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7   UNITED STATES DISTRICT COURT

8   NORTHERN DISTRICT OF CALIFORNIA

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10   STEPHANY BORGES, individually and as   CASE NO.: 15-CV-00846 YGR
     successor-in-interest to Daren Borges,

11   Plaintiff,   **JUDGMENT ON SPECIAL VERDICT**

12   vs.

13   COUNTY OF HUMBOLDT,
     SHERIFF MICHAEL DOWNEY,
14   TIM HERSHBERGER, TERRI BITTNER,
     TIM HAMMER and DAVID SWIM,

15   Defendants.

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18   This action came on regularly for trial on August 18, 2017, in Courtroom 1 of the United

19   States District Court, Northern District of California, Eureka Division, Honorable Yvonne

20   Gonzalez Rogers, presiding. The Plaintiff in this Case, No. CV 15-00846-YGR, Stephany

21   Borges, individually and as successor-in-interest to Daren Borges, was represented by Dale K.

22   Galipo and John Fattahi. Defendants County of Humboldt, David Swim, Terri Bittner, Tim

23   Hammer, Tim Hershberger and Michael Downey were represented by Nancy K. Delaney,

24   Nicholas R. Kloeppel and Amy A. Hunt of Mitchell, Brisso, Delaney & Vrieze.

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1 A jury of eight persons was regularly empaneled and sworn. Witnesses were sworn and

2 testified. After hearing the evidence, the jury was instructed by the Court and the Case was

3 submitted to the jury. The parties stipulated that all individual defendants acted in the course and

4 scope of their public employment. The jury deliberated and thereafter returned into Court with its

5 special verdict as follows:

6

7   Verdict Form

8   First Claim

9   Did Stephany Borges establish that the defendant listed below deprived Daren Borges of

10 his rights to adequate medical care in violation of the Due Process Clause of the Fourteenth

11 Amendment:

12 Tim Hershberger   _____ Yes   _X_ No

13 Terri Bittner   _X_ Yes   _____ No

14 Tim Hammer   _X_ Yes   _____ No

15 David Swim   _X_ Yes   _____ No

16 Proceed to the **Second Claim**

17

18   Second Claim

19   Did Stephany Borges establish that the defendant listed below deprived her of the right to

20 be free from interference with familial association in violation of the Fourteenth Amendment:

21 Tim Hershberger   _____ Yes   _X_ No

22 Terri Bittner   _____ Yes   _X_ No

23 Tim Hammer   _____ Yes   _X_ No

24 David Swim   _____ Yes   _X_ No

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1   If you answered "Yes" to any question under the **First Claim** or the **Second Claim** then

2 proceed to the **Third Claim**.

3   Alternatively, if you answered "No" to all defendants under the **First Claim** and the

4 **Second Claim** proceed to the **Fourth Claim**.

5

6   Third Claim

7   Did Stephany Borges establish that the County of Humboldt is liable under Section 1983

8 as a result of either: (a) an official policy, practice, or custom, or (b) the failure to train:

9   __X__ Yes   _____ No

10   Did Stephany Borges establish that Michael Downey is liable under Section 1983 as a

11 supervisor:

12   _____ Yes   __X__ No

13 Proceed to the **Fourth Claim.**

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15   Fourth Claim

16   Did Stephany Borges establish that the defendant listed below deprived Daren Borges of

17 his rights to have medical care summoned in violation of California Government Code Section

18 845.6:

19 Tim Hershberger   _____ Yes   __X__ No

20 Terri Bittner   __X__ Yes   _____ No

21 Tim Hammer   __X__ Yes   _____ No

22 David Swim   __X__ Yes   _____ No

23   If you answered "Yes" to any question under any of the Claim (**First, Second, Third or**

24 **Fourth**) then proceed to **Damages**. Alternatively, if you answered "No" to all of the Claims,

25 please **sign and date** the last page of this verdict form, then return to the Court.

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1   Damages

2   We, the jury, award damages in the following amount:

3    $2,500,000.00"

4   Special Verdict Form

5   For any defendant for whom you answered "Yes" for the **First Claim** and/or the **Second**

6   **Claim**, do you find by a preponderance of the evidence that the defendant engaged in the

7   conduct with malice, oppression, or reckless disregard of Stephany Borges' or Daren Borges'

8   rights:

9   Tim Hershberger   _____Yes   _____ No   _X_ Not applicable

10   Terri Bittner   _____Yes   _X_ No   _____ Not applicable

11   Tim Hammer   _____Yes   _X_ No   _____ Not applicable

12   David Swim   _____Yes   _X_ No   _____ Not applicable"

13

14   NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that: Plaintiff

15   Stephany Borges shall recover the sum of $2,500,000.00 from Defendants County of Humboldt,

16   Terri Bittner, Tim Hammer, and David Swim, plus post-judgment interest, costs, and attorneys'

17   fees as provided by law. Plaintiff shall file any application for costs or attorneys' fees within 35

18   days of entry of judgment, or within 7 days of the filing of any reply in support of any Rule 50(b)

19   motion, whichever is later.

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21   //

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24   //

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1   IT IS ALSO ORDERED, ADJUDGED AND DECREED that Plaintiff shall take nothing

2 from Defendants Timothy Hershberger and Michael Downey, and all claims against said

3 defendants are dismissed. Plaintiff shall take nothing on her claims for interference with familial

4 association under the Fourteenth Amendment, and all such claims are dismissed. Plaintiff shall

5 take nothing on her prayer for punitive damages, and any claim for such damages is dismissed.

6

7 DATED: <u>October 30, 2017</u>

                           Honorable Yvonne Gonzalez Rogers
                           United States District Court

8 APPROVED AS TO FORM:

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10 By: */s/ Nancy K. Delaney*
         Nancy K. Delaney, Attorneys for County Defendants

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