

1 Dan Stormer, Esq. [S.B. # 101967]
Brian Olney, Esq. [S.B. #298089]
2 Rebecca Brown, Esq. [S.B. #336638]
HADSELL STORMER RENICK & DAI LLP
3 128 N. Fair Oaks Avenue
Pasadena, California 91103
4 Telephone: (626) 585-9600
Facsimile: (626) 577-7079
5 Emails: bolney@hadsellstormer.com
rbrown@hadsellstormer.com

6 Attorneys for Plaintiff
7 MATILDE GARZA

8
9
10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 MATILDE GARZA, individually and as
surviving heir and successor in interest of
14 ANTONIO F. GARZA, JR. (deceased),

15 Plaintiff,

16 v.

17 COUNTY OF SAN BERNARDINO;
18 BILL ABERNATHY; NICHOLAS
KRINDER; and DOES 1, 3-9.

19 Defendants.
20
21
22

Case No.: 23-cv-01849

COMPLAINT FOR DAMAGES:

1. 42 U.S.C. § 1983 – Excessive Force
2. 42 U.S.C. § 1983 – Deprivation of Rights of Plaintiff to Familial Relationship with Decedent
3. 42 U.S.C. § 1983 – Failure to Intervene
4. 42 U.S.C. § 12131 – Violation of Title II of the Americans with Disabilities Act
5. 29 U.S.C. § 794 – Violation of the Rehabilitation Act
6. Wrongful Death
7. Cal. Civil Code § 52.1 – Bane Act
8. Assault
9. Battery
10. Negligence

[DEMAND FOR JURY TRIAL]

INTRODUCTION

1
2 1. In the morning of February 5, 2023, deputies from the San Bernardino
3 County Sheriff’s Department (“SBSD”), deputies from the Riverside County Sheriff’s
4 Department (“RSD”), and officers from the California Highway Patrol (“CHP”) chased
5 down Antonio F. F. Garza, Jr., who was experiencing a mental health crisis, and shot
6 him dead. Mr. Garza was a forty-four-year-old Latino man whose serious mental illness
7 was well known to the SBSBD. Mr. Garza was frightened, alone, and attempting to flee.
8 Rather than de-escalate the encounter, the involved officers needlessly escalated the
9 encounter and SBSBD Deputies Bill Abernathy and Nicholas Krinder shot Mr. Garza
10 twelve times, including at least twice in the back and at least twice after he collapsed to
11 the ground.

12 2. Less than one hour before Deputies Abernathy and Krinder killed Mr.
13 Garza, SBSBD deputies had responded to a call regarding Mr. Garza allegedly burning
14 items on his property in Yucca Valley, California. Due to his mental illness, Mr. Garza
15 was terrified of interacting with law enforcement. When the SBSBD deputies arrived at
16 his property, Mr. Garza left the property in his truck.

17 3. The SBSBD deputies pursued Mr. Garza for approximately thirty miles
18 westbound on Highway 62 to the Interstate 10 Freeway. RSD and CHP personnel
19 joined the pursuit of Mr. Garza. Near the end of Whitewater Cutoff in Whitewater,
20 California, Mr. Garza pulled over and exited his truck. Mr. Garza then ran into the
21 desert, away from the many law enforcement officers pursuing him. The officers chased
22 after Mr. Garza on foot, surrounding him from multiple directions and pointing their
23 guns at him. Mr. Garza never harmed, attempted to harm, or threatened to harm any law
24 enforcement officers or civilians.

25 4. Police officers in California are trained to safely de-escalate interactions
26 with individuals suffering from mental illness. Instead, these deputies chose to use
27 lethal force on a peaceful mentally ill man and shot him twelve times.

28 5. The conduct of the SBSBD Deputies was outrageous. Their tragic killing of

1 Mr. Garza resulted from Defendants’ lack of planning, failure to deescalate the
2 situation, use of excessive force, and inadequate and misapplied training. Defendants’
3 unjustifiable actions ended Mr. Garza’s life and robbed Plaintiff Matilde Garza of her
4 only son.

5 6. Ms. Garza—Mr. Garza’s mother and sole heir—brings this action in her
6 individual capacity and as her son’s successor in interest for damages against
7 Defendants for general, compensatory, and statutory damages, costs and attorneys’ fees,
8 declaratory and injunctive relief resulting from Defendants’ unlawful and egregious
9 conduct, as alleged herein. Additionally, Plaintiff seeks punitive damages against the
10 individual Defendants.

11 **PARTIES**

12 7. Plaintiff Matilde Garza is the mother and next-of-kin of the decedent
13 Antonio F. Garza, Jr. Mr. Garza was shot and killed by Defendants and/or their agents,
14 subjecting Matilde Garza to injuries and damages as described herein. Ms. Garza sues
15 Defendants in her individual capacity for the violation of her rights under state and
16 federal law, and as Mr. Garza’s successor in interest for the violation of his rights under
17 state and federal law.

18 8. Defendant County of San Bernardino is a duly organized public entity
19 existing under the laws of the State of California. The San Bernardino County Sheriff’s
20 Department (“SBSD”) is the law enforcement agency for Defendant County of San
21 Bernardino. The County of San Bernardino is responsible for the actions, omissions,
22 policies, procedures, practices, and customs of its various agents and agencies,
23 including SBSD and its agents and employees. At all relevant times, Defendant County
24 of San Bernardino was responsible for ensuring that the actions, omissions, policies,
25 procedures, practices, and customs of the SBSD and its agents and employees complied
26 with the laws of the United States and the State of California.

27 9. Defendant Bill Abernathy is an SBSD deputy who pursued Mr. Garza by
28 car and on foot and without justification shot and killed Mr. Garza.

1 10. Defendant Nicholas Krinder is an SBSB deputy who pursued Mr. Garza by
2 car and on foot and without justification shot and killed Mr. Garza.

3 11. Defendant Doe 1 is an SBSB deputy who pursued Mr. Garza by car and on
4 foot and pointed his gun at Mr. Garza alongside Defendants Bill Abernathy and
5 Nicholas Krinder.

6 12. Doe 2 is a law enforcement officer employed by the California Highway
7 Patrol (CHP) who pursued Mr. Garza on foot and pointed his gun at Mr. Garza
8 alongside Defendants Bill Abernathy and Nicholas Krinder. At the time of the incident,
9 Doe 2 was acting under color of law within the course and scope of his duties and with
10 the complete authority and ratification of his principal, CHP.

11 13. Defendants Does 3-9 are SBSB deputies who pursued Mr. Garza by car.

12 14. At all relevant times, the County of San Bernardino was the employer of
13 Defendants Bill Abernathy, Nicholas Krinder, and Does 1 and 3-9 (collectively the
14 “Defendant Deputies”). Defendants Bill Abernathy, Nicholas Krinder, and Does 1 and
15 3-9 are Deputies for the SBSB. At the time of the incident, Defendants Bill Abernathy,
16 Nicholas Krinder, and Does 1 and 3-9 were acting under color of law within the course
17 and scope of their duties as Deputies for the SBSB. Defendants Bill Abernathy,
18 Nicholas Krinder, and Does 1 and 3-9 were acting with the complete authority and
19 ratification of their principal, Defendant County of San Bernardino.

20 15. On information and belief, Bill Abernathy, Nicholas Krinder, and Does 1
21 and 3-9 at all relevant times were, and are, residents of the County of San Bernardino,
22 California. In doing the acts and failing to act as hereinafter described, Defendants Bill
23 Abernathy, Nicholas Krinder, and Does 1 and 3-9 were acting on the implied and actual
24 permission and consent of the County of San Bernardino. The true names and capacities
25 of Does 1 and 3-9 are unknown to Plaintiff, who otherwise sue these Defendants by
26 such fictitious names. Plaintiff will amend this Complaint or seek leave to do so when
27 the true names and capacities of these Defendants have been ascertained. Each of the
28 fictitiously named Defendants is responsible in some manner for the acts, omissions,

1 injuries, and damages alleged herein.

2 16. Plaintiff is informed and believe and thereon allege that at all times
3 relevant herein, Defendants and each of them were the agents, employees, servants,
4 joint venturers, partners, and/or co-conspirators of the other Defendants named in this
5 Complaint and that at all times, each of the Defendants was acting within the course and
6 scope of said relationship with Defendants.

7 17. All of the acts and omissions complained of herein by Plaintiff against
8 Defendants were done and performed by said Defendants by and through their
9 authorized agents, servants and/or employees, all of whom at all relevant times herein
10 were acting within the course, purpose, and scope of said agency, service, and/or
11 employment capacity. Moreover, Defendants and their agents ratified all of the acts and
12 omissions complained of herein. Whenever and wherever reference is made in this
13 Complaint for Damages to any act or failure to act by a Defendant or Defendants, such
14 allegations and references shall also be deemed to mean the acts and failures to act of
15 each Defendant acting individually, jointly, and severally.

16 JURISDICTION

17 18. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and
18 1343(a) because Plaintiff asserts claims arising under the laws of the United States
19 including 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the United
20 States Constitution. Plaintiff's state-law claims form part of the same case and
21 controversy and are within the supplemental jurisdiction of the Court pursuant to 28
22 U.S.C. § 1367.

23 VENUE

24 19. Venue is proper in the United States District Court of the Central District
25 of California pursuant to 28 U.S.C. § 1391(b)(1) as the Central District is "a judicial
26 district in which any defendant resides" and "all defendants are residents of the State in
27 which the district is located." Venue is also proper pursuant to 28 U.S.C. § 1391(b)(2),
28 as the Central District is "a judicial district in which a substantial part of the events or

1 omissions giving rise to the claim occurred[.]” Venue is proper in this Court because all
2 incidents, events, and occurrences giving rise to this action occurred in the Counties of
3 San Bernardino and Riverside, California.

4 **ADMINISTRATIVE PREREQUISITES**

5 20. Plaintiff exhausted her administrative remedies by timely filing
6 governmental tort claims with the County of San Bernardino pursuant to California
7 Government Code sections 910 *et seq.* Plaintiff filed a tort claim in her individual
8 capacity on April 6, 2023. The County rejected this tort claim when it failed to respond
9 to the claim by May 22, 2023, the forty-five day time period set forth in California
10 Government Code Section 911.6. Plaintiff also filed a tort claim as successor in interest
11 to Antonio F. Garza, Jr. on May 15, 2023. The County likewise rejected this tort claim
12 by failing to respond to the claim by June 29, 2023, the forty-five day time period set
13 forth in California Government Code Section 911.6.

14 **FACTUAL ALLEGATIONS**

15 21. Antonio F. Garza, Jr. was a successful business owner and beloved family
16 member who lived in the Joshua Tree area for most of his life.

17 22. In his youth, Mr. Garza excelled at sports, including cross country and
18 wrestling.

19 23. Mr. Garza owned a metal fabrication company and worked as a
20 maintenance mechanic. He was a long-time member of Local 12 Operating Engineers.
21 He loved riding his Harley Davidson motorcycle, working in his welding shop, caring
22 for his dogs, and spending time with his family.

23 24. In the summer of 2020, Mr. Garza’s mental health began to decline. Mr.
24 Garza began to suffer from symptoms consistent with schizophrenia, including severe
25 delusions, paranoia, hallucinations, and erratic behavior. Mr. Garza believed that people
26 were conspiring to surveil him, steal from him, and/or harm him. Mr. Garza became
27 extremely fearful of law enforcement and believed that law enforcement officers were
28 conspiring against him.

1 25. Mr. Garza's family became increasingly worried about his mental health.
2 Mr. Garza's family observed that he was highly anxious and behaving erratically. For
3 months, Mr. Garza's family searched for mental health treatment options and resources
4 for Mr. Garza. They reached out to the various mental health treatment centers, crisis
5 centers, hospitals, and attorneys to no avail. Family members pleaded with Mr. Garza to
6 seek mental health treatment, but he did not believe that he needed help. They were
7 consistently told that Mr. Garza could be compelled to receive mental health treatment
8 only if he harmed himself, harmed others, or was arrested.

9 26. In January 2021, Mr. Garza came to the home of his sister, Berta Garza
10 Logan, after she told him that he could not come to her home. Ms. Garza Logan called
11 the San Bernardino County Sheriff's Department ("SBSD") to seek assistance. Mr.
12 Garza left the property before an SBSB deputy arrived. The family member asked the
13 responding SBSB deputy how she could seek help for Mr. Garza. The deputy informed
14 her that Mr. Garza could not be compelled to seek mental health treatment unless he
15 harmed himself, harmed others, or was arrested. The deputy agreed to conduct a
16 wellness check on Mr. Garza.

17 27. Throughout January 2021, Mr. Garza's family members called the SBSB
18 multiple times, requesting that wellness checks be performed on Mr. Garza due to
19 concerns about his mental illness.

20 28. On February 5, 2021, SBSB deputies arrested Mr. Garza following a
21 wellness check requested by Plaintiff.

22 29. Following the arrest, Mr. Garza was held in SBSB custody in general
23 population at the West Valley Detention Center until May 13, 2021. West Valley
24 Detention Center is managed and operated by SBSB. On May 13, 2021, while Mr.
25 Garza's case was still pre-trial, Mr. Garza's family posted his bail, and he was released
26 from custody.

27 30. On March 18, 2022, Mr. Garza's attorney declared a doubt as to Mr.
28 Garza's mental competence pursuant to California Penal Code § 1368. The court filed

1 an order for a psychiatric appointment for Mr. Garza and suspended the criminal
2 proceedings against him.

3 31. On August 16, 2022, Mr. Garza was remanded into custody. On
4 information and belief, Mr. Garza was to be held in jail for one week and would then be
5 transferred to a mental health treatment facility.

6 32. However, Mr. Garza was never transferred to a mental health facility and
7 was instead held in SBSB custody in general population at the West Valley Detention
8 Center for five months while criminal proceedings against him were suspended.
9 Hearings were held regarding Mr. Garza's placement on September 29, 2022, October
10 21, 2022, and January 20, 2023. At these hearings, the Joshua Tree Superior Court
11 judge presiding over Mr. Garza's case repeatedly expressed frustration that Mr. Garza
12 had not been placed in a mental health treatment program.

13 33. Mr. Garza's mental health further deteriorated while he was incarcerated
14 for five months in general population without access to adequate mental health
15 treatment and cut off from his family and loved ones. On information and belief, Mr.
16 Garza did not receive mental health care or medication while incarcerated. He did not
17 understand why he was incarcerated and was traumatized by the experience. On
18 information and belief, there was in fact an approximately eight-hundred-person waitlist
19 for mental health treatment and Mr. Garza was never even placed on the waitlist.

20 34. On January 24, 2023, the Court ordered that Mr. Garza be released from
21 custody on his own recognizance, with the condition that he report to the Department of
22 Behavioral Health with Valley Star in Yucca Valley, California within forty-eight hours
23 of his release and participate in their treatment program.

24 35. On January 27, 2023, Ms. Garza drove her son to the Department of
25 Behavioral Health with Valley Star in Yucca Valley. Mr. Garza attempted to enroll in
26 treatment, but he was informed that there was a four month wait to begin treatment. Mr.
27 Garza's family members then helped him apply for MediCal so that he would be able to
28 afford treatment once he was able to receive treatment.

1 36. On information and belief, in the morning of February 5, 2023, Mr. Garza
2 was experiencing a mental health crisis, which included delusions regarding people
3 conspiring against him. Mr. Garza began to burn some documents and electronics on his
4 own property located at Indio Avenue and Canterbury Street in Yucca Valley.

5 37. At or about 10:12 a.m., SBSB deputies came to Mr. Garza's property in
6 response to a call regarding Mr. Garza burning items on his property.

7 38. On information and belief, once the SBSB deputies arrived at Mr. Garza's
8 property, Mr. Garza became frightened of the law enforcement officers and left the
9 property in his pickup truck.

10 39. Mr. Garza drove approximately thirty miles westbound on Highway 62 to
11 Interstate 10. The SBSB deputies pursued Mr. Garza on Highway 62 and then on
12 Interstate 10. On information and belief, Mr. Garza maintained a speed at or slightly
13 above the speed of traffic. Riverside County Sheriff's Department ("RSD") deputies
14 and California Highway Patrol ("CHP") officers joined the vehicle pursuit of Mr.
15 Garza.

16 40. At approximately 10:55 a.m., at or near the end of Whitewater Cutoff road
17 in Whitewater, California, Mr. Garza pulled over off the north side of Interstate 10. He
18 parked the truck in the dirt north of the freeway, perpendicular to traffic.

19 41. The area to the north of the freeway near the end of Whitewater Cutoff is
20 rough desert terrain. The ground is uneven and covered in dried shrubs. There are a few
21 larger bushes. The area is dusty and often windy. Whitewater Cutoff is a small road
22 with no lane markings. It ends in a cul-de-sac. To the east of Whitewater Cutoff are
23 hills with windmills. To the west and north of Whitewater Cutoff is desert terrain. To
24 the south is the Interstate 10. There were no civilians present in this area and no
25 structures or items located in this area.

26 42. Several law enforcement vehicles blocked the two or three lanes of traffic
27 on the right side of the freeway, stopping traffic. At least ten police officers exited their
28 vehicles.

1 43. Mr. Garza then exited his truck and began running north, away from the
2 freeway and police officers. Mr. Garza climbed over a fence on the side of the freeway
3 and continued running north into the desert. On information and belief, Mr. Garza was
4 suffering from fear-inducing delusions, was very afraid, and was attempting to escape
5 from the officers. At least four police officers, including Defendant Deputies
6 Abernathy, Krinder, Doe 1 (the “Defendant Deputies”), and CHP officer Doe 2 chased
7 after Mr. Garza, with their guns drawn and pointed at him.

8 44. After a few seconds, Mr. Garza stopped running and faced the Defendant
9 Deputies and the officer. He was standing on Whitewater Cutoff, approximately ten to
10 fifteen feet north of the Defendant Deputies and the officer.

11 45. The Defendant Deputies and the officer formed a line between Mr. Garza
12 and the freeway. Mr. Garza slowly backed away from the officers, walking north up
13 Whitewater Cutoff. The Defendant Deputies and the officer continued advancing
14 toward Mr. Garza with their guns drawn and pointed at him. Mr. Garza continued to
15 slowly back away from the Defendant Deputies and the officer for approximately
16 twenty-five seconds, and the officers continued to advance towards him with their guns
17 pointed at him.

18 46. Mr. Garza bounced a few times on his feet as if he were preparing to run
19 and then turned right and ran away from the officers in a northwest direction, away
20 from the freeway and into the desert. The Defendant Deputies and the officer ran after
21 Mr. Garza. Two of the Defendant Deputies that were chasing him stood in front of Mr.
22 Garza with their guns pointed at him and the other Defendant Deputy (Doe 1) and the
23 CHP officer (Doe 2) that were chasing him stood off to the side. There were large rocks
24 behind Mr. Garza. Mr. Garza was trapped with nowhere to go.

25 47. Mr. Garza turned around and ran east towards Whitewater Cutoff, away
26 from the three SBSB Deputies and the officer CHP, Doe 2. The three SBSB Deputies
27 and the CHP officer ran after him. Mr. Garza stopped on the left side of Whitewater
28 Cutoff. He turned to face the three SBSB Deputies and the CHP officer and walked

1 backwards away from them, heading north. The three SBSB Defendant Deputies
2 formed a line approximately ten feet in front of Mr. Garza and advanced towards him
3 with their guns pointed at him. The CHP officer was approximately ten to twenty yards
4 west of Mr. Garza.

5 48. Mr. Garza began running west again, away from the three SBSB Deputies
6 in front of him. Mr. Garza was only able to take a few steps.

7 49. The three SBSB Deputies and the CHP officer did not attempt to de-
8 escalate the situation or communicate effectively with Mr. Garza.

9 50. Instead, at approximately 10:57 a.m., Defendants Abernathy and Krinder
10 shot Mr. Garza twelve times. Mr. Garza's autopsy revealed that Defendants Abernathy
11 and Krinder shot Mr. Garza at least twice in the back and at least twice after he had
12 collapsed to the ground. The autopsy report concluded that Mr. Garza died as a result of
13 multiple gunshot wounds.

14 51. At no time throughout his encounter with law enforcement did Mr. Garza
15 pose an immediate threat of death or serious bodily injury to any person. Mr. Garza
16 never harmed, attempted to harm, or threatened to harm any law enforcement officers or
17 civilians.

18 52. Mr. Garza was declared dead at approximately 11:24 a.m. He was just
19 forty-four years old.

20 53. In the morning of February 5, 2023, Mr. Garza's neighbor contacted Mr.
21 Garza's sister, Vicky Velasquez, to inform her that he saw SBSB personnel and San
22 Bernardino County Fire Department personnel at Mr. Garza's property. Shortly
23 thereafter, Ms. Velasquez and other family members learned from social media that
24 there had been a police chase in Yucca Valley involving a red pickup truck, which
25 matched the description of Mr. Garza's pickup truck.

26 54. Based on this information, Mr. Garza's family was concerned that Mr.
27 Garza might have been involved in the police chase. Throughout the day of February 5,
28 2023, Mr. Garza's family members repeatedly called the SBSB, RSD, Riverside County

1 Coroner's Office, and local hospitals in an effort to locate Mr. Garza. The SBSB, RSD,
2 Riverside County Coroner's Office, and local hospitals all refused to provide the family
3 with any information, including confirming or denying that Mr. Garza was involved in a
4 police chase.

5 55. In the evening of February 5, 2023, an investigator from the Riverside
6 District Attorney's Office called Ms. Garza Logan and asked her to come to the SBSB
7 station in Joshua Tree so that he could speak with her and her family members. Ms.
8 Garza Logan hoped that the investigator would share information with her regarding
9 Mr. Garza, so she agreed to meet with him. Ms. Garza Logan, Ms. Velasquez, and Ms.
10 Velasquez's husband promptly drove to the SBSB station in Joshua Tree.

11 56. Upon arriving at the station, the investigator refused to share any
12 information with Ms. Garza Logan and Ms. Velasquez. He only told them that someone
13 was deceased, but would not confirm or deny whether the decedent was Mr. Garza. He
14 then told Ms. Garza Logan and Ms. Velasquez that he needed to speak with them
15 separately. Ms. Garza Logan agreed to speak with him alone. The investigator then
16 interrogated Ms. Garza Logan about Mr. Garza.

17 57. At approximately 1:00 a.m. on February 6, 2023, a representative from the
18 Riverside County Coroner's Office returned a call from Silvia Garza-Littman, Mr.
19 Garza's sister. The representative informed Ms. Garza-Littman that Mr. Garza was
20 deceased. This was the first notification of Mr. Garza's death that the family received.

21 **FIRST CAUSE OF ACTION**

22 **42 U.S.C. § 1983 – Excessive Force**

23 **(Plaintiff, as Successor in Interest of Decedent Antonio F. Garza, Jr.,**

24 **Against All Defendants)**

25 58. Plaintiff realleges and incorporates by reference all preceding paragraphs
26 as though fully set forth herein.

27 59. On or about February 5, 2023, after causes of action arose in his favor,
28 Decedent Antonio F. Garza, Jr. would have been a Plaintiff in this action had he

1 survived the injuries he sustained.

2 60. Defendants, acting under color of state law, deprived Mr. Garza of rights,
3 privileges, and immunities secured by the Constitution and the laws of the United
4 States, including those secured by the Fourth Amendment to the Constitution,
5 incorporated and made applicable to the states by the Fourteenth Amendment, by,
6 among other things, subjecting him to unreasonable and excessive force, including
7 lethal force. Deputies Bill Abernathy and Nicholas Krinder unreasonably and repeatedly
8 shot Mr. Garza twelve times as he was experiencing a mental health crisis, resulting in
9 his death.

10 61. The Defendant Deputies' decision to force a violent and unnecessary
11 confrontation with Mr. Garza was objectively unreasonable and a violation of Mr.
12 Garza's Fourth Amendment rights. There was no need for the Deputies to unreasonably
13 agitate or provoke Mr. Garza by chasing him with their guns drawn and pointed at him.
14 The Deputies had numerous alternatives to safely de-escalate the situation without the
15 use of deadly force. On information and belief, the Deputies were aware that Mr. Garza
16 was mentally ill and was not likely to respond rationally to deputies and officers
17 chasing him with their guns trained on him. There was no immediate need to subdue
18 Mr. Garza and take him into custody while he ran around the rough desert terrain,
19 where there were no civilians or property nearby, and the force the Deputies applied
20 was excessive and unreasonable.

21 62. Each of the Defendant Deputies was both personally involved and an
22 integral participant in the violation of Mr. Garza's constitutional rights because each
23 Deputy was aware of the unlawful actions of the other Deputies, did not object to these
24 violations of Mr. Garza's rights, and participated in the violations by performing police
25 functions, including meaningful participation in the needless and unnecessary operation
26 to escalate the encounter with Mr. Garza and use unjustified force, including lethal
27 force.

28 63. The foregoing wrongful acts and failures to act of Defendants killed Mr.

1 Garza. As a proximate result of the foregoing wrongful acts of Defendants, and each of
2 them, Mr. Garza suffered great pain, suffering, mental and emotional anguish, the loss
3 of the enjoyment of life, and death.

4 64. By engaging in the foregoing wrongful acts and failures to act, Defendants
5 acted with conscious disregard of Mr. Garza's rights. There was no need for the
6 Defendant Deputies to shoot Mr. Garza. In chasing Mr. Garza with their guns drawn,
7 prepared to shoot and kill Mr. Garza, the Defendant Deputies escalated a peaceful
8 encounter and ultimately resorted to lethal force without justification. It was clear to
9 Defendants that Mr. Garza was in the midst of a mental health crisis. At no time did Mr.
10 Garza harm, attempt to harm, or threaten to harm anyone, rendering the use of lethal
11 force inappropriate.

12 65. Defendants Abernathy, Krinder, and Does 1 and 3-9 acted pursuant to
13 expressly adopted official policies or longstanding practices or customs of Defendant
14 County of San Bernardino. These include policies and longstanding practices or
15 customs on the use of force, including lethal force, in situations including but not
16 limited to encounters with individuals who suffer from mental illness.

17 66. In addition, the training policies of Defendant County of San Bernardino
18 were not adequate to train its deputies to handle the usual and recurring situations with
19 which they must deal, including, but not limited to, identifying and interacting with
20 individuals experiencing a mental crisis and utilizing de-escalation techniques.
21 Defendant County knew that the failure to adequately train deputies to identify and
22 interact with individuals experiencing a mental crisis and utilize de-escalation
23 techniques made it highly predictable that SBSD deputies would engage in conduct that
24 would deprive persons such as Mr. Garza of their rights. Defendant County of San
25 Bernardino was thus deliberately indifferent to the obvious consequences of the failure
26 to train deputies adequately. This lack of training led to Mr. Garza's senseless killing at
27 the hands of Defendants Abernathy and Krinder.

28 67. Defendant County of San Bernardino's official policies and/or

1 longstanding practices or customs, including but not limited to its training policies,
2 caused the deprivation of the constitutional rights of Mr. Garza by Defendants
3 Abernathy, Krinder, and Does 1 and 3-9; that is, the County of San Bernardino's
4 official policies and/or longstanding practices or customs are so closely related to the
5 deprivation of Mr. Garza's rights as to be the moving force that caused his injuries.

6 68. San Bernardino County Sheriff Dicus, a final policymaker for the
7 Defendant County of San Bernardino, ratified the actions and omissions of Defendants
8 Abernathy, Krinder, and Does 1 and 3-9 in that he had knowledge of and made a
9 deliberate choice to approve their unlawful acts and omissions.

10 69. Defendants' conduct was willful, wanton, malicious, and oppressive,
11 thereby justifying an award of punitive damages against the individual Defendants (but
12 not the Defendant County) in an amount adequate to punish the wrongful conduct
13 alleged herein and to deter such conduct in the future.

14 **SECOND CAUSE OF ACTION**

15 **42 U.S.C. § 1983 – Deprivation of Rights of Plaintiff to**

16 **Familial Relationship with Decedent**

17 **(Plaintiff, in her individual capacity, Against All Defendants)**

18 70. Plaintiff realleges and incorporates by reference each and every allegation
19 contained above as though fully set forth herein.

20 71. Defendants, acting under color of state law, deprived Plaintiff of her right
21 to a familial relationship with decedent Antonio F. Garza, Jr. without due process of law
22 in violation of the Fourteenth Amendment by their use of unreasonable, unjustified
23 force and violence, which shocks the conscience, evidences deliberate indifference on
24 the part of the Defendant Deputies, demonstrates an intent and purpose to harm, and
25 caused injuries which resulted in Mr. Garza's death.

26 72. The foregoing wrongful acts and failures to act of Defendants killed Mr.
27 Garza. As a proximate result of the foregoing wrongful acts of Defendants, and each of
28 them, Mr. Garza suffered great pain, suffering, and death, and Plaintiff has suffered and

1 continues to suffer humiliation, hardship, anxiety, indignity, and severe mental and
2 emotional anguish.

3 73. By engaging in the foregoing wrongful acts and failures to act, Defendants
4 acted with conscious disregard of Mr. Garza's rights. There was no need for the
5 Defendant Deputies to shoot Mr. Garza. In chasing Mr. Garza with their guns drawn,
6 prepared to shoot and kill Mr. Garza, the Defendant Deputies escalated a peaceful
7 encounter and ultimately resorted to lethal force without justification. It was clear that
8 Mr. Garza was in the midst of a mental health crisis. At no time did Mr. Garza harm,
9 attempt to harm, or threaten to harm anyone, rendering the use of lethal force
10 inappropriate.

11 74. Defendants Abernathy, Krinder, and Does 1 and 3-9 acted pursuant to
12 expressly adopted official policies or longstanding practices or customs of Defendant
13 County of San Bernardino. These include policies and longstanding practices or
14 customs on the use of force, including lethal force, in situations including but not
15 limited to encounters with individuals who suffer from mental illness.

16 75. In addition, the training policies of Defendant County of San Bernardino
17 were not adequate to train its deputies to handle the usual and recurring situations with
18 which they must deal, including, but not limited to, identifying and interacting with
19 individuals experiencing a mental crisis and utilizing de-escalation techniques.
20 Defendant County knew that the failure to adequately train deputies to identify and
21 interact with individuals experiencing a mental crisis and utilize de-escalation
22 techniques made it highly predictable that its deputies would engage in conduct that
23 would deprive persons such as Mr. Garza of their rights. Defendant County of San
24 Bernardino was thus deliberately indifferent to the obvious consequences of the failure
25 to train deputies adequately. This lack of training led to Mr. Garza's senseless killing at
26 the hands of Defendants Abernathy and Krinder.

27 76. Defendant County of San Bernardino's official policies and/or
28 longstanding practices or customs, including but not limited to its training policies,

1 caused the deprivation of the constitutional rights of Mr. Garza by Defendants
2 Abernathy, Krinder, and Does 1 and 3-9; that is, the County of San Bernardino's
3 official policies and/or longstanding practices or customs are so closely related to the
4 deprivation of Mr. Garza's rights as to be the moving force that caused his injuries.

5 77. San Bernardino County Sheriff Dicus, a final policymaker for the
6 Defendant County of San Bernardino, ratified the actions and omissions of Defendants
7 Abernathy, Krinder, and Does 1 and 3-9 in that he had knowledge of and made a
8 deliberate choice to approve their unlawful acts and omissions.

9 78. Defendants' conduct was willful, wanton, malicious, and oppressive,
10 thereby justifying an award of punitive damages against the individual Defendants (but
11 not the Defendant County) in an amount adequate to punish the wrongful conduct
12 alleged herein and to deter such conduct in the future.

13 **THIRD CAUSE OF ACTION**

14 **42 U.S.C. § 1983 – Failure to Intervene**

15 **(Plaintiff, in her individual capacity and as Successor in Interest of Decedent**

16 **Antonio F. Garza, Jr., Against All Defendants)**

17 79. Plaintiff realleges and incorporates by reference each and every allegation
18 contained above as though fully set herein.

19 80. On or about February 5, 2023, after causes of action arose in his favor,
20 Decedent Antonio F. Garza, Jr. would have been a Plaintiff in this action had he
21 survived the injuries he sustained.

22 81. Defendants, acting under color of state law, deprived Antonio F. Garza, Jr.
23 of rights, privileges, and immunities secured by the Constitution and the laws of the
24 United States, including those secured by the Fourth Amendment to the Constitution,
25 incorporated and made applicable to the states by the Fourteenth Amendment, by,
26 among other things, subjecting him to unreasonable and excessive force, including
27 lethal force, and failing to intervene in the constitutional violations of their fellow
28 deputies. Deputies Abernathy and Krinder unreasonably and repeatedly shot Mr. Garza

1 as he was experiencing a mental health crisis, resulting in his death.

2 82. Plaintiff is informed and believe and thereon allege that, at all relevant
3 times herein mentioned, Defendants Abernathy, Krinder, and Does 1 and 3-9 were
4 present and had a realistic and reasonable opportunity to intervene to prevent the use of
5 excessive force by their fellow Deputies against Mr. Garza, but neglected to do so.

6 83. The foregoing wrongful acts and failures to act of Defendants killed Mr.
7 Garza. As a proximate result of the foregoing wrongful acts of Defendants, and each of
8 them, Mr. Garza suffered great pain, suffering, the loss of enjoyment of life, and death,
9 and Plaintiff has suffered and continues to suffer humiliation, hardship, anxiety,
10 indignity, and severe mental and emotional anguish.

11 84. By engaging in the foregoing wrongful acts and failures to act, Defendants
12 acted with conscious disregard of Mr. Garza's rights. There was no need for the
13 Defendant Deputies to shoot Mr. Garza. In chasing Mr. Garza with their guns drawn,
14 prepared to shoot and kill Mr. Garza, the Defendant Deputies escalated a peaceful
15 encounter and ultimately resorted to lethal force without justification. It was clear that
16 Mr. Garza was in the midst of a mental health crisis. At no time did Mr. Garza harm,
17 attempt to harm, or threaten to harm anyone, rendering the use of lethal force
18 inappropriate.

19 85. Defendants Abernathy, Krinder, and Does 1 and 3-9 acted pursuant to
20 expressly adopted official policies or longstanding practices or customs of Defendant
21 County of San Bernardino. These include policies and longstanding practices or
22 customs on the failure to intervene in unconstitutional uses of force, including lethal
23 force, in situations including but not limited to encounters with individuals who suffer
24 from mental illness.

25 86. In addition, the training policies of Defendant County of San Bernardino
26 were not adequate to train its deputies to handle the usual and recurring situations with
27 which they must deal, including, but not limited to, intervening in the constitutional
28 violations of fellow deputies in situations involving identifying and interacting with

1 individuals experiencing a mental crisis and utilizing de-escalation techniques.
2 Defendant County knew that the failure to adequately train deputies to intervene in the
3 constitutional violations of other deputies in situations involving identifying and
4 interacting with individuals experiencing a mental crisis and utilizing de-escalation
5 techniques made it highly predictable that its deputies would fail to intervene in conduct
6 that would deprive persons such as Mr. Garza of their rights. Defendant County of San
7 Bernardino was thus deliberately indifferent to the obvious consequences of the failure
8 to train deputies adequately. This lack of training led to Mr. Garza's senseless killing at
9 the hands of Defendants Abernathy and Krinder.

10 87. Defendant County of San Bernardino's official policies and/or
11 longstanding practices or customs, including but not limited to its training policies,
12 caused the deprivation of the constitutional rights of Mr. Garza by Defendants
13 Abernathy, Krinder, and Does 1 and 3-9; that is, the County of San Bernardino's
14 official policies and/or longstanding practices or customs are so closely related to the
15 deprivation of Mr. Garza's rights as to be the moving force that caused his injuries.

16 88. San Bernardino County Sheriff Dicus, a final policymaker for the
17 Defendant County of San Bernardino, ratified the actions and omissions of Defendants
18 Abernathy, Krinder, and Does 1 and 3-9 in that he had knowledge of and made a
19 deliberate choice to approve their unlawful acts and omissions.

20 89. Defendants' conduct was willful, wanton, malicious, and oppressive,
21 thereby justifying an award of punitive damages against the individual Defendants (but
22 not the Defendant County) in an amount adequate to punish the wrongful conduct
23 alleged herein and to deter such conduct in the future.

24 **FOURTH CAUSE OF ACTION**

25 **42 U.S.C. § 12131– Violation of Title II of the Americans with Disabilities Act**
26 **(Plaintiff, in her individual capacity and as Successor in Interest of Decedent**
27 **Antonio F. Garza, Jr., Against Defendant County of San Bernardino)**

28 90. Plaintiff realleges and incorporates by reference each and every allegation

1 contained above as though fully set forth herein.

2 91. On or about February 5, 2023, after causes of action arose in his favor,
3 Decedent Antonio F. Garza, Jr. would have been a Plaintiff in this action had he
4 survived the injuries he sustained. In addition, Plaintiff is a “person aggrieved” within
5 the meaning of the ADA.

6 92. Congress enacted the Americans With Disabilities Act (“ADA”) upon
7 finding, among other things, that “society has tended to isolate and segregate
8 individuals with disabilities” and that such forms for discrimination continue to be a
9 “serious and pervasive social problem.” 42 U.S.C. §12101(a)(2).

10 93. In response to these findings, Congress explicitly stated that the purpose of
11 the ADA is to provide “a clear and comprehensive national mandate for the elimination
12 of discrimination against individuals with disabilities” and “clear, strong, consistent,
13 enforceable standards addressing discrimination against individuals with disabilities.”
14 42 U.S.C. § 12101(b)(1)-(2).

15 94. Title II of the ADA provides in pertinent part: “[N]o qualified individual
16 with a disability shall, by reason of such disability, be excluded from participation in or
17 be denied the benefits of the services, programs, or activities of a public entity, or be
18 subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

19 95. The U.S. Department of Justice implemented Title II, 28 C.F.R. § 35.160,
20 regulations which require public entities to take appropriate steps to ensure that
21 communications with members of the public with disabilities are as effective as
22 communications with others.

23 96. At all times relevant to this action, Defendant County of San Bernardino
24 was a public entity within the meaning of Title II of the ADA and provided programs,
25 services, and activities to the general public.

26 97. The U.S. Department of Justice, Civil Rights Division, Disability Rights
27 section has published, “Commonly Asked Questions About the Americans with
28 Disabilities Act and Law Enforcement,” a document in which the U.S. Department of

1 Justice provides guidelines in the interpretation of Title II of the ADA (the Guidelines).
2 In the Guidelines, the Department of Justice notes that the ADA affects virtually
3 everything that police officers and deputies do, including providing emergency medical
4 services, arresting, booking, and holding suspects, and other duties.

5 98. At all times relevant to this action, Mr. Garza was a “qualified individual”
6 as defined under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131(2) in
7 that he suffered from a mental illness which at times caused him to experience severe
8 paranoia and behave erratically and resulted in substantial limitations in his mental and
9 emotional processes such as thinking, concentrating, and interacting with others.

10 99. On information and belief, at all times relevant to this action, Defendants
11 were made aware of Mr. Garza’s disability through, for example, Mr. Garza’s erratic
12 behavior with responding officers. In addition, on information and belief, at all relevant
13 times SBSB was made aware of Mr. Garza’s disability through prior contacts with Mr.
14 Garza, including numerous wellness checks conducted by SBSB deputies on Mr. Garza
15 and Mr. Garza’s contacts with the criminal justice system while in SBSB custody.

16 100. During their encounter with Mr. Garza, the Defendant Deputies failed to
17 reasonably accommodate Mr. Garza’s disability, causing him to suffer greater injury in
18 that process than other seized persons. Through the acts and omissions of Defendant
19 County of San Bernardino and their agents and employees described herein, Defendant
20 County of San Bernardino violated Title II of the ADA by excluding Mr. Garza from
21 participation in, by denying him the benefits of, and subjecting him to discrimination in
22 the benefits and services it provides to the general public. Specifically, the Defendant
23 Deputies needlessly and recklessly escalated the situation with Mr. Garza by chasing
24 him with their guns drawn and pointed at him and shooting him multiple times, all
25 without justification or any reasonable basis and without taking into account his mental
26 illness. Rather than take these unjustified, unreasonable, harmful, and overly
27 provocative steps, the Defendants Deputies could have de-escalated the situation and
28 thus could have avoided subjecting Mr. Garza to greater injury compared to other

1 arrestees.

2 101. Plaintiff is informed, believes, and thereon alleges that Defendant County
3 of San Bernardino and its agents and employees have failed and continue to fail to take
4 into account and provide reasonable accommodations for persons with mental
5 disabilities by failing to, among other things:

- 6 a. Adopt and enforce policies and procedures for communicating
7 effectively, controlling, and interacting with persons with mental
8 disabilities;
- 9 b. Adopt and enforce policies and procedures for providing persons
10 with mental disabilities access to medical facilities, including the
11 provision of employees with medical training and medical resources
12 to communicate, interact with, and control such persons;
- 13 c. Train and supervise County of San Bernardino and SBSD deputies
14 and employees to communicate effectively, control, interact with,
15 and safely de-escalate encounters persons with mental disabilities;
- 16 d. Train and supervise County of San Bernardino and SBSD deputies
17 and employees regarding the cognition and behavior of persons with
18 mental disabilities; and
- 19 e. Train and supervise County of San Bernardino and SBSD deputies
20 and employees that they should not use force, or put themselves in
21 positions where the use of force may become necessary, without first
22 notifying and obtaining the assistance of persons who have the
23 requisite training and experience in communicating effectively with
24 and controlling and interacting with persons with mental disabilities.

25 102. As a direct and proximate result of the aforementioned acts, including but
26 not limited to Defendants' deliberate indifference to the violation of Mr. Garza's
27 federally protected rights, Mr. Garza suffered great pain, suffering, and death, and
28 Plaintiff has suffered and continues to suffer humiliation, hardship, anxiety, indignity,

1 and severe mental and emotional anguish.

2 103. Pursuant to 42 U.S.C. § 12133, Plaintiff is entitled to recover the
3 compensatory damages described herein, and reasonable attorneys' fees and costs
4 incurred in bringing this action.

5 **FIFTH CAUSE OF ACTION**

6 **29 U.S.C. § 794 – Violation of the Rehabilitation Act**

7 **(Plaintiff, in her individual capacity and as Successor in Interest of Decedent**
8 **Antonio F. Garza, Jr., Against Defendant County of San Bernardino)**

9 104. Plaintiff realleges and incorporates by reference all preceding paragraphs
10 as though fully set forth herein.

11 105. On or about February 5, 2023, after causes of action arose in his favor,
12 Decedent Antonio F. Garza, Jr. would have been a Plaintiff in this action had he
13 survived the injuries he sustained. In addition, Plaintiff is a “person aggrieved” within
14 the meaning of 29 U.S.C. § 794a(a)(2).

15 106. Section 504 of the Rehabilitation Act of 1973 provides in pertinent part:
16 “[N]o otherwise qualified individual with a disability ... shall, solely by reason of her or
17 his disability, be excluded from the participation in, be denied the benefits, or be
18 subjected to discrimination under any program or activity receiving federal financial
19 assistance ...” 29 U.S.C. § 794.

20 107. Mr. Garza, at all times relevant herein, was a qualified individual with a
21 disability within the meaning of the Rehabilitation Act because he suffered from a
22 mental illness, which at times caused him to experience severe paranoia and behave
23 erratically and resulted in substantial limitations in his mental and emotional processes
24 such as thinking, concentrating, and interacting with others. *See* 29 U.S.C. §
25 705(20)(B).

26 108. At all times relevant to this action Defendant County of San Bernardino
27 was a recipient of Federal funding within the meaning of the Rehabilitation Act.

28 109. Through its acts and omissions described herein, Defendant County of San

1 Bernardino has violated the Rehabilitation Act, including all applicable implementing
2 regulations, by excluding Mr. Garza, from participation in, denying him the benefits of,
3 and subjecting him to discrimination in the benefits and services it provides to the
4 general public.

5 110. As a direct and proximate result of the aforementioned acts, including but
6 not limited to Defendants' deliberate indifference to the violation of Mr. Garza's
7 federally protected rights, Mr. Garza suffered great pain, suffering, and death, and
8 Plaintiff has suffered and continues to suffer humiliation, hardship, anxiety, indignity,
9 and severe mental and emotional anguish.

10 111. Pursuant to 29 U.S.C. § 794(a), Plaintiff is entitled to recover the damages
11 described in this Complaint and reasonable attorneys' fees and costs incurred in
12 bringing this action.

13 **SIXTH CAUSE OF ACTION**

14 **Wrongful Death (e.g., Cal. Civ. Proc. Code § 377.60,**
15 **Cal. Civil Code § 43)**

16 **(Plaintiff, in her individual capacity, Against All Defendants)**

17 112. Plaintiff realleges and incorporates by reference each and every allegation
18 contained above as though fully set forth herein.

19 113. Antonio F. Garza, Jr. had no predeceased spouse or domestic partner and
20 has no surviving spouse, domestic partner, or issue. Accordingly, Plaintiff Matilde
21 Garza, as Mr. Garza's surviving parent, is entitled to his property by intestate
22 succession pursuant to Probate Code § 6402, and is thus the proper defendant for
23 wrongful death claims under Civil Code § 377.60(a).

24 114. Mr. Garza's death was a direct and proximate result of the aforementioned
25 wrongful and/or negligent acts and/or omissions of Defendants.

26 115. Defendants Abernathy and Krinder's shooting death of Mr. Garza was
27 unjustified, unlawful, and unnecessary under the circumstances, given that Mr. Garza
28 was experiencing a mental health crisis and did not place any of the Defendant Deputies

1 or any member of the public in any danger.

2 116. Specifically, Defendant Deputies ignored established law enforcement
3 practices and initiated an aggressive interaction with Mr. Garza that quickly escalated
4 into the intentional and deliberate killing of a mentally ill man who clearly posed no
5 threat to the Deputies or anyone else. No facts justify Abernathy and Krinder's killing
6 of Mr. Garza. There was no reasonable basis for the Deputies to perceive any threat
7 from Mr. Garza.

8 117. There was no need for the Deputies to unreasonably agitate or provoke Mr.
9 Garza by chasing him with their guns drawn and pointed at him. The Deputies had
10 numerous alternatives to safely de-escalate the situation. On information and belief, the
11 Deputies were aware that Mr. Garza was mentally ill and was not likely to respond
12 rationally to deputies chasing him with their guns trained on him. There was no
13 immediate need to subdue Mr. Garza and take him into custody while he ran around the
14 rough desert terrain, where there were no civilians or property nearby, and the force the
15 Deputies applied was excessive and unreasonable.

16 118. On information and belief, the Defendant Deputies knew or should have
17 known that Mr. Garza was severely mentally ill and posed no threat to the Defendant
18 Deputies or anyone else. However, the Defendant Deputies ignored established police
19 practices, ignored the fact that Mr. Garza was mentally ill, initiated an unnecessary
20 interaction with Mr. Garza in which they chased Mr. Garza with their guns pointed at
21 him, and when Mr. Garza attempted to run away from the Defendant Deputies in fear,
22 Defendants Abernathy and Krinder shot Mr. Garza multiple times, killing him.

23 119. Each of the Defendant Deputies was both personally involved and an
24 integral participant in the violation of Mr. Garza's constitutional rights because each
25 Deputy was aware of the unlawful actions of the other Deputies, did not object to these
26 violations of Mr. Garza's rights, and participated in the violations by performing police
27 functions, including meaningful participation in the needless and unnecessary operation
28 to escalate the encounter with Mr. Garza and use unjustified force, including lethal

1 force.

2 120. Defendants' acts and/or omissions thus were a direct and proximate cause
3 of Plaintiff's injuries and damages, as alleged herein.

4 121. Each of the Defendant Deputies was both personally involved and aided
5 and abetted in the violation of Plaintiff's rights. Each Deputy knew that the other
6 Deputies were committing unlawful actions against Mr. Garza as they planned to and
7 did unlawfully use excessive force against Mr. Garza, killing him. Each Deputy gave
8 substantial assistance or encouragement to the other Deputies and each Deputy's
9 conduct was a substantial factor in causing harm to Plaintiff.

10 122. As a direct and proximate result of Defendants' wrongful and/or negligent
11 acts and/or omissions, Plaintiff incurred funeral and burial expenses in an amount to be
12 proved at trial.

13 123. As a direct and proximate result of Defendants' wrongful and/or negligent
14 acts and/or omissions, Plaintiff suffered the loss of Mr. Garza's services, society, care,
15 comfort, support, protection, gifts and benefits, as well as the loss of the present value
16 of his future services to them for the remainder of her lives.

17 124. Plaintiff is further entitled to recover prejudgment interest.

18 125. Defendant County of San Bernardino is vicariously liable for its
19 employees' wrongful and/or negligent acts and/or omissions.

20 126. Defendants' conduct was willful, wanton, malicious, and oppressive,
21 thereby justifying an award of punitive damages against the individual Defendants (but
22 not the Defendant County) in an amount adequate to punish the wrongful conduct
23 alleged herein and to deter such conduct in the future.

24 **SEVENTH CAUSE OF ACTION**

25 **Cal. Civil Code § 52.1 – Bane Act**

26 **(Plaintiff, as Successor in Interest of Decedent Antonio F. Garza, Jr., Against All**
27 **Defendants)**

28 127. Plaintiff realleges and incorporates by reference each and every allegation

1 contained above as though fully set forth herein.

2 128. On or about February 5, 2023, after causes of action arose in his favor,
3 Decedent Antonio F. Garza, Jr. would have been a Plaintiff in this action had he
4 survived the injuries he sustained.

5 129. The California Constitution Art. I, § 13 and the United States Constitution,
6 Amendment IV, guarantee the right of persons to be free from arrests without probable
7 cause, unreasonable searches and seizures, and use of unnecessary and excessive force
8 on the part of law enforcement officers. Defendants, by engaging in the wrongful acts
9 and failures to act alleged in this action, denied this right to Mr. Garza by threats,
10 intimidation, or coercion, either intentionally or through their deliberate indifference.
11 Defendant Deputies' unlawful actions were a substantial factor causing Mr. Garza's
12 death and also severe injuries and suffering prior to his death. For this reason, Plaintiff,
13 as successor in interest to Mr. Garza, may state a claim for damages pursuant to Civil
14 Code section 52.1.

15 130. Each of the Defendant Deputies was both personally involved and aided
16 and abetted in the violation of Plaintiff's rights. Each Deputy knew that the other
17 Deputies were committing unlawful actions against Mr. Garza as they planned to and
18 did unlawfully use excessive force against Mr. Garza, killing him. Each Deputy gave
19 substantial assistance or encouragement to the other Deputies and each Deputy's
20 conduct was a substantial factor in causing harm to Plaintiff.

21 131. Defendant County of San Bernardino is vicariously liable for the
22 Defendant Deputies' misconduct.

23 132. As the direct and legal result of Defendants' conduct, Plaintiff suffered and
24 will continue to suffer damages, including but not limited to those set forth above.
25 Plaintiff is entitled to statutory damages under Civil Code section 52, as well as
26 compensatory and punitive damages and attorneys' fees.

27 133. Defendants' conduct was willful, wanton, malicious, and oppressive,
28 thereby justifying an award of punitive damages against the individual Defendants (but

1 not the Defendant County) in an amount adequate to punish the wrongful conduct
2 alleged herein and to deter such conduct in the future.

3 **EIGHTH CAUSE OF ACTION**

4 **Assault (e.g., Cal. Civil Code § 43)**

5 **(Plaintiff, as Successor in Interest of Decedent Antonio F. Garza, Jr., Against All**
6 **Defendants)**

7 134. Plaintiff realleges and incorporates by reference each and every allegation
8 contained above as though fully set forth herein.

9 135. On or about February 5, 2023, after causes of action arose in his favor,
10 Decedent Antonio F. Garza, Jr. would have been a Plaintiff in this action had he
11 survived the injuries he sustained.

12 136. Defendants Abernathy, Krinder, and Does 1 and 3-9, intended to cause
13 harmful or offensive contact with Mr. Garza, and threatened to touch Mr. Garza in a
14 harmful or offensive manner.

15 137. Mr. Garza reasonably believed that he was about to be touched in a
16 harmful or offensive manner, and it reasonably appeared to Mr. Garza that Defendants
17 were about to carry out their threats.

18 138. Mr. Garza did not consent to Defendants' conduct.

19 139. Mr. Garza was harmed.

20 140. Defendants' conduct was a substantial factor in causing Mr. Garza's harm.

21 141. Each of the Defendant Deputies was both personally involved and aided
22 and abetted in the violation of Plaintiff's rights. Each Deputy knew that the other
23 Deputies were committing unlawful actions against Mr. Garza as they planned to and
24 did unlawfully use excessive force against Mr. Garza, killing him. Each Deputy gave
25 substantial assistance or encouragement to the other Deputies and each Deputy's
26 conduct was a substantial factor in causing harm to Plaintiff.

27 142. Defendant County of San Bernardino is vicariously liable for the actions of
28 the Deputy Defendants.

1 143. Defendants Abernathy, Krinder, and Does 1 and 3-9's conduct was willful,
2 wanton, malicious, and oppressive, thereby justifying an award of punitive damages
3 against the individual Defendants (but not the entity Defendants) in an amount adequate
4 to punish the wrongful conduct alleged herein and to deter such conduct in the future.

5 **NINTH CAUSE OF ACTION**

6 **Battery (e.g., Cal. Civil Code § 43)**

7 **(Plaintiff, as Successor in Interest of Decedent Antonio F. Garza, Jr., Against All**
8 **Defendants)**

9 144. Plaintiff realleges and incorporates by reference each and every allegation
10 contained above as though fully set forth herein.

11 145. On or about February 5, 2023, after causes of action arose in his favor,
12 Decedent Antonio F. Garza, Jr. would have been a Plaintiff in this action had he
13 survived the injuries he sustained.

14 146. Defendants Abernathy and Krinder intentionally touched Mr. Garza, or
15 caused him to be touched.

16 147. Defendants Abernathy and Krinder used unreasonable force. Defendants
17 had reason to believe Mr. Garza was mentally ill. Mr. Garza never harmed, attempted to
18 harm, or threatened to harm anyone, and he presented no threat to another person.

19 148. Mr. Garza did not consent to the use of that force.

20 149. Mr. Garza was harmed. As a result of the conduct of the Defendants as
21 alleged herein, Mr. Garza sustained and incurred damages for a measurable period of
22 time before his death, collapsing onto the ground, bleeding out, and dying alone in the
23 desert. Plaintiff, as successor in interest to Antonio F. Garza, Jr., therefore, seeks
24 recovery for personal property damages, and all other related expenses, damages, and
25 losses, as permitted by § 377.34 of the Code of Civil Procedure, against Defendants,
26 according to proof at trial.

27 150. The use of unreasonable force by Defendants Abernathy and Krinder was a
28 substantial factor in causing Mr. Garza's harm.

1 supervise, train, review, and ensure that its Deputies abided by the standard of care,
2 failed to enact appropriate standards and procedures that would have prevented such
3 harms to Plaintiff, including failing to train Deputies (1) to identify and interact with
4 individuals experiencing a mental crisis; (2) to utilize de-escalation techniques; and (3)
5 not to use excessive force situations where such actions are not justified.

6 158. Each of the Defendant Deputies was both personally involved and aided
7 and abetted in the violation of Plaintiff's rights. Each Deputy knew that the other
8 Deputies were committing unlawful actions against Mr. Garza as they planned to and
9 did unlawfully use excessive force against Mr. Garza, killing him. Each Deputy gave
10 substantial assistance or encouragement to the other Deputies and each Deputy's
11 conduct was a substantial factor in causing harm to Plaintiff.

12 159. As a direct result of Defendants' conduct, which included an unnecessary
13 attempt to seize, arrest, and use excessive force upon Mr. Garza, Plaintiff was injured.

14 160. Defendant County of San Bernardino is vicariously liable for the actions of
15 the Deputy Defendants.

16 161. The acts and failures to act as alleged herein caused severe anxiety, pain,
17 suffering and emotional distress and injury to Plaintiff, and Plaintiff is therefore entitled
18 to damages in an amount to be proven at trial.

19 162. Defendants Abernathy and Krinder's conduct was willful, wanton,
20 malicious, and oppressive, thereby justifying an award of punitive damages against the
21 individual Defendants (but not the Defendant County) in an amount adequate to punish
22 the wrongful conduct alleged herein and to deter such conduct in the future.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff prays for the following relief:

25 1. For compensatory, general, and special damages against each Defendant,
26 jointly and severally, amounts to be proven at trial;

27 2. Punitive and exemplary damages against individually named Defendants
28 Abernathy, Krinder, and Does 1 and 3-9, in an amount appropriate to punish

1 Defendant(s) and deter others from engaging in similar misconduct;

2 3. Prejudgment and post-judgment interest;

3 4. For costs of suit and reasonable attorneys' fees and costs as authorized by
4 statute or law;

5 5. For restitution as the Court deems just and proper;

6 6. For such other relief, including injunctive and/or declaratory relief, as the
7 Court may deem proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands trial by jury in this action.

10
11 Dated: September 11, 2023

Respectfully Submitted,

12 HADSELL STORMER RENICK & DAI LLP

13
14 By: /s/ Rebecca Brown

15 Brian Olney
16 Rebecca Brown
17 Attorneys for Plaintiff