

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

DAMARIS JUSTINIANO, as the personal  
representative of the estate of Wilfredo  
Justiniano, Jr.,

Plaintiff,

v.

Civil Action No. 15-cv-11587-NMG

STEPHEN V. WALKER and TIMOTHY P.  
ALBEN,

Defendants.

**REPORT AND RECOMMENDATION REGARDING DEFENDANT TIMOTHY  
ALBEN'S MOTION TO DISMISS AND  
DEFENDANT STEPHEN WALKER'S MOTION TO DISMISS  
(Dkt. Nos. 9 and 23)**

CABELL, U.S.M.J.

On June 14, 2013, Wilfredo Justiniano Jr. was killed following an encounter with Massachusetts State Police Trooper Stephen Walker ("Trooper Walker"). The plaintiff, Damaris Justiniano, has brought suit as the personal representative of Justiniano's estate against Trooper Walker and his supervisor, MSP Colonel Timothy Alben ("Colonel Alben"). Trooper Walker moves to dismiss one of the two counts against him while Colonel Alben moves to dismiss both counts against him. (Dkt. Nos. 23 and 9). For the reasons discussed below, I recommend that Defendant Walker's motion to dismiss be denied, but that Defendant Alben's motion to dismiss be granted.

**I. RELEVANT FACTUAL BACKGROUND**

The facts are taken from the complaint and are accepted as true for purposes of the present motions. Trooper Walker was at all relevant times a Massachusetts State Police Officer. On June

*after consideration of plaintiff's objections thereto (Docket No. 31),  
Report and Recommendation is accepted and adopted.*

*SGM Gorton, USDT 8/21/16*