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

10 **'19CV2303 JLS LL**

11 **DOLORES ROSALES,**)
 12)
 13 Plaintiff,)
 14 vs.)

15 **COUNTY OF SAN DIEGO; SHERIFF**)
 16 **WILLIAM D. GORE,** an individual; Deputy)
 17 **Terence YORK** an individual; Deputy)
 18 **Brandon DELIMA** an individual; Deputy)
 19 **Evan MCCORMICK** an individual; Deputy)
 20 **Nicholas ADAMS** an individual; Deputy)
 21 **Eric COTRELL Jr.** an individual, Deputy)
 22 **Carl FIELSTRA** an individual; Deputy Brian)
 23 **SCHAEFER** an individual; Deputy)
 24 **Christopher PEREZ** an individual; Sergeant)
 25 **Dwain WASHINGTON** an individual,)
 26 **Deputy Ronald BUSHNELL** an individual;)
 27 **Deputy Steven FEALY** an individual;)
 28 **Deputy Scott ROSALL** an individual; DOES)
 1 through 50, inclusive.

Defendants,

COMPLAINT FOR DAMAGES

1. 4th- 14th Amendment—Substantive Due Process Viol. 42 U.S.C. § 1983 (Interference familial relationship)
2. 4th-14th Amendment.42 U.S.C.§ 1983 (Unreasonable use of force)
3. 4th-14thAmendment 42 U.S.C. § 1983 (Denial medical care and deliberate indifference to serious medical need)
4. Municipal Liability—Ratification of unconstitutional acts 42 USC § 1983
5. Municipal Liability-Failure to train 42 U.S.C. § 1983
6. Municipal Liability-Unconstitutional Customs & Practices 42 U.S.C.1983
7. Gral. Negligence -Wrongful Death Under Ca. Law & Gov. Code §820
8. Violation Cal. Civil Code § 51; 51.7 & 52.1 (*Bane Act*)
9. False Arrest - False Imprisonment
10. Battery under California Law
11. Violation to the 4th Amendment & 14th Amendment -unreasonable search & seizures (taking of blood without consent or warrant.

[DEMAND FOR JURY TRIAL]

1
2 **COMPLAINT FOR DAMAGES**

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4 Plaintiff DOLORES ROSALES is the mother and the successor in interest to decedent,
5 MARCO ANTONIO NAPOLES. Plaintiff individually and as successor in interest brings
6 this Civil Complaint for violation of civil rights and for wrongful death against
7 Defendants; County of San Diego ("COUNTY"); SHERIFF WILLIAM D. GORE
8 (" SHERIFF GORE") an individual; Deputy Terence York, an individual; Deputy
9 Brandon Delima an individual; Deputy Evan McCormick an individual, Deputy Nicholas
10 Adams an individual; Deputy Eric Cottrell Jr. an individual, Deputy Carl Fielstra an
11 individual; Deputy Brian Schaefer, an individual; Deputy Christopher Perez, an individual;
12 Sergeant Dwain Washington an individual, Deputy Ronald Bushnell an individual; Deputy
13 Steven Fealy an individual; Deputy Scott Rosall an individual; and DOES 1 through 50
14 inclusive; and respectfully allege as follows:

15 **I. JURISDICTION AND VENUE**

- 16 1. This civil action is brought for redress of violations to constitutional rights
17 protected under 42 U.S.C. § 1983, 1985, 1986, 1988, and for violations to the Fourth
18 & Fourteenth Amendments of the United States Constitution. Jurisdiction is based
19 under 28 U.S.C. § 1331,1343,367. This Honorable US District Court has
20 supplemental jurisdiction over Plaintiff's State claims pursuant to 28 U.S.C. § 1367
21 (a) because those claims are intrinsically related to the federal claims and they form
22 part of the same case and controversy under Article III of the US Constitution.
- 23 2. Venue in this District Court is proper under 28 U.S.C. § 1391(b), because all
24 Defendants reside in this Judicial District and all of the incidents and occurrences
25 giving rise to this case occurred within the geographical area covered by this
26 Southern Judicial District. The amount in controversy exceeds the minimum
27 jurisdictional limits.
28

1 3. Plaintiff DOLORES ROSALES duly filed and served Government Claim pursuant
2 to California Government Code Section 910 et seq. Defendant County of San
3 Diego rejected the claim on August 30, 2019. This Complaint is filed within 6
4 months from the date of the Governmental claim's rejection.

5
6 **II. INTRODUCTION**

- 7
8 4. This action seeks compensatory damages from Defendants for serious violations to
9 various rights under the United States Constitution and under California State law
10 resulting in the death of Marco Antonio Napoles a 29 years old man.
11 5. Defendants used unreasonable force resulting in the death of NAPOLES. Video
12 footage evidence shows shocking images of the excessive use of force. In support,
13 Plaintiff is concurrently seeking leave of Court to submit for filing; video footage
14 excerpts as **EXHIBIT 1** of the Complaint. (per CASD ECF rules and procedures).
15 6. Plaintiff is the mother of the decedent. Legal standing is vested pursuant California
16 Civil Procedure Code §377.60 (b). A Declaration pursuant CCP 377.32 is here
17 enclosed as **EXHIBIT 2**.
18 7. Plaintiff acts in her individual capacity and as successor in interest to Decedent for
19 wrongful death damages including survival damages for Mr. Marco Napoles' death,
20 for the loss of enjoyment of his life, and his pre-death pain and suffering.

21 **III. PARTIES**

- 22
23 8. At all relevant times Decedent MARCO ANTONIO NAPOLES ("NAPOLES")
24 was an habitual resident of el Monte California County of Los Angeles.
25 9. At all relevant times Plaintiff DOLORES ROSALES was an resident of Tijuana
26 Baja California, Mexico, with legal US Immigration authorization to enter to the
27 United States. Plaintiff is the natural mother of Decedent Marco Antonio Napoles.
28

1 Plaintiff was dependent upon her son at the time of his death for the necessities of
2 her life, including and not limited to shelter, food, and medical care.

3 10. At all relevant times, Defendant COUNTY OF SAN DIEGO (“COUNTY”) was
4 a municipal corporation existing under the laws of the State of California.
5 “COUNTY” is a chartered subdivision of the State of California with the capacity
6 to be sued pursuant to 42 U.S.C § 1983 as upheld by *Monell v. Dpt. Of Social Services*
7 (1978) 436 US. 658, 691. COUNTY is responsible for the actions, omissions,
8 policies, procedures, practices, and customs of its various agents and agencies,
9 including the County of San Diego Sheriff’s Department (“SDSD”). Its agents and
10 employees. At all relevant times, COUNTY was responsible for assuring that the
11 actions, omissions, policies, procedures, practices, and customs of the SDSD and
12 its employees and agents complied with the laws of the United States and Ca Law.

13 11. Defendant (“SHERIFF GORE”) is the Sheriff for the County of San Diego.
14 Plaintiff is informed and believe and based thereon alleges that at all relevant times,
15 “SHERIFF GORE” was responsible for implementing, maintaining, sanctioning
16 or condoning policies, customs and / or practices under which other defendants
17 committed the illegal, unconstitutional and wrongful acts hereinafter complained
18 of. By reason of ratification and condoning of these policies, practices and customs,
19 Defendant SHERIFF GORE is liable for the damages hereinafter complained of.
20 Thus, Plaintiff sues Defendant SHERIFF GORE in official and personal capacity.

21 12. At all relevant times, Defendant TERENCE YORK, (“YORK”), was a Sheriff’s
22 deputy working for SDSD. YORK was acting under color of law and within the
23 course and scope of his employment as a deputy for SDSD. YORK was acting
24 within the complete authority and ratification of his principal, (COUNTY).

25 13. At all relevant times, Defendant BRANDON DELIMA, (“DELIMA”), was a
26 Sheriff’s deputy working for SDSD. DELIMA was acting under color of law and
27 within the course and scope of his employment as a deputy for SDSD. DELIMA
28 was acting within the complete authority and ratification of principal -COUNTY.

1 14. At all relevant times, Defendant EVAN MCCORMICK, ("MCCORMICK"), was
2 a Sheriff's deputy working for SDSO. MCCORMICK was acting under color of
3 law and within the course and scope of his employment as a deputy for SDSO.
4 MCCORMICK was acting within the complete authority and ratification of his
5 principal - Defendant COUNTY.

6 15. At all relevant times, Defendant NICHOLAS ADAMS, ("ADAMS"), was a
7 Sheriff's deputy working for SDSO. ADAMS was acting under color of law and
8 within the course and scope of his employment as a deputy for SDSO. ADAMS
9 was acting within the complete authority and ratification of Defendant COUNTY.

10 16. At all relevant times, Defendant ERICK COTTRELL was a Sheriff's deputy
11 working for SDSO. COTTRELL was acting under color of law and within the
12 course and scope of his employment as a deputy for SDSO. He was acting within
13 the complete authority and ratification of his principal, Defendant COUNTY.

14 17. At all relevant times, Defendant CARL FIELSTRA was a Sheriff's deputy working
15 for SDSO. FIELSTRA was acting under color of law and within the course and
16 scope of his employment as a deputy for SDSO. FIELSTRA was acting within the
17 complete authority and ratification of his principal, Defendant COUNTY.

18 18. At all relevant times, Defendant BRIAN SCHAEFER, ("SCHAEFER"), was a
19 Sheriff's deputy working for SDSO. SCHAEFER was acting under color of law and
20 within the course and scope of his employment as a deputy for SDSO. SCHAEFER
21 was acting within the complete authority and ratification of his principal COUNTY.

22 19. At all relevant times, Defendant CHRISTOPHER PEREZ, ("PEREZ"), was a
23 Sheriff's deputy working for SDSO. PEREZ was acting under color of law and
24 within the course and scope of his employment as a deputy for SDSO. PEREZ was
25 acting within the complete authority and ratification of his principal, COUNTY.

26 20. At all relevant times, Defendant Sergeant DWAIN WASHINGTON,
27 ("WASHINGTON"), was a Sheriff's Sergeant working for SDSO.
28 WASHINGTON was acting under color of law and within the course and scope

1 of his employment as a Sergeant for SDSD. WASHINGTON was acting within the
2 complete authority and ratification of his principal, Defendant COUNTY.

3 21. At all relevant times, Defendant RONALD BUSHNELL was a Sheriff's deputy
4 working for SDSD. BUSHNELL was acting under color of law and within the
5 course and scope of his employment as a deputy for SDSD. BUSHNELL was
6 acting within the complete authority and ratification of his principal -County.

7 22. At all relevant times, Defendant STEVEN FEALY ("FEALY"), was a Sheriff's
8 Deputy working for SDSD. FEALY was acting under color of law and within the
9 course and scope of his employment as a deputy for SDSD. FEALY was acting
10 within the complete authority and ratification of his principal THE COUNTY.

11 23. At all relevant times, Defendant SCOTT ROSALL ("ROSALL"), was a Sheriff's
12 Deputy working for SDSD. ROSALL was acting under color of law and within the
13 course and scope of his employment as a deputy for SDSD. ROSALL was acting
14 within the complete authority and ratification of Defendant "County".

15 24. Plaintiff reasonably believes and therefore here alleges that at all relevant times, the
16 individual Defendants DOES 1-50 were residents of the County of San Diego.

17 25. All individually named Defendants are sued in their individual capacities.

18
19 **IV. FACTS COMMON TO ALL CLAIMS FOR RELIEF**

20
21 26. PLAINTIFF repeats and re-alleges each and every foregoing allegation with the
22 same force and effect as if fully set forth herein.

23 27. Marco Napoles was 29 years old at the time of his death. He was a student pursuing
24 a career as a Barber and he worked at Barbershops in the City of el Monte
25 California. He had no criminal background and he had no children. He supported
26 his mother financially. Plaintiff- relied on Decedent for her life necessities.

27 28. **On August 16 2018**, upon plaintiff's information and belief NAPOLES was
28 traveling from or to Temecula California when his vehicle Nissan Altima

1 malfunctioned. He left his car on the side of the highway and looked for help. He
2 walked to the nearest Gas Station which was miles away located at 4730 Highway
3 76 in the City of Fallbrook, California County of San Diego.

4 29. The following factual events have been recorded on video. (Sheriff Deputy's body
5 cameras, surveillance video from the gas station store and by-stander witness'
6 cellphone recordings). Excerpts of these videos is submitted as Exhibit No. 1

7 30. When NAPOLES entered to the Gas Station store, he talked to an employee and
8 asked her for help. i.e. He asked if she could let him charge his cellphone at the
9 store. Napoles wanted to call his family & friends and ask them to pick him up. The
10 employee nicely let him use her phone to make a phone call while NAPOLES'
11 phone was being charged. It was around 2 to 4 am when Marco was at this Gas
12 Station in the middle of a Highway simply asking for help.

13 31. While he was inside the Gas Station store NAPOLES did not threat any body, nor
14 he acted in any way that would cause the store employees or anybody to feel
15 threatened or in imminent danger. In fact, video surveillance shows NAPOLES
16 remained in the store for several minutes simply waiting for his phone to be
17 charged. Upon Plaintiff's information and belief, NAPOLES felt safer by being at
18 a this Gas Station Store rather than being somewhere else. (The surrounding area
19 to the gas station in turn was desolate and very dark). His car was miles away.

20 32. Surveillance video shows that NAPOLES was normally chatting with other store
21 employees and even with other customers without being a threat or a danger to
22 anyone. At or around 4:30 am, a new store employee came to the store. Upon
23 Plaintiff's information and belief, she was a manager and she apparently did not
24 want NAPOLES to be standing inside the store for prolonged time. The manager
25 told NAPOLES that he should leave or he should stand outside the store near the
26 gas pumps or the parking area. NAPOLES stayed outside the door of the store near
27 the gas pumps. He was not aggressive or violent to anyone and at no point he acted
28 in any threatening manner when he was inside the store. He was simply waiting for
his phone to be charged and trying to reach for friends or family to be picked up.

1 33. Upon information and belief, NAPOLES sometimes would get back inside the
2 store presumably to check the status of his cellphone charging. At some point
3 thereafter, the manager decided to call the police and report that there was a
4 “Customer who was just standing in the store and not leaving after being told to
5 leave”. Upon information & belief the call was received by a 911 operator who
6 asked a store employee specifically whether the suspect had any weapons or
7 anything? The employee replied that she was not aware of any.

8 34. NAPOLES was not an imminent danger or threat to any one, and such fact was
9 clearly communicated by the employee to the 911 call operator indicating that they
10 just wanted him to be outside the store area.

11 35. Approximately at 04:50 hours, San Diego Sheriff's Deputy Terence York (YORK)
12 responded to the scene in his Patrol vehicle without emergency lights. When
13 Deputy YORK arrived he approached NAPOLES who was indeed outside the
14 store, near the Gas Pumps. YORK had a normal conversation with NAPOLES in
15 which NAPOLES explained to the Deputy that his car let him down and that he
16 needed help because he was far away from home. He wanted to call his friends or
17 family to be picked up. NAPOLES was polite to Deputy YORK and never violent.
18 NAPOLES was not a threat. NAPOLES was not armed in any way. He had no
19 criminal record and he had no other interest at the gas station other than get help.

20 36. NAPOLES showed Deputy YORK his California ID and YORK checked
21 NAPOLES's criminal background with his Sheriff's Dpt. Dispatch. Upon
22 information and belief, YORK was informed by his dispatch that NAPOLES had
23 no criminal records. Deputy YORK and NAPOLES continued talk in a normal
24 fashion as the evidence -video shows for approximately 20 minutes.

25 37. NAPOLES told YORK on many times that he “just needed help” either to tow
26 his car or to call his family or friends because his car was not working. NAPOLES
27 was clearly not a threat to Deputy YORK neither to anyone else. Deputy YORK
28 allowed NAPOLES to use his cell phone (York's phone) so he could call his
friends or family to pick him up.