

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

PATRICIA HAYES,  
AS EXECUTOR OF THE ESTATE OF  
SHERILYN HAYES,  
Plaintiff

V.  
TOWN OF DALTON, Jeffrey E. Coe, Dalton Chief  
of Police in his Individual and Official Capacities,  
Dalton Police Officer John Marley, in his Individual  
and Official Capacities, Dispatcher Frank M. Speth, III,  
in his Individual and Official Capacities, Dalton Police  
Officer Dylan Bencivenga, in his Individual and Official  
Capacities, TOWN OF PERU, and Peru Police Officer Kyle  
Nutting, in his Individual and Official Capacities,

Defendants

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COMPLAINT AND JURY DEMAND

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**INTRODUCTION**

This is a Federal Civil Rights action to recover damages for the wrongful death of Sherilyn Hayes brought against the Town of Dalton, members of the Dalton Police Department, including Jeffrey Coe, Dalton Chief of Police, and Dalton Police Officers John Marley and Dylan Bencivenga, Dispatcher Frank Speth, as well as the Town of Peru, and Peru Police Officer Kyle Nutting pursuant to, inter alia, 42 U.S.C. sec. 1983.

It is hereby alleged that that the affirmative action and/or lack of actions by the aforementioned officers and/or employees of the Town of Dalton and Town of Peru, were done under color of law in violation of the Decedent's rights and resulted in a "State-Created Danger." The Defendants' actions were grossly negligent and/or recklessly indifferent in denying the Decedent Sherilyn Hayes appropriate care and attention that resulted in her death. As a result of the Defendant officers' and/or employees of the Towns of Dalton and Peru's affirmative actions, they created the risk of harm to the Decedent and subsequently conspired to cover up the wrongful acts they committed. As a consequence, the Plaintiff's rights have been violated under both the Federal and State Constitutions.

## **PARTIES**

1. The Plaintiff, Patricia Hayes, resides in Pittsfield, Berkshire County, Massachusetts. Patricia Hayes is the mother and duly appointed personal representative and Administrator of the Estate of Sherilyn Hayes.
2. Defendant, Town of Dalton, is a municipality located in Berkshire County, Massachusetts (hereinafter, "Dalton").
3. Defendant, Town of Peru, is a municipality located in Berkshire County, Massachusetts (hereinafter, "Peru").
4. Defendant, Jeffrey Coe (hereinafter, "Defendant Coe"), is an individual who was employed by the Town of Dalton as the Police Chief, and on information and belief, is a resident of Massachusetts.
5. Defendant, John Marley (hereinafter, "Defendant Marley"), is an individual who was formerly employed by the Town of Dalton as a police officer.
6. Defendant, Dylan Bencivenga (hereinafter, "Defendant Bencivenga"), is an individual who is employed by the Town of Dalton as a police officer.
7. Defendant, Frank M. Speth, III (hereinafter, "Defendant Speth"), is an individual, who for all relevant periods of time was employed by the Town of Dalton as a Dispatcher.
8. Defendant, Kyle Nutting (hereinafter, "Defendant Nutting"), is an individual is employed by the Town of Peru as a police officer.

## **FACTUAL ALLEGATIONS**

9. On November 23, 2019, at approximately 6:16 PM, an emergency "well-being" call for service was made to, and received by Defendant Frank Speth, at the Dalton Communications Center. The call for emergency service originated from Tyler Hamilton (hereinafter "Mr. Hamilton")
10. Mr. Hamilton's call was logged into the Dalton Police Incident System as Incident #19-159-01: and call #19-17507.
11. Mr. Hamilton reported to Dispatcher Speth that the Decedent, Sherilyn Hayes and her fiancé, Defendant Officer Kyle Nutting, had just been involved in a domestic confrontation premised on an allegation of infidelity.

12. Mr. Hamilton informed Defendant Speth that Defendant Nutting had left the scene, but Ms. Hayes, the female party was still at her North Street residence.
13. Sherilyn Hayes was a graduate of Taconic High School and the Mildred Elley vocational school. She worked as an insurance liaison for a Pittsfield medical office.
14. It is important for purposes of this complaint to know that at the time of this incident, Defendant Nutting was employed as a police officer for the neighboring Town of Peru.
15. Prior to calling the Dalton Police Department, Mr. Hamilton and his fiancé had gone to the North Street residence of the Decedent, Sherilyn Hayes and knocked on the door, attempting to get in touch with Ms. Hayes, who did not respond.
16. During Mr. Hamilton’s call to Dispatcher Speth, he stated to Speth, *“My buddy and his girlfriend got into an argument. And I just wanted to see if somebody could swing over and do a wellness check.”*
17. Mr. Hamilton urged Dispatcher Speth to hurry because he believed Ms. Hayes was in jeopardy of physically harming herself.
18. Mr. Hamilton specifically stated to Dispatcher Speth that they (Defendant Nutting and the Decedent) *“...just got into an argument”* and that the female party had threatened *“...to kill herself...”*
19. Dispatcher Frank Speth received and processed the call made by Mr. Hamilton and was under an obligation by Dalton Police Departmental Rules to expedite officers to the Decedent’s address.
20. Dispatcher Speth also learned from Mr. Hamilton that the Decedent’s fiancé, was a Peru Police Officer.

Dispatcher:	Okay. What's going on there?
Caller:	Um, they just got into an argument. She thinks that he's cheating on her. And then he left, took the dog with him. And she said some things, like, she was going to kill herself and ...
Dispatcher:	Okay. Does she have any weapons in the house?
Caller:	He does. He is a Peru cop.
Dispatcher:	Okay. And what's his last name?

21. Mr. Hamilton also stated to Dispatcher Speth that Mr. Nutting had *“...been calling me and texting me saying that he's worried about her.”*
22. As a result of the urgency of Mr. Hamilton’s call, Dispatcher Speth stated to Mr. Hamilton that he would dispatch officers to the Decedent’s North Street residence:

Speth: *Okay. All right. I'll send the officers over there. And she said that, uh, she was going to do harm to herself?*

Hamilton: *Yes.*

23. Mr. Hamilton also indicated to Dispatcher Speth that Officer Nutting was currently having dinner with the Peru Chief of Police, Jeffrey Henault (“Chief Henault”):

Dispatcher:	Okay. All right. And, um, he's left the residence, right?
Caller:	He did.
Dispatcher:	Okay. Is he on foot or is he in a vehicle?
Caller:	He's in a vehicle. He, he went ... he was having dinner with his police chief ...
Dispatcher:	Okay.
Caller:	... from Peru.
Dispatcher:	All right. So he's not there then? Okay.
Caller:	No.
Dispatcher:	All right. We'll send the officers over there.
Caller:	Awesome. Thank you.

24. At approximately 6:18 pm (i.e., approximately two minutes after receiving the call from Mr. Hamilton) Dispatcher Speth broadcast the call over the Department’s radio system and dispatched Dalton Police Cruisers #7 and #9 to respond to the Ms. Hayes’ apartment.
25. Dalton Cruiser #7 was assigned to Reserve Police Officer Dylan Bencivenga. Dalton Cruiser #9 was assigned to Defendant Officer John Marley.
26. Dispatcher Speth identified the call out as a "domestic" and requested that the officers call into the Communication Center so he could provide them with more information.
27. Officer John Marley responded to Dispatcher Speth and stated that he was in the Dalton police station at the time of the radio broadcast and that he would go to the Communications Center to speak personally to Dispatcher Speth.
28. Dispatcher Speth subsequently stated that he had not wanted to provide the entirety of the information on an open radio channel in connection with a call involving a domestic dispute because Ms. Hayes’ finance was a police officer.
29. The Plaintiff avers that Defendant Speth’s actions were motivated by the fact that as a police officer, a potential arrest of Mr. Nutting for a domestic incident could result in serious employment consequences.

30. Officer Marley subsequently reported that when he spoke to Dispatcher Speth he was also informed that the male party involved in the domestic incident with the Decedent was a Peru Police Officer.
31. After speaking to Dispatcher Speth, Officer Marley was advised that Mr. Hamilton had specifically requested a well-being check because Ms. Hayes had made a threat to harm herself.
32. The Town of Dalton Police Department's Rules and Regulations state that any call for service which includes a suicide threat is to be considered an "Emergency/Code Three" call which requires an *immediate* response.
33. After speaking to Mr. Hamilton, both Defendants Speth and Marley were in possession of critical information which they knew required an immediate response to the scene of Ms. Hayes' apartment.
34. Instead of responding to the scene immediately as required, Defendant Marley called Officer Bencivenga over the radio at 6:21 pm and instructed Officer Bencivenga to:  
  
*"Just stand by in the area there. I'm going to make a phone call and I'll update you in a minute."*
35. At the time of Defendant Marley's radio broadcast, Officer Bencivenga was already in route to, or at the scene of Ms. Hayes' North Street apartment.
36. The subsequent investigation of the actions taken by the members of the Dalton Police Department involved in this matter concluded as follows:  
  
*"I find it more likely than not that Officer Marley's first priority was to advise Officer Bencivenga that a police officer was involved in the domestic dispute and that immediate response to a call for a well-being check on someone who threatened suicide was subordinated to this "professional courtesy."*
37. The Dalton Police Department Policy on Domestic Violence (PP#205) has a specific section for this type of emergency situation involving a law enforcement officer.
38. Under Paragraph I. 'Allegations Against Law Enforcement Personnel' the following actions are required regarding Dispatch and Officer response(s) when another law enforcement officer is involved:

Section VIII (Dispatch and Officer Response)

- A. Dispatch / communication officers shall immediately notify the on-duty commanding officer of all domestic violence involving law enforcement officers.

1. The responding officers shall take immediate action to ensure the safety of the victim and all parties present.
2. A supervisor of higher rank will remain on the scene until relieved by the responding supervisor
3. The responding officers will remain on the scene until relieved by the responding supervisor.
4. The responding officers shall document, in a report, their actions and complete such report prior to the end of their tour of duty.

39. As Dalton Officer Bencivenga continued to stand by and not respond to Ms. Hayes' apartment, Officer Marley used his department-issued cellphone to try to reach Officer Nutting.

40. At 6:24 pm, eight minutes after receiving the emergency request for a wellness check, Defendant Marley instead called Peru Police Chief Jeffrey Henault in an attempt to determine Officer Nutting's location.

41. The call from Officer Marley to Chief Henault was not made on a recorded line. Chief Henault allowed Officer Nutting to use his personal phone to speak to Officer Marley.

42. According to Defendant Marley, Officer Nutting told him the following:

	her? What's going on?" Um, and he tells me that, uh, they had this verbal argument and that, um, she believed he was cheating on her and that, uh, he wasn't. And that they, uh ... he chose to leave at some point. Uh, that during their discussion they had made, uh, she had made a comment about wanting to hurt herself. Uh, he said that she ... he didn't believe she had the intent to hurt herself. That he didn't think she was going to hurt herself. Uh, that, um, there was no need for police to conduct a well-being check based on those statements. Um, that he felt that she was just upset and, um, uh, and INAUDIBLE.
Donovan:	Okay. And I'm not trying ... I just want to get it clear. He told you that he didn't think there was a need for a well-being check based on ...
Marley:	I'd like to look at my report to refer to what I ...
Donovan:	Yup.
Marley:	... said ... well, his exact words to me so I can ...
Donovan:	Okay. If you want to look at it, sure.

43. The substance of the above conversation between Defendant Marley and Officer Nutting was omitted from Officer Marley's initial report of the incident. Defendant Marley did not say in his initial written report that he had even spoken to Chief Nutting previously.
44. Additionally, Defendant Marley's incident report omits significant information that he learned from speaking with Dispatcher Speth that Ms. Hayes had threatened to kill or harm herself.
45. Plaintiff avers that Defendant Marley's omission of his contact with Chief Henault and Defendant Nutting and his awareness of potential harm to Ms. Hayes from his report was intentional and was done for the purpose of withholding critical information regarding the affirmative actions taken by himself and other officers that resulted in a deprivation of Plaintiff's constitutional rights.
46. During a subsequent interview, Officer Marley stated that Officer Nutting disclosed to him that although Ms. Hayes had threatened to harm herself, he (Officer Nutting) personally thought "*...there was no need for police to conduct a well-being check...*"
47. Defendant Marley's decision not to respond to Ms. Hayes' apartment was apparently based upon the opinion of Officer Nutting, who was identified as an active participant in the domestic confrontation. As a consequence, Defendant Marley concluded that there was no need to conduct a well-being check.
48. During the subsequent investigation, Defendant Marley conceded that both Defendant Nutting and Mr. Hamilton told him they believed Ms. Hayes "wanted to die" and that Ms. Hayes had threatened to kill herself.
49. Defendant Marley clearly had sufficient information from multiple sources that confirmed that a domestic argument had taken place and that a participant had threatened to harm herself.
50. Defendant Marley possessed critical information which would lead any reasonable police officer under the same circumstances to take immediate action and make an emergency response to Ms. Hayes' address.
51. Defendant Marley also knew, based upon his years of training as an experienced officer what the Dalton Police Department Rules were regarding domestic confrontations involving other police officers.
52. Despite this information, Defendant Marley did not respond to Ms. Hayes' apartment at this time, nor did he direct Officer Bencivenga to respond. Officer Bencivenga continued to remain outside Ms. Hayes' apartment "standing-by" at his supervisor's direction.

53. After speaking with Defendant Nutting, Defendant Marley (at 6:29 pm) then re-called Mr. Hamilton from the Dalton Police Department and had another conversation that lasted for approximately three minutes.
54. During this conversation, Mr. Hamilton once again stated that he and his fiancé had returned to Ms. Hayes residence and *"...we knocked on the door and she didn't answer, so I'm, like, yeah, we were there for, like, 20 minutes knocking on the door. She didn't answer."*
55. Defendant Marley continued his conversation with Mr. Hamilton and asked, *"All right. Does she know ... did she know you were at the door? Do we think she's there?"*
- Mr. Hamilton responded, *"Uh, as far as I knew she was there. She doesn't have a vehicle, so she couldn't have gone anywhere."*
56. Officer Marley continued the delay in responding to the scene and stated the following in an obvious attempt to dissuade Mr. Hamilton from insisting that the police go to Ms. Hayes' apartment.

Officer:	Okay. Well, that's regardless. So w-, so what you're asking us to do, though, is to go there and speak to her to make sure she's okay?
Caller:	I, I just don't want it to interfere with his career ...
Officer:	I hear ...
Caller:	... because ...
Officer:	... I hear what you're saying, but he's not calling and asking us to do this. So you're the caller. So for us to go there and either force our way into that home or to take her into custody, we need someone to tell us that that's what they're asking us to do. We can't just, you know, go with, well, we don't want you to go, but I wanted to tell you. It, it just, it doesn't work that way with us. So we need you to INAUDIBLE you want us to go there and check on her or you're going to use some other means yourself to do that or we're going to go there and she doesn't answer the door, we're going to either break the door down or we're going to get a, a key and go in and talk to her.
Caller:	Um, I'll, I'll go back there.
Officer:	All right.



57. Rather than comply with the Department's mandated domestic abuse policy, Officer Marley placed the onus on Mr. Hamilton to make the determination whether or not an immediate well-being check was required.
58. By telling Mr. Hamilton "*we need someone to tell us that's what they are asking us to do...*" Defendant Marley improperly shifted responsibility to Mr. Hamilton to insist that the check be made or, alternatively, to retract his initial request for a well-being check of Ms. Hayes.
59. Defendant Marley's insistence that Mr. Hamilton make a second demand for a well-being check was not required or appropriate in light of the information already provided to Officer Marley and Dispatcher Speth.
54. Nor was there a need for a "forced entry" into Ms. Hayes apartment by Dalton Police as Defendant Marley had suggested to Mr. Hamilton. It is common knowledge within the Dalton Police Department that there is a key lock box at Ms. Hayes' North Street complex which contains a master key to all apartments.
60. The Plaintiff avers that Defendant Marley's conversation was intended to have a chilling effect on Mr. Hamilton in an attempt to discourage Mr. Hamilton from insisting that the well-being check be made.
61. That fact that Defendant Marley failed to ask Officer Nutting or Mr. Hamilton for Ms. Hayes's telephone number, failed to inquire about how to access the apartment, failed to ask whether Ms. Hayes had made suicidal statements in the past, and pressured Mr. Hamilton to accept responsibility for the situation, all support the conclusion that Defendant Marley deliberately chose to avoid becoming involved and violated his own departmental rules in an attempt to avoid negatively impacting a fellow police officer's career.
62. Defendant Marley called Officer Bencivenga on his personal cell phone and told him to remain where he was outside the apartment complex, even after Marley learned Mr. Hamilton had already gone to the Hayes apartment and knocked on the door for 20 minutes with no answer.
63. Neither Defendants Marley or Bencivenga took any further action to respond to the North Street apartment until after the discovery of the Decedent.
64. At 6:40 p.m., the Dalton dispatch center received yet another call from Mr. Hamilton, approximately twenty-four (24) minutes after his first request for a wellness check.
65. During that conversation Mr. Hamilton informed Defendant Marley that he had been in touch with Defendant Nutting, and that they (Mr. Hamilton and Mr. Nutting) were going back to the residence to check on Ms. Hayes.

Dispatcher:	Okay. Hold on one second.
Caller:	Yup.
Officer:	Hey, [REDACTED] John Marley.
Caller:	How's it going?
Officer:	Good. What's up, man?
Caller:	So I guess, um, [REDACTED] going to be going back there with a friend ...
Officer:	Okay.
Caller:	... to figure out what's going on.
Officer:	Okay.
Caller:	So ...
Officer:	So he's going to go check on her and make sure it's all good?
Caller:	Yeah.
Officer:	Okay. Excellent. Thank you for, uh, calling us back and letting us know.
Caller:	Thank you.
Officer:	Thank you.
Caller:	All right. Bye.

66. Defendant Marely's reckless indifference and failure to respond to the scene was a blatant violation of his own Department's Rules as well as the training and education provided to police officers in Massachusetts regarding responses to domestic violence incidents.
67. Officer Marley's subsequent decision to approve Officer Nutting return to the scene to "check on" Ms. Hayes with Mr. Hamilton was also a violation of the Departments Rules given that:
- (1) Officer Nutting was identified as a participant in the domestic confrontation which involved accusations of infidelity and domestic violence:
  - (2) Officer Nutting was a potential criminal defendant given his own stated role in the incident: and
  - (3) Officer Marley would have access to any evidence present at the scene and was aware that Ms. Hayes had threatened to harm herself.
68. Allowing Defendant Nutting to return to the scene might also have caused the situation to escalate. The proper, and only acceptable response would have been for the Dalton Police Department to initially respond to the scene immediately and to take precautions to ensure Ms. Hayes' safety and well-being.

69. The initial call for emergency assistance by Mr. Hamilton was made to Dispatcher Speth at 6:16 pm. The call was subsequently closed out by Dispatcher Frank Speth at 6:50 pm without any response to the scene by Dalton Police.
70. At approximately 7:00 pm, Defendant Nutting and Mr. Hamilton returned to the apartment and discovered Ms. Hayes.
71. At approximately 7:01 pm, another emergency call was made to the Dalton Police Department requesting assistance for a person who had just taken her life at the North Street address.
72. At 7:30 Ms. Hayes was transported to Berkshire Medical Center.
73. The Defendants, separately and collectively subsequently conspired to conceal the events surrounding the death of the Decedent by intentionally deleting or failing to reference key events that occurred prior the Ms. Hayes' death.
74. As a result of the intentional omissions from Defendant Marley's incident report and the reports of others involved in the incident, there was no awareness of the true chronology of events that transpired on November 23, 2019, that led to the loss of Ms. Hayes' life.
75. In November of 2019, an anonymous letter was sent to and received by Dalton Select Board member Robert Bishop. In that anonymous letter the actual events involved that evening and the attempts to "cover up" were disclosed.
76. The anonymous letter read as follows:

Mr. Bishop,  
on 11/23/19 my friend S [REDACTED], killed herself in Dalton.  
About an hour before she was found, my other friend called  
and asked the Dalton Police to check on her because we  
were concerned she may harm herself. The Dalton Police  
never went to the house to check on her. They never showed  
up until AFTER she was found dead. This is so wrong!  
The Dalton Police will cover this up! They need to be  
investigated by someone from the outside.

S [REDACTED]'s boyfriend is a cop and I believe they were  
trying to protect him. Now they will try to cover the  
whole thing up, and protect themselves.

I WILL to to the news.
77. On or about May of 2020, the Dalton Select board voted to terminate Officer Marley's employment with the Town, finding that Marley was in violation of all eight

counts alleged against him, including conduct unbecoming an officer, incompetence, failing to comply with police procedure and ethics violations.

78. In April of 2021, in a 29-page decision, Betty E. Waxman, the Arbitrator chosen to arbitrate the decision to terminate Officer Marley, found that Marley had violated police policy and as a result his termination was justified. (Attached as Exhibit 1)
79. The Arbitrator concluded; “The Grievant’s primary motivation was to protect Officer Nutting, not Ms. Hayes, even after Mr. Hamilton stated that he had already been to the Hayes residence and there was no response. . . . The Grievant lost precious moments looking for a direct instruction to go to the Hayes residence and failing that, a way to rationalize not going.”
80. The Arbitrator’s finding also revealed that after Marley learned that the Town had hired Alfred Donovan, a former Tewksbury Police chief, to conduct a probe, he attempted to intimidate other officers from cooperating with the investigation.
81. Arbitrator Waxman wrote, Officer Marley’s actions were seen as an “attempt to interfere with the investigation into his conduct by engaging in intimidating and threatening conduct towards other police officers.”

### **COUNT I**

42 U.S.C. § 1983

**DENIAL OF DUE PROCESS BY ALL DEFENDANTS  
(Defendants Coe, Speth, Bencivenga, Marley and Nutting)**

82. Plaintiff incorporates by reference the allegations set forth in all previous Paragraphs through as if fully set forth herein.
83. In their actions, set forth above, the Defendants violated the Plaintiff’s decedent’s clearly established and fundamental right under the substantive due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, i.e. decedent’s rights to personal security, bodily integrity and life. These violations are and were all of such magnitude of liberty deprivation that these abuses that Defendants have inflicted upon Plaintiff’s decedent stripped from her the very essence of her personhood.
84. The Defendants jointly and severally violated 42 U.S.C. § 1983 by their acts and omissions, as described above, which constituted deliberate indifference to Ms. Haye's serious medical, mental health and personal safety needs.
85. This deliberate indifference deprived Ms. Hayes of her right to security of her person and the right to liberty in violation of the United States Constitution including, but not limited to, the Eighth and Fourteenth Amendments.

86. The Defendant's actions in violation of Ms. Hayes' constitutional rights described above were done maliciously, in bad faith, purposely and intentionally thereby entitling Plaintiff to punitive damages.
87. As a direct and proximate result of the Defendants' conduct in depriving Ms. Hayes of her constitutional rights in violation of 42 U.S.C. § 1983, as described above, the decedent has sustained severe permanent personal and emotional injuries, has suffered great pain of body and mind, and has permanently lost the ability to live, enjoy and carry on with her life.
88. Defendants' violations of the aforementioned clearly established rights, were characterized by the following:
- a. They caused harm that was foreseeable and direct;
  - b. They acted with a degree of culpability that shocks the conscience;
  - c. They affirmatively undertook actions that increased the risk of serious injury and/or death and therefore were a cause of the death of Plaintiff
  - d. Defendants used their authority so as to act affirmatively and proactively and to thereby create a grave danger to Plaintiff and/or to render her more vulnerable to danger than had these Defendants not acted at all.

## **COUNT II**

42 U.S.C. § 1983

### **DENIAL OF EQUAL PROTECTION BY ALL DEFENDANTS**

89. Plaintiff incorporates by reference the allegations set forth in all previous Paragraphs through as if fully set forth herein.
90. At all times herein all the Defendants herein violated Plaintiff's decedent's rights to the equal protection of the law as secured by the Fourteenth Amendment to the United States Constitution, in that she was a victim of domestic violence, inflicted by a Peru Police Officer, as distinguished from being a victim of domestic violence inflicted by a person other than a police officer, as set forth above.
91. Defendants encountered, responded to and treated Plaintiff's decedent differently, adversely and more injuriously due to her status as a victim of domestic violence inflicted by a Peru Police Officer than they would have encountered, responded to and treated her, had she been a victim of domestic violence, inflicted by a person other than a police officer
92. The Defendants had no rational or reasonable basis for treating Plaintiff's decedent differently by virtue of the fact that her assailant or potential assailant was a police officer, than the victims of assailants or potential assailants who are not police officers.
93. Defendant's hesitation in responding to the call for a well-being check was not

due to a lack of legitimate triggers but, rather, was due to Officer Nutting's status as a police officer.

94. As a direct and proximate result of the acts and conduct of the Defendants, Plaintiff suffered multiple injuries including, but not limited to, loss of life.

***COUNT III***

**FAILURE TO PROTECT/VIOLATION OF "SPECIAL DUTY"/ VIOLATION OF CIVIL RIGHTS**

95. Plaintiff incorporates by reference all of the above paragraphs as if set forth fully herein.
96. As detailed above, by their actions and omissions of November 23, 2019, Defendants affirmatively acted to increase the threat which existed to Plaintiffs beyond that which otherwise existed including, without limitation upon the generality of the foregoing, by instructing officers not to respond to a call, by refusing and/or failing to recognize the threat to Plaintiff, by intentionally and/or negligently violating protocol and procedure, by using their positions as police officers and/or dispatchers to prevent Plaintiff from receiving care and protection, by treating Ms. Hayes differently due to the fact the alleged domestic assailant was a police officer, and others which was created by such call and by refusing and/or failing to provide protection to Plaintiff in light of the known threat posed to her safety.
97. The affirmative actions of Defendants in their failure to protect Plaintiff after their actions elevated the threat to Plaintiff's safety and Defendants repeated refusal to respond after they were well aware of the threat to her life and were asked on multiple occasions to provide reasonable protection shocks the conscience.
98. Whereas a police or public safety officer's failure to protect an individual against private violence does not ordinarily constitute a constitutional violation, that general principle is not absolute and an affirmative, constitutional duty to protect arises where the state actor, Defendants here, as here, creates the danger to an individual.
99. Defendants' failure(s) to protect Plaintiffs in light of the foregoing represents a constitutional violation of Plaintiffs' civil rights.
100. Alternatively, the Defendants violated Plaintiffs' civil rights insofar as they were, at all times relevant, subject to a "special duty" owed to Plaintiff including, in among other respects, Defendants made an implicit and/or express promise to protect Plaintiff, Plaintiffs relied upon such promise, Defendants failed to fulfill such promise and Plaintiff was injured thereby, such unfulfilled promise creating a special duty in exception to the prevailing general duty principle.

**COUNT IV**

**(42 U.S.C. § 1985 (2) and (3) - Conspiracy by State Actor)**

101. Plaintiff incorporates by reference all of the above paragraphs as if set forth fully herein.

102. At all times material to this Complaint, two or more persons, to wit, all the Defendants, conspired for the purpose of impeding, hindering, obstructing, or defeating, in various manners, the due course of justice in Massachusetts with intent to deny the Plaintiff the equal protection of the laws.

103. The Plaintiff was harmed by the acts and means alleged above.

**COUNT V**

(42 U.S.C. § 1986 - Failure to Prevent Section 1985 Violation)  
(Defendants Coe, Speth, Bencivenga, Marley and Nutting)

104. Plaintiff incorporates by reference all of the above paragraphs as if set forth fully herein.

105. At all times material to this Complaint the Defendants had knowledge that the wrongs conspired to be done as mentioned above, were about to be committed, and said Defendants had power to prevent or aid in preventing the commission of the same, and neglected and/or refused to do so and their failure to prevent such unlawful conduct resulted in the harm to the Plaintiff.

**COUNT VI**

**GROSS NEGLIGENCE**

(Defendants Coe, Speth, Bencivenga, Marley and Nutting)

106. Plaintiff incorporates by reference all of the above paragraphs as if set forth fully herein.

107. At all times herein, Defendants Coe, Speth, Bencivenga, Marley and Nutting acted in a manner so reckless, as set forth above, as to demonstrate substantial lack of concern as to whether injury or death would occur and, as such, are not protected by governmental immunity.

**COUNT VII**

**LIABILITY UNDER M.G.L. CH. 258 V. TOWN OF DALTON**

108. Plaintiff incorporates by reference all of the above paragraphs as if set forth fully herein.

109. Plaintiffs provided proper notice of their claim for damages against the Town pursuant to the provisions of M.G.L. Ch. 258 on February 4, 2021.

110. Said notice was sent by certified mail and received by the Town on February 4, 2021.
111. The content of Plaintiff's notice of claim for damages dated October 28, 2002 is hereby incorporated herein by reference.
112. More than six (6) months has passed since Plaintiff presented their claim for damages to the Town.
113. The Town engaged in a pattern of gross negligence and otherwise actionable negligence pursuant to M.G.L. Ch. 258.
114. It was reasonably foreseeable by the Town that their failure to use due care in the hiring, training and supervision of their police officers might result in harm to a member of the general public.
115. As a result of the Town's gross negligence, Plaintiff has suffered serious physical, emotional and financial harm.
116. The Town's gross negligence entitles the Plaintiff to compensatory and punitive damages, along with costs, interest and attorneys fees.

WHEREFORE, the Plaintiffs, demand judgment against the Town of Dalton, together with interest, costs of suit, punitive damages, attorneys fees, and such other relief as this Court deems just and appropriate.

**COUNT VIII**

(M.G.L. Chapter 229, Sect. 2A as to All Defendants)

117. Plaintiff repeats and realleges each prior paragraph above with the same force and effect as if set forth in full herein.
118. Plaintiff claims damages for the injuries set forth above under the Massachusetts wrongful death statute, M.G.L. Chapter 229, Section 2A et seq., against all Defendants for violations of their, the Decedent's, and the Estate's rights under color of law of the Commonwealth of Massachusetts, including but not limited to its declaration of rights, common law negligence, statutory negligence, and wrongful death.

**COUNT IX:**

VIOLATION OF 42 U.S.C. § 1983 CONSPIRACY  
(Defendants Coe, Speth, Bencivenga, Marley and Nutting)

119. Plaintiff repeats and realleges each prior paragraph above with the same force and effect as if set forth in full herein.



120. By the actions described above, the Defendants so named in this count conspired together to deprive the Plaintiff of evidence her procedural and substantive constitutional rights and are jointly liable.
121. As a proximate result of these actions, plaintiff has suffered damages in an amount to be determined at trial.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS SO TRIABLE. WHEREFORE, the Plaintiff, Patricia Hayes, as duly appointed personal representative and Administrator of the Estate of Sherilyn Hayes, respectfully requests that this Court:

1. Enter judgment in her favor on each Count of this Complaint;
2. Award her compensatory damages, including, but not limited to, loss of pay and emotional distress damages;
3. Award the Plaintiff her costs and attorneys' fees;
4. Award the Plaintiff multiple and/or punitive damages; and
5. Award the Plaintiff such other relief as this Court deems just, equitable and appropriate.

Respectfully submitted,

For the Plaintiff  
By Her Attorney,

LAW OFFICES OF TIMOTHY M. BURKE

/s/ Timothy M. Burke, Esq.  
Timothy M. Burke, BBO #065720  
117 Kendrick Street, Suite 300  
Needham, MA 02494  
(781) 455-0707

DATE: 05/07/2021

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on this date. Paper copies will be mailed to those listed as non-participants on the ECF system.

Dated: 05/07/2021

/s/ Timothy M. Burke, Esq.