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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2006 JUN -2 PM 4: 20

LORETTA G. WHYTE
CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**CARDELL HAYES, Individually
and as administrator of the Estate
of ANTHONY HAYES
versus**

CIVIL ACTION

No: **06-2917**

**CITY OF NEW ORLEANS,
CHRISTIAN VARNADO,
MARK BONVILLIAN, GARY KESSEL,
WILLIAM CERAVOLO, JEFFREY
WALLS AND JEFFREY HOCHMAN,
Individually and as Police Officers
of the New Orleans Police Department**

SECTION **SECT. B MAG 5**
MAG. " "

Jury Trial

FILED: _____

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COMPLAINT

I. Jurisdiction

1. This action is brought pursuant to 42 U.S.C. 1983 and 1988 and pursuant to the Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. § 1331 and 1343 and the aforementioned statutory and constitutional provisions. Plaintiff further invokes the pendant jurisdiction of the Court to consider claims arising under state law pursuant to 28 U.S.C. 1367.

A jury trial is requested.

Fee **350.00**
 Process _____
 Dktd _____
____ CtRmDep _____
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II. PARTY PLAINTIFF

2. **Cardell Hayes** is a person of the full age of majority and a resident of the Eastern District of Louisiana.

3. **Cardell Hayes** is a surviving son and administrator of the Estate of Anthony Hayes.

III. PARTY DEFENDANTS

4. **City of New Orleans**, made defendant herein, is a political subdivision of the State of Louisiana and a municipal corporation, which was at all relevant times the employer of the defendants, **Christian Varnado, Mark Bonvillian, Gary Kessel, Jeffrey Walls, Jeffrey Hochman; and William Ceravolo**. Defendant, City of New Orleans, is directly liable for the acts complained of herein due to its policies and practices and its grossly negligent hiring, training and supervision of the defendant police officers. Defendant, City of New Orleans, is also vicariously liable for the acts complained of herein.

5. Defendants, **Christian Varnado, Mark Bonvillian, Gary Kessel, Jeffrey Walls, Jeffrey Hochman, and William Ceravolo**, are persons of the full age of majority and residents of the Eastern District of Louisiana. They were officers with the New Orleans Police Department at the time of the incident complained of herein and acting in the course and scope of their employment and under color of law. They are sued individually and in their official capacity.

IV. STATEMENT OF FACTS

6. On or about December 26, 2005, Anthony Hayes was involved in an incident at Walgreens Drug Store on St. Charles Avenue and Felicity Street when he got into an argument with a store employee over a credit card that would not work. Mr. Hayes then left the store and proceeded to walk along St. Charles Avenue toward downtown New Orleans carrying a small knife

in his hand at which time he was spotted by an off-duty St. Bernard sheriff's deputy who flagged down a passing police officer.

7. Within minutes, several cars of New Orleans police officers arrived, exited their cars with guns drawn, as they tried to contain Mr. Hayes in the middle of St. Charles Avenue. Several witnesses advised the police officers that Mr. Hayes had a history of mental illness. After using pepper spray several times on Mr. Hayes, Defendants Christian Varnado, Mark Bonvillian, Gary Kessel, Jeffrey Walls, Jeffrey Hochman, and William Ceravolo, did fatally shoot Anthony Hayes at least nine (9) times without just cause or provocation and clearly in excessive use of deadly force.

8. It is a routine pattern and practice of the New Orleans Police Department to assault, abuse and kill persons without just cause or provocation in violation of their constitutional rights.

V. FIRST CAUSE OF ACTION

9. Plaintiff, Cardell Hayes, repeats and realleges each and every allegation of the complaint as though copied herein in extenso, in particular the unlawful and excessive shooting of Anthony Hayes was done by defendant police officers while acting under the color of law and constituted a violation of 42 U.S.C. 1983 and 1988.

10. The Defendants, Christian Varnado, Mark Bonvillian, Gary Kessel, Jeffrey Walls, Jeffrey Hochman, and William Ceravolo, acting individually and together, and under color of law engaged in a course of conduct which acted to and did deprive Anthony Hayes of his constitutional rights, specifically, his right to due process of law, as protected by the 14th Amendment to the United States Constitution.

11. At all times pertinent herein the defendants acted unreasonably, recklessly and with deliberate indifference and disregard for the constitutional and civil rights and life of Anthony Hayes.

The defendants' actions were done recklessly, maliciously, willfully and intentionally.

12. Plaintiff, Cardell Hayes, further alleges that such acts were the proximate cause of Anthony Hayes' death.

VI. SECOND CAUSE OF ACTION

13. Plaintiff, Cardell Hayes, repeats and realleges each and every allegation of the complaint as though copied herein in extenso.

14. Defendant police officers did knowingly, willfully and intentionally use excessive force against Anthony Hayes.

VII. THIRD CAUSE OF ACTION

15. Plaintiff, Cardell Hayes, repeats and realleges each and every allegation of the complaint as though copied herein in extenso.

16. Defendant, City of New Orleans, respectfully established customs, policies and practices which directly deprived Anthony Hayes of his life in the following non-exclusive list of particulars, among others which may be shown at a trial hereof:

- A. Employment or retention of incompetent employees;
- B. Failure to properly hire, train, discipline and/or supervise police officers;
- C. Permitting or failing to prevent abuse by New Orleans Police officers;
- D. Toleration of a pattern and practice of police misconduct;
- E. Toleration of a pattern and practice of use of excessive force;
- F. Failure to adequately discipline subordinates who violate civil rights.

All of the aforementioned acts, including others which may be proven at a trial of this matter, had the effect of depriving Anthony Hayes of his right to not be deprived of life, his right to be free from

cruel and unusual punishment and other rights, privileges and immunities secured by the Constitution and laws of the United States and of the State of Louisiana, which directly and proximately caused the death complained of herein.

17. At all times pertinent herein the defendants acted unreasonably, recklessly and with deliberate indifference and disregard for the constitutional and civil rights and safety of Anthony Hayes and that such actions were the proximate cause and cause in fact of the death described herein.

VIII. FOURTH CAUSE OF ACTION

18. Plaintiff, Cardell Hayes, repeats and realleges each and every allegation of the complaint as though copied herein in extenso.

19. Plaintiff, Cardell Hayes, further alleges that the foregoing defendants were acting in the course and scope of their employment with the City of New Orleans individually and together and thereby rendering the City of New Orleans and the New Orleans Police Department vicariously liable for the death of Anthony Hayes.

20. Plaintiff further alleges that these actions were the proximate cause and cause in fact of the death of Anthony Hayes.

IX. DAMAGES

21. Plaintiff, Cardell Hayes, is now suffering and will continue to suffer irreparable harm from the Defendants' policies, practices, procedures and customs as mentioned heretofore. The conduct of the City of New Orleans deprived Anthony Hayes of due process of law, equal protection under the law, and constituted deliberate indifference toward his life, safety and welfare.

22. As a result of the actions of the defendants as described above, plaintiff suffered physical, mental and emotional distress, pain and suffering, loss of enjoyment of life with his father, legal expense among other damages to be shown at trial of this matter:

A.	Physical pain and suffering	\$500,000.00
B.	Mental and emotional pain and suffering, including humiliation, aggravation, anxiety, inconvenience, fear, fright and intimidation	500,000.00
C.	Deprivation of rights, privileges, and immunities secured to plaintiff and all citizens	500,000.00
D.	Lost of consortium, society and affection	500,000.00
E.	Punitive and exemplary damages to be assessed in the nature of a fine to ensure that such conduct as was used to victimize plaintiff is not used in the future against other citizens	2,000,000.00
TOTAL.....		\$4,000,000.00

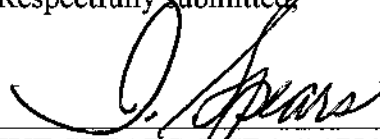
X. PRAYER FOR RELIEF

WHEREFORE, plaintiff, Cardell Hayes, prays that after due proceedings had, there be judgment rendered herein in his favor and against defendants The City of New Orleans, Christian Varnado, Mark Bonvillian, Gary Kessel, Jeffrey Walls, Jeffrey Hochman, and William Ceravolo, individually and in their capacity as police officers with the New Orleans Police Department, and for such other relief as this Court may deem just and appropriate.

FURTHER plaintiff prays for all costs and expenses incurred in this litigation, and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

FURTHER plaintiff prays for and demands trial by jury as to all issues.

Respectfully submitted,



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