

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SANDRA CAROLINE JONES, as Administrator
of the Estate of DARRIUS HAYWARD KENNEDY
Deceased,

Plaintiff(s),

-against-

THE CITY OF NEW YORK,

Defendant.

Index No.
Date Purchased:

SUMMONS

Basis of Venue:
Situs of occurrence

COUNTY OF NEW YORK

To the above-named Defendant:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action by serving a verified answer upon the undersigned within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York.

PLEASE TAKE FURTHER NOTICE that in case of defendants' failure to answer, judgment will be taken against you, jointly and severally, by default for the relief demanded in the verified complaint.

Dated: New York, New York
July 15, 2013

Yours, etc.,

LAW OFFICE OF RICHARD M. KENNY

By: 
JAMES P. LUNDY

Attorneys for Plaintiff
875 Avenue of the Americas - Suite
New York, New York 10001
212-421-0300

TO: THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Index No.:

SANDRA CAROLINE JONES, as Administrator of the
Estate of DARRIUS HAYWARD KENNEDY,
Deceased,

Plaintiff,

VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK,

Defendants.

-----X

Plaintiff, SANDRA CAROLINE JONES, by her attorneys, the LAW OFFICE OF RICHARD M. KENNY, as and for her Verified Complaint, respectfully alleges the following upon information and belief:

1. That on June 20, 2013, by Order of the Surrogate of New York County, the plaintiff, SANDRA CAROLINE JONES, sister of the decedent, was appointed the Administrator of the Estate of DARRIUS HAYWARD KENNEDY, Deceased.
2. That at all times hereinafter mentioned, the plaintiff, SANDRA CAROLINE JONES, was and still is a resident of the County of Chemung, State of New York.
3. That at all times hereinafter mentioned, the defendant, THE CITY OF NEW YORK, was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.
4. That on November 5, 2012, a Notice of Claim was duly served upon the defendant, THE CITY OF NEW YORK.
5. That the aforesaid Notice of Claim was filed within ninety (90) days after the cause of action accrued and set forth the name and post office address of the plaintiff, the nature

of the claim, the time, place and manner in which the claim arose and the items of damage and injuries sustained.

6. That a hearing pursuant to §50-h of the General Municipal Law was conducted on January 8, 2013, at the bequest of the defendant, THE CITY OF NEW YORK.

7. That at least thirty (30) days have elapsed since the demand or claim upon which this action is predicated was presented to the defendant, THE CITY OF NEW YORK, for adjustment or payment thereof. And it has neglected and/or refused to make adjustment or payment thereof.

8. That this action was commenced within one year after the cause of action alleged herein accrued.

9. That this action arises under the New York State and United States Constitutions, particularly under the provisions of Article I, Sections 11 and 12 of the New York State Constitution and the Fourth, Sixth and Fourteenth Amendments to the Constitution of the United States and under Federal Law, particularly 42 U.S.C. 1981, 1983, 1985 and 28 U.S.C. 1343.

10. That at all times hereinafter mentioned, numerous police officers whose identities are presently unknown to the plaintiff, were and still are, duly appointed, employed and acting policemen of the New York City Police Department, an agency of the defendant, THE CITY OF NEW YORK.

11. That each and all of the acts of the defendant, and its agents, servants and/or employees, including police officers, alleged herein were done by the defendant, its agents, servants and/or employees, including police officers, and not as individuals but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New

York, the City of New York and the County of New York, and under the authority of their office as policemen for such City and County.

12. That the actions taken by the defendant, its agents, servants and/or employees, including police officers, as set forth in the following paragraphs, did violate and deprive the plaintiff's decedent, DARRIUS HAYWOOD KENNEDY, of his Federal and Constitutional rights, and such actions were taken by said police officers pursuant to official municipal policy as implemented by the New York City Police Department and the defendant, THE CITY OF NEW YORK.

13. That the actions taken by the defendant, its agents, servants and/or employees, including police officers, as set forth in the following paragraphs, were taken by said officers in accord with the policies, customs and practices followed by members of the new York City Police Department, as mandated by the defendant, THE CITY OF NEW YORK, which implemented said policies, customs and practices through its training and supervision of its police force.

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF'S DECIDENT, DARRIUS HAYWOOD KENNEDY: ASSAULT AND BATTERY

14. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "13" inclusive, as if same were more fully set forth at length herein.

15. That on August 11, 2012 at approximately 3:00 p.m., at 44th Street and Seventh Avenue, New York, New York, two police officers whose identities are unknown to the plaintiff, and who are believed to be from the Midtown South Precinct, accosted the plaintiff's decedent, DARRIUS HAYWOOD KENNEDY, accusing him in an aggressive way of allegedly smoking

marijuana and frightening the plaintiff's decedent, causing him to be in fear of an imminent, unwanted assault.

16. That the plaintiff's decedent, DARRIUS HAYWOOD KENNEDY, an obvious and visibly disturbed person not in his usual state of mind, pulled out a knife and immediately retreated.

17. That the New York City Police Department knew of the plaintiff's decedent's psychiatric condition based upon previous encounters with the plaintiff's decedent.

18. That thereafter, while the plaintiff's decedent was retreating south on Seven Avenue, alternately skipping backwards and walking, many other police officers whose names are unknown to the plaintiff, but who are believed to be from the Midtown South Precinct, came to the scene and participated in the pursuit of the plaintiff's decedent.

19. That the requisite supervisory personnel or members of the Emergency Services Unit were NOT present prior to the ultimate shooting death of the plaintiff's decedent.

20. That as the plaintiff's decedent continued south on Seventh Avenue, the officers maintained unnecessarily close contact with the plaintiff's decedent, exacerbating the situation.

21. That the plaintiff's decedent was cornered at 37th Street and Seventh Avenue and police officers believed to be from the Midtown South Precinct, without lawful basis, reason or justification, applied excessive, unjustifiable deadly force to the plaintiff's decedent, discharging at least twelve (12) shots, killing the plaintiff's decedent in front of the premises known as 501 Seventh Avenue, New York, New York.

22. That at no time prior to the shooting, did the plaintiff's decedent threaten any member of the public or any police officer.

23. That at the time of the shooting, plaintiff's decedent was at such a distance from any police officer that he posed no threat of imminent danger to any police officer or member of the public.

24. That the defendant, its agents, servants and/or employees, including police officers, took these actions without any justification, provocation or basis in law or fact.

25. That as a result of the assault and battery above herein, the plaintiff's decedent suffered permanent, serious and severe injuries including the above-referenced gunshot trauma, massive loss of blood, conscious pain and suffering and death.

26. That the amount of damages sought by the plaintiff against the defendant exceeds the jurisdictional limit of all lower Courts in which this action may otherwise have been brought.

**AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF
PLAINTIFF'S DECEDENT, DARRIUS HAYWOOD KENNEDY:
VIOLATION OF UNITED STATES CONSTITUTIONAL RIGHTS**

27. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "22" inclusive, as if same were more fully set forth at length herein.

28. That the conduct of the defendant, its agents, servants and/or employees, including police officers, and each of them, deprived the plaintiff's decedent of the following rights, privileges and immunities secured to him by the Constitution of the United States:

(A) The right of the plaintiff's decedent to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States;

(B) The right of the plaintiff's decedent to be informed of the nature and cause of the accusation against him, secured to him under the Sixth and Fourteenth Amendments to the Constitution of the United States;

(C) The right of the plaintiff's decedent not to be deprived of life, liberty or property without due process of law and the right to the equal protection of the law secured by the Fourteenth Amendment to the Constitution of the United States.

29. That as a result of these actions, the plaintiff's decedent suffered a violation of his constitutional rights under the Constitution of the United States, all of which have resulted in damages which exceed the jurisdictional limits of all lower Courts in which this action may otherwise have been brought.

**AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF
PLAINTIFF'S DECEDENT, DARRIUS HAYWOOD KENNEDY:
VIOLATION OF NEW YORK STATE CONSTITUTIONAL RIGHTS**

30. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "13", "14" through "23" and "25" through "26" inclusive, as if same were more fully set forth at length herein.

31. That the conduct of the defendant, its agents, servants and/or employees, including police officers, and each of them, deprived the plaintiff's decedent of the following rights, privileges and immunities secured to him by Article I §§11 and 12 of the New York State Constitution:

(A) The right of the plaintiff's decedent that he shall not be denied the equal protection of the laws of this state or any subdivision thereof; and

(B) The right of the plaintiff's decedent to be secure in his person, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

32. That as a result of these actions, the plaintiff's decedent suffered violation of his constitutional rights under the New York State Constitution, all of which have resulted in

damages which exceed the jurisdictional limits of all lower Courts in which this action may otherwise have been brought.

**AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF PLAINTIFF'S
DECEDENT, DARRIUS HAYWOOD KENNEDY: PUNITIVE DAMAGES**

33. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "13", "14" through "23", "25" through "26" and "28" through "29" inclusive, as if same were more fully set forth at length herein.

34. That the acts, conduct and behavior of the defendant, its agents, servants and/or employees, including police officers, and each of them, which shock the conscience, were performed knowingly, intentionally and maliciously.

35. That as a result of these actions, the plaintiff's decedent sustained damages which exceed the jurisdictional limits of all lower Courts in which this action may otherwise have been brought.

**AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF
PLAINTIFF SANDRA CAROLINE JONES: WRONGFUL DEATH**

36. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "13", "14" through "23", "25" through "26", "28" through "29" and "31" through "32" inclusive, as if same were more fully set forth at length herein.

37. That as a result of the foregoing occurrence, the plaintiff's decedent, DARRIUS HAYWOOD KENNEDY, sustained injuries leading to his death on August 11, 2012.

36. That by reason of the wrongful death of the decedent, the plaintiff and the distributees of the Estate of the Decedent, suffered pecuniary loss, funeral expenses, loss of services and other items of damage.

38. That by reason of the wrongful death of DARRIUS HAYWOOD KENNEDY, the plaintiff, SANDRA CAROLINE JONES, has been damaged in an amount in excess of the jurisdictional limits of all lower Courts in which this action may otherwise have been brought.

WHEREFORE, the plaintiff, SANDRA CAROLINE JONES as Administrator of the Estate of DARRIUS HAYWOOD KENNEDY, demands judgment in an amount in excess of the jurisdictional limits of all lower Courts in which this action may otherwise have been brought on the First, Second, Third, Fourth and Fifth Causes of Action, together with the costs and disbursements of this action.

LAW OFFICE OF RICHARD M. KENNY

By: 

JAMES P. LUNDY

Attorneys for Plaintiff

Office and P.O. Address

857 Avenue of the Americas - Suite 805

New York, New York 10001

(212) 421-0300

