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11 interest, Juan Mendez and Josefina Mendez; JUAN MENDEZ, individually;
12 JOSEFINA MENDEZ, individually

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

15 ESTATE OF JOSE MENDEZ, by and) **CASE NO.**
16 through successors in interest, Juan)
17 Mendez and Josefina Mendez; JUAN) **COMPLAINT FOR DAMAGES**
18 MENDEZ, individually; JOSEFINA)
19 MENDEZ, individually;) 1. Excessive Force/Unreasonable
20) Seizure (42 U.S.C. § 1983)
21 Plaintiffs,) 2. Municipal Liability for
22) Unconstitutional Customs and
23 vs.) Practices (42 U.S.C. § 1983)
24) 3. Interference with Familial Integrity
25 CITY OF LOS ANGELES; LOS) Substantive Due Process Violation
26 ANGELES POLICE DEPARTMENT;) (42 U.S.C. § 1983)
27 JOSUE MERIDA; JEREMY)
28 WAGNER, and DOES 1 to 10,) 4. Assault & Battery
5. Wrongful Death
6. Civil Rights Violations (Cal. Civ.
Code §52.1)
Defendants.)
) **DEMAND FOR JURY TRIAL**

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COMPLAINT FOR DAMAGES

COME NOW Plaintiffs ESTATE OF JOSE MENDEZ, by and through successors in interest, Juan Mendez and Josefina Mendez, JUAN MENDEZ, individually, and JOSEFINA MENDEZ, individually, and allege as follows:

INTRODUCTION

1. This civil rights action seeks to establish the true and unequivocal facts surrounding the shooting and killing of Jose Mendez by Officer Josue Merida and Officer Jeremy Wagner of the Los Angeles Police Department. This civil rights action further seeks to establish the violations of fundamental rights under the United States Constitution in connection with the killing of Jose Mendez on or about February 6, 2016.

2. Jose Mendez was a 16-year-old boy who found himself in troubling times, but who always maintained a sense of curiosity and playfulness. He shared a deep love with his parents. Jose’s death has been a profound and unimaginable loss to his parents, the present Plaintiffs.

3. Without justification or cause, Defendants Officer Josue Merida and Officer Jeremy Wagner shot and killed Jose as Jose attempted to exit a vehicle in compliance with the officers’ orders. This coldblooded shooting was absolutely unjustified and it is Plaintiffs’ goal to show that the cowardly killing of Jose was a senseless and unwarranted act of police abuse.

JURISDICTION AND VENUE

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

1 11. Defendant Officer JOSUE MERIDA (hereinafter “MERIDA”) is a
2 police officer working for the Los Angeles Police Department. Defendant MERIDA
3 is sued in his official and individual capacity. At all times relevant to the present
4 action, Defendant MERIDA was acting under the color of law, to wit, under the color
5 of the ordinances, regulations, policies, customs, and usages of Defendant LOS
6 ANGELES, as well as under the color of the statutes and regulations of the State of
7 California.

8 12. Defendant Officer JEREMY WAGNER (hereinafter “WAGNER”) is a
9 police officer working for the Los Angeles Police Department. Defendant WAGNER
10 is sued in his official and individual capacity. At all times relevant to the present
11 action, Defendant WAGNER was acting under the color of law, to wit, under the
12 color of the ordinances, regulations, policies, customs, and usages of Defendant LOS
13 ANGELES, as well as under the color of the statutes and regulations of the State of
14 California.

15 13. At all relevant times, each of DOES 1 through 10 were employees of the
16 LAPD. At all times relevant herein, each of DOES 1 through 10 was an employee
17 and/or agent of Defendant LOS ANGELES and he or she acted under color of law, to
18 wit, under the color of the statutes, ordinances, regulations, policies, customs, and
19 usages of Defendant LOS ANGELES and the LAPD, as well as under the color of the
20 statutes and regulations of the State of California.

21 14. At all relevant times, each of the Defendants DOES 1 through 10 was
22 acting within his or her capacity as an employee, agent, representative and/or servant
23 of LOS ANGELES and is sued in their individual capacities.

24 15. On information and belief, at all relevant times, Defendants MERIDA
25 and WAGNER, and DOES 1 through 10, inclusive, were residents of the City of Los
26 Angeles, California.

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1 16. The true names of Defendants DOES 1 through 10, inclusive, are
2 unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names.
3 Plaintiffs will seek leave to amend this Complaint to show the true names and
4 capacities of these Defendants when they have been ascertained. Each of the
5 fictitiously named Defendants is responsible in some manner for the conduct and
6 liabilities alleged herein.

7 17. Defendants DOES 6 through 10 were also duly appointed police officers,
8 sergeants, lieutenants, detectives, or other supervisors, officials, executives and/or
9 policymakers of LAPD, a department and subdivision of Defendant LOS ANGELES,
10 and at all times mentioned herein said Defendants were acting in the course and scope
11 of their employment with Defendant LOS ANGELES, which is liable under the
12 doctrine of *respondeat superior* pursuant to California Government Code § 815.2.

13 18. Defendants DOES 1 through 3 are supervisory employees for
14 Defendant LOS ANGELES who were acting under color of law within the course and
15 scope of their duties as police officers for Defendant LOS ANGELES. Defendants
16 DOES 1 through 3 were acting with the complete authority and ratification of their
17 principal, Defendant LOS ANGELES.

18 19. Defendants DOES 4 through 10 are managerial, supervisory, and
19 policymaking employees of Defendant LOS ANGELES, who were acting under color
20 of law within the course and scope of their duties as managerial, supervisory, and
21 policymaking employees for Defendant LOS ANGELES. Defendants DOES 9 and 10
22 were acting with the complete authority and ratification of their principal, Defendant
23 LOS ANGELES.

24 20. Each of the Defendants caused and is responsible for the unlawful
25 conduct and resulting by, inter alia, personally participating in the conduct, or acting
26 jointly and in concert with others who did so; by authorizing, acquiescing or failing to
27 take action to prevent the unlawful conduct; by promulgating policies and procedures
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1 pursuant to which the unlawful conduct occurred; by failing and refusing, with
2 deliberate indifference to Plaintiffs' rights, to initiate and maintain adequate
3 supervision and/or training; and, by ratifying the unlawful conduct that occurred by
4 agents and peace officers under their direction and control. Whenever and wherever
5 reference is made in this Complaint to any act by a Defendant, such allegation and
6 reference shall also be deemed to mean the acts and failures to act of each Defendant
7 individually, jointly and severally. They are sued in their individual and official
8 capacities and in some manner are responsible for the acts and omissions alleged
9 herein. Plaintiffs will ask leave of this Court to amend this Complaint to allege such
10 name and responsibility when that information is ascertained. Each of the
11 Defendants is the agent of the other.

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

13 21. Plaintiffs reallege and incorporate the foregoing paragraphs as if set
14 forth herein.

15 22. Jose Mendez was born on September 25, 1999, and was only 16 years
16 old at the time of his death. He was of diminutive stature: five-foot-one and weighed
17 115 pounds, and appeared to be a child. He was in good health.

18 23. On or about February 6, 2015, at approximately 10:45 p.m., Jose
19 Mendez was driving a vehicle along Lorena Street in the Boyle Heights district of
20 Los Angeles. Officer MERIDA and Officer WAGNER observed Jose Mendez
21 traveling along Lorena Street, and proceeded to conduct a traffic stop. Jose Mendez
22 pulled over slowly and pulled into the driveway of a residence on East 6th Street.

23 24. Jose Mendez sat in the driver's seat of the vehicle after coming to a stop.
24 Thereafter, Officer MERIDA and Officer WAGNER ran toward the vehicle and fired
25 their firearms repeatedly at Jose Mendez, striking him in the side of the head, his
26 back, chest and legs. Officers MERIDA and WAGNER did not issue any commands
27 prior to shooting at JOSE MENDEZ.
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1 25. Officers MERIDA and WAGNER shot repeatedly at JOSE MENDEZ,
2 causing him to suffer 19 gunshot wounds.

3 26. After shooting and killing JOSE MENDEZ, Officers MERIDA and
4 WAGNER removed the body of JOSE MENDEZ from the car; this, in violation of
5 the law and contrary to LAPD policies. They cut the seat belt still worn by JOSE
6 MENDEZ then dragged his body from the vehicle and placed the body on the
7 sidewalk approximately 30 feet away from the vehicle.

8 27. Officer MERIDA and Officer WAGNER searched the vehicle and
9 “found” a sawed off shotgun concealed underneath the front passenger’s seat.

10 28. Defendants MERIDA and WAGNER killed Jose Mendez without
11 justification. The shooting and killing of Jose Mendez was without provocation,
12 cause or necessity as Jose Mendez did not pose a threat or represent a danger of any
13 nature to anyone, including Defendants MERIDA and WAGNER, at the time of the
14 shooting. Jose Mendez was attempting to comply with the orders and commands of
15 Defendants MERIDA and WAGNER at the time he was shot in the face, back, chest
16 and legs 19 times by Defendants MERIDA and WAGNER. Accordingly, the
17 shooting and killing of Jose Mendez was unjustified and this use of force was
18 unwarranted and excessive under the circumstances.

19 29. Officers MERIDA and WAGNER have been involved in multiple on-
20 duty shootings. In addition to the present shooting, officer WAGNER was involved
21 in a shooting in 2010 and 2014. Officer MERIDA was involved in the same
22 shooting in 2014.

23 30. Defendants LOS ANGELES and the LAPD were long aware of the
24 propensity of their police officers, including Defendants MERIDA and WAGNER, to
25 callously and recklessly use excessive force against members of the public,
26 particularly targeting minority groups, and to engage in deceitful misconduct. The
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1 following incidents illustrate the use of excessive deadly force, all of which are
2 pursuant to these unconstitutional customs, policies and practices of the LAPD:

- 3 a. On February 3, 2007, six LAPD officers used excessive force against
4 Mauricio Cornejo when the officers severely beat Mauricio Cornejo after
5 he fled a traffic stop. At the time of the beating, Mauricio Cornejo was
6 unarmed and posed no threat of death or serious bodily injury to the
7 officers or to anyone else. The LAPD officers were not disciplined or
8 required to undergo any retraining as a result of their use of deadly force
9 against Mauricio Cornejo. LOS ANGELES concluded that the use of
10 force against Mauricio Cornejo was justified and that it was within and
11 consistent with LAPD policy.
- 12 b. On January 14, 2011, LAPD Officer Aaron Goff used excessive force
13 when he shot and killed Reginald Doucet, Jr. At the time of the shooting,
14 Reginald Doucet, Jr. was unarmed, naked and experiencing a psychotic
15 episode. Officer Goff shot Reginald Doucet, Jr. twice in the back. LAPD
16 Officer Goff was not disciplined or required to undergo any retraining as
17 a result of his use of deadly force against Reginald Doucet, Jr. LOS
18 ANGELES concluded that the use of force against Reginald Doucet, Jr.
19 was justified and that it was within and consistent with LAPD policy.
- 20 c. On May 10, 2011, LAPD Officer Arthur Gamboa used excessive force
21 when he shot and killed Anthony Garrett. Officer Gamboa shot Arthur
22 Garrett twice in the back. Although the Board of Police Commissioners
23 determined that the pre-shooting tactics and shooting were outside
24 department policy, Officer Gamboa was not disciplined or required to
25 undergo any retraining as a result of his use of excessive deadly force
26 against Arthur Garrett.

- 1 d. On July 22, 2011, LAPD Officer Fernando Ortega used excessive force
2 against Maria del Carmen Ruvalcaba when he shot and killed Maria del
3 Carmen Ruvalcaba in her home. At the time that Officer Ortega fired,
4 Maria del Carmen Ruvalcaba was unarmed and posed no threat of death
5 or serious bodily injury to the shooting officer, to any of the other
6 officers on scene, or to anyone else. Officer Ortega was not disciplined
7 or required to undergo any retraining as a result of his use of deadly
8 force against Maria del Carmen Ruvalcaba. LOS ANGELES concluded
9 that the shooting of Maria del Carmen Ruvalcaba by Officer Ortega was
10 justified and that it was within and consistent with LAPD policy.
- 11 e. On February 2, 2013, LAPD officers used excessive force against Sergio
12 Pina. Sergio Pina was shot multiple times although he was unarmed and
13 posed no threat of death or serious bodily injury to the officers or any
14 other person at the time that he was shot. None of the officers involved
15 in the shooting of Sergio Pina were disciplined or required to undergo
16 any re-training as a result of their use of excessive deadly force against
17 Sergio Pina. LOS ANGELES declared the shooting of Sergio Pina was
18 justified and that it was within and consistent with LAPD policy.
- 19 f. On March 19, 2013, LAPD Officers Gerald Adams, Houston Stauber,
20 Alfredo Morales and Shaun Hillman used excessive force against David
21 Martinez when they shot him multiple times, killing him. At the time of
22 the officers' use of excessive deadly force, David Martinez was
23 unarmed, was running away from the officers, and posed no threat of
24 death or serious bodily injury to the officers or any other person. None
25 of the officers involved in the shooting of David Martinez were
26 disciplined or required to undergo any re-training as a result of their use
27 of excessive deadly force. LOS ANGELES declared the shooting of
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- 1 David Martinez to be justified and that it was within and consistent with
2 LAPD policy.
- 3 g. On March 5, 2015, LAPD Officer Brian Van Gorden used excessive
4 force against Sergio Navas when he shot and killed Sergio Navas.
5 Officer Van Gorden and Sergio Navas were engaged in a vehicle pursuit
6 which ended in Officer Van Gorden shooting and killing Sergio Navas.
7 At the time that Officer Van Gorden fired, Sergio Navas was unarmed
8 and posed no threat of death or serious bodily injury to the shooting
9 officer, to any of the other officers on scene, or to anyone else. The
10 Board of Police Commissioners determined that the pre-shooting tactics
11 and shooting were outside department policy.
- 12 h. On May 5, 2015, LAPD Officer Clifford Proctor used excessive force
13 against Brendon Glenn when he shot and killed Brendon Glenn. Officer
14 Proctor and Brendon Glenn were engaged in an altercation which ended
15 in Officer Proctor shooting and killing Brendon Glenn. At the time that
16 Officer Proctor fired, Brendon Glenn was unarmed and posed no threat
17 of death or serious bodily injury to the shooting officer, to any of the
18 other officers on scene, or to anyone else. The Board of Police
19 Commissioners determined that the pre-shooting tactics and shooting
20 were outside department policy.
- 21 i. In 2016, the Board of Police Commissioners required the LAPD to
22 reevaluate its excessive force policies in an effort to reduce the number
23 of police shooting by revamping department policies, revising training
24 and emphasizing the use of less-lethal devices.
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FIRST CLAIM FOR RELIEF

Excessive Force/Unreasonable Seizure

42 U.S.C. § 1983

As Against Defendants JOSUE MERIDA, JEREMY WAGNER

and DOES 1 through 10

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6 31. Plaintiff ESTATE OF JOSE MENDEZ realleges and incorporates the
7 foregoing paragraphs as if set forth herein.

8 32. Defendants MERIDA and WAGNER's actions described herein violated
9 Jose Mendez's rights under the Fourth Amendment to the United States Constitution
10 incorporated and made applicable to states and municipalities by the Due Process
11 Clause of the Fourteenth Amendment, by subjecting Jose Mendez to unreasonable
12 searches and seizures of his person.

13 33. At the time Jose Mendez was shot and killed, he was not engaging in any
14 assaultive or threatening conduct. Under the totality of the relevant circumstances that
15 existed, Jose Mendez posed no danger or threat to Defendants MERIDA and
16 WAGNER, or anyone else. The shooting and killing of Jose Mendez was
17 unreasonable under the circumstances in every respect.

18 34. These actions violated Jose Mendez's right to be free from unreasonable
19 searches and seizures as guaranteed under the Fourth Amendment to the United
20 States Constitution.

21 35. The violation of Jose Mendez's Fourth Amendment rights occurred
22 pursuant to a policy, custom, or practice, maintained by LOS ANGELES of
23 subjecting private citizens to unreasonable searches and seizures in violation of the
24 Fourth Amendment to the United States.

25 36. Defendants' conduct violated clearly established constitutional or other
26 rights, of which Defendants knew, or of which reasonable public officials should
27 have known, rendering Defendants liable to Plaintiffs under 42 U.S.C. § 1983.
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1 37. The unauthorized, unwarranted killing of Jose Mendez was willful and
2 done with a deliberate disregard for the rights and safety of Jose Mendez, and
3 therefore warrants the imposition of punitive damages as to Defendants MERIDA
4 and WAGNER.

5 38. After being shot by Defendants MERIDA and WAGNER, Jose Mendez
6 endured great physical and emotional pain and suffering.

7 39. Accordingly, Defendants MERIDA and WAGNER are liable to Plaintiff
8 for compensatory damages pursuant to 42 U.S.C. § 1983.

9 **SECOND CLAIM FOR RELIEF**

10 **Municipal Liability for Unconstitutional Customs and Practices**

11 **42 U.S.C. § 1983**

12 **As Against Defendant CITY OF LOS ANGELES,**

13 **LOS ANGELES POLICE DEPARTMENT and DOES 1 through 10**

14 40. Plaintiffs reallege and incorporate the foregoing paragraphs as if set
15 forth herein.

16 41. On and before February 6, 2015, and prior to the killing of Jose Mendez,
17 Defendants LOS ANGELES, LAPD and Does 1 through 10, and each of them, were
18 aware that LAPD police officers, including Defendants MERIDA and WAGNER,
19 had engaged in a custom and practice of callous and reckless use of firearms and
20 other misconduct, as summarized in the paragraphs above.

21 42. Defendants LOS ANGELES, LAPD and Does 1 through 10, and each of
22 them, acting with deliberate indifference to the rights and liberties of the public in
23 general, and of the present Plaintiffs, and of persons in Jose Mendez's class, situation
24 and comparable position in particular, knowingly maintained, enforced and applied
25 customs and practices of:

- 26 a. Encouraging, accommodating, or ratifying the shooting of residents;
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- 1 b. Encouraging, accommodating, or ratifying the use of excessive and
2 unreasonable force, including deadly force;
- 3 c. Encouraging, accommodating, or facilitating a “code of silence” among
4 LAPD officers/supervisors, pursuant to which false reports were
5 generated and excessive and unreasonable force was covered up;
- 6 d. Employing and retraining, as police officers and other personnel,
7 including individuals such as Defendants MERIDA and WAGNER, who
8 said Defendants knew or reasonably should have known had dangerous
9 propensities for abusing their authority and for mistreating members of
10 the public;
- 11 e. Inadequately supervising, training, and disciplining LAPD police
12 officers, including Defendants MERIDA and WAGNER, who said
13 Defendants knew or in the exercise of reasonable care should have
14 known had the aforementioned propensities and character traits;
- 15 f. Maintaining grossly inadequate procedures for reporting, supervising,
16 investigating, reviewing, disciplining and controlling intentional
17 misconduct by officers;
- 18 g. Assigning police officers with known histories of misconduct, including
19 criminal conduct, in accord with LAPD custom of assigning these police
20 officers to come into contact with members of the public;
- 21 h. Ratifying wrongful conduct by police officers and supervisors which
22 result in serious injuries and death to members of the public, civil
23 litigation judgments and settlements by failing to implement corrective
24 action to prevent repetition of the wrongful conduct; and
- 25 i. Failing to discipline, investigate and take corrective actions against
26 LAPD police officers for misconduct, including, but not limited to,
27 unlawful detention, excessive force and false reports.
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1 43. By reason of the aforementioned customs and practices, Plaintiffs were
2 severely injured and subjected to pain and suffering as alleged above in the First
3 Claim for Relief.

4 44. Defendants LOS ANGELES, LAPD and Does 1 through 10, with
5 various other officials, whether named or unnamed, had either actual or constructive
6 knowledge of the deficient policies, practices and customs alleged in the paragraphs
7 above. Despite having knowledge as stated above these Defendants condoned,
8 tolerated and through actions and inactions thereby ratified such customs and
9 practices. Said Defendants also acted with deliberate indifference to the foreseeable
10 effects and consequences of these policies with respect to the constitutional rights of
11 Plaintiffs and other individuals similarly situated.

12 45. Plaintiffs are informed and believe and thereon allege that Defendants
13 MERIDA and WAGNER each had a history and propensity for acts of the nature
14 complained of herein and manifested such propensity prior to and during their
15 employment and/or agency with Defendant LOS ANGELES. Plaintiffs are further
16 informed and believe and thereon allege that Defendants LOS ANGELES, LAPD,
17 and Does 1 through 10, knew, or in the exercise of reasonable care should have
18 known, of such prior history and propensity at the time such individuals were hired
19 and/or during the time of their employment. These Defendants' disregard of this
20 knowledge and/or failure to adequately investigate and discover and correct such
21 facts caused the violation of Plaintiffs' constitutional rights.

22 46. The policies, practices, and customs implemented and maintained and
23 still tolerated by Defendants LOS ANGELES, LAPD and Does 1 through 10, and
24 each of them, were affirmatively linked to and were a significantly influential force
25 behind the injuries of Plaintiffs.

26 47. By reason of the aforementioned acts and omissions, Jose Mendez was
27 shot and killed by Defendants MERIDA and WAGNER.
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1 48. Accordingly, Defendant LOS ANGELES is liable to Plaintiffs for
2 compensatory damages pursuant to 42 U.S.C. § 1983.

3 **THIRD CLAIM FOR RELIEF**

4 **Interference with Familial Integrity**

5 **Substantive Due Process Violation**

6 **42 U.S.C. § 1983**

7 **As Against Defendants CITY OF LOS ANGELES, LOS ANGELES**
8 **POLICE DEPARTMENT, JOSUE MERIDA, JEREMY WAGNER,**
9 **and DOE Defendants 1 through 10**

10 49. Plaintiffs reallege and incorporate the foregoing paragraphs as if set
11 forth herein.

12 50. The substantive due process clause of the Fourteenth Amendment to the
13 United States Constitution guarantees all persons the right to be free from unlawful
14 state interference with their familial relations. 42 U.S.C. § 1983 provides a private
15 right of action for conduct which violates this right.

16 51. On or about February 6, 2015, at approximately 10:45 p.m., Jose
17 Mendez was driving a vehicle along Lorena Street in the Boyle Heights district of
18 Los Angeles. Officer MERIDA and Officer WAGNER observed Jose Mendez
19 traveling along Lorena Street, and proceeded to conduct a traffic stop. A vehicle
20 pursuit ensued. The vehicle pursuit ended when Jose Mendez parked the vehicle in a
21 driveway located near the intersection of 6th Street and Lorena Street in the City of
22 Los Angeles. Jose Mendez opened the driver's side door and was in the process of
23 complying with the officers' commands when Officer MERIDA and Officer
24 WAGNER fired 19 rounds of ammunition at Jose Mendez's face, back, chest and
25 legs.

26 52. As alleged above, the shooting and killing of Jose Mendez was
27 unreasonable under the circumstances of the encounter between Jose Mendez and
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1 Defendants MERIDA and WAGNER. As such, the shooting and killing of Jose
2 Mendez violated the constitutional limits on police use of deadly force in violation of
3 the Fourth Amendment's limits on unreasonable seizures.

4 53. At the same time, the shooting and killing of Jose Mendez by
5 Defendants MERIDA and WAGNER violated the rights of Plaintiffs JUAN
6 MENDEZ and JOSEFINA MENDEZ to be free from police interference in their
7 relationship with Jose Mendez.

8 54. The unreasonable conduct of Defendants MERIDA and WAGNER was
9 the direct and proximate cause of the death of Jose Mendez. As a result of the
10 unreasonable conduct of Defendants MERIDA and WAGNER, Plaintiffs lost Jose
11 Mendez, as well as his love, affection, society and moral support.

12 55. The unreasonable conduct of these Defendants was willful and done
13 with a deliberate disregard for the rights and safety of Jose Mendez and the present
14 Plaintiffs and therefore warrants the imposition of punitive damages as to Defendants
15 MERIDA and WAGNER.

16 56. Accordingly, Defendants CITY LOS ANGELES and DOES 1 through
17 10 are liable to Plaintiffs for compensatory damages pursuant to 42 U.S.C. § 1983.

18 **FOURTH CLAIM FOR RELIEF**

19 **ASSAULT & BATTERY**

20 **As Against Defendants JOSUE MERIDA, JEREMY WAGNER,**
21 **CITY OF LOS ANGELES, LOS ANGELES POLICE DEPARTMENT**
22 **and DOE Defendants 1 through 10**

23 57. Plaintiffs reallege and incorporate the foregoing paragraphs as if set
24 forth herein.

25 58. This cause of action arises under the general laws and Constitution of the
26 State of California. Plaintiffs have complied with the California Tort Claims Act
27 requirements.
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1 59. Defendants MERIDA and WAGNER assaulted and battered Jose
2 Mendez, as pleaded herein above, when said Defendants acted intentionally to cause,
3 and did cause, said non-consensual, unprivileged, unjustified, excessive, harmful or
4 offensive contact to the person of Jose Mendez by unreasonably and unjustly
5 shooting and killing Jose Mendez.

6 60. These acts were undertaken by Defendants MERIDA and WAGNER
7 intentionally and without justification.

8 61. As a result of these deliberate and unjustified acts undertaken by
9 Defendants MERIDA and WAGNER, Jose Mendez endured great physical and
10 emotional pain and suffering.

11 62. These deliberate and unjustified acts undertaken by Defendants
12 MERIDA and WAGNER were willful and done with a deliberate disregard for the
13 rights and safety of Jose Mendez and, therefore, warrant the imposition of punitive
14 damages as to Defendants MERIDA and WAGNER.

15 63. Defendants CITY LOS ANGELES and LOS ANGELES POLICE
16 DEPARTMENT are liable to Plaintiffs for the acts of their public employees, the
17 individual Defendants herein, for conduct and/or omissions herein alleged, pursuant
18 to the doctrine of *respondeat superior*, codified at California Government Code §
19 815.2.

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FIFTH CLAIM FOR RELIEF

WRONGFUL DEATH

**As Against Defendants JOSUE MERIDA, JEREMY WAGNER,
CITY OF LOS ANGELES, LOS ANGELES POLICE DEPARTMENT and
DOE Defendants 1 through 10**

64. Plaintiffs reallege and incorporate the foregoing paragraphs as if set forth herein.

65. This cause of action arises under the general laws and Constitution of the State of California. Plaintiffs have complied with the California Tort Claims Act requirements.

66. Defendants MERIDA and WAGNER, while working as police officers of the LAPD, and acting within the course and scope of their duties, employed negligent tactics and intentionally and/or without due care shot Jose Mendez. The shooting resulted as a result of Defendants MERIDA and WAGNER's unsafe, improper and negligent tactics. As a result of these intentional acts and negligence, Jose Mendez suffered serious injuries and lost his life. Defendants MERIDA and WAGNER had no legal or reasonable justification for their actions.

67. As a direct and proximate result of the conduct of Defendants MERIDA and WAGNER, Jose Mendez lost his life. Plaintiffs have been deprived of the life-long love, affection, comfort, and society of Jose Mendez, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs were further caused to pay funeral and burial expenses as a result of the conduct of Defendants MERIDA and WAGNER.

68. Defendants CITY OF LOS ANGELES and LOS ANGELES POLICE DEPARTMENT are vicariously liable for the wrongful, intentional and/or negligent acts of Defendants MERIDA and WAGNER, and DOES 1 through 10, pursuant to California Government Code § 815.2, which provides that a public entity is liable for

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

3 **SIXTH CLAIM FOR RELIEF**

4 **Civil Rights Violations (Cal. Civ. Code § 52.1)**

5 **As Against Defendants CITY OF LOS ANGELES, LOS ANGELES POLICE**
6 **DEPARTMENT, JOSUE MERIDA, JEREMY WAGNER and DOE Defendants**
7 **1 through 10**

8 69. Plaintiff ESTATE OF JOSE MENDEZ realleges and incorporates the
9 foregoing paragraphs as if set forth herein.

10 70. This cause of action arises under the general laws and Constitution of the
11 State of California, including California Civil Code § 52.1 and California
12 Government Code §§820 and 815.2. Plaintiff ESTATE OF JOSE MENDEZ has
13 complied with the California Tort Claims Act requirements.

14 71. As a result of the conduct of Defendants JOSUE MERIDA and
15 JEREMY WAGNER, and DOES 1 through 10, by the use of threats, intimidation,
16 and coercions, interfered with Plaintiff ESTATE OF JOSE MENDEZ's exercise and
17 enjoyment of the rights secured by the United States Constitution and other Federal
18 laws, the Constitution and laws of the State of California, and their rights under
19 California Civil Code § 52.1.

20 72. The California Civil Code § 52.1(b) authorizes a private right of action
21 for damages to any person whose constitutional rights are violated. Moreover, "a
22 successful claim for excessive force under the Fourth Amendment provides the basis
23 for a successful claim under § 52.1." *Chaudhry v. City of Los Angeles*, 751 F.3d
24 1096, 1105-06 (9th Cir. 2014); citing *Cameron v. Craig*, 713 F.3d 1012, 1022 (9th
25 Cir.2013) ("[T]he elements of the excessive force claim under § 52.1 are the same as
26 under § 1983."); *Bender v. Cnty. of L.A.*, 217 Cal.App.4th 968, 976 (2013) ("an
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1 unlawful [seizure]—when accompanied by unnecessary, deliberate and excessive
2 force—is [] within the protection of the Bane Act”).

3 73. Defendants’ actions as alleged herein violated Plaintiff ESTATE OF
4 JOSE MENDEZ’s constitutional rights against unreasonable searches and seizures
5 and rights to familial association, all of which are protected by the Constitution of the
6 State of California.

7 74. As a proximate result of the acts of these Defendants, and each of them,
8 Jose Mendez was made to lose his life without cause or justification.

9 75. All of the above acts and omissions of Defendants JOSUE MERIDA and
10 JEREMY WAGNER were wilful, wanton, malicious and oppressive, thereby
11 justifying the awarding of exemplary and punitive damages as to these Defendants.

12 76. Defendants JOSUE MERIDA, JEREMY WAGNER, CITY OF LOS
13 ANGELES and LOS ANGELES POLICE DEPARTMENT, and each of them, for
14 their respective acts and violations pleaded herein above, are liable to Plaintiff
15 ESTATE OF JOSE MENDEZ for damages, penalties and attorneys’ fees as provided
16 in California Civil Code § 52.1.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs requests entry of judgment in their favor and against
19 Defendants as follows:

20 A. For compensatory damages, including pre-death pain and suffering
21 damages, general damages and special damages, and statutory damages for violation
22 of the laws and Constitution of the United States and State of California, in an
23 amount to be determined at trial;

24 B. For punitive damages against Defendants JOSUE MERIDA and
25 JEREMY WAGNER pursuant to 42 U.S.C. § 1983, and any other applicable laws or
26 status, in an amount sufficient to deter and make an example of each non-government
27 entity Defendant;

- 1 C. For prejudgment interest to be determined at trial;
- 2 D. For reasonable costs of this suit and attorneys' fees, including
- 3 attorneys' fees pursuant to 42 U.S.C. § 1988; and
- 4 E. For such further other relief as the Court may deem just, proper, and
- 5 appropriate.

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7 Dated: January 11, 2017

CASILLAS & ASSOCIATES

8
9 By /s/ Arnoldo Casillas
10 ARNOLDO CASILLAS
11 DENISSE O. GASTÉLUM
12 Attorneys for Plaintiffs, ESTATE OF JOSE
13 MENDEZ, by and through successors in
14 interest, Juan Mendez and Josefina Mendez;
15 JUAN MENDEZ, individually; JOSEFINA
16 MENDEZ, individually
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DEMAND FOR JURY TRIAL

Plaintiffs ESTATE OF JOSE MENDEZ, by and through successors in interest, Juan Mendez and Josefina Mendez, JUAN MENDEZ, individually, JOSEFINA MENDEZ, individually, hereby demand trial by jury.

Dated: January 11, 2017

CASILLAS & ASSOCIATES

By */s/ Arnoldo Casillas* _____
ARNOLDO CASILLAS
DENISSE O. GASTÉLUM
Attorneys for Plaintiffs, ESTATE OF JOSE MENDEZ, by and through successors in interest, Juan Mendez and Josefina Mendez; JUAN MENDEZ, individually; JOSEFINA MENDEZ, individually