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

ROWDY PAUU, an individual,

Plaintiff,

v.

COUNTY OF SAN DIEGO;
WILLIAM GORE in his individual
capacity; DAVID LOVEJOY in his
individual capacity; JONATHON
YOUNG in his individual capacity;
and DOES 1-25

Defendants.

CASE NO. 23-CV-00961-TWR-SBC

FIRST AMENDED COMPLAINT

- 1) **Excessive Force (42 U.S.C. §1983)
Unconstitutional Seizure under
the Fourth Amendment**
- 2) **Excessive Force (42 U.S.C. §1983)
Due Process Violation under the
Fourteenth Amendment**
- 3) **Failure to Properly Supervise and
Discipline (42 U.S.C. §1983)**
- 4) **Monell (42 U.S.C. §1983)**

JURY TRIAL DEMANDED

1 COMES NOW, ROWDY PAUU, an individual, by his attorneys of record,
2 alleges and complains as follows:

3 **I. INTRODUCTION**

4 Detective Rowdy Pauu of the National City Police Department is a member
5 of the San Diego County Regional Auto Theft Task Force (RATT), a task force run
6 by the office of the District Attorney. On February 16, 2022, Detective Pauu was
7 canvassing the El Cajon area in an unmarked police cruiser, searching for stolen
8 vehicles as part of the task force. Detective Pauu and his colleagues, who were in
9 unmarked cars, began pursuit of a suspect. When the pursuit came to a stop, for
10 everyone's safety, they situated themselves around the suspect and waited for
11 sheriff's deputies to arrive in their marked patrol vehicles. They were in a cul-de-
12 sac.

13 When defendant deputies Lovejoy and Young arrived, they parked their
14 marked vehicles at the entrance of the cul-de-sac. The suspect was surrounded by
15 law enforcement, with the deputies' cars blocking the only way out. Deputies
16 Lovejoy and Young, the only law enforcement officials in uniform, did nothing to
17 coordinate the use of force with Detective Pauu and two other detectives, who were
18 standing on the other side of the suspect. The three officers had already positioned
19 themselves at the end of the cul-de-sac in order to surround the suspect and they
20 were visible to the defendants.

21 Defendants were about 50 feet from the suspect when he came out of his car.
22 Lovejoy and Young gave no warning that they would shoot. Defendant deputies
23 discharged their weapons indiscriminately at or towards the three detectives
24 spraying them with bullets a total of 17 times, one of the bullets striking Detective
25 Pauu in the leg. A second bullet whizzed by the other two detectives and went
26 through the garage door of the house immediately behind them. The bullet then hit
27 a car. The shooting was done intentionally and volitionally.

1 These deputies were concerned with neither the safety of law enforcement
2 officers on scene nor of the bystanders when they fired their weapons. Lovejoy and
3 Young were standing behind the doors of their patrol cars. They had no need to
4 immediately and recklessly fire their weapons. They knew that other law
5 enforcement officers were on the scene, directly downrange from where they were
6 shooting.

7 After shooting Rowdy Pauu, Deputy Lovejoy told the members of the task
8 force that he had seen Detective Pauu in his line of sight but he shot anyway
9 because he thought “he could make it.” It was reckless in the extreme to shoot a
10 deadly weapon seventeen times, knowing that fellow officers were in their line of
11 fire. This conduct of shooting at fellow officers downrange violates the
12 Constitution and the rules that all California peace officers are required to follow.
13 Defendants were either plainly incompetent or they knowingly violated the law.

14 Detective Pauu has endured pain, discomfort, anxiety and fear in the months
15 since this incident. Doctors are not able to remove the bullet from his leg for fear
16 of exacerbating his injuries. Detective Pauu will have to live with a bullet in his
17 leg as a constant reminder of the night his life was endangered.

18 **II. GENERAL ALLEGATIONS**

19 1. Jurisdiction is proper in the United States District Court for the
20 Southern District of California pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §
21 1343(3) and (4), et seq.

22 2. Venue is proper in the Southern District of California because the acts
23 or omissions which form the basis of Plaintiff’s claims occurred in San Diego
24 County, California, within the Southern District.

25 3. At all times relevant to this complaint, Plaintiff Rowdy Pauu was an
26 individual residing in San Diego County, California.

27 4. Defendant County of San Diego is a public entity, duly organized and
28 existing under the law of the State of California.

1 5. Defendant William Gore was, at all times mentioned herein, the
2 Sheriff of the County of San Diego, the highest position within the San Diego
3 County Sheriff's Department. As Sheriff, Defendant Gore was responsible for
4 hiring, screening, training, retention, supervision, discipline, counseling, and
5 control of all San Diego County Sheriff's Department custodial employees and/or
6 agents, contractors, and Doe Defendants.

7 6. The conduct alleged herein occurred while Defendant Gore was the
8 Sheriff, before his retirement on February 3, 202. Those failures over several
9 decades led to, and caused, the events on February 16, 2022.

10 7. At all times relevant to this complaint, Defendant William Gore was
11 a policy-maker for the San Diego Sheriff's Department (hereinafter "Sheriff's")
12 and was responsible for promulgation of policies and procedures to comply with
13 the California state mandates and the state and federal Constitutions. He was
14 responsible for the supervision and control of officers who are or were employed
15 by the Sheriff's, who are under his command and/or who report to him, including
16 the Defendants to be named.

17 8. At all times relevant to this complaint, Defendant David Lovejoy, was
18 a deputy with the San Diego County Sheriff's Department who fired his weapon at
19 or towards Rowdy Pauu a total of twelve times.

20 9. At all times relevant to this complaint, Defendant Jonathon Young,
21 was an officer with the San Diego County Sheriff's Department who fired his
22 weapon at or towards Rowdy Pauu a total of five times.

23 10. Upon information and belief, either Lovejoy or Young hit Detective
24 Pauu in the leg with a bullet.

25 11. At all times relevant to this complaint, all individual defendants and
26 Does were San Diego sheriff deputies and agents of Defendant County of San
27 Diego; and/or its agents or contractors authorized to work for the County of San
28 Diego.

1 12. Plaintiff is ignorant of the true names and capacities of Does 1 through
2 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff
3 will amend this complaint to allege their true names and capacities when
4 ascertained. The Doe defendants were supervisors who oversaw policies and
5 procedures, training, supervision and discipline of deputies, including Young and
6 Lovejoy.

7 13. Doe 1 is believed to be the policymaker and/or the decisionmaker for
8 the Sheriff's department, responsible for the final decision making as to the discipline
9 of defendants Lovejoy and Young. Doe 1 ratified the actions of Lovejoy and Young
10 by failing to take any action after the shooting. Confronted with the facts that
11 Lovejoy and Young shot 17 times at fellow officers, Doe 1 did nothing.

12 14. Doe 2 is believed to be the official who made the decision to use
13 different channels of communication for the deputies in joint task operations.

14 15. Plaintiff is informed and believes and thereon alleges that each of
15 these fictitiously named defendants is responsible in some manner for the
16 occurrences herein alleged, and that plaintiff's injuries as herein alleged were
17 proximately caused by the aforementioned defendants.

18 16. Plaintiff is informed and believes and thereon alleges that at all times
19 alleged herein mentioned each of the defendants was the agent and employee of
20 each of the remaining defendants and, in doing the things hereinafter alleged, was
21 acting within the course and scope of such agency and employment.

22 **III. FACTS REGARDING THE SHOOTING OF ROWDY PAUU**

23 17. Plaintiff realleges all prior paragraphs of this complaint and
24 incorporate the same herein.

25 18. At the time of the incident, Rowdy Pauu was 36 years old.

26 19. Rowdy was a detective for the National City Police Department and
27 was a member of the San Diego County Regional Auto Theft Task Force
28 ("RATT"), a task force run by the office of the District Attorney.

1 20. Detective Pauu had been recognized as Officer of the Year by the Auto
2 Theft Advisory Committee.

3 21. Most members of the task force were undercover detectives from
4 various police departments across the county working in plain clothes.

5 22. The task force included the Sheriff's Department, whose deputies in
6 marked cars and uniform would coordinate the arrest. Because the task force
7 involved catching auto thieves who would attempt to evade law enforcement by
8 driving from one city to another, it required multi-jurisdiction involvement and
9 coordination across the County of San Diego.

10 23. On the evening of February 16, 2022, Detective Pauu was canvassing
11 the El Cajon area, looking for stolen vehicles. He and his partners were in plain
12 clothes and in unmarked cars.

13 24. Detective Pauu and his colleagues began pursuit of a suspect who had
14 stolen a trailer.

15 25. During their pursuit, they attempted to contact the San Diego Sheriff's
16 Department to help with the apprehension of the suspect.

17 26. Instead of being able to communicate directly with Sheriff's Dispatch,
18 the detectives had to contact a sheriff's deputy using a cell phone, who then relayed
19 the information to Dispatch, which then communicated with the deputies who came
20 to the scene. This was because the Sheriff's Department was using two separate
21 methods of communication.

22 27. The officers on the task force had been given radios that did not
23 communicate directly with Sheriff's Dispatch.

24 28. The use of two communication channels was dangerous and reckless.
25 This prevented the RATT members from communicating directly with uniformed
26 officers who would be taking charge of the potentially dangerous felony stop.

27 29. This failure to coordinate communication was particularly dangerous
28 given that RATT members are undercover and unknown to the Sheriff deputies.

1 RATT members conduct their operation in the dark at night when car thieves are
2 most active.

3 30. The dangers of using two channels were obvious to the County of San
4 Diego because it is a participant in the task force and knew that members would be
5 facing an uncertain and often volatile situations every night.

6 31. The failure to be on the same radio channel forced the RATT members
7 to play telephone, using their cell phones to relay messages to Dispatch which
8 would then replay the message to the deputies.

9 32. Defendants Lovejoy and Young were not members of RATT. They
10 worked out of the Sheriff's Lakeside substation.

11 33. Detective Pauu and his colleagues were in unmarked patrol cars.

12 34. When the suspect came to a stop, they situated themselves around the
13 suspect in a cul-de-sac and waited for sheriff's deputies to arrive in their marked
14 patrol vehicles.

15 35. This was for the safety of the officers, the suspect and the residents in
16 the neighborhood.

17 36. When Defendants Lovejoy and Young arrived to the scene, Detective
18 Pauu was situated behind the suspect.

19 37. Two other detectives were standing near Detective Pauu, also
20 downrange from the defendants.

21 38. Because of the way in which defendants parked their patrol cars at the
22 entrance of the cul-de-sac, they had blocked the only way out.

23 39. The headlights from their patrol cars were illuminating in the direction
24 of the detectives at the other end of the cul-de-sac. Defendants knew that the
25 detectives were there.

26 40. Defendants Lovejoy and Young were about fifty (50) feet from the
27 suspect when he produced a knife and was stumbling around. The suspect was
28

1 surrounded by law enforcement in a cul-de-sac with the deputies' vehicles blocking
2 the only way out.

3 41. At the time the two deputies started shooting without a warning, the
4 suspect was moving towards the ground. The suspect had made no movement
5 towards the deputies or anyone else.

6 42. The suspect had made no threats against anyone.

7 43. At the time of the shooting, the suspect was complying with the
8 commands.

9 44. The suspect was moving to the side and not towards anyone as he was
10 going down to the ground.

11 45. The situation was de-escalating.

12 46. Defendants Lovejoy and Young discharged their firearms multiple
13 times, striking Detective Pauu in the leg.

14 47. They discharged their weapons a total of seventeen times.

15 48. At least one of the bullets entered a garage of a home and hit a car that
16 was parked inside.

17 49. At the time of the shooting, Detective Rowdy's two partners were
18 standing in front of that garage.

19 50. The bullets whiz by them as they were standing there.

20 51. No detective, including Detective Pauu, moved away from their
21 positions before the shooting because there was no warning given to them that shots
22 would be fired.

23 52. Immediately before the shooting, one of the detectives was about to
24 caution the team about the potential for crossfire due to the positioning of the
25 deputies when they arrived at the scene.

26 53. They needed to communicate and coordinate their movements
27 because it would have been dangerous for the detectives to move out of the V of
28

1 their car doors and expose their bodies to either cross fir or some potential danger
2 the suspect could have posed.

3 54. It was not possible for the detectives to communicate to Deputies
4 Lovejoy and Young their concern for crossfire because the deputies did not have
5 the same radio channel.

6 55. Before the officers could coordinate movement to avoid crossfire, the
7 defendants shot at the detectives.

8 56. With no warning and no coordination, defendants shot directly at or
9 towards the detectives indiscriminately, knowing that officers were downrange and
10 at great risk of being harmed or killed. They did so without a care or consideration
11 as to who they hit.

12 57. Defendants shot at the detectives intentionally and volitionally. They
13 did not accidentally discharge their weapons.

14 58. As a result, they seized Rowdu Pauu with a bullet.

15 59. This seizure was a reasonably foreseeable consequence of their
16 intentional conduct in shooting 17 times directly at or in his direction, knowing that
17 he was there.

18 60. The three detectives suddenly heard the shots and ran away from the
19 hail of bullets and took cover, not knowing what was happening.

20 61. After shooting Detective Pauu, Defendant Lovejoy told members of
21 the task force that he saw Detective Pauu in his line of sight, but he fired anyway
22 because he thought he “could make the shot.”

23 62. Lovejoy and Young had the opportunity to deliberate before
24 recklessly shooting when there was no imminent threat to them.

25 63. They were in a residential neighborhood.

26 64. Defendants Lovejoy and Young were not concerned with the safety of
27 law enforcement officers on scene or bystanders when they fired their weapons.

28

1 65. Defendants Lovejoy and Young were standing behind the doors of
2 their patrol cars and had no need to immediately and recklessly fire their weapons.

3 66. Defendants Lovejoy and Young were fundamentally involved in the
4 reckless or deliberately indifferent conduct that caused Detective Pauu to be shot
5 in the leg.

6 67. Their conduct in shooting at or in the direction of the deputies was
7 objectively unreasonable. No other law enforcement official used any level of
8 force because there was no need for any level of force.

9 68. This conduct in shooting at fellow police officers when there was no
10 justification violates the Constitution and the minimum standards required of all
11 certified peace officers in the state of California. Defendants were either plainly
12 incompetent by not knowing the rules related to the use of lethal force or they
13 knowingly violated the law.

14 69. Detective Pauu has endured pain, discomfort, anxiety and fear in the
15 months since this incident. He was not able to work for approximately four (4)
16 months, during which time Detective Pauu suffered from the added anxiety and
17 uncertainty about his future.

18 70. Doctors are not able to remove the bullet from his leg for fear of
19 exacerbating his injuries. He has been consistently attending physical therapy but
20 will most likely deal with this pain and the reminder for the rest of his life.

21 **IV. FACTS REGARDING PRIOR INCIDENTS**

22 71. San Diego County Sheriff's Department has a long history of failing
23 to train, supervise or discipline its employees on the use of force.

24 72. In 2010, a deputy named Jason Philpot was involved in a beating of a
25 man who was protesting the detention of his brother based on a mistake. Philpot
26 and other deputies caused two felonies to be charged against the brothers. The
27 Superior Court dismissed the charges against the plaintiffs at a preliminary hearing.
28 Three months after that incident, Deputy Philpot was involved in another incident

1 in which he repeatedly punched a man, who was in his own home, in the face,
2 fracturing his eye socket. Deputy Philpot instigated a false criminal case against
3 the victim for resisting an officer (P.C. § 148). The man was acquitted in a jury
4 trial.

5 73. Approximately one month after this incident, Deputy Philpot was
6 promoted to the Sheriff's Training Division, to teach recruits and other deputies
7 defensive tactics and use of force.

8 74. Deputy Philpot maintained a Myspace page, which included his name,
9 photographs of him, and his Myspace moniker 'Knuckle Sandooch.' Also on
10 Deputy Philpot's Myspace page was a drawing of a police officer with the
11 following statement: 'I'm going to kick your ass AND GET AWAY WITH IT.'
12 Also on the page was a photo of a handgun, entitled "Music." Deputy Philpot listed
13 his occupation as "Waste Management", a couple of inches below a photograph of
14 a deputy sheriff on top of a man, choking him. Sheriff's Department took no action
15 against Philpot but promoted him to a position where he trained other deputies.

16 75. In 2017, Deputy Philpot medically retired after a man shot him. The
17 shooting occurred after Philpot and his brothers got into a physical altercation with
18 the man following a Metallica concert. According to the shooter, Philpot and his
19 brothers advanced towards him, prompting him to shoot in self-defense.

20 76. In 2015, deputies shot and killed a suicidal man named Gary
21 Kendrick, who was standing with his arms outstretched, parallel to the ground.
22 After they shot and killed him, deputies locked his wife in the back of a police car,
23 transported her to a police station, placed in a guarded interrogation room for
24 almost four hours, and then subjected her to two and a half hours of questioning.
25 There was no Internal Affairs investigation of the deputies involved in that case for
26 their conduct.

27 77. In 2015, Lucky Phounsy's family called 911 to get help for his mental
28 health. Deputies Tasered him, beat him and put him in carotid restraint, killing

1 Lucky. There was no Internal Affairs investigation of the deputies involved in the
2 death of Lucky Phounsy. The primary deputy to cause Lucky's death, Richard
3 Fischer, was never disciplined or investigated. Three years later, after sixteen
4 women accused him of sexually assaulting them, Fischer was charged with
5 multiple counts of felonies. For over a year, the Sheriff's Department ignored
6 complaints by victims that Fischer had raped them.

7 78. In March 2016, San Diego Sheriff's Deputy Jason Phillips shot a man
8 through his car window five times. The chain of events that culminated with the
9 shooting at 2 a.m. that Sunday morning began with a retirement party for a San
10 Diego County sheriff's sergeant the night before. Phillips, a sheriff's detective, had
11 been drinking heavily at the party and then gone to the bar afterwards. Phillips was
12 suspended for four days not for the shooting, but because he was carrying a gun
13 while drinking alcohol.

14 79. During the investigation that followed, Phillips was interviewed with
15 his attorney present. When the Sheriff's Department interviewed the victim, Mr.
16 Blanco, the detectives repeatedly challenged him, telling him he was not telling the
17 truth. The detectives tested the blood alcohol level of the victim, but not that of
18 any of the deputies involved in the shooting.

19 80. In 2017, Sheriff's deputies approached Kristopher Birtcher, a mentally
20 impaired man, in response to calls expressing concern about decedent's welfare.
21 Deputies repeatedly Tased Mr. Birtcher; struck and beat him; forced him to lay
22 prone on the ground, face down, in restraints as multiples deputies pressed down
23 on him; used a spit sock to cover his face; and ultimately killed Mr. Birtcher.

24 81. There was no Internal Affairs investigation of the deputies involved
25 in the death of Kristopher Birtcher. There was no request made to Internal Affairs
26 to conduct an investigation of the deputies in this case.

27 82. On February 28, 2018, Sheriff's deputies arrested Oscar Leal at his
28 apartment in Vista. Deputies pepper sprayed Leal who was handcuffed. Leal

1 became unresponsive and was pronounced dead at Tri-City Medical Center, 90
2 minutes after deputies first arrived at Leal’s apartment. The Medical Examiner’s
3 autopsy report noted “minor blunt force injuries of the head, torso and extremities,
4 with abrasions, ecchymoses (bleeding under the skin) and areas of superficial
5 laceration surrounding both wrists ... consistent with the clinical history of being
6 restrained in handcuffs[.]” The Medical Examiner classified the manner of death
7 as a homicide.

8 83. In lieu of proper investigation, discipline and training, Sheriff Gore
9 issued a statement to the Union Tribune that he disagrees with the classification of
10 the manner of death in the Leal case as a homicide. He then faulted Mr. Leal for
11 his own death.

12 84. In May 2020, Sheriff’s Deputy Aaron Russell was charged with
13 murder after he shot a mentally ill man who was running away after escaping from
14 a police vehicle. The victim, Nicolas Bils, presented no threat when he was shot in
15 the back and killed. Even after Deputy Russell pled guilty, the department failed to
16 train its deputies on the proper use of lethal force.

17 85. In March of 2022, a Sheriff’s Deputy, Jason Bunch, in plain clothes,
18 served an eviction notice on Dr. Yan Li. When she answered the door, Dr. Li was
19 holding a kitchen knife. Deputy Bunch immediately started screaming and cursing
20 at Dr. Li, threatening to use deadly force if she did not drop the knife. Dr. Li was
21 asking for a badge because she was unsure as to who he was. Bunch pointed a gun
22 in her face and continued to curse and scream at her. At no time did Dr. Li point
23 the knife at anyone or make threats. Three deputies later breached the home and
24 shot her dead after she ran out with a knife. She had committed no crime at the
25 time they entered her home. While Dr. Li’s shooting took place two weeks after
26 defendants shot Detective Pauu, the failure to train and supervise Bunch predated
27 this incident and shows a continuing and widespread culture of lawlessness in the
28 department resulting from the County’s failures.

1 86. The County was aware that the lack of discipline and training led to
2 deputies continuing their unconstitutional conduct. Despite this knowledge, they
3 continued their failure to take action. For example, in 2018, Deputy Rudy Peraza
4 violently pulled inmate Anthony Bolden by his waist chain through the tray slot of
5 a jail cell door that was shut. Peraza then repeatedly Tased Bolden, continuing to
6 Tase him as Mr. Bolden lay in pain in shackles on the ground. Peraza faced no
7 consequences. One year later, in 2019, Peraza walked up to Miguel Villa and
8 punched him in the face multiple times. Mr. Villa was in restraints on a gurney at
9 the time and posed no threat to anyone. Peraza held Mr. Villa's head with his left
10 hand and punched him in the face five or six times with a closed fist until Mr. Villa
11 fell off the gurney. While Mr. Villa was on the ground still in full restraints, Peraza
12 then dropped onto his knee on Mr. Villa's head, putting his weight on it. Peraza
13 weighed approximately 250 pounds. Peraza remained on Mr. Villa's head until
14 another deputy tapped Peraza on the back. The San Diego police officers who had
15 brought Mr. Villa to the jail for booking filed a complaint with Internal Affairs of
16 the Sheriff's Department. It was only then that the Sheriff's department initiated an
17 investigation and suspended Peraza for ten days.

18 87. There has been a culture of covering up misconduct, with a *de facto*
19 policy of ignoring the use of improper force, including lethal force. The
20 supervisors failed to discipline and train deputies who violated citizens'
21 constitutional rights, often refusing to accept citizen complaints or failing to open
22 an investigation. When Lee Lacy filed a complaint with the Department after a
23 deputy named Randall Ribada attacked Mr. Lacy unprovoked, a Lieutenant
24 Donahue of Internal Affairs notified Mr. Lacy that an investigation had been
25 conducted and determined Mr. Lacy's allegations to be unfounded. No Internal
26 Affairs investigation had actually been conducted. This has been a common
27 practice.

1 88. The continuing pattern of the department's failure to curb
2 unconstitutional conduct by its employees was made known to defendants through
3 complaints by victims, lawsuits and media coverage:
4 [https://www.sandiegouniontribune.com/news/watchdog/story/2020-05-](https://www.sandiegouniontribune.com/news/watchdog/story/2020-05-31/excessive-force-negligence-lawsuits-continue-to-plague-san-diego-sheriffs-department)
5 [31/excessive-force-negligence-lawsuits-continue-to-plague-san-diego-sheriffs-](https://www.sandiegouniontribune.com/news/watchdog/story/2020-05-31/excessive-force-negligence-lawsuits-continue-to-plague-san-diego-sheriffs-department)
6 [department](https://www.sandiegouniontribune.com/news/watchdog/story/2020-05-31/excessive-force-negligence-lawsuits-continue-to-plague-san-diego-sheriffs-department) (last accessed January 5, 2023).

7 89. Even after a deputy was charged with manslaughter for shooting an
8 unarmed person in the back, the County did not institute training on the proper use
9 of deadly force and de-escalation tactics.

10 90. Defendants Gore and County of San Diego failed to supervise,
11 discipline or discharge defendant Lovejoy after a victim alleged that he pulled the
12 woman out of her car by her hair over a minor traffic stop in October of 2020.
13 According to the victim, Lovejoy pulled her braids out of her head as he was pulling
14 her out of her car window. Lovejoy was not disciplined or retrained and remained
15 on the force.

16 91. Lovejoy was never given training on the proper use of force. This
17 failure led to Lovejoy's continued and escalating use of unnecessary force. Had
18 Lovejoy faced consequence from the prior allegation of misconduct, he would have
19 learned to use proper tactics instead of endangering the lives of detectives and other
20 bystanders.

21 92. Upon information and belief, the County of San Diego and Doe
22 Supervisory defendants who were final policy makers, did not properly investigate
23 and discipline Lovejoy or Young after this incident. Defendants ratified their
24 unconstitutional conduct by failing to terminate their employment or to discipline
25 them.

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1 **V. PLAINTIFF'S CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Excessive Force (42 U.S.C. § 1983)**

4 **Unconstitutional Seizure under the Fourth Amendment**
5 **[Against Defendants Lovejoy and Young]**

6 93. Plaintiff realleges all prior paragraphs of this complaint and
7 incorporate the same herein by reference.

8 94. Defendants Lovejoy and Young violated Rowdy Pauu's Fourth
9 Amendment rights.

10 95. Defendants were objectively unreasonable when they used deadly
11 force in shooting at or in the direction of Detective Pauu and other undercover
12 officers who were downrange.

13 96. Defendants acted with extreme recklessness when they used excessive
14 force, shooting Detective Pauu in the leg.

15 97. Defendants acted with deliberate indifference when they discharged
16 their firearms after ascertaining that Detective Pauu and other detectives were
17 directly in their line of fire.

18 98. Defendant Lovejoy knew that innocent people were down range but
19 decided to shoot anyway.

20 99. Defendants Lovejoy and Young provided no warning to the other law
21 enforcement officers that they were going to fire their weapons.

22 100. No other law enforcement officials shot at the suspect because there
23 was no threat of harm.

24 101. It was either Lovejoy or Young whose shot hit Detective Pauu in the
25 leg.

26 102. According to the California Commission on Peace Officer Standards
27 and Training (POST), "peace officers are authorized to use deadly force only as a
28 last resort and only under the strictest of limitations and restraints."

1 103. One of the 4 “Fundamental Rules” of firearms training under POST is
2 to “be sure of the target and what’s beyond it before firing the firearm.” Volume
3 5, Learning Domain 35, Chapter 1.

4 104. They are required to:

- 5 • Be aware that if the projectile misses or completely passes through the
6 target, it could strike an unintended person or object.
- 7 • Clearly identify the target before firing. Never fire at a movement,
8 color, sound, or shape unless it can be clearly identified.
- 9 • Officers should be aware of all persons around them before they fire
10 a firearm to make sure no one is moving into the line of fire.

11 105. This fundamental rule is taught to all officers in the state of California.

12 106. According to POST, “the use of deadly force is the most serious
13 decision a peace officer may ever have to make. Such a decision should be guided
14 by the reverence for human life and used only when other means of control are
15 unreasonable or have been exhausted.”

16 107. POST teaches that “an officer may use deadly force to protect oneself
17 or others when the officer has the objective and reasonable belief that his life, or
18 the life of another, is in imminent danger of death or serious physical injury based
19 upon the totality of the facts known to the officer at the time.”

20 108. According to POST, one of the questions every peace officer is
21 **required** to consider is, “**Is there a crowd of innocent people behind the**
22 **subject?”** *Id.* at 1-31.

23 109. An officer’s underlying intent or motives are not relevant in
24 determining whether the use of force was reasonable. *Id.* at 1-35.

25 110. An officer need not intentionally aim at a specific person in order to
26 seize that person for Fourth Amendment purposes. See *Nelson v. City of Davis*, 685
27 F.3d 867, 876 (9th Cir. 2012) (finding excessive force liability despite defendant
28 officer's argument that he did not intentionally target the plaintiff).

1 111. The Ninth Circuit has held that to argue otherwise “misapprehends the
2 distinction between intentional and unintentional conduct” for the purposes of the
3 Fourth Amendment. *Id.*

4 112. So long as an individual's freedom of movement is terminated by an
5 “intentional application of force,” that individual is seized. Defendants did not
6 discharge their weapons 17 times by accident.

7 113. To determine whether the seizure was unreasonable, the jury (or court)
8 must analyze the totality of the circumstances, including the risk to officer safety
9 and the level of injury that might be inflicted. *Berg v. Cnty. of L.A.*, 2021 WL
10 4691154, at * 11 (C.D. Cal. May 28, 2021) (finding likelihood of success on
11 excessive force claim where in response to a bottle thrown, deputies shot pepper
12 balls into the crowd).

13 114. Whether an officer's application of force was aimed at a plaintiff (or
14 at someone else) is not dispositive of “reasonableness” under the Fourth
15 Amendment. *Id.*

16 115. When the intended target poses “little to no threat of harm to others”
17 and the officer “inadvertently” hits a bystander, “a reasonable juror could find in
18 light of the circumstances this conduct constitutes a violation of the Fourth
19 Amendment excessive force.” *See Black Lives Matter Los Angeles v. City of Los*
20 *Angeles*, No. CV 20-5027 CBM(ASX), 2021 WL 3163309, at *5 (C.D. Cal. May
21 10, 2021).

22 116. Here, the intended target posed no threat of harm, thus the shooting of
23 the bystander, detective Pauu, was excessive.

24 117. Defendants are not entitled to qualified immunity because they were
25 on notice that shooting under these circumstances violated the Fourth Amendment.
26 *See Marroquin v. Unidentified LAPD Officer*, No. 221CV07607RGKJEM, 2022
27 WL 18278405, at *5 (C.D. Cal. Dec. 15, 2022) (finding no qualified immunity
28 because as a result of *Nelson*, which was decided in 2012, as of October of 2020,

1 “[A] reasonable officer would have been on notice that both the firing of a projectile
2 that risked causing serious harm ... would constitute unreasonable force.”)

3 118. “The mere fact that a use of force may have been directed at a third
4 party, or at a crowd in general, does not necessarily bar an innocent bystander from
5 bringing a Fourth Amendment claim.” *Id.* at *3.

6 119. An ‘unintended person’ may bring a claim, so long as the police action
7 was volitional.

8 120. Here, the discharging of the weapon was intentional and a “knowing
9 act.” The mere fact that the defendants did not care who they hit does not change
10 the fact that there was a seizure and that the seizure was unreasonable.

11 121. As of 1998, a police officer had a clearly established right to be free
12 from unreasonable seizures. *See Jensen v. City of Oxnard*, 145 F.3d 1078, 1085
13 (9th Cir. 1998).

14 122. These defendants are not entitled to qualified immunity because
15 shooting indiscriminately into a crowd knowing that bystanders may get shot shows
16 that they are either clearly incompetent or they knowingly violated the law.

17 123. The conduct alleged herein caused Detective Pauu to be deprived of
18 his civil rights that are protected under the United States Constitution which has
19 also legally, proximately, foreseeably and actually caused Detective Pauu to suffer
20 emotional distress, pain and suffering and further damages all in an amount to be
21 shown according to proof at the time of trial.

22 **SECOND CAUSE OF ACTION**
23 **Excessive Force (42 U.S.C. § 1983)**
24 **Substantive Due Process Violation under the Fourteenth Amendment**
25 **[Against Defendants Lovejoy and Young]**

26 124. Plaintiff realleges all prior paragraphs of this complaint and
27 incorporate the same herein by reference.
28

1 125. Plaintiff pleads the first and second causes of action in the alternative.
2 If a factfinder finds that there was no seizure under the Fourth Amendment,
3 Detective Pauu is entitled to bring a substance due process claim.

4 126. Defendants Lovejoy and Young violated Rowdy Pauu's Fourteenth
5 Amendment rights.

6 127. Defendants Lovejoy and Young were each fundamentally involved in
7 the conduct that caused Detective Pauu to be subjected to excessive force.

8 128. Defendants acted with extreme recklessness when they used deadly
9 force in shooting at or in the direction of Detective Pauu and other undercover
10 officers who were downrange.

11 129. Defendants acted with extreme recklessness when they used excessive
12 force, shooting Detective Pauu in the leg.

13 130. Defendants acted with deliberate indifference when they discharged
14 their firearms after ascertaining that Detective Pauu and two other officers were
15 directly in their line of fire.

16 131. Defendants Lovejoy and Young were not in an emergency situation
17 and had time to deliberate before firing their weapon.

18 132. Defendant Lovejoy knew that Detective Rowdy was down range
19 because Lovejoy saw him and decided to shoot anyway.

20 133. The suspect did not have a gun and was encircled in a cul-de-sac with
21 law enforcement officers blocking his exit.

22 134. The suspect never ran towards any law enforcement officials; charged
23 at them; or made threats against them.

24 135. The situation was de-escalating.

25 136. There was sufficient time and opportunity for officials to deliberate
26 and they did in fact deliberate.

27 137. Defendants Lovejoy and Young provided no warning to the other law
28 enforcement officers that they were going to fire their weapons.

1 138. No other law enforcement officials shot at the suspect because there
2 was no threat of harm.

3 139. It was either Lovejoy or Young whose shot hit Detective Pauu in the
4 leg.

5 140. These defendants are not entitled to qualified immunity because
6 shooting at Detective Pauu shows that they are either clearly incompetent or they
7 knowingly violated the law.

8 141. In addition, the Ninth Circuit has never required a prior case “on all
9 fours prohibiting that particular manifestation of unconstitutional conduct” to find
10 a right “clearly established.” *See Deorle v. Rutherford*, 242 F.3d 1119, 1286 (2001).
11 Officials can still have “fair warning” that their conduct violates established law
12 “even in novel factual circumstances.” *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).
13 The Supreme Court reaffirmed this recently in *Taylor v. Riojas*.

14 142. Defendants were on notice that shooting at the plaintiff violated the
15 Fourteenth Amended by *Nicholson v. City of Los Angeles*, 935 F.3d 685 (9th Cir.
16 2019).

17 143. As a direct and proximate result of Defendants’ deliberate indifference
18 to Detective Rowdy Pauu’s constitutional rights, Detective Pauu experienced
19 physical pain, severe emotional distress, and mental anguish, as well as other
20 damages as alleged herein.

21 144. The conduct alleged herein caused Detective Pauu to be deprived of
22 his civil rights that are protected under the United States Constitution which has
23 also legally, proximately, foreseeably and actually caused Detective Pauu to suffer
24 emotional distress, pain and suffering and further damages all in an amount to be
25 shown according to proof at the time of trial.

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**
2 **Failure to Properly Train, Supervise and Discipline (42 U.S.C. § 1983)**
3 **[Against Defendant Gore and Supervisory Doe Defendants 1-25]**

4 145. Plaintiff realleges all prior paragraphs of this complaint and
5 incorporates the same herein by references.

6 146. Defendant Does 1-25 failed to properly supervise and discipline
7 officers who are required to meet the standards of the Constitution.

8 147. Does 1 to 10 are believed to be supervisors responsible to
9 promulgating policies. These Defendants failed to promulgate and enforce
10 adequate policies and procedures related to misconduct and the violation of
11 citizens' civil rights by COSD deputies despite their specific knowledge of the
12 history of Constitutional violations within the department.

13 148. Does 11 to 25 are believed to be supervisors responsible for
14 investigating and disciplining deputies. Defendants have a widespread history of
15 ratifying deputy misconduct by failing to conduct appropriate investigations and/or
16 properly discipline deputies for excessive force and constitutional rights violations.

17 149. Does 1 to 25 includes defendants who were direct supervisors of
18 Lovejoy and Young who failed to ensure that these deputies were properly trained
19 on de-escalation and the proper use of deadly force.

20 150. Does 1 to 25 includes defendants who were direct supervisors of
21 Lovejoy and Young who failed to properly investigate and discipline them for prior
22 misconduct.

23 151. Does 1 to 25 includes defendants who made decisions regarding the
24 two forms of communication with a different channel for members of the task force.

25 152. Gore and Doe Defendants were aware of previous instances of
26 excessive use of force and failed to properly supervise and discipline their
27 employees.
28

1 153. Gore and Doe Defendants have a widespread history of ratifying
2 employee misconduct by failing to conduct appropriate investigations.

3 154. Gore and Doe Defendants refused to investigate misconduct and/or
4 took no remedial steps or action against their employees.

5 155. Upon information and belief, Gore and Doe Defendants were aware
6 of previous instances of excessive use of force but failed to properly supervise and
7 discipline their employees.

8 156. Upon information and belief, supervising officers were made aware of
9 the Constitutional violations committed by the deputies but failed to supervise or
10 discipline them. This consistent failure created a culture in which deputies
11 continued to use unreasonable force without fear of accountability.

12 157. This culture has created a shoot first, ask questions later mentality,
13 with a deputy shooting a man through a window five times; a deputy who shot a
14 man in the back; and a deputy putting a gun to a woman's face for holding a kitchen
15 knife in her own home.

16 158. This included prior complaint of use of unnecessary and excessive
17 force used by defendant Lovejoy, who allegedly pulled a woman out of her car by
18 her hair over a minor traffic stop in October of 2020. According to the victim,
19 Lovejoy pulled her braids out of her head as he was pulling her out of her car
20 window. Lovejoy was not disciplined or retrained and remained on the force.

21 159. There has been an official policy of acquiescence in the wrongful
22 conduct. Defendants failed to promulgate corrective policies and regulations in the
23 face of repeated Constitutional violations.

24 160. Gore and Doe Defendants condoned and acquiesced in the abusive
25 behavior of their subordinates by refusing to retrain them, discipline them, or
26 correct their abusive behavior.

27 161. Gore and Doe Defendants were, or should have been, aware that the
28 policy regarding supervision and discipline of staff that violated the civil rights of

1 citizens was so inadequate that it was obvious that a failure to correct it would result
2 in further incidents of dangerous and lawless conduct perpetrated by their
3 subordinates.

4 162. As a result of all Defendants' historical failure to properly supervise
5 and discipline deputies, Defendants were deliberately indifferent to the needs of
6 Plaintiff.

7 163. The failure to supervise and discipline was the moving force behind
8 the misconduct of the deputies and the resulting pain and suffering.

9 164. After the shooting, Doe Defendants ratified the actions of Lovejoy and
10 Young by taking no action against them.

11 **FOURTH CAUSE OF ACTION**
12 ***Monell Municipal Liability Civil Rights Action (42 U.S.C. § 1983)***
13 **[By Plaintiff against Defendant County of San Diego]**

14 165. Plaintiff realleges all prior paragraphs of this complaint and
15 incorporate the same herein by this reference.

16 166. Upon information and belief, Plaintiff alleges that Defendant County
17 of San Diego, through its Sheriff's Department, has unlawful policies, customs
18 and habits of providing improper and inadequate communication capabilities,
19 proximately causing the constitutional deprivations, injuries and damages alleged
20 herein. As a result, Plaintiff is entitled to damages pursuant to Title 42 U.S.C. §
21 1983, in an amount to be proven at trial.

22 167. The County of San Diego failed to provide its deputies and members
23 of the joint task force with radios that would allow for direct communication with
24 one another which constitutes a policy for which the County is responsible. As a
25 result of these policies, customs and practices, Mr. Pauu was injured.

26 168. When the deputies stood at the entrance of the cul-de-sac, the three
27 detectives had already stationed themselves at the end of the cul-de-sac in a
28 position of safety. But the deputies parked their patrol cars and stood by their

1 cars, creating a circle and a potential for crossfire. The detectives could not move
2 out of their positions without creating a dangerous situation. If they moved away
3 from the safety of their car doors, they risked getting shot in crossfire or being
4 mistaken for a suspect because they were in plain clothes.

5 169. They needed to radio the deputies in order to coordinate their moves.
6 They could not do so because they were on different frequencies.

7 170. As a result of these policies, customs, and practices, Detective Pauu
8 could not reposition himself before the shooting and he was injured.

9 171. The County was aware of the dangers of failing to communicate and
10 yet had a policy of having two different radio channels, making this shooting a
11 predictable consequence. Members of the task force were prevented from
12 communicating their precise location and their observations as the events were
13 unfolding. Defendants Lovejoy and Young were not a part of RATT and did not
14 know any of the detectives involved in the operation. The failure to use the same
15 radio channel prevented the task force members from minimizing harm to
16 themselves and the community.

17 172. William Gore acted under color of law in supervising the Sheriff's
18 Department, promulgating and enforcing its policies and procedures. The
19 Sheriff's Department has a de facto policy, custom and practice of not properly
20 equipping its officers with the appropriate channels to communicate effectively
21 with officers on the joint task force. The lack of communication between the task
22 force and defendants directly resulted in Mr. Pauu's injuries. The incapability of
23 communication between the task force and defendant deputies are
24 unconstitutional policies, customs and practices under *Monell v. Department of*
25 *Social Services of New York*, 436 U.S. 658 (1978).

26 173. These mistakes and Constitutional violations occurred before
27 William Gore retired from the Sheriff's Department on February 3, 2022, two
28 weeks before Detective Pauu's shooting. The inadequate policies he set and his

1 failures to oversee his subordinates occurred over two decades before his
2 retirement.

3 174. Defendant County was, or should have been, aware that the program
4 of providing radios that could not effectively communicate with the task force
5 was so inadequate that it was obvious that a failure to correct it would result in
6 further incidents or dangerous or lawless conduct perpetrated by their
7 subordinates.

8 175. The County also failed to properly train its employees on
9 coordination in the use of force as a part of a task force. When different officials
10 from various departments work on a joint task force, which occurs every day in
11 the County of San Diego, it is predictable that friendly fire may occur without
12 coordination and communication. This is particularly dangerous when members
13 work in plain clothes in unmarked cars. The County failed to train its deputies on
14 coordination of the use of force and de-escalation. As a direct result, defendants
15 shot at innocent law enforcement officials.

16 176. The County also has a de facto policy of permitting excessive use by
17 its deputies. The County has a widespread practice of failing to hold deputies
18 accountable for their excessive use of force, including the use of deadly force.
19 The County has a pattern of refusing to investigate; to discipline; to retrain; or to
20 terminate the employment of deputies who violate citizens' rights. This includes
21 the failure to discipline and train Lovejoy after a woman complained of being
22 pulled out of her car through a window for a minor traffic violation. It was made
23 clear to the department that Lovejoy had a propensity for violence and needless
24 escalation. The County was aware that Lovejoy was not fit to serve and that he
25 could not properly assess a threat without umping to immediate use of force. The
26 failure to supervise, discipline and train Lovejoy resulted in his shooting
27 Detective Pauu.

28 177. After the shooting, Doe Defendants and the County of San Diego

1 ratified the actions of the Defendants by failing to take any action to investigate
2 and discipline them.

3 **VI. RELIEF REQUESTED**

4 **WHEREFORE**, Plaintiff prays as follows:

- 5 1. For general and special damages according to proof at the time of trial;
6 2. For punitive damages against all individual defendants;
7 3. For all other damages, costs, interest, and attorneys' fees as allowed by
8 law; and
9 4. Any other relief this court deems just and proper.

10 **VII. DEMAND FOR JURY TRIAL**

11 Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh
12 Amendment to the United States Constitution, Plaintiff hereby demands a jury trial
13 of this action.

14 Respectfully submitted,

15
16 December 18, 2023

IREDALE AND YOO, APC

s/ Julia Yoo

EUGENE IREDALE

JULIA YOO

GRACE JUN

CHELSEA REHERMAN

Attorneys for Plaintiff