

STATE OF NEW YORK: COUNTY OF ERIE

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In the Matter of the claim of

DENICE RIVERA, Individually and as Parent  
of RAFAEL RIVERA, deceased,

**NOTICE OF CLAIM**

Claimant,

-against-

BUFFALO POLICE DEPARTMENT, and  
The City of Buffalo

Respondents.

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**TO: BUFFALO POLICE DEPARTMENT**  
68 Court Street  
Buffalo, New York 14202

**City of Buffalo, New York**  
Buffalo City Hall  
65 Niagara Square  
Buffalo, New York 14202

**PLEASE TAKE NOTICE**, DENICE RIVERA, the Claimant herein, hereby makes a claim and demand against the BUFFALO POLICE DEPARTMENT, and The City of Buffalo, pursuant to § 50-e of the General Municipal Law, as follows:

**1. The names and post-office addresses of the Claimant and Claimant's attorneys are:**

Denice Rivera  
763 8<sup>th</sup> Street  
Niagara Falls, NY 14301

Steven M. Cohen  
HOGANWILLIG  
2410 North Forest Road, Suite 301  
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**2. The nature of the claim:**

This action seeks to recover damages, on behalf of DENICE RIVERA individually and as parent of RAFAEL RIVERA, arising out of the wrongful death, pain and suffering of RAFAEL RIVERA as a result of the intentional and/or negligent, careless, reckless and otherwise tortious conduct of the BUFFALO POLICE DEPARTMENT and City of Buffalo (collectively “Respondents”), and/or its/their agents, servants and/or employees, as further set forth below. In addition, DENICE RIVERA asserts derivative claims herein, and claims for the emotional pain and suffering of bearing witness to her son’s suffering and demise as a result of the tortious conduct of Respondents herein.

**3. The date, time when, the place where and the manner in which the claim arose is as follows:**

The incident giving rise to this matter occurred on September 12, 2018, at approximately 3:14 am, when Buffalo Police shot and killed Raphael Rivera on Plymouth Avenue, between Massachusetts Avenue and Rhode Island Street, City of Buffalo, County of Erie, State of New York. Claimant, Denice Rivera is Raphael Rivera’s Mother.

Upon information and belief, at approximately 3:14 am on September 12, 2018, RAFAEL RIVERA was shot in the back and/or side, multiple times by Respondents and agents of Respondents while running away from them. At no relevant time herein did RAFAEL RIVERA point a weapon at Respondents or at any other individual or at any structure or dwelling, nor did he pose an immediate threat to anyone at the time he was shot and killed. At approximately 3:14 am, RAFAEL RIVERA was placed in handcuffs while dying on the ground and no first aid was attempted by Respondents. At approximately 3:19 am, and after approximately five (5) minutes

of laying unattended and uncared for by Respondents, ambulance company AMR and the Buffalo Fire Department arrived on scene. Upon information and belief, RAFAEL RIVERA was already deceased upon arrival of emergency services. The BUFFALO POLICE DEPARTMENT, City of Buffalo and/or its/their agents, servants or employees further negligently and recklessly disregarded human life in not attempting to rescue or assist RAFAEL RIVERA, after shooting him in the back and/or side.

**4. The items of damages or injuries claimed are:**

DENICE RIVERA asserts claims herein, for

Negligent hiring and training and supervision of Buffalo Police Officers by Respondents;

Negligent and reckless policies and procedures respecting use of force by Police Officers upon civilian suspects, instituted by Respondents;

Negligent, reckless and intentional disregard of the statutory strictures of NY Penal Law Article 35;

Negligent, reckless and intentional disregard of departmental policies as set forth in the regulations of the Buffalo Police Department;

Wrongful death of RAFAEL RIVERA;

Physical pain and suffering by RAFAEL RIVERA;

Emotional pain and suffering for the loss of her son;

Emotional pain and suffering for bearing witness to her son's suffering and demise;

Economic loss;

Punitive damages,

All as a result of the tortious conduct of Respondents herein. As a result of the wrongful death of Raphael Rivera, caused in whole by The Buffalo Police Department and/or City of Buffalo, Claimant seeks all damages under the law for, economic loss, special damages, pain and suffering, emotional suffering, punitive damages and other damages, the full extent of which are unknown at present.

Said claim and demand is hereby presented for adjustment and payment.

Dated: Amherst, New York  
November 19, 2018



Steven M. Cohen, Esq.  
HOGANWILLIG, PLLC  
*Attorneys for Claimant*  
2401 North Forest Road, Suite 301  
Amherst, New York 14068  
Telephone: (716) 636-7600

TO: BUFFALO POLICE DEPARTMENT  
City of Buffalo

**VERIFICATION**

STATE OF NEW YORK     )  
COUNTY OF ERIE        ) SS:

DENICE RIVERA, being duly sworn deposes and says: that she is the Claimant, both individually and as parent and natural guardian of Rafael Rivera, deceased, in the above matter, that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to her knowledge except as to those matters alleged to be upon information and belief, as to those matters, she believes them to be true.

  
DENICE RIVERA

Sworn to before me this  
20<sup>th</sup> day of November, 2018

  
NOTARY PUBLIC

**Patricia M. Ifkovich**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Aug. 3, 2022