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

ROCKY BRANDON, II,
individually, and as successor-in-
interest to ROCKY BRANDON,
deceased,

Plaintiff,

v.

COUNTY OF SAN
BERNARDINO; and DOES 1-10,
inclusive,

Defendants.

CASE No.: _____

[*Honorable:*

**PLAINTIFF’S COMPLAINT FOR
DAMAGES**

1. 42 U.S.C. § 1983 (Unreasonable Search and Seizure – Excessive Force)
2. 42 U.S.C. § 1983 (Denial of Familial Relationship – Fourteenth Amendment)
3. 42 U.S.C. § 1983 (Municipal Liability – Unconstitutional Custom, Practice, or Policy)
4. 42 U.S.C. § 1983 (Municipal Liability – Failure to Train)
5. 42 U.S.C. § 1983 (Municipal Liability – Ratification)
6. Battery
7. Negligence
8. Violation of the Bane Act

DEMAND FOR JURY TRIAL

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COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff ROCKY BRANDON, II for his Complaint against COUNTY OF SAN BERNARDINO, and DOES 1-10, inclusive, and hereby alleges as follows:

INTRODUCTION

1. This civil rights action arises out of the use of excessive and unreasonable force, including deadly force, against ROCKY BRANDON, deceased, by COUNTY OF SAN BERNARDINO Sheriff’s Department (“SBSD”) Deputies on December 18, 2020, at approximately 5:30 p.m., at or around the Sinclair Gas Station at 32787 Highway 18, Lucerne Valley, San Bernardino, California.

2. DECEDENT, Rocky Brandon, suffered serious bodily injury and death, as a direct and proximate result of the actions and inactions of DEFENDANTS COUNTY, SBSD Deputies, and DOES 1-10, inclusive. DEFENDANTS COUNTY, and DOES 1-10, inclusive, are directly liable for DECEDENT and PLAINTIFF’S injuries under federal law pursuant to 42 U.S.C. § 1983. DEFENDANT COUNTY is also vicariously liable for the acts and omissions of SBSD Deputies and DEFENDANT DOES 1-10, inclusive, pursuant to Cal. Govt. Code §§ 820 and 815(a).

3. DEFENDANT DOES 1-8, inclusive, caused various injuries herein directly, or by integrally participating or failing to intervene in the incident, and by engaging in other acts and/or omissions around the time of the incident. Specifically, DEFENDANT DOES 1-8, inclusive, repeatedly shot DECEDENT while he was unarmed and not an immediate threat of death or serious bodily injury, causing his death.

4. DEFENDANTS COUNTY OF SAN BERNARDINO and DOES 9-10, inclusive, also caused various injuries and are liable under federal law

1 and under the principles set forth in *Monell v. Department of Social Services*,
2 436 U.S. 658 (1978).

3 5. PLAINTIFF seeks compensatory and punitive damages from
4 DEFENDANTS for violating various rights under the United States
5 Constitution in connection with their use of excessive and unreasonable deadly
6 force.

7
8 **THE PARTIES**

9 6. At all relevant times, Plaintiff ROCKY BRANDON, II
10 (“PLAINTIFF”) was an individual residing in County of San Bernardino,
11 California. PLAINTIFF is the natural son of DECEDENT and brings this
12 action individually and as successor-in-interest, to DECEDENT. PLAINTIFF
13 seeks compensatory and punitive damages under federal and state law.

14 7. At all relevant times, Decedent ROCKY BRANDON
15 (“DECEDENT”), 65-years-old, was an individual residing in County of San
16 Bernardino, California. DECEDENT is the natural father of PLAINTIFF.

17 8. DEFENDANT COUNTY OF SAN BERNARDINO (“COUNTY”)
18 is a political subdivision of the State of California that is within this judicial
19 district. COUNTY is responsible for the actions, omissions, policies,
20 procedures, practices, and customs of its various agents and agencies,
21 including the COUNTY OF SAN BERNARDINO SHERIFF’S
22 DEPARTMENT (“SBSD”) and its agents and employees. At all relevant
23 times, DEFENDANT COUNTY was responsible for assuring that actions,
24 omissions, policies, procedures, practices, and customs of the COUNTY,
25 SBSB, and its employees and agents complied with the laws of the United
26 States and the State of California. At all relevant times, COUNTY was the
27 employer of DEFENDANT DOES 1-10.

1 9. At all relevant times, DEFENDANTS DOES 1-8, inclusive, were
2 duly appointed SBSB Deputies and employees and agents of the COUNTY,
3 subject to the oversight and supervision by COUNTY'S elected and non-
4 elected officials and acted within the course and scope of their employment
5 and under color of law, to wit, under the color of statutes, ordinances,
6 regulations, policies, customs, and usage of DEFENDANT COUNTY, SBSB,
7 and under color of the statutes and regulations of the State of California. At
8 all relevant times, each and every DEFENDANT was the agent of each and
9 every other DEFENDANT and had the legal duty to oversee and supervise the
10 hiring, conduct and employment of each and every DEFENDANT. At all
11 relevant times, DOES 1-8, inclusive, were acting with the complete authority
12 and ratification of their principal, DEFENDANT COUNTY.

13 10. Defendants DOES 9-10, inclusive, are managerial, supervisory,
14 or policymaking employees of the COUNTY who were acting under color of
15 law within the course and scope of their duties as supervisory Deputies for
16 the SBSB. DOES 9-10, inclusive, were acting with the complete authority of
17 their principal, DEFENDANT COUNTY.

18 11. PLAINTIFF is ignorant of the true names and capacities of
19 DEFENDANT DOES 1-10, inclusive, and therefore sues these defendants by
20 such fictitious names. PLAINTIFF will amend the complaint to allege the true
21 names and capacities of those defendants when the same has been ascertained.
22 PLAINTIFF is informed and believes, and on that basis alleges, that DOES 1-
23 10, inclusive, and each of them, are responsible in some manner for the
24 occurrences alleged herein and proximately caused PLAINTIFF'S damages.

25 12. On information and belief, DEFENDANT DOES 1-10, inclusive,
26 were at all relevant times residents of the County of San Bernardino.

27 13. PLAINTIFF is informed and believes, and on that basis alleges,
28 that DEFENDANTS acted at all times mentioned herein as the actual and/or

1 ostensible agents, employees, servants, or representatives of each other and,
2 in doing the activities alleged herein, acted within the scope of their authority
3 as agents and employees, and with the permission and consent of each other.

4 14. PLAINTIFF is informed and believes, and on that basis alleges,
5 that at all times mentioned herein all DEFENDANTS acted under color of law,
6 statute, ordinance, regulations, customs and usages of the State of California
7 and the COUNTY.

8 15. All DEFENDANTS who are natural persons, including DOES 1-
9 10, inclusive, are sued individually and/or in his/her capacity as officers,
10 deputies, investigators, sergeants, captains, commanders, supervisors, and/ or
11 civilian employees, agents, policy makers, and representatives of the
12 COUNTY and the SBSB.

13 16. DEFENDANT COUNTY is liable for the nonfeasance and
14 malfeasance of DEFENDANT DOES 1-10, inclusive, for the state law claims
15 herein pursuant to Cal. Govt. Code §§ 815.2(a), 815.6. Further, DEFENDANT
16 DOES 1-10, inclusive, are liable for their nonfeasance and malfeasance
17 pursuant to Cal. Govt. Code § 820(a).

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19 **JURISDICTION AND VENUE**

20 17. The Court has jurisdiction over PLAINTIFF'S claims pursuant to
21 28 U.S.C. §§ 1331 and 1343(a)(3)-(4) because PLAINTIFF asserts claims
22 arising under the laws of the United States including 42 U.S.C. § 1983 and the
23 Fourth Amendment of the United States Constitution.

24 18. This Court has supplemental jurisdiction over Plaintiff's claims
25 arising under state law pursuant to 28 U.S.C. § 1367(a), because those claims
26 are so related to the federal claims that they form part of the same case or
27 controversy under Article III of the United States Constitution.

28 19. Venue in this judicial district is proper pursuant to 28 U.S.C.

1 § 1391(b), because all incidents, events, and occurrences giving rise to this
2 action occurred within this district.

3
4 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

5 20. PLAINTIFF repeats and re-alleges each and every allegation of
6 paragraphs 1 through 19, inclusive, as if fully set forth herein.

7 21. PLAINTIFF sustained damages, including but not limited to the
8 loss of the familial relationship with his father, DECEDENT. DECEDENT
9 sustained injuries, including but not limited to pain and suffering when
10 DEFENDANT DOES 1-10 inclusive, used excessive and unreasonable force,
11 including deadly force, and employed negligent tactics when they used force,
12 including deadly force, against DECEDENT, causing DECEDENT great
13 bodily injury and death.

14 22. On December 18, 2020, DECEDENT, at approximately 5:20 a.m.,
15 went to the Sinclair Gas Station at 32787 State Highway 19. Upon information
16 and believe, the gas station was not open at that time, so DECEDENT sat in
17 his vehicle and waited.

18 23. Upon information and belief, unbeknownst to DECEDENT, SBSB
19 Deputies responded to the scene at approximately 5:30 a.m. while
20 DECEDENT was still inside of his car.

21 24. There was no crime in progress, the SBSB Deputies were not
22 responding to a serious or violent crime, and SBSB Deputies did not have any
23 information that any person was harmed or about to be harmed by
24 DECEDENT.

25 25. At this time, and all relevant times thereafter, DECEDENT never
26 verbally threatened any SBSB Deputy, DECEDENT was not an immediate
27 threat to the safety of any person or SBSB Deputy, including not an immediate
28 threat of death or serious bodily injury.

1 26. SBSD Deputies began using force, including deadly force against
2 DECEDENT causing DECEDENT fear, anxiety, pain, suffering, and death.

3 27. Additional SBSB Deputies failed to intervene on the use of
4 excessive and unreasonable force being used on DECEDENT and were
5 integral participants in the use of excessive and unreasonable force being used
6 on DECEDENT.

7 28. Upon information and belief, at the time that DEFENDANT
8 DOES 1-8, inclusive, were shooting at DECEDENT while in a car, no person
9 or SBSB Deputy was in the path of DECEDENT'S car, no person or Deputy
10 was about to be hit or run over by DECEDENT'S car, any person or Deputy
11 anywhere nearby DECEDENT'S car had the time and capability to move out
12 of the way if needed, the vehicle was not moving at a high rate of speed,
13 DECEDENT was not armed with a weapon, and DECEDENT did not pose an
14 immediate threat of death or serious bodily injury to any person or Deputy at
15 the time of the shots.

16 29. At the time that DEFENDANT DOES 1-8, inclusive, were
17 shooting at DECEDENT, DECEDENT had not verbally threatened any of the
18 SBSB Deputies, and DECEDENT never attempted to assault any of the SBSB
19 Deputies or anyone else.

20 30. As a result of DEFENDANTS' actions and inactions, including
21 SBSB Deputies' use of excessive and unreasonable force, DECEDENT
22 experienced serious bodily injury, pain and suffering, and death. As a result
23 of DEFENDANTS' actions and inactions, including SBSB Deputies' use of
24 excessive and unreasonable force, PLAINTIFF suffered the loss of his father.

25 31. SBSB Deputies violated their own policies and basic officer
26 training when they used force, including deadly force against DECEDENT.
27 SBSB Deputies are trained that they cannot shot at a vehicle just because it is
28 trying to flee. SBSB Deputies are trained that they cannot use deadly force to

1 effectuate an arrest when a person is not an immediate threat of death or
2 serious bodily injury. SBSB Deputies are trained that they should not
3 discharge a firearm at a moving vehicle because of the great potential risk of
4 death or serious bodily injury to the vehicle occupant, bystanders, and law
5 enforcement officers. Safety may be jeopardized by loss of control of the
6 vehicle or unnecessary shooting of occupants or bystanders. SBSB Deputies
7 are trained that they must position themselves in such a manner to avoid being
8 in the potential path of the vehicle and to move out of the path of a vehicle
9 instead of discharging a firearm at the vehicle or occupants.

10 32. The use of force was excessive and objectively unreasonable
11 under the circumstances, especially because the unarmed DECEDENT did not
12 pose an immediate threat of death or serious bodily injury to anyone at the
13 time the shooting, no person or deputy was in the path of the vehicle, no person
14 or deputy was about to be struck by the vehicle, no person or deputy was about
15 to be run over by the vehicle, this was not a high speed pursuit in a crowded
16 area, the SBSB Deputies violated their own training when they used force
17 against DECEDENT, the SBSB Deputies had the opportunity to move further
18 out of the way if they needed to, the SBSB Deputies were not responding to a
19 violent crime and had no information that any person was hurt or that
20 DECEDENT had hurt any person, DECEDENT did not verbally threaten any
21 person or deputy, and there were less intrusive means available to effectuate
22 a detention of the 65-year-old DECEDENT.

23 33. On or around June 8, 2021, PLAINTIFF filed a comprehensive
24 and timely claim for damages with the COUNTY OF SAN BERNARDINO
25 pursuant to applicable sections of the California Government Code.

26 34. On July 9, 2021, the COUNTY served a letter of rejection of
27 PLAINTIFF'S claims.
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1 35. PLAINTIFF seeks damages individually for the loss of his father,
2 and as success-in-interest of DECEDENT, for his pre-death pain and
3 suffering, and loss of enjoyment of life. PLAINTIFF also seeks reasonable
4 attorneys' fees and costs.

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6 **FIRST CLAIM FOR RELIEF**

7 **Unreasonable Search and Seizure – Excessive Force (42 U.S.C. § 1983)**

8 (By PLAINTIFF against DOES 1-8, inclusive)

9 36. PLAINTIFF repeats and re-alleges each and every allegation of
10 paragraphs 1 through 35, inclusive, as if fully set forth herein.

11 37. The Fourth Amendment of the United States Constitution, as
12 applied to State Actors by the Fourteenth Amendment, provides the right of
13 every person to be free from the use of excessive force by Deputies.

14 38. At all relevant times, DECEDENT never threatened any Deputy,
15 was not attempting, willing, or intending to inflict harm to anyone.
16 DEFENDANTS were not responding to a serious or violent crime,
17 DEFENDANTS had no information that any person was harmed or that
18 DECEDENT had harmed any person, and DEFENDANTS did not see a crime
19 in progress upon arrival. DECEDENT was not engaged in a high-speed
20 pursuit nor in a crowded area, there were no person or deputies in the path of
21 the vehicle, and there was no person or deputy about to be hit or run over by
22 the vehicle. Nevertheless, DEFENDANT DOES 1-8, inclusive, used force
23 including deadly force against DECEDENT, including by repeatedly shooting
24 at DECEDENT and causing his death.

25 39. When DEFENDANT DOES 1-8, inclusive, used force, including
26 deadly force against DECEDENT, DECEDENT was not an immediate threat
27 to the safety of others, was not an immediate threat of death or serious bodily
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1 injury, and there were several less-intrusive alternatives to the use of deadly
2 force available to the SBSB Deputies at the time.

3 40. SBSB Deputies were equipped with less-lethal force options that
4 could have been employed instead of lethal force. Then the SBSB should have
5 given the DECEDENT time to comply after less-lethal force was used instead
6 of escalating the situation to using deadly force. SBSB Deputies are trained
7 that they should consider the least intrusive force option, and to only use
8 deadly force when necessary. The SBSB Deputies had the time and ability to
9 attempt voluntary compliance without resorting to physical force through de-
10 escalation and tactical communication but failed to do so.

11 41. Additionally, considering the number of SBSB Deputies on scene
12 against the sole DECEDENT, size, age, and relative strength of the SBSB
13 Deputies against the sole 65-year-old DECEDENT, and whether the SBSB
14 Deputies had reason to believe that DECEDENT was mentally ill or
15 emotionally disturbed, the use of force and deadly force against DECEDENT
16 was objectively unreasonable.

17 42. Upon information and belief, the SBSB Deputies had the
18 opportunity to provide a verbal warning to DECEDENT but failed to do so
19 prior to the use of deadly force against DECEDENT. This shooting violated
20 SBSB Deputy training and standard sheriff's deputy training, including
21 violating training with respect to the use of deadly force and with respect to
22 the shooting of a motor vehicle and its occupant.

23 43. DEFENDANT DOES 1-8, inclusive, caused various injuries as
24 mentioned herein by integrally participating or failing to intervene in the
25 incident, and by engaging in other acts and/or omissions around the time of
26 the incident. DEFENDANTS' acts and omissions deprived DECEDENT of
27 his right to be secure in his person against unreasonable searches and seizures
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1 as guaranteed to DECEDENT under the Fourth Amendment to the United
2 States Constitution and applied to state actors by the Fourteenth Amendment.

3 44. As a direct result of the aforesaid acts and omissions of
4 DEFENDANT DOES 1-8, inclusive, DECEDENT suffered great physical and
5 mental injury prior to his death, loss of life, and loss of enjoyment of life.

6 45. The conduct of DEFENDANT DOES 1-8, inclusive, alleged above
7 was willful, wanton, malicious, and done with reckless disregard for the rights
8 and safety of DECEDENT and warrants the imposition of exemplary and
9 punitive damages in an amount according to proof.

10 46. DEFENDANT DOES 1-8, inclusive, were acting under color of
11 state law and within the course and scope of their employment as law
12 enforcement Deputies for the COUNTY.

13 47. PLAINTIFF seeks survival damages, including but not limited to
14 pre-death pain and suffering, loss of life, and loss of enjoyment of life, under
15 this claim. PLAINTIFF also seeks reasonable attorneys' fees and costs under
16 this claim.

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18 **SECOND CLAIM FOR RELIEF**

19 **Substantive Due Process (42 U.S.C. § 1983)**

20 (By PLAINTIFF against DOES 1-8, inclusive)

21 48. PLAINTIFF repeats and re-alleges each and every allegation in
22 paragraphs 1 through 47 of this Complaint with the same force and effect as
23 if fully set forth herein.

24 49. The Substantive Due Process Clause of the Fourteenth
25 Amendment to the United States Constitution guarantees all persons the right
26 to be free from unlawful state interference with their familial relations.

27 50. DEFENDANT DOES 1-8, inclusive, intentionally shot the visibly
28 unarmed DECEDENT, causing his death, when he was not an immediate threat

1 of death or serious bodily injury to any person at the time. Upon information
2 and belief, DEFENDANTS failed to give DECEDENT a verbal warning before
3 they used deadly force against him and took his life. There were less-intrusive
4 means available to the SBSB Deputies besides the use of deadly force,
5 including de-escalation and tactical communication to attempt voluntary
6 compliance, and upon information and believe, the SBSB failed to deploy
7 these less-intrusive techniques and/or failed to allow DECEDENT the time to
8 comply thereafter.

9 51. The use of excessive and objectively unreasonable deadly force
10 by DEFENDANT DOES 1-8, inclusive, as alleged above, shocks the
11 conscience, was in deliberate indifference and reckless disregard for
12 DECEDENT'S and Plaintiff's rights, and displayed a purpose to harm
13 DECEDENT unrelated to a legitimate law enforcement objective. In so doing,
14 DEFENDANTS' DOES 1-8, inclusive, conduct constitutes a violation of
15 PLAINTIFF'S and DECEDENT'S Fourteenth Amendment Substantive Due
16 Process right to be free from unlawful state interference with their familial
17 relationship with their son and beloved family member.

18 52. DEFENDANTS' DOES 1-8, inclusive, conduct was malicious,
19 oppressive and in reckless disregard for the rights and safety of DECEDENT
20 and PLAINTIFF and warrants the imposition of exemplary and punitive
21 damages as to DEFENDANT DOES 1-8, inclusive.

22 53. As a direct result of the death of DECEDENT, PLAINTIFF has
23 suffered the loss of DECEDENT'S love, care, comfort, society,
24 companionship, assistance, protection, affection, moral support, financial
25 support, and loss of services of DECEDENT. PLAINTIFF seeks wrongful
26 death damages under this claim.

27 54. PLAINTIFF also seeks attorneys' fees pursuant to 42 U.S.C. §
28 1988 and costs of suit.

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THIRD CLAIM FOR RELIEF

Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)

(By PLAINTIFF against COUNTY and DOES 9-10, inclusive)

55. PLAINTIFF repeats and re-alleges each and every allegation of paragraphs 1 through 54, inclusive, as if fully set forth herein.

56. DEFENDANT DOES 1-8, inclusive, acted under color of state law and within the course and scope of his employment when they intentionally shot and killed DECEDENT without there being an immediate threat of death or serious bodily injury, thereby using excessive and unreasonable force against DECEDENT. At all relevant times, DECEDENT was unarmed, there was no person in the path of the vehicle, no person about to be hit or run over by the vehicle, this was not a high-speed chase nor in a crowded area, the SBSB Deputies were not responding to a violent crime, there was no crime in progress with SBSB Deputies arrived, DECEDENT did not verbally threaten any person or officer, and did not harm any person or officer.

57. DEFENDANT DOES 1-8, inclusive, acted pursuant to an expressly adopted or fiscal policy or longstanding practice or custom of the DEFENDANT COUNTY, and DOES 9-10, inclusive.

58. On information and belief, DEFENDANT DOES 1-8, inclusive, were not disciplined, reprimanded, retrained, provided additional training, suspended, or otherwise penalized in connection with the deprivation of PLAINTIFF’S or DECEDENT’S rights.

59. DEFENDANTS COUNTY, and DOES 9-10, inclusive, together with other COUNTY policymakers and supervisors, maintained, inter alia, the following unconstitutional customs, practices, and policies:

1 (a) Using excessive and objectively unreasonable force,
2 including deadly force on unarmed persons who do not pose a risk of
3 immediate death or serious bodily injury to others.

4 (b) Providing inadequate training regarding the use of force,
5 including the use of less-lethal force, and deadly force.

6 (c) Using deadly force against a person in a vehicle and/or in a
7 moving vehicle.

8 (d) Providing inadequate training regarding the use of deadly
9 force against a person in a vehicle and/or moving vehicle.

10 (e) Employing and retaining as Deputies, individuals such as
11 DEFENDANT DOES 1-8, inclusive, who upon information and belief,
12 DEFENDANT COUNTY, and DOES 9-10, inclusive, at all times
13 material herein, knew or reasonably should have known had dangerous
14 propensities for abusing their authority and for using excessive force.

15 (f) Inadequately supervising, training, controlling, assigning,
16 and disciplining COUNTY law enforcement Deputies, and other
17 personnel, including DEFENDANT DOES 1-8, inclusive, who
18 COUNTY knew or in the exercise of reasonable care should have
19 known, had the aforementioned propensities or character traits.

20 (g) Maintaining grossly inadequate procedures for reporting,
21 supervising, investigating, reviewing, disciplining and controlling
22 misconduct by law enforcement Deputies of the COUNTY.

23 (h) Announcing that unjustified uses of force are “within
24 policy,” including shootings that were later determined in court to be
25 unconstitutional.

26 (i) Even where uses of force are determined in court to be
27 unconstitutional, refusing to discipline, terminate, or retrain the
28 Deputies involved.

1 (j) Failing to adequately discipline COUNTY law enforcement
2 Deputies for the above-mentioned categories of misconduct, including
3 inadequate discipline and “slaps on the wrist,” discipline that is so slight
4 as to be out of proportion with the magnitude of the misconduct, and
5 other inadequate discipline that is tantamount to encouraging
6 misconduct.

7 (k) Encouraging, accommodating, or facilitating a “blue code
8 of silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,” or
9 simply “code of silence,” pursuant to which Deputies do not report other
10 Deputies’ errors, misconduct, or crimes. Pursuant to this code of
11 silence, if questioned about an incident of misconduct involving another
12 officer, while following the code, the officer being questioned will claim
13 ignorance of the other officer’s wrongdoing.

14 (l) Maintaining a policy of inaction and an attitude of
15 indifference towards soaring numbers of law enforcement shootings,
16 including failing to discipline, retrain, investigate, terminate, and
17 recommend deputies for criminal prosecution who participate in
18 shootings of unarmed people.

19 (m) Otherwise covering up police misconduct.

20 60. On information and belief, the COUNTY has deficient policies
21 with respect to shooting at vehicles and their occupants. On information and
22 belief, the COUNTY has deficient policies that fail to train deputies not to
23 shoot vehicles or their occupants and fail to train deputies not to stand in the
24 path of the vehicle the Deputy thinks might move. As a result of these
25 deficient policies, the Deputy Defendants shot DECEDENT while DECEDENT
26 occupied a vehicle, resulting in the injuries claimed in this lawsuit.

27 61. DEFENDANTS COUNTY and DOES 9-10, inclusive, together
28 with various other officials, whether named or unnamed, had either actual or

1 constructive knowledge of the deficient policies, practices and customs
2 alleged herein. Despite having knowledge as stated above, these
3 DEFENDANTS condoned, tolerated and through actions and inactions thereby
4 ratified such policies. Said DEFENDANTS also acted with deliberate
5 indifference to the foreseeable effects and consequences of these policies with
6 respect to the constitutional rights of PLAINTIFF and other individuals
7 similarly situated.

8 62. By perpetrating, sanctioning, tolerating, and ratifying the
9 outrageous conduct and other wrongful acts, DEFENDANTS COUNTY and
10 DOES 9-10, inclusive, acted with intentional, reckless, and callous disregard
11 for the PLAINTIFF'S constitutional rights. Furthermore, the policies,
12 practices, and customs implemented, maintained, and tolerated by
13 DEFENDANTS COUNTY and DOES 9-10, inclusive, were affirmatively
14 linked to and were a significantly influential force behind PLAINTIFF'S
15 injuries.

16 63. By reason of the aforementioned acts and omissions, and as a
17 direct and proximate result of the aforementioned unconstitutional policies
18 and customs, DECEDENT endured substantial pain and suffering, loss of
19 enjoyment of life, and loss of life, and PLAINTIFF has suffered the loss of his
20 father, and will continue to be deprived for the remainder of his natural life.

21 64. The acts of each of DEFENDANTS DOES 9-10, inclusive, were
22 willful, wanton, oppressive, malicious, fraudulent, and extremely offensive
23 and unconscionable to any person of normal sensibilities, and therefore
24 warrants imposition of exemplary and punitive damages as to DOES 9-10,
25 inclusive.

26 65. On information and belief, the following are examples of cases
27 where SBSB Deputies were not disciplined, reprimanded, retrained,
28 suspended, or otherwise penalized in connection with the underlying acts

1 giving rise to the below lawsuits, which indicates that the COUNTY routinely
2 ratifies such behavior, fails to train its Deputies, and maintains a practice of
3 allowing such behavior:

4 a. In *Estate of Merlin Factor v. County of San Bernardino, et al.*,
5 case number 5:14-cv-01289-DMG-AGR(x), Plaintiffs argued that the use of
6 deadly force against the unarmed Merlin Factor in 2013 was unreasonable.
7 The police reports showed that Mr. Factor was unarmed, and the parties
8 settled the case for a high six-figure settlement. Upon information and
9 belief, no deputy was retained, provided additional training, disciplined,
10 suspended, or terminated as a result of this incident.

11 b. In *Archibald v. County of San Bernardino*, case number 5-16-
12 cv-1128, Plaintiff argued that the involved San Bernardino County sheriff's
13 deputy used deadly force against the unarmed Nathanael Pickett in 2015
14 when he posed no immediate threat. In 2018, the jury in that case returned
15 a \$33.5 million verdict against Defendant County of San Bernardino and its
16 involved deputy, Kyle Woods. In the Archibald case, there was video
17 footage that captured the shooting incident. However, SBSB accepted
18 Woods' version over what was depicted in the video and rejected the
19 objective evidence. Woods continued to work at SBSB after the Archibald
20 shooting, and then he was involved in another shooting. On January 14,
21 2018, after the Archibald shooting incident, Woods shot Ryan Martinez
22 after Mr. Martinez's vehicle flipped over and while Mr. Martinez was still
23 inside the vehicle. The contentions against Woods were that he shot Mr.
24 Martinez without giving him commands, without warning, and when there
25 was no imminent or immediate threat of death or serious bodily injury to
26 anyone. After the Martinez shooting, Woods remained employed by the
27 SBSB. That the SBSB retained Woods after he shot Ryan Martinez raises
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1 an inference that the County retained and hired deputies who demonstrated
2 a propensity for abusing their authority.

3 c. In *T.M. (Phillips) v. County of San Bernardino, et al.*, case
4 number 5:18- cv-2532-R-PLA, Plaintiff alleged that the shooting of
5 Lajuana Phillips who was driving her vehicle despite not posing an
6 immediate threat of death or serious bodily injury was excessive and
7 unreasonable. In 2018, the parties settled the case for a seven-figure
8 settlement. Upon information and belief, no deputy was retained, provided
9 additional training, disciplined, suspended, or terminated as a result of this
10 incident.

11 d. In *Ronero v. County of San Bernardino*, case number 5:16-cv-
12 02655, the COUNTY settled with a man involved in non-fatal deputy
13 shooting that resulting in serious injuries including the loss of the victim's
14 left leg. The COUNTY ratified the deputies' conduct, found the shooting to
15 be "within policy," and failed to reprimand, retrain, or otherwise penalize
16 the deputies for their conduct.

17 e. In *Young v. County of San Bernardino, et al.*, case number
18 5:15-CV- 01102-JGB-SP, Plaintiff argued that the 2014 shooting of Keivon
19 Young was excessive and unreasonable. In 2016 a jury agreed and awarded
20 a high six-figure verdict in Plaintiff's favor. Upon information and belief,
21 no deputy was retained, provided additional training, disciplined,
22 suspended, or terminated as a result of this incident.

23 f. In *M.A., et al. v. County of San Bernardino, et al.*, case number
24 8:20-c-00567-JFW-SHK, Plaintiffs alleged that the 2019 fatal shooting of
25 Darrell Allen, Jr. was excessive and unreasonable when deputies
26 intentionally shot Mr. Allen several times without warning, and when Mr.
27 Allen was not an immediate threat of death or serious bodily injury. In
28 2021, the parties settled the case for a seven-figure settlement. Upon

1 information and belief, no deputy was retained, provided additional
2 training, disciplined, suspended, or terminated as a result of this incident.

3 g. In *Brown v. County of San Bernardino*, case number 5:20-cv-
4 01658, Mr. Brown alleged that deputies used excessive and unreasonable
5 force when they shot him several times and when he never threatened any
6 person with a weapon or vehicle. In 2021, the parties settled the case for a
7 high six-figure settlement. Upon information and belief, no deputy was
8 retained, provided additional training, disciplined, suspended, or terminated
9 as a result of this incident.

10 h. In *Gomez v. County of San Bernardino*, case number 5:13-cv-
11 2185, a lawsuit involving the non-fatal shooting of an unarmed 31-year-old
12 man in his apartment complex after a vehicle pursuit.

13 i. In *Estate of Allen Kephart v. County of San Bernardino*, CIL
14 VDS 1110314, San Bernardino Superior Court, a lawsuit involving an
15 incident wherein multiple deputies used excessive force against a 43-year-
16 old man, which resulted in death.

17 j. In *Elio Carrion v. County of San Bernardino*, case number
18 2:06-cv-8210, a lawsuit involving a non-fatal shooting of a passenger.

19 k. In *Sofflet v. County of San Bernardino*, case number 5:18-cv-
20 279, wherein a seven-figure settlement was reached regarding the in-
21 custody death of a 34-year-old woman.

22 l. Numerous prior incidents at County San Bernardino detention
23 centers also support Plaintiffs' claims for Municipal Liability in this case.
24 For example, between 2014 and 2016, thirty-three County inmates filed
25 lawsuits alleging torture by the County and its deputies' involving
26 violations of 42 USC 1983. (Case Nos. 5:15-cv-02515-JGB-DTB). Johnny
27 Alcala and 14 other inmates sued the County, and David Smith filed his
28 own lawsuit (5:15-cv-02513-JGB-DTB), going back to years of torture by

1 COUNTY correctional officers. Moreover, the ACLU also brought a class
2 action lawsuit alleging unconstitutional practice of LGBT inmates at the
3 County's WVDC. (Case No. 14-2171-JGB-SP). The ACLU's lawsuit
4 addressed the trouble of WVDC in denying services in unconstitutional
5 manner, including failure to make safety checks as mandated by Title 15,
6 and the suit represented approximately 600 individuals.

7 66. Accordingly, DEFENDANTS COUNTY and DOES 9-10,
8 inclusive, each are liable for compensatory damages under 42 U.S.C. § 1983.

9 67. PLAINTIFF brings this claim as successor-in-interest to
10 DECEDENT and seeks survival damages. PLAINTIFF also seeks reasonable
11 attorneys' fees and costs under this claim.

12

13

FOURTH CLAIM FOR RELIEF

14

Municipal Liability for Failure to Train (42 U.S.C. §1983)

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(By PLAINTIFF against COUNTY and DOES 9-10, inclusive)

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68. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs 1 through 67 of this Complaint with the same force and effect as if fully set forth herein.

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69. At all relevant times, DEFENDANT DOES 1-8, inclusive, acted under color of law and within the course and scope of their employment with the COUNTY.

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70. The acts of DEFENDANT DOES 1-8, inclusive, as described herein, deprived DECEDENT and PLAINTIFF of their particular rights under the United States Constitution, including when they intentionally shot DECEDENT without justification, causing his death.

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71. On information and belief, DEFENDANT COUNTY failed to properly and adequately train DEFENDANTS DOES 1-8, inclusive, including with regard to the use of deadly force generally, and with respect to shooting

1 at motor vehicles and their occupants. The training policies of
2 DEFENDANTS COUNTY and DOES 9-10, inclusive, were not adequate to
3 train its deputies to handle the usual and recurring situations with which they
4 must deal.

5 72. On information and belief, the COUNTY failed to train their
6 deputies not to shoot at vehicles or their occupants and failed to train their
7 deputies not to stand in the path of a vehicle the deputy thinks might move.
8 As a result of this deficient policy and deficient training, the deputy defendants
9 shot DECEDENT, resulting in the injuries claimed in this lawsuit.

10 73. The training policies of DEFENDANT COUNTY were not
11 adequate to train its Deputies to handle the usual and recurring situations with
12 which they must deal, including de-escalation techniques, tactical
13 communication, tactical positioning, and both the use of less than lethal and
14 lethal force.

15 74. DEFENDANT COUNTY and DOES 9-10, inclusive, were
16 deliberately indifferent to the obvious consequences of its failure to train its
17 Deputies adequately, including with respect to the use of force and with
18 respect to shooting at vehicles and their occupants.

19 75. The failure of DEFENDANT COUNTY and DOES 9-10,
20 inclusive, to provide adequate training caused the deprivation of
21 PLAINTIFF'S and DECEDENT'S rights by DEFENDANT DOES 1-8,
22 inclusive; that is, DEFENDANTS' failure to train is so closely related to the
23 deprivation of PLAINTIFF'S and DECEDENT'S rights as to be the moving
24 force that caused the ultimate injury.

25 76. The following are only a few examples of cases where the
26 COUNTY failed to train its Deputies, and the involved Deputies were not
27 disciplined, reprimanded, retrained, suspended, or otherwise penalized in
28 connection with the underlying acts giving rise to the below lawsuits, which

1 indicates that DEFENDANT COUNTY failed to adequately train its Deputies,
2 more specifically the failure to train with regard to the use of force:

3 a. In *Estate of Merlin Factor v. County of San Bernardino, et al.*,
4 case number 5:14-cv-01289-DMG-AGR(x), Plaintiffs argued that the use of
5 deadly force against the unarmed Merlin Factor in 2013 was unreasonable.
6 The police reports showed that Mr. Factor was unarmed, and the parties
7 settled the case for a high six-figure settlement. Upon information and
8 belief, no deputy was retained, provided additional training, disciplined,
9 suspended, or terminated as a result of this incident.

10 b. In *Archibald v. County of San Bernardino*, case number 5-16-
11 cv-1128, Plaintiff argued that the involved San Bernardino County sheriff's
12 deputy used deadly force against the unarmed Nathanael Pickett in 2015
13 when he posed no immediate threat. In 2018, the jury in that case returned
14 a \$33.5 million verdict against Defendant County of San Bernardino and its
15 involved deputy, Kyle Woods. In the Archibald case, there was video
16 footage that captured the shooting incident. However, SBSB accepted
17 Woods' version over what was depicted in the video and rejected the
18 objective evidence. Woods continued to work at SBSB after the Archibald
19 shooting, and then he was involved in another shooting. On January 14,
20 2018, after the Archibald shooting incident, Woods shot Ryan Martinez
21 after Mr. Martinez's vehicle flipped over and while Mr. Martinez was still
22 inside the vehicle. The contentions against Woods were that he shot Mr.
23 Martinez without giving him commands, without warning, and when there
24 was no imminent or immediate threat of death or serious bodily injury to
25 anyone. After the Martinez shooting, Woods remained employed by the
26 SBSB. That the SBSB retained Woods after he shot Ryan Martinez raises
27 an inference that the County retained and hired deputies who demonstrated
28 a propensity for abusing their authority.

1 c. In *T.M. (Phillips) v. County of San Bernardino, et al.*, case
2 number 5:18- cv-2532-R-PLA, Plaintiff alleged that the shooting of
3 Lajuana Phillips who was driving her vehicle despite not posing an
4 immediate threat of death or serious bodily injury was excessive and
5 unreasonable. In 2018, the parties settled the case for a seven-figure
6 settlement. Upon information and belief, no deputy was retained, provided
7 additional training, disciplined, suspended, or terminated as a result of this
8 incident.

9 d. In *Ronero v. County of San Bernardino*, case number 5:16-cv-
10 02655, the COUNTY settled with a man involved in non-fatal deputy
11 shooting that resulting in serious injuries including the loss of the victim’s
12 left leg. The COUNTY ratified the deputies’ conduct, found the shooting to
13 be “within policy,” and failed to reprimand, retrain, or otherwise penalize
14 the deputies for their conduct.

15 e. In *Young v. County of San Bernardino, et al.*, case number
16 5:15-CV- 01102-JGB-SP, Plaintiff argued that the 2014 shooting of Keivon
17 Young was excessive and unreasonable. In 2016 a jury agreed and awarded
18 a high six-figure verdict in Plaintiff’s favor. Upon information and belief,
19 no deputy was retained, provided additional training, disciplined,
20 suspended, or terminated as a result of this incident.

21 f. In *M.A., et al. v. County of San Bernardino, et al.*, case number
22 8:20-c-00567-JFW-SHK, Plaintiffs alleged that the 2019 fatal shooting of
23 Darrell Allen, Jr. was excessive and unreasonable when deputies
24 intentionally shot Mr. Allen several times without warning, and when Mr.
25 Allen was not an immediate threat of death or serious bodily injury. In
26 2021, the parties settled the case for a seven-figure settlement. Upon
27 information and belief, no deputy was retained, provided additional
28 training, disciplined, suspended, or terminated as a result of this incident.

1 g. In *Brown v. County of San Bernardino*, case number 5:20-cv-
2 01658, Mr. Brown alleged that deputies used excessive and unreasonable
3 force when they shot him several times and when he never threatened any
4 person with a weapon or vehicle. In 2021, the parties settled the case for a
5 high six-figure settlement. Upon information and belief, no deputy was
6 retained, provided additional training, disciplined, suspended, or terminated
7 as a result of this incident.

8 h. In *Gomez v. County of San Bernardino*, case number 5:13-cv-
9 2185, a lawsuit involving the non-fatal shooting of an unarmed 31-year-old
10 man in his apartment complex after a vehicle pursuit.

11 i. In *Estate of Allen Kephart v. County of San Bernardino*, CIL
12 VDS 1110314, San Bernardino Superior Court, a lawsuit involving an
13 incident wherein multiple deputies used excessive force against a 43-year-
14 old man, which resulted in death.

15 j. In *Elio Carrion v. County of San Bernardino*, case number
16 2:06-cv-8210, a lawsuit involving a non-fatal shooting of a passenger.

17 k. In *Sofflet v. County of San Bernardino*, case number 5:18-cv-
18 279, wherein a seven-figure settlement was reached regarding the in-
19 custody death of a 34-year-old woman.

20 l. Numerous prior incidents at County San Bernardino detention
21 centers also support Plaintiffs' claims for Municipal Liability in this case.
22 For example, between 2014 and 2016, thirty-three County inmates filed
23 lawsuits alleging torture by the County and its deputies' involving
24 violations of 42 USC 1983. (Case Nos. 5:15-cv-02515-JGB-DTB). Johnny
25 Alcala and 14 other inmates sued the County, and David Smith filed his
26 own lawsuit (5:15-cv-02513-JGB-DTB), going back to years of torture by
27 COUNTY correctional officers. Moreover, the ACLU also brought a class
28 action lawsuit alleging unconstitutional practice of LGBT inmates at the

1 County's WVDC. (Case No. 14-2171-JGB-SP). The ACLU's lawsuit
2 addressed the trouble of WVDC in denying services in unconstitutional
3 manner, including failure to make safety checks as mandated by Title 15,
4 and the suit represented approximately 600 individuals.

5 77. As a direct and proximate result of the aforementioned conduct,
6 DECEDENT endured severe pain and suffering loss of enjoyment of life, and
7 loss of life. Further, as a direct and proximate result of the aforementioned
8 conduct, PLAINTIFF endured the loss of his father, including being deprived
9 of the life-long love, companionship, comfort, support, society, care, and
10 sustenance of DECEDENT, and will continue to be so deprived for the
11 remainder of his natural life.

12 78. Accordingly, DEFENDANT COUNTY and DOES 9-10,
13 inclusive, are liable to PLAINTIFF for compensatory damages under 42
14 U.S.C. § 1983.

15 79. PLAINTIFF brings this claim as successor-in-interest to
16 DECEDENT and seeks survival damages. PLAINTIFF also seeks reasonable
17 attorneys' fees and costs under this claim.

18
19 **FIFTH CLAIM FOR RELIEF**

20 **Municipal Liability – Ratification (42 U.S.C. § 1983)**

21 (By PLAINTIFF against COUNTY and DOES 9-10, inclusive)

22 80. PLAINTIFF repeats and re-alleges each and every allegation in
23 paragraphs 1 through 79 of this Complaint with the same force and effect as
24 if fully set forth herein.

25 81. At all relevant times, DEFENDANT DOES 1-8, inclusive, acted
26 under color of law and within the course and scope of their employment with
27 the COUNTY.

1 82. The acts of DEFENDANT DOES 1-8, inclusive, as described
2 herein, deprived DECEDENT and PLAINTIFF of their particular rights under
3 the United States Constitution, including when they intentionally shot
4 DECEDENT without justification, causing his death.

5 83. Upon information and belief, a final policymaker, acting under
6 color of law, has a history of ratifying the unconstitutional and unreasonable
7 uses of force, including deadly force.

8 84. Upon information and belief, a final policymaker for the
9 COUNTY, acting under color of law, who had final policymaking authority
10 concerning the acts of DEFENDANT DOES 1-8, inclusive, and the bases for
11 them, ratified the acts and omissions of DEFENDANT DOES 1-8, inclusive,
12 and the bases for them. Upon information and belief, the final policymaker
13 knew of and specifically approved of DEFENDANTS' acts, specifically
14 approving the SBSB Deputies' shooting of the unarmed 65-year-old
15 DECEDENT when he was not an immediate threat of death or serious bodily
16 injury.

17 85. On information and belief, the official policies with respect to the
18 incident are that Deputies are not to use deadly force against an individual
19 unless the individual poses an immediate risk of death or serious bodily injury
20 to the Deputies or others. The Deputies' actions deviated from these official
21 policies because DECEDENT did not pose an immediate threat of death or
22 serious bodily injury to the involved Deputies or anyone else.

23 86. Upon information and belief, a final policymaker(s) has
24 determined (or will determine) that the acts of DEFENDANT DOES 1-8,
25 inclusive, were "within policy."

26 87. The following are only a few examples of cases where SBSB
27 Deputies were not disciplined, reprimanded, retrained, suspended, or
28 otherwise penalized in connection with the underlying acts giving rise to the

1 below lawsuits, which indicates that DEFENDANT COUNTY routinely
2 ratifies such behavior:

3 a. In *Estate of Merlin Factor v. County of San Bernardino, et al.*,
4 case number 5:14-cv-01289-DMG-AGR(x), Plaintiffs argued that the use of
5 deadly force against the unarmed Merlin Factor in 2013 was unreasonable.
6 The police reports showed that Mr. Factor was unarmed, and the parties
7 settled the case for a high six-figure settlement. Upon information and
8 belief, no deputy was retained, provided additional training, disciplined,
9 suspended, or terminated as a result of this incident.

10 b. In *Archibald v. County of San Bernardino*, case number 5-16-
11 cv-1128, Plaintiff argued that the involved San Bernardino County sheriff's
12 deputy used deadly force against the unarmed Nathanael Pickett in 2015
13 when he posed no immediate threat. In 2018, the jury in that case returned
14 a \$33.5 million verdict against Defendant County of San Bernardino and its
15 involved deputy, Kyle Woods. In the Archibald case, there was video
16 footage that captured the shooting incident. However, SBSB accepted
17 Woods' version over what was depicted in the video and rejected the
18 objective evidence. Woods continued to work at SBSB after the Archibald
19 shooting, and then he was involved in another shooting. On January 14,
20 2018, after the Archibald shooting incident, Woods shot Ryan Martinez
21 after Mr. Martinez's vehicle flipped over and while Mr. Martinez was still
22 inside the vehicle. The contentions against Woods were that he shot Mr.
23 Martinez without giving him commands, without warning, and when there
24 was no imminent or immediate threat of death or serious bodily injury to
25 anyone. After the Martinez shooting, Woods remained employed by the
26 SBSB. That the SBSB retained Woods after he shot Ryan Martinez raises
27 an inference that the County retained and hired deputies who demonstrated
28 a propensity for abusing their authority.

1 c. In *T.M. (Phillips) v. County of San Bernardino, et al.*, case
2 number 5:18- cv-2532-R-PLA, Plaintiff alleged that the shooting of
3 Lajuana Phillips who was driving her vehicle despite not posing an
4 immediate threat of death or serious bodily injury was excessive and
5 unreasonable. In 2018, the parties settled the case for a seven-figure
6 settlement. Upon information and belief, no deputy was retained, provided
7 additional training, disciplined, suspended, or terminated as a result of this
8 incident.

9 d. In *Ronero v. County of San Bernardino*, case number 5:16-cv-
10 02655, the COUNTY settled with a man involved in non-fatal deputy
11 shooting that resulting in serious injuries including the loss of the victim’s
12 left leg. The COUNTY ratified the deputies’ conduct, found the shooting to
13 be “within policy,” and failed to reprimand, retrain, or otherwise penalize
14 the deputies for their conduct.

15 e. In *Young v. County of San Bernardino, et al.*, case number
16 5:15-CV- 01102-JGB-SP, Plaintiff argued that the 2014 shooting of Keivon
17 Young was excessive and unreasonable. In 2016 a jury agreed and awarded
18 a high six-figure verdict in Plaintiff’s favor. Upon information and belief,
19 no deputy was retained, provided additional training, disciplined,
20 suspended, or terminated as a result of this incident.

21 f. In *M.A., et al. v. County of San Bernardino, et al.*, case number
22 8:20-c-00567-JFW-SHK, Plaintiffs alleged that the 2019 fatal shooting of
23 Darrell Allen, Jr. was excessive and unreasonable when deputies
24 intentionally shot Mr. Allen several times without warning, and when Mr.
25 Allen was not an immediate threat of death or serious bodily injury. In
26 2021, the parties settled the case for a seven-figure settlement. Upon
27 information and belief, no deputy was retained, provided additional
28 training, disciplined, suspended, or terminated as a result of this incident.

1 g. In *Brown v. County of San Bernardino*, case number 5:20-cv-
2 01658, Mr. Brown alleged that deputies used excessive and unreasonable
3 force when they shot him several times and when he never threatened any
4 person with a weapon or vehicle. In 2021, the parties settled the case for a
5 high six-figure settlement. Upon information and belief, no deputy was
6 retained, provided additional training, disciplined, suspended, or terminated
7 as a result of this incident.

8 h. In *Gomez v. County of San Bernardino*, case number 5:13-cv-
9 2185, a lawsuit involving the non-fatal shooting of an unarmed 31-year-old
10 man in his apartment complex after a vehicle pursuit.

11 i. In *Estate of Allen Kephart v. County of San Bernardino*, CIL
12 VDS 1110314, San Bernardino Superior Court, a lawsuit involving an
13 incident wherein multiple deputies used excessive force against a 43-year-
14 old man, which resulted in death.

15 j. In *Elio Carrion v. County of San Bernardino*, case number
16 2:06-cv-8210, a lawsuit involving a non-fatal shooting of a passenger.

17 k. In *Sofflet v. County of San Bernardino*, case number 5:18-cv-
18 279, wherein a seven-figure settlement was reached regarding the in-
19 custody death of a 34-year-old woman.

20 l. Numerous prior incidents at County San Bernardino detention
21 centers also support Plaintiffs' claims for Municipal Liability in this case.
22 For example, between 2014 and 2016, thirty-three County inmates filed
23 lawsuits alleging torture by the County and its deputies' involving
24 violations of 42 USC 1983. (Case Nos. 5:15-cv-02515-JGB-DTB). Johnny
25 Alcala and 14 other inmates sued the County, and David Smith filed his
26 own lawsuit (5:15-cv-02513-JGB-DTB), going back to years of torture by
27 COUNTY correctional officers. Moreover, the ACLU also brought a class
28 action lawsuit alleging unconstitutional practice of LGBT inmates at the

1 County’s WVDC. (Case No. 14-2171-JGB-SP). The ACLU’s lawsuit
2 addressed the trouble of WVDC in denying services in unconstitutional
3 manner, including failure to make safety checks as mandated by Title 15,
4 and the suit represented approximately 600 individuals.

5 88. By reason of the aforementioned acts and omissions,
6 DEFENDANTS COUNTY and DOES 9-10, inclusive, are liable to
7 PLAINTIFF for compensatory damages under 42 U.S.C. § 1983.

8 89. PLAINTIFF brings this claim as successor-in-interest to
9 DECEDENT and seeks survival damages. PLAINTIFF also seeks reasonable
10 attorneys’ fees and costs under this claim.

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17 **SIXTH CLAIM FOR RELIEF**

18 **Battery (Cal. Govt. Code §§ 815, 820 and California Common Law)**

19 (By PLAINTIFF against DEFENDANT DOES 1-8, inclusive, directly; and
20 COUNTY and DOES 9-10 vicariously)

21 90. PLAINTIFF repeats and realleges each and every allegation in
22 paragraphs 1 through 89 of this Complaint with the same force and effect as
23 if fully set forth herein.

24 91. At all relevant times, DEFENDANT DOES 1-8, inclusive, were
25 working as Deputies for the SBSB and were acting within the course and scope
26 of their duties as Deputies for the COUNTY.

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1 92. When DEFENDANT DOES 1-8, inclusive, were detaining
2 DECEDENT, DECEDENT was not threatening any person, and DECEDENT
3 never verbally threatened any DEFENDANT Deputies.

4 93. DECEDENT was not attempting, willing, or intending to inflict
5 harm to anyone. DEFENDANTS were not responding to a serious or violent
6 crime, DEFENDANTS did not witness a crime in progress upon arrival,
7 DEFENDANTS had no information that anyone had been hurt or injured or
8 that DECEDENT had hurt or injured someone. DECEDENT was in his
9 vehicle when DEFENDANT DOES 1-8, inclusive, used force against
10 DECEDENT including when they repeatedly shot DECEDENT without
11 justification, when DECEDENT was unarmed, and when no person was in the
12 path of the vehicle or about to be hit or run over by the vehicle.

13 94. The shooting was excessive and objectively unreasonable,
14 especially because throughout the incident, DECEDENT presented no
15 immediate threat to the safety of the Deputies or others, including not an
16 immediate threat of death or serious bodily injury to any Deputy or other
17 person. Further, DEFENDANTS' shooting and use of force violated their
18 training, standard law enforcement training, and generally accepted law
19 enforcement standards.

20 95. DEFENDANT DOES 1-8, inclusive, had no legal justification for
21 using force against DECEDENT, and the use of force was unreasonable and
22 non-privileged. Moreover, DECEDENT did not knowingly or voluntarily
23 consent to the use of force against him.

24 96. DEFENDANT DOES 1-8, inclusive, caused various injuries as
25 mentioned herein and are liable either because they directly harmed
26 DECEDENT or by integrally participating or failing to intervene in the
27 incident, and by engaging in other acts and/or omissions around the time of
28

1 the incident. DEFENDANTS' acts and omissions resulted in harmful and
2 offensive touching of PLAINTIFF.

3 97. As a direct and proximate result of the aforesaid acts and
4 omissions of DEFENDANT DOES 1-8, inclusive, DECEDENT suffered great
5 physical and mental injury, as well as fear and emotional distress related to
6 his physical injuries, pain and suffering, humiliation, anguish, and death.

7 98. The conduct of DEFENDANT DOES 1-8, inclusive, was
8 malicious, wanton, oppressive, and accomplished with a conscious disregard
9 for the rights of DECEDENT, entitling PLAINTIFF to an award of exemplary
10 and punitive damages, which PLAINTIFF seeks under this claim.

11 99. DEFENDANT DOES 1-8, inclusive, are directly liable for their
12 actions and inactions pursuant to Cal. Govt. Code § 820(a).

13 100. The COUNTY is vicariously liable for the wrongful acts and
14 omissions of DEFENDANT DOES 1-8, inclusive, pursuant to section 815.2(a)
15 of the California Government Code, which provides that a public entity is
16 liable for the injuries caused by its employees within the scope of the
17 employment if the employee's act would subject him or her to liability.

18 101. PLAINTIFF seeks compensatory damages and brings this
19 wrongful death claim as successor-in-interest to DECEDENT against
20 DEFENDANTS and seeks survival and wrongful death damages under this
21 claim. PLAINTIFF also seeks reasonable costs and funeral and burial
22 expenses on this claim.

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SEVENTH CLAIM FOR RELIEF

Negligence (Cal. Govt. Code §§ 815, 820 and California Common Law)
(By PLAINTIFF against DEFENDANT DOES 1-8, inclusive, directly; and COUNTY and DOES 9-10 vicariously)

102. PLAINTIFF repeats and realleges each and every allegation in paragraphs 1 through 101 of this Complaint with the same force and effect as if fully set forth herein.

103. Sheriff’s Deputies, including DEFENDANTS, have a duty to use reasonable care to prevent harm or injury to other. This duty includes but is not limited to the following: using appropriate tactics, giving appropriate commands, giving warnings, allowing time for the subject to understand and comply with appropriate commands and warnings, not using any force unless necessary, using less-intrusive options, acting objectively reasonable when using deadly force, not shooting at vehicles and their occupants, and only using deadly force as a last resort. DEFENDANTS breached this duty of care.

104. The actions and inactions of DEFENDANTS were negligent and reckless, including but not limited to:

- a) DEFENDANTS’ failure to constitutionally respond to DECEDENT.
- b) DEFENDANTS’ failure to properly and adequately assess the need to use force against DECEDENT.
- c) DEFENDANTS’ negligent tactics and handling of the situation with DECEDENT, including the failure to de-escalate the situation.
- d) DEFENDANTS’ negligent use of force against DECEDENT.
- e) DEFENDANTS’ failure to provide prompt medical care to DECEDENT.

1 f) Negligent tactics and handling of the situation with
2 DECEDENT, including pre-shooting negligence and the failure to give
3 appropriate commands and warnings.

4 g) DEFENDANTS' failure to properly train and supervise
5 employees.

6 h) DEFENDANTS' failure to ensure that adequate numbers of
7 employees with appropriate education and training were available to meet
8 the needs of and protect the rights of DECEDENT.

9 i) DEFENDANTS' negligent handling of evidence and
10 witnesses.

11 j) DEFENDANTS' failure to properly report the incident.

12 k) DEFENDANTS' failure to de-escalate the situation and use
13 proper communication and commands.

14 105. As a result of their misconduct, DEFENDANTS are liable for
15 PLAINTIFF'S and DECEDENT'S injuries on this claim, either because they
16 were integral participants in the aforementioned conduct, or because they
17 failed to intervene to prevent these violations.

18 106. As a direct and proximate result of DEFENDANTS' conduct as
19 alleged above, and other undiscovered negligent conduct, DECEDENT
20 suffered the loss of his life, and PLAINTIFF has been deprived of the life-
21 long love, companionship, comfort, care, support, society, and sustenance of
22 DECEDENT, and will continue to be so deprived for the remainder of his
23 natural life.

24 107. DEFENDANT DOES 1-8, inclusive, are directly liable for their
25 actions and inactions pursuant to Cal. Govt. Code § 820(a).

26 108. The COUNTY is vicariously liable for the wrongful acts of
27 DEFENDANT DOES 1-8, inclusive, pursuant to section 815.2(a) of the
28 California Government Code, which provides that a public entity is liable for

1 the injuries caused by its employees within the scope of the employment if the
2 employee's act would subject him or her to liability.

3 109. PLAINTIFF seeks compensatory damages and brings this
4 wrongful death claim as successor-in-interest to DECEDENT against
5 DEFENDANTS and seeks survival and wrongful death damages under this
6 claim. PLAINTIFF also seeks reasonable costs and funeral and burial
7 expenses on this claim.

8
9 **EIGHTH CLAIM FOR RELIEF**

10 **Violation of the Bane Act (Cal. Civil Code § 52.1)**

11 (By PLAINTIFF against DEFENDANT DOES 1-8, inclusive, directly; and
12 COUNTY and DOES 9-10 vicariously)

13 110. PLAINTIFF repeats and realleges each and every allegation in
14 paragraphs 1 through 109 of this Complaint with the same force and effect as
15 if fully set forth herein.

16 111. California Civil Code, Section 52.1 (the Bane Act), prohibits any
17 person, including a police officer, from interfering with another person's
18 exercise or enjoyment of his constitutional rights by threats, intimidation, or
19 coercion, including by the use of unconstitutionally excessive force. Conduct
20 that violates the Fourth Amendment, including the use of excessive force,
21 violates the Bane Act when performed with specific intent to deprive others
22 of their civil rights, which can be inferred by a reckless disregard for the
23 person's civil rights.

24 112. DEFENDANT DOES 1-8, inclusive, while working for the
25 COUNTY and acting within the course and scope of their duties as Deputies
26 and under color of law, intentionally committed, and attempted to commit acts
27 of violence against DECEDENT, including by intentionally and repeatedly
28 shooting DECEDENT and otherwise using unreasonable force against

1 DECEDENT. This shooting was excessive and objectively unreasonable and
2 especially reckless because DECEDENT was unarmed, not person was in the
3 path of the vehicle, no person was about to be hit or run over by the vehicle,
4 and DECEDENT did not pose an immediate threat of death or serious bodily
5 injury to any person. Further, the DEFENDANTS' shooting and use of force
6 violated basic law enforcement training, and generally accepted law
7 enforcement standards. DEFENDANTS' shot and killed DECEDENT without
8 any legal justification.

9 113. When DEFENDANT DOES 1-8, inclusive, repeatedly shot
10 DECEDENT while DECEDENT was not an immediate threat of death or
11 serious bodily injury, they interfered with DECEDENT'S constitutional rights
12 to be free from unreasonable searches and seizures, to equal protection of the
13 laws, to be free from state actions that shock the conscience, and to life,
14 liberty, and property.

15 114. On information and belief, DEFENDANT DOES 1-8, inclusive,
16 intentionally and spitefully committed the above acts to discourage or prevent
17 DECEDENT from exercising his civil rights, or from enjoying such rights,
18 which he was and is fully entitled to enjoy. DEFENDANT DOES 1-8,
19 inclusive, intentionally interfered with the above constitutional rights of
20 DECEDENT, and as alleged herein, which can be demonstrated by
21 DEFENDANTS' reckless disregard for DECEDENT'S constitutional rights.

22 115. On information and belief, DECEDENT reasonably believed and
23 understood that the violent acts committed by DEFENDANT DOES 1-8,
24 inclusive, were intended to discourage him from exercising the above civil
25 rights, to retaliate against him for invoking such rights, or to prevent him from
26 exercising such rights.

27 116. The conduct of DEFENDANT DOES 1-8, inclusive, was a
28 substantial factor in causing DECEDENT'S harm, loss, injury, and damages.

1 117. The COUNTY is vicariously liable for the wrongful acts of
2 DEFENDANT DOES 1-8 pursuant to section 815.2(a) of the California
3 Government Code, which provides that a public entity is liable for the injuries
4 caused by its employees within the scope of the employment if the employee's
5 act would subject him or her to liability.

6 118. DEFENDANT DOES 9-10 are vicariously liable under California
7 law and the doctrine of *respondeat superior*.

8 119. The conduct of DEFENDANT DOES 1-8, inclusive, was
9 malicious, wanton, oppressive, and accomplished with a conscious disregard
10 for DECEDENT'S rights, justifying an award of exemplary and punitive
11 damages as to DEFENDANT DOES 1-8, inclusive.

12 120. PLAINTIFF seeks compensatory damages for the violations of his
13 rights, including for his past and future pain and suffering including:
14 impairment, disfigurement, emotional distress, mental anguish,
15 embarrassment, loss of quality of life; and any medical expenses. PLAINTIFF
16 also seeks punitive damages, costs, and attorney's fees under California Civil
17 Code section 52 *et seq.* as to this claim.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ROCKY BRANDON, II, requests entry of judgment in his favor against COUNTY OF SAN BERNARDINO; and DOES 1-10, inclusive, as follows:

- 1. For compensatory damages, according to proof at trial, under federal and State law.
- 2. For punitive and exemplary damages against the individual defendants in an amount to be proven at trial.
- 3. For statutory damages.
- 4. For reasonable attorneys’ fees including litigation expenses.
- 5. For costs of suit and interest incurred herein.
- 6. For such other and further relief as the Court may deem just and proper.

DATED: December 10, 2021 **THE LAW OFFICES OF DALE K. GALIPO**
THE LAW OFFICE OF BRUCE MARGOLIN

/s/ Marcel F. Sincich

Dale K. Galipo, Esq.
Bruce Margolin, Esq.
Marcel F. Sincich, Esq.
Attorneys for Plaintiff ROCKY BRANDON, II

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DEMAND FOR JURY TRIAL

PLAINTIFF hereby submits this demand that this action be tried in front of a jury.

DATED: December 10, 2021 **THE LAW OFFICES OF DALE K. GALIPO**
THE LAW OFFICE OF BRUCE MARGOLIN

/s/ Marcel F. Sincich

Dale K. Galipo, Esq.
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Attorneys for Plaintiff **ROCKY BRANDON, II**