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IFETAYO R. AZIBO-BOYNTON and
ESTATE OF LEVI B. BOYNTON, JR.

FILED
SEP 15 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IFP
NP
(3)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ADR

IFETAYO R. AZIBO-BOYNTON, an
individual; and the ESTATE OF LEVI B.
BOYNTON, JR. by and through personal
representative IFETAYO R. AZIBO-
BOYNTON,

CASE NO
10-04151

JL

COMPLAINT FOR DAMAGES

Plaintiffs,

vs.

JURY TRIAL DEMANDED

CITY OF PINOLE, a city governmental entity;
CITY OF RICHMOND, a city governmental
entity; TIM COUWELS, an individual;
CHRIS FODOR, an individual; ZACH BLUME,
an individual; PAUL M. CLANCY, an
individual; CHRIS MAGNUS, an individual;
and DOES 1-50, inclusive,

Defendants.

COME NOW Plaintiffs IFETAYO R. AZIBO-BOYNTON, an individual; and the ESTATE OF LEVI B. BOYNTON, JR. by and through personal representative IFETAYO R. AZIBO-BOYNTON (collectively referred to as "Plaintiffs"), to complain against Defendants CITY OF PINOLE, a city governmental entity; CITY OF RICHMOND, a city governmental entity; TIM COUWELS, an individual; CHRIS FODOR, an individual; ZACH BLUME, an individual; PAUL M. CLANCY, an individual; CHRIS MAGNUS, an individual; and DOES 1-50, inclusive (collectively referred to as "Defendants") as follows:

GENERAL ALLEGATIONS

1
2 1. Plaintiff herein, IFETAYO R. AZIBO-BOYNTON, is and at all times herein mentioned was a
3 citizen of the United States. Plaintiff is the surviving mother of Decedent, LEVI B. BOYNTON, JR.
4 (hereinafter "Decedent").
5

6 2. Plaintiff herein, the ESTATE OF LEVI B. BOYNTON, JR, is represented by and through,
7 IFETAYO R. AZIBO-BOYNTON, the DECEDENT's mother and personal representative of the
8 ESTATE OF LEVI B. BOYNTON, JR.
9

10 3. Defendant herein, the CITY OF PINOLE, is a city governmental entity, duly organized and
11 existing under the laws of the State of California, in the County of Contra Costa, in the Northern
12 District of California. Defendant CITY OF PINOLE operates the PINOLE POLICE
13 DEPARTMENT. Defendant CITY OF PINOLE is the employer of Defendants PAUL M. CLANCY,
14 TIM COUWELS, CHRIS FODOR, ZACH BLUME and/or DOES 1-50, and is responsible for their
15 wrongful actions.
16

17 4. Defendant herein, the CITY OF RICHMOND, is a city governmental entity, duly organized
18 and existing under the laws of the State of California, in the County of Contra Costa, in the Northern
19 District of California. Defendant CITY OF RICHMOND operates the RICHMOND POLICE
20 DEPARTMENT. Defendant CITY OF RICHMOND is the employer of Defendants CHRIS
21 MAGNUS, TIM COUWELS, CHRIS FODOR, ZACH BLUME and/or DOES 1-50, and is
22 responsible for their wrongful actions.
23

24 5. Defendant herein, TIM COUWELS, is an individual who is being sued in his individual
25 capacity and in his capacity as a Sergeant Police Officer working for either the CITY OF
26 RICHMOND or the CITY OF PINOLE.
27

28 6. Defendant herein, CHRIS FODOR, is an individual who is being sued in his individual

1 capacity and in his capacity as a Corporal Police Officer working for either the CITY OF
2 RICHMOND or the CITY OF PINOLE.

3
4 7. Defendant herein, ZACH BLUME, is an individual who is being sued in his individual
5 capacity and in his capacity as a Police Officer working for either the CITY OF RICHMOND or the
6 CITY OF PINOLE.

7
8 8. Defendant herein, PAUL M. CLANCY, is an individual who is being sued in his individual
9 capacity and in his capacity as the Chief of Police for the CITY OF PINOLE and PINOLE POLICE
10 DEPARTMENT.

11
12 9. Defendant herein, CHRIS MAGNUS, is an individual who is being sued in his individual
13 capacity and in his capacity as the Chief of Police for the CITY OF RICHMOND and RICHMOND
14 POLICE DEPARTMENT.

15
16 10. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 through 50,
17 inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs are informed and
18 believe and thereon allege that each Defendant so named is responsible in some manner for the
19 injuries and damages sustained by plaintiffs as set forth herein. Plaintiffs will amend their complaint
20 to state the names and capacities of DOES 1-50, inclusive, when they have been ascertained.

21
22 11. DOES 1 through 50, inclusive, are police officers employed by Defendants, acting within the
23 course and scope of their employment by Defendants, and were directly involved in the unlawful
24 pursuit, unlawful shooting and wrongful death of DECEDENT. DOES 1 through 50, inclusive, are
25 Defendant police officers employed by Defendants, acting within the course and scope of their
26 employment by Defendants CITY OF RICHMOND and CITY OF PINOLE, were employed in a
27 supervisory capacity by Defendants and were responsible in some manner for properly and
28 adequately hiring, retaining, supervising, disciplining, and training defendant police officers

1 employed by CITY OF RICHMOND and CITY OF PINOLE in the proper and reasonable pursuits,
2 making of detentions and arrests, and use of force.

3
4 **COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS**

5 12. Plaintiffs are required to comply with an administrative tort claim requirement under
6 California law. Plaintiffs have complied with all such requirements by submitting timely Claims to
7 Defendants CITY OF RICHMOND and CITY OF PINOLE, receiving rejection letters from
8 Defendants, and by suing within the time prescribed by the rejection notices and California law.

9
10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 13. The following facts are stated on information and belief.

12 14. On September 12, 2009 at approximately 0109 hrs, a call was made to 911 in the CITY OF
13 PINOLE reporting that a carjacking of a Jeep Grand Cherokee had occurred. Shortly thereafter, a
14 CITY OF PINOLE police car was dispatched and spotted a vehicle fitting the description (hereinafter
15 "Subject Vehicle"). The CITY OF PINOLE police car unit followed the Subject Vehicle at a slow
16 speed and called for back-up as it was reported that there were weapons involved. The CITY OF
17 PINOLE police officers pursued the suspects in the Subject Vehicle over a short distance into the
18 CITY OF RICHMOND. Defendant TIM COUWELS instructed Defendant CHRIS FODOR, ZACH
19 BLUME, DOES 1-50, and other Defendants not to turn on lights or sirens until back-up vehicles
20 arrived.
21

22
23 15. At approximately 0116 hrs, Defendants TIM COUWELS, CHRIS FODOR, ZACH BLUME
24 and DOES 1-50 caused the Subject Vehicle to go into a ravine and off of the road. Allegedly, one
25 shot was allegedly shot from the Subject Vehicle. At that point, Defendants COUWELS, BLUME,
26 FODOR and DOES 1-50, in their capacity as police officers and employees for the CITY OF
27 PINOLE POLICE DEPARTMENT and CITY OF RICHMOND POLICE DEPARTMENT,
28

1 proceeded to fire approximately 32 rounds upon the vehicle. This was excessive in light of the fact
2 that the car was ran off the road and was in a ravine. In addition, firing over 30 rounds without first
3 trying to talk down the situation was also unnecessary and an excessive use of force.
4

5 16. Defendants and each of them also used excessive use of force in attempting to apprehend
6 Decedent LEVI B. BOYNTON, JR., an alleged suspect in a carjacking. None of the aforementioned
7 Officer Defendants actually saw the Decedent shoot a weapon. Further, there is no evidence that
8 Decedent fired any weapon upon the Officer Defendants.
9

10 17. As a result of the unlawful pursuit, wrongful firing of shots, excessive force, and wrongful
11 death of Decedent LEVI B. BOYNTON, JR., Defendants TIM COUWELS, CHRIS FODOR, ZACH
12 BLUME, DOES 1-50 and their employer Defendants CITY OF PINOLE and CITY OF
13 RICHMOND, said Defendants caused the wrongful death of Decedent LEVI B. BOYNTON, JR.
14 Plaintiffs have also suffered emotional distress, pain and suffering, loss of consortium, lost wages,
15 lost opportunities and various other damages in an amount to be determined at trial, but in excess of
16 \$20 million.
17

18 18. Plaintiffs further are informed and believe and thereon allege that Decedent's death was a
19 foreseeable harm resulting from defendants' failure to exercise the duty of care owed to Decedent,
20 both by their unlawful pursuit, attempt to apprehend, wrongful firing of shots, and intentionally using
21 deadly and excessive force against the Decedent.
22

23 19. The above-described intentional and/or negligent conduct by Defendants was a factual and
24 proximate cause of Decedent's death and Plaintiffs' damages.

25 20. Plaintiffs are informed and believe and thereon allege that Defendant CITY OF PINOLE by
26 and through its supervisory employees and agents, Chief PAUL M. CLANCY, and DOES 1-50,
27 inclusive, have and had a mandatory duty of care to properly and adequately hire, train, retain,
28

1 supervise, and discipline its police officers so as to avoid unreasonable risk of harm to suspected
2 persons. With deliberate indifference, CITY OF PINOLE, DOES 1-50, and other Defendants herein
3 failed to take necessary, proper, and/or adequate measures to prevent the violation of Decedent's and
4 Plaintiffs' rights.

5
6 a. Plaintiffs are informed and believe and thereon allege that on the night of Mr. Grant's
7 death a non-professional relationship existed between one or more of the CITY OF
8 PINOLE and/or CITY OF RICHMOND Officer Defendants on the scene when
9 Decedent was shot and killed and that this non-professional relationship may have
10 contributed to the unlawful pursuit, attempt to apprehend, wrongful firing of shots, and
11 intentionally using deadly and excessive force against the Decedent.

12
13 b. Plaintiffs are informed and believe and thereon allege that the CITY OF PINOLE
14 and/or the CITY OF RICHMOND by and through its Chiefs, Defendants CLANCY
15 and MAGNUS, and one or more of their command officers, particularly the
16 assignment officer(s), were aware of this relationship yet made no effort to alter their
17 assignment so that their work as CITY OF RICHMOND and CITY OF PINOLE
18 Officers would not be compromised.

19
20 c. Plaintiffs are informed and believe and thereon allege that this practice of assigning
21 individuals together who have a non-professional relationship was deliberately
22 indifferent to the constitutional rights of Decedent LEVI B. BOYNTON, JR. and
23 others.
24

25 21. Plaintiffs are informed and believe and thereon allege that Defendants CITY OF PINOLE,
26 CITY OF PINOLE, Chief MAGNUS, Chief CLANCY, TIM COUWELS, CHRIS FODOR, ZACH
27 BLUME, and DOES 1-50, inclusive, breached their duty of care to the public in that they failed to
28

1 adequately train, supervise, and discipline their police officers in the proper making of detentions,
2 apprehensions, pursuits, arrests and use of force. This lack of adequate supervisory training
3 demonstrates the existence of an informal custom, policy or practice of promoting, tolerating, and/or
4 ratifying with deliberate indifference the continued making of unlawful detentions, arrests, and use of
5 excessive and/or deadly force against suspects, including Plaintiff Decedent, by Defendant police
6 officers TIM COUWELS, CHRIS FODOR, ZACH BLUME, and DOES 1-50.
7

8 22. Plaintiffs are informed, believe, and thereon allege that the conduct stated herein of
9 Defendants TIM COUWELS, CHRIS FODOR, ZACH BLUME, PAUL CLANCY, CHRIS
10 MAGNUS and DOES 1-50, as police officers, individual employees, agents and/or servants of the
11 CITY OF PINOLE and CITY OF RICHMOND, constitute civil rights violations arising from the
12 illegal detention and use of excessive and/or deadly force causing the wrongful death of Decedent
13 LEVI B. BOYNTON, JR. The civil rights violations include, but are not limited to, constitutional
14 and/or statutory rights violations under California and Federal law.
15
16

17 23. Plaintiffs are informed, believes and thereon alleges that the CITY OF PINOLE and CITY OF
18 RICHMOND police officers, individual employees, agents and/or servants of the CITY OF PINOLE
19 and CITY OF RICHMOND and Defendant Chiefs CLANCY and MAGNUS, and are responsible for
20 the wrongful death of Decedent LEVI B. BOYNTON, JR. by the acts and/or omissions committed
21 within the course and scope of employment, under the theory of respondeat superior liability.
22

23 24. Plaintiffs are informed, believe and thereon alleges that the judgment of Defendants TIM
24 COUWELS, CHRIS FODOR, ZACH BLUME, PAUL CLANCY, CHRIS MAGNUS, DOES 1-50
25 and each of them resulted in the wrongful death of Decedent LEVI B. BOYNTON, JR. Defendants
26 and each of them failed to exercise due care, during the pursuit and attempted apprehension of
27 Decedent LEVI B. BOYNTON, JR. which resulted in his death.
28

DAMAGES

1
2 25. As a proximate result of Defendants' wrongful acts as set forth within, Plaintiffs have
3 incurred special damages in excess of \$10 million, including, but not limited to, a monetary loss,
4 medical expenses, lost wages, future earnings, loss of employment, loss of credit, loss of
5 opportunities, attorney fees, funeral expenses, burial costs, property damage and other damages to be
6 determined at trial.
7

8 26. As a proximate result of Defendants' wrongful acts as set forth within, Plaintiffs have
9 incurred general damages in excess of \$10 million, including, but not limited to, a claim for wrongful
10 death, excessive force, battery, pain and suffering, emotional distress, loss of familial relations,
11 decedent's society, comfort, protection, companionship, love, affection, solace, and moral support
12

13 27. As a proximate result of Defendants' extreme and outrageous acts, Plaintiffs have suffered
14 and continue to suffer emotional distress, humiliation and embarrassment. Plaintiffs are informed
15 and believe that the Defendants acted deliberately for the purpose of causing them to suffer emotional
16 distress. Defendants further acted intentionally and unreasonably because they knew and/or should
17 have known that their conduct was likely to result in severe mental distress. Plaintiffs therefore seek
18 damages for such emotional distress in an amount to be proven at trial.
19

20 28. Defendants committed the acts alleged herein willfully, wantonly, maliciously, fraudulently
21 and oppressively with the wrongful intention of injuring Plaintiffs, and acted with an improper and
22 evil motive amounting to malice and in conscious disregard of Plaintiffs' rights. Such wrongful,
23 discriminatory and retaliatory conduct was malicious, oppressive, fraudulent and in conscious
24 disregard for Plaintiffs' rights, such that punitive damages are warranted to punish Defendants and
25 each of them, to deter such conduct by Defendants and each of them in the future and to make an
26 example of Defendants, all in amounts to be proven at trial.
27
28

1 29. Additionally, Plaintiff is entitled to the reasonable value of funeral and burial expenses
2 pursuant to C.C.P. §§ 377.60 and 377.61 and other relevant code sections.

3 30. Plaintiff, ESTATE OF LEVI B. BOYNTON, JR., is entitled to recover damages by and
4 through IFETAYO R. AZIBO-BOYNTON, the personal representative of Decedent's estate pursuant
5 to his right of survivorship for the pain and suffering he endured as a result of the violation of his
6 civil rights.
7

8 31. Plaintiffs found it necessary to engage the services of private counsel to vindicate the rights of
9 Decedent and Plaintiffs' rights under the law. Plaintiffs are therefore entitled to an award of
10 attorneys' fees and/or costs pursuant to statute(s) in the event that they are the prevailing parties in
11 this action under 42 U.S.C. §§§§ 1983, 1985-86 and 1988, and other applicable codes.
12

13 **JURY DEMAND**

14 32. Plaintiffs hereby demand a jury trial in this action.
15

16 **FIRST CAUSE OF ACTION**
17 **Violation of Fourth Amendment of the United States Constitution**
18 **(42 U.S.C. §1983)**

19 33. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 32 of this Complaint as
20 though the same was set forth herein.

21 34. Defendants' above-described conduct violated the Decedent's right as provided for under the
22 Fourth Amendment to the United States Constitution to be free from unreasonable seizures.

23 35. In addition, Defendants' attempted to apprehend Decedent without reasonable suspicion, and
24 therefore violated Decedent's right as provided for under the Fourth Amendment to the United States
25 Constitution to be free from unreasonable seizures.
26

27 36. Defendants' above-described conduct, wherein it is alleged that the Defendant Officers
28 arrested decedent without probable cause violating his rights as provided for under the Fourth

1 Amendment to the United States Constitution to be free from unlawful seizure (arrest).

2 37. Defendants' above-described conduct violated decedent's right as provided for under the
3 Fourth Amendment to the United States Constitution to be free from excessive force and/or the
4 arbitrary and/or unreasonable use of deadly force against him.
5

6 38. WHEREFORE, Plaintiffs pray for relief as herein set forth.
7

8 **SECOND CAUSE OF ACTION**
9 **Conspiracy to Violate Decedent's Civil Rights**
10 **(42 U.S.C. §1985)**

11 39. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 38 of this
12 Complaint as though the same were set forth herein.

13 40. In doing the acts complained of herein, Defendants TIM COUWELS, CHRIS FODOR,
14 ZACH BLUME, PAUL CLANCY, CHRIS MAGNUS, DOES 1-50 and each of them acted in
15 concert and conspired to violate Decedent's federal civil rights to be free from unreasonable seizures
16 and excessive and/or arbitrary force.

17 41. Defendants TIM COUWELS, CHRIS FODOR, ZACH BLUME, PAUL CLANCY, CHRIS
18 MAGNUS, DOES 1-50 and each of them had knowledge of the wrongs conspired to be done and
19 committed and had the power to prevent or aid in preventing the commission of the same. None of
20 the Defendants attempted to prevent and/or stop the violation of the decedent's civil rights.
21

22 42. WHEREFORE, Plaintiffs pray for relief as herein set forth.
23

24 **THIRD CAUSE OF ACTION**
25 **Wrongful Death**
26 **(42 U.S.C. §1983 and U.S. Constitution)**

27 43. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 42 of this
28 Complaint.

1 44. Defendants acted under color of law by shooting and killing Decedent without lawful
2 justification and subjecting Decedent to excessive force thereby depriving Plaintiffs and the Decedent
3 of certain constitutionally protected rights, including, but not limited to:

- 4
- 5 a. The right to be free from unreasonable searches and seizures, as guaranteed by the
6 Fourth and Fourteenth Amendments to the United States Constitution;
 - 7 b. The right not to be deprived of life or liberty without due process of law, as guaranteed
8 by the Fifth and Fourteenth Amendments to the United States Constitution;
 - 9 c. The right to be free from the use of excessive force by police officers, which is
10 guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States
11 Constitution; and/or,
 - 12 d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment
13 to the United States Constitution; and/or,
 - 14 e. The right to be free from interference within the zone of privacy, as protected by the
15 Fourth and Ninth Amendments to the United States Constitution;
 - 16
 - 17

18 45. WHEREFORE, Plaintiffs pray for relief as herein set forth.

19

20 **FOURTH CAUSE OF ACTION**

21 **Wrongful Death**

22 **(C.C.P. §377.60 and 377.61, Applicable California Law and CA Constitution)**

23 46. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 45 of this
24 Complaint.

25 47. Defendants acted under color of law by shooting and killing Decedent without lawful
26 justification and subjecting Decedent to excessive force thereby depriving Plaintiffs and the Decedent
27 of certain constitutionally protected rights as set forth above in Paragraph 44.

28 48. In addition to violating the U.S. Constitution and federal statutes, Defendants and each of

1 them also violated the California Constitution and applicable California statutes in causing the
2 wrongful death of Decedent.

3 49. Defendants and DOES 1-50 inclusive, by and through their respective agents and employees,
4 proximately caused the death of Decedent LEVI B. BOYNTON, JR. as a result of their negligent
5 conduct and/or negligent failure to act as set-forth herein.
6

7 50. As an actual and proximate result of said defendants' negligence, and the death of Decedent,
8 Plaintiffs have sustained pecuniary loss resulting from the loss of comfort, society, attention, services,
9 and support of Decedent, in an amount according to proof at trial.
10

11 51. As a further actual and proximate result of said Defendants' wrongful causing of the death of
12 Decedent, Plaintiffs incurred funeral and burial expenses, in an amount according to proof at trial.

13 52. Pursuant to California C.C.P. Sections 377.60 and 377.61, Plaintiffs have brought this action,
14 and claims damages from said Defendants for the wrongful death of decedent, and the resulting
15 injuries and damages.
16

17 53. WHEREFORE, Plaintiffs pray for relief as herein set forth.

18 **FIFTH CAUSE OF ACTION**
19 **Violations of Plaintiffs' Civil Rights to Familial Relationship**
20 **(42 U.S.C. § 1983)**

21 54. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 53 of this
22 Complaint as though fully set forth within.

23 55. Defendants, acting under color of state law, and without due process of law, deprived
24 Plaintiffs of their right to a familial relationship by attempting to apprehend and seize Decedent by
25 use of unreasonable, unjustified and deadly force and violence, causing injuries which resulted in
26 Decedent's death, all with intentional excessive force and means not proportionate to any force used
27 by persons on the Subject Vehicle, and did attempt to conceal their excessive use of force and hide
28

1 the true cause of Decedent's demise to deprive Plaintiffs of their right to seek redress, all in violation
2 of rights, privileges, and immunities secured by the First, Fourth, and Fourteenth Amendments to the
3 United States Constitution.

4
5 56. WHEREFORE, Plaintiffs pray for relief as herein set forth.

6 **SIXTH CAUSE OF ACTION**

7 **Monell**

8 **(42 U.S.C. §1983)**

9 57. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 56 of this
10 Complaint as though the same was set forth herein.

11 58. Plaintiffs are informed and believe and thereon allege that high ranking CITY OF
12 RICHMOND and CITY OF PINOLE officials, including high ranking police supervisors such as
13 Defendant Chief CLANCY, Defendant Chief MAGNUS, DOES 1-50, and/or each of them,
14 approved, ratified, condoned, encouraged, sought to cover up, and/or tacitly authorized the continuing
15 pattern and practice of misconduct and/or civil rights violations by said officers Defendants.

16
17 59. Plaintiffs are further informed and believe and thereon allege that as a result of the deliberate
18 indifference, reckless and/or conscious disregard of the misconduct by Defendants TIM COUWELS,
19 CHRIS FODOR, ZACH BLUME, PAUL CLANCY, CHRIS MAGNUS, DOES 1-50, and/or each of
20 them Decedent's constitutional rights were violated.

21
22 60. Plaintiffs are further informed and believe and thereon allege that as a result of the deliberate
23 indifference, reckless and/or conscious disregard of the misconduct by Defendants TIM COUWELS,
24 CHRIS FODOR, ZACH BLUME, PAUL CLANCY, CHRIS MAGNUS, DOES 1-50, and/or each of
25 them, Defendant Chief CLANCY, Defendant Chief MAGNUS, DOES 1-50, and/or each of them,
26 encouraged these officers to continue their course of misconduct.
27
28

1 61. The aforementioned acts and/or omissions and/or deliberate indifference by high ranking
2 CITY OF RICHMOND and CITY OF PINOLE officials, including high ranking CITY OF
3 RICHMOND and CITY OF PINOLE Police Department supervisors, Defendant Chief CLANCY,
4 Defendant Chief MAGNUS, DOES 1-50, and each of them resulted in the deprivation of Plaintiffs'
5 constitutional rights including, but not limited to, the following:
6

- 7 a. The right to be free from unreasonable searches and seizures, as guaranteed by the
8 Fourth and Fourteenth Amendments to the United States Constitution;
9
10 b. The right not to be deprived of life or liberty without due process of law, as guaranteed
11 by the Fifth and Fourteenth Amendments to the United States Constitution;
12
13 c. The right to be free from the use of excessive force by police officers, which is
14 guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States
15 Constitution;
16
17 d. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment
18 to the United States Constitution; and/or,
19
20 e. The right to be free from interference within the zone of privacy, as protected by the
21 Fourth and Ninth Amendments to the United States Constitution;

22 62. Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the
23 United States Constitution.

24 63. WHEREFORE, Plaintiffs pray for relief as herein set forth.

25 **SEVENTH CAUSE OF ACTION**
26 **Survival action: Violation of decedent's civil rights**
27 **(42 U.S.C. §1983)**

28 64. Plaintiffs hereby re-alleges and incorporates by reference herein paragraphs 1 through 63 of
this Complaint.

1 65. Decedent LEVI B. BOYNTON, JR. was forced to endure great conscious pain and suffering
2 because of the Defendants' conduct before his death.

3
4 66. Decedent LEVI B. BOYNTON, JR. did not file a legal action before his death.

5 67. Plaintiff, IFETAYO AZIBO-BOYNTON, as personal representative of the ESTATE OF
6 LEVI B. BOYNTON, JR. claims damages for the conscious pain and suffering incurred by LEVI B.
7 BOYNTON, JR., as provided for under 42 U.S.C. §1983.

8 68. WHEREFORE, Plaintiffs pray for relief as herein set forth.

9
10 **EIGHTH CAUSE OF ACTION**
11 **Negligence**
12 **(California Law and Federal Law)**

13 69. Plaintiffs hereby re-alleges and incorporates by reference herein paragraphs 1 through 68 of
14 this Complaint as though the same was set forth herein.

15 70. Defendants and each of them owed a duty to Decedent LEVI B. BOYNTON, JR. as police
16 officers, city officials, city governmental entities etc., to provide police services with ordinary and
17 professional skill. Defendants and each of them also owed a duty not to wrongfully kill Decedent
18 LEVI B. BOYNTON, JR. Defendants and each of them owed a duty to Decedent's family and
19 Plaintiffs not to wrongfully kill Decedent and not to cause them emotional distress, pecuniary loss,
20 and other damages as set forth within.

21 71. When Defendants committed the conduct set forth herein, Defendants and each of them
22 breached their duties owed to Plaintiffs.

23 72. As set forth above, Defendants were acting within the scope of employment and under the
24 direct supervision of Defendants CITY OF PINOLE, CITY OF RICHMOND, Defendant Chief
25 CLANCY, Defendant Chief MAGNUS, DOES 1-50 and other Defendants.

26
27
28 73. As set forth within, Defendants have proximately caused the death, damages and injuries set

1 forth herein of Decedent.

2 74. WHEREFORE, Plaintiffs pray for relief as herein set forth.

3
4 **NINTH CAUSE OF ACTION**
5 **Negligent Supervision**
6 **(California Law and Federal Law)**

7 75. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 74 of this
8 Complaint and the entire Eighth Cause of Action as though the same was set forth herein.

9 76. As set forth herein, Defendants TIM COUWELS, CHRIS FODOR, ZACH BLUME, PAUL
10 CLANCY, CHRIS MAGNUS, DOES 1-50 were the employees and agents of CITY OF PINOLE,
11 CITY OF RICHMOND, Defendant Chief CLANCY, Defendant Chief MAGNUS, DOES 1-50 and
12 other Defendants, and in doing the things herein alleged, were acting within the course and scope of
13 employment under the direct supervision of Defendants CITY OF PINOLE, CITY OF RICHMOND,
14 Defendant Chief CLANCY, Defendant Chief MAGNUS, DOES 1-50 and other Defendants

15 77. At this time and place, Defendants and each of them negligently owned, supervised, trained,
16 maintained, controlled and operated their departments, employees, agents and the services mentioned
17 herein so as to cause the damages to Plaintiffs set forth within. Further, Defendants wrongfully
18 entrusted Defendants so as to cause Plaintiffs damages. Defendants' failure to properly manage,
19 supervise, train, maintain, control and operate their agencies, departments, employees, agents and the
20 police services mentioned herein proximately caused Plaintiffs damages. Defendants CITY OF
21 PINOLE, CITY OF RICHMOND, Defendant Chief CLANCY, Defendant Chief MAGNUS and
22 DOES 1-50 employed Defendants TIM COUWELS, CHRIS FODOR, ZACH BLUME, PAUL
23 CLANCY, CHRIS MAGNUS and DOES 1-50 to provide policing services and pursuant to this
24 employment negligently rendered professional services to Decedent.
25
26
27

28 78. Defendants CITY OF PINOLE, CITY OF RICHMOND, Defendant Chief CLANCY,

1 Defendant Chief MAGNUS, DOES 1-50 and other Defendants are therefore liable to Plaintiffs for
2 the negligent supervision of Defendants.

3 79. WHEREFORE, Plaintiffs pray for relief as herein set forth.
4

5 **TENTH CAUSE OF ACTION**
6 **Intentional Infliction of Emotional Distress**
7 **(Violation of California Law)**

8 80. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 79 of this
9 Complaint as though the same was set forth herein.

10 81. The facts set forth within constitute extreme and outrageous conduct by the Defendants
11 toward Plaintiffs.

12 82. Such extreme and outrageous acts did in fact cause Plaintiffs severe emotional distress.
13

14 83. As a proximate result of Defendants' extreme and outrageous acts, Plaintiffs have suffered
15 and continue to suffer emotional distress, humiliation and embarrassment. Plaintiffs are informed
16 and believe that the Defendants acted deliberately for the purpose of causing them to suffer emotional
17 distress. Defendants further acted intentionally and unreasonably because they knew and/or should
18 have known that their conduct was likely to result in severe mental distress. Plaintiffs therefore seek
19 damages for such emotional distress in an amount to be proven at trial.
20

21 84. Even if the conduct of certain Defendants is not found to be intentional, those Defendants are
22 still liable for negligent infliction of emotional distress for the reasons set forth within.

23 85. Defendants committed the acts alleged herein willfully, wantonly, maliciously, fraudulently
24 and oppressively with the wrongful intention of injuring Plaintiffs, and acted with an improper and
25 evil motive amounting to malice and in conscious disregard of Plaintiffs' rights. Such wrongful,
26 discriminatory and retaliatory conduct was malicious, oppressive, fraudulent and in conscious
27 disregard for Plaintiffs' rights, such that punitive damages are warranted to punish Defendants and
28

1 each of them, to deter such conduct by Defendants and each of them in the future and to make an
2 example of Defendants, all in amounts to be proven at trial.

3
4 86. As a proximate result of the intentional, oppressive and fraudulent conduct of Defendants as
5 herein alleged, Plaintiffs have suffered severe emotional distress, harm, humiliation, embarrassment,
6 and mental and physical pain and anguish, all to her damage in an amount to be established at trial.

7
8 87. As a proximate result of the intentional, oppressive and fraudulent conduct of Defendants as
9 herein alleged, Plaintiffs have sustained damages, including monetary loss, medical expenses, lost
10 wages, loss of employment, loss of credit, loss of opportunities, attorney fees and other damages to
11 be determined at trial.

12 88. In doing the things herein alleged, Defendants acted intentionally and with malice, oppression
13 and fraud, and Plaintiffs are therefore entitled to an award of exemplary and punitive damages against
14 Defendants. The aforementioned conduct of Defendants was an intentional misrepresentation, deceit,
15 or concealment of a material fact known to the Defendants with the intention on the part of the
16 Defendants of thereby depriving Plaintiffs of legal rights or otherwise causing injury, and was
17 despicable conduct that subjected Plaintiffs to a cruel and unjust hardship in conscious disregard of
18 the Plaintiffs' rights, so as to justify an award of exemplary and punitive damages, as well as attorney
19 fees and costs.
20

21
22 89. WHEREFORE, Plaintiffs pray for relief as herein set forth.

23 **ELEVENTH CAUSE OF ACTION**
24 **Negligent Infliction of Emotional Distress**
25 **(Against All Defendants)**

26 90. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 89 of this
27 Complaint and the entire Eighth, Ninth and Tenth Causes of Action as though the same was set forth
28 herein.

1 91. If the infliction of emotional distress by Defendants was not intentional, the infliction was
2 negligent. As stated within, Defendants owe a duty to Plaintiffs to not breach the duties owed to
3 Plaintiffs, and Defendants breached those duties.
4

5 92. Defendants knew or should have known that her/their failure to exercise due care in the
6 performance of their police services and other actions as alleged herein would cause Plaintiffs severe
7 emotional distress.

8 93. As a proximate result of Defendants' conduct, Plaintiffs have suffered damages, general
9 damages, special damages and other damages in an amount to be determined at trial.
10

11 94. As a proximate result of Defendants' actions as alleged herein, Plaintiffs have suffered severe
12 emotional distress, mental anguish, mental suffering, harm, and mental and physical pain and
13 anguish, all to their damage in an amount to be established at trial. As a proximate result of
14 Defendants' negligent and wrongful acts, Plaintiffs have suffered and continue to suffer emotional
15 distress. Plaintiffs therefore seek damages for such emotional distress in an amount to be proven at
16 trial.
17

18 95. As a further proximate result of the negligent conduct of Defendants as herein alleged,
19 Plaintiffs have sustained damages, including monetary loss, medical expenses, loss of employment,
20 loss of credit, loss of opportunities, attorney fees and other damages to be determined at trial.
21

22 96. WHEREFORE, Plaintiffs pray for relief as herein set forth.

23 **TWELFTH CAUSE OF ACTION**
24 **Violation of Decedent's Right To Enjoy Civil Rights**
25 **(Violation of California Civil Code §52.1)**

26 97. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 96 of this Complaint as
27 though the same was set forth herein.

28 98. Defendants' above-described conduct constituted interference, and attempted interference, by

1 threats, intimidation and coercion, with decedent's peaceable exercise and enjoyment of rights
2 secured by the Constitution and laws of the United States and the State of California, in violation of
3 California Civil Code §52.1.

4
5 99. WHEREFORE, Plaintiffs pray for relief as herein set forth.

6 **THIRTEENTH CAUSE OF ACTION**
7 **Violation of Decedent's State Statutory Rights**
8 **(Violation of California Civil Code §51.7)**

9 100. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 99 of this Complaint as
10 though the same was set forth herein.

11 101. Plaintiff is informed and believes and thereon alleges that the conduct of Defendants TIM
12 COUWELS, CHRIS FODOR, ZACH BLUME and DOES 1 through 50, inclusive, as described
13 herein, was motivated by prejudice against Decedent LEVI B. BOYNTON, JR. Plaintiff is and was
14 readily recognizable as African-American. In engaging in such conduct, Defendants violated
15 Decedent's rights under California Civil Code §51.7 to be free from violence, or intimidation by
16 threat of violence committed against him because of his race.

17
18 102. Under the provisions of California Civil Code §52(b), Defendants are liable for punitive
19 damages for each violation of Civil Code §51.7, reasonable attorney's fees and an additional
20 \$25,000.00.

21
22 103. As a proximate result of Defendants' wrongful conduct, Plaintiffs suffered damages as herein
23 set forth.

24 104. WHEREFORE, Plaintiffs pray for relief as herein set forth.

25 **FOURTEENTH CAUSE OF ACTION**
26 **(Assault And Battery)**

27 105. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 104 of this Complaint
28 as though the same was set forth herein.

1 106. Defendants' above-described conduct constituted assault and battery.

2 107. WHEREFORE, Plaintiffs pray for relief as herein set forth.


3 **PRAYER**

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

- 5 1. For general damages in excess of \$20 million;
- 6 2. For special damages in excess of \$20 million;
- 7 3. For funeral and burial expenses according to proof;
- 8 4. For lost wages according to proof;
- 9 5. For punitive damages in excess of \$20 million;
- 10 6. For prejudgment interest on such damages as provided by law;
- 11 7. For all remedies available to Plaintiffs as a matter of law based upon the causes of
- 12 action and claims set forth within;
- 13 8. For attorney fees incurred by Plaintiffs;
- 14 9. For costs of suit herein incurred; and
- 15 10. For such other and further relief as the court deems proper.
- 16
- 17

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19 DATED: September 9, 2010

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LINNEA N. WILLIS
Attorney for Plaintiffs

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