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8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 )  
 12 THE ESTATE OF JERRY A. AMARO III; )  
 GERALDINE MONTOYA; STEPHANIE )  
 13 MONTOYA; )  
 14 Plaintiffs, )

CASE NO: C09-01019 WHA

**STIPULATION AND ~~PROPOSED~~  
 ORDER GRANTING LEAVE FOR  
 PLAINTIFFS TO FILE FIRST AMENDED  
 COMPLAINT FOR DAMAGES**

15 vs. )

16 )  
 17 CITY OF OAKLAND; RICHARD WORD; )  
 EDWARD POULSON; R. HOLMGREN; S. )  
 18 NOWAK; M. BATTLE; E. KARSSEBOOM; )  
 C. BUNN; M. PATTERSON; **T. PENA;** )  
 19 individually and in their capacities as members )  
 of the CITY OF OAKLAND Police )  
 20 Department; DOES 2-100, inclusive, )  
 21 Defendants. )

22 )  
 23 Estate of Amaro, et al. v. City of Oakland, et al  
 24 Case No. C09-01019 WHA  
 Stip and ~~Proposed~~ Order Granting Leave to File First Amended Complaint For Damages

1 THE PARTIES, BY AND THROUGH THEIR RESPECTIVE COUNSEL OF  
2 RECORD, DO HEREBY STIPULATE AND AGREE THAT:

3 Plaintiffs shall be given leave to file the First Amended Complaint for Damages which is  
4 attached and incorporated herein by reference as Exhibit 1 and that upon entry of the Order  
5 granting this Stipulation, said First Amended Complaint for Damages shall be deemed filed.  
6 Defendants shall reserve all of their rights and defenses in connection with the filing of said First  
7 Amended Complaint for Damages.

8 IT IS SO STIPULATED:

9 Dated: August 28, 2009

/s/  
\_\_\_\_\_  
JOHN L. BURRIS  
Attorney for Plaintiffs

11 Dated: August 28, 2009

/s/  
\_\_\_\_\_  
JAMES B. CHANIN  
Attorney for Plaintiffs

13 Dated: August 28, 2009

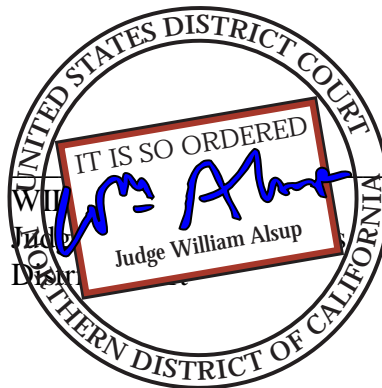
/s/  
\_\_\_\_\_  
STEPHEN Q. ROWELL  
Attorney for City of Oakland  
Defendants

15 Dated: August 28, 2009

/s/  
\_\_\_\_\_  
JOHN VERBER  
Attorney for Defendant  
Edward Poulson

18 PURSUANT TO STIPULATION,  
19 IT IS SO ORDERED:

20 Dated: September 1 \_\_, 2009



23 Estate of Amaro, et al. v. City of Oakland, et al  
24 Case No. C09-01019 WHA  
Stip and ~~Proposed~~ Order Granting Leave to File First Amended Complaint For Damages

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12 THE ESTATE OF JERRY A. AMARO III; )  
GERALDINE MONTOYA; STEPHANIE )  
13 MONTOYA; )

14 Plaintiffs, )

15 vs. )

16 )  
17 CITY OF OAKLAND; RICHARD WORD; )  
EDWARD POULSON; R. HOLMGREN; S. )  
18 NOWAK; M. BATTLE; E. KARSSEBOOM; )  
C. BUNN; M. PATTERSON; T. PENA; )  
19 individually and in their capacities as members )  
of the CITY OF OAKLAND Police )  
20 Department; DOES 2-100, inclusive, )

21 Defendants. )  
22 )  
23 )

CASE NO: C09-01019 WHA

**FIRST AMENDED  
COMPLAINT FOR DAMAGES  
(Violation of Civil Rights,  
42 U.S.C. Section 1983)**

**JURY TRIAL DEMANDED**

24 Estate of Amaro, et al. v. City of Oakland, et al  
Case No. C09-01019 WHA  
First Amended Complaint For Damages

1  
2  
3  
4  
5  
**JURISDICTION AND VENUE**

6 1. This complaint arises from the death of JERRY A. AMARO III in Oakland,  
7 California. The complaint seeks remedies pursuant to 42 U.S.C. Section 1983. Jurisdiction is  
8 conferred upon this Court by 28 U.S.C. Sections 1331 and 1343.

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**INTERDISTRICT ASSIGNMENT**

17 2. The acts and/or omissions giving rise to plaintiffs' claims occurred within the  
18 City of Oakland, County of Alameda, California. Therefore, venue is proper in the Northern  
19 District of California, San Francisco and/or Oakland Divisions pursuant to Local Rule 3-2(d).

20  
21  
22  
23  
24  
**PARTIES**

25 3. JERRY A. AMARO III died on or about April 21, 2000, as a result of injuries  
26 he sustained during an arrest by the individual defendants that occurred on or about March 23,  
27 2000. The decedent was not married at the time of his death and died without leaving a will.  
28 To the extent that this action seeks to recover damages for the violation of rights personal to  
29 the decedent, this action is maintained on behalf of the ESTATE OF JERRY A. AMARO III  
30 by his successors in interest, GERALDINE MONTOYA and STEPHANIE MONTOYA. Said  
31 plaintiffs are persons with standing to bring the within action pursuant to California Code of  
32 Civil Procedure Sections 377.30 and 377.60 and/or California Probate Code Section 6402.

33 4. Plaintiff GERALDINE MONTOYA is the natural mother of JERRY A.  
34 AMARO III and brings this action in her personal capacity for the violation of her rights under  
35 the United States Constitution and/or as successor in interest to the ESTATE OF JERRY A.  
36 AMARO III and/or as a person with standing to bring this action under California Code of  
37 Civil Procedure Sections 377.30 and 377.60.

38 5. Plaintiff STEPHANIE MONTOYA is the sister of JERRY A. AMARO III.  
39 JERRY A. AMARO III. At the time of the decedent's death, Plaintiff STEPHANIE

1 MONTOYA was a minor who had resided in the same household of the decedent for the 180  
2 days prior to his death and was dependent upon the decedent for at least on half of her support.  
3 Therefore, Plaintiff STEPHANIE MONTOYA has standing to bring this action for the  
4 violation of the decedent's Constitutional rights under California Code of Civil Procedure  
5 Section 377.60(c).

6 6. Defendant CITY OF OAKLAND was at all times mentioned herein, a  
7 municipal corporation duly organized and existing under the laws of the State of California.

8 7. Defendant RICHARD WORD (hereinafter Defendant WORD) was at all times  
9 herein mentioned the Chief of Police for the CITY OF OAKLAND Police Department.  
10 Defendant WORD is sued herein in his individual and official capacities.

11 8. Defendant EDWARD POULSON (hereinafter Defendant POULSON) was at all  
12 times herein mentioned, employed by the CITY OF OAKLAND Police Department and is  
13 sued herein in his individual and official capacities.

14 9. Defendant R. HOLMGREN (hereinafter Defendant HOLMGREN) was at all  
15 times herein mentioned, employed by the CITY OF OAKLAND Police Department and is  
16 sued herein in his individual and official capacities.

17 10. Defendant S. NOWAK (hereinafter Defendant NOWACK) was at all times  
18 herein mentioned, employed by the CITY OF OAKLAND Police Department and is sued  
19 herein in his individual and official capacities.

20 11. Defendant M. BATTLE (hereinafter Defendant BATTLE) was at all times  
21 herein mentioned, employed by the CITY OF OAKLAND Police Department and is sued  
22 herein in his individual and official capacities.

1           12. Defendant E. KARSSEBOOM (hereinafter Defendant KARSSEBOOM) was at  
2 all times herein mentioned, employed by the CITY OF OAKLAND Police Department and is  
3 sued herein in his individual and official capacities.

4           13. Defendant C. BUNN (hereinafter Defendant BUNN) was at all times herein  
5 mentioned, employed by the CITY OF OAKLAND Police Department and is sued herein in  
6 his individual and official capacities.

7           14. Defendant M. PATTERSON (hereinafter Defendant PATTERSON) was at all  
8 times herein mentioned, employed by the CITY OF OAKLAND Police Department and is  
9 sued herein in his individual and official capacities.

10           **15. Defendant T. PENA (hereinafter Defendant Pena) was at all times herein**  
11 **mentioned, employed by the CITY OF OAKLAND Police Department and is sued herein**  
12 **in her individual and official capacities. Defendant Pena is being substituted as the true**  
13 **name of the Defendant fictitiously named as Doe 1 in the Complaint.**

14           16. Plaintiffs are ignorant of the true names and/or capacities of defendants sued  
15 herein as DOES 2 through 20, inclusive, and therefore sues said defendants by such fictitious  
16 names. Plaintiffs will amend this complaint to allege their true names and capacities when  
17 ascertained. Plaintiffs are informed and believe, and upon such information and belief allege  
18 that each of the Doe defendants is legally responsible and liable for the incident, injuries and  
19 damages hereinafter set forth, and that each of said defendants proximately caused said  
20 incidents, injuries and damages by reason of their negligence, breach of duty, negligent  
21 supervision, management or control, battery, violation of constitutional rights, violation of  
22 public policy, or by reason of other personal, vicarious or imputed negligence, fault, or breach  
23 of duty, whether severally or jointly, or whether based upon agency, employment, ownership,  
entrustment, custody, care or control or upon any other act or omission. Plaintiffs will ask

1 leave to amend this complaint to insert further charging allegations when such facts are  
2 ascertained.

3 17. In doing the acts alleged herein, Defendants, and each of them, acted within the  
4 course and scope of their employment for the CITY OF OAKLAND.

5 18. In doing the acts and/or omissions alleged herein, Defendants, and each of  
6 them, acted under color of authority and/or under color of law.

7 19. In doing the acts and/or omissions alleged herein, Defendants, and each of  
8 them, acted as the agent, servant, employee and/or in concert with each of said other  
9 Defendants herein.

#### 10 **STATEMENT OF FACTS**

11 20. Defendants CITY OF OAKLAND, RICHARD WORD and other high ranking  
12 CITY OF OAKLAND officials have long been on actual notice that members of the CITY OF  
13 OAKLAND Police Department, particularly those assigned to narcotics and gang units,  
14 repeatedly violated the constitutional rights of citizens by subjecting them to searches and  
15 arrests without probable cause, causing citizens to be subjected to excessive force, fabricating  
16 information in reports, providing false and/or intentionally misleading information in Internal  
17 Affairs investigations and have otherwise caused numerous citizens to be subjected to the  
18 violation of their Constitutional rights.

19 21. Plaintiffs are further informed and believe and thereon allege that said customs,  
20 policies, patterns and/or practices are the product of a culture of tolerance in the CITY OF  
21 OAKLAND Police Department in which the end result, i.e., an arrest and/or prosecution, by  
22 any means necessary (whether lawful or unlawful) became more important than ensuring that  
23 the Constitution and legal processes are followed by members of the Oakland Police  
24 Department.

1           22. Plaintiffs are further informed and believe and thereon allege that as a matter of  
2 official policy -- rooted in an entrenched posture of deliberate indifference to the constitutional  
3 rights of primarily minority citizens who live, visit and/or travel within Oakland neighborhoods  
4 in particular -- defendant CITY OF OAKLAND, RICHARD WORD and/or DOES 2-100  
5 and/or each of them, allowed citizens, such as the decedent, JERRY A. AMARO III, to be  
6 abused by its police officers and turned a blind eye to the promotion and retention of members  
7 of the Oakland Police Department who have engaged in such civil rights violations and/or who  
8 have encouraged, authorized and/or condoned said practices.

9           23. As a result of the pre-existing customs, policies, patterns and/or practices of  
10 such abuses by members of defendant CITY OF OAKLAND's Police Department, the  
11 decedent, JERRY A. AMARO III and Plaintiff GERALDINE MONTOYA were subjected to  
12 the violation of their constitutional rights as alleged herein.

13           24. On or about March 23, 2000, the decedent, JERRY A. AMARO III was arrested  
14 **during a reverse drug sting operation that was supervised by Defendant EDWARD**  
15 **POULSON. Based on the evidence adduced to date, Plaintiffs are further informed and**  
16 **believe and thereon allege that Defendants E. KARSSEBOOM, C. BUNN, M.**  
17 **PATTERSON and/or DOES 2-100 and/or each of them, were assigned as plainclothes**  
18 **undercover officers during the incident. Plaintiffs are further informed and believe and**  
19 **thereon allege that these officers were assigned to pose as drug dealers and to make sales**  
20 **of "bunk" narcotics to drug users. Plaintiffs are further informed and believe and**  
21 **thereon allege that once the undercover officers made the sale of the bunk narcotics to the**  
22 **buyer, they were instructed to give a signal to a team of arrest officers who would emerge**  
23 **from an unmarked van to arrest the buyer.**



1           25. Based on the evidence adduced to date, Plaintiffs are informed and believe  
2 and thereon allege that Defendants POULSON, R. HOLMGREN; T. PENA and/or DOES  
3 2-100 and/or each of them, were assigned to be the arrest team for the subject reverse  
4 drug sting operation. Plaintiffs are further informed and believe and thereon allege that  
5 said Defendants were stationed in an unmarked van located in the vicinity of the narcotic  
6 sales being conducted by Defendants KARSSABOOM, BUNN, PATTERSON and/or  
7 DOES 2-100 and/or each of them.

8           26. Based on the evidence adduced to date, Plaintiffs are further informed and  
9 believe and thereon allege that Defendants S. NOWAK; M. BATTLE and/or DOES 2-100  
10 and/or each of them, were assigned primarily as transport officers who would remove the  
11 buyers arrested in the reverse drug sting to another location and/or to jail following their  
12 arrest.

13           27. Based on the evidence adduced to date, Plaintiffs are informed and believe  
14 and thereon allege that decedent JERRY A. AMARO III (hereinafter, decedent) was  
15 identified by one of the undercover officers as having purchased bunk narcotics during  
16 the subject sting operation and that a signal was given to the arrest team officers who  
17 emerged from the unmarked van to arrest the decedent.

18           28. Based on the evidence adduced to date, Plaintiffs are informed and believe  
19 and thereon allege that the individual Defendants, including, but not limited to,  
20 EDWARD POULSON, R. HOLMGREM; S. NOWAK, M. BATTLE, E.  
21 KARSSEBOOM, C. BUNN; M. PATTERSON; T. PENA and/or DOES 2-100,  
22 individually and/or while acting in concert with one another, subjected decedent to the  
23 violation of his Federal constitutional rights during and/or following his arrest as result  
24 of said sting operation, including, but not limited to, by subjecting him to the use of

1 excessive force, by their failure to intervene to stop the use of force on the decedent, by  
2 their failure to obtain medical treatment for the decedent's injuries resulting from the use  
3 of excessive force and/or by conspiring with other Defendants to conceal the violation of  
4 the decedent's constitutional rights and/or by other acts and/or omissions which caused  
5 the violation of the decedent's constitutional rights subject to continuing discovery.

6 29. Based on the evidence adduced to date, Plaintiffs are informed and believe  
7 and thereon allege that said excessive force may have included, but may not have been  
8 limited to, tackling and/or otherwise knocking the decedent to the ground; punching,  
9 kicking, hitting and/or the use of other physical force on the decedent; and/or otherwise  
10 subjecting the decedent to other forms of excessive force during the incident subject to  
11 continuing discovery.

12 30. Based on the evidence adduced to date, Plaintiffs are further informed and  
13 believe and thereon allege that despite the use of excessive force on the decedent, none of  
14 the individual Defendants wrote any police reports, use of force and/or any other  
15 documentation concerning the use of force on the decedent, the injuries sustained by the  
16 decedent as a result of the use of force, requests for medical treatment made by the  
17 decedent or his complaints of pain, or any other documentation concerning the use of  
18 force, denial of medical treatment to the decedent or his complaints of pain.

19 31. Based on the evidence adduced to date, Plaintiffs are informed and believe  
20 and thereon allege that the use of excessive force as alleged herein was so extreme that it  
21 resulted in severe internal injuries to the decedent which included, but was not limited to,  
22 five fractured ribs, the laceration of the decedent's left lung and/or other injuries.  
23 Despite the use of excessive force and the injuries sustained by the decedent, and the  
24 decedent's repeated complaints about his pain and requests to the officers for medical

1 treatment, Plaintiffs are informed and believe and thereon allege that none of the  
2 individual Defendants sought medical treatment for the decedent and, instead, he was  
3 transported to jail following his arrest.

4 32. Based on the evidence adduced to date, Plaintiffs are further informed and  
5 believe and thereon allege that despite the serious nature of his injuries, decedent was not  
6 given necessary medical treatment while he was incarcerated in the Oakland City Jail  
7 following this incident.

8 33. Based on the evidence adduced to date, Plaintiffs are further informed and  
9 believe and thereon allege that after the decedent's death, Defendant HOLMGREN  
10 initially gave a statement in which he failed to mention that the decedent was punched  
11 during the arrest. Plaintiffs are further informed and believe and thereon allege that  
12 civilian witnesses reported to the Oakland Police Department that the decedent had been  
13 subjected to force during the incident, and that a civilian witness specifically reported  
14 that the decedent had been punched during his arrest. Thereafter, Plaintiffs are  
15 informed and believe and thereon allege that Defendant HOLMGREN told OPD  
16 investigators that he heard and felt the decedent being hit, consistent with being punched,  
17 while he was being arrested, but claimed he did not know who punched the decedent.  
18 Plaintiffs are further informed and believe and thereon allege that notwithstanding  
19 Defendant HOLMGREN'S statement, none of the individual Defendants have ever come  
20 forward to admit punching, kicking or hitting the decedent during this incident or seeing  
any officer who had done so.

21 34. At the time of this incident, Plaintiffs are informed and believe and thereon  
22 allege that Defendant POULSON was a Lieutenant in the CITY OF OAKLAND Police  
23 Department and was the highest ranking member of the police department present during the

1 arrest of the decedent. Subsequent to this incident, Plaintiffs are informed and believe and  
2 thereon allege that Defendant POULSON was promoted to the rank of Captain and also held a  
3 high ranking position within the CITY OF OAKLAND Police Department’s Internal Affairs  
4 division and was responsible for investigating complaints against members of the CITY OF  
5 OAKLAND Police Department notwithstanding his own misconduct in this case.

6 35. Plaintiffs are further informed and believe and thereon allege that the individual  
7 Defendants **and/or each of them, individually and/or while acting in concert with one**  
8 **another** conspired with one another to lie about and conceal the use of excessive force on the  
9 decedent.

10 36. Plaintiffs are informed and believe and thereon allege that the decedent suffered  
11 in severe pain following this incident and subsequently died as a result of his injuries on or  
12 about April 21, 2000.

13 37. Plaintiffs are further informed and believe and thereon allege that following the  
14 death of the decedent, the individual Defendants and/or each of them, continued to conspire to  
15 lie about and conceal the use of excessive force on the decedent, including, but not limited to,  
16 during investigations of the incident conducted by the CITY OF OAKAND Police Department  
17 in the aftermath of the decedent’s death.

18 38. As a direct and proximate result of the conspiracy of the individual Defendants  
19 to lie about and conceal the true facts concerning the use of excessive force on the decedent  
20 that led to the decedent’s death, Plaintiffs were prevented from knowing that the decedent had  
21 suffered the violation of his Fourth Amendment right to be free from excessive force during the  
22 arrest and/or that the decedent died as a result of the violation of his Constitutional rights. As a  
23 result, the Plaintiffs did not know that they and the decedent had actionable claims that could  
24 be made as a result of this incident until it was made known in published press reports in late

1 January 2009 that Defendant POULSON had been suspended by the CITY OF OAKLAND  
2 Police Department in January 2009 because of an FBI investigation in which it was alleged that  
3 Defendant POULSON had kicked the decedent during the subject incident and directed his  
4 subordinates to lie about it.

5 39. Prior to this disclosure, Plaintiffs had no ability to obtain the true facts of this  
6 incident and, in fact, despite their due diligence, they could not have learned about the true  
7 facts due to the intentional concealment of the true facts by the individual Defendants and/or  
8 each of them.

9 40. Plaintiffs are further informed and believe and thereon allege that despite the  
10 fact that defendant CITY OF OAKLAND retained an attorney to independently investigate the  
11 subject incident, defendant CITY OF OAKLAND never notified the Plaintiffs of any such  
12 investigation, nor disclosed any of the true facts of what occurred during the underlying  
13 incident until Plaintiffs discovered the true facts in press reports in January 2009.

14 41. Furthermore, as a result of the fact that peace officer personnel files and  
15 investigations are “confidential” under California law, the Plaintiffs had no ability to discover  
16 any of the police department records or investigations in this matter and their request for a  
17 copy of the police report of the underlying incident was denied by the CITY OF OAKLAND  
18 Police Department in November 2000. Therefore, despite Plaintiffs’ exercise of due diligence,  
19 they did not, and could not have, discovered the true facts of what occurred and the existence  
20 of their claims for relief, until January 2009. Accordingly, Plaintiffs allege that this Complaint  
21 has been timely filed and that the doctrines of equitable estoppel and/or fraudulent concealment  
22 operate to bar the defense of the statute of limitations by Defendants in this action.

23 42. Plaintiffs are further informed and believe and thereon allege that Plaintiff  
24 GERALDINE MONTOYA and the decedent suffered the violation of their/his constitutional

1 rights as a result of customs, policies, or practices of Defendants CITY OF OAKLAND,  
2 RICHARD WORD and/or DOES 2-100, and/or each of them, individually and/or while acting  
3 in concert with one another, including, but not limited to, customs, policies or practices which  
4 encouraged, ratified, authorized or condoned the use of excessive force, the fabrication and/or  
5 falsification of police reports, lying and concealment of misconduct and/or other conduct  
6 which foreseeably resulted in the violation of the rights of the decedent and/or plaintiffs;  
7 customs, policies and/or practices of inadequate and/or inappropriate training; customs,  
8 policies and/or practices of conducting searches and/or seizures in violation of the United  
9 States Constitution; customs, policies and/or practices of inadequate and/or inappropriate  
10 supervision, control and/or discipline; customs, policies and/or practices of subjecting minority  
11 individuals in Oakland to unnecessary and excessive force, unreasonable seizures and/or  
12 disparate and/or discriminatory treatment because of their race, gender and/or age, and/or other  
13 customs, policies and practices that caused and/or contributed to the cause of the violation of  
14 the constitutional rights and/or other wrongful conduct that occurred in this case subject to  
15 continuing discovery.

16 43. Plaintiffs are further informed and believe and thereon allege that Defendants  
17 CITY OF OAKLAND, RICHARD WORD, DOES 2-100 and/or each of them, tacitly or  
18 directly ratified, approved and/or condoned the use of excessive force on the decedent, the  
19 denial of medical treatment to the decedent, the lying and concealment of the use of excessive  
20 force by the individual Defendants and other misconduct that occurred in this case and/or  
21 failed to take any or appropriate remedial action in response to this incident despite the serious  
22 nature of the incident and the loss of life that occurred.

23 44. Plaintiffs are further informed and believe and thereon allege that prior to the  
24 subject incident, Defendant CITY OF OAKLAND, RICHARD WORD and/or Does 2-100

1 and/or each of them, knew, or reasonably should have known, that certain members of the  
2 CITY OF OAKLAND Police Department, particularly those assigned to drug and gang units,  
3 had engaged in a repeated pattern and practice of violating the Constitutional rights of minority  
4 citizens living, traveling and/or visiting Oakland and fabricated or falsified information  
5 contained in police reports concerning their misconduct. See, e.g., *Delphine Allen, et al. v.*  
6 *City of Oakland, et al*, C00-4599 TEH (the “Riders Litigation”).

7 45. Plaintiffs are further informed and believe and thereon allege that despite said  
8 prior knowledge, Defendant CITY OF OAKLAND, RICHARD WORD and/or Does 2-100  
9 and/or each of them, said Defendants ratified and/or approved of the use of force, failure to  
10 obtain medical treatment for the decedent and/or fabrication and/or falsification of police  
11 reports by the individual Defendants in this case.

12 **STATEMENT OF DAMAGES**

13 46. As a result of this incident, Plaintiff GERALDINE MONTOYA sustained  
14 damages, and will sustain in the future damages, including, but not limited to, damages for the  
15 violation of her right to the familial association with the decedent, loss of the society, comfort,  
16 affection, association and support of the decedent; funeral and burial expenses, punitive  
17 damages and/or other damages to be determined according to proof.

18 47. The Plaintiffs, as the successors in interest to the decedent, may also be entitled  
19 to recover damages for the loss of life suffered by the decedent as a result of the subject  
20 incident, loss of society, comfort, affection and support, medical and related expenses, punitive  
21 damages and/or other damages in amounts to be determined according to proof.

22 48. Plaintiffs are informed and believe and thereon allege that the acts and/or  
23 omissions of the individual Defendants and/or each of them, were, or may have been,  
24 intentional, malicious, oppressive and/or done with a conscious or callous disregard for the

1 safety and/or constitutional rights of the decedent and/or Plaintiffs which may thereby justify  
2 an award of punitive or exemplary damages in amounts to be determined according to proof.

3 49. Plaintiffs will also be entitled to an award of attorneys' fees and/or costs  
4 pursuant to statute(s) in the event that they are the prevailing parties in this action under 42  
5 U.S.C. Sections 1983, 1985-86, and 1988.

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**  
8 **(42 U.S.C. SECTION 1983)**

9 **(Against the Individual Defendants for the Violation of Decedent's Constitutional Rights)**

10 50. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1 through 49.

11 51. In doing the acts complained of herein, Defendants EDWARD POULSON, R.  
12 HOLMGREN; S. NOWAK; M. BATTLE; E. KARSSEBOOM; C. BUNN; M. PATTERSON;  
13 **T. PENA** and/or DOES 2-100 and/or each of them, individually and/or while acting in concert  
14 with one another, did act under color of state law to deprive the decedent, JERRY A. AMARO  
15 III, of certain constitutionally protected rights, including, but not limited to, the right not to be  
16 deprived of life or liberty without Due Process of Law; the right to be free from unreasonable  
17 searches and/or seizures; the right to continued familial relationship, association, comfort,  
18 society and affection of the Plaintiffs, the right to be free from discrimination based on race,  
19 age and/or gender; and/or the right to Equal Protection of the Law.

20 52. Said rights are substantive guarantees under the Fourth and/or Fourteenth  
21 Amendments to the United States Constitution.

22 53. As a result of the violation of the decedent's constitutional rights as alleged  
23 herein, decedent suffered injuries and damages, including, but not limited to the loss of the  
24 enjoyment of life; special damages, including, but not limited to, future income and wage loss;  
funeral and burial expenses; interference with his right to the familial association, society,



1 comfort and affection with the Plaintiffs and other general and special damages to be  
2 determined according to proof.

3 54. Plaintiffs are informed and believe and thereon allege that the acts and/or  
4 omissions of Defendants EDWARD POULSON, R. HOLMGREN; S. NOWAK; M. BATTLE;  
5 E. KARSSEBOOM; C. BUNN; M. PATTERSON; **T. PENA; DOES 2-100** and/or each of  
6 them, were intentional, malicious, oppressive and/or done with a conscious, callous and/or  
7 reckless disregard for the rights of the decedent and/or Plaintiffs. Therefore, Plaintiffs pray for  
8 an award of punitive damages in amounts to be determined according to proof.

9 55. Plaintiffs are also entitled to recover their attorneys' fees and costs pursuant to  
10 42 U.S.C. Sections 1983, 1988 and/or other applicable law.

11 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

12 **SECOND CLAIM FOR RELIEF**  
13 **(42 U.S.C. SECTION 1983)**  
14 **(Against the Individual Defendants for the Violation of Plaintiffs GERALDINE**  
15 **MONTOYA's Constitutional Rights)**

16 56. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1 through 55.

17 57. In doing the acts complained of herein, the individual Defendants, EDWARD  
18 POULSON, R. HOLMGREN; S. NOWAK; M. BATTLE; E. KARSSEBOOM; C. BUNN; M.  
19 PATTERSON; **T. PENA** and/or **DOES 2-100** and/or each of them, individually and/or while  
20 acting in concert with one another, did act under color of state law to deprive the Plaintiff  
21 GERALDINE MONTOYA, as alleged heretofore, of certain constitutionally protected rights,  
22 including, but not limited to, the right to continued familial association, society, comfort,  
23 affection, support and companionship of the decedent as guaranteed by the Fourteenth  
24 Amendment to the United States Constitution.

1           58. As a result of the violation of the Plaintiff's constitutional rights as alleged  
2 herein, Plaintiff GERALDINE MONTOYA suffered, and will continue to suffer in the future,  
3 injuries and damages, including, but not limited to, loss of comfort, affection, society, support,  
4 companionship and familial association of the decedent, pain, suffering and emotional distress,  
5 funeral and burial expenses, loss of income and/or support, in amounts to be determined  
6 according to proof.

7           59. Plaintiff is informed and believes and thereon alleges that the acts and/or  
8 omissions of Defendants EDWARD POULSON, R. HOLMGREN; S. NOWAK; M. BATTLE;  
9 E. KARSSEBOOM; C. BUNN; M. PATTERSON; **T. PENA** and/or DOES 2-100 and/or each  
10 of them, were intentional, malicious, oppressive and/or done with a conscious, callous and/or  
11 reckless disregard for the rights of the decedent and/or Plaintiff. Therefore, Plaintiff prays for  
12 an award of punitive damages in amounts to be determined according to proof.

13           60. Plaintiff is also entitled to recover their attorneys' fees and costs pursuant to 42  
14 U.S.C. Sections 1983, 1988 and/or other applicable law.

15           WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

16                           **THIRD CLAIM FOR RELIEF**  
17                           **(42 U.S.C. SECTION 1983)**  
18                           **(ALL PLAINTIFFS AGAINST THE CITY OF OAKLAND, RICHARD WORD, DOES 1-**  
19                           **100)**

20           61. Plaintiffs incorporate by reference and re-allege herein Paragraphs 1 through  
21 **60.**

22           62. As against Defendants CITY OF OAKLAND, RICHARD WORD and/or  
23 DOES 2-100 and/or each of them, the Plaintiffs, and each of them, allege that the violation of  
24 the constitutional rights of the Plaintiff GERALDINE MONTOYA and/or decedent as alleged  
heretofore were caused as a result of customs, policies and/or practices of Defendants CITY  
OF OAKLAND, RICHARD WORD and/or DOES 2-100 and/or each of them.

1           63. Plaintiffs are further informed and believe and thereon allege that prior to the  
2 subject incident, Defendant CITY OF OAKLAND, RICHARD WORD and/or DOES 2-100  
3 and/or each of them, were on actual notice of customs, policies, patterns and practices by  
4 members of the CITY OF OAKLAND Police Department, including, but not limited to,  
5 policies which caused citizens to subjected to unreasonable seizures, the use of excessive force,  
6 disparate and/or discriminatory treatment based on race, gender and/or age and/or the  
7 fabrication and/or falsification of police reports.

8           64. Plaintiffs are further informed and believe and thereon allege that despite said  
9 notice, Defendants CITY OF OAKLAND, RICHARD WORD and/or DOES 2-100 and/or each  
10 of them, failed to take any or appropriate remedial action to prevent ongoing violations of the  
11 rights of citizens by members of its police department to prevent ongoing incidents involving  
12 unreasonable seizures, the use of excessive force and/or disparate and/or discriminatory  
13 treatment based on age, race and/or gender and/or the falsification and/or fabrication of police  
14 reports.

15           65. Plaintiffs are further informed and believe and thereon allege that Defendants  
16 CITY OF OAKLAND, RICHARD WORD and/or DOES 2-100 and/or each of them, knew  
17 and/or reasonably should have known, that Defendants EDWARD POULSON, R.  
18 HOLMGREN; S. NOWAK; M. BATTLE; E. KARSSEBOOM; C. BUNN; M. PATTERSON;  
19 **T. PENA** and/or DOES 2-100 and/or each of them, had engaged in prior misconduct during  
20 and following this incident, but failed to take any or appropriate remedial action.

21           66. Plaintiffs are further informed and believe and thereon allege that Defendant  
22 CITY OF OAKLAND, RICHARD WORD and/or DOES 2-100 and/or each of them, ratified,  
23 approved and/or condoned the violation of the constitutional rights of the decedent and/or  
24 Plaintiffs as alleged herein. In particular, Plaintiffs are informed and believe and thereon

1 allege that none of the officers involved in this incident who failed to document the use of  
2 force on the decedent where terminated by the CITY OF OAKLAND Police Department  
3 notwithstanding regulations that provided for termination for untruthfulness. Plaintiffs are  
4 further informed and believe and thereon allege that notwithstanding his misconduct in this  
5 case, Defendant POULSON was promoted to Captain and placed into a high ranking position  
6 in the CITY OF OAKLAND Police Department’s Internal Affairs unit where he was  
7 responsible for investigating complaints of officer misconduct.

8 67. As a result of the aforesaid customs, policies, practices and/or ratification of  
9 constitutional violations as alleged herein by Defendants CITY OF OAKLAND, RICHARD  
10 WORD and/or DOES 2-100 and/or each of them, Plaintiff GERALDINE MONTOYA and/or  
11 decedent suffered the violation of their constitutional rights, including, but not limited to, the  
12 right to the right of the Plaintiff and decedent to the continued familial association, society,  
13 comfort, affection, support and companionship between said Plaintiffs and decedent, the right  
14 to be free from unreasonable seizures, the right to privacy and personal security, the right not  
15 to be deprived of life or liberty without Due Process of Law and/or the Right to Equal  
16 Protection of the Law which are guaranteed by the Fourth and/or Fourteenth Amendments to  
17 the United States Constitution.

18 68. As a result of the violation of the Plaintiff’s and/or decedent’s constitutional  
19 rights as alleged herein, Plaintiffs suffered, and will continue to suffer in the future, injuries  
20 and damages, including general and special damages as more particularly described  
21 hereinabove and herein below.

22 69. Plaintiffs are also entitled to recover their attorneys’ fees and costs pursuant to  
23 42 U.S.C. Sections 1983, 1988 and/or other applicable law.

24 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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**JURY TRIAL DEMAND**

70. Plaintiffs hereby demand a jury trial.

**PRAYER**

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 1. General damages in the amount of \$10 million dollars or in an amount to be determined according to proof;
- 2. Special damages, including but not limited to, past, present and/or future wage loss, income and support, medical expenses, funeral and burial expenses and/or other special damages in amounts to be determined according to proof;
- 3. Attorneys' fees pursuant to statutes;
- 4. Costs of suit;
- 5. Punitive and exemplary damages in amounts to be determined according to proof against the individual Defendants EDWARD POULSON, R. HOLMGREN; S. NOWAK; M. BATTLE; E. KARSSEBOOM; C. BUNN; M. PATTERSON; **T. PENA** and/or DOES 2-100 and/or each of them and/or each of them;
- 6. For prejudgment interest as permitted by law;
- 7. For such other and further relief as the Court may deem just and proper.

August 27, 2009

\_\_\_\_\_/S/  
JOHN L. BURRIS  
Attorney for Plaintiffs

August 27, 2009

\_\_\_\_\_/S/  
JAMES B. CHANIN  
Attorney for Plaintiffs