

1 LAW OFFICES OF DALE K. GALIPO
2 Dale K. Galipo (Bar No. 144074)
3 dalekgalipo@yahoo.com
4 Eric Valenzuela (Bar No. 284500)
5 evalenzuela@galipolaw.com
6 21800 Burbank Boulevard, Suite 310
7 Woodland Hills, California 91367
8 Telephone: (818) 347-3333
9 Facsimile: (818) 347-4118

10 Attorneys for Plaintiffs

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

13 GALE SOSTEK; and HERB SOSTEK

14 Plaintiffs,

15 vs.

16 COUNTY OF SAN BERNARDINO;
17 and DOES 1-10, inclusive,

18 Defendants.

Case No. 5:23-cv-2236

COMPLAINT FOR DAMAGES

1. Unreasonable Search and Seizure—
Excessive Force (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—
Denial of Medical Care (42 U.S.C.
§ 1983)
3. Substantive Due Process—(42
U.S.C. § 1983)
4. Battery (Survival and Wrongful
Death)
5. Negligence (Survival and Wrongful
Death)
6. Violation of Bane Act (Cal. Civil
Code § 52.1)

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

19 1. Plaintiffs GALE SOSTEK and HERB SOSTEK for their complaint against
20 Defendants COUNTY OF SAN BERNARDINO, and Does 1-10, inclusive, allege
21 as follows:
22
23
24

1 **INTRODUCTION**

2 2. This civil rights action seeks compensatory and punitive damages from
3 Defendants for violating various rights under the United States Constitution and
4 state law in connection with the fatal police shooting of the decedent, Kyle Sostek.

5 **PARTIES**

6 3. At all relevant times, Kyle Sostek (“DECEDENT”) was an individual
7 residing in County of San Bernardino, California.

8 4. Plaintiff GALE SOSTEK is an individual residing in the County of San
9 Bernadino, California, and is the biological mother of DECEDENT. GALE
10 SOSTEK sues both in her individual capacity as the mother of DECEDENT and in
11 a representative capacity as a successor-in-interest to DECEDENT. GALE
12 SOSTEK seeks both survival damages, including pain and suffering and wrongful
13 death damages under federal and state law.

14 5. Plaintiff HERB SOSTEK is an individual residing in the County of San
15 Bernadino, California, and is the biological father of DECEDENT. HERB
16 SOSTEK sues both in his individual capacity as the father of DECEDENT and in a
17 representative capacity as a successor-in-interest to DECEDENT. HERB SOSTEK
18 seeks both survival damages, including DECEDENT’s pain and suffering, and
19 wrongful death damages under federal and state law.

20 6. At all relevant times, Defendant COUNTY OF SAN BERNARDINO
21 (“COUNTY”) is and was a duly organized public entity, form unknown, existing
22 under the laws of the State of California. At all relevant times, COUNTY was the
23 employer of Defendant DOES 1-4, who were COUNTY sheriff’s deputies, DOES
24 5-6, who were COUNTY sheriff’s deputies’ supervisory officers, and DOES 7-10,
25 who were managerial, supervisory, and policymaking employees of the COUNTY
26 Sheriff’s Department. On information and belief, at all relevant times, DOES 1-10
27 were residents of County of San Bernardino, California. DOES 1-10 are sued in
28 their individual capacity for damages only.

1 7. At all relevant times, Defendants DOES 1-10 were duly authorized
2 employees and agents of COUNTY, who were acting under color of law within the
3 course and scope of their respective duties as sheriff's deputies and with the
4 complete authority and ratification of their principal, Defendant COUNTY.

5 8. At all relevant times, Defendants DOES 1-10 were duly appointed officers
6 and/or employees or agents of COUNTY, subject to oversight and supervision by
7 COUNTY's elected and non-elected officials.

8 9. In doing the acts and failing and omitting to act as hereinafter described,
9 Defendants DOES 1-10 were acting on the implied and actual permission and
10 consent of COUNTY.

11 10. At all times mentioned herein, each and every COUNTY defendant was the
12 agent of each and every other COUNTY defendant and had the legal duty to
13 oversee and supervise the hiring, conduct and employment of each and every
14 COUNTY defendant.

15 11. The true names of defendants DOES 1 through 10, inclusive, are unknown
16 to Plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs
17 will seek leave to amend this complaint to show the true names and capacities of
18 these defendants when they have been ascertained. Each of the fictitious named
19 defendants is responsible in some manner for the conduct and liabilities alleged
20 herein.

21 12. On September 11, 2023, Plaintiffs filed an amended claim for damages with
22 COUNTY pursuant to applicable sections of the California Government Code.

23 13. On October 23, 2023, COUNTY rejected Plaintiffs' claims for damages.

24 **JURISDICTION AND VENUE**

25 14. This civil action is brought for the redress of alleged deprivations of
26 constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, 1988, and the
27 Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction
28 is founded on 28 U.S.C. §§ 1331, 1343, and 1367.

1 15. Venue is proper in this Court under 28 U.S.C. § 1391(b), because
2 Defendants reside in, and all incidents, events, and occurrences giving rise to this
3 action occurred in, the County of San Bernardino, California.
4

5 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

6 16. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
7 through 15 of this Complaint with the same force and effect as if fully set forth
8 herein.

9 17. On or about March 12, 2023, DECEDENT was on or near the 800 Block of
10 Vista Ave., in Sugarloaf (Unincorporated BigBear), California.

11 18. Near 800 block of Vista Ave., DOES 1-4 discharged their firearms at
12 DECEDENT, striking him causing DECEDENT serious physical injury and
13 eventually killing him.

14 19. At the time of the shooting, DECEDENT was unarmed, and there were less
15 than lethal alternatives available to the involved deputies that were not exhausted
16 before resorting to using deadly force against DECEDENT. Further, DECEDENT
17 posed no imminent threat of death or serious physical injury to either DOES 1-4 or
18 any other person, especially since he was unarmed when he was fatally shot. None
19 of the involved deputies sustained substantial bodily injury during this incident.

20 20. On information and belief, DOES 1-4 had no information that DECEDENT
21 had committed a felony.

22 21. After shooting DECEDENT, DOES 1-4 did not timely summons medical
23 attention for DECEDENT, who was bleeding profusely and had obvious serious
24 injuries.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CLAIM FOR RELIEF**

2 **Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)**

3 (Against Defendants DOES 1-4)

4 22. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
5 through 21 of this Complaint with the same force and effect as if fully set forth
6 herein.

7 23. DOES1-4’s unjustified shooting deprived DECEDENT of his right to be
8 secure in his persons against unreasonable searches and seizures as guaranteed to
9 DECEDENT under the Fourth Amendment to the United States Constitution and
10 applied to state actors by the Fourteenth Amendment.

11 24. The unreasonable use of force by Defendant DOES 1-4 deprived the
12 DECEDENT of his right to be secure in his person against unreasonable searches
13 and seizures as guaranteed to DECEDENT under the Fourth Amendment to the
14 United States Constitution and applied to state actors by the Fourteenth
15 Amendment.

16 25. As a result, DECEDENT suffered extreme mental and physical pain and
17 suffering, loss of enjoyment of life and eventually suffered a loss of life and of
18 earning capacity. Plaintiffs have also been deprived of the life-long love,
19 companionship, comfort, support, society, care, and sustenance of DECEDENT,
20 and will continue to be so deprived for the remainder of their natural lives.
21 Plaintiffs are also claiming funeral and burial expenses.

22 26. As a result of the conduct of DOES 1-4, they are liable for DECEDENT’s
23 injuries, either because they were integral participants in the excessive force, or
24 because they failed to intervene to prevent these violations.

25 27. This use of deadly force was excessive and unreasonable under the
26 circumstances, especially since DECEDENT was unarmed when he was fatally
27 shot, DECEDENT had not caused anyone serious bodily injury and there were less
28 then lethal alternatives to shooting DECEDENT which were not first used.

1 Defendants' actions thus deprived DECEDENT of his right to be free from
2 unreasonable searches and seizures under the Fourth Amendment and applied to
3 state actors by the Fourteenth Amendment.

4 28. The conduct of DOES 1-4 was willful, wanton, malicious, and done with
5 reckless disregard for the rights and safety of DECEDENT and therefore warrants
6 the imposition of exemplary and punitive damages as to Defendants DOES 1-4.

7 29. Plaintiffs bring this claim as successors-in-interest to the DECEDENT, and
8 seek both survival, including DECEDENT's pain and suffering and loss of
9 enjoyment of life and wrongful death damages for the violation of DECEDENT's
10 rights.

11 30. Plaintiffs also seek attorney fees under this claim.

12
13 **SECOND CLAIM FOR RELIEF**

14 **Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)**

15 (Against Defendants DOES 1-4)

16 31. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
17 through 30 of this Complaint with the same force and effect as if fully set forth
18 herein.

19 32. The denial of medical care by Defendant Does 1-4 deprived DECEDENT
20 of his right to be secure in his person against unreasonable searches and seizures as
21 guaranteed to DECEDENT under the Fourth Amendment to the United States
22 Constitution and applied to state actors by the Fourteenth Amendment.

23 33. As a result, DECEDENT suffered extreme mental and physical pain and
24 suffering and eventually suffered a loss of life and earning capacity. Plaintiffs have
25 also been deprived of the life-long love, companionship, comfort, support, society,
26 care, and sustenance of DECEDENT, and will continue to be so deprived for the
27 remainder of their natural lives. Plaintiffs are also claiming funeral and burial
28 expenses.

1 34. Defendant Does 1-4 knew that failure to provide timely medical treatment to
2 DECEDENT could result in further significant injury or the unnecessary and
3 wanton infliction of pain, but disregarded that serious medical need, causing
4 DECEDENT great bodily harm and death.

5 35. After shooting DECEDENT multiple times, DOES 1-4 did not timely
6 summons medical attention for DECEDENT, who was bleeding profusely and had
7 obvious serious injuries, and DOES 1-4 also did not allow and prevented
8 responding medical personnel on-scene to timely render medical aid/assistance to
9 DECEDENT.

10 36. The conduct of Does 1-4 was willful, wanton, malicious, and done with
11 reckless disregard for the rights and safety of DECEDENT and therefore warrants
12 the imposition of exemplary and punitive damages as to Defendant Does 1-4.

13 37. Plaintiffs bring this claim as a successors-in-interest to DECEDENT, and
14 seek both survival and wrongful death damages for the violation of DECEDENT's
15 rights.

16 38. Plaintiffs also seek attorney's fees under this claim.

17
18 **THIRD CLAIM FOR RELIEF**

19 **Substantive Due Process (42 U.S.C. § 1983)**

20 (Against Defendant DOES 1-4)

21 39. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
22 through 38 of this Complaint with the same force and effect as if fully set forth
23 herein.

24 40. GALE SOSTEK and had a cognizable interest under the Due Process
25 Clause of the Fourteenth Amendment of the United States Constitution to be free
26 from state actions that deprive her of life, liberty, or property in such a manner as to
27 shock the conscience, including but not limited to, unwarranted state interference in
28 Plaintiff's familial relationship with her son, DECEDENT.

1 41. HERB SOSTEK had a cognizable interest under the Due Process Clause of
2 the Fourteenth Amendment of the United States Constitution to be free from state
3 actions that deprive him of life, liberty, or property in such a manner as to shock the
4 conscience, including but not limited to, unwarranted state interference in
5 Plaintiff's familial relationship with his son, DECEDENT.

6 42. As a result of the excessive force by DOES 1-4, and their failure to
7 intervene, DECEDENT died. Plaintiffs GALE and HERB SOSTEK were thereby
8 deprived of their constitutional right of familial relationship with DECEDENT.

9 43. Does 1-4, acting under color of state law, thus violated the Fourteenth
10 Amendment rights of GALE and HERB SOSTEK to be free from unwarranted
11 interference with their familial relationship with DECEDENT.

12 44. The aforementioned actions of DOES 1-4, along with other undiscovered
13 conduct, shock the conscience, in that they acted with deliberate indifference to the
14 constitutional rights of DECEDENT and Plaintiffs GALE and HERB SOSTEK and
15 with purpose to harm unrelated to any legitimate law enforcement objective.

16 45. Defendants DOES 1-4, acting under color of state law, thus violated the
17 Fourteenth Amendment rights of DECEDENT and Plaintiffs.

18 46. As a direct and proximate cause of the acts of DOES 1-4, DECEDENT
19 experienced severe pain and suffering and lost his life and earning capacity.
20 Plaintiffs suffered extreme and severe mental anguish and pain and have been
21 injured in mind and body. Plaintiffs has also been deprived of the life-long love,
22 companionship, comfort, support, society, care and sustenance of DECEDENT, and
23 will continue to be so deprived for the remainder of their natural lives. Plaintiffs
24 are also claiming funeral and burial expenses.

25 47. As a result of the conduct of Does 1-4, they are liable for DECEDENT'S
26 injuries, either because they were integral participants in the denial of due process,
27 or because they failed to intervene to prevent these violations.

28

1 48. The conduct of DOES 1-4 was willful, wanton, malicious, and done with
2 reckless disregard for the rights and safety of DECEDENT and Plaintiffs and
3 therefore warrants the imposition of exemplary and punitive damages as to
4 Defendant DOES 1-4.

5 49. Plaintiffs brings this claim individually and as a successors-in-interest to
6 DECEDENT, and seek both survival and wrongful death damages for the violation
7 of both Plaintiffs' and DECEDENT's rights.

8 50. Plaintiffs also seek attorney fees under this claim.
9

10 **FOURTH CLAIM FOR RELIEF**

11 **Battery (Cal. Govt. Code § 820 and California Common Law)**

12 (Wrongful Death)

13 (Against Defendant DOES 1-4 and COUNTY)

14 51. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
15 through 50 of this Complaint with the same force and effect as if fully set forth
16 herein.

17 52. DOES 1-4, while working as a sheriff's deputies for the COUNTY Sheriff's
18 Department, and acting within the course and scope of their duties, intentionally
19 shot DECEDENT. As a result of the actions of DOES 1-4, DECEDENT suffered
20 severe mental and physical pain and suffering, loss of enjoyment of life and
21 ultimately died from his injuries and lost earning capacity. DOES 1-4 had no legal
22 justification for using force against DECEDENT and said defendants' use of force
23 while carrying out their officer duties was an unreasonable use of force, especially
24 since DECEDENT was unarmed when he was fatally shot and he had not caused
25 serious bodily injury to anyone, including the involved deputies, prior to the
26 shooting.

27 53. As a direct and proximate result of defendants' conduct as alleged above,
28 Plaintiffs suffered extreme and severe mental anguish and pain and have been

1 injured in mind and body. Plaintiffs also have been deprived of the life-long love,
2 companionship, comfort, support, society, care and sustenance of DECEDENT, and
3 will continue to be so deprived for the remainder of their natural lives. Plaintiffs
4 also are claiming funeral and burial expenses.

5 54. COUNTY is vicariously liable for the wrongful acts of DOES 1-4 pursuant
6 to section 815.2(a) of the California Government Code, which provides that a
7 public entity is liable for the injuries caused by its employees within the scope of
8 the employment if the employee's act would subject him or her to liability.

9 55. The conduct of DOES 1-4 was malicious, wanton, oppressive, and
10 accomplished with a conscious disregard for the rights of Plaintiffs and
11 DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
12 DECEDENT, to an award of exemplary and punitive damages.

13 56. Plaintiffs bring this claim both individually and as a successors-in-interest to
14 DECEDENT, and seek both survival damages, including pain and suffering
15 damages and loss of enjoyment of life and wrongful death damages.

16
17 **FIFTH CLAIM FOR RELIEF**

18 **Negligence (Cal. Govt. Code § 820 and California Common Law)**

19 (Wrongful Death)

20 (Against All Defendants)

21 57. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
22 through 55 of this Complaint with the same force and effect as if fully set forth
23 herein.

24 58. The actions and inactions of the Defendants were negligent and reckless,
25 including but not limited to:

- 26 (a) the failure to properly and adequately train employees,
27 including DOES 1-4, with regards to the use of force,
28 including deadly force;

- 1 (b) the failure to properly and adequately assess the need to
- 2 detain, arrest, and use force, including deadly force against
- 3 DECEDENT;
- 4 (c) the negligent tactics and handling of the situation with
- 5 DECEDENT, including pre-shooting negligence and dealing
- 6 with individuals that suffer from mental illness;
- 7 (d) the negligent detention, arrest, and use of force, including
- 8 deadly force, against DECEDENT;
- 9 (e) the negligent detention and arrest, including the initial
- 10 vehicle stop of DECEDENT;
- 11 (f) the failure to provide prompt medical care to DECEDENT;
- 12 (g) the failure to properly train and supervise employees, both
- 13 professional and non-professional, including DOES 1-4;
- 14 (h) the failure to ensure that adequate numbers of employees
- 15 with appropriate education and training were available to
- 16 meet the needs of and protect the rights of DECEDENT; and
- 17 (i) the negligent handling of evidence and witnesses.

18 59. As a direct and proximate result of defendants' conduct as alleged above,
19 and other undiscovered negligent conduct, DECEDENT was caused to suffer
20 severe pain and suffering and ultimately died and lost earning capacity. Also as a
21 direct and proximate result of defendants' conduct as alleged above, Plaintiffs
22 suffered extreme and severe mental anguish and pain and have been injured in
23 mind and body. Plaintiffs also have been deprived of the life-long love,
24 companionship, comfort, support, society, care and sustenance of DECEDENT, and
25 will continue to be so deprived for the remainder of their natural lives. Plaintiffs
26 also are claiming funeral and burial expenses.

27 60. COUNTY is vicariously liable for the wrongful acts of DOES 1-10 pursuant
28 to section 815.2 of the California Government Code, which provides that a public

1 entity is liable for the injuries caused by its employees within the scope of the
2 employment if the employee's act would subject him or her to liability.

3 61. Plaintiffs bring this claim as a successors-in-interest to DECEDENT, and
4 seek wrongful death damages.

5 **SIXTH CLAIM FOR RELIEF**

6 **Violation of Bane Act (Cal. Civil Code § 52.1)**

7 (Against All Defendants)

8 62. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
9 through 60 of this Complaint with the same force and effect as if fully set forth
10 herein.

11 63. California Civil Code, Section 52.1 (the Bane Act), prohibits any person
12 from interfering with another person's exercise or enjoyment of his constitutional
13 rights by threats, intimidation, or coercion.

14 64. Conduct that violates the Fourth Amendment violates the California Bane
15 Act.¹

16 65. Defendant DOES 1-4 use of deadly force was excessive and unreasonable
17 under the circumstances, especially since DECEDENT was unarmed and had not
18 inflicted serious bodily injury on anyone, including the involved deputies, during
19 the incident. Further, there were less than lethal alternatives which were not first
20 exhausted before resorting to the use of deadly force. Defendants' actions thus
21 deprived DECEDENT of his right to be free from unreasonable searches and
22 seizures under the Fourth Amendment and applied to state actors by the Fourteenth
23 Amendment.

24
25
26
27 ¹ See *Chaudhry v. City of Los Angeles*, 2014 WL 2030195, at * 6 (9th Cir. May
28 19, 2014) (citing *Cameron v. Craig*, 713 F.3d 1012, 1022 (9th Cir. 2013)).

1 66. The involved deputies intentionally used excessive deadly force against
2 DECEDENT by recklessly disregarding the DECEDENT's right to be free from
3 excessive force.

4 67. DOES 1-4, while working as sheriff's deputies for the COUNTY Sheriff's
5 Department, and acting within the course and scope of their duties, interfered with
6 or attempted to interfere with the rights of DECEDENT to be free from
7 unreasonable searches and seizures, to equal protection of the laws, to access to the
8 courts, and to be free from state actions that shock the conscience, by threatening or
9 committing acts involving violence, threats, coercion, or intimidation.

10 68. On information and belief, DECEDENT reasonably believed that if he
11 exercised his rights, including his civil rights, DOES 1-4 would commit acts
12 involving violence, threats, coercion, or intimidation against them or their property.

13 69. On information and belief Defendant DOES 1-4 detained and injured
14 DECEDENT to prevent him from exercising his rights or retaliated against
15 DECEDENT for having exercised his rights.

16 70. DECEDENT was caused to suffer extreme mental and physical pain and
17 suffering and eventually suffered a loss of life and of earning capacity. Plaintiffs
18 have also been deprived of the life-long love, companionship, comfort, support,
19 society, care, and sustenance of DECEDENT, and will continue to be so deprived
20 for the remainder of their natural lives. Plaintiffs are also claiming funeral and
21 burial expenses.

22 71. The conduct of DOES 1-4 was a substantial factor in causing the harms,
23 losses, injuries, and damages of DECEDENT and Plaintiffs.

24 72. COUNTY is vicariously liable for the wrongful acts of DOES 1-4 pursuant
25 to section 815.2(a) of the California Government Code, which provides that a
26 public entity is liable for the injuries caused by its employees within the scope of
27 the employment if the employee's act would subject him or her to liability.

28

1 73. The conduct of DOES 1-4 was malicious, wanton, oppressive, and
2 accomplished with a conscious disregard for the rights of DECEDENT entitling
3 Plaintiffs to an award of exemplary and punitive damages.

4 74. Plaintiffs bring this claim as successors-in-interest to the DECEDENT, and
5 seek both survival, including pain and suffering damages and loss of enjoyment of
6 life and wrongful death damages for the violation of DECEDENT’s rights

7 75. The Plaintiffs also seek attorney fees under this claim.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs request entry of judgment in their favor and against
10 Defendants County of Los Angeles, and Does 1-10, inclusive, as follows:

- 11 A. For compensatory damages in excess of \$5,000,000, including
- 12 both survival damages, including pain and suffering and loss of
- 13 enjoyment of life and wrongful death damages under federal and
- 14 state law, in the amount to be proven at trial;
- 15 B. For funeral and burial expenses;
- 16 C. For punitive damages against the individual defendants in an
- 17 amount to be proven at trial;
- 18 D. For interest;
- 19 E. For reasonable costs of this suit and attorneys’ fees; and
- 20 F. For such further other relief as the Court may deem just, proper,
- 21 and appropriate.
- 22 G. For treble damages under Civil Code Section 52.1.

23 DATED: October 30, 2023

LAW OFFICES OF DALE K. GALIPO

24
25
26 By _____ /s/ Dale K. Galipo
27 Dale K. Galipo
28 Eric Valenzuela
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: October 30, 2023

LAW OFFICES OF DALE K. GALIPO

By _____ /s/ Dale K. Galipo
Dale K. Galipo
Eric Valenzuela
Attorneys for Plaintiffs