

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ESTATE OF JIMMIE MARTELL SANDERS,
by Special Administrator Diann Cannady,

Plaintiff,

Case No. 20-CV-1164

vs.

JAY STEINKE,

Defendant.

**DEFENDANT JAY STEINKE'S
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, Jay Steinke, by his attorneys, Gunta Law Offices, S.C., submits the following Answer and Affirmative Defenses to the Plaintiff's Complaint:

INTRODUCTION

1. Admit that Jimmie Martell Sanders was shot dead by City of Appleton Police Lieutenant Jay Steinke on May 21, 2017 and that Sanders was 33 years old. Deny that Sanders posed no threat to anyone. Lack knowledge and information sufficient to form a belief as to the truth or falsity of the remainder of Paragraph 1, and therefore deny the same.

THE PARTIES AND OTHER PERSONS

2. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 2, and therefore deny the same.

3. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 3, and therefore deny the same.
4. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 4, and therefore deny the same.
5. Lt. Steinke being sued in his individual capacity is a statement of Plaintiff's legal positions and legal conclusions, and therefore, requires no response to said alleged legal conclusions. Further answering this paragraph, deny any material allegations contained therein regarding the Defendant, Lt. Steinke. Admit the remainder of Paragraph 5.
6. Admit that Erick Aguilar ("Ofc. Aguilar") is not a defendant, however, he was a patrol officer for the City of Appleton on May 21, 2017, and that he was acting under the color of law and within the scope of his employment as a police officer for the City of Appleton. Deny the remainder of Paragraph 6.

JURISDICTION AND VENUE

7. Paragraph 7 is a statement of Plaintiff's legal positions and legal conclusions, and therefore, requires no response to said alleged legal conclusions. Further answering this paragraph, deny any material allegations contained therein regarding the Defendant, Lt. Jay Steinke.
8. Paragraph 8 is a statement of Plaintiff's legal positions and legal conclusions, and therefore, requires no response to said alleged legal conclusions. Further answering this paragraph, deny any material allegations contained therein regarding the Defendant, Lt. Jay Steinke.

9. Paragraph 9 is a statement of Plaintiff's legal positions and legal conclusions, and therefore, requires no response to said alleged legal conclusions. Further answering this paragraph, deny any material allegations contained therein regarding the Defendant, Lt. Jay Steinke.

THE FACTS

10. Admit.
11. Admit.
12. Admit that Lt. Steinke and Ofc. Auilar were alerted to a disturbance at Jack's Apple Pub, located at 535 West College Avenue in the City of Appleton. Deny the alert call included information about a single gunshot.
13. Admit that Lt. Steinke and Ofc. Aguilar arrived at Jack's Apple Pub and they did not hear any gunshots. Lack knowledge and information sufficient to form a belief as to the truth or falsity of the remainder of Paragraph 13, and therefore deny the same.
14. Admit that Lt. Steinke pulled out his gun and stepped inside Jack's Apple Pub with gun in hand. Deny Lt. Steinke opened the door.
- 15.
- a. Admit.
 - b. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 15b, and therefore deny the same.
 - c. Deny.
 - d. Deny.
 - e. Deny.

16. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 16, and therefore deny the same.
17. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 17, and therefore deny the same.
18. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 18, and therefore deny the same.

THE CLAIMS

19. Paragraph 19 is a statement of Plaintiff's legal positions and legal conclusions, and therefore, requires no response to said alleged legal conclusions. Further answering this paragraph, deny any material allegations contained therein regarding the Defendant, Lt. Jay Steinke.
20. Paragraph 20 is a statement of Plaintiff's legal positions and legal conclusions, and therefore, requires no response to said alleged legal conclusions. Further answering this paragraph, deny any material allegations contained therein regarding the Defendant, Officer Jay Steinke.
21. Deny.
22. Deny.
23. Deny.

RELIEF REQUESTED

24. Deny that the Plaintiff is entitled to any relief.
 - a. Deny that the Plaintiff is entitled to judgment or damages.

- b. Deny that the Plaintiff is entitled to judgment or damages.
- c. Deny that the Plaintiff is entitled to punitive damages.
- d. Deny that the Plaintiff is entitled to injunctive or equitable relief.
- e. Deny that the Plaintiff is entitled to any costs or attorney's fees.
- f. Deny that the Plaintiff is entitled to injunctive or equitable relief.

DEMAND FOR TRIAL BY JURY

25. Paragraph 25 is a statement of Plaintiff's legal positions and legal conclusions, and therefore requires no response to said alleged legal conclusions. Further answering this Paragraph, deny any material allegations contained therein regarding the Defendant, Jay Steinke.

AFFIRMATIVE DEFENSES

- 1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
- 2. Plaintiff's state law claims, if any, are subject to the procedural prerequisites for bringing or maintaining a cause of action under § 893.80(1)(a) and (1)(b), Wis. Stats. and the exclusions, immunities and limitations on liability set forth in § 893.80, Wis. Stats.
- 3. Any injuries or damages suffered by the Plaintiff were caused by the conduct of Jimmie Martell Sanders, Henry M. Nellum or other parties, and not by any conduct of the Defendant.
- 4. The Plaintiff may have failed to mitigate the damages.
- 5. Defendant Jay Steinke is entitled to qualified immunity.
- 6. Defendant Jay Steinke is entitled to discretionary act immunity.
- 7. The Defendant's conduct was privileged.

WHEREFORE, this Defendant requests judgment dismissing Plaintiff's complaint and awarding costs and attorneys fees as allowed by law.

Dated at Wauwatosa, Wisconsin, this 12th day of October, 2020.

GUNTA LAW OFFICES, S.C.
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