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

**'19CV2303 JLS LL**

DOLORES ROSALES,

Plaintiff,

vs.

COUNTY OF SAN DIEGO; SHERIFF)  
WILLIAM D. GORE, an individual; Deputy)  
Terence YORK an individual; Deputy)  
Brandon DELIMA an individual; Deputy)  
Evan MCCORMICK an individual; Deputy)  
Nicholas ADAMS an individual; Deputy)  
Eric COTRELL Jr. an individual, Deputy)  
Carl FIELSTRA an individual; Deputy Brian)  
SCHAEFER an individual; Deputy)  
Christopher PEREZ an individual; Sergeant)  
Dwain WASHINGTON an individual,  
Deputy Ronald BUSHNELL an individual;  
Deputy Steven FEALY an individual;  
Deputy Scott ROSALL an individual; DOES)  
1 through 50, inclusive.

Defendants,

**COMPLAINT FOR DAMAGES**

1. 4<sup>th</sup>- 14<sup>th</sup> Amendment—Substantive Due Process Viol. 42 U.S.C. § 1983 (Interference familial relationship)
2. 4<sup>th</sup>-14<sup>th</sup> Amendment, 42 U.S.C. § 1983 (Unreasonable use of force)
3. 4<sup>th</sup>-14<sup>th</sup> Amendment 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 4<sup>th</sup> Amendment & 14<sup>th</sup> Amendment -unreasonable search & seizures (taking of blood without consent or warrant.

**[ DEMAND FOR JURY TRIAL ]**

**COMPLAINT FOR DAMAGES**

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

**I. JURISDICTION AND VENUE**

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

- 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 SDSD. MCCORMICK was acting under color of  
3 law and within the course and scope of his employment as a deputy for SDSD.  
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 SDSD. ADAMS was acting under color of law and  
8 within the course and scope of his employment as a deputy for SDSD. 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 SDSD. COTTRELL was acting under color of law and within the  
12 course and scope of his employment as a deputy for SDSD. 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 SDSD. FIELSTRA was acting under color of law and within the course and  
16 scope of his employment as a deputy for SDSD. 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 SDSD. SCHAEFER was acting under color of law and  
20 within the course and scope of his employment as a deputy for SDSD. 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 SDSD. PEREZ was acting under color of law and  
24 within the course and scope of his employment as a deputy for SDSD. 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 SDSD.  
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.



1 38. One friend answered and upon information and belief he told NAPOLES that it  
2 was too early. That he could probably come and help NAPOLES but later that day.

3 39. NAPOLES insisted asking his friend to come as quickly as possible because he felt  
4 he was in a dangerous place. The phone call ended and NAPOLES in apologetic  
5 tone thanked Deputy YORK for letting him use his cell phone to call his friend.

6 40. NAPOLES asked Deputy YORK if it was ok to stay outside the store near the Gas  
7 Station Pumps. After all, the Manager said that he could stay around the pumps or  
8 in the parking area as long as he was not inside the store.

9 41. YORK told NAPOLES that the Manager did not want him anywhere around the  
10 store and that he had to leave. NAPOLES was at all times polite and respectful to  
11 Deputy YORK asking if he could stay at least near the illuminated area because he  
12 was afraid that something could happen to him. NAPOLES never engaged in any  
13 conduct that warranted the use of force by DEPUTY YORK. NAPOLES had no  
14 place to go, he was miles away from his non operable car, hundreds of miles away  
15 from his home and his phone was not working either. NAPOLES walked around  
16 the corner of the Gas station after Deputy YORK told him that he definitely had  
17 to leave totally outside the premises of the Gas Station. NAPOLES regrettably  
18 complied with Deputy YORK'S orders and upon information and belief he walked  
19 towards a zone adjacent to the gas station. Deputy YORK went back to his patrol  
20 vehicle and remained inside his vehicle near the gas station parking.

21 42. Upon information and belief a few minutes later YORK observed that NAPOLES  
22 was walking near the Gas Pumps although he appeared to be now going towards  
23 the sidewalk adjacent to the gas station. DEPUTY YORK approached NAPOLES  
24 for a second time. But this time, Deputy YORK in a raised level of voice and  
25 command told NAPOLES to take his back pack off, while at the same time he  
26 engaged in the use of force pulling NAPOLES by the arm. Using force to  
27 apparently submit NAPOLES.

28 43. At that precise time as you will see on the video (Exhibit No. 1) a second San Diego  
County Sheriff's Deputy, Defendant BRANDON "DELIMA" arrived to the

1 scene. NAPOLES then was forcefully thrown to the ground by both Deputies who  
2 were yelling to NAPOLES "stop resisting". NAPOLES did nothing to prompt the  
3 use of force. At third Deputy from San Diego Sheriff's Department arrived.  
4 Defendant Deputy FIELSTRA who was apparently just driving by the area who  
5 approached to "assist" YORK and DELIMA. Lastly, a border patrol agent was  
6 also driving nearby and decided to step out of his vehicle and approach to the area.

7 44. When NAPOLES was thrown by force to the ground DEFENDANTS; YORK,  
8 DELIMA AND FIELSTRA used unreasonable force by placing their bodies on  
9 top of NAPOLES and deliberately hitting him with punches without any legal  
10 justification. NAPOLES was never violent to the Deputies. Instead, he was asking  
11 for help. At no point he was a threat to DEFENDANTS YORK, DELIMA OR  
12 FIELSTRA. NAPOLES had no weapons. NAPOLES had no criminal record.  
13 NAPOLES had not been violent towards YORK nor to anyone. NAPOLES was  
14 not an imminent threat to any of DEFENDANTS; YORK, DELIMA OR  
15 FIELSTRA. NAPOLES was clearly asking the Deputies to stop using force,  
16 Defendant DELIMA however, unreasonably pulled out his Taser Gun and shot  
17 NAPOLES with his TASER GUN on several occasions at a very close range.

18 45. Upon plaintiff's information and belief NAPOLES was shot with DELIMA's Taser  
19 Gun several times. Approximately more than 6 times, to his chest and to his back.  
20 DELIMA shot his taser at NAPOLES on shooting mode and stun mode.  
21 NAPOLES can be heard on the body cam videos screaming for help, asking the  
22 Deputies to Stop using the taser. NAPOLES was screaming in pain asking for help  
23 and begging the Deputies to stop. The Deputies "apparently" lost their body cams  
24 in the struggle, which ended down on the rocks recording audio but pointing the  
25 video camera away from the struggle. A bystander eye witness however, recorded  
26 part of these incidents of force with his cell phone. And as Exhibit 1 shows,  
27 Defendants YORK, DELIMA AND FIELSTRA indeed used unreasonable force  
28 against NAPOLES hitting him on the ground just moments before DELIMA  
decided to use his taser against NAPOLES unnecessarily engaging in force again.

1 46. Moments later YORK is heard on the videos claiming that he was bit on his thumb.

2 47. Upon information and belief, YORK had been bit on his thumb by a Dog days  
3 before this incident, while he was training a Dog as a K9 officer. The body cams  
4 footage and the audio show that NAPOLES denied the bit.

5 48. After this first incident of unreasonable use of force by Defendants YORK,  
6 DELIMA AND FIELSTRA against NAPOLES, he ended up being already  
7 handcuffed, submitted by force to the ground, considerably injured by the multiple  
8 taser deployments, and the use of force by the Deputies. NAPOLES is heard on  
9 the video on multiple times clearly asking for help. Upon information and belief  
10 bystanders witnesses could hear NAPOLES yelling for help saying "please help  
11 me... please call 911, please help... they are going to kill me".

12 49. When NAPOLES was already handcuffed, tasered on multiple times, already on  
13 the ground, and undoubtedly under the total control of DEFENDANTS YORK,  
14 DELIMA AND FIELSTRA, the Defendants did not proceed to seek and provide  
15 medical care to NAPOLES for the taser deployments and the use of force. Instead,  
16 they requested additional Deputies to the scene, and also requested an extreme  
17 restrain device called the "WRAP". Defendants ignored NAPOLES' pleas for  
18 help.

19 50. Deputy Defendant Evan McCormick (MCCORMICK) was one of the "additional  
20 Deputies" of the several Deputies that responded to the incident. When  
21 MCCORMICK arrived to the scene, as the body cam videos show, MCCORMICK  
22 applied all of his body weight upon NAPOLES body despite the fact that  
23 NAPOLES was on the ground, injured, tasered, and handcuffed. MCCORMICK  
24 used objectively unreasonable force by applying intense pressure with his knees and  
25 his 300 pounds body weight applied to NAPOLES chest. And then he outrageously  
26 used an air choke hold force technique forcefully pushing NAPOLES head and  
27 neck around the carotid artery using both of this hands with full force causing  
28 excruciating pain to NAPOLES. Defendant MCCORMICK dangerously  
obstructed NAPOLES ability to breath.

1 51. Upon information and belief Defendant MCCORMICK intentionally used  
2 unreasonable force by applying this restraint technique which involves pressure to  
3 the carotid artery area obstructing the airflow to NAPOLES' head and brain.

4 52. When MCCORMICK was engaging in this **Second incident of unreasonable use**  
5 **of force** against the decedent, NAPOLES asked multiple times for help, he told  
6 Deputy MCCORMICK specifically "Excuse me, I need to stand up ". He could not  
7 breath and he literally yelled to the Defendants I am f..... dying ". NAPOLES was  
8 not a threat to MCCORMICK nor to anyone else. NAPOLES was handcuffed,  
9 he had been already tasered on multiple times, he was severely injured, he was  
10 submitted on the ground, he had no weapons, he had no criminal record, he did  
11 nothing to be subject to such shameful methods of restrain and excessive force.

12 53. NAPOLES lost consciousness moments after he was subject to MCCORMICK's  
13 air choke hold. As shown on the video ( Exhibit No. 1) the acts of Defendants,  
14 specially MCCORMICK 's conduct was objectively unreasonable, further  
15 in-humane and shocking. The fact that MCCORMICK was yelling to his now fatal  
16 victim "stop resisting" while in essence he was killing a vulnerable human being,  
17 should definitely shock the conscience of anybody who is able to see this on video.  
18 Defendant's conduct was not only unreasonable but slaughterous.

19 54. **A third incident of unreasonable use of force against decedent occurred** when  
20 DEFENDANT MCCORMICK, Defendants ADAMS, PEREZ, SCHAEFER,  
21 COTRELL, DELIMA and DOES 1-10 used unreasonable force against  
22 NAPOLES by placing their body weight on top of NAPOLES body who was  
23 already in serious need of medical attention, unconscious, and possibly having  
24 problems to breath. Just Deputy MCCORMICK's body alone with his gear  
25 uniform weights more than 300 pounds. NAPOLES had at some point 4 deputies  
26 using their knees and bodies on top of him before they started to apply the extreme  
27 restraint device called the "WRAP".  
28

1 55. The WRAP is an extreme method of body restraint which is apparently used to  
2 restrain uncontrollable individuals by tying their whole body inside the device  
3 impeding the person's body mobility in any way.

4 56. Defendants decided to place NAPOLES on the WRAP device knowing that  
5 NAPOLES was unconscious as result of MCCORMICK'S air choke hold, and  
6 physically injured by the multiple taser shots of DELIMA. Defendants carelessly  
7 continued to use force against an inert body of NAPOLES to apply their "WRAP".

8 57. Plaintiff alleges that the conduct of Defendants in this deadly incident was  
9 unconstitutional and constituted more clearly a criminal homicide recorded on  
10 video rather than reasonable law enforcement procedural conduct. This matter was  
11 brought to the Attention of the San Diego County District Attorney's office for  
12 investigation. The DA's office determined -as usual- that the law enforcement  
13 personnel acted reasonably under the circumstances and shall bear no state liability.

14 58. The second and the third main incidents of excessive force happened in the  
15 presence of multiple SDSO Deputies who responded to the scene. Including  
16 Defendant SERGEANT DWAIN WASHINGTON, who did nothing to stop his  
17 Deputies from engaging in the wrongful conduct described above. By failing to act,  
18 Defendant WASHINGTON affirmatively ratified and approved the wrongful  
19 conduct of his Sheriff Deputies. Therefore he is liable for deliberate indifference to  
20 unconstitutional acts committed in front of him doing nothing to prevent a death.

21 59. After NAPOLES was subject to all of the above egregious abuse of force,  
22 Paramedics from the North County Fire Protection District (NCFPD) who have  
23 arrived to treat Deputy YORK but not NAPOLES, asked the Deputies if  
24 NAPOLES needed attention and if they could evaluate his medical condition.

25 60. DEFENDANTS clearly knew that NAPOLES had been tasered; subject of force,  
26 subject to limitation of movement, and had been left unconscious by  
27 MCCORMICK's air choke restraint. Despite all the above, in deliberate  
28 indifference to a serious medical need, Defendants were not allowing the

1 paramedics to operate freely and to medically evaluate NAPOLES without the  
2 WRAP device continuing to be applied to his body.

3 61. Moreover, DEFENDANT MCCORMICK outrageously decided to intervene  
4 again and placed a SPIT BAG covering Napoles' inert head aggravating the  
5 possibility of NAPOLES being unable to breath at all. NAPOLES was eventually  
6 taken to the ambulance after the placing of the bag to his head.

7 62. DEFENDANTS STEVEN FEALY AND SCOTT ROSALL boarded the  
8 ambulance too. FEALY AND ROSALL did not allow the paramedics to medically  
9 evaluate and treat NAPOLES unrestrained despite the medical emergency situation.  
10 Defendants allowed the paramedics to take the WRAP off NAPOLES' body only  
11 after the paramedics confirmed that he was not breathing. Even after knowing that  
12 NAPOLES was under cardiac arrest, Defendants FEALY AND ROSALL  
13 continued obstructing the paramedic's job with deliberate indifference to the  
14 emergency situation, trying to handcuff the lifeless body of NAPOLES.

15 63. NAPOLES was eventually taken to a Hospital. The paramedics personnel did their  
16 best and were able to bring his pulse back, although his condition was critically  
17 serious and the risk of NAPOLES death remained high. He died the next day.

18 64. During the time that NAPOLES was at the emergency room, DEFENDANT  
19 DEPUTY RONALD BUSHNELL, was more concerned and preoccupied to try  
20 to obtain blood samples from NAPOLES' body rather than being concerned for  
21 the safety of NAPOLES. DEFENDANT DEPUTY RONALD BUSHNELL  
22 unconstitutionally and without a warrant collected what he purportedly reported  
23 later to be blood samples of NAPOLES. Upon being confronted by a nurse who  
24 told Defendant BUSHNELL that he was not authorized to collect any blood  
25 without consent or a warrant, Defendant indicated that he would take blood anyway  
26 and he could seek and obtain a warrant after taking NAPOLES' blood with him.

27 65. Upon information and belief Defendant BUSHNELL violated 4<sup>th</sup> amendment  
28 constitutional rights of NAPOLES. A subsequently obtained warrant does not  
make DEFENDANT BUSHNELL conduct less wrong or less unconstitutional.

1 66. NAPOLES died on the next day at the hospital despite the great efforts of the  
2 Doctors and nurses treating him. The CAUSE OF DEATH as determined by SAN  
3 DIEGO COUNTY medical examiner's department was SUDDEN  
4 CARODIOPULMONARY ARREST ASSOCIATED WITH PHYSICAL  
5 EXERTION DURING LAW ENFORCEMENT RESTRAINT AND  
6 METHAMPHETAMINE INTOXICATION.

7 67. At the time of the incidents complained above, Defendant SHERIFF GORE was  
8 the Sheriff of the County of San Diego. Defendant SHERIFF GORE is an official  
9 policy maker for Defendant County of San Diego, in regards to law enforcement  
10 policies. He is the person in charge to implement those policies in furtherance of  
11 public safety of the people of the State of California & County of San Diego.  
12 SHERIFF GORE has taken an oath as Sheriff of San Diego County to uphold the  
13 Constitution of the United States , and has publicly embraced a noble commitment  
14 to provide the "highest quality public safety service to the County of San Diego".  
15 As to the circumstances of this case, public safety has failed utterly.

16 68. DEFENDANT SHERIFF GORE AND COUNTY knew and should have  
17 known of the unconstitutional and deadly practices of their Deputies such as;

- 18 a) The unreasonable use of force and the unreasonable use of taser at close  
19 range in the chest and back of individuals unjustifiably and unnecessarily.  
20 b) The unreasonable use of air choke hold force techniques used by San  
21 Diego County Sheriff Deputies unnecessarily creating a risk of death.  
22 c) The unreasonable use of force by applying body weight and kneeling on  
23 top of non combative individuals which have been handcuffed and lie on  
24 the ground. Creating unnecessary risk of death by positional asphyxia.  
25 d) The unreasonable use of force by application of the extreme restraint  
26 method device called "THE WRAP " by his San Diego Sheriff Deputies.  
27 The practice causes unnecessarily risk of death as it is used even on  
28 injured and unconscious individuals with difficulty to breath causing  
wrongful death.

69. DEFENDANT SHERIFF GORE and COUNTY have ratified all the unconstitutional practices stated above. Upon information and belief, other people have died before and after NAPOLES because of these practices. Despite the above, Defendant Sheriff GORE and COUNTY have taken no action to prevent these unconstitutional practices which may continue to result in other Deaths. None of the Deputies involved in this case have been disciplined at all.

70. DEFENDANTS SHERIFF GORE AND COUNTY knew or should have known that these practices are dangerous to the community and can result in death and violations to the United States Constitution. Therefore, the ratifying conduct as policy makers and implementers of unconstitutional practices by omission, makes proper the alleged liability under 42 U.S.C. 1983

#### **FIRST CLAIM FOR RELIEF**

Substantive Due Process- Interference with familial relationship  
(Fourteenth Amendment – 42 U.S.C. § 1983)  
(By Plaintiff Dolores Rosales against all defendants)

71. Plaintiff repeats and re-alleges each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

72. Decedent and Plaintiff had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that unlawfully interfere with their familial relationship as mother and son.

73. The conduct and acts of all the Defendants were undertaken under the color of law.

74. By the foregoing events of unreasonable force, and the denial of adequate and prompt medical care to the Decedent, Defendants caused an unnecessary Death. And in so doing, unlawfully interfered with the familial relationship between Plaintiff and her now dead son Marco Napoles.

75. Plaintiff has therefore been deprived of the life-long love, companionship, comfort, education, support, society, care, financial support, and sustenance of DECEDENT, and will continue to be so deprived of all of the above including life necessities such as shelter, food, medical care for the remainder of her natural life.



1 76. As a direct and legal result of Defendants unreasonable use of force, and deliberate  
2 indifference to risk of death, Decedent and plaintiff were deprived of their  
3 constitutional right to their familiar relationship.

4 77. DEFENDANTS acted and / or failed to act knowing or when they reasonably  
5 should have known that their unconstitutional acts and or omissions would cause  
6 Decedent and plaintiff to suffer irreparable harm.

7 78. The conduct of Defendants was willful, wanton, malicious, and done with  
8 deliberate disregard for the rights and safety of DECEDENT and Plaintiff, and  
9 therefore warrants the imposition of exemplary and punitive damages.

10 79. Plaintiff brings this claim in her individual capacity and as successor in interest to  
11 Decedent and seeks exemplary and general and wrongful death damages. Plaintiff  
12 also seeks costs and attorney fees under this claim pursuant 42 U.S.C. 1988.

13  
14 **SECOND CLAIM FOR RELIEF**

15 Unreasonable Search and Seizure—Excessive use of Force  
16 (Fourth and Fourteenth Amendment—42 U.S.C. § 1983)

17 (By Plaintiff Dolores Rosales against DEFENDANTS YORK, DELIMA,  
18 FIELSTRA, MCCORMICK, ADAMS, PEREZ,

19 80. Plaintiff repeats and re-alleges each and every foregoing allegation and paragraph  
20 with the same force and effect as if fully set forth herein.

21 81. The Fourth Amendment to the US Constitution as applied to State Actors by the  
22 14<sup>th</sup> Amendment provides the right of every person to be free from the use of  
23 excessive force by Sheriff Deputies and State Agents. Defendants deprived  
24 DECEDENT of his right to be free from excessive use of force when force was  
25 used against him on the at least 3 main incidents of unreasonable use of force as  
26 described and identified above. Including but not limited the use of ; Physical Force,  
27 taser, carotid arteria -air choke hold, asphyxia by body weight, and a WRAP device.

28 82. As result of Defendant's wrongful misconduct and excessive use of force,  
DECEDENT suffered extreme pain and suffering prior to his death. He lost his

1 life, he lost the enjoyment of the rest of his life. He was just 29 years old. He suffered  
2 the loss of his earning capacity and the opportunity to continue providing support  
3 to his mother.

4 83. Plaintiff lost her son, his love, his care, his companionship, comfort, education,  
5 support, society, care, financial support, and sustenance. Plaintiff will continue to  
6 suffer the loss of her son Marco every day of the rest of her life.

7 84. Plaintiff brings this claim as successor in interest to Decedent and seeks survival  
8 damages for the egregious violations to Decedent's Constitutional Rights.

9 85. Plaintiff also seeks costs and attorney fees under this claim pursuant 42 U.S.C. 1988.

10  
11 **THIRD CLAIM FOR RELIEF**

12 Unreasonable Search and Seizure—Denial of medical care and deliberate  
13 indifference to a medical emergency with risk of death  
14 (Fourth and Fourteenth Amendment—42 U.S.C. § 1983)  
15 (As to all Defendants)

16 86. Plaintiff repeats and re-alleges each and every foregoing allegation and paragraph  
17 with the same force and effect as if fully set forth herein.

18 87. The Fourth Amendment as applied to state actors by the Fourteenth Amendment  
19 protects the rights to adequate medical care and to be free from unconstitutional  
20 acts depriving a person including a pretrial detainee or arrestee of medical care and  
21 attention in a medical emergency. To the extent that Decedent was placed under a  
22 lawful arrest without conceding the legality of such arrest here, Defendants violated  
23 DECEDENT'S right to adequate medical care and to be free from punishment  
24 prior to conviction. Defendants failed to provide prompt, adequate and due medical  
25 care to NAPOLES at a critical time when he was severely injured with risk of death.

26 88. Decedent was in serious need of medical care and emergency assistance because  
27 he was subject to brutal levels of force by Defendants. Including and not limited to  
28 the following; Physical Force, taser, carotid artery -air choke hold, asphyxia by body  
weight, and the unreasonable use of a WRAP device. Despite that Decedent begged  
the Deputies for help on multiple occasions when he was in serious need of

1 emergency treatment, Defendants deliberately chose not to provide neither allow  
2 others to provide any adequate and prompt medical care until several minutes after  
3 Decedent lost consciousness. Defendants knew or should have reasonably known  
4 that immediate medical care here was crucial to save the life of Decedent.  
5 Defendants deliberately chose to ignore the emergency & the serious risk of death.

6 89. After using a taser on multiple times against NAPOLES the defendants had the  
7 legal obligation to procure immediate medical assistance to him in accordance with  
8 SDSD own policies and manuals. The evidence shows that instead of providing  
9 prompt medical care to Napoles, the Defendants deliberately engaged in more  
10 physical distress and subjected Decedent to more egregious levels and methods of  
11 unreasonable force which ultimately resulted in his death.

12 90. As a result of Defendants Deliberate Indifference to the serious need for prompt  
13 medical assistance, NAPOLES suffered extreme pre-death pain and suffering, and  
14 died after his agony. Defendants are liable for the loss of his life and the loss of  
15 enjoyment of his life. NAPOLES suffered loss of earning capacity and ability to  
16 provide support for his mother.

17 91. Defendants are liable for DECEDENT and for PLAINTIFF'S injuries because  
18 they were an integral participant and/or because they failed to intervene to prevent  
19 the violations of DECEDENT'S rights to receive vital emergency care on time.

20 92. The conduct of Defendant deputies was excessive, unreasonably, willful, wanton,  
21 malicious, and done with deliberate and reckless disregard for the rights and safety  
22 of DECEDENT and therefore warrants the imposition of exemplary damages.

23 93. Plaintiff Dolores Rosales brings this claim individually and as successor in interest  
24 seeking damages including survival damages for the violation of DECEDENT'S  
25 constitutional rights.  
26  
27  
28

**FOURTH CLAIM FOR RELIEF**

Municipal Liability—Ratification (42 U.S.C. § 1983) (By Plaintiffs against Defendants COUNTY and SHERIFF GORE & DOES 11-20)

94. Plaintiff repeats and re-allege each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

95. At all times relevant to this complaint, Defendants acted under color of law.

96. The acts of Defendants deprived DECEDENT and Plaintiff of their rights under the United States Constitution.

97. Upon information and belief, at all relevant times, Defendant SHERIFF GORE was the upper management, supervisory personnel and final policymaker in chief and policy enforcer in chief, for Defendant COUNTY OF SAN DIEGO during the time of these events.

98. DEFENDANTS COUNTY, SHERIFF GORE and DOES 11-20 have ratified and acquiesced in the acts and constitutional violations committed by the all the Defendants against NAPOLES as alleged above. Although the majority of the acts and omissions of the acting Deputy Defendants of this case were recorded by audio and video through body cams, surveillance and cellphones, no retraining or disciplinary actions have been taken against any Deputy involved in this case.

99. The unlawful acts and omissions of the Deputy Defendants as perpetrated here against the Decedent, are just part of series of deaths that have occurred in San Diego County where SDSD Sheriffs Deputies are involved and engage in such practices in violation of the US Constitution. Despite the above, neither Defendant COUNTY nor Defendant Sheriff GORE, have taken any remedial actions for re-training or any disciplinary measure concerning the Deputies involved in this death.

100. Moreover, upon information and belief, Defendants COUNTY and SHERIFF GORE have affirmatively approved the Defendants' actions, first by failing to take remedial actions as stated above, and moreover by publicly supporting the behavior observed by their Sheriff Deputies involved.

1 101. By reason of the aforementioned acts and omissions, Plaintiff has suffered  
2 loss of the love, companionship, affection, comfort, care, society, training,  
3 guidance, and past and future support of DECEDENT. The aforementioned acts  
4 and omissions also caused DECEDENT'S pre-death pain and suffering, loss of  
5 enjoyment of life, and death.

6 102. Accordingly, Defendant COUNTY and DEFENDANT SHERIFF GORE  
7 should be liable to the Plaintiff for compensatory damages under 42 U.S.C. § 1983,  
8 for their indulgent conduct towards unconstitutional practices that have resulted in  
9 death and remain to be a serious risk of future similar deaths to the community of  
10 San Diego County if no judicial action is taken.

11 103. Plaintiff brings this claim as a successor in interest to DECEDENT and  
12 individually and seeks both survival and wrongful death damages under this claim.

13 104. Plaintiff also seeks costs and attorney's fees under this claim pursuant 42  
14 U.S.C. 1988.

15 **FIFTH CLAIM FOR RELIEF**

16 Municipal Liability—Failure to Train (42 U.S.C. § 1983)  
17 (Against Defendant COUNTY Defendant SHERIFF GORE, DOES 11-20 )

18 105. Plaintiff repeats and re-alleges each and every foregoing allegation and  
19 paragraph set forth above with the same force and effect as if fully set forth herein.  
20 The Defendants acted under color of law.

21 106. Defendants COUNTY OF SAN DIEGO, and SHERIFF GORE had  
22 deficient and inadequate training policies for its Sheriff's Department Deputies.

23 107. A low level call priority -4 being not a threat to anyone resulted in the death  
24 of a young man without legal and moral justification.

25 108. Defendants COUNTY and SHERIFF GORE should be liable for their  
26 failure to properly train the Deputies Defendants involved in the wrongful death of  
27 NAPOLES. SDSO Deputies showed by way of their own body cam videos their  
28 poor training and the deliberate indifference to NAPOLES' constitutional rights.

1 109. The failure to train is so closely related to the deprivation of the  
2 DECEDENT'S and Plaintiff's rights as to being the actual moving force that  
3 caused the ultimate death of NAPOLES for the following inadequate training  
4 considerations:

- 5 a. SDSD staff are inadequately trained with respect to the use of force against  
6 members of the society and human beings. Inadequately trained also as to  
7 methods of restraint allowed and not allowed within SDSD policies.
- 8 b. SDSD Deputies are inadequately trained with respect to de-escalating risk  
9 to engage in use of force in situations involving low level of priority 911 calls
- 10 c. SDSD Deputies are inadequately trained with respect to handling situations  
11 involving subjects who appear to have a medical condition or some form of  
12 personal situation causing anxiety, nervousness or fears to an otherwise  
13 normal person.
- 14 d. SDSD staff are inadequately trained to summon immediate medical care for  
15 detainees in serious need for medical emergency care after use of force.
- 16 e. SDSD staff are inadequately trained to summon medical care for a detainee,  
17 or have a detainee medically evaluated, who has been subject to the use of  
18 taser, especially when used excessively and unjustifiably in many occasions.
- 19 f. SDSD staff are inadequately trained as to the use of the "WRAP" device on  
20 injured individuals requiring immediate emergency medical care.

21  
22 113. By reason of the aforementioned failure to train and omissions, Plaintiff has  
23 suffered loss of the love, companionship, affection, comfort, care, society, training,  
24 guidance, and past and future financial support of DECEDENT. The  
25 aforementioned acts and omissions also caused DECEDENT'S pre-death pain and  
26 suffering, loss of enjoyment of life, and death.

27 114. Accordingly, Defendant COUNTY is liable to the Plaintiff for compensatory  
28 damages under 42 U.S.C. § 1983.

1 115. Plaintiff brings this claim as a successor in interest to DECEDENT and  
2 seeks both survival and wrongful death damages under this claim. Plaintiff also  
3 seeks costs and attorney's fees under this claim.  
4

5 **SIXTH CLAIM FOR RELIEF**

6 Municipal Liability—Unconstitutional Custom or Policy (42 U.S.C. § 1983)  
7 (Against Defendants COUNTY and SHERIFF GORE and DOES 11-20)  
8

9 117. Plaintiffs repeat and re-allege each and every foregoing allegation and  
10 paragraph set forth above with the same force and effect as if fully set forth herein.

11 118. The individual Defendants acted under color of law.

12 119. Upon Plaintiff's information and belief on or about August 16 2018, and for  
13 at least five years prior to this deadly incident, Defendants COUNTY OF SAN  
14 DIEGO, SHERIFF GORES and DOES 11-20, have established, maintained,  
15 applied and allowed a custom, policy and practice of using and permitting the use  
16 of unnecessary and unreasonable force by;

- 17 a) Condoning peace officers code of silence through the SD Sheriff Department.  
18 b) Failing to discipline officers who engage in the use of unnecessary unreasonable  
19 force resulting in injury or death.  
20 c) Failure to adequately supervise and control officers known or who reasonably  
21 should have known to have used unnecessary and unreasonable force.  
22 d) Failure to adequately supervise and control officers known or who reasonably  
23 should have known to have used unnecessarily and excessively their taser guns.  
24 e) Failure to adequately supervise and control officers known or who reasonably  
25 should have known to have used unnecessarily and dangerously the WRAP.  
26 f) Failure to adequately supervise and to train deputies in a manner that is safe and  
27 consistent with civil police forces.  
28

1 120. By reason of the aforementioned customs and practices, Plaintiff have  
2 suffered the loss of the love, companionship, affection, comfort, care, society,  
3 training, guidance, and past and future financial support of DECEDENT. The  
4 aforementioned acts and omissions also caused DECEDENT'S pre-death pain and  
5 suffering, loss of enjoyment of life, and death. Accordingly, Defendant COUNTY  
6 and SHERIFF GORE shall be liable to the Plaintiff for compensatory damages  
7 under 42 U.S.C. § 1988. Plaintiff DOLORES ROSALES brings this claim  
8 individually and as a successor in interest to DECEDENT and seeks both survival  
9 and wrongful death damages under this claim.

10  
11 **SEVENTH CLAIM FOR RELIEF**

12 Negligence (Cal. Govt. Code § 820 and California Common Law)

13 (Wrongful Death)

14 (By Plaintiff against ALL Defendants in this complaint)

15 121. Plaintiffs repeat and re-allege each and every foregoing allegation and  
16 paragraph set forth above with the same force and effect as if fully set forth herein.

17 122. The actions and inactions of Defendants were negligent and reckless,  
18 including but not limited to:

- 19 a. The negligent use of unreasonable force against NAPOLES on several  
20 occasions and for a long period of time causing ultimately his death.  
21 Including but not limited to physical force, taser, carotid arteria -air choke  
22 hold, positional asphyxia by application of body weight, the WRAP device.
- 23 b. The negligent handling of the situation with DECEDENT, including, but  
24 not limited to, negligently making use of a taser upon DECEDENT on  
25 several times, to both chest and back and by shooting mode and stun mode.
- 26 c. The negligent tactics and handling of the situation with DECEDENT,  
27 including, negligently placing the DECEDENT in the "WRAP" restraint  
28 device when he was already unconscious, after being tasered and subject to



1 air choke hold restraints and other methods of force in multiple occasions,  
2 all instead of medically evaluating and providing emergency medical care.

3 d. The negligent failure to medically evaluate him while he was having a medical  
4 emergency and going through medical distress as clearly seen on the video  
5 recordings.

6 e. The negligent failure to render timely medical aid to the decedent when he  
7 was in a state of medical emergency and distress.

8 f. The negligent failure to allow the paramedics to provide timely medical  
9 emergency care to the Decedent.

10 g. The negligent training and failure to train SDDS sheriffs on the issues and  
11 topics set forth above in this complaint.

12 139. As a direct and proximate result of Defendants' negligence, DECEDENT  
13 died and Plaintiff was deprived of the life-long love, companionship, comfort,  
14 support, society, care and sustenance of her son, and will continue to be so deprived  
15 for the remainder of her natural life.

16 140. COUNTY is vicariously liable for the wrongful acts of its employees  
17 pursuant to section 815.2(a) of the California Government Code, which provides  
18 that a public entity is liable for the injuries caused by its employees within the scope  
19 of the employment if the employee's act would subject him or her to liability.

20 141. The conduct of Defendants was malicious, wanton, oppressive, and  
21 accomplished with a conscious disregard for the rights of the Plaintiff and  
22 DECEDENT, entitling the Plaintiff, individually and as successor-in-interests to  
23 DECEDENT to an award of exemplary damages in the interest of justice.

24 142. Plaintiff seeks wrongful death and survival damages under this claim.  
25 Plaintiffs also seek costs, interest and attorneys' fees under §1021.5.  
26  
27  
28

**EIGHT CLAIM FOR RELIEF**

Violation of Bane Act (Cal. Civil Code §52.1 and California Common Law)  
(Plaintiff against ALL Defendants in this complaint)

143. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

144. Defendants used objectively unreasonable force against the DECEDENT and used violence, intimidation, threats, including techniques specifically intended to threat, to cause intimidation, coercion , to cause pain, suffering, and the ultimately to cause death of the DECEDENT in violation of his rights under the US Constitution, under The California State Constitution, and under fundamental concepts of human rights.

145. DECEDENT was subject to cruel suffering and agony losing his very young life to no reason. The conduct of Defendants was a substantial factor in causing DECEDENT'S DEATH. Thus, they should be liable for the death caused.

146. The conduct of Defendants was malicious, wanton, oppressive, and accomplished with a conscious disregard for the rights of DECEDENT. Plaintiff seeks remedies by award of exemplary damages, except as to the COUNTY.

147. Plaintiff brings this claim in her capacity as successor in interest to the decedent and seeks survival damages under this claim. Plaintiff also seeks costs, interest, and attorneys' fees under §52.1 and §1021.5.

**NINTH CLAIM FOR RELIEF**

False Imprisonment- Under CA Claim

(By Plaintiff against DEFENDANTS YORK, DELIMA AND FIELSTRA)

123. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

124. Defendants YORK, DELIMA AND FIELSTRA by intentional acts with the use of force confined Decedent into a bounded area by the use of unreasonable force causing damages resulting in Death without legal justification.

1 125. NAPOLES was a licensee at the commercial premises of the Gas Station.  
2 Upon Defendant YORK's request to leave NAPOLES complied and left. At the  
3 time when Defendant YORK approached NAPOLES for a second time,  
4 NAPOLES was walking towards the sidewalk area of the Gas Station which is  
5 public property not private. Defendants conduct was a substantial factor in causing  
6 the death of DECEDENT and damages to Plaintiff.

7 126. Plaintiff seeks both survival and wrongful death damages under this claim,  
8 as well as costs, interest, and attorneys' fees under §1021.5.

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

13  
14 **TENTH CLAIM FOR RELIEF**

15 Battery (Cal. Govt. Code § 820 and California Common Law)  
16 (Wrongful Death)

(By Plaintiff against all Defendants except COUNTY and SHERIFF GORE)

17 128. Plaintiff repeats and re-allege each and every foregoing allegation and  
18 paragraph set forth above with the same force and effect as if fully set forth herein.

19 129. Defendants used excessive and unreasonable force against NAPOLES on  
20 several occasions as pleaded above to which NAPOLES did not consent and which  
21 caused NAPOLES' death.

22 130. As a direct and proximate result of Defendants' conduct as alleged above,  
23 the Plaintiff has been deprived of the life-long love, companionship, comfort,  
24 support, society, care, financial support, and sustenance of her loving son  
25 NAPOLES, and she will continue to be so deprived for the remainder of her  
26 natural life. The conduct of Defendants was malicious, wanton, oppressive, and  
27 accomplished with a conscious disregard for the rights of Plaintiff and  
28

1 DECEDENT, entitling the Plaintiff, individually and as successor-in-interests to  
2 DECEDENT, to an award of exemplary damages.

3 131. Plaintiff seeks wrongful death and survival damages under this claim, as well  
4 as costs, interest, and attorneys' fees under §1021.5. Plaintiff was financially  
5 dependent on DECEDENT.

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

11  
12 **ELEVENTH CLAIM FOR RELIEF**

13 Unreasonable Search and Seizure—Take of blood without consent or warrant  
14 (Fourth and Fourteenth Amendment—42 U.S.C. § 1983)  
(As to DEFENDANTS BUSHNELL, COUNTY AND SHERIFF GORE)

15 110. Plaintiff repeats and re-alleges each and every foregoing allegation and  
16 paragraph with the same force and effect as if fully set forth herein.

17 111. The Fourth Amendment as applied to state actors by the Fourteenth  
18 Amendment, protects the rights of the person to be protected from unreasonable  
19 searches and seizures. Defendant BUSHNELL without consent and without a  
20 warrant alleges to have obtained blood samples of the body of Plaintiff's son before  
21 he died at the hospital. To the extend the samples of blood in fact pertain to the  
22 now deceased NAPOLES, any samples obtained while he was alive without his  
23 consent and without a warrant should be considered the fruit of a poisonous tree  
24 vitiated with the flagrant unconstitutionality of Defendant's acts. The Conduct of  
25 Defendant BUSHNELL offends the fundamental notions of the 4<sup>th</sup> Amendment  
26 and the 14<sup>th</sup> Amendment, and it is the legal cause to Decedent and Plaintiff's harms.  
27  
28

112. Plaintiff brings this claim as successor in interest seeking damages including survival damages for the violation of DECEDENT'S Fourth and Fourteen Amendment rights under the United States of America Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff request entry of judgment in her favor and against the Defendants as follows:

- For compensatory damages against all Defendants, including both survival damages (pre-death pain and suffering under the federal survival claims and loss of life and loss of enjoyment of life under the federal and state survival claims) and wrongful death damages under federal and state law, in an amount to be proven at trial;

- For loss of financial support;

- For funeral and burial expenses;

- For exemplary and punitive damages against the individual defendants in an amount to be proven at trial;

For pre- and post-judgment interest at the maximum legal rate;

- For reasonable costs of this suit and attorneys' fees pursuant to; 42 U.S.C. §1988, §52.1, and §1021.5; and

- For such further other relief as the Court may deem just, proper, and appropriate.

Respectfully Submitted by:

Date: December 02, 2019

s/Jesus Eduardo Arias Esq. LL. M.

Attorney for Plaintiff

Email: [jearias@jesuseduardoarias.com](mailto:jearias@jesuseduardoarias.com)