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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARMEL GARCIA, an individual; M.Y.
AND L.Y., minors by and through their
guardian ad litem VANESSA RUIZ; L.Y., a
minor by and through his guardian ad litem
FRANCISCA URIOSTEGUI,

Plaintiffs,

v.

YUBA COUNTY SHERIFF'S
DEPARTMENT; YUBA COUNTY
SHERIFF'S DEPUTIES DOES 1-5; CITY
OF VACAVILLE; and VACAVILLE
POLICE OFFICER DOES 6-10;

Defendants.

CASE NO.: 2:19-cv-02621-KJM-DB

SECOND AMENDED COMPLAINT

1. Violation of Decedent's Fourth Amendment Rights 42 U.S.C §1983 (Excessive Force);
2. Violation of Plaintiffs' Fourteenth Amendment Rights, 42 U.S. §1983 (Familial Relations); and
3. *Monell* against CITY OF VACAVILLE.

DEMAND FOR JURY TRIAL

1 Plaintiffs, demanding a jury trial, bring this action against Defendants CITY OF
2 VACAVILLE; and VACAVILLE POLICE OFFICER DOES 6-10, inclusive, for general,
3 consequential, compensatory, punitive and statutory damages, costs and attorneys' fees resulting
4 from defendants' unconstitutional and tortious conduct, and as grounds therefore allege as
5 follows:

6 **I. PARTIES**

7 1. Plaintiff CARMEL GARCIA, mother of decedent Samuel Levi Yasko, brings this case in
8 her individual capacity and as a natural heir, successor in interest and survivor of decedent
9 Samuel Levi Yasko. She is a person described in California Code of Civil Procedure section
10 377.60(b) as persons who may bring a wrongful death action. In her own right, GARCIA brings
11 decedent's survivorship claim under 42 U.S.C. sec. 1983 for deliberate indifference, excessive
12 force, as well as her own claim for violation of 42 U.S.C. sec. 1983 for her constitutionally
protected interest in the companionship of decedent.

13 2. Plaintiffs M.Y. AND L.Y. are minors and bring their actions by and through their guardian
14 ad litem VANESSA RUIZ. The minors are individuals and natural heirs, successors in interest
15 and survivors of decedent, Samuel Levi Yasko, their father. They are persons described in
16 California Code of Civil Procedure section 377.60(a) as persons who may bring a wrongful death
17 action and who would be entitled to the property of the decedent through intestate succession. In
18 their own right, the minors bring decedent's survivorship claim under 42 U.S.C. sec. 1983 for
19 deliberate indifference, excessive force, as well as their own claim for violation of 42 U.S.C. sec.
20 1983 for their constitutionally protected interest in the companionship of decedent.

21 3. Plaintiff L.Y. is a minor and brings his action by and through his guardian ad litem
22 FRANCISCA URIOSTEGUI. The minor is an individual and natural heir, successor in interest
23 and survivor of decedent, Samuel Levi Yasko, his father. The minor is a person described in
California Code of Civil Procedure section 377.60(a) as a person who may bring a wrongful

1 death action and who would be entitled to the property of the decedent through intestate
2 succession. In his own right, the minor brings decedent's survivorship claim under 42 U.S.C. sec.
3 1983 for deliberate indifference, excessive force, as well as his own claim for violation of 42
4 U.S.C. sec. 1983 for his constitutionally protected interest in the companionship of decedent.

5 4. Defendant CITY OF VACAVILLE ("VACAVILLE") is a legal entity established under
6 the laws of the state of California with all the powers specified and necessarily implied by the
7 Constitution and laws of the State of California. VACAVILLE is a municipality located within
8 the Eastern District of California.

9 5. Defendant Officer JULIE BAILEY, an individual. Officer J. BAILEY worked for the
10 Vacaville Police Department at all times relevant hereto. Defendant is being sued in her personal
11 and official capacity.

12 6. Defendant Officer CHUCK BAILEY, an individual. Officer C. BAILEY worked for the
13 Vacaville Police Department at all times relevant hereto. Defendant is being sued in his personal
14 and official capacity.

15 7. Defendant Officer DUSTIN WILLIS, an individual. Officer WILLIS worked for the
16 Vacaville Police Department at all times relevant hereto. Defendant is being sued in his personal
17 and official capacity.

18 8. Defendant Sergeant DAVE SPENCER, an individual. Sgt. SPENCER worked for the
19 Vacaville Police Department at all times relevant hereto. Defendant is being sued in his personal
20 and official capacity.

21 9. VACAVILLE POLICE OFFICERS DOES 6-10 are defendants whose capacities are
22 unknown to plaintiffs at this time. Each of these DOE defendants is being sued in his or her
23 individual capacity.

24 10. All defendants acted under the color of law as it pertains to this complaint.

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II. JURISDICTION AND VENUE

11. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and 12132 and the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, made applicable to Defendants through the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction over plaintiffs' claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a).

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise to this action occurred in the City of Vacaville, which are located in this district.

III. STATEMENT OF FACTS

A. THE INCIDENT

13. On December 29, 2017, decedent, Samuel Levi Yasko, was working as a laborer at a construction site in Northern California. He had only just started working there, together with his brother, Joseph Sturgeon, and a friend, Jason Hays.

14. Over the course of that day, decedent had appeared despondent to his companions at work. Yasko had told his brother that he was depressed and engaged in potentially self-harming behavior. Decedent also asked his work companions if they thought he was "crazy." At one point, decedent suffered a fall during the day from a third story balcony at the job site and may have hit his head.

15. Decedent acted erratically after the fall. Sturgeon and Hays attempted to take Yasko to the hospital but he refused. After several hours of trying to persuade Yasko to leave the jobsite, at approximately 6:00 PM, decedent, the three men left the jobsite.

16. On the way back home, decedent continued acting erratically. He tried to strangle himself using the rear seatbelts, requiring Sturgeon and Hays to stop at a gas station. There, Sturgeon and Hays restrained decedent with some straps in order to get decedent to calm down. After a while, decedent seemed to calm down the trio continued driving home.

1 17. After another while, decedent again started to act erratically and got out of his ties.
2 Decedent again tried to strangle himself, causing Sturgeon and Hays to stop at a gas station in
3 Vacaville. There, Sturgeon and Hays cut the seat belts and physically restrained the decedent. At
4 some point while at the gas station, Hays called Vacaville for help. Hays informed the police that
5 decedent was having a mental health crisis and asked for help. Hays informed dispatch that he
6 and Sturgeon were holding decedent down because he was trying to commit suicide.

7 18. Vacaville dispatch contacted Vacaville police officers to go to the scene. Officer Julie
8 Bailey was the first officer to arrive on scene. At the scene, Sturgeon and Hays explained that
9 decedent had been suicidal. They also informed the officer that Yasko, who was shirtless and
10 only wearing pants, was unarmed. Officer J. Bailey instructed Sturgeon and Hays to continue
11 their efforts restraining the decedent. Specifically, Officer J. Bailey instructed Sturgeon to
12 continue applying pressure to the decedent's back as he lay in a prone position.

13 19. Thereafter, Officer Chuck Bailey arrived on scene. Officer C. Bailey immediately
14 began kneeling on decedent's upper torso as he lay in a prone position in order to keep him
15 restrained. Decedent, it should be noted, was obese, weighing over 250 pounds and being over 6
16 feet tall.

17 20. Thereafter, Sgt. Dave Spencer arrived on scene. Together, Sgt. Spencer and Officers
18 C. and J. Bailey placed their weight on decedent in order to restrain him. At that point, the
19 officers decided to place decedent in a WRAP device. Sgt. Spencer went to his vehicle to retrieve
20 the WRAP. Based on video footage of the incident, it appears that at some point at least one
21 officer physically struck the decedent and/or stomped on decedent with his foot. Additionally, it
22 appears that decedent was Tasered at some point.

23 21. When Sgt. Spencer returned with the WRAP, three officers, including Officer Dustin
24 Willis, were placing weight on decedent to keep him in a prone position in order to place
25 decedent in a WRAP device. Shortly thereafter, as the officers were handcuffing decedent and

1 placing him into the WRAP, decedent stopped breathing. Officers checked him for a pulse and
2 discovered that he had no pulse. Fire and medical was summoned. At no point did any of the
3 officers/sergeant present intervene to prevent the use of force on decedent, which ultimately led
4 to decedent's death.

5 22. At approximately 8:10 PM, fire and medical arrived at the scene and took over.
6 Decedent was thereafter taken to Vaca Valley Hospital. Decedent arrived unconscious to the
7 hospital. Decedent remained unconscious, in a coma, for over a week. On January 3, 2018,
8 decedent died.

9 **B. THE CITY OF VACAVILLE UNCONSTITUTIONAL POLICIES, CUSTOMS**
10 **AND PRACTICES**

11 23. It is well-known that all police departments, including the Vacaville Police Department,
12 regularly receive calls for assistance in connection with persons undergoing a mental health
13 crisis. Police departments, unfortunately, are on the front lines in dealing with mental health
14 problems.

15 24. Here, decedent's friends contacted Vacaville dispatch to report they needed assistance
16 with decedent, who had been trying to commit suicide. The City of Vacaville's dispatch
17 categorized the call as a mental health call.

18 25. Because police departments regularly deal with persons suffering from a mental health
19 crisis, for the past several decades police departments across the United States have developed
20 protocols to follow during such calls for service. Typically, police departments assign a crisis
21 intervention team officer (a "CIT Officer") to respond to calls dealing with mental health crises.
22 Such officers are typically trained on how to interact with persons with mental problems or in
23 crisis, and how to de-escalate the situation. This is particularly true where the call appears to be
24 one where the "suspect" may have to be 5150-ed.

1 26. In such cases, CIT Officers are given certain training to avoid the unnecessary use of
2 force on an individual who, aside from the mental health crisis, is not in any way breaking the
3 law. Such officers are trained to talk with the suspect, to not escalate the situation, to avoid using
4 physical force, to not rush the situation (i.e., time is on the side of the officers), to keep a safe
5 distance between the officers and the suspect in order to build a rapport, and, if necessary, to
6 reach out mental health professionals, such as mobile crisis response teams, for assistance. These
7 techniques have become the standard for police departments across the United States and
8 California.

9 27. Upon information and belief, the Defendant CITY OF VACAVILLE did not have
10 protocols and policies in place for dealing with suspects suffering from mental health crises.
11 Specifically, Defendant CITY OF VACAVILLE did not a policy requiring that a CIT Officer be
12 assigned to such a call for service or that a CIT Officer take command of such a situation. To the
13 contrary, it was Defendant CITY OF VACAVILLE's policy to assign the nearest officer to
14 respond to the scene involving a suspect dealing with a mental health crisis, regardless of
15 whether such an officer had any CIT training.

16 28. Upon information and belief, the Defendant CITY OF VACAVILLE had a further
17 custom, policy and/or practice of allowing its officers to physically engage the suspect having a
18 mental health crisis without first having to take steps to de-escalate the situation as described
19 above.

20 29. Additionally, Defendant CITY OF VACAVILLE had a policy, custom and practice of
21 allowing multiple officers to apply pressure on a suspect in order to cuff that person. Said policy,
22 custom and practice authorized officers to apply considerable weight to a suspect regardless of
23 whether the suspect was suffering from a mental health crisis or was overweight. Defendant
24 CITY OF VACAVILLE had a further policy of allowing its officers to use a WRAP device to
restrain suspects in a "hogtie" position.

1 30. Defendant CITY OF VACAVILLE, however, did not have rules to prevent or minimize
2 the risk of positional asphyxia, which is a common danger when weight is placed on a suspect
3 for a prolonged period of time in a prone position. This danger is further exacerbated when the
4 suspect is being restrained in connection with the use of a WRAP device and where the suspect
5 is overweight. See, e.g., <https://www.courant.com/sd-me-wrap-restraint-20170106-story.html>.

6 31. Despite said dangers associated with the use of the WRAP device and the use of
7 prolonged weight on a suspect in a prone position, Defendant CITY OF VACAVILLE had a
8 policy, practice and custom that allowed its officers to engage in such activities.

9 32. Finally, Defendant CITY OF VACAVILLE did not adequately train its officers against
10 the dangers of positional asphyxia in connection with obese suspects placed in a prone position
11 for long periods of time or in connection with the WRAP.

12 33. Similarly, Defendant CITY OF VACAVILLE did not adequately train its officers on how
13 to engage with persons suffering from mental health crises for purposes of minimizing the use of
14 force on such individuals.

15 IV. CAUSES OF ACTION

16 **FIRST CLAIM Violation of Decedent's Fourth Amendment Rights 42 U.S.C §1983** 17 **(Excessive Force as to the Individual Officers and POLICE OFFICERS DOES 6-10)**

18 34. Plaintiffs incorporate herein by reference the preceding paragraphs of this complaint as
19 fully set forth herein.

20 35. Plaintiffs GARCIA, L.Y., M.Y. and L.Y. are the heirs and successors in interest of
21 decedent and accordingly have standing under Code of Civil Procedure section 377.30 to bring
22 this claim.

23 36. All named Defendants J. Bailey, C. Bailey, Willis, and Spencer and VACAVILLE
POLICE OFFICERS DOES 6-10, acting under color of law, used unreasonable and excessive
force on December 29, 2017 (or were integral participants in the use of force thereof), by
deliberately and intentionally striking decedent, Tasing decedent, excessively restraining

1 decedent (including by having untrained civilians restrain decedent) in such a manner so as to
2 lead to positional asphyxia and ultimately killing decedent when, among other things, (i)
3 decedent had not committed any crime; (ii) decedent was unarmed; (iii) decedent did not pose
4 any threat to defendant, other officers or bystanders; (iv) defendant knew, or should have known,
5 that decedent was suffering from a mental, psychological or physical distress and (v) other
6 alternative methods were available to effectuate a seizure. Such actions were in conscious and
7 reckless disregard of the risk of injury and death and under the circumstances there was no
8 objectively reasonable basis for the defendants' actions.

9 37. As a direct result of the named Defendants and VACAVILLE POLICE OFFICERS
10 DOES 6-10's actions and inactions, decedent's constitutional rights were violated, resulting in
11 decedent's death.

12 38. The conduct of the named Defendants and VACAVILLE POLICE OFFICERS DOES
13 6-10, as alleged, was intended to cause injury to Samuel Yasko and was done in conscious
14 disregard of Samuel Yasko's rights and safety and thus constitutes malice. In addition, by his
15 conduct, the Defendant Officers subjected Samuel Yasko to cruel and unjust hardship in
16 conscious disregard of his civil rights, thus constituting oppression. Because the above acts were
17 performed in a malicious, and/or oppressive manner, decedent is entitled to recover punitive
18 damages from named Defendants and Defendant VACAVILLE POLICE OFFICERS DOES 6-
19 10 in an amount according to proof.

SECOND CLAIM

**Violation of Plaintiffs' Fourteenth Amendment Rights, 42 U.S. §1983 (Familial Relations -
As to the Individual Officers and POLICE OFFICERS DOES 6-10)**

20 39. Plaintiffs incorporate herein by reference the preceding paragraphs of this complaint as
21 fully set forth herein.

22 40. Plaintiff Carmel Garcia is decedent's mother and therefore she has a cognizable interest
23 under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to

1 be free from state actions that deprive her of life, liberty, or property in such a manner as to
2 shock the conscience, including, but not limited to, the unwarranted state interference in their
3 familial relationship with her son, decedent Samuel Yasko.

4 41. Plaintiffs LY, MY and LY are the heirs and successors in interest of decedent.

5 42. Plaintiffs LY, MY and LY by and through their guardian ad litem have a cognizable
6 interest under the Due Process Clause of the Fourteenth Amendment of the United States
7 Constitution to be free from state actions that deprive her of life, liberty, or property in such a
8 manner as to shock the conscience, including, but not limited to, the unwarranted state
9 interference in their familial relationship with their father, decedent Samuel Yasko.

10 43. Defendants and Does 6-10 deprived plaintiffs of their Fourteenth Amendment rights,
11 and those rights and privileges and immunities secured by the Constitution and applied to the
12 states through the Fourteenth Amendment by deliberately and intentionally beating, excessively
13 restraining, and ultimately killing decedent when, among other things, (i) decedent had not
14 committed any crime; (ii) decedent was unarmed; (iii) decedent did not pose any threat to
15 defendant, other officers or bystanders; (iv) defendant knew, or should have known, that
16 decedent was suffering from a mental, psychological or physical distress; and (v) other
17 alternative methods were available to effectuate a seizure. Such actions were outrageous and
18 shock the conscience.

19 45. The aforementioned actions of defendants, while acting under color of state law, and
20 without due process of law, violated the substantive due process rights of Plaintiffs to be free
21 from unwarranted interference with their familial relationship with decedent.

22 **THIRD CLAIM**

23 **Violation of Plaintiffs' Fourteenth Amendment Rights, 42 U.S. §1983 (Familial Relations - As to the Individual Officers and POLICE OFFICERS DOES 6-10)**

24 46. Plaintiffs incorporate herein by reference the preceding paragraphs of this complaint as
fully set forth herein.

1 47. Defendant CITY OF VACAVILLE, who deprived Plaintiff of his rights, privileges,
2 and immunities secured by the United States Constitution, by, among other things, having a
3 policy, custom and practice of not assigning CIT Officers to respond to mental health crisis calls;
4 of not requiring officers to de-escalate their interactions in 5150 situations; failing to train, or
5 inadequately training, its officers on how to deal with persons suffering from psychiatric or
6 psychological problems. Defendant VACAVILLE also has a widespread or longstanding custom
7 and practice of not providing assistance to individuals suffering from psychiatric or
8 psychological problems, which failures, together with its lack of, or inadequate, training of its
9 officers amounts to deliberate indifference towards the constitutional rights of individuals, such
10 as Samuel Yasko.

11 48. Defendant CITY OF VACAVILLE, further deprived Plaintiff of his rights, privileges,
12 and immunities secured by the United States Constitution, by, among other things, having a
13 policy, custom and practice of allowing officers to place considerable weight for prolonged
14 periods of time on suspects in a prone position; utilizing a WRAP restraint on non-violent
15 individuals; and failing to train, or inadequately training, about the dangers of positional
16 asphyxia and the WRAP. Defendant VACAVILLE also has a widespread or longstanding
17 custom and practice of not providing assistance to individuals suffering from psychiatric or
18 psychological problems, which failures, together with its lack of, or inadequate, training of its
19 officers amounts to deliberate indifference towards the constitutional rights of individuals, such
20 as Samuel Yasko.

21 49. All of the above policies, customs and practices were moving forces behind the
22 Plaintiff's constitutional injuries as said policies, customs and practices make it predictable that
23 constitutional violations would take place and, at all times relevant hereto, the individually
24 named defendants were acting in compliance with said policies, customs and practices.

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V. PRAYER FOR RELIEF

Plaintiffs pray for judgment against defendants as follows:

1. For compensatory damages and other special damages according to proof;
2. For general damages according to proof;
3. For punitive damages against all individual defendants according to proof;
4. The prejudgment interest at the legal rate according to proof;
5. For costs and reasonable attorneys' fees as provided by law; and
6. For such other relief as the Court may deem fit and proper.

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VI. JURY DEMAND

Plaintiffs demand a jury trial in this action.

Respectfully submitted,

LAW OFFICE OF FULVIO F. CAJINA

Dated: November 16, 2020

/s/ Fulvio F. Cajina

FULVIO F. CAJINA
Attorneys for Plaintiffs