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7 Attorneys for Plaintiff **RICHARD OLANGO ABUKA**

8 **UNITED STATES DISTRICT COURT**
 9
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **RICHARD OLANGO ABUKA, an**
 individual
 12 **Plaintiffs,**
 13 vs.
 14 **EL CAJON POLICE**
DEPARTMENT, RICHARD
 15 **GONSALVES and DOES 1-10,**
 16 Inclusive,
 17 **Defendants.**

CASE NO.: **'17CV0089 BAS NLS**
COMPLAINT FOR DAMAGES
FOR:
VIOLATION OF FEDERAL CIVIL
RIGHTS (42 U.S.C. § 1983) FOR:
 1. **Substantive Due Process - 42**
U.S.C. § 1983
 2. **Interference with Familial**
Relationship and Freedom of
Association - 42 U.S.C. § 1983

JURY TRIAL DEMANDED

21 **COMES NOW RICHARD OLANGO ABUKA, and DOES 1-10, Inclusive**
 22 **allege as follows:**

23 **INTRODUCTION**

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 25 1. This civil rights action seeks compensatory and punitive damages
 26 from Defendants for violating various rights under the United States Constitution
 27 in connection with the fatal police beating of the DECEDENT ALFRED
 28 **OLANGO.**

1 11. At all relevant times herein, Defendant EL CAJON is, and was, a
2 public entity duly authorized and existing as such in and under the laws of the State
3 of California; and at all times herein mentioned, Defendants EL CAJON has
4 possessed the power and authority to adopt policies and prescribe rules, regulations
5 and practices affecting the operation of the El Cajon Police Department and its
6 tactics, methods, practices, customs and usage. At all relevant times, EL CAJON
7 was the employer Defendants RICHARD GONSALVES and DOES 1-10 who
8 were EL CAJON police officers, managerial, supervisory, and policymaking
9 employees of EL CAJON Police Department. On information and belief, at all
10 relevant times, Defendant RICHARD GONSALVES and DOES 1-10 were
11 residents of the County of Los Angeles, California. Defendants RICHARD
12 GONSALVES and DOES 1-10 are sued in their individual and official capacity.

13 12. Defendants RICHARD GONSALVES and DOES 1-10 were acting
14 under color of law and within the course and scope of their employment, including
15 but not limited to under California September 27, 2016, the date the incident and
16 Defendant EL CAJON is legally responsible for all damages caused by the
17 intentional and/or negligent and/or otherwise tortious conduct of Defendants
18 RICHARD GONSALVES and DOES 1-10 as alleged herein.

19 13. At all relevant times, Defendants RICHARD GONSALVES,
20 individually and as a peace officer; and DOES 1-10 were duly authorized
21 employees and agents of EL CAJON, who were acting under color of law within
22 the course and scope of their respective duties as police officers and within the
23 complete authority and ratification of their principal, Defendant EL CAJON.

24 14. At all relevant times, Defendants RICHARD GONSALVES,
25 individually and as a peace officer; and DOES 1-10 were duly appointed officers
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1 and/or employees or agents of EL CAJON, subject to oversight and supervision by
2 EL CAJON's elected and non-elected officials.

3 15. In doing the acts and failing and omitting to act as hereinafter
4 described, Defendants RICHARD GONSALVES, individually and as a peace
5 officer; and DOES 1-10 were acting on the implied and actual permission and
6 consent of EL CAJON.

7 16. At all relevant times, Defendants RICHARD GONSALVES
8 individually and as a peace officer; and DOES 1-10 were working for Defendant
9 EL CAJON as police officers.

10 17. Plaintiff is unaware of the true names and capacities of those
11 Defendants named herein as DOES 1-10. Plaintiff will amend this Complaint to
12 allege said Defendants' true names and capacities when that information becomes
13 known to Plaintiff. Plaintiff is informed and believes, and thereon alleges that
14 these DOES 1-10 are legally responsible and liable for the incident, injuries, and
15 damages hereinafter set forth, and that each of said Defendants proximately caused
16 the injuries and damages by reason of negligent, careless, deliberately indifferent,
17 intentional, willful, or wanton misconduct, including the negligent, careless,
18 deliberately indifferent, intentional, willful, or wanted misconduct in creating and
19 otherwise causing the incidents, conditions, and circumstances hereinafter set
20 forth, or by reason of direct or imputed negligence or vicarious fault or breach of
21 duty arising out of the matters herein alleged. Plaintiff will seek to amend this
22 Complaint to set forth said true names and identities of the unknown named DOE
23 Defendants when they are ascertained.
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JURISDICTION

FACTS COMMON TO ALL CAUSES OF ACTION

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3 18. Plaintiffs repeat and reallege each and every allegation in the
4 preceding paragraphs as though fully set forth herein.

5 19. On September 27, 2016, Lucy Olango, sister of DECEDENT
6 ALFRED OLANGO called 911 three times seeking emergency medical help for
7 her brother, DECEDENT ALFRED OLANGO, who she believed was
8 experiencing a mental breakdown at the Broadway Village Shopping Center,
9 located at 701 Broadway, El Cajon, California.

10 20. Approximately fifty minutes later, DEFENDANT RICHARD
11 GONSALVES arrived on the scene, and within about one minute, DEFENDANT
12 RICHARD GONSALVES, without justification, used deadly force and shot
13 DECEDENT ALFRED OLANGO four times, killing him. DECEDNENT
14 ALFRED OLANGO was unarmed.

15 21. Before arriving on the scene, DEFENDANT RICHARD
16 GONSALVES knew DECEDENT ALFRED OLANGO was having a mental crisis
17 because dispatch had coded the call as "5150" pursuant to Cal. *Welf. & Inst. Code*
18 §5150, which allows a peace officer to detain a person with "a mental health
19 disorder." DEFENDANT RICHARD GONSALVES knew that he was not
20 investigating a crime and that DECEDENT ALFRED OLANGO had not
21 threatened anyone with harm. Yet, instead of waiting for a Psychiatric Emergency
22 Response Team ("P.E.R.T.") to arrive or implementing other, non-lethal detention
23 or calming techniques, DEFENDANT RICHARD GONSALVES drew his firearm
24 and aggressively confronted, chased, and cornered DECENDANT ALFRED
25 OLANGO.
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1 22. Even though EL CAJON had treated Lucy Olango's repeated pleas for
2 help as a low priority call, making her wait near an hour even for a dispatch,
3 immediately upon arrival, DEFENDANT RICHARD GONSALVES very quickly
4 escalated the noncriminal, 5150 call to deadly force without warning.

5 DEFENDANT RICHARD GONSALVES' cowboy attitude and demeanor
6 provoked DECEDENT ALFRED OLANGO into taking foreseeable defensive
7 measures which DEFENDANT RICHARD GONSALVES then used as false
8 justification to kill him.

9 23. DEFENDANT RICHARD GONSALVES acted negligently in both
10 his pre-shooting tactical conduct and decisions, e.g., to escalate to deadly force
11 very quickly and without warning, not to wait for P.E.R.T., not to use nonlethal
12 alternatives, and to instead confront and provoke DECEDENT ALFRED
13 OLANGO, as well as his decision to shoot an unarmed man.

14 24. DECEDENT ALFRED OLANGO posed no threat to DEFENDANT
15 RICHARD GONSALVES and DOES 1-10 when he repeatedly shot him. On
16 information and belief, DEFENDANT RICHARD GONSALVES and DOES 1-10
17 knew DECEDENT ALFRED OLANGO posed no threat to their lives or bodily
18 harm when he repeatedly shot him. On information and belief, DEFENDANT
19 RICHARD GONSALVES and DOES 1-10 failed to provide advance warnings to
20 DECEDENT ALFRED OLANGO prior to shooting him. On information and
21 belief, DEFENDANT RICHARD GONSALVES and DOES 1-10 failed to request
22 medical aid for Decedent as he lay dying on the ground as a result of multiple
23 bullet wounds.
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25 25. DEFENDANT RICHARD GONSALVES and DOES 1-10, while
26 acting in the course and scope of their employment with EL CAJON, negligently
27 assessed the circumstances presented to them and used deadly force against
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1 DECEDENT ALFRED OLANGO when Decedent ALFRED OLANGO posed no
2 reasonable threat to DEFENDANT RICHARD GONSALVES and DOES 1-10.

3 26. At no time during the course of these events did DECEDENT
4 ALFRED OLANGO pose any reasonable threat of violence to the defendant
5 deputies, nor did he do anything to justify the use of deadly, excessive,
6 unreasonable and unnecessary force against him, by the defendant officers.

7 27. EL CAJON is responsible not only because DEFENDANT
8 RICHARD GONSALVES was acting in the course and scope of his employment,
9 but also because of EL CAJON's dilatory dispatch decisions, its own negligent
10 failures to train and supervise DEFENDANT RICHARD GONSALVES, and for
11 its negligent decision to retain DEFENDANT RICHARD GONSALVES despite
12 his demonstrated unfitness.

13 **FIRST CAUSE OF ACTION**

14 **Substantive Due Process - 42 U.S.C. § 1983**

15 **(Plaintiff RICHARD OLANGO ABUKA against all Defendants and DOES 1-**
16 **10, Inclusive)**

17 28. Plaintiff repeats and realleges each and every allegation in the
18 preceding paragraphs as though fully set forth herein.

19 29. RICHARD OLANGO ABUKA had a cognizable interest under the
20 Due Process Clause of the Fourteenth Amendment of the United States
21 Constitution to be free from state actions that deprived her from life, liberty, or
22 property in such a manner as to shock the conscious, including but not limited to,
23 unwarranted state interference in Plaintiffs' familial relationship with DECEDENT
24 ALFRED OLANGO.

25 30. DECEDENT ALFRED OLANGO had a cognizable interest under the
26 Due Process Clause of the Fourteenth Amendment of the United States
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1 Constitution to be free from state actions that deprived him from life, liberty, or
2 property in such a manner as to shock the conscious.

3 31. As a result of the unjustified shooting which was committed when
4 DEFENDANT RICHARD GONSALVES and DOES 1-10 knew DECEDENT
5 posed no harm to them or others DECEDENT died. RICHARD OLANGO
6 ABUKA was thereby deprived of his constitutional right of familial relationship
7 with DECEDENT ALFRED OLANGO.

8 32. RICHARD GONSALVES and DOES 1-10, individually and as a
9 peace officers, acting under the color of state law, thus violated the Fourteenth
10 Amendment of RICHARD OLANGO ABUKA to be free from unwarranted
11 interference with his familial relationship with DECEDENT ALFRED OLANGO.

12 33. The aforementioned actions of RICHARD GONSALVES and
13 Defendants DOES 1-10, along with other undiscovered conduct, shook the
14 conscious, in that they acted with deliberate indifference to the constitutional rights
15 of DECEDENT ALFRED OLANGO and RICHARD OLANGO ABUKA and with
16 purpose to harm unrelated to any legitimate law enforcement objective.

17 34. As a direct and proximate cause of the acts of the Defendants Plaintiff
18 has also been deprived of his life-long love, companionship, comfort, support,
19 society, care and sustenance of DECEDENT ALFRED OLANGO, and will
20 continue to be so deprived for the remainder of his natural life. Plaintiff is also
21 claiming funeral and burial expenses, loss of gifts and benefits and a loss of
22 financial support.

23 35. The conduct of Defendants RICHARD GONSALVES and DOES 1-
24 10 was willful, wanton, malicious, and done with reckless disregard for the rights
25 and safety of DECEDENT ALFRED OLANGO and therefore warrants the
26 imposition of exemplary and punitive damages.
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: January 13, 2017

IVIE, McNEILL & WYATT

By: /s/ Rodney S. Diggs
RODNEY S. DIGGS
Attorneys for Plaintiffs

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DECLARATIONS

DÉCLARATION OF RICHARD OLANGO ABUKA

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2 1. The decedent's name who is the subject of this action for wrongful death is
3 ALFRED OLANGO.

4 2. No proceeding is now pending in California for administration of the
5 DECEDENT's estate.

6 3. I am the biological father of DECEDENT.

7 4. No other persons are bringing this claim with me.

8 5. The only other persons having the right to commence the action or
9 proceeding is ALFRED OLANGO's mother, children and wife.

10 I declare under penalty of perjury under the law of the State of California
11 that the foregoing is true and correct.

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13 Dated: January 13, 2017

/s/ RICHARD OLANGO ABUKA
Richard Olango Abuka, Declarant