



1 Court rejected the government’s argument that an assault with a car was *per se*  
2 justification for the use of deadly force. (*Id.* at 11:1-4).

3 The Court entered a Final Pretrial Conference Order on March 21, 2013. (Docket  
4 No. 76). Champommier’s parents, Carol Champommier and Eric Avery Feldman,  
5 individually and as successors-in-interest, assert claims for wrongful death (negligence)  
6 and battery.

7 The matter came on for trial before the Court sitting without a jury on March 26,  
8 March 27, March 28, March 29, April 1, April 2, April 3, and May 23, 2013. Following  
9 the presentation of evidence and argument, the parties filed supplemental briefs, after  
10 which the matter was taken under submission.

11 Having carefully reviewed the record and the arguments of counsel, as presented  
12 at the trial and in their written submissions, the Court now makes the following findings  
13 of fact and reaches the following conclusions of law pursuant to Rule 52 of the Federal  
14 Rules of Civil Procedure. Any finding of fact that constitutes a conclusion of law is also  
15 hereby adopted as a conclusion of law, and any conclusion of law that constitutes a  
16 finding of fact is also hereby adopted as a finding of fact.

17 **I. FINDINGS OF FACT**

18 1. On June 24, 2010, members of a Drug Enforcement Administration  
19 (“DEA”) Sensitive Investigations Unit (“SIU”) task force executed a search warrant in  
20 the San Fernando Valley area. After successfully completing their duties, the agents and  
21 deputized officers (collectively “officers”) drove to a public parking lot to debrief  
22 around 9:00 p.m. The officers were directed to meet in the northwest corner of the  
23 parking lot. The location of the debriefing was chosen by DEA Special Agent Pullen.

24 2. It is not an uncommon practice or a deviation from agency procedures to  
25 arrange for a debriefing in a public location like a retail parking lot.

26 3. The SIU task force included: Detective Joseph Chavez (Los Angeles Police  
27 Department (“LAPD”), Deputy Alfonso Serrano (Los Angeles Sheriff’s Department  
28 (“LASD”)), Deputy Mark Brewster (LASD), DEA Special Agent Jonathan Pullen, DEA

1 Special Agent Eric Kischer, DEA Special Agent Sean Fromson, DEA Special Agent  
2 Samantha Pasanello, DEA Special Agent Peter Taylor LoPresti, and Special Agent  
3 Jennifer Caruth (Internal Revenue Service (“IRS”)). All of the officers were acting  
4 under color of federal law and on behalf of the United States of America during the  
5 events giving rise to this trial. In these Findings of Fact and Conclusions of Law, the  
6 Court refers to the law enforcement witnesses by their titles at their respective agencies.  
7 Sometimes during trial or in documents, the members of the Task Force were referred to  
8 as Task Force Officers. All of the Task Force Officers had distinguished law  
9 enforcement careers. None had a record of any improper use of force.

10 4. In particular, Special Agent LoPresti was described as conscientious,  
11 devoted to his career, well-trained, and respected by his peers and supervisors. Based on  
12 Special LoPresti’s testimony, the Court accepts this view and notes that Special Agent  
13 LoPresti appeared on the stand as calm, level-headed and not likely to shoot in fear or  
14 anger. Special Agent LoPresti had never fired his weapon except in training.

15 5. Champommier was an 18 year-old high school graduate who lived with his  
16 mother. Earlier in the day, Champommier arranged through a social networking site to  
17 meet a new acquaintance, Douglas Ryan Oeters, at the same public parking lot around  
18 9:30 p.m. that night. This was to be their first in-person meeting. Champommier told  
19 Oeters to look for him in a light colored or white sedan. That night, Champommier was  
20 driving his mother’s white 2000 Toyota Corolla, which had a manual transmission and  
21 front wheel drive. The Corolla was not equipped with anti-lock brakes.

22 6. The parking lot where the events transpired is located at the intersection of  
23 Ventura Boulevard and Laurel Canyon Boulevard in Studio City, California. Laurel  
24 Canyon runs north-south and bounds the lot on the east. Ventura Boulevard runs east-  
25 west and bounds the lot on the south, where shops and restaurants are located. The west  
26 border of the lot is bounded by a chain link fence and the north edge of the lot is  
27 bounded by foliage. The parking lot services a number of establishments, including a  
28 Chipotle, Vons grocery store, and CitiBank.

1           **A.     Officers Arrive at the Parking Lot**

2           7.     The officers began to arrive at the parking lot sometime before 9:30 p.m.  
3 By the time the officers reached the parking lot, exited their vehicles, and congregated in  
4 the northwest corner of the parking lot under a street light, all of the officers were  
5 dressed in plain clothes. Many of the officers removed their DEA vests and gear before  
6 exiting their vehicles, while some officers removed identifying clothing after executing  
7 the search warrant. Each officer's vehicle was unmarked, *i.e.* not a black-and-white  
8 police vehicle. As a result, there were no external clues to onlookers that any members  
9 of the group were law enforcement officers. One civilian witness referred to the officers  
10 as "bikers."

11          8.     That night, Special Agent Kischer drove a white Dodge Charger, which he  
12 parked in the far west parking lane against the chain link fence. Special Agent Kischer's  
13 vehicle was parked north of a red utility box located along the chain link fence, in the  
14 third stall (counting from the north). The other officers parked east across the driving  
15 lane, in the second lane of parking stalls. Special Agent Fromson parked his Chevy  
16 pick-up truck in the northernmost portion of the parking lane, in a triangular spot not  
17 designated as a stall. In the northernmost stall, Detective Chavez's Toyota 4Runner was  
18 parked slightly crooked, occupying a portion of the second stall. Deputy Serrano parked  
19 his gray Chevy Impala in the third stall and Special Agent Caruth parked her Silver  
20 Mazda 6 in the stall next to it, the fourth stall from the north. Many of the witnesses  
21 referred to the locations of parked cars as points of reference in their testimony.

22          9.     The officers exited their vehicles and congregated under the street light  
23 located between the red box and Special Agent Kischer's Dodge Charger. The officers  
24 locked their cars but left behind items obtained from the earlier search, including drugs  
25 and money.

26          10.    None of the officers were concerned about counter surveillance of their  
27 debriefing.

28

1           **B.     Oeters Approaches the Officers' Location**

2           11.    Oeters also arrived at the parking lot before 9:30 p.m. He parked his car on  
3 the east side of the lot, by the Vons market. After exiting his vehicle, Oeters walked in a  
4 westward direction looking for Champommier's vehicle. Oeters passed the officers,  
5 unaware that they were law enforcement, on his path to locate Champommier.

6           12.    Oeters turned south in the westernmost driving lane and walked toward  
7 Special Agent Kischer's white Dodge Charger. Thinking that it may belong to  
8 Champommier, Oeters peered inside the vehicle. Oeters did not see anyone in the  
9 Dodge Charger and continued to walk southward.

10          13.    The officers noticed Oeters and became suspicious because he was looking  
11 in cars without an apparent purpose. As Oeters walked south, Detective Chavez  
12 approached him. Oeters did not initially recognize Detective Chavez as an officer  
13 because he was in plain clothes and feared a violent set-up. Oeters began to back up and  
14 away from the officers.

15          14.    Detective Chavez then orally identified himself as law enforcement while  
16 other officers approached his location against the chain link fence bordering the west  
17 side of the parking lot. Special Agent Kischer also approached Oeters. The group stood  
18 in the fifth and sixth stalls counting from the north – those stalls just south of the red  
19 box.

20          15.    Oeters repeatedly told the officers that he had done nothing wrong and  
21 questioned the officers' purpose in approaching him. The officers described his affect as  
22 jittery and nervous. They testified that he appeared somewhat disheveled.

23          16.    There was conflicting testimony about Oeters' behavior after Detective  
24 Chavez identified himself as an officer. Specifically, the witnesses diverged in  
25 describing the extent of Oeters' non-compliance with officer orders. Special Agent  
26 LoPresti testified that Oeters was not affirmatively complying with officer commands  
27 but nothing about Oeters' interactions with Detective Chavez and Special Agent Kischer  
28 caused him to draw his weapon. Other officers testified that they observed physical

1 resistance to detention but also left their weapons holstered. That the officers did not  
2 draw their weapons in response to Oeters' non-compliance indicates that he posed a  
3 minimal physical threat, if any, to the officers and the passers-by.

4 17. In response to Oeters' non-compliance or resistance, Detective Chavez and  
5 Special Agent Kischer attempted to go "hands on" with Oeters in order to physically  
6 detain him.

7 **C. Deputy Brewster Arrives at the Parking Lot**

8 18. Deputy Brewster arrived after the other officers because he initially drove  
9 to the wrong debrief location.

10 19. Deputy Brewster was wearing a dark blue Hawaiian shirt and denim pants.  
11 Like the other officers, his badge was not visibly displayed. His weight was between  
12 240 and 250 pounds that night, and his height is between 5'8 and 5'9.

13 20. When he arrived at the parking lot, Deputy Brewster saw the other officers  
14 attempting to detain Oeters against the chain link fence. Deputy Brewster concluded  
15 that he should provide back-up for the detaining officers and parked his Nissan truck  
16 quickly in the sixth parking stall from the north in the second parking lane, partially in  
17 the parking stall and partially in the driving lane. The front of his vehicle jutted into the  
18 driving lane and faced the chain link fence to the west.

19 21. Deputy Brewster exited his vehicle, walked west, and entered the driving  
20 lane between the parking lanes without observing whether there was cross traffic. He  
21 testified inconsistently as to the level of urgency he felt when approaching the scene of  
22 Oeters' detention, but the testimony of other witnesses suggested he walked somewhat  
23 quickly toward Oeters and the other officers.

24 22. Deputy Brewster testified that he saw Oeters' right hand reach into his  
25 pocket and observed Oeters' affirmative non-compliance with officer orders. (Although  
26 Special Agent Pullen testified that Oeters did not put his hand in his pocket but instead  
27 dropped his right hand, this conflicting testimony need not be reconciled. Whether  
28

1 Oeters placed his hand in his pocket or dropped his hand is not relevant to the Court's  
2 determination of Plaintiffs' FTCA claims.)

3 23. Deputy Brewster then drew his weapon, a 9mm Beretta, in response to  
4 Oeters' behavior. He testified that he feared Oeters was reaching for a weapon or drugs.

5 24. Deputy Brewster pointed his gun at Oeters and continued to walk west  
6 across the driving lane, toward the other officers. The officers who went "hands on"  
7 with Oeters were very close to Oeters' sides – they stood only inches from Deputy  
8 Brewster's target.

9 25. Deputy Brewster stopped a few feet inside the seventh stall from the north  
10 in the westernmost parking lane, south of Oeters and the other officers, facing northwest.  
11 He continued to point his gun at Oeters.

12 26. Deputy Brewster was the only officer with his weapon drawn at that time.

13 **D. Champommier's Vehicle Impacts Deputy Brewster**

14 27. Champommier's vehicle approached Deputy Brewster from the south. *See*  
15 *infra* Section I.G. While Deputy Brewster testified that he perceived some peripheral  
16 movement to his left, he was not consciously aware of an approaching vehicle.

17 28. Deputy Brewster described Champommier's vehicle coming close to his  
18 left side. He dropped his left hand toward the hood, maneuvering into a semi-seated  
19 position on the driver's side of the hood. He initially described this action to police  
20 interviewers as "vaulting." Deputy Brewster testified that he held his gun in his right hand  
21 such that the butt of his gun tapped the windshield. He could see Champommier in a  
22 panicked state, struggling to bring the car into gear.

23 29. Deputy Brewster testified that he remained on the hood for one to two  
24 seconds before sliding off the driver's side and onto his feet without falling or  
25 stumbling.

26 30. Deputy Brewster's description of the impact is consistent with the  
27 testimony of Detective Chavez, Deputy Serrano, and Special Agent Pullen. His account  
28 is substantially consistent with the testimony of Special Agent Fromson and Oeters.

1           31. Deputy Brewster suffered no significant or even minor injuries as a result of  
2 the impact with Champommier's vehicle. He developed no bruises and suffered no  
3 lacerations. He reported only slight tingling at the time of his medical examination,  
4 where no injuries were noted. He later mentioned numbness in his left thigh and  
5 tenderness in his shoulder. His clothes were unscathed and bore no visible damage from  
6 the car. Later damage to Deputy Brewster's clothing was done by medical professionals  
7 evaluating him for possible injury.

8           32. Investigators did not find any fingerprints, dents, scratches, scuffs, or marks  
9 related to the incident on the hood of the vehicle.

10          33. The Court accepts the testimony of Deputy Brewster regarding the manner  
11 in which he was impacted by the vehicle. Deputy Brewster's testimony is also  
12 consistent with the lack of physical damage to his person, his clothes, and the vehicle.

13          34. After the impact, the Toyota lurched forward and stopped a number of  
14 times. Special Agent Caruth and Deputy Serrano testified that Champommier's vehicle  
15 appeared to be out of gear after coming into contact with Deputy Brewster.

16           **E. Special Agent LoPresti Fires the First Shot at Champommier**

17          35. Before the impact, Special Agent LoPresti stood near the center of the sixth  
18 stall from the north in the westernmost parking lane, providing support for the officers  
19 detaining Oeters. Special Agent LoPresti was slightly south and slightly east of the  
20 group and approximately 13 feet north and slightly west of Deputy Brewster.

21          36. Special Agent LoPresti testified that just before the impact, Special Agent  
22 Pullen brushed by him on his left side, drawing his attention to Deputy Brewster just in  
23 time to witness the collision.

24          37. Special Agent LoPresti was unaware of Champommier's vehicle before he  
25 turned. He did not perceive its approach to the impact site and did not witness the speed  
26 of the vehicle beforehand. Nor did he hear tires screech or an engine rev at any point.

27          38. His recollection of the impact substantially differed from all other  
28 witnesses. Special Agent LoPresti testified that he saw Deputy Brewster's feet fly out



1 from under him as Deputy Brewster was launched into the air from the force of the  
2 vehicle's impact. Special Agent LoPresti testified he then saw Deputy Brewster in the  
3 air, level with the roof above the windshield. From this vantage, Special Agent LoPresti  
4 testified that he could see the soles of Deputy Brewster's shoes. He also testified that  
5 Deputy Brewster's waist impacted the windshield, followed by his left hip and lower  
6 back. Special Agent LoPresti testified that Deputy Brewster landed on the hood, facing  
7 away from Champommier and toward the officers.

8         39. Special Agent LoPresti's testimony about Deputy Brewster conflicts with  
9 that of all other officers and lay witnesses, including Deputy Brewster himself.  
10 Although the Court finds that Special Agent LoPresti testified truthfully according to his  
11 recollection, either his recollection is mistaken or he miserably failed to make an  
12 accurate assessment of the true situation at the time he shot.

13         40. The impact occurred 13 feet from where Special Agent LoPresti stood.  
14 Special Agent LoPresti stated after the incident that he initially thought the driver would  
15 pull over and apologize but failed to do so. After witnessing the impact, Special Agent  
16 LoPresti pivoted slightly and drew his weapon, a Glock 23-40 caliber pistol.

17         41. When Champommier's Toyota Corolla reached Special Agent LoPresti, he  
18 shot approximately perpendicularly into the driver's side window. He was about three  
19 feet from the vehicle when he discharged his weapon.

20         42. Special Agents LoPresti and Fromson and Deputy Brewster all testified that  
21 one to two seconds passed between impact and the first shot.

22         43. Deputy Brewster's location at the time of the first shot was the subject of  
23 conflicting testimony. Deputy Brewster testified that he was sliding off the vehicle  
24 when Special Agent LoPresti fired. Special Agent LoPresti testified that he perceived  
25 Deputy Brewster on the hood when he fired. Detective Chavez and Deputy Serrano  
26 testified that they observed Deputy Brewster on the hood when they heard the first shot.  
27 Oeters testified that Deputy Brewster was off the hood at the time of the first shot.

28

1           44. At the time of the impact, Special Agent Caruth was standing between her  
2 vehicle and Deputy Serrano's vehicle, near the driving lane between the third and fourth  
3 parking stalls counting from the north. (*See* Ex. 103-4580). She testified that she was  
4 likely closer to Deputy Serrano's vehicle at the time. Special Agent Caruth's vehicle  
5 was parked directly across the driving lane from the parking stall where first shot  
6 occurred (as evidenced by glass shatter). The parking stall where the first shot occurred  
7 is immediately south of the parking stall marked by a sewer grate.

8           45. Special Agent Caruth testified that Deputy Brewster's feet reached the  
9 asphalt "almost simultaneously" with the noise of the first shot. (Trial Trans. 10:124:20-  
10 23). According to her testimony, Deputy Brewster slid off the car and onto his feet  
11 south of her location. (Trial Trans. 10:122:4-25). She further testified that Deputy  
12 Brewster was off the hood by the time Champommier's vehicle reached the stall in  
13 which her vehicle was parked, which is roughly across the driving lane from the location  
14 of the first shot. (Trial Trans. 10:112:11-15). Her testimony supports a conclusion that  
15 Deputy Brewster was on the ground when the first shot was audible.

16           46. The Court finds that at least two seconds elapsed between the impact and  
17 the shot, based on the all the percipient testimony, the physical evidence, and the  
18 testimony of the experts.

19           47. It is therefore evident that Deputy Brewster was sliding off the vehicle at or  
20 before the very moment when Special Agent LoPresti fired, allowing him to touch the  
21 ground either before or at the moment of the first shot, or at least when the first shot rang  
22 out.

23           48. The bullet entered Champommier's left arm, passed through his lungs,  
24 severed his aorta, and exited his right side. Champommier ultimately died from the  
25 wounds caused by this bullet.

26           49. Special Agent LoPresti testified that he fired the first shot to stop a  
27 perceived attack on Deputy Brewster. He testified that he did not perceive any danger to  
28 other officers, himself, or civilians in the parking lot – in fact, Special Agent LoPresti

1 was entirely unaware of his colleagues' locations when he discharged his weapon.  
2 Special Agent LoPresti further testified that he would not have shot at all had Deputy  
3 Brewster been off the hood of the vehicle.

4 50. No officers or civilians were in the vehicle's path at the time of the first  
5 shot.

6 51. Throughout his testimony, Special Agent LoPresti gave only one reason for  
7 shooting Champommier: To protect Deputy Brewster from severe injury or death. In  
8 spite of this insistence, Special Agent LoPresti did not articulate at trial exactly how  
9 shooting the driver of a moving vehicle while another officer was on the hood would be  
10 helpful to the besieged officer. And even Special Agent LoPresti recognized that  
11 Deputy Brewster's safety would no longer be threatened if he was off the hood and the  
12 vehicle was driving away.

13 52. Therefore, the Court finds that Deputy Brewster was not in immediate  
14 danger at the time of the first shot.

15 53. Nor do standard police practices support the automatic use of deadly force  
16 even in the case of the use of a vehicle as an assaultive weapon. For example, the Los  
17 Angeles Sheriff's Department maintains a policy that states that the use of a firearm  
18 against a moving motor vehicle is almost always ineffective and that of an assaultive  
19 motor vehicle does not presumptively justify the use of deadly force. It reads, in  
20 relevant part:

21  
22 This section reinforces the Department's Core Values and underscores the  
23 reverence for human life.

24 The use of firearms against moving motor vehicles is inherently dangerous and  
25 almost always ineffective . . . .

26 A Department member shall not discharge a firearm at a motor vehicle or its  
27 occupant(s) in response to a threat posed solely by the vehicle unless the member  
28 has an objectively reasonable belief that:

- 1           • The vehicle or suspect poses an immediate threat of death or serious  
2 physical injury to the Department member or another person; AND  
3           • The Department member has no reasonable alternative course of action to  
4 prevent the death or serious physical injury.

5 In the extraordinary instance that a Department member feels compelled to fire at  
6 a motor vehicle or its occupant(s), the conduct of the involved personnel shall be  
7 evaluated in accordance with sound tactical principles including the following:

- 8           • Cover and/or tactical relocation,  
9           • Safe distance,  
10          • Incident command and tactical leadership,  
11          • Coordinated personnel placement,  
12          • Tactical approach,  
13          • Regard for viable target acquisition,  
14          • Due regard for background, including the location, other traffic, and  
15          innocent persons,  
16          • Due regard for crossfire,  
17          • Controlled fire and management of ammunition.

18 (Ex. 296) (emphasis in original).

19 54. This policy is typical of the policy of law enforcement agencies. Plaintiffs'  
20 police practices expert, Roger Clark, testified that this policy is typical of those currently  
21 in effect at law enforcement agencies around the country. Clark testified that over time  
22 law enforcement agencies have enacted increasingly restrictive policies governing  
23 officers' firing at occupied motor vehicles. The government's police practices expert,  
24 Ronald McCarthy, agreed that "the great majority of agencies say don't shoot at  
25 vehicles." (Trial Trans. 9:111:22-23).

26 55. McCarthy, however, suggested in his testimony that this policy reflected the  
27 common-sense conclusion that a bullet could not stop a car, but was not relevant to a  
28 decision to shoot a driver. McCarthy testified that assaultive motor vehicles killed  
twelve law enforcement officers in 2011. In general, the Court regards McCarthy as  
more persuasive than Clark, but the Court does not view this portion of McCarthy's  
testimony as consistent with either the logic or text of Exhibit 296.

56. Special Agents Caruth and Fromson also drew their weapons but did not  
shoot. Both testified that they would have shot had they acquired a clear angle.

1           57. Deputy Brewster testified that, although he could have shot Champommier  
2 while he was on the hood of the vehicle, he did not do so because he feared that shooting  
3 the driver would place him in even more danger.

4           58. No officers voiced any commands to Champommier or otherwise identified  
5 themselves as law enforcement at any time before the first shot.

6           **F. Special Agent LoPresti Fires Four Additional Shots at Champommier**

7           59. Having suffered a mortal gunshot wound, Champommier accelerated away  
8 from the officers, driving north and swerving slightly to the east.

9           60. Deputy Brewster took a shooting stance north of Special Agent LoPresti,  
10 near the Dodge Charger's rear bumper, and shot at Champommier. Deputy Brewster's  
11 shot did not hit Champommier, although it struck the vehicle. Deputy Brewster testified  
12 that his shot shattered the rear windshield. This shot caused a wide dispersion of  
13 shattered glass.

14           61. At the time he fired his shot, Deputy Brewster believed it was in defense of  
15 fellow officers whom he had earlier seen north of his location. At the time he shot, he  
16 did not know where his fellow officers were.

17           62. Special Agent LoPresti continued firing at Champommier, discharging  
18 another four shots. None of Special Agent LoPresti's remaining shots hit  
19 Champommier, but most hit the Toyota Corolla.

20           63. Special Agent LoPresti testified that during each of his shots – five in total  
21 – he believed that Deputy Brewster remained on the hood of the Toyota Corolla. At  
22 least one of the later shots was fired through the rear window toward Champommier.  
23 For the very brief time that Deputy Brewster was on the Toyota Corolla, he faced  
24 Champommier through the windshield. Had Deputy Brewster been on the Toyota  
25 Corolla when that shot was fired, the bullet could have passed through Champommier or  
26 the Toyota Corolla and hit Deputy Brewster.

27           64. The government's own expert witness, Ronald McCarthy, testified that the  
28 final shots fired by Special Agent LoPresti (after the Toyota turned east) were

1 unjustified uses of deadly force because Champommier no longer presented an  
2 immediate threat to any officer or civilian.

3 65. The vehicle accelerated away from the officers and continued to arc to the  
4 east, turning down a driving lane parallel to the lot's north boundary.

5 66. Champommier's vehicle crashed into a parked Infinity Sport Utility  
6 Vehicle, knocking the Infinity out of its parking stall and into another car.

7 67. The officers approached the vehicle, shouting commands. Champommier  
8 attempted to comply, weakly trying to hold his hands in the air. When the officers  
9 concluded that Champommier could not comply due to his injuries, they extracted him  
10 from the vehicle and attempted resuscitation.

11 68. Champommier was later pronounced dead by paramedics who arrived at the  
12 scene.

13 69. The initial DEA cable summarizing the incident the following evening  
14 characterized the impact speed as "rapid" and noted that "[i]t appeared Champommier  
15 was specifically attempting to strike" the officers. (Ex. 143). The cable also stated that  
16 Special Agent LoPresti shot Champommier in defense of other officers, not in defense of  
17 Deputy Brewster, after he and Deputy Brewster shouted strong verbal commands. (*Id.*).

### 18 **G. Path and Speed of the Toyota Corolla**

19 70. Much of the trial focused on Champommier's conduct on the night of June  
20 24, 2010, in an attempt to reconstruct his state of mind and speculate about his  
21 intentions. But Champommier's pre-impact conduct is only minimally relevant to the  
22 decisive issues in this case because Special Agent LoPresti testified consistently that he  
23 was unaware of Champommier until the moment of impact, and the question for the  
24 Court is whether Special Agent LoPresti acted reasonably.

25 71. Nevertheless, the Court will address the controverted evidence for the sake  
26 of the record because it was the source of many, if not most, of the factual disputes  
27 throughout the bench trial. The speed and path of the vehicle are also relevant to the  
28

1 ultimate issues because they dictate the time within which Special Agent LoPresti  
2 necessarily acted to discharge his weapon.

3 72. In addition to the percipient witnesses, Plaintiffs called Jon Landerville  
4 (accident reconstruction expert), Ronald Scott (ballistics analyst), and Roger Clark  
5 (police practices) as testifying experts. The United States called Timothy Leggett  
6 (accident reconstruction), William Lewinski (firearms), and Ronald McCarthy (police  
7 practices). Tracy Peck of the Los Angeles County Sherriff's Department testified  
8 regarding the firearms investigation of the incident and subsequent ballistics analysis.

9 **1. Path of the Vehicle**

10 73. The expert witnesses agreed that as Deputy Brewster crossed the driving  
11 lane and took his position inside the parking stall, Champommier, driving the white  
12 Toyota Corolla, approached the area. The testifying experts diverged, however, when it  
13 came to assessing the car's approach to the impact site.

14 74. Of the testifying officers, only Deputy Serrano was aware of  
15 Champommier's vehicle before it reached Deputy Brewster. He testified that the vehicle  
16 approached from the southeast, traveling west from the CitiBank. He testified that the  
17 vehicle was stopped at the time he observed it, facing north. Deputy Serrano testified  
18 that he heard the vehicle rev its engine while stopped and perceived the vehicle's  
19 headlights to be on. After observing the vehicle, Deputy Serrano turned his attention  
20 back to the group detaining Oeters. He testified that he turned away from the vehicle  
21 because it posed no particular threat at the time.

22 75. Jon Landerville, Plaintiffs' accident reconstruction expert, declined to  
23 speculate whether Champommier approached from the east, turning right into the  
24 driving lane, or from the west, turning left into the parking lane due to the paucity of  
25 physical evidence. Landerville noted, however, that Champommier appeared to be on  
26 an arc throughout the encounter that would indicate an approach from the east (arcing to  
27 the right), driving in a westerly direction. He also testified that it is possible  
28 Champommier was traveling up to 17 miles per hour during his approach before

1 perceiving Deputy Brewster in his path and then reacting to Deputy Brewster's presence,  
2 braking, and nearing a speed of zero at the point of impact.

3 76. Timothy Leggett, the government's accident reconstruction expert,  
4 disagreed and concluded that the physical evidence showed the vehicle approached from  
5 the west driving east in a swerving manner. His opinion was based on the tire marks at  
6 evidence tag A. Landerville testified in rebuttal that these marks could only be  
7 attributed to a dual wheeled truck, and not the Toyota Corolla. Leggett disputed  
8 Landerville's opinion, testifying instead that the dual marks were a result of "off  
9 tracking," which occurs when a rear tire is on an inner path compared to the front tire  
10 during a turn. Once the vehicle straightened out, Leggett testified the tire tracks aligned  
11 again. Leggett conceded that the Corolla would have had to be accelerating at maximum  
12 speed during the left turn in order to achieve the "off tracking" he described.

13 77. The better view of the evidence, one supported by Deputy Serrano's  
14 testimony, is that the vehicle approached from the east, driving west, and turned right  
15 into the driving lane to travel northbound. The experts each offered a plausible scenario  
16 to explain the vehicle's arrival at the impact site but the physical evidence alone as  
17 presented by the experts cannot be described as conclusive. However, had the Toyota  
18 Corolla been accelerating at maximum speed during its approach, as posited by Leggett,  
19 it is likely that one of the officers would have noticed the noise or movement and  
20 therefore become aware of the Toyota Corolla prior to its impact with Deputy Brewster.  
21 The Court also has no reason to discredit Deputy Serrano's testimony about the path of  
22 travel. Regardless, whether the vehicle approached from the east or west is not relevant  
23 to the Court's analysis because it had no bearing on Special Agent LoPresti's decision to  
24 employ deadly force.

25 78. It is undisputed that following the initial approach, Champommier drove the  
26 vehicle in a northward direction, against the ordinary flow of traffic in that particular  
27 driving lane, parallel to the chain link fence, from the southern end of the driving lane.  
28 The closest exit was in the opposite direction.



1           79.   Apart from Deputy Brewster, no other officers were threatened by  
2 Champommier at any time.

3                   **2.    Speed of the Toyota Corolla**

4           80.   For most witnesses who were focused on the Oeters detention,  
5 Champommier's appearance was sudden and without context. As a result, the percipient  
6 witnesses offered conflicting testimony about the perceived speed of the Toyota Corolla  
7 before impact, during impact, and at the time of the shooting. The most significant  
8 discrepancies were in testimony about the speed of the vehicle before it impacted  
9 Deputy Brewster.

10          81.   The officers testified to a wide range of possible speeds, strongly informed  
11 by auditory input. Detective Chavez testified that the car sounded as though it was  
12 traveling between 20 and 30 miles per hour before the impact, but he did not visually  
13 observe the vehicle before it hit Deputy Brewster. Deputy Serrano also estimated the  
14 vehicle to be traveling between 25 and 30 miles per hour prior to impact. Special Agent  
15 LoPresti estimated the car's speed at 10 to 15 miles per hour at the time of impact.  
16 Special Agent Fromson testified that the vehicle was traveling at least five miles per  
17 hour throughout the incident. Special Agent Caruth described the vehicle as traveling  
18 between 10 and 20 miles per hour before impact then lurching and bucking after the  
19 impact with Deputy Brewster. None of these accounts were particularly definite in light  
20 of the witnesses' limited observations of the vehicle.

21          82.   Oeters, the other key percipient witness to the incident, gave potentially  
22 inconsistent statements about the vehicle's speed. After stating in a police interview that  
23 he saw a white car "fly" towards the group of officers, Oeters repeatedly testified under  
24 oath during a deposition that the vehicle approached Deputy Brewster slowly, stopped  
25 immediately after contacting Deputy Brewster, and rolled slightly just before stopping  
26 when Special Agent LoPresti fired the first shot.

27          83.   Other percipient witnesses described audible tire screeches or squeals both  
28 before and after the impact and gun shots. These noises led the witnesses to infer that

1 the car either accelerated or decelerated at particular moments in time. However, the  
2 weight of the evidence does not support a factual finding based on conflicting testimony  
3 about the audible noises alone. Importantly, Special Agent LoPresti testified that he did  
4 not hear any tire noises before shooting.

5 84. Expert testimony was essential given the contradictory and inconclusive  
6 accounts given by percipient witnesses, but the testifying experts also offered differing  
7 analysis of the car's speed based on physical evidence. The experts only agreed that the  
8 Toyota Corolla traveled between 12 and 15 miles per hour when it crashed into the  
9 Infinity.

10 85. Landerville opined that the car was traveling no more than 5 miles per hour  
11 when it reached Deputy Brewster based on the lack of damage to the car, the lack of  
12 injury to Deputy Brewster or his clothing, and percipient witness testimony regarding  
13 the impact. Landerville further concluded that the vehicle was traveling no more than  
14 five miles per hour when Special Agent LoPresti shot Champommier based on a glass  
15 dispersion test he performed and physical speed calculations. In other words,  
16 Landerville testified that Champommier was traveling very slowly and stopping before  
17 the impact and until the first shot. Even if the vehicle was traveling at four to five miles  
18 per hour at the time it reached Deputy Brewster, Landerville testified that the vehicle  
19 had to be decelerating such that it was nearly stopped; any other scenario would be  
20 inconsistent with the lack of injury to Deputy Brewster's leg.

21 86. Landerville also focused on the tire marks at the scene to support his  
22 analysis. In Landerville's opinion, an accelerating vehicle initially leaves a dark mark as  
23 a result of the tire rubber "peeling out." He testified that as an accelerating vehicle  
24 moves forward, the tire mark dissipates. Tire marks are also influenced by the terrain  
25 and the specifications of the vehicle. Skid marks, as opposed to acceleration marks, are  
26 caused by a braking vehicle, and end in a dark mark that terminates abruptly.  
27 Landerville explained that dark coloration results when rubber is heated up by the  
28 traction caused by the brake. The heat and the traction cause the mark to be dark. The

1 terminus of movement causes the mark to end suddenly, as opposed to tapering off.  
2 Landerville concluded that the marks starting at evidence tags C and D and terminating  
3 at E and F represent brake marks, where E and F are the ends of the braking event. He  
4 noted that either the rear or front tires could have left the marks, observing that the  
5 recently-laid asphalt in the parking lot was particularly susceptible to tire marks. Many  
6 tire marks scarred the surface of the lot. Landerville contrasted marks E and F with the  
7 mark at evidence tag I, explaining that the later is an acceleration mark that starts darkly  
8 and fades gradually. Inconsistent gradations are attributable, in Landerville's view, to  
9 the topography of the parking lot and modulation of clutch pressure.

10 87. Landerville emphasized that the speed of the vehicle must be examined in  
11 context and with reference to other physical evidence of speed throughout the encounter.  
12 The linchpin of his analysis is the speed of the vehicle when it hit the Infinity.  
13 Landerville testified that the vehicle had to be moving at a high enough speed to displace  
14 a larger, heavier car from its parking spot but slow enough so that no airbags deployed.  
15 The end speed cabins the possible speed of the vehicle before the crash, because tire  
16 marks show that the vehicle accelerated after the first shot and then decelerated, turning  
17 east, before the crash.

18 88. Landerville also relied on the glass dispersion at the site of the fatal shot to  
19 support his conclusion that the vehicle was traveling slowly when Special Agent  
20 LoPresti first fired. The glass scatter caused by the fatal shot was confined to a much  
21 smaller area (about five square feet) than the glass scatter caused by a later shot when  
22 the car was traveling between 15 and 18 miles per hour. According to Landerville, the  
23 density and restricted size of the glass scatter at the site of the fatal shot indicates that  
24 Champommier was driving far slower than 15 miles per hour. The fatal shot also left  
25 some glass in the window pane, characteristic of a lower-speed impact.

26 89. Landerville conducted an experiment to attempt to verify this conclusion,  
27 using a hammer to break the window of the Toyota Corolla while the car was traveling  
28 at a variety of speeds. Based on these tests, he opined that the car was traveling faster

1 than zero miles per hour and slower than five miles per hour when Special Agent  
2 LoPresti first fired his weapon. Landerville testified that the glass scatter created by a  
3 projectile impacting the Toyota Corolla when it travels five miles per hour is more  
4 dispersed and less dense than the glass scatter created when Special Agent LoPresti's  
5 bullet pierced the window. Consequently, in Landerville's opinion, the car was going  
6 less than five miles per hour when Special Agent LoPresti fired into the driver's side  
7 window.

8 90. Leggett, the government's expert, offered a very different picture of car's  
9 speed. After examining the same evidence and utilizing similar software and methods,  
10 Leggett concluded that the vehicle accelerated to the point of impact with Deputy  
11 Brewster and traveled faster than Landerville posited as it sped away from the officers.

12 91. Leggett testified that the vehicle would have coasted, decelerating prior to  
13 hitting the Infinity at 12 to 15 miles per hour. Based on this speed, he inferred that the  
14 vehicle rounded the corner, traveling eastward away from the officers at about 20 to 22  
15 miles per hour. Here he diverges from Landerville, who concluded based on the end  
16 speed that the vehicle rounded the corner at a maximum of 18 miles per hour.

17 92. Leggett continued to extrapolate the car's speed by working backward in  
18 time. Because there were acceleration marks away from the impact site and shooting  
19 site, Leggett opined that the vehicle was traveling between 9.9 and 12 miles per hour  
20 when it impacted Deputy Brewster and 12.5 to 15.5 miles per hour at the time Special  
21 Agent LoPresti shot Champommier. He reached this conclusion by referencing the  
22 speed of the vehicle when it crashed into the Infinity and his projections of speed as the  
23 vehicle traveled away from the officers.

24 93. Leggett testified that the vehicle did not leave any brake marks in the  
25 parking lot. Rather, he concluded that each mark was caused by acceleration.  
26 According to Leggett, brake marks should not be laterally consistent, but should instead  
27 have dark marks on the edge of each tire. Since he did not observe dark-edged marks,  
28 he dismissed the possibility that Champommier applied the brakes, creating skid marks.

1           94. Leggett testified that the most notable mark began at evidence tag C and  
2 ended at evidence tag E, which he believes was an acceleration mark in light of the  
3 horizontal gradation of color. He testified that darkness in the middle and lightness on  
4 the outer edges of a tire mark indicates acceleration. Leggett testified that this mark was  
5 unique as compared to all other marks, which he also believes were caused by  
6 acceleration. In order to cause this particular mark, Leggett testified that Champommier  
7 had to depress the clutch, put his foot on the gas so that the engine ran at 3000 to 4,000  
8 revolutions per minute (near its maximum capacity), and drop the clutch quickly so that  
9 there was no transition of gears and the maximum torque was at the upper line. In other  
10 words, the vehicle would be accelerating at maximum speed. This causes the tires to  
11 spin rapidly, creating smoke and squealing tires. Leggett admitted that typical  
12 acceleration marks start out dark and fade gradually, but testified that this mark was  
13 unique because the driver intentionally manipulated the clutch to create noise and sound.  
14 He testified that this is the only way Champommier's vehicle could have left an  
15 acceleration mark with those traits.

16           95. Leggett also concluded that evidence tag G marked the impact site, whereas  
17 Landerville testified that it was caused when Champommier struggled with the clutch.  
18 These opinions are not mutually exclusive in light of Deputy Brewster's testimony that,  
19 while he was seated on the hood of the vehicle, he witnessed Champommier panicked  
20 and attempting to put the car into gear.

21           96. In spite of the quality of the witnesses and the thoroughness of their  
22 testimony, the Court cannot determine the cause of each tire mark from the evidence  
23 before it. Nevertheless, the weight of evidence supports Landerville's characterization  
24 of events and estimates of speed. Based on the credible testimony of Deputy Brewster  
25 about the impact, the physical evidence, and general principles of physics and accident  
26 reconstruction as explained by testifying experts, the Court finds that the Toyota Corolla  
27 was traveling at approximately five miles per hour on average at the time of impact and  
28 at the time of the first shot.

1           97. The Court finds Deputy Brewster's description of the impact to be credible,  
2 and in order for the car to have impacted him in the way he described, it had to be  
3 driving somewhat slowly. Notably, Deputy Brewster was uninjured by the impact. His  
4 clothes were unscathed and the hood and bumper of the vehicle bore no dents, scratches,  
5 or scuffs from his body. Had the car been traveling at a faster speed, Deputy Brewster  
6 would not have been able to avoid a collision with his knees and execute a controlled  
7 roll, sliding off of the vehicle and onto his feet. Both the vehicle and Deputy Brewster  
8 would have sustained physical damage, or at least exhibited physical evidence, if the car  
9 was traveling faster than 10 miles per hour.

10           98. The sequence and timing of the shooting also necessarily limits the  
11 vehicle's speed. Two seconds elapsed between the impact and the first shot. The  
12 distance between the point of impact and shooting location was approximately 13 feet.  
13 As the vehicle reached Special Agent LoPresti, he shot into the front driver's side  
14 window. Basic physic dictates that the faster the vehicle covered the distance between  
15 the two points, the less time Special Agent LoPresti had to draw and fire the pistol.

16           99. According to the government's firearms expert, William Lewinski, the  
17 average draw and shoot time for a police marksman is about 1.5 seconds in a controlled,  
18 self-selected, testing environment where the subject is aware that shots will be  
19 necessary. Here, none of those features were present and no evidence was offered to  
20 show Special Agent LoPresti's draw speed (only his shooting accuracy, which has no  
21 logical bearing on reaction and draw time). Because Special Agent LoPresti was not in a  
22 controlled test environment, awaiting a signal to prompt a draw-and-shoot response, but  
23 instead was in a busy public setting with no warning that he would conceivably need to  
24 employ deadly force, it is implausible that Special Agent LoPresti could physically  
25 process stimuli, decide to shoot, and mechanically discharge his weapon in less than 1.5  
26 seconds. Plaintiffs' ballistics expert also testified that the minimum draw time in these  
27 circumstances would have been between 1.5 and 3 seconds, depending on how quickly  
28 Special Agent LoPresti processes information and stimuli.

1 Consequently, Special Agent LoPresti did not and could not have discharged his weapon  
2 within one second of the impact.

3 100. Based on these calculations, Special Agent LoPresti would not have had  
4 time to draw his weapon and discharge the fatal shot had the car been traveling faster  
5 than five miles per hour at and after it collided with Deputy Brewster. Assuming the  
6 vehicle traveled 13 feet between impact and Special Agent LoPresti in 1.5 seconds, the  
7 car would have been traveling slightly over five miles per hour. If the vehicle traveled  
8 13 feet between impact and Special Agent LoPresti in two seconds, the vehicle would  
9 have been traveling at 4.4 miles per hour.

10 101. Leggett's opinion as to speed is implausible, based on the known  
11 information about the fatal shot. According to his calculations, Special Agent LoPresti  
12 had only between 0.7 and 0.9 seconds to perceive the threat to Deputy Brewster,  
13 unholster his weapon, aim, decide to employ deadly force, and shoot. This time would  
14 be remarkable even in a controlled environment.

15 102. Leggett's speed approximations also necessitate a host of physical  
16 consequences not borne out by the evidence. **First**, the speeds posited by Leggett mean  
17 that Deputy Brewster was on the hood of the vehicle at a location beyond where Special  
18 Agent LoPresti fired the first shot, an implausible scenario given the Court's other  
19 findings. For example, if two seconds elapsed between the impact and the first shot, and  
20 the car was traveling 11.5 miles per hour, then Deputy Brewster would have been carried  
21 34 feet on the hood of the vehicle, well beyond the 13 feet between the impact site and  
22 the shooting site. The same conclusion is required even if only one second elapsed  
23 before the first shot. **Second**, it would have been impossible for Deputy Brewster to  
24 land on his feet, as he did, if the car was traveling more than 12 miles per hour. Leggett  
25 conceded this on the stand and testified that he would also have expected Deputy  
26 Brewster to fall if the vehicle was traveling ten miles per hour. The ease with which  
27 Deputy Brewster disengaged from the vehicle and took a shooting stance therefore  
28 further undermines Leggett's opinions about speed. **Third**, Leggett admitted that,

1 according to his calculations, Deputy Brewster would have been on the hood of the  
2 vehicle for the first three of Special Agent LoPresti's shots, a possibility the Court  
3 rejects based on the witnesses' testimony and the fact that Special Agent LoPresti's  
4 bullets did not strike Deputy Brewster. *Fourth*, at least some officers probably would  
5 have taken note of the vehicle sooner if it had been smoking and screeching its tires as  
6 Leggett suggested.

7         103. Finding the vehicle traveled approximately five miles per hour is also  
8 consistent with witness testimony regarding lurching or bucking after impact and Deputy  
9 Brewster's observation that Champommier struggled to get the car into gear. Leggett,  
10 testifying for the government, agreed that a car lurching or bucking in neutral, the gear  
11 he believed the vehicle to be in throughout the incident, would be traveling between  
12 three and four miles per hour.

13         104. Certain of Leggett's opinions must also be viewed skeptically because they  
14 lack evidentiary support. Specifically, Leggett relied on photographs included in  
15 Landerville's expert report and presupposed that certain marks were either caused by  
16 acceleration or braking. He used these marks as illustrations to show that the marks at  
17 the scene were strictly acceleration marks. But no evidence was presented to establish  
18 that Landerville or his associates created the marks in the manner Leggett presumed.  
19 Landerville was not questioned about the source of the marks in the photographs he  
20 took, which easily could have been caused by acceleration where Leggett saw brake  
21 marks or vice versa. Indeed, the marks could even have been caused by other vehicles.

22         105. And while Leggett raised an appropriate point that the glass dispersion test  
23 offered into evidence by Landerville is not dispositive because it did not replicate the  
24 actual projectile used or the precise conditions of the shooting, the Court can compare  
25 the glass dispersion at the site of the first shot with the glass dispersion caused by later  
26 shots, when the vehicle was indisputably traveling faster. The comparison indicates that  
27 at the time of first shot, Champommier's vehicle was traveling slower than when it  
28 turned the corner and began traveling east, consistent with Landerville's opinions.



1           106. The evidence considered by the Court therefore supports a finding that the  
2 vehicle was traveling at approximately five miles per hour (on average) during the  
3 impact with Deputy Brewster and the first shot by Special Agent LoPresti.

### 4                   **3. Champommier's Intentions**

5           107. The emphasis at trial on what happened before the impact was, in large part,  
6 a surrogate for competing narratives about Champommier's intentions. The goal of  
7 Plaintiffs was to show that Champommier did not necessarily intend to strike Deputy  
8 Brewster. Rather, he approached the activity in the parking lot, perhaps out of curiosity  
9 or perhaps to see if he could assist Oeters, and then lost control of his mother's car and  
10 reasonably sought to flee armed thugs. Under this scenario Plaintiffs ask the Court to  
11 conclude by implication that Special Agent LoPresti's use of force was improper  
12 because he could not reasonably have concluded that Champommier was an immediate  
13 threat to Deputy Brewster or anyone else.

14           108. The goal of the government was to show that Champommier intentionally  
15 tried to run down Deputy Brewster, and posed a threat to anyone in the parking lot.  
16 Implicit even in the government's contentions is that Champommier did so only because  
17 he believed that Oeters was threatened by armed thugs. Ultimately, the issue of  
18 Champommier's intentions is largely irrelevant to this Court's ruling. Nonetheless,  
19 certain findings are appropriate because they do relate to the reasonableness of Special  
20 Agent LoPresti's decision to shoot.

21           109. The Court finds that Champommier could not reasonably have known that  
22 the police officers were, in fact, police officers.

23           110. The Court finds that Champommier did not intend to kill Deputy Brewster.  
24 If Champommier had accelerated from where the Toyota Corolla was first observed, the  
25 speed would have been much greater. Champommier had a problem with the manual  
26 transmission, but he could have floored the gas pedal, ignored the clutch, and "red-lined"  
27 the transmission. Had he done so, Deputy Brewster would be dead or very seriously  
28

1 injured. As even the government’s expert noted, the evidence is consistent with an  
2 attempt to draw attention or scare the officers, presumably to distract them from Oeters.

3 111. The Court finds that the shooting was a mistake, in the lay sense of the  
4 word. Had Special Agent LoPresti withheld his fire and announced himself as a police  
5 officer, then Champommier would have stopped the Toyota Corolla and surrendered.  
6 This finding is supported by the testimony of Ms. Champommier about her son’s  
7 character and background, and because the evidence suggests no reason for an  
8 intentional battery except concern for Oeters.

9 112. The government raised issues as to the credibility of Oeters’ testimony,  
10 received by the Court through deposition. It is sufficient to note that Oeters’ testimony  
11 is consistent with these Findings of Fact. The Court would have reached the same  
12 Findings of Fact even if Oeters’ deposition were disregarded.

13 113. Likewise, the testimony of Roger Clark is consistent with these Findings of  
14 Fact, apart from where the Court specifically rejects his conclusions. But the Court  
15 would have reached the same Findings of Fact even if Clark’s testimony were  
16 disregarded.

## 17 **II. CONCLUSIONS OF LAW**

18 114. The FTCA vests federal courts with exclusive jurisdiction over claims  
19 against the United States government for certain losses and injuries for which it has  
20 waived sovereign immunity. Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680  
21 (“FTCA”). The “law enforcement proviso . . . extends the waiver of sovereign immunity  
22 to claims for six intentional torts, including assault and battery, that are based on the acts  
23 or omissions of investigative or law enforcement officers.” *Millbrook v. U.S.*, -- U.S. -- ,  
24 133 S.Ct. 1441, 1443 (2013) (quotation and citation omitted). “Substantively, the FTCA  
25 makes the United States liable to the same extent as a private individual under like  
26 circumstances, under the law of the place where the tort occurred.” *Levin v. U.S.*, -- U.S.  
27 -- ,133 S.Ct. 1224 (2013). Because the events in this matter occurred in California,  
28

1 California law applies. Under California law, officers and their employers can be held  
2 liable for battery and negligence in the use of deadly force.

3 **A. Battery**

4 115. For liability to attach to a law enforcement officer's conduct undertaken in  
5 the scope of his employment, a plaintiff must prove the *prima facie* elements of battery  
6 and show that the force used was objectively unreasonable. *See Edson v. City of*  
7 *Anaheim*, 63 Cal. App. 4th 1269, 1272-73, 74 Cal. Rptr. 2d 614 (1998) ("By definition  
8 then, a *prima facie* battery is not established unless and until plaintiff proves  
9 unreasonable force was used."); *see also* CACI 1305, Battery by Peace Officer.

10 116. The applicable jury instruction, tailored for this case, would have been  
11 given in the following form:

12  
13 Plaintiffs claim that Special Agent LoPresti harmed Zachary Champommier  
14 by using unreasonable force. To establish this claim, Plaintiffs must prove all of  
15 the following:

- 16 (1) That Special Agent LoPresti intentionally touched Zachary Champommier or  
17 caused Zachary Champommier to be touched;  
18 (2) That Special Agent LoPresti used unreasonable force against Zachary  
19 Champommier;  
20 (3) That Zachary Champommier did not consent to the use of that force;  
21 (4) That Zachary Champommier was harmed; and  
22 (5) That Special Agent LoPresti's use of unreasonable force was a substantial  
23 factor in causing harm to Zachary Champommier.

24 A police officer may use reasonable force to arrest or detain a person when  
25 he or she has reasonable cause to believe that that person has committed a crime.  
26 Even if the police officer is mistaken, a person being arrested or detained has a  
27 duty not to use force to resist the police officer unless the police officer is using  
28 unreasonable force.

In deciding whether Special Agent LoPresti used unreasonable force, you  
must determine the amount of force that would have appeared reasonable to a  
police officer in Special Agent LoPresti's position under the same or similar  
circumstances. You should consider, among other factors, the following:

- 1 (a) The seriousness of the crime at issue;
- 2 (b) Whether Zachary Champommier reasonably appeared to pose an immediate
- 3 threat to the safety of Deputy Brewster; and
- 4 (c) Whether Zachary Champommier was actively resisting arrest or attempting to
- 5 evade arrest.

6 A police officer who makes or attempts to make an arrest is not required to

7 retreat or cease from his or her efforts because of the resistance or threatened

8 resistance of the person being arrested.

9 117. Reasonableness of a use of force by a police officer under California battery

10 law is measured in part by referencing the Constitution and its protections, as elucidated

11 in *Graham v. Connor*. 490 U.S. 386, 397, 109 S.Ct. 1865, 104 L.Ed. 2d 443 (1989); *see*

12 *Edson*, 63 Cal. App. 4th at 1273 (applying *Graham*).

13 118. As recently elaborated by the Ninth Circuit, the *Graham* factors (which are

14 incorporated into the applicable California jury instruction) “are not exclusive and we

15 must consider the totality of the circumstances.” *Gonzalez v. City of Anaheim*, 715 F.3d

16 766, 769 (9th Cir. 2013). It may also be appropriate for courts to consider the

17 availability of alternative means or other circumstances presented to officers at the

18 scene. *See, e.g., Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (en banc).

19 119. The parties in this case do not dispute that *Graham* provides a non-

20 exclusive analytical framework for assessing the reasonableness of force in the context

21 of a California state law battery claim against a police officer.

22 120. The first *Graham* factor, seriousness of the suspected offense, generally

23 weighs in an officer’s favor if the officer has reason to believe that the individual had

24 committed a felony. *Id.* at \*3. The second *Graham* factor, immediacy of the threat

25 posed to other officers or civilians, is characterized as the most important factor. *Id.*

26 The third *Graham* factor, active resistance to arrest or flight, can be assessed in degrees.

27

28

1 *See Mattos v. Agarano*, 661 F.3d 433, 445 (9th Cir. 2011) (clutching steering wheel to  
2 prevent removal from a vehicle constitutes “some resistance to arrest.”).

3 121. “[I]t is not constitutionally unreasonable to prevent escape using deadly  
4 force where the officer has probable cause to believe that the suspect poses a threat of  
5 serious physical harm, either to the officer or to others.” *Wilkinson v. Torres*, 610 F.3d  
6 546, 550 (9th Cir. 2010) (quotation and citation omitted). But, an officer “may not  
7 shoot to kill unless, at a minimum, the suspect presents an immediate threat to the  
8 officer or others, or is fleeing and his escape will result in a serious threat of injury to  
9 persons.” *Harris v. Roderick*, 126 F.3d 1189, 1201 (9th Cir. 1997).

10 122. Courts are directed to give “careful attention to the facts and circumstances  
11 of each particular case” noting that “[t]he ‘reasonableness’ of a particular use of force  
12 must be judged from the perspective of a reasonable officer on the scene, rather than  
13 with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396 (citation omitted).  
14 Furthermore, “[t]he calculus of reasonableness must embody allowance for the fact that  
15 police officers are often forced to make split-second judgments – in circumstances that  
16 are tense, uncertain, and rapidly evolving – about the amount of force that is necessary  
17 in a particular situation.” *Id.* at 396-97. The reasonableness inquiry is therefore highly  
18 fact specific and objective. *See Scott v. Harris*, 550 U.S. 372, 383, 127 S.Ct. 1769, 167  
19 L.Ed. 2d 686 (2007) (“Although respondent’s attempt to craft an easy-to-apply legal  
20 test in the Fourth Amendment context is admirable, in the end we must still slosh our  
21 way through the factbound morass of ‘reasonableness.’”). “A reasonable use of deadly  
22 force encompasses a range of conduct, and the availability of a less-intrusive alternative  
23 will not render conduct unreasonable.” *Wilkinson*, 610 F.3d at 551, citing *Scott v.*  
24 *Henrich*, 39 F.3d 912, 915 (9th Cir. 1994).

25 123. “A police officer’s use of deadly force is reasonable if ‘the officer has  
26 probable cause to believe that the suspect poses a significant threat of death or serious  
27 physical injury to the officer or others. Thus, ‘an officer may reasonably use deadly  
28 force when he or she confronts an armed suspect in close proximity whose actions

1 indicate an intent to attack.” *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 528, 89 Cal.  
2 Rptr. 3d 801(2009) (citations omitted).

3 124. The Court is not aware of any analogous case law addressing the unique  
4 constellation of facts presented here and applying legal standards articulated by the  
5 Ninth Circuit. Unlike many of the cases cited by the government, Champommier had  
6 not led officers on a car chase. Special Agent LoPresti was not aware of any  
7 substantial, objective facts indicating that Champommier meant to harm any officers.  
8 Champommier had no way of knowing that the members of the group were law  
9 enforcement officials. No officers identified themselves to Champommier, and no  
10 officers expressed commands before shots were fired. The officers had no suspicion of  
11 criminal activity by Champommier apart from the impact with Deputy Brewster itself.  
12 Aside from the vehicle, there is no evidence that Champommier had a weapon. Nor  
13 was Champommier driving toward any officers or civilians at the time of the fatal shot.  
14 Contrary to the arguments of the United States, no *per se* rule operates to allow deadly  
15 force whenever a vehicle impacts a law enforcement officer. Such a rule would allow a  
16 pedestrian officer to shoot and kill a motorist whose vehicle merely creeps into an  
17 intersection and touches an officer.

18 125. An illustrative case for comparison is *Gonzalez v. City of Anaheim*, 715  
19 F.3d 766 (9th Cir. 2013), a recent Ninth Circuit decision applying *Graham* to the use of  
20 deadly force against a motorist. Although in closing arguments the government urged  
21 the Court to reach the same conclusion as the district court and later the Ninth Circuit in  
22 *Gonzalez*, it failed to account for the stark factual differences between the cases and the  
23 substantial legal implications of those differences. In *Gonzalez*, uniformed patrol  
24 officers in a black and white police cruiser pulled Gonzalez over after observing him  
25 drive erratically. *Id.* at 768. During the traffic stop, Gonzalez exhibited bizarre and  
26 non-compliant behavior: he reached between seats (leading the officers to suspect he  
27 had a weapon), kept his fists clenched (concealing what the officers believed to be  
28 drugs), and repeatedly ignored the officer’s commands. *Id.* The officers used

1 escalating levels of force, including baton strikes with a flash light and a sleeper hold, to  
2 address Gonzalez’s affirmative non-compliance and physical resistance. *Id.* One of the  
3 officers entered the van and began punching Gonzalez, who responded by shifting his  
4 car into gear and driving away rapidly with the officer in his passenger seat. *Id.* The  
5 officer commanded Gonzalez to stop and attempted to knock the car out of gear. *Id.* at  
6 768-69. When Gonzalez did not respond, the officer shot him. *Id.* at 769. The Ninth  
7 Circuit affirmed the district court’s grant of summary judgment in the city’s favor,  
8 concluding that the use of force was objectively reasonable in light of the facts.

9 126. Here, there were no uniforms, commands, suspicions of criminal activity,  
10 acts of resistance, or escalations of force. Deputy Brewster was not Champommier’s  
11 captive, but instead slid off the vehicle freely onto his feet. Acceleration posed no  
12 danger since no one was in the path of the Toyota Corolla and Deputy Brewster was  
13 sliding onto his feet. The implication of the factual differences between these cases  
14 cannot be ignored – each factor that justified the shooting in *Gonzalez* militates in favor  
15 of the opposite conclusion on the facts currently before the Court.

16 127. In denying summary judgment, the Court already distinguished *Wilkinson*,  
17 610 F.3d 546. On its face, *Wilkinson* is a powerful case for the government, because it  
18 involves an assaultive vehicle and makes its ruling as a matter of law over Judge  
19 Marshall’s dissent. *Id.* at 555. However, each use of force is fact-specific. Most  
20 importantly, *Wilkinson* involved uniform officers and a suspect who refused to obey a  
21 command to stop.

22 128. In *Adams v. Speers*, 473 F.3d 989, 991 (9th Cir. 2007), the decedent led  
23 police on a chase, largely within the speed limit, for over an hour. The decedent refused  
24 to stop even after his car was rammed twice. *Id.* at 992. Ultimately, an officer shot and  
25 killed the driver without warning. *Id.* The Ninth Circuit determined that no officer  
26 could conclude under those circumstances that deadly force was appropriate. *Id.* at 993-  
27 94 (“[T]he absence of warning and the lack of danger to the shooter or others” render  
28 deadly force excessive).

1           129. In *A.D. v. California Highway Patrol*, 712 F.3d 446, 453-57 (9th Cir.  
2 2013), the Ninth Circuit recently affirmed a jury verdict in favor of the minor children  
3 of a decedent killed following a chase. The issues and facts are not analogous here,  
4 because the case rested in large part on a jury finding that the officer in fact acted  
5 without a legitimate law enforcement objective. This recent case does bolster the  
6 Court’s conclusion that there is not a categorical rule that allows use of force, as argued  
7 by the government.

8           **B. Negligence**

9           130. To prevail on Plaintiffs’ claim for negligence (wrongful death) consistent  
10 with their allegations, Plaintiffs must prove that the officers breached a duty of care to  
11 Zachary Champommier, that he was harmed, and that the officers’ negligence was a  
12 substantial factor in causing that harm. *See* CACI 400; Cal. Civ. Code § 1714. The  
13 Supreme Court of California recently clarified that liability may attach to negligent pre-  
14 shooting tactics by police officers under California law “if the tactical conduct and  
15 decisions leading up to the use of deadly force show, as part of the totality of  
16 circumstances, that the use of deadly force was unreasonable.” *Hayes v. County of San*  
17 *Diego, et al.*, 9th Cir. Case No. 09-55644, Slip Op. at 2 (Cal. Aug. 19, 2013). The  
18 question certified in *Hayes* was specifically decided under the “law of negligence” and  
19 does not appear to impact California law as it pertains to battery by a peace officer. *Id.*  
20 at 6 (“Under those state statutes, general principles of tort law, in particular the law of  
21 negligence, govern this case.”).

22   **III. APPLICATION OF LAW TO FACTS**

23           **A. Battery**

24           131. The Court must decide whether Plaintiffs established by a preponderance of  
25 evidence that Special Agent LoPresti’s use of deadly force was objectively  
26 unreasonable under the particular circumstances of the shooting. The facts of this case  
27 are undeniably tragic, comprised of a series of fateful coincidences and confusion, and  
28 complicated by a decided lack of criminal wrongdoing on the part of the decedent. The



1 decisions made by the parties involved were necessarily rapid since the timing of events  
2 (both by happenstance and by the actors' choices) left little room for reflection. But,  
3 the short duration of the altercation alone does not mitigate the countervailing evidence  
4 tending to show the force was unreasonable under any sensible interpretation of the  
5 facts.

6 132. Accordingly, applying the *Graham* factors, binding Ninth Circuit case law,  
7 and California law of battery, the Court concludes that Special Agent LoPresti's use of  
8 deadly force against Champommier in response to the low-speed impact with Deputy  
9 Brewster was objectively unreasonable *despite* Special Agent LoPresti's reasonable  
10 belief that the impact was assaultive. Special Agent LoPresti did not have sufficient  
11 cause to conclude that Champommier posed an immediate continuing threat of death or  
12 serious physical injury to Deputy Brewster when Special Agent LoPresti discharged his  
13 weapon.

14 133. The facts relevant to the shooting can be summarized as follows: Special  
15 Agent LoPresti was providing backup for a minimally contentious investigatory stop of  
16 a pedestrian in a public parking lot. His gun was holstered at his hip. All involved  
17 officers were dressed in plain clothes, standing near unmarked police vehicles. Special  
18 Agent LoPresti turned south toward the driving lane just in time to observe a low-speed  
19 impact between Champommier's vehicle and Deputy Brewster, who had his gun  
20 pointed toward the investigatory stop. The collision was a complete surprise to all  
21 officers – only one officer had even noticed Champommier's vehicle prior to the  
22 impact. Champommier was driving approximately five miles per hour (on average)  
23 against the posted flow of traffic. Deputy Brewster vaulted onto the hood to avoid  
24 injury and stayed seated on the hood of the vehicle with his gun drawn for  
25 approximately one to two seconds. Special Agent LoPresti concluded the impact was  
26 assaultive, unholstered his Glock pistol and fatally shot Champommier through the  
27 driver's side front window, all within at least two seconds of the impact.

28

1           134. Although Deputy Brewster could have shot Champommier through the  
2 windshield while he was on the hood, he elected not to for his own safety. As Special  
3 Agent LoPresti drew his pistol and shot Champommier, Deputy Brewster slid off of the  
4 vehicle into a standing position. He was virtually uninjured and there were no officers  
5 or civilians in the path of the vehicle's travel. Special Agent LoPresti then shot four  
6 more rounds at Champommier even though Deputy Brewster was safely standing to his  
7 north. Deputy Brewster also fired a shot at Champommier from a standing position.  
8 No warnings were given to Champommier and the officers did not identify themselves  
9 to Champommier as law enforcement at any time before shooting. The later shots  
10 unquestionably lacked justification and constituted objectively unreasonable force, but  
11 those bullets did not strike Champommier. Champommier died from the injuries  
12 caused by Special Agent LoPresti's first shot.

13           135. With these facts in mind, the Court concludes that Special Agent LoPresti's  
14 first shot was objectively unreasonable.

15                   **1. The first *Graham* factor**

16           136. The first *Graham* factor, seriousness of the suspected offense, weighs in  
17 favor of finding that the use of deadly force was reasonable, to a very limited degree.  
18 As noted above, any felony is sufficient for this factor to count towards law  
19 enforcement. As will be discussed below, Champommier could reasonably have been  
20 viewed as a suspect in an assault with a deadly weapon. However, before the impact,  
21 Champommier was not suspected of committing any offense whatsoever. He could not  
22 have been a suspect since he did not register in the officers' consciousness. As a result,  
23 the only basis for asserting that Champommier was suspected of criminal activity would  
24 be the collision with Deputy Brewster.

25                   **2. The second *Graham* factor**

26           137. The second *Graham* factor, whether Champommier reasonably appeared to  
27 pose an immediate threat to the safety of Deputy Brewster (or the other officers) is the  
28 most important factor by law and the most relevant on the facts of this case.

1           138. This factor involves two questions: (1) Could Special Agent LoPresti  
2 reasonably conclude that the collision with Deputy Brewster was intentional; and (2) if  
3 so, did Champommier continue to pose a risk after the collision? Both questions are  
4 very close calls on the facts of this case.

5           139. As to the issue of an intentional assault, both parties adduced a number of  
6 facts at trial and argued a number of points based on the evidence. Plaintiffs argue that  
7 the officers did not observe the approach of Toyota Corolla and therefore any  
8 conclusion about an intentional assault was speculative and unreasonable. Plaintiffs  
9 proffer alternative scenarios, all with some basis in the evidence. For example,  
10 Champommier may have seen the plain clothed officers apparently harassing Oeters  
11 and decided to drive by for a closer look. Distracted by Oeters' detainment,  
12 Champommier may not have seen Deputy Brewster until it was too late to stop the  
13 vehicle, causing the collision. While it would have been prudent to stop under these  
14 circumstances, Champommier was face-to-face with the butt of Deputy Brewster's gun,  
15 not knowing that Deputy Brewster was an officer instead of a criminal. In fact, lay  
16 witnesses testified that the group of officers actually looked like some kind of gang. If  
17 the impact had been an accident, it is plausible Champommier did not stop because he  
18 was afraid. Champommier's fear could have manifested in the panic Deputy Brewster  
19 observed.

20           140. There is evidence to suggest that Special Agent LoPresti was, in fact, aware  
21 of the possibility that the collision was accidental. He initially implied that the impact  
22 might not have been intentionally assaultive, stating that at some level he expected the  
23 driver to stop and apologize. Plaintiffs attached considerably more weight to this  
24 statement than does the Court, but it is a reminder that the intentions of Champommier  
25 were inherently ambiguous.

26           141. The government relies on the facts that Champommier's vehicle was going  
27 against the direction of traffic marked in the parking lot and struck Deputy Brewster in  
28

1 a painted parking stall. More broadly, the government does rely (and is entitled to rely)  
2 on the perception of several officers that the impact was intentional.

3 142. On this specific point, the Court concludes that Special Agent LoPresti  
4 could reasonably believe that the impact was intentional, and therefore that Deputy  
5 Brewster was the victim of an assault with a deadly weapon. Apart from the position of  
6 the Toyota Corolla, which is persuasive for the government, the Court must accept the  
7 belief – or perhaps the intuition – of the witnesses. They were there and the Court was  
8 not.

9 143. In the government’s view, this reasonable belief should decide the case: As  
10 a categorical matter of law, Special Agent LoPresti had the right to shoot if he  
11 reasonably determined that Deputy Brewer had been intentionally struck. The Court  
12 rejected that view when summary judgment was denied and the Court rejects that view  
13 now.

14 144. The remaining question and most important question is whether a  
15 reasonable officer in Special Agent LoPresti’s position could objectively conclude that  
16 deadly force was necessary in the immediate defense of life.

17 145. The Court finds and concludes that no reasonable officer could conclude  
18 that there was an immediate threat to life. This finding and conclusion is based on the  
19 following facts.

20 146. *First*, Deputy Brewster was not seated on the hood at the time of the first  
21 shoot. Special Agent LoPresti’s *only* basis for perceiving an immediate threat was  
22 Deputy Brewster’s continued presence on the hood of the Toyota Corolla. Special  
23 Agent LoPresti testified to that, and to his perception (quite mistaken) that Deputy  
24 Brewster was on the hood of the Toyota Corolla through his shots. Likewise,  
25 government expert Ronald McCarthy testified that the shooting would be questionable  
26 if Deputy Brewster was not on the vehicle.

27 147. The Court has found that, at the time of the first shot, Deputy Brewster was  
28 either not on the Toyota Corolla at all or was at the least in the process of sliding off a

1 very slow vehicle, virtually unharmed. Although the Court should not second-guess a  
2 reasonable decision to shoot, the Court is not required to defer to a decision based on  
3 the mistaken belief that Deputy Brewster remained on the hood of the car for a  
4 considerable longer period than was possible. Special Agent LoPresti either was  
5 severely mistaken in his perception at the time or a recollection since that is flatly  
6 mistaken.

7 148. Special Agent LoPresti never articulated exactly *how* the death or  
8 disablement of the driver would assist Deputy Brewster. The government suggested  
9 that the driver could have stopped abruptly, thrown Deputy Brewster off the hood, and  
10 then run him over. Even this fanciful suggestion is dependent on Deputy Brewster's  
11 continued presence on the hood. A more likely scenario would have been that Special  
12 Agent LoPresti believed that a disabled driver would have resulted in the vehicle  
13 slowing down so that Deputy Brewster could escape unharmed. The vehicle was  
14 moving slowly and, again, Deputy Brewster was already safe at the time of the first  
15 shot.

16 149. Showing every deference to Special Agent LoPresti, the threat had  
17 manifested and was abating. The use of deadly force was therefore unnecessary to  
18 preserve Deputy Brewster's safety. The shot was reactive, not protective.

19 150. *Second*, the general policy of law enforcement is to recognize how  
20 ineffectual such shots are. Exhibit 296 sets forth the policy that "use of firearms against  
21 moving motor vehicles is inherently dangerous and almost always ineffective."  
22 Therefore, "an assaultive motor vehicle shall not presumptively justify a Department  
23 member's use of deadly force." Although otherwise an excellent witness, Ronald  
24 McCarthy's attempt to minimize this policy was illogical and did not persuade the  
25 Court.

26 151. *Third*, even the government's expert concluded that Special Agent  
27 LoPresti's final shots were objectively unreasonable. Although Ronald McCarthy  
28 testified that the first shot was justified to defend Deputy Brewster's life, that testimony

1 is necessarily dependent on a conclusion that Deputy Brewster was still on the hood of  
2 the car. In the absence of his presence, there is no real difference between the first and  
3 last shots. Moreover, the willingness of Special Agent LoPresti to shoot unreasonably a  
4 few seconds later does cast doubt on his judgment to shoot at all. This point, however,  
5 cannot be relied on too much because the focus must be on an objective officer, not on  
6 Special Agent LoPresti himself.

7 152. *Fourth*, the failure of Deputy Brewster to shoot at first shows how ill-  
8 advised Special Agent LoPresti's shot was. Deputy Brewster testified that he could  
9 have taken a clear shot at Champommier while he was on the hood of the vehicle and  
10 chose not to do so. Deputy Brewster testified that he "decided it was more prudent to  
11 get off the hood while [he] could" since shooting the driver might place him at a greater  
12 risk than he was in already. (Trial Trans. 5:50:2-3). The law is that Special Agent  
13 LoPresti was not required to choose the best course of action or use lesser force if  
14 deadly force was justified. However, Deputy Brewster's decision not to shoot is some  
15 evidence of the objectively unreasonableness of Special Agent LoPresti's shot. The  
16 Court acknowledges that Deputy Brewster shot later, but that shot was also objectively  
17 unreasonable.

18 153. *Fifth*, the shot was taken with no warnings whatsoever. Had Special Agent  
19 LoPresti identified himself and demanded that Champommier stop, then Champommier  
20 would have done so. Again, no one, including Special Agent LoPresti, has articulated  
21 why an *immediate* shot was necessary to save Deputy Brewster's life.

22 154. *Sixth*, the Court gives no weight to the argument that the shot was  
23 necessary to protect the life of other officers. Ronald McCarthy relied on that theory  
24 but with no evidentiary support in the facts that the trial actually developed. No one but  
25 Deputy Brewster was at risk. At a minimum, there was no threat so immediate that  
26 Special Agent LoPresti could dispense with a warning. Indeed, it is only the  
27 government and McCarthy that argued this point – Special Agent LoPresti testified that  
28 he was only concerned about Deputy Brewster.

1           155. The government argues that Deputy Brewster did shoot. That shot is  
2 objectively unreasonable. Special Agent Fromson and Special Agent Caruth testified  
3 that also would have shot if they could have obtained a clear line of sight. However,  
4 again, they did not articulate precisely how those shots would have assisted Deputy  
5 Brewster or anyone else.

6           156. Ultimately, the government’s argument is no different at trial than it was at  
7 summary judgment. Again, the Court rejects any categorical rule. Special Agent  
8 LoPresti was not faced with a situation analogous to a suspect armed with a gun.  
9 Vehicles are used as deadly weapons, but they are distinct from guns in their everyday  
10 public use and in their operation when employed as weapons. The presence of a gun  
11 may itself be construed as a deadly threat in many contexts, and a suspect with a gun  
12 can do near-instant fatal damage to anyone in the near vicinity. There were no potential  
13 victims in the vehicle’s path when Special Agent LoPresti shot Champommier and any  
14 threat would take at least a number of seconds to manifest. The only person impacted  
15 by the vehicle, Deputy Brewster, was unharmed and moving to a place of safety.  
16 Champommier was driving away from the officers. Consequently, there was no  
17 objective foundation for concluding that Champommier and his vehicle posed a  
18 continuing threat to anyone in the lot.

19           157. Giving due weight to the pressure of making split-second, life or death  
20 decisions, the Court nonetheless finds and concludes that no one was immediately  
21 threatened with death or serious bodily harm.

22                   **3. The third *Graham* factor**

23           158. The above analysis is equally applicable to the third *Graham* factor, which  
24 is active resistance to arrest or flight. This factor weighs in favor of finding that the use  
25 of deadly force was unreasonable. This factor is as strong in Plaintiffs’ favor as the first  
26 – to say a person actively resisted arrest when there was no obvious police presence  
27 fundamentally defies logic and verges on the Orwellian. Champommier’s last act was  
28 an attempt to comply with police commands once authoritatively given. Had the

1 officers verbalized those commands before shooting, Champommier would likely be  
2 alive today.

3 159. Accordingly, the Court finds and concludes that Special Agent LoPresti's  
4 use of deadly force against Champommier was objectively unreasonable.

5 160. All other elements of Plaintiffs' battery claim under the FTCA are met.

6 **B. Negligence**

7 161. Plaintiffs have failed to show that the officers breached a duty of care by  
8 debriefing in a public parking lot, which was the only theory of negligence tried to the  
9 Court. (*See* Final Pretrial Conference Order at 4). Plaintiffs failed in their burden to  
10 prove that the decision to meet at the location deviated from any established standard of  
11 care. Moreover, the officers acted reasonably in regard to Oeters, whose peculiar  
12 behavior justified both further investigation and then an investigative stop pursuant to  
13 *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968).

14 162. In regard to the negligence issues, the Court finds that the testimony of  
15 Ronald McCarthy was more credible and supported in the evidence than the testimony  
16 of Roger Clark.

17 163. Common sense also dictates that Plaintiffs failed to meet their burden.  
18 Police officers have the legal right to carry concealed firearms while off-duty and  
19 typically do so. If the officers had met, say, to celebrate Special Agent LoPresti's  
20 birthday, they also would have been in street clothes and armed. Observing Oeters  
21 while off-duty, they still would have investigated. While it is true that the Task Force  
22 officers were there because of the decision to debrief, that purpose by itself did not lead  
23 to the tragic events here. The suggestion by Roger Clark that they should have called  
24 uniformed LAPD officers was lacking in support and can only be viewed as his own  
25 personal belief in a "best practice" that is not required by California law, or even very  
26 sensible.

27 164. *Hayes* decisively opens the door for courts and juries to consider pre-  
28 shooting decisions and tactics when evaluating whether a use of deadly force was



1 negligent under California law. In this regard, it is helpful to the Plaintiffs in a broad  
2 sense. *Hayes* allows for the possibility of a finding of negligence based on the totality  
3 of circumstances including if the officers’ somehow provoked Champommier to drive  
4 to the scene or to drive his car towards Deputy Brewster. Factually, however, there is  
5 no basis for finding the type of provocation at issue in *Hayes* or the cases it considers.

6 165. It could be argued that the facts considered in assessing Plaintiffs’ battery  
7 claim would also support a finding of liability for negligence, but Plaintiffs’ inclusion  
8 of the negligence claim was specifically targeted at the officers’ pre-shooting tactical  
9 decision to meet in the parking lot. (Final Pre-trial Conference Order at 4 (“The task  
10 force’s meeting in a busy public parking lot shortly after nine o’clock on a summer  
11 Thursday evening, in plain clothes and with plain cars, unreasonably created a  
12 dangerous condition. The assault and shooting of Zachary arose from the chaos these  
13 federal agents negligently created.”)).

14 166. Given the uncertainty of California law at the time of the Final Pretrial  
15 Conference, it is understandable that Plaintiffs’ counsel directed their negligence claim  
16 at pre-shooting conduct, divorced from Special Agent LoPresti’s use of deadly force.  
17 But that is no longer appropriate in light of *Hayes* unless the pre-shooting tactics or  
18 decisions themselves resulted in independent injury. *Hayes*, Slip Op. at 8 (where the  
19 only injury alleged is a loss of life, a “case involves only a single indivisible cause of  
20 action, seeking recovery for a single wrong – the shooting itself.”). Instead, because a  
21 single injury is alleged, the officers’ decision to debrief in the parking lot “is only  
22 relevant here to the extent it shows, as part of the totality of circumstances, that the  
23 shooting itself was negligent.” *Id.* at 9. Therefore, it would not be appropriate to award  
24 the same damages under both of Plaintiffs’ claims.

#### 25 **IV. DAMAGES**

26 167. Total economic damages are \$6,172.61 for burial expenses and funeral  
27 costs and are awarded to Ms. Champommier.

1           168. Plaintiffs are also entitled to non-economic damages to compensate their  
2 loss of their son’s “love, companionship, comfort, care, assistance, protection, affection,  
3 society and moral support.” CACI 2-3921. The award of non-economic damages  
4 should take into account the remainder of Plaintiffs’ lives and be determined in the  
5 amount of current dollars at the time of judgment, not reduced to present cash value. *Id.*  
6 The award of non-economic damages does *not* include the grief and suffering of  
7 Plaintiffs. The award of non-economic damages is also not meant to punish the United  
8 States of America or “send a message”.

9           169. Both Plaintiffs have a life expectancy of 33 years.

10           170. Counsel for both Plaintiffs jointly suggested that an amount be awarded to  
11 Ms. Champommier and then a percentage of that amount be awarded to Mr. Feldman.  
12 Counsel suggested 75%.

13           171. The Court agrees in general with the suggested approach, which is also  
14 sanctioned by California law. However, Mr. Feldman does not deserve 75%. The  
15 Court does not presume to say that one parent loved Champommier more, but grief is  
16 not a recoverable item. Ms. Champommier was the custodial parent. The testimony at  
17 trial established that Champommier always would have been more central to Ms.  
18 Champommier’s life than to Mr. Feldman’s life. The Court is certain that the  
19 temporary estrangement between Champommier and his father would have quickly  
20 come to an end.

21           172. Based on all of the evidence, an appropriate percentage is 50%.

1 **V. VERDICT**

2 The Court finds and rules as follows

- 3 1. On Plaintiffs' Claim 1 for wrongful death (negligence): In favor of Defendant.  
4 2. On Plaintiff's Claim 2 for battery: In favor of Plaintiffs.  
5 3. Plaintiff Carol Champommier is awarded \$6,172.61 in economic damages and  
6 \$2,000,000.00 in non-economic damages.  
7 4. Plaintiff Eric Feldman is awarded \$1,000,000.00 in non-economic damages.

8 The Court will enter a separate judgment pursuant to Rules 54 and 58(b) of the  
9 Federal Rules of Civil Procedure.

10 

11 Dated: August 21, 2013

12 MICHAEL W. FITZGERALD  
13 United States District Judge  
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