard, gross recklessness and deliberate indifference for Linda Ferderbar's personal safety, well-being and right to life in derogation of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution.

44. Further, Defendants' actions resulted in the seizure of Linda Ferderbar's person and life in derogation of the Fourth Amendment of the United States Constitution.

45. Defendants' conduct, their position and authority as state actors facilitated, enabled and created the dangerous situation and made Linda Ferderbar particularly vulnerable to harm.

46. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions or failure to act of the Defendants, Linda Ferderbar was deprived of her right to privacy, and right to life without Due Process and in violation of her

Equal Protection rights as guaranteed by the Fourteenth Amendment of the United States Constitution.

47. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions and/or failure to act of the Defendants, Linda Ferderbar was unreasonably seized in violation of her rights under the Fourth Amendment of the United States Constitution.

WHEREFORE, plaintiff demands judgment against Defendants, and each of them, for all available damages including punitive damages, in addition to attorney fees and costs pursuant to 42 U.S.C. §1988.

COUNT THREE

Plaintiff v. Northwest Regional Communications,  
Nussbaum, Tush, Craig, Deutsch, Ging, Zurcher and Cestra  
Wrongful Death Action

48. Plaintiff incorporates by reference the allegations of paragraph 1 through 47 as if fully restated.

49. Defendants by virtue of their position, authority and knowledge had a duty to protect the decedent from harm.

50. Defendants' actions and/or failures to act constituted negligence and/or willful misconduct resulting in a breach in their duty of care towards the decedent.

51. The decedent, Linda Ferderbar's, death was a direct and proximate result of the Defendants' negligence and/or willful misconduct.

52. Decedent is survived by a minor child, John Cameron Ferderbar, born August 30, 2001, and by her parents, on whose

behalf the within claim for wrongful death benefits is brought.

53. As a result of Linda Ferderbar's death, her survivors have or will have sustained pecuniary losses, including but not limited to loss of decedent's income, maintenance, guidance, companionship, support, love and society along with any other damages recoverable pursuant to Pennsylvania's Wrongful Death Act.

WHEREFORE, plaintiff demands judgment against Defendants, and each of them, for all available damages including but not limited to fees and costs, and any other such relief this Court deems just and proper.

COUNT FOUR

Plaintiff v. Northwest, Nussbaum, Tush, Craig,  
Deutsch, Ging, Zurcher and Cestra  
Survival Action

54. Plaintiff incorporates by reference the allegations of paragraphs 1 through 53 as if fully restated.

55. Plaintiff brings this action for the damages on behalf of the Estate of Linda Ferderbar for any and all damages suffered by the Estate recoverable under Pennsylvania's Survival Statute at 42 Pa. C.S.A. §8302.

56. Plaintiff claims as damages include but not limited to past and future loss of income and earning capacity, as well as pain and suffering, physical injury, disfigurement and loss of life suffered by the decedent, Linda Ferderbar.


WHEREFORE, plaintiff demands judgment against Defendants for all available damages, including but not limited to fees

and costs, and any other such relief this Court deems just and proper.

Respectfully submitted,

BALZARINI & WATSON

BY



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AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :  
 : ss:  
COUNTY OF ALLEGHENY :

Before me, the undersigned authority, personally appeared, JOSEPH FERDERAR, who, being first duly sworn according to law, deposes and says that the facts contained in the foregoing COMPLAINT are true and correct to the best of his knowledge, information and belief.

Joseph W. Ferderbar  
Joseph Ferderbar

Sworn to and subscribed before me this

1<sup>ST</sup> day of November, 2005

Annette Hallo  
Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Annette Hallo, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires 12/31/2008

Member, Pennsylvania Association of Notaries