

LAW OFFICES OF DALE K. GALIPO
Dale K. Galipo, Esq. (SBN 144074)
dalekgalipo@yahoo.com
21800 Burbank Boulevard, Suite 310
Woodland Hills, California 91367
Telephone: (818) 347-3333
Facsimile: (818) 347-4118

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

ANGELA HERNANDEZ, individually
and as a successor in interest to Steven
Schiltz, deceased,

Plaintiff,

vs.

CITY OF HUNTINGTON BEACH,
and DOES 1-10, inclusive,

Defendants.

Case No. 17-1257

COMPLAINT FOR DAMAGES

1. Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)
3. Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
4. Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)
5. Municipal Liability – Ratification (42 U.S.C. § 1983)
6. Municipal Liability – Inadequate Training (42 U.S.C. § 1983)
7. Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)
8. False Arrest/False Imprisonment
9. Battery (wrongful death)
10. Negligence (wrongful death)
11. Violation of Cal. Civil Code § 52.1

DEMAND FOR JURY TRIAL

1 DECEDENT. HERNANDEZ sues both in her individual capacity as the mother of
2 DECEDENT and in a representative capacity as a successor in interest to
3 DECEDENT pursuant to California Code of Civil Procedure § 377.60.

4 HERNANDEZ seeks both survival and wrongful death damages under federal and
5 state law, as well as funeral and burial expenses and attorneys' fees.

6 6. At all relevant times, Defendant CITY OF HUNTINGTON BEACH
7 ("CITY") is and was a municipal corporation existing under the laws of the State of
8 California. CITY is a chartered subdivision of the State of California with the
9 capacity to be sued. CITY is responsible for the actions, omissions, policies,
10 procedures, practices, and customs of its various agents and agencies, including the
11 Huntington Beach Police Department and its agents and employees. At all relevant
12 times, Defendant CITY was responsible for assuring that the actions, omissions,
13 policies, procedures, practices, and customs of the Huntington Beach Police
14 Department and its employees and agents complied with the laws of the United
15 States and of the State of California. At all relevant times, CITY was the employer
16 of Defendants, DOES 1-10.

17 7. Defendants DOES 1-5 ("DOE OFFICERS") are officers working for
18 the Huntington Beach Police Department. DOE OFFICERS were acting under color
19 of law within the course and scope of their duties as officers for the Huntington
20 Beach Police Department. DOE OFFICERS were acting with the complete
21 authority and ratification of their principal, Defendant CITY.

22 8. Defendants DOES 6-8 are supervisory officers for the Huntington
23 Beach Police Department who were acting under color of law within the course and
24 scope of their duties as officers for the Huntington Beach Police Department.
25 DOES 6-8 were acting with the complete authority and ratification of their principal,
26 Defendant CITY.

27 9. Defendants DOES 9-10 are managerial, supervisory, and
28 policymaking employees of the Huntington Beach Police Department, who were

1 acting under color of law within the course and scope of their duties as managerial,
2 supervisory, and policymaking employees for the Huntington Beach Police
3 Department. DOES 9-10 were acting with the complete authority and ratification of
4 their principal, Defendant CITY.

5 10. On information and belief, DOES 1-10 were residents of the County of
6 Orange.

7 11. In doing the acts and failing and omitting to act as hereinafter
8 described, Defendants DOES 1-5 were acting on the implied and actual permission
9 and consent of Defendants DOES 6-10.

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

13 13. The true names and capacities, whether individual, corporate,
14 association or otherwise of Defendants DOES 1-10, inclusive, are unknown to
15 Plaintiff, who otherwise sues these Defendants by such fictitious names. Plaintiff
16 will seek leave to amend her complaint to show the true names and capacity of these
17 Defendants when they have been ascertained. Each of the fictitiously-named
18 Defendants is responsible in some manner for the conduct or liabilities alleged
19 herein.

20 14. At all times mentioned herein, each and every defendant was the agent
21 of each and every other defendant and had the legal duty to oversee and supervise
22 the hiring, conduct, and employment of each and every defendant.

23 15. All of the acts complained of herein by Plaintiff against Defendants
24 were done and performed by said Defendants by and through their authorized
25 agents, servants, and/or employees, all of whom at all relevant times herein were
26 acting within the course, purpose, and scope of said agency, service, and/or
27 employment capacity. Moreover, Defendants and their agents ratified all of the acts
28 complained of herein.

1 16. DOES 1-10 are sued in their individual capacity.

2 17. On or around May 5, 2017, Plaintiff filed a comprehensive and timely
3 claim for damages with the City of Huntington Beach pursuant to applicable
4 sections of the California Government Code. Having received no written rejection,
5 this claim was rejected by operation of law on June 22, 2017.

6
7 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

8 18. Plaintiff repeats and re-alleges each and every allegation in
9 paragraphs 1 through 17 of her Complaint with the same force and effect as if fully
10 set forth herein.

11 19. On March 9, 2017, DECEDENT was scheduled to play in an adult
12 softball league game at the Huntington Beach Central Park Sports Complex
13 (“Complex”) at approximately 7:45 p.m. on that date. DECEDENT arrived at the
14 Complex at approximately 6:30 p.m. that evening. On information and belief, when
15 he was looking for his softball team, DECEDENT was stabbed, beaten, and
16 assaulted by civilians (names currently unknown) at the Complex. On information
17 and belief, as a result of his injuries, DECEDENT was bleeding profusely and may
18 have become disoriented. Also on information and belief, DECEDENT escaped
19 from his assailants and began running through the Complex. DOE OFFICERS
20 responded to the Complex and, shortly thereafter, fired multiple shots at
21 DECEDENT without justification. On information and belief, at the time of the
22 shooting, DECEDENT was unarmed and did not pose an immediate threat of death
23 or serious bodily injury to DOE OFFICERS or anyone else. DECEDENT was struck
24 by the gunshots multiple times, including in the head, and ultimately died from the
25 gunshot wounds. DECEDENT was considered legally blind in one eye and had poor
26 vision. On information and belief, DECEDENT was not wearing his prescription
27 eyeglasses at the time of this incident.

20. After being shot, DECEDENT was immobile, bleeding profusely, and in obvious and critical need of emergency medical care and treatment. Defendants did not timely summon medical care or permit medical personnel to treat DECEDENT. The delay of medical care to DECEDENT caused DECEDENT extreme physical and emotional pain and suffering, and was a contributing cause of DECEDENT's death.

21. The use of deadly force against DECEDENT was excessive and objectively unreasonable under the circumstances, especially because DECEDENT did not pose an immediate threat of death or serious bodily injury to anyone at the time of the shooting.

22. Plaintiff HERNANDEZ is DECEDENT's successor in interest as defined in Section 377.11 of the California Code of Civil Procedure and succeeds to DECEDENT's interest in this action as the natural mother of DECEDENT. Plaintiff incurred funeral and burial expenses as a result of the shooting.

FIRST CLAIM FOR RELIEF

Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)

(Against Defendants DOE OFFICERS)

23. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 22 of her Complaint with the same force and effect as if fully set forth herein.

24. Defendants DOE OFFICERS detained DECEDENT without reasonable suspicion and arrested him without probable cause.

25. When DOE OFFICERS pointed their guns at DECEDENT, shot DECEDENT, and (on information and belief) placed him in handcuffs, they violated DECEDENT's right to be secure in his person against unreasonable searches and

1 seizures as guaranteed to DECEDENT under the Fourth Amendment to the United
2 States Constitution and applied to state actors by the Fourteenth Amendment.

3 26. The conduct of Defendants DOE OFFICERS was willful, wanton,
4 malicious, and done with reckless disregard for the rights and safety of DECEDENT
5 and therefore warrants the imposition of exemplary and punitive damages as to
6 Defendants DOE OFFICERS.

7 27. As a result of their misconduct, Defendants DOE OFFICERS are liable
8 for DECEDENT's injuries, either because they were integral participants in the
9 wrongful detention and arrest, or because they failed to intervene to prevent these
10 violations.

11 28. Plaintiff HERNANDEZ brings this claim as a successor in interest to
12 DECEDENT, and seeks both survival and wrongful death damages for the violation
13 of DECEDENT's rights. Plaintiff also seeks funeral and burial expenses and
14 attorney's fees under this claim.

15
16 **SECOND CLAIM FOR RELIEF**

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

18 (Against Defendants DOE OFFICERS)

19 29. Plaintiff repeats and re-alleges each and every allegation in
20 paragraphs 1 through 28 of her Complaint with the same force and effect as if fully
21 set forth herein.

22 30. DOE OFFICERS fired multiple shots at DECEDENT without
23 justification. The shooting was excessive and unreasonable, particularly because, on
24 information and belief, at the time of the shooting, DECEDENT was unarmed and
25 did not pose an immediate threat of death or serious bodily injury to DOE
26 OFFICERS or anyone else. DECEDENT was struck by the gunshots multiple times,
27 including in the head, and ultimately died from the gunshot wounds.

31. DOE OFFICERS' unjustified shooting deprived DECEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

32. As a result of the foregoing, DECEDENT suffered great physical pain and emotional distress up to the time of his death, loss of enjoyment of life, loss of life, and loss of earning capacity.

33. The conduct of DOE OFFICERS was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDENT, and therefore warrants the imposition of exemplary and punitive damages as to Defendants DOE OFFICERS.

34. The shooting was excessive and unreasonable, and DECEDENT posed no immediate threat of death or serious bodily injury at the time of the shooting. Further, DOE OFFICERS' shooting and use of force violated their training and standard police officer training.

35. Plaintiff HERNANDEZ brings this claim as a successor in interest to DECEDENT, and seeks both survival and wrongful death damages for the violation of DECEDENT's rights. Plaintiff further seeks funeral and burial expenses and attorney's fees under this claim.

THIRD CLAIM FOR RELIEF

Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
(Against Defendants DOE OFFICERS)

36. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 35 of her Complaint with the same force and effect as if fully set forth herein.

37. The denial of medical care by Defendants DOE OFFICERS deprived DECEDENT of his right to be secure in his person against unreasonable searches

1 and seizures as guaranteed to him under the Fourth Amendment to the United States
2 Constitution and applied to state actors by the Fourteenth Amendment.

3 38. The denial of medical care contributed to DECEDENT's great physical
4 pain and emotional distress and was a contributing cause of his death.

5 39. Defendants DOE OFFICERS knew that failure to provide timely
6 medical treatment to DECEDENT could result in further significant injury or the
7 unnecessary and wanton infliction of pain, but disregarded that serious medical
8 need, causing DECEDENT great bodily harm and death.

9 40. The conduct of DOE OFFICERS was willful, wanton, malicious, and
10 done with reckless disregard for the rights and safety of DECEDENT and therefore
11 warrants the imposition of exemplary and punitive damages as to Defendants DOE
12 OFFICERS.

13 41. As a result of their misconduct, each of Defendants DOE OFFICERS
14 are liable for DECEDENT's injuries, either because they were integral participants
15 in the wrongful detention and arrest, or because they failed to intervene to prevent
16 these violations.

17 42. Plaintiff HERNANDEZ brings this claim both individually and as a
18 successor in interest to DECEDENT, and seeks both survival and wrongful death
19 damages for the violation of DECEDENT's rights. Plaintiff further seeks funeral
20 and burial expenses and attorney's fees under this claim.

21
22 **FOURTH CLAIM FOR RELIEF**

23 **Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)**

24 (Against Defendants DOE OFFICERS)

25 43. Plaintiff repeats and re-alleges each and every allegation in
26 paragraphs 1 through 42 of her Complaint with the same force and effect as if fully
27 set forth herein.

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

6 45. The aforementioned actions of DOE OFFICERS, including shooting
7 DECEDENT, along with other undiscovered conduct, shock the conscience, in that
8 they acted with deliberate indifference to the constitutional rights of DECEDENT
9 and Plaintiff, and with purpose to harm unrelated to any legitimate law enforcement
10 objective.

11 46. DOE OFFICERS thus violated the substantive due process rights of
12 Plaintiff to be free from unwarranted interference with her familial relationship with
13 DECEDENT, her son.

14 47. As a direct and proximate cause of the acts of DOE OFFICERS,
15 Plaintiff suffered emotional distress, mental anguish, and pain. Plaintiff has also
16 been deprived of the life-long love, companionship, comfort, support, society, care,
17 and sustenance of DECEDENT, and will continue to be so deprived for the
18 remainder of her natural life.

19 48. The conduct of DOE OFFICERS was willful, wanton, malicious, and
20 done with reckless disregard for the rights and safety of DECEDENT and Plaintiff
21 and therefore warrants the imposition of exemplary and punitive damages as to
22 Defendants DOE OFFICERS.

23 49. Plaintiff HERNANDEZ brings this claim both individually and as a
24 successor in interest to DECEDENT, and seeks both survival and wrongful death
25 damages for the violation of DECEDENT's rights. Plaintiff also seeks funeral and
26 burial expenses and attorney's fees under this claim.

FIFTH CLAIM FOR RELIEF

Municipal Liability – Ratification (42 U.S.C. § 1983)

(Against Defendants CITY and DOES 6-10)

50. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 49 of her Complaint with the same force and effect as if fully set forth herein.

51. Defendants DOE OFFICERS acted under color of law.

52. The acts of Defendants DOE OFFICERS deprived DECEDENT and Plaintiff of their particular rights under the United States Constitution.

53. Upon information and belief, a final policymaker, acting under color of law, who had final policymaking authority concerning the acts of Defendants DOE OFFICERS, ratified (or will ratify) Defendants DOE OFFICERS' acts and the bases for them. Upon information and belief, the final policymaker knew of and specifically approved of (or will specifically approve of) Defendants DOE OFFICERS' acts.

54. Upon information and belief, a final policymaker has determined (or will determine) that the acts of Defendants DOE OFFICERS were "within policy."

55. On information and belief, Defendants DOE OFFICERS were not disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection with DECEDENT's death.

56. By reason of the aforementioned acts and omissions, Plaintiff has suffered loss of the love, companionship, affection, comfort, care, society, training, guidance, and past and future support of DECEDENT. The aforementioned acts and omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life, and death.

57. Accordingly, Defendants CITY and DOES 6-10 each are liable to Plaintiff for compensatory damages under 42 U.S.C. § 1983.

1 58. Plaintiff HERNANDEZ brings this claim both individually and as a
2 successor in interest to DECEDENT, and seeks both survival and wrongful death
3 damages under this claim. Plaintiff also seeks funeral and burial expenses and
4 attorney's fees under this claim.

5
6 **SIXTH CLAIM FOR RELIEF**

7 **Municipal Liability – Failure to Train (42 U.S.C. § 1983)**

8 (Against Defendants CITY and DOES 6-10)

9 59. Plaintiff repeats and re-alleges each and every allegation in paragraphs
10 1 through 58 of her Complaint with the same force and effect as if fully set forth
11 herein.

12 60. Defendants DOE OFFICERS acted under color of law.

13 61. The acts of Defendants DOE OFFICERS deprived DECEDENT and
14 Plaintiff of their particular rights under the United States Constitution.

15 62. The training policies of Defendant CITY were not adequate to train its
16 officers to handle the usual and recurring situations with which they must deal.

17 63. Defendant CITY was deliberately indifferent to the obvious
18 consequences of its failure to train its officers adequately.

19 64. The failure of Defendant CITY to provide adequate training caused the
20 deprivation of the rights of DECEDENT and Plaintiff by Defendants DOE
21 OFFICERS; that is, the defendant's failure to train is so closely related to the
22 deprivation of DECEDENT's and Plaintiff's rights as to be the moving force that
23 caused the ultimate injury.

24 65. By reason of the aforementioned acts and omissions, Plaintiff has
25 suffered loss of the love, companionship, affection, comfort, care, society, training,
26 guidance, and past and future support of DECEDENT. The aforementioned acts and
27 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
28 and death.

1 66. Accordingly, Defendants CITY and DOES 6-10 each are liable to
2 Plaintiff for compensatory damages under 42 U.S.C. § 1983.

3 67. Plaintiff HERNANDEZ brings this claim both individually and as a
4 successor in interest to DECEDENT, and seeks both survival and wrongful death
5 damages under this claim. Plaintiff also seeks funeral and burial expenses and
6 attorney's fees under this claim.

7
8 **SEVENTH CLAIM FOR RELIEF**

9 **Municipal Liability – Unconstitutional Custom or Policy (42 U.S.C. § 1983)**

10 (Against Defendants CITY and DOES 6-10)

11 68. Plaintiff repeats and re-alleges each and every allegation in paragraphs
12 1 through 67 of her Complaint with the same force and effect as if fully set forth
13 herein.

14 69. Defendants DOE OFFICERS acted under color of law.

15 70. Defendants DOE OFFICERS acted pursuant to an expressly adopted
16 official policy or a longstanding practice or custom of the Defendant CITY.

17 71. On information and belief, Defendants DOE OFFICERS were not
18 disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection
19 with DECEDENT's death.

20 72. Defendants CITY and DOES 6-10, together with other CITY
21 policymakers and supervisors, maintained, inter alia, the following unconstitutional
22 customs, practices, and policies:

- 23 (a) Using excessive force, including excessive deadly force;
24 (b) Providing inadequate training regarding the use of deadly force;
25 (c) Employing and retaining as officers individuals such as
26 Defendants DOE OFFICERS, whom Defendant CITY at all
27 times material herein knew or reasonably should have known
28

1 had dangerous propensities for abusing their authority and for
2 using excessive force;

3 (d) Inadequately supervising, training, controlling, assigning, and
4 disciplining CITY officers and other personnel, including
5 Defendants DOE OFFICERS, whom Defendant CITY knew or
6 in the exercise of reasonable care should have known had the
7 aforementioned propensities and character traits;

8 (e) Maintaining grossly inadequate procedures for reporting,
9 supervising, investigating, reviewing, disciplining and
10 controlling misconduct by CITY officers;

11 (f) Failing to adequately discipline CITY officers for the above-
12 referenced categories of misconduct, including “slaps on the
13 wrist,” discipline that is so slight as to be out of proportion to the
14 magnitude of the misconduct, and other inadequate discipline
15 that is tantamount to encouraging misconduct;

16 (g) Announcing that unjustified shootings are “within policy,”
17 including shootings that were later determined in court to be
18 unconstitutional;

19 (h) Even where shootings are determined in court to be
20 unconstitutional, refusing to discipline, terminate, or retrain the
21 officers involved;

22 (i) Encouraging, accommodating, or facilitating a “blue code of
23 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,”
24 or simply “code of silence,” pursuant to which police officers do
25 not report other officers’ errors, misconduct, or crimes. Pursuant
26 to this code of silence, if questioned about an incident of
27 misconduct involving another officer, while following the code,
28

1 the officer being questioned will claim ignorance of the other
2 officers' wrongdoing; and

- 3 (j) Maintaining a policy of inaction and an attitude of indifference
4 towards soaring numbers of police shootings, including by
5 failing to discipline, retrain, investigate, terminate, and
6 recommend officers for criminal prosecution who participate in
7 shootings of unarmed people.

8 73. The aforementioned unconstitutional customs, practices, and policies, in
9 addition to the ratification of the deficient customs, practices, and policies, are
10 evidenced by the number of prior cases in which a jury has found force used by a
11 police officer working for the Huntington Beach Police Department to be excessive
12 and unreasonable.

13 74. By reason of the aforementioned acts and omissions, Plaintiff has
14 suffered loss of the love, companionship, affection, comfort, care, society, training,
15 guidance, and past and future support of DECEDENT. The aforementioned acts and
16 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
17 and death.

18 75. Defendants CITY and DOES 6-10, together with various other
19 officials, whether named or unnamed, had either actual or constructive knowledge
20 of the deficient policies, practices and customs alleged in the paragraphs above.
21 Despite having knowledge as stated above, these defendants condoned, tolerated and
22 through actions and inactions thereby ratified such policies. Said defendants also
23 acted with deliberate indifference to the foreseeable effects and consequences of
24 these policies with respect to the constitutional rights of DECEDENT, Plaintiff, and
25 other individuals similarly situated.

26 76. By perpetrating, sanctioning, tolerating and ratifying the outrageous
27 conduct and other wrongful acts, DOES 6-10 acted with intentional, reckless, and
28 callous disregard for the life of DECEDENT and for DECEDENT's and Plaintiff's

1 constitutional rights. Furthermore, the policies, practices, and customs implemented,
2 maintained, and still tolerated by Defendants CITY and DOES 6-10 were
3 affirmatively linked to and were a significantly influential force behind the injuries
4 of DECEDENT and Plaintiff.

5 77. Accordingly, Defendants CITY and DOES 6-10 each are liable to
6 Plaintiff for compensatory damages under 42 U.S.C. § 1983.

7 78. Plaintiff HERNANDEZ brings this claim both individually and as a
8 successor in interest to DECEDENT, and seeks both survival and wrongful death
9 damages under this claim. Plaintiff also seeks funeral and burial expenses and
10 attorney's fees under this claim.

11
12 **EIGHTH CLAIM FOR RELIEF**

13 **False Arrest/False Imprisonment**

14 (Against Defendants CITY and DOE OFFICERS)

15 79. Plaintiff repeats and re-alleges each and every allegation in
16 paragraphs 1 through 78 of her Complaint with the same force and effect as if fully
17 set forth herein.

18 80. Defendants DOE OFFICERS, while working as officers for the
19 Huntington Beach Police Department and acting within the course and scope of their
20 duties, intentionally deprived DECEDENT of his freedom of movement by use of
21 force, threats of force, menace, fraud, deceit, and unreasonable duress. DOE
22 OFFICERS detained DECEDENT without reasonable suspicion and arrested him
23 without probable cause.

24 81. DECEDENT did not knowingly or voluntarily consent.

25 82. Defendants DOE OFFICERS detained DECEDENT for an appreciable
26 amount of time.

27 83. The conduct of DOE OFFICERS was a substantial factor in causing the
28 harm to DECEDENT.

1 84. Defendant CITY is vicariously liable for the wrongful acts of
2 Defendants DOE OFFICERS pursuant to section 815.2(a) of the California
3 Government Code, which provides that a public entity is liable for the injuries
4 caused by its employees within the scope of the employment if the employee's act
5 would subject him or her to liability.

6 85. The conduct of DOE OFFICERS was malicious, wanton, oppressive,
7 and accomplished with a conscious disregard for the rights of DECEDENT, entitling
8 Plaintiff to an award of exemplary and punitive damages.

9 86. As a result of their misconduct, Defendants DOE OFFICERS are liable
10 for DECEDENT's injuries, either because they were integral participants in the
11 wrongful detention and arrest, or because they failed to intervene to prevent these
12 violations.

13 87. Plaintiff HERNANDEZ brings this claim both individually and as a
14 successor in interest to DECEDENT, and seeks both wrongful death and survival
15 damages under this claim. Plaintiff also seeks attorney's fees and funeral and burial
16 expenses under this claim.

17
18 **NINTH CLAIM FOR RELIEF**

19 **Battery (Wrongful Death)**

20 (Against Defendants CITY and DOE OFFICERS)

21 88. Plaintiff repeats and re-alleges each and every allegation in
22 paragraphs 1 through 87 of her Complaint with the same force and effect as if fully
23 set forth herein.

24 89. DOE OFFICERS while working as officers for the Huntington Beach
25 Police Department and acting within the course and scope of their employment with
26 the CITY, intentionally shot DECEDENT multiple times, thereby using
27 unreasonable and excessive force against him. As a result of the actions of DOE
28 OFFICERS, DECEDENT suffered severe pain and suffering and ultimately died

1 from his injuries. DOE OFFICERS had no legal justification for using force against
2 DECEDENT, and their use of force while carrying out their duties as police officers
3 was an unreasonable and nonprivileged use of force.

4 90. As a direct and proximate result of the conduct of DOE OFFICERS as
5 alleged above, DECEDENT sustained injuries, eventually died from his injuries,
6 and also lost his earning capacity. As a direct and proximate result of the conduct of
7 DOE OFFICERS as alleged above, DECEDENT suffered survival damages
8 pursuant to Code of Civil Procedure Section 377.34.

9 91. The CITY is vicariously liable for the wrongful acts of DOE
10 OFFICERS pursuant to section 815.2(a) of the California Government Code, which
11 provides that a public entity is liable for the injuries caused by its employees within
12 the scope of the employment if the employee's act would subject him or her to
13 liability.

14 92. The conduct of DOE OFFICERS was malicious, wanton, oppressive,
15 and accomplished with a conscious disregard for the rights of Plaintiff and
16 DECEDENT, entitling Plaintiff, both individually and as a successor in interest to
17 DECEDENT, to an award of exemplary and punitive damages as to Defendants
18 DOE OFFICERS.

19 93. Plaintiff HERNANDEZ brings this claim both individually and as a
20 successor in interest to DECEDENT, and seeks both survival and wrongful death
21 damages under this claim. Plaintiff also seeks funeral and burial expenses and
22 attorney's fees under this claim.

23 **TENTH CLAIM FOR RELIEF**

24 **Negligence (Wrongful Death)**

25 **(Against all Defendants)**

26 94. Plaintiff repeats and re-alleges each and every allegation in
27 paragraphs 1 through 93 of her Complaint with the same force and effect as if fully
28 set forth herein.

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

6 96. Defendants DOES 1-10 breached their duty of care. The actions and
7 inactions of Defendants DOES 1-10 were negligent and reckless, including but not
8 limited to:

- 9 (a) the failure of DOE OFFICERS to properly and adequately assess
10 the need to detain, arrest, and use force or deadly force against
11 DECEDENT;
- 12 (b) the negligent tactics and handling of the situation with
13 DECEDENT, including DOE OFFICERS' pre-shooting
14 negligence;
- 15 (c) the negligent detention, arrest, and use of force, including deadly
16 force, against DECEDENT by DOE OFFICERS;
- 17 (d) the failure of DOE OFFICERS to provide prompt medical care to
18 DECEDENT;
- 19 (e) the failure of DOES 6-10 to properly train and supervise
20 employees, both professional and non-professional, including
21 DOE OFFICERS;
- 22 (f) the failure of DOES 6-10 to ensure that adequate numbers of
23 employees with appropriate education and training were
24 available to meet the needs of and protect the rights of
25 DECEDENT; and
- 26 (g) the negligent communication of information during the incident.

27 97. As a direct and proximate result of Defendants' conduct as alleged
28 above, and other undiscovered negligent conduct, DECEDENT was caused to suffer

1 severe pain and suffering and ultimately died. Also as a direct and proximate result
2 of Defendants' conduct as alleged above, Plaintiff has suffered emotional distress
3 and mental anguish. Plaintiff has also been deprived of the life-long love,
4 companionship, comfort, support, society, care and sustenance of DECEDENT, and
5 will continue to be so deprived for the remainder of her natural life.

6 98. The CITY is vicariously liable for the wrongful acts of Defendants
7 DOES 1-10 pursuant to section 815.2(a) of the California Government Code, which
8 provides that a public entity is liable for the injuries caused by its employees within
9 the scope of the employment if the employee's act would subject him or her to
10 liability.

11 99. Plaintiff HERNANDEZ brings this claim both individually and as a
12 successor in interest to DECEDENT, and seeks both survival and wrongful death
13 damages under this claim. Plaintiff also seeks funeral and burial expenses and
14 attorney's fees.

15
16 **ELEVENTH CLAIM FOR RELIEF**

17 **(Violation of Cal. Civil Code § 52.1)**

18 **(Against all Defendants)**

19 100. Plaintiff repeats and re-alleges each and every allegation in
20 paragraphs 1 through 99 of her Complaint with the same force and effect as if fully
21 set forth herein.

22 101. California Civil Code, Section 52.1 (the Bane Act), prohibits any
23 person from using violent acts or threatening to commit violent acts in retaliation
24 against another person for exercising that person's constitutional rights. Moreover,
25 "a successful claim for excessive force under the Fourth Amendment provides the
26 basis for a successful claim under § 52.1." *Chaudhry v. City of Los Angeles*, 751
27 F.3d 1096, 1105-06 (9th Cir. 2014); citing *Cameron v. Craig*, 713 F.3d 1012, 1022
28 (9th Cir. 2013) ("[T]he elements of the excessive force claim under § 52.1 are the

1 same as under § 1983.”); *Bender v. Cnty. of L.A.*, 217 Cal. App. 4th 968, 976 (2013)
2 (“an unlawful [seizure]—when accompanied by unnecessary, deliberate and
3 excessive force—is [] within the protection of the Bane Act”).

4 102. On information and belief, Defendants DOE OFFICERS, while
5 working for the CITY and acting within the course and scope of their duties,
6 intentionally committed and attempted to commit acts of violence against
7 DECEDENT, including by shooting him without justification or excuse, by
8 integrally participating and failing to intervene in the above violence, and by
9 denying DECEDENT necessary medical care. DOE OFFICERS coerced,
10 intimidated, and threatened DECEDENT, including by pursuing him on foot and
11 shooting DECEDENT while he was running away. It was not necessary for DOE
12 OFFICERS to shoot DECEDENT in order to take him into custody, such that the
13 use of force was independent from the unreasonable detention and arrest.

14 103. When Defendants DOE OFFICERS shot DECEDENT, unreasonably
15 detained him, and then denied him medical care, they interfered with his civil rights
16 to be free from unreasonable searches and seizures, to due process, to equal
17 protection of the laws, to medical care, to be free from state actions that shock the
18 conscience, and to life, liberty, and property.

19 104. On information and belief, Defendants intentionally and spitefully
20 committed the above acts to discourage DECEDENT from exercising his civil
21 rights, to retaliate against him for invoking such rights, or to prevent him from
22 exercising such rights, which he was fully entitled to enjoy.

23 105. On information and belief, DECEDENT reasonably believed and
24 understood that the violent acts committed by Defendants DOE OFFICERS were
25 intended to discourage him from exercising the above civil rights, to retaliate against
26 him for invoking such rights, or to prevent him from exercising such rights.

27 106. Defendants successfully interfered with the above civil rights of
28 DECEDENT and Plaintiff.

1 107. The conduct of Defendants DOE OFFICERS was a substantial factor in
2 causing Plaintiff's harms, losses, injuries, and damages.

3 108. The CITY is vicariously liable for the wrongful acts of Defendants
4 DOE OFFICERS pursuant to section 815.2(a) of the California Government Code,
5 which provides that a public entity is liable for the injuries caused by its employees
6 within the scope of the employment if the employee's act would subject him or her
7 to liability.

8 109. Defendants DOES 6-10 are vicariously liable under California law and
9 the doctrine of *respondeat superior*.

10 110. The conduct of Defendants was malicious, wanton, oppressive, and
11 accomplished with a conscious disregard for DECEDENT's and Plaintiff's rights,
12 justifying an award of exemplary and punitive damages as to Defendants DOE
13 OFFICERS.

14 111. Plaintiff HERNANDEZ brings this claim both individually and as a
15 successor in interest to DECEDENT, and seeks both survival and wrongful death
16 damages under this claim. Plaintiff also seeks funeral and burial expenses and
17 attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Angela Hernandez requests entry of judgment in her favor and against Defendants City of Huntington Beach and Does 1-10, inclusive, as follows:

- A. For compensatory damages, including both survival damages and wrongful death damages under federal and state law, in the amount of \$20 million;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable attorneys' fees, including litigation expenses;
- F. For costs of suit; and
- G. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: July 21, 2017

LAW OFFICES OF DALE K. GALIPO

By /s/ Dale K. Galipo

Dale K. Galipo
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: July 21, 2017

LAW OFFICES OF DALE K. GALIPO

By /s/ Dale K. Galipo
Dale K. Galipo
Attorneys for Plaintiff