

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

RAPHAEL DAVID TATUM
Plaintiff
v.
JOSHUA GUEVARA, et al.
Defendant(s)

Civil Action No. 26-CV-262

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: City of Wauwatosa

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court and under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 4/20/26

s/ Raphael David Tatum #461180

Signature of attorney or unrepresented plaintiff

Raphael David Tatum #461180

Printed Name

Green Bay Correctional Institution

Address

Telephone number

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

RAPHAEL DAVID TATUM
Plaintiff
v.
JOSHUA GUEVARA, et al.
Defendant(s)

Civil Action No. 26-CV-262

WAIVER OF THE SERVICE OF A SUMMONS

To: Raphael David Tatum #461180
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 4/20/26, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

Signature of attorney or unrepresented defendant

City of Wauwatosa
Printed Name of Party Waiving Service

Printed Name

Address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RAPHAEL DAVID TATUM,
Plaintiff(s),

v.

Case No. 26-CV-262

JOSHUA GUEVARA, et al.,
Defendant(s).

CONSENT TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE

This form must be filed with the Clerk of Court within 21 days of receipt. Although choosing to have your case decided by a magistrate judge is optional and refusal will not have adverse substantive consequences, the timely return of this completed form is mandatory.

If you do not consent to a magistrate judge deciding your case, a district judge will handle all aspects of your case. When a case is handled by a district judge, magistrate judges in this district play no further role in the case and do not issue reports and recommendations.

Magistrate judges do not conduct felony trials, and therefore felony trials do not interfere with scheduling and processing of cases before magistrate judges.

Check one:

- The undersigned attorney of record or pro se litigant **consents** to have **Magistrate Judge Stephen C. Dries** conduct all proceedings in this case, including a bench or jury trial, and enter final judgment in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73(b).
- The undersigned attorney of record or pro se litigant **refuses** to have a magistrate judge enter final judgment in this matter. I understand that this means that a district judge alone will handle all further proceedings in this matter.

Signed this _____ day of _____, _____.

(Day)

(Month)

(Year)

Signature of counsel of record or pro se litigant

- Plaintiff/Petitioner (attorney or pro se litigant)
- Defendant/Respondent (attorney or pro se litigant)
- Other Party

ASSIGNMENT OF CIVIL CASES
EASTERN DISTRICT OF WISCONSIN

At the time a new civil action is filed, it is assigned by random selection to either a district judge or a magistrate judge in accordance with the local rules. Pursuant to the provisions of 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure, a United States Magistrate Judge may, with the consent of the parties, conduct all proceedings in this civil action, including a bench or jury trial and order the entry of judgment. The statute provides for direct appeal to the U.S. Court of Appeals for the Seventh Circuit.

Once the assigned district or magistrate judge has been selected, the local rules of this district require that each party to the action receive a copy of the "consent form." Each party shall complete the form and return it to the Clerk of Court **within 21 days** after its receipt.


If this case has been randomly assigned to a **district judge** and all parties consent to have the magistrate judge conduct all proceedings in the case, the district judge may enter an order transferring the case to the magistrate judge.

If this case has been randomly assigned to a **magistrate judge** and not all parties consent, then the case will be reassigned by random selection to a district judge. If all parties consent, the magistrate judge will conduct all proceedings in this action.

While the decision to consent or not to consent to the exercise of jurisdiction by the magistrate judge is entirely voluntary, the duty to respond to this order is **mandatory**. Your response shall be made to the Clerk of Court only on the form on the reverse side of this notice.

IT IS THEREFORE ORDERED, that you complete this form and return it to the Clerk of Court within **twenty-one (21) days** from receipt.

UNITED STATES DISTRICT COURT



Honorable Pamela Pepper,
Chief Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RAPHAEL DAVID TATUM,

Plaintiff,

v.

Case No. 26-CV-262

JOSHUA GUEVARA, PAUL KAYE,
JULIE GIBBS, PATRICK KAINE,
AURORA HEALTH CARE INC.,
CITY OF NEW BERLIN WISCONSIN,
CITY OF WAUWATOSA, WISCONSIN, and
CITIES AND VILLAGES MUTUAL INSURANCE COMPANY,

Defendants.

SCREENING ORDER

Plaintiff Raphael David Tatum, who is currently serving a state prison sentence at Green Bay Correctional Institution and representing himself, filed a complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. This matter comes before the Court on Plaintiff's motion for leave to proceed without prepayment of the filing fee and to screen the complaint.

MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE

Plaintiff has requested leave to proceed without prepaying the full filing fee (*in forma pauperis*). A prisoner plaintiff proceeding *in forma pauperis* is required to pay the full amount of the \$350.00 filing fee over time. *See* 28 U.S.C. § 1915(b)(1). Plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2), and has been assessed and paid an initial partial filing fee of \$71.22. Plaintiff's motion for leave to proceed without prepayment of the filing fee will be granted.

alleged.” *Id.* at 556. “[T]he complaint’s allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555 (internal quotations omitted).

ALLEGATIONS OF THE COMPLAINT

In screening a complaint, the Court accepts the allegations as true and draws all reasonable inferences in the plaintiff’s favor. *See Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020) (citation omitted). The Court notes, however, that the allegations in the complaint are just that, allegations; they are Plaintiff’s version of the events that have purportedly occurred. With this in mind, the Court will summarize Plaintiff’s allegations as presented in the complaint.

On March 22, 2023, Plaintiff was an authorized overnight visitor in Room 111 at Aurora Zilber Family Hospice, operated by Aurora Health Care Inc. Compl. ¶ 17, Dkt. No. 1. Plaintiff’s father was receiving end of life care in Room 111. *Id.* ¶ 18. Access to the room was restricted; visitors were screened by staff and the door to the room was closed. *Id.* ¶ 20.

At approximately 8:15 a.m. on March 22, 2023, Officer Joshua Guevara, Officer Paul Kaye, Officer Julie Gibbs, and Officer Patrick Kaine entered Aurora Zilber Family Hospice and requested access to Room 111. *Id.* ¶¶ 22–23. Aurora staff allowed the officers to proceed into the room without notifying the occupants or receiving consent from Plaintiff’s father or the authorized visitors. *Id.* ¶ 24. Officer Gibbs knocked on the door, and Plaintiff’s sister partially opened the door to see who was present. *Id.* ¶¶ 26–27. As soon as the door opened, Officer Gibbs and Officer Kaine entered the room. *Id.* ¶ 28. Plaintiff was asleep when the officers entered. *Id.* ¶ 34.

The officers handcuffed Plaintiff, detained him, and searched his person. *Id.* ¶¶ 35–36. The officers seized Plaintiff’s cellphone and the \$8,200 in cash in Plaintiff’s possession. *Id.* ¶¶ 37–38. Plaintiff’s sister had a fanny pack on her person. *Id.* ¶ 40. Even though she told the officers

Plaintiff also claims that the officers violated his right to privacy. To state a Fourth Amendment violation of privacy claim, the plaintiff must allege that the official's action infringed "an expectation of privacy that society is prepared to consider unreasonable" and that the government's invasion of his reasonable expectation of privacy was unreasonable. *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987) (plurality opinion). Plaintiff alleges that the hospice room functioned as a temporary dwelling for his father and himself as a visitor, that he had a reasonable expectation of privacy in the hospice room, and that the officers' entry into the room was unreasonable. At this stage, Plaintiff may proceed on a violation of privacy claim against Officers Guevara, Kaye, Gibbs, and Kaine.

Plaintiff may not proceed on a civil conspiracy claim against the officers, however. To state a civil conspiracy claim under 42 U.S.C. § 1985, a plaintiff must allege that "an actual conspiracy existed (in other words, that people agreed to injure him), that its purpose was to deprive [the plaintiff] of his constitutional rights, that an act was committed in furtherance of the conspiracy, and that he was injured." *Alexander v. City of South Bend*, 433 F.3d 550, 556–57 (7th Cir. 2006) (citation omitted). "Vague and conclusory allegations of the existence of a conspiracy are not enough to sustain a plaintiff's burden . . . [A] complaint must contain factual allegations suggesting that the defendants reached a meeting of the minds . . . to deprive [a plaintiff] of his constitutional rights." *Evers v. Reak*, 21 F. App'x 447, 450 (7th Cir. 2002). Plaintiff alleges that the officers met at the hospice facility, simultaneously entered the hospice facility together, and entered the hospice room without probable cause or a warrant in furtherance of the conspiracy. Plaintiff does not allege the "what, when, why, and how" of Defendants' alleged agreement to violate his rights, so his conclusory assertion of a conspiracy fails to state a claim.

provide a basis upon which to assert a constitutional claim directly against the insurance company. *See Bladdek v. Hoff*, No. 04-C-715, 2005 WL 8165830, at *1 (E.D. Wis. Feb. 23, 2005). Therefore, Cities and Villages Mutual Insurance Company will be terminated as a defendant.

In addition, Plaintiff cannot proceed against Aurora Health Care Inc. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *L.P. v. Marian Catholic High Sch.*, 852 F.3d 690, 696 (7th Cir. 2017). The complaint contains no allegations from which the Court can infer that Aurora Health Care Inc. was acting under the color of state law when it allegedly deprived Plaintiff of his rights. Therefore, the claims against Aurora Health Care Inc. must be dismissed. *See Reed v. Columbia St. Mary’s Hosp.*, 782 F.3d 331, 337 (7th Cir. 2015).

IT IS THEREFORE ORDERED that Plaintiff’s motion for leave to proceed *in forma pauperis* (Dkt. No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that Aurora Health Care Inc. and Cities and Villages Mutual Insurance Company are **TERMINATED** as defendants.

IT IS FURTHER ORDERED that the United States Marshal shall serve a copy of the complaint and this order upon Joshua Guevara, Paul Kaye, Julie Gibbs, Patrick Kaine, City of New Berlin, and City of Wauwatosa pursuant to Federal Rule of Civil Procedure 4. Plaintiff is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). The current fee for waiver-of-service packages is \$8.00 per item mailed. The full fee schedule is provided at 28 C.F.R. §§ 0.114(a)(2)–(3). Although Congress requires the Court to order service by the U.S. Marshals Service precisely because *in forma pauperis* plaintiffs

and Oshkosh Correctional Institution. Plaintiffs who are inmates at all other prison facilities must submit the original document for each filing to the Court to the following address:

Honorable Byron B. Conway
c/o Office of the Clerk
United States District Court
Eastern District of Wisconsin
125 S. Jefferson Street, Suite 102
Green Bay, WI 54301

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

Plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Enclosed is a guide prepared by court staff to address common questions that arise in cases filed by prisoners. Entitled "Answers to Prisoner Litigants' Common Questions," this guide contains information that Plaintiff may find useful in prosecuting this case.

Dated at Green Bay, Wisconsin on April 14, 2026.

s/ Byron B. Conway

BYRON B. CONWAY
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

①
RAPHAEL DAVID TATUM
PLAINTIFF
V.

CASE NO. _____

JOSHUA GUEVARA; PAUL KAYE; JULIE GIBBS; PATRICK KANE; AURORA -
HEALTH CARE INC. d/b/a AURORA ZILBER FAMILY HOSPICE; CITY OF NEW-
BERLIN, WISCONSIN; CITY OF WAUWATOSA, WISCONSIN; CITIES AND
VILLAGES MUTUAL INSURANCE COMPANY,
DEFENDANTS

COMPLAINT

FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF

(42 USC § 1983 - 1988) (42 USC § 1985)

I. PRELIMINARY STATEMENT

- 1. THIS ACTION SEEKS REDRESS FOR INDEPENDENT VIOLATIONS OF THE FOURTH AMENDMENT, ARISING FROM DEFENDANTS' WARRANTLESS AND NON-CONSENSUAL ENTRY INTO A PRIVATE HOSPICE ROOM, FOLLOWED BY UNREASONABLE SEARCHES, UNLAWFUL DETENTION, SEIZURES OF PROPERTY, AND INTRUSION INTO A FAMILY'S END OF LIFE MEDICAL SETTING.
- 2. PLAINTIFF EXPRESSLY DISCLAIMS ANY CHALLENGE TO THE VALIDITY OF HIS CRIMINAL CONVICTIONS. THIS ACTION DOES NOT SEEK REVERSAL, EXPUNGEMENT, OR INVALIDATION OF ANY CONVICTION OR SENTENCE.
- 3. PLAINTIFF SEEKS DAMAGES AND EQUITABLE RELIEF SOLELY FOR CONSTITUTIONAL INJURIES THAT WERE COMPLETE AT THE TIME OF DEFENDANTS' CONDUCT AND DO NOT IMPLY THE INVALIDITY OF ANY CRIMINAL JUDGEMENT. THE SEIZED PROPERTY AT ISSUE WAS NOT RELIED UPON, INTRODUCED, OR NECESSARY TO SECURE PLAINTIFF'S CONVICTIONS, AND PLAINTIFF'S CLAIMS FALL SQUARELY WITHIN THE CATEGORY OF FOURTH AMENDMENT CLAIMS PERMITTED NOTWITHSTANDING A CONVICTION.

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- 12. (INSTITUTIONAL AND MUNICIPAL DEFENDANTS): DEFENDANT AURORA ZILBER FAMILY HOSPICE IS A HOSPICE FACILITY LOCATED AT 1155 HONEYCREEK PARKWAY, WAUWATOSA, WISCONSIN.
- 13. DEFENDANT AURORA HEALTH CARE, INC. OPERATES AURORA ZILBER FAMILY HOSPICE AND IS RESPONSIBLE FOR ITS POLICIES, STAFFING, TRAINING, AND VISITOR-ACCESS PROCEDURES.
- 14. DEFENDANT CITY OF NEW BERLIN, WISCONSIN IS A MUNICIPAL CORPORATION RESPONSIBLE FOR THE POLICIES, CUSTOMS, AND TRAINING OF THE NEW BERLIN POLICE DEPARTMENT.
- 15. DEFENDANT CITY OF WAUWATOSA, WISCONSIN IS A MUNICIPAL CORPORATION RESPONSIBLE FOR THE POLICIES, CUSTOMS, AND TRAINING OF THE WAUWATOSA POLICE DEPARTMENT.
- 16. DEFENDANT CITIES AND VILLAGES MUTUAL INSURANCE COMPANY (CVMIC) IS NAMED PURSUANT TO WIS. STAT. 895.46 AS THE MUNICIPAL INSURER OBLIGATED TO INDEMNIFY MUNICIPAL DEFENDANTS AND THEIR EMPLOYEES FOR ACTS COMMITTED WITHIN THE SCOPE OF EMPLOYMENT.

IV. FACTUAL ALLEGATIONS

(A) THE PRIVATE HOSPICE SETTING:

- 17. ON MARCH 22, 2023, PLAINTIFF WAS AN AUTHORIZED OVERNIGHT VISITOR IN ROOM III AT AURORA ZILBER FAMILY HOSPICE.
- 18. PLAINTIFF'S FATHER WAS RECEIVING END OF LIFE CARE IN HOSPICE ROOM III.
- 19. ROOM III WAS A PRIVATE HOSPICE ROOM, NOT OPEN TO THE PUBLIC, AND FUNCTIONED AS A TEMPORARY DWELLING FOR THE PATIENT AND AUTHORIZED FAMILY MEMBERS.

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- 33 • DEFENDANTS PUSHED THE DOOR FURTHER OPEN, MAKING IT RELEASE FROM PLAINTIFF'S SISTERS' HANDS AND ENTERED THE ROOM.
- 34 • PLAINTIFF WAS ASLEEP AT THE TIME OF ENTRY
- 35 • DEFENDANTS ENTERED WHILE PLAINTIFF'S FATHER LAY DYING IN HOSPICE CARE, SURROUNDED, HAND CUFFED, AND DETAINED.

(D) SEARCH AND SEIZURE OF PLAINTIFF'S PROPERTY:

- 36 • FOLLOWING THE UNLAWFUL ENTRY, DEFENDANTS SEARCHED PLAINTIFF'S PERSON.
- 37 • DEFENDANTS SEIZED APPROXIMATELY \$8200.00 IN CASH FROM PLAINTIFF.
- 38 • DEFENDANTS SEIZED PLAINTIFF'S CELL PHONE WHICH CONTAINED IRREPLACEABLE PHOTOGRAPHS OF PLAINTIFF'S FATHER AND FAMILY.
- 39 • THE SEIZED PROPERTY WAS NOT INTRODUCED, RELIED UPON, OR NECESSARY TO SECURE PLAINTIFF'S CRIMINAL CONVICTIONS.

(E) SEIZURE OF THIRD-PARTY PROPERTY AND REENTRY:

- 40 • PLAINTIFF'S SISTER HAD IN HER POSSESSION A FANNY PACK SHE STATED TO OFFICERS, WERE OF HER BELONGINGS.
- 41 • SHE EXPRESSLY REFUSED CONSENT FOR OFFICERS TO SEARCH OR SEIZE IT.
- 42 • DEFENDANTS CONFERRED AND AGREED TO SEIZE THE FANNY PACK.
- 43 • DEFENDANTS RE-ENTERED THE ROOM III AND FORCIBLY WRESTLED THE FANNY PACK FROM HER POSSESSION, SAYING IT'S PLAINTIFF'S.
- 44 • THIS SEIZURE OCCURRED A FEW FEET FROM PLAINTIFF'S DYING FATHER.

(F) LACK OF JUDICIAL AUTHORIZATION; UNLAWFUL DETENTION:

- 45 • NO ARREST WARRANT, SEARCH WARRANT, OR OTHER JUDICIAL AUTHORIZATION EXISTED AT ANY TIME PRIOR TO OR DURING DEFENDANTS' ENTRY, SEARCHES, OR SEIZURES, AS WELL AS DETENTION OF PLAINTIFF, MAKING THE ENTRY, SEARCH, SEIZURES, AND DETENTION UNLAWFUL.

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- 52. A FEMALE PASSENGER WHO WAS ALSO BEING TRANSPORTED IN THE LYFT, WAS ALSO QUESTIONED BY WMPD AND GAVE CONFLICTING STATEMENTS TO THE WMPD OFFICERS.
- 53. NEW BERLIN PD OFFICERS DID NOT CONDUCT ANY TYPE OF INTERVIEW OR MAKE CONTACT WITH THE FEMALE PASSENGER TO ESTABLISH VERACITY, CREDIBILITY, OR BASIS OF KNOWLEDGE BEFORE USING HER CONTRADICTORY STATEMENT TO ESTABLISH PROBABLE CAUSE. NEW BERLIN PD SIMPLY REVIEWED WMPD'S BODY CAM FOOTAGE OF THE FEMALE PASSENGER STATING THAT SHE BOTH HAD NO KNOWLEDGE OF THE VEHICLE IN QUESTION, BUT AT SOME POINT IN TIME SOME HOW THE PLAINTIFF HAD DRIVEN HER IN THE SAME VEHICLE SHE STATED SHE HAD NO KNOWLEDGE OF.
- 54. THE RANGE ROVER VEHICLE WAS NOT TITLED TO THE PLAINTIFF, AND WAS PARKED BEHIND A PRIVATE RESIDENCE IN A BACKYARD WITH NO OCCUPANTS WHEN WEST MILWAUKEE PD CONDUCTED A WARRANTLESS ENTRY INTO THE HOME'S CURTILAGE, AS WELL AS A WARRANTLESS ENTRY INTO THE VEHICLE, TO CONDUCT A WARRANTLESS SEARCH AND SEIZURE OF THE VEHICLE. THIS IS WHERE OFFICER JAVIER DISCOVERED THE NEW BERLIN ID.
- 55. AFTER WMPD CONCLUDED THEIR INVESTIGATION OF THE PLAINTIFF'S POSSESSION OF THE CONTENTS OF THE RANGE ROVER, RESULTING IN HIM BEING RELEASED FROM THE SCENE, WITH NO DETERMINATION MADE THAT HE POSSESSED ANYTHING IN THE VEHICLE, THE NEW BERLIN DEFENDANTS MADE A DETERMINATION THAT THE PLAINTIFF DID POSSESS THE ID THAT WAS DISCOVERED BY WMPD, SUPERSEDING THE AUTHORITY OF THE MILWAUKEE COUNTY LAW ENFORCEMENT AGENCY WAS ACTUALLY DISCOVERED THE ID.

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• 62 • NBPD DEFENDANTS ACTED OUTSIDE THEIR AUTHORITY IN AN EFFORT TO ESTABLISH PROBABLE CAUSE USING FOUR MONTH OLD STALE MILWAUKEE COUNTY EVIDENCE.

• 63 • NBPD DEFENDANTS DID NOT CONDUCT A SIGNIFICANT INVESTIGATION AS REQUIRED BY WISCONSIN LAW, BEFORE USING THE STATEMENTS FROM BOTH STALE MILWAUKEE COUNTY INCIDENTS AS A BASIS FOR THE MARCH 22, 2023 UNLAWFUL ENTRY INTO THE HOSPICE ROOM TO ARREST THE PLAINTIFF.

• 64 • DURING DEFENDANT GUEVARA'S TESTIMONY ON JULY 21 AND JULY 26 OF 2023 IN BRANCH 5 OF WAUKESHA COUNTY'S COURT HOUSE, HE FURTHER DAMAGED THE INTEGRITY OF THE PROBABLE CAUSE THEORY BY COMMITTING PERJURY SUBORNED BY PROSECUTOR PETER TEMPELIS WHO QUESTIONED GUEVARA ON THE STAND UNDER OATH AS TO WHY GUEVARA, KAYE, GIBBS, AND KAINE WERE AT THE HOSPICE LOCATION ON MARCH 22, 2023.

• 65 • DEFENDANT GUEVARA STATED HE WAS AT THE HOSPICE LOCATION IN ORDER TO EXECUTE A SEARCH WARRANT FOR A 2020 S CLASS AMG MERCEDES AND A 2016 CLA MERCEDES THAT WAS PARKED IN THE HOSPICE PARKING LOT. A SEARCH WARRANT FOR THOSE VEHICLES WERE NOT OBTAINED UNTIL AFTER THE UNLAWFUL ENTRY INTO THE HOSPICE AND UNLAWFUL ARREST, WHICH PRECLUDES THE SEARCH WARRANT FROM BEING THE REASON OFFICERS SOUGHT ENTRY INTO THE PLAINTIFF'S PRIVATE HOSPICE ROOM.

• 66 • PROSECUTOR PETER TEMPELIS REVIEWED AND SIGNED THE SEARCH WARRANT THAT GUEVARA LIED TO HIM ABOUT ON THE STAND.

(11)

•73° THE DEFENDANTS GUEVARA, KAYE, GIBBS, AND KATNE EXECUTED THEIR MUNICIPALITY'S POLICYMAKER'S ARREST, SEARCH, AND TRANSPORT POLICIES WITH A DELIBERATE INDIFFERENCE TO THE OBVIOUS AND FORSEEABLE RISK THE ENFORCEMENT OF THESE POLICIES, WITH NO PROBABLE CAUSE, WOULD HAVE ON THE PLAINTIFF, CAUSING CONSTITUTIONAL INJURY TO THE PLAINTIFF. THE ENFORCEMENT OF THE MUNICIPALITY'S POLICIES BY THE DEFENDANTS WITH A DELIBERATE INDIFFERENCE, IS A MOVING FORCE BEHIND THE PLAINTIFF'S FOURTH AMENDMENT VIOLATIONS CAUSED BY THE DEFENDANTS. POLICY ENFORCEMENT

VI CLAIMS FOR RELIEF

• COUNT I

UNLAWFUL WARRANTLESS ENTRY - FOURTH AMENDMENT (42 USC § 1983)

•74° DEFENDANTS ENTERED A PRIVATE HOSPICE ROOM WITHOUT A WARRANT, CONSENT, OR EXIGENT CIRCUMSTANCES.

•75° THIS ENTRY VIOLATED PLAINTIFF'S FOURTH AMENDMENT RIGHTS

COUNT II

UNREASONABLE SEARCH - FOURTH AMENDMENT (42 USC § 1983)

•76° DEFENDANTS SEARCHED PLAINTIFF FOLLOWING AN UNLAWFUL ENTRY.

•77° THE SEARCH WAS UNREASONABLE AND UNCONSTITUTIONAL.

COUNT III

UNREASONABLE SEIZURE OF PROPERTY - FOURTH AMENDMENT (42 USC § 1983)

•78° DEFENDANTS SEIZED PLAINTIFF'S CASH AND CELLULAR PHONE WITHOUT LAWFUL JUSTIFICATION.

•79° DEFENDANTS SEIZED THIRD-PARTY PROPERTY BY FORCE AND WITHOUT CONSENT.

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COUNT VIII

UNLAWFUL DETENTION - FOURTH AMENDMENT (42 USC § 1983)

- 88 • DEFENDANTS ENTER THE HOSPICE ROOM WITH NO WARRANT OR CONSENT.
- 89 • DEFENDANTS SURROUNDED THE PLAINTIFF TO RESTRICT HIS MOVEMENT
- 90 • DEFENDANTS PLACED PLAINTIFF IN HANDCUFFS AND TRANSPORTED HIM TO A JAIL WITH NO PROBABLE CAUSE DURING WHICH TIME PLAINTIFF'S FATHER PASSED AWAY, AFTER PLAINTIFF WAS FORCIBLY REMOVED FROM HIM AND UNLAWFULLY DETAINED. IN VIOLATION OF FOURTH AMENDMENT.

COUNT VIII

CIVIL CONSPIRACY (42 USC § 1985) (TO VIOLATE FOURTH AMENDMENT)

- 91 • STATE ACTORS MET AT THE HOSPICE FACILITY AND SIMULTANEOUSLY ENTERED THE HOSPICE FACILITY TOGETHER.
- 92 • STATE ACTORS ALL PROCEEDED TO THE HOSPICE FACILITY RECEPTIONIST TO REQUEST ENTRY TO ROOM III WITH NO PROBABLE CAUSE OR WARRANT.
- 93 • OVERT ACTS WERE COMMITTED IN FURTHERANCE OF THE CONSPIRACY.

VII DAMAGES

- 94 • PLAINTIFF SUFFERED EMOTIONAL DISTRESS, NIGHTMARES, STRESS HEADACHE INVASION OF PRIVACY, LOSS OF DIGNITY, AND PERMANENT DEPRIVATION OF PERSONAL PROPERTY.
- 95 • PLAINTIFF SEEKS COMPENSATORY DAMAGES
- 96 • PLAINTIFF SEEKS PUNITIVE DAMAGES AGAINST INDIVIDUAL DEFENDANTS.
- 97 • PLAINTIFF SEEKS COST, ATTORNEY FEES PURSUANT TO 42 USC § 1988, AND
- 98 • ANY FURTHER RELIEF THE COURT DEEMS JUST.

VIII JURY DEMAND

- 99 • PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

RESPECTFULLY SUBMITTED,

RAPHAEL DAVID TATUM

PLAINTIFF, PRO SE

UNITED STATES DISTRICT COURT
for the
Eastern District of Wisconsin

RAPHAEL DAVID TATUM
Plaintiff
v.
JOSHUA GUEVARA, et al.
Defendant(s)

Civil Action No. 26-CV-262

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: City of Wauwatosa
(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

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If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 4/20/26

s/ Raphael David Tatum #461180
Signature of attorney or unrepresented plaintiff
Raphael David Tatum #461180
Printed Name
Green Bay Correctional Institution
Address
Telephone number

UNITED STATES DISTRICT COURT

for the Eastern District of Wisconsin

RAPHAEL DAVID TATUM
Plaintiff
v.
JOSHUA GUEVARA, et al.
Defendant(s)

Civil Action No. 26-CV-262

WAIVER OF THE SERVICE OF A SUMMONS

To: Raphael David Tatum #461180
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 4/20/26, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

Signature of attorney or unrepresented defendant

City of Wauwatosa
Printed Name of Party Waiving Service

Printed Name

Address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RAPHAEL DAVID TATUM,
Plaintiff(s),

v.

Case No. 26-CV-262

JOSHUA GUEVARA, et al.,
Defendant(s).

CONSENT TO PROCEED BEFORE A U.S. MAGISTRATE JUDGE

This form must be filed with the Clerk of Court within 21 days of receipt. Although choosing to have your case decided by a magistrate judge is optional and refusal will not have adverse substantive consequences, the timely return of this completed form is mandatory.

If you do not consent to a magistrate judge deciding your case, a district judge will handle all aspects of your case. When a case is handled by a district judge, magistrate judges in this district play no further role in the case and do not issue reports and recommendations.

Magistrate judges do not conduct felony trials, and therefore felony trials do not interfere with scheduling and processing of cases before magistrate judges.

Check one:

- The undersigned attorney of record or pro se litigant **consents** to have **Magistrate Judge Stephen C. Dries** conduct all proceedings in this case, including a bench or jury trial, and enter final judgment in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73(b).
- The undersigned attorney of record or pro se litigant **refuses** to have a magistrate judge enter final judgment in this matter. I understand that this means that a district judge alone will handle all further proceedings in this matter.

Signed this _____ day of _____, _____.
(Day) (Month) (Year)

Signature of counsel of record or pro se litigant

- Plaintiff/Petitioner (attorney or pro se litigant)
- Defendant/Respondent (attorney or pro se litigant)
- Other Party

ASSIGNMENT OF CIVIL CASES
EASTERN DISTRICT OF WISCONSIN

At the time a new civil action is filed, it is assigned by random selection to either a district judge or a magistrate judge in accordance with the local rules. Pursuant to the provisions of 28 U.S.C. § 636(c) and Rule 73 of the Federal Rules of Civil Procedure, a United States Magistrate Judge may, with the consent of the parties, conduct all proceedings in this civil action, including a bench or jury trial and order the entry of judgment. The statute provides for direct appeal to the U.S. Court of Appeals for the Seventh Circuit.

Once the assigned district or magistrate judge has been selected, the local rules of this district require that each party to the action receive a copy of the "consent form." Each party shall complete the form and return it to the Clerk of Court **within 21 days** after its receipt.

If this case has been randomly assigned to a **district judge** and all parties consent to have the magistrate judge conduct all proceedings in the case, the district judge may enter an order transferring the case to the magistrate judge.

If this case has been randomly assigned to a **magistrate judge** and not all parties consent, then the case will be reassigned by random selection to a district judge. If all parties consent, the magistrate judge will conduct all proceedings in this action.

While the decision to consent or not to consent to the exercise of jurisdiction by the magistrate judge is entirely voluntary, the duty to respond to this order is **mandatory**. Your response shall be made to the Clerk of Court only on the form on the reverse side of this notice.

IT IS THEREFORE ORDERED, that you complete this form and return it to the Clerk of Court within **twenty-one (21) days** from receipt.

UNITED STATES DISTRICT COURT



Honorable Pamela Pepper,
Chief Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RAPHAEL DAVID TATUM,

Plaintiff,

v.

Case No. 26-CV-262

JOSHUA GUEVARA, PAUL KAYE,
JULIE GIBBS, PATRICK KAINE,
AURORA HEALTH CARE INC.,
CITY OF NEW BERLIN WISCONSIN,
CITY OF WAUWATOSA, WISCONSIN, and
CITIES AND VILLAGES MUTUAL INSURANCE COMPANY,

Defendants.

SCREENING ORDER

Plaintiff Raphael David Tatum, who is currently serving a state prison sentence at Green Bay Correctional Institution and representing himself, filed a complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. This matter comes before the Court on Plaintiff's motion for leave to proceed without prepayment of the filing fee and to screen the complaint.

MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYMENT OF THE FILING FEE

Plaintiff has requested leave to proceed without prepaying the full filing fee (*in forma pauperis*). A prisoner plaintiff proceeding *in forma pauperis* is required to pay the full amount of the \$350.00 filing fee over time. *See* 28 U.S.C. § 1915(b)(1). Plaintiff has filed a certified copy of his prison trust account statement for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2), and has been assessed and paid an initial partial filing fee of \$71.22. Plaintiff's motion for leave to proceed without prepayment of the filing fee will be granted.

alleged.” *Id.* at 556. “[T]he complaint’s allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555 (internal quotations omitted).

ALLEGATIONS OF THE COMPLAINT

In screening a complaint, the Court accepts the allegations as true and draws all reasonable inferences in the plaintiff’s favor. *See Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020) (citation omitted). The Court notes, however, that the allegations in the complaint are just that, allegations; they are Plaintiff’s version of the events that have purportedly occurred. With this in mind, the Court will summarize Plaintiff’s allegations as presented in the complaint.

On March 22, 2023, Plaintiff was an authorized overnight visitor in Room 111 at Aurora Zilber Family Hospice, operated by Aurora Health Care Inc. Compl. ¶ 17, Dkt. No. 1. Plaintiff’s father was receiving end of life care in Room 111. *Id.* ¶ 18. Access to the room was restricted; visitors were screened by staff and the door to the room was closed. *Id.* ¶ 20.

At approximately 8:15 a.m. on March 22, 2023, Officer Joshua Guevara, Officer Paul Kaye, Officer Julie Gibbs, and Officer Patrick Kaine entered Aurora Zilber Family Hospice and requested access to Room 111. *Id.* ¶¶ 22–23. Aurora staff allowed the officers to proceed into the room without notifying the occupants or receiving consent from Plaintiff’s father or the authorized visitors. *Id.* ¶ 24. Officer Gibbs knocked on the door, and Plaintiff’s sister partially opened the door to see who was present. *Id.* ¶¶ 26–27. As soon as the door opened, Officer Gibbs and Officer Kaine entered the room. *Id.* ¶ 28. Plaintiff was asleep when the officers entered. *Id.* ¶ 34.

The officers handcuffed Plaintiff, detained him, and searched his person. *Id.* ¶¶ 35–36. The officers seized Plaintiff’s cellphone and the \$8,200 in cash in Plaintiff’s possession. *Id.* ¶¶ 37–38. Plaintiff’s sister had a fanny pack on her person. *Id.* ¶ 40. Even though she told the officers

Plaintiff also claims that the officers violated his right to privacy. To state a Fourth Amendment violation of privacy claim, the plaintiff must allege that the official's action infringed "an expectation of privacy that society is prepared to consider unreasonable" and that the government's invasion of his reasonable expectation of privacy was unreasonable. *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987) (plurality opinion). Plaintiff alleges that the hospice room functioned as a temporary dwelling for his father and himself as a visitor, that he had a reasonable expectation of privacy in the hospice room, and that the officers' entry into the room was unreasonable. At this stage, Plaintiff may proceed on a violation of privacy claim against Officers Guevara, Kaye, Gibbs, and Kaine.

Plaintiff may not proceed on a civil conspiracy claim against the officers, however. To state a civil conspiracy claim under 42 U.S.C. § 1985, a plaintiff must allege that "an actual conspiracy existed (in other words, that people agreed to injure him), that its purpose was to deprive [the plaintiff] of his constitutional rights, that an act was committed in furtherance of the conspiracy, and that he was injured." *Alexander v. City of South Bend*, 433 F.3d 550, 556–57 (7th Cir. 2006) (citation omitted). "Vague and conclusory allegations of the existence of a conspiracy are not enough to sustain a plaintiff's burden [A] complaint must contain factual allegations suggesting that the defendants reached a meeting of the minds . . . to deprive [a plaintiff] of his constitutional rights." *Evers v. Reak*, 21 F. App'x 447, 450 (7th Cir. 2002). Plaintiff alleges that the officers met at the hospice facility, simultaneously entered the hospice facility together, and entered the hospice room without probable cause or a warrant in furtherance of the conspiracy. Plaintiff does not allege the "what, when, why, and how" of Defendants' alleged agreement to violate his rights, so his conclusory assertion of a conspiracy fails to state a claim.

provide a basis upon which to assert a constitutional claim directly against the insurance company. *See Bladdek v. Hoff*, No. 04-C-715, 2005 WL 8165830, at *1 (E.D. Wis. Feb. 23, 2005). Therefore, Cities and Villages Mutual Insurance Company will be terminated as a defendant.

In addition, Plaintiff cannot proceed against Aurora Health Care Inc. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *L.P. v. Marian Catholic High Sch.*, 852 F.3d 690, 696 (7th Cir. 2017). The complaint contains no allegations from which the Court can infer that Aurora Health Care Inc. was acting under the color of state law when it allegedly deprived Plaintiff of his rights. Therefore, the claims against Aurora Health Care Inc. must be dismissed. *See Reed v. Columbia St. Mary’s Hosp.*, 782 F.3d 331, 337 (7th Cir. 2015).

IT IS THEREFORE ORDERED that Plaintiff’s motion for leave to proceed *in forma pauperis* (Dkt. No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that Aurora Health Care Inc. and Cities and Villages Mutual Insurance Company are **TERMINATED** as defendants.

IT IS FURTHER ORDERED that the United States Marshal shall serve a copy of the complaint and this order upon Joshua Guevara, Paul Kaye, Julie Gibbs, Patrick Kaine, City of New Berlin, and City of Wauwatosa pursuant to Federal Rule of Civil Procedure 4. Plaintiff is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). The current fee for waiver-of-service packages is \$8.00 per item mailed. The full fee schedule is provided at 28 C.F.R. §§ 0.114(a)(2)–(3). Although Congress requires the Court to order service by the U.S. Marshals Service precisely because *in forma pauperis* plaintiffs

and Oshkosh Correctional Institution. Plaintiffs who are inmates at all other prison facilities must submit the original document for each filing to the Court to the following address:

Honorable Byron B. Conway
c/o Office of the Clerk
United States District Court
Eastern District of Wisconsin
125 S. Jefferson Street, Suite 102
Green Bay, WI 54301

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

Plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute. In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Enclosed is a guide prepared by court staff to address common questions that arise in cases filed by prisoners. Entitled "Answers to Prisoner Litigants' Common Questions," this guide contains information that Plaintiff may find useful in prosecuting this case.

Dated at Green Bay, Wisconsin on April 14, 2026.

s/ Byron B. Conway

BYRON B. CONWAY
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

①
RAPHAEL DAVID TATUM
PLAINTIFF
V.

CASE NO. _____

JOSHUA GUEVARA; PAUL KAYE; JULIE GIBBS; PATRICK KAINE; AURORA -
HEALTH CARE INC. d/b/a AURORA ZILBER FAMILY HOSPICE; CITY OF NEW-
BERLIN, WISCONSIN; CITY OF WAUWATOSA, WISCONSIN; CITIES AND
VILLAGES MUTUAL INSURANCE COMPANY,
DEFENDANTS

COMPLAINT
FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF
(42 USC § 1983 - 1988) (42 USC § 1985)

I. PRELIMINARY STATEMENT

- 1. THIS ACTION SEEKS REDRESS FOR INDEPENDENT VIOLATIONS OF THE FOURTH AMENDMENT, ARISING FROM DEFENDANTS' WARRANTLESS AND NON-CONSENSUAL ENTRY INTO A PRIVATE HOSPICE ROOM, FOLLOWED BY UNREASONABLE SEARCHES, UNLAWFUL DETENTION, SEIZURES OF PROPERTY, AND INTRUSION INTO A FAMILY'S END OF LIFE MEDICAL SETTING.
- 2. PLAINTIFF EXPRESSLY DISCLAIMS ANY CHALLENGE TO THE VALIDITY OF HIS CRIMINAL CONVICTIONS. THIS ACTION DOES NOT SEEK REVERSAL, EXPUNGEMENT, OR INVALIDATION OF ANY CONVICTION OR SENTENCE.
- 3. PLAINTIFF SEEKS DAMAGES AND EQUITABLE RELIEF SOLELY FOR CONSTITUTIONAL INJURIES THAT WERE COMPLETE AT THE TIME OF DEFENDANTS' CONDUCT AND DO NOT IMPLY THE INVALIDITY OF ANY CRIMINAL JUDGEMENT. THE SEIZED PROPERTY AT ISSUE WAS NOT RELIED UPON, INTRODUCED, OR NECESSARY TO SECURE PLAINTIFF'S CONVICTIONS, AND PLAINTIFF'S CLAIMS FALL SQUARELY WITHIN THE CATEGORY OF FOURTH AMENDMENT CLAIMS PERMITTED NOTWITHSTANDING A CONVICTION.

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- 12. • (INSTITUTIONAL AND MUNICIPAL DEFENDANTS): DEFENDANT AURORA ZILBER FAMILY HOSPICE IS A HOSPICE FACILITY LOCATED AT 1155 HONEYCREEK PARKWAY, WAUWATOSA, WISCONSIN.
- 13. • DEFENDANT AURORA HEALTH CARE, INC. OPERATES AURORA ZILBER FAMILY HOSPICE AND IS RESPONSIBLE FOR ITS POLICIES, STAFFING, TRAINING, AND VISITOR-ACCESS PROCEDURES.
- 14. • DEFENDANT CITY OF NEW BERLIN, WISCONSIN IS A MUNICIPAL CORPORATION RESPONSIBLE FOR THE POLICIES, CUSTOMS, AND TRAINING OF THE NEW BERLIN POLICE DEPARTMENT.
- 15. • DEFENDANT CITY OF WAUWATOSA, WISCONSIN IS A MUNICIPAL CORPORATION RESPONSIBLE FOR THE POLICIES, CUSTOMS, AND TRAINING OF THE WAUWATOSA POLICE DEPARTMENT.
- 16. • DEFENDANT CITIES AND VILLAGES MUTUAL INSURANCE COMPANY (CVMIC) IS NAMED PURSUANT TO WIS. STAT. 895.46 AS THE MUNICIPAL INSURER OBLIGATED TO INDEMNIFY MUNICIPAL DEFENDANTS AND THEIR EMPLOYEES FOR ACTS COMMITTED WITHIN THE SCOPE OF EMPLOYMENT.

IV. FACTUAL ALLEGATIONS

(A) THE PRIVATE HOSPICE SETTING:

- 17. • ON MARCH 22, 2023, PLAINTIFF WAS AN AUTHORIZED OVERNIGHT VISITOR IN ROOM III AT AURORA ZILBER FAMILY HOSPICE.
- 18. • PLAINTIFF'S FATHER WAS RECEIVING END OF LIFE CARE IN HOSPICE ROOM III.
- 19. • ROOM III WAS A PRIVATE HOSPICE ROOM, NOT OPEN TO THE PUBLIC, AND FUNCTIONED AS A TEMPORARY DWELLING FOR THE PATIENT AND AUTHORIZED FAMILY MEMBERS.

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- 33 • DEFENDANTS PUSHED THE DOOR FURTHER OPEN, MAKING IT RELEASE FROM PLAINTIFF'S SISTERS' HANDS AND ENTERED THE ROOM.
- 34 • PLAINTIFF WAS ASLEEP AT THE TIME OF ENTRY
- 35 • DEFENDANTS ENTERED WHILE PLAINTIFF'S FATHER LAY DYING IN HOSPICE CARE, SURROUNDED, HAND CUFFED, AND DETAINED PLAINTIFF

(D) SEARCH AND SEIZURE OF PLAINTIFF'S PROPERTY:

- 36 • FOLLOWING THE UNLAWFUL ENTRY, DEFENDANTS SEARCHED PLAINTIFF'S PERSON.
- 37 • DEFENDANTS SEIZED APPROXIMATELY \$8200.00 IN CASH FROM PLAINTIFF.
- 38 • DEFENDANTS SEIZED PLAINTIFF'S CELL PHONE WHICH CONTAINED IRREPLACEABLE PHOTOGRAPHS OF PLAINTIFF'S FATHER AND FAMILY.
- 39 • THE SEIZED PROPERTY WAS NOT INTRODUCED, RELIED UPON, OR NECESSARY TO SECURE PLAINTIFF'S CRIMINAL CONVICTIONS.

(E) SEIZURE OF THIRD-PARTY PROPERTY AND REENTRY:

- 40 • PLAINTIFF'S SISTER HAD IN HER POSSESSION A FANNY PACK SHE STATED TO OFFICERS, WERE OF HER BELONGINGS.
- 41 • SHE EXPRESSLY REFUSED CONSENT FOR OFFICERS TO SEARCH OR SEIZE IT.
- 42 • DEFENDANTS CONFERRED AND AGREED TO SEIZE THE FANNY PACK.
- 43 • DEFENDANTS RE-ENTERED THE ROOM III AND FORCIBLY WRESTLED THE FANNY PACK FROM HER POSSESSION, SAYING ITS PLAINTIFF'S.
- 44 • THIS SEIZURE OCCURRED A FEW FEET FROM PLAINTIFF'S DYING FATHER.

(F) LACK OF JUDICIAL AUTHORIZATION; UNLAWFUL DETENTION:

- 45 • NO ARREST WARRANT, SEARCH WARRANT, OR OTHER JUDICIAL AUTHORIZATION EXISTED AT ANY TIME PRIOR TO OR DURING DEFENDANTS' ENTRY, SEARCHES, OR SEIZURES, AS WELL AS DETENTION OF PLAINTIFF, MAKING THE ENTRY, SEARCH, SEIZURES, AND DETENTION UNLAWFUL.

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- 52. A FEMALE PASSENGER WHO WAS ALSO BEING TRANSPORTED IN THE LYFT, WAS ALSO QUESTIONED BY WMPD AND GAVE CONFLICTING STATEMENTS TO THE WMPD OFFICERS.
- 53. NEW BERLIN PD OFFICERS DID NOT CONDUCT ANY TYPE OF INTERVIEW OR MAKE CONTACT WITH THE FEMALE PASSENGER TO ESTABLISH VERACITY, CREDIBILITY, OR BASIS OF KNOWLEDGE BEFORE USING HER CONTRADICTORY STATEMENT TO ESTABLISH PROBABLE CAUSE. NEW BERLIN PD SIMPLY REVIEWED WMPD'S BODY CAM FOOTAGE OF THE FEMALE PASSENGER STATING THAT SHE BOTH HAD NO KNOWLEDGE OF THE VEHICLE IN QUESTION, BUT AT SOME POINT IN TIME SOME HOW THE PLAINTIFF HAD DRIVEN HER IN THE SAME VEHICLE SHE STATED SHE HAD NO KNOWLEDGE OF.
- 54. THE RANGE ROVER VEHICLE WAS NOT TITLED TO THE PLAINTIFF, AND WAS PARKED BEHIND A PRIVATE RESIDENCE IN A BACK YARD WITH NO OCCUPANTS WHEN WEST MILWAUKEE PD CONDUCTED A WARRANTLESS ENTRY INTO THE HOME'S CURTILAGE, AS WELL AS A WARRANTLESS ENTRY INTO THE VEHICLE, TO CONDUCT A WARRANTLESS SEARCH AND SEIZURE OF THE VEHICLE. THIS IS WHERE OFFICER JAVIER DISCOVERED THE NEW BERLIN ID.
- 55. AFTER WMPD CONCLUDED THEIR INVESTIGATION OF THE PLAINTIFF'S POSSESSION OF THE CONTENTS OF THE RANGE ROVER, RESULTING IN HIM BEING RELEASED FROM THE SCENE, WITH NO DETERMINATION MADE THAT HE POSSESSED ANYTHING IN THE VEHICLE, THE NEW BERLIN DEFENDANTS MADE A DETERMINATION THAT THE PLAINTIFF DID POSSESS THE ID THAT WAS DISCOVERED BY WMPD, SUPERSEDING THE AUTHORITY OF THE MILWAUKEE COUNTY LAW ENFORCEMENT AGENCY WAS ACTUALLY DISCOVERED THE ID.

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• 62 • NBPD DEFENDANTS ACTED OUTSIDE THEIR AUTHORITY IN AN EFFORT TO ESTABLISH PROBABLE CAUSE USING FOUR MONTH OLD STALE MILWAUKEE COUNTY EVIDENCE.

• 63 • NBPD DEFENDANTS DID NOT CONDUCT A SIGNIFICANT INVESTIGATION AS REQUIRED BY WISCONSIN LAW, BEFORE USING THE STATEMENTS FROM BOTH STALE MILWAUKEE COUNTY INCIDENTS AS A BASIS FOR THE MARCH 22, 2023 UNLAWFUL ENTRY INTO THE HOSPICE ROOM TO ARREST THE PLAINTIFF.

• 64 • DURING DEFENDANT GUEVARA'S TESTIMONY ON JULY 21 AND JULY 26 OF 2023 IN BRANCH 5 OF WAUKESHA COUNTY'S COURT HOUSE, HE FURTHER DAMAGED THE INTEGRITY OF THE PROBABLE CAUSE THEORY BY COMMITTING PERJURY SUBORNED BY PROSECUTOR PETER TEMPELIS WHO QUESTIONED GUEVARA ON THE STAND UNDER OATH AS TO WHY GUEVARA, KAYE, GIBBS, AND KAINE WERE AT THE HOSPICE LOCATION ON MARCH 22, 2023.

• 65 • DEFENDANT GUEVARA STATED HE WAS AT THE HOSPICE LOCATION IN ORDER TO EXECUTE A SEARCH WARRANT FOR A 2020 S CLASS AMG MERCEDES AND A 2016 CLA MERCEDES THAT WAS PARKED IN THE HOSPICE PARKING LOT. A SEARCH WARRANT FOR THOSE VEHICLES WERE NOT OBTAINED UNTIL AFTER THE UNLAWFUL ENTRY INTO THE HOSPICE AND UNLAWFUL ARREST, WHICH PRECLUDES THE SEARCH WARRANT FROM BEING THE REASON OFFICERS SOUGHT ENTRY INTO THE PLAINTIFF'S PRIVATE HOSPICE ROOM.

• 66 • PROSECUTOR PETER TEMPELIS REVIEWED AND SIGNED THE SEARCH WARRANT THAT GUEVARA LIED TO HIM ABOUT ON THE STAND.

(11)

•73° THE DEFENDANTS GUEVARA, KAYE, GIBBS, AND KATNE EXECUTED THEIR MUNICIPALITY'S POLICYMAKER'S ARREST, SEARCH, AND TRANSPORT POLICIES WITH A DELIBERATE INDIFFERENCE TO THE OBVIOUS AND FORSEEABLE RISK THE ENFORCEMENT OF THESE POLICIES, WITH NO PROBABLE CAUSE, WOULD HAVE ON THE PLAINTIFF, CAUSING CONSTITUTIONAL INJURY TO THE PLAINTIFF. THE ENFORCEMENT OF THE MUNICIPALITY'S POLICIES BY THE DEFENDANTS WITH A DELIBERATE INDIFFERENCE, IS A MOVING FORCE BEHIND THE PLAINTIFF'S FOURTH AMENDMENT VIOLATIONS CAUSED BY THE DEFENDANTS. POLICY ENFORCEMENT

VI CLAIMS FOR RELIEF

• COUNT I

UNLAWFUL WARRANTLESS ENTRY - FOURTH AMENDMENT (42 USC § 1983)

•74° DEFENDANTS ENTERED A PRIVATE HOSPICE ROOM WITHOUT A WARRANT, CONSENT, OR EXIGENT CIRCUMSTANCES.

•75° THIS ENTRY VIOLATED PLAINTIFF'S FOURTH AMENDMENT RIGHTS

COUNT II

UNREASONABLE SEARCH - FOURTH AMENDMENT (42 USC § 1983)

•76° DEFENDANTS SEARCHED PLAINTIFF FOLLOWING AN UNLAWFUL ENTRY.

•77° THE SEARCH WAS UNREASONABLE AND UNCONSTITUTIONAL.

COUNT III

UNREASONABLE SEIZURE OF PROPERTY - FOURTH AMENDMENT (42 USC § 1983)

•78° DEFENDANTS SEIZED PLAINTIFF'S CASH AND CELLULAR PHONE WITHOUT LAWFUL JUSTIFICATION.

•79° DEFENDANTS SEIZED THIRD-PARTY PROPERTY BY FORCE AND WITHOUT CONSENT.

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COUNT VIII

UNLAWFUL DETENTION - FOURTH AMENDMENT (42 USC § 1983)

- 88 • DEFENDANTS ENTER THE HOSPICE ROOM WITH NO WARRANT OR CONSENT.
- 89 • DEFENDANTS SURROUNDED THE PLAINTIFF TO RESTRICT HIS MOVEMENT
- 90 • DEFENDANTS PLACED PLAINTIFF IN HANDCUFFS AND TRANSPORTED HIM TO A JAIL WITH NO PROBABLE CAUSE DURING WHICH TIME PLAINTIFF'S FATHER PASSED AWAY, AFTER PLAINTIFF WAS FORCIBLY REMOVED FROM HIM AND UNLAWFULLY DETAINED IN VIOLATION OF FOURTH AMENDMENT.

COUNT VIII

CIVIL CONSPIRACY (42 USC § 1985) (TO VIOLATE FOURTH AMENDMENT)

- 91 • STATE ACTORS MET AT THE HOSPICE FACILITY AND SIMULTANEOUSLY ENTERED THE HOSPICE FACILITY TOGETHER.
- 92 • STATE ACTORS ALL PROCEEDED TO THE HOSPICE FACILITY RECEPTIONIST TO REQUEST ENTRY TO ROOM III WITH NO PROBABLE CAUSE OR WARRANT
- 93 • OVERT ACTS WERE COMMITTED IN FURTHERANCE OF THE CONSPIRACY.

VII DAMAGES

- 94 • PLAINTIFF SUFFERED EMOTIONAL DISTRESS, NIGHTMARES, STRESS HEADACHE INVASION OF PRIVACY, LOSS OF DIGNITY, AND PERMANENT DEPRIVATION OF PERSONAL PROPERTY.
- 95 • PLAINTIFF SEEKS COMPENSATORY DAMAGES
- 96 • PLAINTIFF SEEKS PUNITIVE DAMAGES AGAINST INDIVIDUAL DEFENDANTS.
- 97 • PLAINTIFF SEEKS COST, ATTORNEY FEES PURSUANT TO 42 USC § 1988, AND
- 98 • ANY FURTHER RELIEF THE COURT DEEMS JUST.

VIII JURY DEMAND

- 99 • PLAINTIFF DEMANDS 'TRIAL BY JURY' ON ALL ISSUES SO TRIABLE.

RESPECTFULLY SUBMITTED,

RAPHAEL DAVID TATUM

PLAINTIFF, PRO SE