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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 K.J.P., a minor, and K.P.P., a minor,
14 individually, by and through their mother,
15 LOAN THI MINH NGUYEN, who also
16 sues individually and as successor in
17 interest to her now deceased husband,
18 Lucky Phounsy, and KIMBERLY NANG
19 CHANTHAPHANH, individually,

17 Plaintiffs,

18 v.

19 COUNTY OF SAN DIEGO, SAN DIEGO
20 COUNTY SHERIFF'S DEPARTMENT,
21 San Diego Sheriff WILLIAM GORE, San
22 Diego Sheriff's Deputy FISCHER
23 (#3003), Unknown San Diego Sheriff's
24 Deputies, CITY OF SANTEE, SANTEE
25 FIRE DEPARTMENT, Santee Fire
26 Department Chief RICHARD MATTICK,
27 Santee Fire Department Crewmember
28 AARON BAGLEY, Unknown Santee Fire
Department Crewmembers, LAKESIDE
FIRE PROTECTION DISTRICT,
Lakeside Fire Protection District Chief
ANDY PARR; Lakeside Fire Protection
District Crewmember MARC POYNTER,
Lakeside Fire Protection District
Crewmember AARON HACKETT
Lakeside Fire Protection District

Case No. '15CV2692 H MDD

COMPLAINT

JURY TRIAL DEMANDED

1 Crewmember DAVID CSIK, and)
 2 Unknown Lakeside Fire Protection District)
 3 Crewmembers,)
 4 Defendants.)

INTRODUCTION

6 1. Plaintiffs sue to recover damages arising from the wrongful death of their
7 father, husband, and son: Lucky Phounsy (“Lucky”).

8 2. On April 13, 2015, Lucky began experiencing symptoms of a mental health
 9 crisis, including paranoid delusions that someone was going to harm him and his family.
 10 Lucky called 911 for help. The San Diego Sheriff’s Department deputies who responded
 11 were unnecessarily confrontational, aggressive, and profane. They refused to answer
 12 Lucky’s questions, and insisted on restraining Lucky from the outset, increasing his
 13 paranoia. The deputies’ actions escalated an already tense, though under control,
 14 situation into violence. Lucky became increasingly agitated and the deputies began using
 15 force on Lucky. Deputies shocked Lucky repeatedly with a TASER, then used punches
 16 and baton strikes on Lucky. Lucky retreated, after each affront, to family members who
 17 were present and able to calm Lucky with reassuring words, gestures, and touch.

18 3. Ultimately, Sheriff’s Deputies hogtied Lucky and carried him out of the
 19 house, hidden from his family’s view. Before Lucky was loaded into an ambulance,
 20 Defendants report giving him multiple doses of a benzodiazepine, a chemical sedative.
 21 Defendants apparently kept Lucky hogtied in route to the hospital, and further
 22 compromised his ability to breath by putting some sort of sock on his face and holding
 23 him down in the gurney. At some point before arriving at the hospital, Lucky’s heart
 24 stopped. While emergency room staff was, after several minutes, able to restart Lucky’s
 25 heart, Lucky died a few days later as a result of his encounter with Defendants.

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1 **JURISDICTION & VENUE**

2 4. The Court has subject matter jurisdiction over this action pursuant to 28
3 U.S.C. §§ 1331, 1343, and 1367, as Plaintiffs assert causes of action arising under 42
4 U.S.C. § 1983, in addition to California causes of action that arise from the same
5 controversy giving rise to Plaintiffs’ 1983 claims.

6 5. The Court has personal jurisdiction over all Defendants in this action, as all
7 Defendants are situated or domiciled in the State of California.

8 6. Pursuant to 28 U.S.C. § 1391, venue is proper in this this District, as the
9 events giving rise to this action occurred in the County of San Diego, California, which
10 is located within the Southern District of California.

11 **PARTIES**

12 7. K.J.P. is a minor domiciled in California. K.J.P. was one of Lucky’s two
13 children.

14 8. K.P.P. is a minor domiciled in California. K.P.P. was Lucky’s other child.

15 9. Loan Thi Minh Nguyen (“Loan”) is an individual domiciled in California.
16 Loan was Lucky’s wife. In addition to suing individually, Loan sues as the successor in
17 interest to Lucky’s estate. See Cal. Code Civ. P. § 377.32; Decl. of Loan Thi Minh
18 Nguyen as Successor in Interest (attached hereto and incorporated by this reference).

19 10. Kimberly Nang Chanthaphanh (“Kimberly”) is an individual domiciled in
20 California. Kimberly was Lucky’s mother.

21 11. The County of San Diego (“County”) is a municipal entity duly organized
22 under California law. The San Diego County Sheriff’s Department (“Sheriff’s
23 Department”) is the chief law enforcement agency for the County.

24 12. William Gore (“Sheriff Gore”) is an individual who, on information and
25 belief, is domiciled in California and who was, at all times relevant to this complaint, the
26 San Diego County Sheriff and, as such, a final policymaker for the Sheriff’s Department,
27 and for the County on matters relating to the Sheriff’s Department and its deputies.

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1 13. Deputy Fischer (#3003) was, at all times relevant to this complaint, a
2 Sheriff's Department deputy whose first name is currently unknown.

3 14. Unknown individuals who, at all times relevant to this complaint, were
4 Sheriff's Department deputies.

5 15. The City of Santee ("City") is a municipal entity duly organized under
6 California law. The Santee Fire Department is the City's chief provider of emergency
7 fire and medical services.

8 16. Richard Mattick ("Chief Mattick") was, at all times relevant to this
9 complaint, Chief of the Santee Fire Department and, as such, a final policymaker for the
10 Santee Fire Department and the City.

11 17. Aaron Bagley ("Bagley") is an individual who was, at all times relevant to
12 this complaint, a crewmember of the Santee Fire Department.

13 18. Unknown individuals who, at all times relevant to this complaint, were
14 Santee Fire Department crewmembers.

15 19. The Lakeside Fire Protection District ("District") is a municipal entity duly
16 organized under California law.

17 20. Andy Parr ("Chief Parr") is an individual who was, at all times relevant to
18 this complaint, the Chief of the District and, as such, a final policymaker for the District.

19 21. Marc Poynter ("Poynter") is an individual who, at all times relevant to this
20 complaint, was a crewmember of the District.

21 22. Aaron Hackett ("Hackett") is an individual who, at all times relevant to this
22 complaint, was a crewmember of the District.

23 23. David Csik ("Csik") is an individual who, at all times relevant to this
24 complaint, was a crewmember of the District.

25 24. Unknown individuals who, at all times relevant to this complaint, were
26 District crewmembers.

27 25. Each individually named defendant acted under color of law and within the
28 scope of his or her agency and employment.

1 **CALIFORNIA CLAIMS FILING REQUIREMENTS**

2 26. With regard to Plaintiffs’ state-law causes of action, Plaintiffs have complied
3 with California’s government tort claims requirements as set forth in California
4 Government Code §§ 900 et seq.

5 **GENERAL ALLEGATIONS**

6 27. K.J.P. and K.P.P. were the minor, biological children of Lucky and Loan,
7 Lucky’s wife. Prior to Lucky’s death, he and Loan lived with their two children in the
8 County. Kimberly was Lucky’s mother. Both Loan and Kimberly witnessed the abuse
9 Sheriff’s Deputies inflicted, abuse that ultimately caused Lucky’s death.

10 28. On Monday, April 13, 2015, Lucky, his wife, Loan, and their two children
11 were at the home of Lucky’s mother and step-father to celebrate Lucky’s son’s birthday.

12 29. Lucky had been experiencing severe insomnia during the preceding days,
13 and had slept very little during the previous 72 hours. The cause of the insomnia has not
14 been determined, but was not due to acute drug intoxication. Over the course of the day,
15 Lucky experienced symptoms that included auditory hallucinations and paranoid
16 delusions. Lucky was terrified that unknown assailants were preparing to harm him, his
17 wife, his children, and others in his family. Concerned, Loan called a psychiatrist for
18 advice, who recommended Lucky get some sleep.

19 30. After his family’s attempts to get Lucky to sleep with over-the-counter
20 medications were unsuccessful, Lucky’s family called a nearby hospital for advice.
21 Lucky, at this point overcome with fear for his own and his family’s safety, called 911 to
22 report that unknown assailants were trying to harm him.

23 31. When San Diego Sheriff’s Deputies and, later, EMTs and paramedics
24 arrived, they each demonstrated a lack of adequate training and understanding with
25 regard to dealing with (and especially diffusing) individuals in the throes of a psychotic
26 episode.

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1 32. Lucky's family members were able to see and/or hear parts of the incident.
2 Though, because the Sheriff's Department refuses to turn over reports and other records,
3 Plaintiffs' allegations are necessarily incomplete.

4 33. At first relieved to see two Sheriff's Department deputies (a male and a
5 female), Lucky was compliant. He turned around and placed his hands above his head as
6 instructed. When the officers told Lucky they were going to handcuff him, however,
7 Lucky became frightened and confused. The deputies did nothing to de-escalate the
8 situation, as they were aggressive and profane. They refused to answer Lucky's
9 questions. Lucky was, at that point, literally incapable of understanding why those he
10 called for help were treating him like a criminal.

11 34. As one of the deputies handcuffed Lucky's right wrist, the other deputy fired
12 his TASER Model X26 at the unarmed Lucky, puncturing Lucky's skin with half-inch
13 darts and shocking him with powerful pulses of electricity, inducing excruciating pain
14 and severe muscle contractions.

15 35. The deputies' unnecessarily aggressive and combative actions provoked an
16 irrational response. Lucky and the male deputy fought for seconds before they separated.

17 36. As Lucky retreated from the male deputy, Lucky's step-father, Greg Kelley,
18 took Lucky by the shoulders and began calming him. The female deputy then
19 approached Lucky and his stepfather with her baton raised. Lucky was able to defend
20 himself from the female deputy's baton strike. The male deputy then shot Lucky again
21 with his TASER. After recovering, Lucky again retreated, this time to his wife.

22 37. Loan put her arms on Lucky's shoulders and began calming him. The male
23 officer then returned and shot Lucky with his TASER for a third time.

24 38. After Lucky recovered, Lucky's step-father and brother-in-law were again
25 able to calm Lucky by hugging him. Additional San Diego Sheriff's deputies then burst
26 through the door, shoved Lucky's stepfather and brother-in-law out of the way, and
27 tackled Lucky to the floor. As more deputies arrived, several deputies converged on
28 Lucky, restrained him violently and in an unsafe manner, then carried him outside.

1 39. Plaintiffs cannot presently state in detail exactly what transpired after
2 deputies stormed the house because deputies would not allow Lucky’s family to clearly
3 view the actions that were being taken against Lucky, nor have the deputies’ reports been
4 made available to Plaintiffs.

5 40. Claimants are informed and believe that, at various times, during this
6 incident various Sheriff’s Deputies, whose identities are not yet known to Plaintiffs,
7 along with EMTs and paramedics from the Santee Fire Department and Lakeside Fire
8 Protection District, subjected Lucky to unnecessary and excessive force and potentially
9 lethal restraints, including, but not limited to, excessive deployment of A TASER against
10 Lucky, hogtying, and chest compressions.

11 41. EMTs and paramedics from the City of Santee’s Fire Department were
12 called around 10:25 p.m. The first two sets of medical providers—hereinafter referred to
13 as “E5” (a fire engine company with emergency medical equipment) and “M5” (an
14 ambulance crew of two or three)—arrived on scene around 10:32 p.m. and 10:33 p.m.,
15 respectively. The M5 crew first treated the superficial, non-life-threatening injuries of
16 the deputies who first engaged Lucky, then transported those deputies to Grossmont
17 Hospital. Sometime after that, an E5 crewmember asked another Sheriff’s Department
18 deputy on scene whether Lucky would need medical attention. The unidentified deputy
19 responded that Lucky “would need medical care.” The E5 crewmember then requested
20 another ambulance unit. EMTs and paramedics from the Lakeside Fire Protection
21 District were called around 10:37 p.m., and “M2” (an ambulance crew of two or three)
22 arrived on scene around 10:47 p.m.

23 42. E5 crewmembers report that they “assessed and treated” Lucky. The E5
24 crewmembers’ report does not explain what this entailed. However, according to the M2
25 crewmembers’ account of what happened, at 10:39p.m., the E5 crewmembers injected
26 Lucky (intra-muscularly) with a sedative. M2 crewmembers claim that, when they
27 arrived, E5 crewmembers gave Lucky a second dose of sedative at 10:50 p.m. The
28 reports appear to conflict as to whether two or three doses were given to Lucky.

1 43. Available reports indicate the doses of sedative had no effect on Lucky—a
2 physiological impossibility. Subsequent toxicological testing at Grossmont Hospital (as
3 well as similar testing performed by the County Medical Examiner) revealed no
4 benzodiazepine in Lucky’s blood. And M2 crewmembers’ report that they were able to
5 further assess and treat Lucky, including lifting him onto a gurney and checking his
6 carotid, apical, and radial pulses. This is inconsistent with their claim that Lucky was
7 “still extremely combative.” In short, whether Lucky was appropriately sedated is an
8 unknown yet material fact in this case.

9 44. In any event, Lucky was put into an ambulance, hogtied and either face
10 down or on his side, then finally, around 11:03 p.m., left for Grossmont Hospital. M2
11 crewmembers were accompanied by E5 crewmembers and by Sheriff’s Deputy Fischer
12 (#3003), who, according to the M2 crewmembers, “forcibly restrain[ed][Lucky]’s torso
13 and head” during the drive to Grossmont Hospital.

14 45. Despite the fact that Lucky desperately needed to be able to breathe freely
15 because: (1) he was in a psychotic state to begin with, (2) had been in an altercation with
16 deputies, (3) had been shocked with a TASER X26 at least three times, (4) had been
17 injected with two or three doses of sedative, (5) was supposedly being observed by four
18 people in the ambulance, and (6) was apparently hogtied in Sheriff’s Department
19 restraints during his ambulance ride, paramedics put a sock over Lucky’s face.

20 46. At some point before Lucky was transferred to the care of Grossmont
21 Hospital, Lucky stopped breathing, and his heart stopped beating. Plaintiffs are informed
22 and believe that this happened at minimum several minutes before arrival at the hospital
23 and was either not observed or ignored by the paramedics and deputies. M2
24 crewmembers claim they started chest compressions and BVM (bag-valve-mask)
25 ventilations, then removed all restraints (although it is unclear how paramedics could
26 have started chest compressions on a hogtied patient who was lying on his side or
27 stomach). M2 crewmembers claim all of this occurred as they were arriving at the
28 hospital, and that the Sheriff’s Department restraints were removed just before pulling

1 into the Grossmont Hospital ambulance bay.

2 47. The Grossmont Hospital ER staff commenced CPR and restarted Lucky's
3 heart. They then initiated a cooling protocol that would have saved Lucky had the
4 cardiac downtime reported by Defendants been accurate. Because of extensive anoxic
5 brain injury, however, Lucky never recovered, and died a few days following his
6 encounter with Sheriff's Deputies, EMTs, and paramedics.

7 48. The following wrongful conduct, among other things, all of which was
8 conducted deliberately and with deliberate indifference to Lucky's health, safety and
9 welfare, proximately caused this avoidable tragedy:

10 a. The responding Sheriff's Department deputies used excessive force
11 against Lucky, including the gratuitous use of the TASER X26, punches,
12 baton strikes, hogtying, chest compressions, and physical restraints in the
13 ambulance while being transported to the hospital.

14 b. The responding deputies acted pursuant to a policy, practice, and/or
15 custom of infringing the rights of the general public through the use of force
16 without legal justification.

17 c. The Sheriff's Department and responding fire departments failed to
18 adequately train their personnel to appropriately and safely respond to and
19 deal with situations involving individuals suffering from psychosis, mental
20 illness, and/or mental disabilities (whether permanent or temporary).

21 d. The responding deputies discriminated against, and failed to
22 accommodate Lucky's disability, because of their perceptions of Lucky's
23 disability and mental health.

24 e. Plaintiffs are informed and believe that, when learning of the events
25 giving rise to this claim, the County's final policymakers (including Sheriff
26 Gore) ratified the acts of the County employees, including the responding
27 Sheriff's Department deputies.

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1 f. The responding paramedics and EMTs failed to use appropriate
2 restraining methods, and failed to provide necessary and adequate medical
3 care, and thus, were a proximate cause of Lucky's death.

4 g. The responding deputies, paramedics, and EMTs triaged the minor,
5 non-life-threatening injuries of deputies over Lucky's life-threatening
6 conditions and thereby were a proximate cause of Lucky's death.

7 h. The responding paramedics and EMTs acted pursuant to a policy,
8 practice, and/or custom of triaging, without medical or legal justification, the
9 less critical medical needs of law enforcement officers over the more critical
10 needs of others.

11 i. Plaintiffs are informed and believe that, when learning of the events
12 giving rise to this claim, the City of Santee's final policymakers (including
13 Chief Richard Mattick) ratified the acts of the City's employees, including
14 the responding EMTs, paramedics, and firefighters.

15 j. Plaintiffs are informed and believe that, when learning of the events
16 giving rise to this claim, the Lakeside Fire Protection District's final
17 policymakers (including Chief Andy Parr) ratified the acts of the District's
18 employees, including the responding EMTs, paramedics, and firefighters.

19 k. Up through the time Lucky was transferred to the care of Grossmont
20 Hospital, the responding deputies, EMTs, and paramedics compromised
21 Lucky's breathing (through the use of electrical weapons, physical restraint,
22 and/or chemical sedation) to the point of inducing death by cardiac arrest
23 and/or asphyxiation.

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1 **FIRST CAUSE OF ACTION**

2 **42 U.S.C. § 1983 – Excessive Force**

3 **(By Lucky’s Successor in Interest against County, Fischer, and Unknown Sheriff’s**
4 **Department Deputies)**

5 49. All preceding paragraphs are incorporated by this reference.

6 50. Loan asserts this claim as Lucky’s successor in interest against all named
7 and currently unknown defendants acting in their individual capacities.

8 51. Defendants violated the Fourth Amendment when, on April 13, 2015, they
9 unnecessarily escalated a situation, and then used unreasonable and excessive force on
10 Lucky, namely, attempting to physically restrain Lucky upon initial contact, shocking
11 Lucky multiple times with a TASER Model X26, striking Lucky with fists and batons,
12 hogtying Lucky, possibly injecting Lucky with sedatives, and compressing his chest in a
13 manner that interfered with normal respirations.

14 52. As a direct and foreseeable result of these deputies’ unreasonable and
15 excessive uses of force, Lucky died. Lucky therefore suffered special and general
16 damages, including those arising from Lucky’s pre-death pain and suffering, along with
17 further damages according to proof at the time of trial.

18 53. In using the force described above, these deputies recklessly disregarded
19 Lucky’ constitutional rights. As such, these deputies’ actions justify an award of
20 punitive damages in an amount to be determined at the time of trial.

21 54. Because the deputies acted in the scope of their employment, the County is
22 vicariously liable for the harm proximately caused by their conduct pursuant to California
23 Government Code § 815.2.

24 **SECOND CAUSE OF ACTION**

25 **42 U.S.C. § 1983 – Denial of Medical Care**

26 **(By Lucky’s Successor in Interest Against All Defendants)**

27 55. All preceding paragraphs are incorporated by this reference.

28 56. Loan asserts this cause of action as Lucky’s successor in interest.

- b. the ratification of the illegal and unconstitutional conduct by an individual with final policy-making authority; and/or
- c. a failure to adequately train municipal employees resulting in the deliberate indifference to the constitutional rights of citizens.

64. The County, Santee, and the District are liable under Monell, in that Lucky's death was not only a result of an unconstitutional practice or custom (namely, a practice or custom of using excessive and unreasonable force on individuals in the midst of a mental health crisis), it was also the result of a failure to train deputies, EMTs, and paramedics to appropriately deal with such individuals. Indeed, the uniformity in which multiple deputies, EMTs, and paramedics acted in reckless disregard of Lucky's rights demonstrates the existence of such a practice or custom, and lack of adequate training. Moreover, upon learning of the conduct giving rise to Lucky's death, the County's, Santee's, and the District's final policymakers (including Sheriff Gore, Chief Mattick, and Chief Parr) ratified the conduct, approved it, and imposed no discipline because of it. As a direct and legal result of the County's, Santee's, and the District's systematically unconstitutional acts and omissions, Lucky died.

65. Lucky therefore suffered special and general damages, including those arising from Lucky's pre-death pain and suffering, along with further damages according to proof at the time of trial.

FOURTH CAUSE OF ACTION

Battery

(By Lucky's Successor in Interest Against County and Unknown Sheriff's Department Deputies)

66. All preceding paragraphs are incorporated by this reference.

67. Loan asserts this cause of action as Lucky's successor in interest.

68. On April 13, 2015, currently unknown Sheriff's Department deputies used unreasonable and excessive force on Lucky. Because these deputies' uses of force on Lucky were without legal justification, it was tortious.

1 78. Because the deputies acted in the scope of their employment, the County is
2 vicariously liable for the harm proximately caused by the deputies' conduct pursuant to
3 California Government Code § 815.2.

4 **SIXTH CAUSE OF ACTION**

5 **42 U.S.C. § 12132 – Americans with Disabilities Act**

6 **(By Lucky's Successor in Interest Against County and Unknown Sheriff's**
7 **Department Deputies)**

8 79. All preceding paragraphs are incorporated by this reference.

9 80. Loan asserts this cause of action as Lucky's successor in interest.

10 81. On April 13, 2015, Lucky had a disability as defined in 42 U.S.C. § 12102.
11 At a minimum, the Sheriff's Department deputies that responded to Lucky's 911 call
12 perceived Lucky as suffering from such a disability.

13 82. When deputies arrived, no one was in danger. See Schreiner v. City of
14 Gresham, 681 F. Supp. 2d 1270, 1279 (D. Oregon 2010) (“[o]nce the area was secure and
15 there was no threat to human safety, the [defendants] would have been under a duty to
16 reasonably accommodate [plaintiffs] disability in handling and transporting him to a
17 mental health facility”) (quoting Hainze v. Richards, 207 F.3d 795, 802 (5th Cir. 2000)).
18 Indeed, Lucky was the one who called 911 for help. The responding deputies needed
19 only to listen to Lucky, interact with him respectfully (by, for example, answering his
20 questions), then drive him to the hospital for psychiatric treatment. Instead, the
21 responding deputies came in with “guns blazing,” behaving aggressively toward Lucky,
22 refusing to answer his questions, and insisting on restraining him from the get go.

23 83. The responding deputies acted aggressively toward Lucky because of his
24 actual or perceived disability. That is, these deputies discriminated against Lucky
25 because of Lucky's actual or perceived disability. This unnecessary escalation of an
26 already delicate situation ultimately led to the deputies' use of repeated and increasing
27 levels of restraint and force, which uses of restraints and force ultimately caused Lucky's
28 death.

1 84. Title II of the ADA provides that the responding deputies had a duty to make
2 reasonable accommodations in dealing with Lucky, including, for example, being civil
3 and respectful upon first contact. See 42 U.S.C. § 12182(b)(2)(A). These deputies failed
4 to comply with this duty.

5 85. As a direct and foreseeable result of these deputies’ actions, Lucky died.
6 Lucky therefore suffered special damages, along with further damages according to proof
7 at the time of trial.

8 86. Because the deputies acted in the scope of their employment, the County is
9 vicariously liable for the harm proximately caused by the deputies’ conduct pursuant to
10 California Government Code § 815.2.

11 **SEVENTH CAUSE OF ACTION**

12 **Cal. Civ. Code §§ 51, 51.7 – Unruh Civil Rights Act**

13 **(By Lucky’s Successor in Interest Against the County and Unknown Sheriff’s**
14 **Department Deputies**

15 87. All preceding paragraphs are incorporated by this reference.

16 88. Loan asserts this cause of action as Lucky’s successor in interest.

17 89. To the extent Lucky’s rights under the ADA were violated, Lucky’s rights
18 under the Unruh Civil Rights Act were also violated. See Cal. Civ. Code § 51(f).

19 90. On April 13, 2015, Lucky suffered from a mental disability as defined by
20 California Civil Code § 51(d)(1) and California Government Code § 12926(j). At a
21 minimum, the Sheriff’s Department deputies that responded to Lucky’s 911 call
22 perceived Lucky as suffering from such a mental disability.

23 91. The responding deputies acted aggressively toward Lucky because of his
24 actual or perceived mental disability. This unnecessary escalation of an already delicate
25 situation ultimately led to the deputies’ use of repeated and increasing levels of restraint
26 and force, which uses of restraints and force ultimately caused Lucky’s death.

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1 102. These defendants' negligence was a substantial factor in causing Lucky's
2 death.

3 103. Because the individual defendants acted in the scope of their employment,
4 the municipal entity defendants are vicariously liable for the harm proximately caused by
5 their subordinates' conduct pursuant to California Government Code § 815.2.

6 **NINTH CAUSE OF ACTION**

7 **Negligent Hiring, Retention, Supervision**

8 **(By Lucky's Successor in Interest Against Sheriff Gore, Chief Mattick, and Chief**
9 **Parr)**

10 104. All preceding paragraphs, except those falling under the First through Eighth
11 Causes of Action, are incorporated by this reference.

12 105. Loan asserts this cause of action as Lucky's successor in interest.

13 106. Sheriff Gore, Chief Mattick, and Chief Parr each had a duty to ensure those
14 they hired, retained, and supervised were fit to perform their respective duties.

15 107. Fischer, currently unknown Sheriff's Department deputies, Bagley, currently
16 unknown Santee Fire Department crewmembers, Poynter, Hackett, Csik, and currently
17 unidentified District crewmembers were each unfit and/or incompetent to perform their
18 respective duties as law enforcement officers, EMTs, and paramedics.

19 108. Sheriff Gore's subordinates were unfit and/or incompetent in a way that
20 created a particular risk to the public, in that they:

- 21 a. used excessive force against Lucky, including the gratuitous use of the
22 TASER X26, punches, baton strikes, hogtying, chest compressions, and
23 physical restraints in the ambulance while being transported to the hospital;
24 b. discriminated against, and failed to accommodate Lucky's disability,
25 because of their perceptions of Lucky's disability and mental health;
26 c. triaged the minor, non-life-threatening injuries of deputies over
27 Lucky's life-threatening conditions and thereby were a proximate cause of
28 Lucky's death; and

1 d. compromised Lucky's breathing (through the use of electrical
2 weapons, physical restraint, and/or chemical sedation) to the point of
3 inducing death by cardiac arrest and/or asphyxiation.

4 109. Sheriff Gore should have known, prior to this incident, that his subordinates
5 were unfit and/or incompetent as described in Paragraph 108, above.

6 110. Chief Mattick's subordinates were unfit and/or incompetent in a way that
7 created a particular risk to the public, in that they:

8 a. failed to use appropriate restraining methods, and failed to provide
9 necessary and adequate medical care, and thus, were a proximate cause of
10 Lucky's death;

11 b. triaged the minor, non-life-threatening injuries of deputies over
12 Lucky's life-threatening conditions and thereby were a proximate cause of
13 Lucky's death; and

14 c. compromised Lucky's breathing (through the use of electrical
15 weapons, physical restraint, and/or chemical sedation) to the point of
16 inducing death by cardiac arrest and/or asphyxiation.

17 111. Chief Mattick should have known, prior to this incident, that his
18 subordinates were unfit and/or incompetent as described in Paragraph 110, above.

19 112. Chief Parrs's subordinates were unfit and/or incompetent in a way that
20 created a particular risk to the public, in that they:

21 a. failed to use appropriate restraining methods, and failed to provide
22 necessary and adequate medical care, and thus, were a proximate cause of
23 Lucky's death;

24 b. triaged the minor, non-life-threatening injuries of deputies over
25 Lucky's life-threatening conditions and thereby were a proximate cause of
26 Lucky's death; and

27 c. compromised Lucky's breathing (through the use of electrical
28 weapons, physical restraint, and/or chemical sedation) to the point of

1 inducing death by cardiac arrest and/or asphyxiation.

2 113. Chief Parr should have known, prior to this incident, that his subordinates
3 were unfit and/or incompetent as described in Paragraph 112, above.

4 114. The unfitness and/or incompetence of Sheriff Gore's, Chief Mattick's, and
5 Chief Parr's subordinates, as described above, caused Lucky's death.

6 115. As a direct and foreseeable result of Sheriff Gore's, Chief Mattick's, and
7 Chief Parr's failure to, with due care, hire, retain, and/or supervise their respective
8 subordinates, Lucky died. Lucky therefore suffered special damages, along with further
9 damages according to proof at the time of trial.

10 116. Because these individual defendants acted in the scope of their employment,
11 the municipal entity defendants are vicariously liable for the harm proximately caused by
12 their subordinates' conduct pursuant to California Government Code § 815.2.

13 **TENTH CAUSE OF ACTION**

14 **Wrongful Death**

15 **(By K.J.P., K.P.P., Loan, Kimberly Against All Defendants)**

16 117. All preceding paragraphs are incorporated by this reference.

17 118. Plaintiffs are, under California Code of Civil Procedure § 377.60, each
18 individuals authorized to bring a cause of action grounded in Lucky's wrongful death.
19 K.J.P. and K.P.P. were Lucky's minor children. Loan was Lucky's wife, and Kimberly
20 was Lucky's mother.

21 119. As set forth in the First through Eighth Causes of Action, Lucky died as a
22 result of Defendants' tortious conduct.

23 120. As a direct and foreseeable result of Lucky's death, Plaintiffs have suffered
24 economic and non-economic damages. Plaintiffs have lost the benefit of the financial
25 support that Lucky would have provided to them during the remainder of his life, or the
26 remainder of each of Plaintiffs' lives, whichever is shorter. Plaintiffs have lost any gifts
27 or other benefits they expected from Lucky. Plaintiffs have incurred funeral and burial
28 costs. Plaintiffs have lost the reasonable value of household services that Lucky would

1 have provided.

2 121. Plaintiffs have lost Lucky’s love, companionship, comfort, care, assistance,
3 protection, affection, society, and moral support. K.J.P. and K.P.P. have further lost
4 Lucky’s training and guidance. Loan has further lost the enjoyment of a romantic
5 partner.

6 **ELEVENTH CAUSE OF ACTION**

7 **42 .S.C. § 1983 – Substantive Due Process**

8 **(By K.J.P., K.P.P., Loan, Kimberly Against All Defendants)**

9 122. All preceding paragraphs are incorporated by this reference.

10 123. As set forth in the First through Eighth Causes of Action, Lucky died as a
11 result of Defendants’ tortious conduct.

12 124. As a result of Lucky’s death, Plaintiffs were deprived of their Fourteenth
13 Amendment right to familial companionship and society. See, e.g., Smith v. City of
14 Fontana, 818 F.2d 1411, 1419-20 (9th Cir. 1987).

15 125. As a direct and foreseeable result of this denial of substantive due process,
16 Plaintiffs have suffered economic and non-economic damages. Plaintiffs have lost the
17 benefit of the financial support that Lucky would have provided to them during the
18 remainder of his life, or the remainder of each of Plaintiffs’ lives, whichever is shorter.
19 Plaintiffs have lost any gifts or other benefits they expected from Lucky. Plaintiffs have
20 incurred funeral and burial costs. Plaintiffs have lost the reasonable value of household
21 services that Lucky would have provided.

22 126. Plaintiffs have lost Lucky’s love, companionship, comfort, care, assistance,
23 protection, affection, society, and moral support. K.J.P. and K.P.P. have further lost
24 Lucky’s training and guidance. Loan has further lost the enjoyment of a romantic
25 partner.

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1 **TWELFTH CAUSE OF ACTION**

2 **Intentional Infliction of Emotional Distress**

3 **(By Loan Against County and Unknown Sheriff’s Department Deputies)**

4 127. All preceding paragraphs are incorporated by this reference.

5 128. The conduct of the Sheriff’s Department deputies that responded to Lucky’s
6 911 call on April 13, 2015, was outrageous, in that these deputies unnecessarily escalated
7 a tense, but under control, situation to the point that deputies used a significant amount of
8 violence against Lucky to subdue him. These deputies did so while his family, including
9 Loan, watched. And these deputies continued to escalate the amount of force they were
10 using even though Lucky’s family had demonstrated, through gentle words and gestures,
11 that such force was unnecessary.

12 129. These deputies acted with reckless disregard of the probability that their
13 actions would cause Loan severe emotional distress.

14 130. Loan suffered severe emotional distress, in that she witnessed Deputies
15 brutally beat her husband and the father of her children, including repeatedly shocking
16 Lucky with a TASER, punching Lucky, striking Lucky with a metal baton, and tackling
17 Lucky to the floor. Deputies then prevented Loan from going outside, where Deputies
18 had hogtied Lucky, to comfort Lucky.

19 131. The responding deputies’ conduct was a substantial factor in causing Loan’s
20 severe emotional distress.

21 132. Because the deputies acted in the scope of their employment, the County is
22 vicariously liable for the harm proximately caused by the deputies’ conduct pursuant to
23 California Government Code § 815.2.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the foregoing allegations considered, Plaintiffs demand:

26 (1) that judgment be rendered in favor of Plaintiffs and against Defendants on
27 all causes of action asserted herein;

28 (2) compensatory damages (including economic and noneconomic damages) as

1 permitted by federal and state law, in amounts to be determined at trial;

2 (3) punitive damages, against the individual defendants only, as permitted by
3 federal law, and in an amount sufficient to deter and make examples out of these
4 individuals, to be determined at trial;

5 (4) reasonable attorney fees, expenses, and costs of suit pursuant to 42 U.S.C.
6 §§ 1983-1988, California Civil Code §§ 52.1 et seq., and any other relevant statutory or
7 case law; and

8 (5) any and all other relief in law or equity to which Plaintiff may be entitled
9 and which this Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs demand, under the Seventh Amendment, a trial by jury as to each and
12 every cause of action asserted herein.

13
14 Dated: November 25, 2015

SINGLETON LAW FIRM, APC

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16 By: /s/Gerald Singleton
17 Gerald Singleton, Esq.
18 Attorneys for Plaintiffs
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