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9 *Attorneys for Plaintiffs*

10 UNITED STATES DISTRICT COURT
 11 EASTERN DISTRICT OF CALIFORNIA

12 D.G., et al.,

Case No. 1:15-cv-00760-JAM-JLT

13 Plaintiffs,

Hon. John A. Mendez

14 v.

**ORDER GRANTING JOINT
 STIPULATION TO FILE AMENDED
 PLEADING**

15 COUNTY OF KERN, et al.,

16 Defendants.
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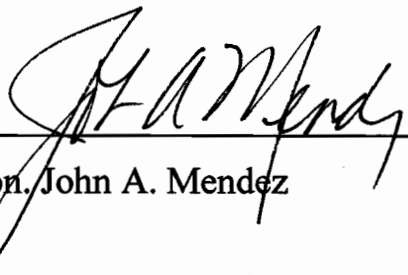
Order

The Court is in receipt of a signed joint stipulation submitted by the parties. In accord with the parties' joint request, good cause having been shown, this Court hereby orders as follows:

1. Plaintiffs' request for leave to file a First Amended Complaint is GRANTED;
2. Plaintiffs shall file their proposed First Amended Complaint within seven (7) calendar days from the date this ORDER is entered;
3. Upon filing, the First Amended Complaint shall serve as the operative complaint in this action.

IT IS SO ORDERED.

Dated: September 1, 2015



Hon. John A. Mendez

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9 *Attorneys for Plaintiffs*

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 D.G., et al.,

13 Plaintiffs,

14 v.

15 COUNTY OF KERN, et al.,

16 Defendants.
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Case No. 1:15-cv-00760-JAM-JLT

Hon. John A. Mendez

**JOINT STIPULATION TO FILE
AMENDED PLEADING**

(proposed order submitted herewith)

1 Come now all parties by and through their respective attorneys of record and
2 hereby stipulate as follows:

3 Whereas, in the spirit of civility and professionalism, and with an eye to
4 bringing this case to trial as quickly and economically as possible, the parties wish
5 to help streamline this litigation by seeking this proposed order. Plaintiffs seek leave
6 to file a First Amended Complaint. Defendants do not oppose the filing of a First
7 Amended Complaint, although they reserve their right to file a motion to dismiss.
8 The parties submit that good cause exists because Plaintiffs only recently discovered
9 the name of the officer involved in the shooting, because no party will be
10 prejudiced, because the litigation will be expedited, and because the resources of the
11 parties and the Court will be conserved. Specifically, the parties stipulate that:

- 12 1. Plaintiffs may file a First Amended Complaint. Specifically, Plaintiffs seek to
13 file a First Amended Complaint naming Robert Reed as a defendant.
14 Defendants do not oppose Plaintiffs' request for leave to amend. Plaintiffs'
15 proposed First Amended Complaint is attached as Exhibit "A."
- 16 2. Plaintiffs shall file their proposed First Amended Complaint within seven (7)
17 calendar days from the date the proposed order is entered;
- 18 3. Upon filing, the First Amended Complaint shall serve as the operative
19 complaint in this action.

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SO STIPULATED.

DATED: August 31, 2015

LAW OFFICES OF DALE K. GALIPO

By /s/ *Thomas C. Seabaugh*

Thomas C. Seabaugh
Attorneys for Plaintiffs

DATED: August 31, 2015

KERN COUNTY COUNSEL'S OFFICE

By /s/ *Andrew C. Thomson*

Andrew C. Thomson
Deputy County Counsel
Attorneys for Defendants

Exhibit “A”

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9 *Attorneys for Plaintiffs*

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 D.G., a minor, by and through his
guardian *ad litem*, Denise Bonilla,
13 individually and as successor-in-interest
14 to David Garcia, deceased;
D.E.G., a minor, by and through her
15 guardian *ad litem*, Denise Bonilla,
16 individually and as successor-in-interest
to David Garcia, deceased;
17 G.D., a minor, by and through her
guardian *ad litem*, Denise Bonilla,
18 individually and as successor-in-interest
19 to David Garcia, deceased;
RAMONA RAMIREZ NUNEZ,
20 individually;

21 Plaintiffs,

22 v.

24 COUNTY OF KERN;
ROBERT REED;
25 DOES 2 THROUGH 10;

26 Defendants.

Case No. 1:15-cv-00760-JAM-JLT

Hon. John A. Mendez

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR DAMAGES**

1. Fourth Amendment—Excessive Force (42 U.S.C. § 1983)
2. Substantive Due Process (42 U.S.C. § 1983)
3. Municipal Liability—Ratification (42 U.S.C. § 1983)
4. Municipal Liability—Inadequate Training (42 U.S.C. § 1983)
5. Municipal Liability—Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)
6. Battery (Wrongful Death)
7. Negligence (Wrongful Death)
8. Violation of Cal. Civil Code § 52.1
9. Negligent Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

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COMPLAINT FOR DAMAGES

COMES NOW, Plaintiffs D.G., a minor, by and through his guardian ad litem, Denise Bonilla, individually and as successor-in-interest to David Garcia, deceased; D.E.G., a minor, by and through her guardian ad litem, Denise Bonilla, individually and as successor-in-interest to David Garcia, deceased; G.D. , a minor, by and through her guardian ad litem, Denise Bonilla, individually and as successor-in-interest to David Garcia, deceased; and RAMONA RAMIREZ NUNEZ, individually; for their First Amended Complaint against Defendants County of Kern, Defendant Robert Reed, and Does 2-10, inclusive, and allege as follows:

JURISDICTION AND VENUE

1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4) because Plaintiffs assert claims arising under the laws of the United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the United States Constitution. This Court has supplemental jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. § 1367(a), because those claims are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants reside in this district and all incidents, events, and occurrences giving rise to this action occurred in this district.

INTRODUCTION

3. This civil rights and state tort action seeks compensatory and punitive damages from Defendants for violating various rights under the United States Constitution and state law in connection with the fatal shooting of the Plaintiffs' loved one.

PARTIES

1
2 4. At all relevant times, David Garcia (“DECEDENT”) was an individual
3 residing in the County of Kern, California.

4 5. Plaintiff D.G. is a minor individual residing in the County of Kern,
5 California and is the natural son of DECEDENT. Plaintiff D.G. sues both in his
6 individual capacity and in a representative capacity as a successor-in-interest to
7 DECEDENT pursuant to California Code of Civil Procedure § 377.60. Plaintiff
8 D.G. seeks both survival and wrongful death damages under federal and state law.
9 Denise Bonilla is the natural mother of D.G..

10 6. Plaintiff D.E.G. is a minor individual residing in the County of Kern,
11 California and is the natural daughter of DECEDENT. Plaintiff D.E.G. sues both in
12 her individual capacity and in a representative capacity as a successor-in-interest to
13 DECEDENT pursuant to California Code of Civil Procedure § 377.60. Plaintiff
14 D.E.G. seeks both survival and wrongful death damages under federal and state law.
15 Denise Bonilla is the natural mother of D.E.G..

16 7. Plaintiff G.D. is a minor individual residing in the County of Kern,
17 California. Plaintiff G.D. is not the biological daughter of DECEDENT, but
18 DECEDENT held her out ever since she was an infant as his own daughter. She
19 called DECEDENT “Daddy,” and he had her name tattooed on his body. Plaintiff
20 G.D. contends that she is the decedent’s heir and successor in interest. Accordingly,
21 Plaintiff G.D. sues both in her individual capacity and in a representative capacity as
22 a successor-in-interest to DECEDENT pursuant to California Code of Civil
23 Procedure § 377.60. Plaintiff G.D. seeks both survival and wrongful death damages
24 under federal and state law. Denise Bonilla is the natural mother of G.D.

25 8. Denise Bonilla is the natural mother and proposed guardian *ad litem* of
26 D.E.G., D.G., and G.D..

27 9. Plaintiff RAMONA RAMIREZ NUNEZ is the natural mother of
28 DECEDENT.

1 10. At all relevant times, Defendant COUNTY OF KERN (“COUNTY”)
2 was and is a municipal corporation existing under the laws of the State of California.
3 COUNTY is a chartered subdivision of the State of California with the capacity to
4 be sued. COUNTY is responsible for the actions, omissions, policies, procedures,
5 practices, and customs of its various agents and agencies, including the Kern County
6 Sheriff’s Department and its agents and employees. At all relevant times, Defendant
7 COUNTY was responsible for assuring that the actions, omissions, policies,
8 procedures, practices, and customs of its employees and agents complied with the
9 laws of the United States and of the State of California. At all relevant times,
10 COUNTY was the employer of Defendants DOES 2-10.

11 11. Defendant Robert Reed (“Defendant Reed”) is a sheriff’s deputy with
12 the Kern County Sheriff’s Office (“KCSO”). Defendants DOES 2-10 (“DOE
13 DEPUTIES”) are sheriff’s deputies or other employees of the KCSO. At all
14 relevant times, Defendant Reed and DOE DEPUTIES were acting under color of
15 law within the course and scope of their duties as sheriff’s deputies at KCSO. At all
16 relevant times, Defendant Reed and DOE DEPUTIES were acting with the complete
17 authority and ratification of their principal, Defendant COUNTY.

18 12. On information and belief, Defendant Reed and DOE DEPUTIES were
19 residents of the County of Kern.

20 13. In doing the acts and failing and omitting to act as hereinafter
21 described, Defendant Reed and DOE DEPUTIES were acting on the implied and
22 actual permission and consent of COUNTY.

23 14. The true names and capacities of the DOE DEPUTIES are unknown to
24 Plaintiffs, who otherwise sue these Defendants by such fictitious names. Plaintiffs
25 will seek leave to amend this complaint to show the true names and capacities of
26 these Defendants when they have been ascertained. Each of the fictitiously-named
27 Defendants is responsible in some manner for the conduct or liabilities alleged
28 herein.

1 15. At all times mentioned herein, each and every defendant was the agent
2 of each and every other defendant and had the legal duty to oversee and supervise
3 the hiring, conduct, and employment of each and every DOE DEPUTY.

4 16. All of the acts complained of herein by Plaintiffs against Defendants
5 were done and performed by said Defendants by and through their authorized
6 agents, servants, and/or employees, all of whom at all relevant times herein were
7 acting within the course, purpose, and scope of said agency, service, and/or
8 employment capacity. Moreover, Defendant COUNTY and its agents ratified all of
9 the acts complained of herein.

10 17. Defendant Reed and DOE DEPUTIES are sued in their individual
11 capacities.

12 18. Plaintiffs filed comprehensive and timely claims for damages on March
13 18, 2015 with COUNTY pursuant to applicable sections of the California
14 Government Code. COUNTY rejected said claims by operation of law on May 1,
15 2015.

16
17 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

18 19. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
19 through 18 of this First Amended Complaint with the same force and effect as if
20 fully set forth herein.

21 20. On the morning of January 26, 2015, Decedent, Plaintiff D.G., Plaintiff
22 D.E.G., Plaintiff G.D., and Denise Bonilla were all at 1134 E Street, in Wasco,
23 California. Denise Bonilla called the Kern County Sheriff's Office (KCSO) because
24 Decedent was not behaving normally. Shortly thereafter, several KCSO deputies,
25 including DOE DEPUTIES, arrived on scene. At all relevant times, all KCSO
26 deputies involved in this incident were acting in the course and scope of their
27 employment with KCSO and COUNTY.

28

1 21. After arriving on scene, KCSO deputies encountered the DECEDENT,
2 who was holding a folding knife. The DECEDENT was apparently in mental
3 distress, but he was not attempting to hurt anyone with the knife. In violation of
4 their training, Defendant Reed and DOE DEPUTIES failed to de-escalate the
5 situation. Instead, one of the DOE DEPUTIES fired a taser at DECEDENT, causing
6 DECEDENT to drop the folding knife.

7 22. After DECEDENT dropped the knife, Denise Bonilla picked it up. At
8 that point, Defendant Reed and DOE DEPUTIES knew that DECEDENT no longer
9 had the knife and was unarmed. After Denise Bonilla picked up the knife,
10 DECEDENT attempted to run from the deputies.

11 23. After DECEDENT took one or two steps outside the front door,
12 Defendant Reed shot Decedent with a firearm. At the time he was shot,
13 DECEDENT was unarmed and had nothing in his hands. He did not present an
14 immediate danger of death or serious bodily injury to himself or anyone else.
15 Plaintiffs D.G., D.E.G., and G.D. watched their father being shot.

16 24. Plaintiffs contend that Defendant Reed and DOE DEPUTIES used
17 excessive and unreasonable force against DECEDENT under the circumstances,
18 including shooting him with firearms when he was unarmed and attempting to evade
19 Defendant Reed and DOE DEPUTIES, or integrally participated or failed to
20 intervene in the shooting. Plaintiffs also contend that Defendant Reed and DOE
21 DEPUTIES were negligent in handling the situation involving DECEDENT,
22 causing DECEDENT's death and emotional harm to Plaintiffs. Plaintiffs also make
23 claims against Defendant Reed and DOE DEPUTIES for battery, wrongful death,
24 and violations of the Tom Bane Civil Rights Act (Cal. Civil Code § 52.1).

25 25. Pursuant to Government Code Section 815.2, County of Kern is
26 vicariously liable for the torts of Defendant Reed and DOE DEPUTIES while in the
27 course and scope of their employment with KCSO and the County of Kern.
28

1 the conscience, including unwarranted state interference in Plaintiffs' familial
2 relationship with their loved one and family member, DECEDENT.

3 39. DECEDENT had a cognizable interest under the Due Process Clause of
4 the Fourteenth Amendment of the United States Constitution to be free from state
5 actions that deprive him of life, liberty, or property in such a manner as to shock the
6 conscience.

7 40. The aforementioned actions of Defendant Reed and DOE DEPUTIES,
8 along with other undiscovered conduct, shock the conscience, in that they acted with
9 deliberate indifference to the constitutional rights of DECEDENT and Plaintiffs, and
10 with purpose to harm unrelated to any legitimate law enforcement objective.

11 41. As a direct and proximate result of these actions, DECEDENT was
12 harmed, experienced pain and suffering, and died. Defendant Reed and DOE
13 DEPUTIES thus violated the substantive due process rights of Plaintiffs to be free
14 from unwarranted interference with their familial relationship with DECEDENT.

15 42. As a direct and proximate cause of the acts of Defendant Reed and
16 DOE DEPUTIES, Plaintiffs suffered emotional distress, mental anguish, and pain.
17 Plaintiffs have also been deprived of the life-long love, companionship, comfort,
18 support, society, care, and sustenance of DECEDENT, and will continue to be so
19 deprived for the remainder of their natural lives.

20 43. The conduct of Defendant Reed and DOE DEPUTIES was willful,
21 wanton, malicious, and done with reckless disregard for the rights and safety of
22 DECEDENT and Plaintiffs, and therefore warrants the imposition of exemplary and
23 punitive damages as to Defendant Reed and DOE DEPUTIES.

24 44. Defendant Reed and DOE DEPUTIES are each liable for
25 DECEDENT's injuries, either because they engaged in the above conduct; because
26 they were integral participants in the above conduct; or because they failed to
27 intervene to prevent the above conduct.

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1 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
2 and death.

3 53. Accordingly, Defendant COUNTY is directly liable to Plaintiffs for
4 compensatory damages under 42 U.S.C. § 1983.

5 54. Plaintiffs D.G., D.E.G., G.D., and RAMONA RAMIREZ NUNEZ
6 bring this claim individually. Plaintiffs D.G., D.E.G., and G.D. also bring this claim
7 as successors-in-interest to DECEDENT.

8 55. Plaintiffs seek both survival and wrongful death damages under this
9 claim. Plaintiffs also seek attorney's fees under this claim. Plaintiffs also claim
10 funeral and burial expenses.

11
12 **FOURTH CLAIM FOR RELIEF**

13 **Municipal Liability – Failure to Train (42 U.S.C. § 1983)**

14 (Against Defendant COUNTY)

15 56. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
16 through 55 of this First Amended Complaint with the same force and effect as if
17 fully set forth herein.

18 57. Defendant Reed and DOE DEPUTIES acted under color of law.

19 58. The acts of Defendant Reed and DOE DEPUTIES deprived
20 DECEDENT and Plaintiffs of their particular rights under the United States
21 Constitution.

22 59. The training policies of Defendant COUNTY were not adequate to
23 train its deputies to handle the usual and recurring situations with which they must
24 deal.

25 60. Defendant COUNTY was deliberately indifferent to the obvious
26 consequences of its failure to train its deputies adequately.

27 61. The failure of Defendant COUNTY to provide adequate training caused
28 the deprivation of the Plaintiffs' rights by Defendant Reed and DOE DEPUTIES;

1 that is, COUNTY's failure to train is so closely related to the deprivation of the
2 Plaintiffs' rights as to be the moving force that caused the ultimate injury.

3 62. By reason of the aforementioned acts and omissions, Plaintiffs have
4 suffered loss of the love, companionship, affection, comfort, care, society, training,
5 guidance, and past and future support of DECEDENT. The aforementioned acts and
6 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
7 and death.

8 63. Accordingly, Defendant COUNTY is liable to Plaintiffs for
9 compensatory damages under 42 U.S.C. § 1983.

10 64. Plaintiffs D.G., D.E.G., G.D., and RAMONA RAMIREZ NUNEZ
11 bring this claim individually. Plaintiffs D.G., D.E.G., and G.D. also bring this claim
12 as successors-in-interest to DECEDENT.

13 65. Plaintiffs seek both survival and wrongful death damages under this
14 claim. Plaintiffs also seek attorney's fees under this claim. Plaintiffs also claim
15 funeral and burial expenses.

16
17 **FIFTH CLAIM FOR RELIEF**

18 **Municipal Liability – Unconstitutional Custom or Policy (42 U.S.C. § 1983)**
19 **(Against Defendant County)**

20 66. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
21 through 65 of this First Amended Complaint with the same force and effect as if
22 fully set forth herein.

23 67. Defendant Reed and DOE DEPUTIES acted under color of law;

24 68. Defendant Reed and DOE DEPUTIES acted pursuant to an expressly
25 adopted official policy or a longstanding practice or custom of the Defendant
26 COUNTY.

1 69. On information and belief, Defendant Reed and DOE DEPUTIES were
2 not disciplined, reprimanded, retrained, suspended, or otherwise penalized in
3 connection with Decedent's death.

4 70. Defendants COUNTY and Defendant Reed and DOE DEPUTIES,
5 together with other COUNTY policymakers and supervisors, maintained, inter alia,
6 the following unconstitutional customs, practices, and policies:

- 7 (a) Using excessive force, including excessive deadly force;
8 (b) Providing inadequate training regarding the use of deadly force;
9 (c) Employing and retaining as police officers individuals such as
10 Defendant Reed and DOE DEPUTIES, who Defendant
11 COUNTY at all times material herein knew or reasonably should
12 have known had dangerous propensities for abusing their
13 authority and for using excessive force;
14 (d) Inadequately supervising, training, controlling, assigning, and
15 disciplining COUNTY deputies, and other personnel, including
16 Defendant Reed and DOE DEPUTIES, who Defendant
17 COUNTY knew or in the exercise of reasonable care should
18 have known had the aforementioned propensities and character
19 traits;
20 (e) Maintaining grossly inadequate procedures for reporting,
21 supervising, investigating, reviewing, disciplining and
22 controlling misconduct by COUNTY deputies, including
23 Defendant Reed and DOE DEPUTIES;
24 (f) Failing to adequately discipline COUNTY police deputies,
25 including Defendant Reed and DOE DEPUTIES, for the above-
26 referenced categories of misconduct, including "slaps on the
27 wrist," discipline that is so slight as to be out of proportion to the
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- 1 magnitude of the misconduct, and other inadequate discipline
2 that is tantamount to encouraging misconduct;
- 3 (g) Announcing that unjustified shootings are “within policy,”
4 including shootings that were later determined in court to be
5 unconstitutional;
- 6 (h) Even where shootings are determined in court to be
7 unconstitutional, refusing to discipline, terminate, or retrain the
8 officers involved;
- 9 (i) Encouraging, accommodating, or facilitating a “blue code of
10 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,”
11 or simply “code of silence,” pursuant to which deputies do not
12 report other deputies’ errors, misconduct, or crimes. Pursuant to
13 this code of silence, if questioned about an incident of
14 misconduct involving another officer, while following the code,
15 the deputy being questioned will claim ignorance of the other
16 deputies’ wrongdoing.
- 17 (j) Maintaining a policy of inaction and an attitude of indifference
18 towards soaring numbers of deputy-involved shootings,
19 including by failing to discipline, retrain, investigate, terminate,
20 and recommend officers for criminal prosecution who participate
21 in shootings of unarmed people.

22 71. The aforementioned unconstitutional customs, practices, and polices, in
23 addition to the ratification of the deficient customs, practices, and policies, are
24 evidenced by the number of prior shootings, which constituted excessive force,
25 involving sheriffs’ deputies working for the Kern County Sheriff’s Department. The
26 following cases, without limitation, are examples of continued misconduct by
27 sheriff’s deputies working for the Kern County Sheriff’s Department:
28

- 1 (a) The deadly and unjustified shooting of David Lee Turner by KSCO
2 Deputy Wesley Kraft on July 10, 2011 at a Fastrip convenience store
3 on Niles Street and Mount Vernon Avenue.
- 4 (b) The beating and in-custody death of David Silva in May 2013. Silva, an
5 unarmed man in mental distress, was killed by deputies who struck him
6 repeatedly in the head with a baton and then asphyxiated him by
7 restraining him in a prone position with weight on his back. KCSO
8 deputies then attempted to cover up the killing by confiscating and
9 deleting video footage from bystanders' cellphones.
- 10 (c) Ronnie Ledesma died in August 2013 following a beating at the hands
11 of KCSO deputies, during which KSCO deputies struck him with
12 batons, used improper control holds, and caused him to be bitten by a
13 police dog.
- 14 (d) Jose Lucero died in December 2010 following a beating at the hands of
15 KCSO deputies that included shocking him 29 times with a taser and
16 hitting him 33 times with batons.
- 17 (e) On January 3, 2014 KSCO Deputy Chris Strunc opened fire without
18 justification at a vehicle that he was attempting to pursue.

19 72. By reason of the aforementioned acts and omissions, Plaintiffs have
20 suffered loss of the love, companionship, affection, comfort, care, society, training,
21 guidance, and past and future support of DECEDENT. The aforementioned acts and
22 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
23 and death.

24 73. Defendants COUNTY, Defendant Reed, and DOES 2-10, together with
25 various other officials, whether named or unnamed, had either actual or constructive
26 knowledge of the deficient policies, practices and customs alleged in the paragraphs
27 above. Despite having knowledge as stated above, these defendants condoned,
28 tolerated and through actions and inactions thereby ratified such policies. Said

1 officials also acted with deliberate indifference to the foreseeable effects and
2 consequences of these policies with respect to the constitutional rights of
3 DECEDENT, Plaintiffs, and other individuals similarly situated.

4 74. By perpetrating, sanctioning, tolerating and ratifying the outrageous
5 conduct and other wrongful acts, Defendant Reed and DOE DEPUTIES acted with
6 intentional, reckless, and callous disregard for the life of DECEDENT and for
7 DECEDENT's and Plaintiffs' constitutional rights. Furthermore, the policies,
8 practices, and customs implemented, maintained, and still tolerated by Defendants
9 COUNTY and Defendant Reed and DOE DEPUTIES were affirmatively linked to
10 and were a significantly influential force behind the injuries to DECEDENT and
11 Plaintiffs.

12 75. Accordingly, Defendant COUNTY is liable to Plaintiffs for
13 compensatory damages under 42 U.S.C. § 1983.

14 76. Plaintiffs D.G., D.E.G., G.D., and RAMONA RAMIREZ NUNEZ
15 bring this claim individually. Plaintiffs D.G., D.E.G., and G.D. also bring this claim
16 as successors-in-interest to DECEDENT.

17 77. Plaintiffs seek both survival and wrongful death damages under this
18 claim. Plaintiffs also seek attorney's fees under this claim. Plaintiffs also claim
19 funeral and burial expenses.

20
21 **SIXTH CLAIM FOR RELIEF**

22 **Battery**

23 (Wrongful Death)

24 (Against All Defendants)

25 78. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
26 through 77 of this First Amended Complaint with the same force and effect as if
27 fully set forth herein.

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1 79. Defendant Reed and DOE DEPUTIES, while working as sheriff's
2 deputies, and acting within the course and scope of their duties, intentionally shot
3 DECEDENT and used unreasonable and excessive force against him. As a result of
4 the actions of Defendant Reed and DOE DEPUTIES, DECEDENT suffered severe
5 pain and suffering and ultimately died from his injuries. Defendant Reed and DOE
6 DEPUTIES had no legal justification for using force against DECEDENT.

7 80. As a result of the actions of Defendant Reed and DOE DEPUTIES,
8 Plaintiffs were deprived of the lifelong love, companionship, comfort, support,
9 society, care, sustenance, training, and guidance of DECEDENT, and will continue
10 to be so deprived for the remainder of their natural lives.

11 81. The COUNTY is vicariously liable for the wrongful acts of DOE
12 DEPUTIES pursuant to section 815.2(a) of the California Government Code, which
13 provides that a public entity is liable for the injuries caused by its employees within
14 the scope of the employment if the employee's act would subject him or her to
15 liability.

16 82. The conduct of Defendant Reed and DOE DEPUTIES was malicious,
17 wanton, oppressive, and accomplished with a conscious disregard for the rights of
18 Plaintiffs and DECEDENT, entitling Plaintiffs, individually and as successors-in-
19 interest to DECEDENT, to an award of exemplary and punitive damages.

20 83. Plaintiffs D.G., D.E.G., and G.D. bring this claim individually and as
21 successors-in-interest to the DECEDENT, and seek both survival and wrongful
22 death damages under this claim.

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SEVENTH CLAIM FOR RELIEF

Negligence

(Wrongful Death)

(Against All Defendants)

84. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 83 of this First Amended Complaint with the same force and effect as if fully set forth herein.

85. Police deputies, including Defendant Reed and DOE DEPUTIES, have a duty to use reasonable care to prevent harm or injury to others. This duty includes using appropriate tactics, giving appropriate commands, giving warnings where feasible, not using any force unless necessary, using less than lethal options, and only using deadly force as a last resort.

86. Defendant Reed and DOE DEPUTIES breached this duty of care. Upon information and belief, the actions and inactions of Defendant Reed and DOE DEPUTIES were negligent and reckless, including but not limited to:

- (a) the failure to properly and adequately assess the need to use force or deadly force against DECEDENT;
- (b) the negligent tactics and handling of the situation with DECEDENT, including pre-shooting negligence;
- (c) the negligent use of force against DECEDENT;
- (d) the failure to ensure that adequate numbers of employees with appropriate education and training were available to meet the needs of and protect the rights of DECEDENT;
- (e) upon information and belief, the negligent handling of evidence and witnesses; and
- (f) the negligent communication of (or failure to communicate) information during the incident.

1 DECEDENT, including by shooting him without justification or excuse or by
2 integrally participating and failing to intervene in the above violence.

3 93. When Defendant Reed and DOE DEPUTIES shot DECEDENT, they
4 interfered with his civil rights to be free from unreasonable searches and seizures, to
5 due process, to equal protection of the laws, to medical care, to be free from state
6 actions that shock the conscience, and to life, liberty, and property.

7 94. On information and belief, Defendant Reed and DOE DEPUTIES
8 intentionally and spitefully committed the above acts to discourage DECEDENT
9 from exercising his civil rights, to retaliate against him for invoking such rights, or
10 to prevent him from exercising such rights, which he was fully entitled to enjoy.

11 95. On information and belief, DECEDENT reasonably believed and
12 understood that the violent acts committed by Defendant Reed and DOE
13 DEPUTIES, inclusive were intended to discourage him from exercising the above
14 civil rights, to retaliate against him for invoking such rights, or to prevent him from
15 exercising such rights.

16 96. Defendant Reed and DOE DEPUTIES successfully interfered with the
17 above civil rights of DECEDENT.

18 97. The conduct of Defendant Reed and DOE DEPUTIES was a substantial
19 factor in causing the above harms, losses, injuries, and damages.

20 98. The COUNTY is vicariously liable for the wrongful acts of Defendant
21 Reed and DOE DEPUTIES pursuant to section 815.2(a) of the California
22 Government Code, which provides that a public entity is liable for the injuries
23 caused by its employees within the scope of the employment if the employee's act
24 would subject him or her to liability.

25 99. The conduct of Defendant Reed and DOE DEPUTIES was malicious,
26 wanton, oppressive, and accomplished with a conscious disregard for
27 DECEDENT's rights, justifying an award of exemplary and punitive damages as to
28 Defendant Reed and DOE DEPUTIES.

1 107. The conduct of Defendant Reed and DOE DEPUTIES was malicious,
2 wanton, oppressive, and accomplished with a conscious disregard for the rights of
3 Plaintiffs D.G., D.E.G., and G.D., justifying an award of exemplary and punitive
4 damages as to Defendant Reed and DOE DEPUTIES.

5 108. Plaintiffs D.G., D.E.G., and G.D. bring this claim individually.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request entry of judgment in their favor and against Defendants County of Kern, Defendant Reed, and Does 2-10, inclusive, as follows:

- A. For compensatory damages in whatever amount may be proven at trial, including both survival damages and wrongful death damages under federal and state law;
- B. For funeral and burial expenses in an amount to be proven at trial;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For statutory damages;
- E. For interest;
- F. For reasonable attorney’s fees, including litigation expenses;
- G. For costs of suit; and
- H. For such further relief as the Court may deem just, proper, and appropriate.

DATED: [proposed]

LAW OFFICES OF DALE K. GALIPO

Bv _____ [proposed]
Dale K. Galipo
Thomas C. Seabaugh
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: [proposed]

LAW OFFICES OF DALE K. GALIPO

By _____ [proposed]
Dale K. Galipo
Thomas C. Seabaugh
Attorneys for Plaintiffs