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Attorneys for Plaintiff ERIKA MERRIMAN, MARIE MERRIMAN, and
JESSICA SANCHEZ as guardian ad litem for Minors J.M. and A.M.

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

ERIKA MERRIMAN, MARIE
MERRIMAN, and JESSICA SANCHEZ
as guardian ad litem for Minors J.M. and
A.M.,

Plaintiffs,

vs.

CITY OF SAN BERNARDINO; and
DOES 1 through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES
FOR:**

1. Unreasonable Search and Seizure
– Excessive Force (via 42 U.S.C.
§ 1983 and via Cal. Civ. Proc.
Code § 377.30)
2. Due Process – Interference with
Familial Relationship (via 42
U.S.C. 42 § 1983)
3. Due Process – Deprivation of
Life Without Due Process
(Hedonic Damages Claim via 42

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U.S.C. 42 § 1983 and via Cal.
Civ. Proc. Code § 377.30)

4. Municipal Liability – Inadequate Training (42 U.S.C. 42 § 1983 and via Cal. Civ. Proc. Code § 377.30)
5. Municipal Liability – Unconstitutional Custom, Practice or Policy (42 U.S.C. 42 § 1983 and via Cal. Civ. Proc. Code § 377.30)
6. Wrongful Death (under California State Law via Cal. Civ. Proc. Code § 377.60)
7. Battery (under California State Law via Cal. Civ. Proc. Code § 377.30)
8. Violation of Cal. Civil Code § 52.1 (under California State Law via Cal. Civ. Proc. Code § 377.30)
9. Negligence (under California State Law via Cal. Civ. Proc. Code § 377.30)

JURY TRIAL DEMANDED

1 **COME NOW** Plaintiffs ERIKA MERRIMAN, MARIE MERRIMAN, and
2 JESSICA SANCHEZ as guardian ad litem for Minors J.M. and A.M. and show this
3
4 Honorable Court the following:

5 **JURISDICTIONAL ALLEGATIONS**

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7 1. As this action is brought under 42 U.S.C. § 1983, this court has
8 jurisdiction over this case under its federal question jurisdiction pursuant to 28
9 U.S.C. § 1331.

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11 2. As the incidents complained of in this action occurred in the County
12 of San Bernardino, State of California, within the territorial jurisdiction of this
13 court, venue properly lies in this court pursuant to 28 U.S.C. § 1391(b)(2).

14
15 3. As plaintiffs' claims brought under California state law arise out of
16 the same transactions and occurrences, and out of a common nucleus of operative
17 facts as the plaintiffs' federal question claims, this court has jurisdiction over the
18 plaintiffs' California State law claims under its supplemental jurisdiction under 28
19 U.S.C. § 1367, and otherwise pursuant to *Mine Workers v. Gibbs*, 383 U.S. 715
20 (1966).

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22 4. Plaintiffs complied with the California Torts Claim Act.
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25 **GENERAL ALLEGATIONS**

26 5. Jessica Sanchez, is a natural person, who, at all times complained
27 of in this action, resided in the County of San Bernardino, State of California.
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Jessica Sanchez appears in this action as the guardian ad litem for plaintiffs J.M.

1 and A.M. Jessica Sanchez is the natural and legal mother of Plaintiffs J.M. and
2 A.M.
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4 6. Plaintiff J.M., is a natural person, who, at all times complained of in this
5 action, resided in the County of San Bernardino, State of California. Plaintiff J.M.
6 appears via guardian ad litem and mother, Jessica Sanchez. Decedent Warren
7 Merriman was the legal and natural father of Plaintiff J.M. Plaintiff J.M. brings this
8 action as an individual and as an heir of Decedent Warren Merriman, and also as
9 successor in interest to Warren Merriman pursuant to Cal. Civ. Proc. Code §
10 377.30. J.M seeks both survival and wrongful death damages under federal¹ and
11 state law.
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15 7. Plaintiff A.M., is a natural person, who, at all times complained of in
16 this action, resided in the County of San Bernardino, State of California. Plaintiff
17 A.M. appears via guardian ad litem and mother, Jessica Sanchez. Decedent Warren
18 Merriman was the legal and natural father of Plaintiff A.M. Plaintiff A.M. brings
19 this action as an individual and as an heir of Decedent Warren Merriman, and also
20 as successor in interest to Warren Merriman pursuant to Cal. Civ. Proc. Code §
21 377.30. A.M seeks both survival and wrongful death damages under federal² and
22 state law.
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¹ Including Hedonic Damages.

² Including Hedonic Damages.

1 8. Plaintiff Erika Merriman, hereinafter referred to as “ERIKA”
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3 or “Plaintiff ERIKA”, is a natural person, who was the legal and natural daughter
4 of Decedent Warren Merriman. ERIKA sues in her individual capacity as the
5 daughter and heir of Decedent Warren Merriman, and also as successor in interest
6 to Decedent Warren Merriman pursuant to Cal. Civ. Proc. Code § 377.30. ERIKA
7 seeks both survival and wrongful death damages under federal³ and state law.
8

9 9. Plaintiff Marie Merriman, hereinafter referred to as “MARIE” or
10 “Plaintiff MARIE”, is a natural person, who was the legal and natural daughter of
11 Decedent Warren Merriman. MARIE sues in her individual capacity as the
12 daughter and heir of Decedent Warren Merriman, and also as successor in interest
13 to Decedent Warren Merriman pursuant to Cal. Civ. Proc. Code § 377.30. MARIE
14 seeks both survival and wrongful death damages under federal⁴ and state law.
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18 10. Warren Merriman, hereinafter referred to as “MERRIMAN” or
19 “DECEDENT MERRIMAN”, died intestate on December 28, 2022, as a direct and
20 proximate result of the conduct of the defendants complained of in this action,
21 which took place on December 28, 2022.
22

23 11. Defendant City of San Bernardino, hereinafter also referred to as
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³ Including Hedonic Damages.

⁴ Including Hedonic Damages.

1 “CITY”, is a municipal entity located in the State of California; within the
2 territorial jurisdiction of this Honorable Court.
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4 12. Defendants DOES 1 through 6, inclusive, are police officers and/or
5 investigators and/or Special Officers, Supervisors (i.e. Corporals, Sergeants,
6 Lieutenants, Captains) and/or some other kind of California Peace Officer, and/or
7 dispatchers and/or some other public officer, public official or employee of
8 defendant CITY and/or otherwise employed by the San Bernardino Police
9 Department or by some other law enforcement agency or other municipal / public
10 entity, who in some way committed some or all of the tortious actions (and
11 constitutional violations) complained of in this action, and/or are otherwise
12 responsible for and liable to plaintiffs for the acts complained of in this action,
13 whose identities are, and remain unknown to plaintiffs, who will amend their
14 complaint to add and to show the actual names of said DOE defendants when
15 ascertained by plaintiffs.
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21 13. At all times complained of herein, DOES 1 through 6, inclusive, were
22 acting as individual persons acting under the color of state law, pursuant to their
23 authority as police officers and/or investigators and/or Special Officers,
24 Supervisors (i.e. Corporals, Sergeants, Lieutenants, Captains) and/or some other
25 kind of California Peace Officer, and/or dispatchers and/or some other public
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1 officer, public official or employee of defendant CITY⁵ and/or otherwise employed
2 by the San Bernardino Police Department, or some other law enforcement agency
3 / public entity, and were acting in the course of and within the scope of their
4 employment with defendant CITY, or some other municipal / public entity.
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7 14. Defendants DOES 7 through 10, inclusive, are sworn peace officers
8 and/or the Chief and/or Assistant Chiefs and/or Commanders and/or Captains
9 and/or Lieutenants and/or Sergeants and/or other Supervisory personnel and/or
10 policy making and/or final policy making officials, employed by San Bernardino
11 Police Department and/or defendant CITY⁶, or some other law enforcement
12 agency and/or municipality, who are in some substantial way liable and
13 responsible for, or otherwise proximately caused and/or contributed to the
14 occurrences complained of by plaintiffs in this action, such as via supervisory
15 liability (i.e. failure to properly supervise, improperly directing subordinate
16 officers, and failure to discipline police officers for using unreasonable / excessive
17 and deadly force upon civilians, and approving such actions of subordinate peace
18 officers), and such as by creating and/or causing the creation of and/or contributing
19 to the creation of the policies and/or practices and/or customs and/or usages of the
20 San Bernardino Police Department for, *inter alia*,: 1) using excessive force on
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⁵ or some other law enforcement agency and public entity.

⁶ or some other law enforcement agency and public entity.

1 persons, including deadly force; 2) fabricating evidence; and 3) covering up
2 tortious conduct by San Bernardino Police Department peace officers.
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4 15. At all times complained of herein, DOES 7 through 10, inclusive,
5 were acting as individual persons acting under the color of state law, pursuant to
6 their authority as the Chief and/or the Assistant Chiefs and/or Captains and/or
7 Lieutenants and/or Sergeants and/or other Supervisory personnel and/or policy-
8 making and/or final policy-making officials with the San Bernardino Police
9 Department⁷, and/or some other public official(s) with defendant CITY⁸, and were
10 acting in the course of and within the scope of their employment with
11 defendant CITY⁹.
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15 16. At all times complained of herein, defendants DOES 7 through 10,
16 inclusive, were acting as individual persons under the color of state law; under and
17 pursuant to their status and authority as peace officers and/or police officers and/or
18 Supervisory peace officers (as described herein, above and below), and/or policy-
19 making peace officers / high ranking officials, with the San Bernardino Police
20 Department¹⁰ and/or otherwise with defendant CITY¹¹.
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27 ⁷ or some other law enforcement agency and public entity.

28 ⁸ or some other law enforcement agency and public entity.

⁹ or some other law enforcement agency and public entity.

¹⁰ or some other law enforcement agency and public entity.

¹¹ Such as a CITY executive officer.

1 17. Plaintiffs are presently unaware of the identities of DOES 1 through
2 10, inclusive, and will amend their complaint to add and to show the actual names
3 of said DOE defendants when made known to plaintiffs.
4

5 18. In addition to the above and foregoing, defendants DOES 1 through 6,
6 inclusive, acted pursuant to a conspiracy, agreement and understanding and
7 common plan and scheme to deprive the plaintiffs and MERRIMAN of their
8 federal Constitutional and statutory rights, and California constitutional and
9 statutory state law rights, as complained of above and below in this action.
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12 19. Defendants DOES 1 through 6, inclusive, acted in joint and concerted
13 action to so deprive the plaintiffs of those rights as complained of herein; all in
14 violation of 42 U.S.C. § 1983, and otherwise in violation of United States
15 (Constitutional and statutory) law and California (Constitutional and statutory)
16 state law.
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19 20. Said conspiracy / agreement / understanding / plan / scheme / joint
20 action / concerted action, above-referenced, was a proximate cause of the violation
21 of the plaintiff's federal and state constitutional and statutory rights, as complained
22 of herein.
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1 **FIRST CAUSE OF ACTION**
2 **VIOLATION OF 42 U.S.C. § 1983**
3 **EXCESSIVE/UNREASONABLE USE OF FORCE UPON PERSON UNDER**
4 **THE FOURTH AMENDMENT TO THE**
5 **UNITED STATES CONSTITUTION**
6 **(By Plaintiffs as Successors-In-Interest, Against DOES 1 through 6, inclusive)**

7 21. Plaintiffs hereby reallege and incorporate by reference the allegations
8 set forth in paragraphs 1 through 20 inclusive, above, as if set forth in full herein.

9 22. On December 28, 2022, Decedent MERRIMAN was at his home
10 while suffering a mental crisis.

11 23. Decedent's mother called the police because she feared for her son's
12 safety who was showing obvious signs of suffering from a mental crisis.

13 24. Defendants San Bernardino Police Department Officers DOES 1
14 through 6, inclusive, responded to the call for service and arrived at Decedent's
15 home in San Bernardino, California.

16 25. When DOES 1 through 6, inclusive, confronted MERRIMAN, he was
17 holding a knife in front of him, near his chest.

18 26. MERRIMAN was several yards away from DOES 1 through 6,
19 inclusive, when he turned around with his back to DOES 1 through 6, inclusive.

20 27. When MERRIMAN turned his back to the officers, Defendants DOES
21 1 through 6, inclusive, shot and killed MERRIMAN.

22 28. The actions of defendants DOES 1 through 6, inclusive, as
23 complained above herein, constituted a violation of MERRIMAN's rights under
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1 the Fourth Amendment to the United States Constitution to be free from the use of
2 unlawful, unreasonable and excessive force upon his person.

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4 29. Plaintiffs brings this claim as the successors-in-interest to
5 MERRIMAN, and seek survival damages pursuant to Cal. Civ. Proc. Code §
6 377.30, including physical and mental pre-death pain and suffering,
7
8 MERRIMAN's loss of life, and loss of enjoyment of life, and wrongful death
9 damages for the violation of MERRIMAN's rights. MERRIMAN incurred other
10 special and general damages and expenses in an amount to be proven at trial which
11 is in excess of \$15,000,000.00 for each plaintiff.
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14 30. The actions by said defendants were committed maliciously,
15 oppressively and in reckless disregard of MERRIMAN's constitutional rights,
16 sufficient for an award of punitive/exemplary damages against all defendants and
17 each of them, save for defendant CITY, in an amount to be proven at trial which is
18 in excess of \$5,000,000.00.
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21 **SECOND CAUSE OF ACTION**
22 **VIOLATION OF 42 U.S.C. § 1983**

23 **LOSS OF FAMILIAL RELATIONSHIP WITHOUT DUE PROCESS OF**
24 **THE LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED**
25 **STATES CONSTITUTION**

26 **(By Plaintiffs individually, Against Defendants DOES 1 through 6, inclusive)**

27 31. Plaintiffs hereby reallege and incorporate by reference the allegations
28 set forth in paragraphs 1 through 30, inclusive, above, as if set forth in full herein.

1 32. The unlawful killing of plaintiffs’ deceased, MERRIMAN, by DOES
2 1 through 6, inclusive described above, deprived plaintiffs of their Familial
3 Relationship with their father, guaranteed to them under the Fourteenth
4 Amendment to the United States Constitution
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6 33. The use of unreasonable deadly force upon MERRIMAN that resulted
7 in the unlawful killing of him by DOES 1 through 6, inclusive was done
8 intentionally, was done in a manner that constituted the use of unreasonable force
9 in a manner that constituted deliberate indifference to and a reckless disregard of
10 MERRIMAN’s life, and to plaintiffs’ Familial Relationships with him, and
11 constituted outrageous behavior that is shocking to the conscience.
12

13 34. DOES 1 through 6, inclusive’s killing of MERRIMAN was essentially
14 a summary execution of MERRIMAN.
15

16 35. The unlawful killing of MERRIMAN, by DOES 1 through 6,
17 inclusive, above-referenced, also caused plaintiffs to suffer the loss of
18 MERRIMAN’s society, solace, comfort and companionship, as well as caused
19 them to suffer great mental, emotional and distress, pain and suffering, in an
20 amount to be shown at trial in excess of \$15,000,000 for each plaintiff.
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22 36. The unlawful killing of MERRIMAN by DOES 1 through 6,
23 inclusive, above-referenced, was done maliciously and in reckless disregard of
24 plaintiffs’ constitutional rights, sufficient for an award of punitive damages against
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1 said defendants (save CITY); all in an amount to be shown at trial, in excess of
2 \$5,000,000.
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4 **THIRD CAUSE OF ACTION**
5 **VIOLATION OF 42 U.S.C. § 1983**
6 **DEPRIVATION OF LIFE WITHOUT DUE PROCESS OF LAW¹² UNDER**
7 **THE FOURTH AND FOURTEENTH AMENDMENTS TO THE**
8 **UNITED STATES CONSTITUTION¹³**
9 **(By Plaintiffs as Successors-in-Interest, Against DOES 1 through 6, inclusive)**

10 37. Plaintiffs hereby reallege and incorporate by reference the allegations
11 set forth in paragraphs 1 through 36 inclusive, above, as if set forth in full herein.

12 38. As shown above, MERRIMAN was the victim of excessive force and
13 was unlawfully and unjustifiably shot to death, with malice, by DOES 1 through 6,
14 inclusive.

15 39. The unlawful killing of MERRIMAN was done without due process
16 of the laws of the United States of America and the State of California, in violation
17 of MERRIMAN’S rights under the Fourteenth Amendment to the United States
18 Constitution; of MERRIMAN’s right not to be deprived of his life without due
19 process of law.
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23 40. The actions of Defendants DOES 1 through 6, inclusive, as
24 complained above herein, also constituted a violation of MERRIMAN’s rights
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28 ¹² Hedonic Damages claim, also pursuant to Cal. Civ. Proc. Code § 377.30.

¹³ And as otherwise provided for under the United States Constitution as those other rights retained by the People (U.S. Const. Amend. 9)

1 under the Fourth Amendment to the United States Constitution to be free from the
2 use of unlawful, unreasonable and excessive force upon his person; deadly force
3 that resulted in his MERRIMAN's death.

4
5 41. Plaintiffs bring this claim as successors-in-interest to MERRIMAN,
6 and seek hedonic damages, including physical and mental pre-death pain and
7 suffering, the loss of MERRIMAN's life, MERRIMAN's loss of the enjoyment of
8 MERRIMAN's life and of his relationships with his family, with his friends, with
9 his lovers, and otherwise of life's pleasures that MERRIMAN would have enjoyed
10 had he not been killed by DOES 1 through 6, inclusive. MERRIMAN also incurred
11 other special and general damages and expenses in an amount to be proven at trial
12 which is in excess of \$15,000,000.00.
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16 42. The actions by said defendants were committed maliciously,
17 oppressively and in reckless disregard of MERRIMAN's constitutional rights,
18 sufficient for an award of punitive/exemplary damages against all defendants and
19 each of them, save for defendant CITY, in an amount to be proven at trial which is
20 in excess of \$5,000,000.00.
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24 **FOURTH CLAIM CAUSE OF ACTION**

25 **(42 U.S.C. § 1983)**

26 **Municipal Liability — Failure to Train**

27 **(By Plaintiffs individually and as Successors-in-Interest, Against Defendants
28 CITY and DOES 7-10)**

43. Plaintiff hereby realleges and incorporates by reference the allegations
set forth in paragraphs 1 through 42, inclusive, above, as if set forth in full herein.

COMPLAINT FOR DAMAGES

1 44. Defendants DOES 1 through 6, inclusive, acted under the color of law.

2 45. The acts of defendants DOES 1 through 6, inclusive, deprived
3
4 MERRIMAN and plaintiffs of their particular rights under the United States
5 Constitution, as alleged above.

6 46. The training policies of CITY were not adequate to train its peace
7
8 officers to handle the usual and recurring situations with which they must deal.

9 47. Defendant CITY was deliberately indifferent to the obvious
10
11 consequences of its failure to train its officers adequately; to wit; the failure to
12 properly train its police officers that they cannot use deadly force on civilians when
13 they do not pose an imminent threat of death or serious bodily to the officers or to
14 another.

15 48. The failure of CITY to provide adequate training caused the deprivation
16
17 of MERRIMAN's and plaintiffs' rights by DOES 1 through 6, inclusive. That is,
18 the defendants' failure to train is so closely related to the deprivation of
19 MERRIMAN's and plaintiffs' rights as to be the moving force that caused the
20 ultimate injury; the shooting of MERRIMAN's death.

21 49. By reason of the aforementioned acts and omissions, plaintiffs and
22
23 MERRIMAN have suffered loss of love, companionship, comfort, care, society,
24 training, guidance, and past and future support. The aforementioned acts and
25 omissions also cause MERRIMAN's pain and suffering, loss of enjoyment of life
26 and death.
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1 50. Accordingly, Defendant CITY is liable to Plaintiffs for compensatory
2 damages under 42 U.S.C. § 1983.
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4 51. Plaintiffs brings this claim as successor-in-interest to MERRIMAN,
5 and seeks survival damages, including physical and mental pre-death pain and
6 suffering, loss of life, and loss of enjoyment of life, and wrongful death damages
7 for the violation of MERRIMAN’s rights. MERRIMAN incurred other special and
8 general damages and expenses in an amount to be proven at trial which is in excess
9 of \$15,000,000.00.
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12 **FIFTH CLAIM CAUSE OF ACTION**

13 **(42 U.S.C. § 1983)**

14 **Municipal Liability —Unconstitutional Custom, Practice and/or Policy**
15 **(By Plaintiffs individually and as Successors-in-Interest, Against Defendants**
16 **CITY and DOES 7-10)**

17 52. Plaintiffs hereby reallege and incorporate by reference the allegations set
18 forth in paragraphs 1 through 51, inclusive, above, as if set forth in full herein.

19 53. Defendants DOES 1 through 6, inclusive, acted under the color of law.

20 54. The acts of Defendants DOES 1 through 6, inclusive, deprived
21 MERRIMAN and Plaintiffs of their particular rights under the United States
22 Constitution.
23

24 55. Defendants DOES 1 through 6, inclusive, acted pursuant to an expressly
25 adopted official policy or a longstanding practice or custom of CITY, to wit; to use
26 excessive force, including deadly force, in situations that the use of use excessive
27 force, including deadly force are unreasonable, excessive and unconstitutional.
28

1 56. On information and belief, defendants DOES 1 through 6, inclusive,
2 were not disciplined, reprimanded, suspended or otherwise penalized in connection
3 with MERRIMAN's death., and was found to be within the policies for the use of
4 force of the San Bernardino Police Department.
5

6 57. Defendant CITY together with other CITY policymakers and
7 supervisors, maintained, *inter alia*, the following unconstitutional customs,
8 practices and policies:
9

10 (a) Using excessive force, including excessive deadly force;
11

12 (b) Providing inadequate training regarding the use of deadly force;
13

14 (c) Employing and retaining as peace officers individuals such as
15 DOES 1 through 6, inclusive, who defendant CITY at all times material
16 herein knew or reasonably should have known had dangerous
17 propensities for abusing their authority and for using excessive force and
18 unlawfully seizing persons;

19 (d) Inadequately supervising, training, controlling, assigning, and
20 disciplining CITY peace officers, and other personnel, including DOES
21 1 through 6, inclusive, who Defendant CITY knew or in the exercise of
22 reasonable care should have known had the aforementioned propensities
23 and character traits;

24 (e) Failing to adequately discipline CITY peace officers, including
25 defendants DOES 1 through 6, inclusive, for the above-referenced
26 categories of misconduct, including "slaps on the wrist" discipline that is
27 so slight as to be out of proportion to the magnitude of the misconduct,
28 and other inadequate discipline that is tantamount to encouraging
misconduct;

1 (f) Announcing that unjustified shootings are “within policy,” including
2 shootings that were later determined in court to be unconstitutional;

3 (g) Even where shootings are determined in court to be unconstitutional,
4 refusing to discipline, terminate, or retrain the officers involved;

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6 (h) Encouraging, accommodating, or facilitating a “blue code of
7 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,” or
8 simply “code of silence,” pursuant to which peace officers do not report
9 other officers’ errors, misconduct, or crimes. Pursuant to this code of
10 silence, if questioned about an incident of misconduct involving another
11 officer, while following the code, the officer being questioned will claim
12 ignorance of the other officers’ wrongdoing;

13 (i) Maintaining a policy of inaction and an attitude of indifference
14 towards soaring numbers of police shootings, including by failing to
15 discipline, retrain, investigate, terminate, and recommend officers for
16 criminal prosecutions who participate in shootings of unarmed people.

17 58. By reason of the aforementioned acts and omissions, plaintiffs and
18 MERRIMAN suffered loss of love, companionship, comfort, care, society,
19 training, guidance, and past and future support. The aforementioned acts and
20 omissions also caused MERRIMAN’s pain and suffering, loss of enjoyment of life,
21 and death.

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23 59. Defendant CITY, together with various other CITY officials, whether
24 named or unnamed, had either actual or constructive knowledge of the deficient
25 policies, practices and customs alleged in the paragraphs above. Despite having
26 knowledge as stated above, these defendants condoned, tolerated and through
27 actions and inactions thereby ratified such policies. Said defendants also acted with
28

1 deliberate indifference to the foreseeable effects and consequences of these policies
2 with respect to the constitutional rights of Plaintiffs, MERRIMAN and other
3 individuals similarly situated.
4

5 60. By perpetrating, sanctioning, tolerating and ratifying the outrageous
6 conduct and other wrongful acts, CITY acted with intentional, reckless, and callous
7 disregard for the life of MERRIMAN, and for MERRIMAN's and plaintiffs'
8 constitutional rights. Furthermore, the policies, practices, and customs
9 implemented, maintained, and still tolerated by defendants CITY and DOES 7
10 through 10, inclusive, were affirmatively linked to and were a significantly
11 influential force behind the injuries of MERRIMAN's and plaintiffs'.
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15 61. Accordingly, defendants CITY and DOES 7 through 10, inclusive, are
16 liable to plaintiffs for compensatory damages under 42 U.S.C. § 1983.
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18 62. Plaintiffs bring this claim as successor-in-interest to MERRIMAN, and
19 seeks survival damages, including physical and mental pre-death pain and
20 suffering, loss of life, and loss of enjoyment of life, and wrongful death damages
21 for the violation of MERRIMAN's rights. MERRIMAN incurred other special and
22 general damages and expenses in an amount to be proven at trial which is in excess
23 of \$15,000,000.00.
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SIXTH CAUSE OF ACTION
WRONGFUL DEATH

Under California State Law – Cal. Civ. Proc. Code § 377.60
(By Plaintiffs Individually Against all Defendants)

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63. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 62, inclusive, above, as if set forth in full herein.

64. Defendants DOES 1 through 6, inclusive, while working as police officers for defendant CITY, and while acting in the course of and with the scope of their employment, intentionally shot MERRIMAN multiple times and used unreasonable and excessive deadly force against him when doing so.

65. No reasonably well-trained peace officer / police officer would have believed, that in and under the circumstances in which defendants DOES 1 through 6, inclusive, engaged and encountered MERRIMAN that MERRIMAN posed a threat of imminent serious injury or death to any of the defendant police officers, or to anyone else.

66. Notwithstanding the obvious unreasonableness of shooting MERRIMAN, and notwithstanding defendants DOES 1 through 6, inclusive, having no reason to believe that MERRIMAN posed a threat of imminent serious injury or death to any of the defendant police officers, or to anyone else, DOES 1 through 6, inclusive proceeded to shoot MERRIMAN to death.

1 67. As a result of the actions of DOES 1 through 6, inclusive, MERRIMAN
2 suffered severe physical, mental and emotional pain and suffering, loss of
3 enjoyment of life, and ultimately his death.
4

5 68. At an absolute minimum, DOES 1 through 6, inclusive's shooting of
6 MERRIMAN constituted negligence and gross negligence, as they owed
7 MERRIMAN and his heirs a duty of due care in seizing and arresting him, in
8 violation of Cal. Civil Code § 1714, and otherwise in violation of Cal. Civil Proc.
9 Code § 377.60.
10
11

12 69. Alternatively, DOES 1 through 6, inclusive's shooting of
13 MERRIMAN constituted the intentional and knowingly wrongful, unlawful,
14 unconstitutional¹⁴, unjustified, and malicious shooting and killing of MERRIMAN;
15 in violation of Cal. Civil Proc. Code § 377.60.
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18 70. As a direct and proximate result of the conduct of DOES 1 through 6,
19 inclusive, as alleged above, MERRIMAN sustained injuries and died from his
20 injuries.
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22 71. As a direct and proximate result of the conduct of DOES 1 through 6,
23 inclusive as alleged above,
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¹⁴ Under both the California Constitution and the United States Constitution.

1 72. Defendants DOES 1 through 6, inclusive, are liable to plaintiffs for
2 the Wrongful Death of MERRIMAN pursuant to Cal. Civil Code § 1714, Cal.
3 Civil Proc. Code § 377.60 and Cal. Gov't Code §§ 815.2 and 820.
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5 73. In addition, CITY is vicariously liable to plaintiffs for the wrongful
6 acts of DOES 1 through 6, inclusive, pursuant to Cal. Civil Code § 1714, Cal. Civil
7 Proc. Code § 377.60 and Cal. Gov't Code §§ 815.2 and 820.
8

9 74. Also as a direct and proximate result of defendants' conduct as
10 alleged above, plaintiffs suffered the loss of their parent – child relationship, and
11 the life-long love, companionship, comfort, support, society, care and sustenance
12 of MERRIMAN, and will continue to be so deprived for the remainder of their
13 natural life.
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16 75. In addition, to the extent that the actions of defendants DOES 1
17 through 6, inclusive, intentional and knowingly wrongful, unlawful,
18 unconstitutional¹⁵, unjustified, and malicious and oppressive, plaintiffs are entitled
19 to an award of punitive damages against defendants, save defendant CITY, in the
20 amount of \$5,000,000.00.
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28 ¹⁵ Under both the California Constitution and the United States Constitution.

SEVENTH CAUSE OF ACTION

BATTERY

Under California State Law

(By Plaintiffs as Successors-in-Interest, Against all Defendants)

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76. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 75, inclusive, above, as if set forth in full herein.

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77. The actions committed by defendants DOES 1 through 6, inclusive's above-described, constituted unjustified non-consensual use of unlawful force and violence upon MERRIMAN, and constituted a battery of him by defendants DOES 1 through 6, inclusive under California state law.

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78. Defendants CITY and DOES 1 through 6, and each of them, are liable to the plaintiffs for said battery of MERRIMAN, pursuant to Cal. Government Code §§ 815.2(a), 820 and otherwise pursuant to the common law.

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79. As a direct and proximate result of the actions of defendants DOES 1 through 6, inclusive, CITY and DOES 1 through 6, inclusive, MERRIMAN was: 1) substantially physically, mentally and emotionally injured and shot to death, 2) incurred general damages and expenses associated costs; all in an amount to be proven at trial which is in excess of \$15,000.000.00.

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80. The actions of said defendants, and each of them, as complained of herein, were committed maliciously, oppressively and in reckless disregard of plaintiff MERRIMAN's constitutional rights, sufficient for an award of punitive / exemplary damages against said defendants, save defendant CITY, in an amount to

1 be proven at trial, in excess of \$5,000,000.00.

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3 **EIGHTH CAUSE OF ACTION**
4 **Violation of Cal. Civil Code § 52.1**
5 **Under California State Law**

6 **(By Plaintiffs as Successors-in-Interest, Against All Defendants)**

7 81. Plaintiff hereby realleges and incorporates by reference the allegations
8 set forth in paragraphs 1 through 80, inclusive, above, as if set forth in full herein.

9 82. On information and belief, defendants DOES 1 through 6, inclusive
10 while working for the CITY and acting within the course and scope of their duties,
11 intentionally committed acts of unreasonable and excessive force and violence
12 against MERRIMAN; excessive force that would also be violative of that force
13 proscribed by the Fourth Amendment to the United States Constitution, by
14 shooting him without justification or excuse, by integrally participating and failing
15 to intervene in the above violence.
16

17 83. Defendants DOES 1 through 6, inclusive, interfered with
18 MERRIMAN's civil rights to be free from unreasonable searches and seizures to
19 due process, to equal protection of the laws, to medical care, to be free from state
20 actions that shock the conscience, and to life, liberty, and property.
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22 84. On information and belief, Defendants intentionally and spitefully
23 committed the above acts to discourage MERRIMAN from exercising his civil
24 rights, to retaliate against him for invoking such rights, or to prevent him from
25 exercising such rights, which they were fully entitled to enjoy.
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1 85. On information and belief, MERRIMAN reasonably believed and
2 understood that the violent acts committed by defendants DOES 1 through 6,
3 inclusive were intended to discourage him from exercising the above civil rights, to
4 retaliate against him, or invoking such rights, or to prevent him from exercising
5 such rights.
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8 86. Plaintiffs bring this claim as successor-in-interest to MERRIMAN,
9 and seek survival damages, including physical and mental pre-death pain and
10 suffering, loss of life, and loss of enjoyment of life, and wrongful death damages
11 for the violation of MERRIMAN's rights. MERRIMAN incurred other special and
12 general damages and expenses in an amount to be proven at trial which is in excess
13 of \$15,000,000.00.
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16 87. The actions by said defendants were committed maliciously,
17 oppressively and in reckless disregard of MERRIMAN's constitutional rights,
18 sufficient for an award of punitive / exemplary damages against all defendants and
19 each of them, save for Defendant CITY, in an amount to be proven at trial which is
20 in excess of \$5,000,000.00.
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23 88. In addition, as a result of the actions of defendants DOES 1 through 6,
24 inclusive, as complained of herein, constituted a violation of California Civil Code
25 § 52.1, and, therefore, plaintiffs are entitled to an award of treble compensatory
26 damages against said defendants, and each of them, in the amount of
27 \$15,000,000.00.
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NINTH CAUSE OF ACTION

Negligence

Under California State Law

(By Plaintiffs as Successors-in-Interest, Against All Defendants)

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89. Plaintiffs hereby reallege and incorporate by reference the allegations set forth in paragraphs 1 through 88, inclusive, above, as if set forth in full herein.

90. Police officers, including Defendants, have a duty to use reasonable care to prevent harm or injury to others. This duty includes using appropriate tactics, giving appropriate commands, giving warnings, and not using any force unless necessary, using less than lethal options, and only using deadly force as a last resort.

91. Defendants breached this duty of care; a duty of care codified as Cal. Civil Code § 1714. Upon information and belief, the actions and inactions of defendants were negligent and reckless, including but not limited to:

- (a) the failure to properly and adequately assess the need to detain, arrest, and use force or deadly force against MERRIMAN;
- (b) the negligent tactics and handling of the situation with MERRIMAN, including pre-shooting negligence;
- (c) the negligent detention, arrest, and use of force, including deadly force, against MERRIMAN;
- (e) the failure to properly train and supervise employees, both professional and non-professional, including DOES 1 through 6, inclusive;
- (f) the failure to ensure that adequate numbers of employees with appropriate education and training were available to meet the needs of and protect the rights of MERRIMAN;
- (g) the negligent handling of evidence and witnesses; and
- (h) the negligent communication of information during the incident.

1 92. As a direct and proximate result of defendants' conduct as alleged above,
2 and other undiscovered negligent conduct, MERRIMAN was caused to suffer
3 severe pain and suffering and ultimately died. Also as a direct and proximate result
4 of the defendants' conduct as alleged above, MERRIMAN suffered severe
5 physically injury emotional distress and mental anguish, as well as ultimately
6 MERRIMAN's death.
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9 93. CITY is vicariously liable for the wrongful acts of Defendants DOES 1
10 through 6, inclusive, pursuant to Cal. Gov't Code §§ 815.2(a) and 820, and Cal.
11 Civil Code § 1714.
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14 94. MERRIMAN incurred other special and general damages and expenses
15 in an amount to be proven at trial which is in excess of \$15,000,000.00.
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17 **WHEREFORE**, plaintiffs prays for judgment as follows:

- 18 a) For a judgment against all defendants for compensatory damages
19 in an amount in excess of \$15,000,000.00;
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21 b) For a judgment against all defendants, save defendant CITY, for
22 punitive damages in an amount in excess of \$5,000,000.00;
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24 c) For an award of reasonable attorney's fees and costs;
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26 d) For a trial by jury; and
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28 e) For such other and further relief as this honorable court deems just
and equitable.

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/s/ Gregory Peacock
GREGORY PEACOCK, ATTORNEY FOR
PLAINTIFFS

/s/ Jerry L. Steering
JERRY L. STEERING, ATTORNEY FOR
PLAINTIFFS