

RETURN DATE: 04/02/13 : SUPERIOR COURT
DOEL SANTIAGO, ADMINISTRATOR : J.D. OF NEW HAVEN
OF THE ESTATE OF OSCAR SANTIAGO
RIVERA
V. : AT NEW HAVEN
CITY OF NEW HAVEN;
DEAN M. ESSERMAN, CHIEF OF POLICE,
in his official and individual capacities;
OFFICER CURTIS RAY, in his official and
individual capacities;
OFFICER ANTHONY ZONA; in his official
and individual capacities
Defendants : FEBRUARY 12, 2013

COMPLAINT

PRELIMINARY STATEMENT

1. This is a civil rights action in which the Plaintiff, Doel Santiago, Administrator for the Estate of Oscar Santiago Rivera, seeks relief for the Defendants' violations of rights secured and protected by the Civil Rights Act of 1871, 42 U.S.C. § 1983, their rights secured by the Fourth, Fifth, and the Fourteenth Amendment of the United States Constitution, and for rights secured under Article One §§ 7, 8, and 9 of the Constitution of the State of Connecticut, pursuant to Connecticut General Statutes §§ 52-557n and 7-465, and under the common law of the State of Connecticut.

2. The Plaintiff alleges that on the night of August 20, 2011, at approximately 10:06 p.m., Defendants **Officer Curtis Ray** and **Officer Anthony Zona**, of the New Haven Police Department, unjustifiably killed **Oscar Santiago-Rivera** in violation of his common law, state and federal constitutional rights as more particularly set forth herein.

3. The Plaintiff further contends that the Defendants **City of New Haven**, and **Dean M. Esserman**, the Chief of Police for the City of New Haven, at all pertinent times, are individually, jointly and severally liable for the violations² of the Plaintiff's common law and federal and state constitutional rights, and the damages flowing therefrom, because, with deliberate indifference, the Defendant tolerated, condoned, encouraged, authorized, and/or ratified the aforesaid violations of the rights of the Plaintiff's decedent, and the Defendant, **City of New Haven**, established and promulgated policies which were the moving force behind such violations, as also more particularly set forth herein.

JURISDICTION

4. The basis of jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1343 and 1367, to vindicate the Plaintiff's decedent's rights under 42 U.S.C. §§ 1983 and 1988, as well as the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 7, 8, and 9 of the Connecticut Constitution.

FIRST COUNT: (ESTATE OF OSCAR SANTIAGO-RIVERA, VIOLATION OF CIVIL RIGHTS; FEDERAL AND STATE CONSTITUTIONS)

1. At all times hereinafter mentioned, the Defendant, **Officer Curtis Ray** was an employee of the **City of New Haven** and is sued individually and in his official capacity as a Police Officer of the **City of New Haven**, and was acting in his official capacity in the performance of his duties and within the scope of his employment as a Police Officer of the **City of New Haven** and under color of law to, to wit, under color of the Constitution, statutes, laws, charter, ordinances, rules, regulations, customs and usages of the State of Connecticut and of the United States.

2. At all times hereinafter mentioned, the Defendant Police Officer, **Anthony Zona**, was an employee of the **City of New Haven** and is sued individually and in his official capacity as a Police Officer of the **City of New Haven**, and was acting in his official capacity in the performance of his duties and within the scope of his employment as a Police Officer of the **City of New Haven** and under color of law to, to wit, under color of the Constitution, statutes, laws, charter, ordinances, rules, regulations, customs and usages of the State of Connecticut and of the United States.

3. At all times hereinafter mentioned, the Defendant, **Chief of Police Dean Esserman**, was an employee of the Defendant, **City of New Haven** and is sued individually and in his official capacity in the performance of his duties and within the

scope of his employment as Chief of Police of the **City of New Haven** and under color of law, to wit, under color of the Constitution, statutes, laws charter, ordinances, rules, regulations, customs and usages of the State of Connecticut and of the United States was acting directly and/or through his agents, designees and/or representatives.

4. At all times hereinafter mentioned, the Defendant, **City of New Haven**, was a municipal corporation in the State of Connecticut and was the employer of the aforementioned Defendant Police Officers, **Officer Curtis Ray** and **Officer Anthony Zona**, and was acting through its agents, designees and/or representatives.

5. On the evening of August 20, 2011, at approximately 10:00 p.m., the defendant officers, Officer Curtis Ray and Officer Sergeant Anthony Zona were dispatched to Lou's Lounge in the City of New Haven, at the request of the owner, Anthony Ornato.

6. A short time later, the defendant officers located the Plaintiff's decedent, Oscar Santiago-Rivera, near the intersection of Blatchley Avenue and Pine Street, and arrested Santiago-Rivera on a misdemeanor summons.

7. During the arrest, Officer Ray and Officer Zona subjected Oscar Santiago Rivera to severe physical assault.

8. The Plaintiff's Decedent, Oscar Santiago-Rivera, was taken to Yale New Haven Hospital, but later died as a result of his injuries.

9. The aforementioned acts committed by the Defendant Police Officer, **Curtis Ray**, while carried out under the color of law, had no justification or excuse in law and were instead illegal, improper and unrelated to any activity in which law enforcement officers may rightfully engage in the course of protecting persons or property or ensuring civil order.

10. This aforementioned acts, which resulted in the death of the Plaintiff's Decedent, **Oscar Santiago-Rivera**, committed by the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, constituted, under the totality of the circumstances, the use of excessive force upon the Plaintiff's Decedent, **Oscar Santiago-Rivera's** person and served to violate Section 53a-22, *et. seq.* of the Connecticut General Statutes.

11. Accordingly, the aforementioned acts committed by the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, deprived the Plaintiff's decedent of his rights, privileges, and immunities secured to him by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, as enforced through Title 42, United States Code, Sections 1983 and 1988.

12. Additionally, the aforementioned excessive force, which resulted in the death of the Plaintiff's Decedent, **Oscar Santiago-Rivera** committed by the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, deprived him of his rights, privileges,

and immunities secured to him directly by Article 1, Sections 7, 8 and 9 of the Connecticut Constitution.

13. In this killing of the Plaintiff's Decedent, **Oscar Santiago-Rivera**, as referenced above, the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, acted outside the scope of their discretion and without authorization of law, and he acted unreasonably, recklessly, with deliberate indifference, and/or with specific intent to deprive the Plaintiff's Decedent, **Oscar Santiago-Rivera** of his aforesaid civil rights, including more specifically:

- a. freedom from physical abuse, coercion, intimidation and death;
- b. freedom from the unjustifiable use of excessive force upon him;
- c. freedom from summary punishment without a fair trial;
- d. application of due process of law; and
- e. application of equal protection of the laws.

14. As a direct and proximate result of this aforementioned acts inflicted upon the Plaintiff's Decedent, **Oscar Santiago-Rivera**, he suffered extreme and fatal injuries to his body.

15. The injuries sustained by the Plaintiff's Decedent, **Oscar Santiago-Rivera** resulted in his death, after excruciating physical pain and mental anguish.

16. As a direct and proximate result of the aforementioned acts, the estate of the Plaintiff's Decedent, **Oscar Santiago-Rivera**, has been obliged to expend and lay out large sums of money for funeral and burial costs.

17. As a further result of the aforementioned killing, the Plaintiff's Decedent, **Oscar Santiago-Rivera** will be unable to make contributions to his household, resulting in loss of income and earning capacity to his estate.

18. As a further direct and proximate result of the aforesaid killing, the Plaintiff's Decedent, **Oscar Santiago-Rivera**, has been denied his normal and expected life span and enjoyments, including pursuit of family and other loving relationships, friendships, anticipated recreational activities and expected landmarks and achievements in his life and fulfillment of his life's goals and passions, all to the loss and detriment of his estate.

19. Within six months of the incident herein described, a notice, which is attached hereto and incorporated as Exhibit A, was sent to the City Clerk of the Defendant, **City of New Haven**, which informed the Defendant, **City of New Haven**, that the Plaintiffs intended to commence litigation against the Defendant Police Officers, **Curtis Ray** and **Anthony Zona** and seek indemnification from the **City of New Haven**.

SECOND COUNT: (ESTATE OF OSCAR SANTIAGO-RIVERA VS. OFFICERS CURTIS RAY AND ANTHONY ZONA, WRONGFUL DEATH)

1-19. Paragraphs 1 through 19 of the First Count are hereby incorporated and made corresponding paragraphs 1 through 19 of this, the Second Count.

20. On the evening of August 20, 2011, in the area of Blatchley Avenue and Pine Street in New Haven, Connecticut, the aforementioned Defendant Police Officers, **Curtis Ray** and **Anthony Zona** acted with negligence, pursuant to Conn. Gen. Stat. § 52-555, in one or more of the following ways:

- a. they used excessive force without the justification or necessity to do so;
- b. they failed to follow the laws, guidelines, rules and procedures governing the use of deadly force established by the Connecticut General Statutes, State of Connecticut and United States Constitutions, the City of New Haven and/ or the New Haven Police Department;

21. As a direct and proximate result of these aforementioned negligent actions on the part of the Defendant Police Officers, **Curtis Ray and Anthony Zona**, the Plaintiff's Decedent, **Oscar Santiago-Rivera**, was killed by Defendant Police Officers, **Curtis Ray and Anthony Zona**.

22. As a direct and proximate result of this aforementioned assault inflicted upon the Plaintiff's Decedent, **Oscar Santiago-Rivera** suffered extreme pain and anguish.

23. As a direct and proximate result of these aforementioned acts, the estate of the Plaintiff's Decedent, **Oscar Santiago-Rivera**, was obliged to expend and lay out sums of money for funeral and burial expenses.

24. As a result of the aforementioned shooting, the Plaintiff's Decedent, **Oscar Santiago-Rivera**, will be unable to make contributions to his household resulting in loss of income and earning capacity to his estate.

25. As a further direct and proximate result of the aforesaid shooting, the Plaintiff's Decedent, **Oscar Santiago-Rivera**, has been denied his normal and expected life span and enjoyments, including pursuit of family and other loving relationships, friendships, anticipated recreational activities, and expected landmarks, and achievements in his life and fulfillment of his life's goals and passions, all to the loss and detriment of his estate.

THIRD COUNT: ESTATE OF OSCAR SANTIAGO-RIVERA VS. CITY OF NEW HAVEN, INDEMNIFICATION

1-25. Paragraphs 1 through 23 of the Second Count are hereby incorporated and made corresponding paragraphs 1 through 23 of this, the Third Count.

26. Pursuant to Connecticut General Statutes Sections 52-557n, and 7-465, the Defendant, **City of New Haven**, is liable for the aforementioned negligent actions of the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, and the injuries and

damages to the Plaintiff's Decedent, the estate of **Oscar Santiago-Rivera**, resulting therefrom, and is required to indemnify said police officer for any judgment rendered thereupon.

FOURTH COUNT: ESTATE OF OSCAR SANTIAGO-RIVERA VS. CITY OF NEW HAVEN, GROSS NEGLIGENCE / RECKLESSNESS

1-19. Paragraphs 1 through 19 of the First Count are hereby incorporated and made corresponding paragraphs 1 through 19 of this, the Fourth Count.

20. Such acts on the part of the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, in addition to being willful, malicious and unjustified, occurred with conscious disregard for the life of the Plaintiff's Decedent, Oscar Santiago-Rivera.

21. Such acts on the part of the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, directly and proximately produced the losses and damages to the estate of the Plaintiff's Decedent, **Oscar Santiago-Rivera**, as described herein.

FIFTH COUNT: ESTATE OF OSCAR SANTIAGO-RIVERA VS. CITY OF NEW HAVEN, MONELL VIOLATION

1-19. Paragraphs 1 through 19 of the First Count are hereby incorporated and made corresponding paragraphs 1 through 19 of this, the Fifth Count.

20. The Defendant, **City of New Haven**, at all pertinent times, exhibited deliberate indifference toward its citizens, including the Plaintiff's Decedent, **Oscar**

Santiago-Rivera, in the establishment and perpetuation of policies, as described more particularly herein, as follows, to wit:

21. It failed to establish and implement adequate training, guidelines, rules and procedures which relate to safe and proper methods of surveillance and apprehension of citizens, on foot and in vehicles and discharge of firearms, by its officers, including the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**.

22. Additionally, the Defendant, **City of New Haven**, failed to establish and implement adequate training, guidelines, rules and procedures which relate to its police officers, including the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**.

23. Furthermore, the Defendant, **City of New Haven**, at all pertinent times, also failed to adequately screen, hire and/or monitor its candidates for police officer, including the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**.

24. The aforementioned failure of the Defendant, **City of New Haven**, to provide adequate screening, training, placement, staffing, guidelines, supervision, investigation, monitoring and/or discipline of its police officers as aforesaid, served to embolden, encourage and/or accommodate its officers, including the Defendant Police Officers, **Curtis Ray** and **Anthony Zona**, in the violation of the civil rights of citizens such as the Plaintiff's Decedent, **Oscar Santiago-Rivera**,

25. As such, these policies, or acts and practices, on the part of the Defendant, **City of New Haven**, which involved a pattern of practice over a long period of time, as described herein, constituted the moving force behind and therefore directly and proximately produced, the violation of the constitutional rights of the Plaintiff's Decedent, **Oscar Santiago-Rivera** and the resultant losses and damages to his estate, as well, as more particularly described herein.

SIXTH COUNT: ESTATE OF OSCAR SANTIAGO-RIVERA VS. CHIEF DEAN M. ESSERMAN, SUPERVISORY LIABILITY

1-25. Paragraphs 1 through 25 of the Fifth Count are hereby incorporated and made corresponding paragraphs 1 through 31 of this, the Sixth Count.

26. The Defendant, **Chief of Police Dean M. Esserman** was deliberately indifferent toward the violation of the civil rights of the Plaintiff's Decedent, **Oscar Santiago-Rivera** in that he established, promulgated, perpetuated, condoned and/or ratified policies of the Defendant, **City of New Haven** Police Department, as aforesaid, which he knew or should reasonably have known were likely to result in the violation of the civil rights of the Plaintiff's Decedent, **Oscar Santiago-Rivera**.

27. The Defendant, **Chief DEAN M. ESSERMAN**, failed to implement and adequately supervise and discipline his police officers, establish proper policies, as to shooting investigations and joint task force activities, implement adequate related

training guidelines and supervision or implement the Court ordered reconstitution of the internal affairs division, as described above, in any meaningful fashion.

28. Such actions and inactions on the part of the Defendant, **Chief Dean M. Esserman**, which exhibited deliberate indifference toward the constitutional rights of the Plaintiff's Decedent, **Oscar Santiago-Rivera**, as aforesaid, were the moving the force behind the violation of such constitutional rights.

29. Such deliberate indifference on the part of the Defendant, **Police Chief Dean M. Esserman**, therefore, was the direct and proximate cause of the loss and damages to the estate of Plaintiff's Decedent, **Oscar Santiago-Rivera**, as described

WHEREFORE, the Plaintiff claims:

1. Actual, compensatory and just damages;
2. Dignatory damages;
3. Common law and statutory punitive damages;
4. Attorneys' fees pursuant to 42 U.S.C. Section 1988; and
5. Such other damages as in law or equity may appertain.

THE PLAINTIFF



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Defendants

: FEBRUARY 12, 2013

STATEMENT RE AMOUNT IN DEMAND

The amount, legal interest or property in demand is in excess of Fifteen
Thousand (\$15,000.00) Dollars.

THE PLAINTIFF



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