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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 THE ESTATE OF CLEMENTE)
13 NAJERA-AGUIRRE, and J.S., A.S.,)
14 Y.S.,)

15 Plaintiffs,)

16 v.)

17 COUNTY OF RIVERSIDE, and DOES 1)
18 through 10, inclusive,)

19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Case No:
PLAINTIFFS' COMPLAINT
FOR DAMAGES

- 1. **VIOLATIONS OF THE FOURTH AND FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION 42 U.S.C. § 1983**
- 2. **DEPRIVATION OF CIVIL RIGHTS UNDER COLOR OF LAW—MONELL CLAIM**
- 3. **VIOLATION OF 42 U.S.C. § 1983 SUBSTANTIVE DUE PROCESS**

DEMAND FOR JURY TRIAL

1 **VENUE AND JURISDICTION**

2 1. This action is brought pursuant to 42 U.S.C. §1983, the Fourth and
3 Fourteenth Amendments of the United States Constitution. Jurisdiction is founded
4 on 29 U.S.C. §§1331 and 1343(1), (2), (3) and (4), and the aforementioned statutory
5 and Constitutional provisions.

6 2. Venue is proper in the Central District of California. The facts
7 underlying all claims and injuries took place within the geographic jurisdiction of
8 the Central District, specifically in Lake Elsinore, Riverside County, California.

9 **PARTIES**

10 3. Plaintiff, THE ESTATE OF CLEMENTE NAJERA-AGUIRRE,
11 appears by and through Clemente Najera-Aguirre's successors-in-interest and
12 representatives, Plaintiffs J.S., A.S., Y.S.

13 4. Plaintiff J.S. is, and was an individual residing in Riverside County,
14 California. Plaintiff J.S. is the natural son of decedent Clemente Najera-Aguirre
15 and sues here both in his individual capacity and as successor-in-interest for THE
16 ESTATE OF CLEMENTE NAJERA-AGUIRRE, by and through his guardian-ad-
17 litem Lucila Salgado.

18 5. Plaintiff A.S. is, and was an individual residing in Riverside County,
19 California. Plaintiff A.S. is the natural son of decedent Clemente Najera-Aguirre
20 and sues here both in his individual capacity and as successor-in-interest for THE
21 ESTATE OF CLEMENTE NAJERA-AGUIRRE, by and through his guardian-ad-
22 litem Lucila Salgado.

23 6. Plaintiff Y.S. is, and was an individual residing in Riverside County,
24 California. Plaintiff Y.S. is the natural daughter of decedent Clemente Najera-
25 Aguirre and sues here both in her individual capacity and as successor-in-interest
26 for THE ESTATE OF CLEMENTE NAJERA-AGUIRRE, by and through her
27 guardian-ad-litem Lucila Salgado.
28

1 7. Defendant COUNTY OF RIVERSIDE (hereinafter sometimes
2 “COUNTY”) is and was, at all times relevant to the matters alleged in this
3 complaint, a public entity duly organized under the laws of the State of California,
4 County of Riverside, and the public employer of the deputies named as defendants
5 in this action.

6 8. Plaintiffs are ignorant of the true names and capacities of Defendants
7 sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by
8 such fictitious names. DOES 1 through 10, and each of them, were duly appointed
9 law enforcement officers, sergeants, lieutenants, detectives, deputies, officials,
10 executives or policymakers, including those officers who on the date plead, stopped,
11 detained, arrested or used physical force on decedent Clemente Najera-Aguirre, of
12 the RCSD, a department and subdivision of Defendant COUNTY. Plaintiffs will
13 amend this complaint to allege said Defendants’ true names and capacities when
14 ascertained. Plaintiffs are informed and believe and thereon allege, that each of the
15 fictitiously named Defendants are responsible in some manner for the occurrences
16 herein alleged, and that Plaintiffs’ damages as herein alleged were proximately
17 caused by the acts and/or omissions of said fictitiously name Defendants.

18 9. Plaintiffs are informed and believe, and thereon allege, that at all times
19 herein mentioned, each of the Defendants were acting within the course and scope
20 of their employment or agency with Defendant COUNTY, which is liable in
21 respondeat superior pursuant to section 815.2, et. seq. of the California Government
22 Code for the acts of said Defendants that are alleged herein. At all times mentioned
23 herein, each Defendant was also acting under the color of law under Riverside
24 County and the State of California. Said Defendants are sued individually and in
25 their capacity as herein and above defined employees, agents, and representatives of
26 Defendant COUNTY.

27 10. Each of the Defendants caused and is responsible for the unlawful
28 conduct and resulting by, inter alia, personally participating in the conduct, or acting

1 jointly and in concert with others who did so; by authorizing, acquiescing or failing
2 to take action to prevent the unlawful conduct; by promulgating policies and
3 procedures pursuant to which the unlawful conduct occurred; by failing and refusing,
4 with deliberate indifference to Plaintiffs' rights, to initiate and maintain adequate
5 supervision and/or training; and, by ratifying the unlawful conduct that occurred by
6 agents and peace officers under their direction and control. Whenever and wherever
7 reference is made in this Complaint to any act by a Defendant, such allegation and
8 reference shall also be deemed to mean the acts and failures to act of each Defendant
9 individually, jointly and severally. They are sued in their individual and official
10 capacities and in some manner are responsible for the acts and omissions alleged
11 herein. Plaintiffs will ask leave of this Court to amend this Complaint to allege such
12 name and responsibility when that information is ascertained. Each of the
13 Defendants is the agent of the other.

14
15 **STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION**

16 11. On or about April 15, 2016, the decedent Clemente Najera-Aguirre was
17 shot and killed by RCSD deputies, DOES 1 and 2, near W. Heald Ave. in Lake
18 Elsinore, CA.

19 12. At the time of the shooting, Clemente Najera-Aguirre did not display
20 any behavior, or take any physical action, that would lead a reasonable officer to
21 believe that his or her life or the life of another was in danger or in threat of imminent
22 harm, such that it would justify using deadly force. In fact, two other RCSD deputies
23 who were present did not shoot the decedent.

24 13. Clemente Najera-Aguirre suffered great pain and anguish for a
25 significant period of time after said defendants shot him. He eventually died from
26 the wounds inflicted upon him by Defendant Does 1 and 2

27 14. Defendant COUNTY was long aware of the propensity of their deputies
28 to callously and recklessly use excessive force against members of the public and to

1 engage in deceitful conduct. The following incidents illustrate the use of excessive
2 deadly force, all of which are pursuant to these unconstitutional customs, policies,
3 and practices of the RCSD:

4 (a) On July 7, 2013, RCSD Deputy Steve Lycopulus used excessive
5 force when he shot and killed Adam Bosch. At no time prior to being shot by Deputy
6 Lycopulus did Adam Bosch display any behavior, or take any physical action, that
7 would lead a reasonable officer to believe that his or her life or the life of another
8 was in danger or in threat of imminent harm, such that would justify using deadly
9 force. At the time of the shooting, Adam Bosch was unarmed. Deputy Lycopulus
10 was neither disciplined nor required to undergo any retraining as a result of his use
11 of deadly force against Adam Bosch.

12 (b) On December 25, 2014, RCSD Deputy Melissa Rodriguez used
13 excessive force when she shot and killed Omar Rodriguez. At no time prior to being
14 shot by Deputy Rodriguez did Omar Rodriguez display any behavior, or take any
15 physical action, that would lead a reasonable officer to believe that his or her life or
16 the life of another was in danger or in threat of imminent harm, such that would
17 justify using deadly force. At the time of the shooting, Omar Rodriguez was
18 unarmed. Deputy Rodriguez was neither disciplined nor required to undergo any
19 retraining as a result of her use of deadly force against Omar Rodriguez.

20 **FIRST CLAIM FOR RELIEF**

21 **DEPRIVATION OF CIVIL RIGHTS UNDER COLOR OF LAW**

22 **(42 USC §§ 1983 and 1988, including Wrongful Death and**

23 **Survival under Federal Violation of Civil Rights)**

24 **[By Plaintiff Estate of Clemente Najera-Aguirre Against Does 1**

25 **and 2]**

26 15. Plaintiffs hereby repeat, re-allege, and incorporate each and every
27 allegation of each and every paragraph above as though fully set forth herein.
28

1 16. This cause of action is to redress a deprivation, under color of authority,
2 statute, ordinance, regulation, policy, custom, practice or usage of a right, privilege
3 or immunity secured to Plaintiffs by the Fourth and Fourteenth Amendments to the
4 United States Constitution and the Constitution and laws of the State of California.

5 17. On or before April 15, 2016, Clemente Najera-Aguirre possessed the
6 rights, guaranteed by the Fourth and Fourteenth Amendments of the United States
7 Constitution, to be free from unreasonable searches, seizures, excessive force by
8 agents of the government, deprivation of liberty without due process of law, and the
9 right to privacy, among others.

10 18. At all times relevant hereto, decedent Clemente Najera-Aguirre did not
11 pose a deadly threat to Does 1 and 2 or anyone else.

12 19. Defendants Does 1 and 2, without cause or legal provocation, exercised
13 the use of deadly force against Clemente Najera-Aguirre as plead above.

14 20. Each of Defendants' conduct was entirely unjustified. The conduct
15 constitutes, among other things, an unjustifiable search and seizure though
16 unreasonable and excessive use of force and unlawful arrest/seizure.

17 21. Said Defendants subjected the Plaintiffs to the aforementioned
18 deprivations by either actual malice or deliberate indifference and disregard of
19 Plaintiffs' civil rights.

20 22. Said Defendants acted at all times herein knowing full well that the
21 established practices, customs, procedures and policies of Defendant COUNTY and
22 the RCSD would allow a cover-up of this misconduct and allow the continued use
23 of illegal and excessive force in violation of the Fourth and Fourteenth Amendment
24 of the Constitution of the United States and the laws of the State of California.

25 23. After being shot by said Defendants, Clemente Najera-Aguirre endured
26 great physical and emotional pain and suffering.

27 24. As a direct and proximate result of the aforementioned acts of said
28 Defendants, and each of them, Clemente Najera-Aguirre received wounds and

1 injuries to his body and mind which caused him to be unconstitutionally deprived of
2 his personal liberties.

3 25. The acts of Defendants, and each of them, were so evil and egregious
4 that said conduct, because of its nature, shocked the conscience and represented a
5 violation of the Fourteenth Amendment's substantive due process protections.

6 26. The conduct of Defendants was willful, wanton, malicious and done
7 with an evil motive, and intent, and reckless disregard for the rights and safety of
8 Plaintiffs and therefore warrants the imposition of exemplary and punitive damages
9 against said Defendants.

10 **SECOND CLAIM FOR RELIEF**

11 **DEPRIVATION OF CIVIL RIGHTS UNDER COLOR OF LAW [*MONELL***
12 **CLAIM]**

13 **(42 USC § 1983 and 1998, including Wrongful Death and Survival under**
14 **Federal Violation of Civil Rights)**

15 **[By All Plaintiff Clemente Najera-Aguirre against Defendant COUNTY OF**
16 **RIVERSIDE]**

17 27. Plaintiffs repeat, re-allege, and incorporate each and every allegation of
18 each and every paragraph above as though fully set forth herein.

19 28. At the time of the shooting, as described above, Defendants Does 1 and
20 2 were acting within the course and scope of their duties as officers, employees, and
21 representatives of Defendant COUNTY and the RCSD, deprived decedent Clemente
22 Najera-Aguirre of his right to be free from unreasonable seizure and excessive force,
23 when said Defendants unreasonably and without justification shot and killed him.

24 29. On and before April 15, 2016, and prior to the killing of Clemente
25 Najera-Aguirre, Defendants COUNTY and DOES 1 through 10, and each of them,
26 were aware that RCSD deputies, including Defendants Does 1 and 2, had engaged
27 in a custom and practice of callous and reckless use of firearms and other
28 misconduct, as summarized in the paragraphs above.

1 30. Defendants COUNTY, DOES 3 through 10, and each of them, acting
2 with deliberate indifference to the rights and liberties of the public in general, and of
3 the present Plaintiffs, and of persons in Clemente Najera-Aguirre's class, situation,
4 and comparable position in particular, knowingly maintained, enforced and applied
5 customs and practices of:

- 6 (a) Encouraging, accommodating, or ratifying the shooting of residents;
7 (b) Encouraging, accommodating, or ratifying the use of excessive and
8 unreasonable force, including deadly force;
9 (c) Encouraging, accommodating, or facilitating a "code of silence"
10 among RCSD officers/supervisors, pursuant to which false reports
11 were generated and excessive and unreasonable force was covered
12 up;
13 (d) Employing and retaining, as officers and other personnel,
14 individuals such as Defendants Does 1 and 2, who Defendant
15 COUNTY knew or reasonably should have known, had dangerous
16 propensities for abusing their authority and for mistreating members
17 of the public;
18 (e) Inadequately supervising, training, controlling, assigning, and
19 disciplining RCSD deputies, including Defendants Does 1 and 2,
20 who Defendant COUNTY knew, or in the exercise of reasonable
21 care should have known, had the aforementioned propensities and
22 character traits;
23 (f) Maintaining grossly inadequate procedures for reporting,
24 supervising, investigating, reviewing, disciplining, and controlling
25 intentional misconduct by officers;
26 (g) Assigning police officers with known histories of misconduct,
27 including criminal conduct, in accordance with the RCSD custom of
28

1 assigning these police officers to come into contact with members
2 of the public;

3 (h) Ratifying wrongful conduct by police officers and supervisors
4 which result in serious injuries and deaths to members of the public
5 as well as civil litigation judgments and settlements by failing to
6 implement corrective action to prevent repetition of the wrongful
7 conduct; and

8 (i) Failing to discipline, investigate, and take corrective actions against
9 RCSD police officers for misconduct, including, but not limited to,
10 unlawful detention, excessive force, and false reports.

11 31. By reason of the aforementioned customs and practices, Clemente
12 Najera-Aguirre was severely injured and subjected to pain and suffering as alleged
13 above in the First Claim for Relief.

14 32. Defendants COUNTY and DOES 3 through 10, with various other
15 officials, whether named or unnamed, had either actual or constructive knowledge
16 of the deficient policies, practices, and customs alleged in the paragraphs above.
17 Despite having knowledge, Defendant COUNTY and DOES 3 through 10 condoned,
18 tolerated and, through actions and inactions, thereby ratified such customs and
19 practices. Said Defendants also acted with deliberate indifference to the foreseeable
20 effects and consequences of these policies with respect to the constitutional rights of
21 Plaintiffs and other individuals similarly situated.

22 33. Plaintiffs are informed and believe, and thereon allege, that Defendants
23 Does 1 and 2 each had a history and propensity for acts of the nature complained of
24 herein and manifested such propensity prior to and during their employment and/or
25 agency with Defendant COUNTY. Plaintiffs are further informed and believe, and
26 thereon allege, that Defendants COUNTY and DOES 1 and 2, knew, or in the
27 exercise of reasonable care should have known, of such prior history and propensity
28 at the time such individuals were hired and/or during the time of their employment.

1 These Defendants' disregard of this knowledge and/or failure to adequately
2 investigate and discover and correct such facts caused the violation of Plaintiffs'
3 constitutional rights.

4 34. The policies, practices, and customs implemented and maintained and
5 still tolerated by Defendants COUNTY and DOES 1 through 10, and each of them,
6 were affirmatively linked to and were a significant influential force behind the
7 Plaintiffs' injuries.

8 35. By reason of the aforementioned acts and omissions, Clemente Najera-
9 Aguirre was shot and killed by Defendants Does 1 and 2.

10 **THIRD CLAIM FOR RELIEF**

11 **SUBSTANTIVE DUE PROCESS VIOLATIONS**

12 **(42 U.S.C. §1983)**

13 **[By Plaintiff J.S., A.S., Y.S., and Against Defendants DOES 1 and 2]**

14 36. Plaintiffs hereby repeat, re-allege, and incorporate each and every
15 allegation of each and every paragraph above as though fully set forth herein.

16 37. The substantive due process clause of the Fourteenth Amendment of
17 the United States Constitution guarantees all persons the right to be free from
18 unlawful state interference with their familial relations. 42 U.S.C. § 1983 provides a
19 private right of action for conduct which violates this right.

20 38. As alleged above, the shooting and killing of Clemente Najera-Aguirre.
21 was unreasonable under the circumstances of the encounter. As such, the shooting
22 and killing of Clemente Najera-Aguirre violated the constitutional limits on police
23 use of deadly force in violation of the Fourth Amendment's limits on unreasonable
24 seizures.

25 39. At the same time Clemente Najera-Aguirre was killed, the right of
26 Plaintiffs J.S., A.S., Y.S., to be free from government interference in their
27 relationship with their father.

1 7. For attorneys' fees, investigation expenses, costs and other expenses in
2 vindication of Plaintiff's Constitutional rights under 42 U.S.C. Section 1988 in an
3 amount according to proof at the time of trial

4 8. For other general damages in an amount according to proof at trial;

5 9. For other special damages in an amount according to proof at trial;

6 10. For pre-judgment and post-judgment interest; and

7 11. For such other and further relief as the Court may deem just and proper.

8
9 Dated: April 13, 2018

PEREIRA LAW

10 By: /s/ Christian F. Pereira
11 CHRISTIAN F. PEREIRA
12 Attorneys for Plaintiffs

DEMAND FOR JURY

COME NOW Plaintiffs THE ESTATE OF CLEMENTE NAJERA-
AGUIRRE, J.S., A.S., Y.S., hereby demand a trial by jury in this matter.

Dated: April 13, 2018

PEREIRA LAW

By: /s/ Christian F. Pereira
CHRISTIAN F. PEREIRA
Attorneys for Plaintiffs