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MICKEL ERICH LEWIS JR, ORIONA LEWIS
and BRIONA LEWIS

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MICKEL ERICH LEWIS JR,
individually and as successor-in-interest
to MICKEL E. LEWIS SR., ORIONA
LEWIS, individually and as successor-in-
interest; and BRIONA LEWIS,
individually and as successor-in-interest,

Plaintiffs,

vs.

KERN COUNTY, Deputy JASON
AYALA, and Does 1–20, inclusive,

Defendants.

CASE NO.: 1:21–CV–00378–NONE
–JLT

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND OTHER
RELIEF**

1. Excessive Force
Fourth Amendment (42 U.S.C. § 1983)
2. Substantive Due Process
Fourteenth Amendment:
Interference with Familial
Relationship (42 U.S.C. § 1983)
3. Municipal Liability (Monell):
Inadequate Training, Ratification,
Unconstitutional Custom and
Practice
4. Battery (Wrongful Death)
5. Negligence (Wrongful Death)
6. Violation of the Bane Act (Cal.
Civil Code § 52.1)
7. Violation of the Ralph Civil
Rights Act (Cal. Civil Code
§51.7)

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8. Intentional Infliction of Emotional Distress

[DECLARATIONS OF MICKEL LEWIS JR., ORIONA LEWIS, and BRIONA LEWIS, PURSUANT TO CCP 377.32 FILED CONCURRENTLY]

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a civil rights and state tort action that seeks compensatory damages from the Defendants generally and punitive damages from Defendant Jason Ayala for violating various rights under the United States Constitution and state law in connection with the fatal officer-involved shooting of Plaintiffs' father, Mickel E. Lewis Sr. on October 2, 2020.

2. Plaintiffs Mickel Erich Lewis Jr., Orion Lewis, and Briona Lewis are the children and successors-in interest to Mickel E. Lewis Sr., an unarmed, 39-year-old African American man who was subjected to an unwarranted vehicle stop, then shot multiple times primarily in the back, by Kern County Sheriff's deputy, Deputy Ayala. After shooting him, Ayala took no action to seek immediate emergency medical care and attention before Mickel E. Lewis Sr. died on the street.

3. In the aftermath of Defendant Ayala killing Plaintiffs' father, Defendants engaged in acts of intimidation and harassment by (a) having multiple officers in marked Sheriff's vehicles congregate adjacent to the memorial, and surround and surveil Plaintiffs and their loved ones as they gathered to mourn the unjustified shooting and wrongful killing of Lewis Sr.; (b) making repeated passes by the memorial, and engaging in hide-and-seek maneuvers from their vehicles, and following Plaintiffs and Lewis Sr.'s loved ones home from the memorial; and (c)

1 threatening adjacent business owners not to communicate or cooperate with Plaintiffs
2 or their counsel as they gathered information and evidence.

3 **JURISDICTION AND VENUE**

4 4. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and
5 1343(a)(3)-(4), because Plaintiffs assert claims arising under the laws of the United
6 States including 42 U.S.C. § 1983, 1985, 1986, and 1988, and the Fourth and
7 Fourteenth Amendments of the United States Constitution. This Court has
8 supplemental jurisdiction over Plaintiffs' claims arising under state law pursuant to 28
9 U.S.C. §§1331,1343,and 1367(a), because those claims are so related to the federal
10 claims that they form part of the same case or controversy under Article III of the
11 United States Constitution.

12 5. Venue is proper in this Court under 28 U.S.C. § 1391(b), because
13 Defendants are believed to reside in this district and all incidents, events, and
14 occurrences giving rise to this action occurred in this district.

15 **PARTIES**

16 6. **Decedent:** At all relevant times, MICKEL E. LEWIS SR.
17 (“DECEDENT”) was of mixed heritage, outwardly appearing and identifying as
18 African American. He was also of German heritage. DECEDENT was a father, and
19 an individual residing in the City of Mojave, California.

20 7. **Plaintiffs:** All Plaintiffs MICKEL ERICH LEWIS JR., ORIONA LEWIS
21 and BRIONA LEWIS (“PLAINTIFFS”) are individuals residing in the City of
22 Mojave, California and are the biological children of DECEDENT. PLAINTIFFS sue
23 both in their individual capacity and in a representative capacity as successors-in-
24 interest to the DECEDENT, pursuant to California Code of Civil Procedure § 377.60.
25 PLAINTIFFS seek both survival and wrongful death damages under federal and state
26 law.

27 8. **Public Entity Defendant:** At all relevant times, Defendant KERN

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1 COUNTY (“COUNTY”) was and is a municipal corporation existing under the laws
2 of the State of California. COUNTY is a governmental subdivision of the State of
3 California with the capacity to be sued. COUNTY is responsible for the actions,
4 omissions, policies, procedures, practices, and customs of its various agents and
5 employees. At all relevant times, Defendant COUNTY was responsible for assuring
6 the actions, omissions, policies, procedures, practices and customs of its employees
7 and agents complied with the laws of the United States and of the State of California.
8 At all relevant times, COUNTY was the employer of Defendant Deputy JASON
9 AYALA and the DOE defendants.

10 9. **Individual Defendant:** At all relevant times, Defendant Deputy JASON
11 AYALA (“AYALA”) is a law enforcement deputy of the Sheriff’s Department of the
12 COUNTY. AYALA was acting under color of law within the course and scope of his
13 duties as a Sheriff’s deputy of the COUNTY. AYALA was acting with complete
14 authority and ratification of his principal, Defendant COUNTY.

15 10. At all times mentioned herein, Defendant COUNTY had a legal duty to
16 oversee and supervise the hiring, conduct and employment of Defendant AYALA.

17 11. All of the acts complained of herein by the PLAINTIFFS against
18 Defendants were done and performed by said Defendants by and through their
19 authorized agents and employees, namely AYALA, whom at all relevant times herein
20 was acting within the course, purpose, and scope of said service and/or employment
21 capacity. Moreover, Defendant COUNTY ratified AYALA and all of the acts
22 complained of herein.

23 12. Defendant AYALA is sued both in his individual and personal capacity,
24 as well as in his official capacity as a deputy of COUNTY’s Sheriff’s Department.

25 13. PLAINTIFFS are informed and believe, and based thereon allege, that
26 each of the Defendants DOES 1-20, inclusive (“DOES”) were engaged in law
27 enforcement as deputies, deputy sergeants, captains, lieutenants, and/or civilian
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1 employees, agents and representatives of Defendant COUNTY, duly employed as a
2 police officer or sheriff's deputy by the COUNTY OF KERN Sherriff's Department,
3 who were acting in the course and scope of his/her employment at all times relevant to
4 the acts and omissions herein alleged. Each Defendant acted in all respects pertinent
5 to this action as the agent of the other Defendants, carried out a joint scheme, business
6 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
7 attributable to the other Defendants. Each defendant, including DOES 1-20 inclusive
8 are collectively referred to as "DEFENDANTS."

9 14. PLAINTIFFS are informed and believe, and based thereon allege, that
10 each and all of the acts and omissions alleged herein were performed by, and/or
11 attributable to, all Defendants, each acting as agents and/or employees, and/or under
12 the direction and control of each of the other Defendants, and that said acts and
13 failures to act were within the course and scope of said agency, employment and/or
14 direction and control. Plaintiff is informed and believes, and thereon alleges, that at
15 all times material hereto Defendants were and are the agents of each other.

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 15. On November 23, 2020, PLAINTIFFS filed a timely tort claim for
18 damages with COUNTY in substantial compliance with California Government Code
19 §910.

20 16. On or about December 10, 2020, the County of Kern sent a notice of
21 rejection of PLAINTIFFS' claims.

22 **FACTUAL ALLEGATIONS**

23 17. PLAINTIFFS repeat and re-allege each and every allegation in
24 paragraphs 1 through 16 of this Complaint as if fully set forth at length herein.

25 18. On October 2, 2020 at approximately 9.00 pm in the City of Mojave,
26 AYALA initiated an unwarranted traffic stop of DECEDENT seconds after
27 DECEDENT exited the driveway of the drive-through restaurant, Wienershnitzel,
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1 having just finished speaking to his daughter, Plaintiff BRIONA LEWIS, who was
2 employed at that business establishment.

3 19. In the absence of reasonable suspicion or probable cause, AYALA
4 followed and stopped DECEDENT's vehicle near the corner of "K" Street and Mono
5 Street, behind the Denny's restaurant and Wienerschnitzel.

6 20. During the traffic stop, and after DECEDENT exited the vehicle,
7 DECEDENT and AYALA engaged in conversation at various locations between and
8 adjacent to DECEDENT and the Sheriff's vehicle. Ultimately, while DECEDENT
9 was standing in the open car door of his vehicle with his back facing AYALA,
10 AYALA issued a command that DECEDENT turn and walk toward the rear of
11 DECEDENT's vehicle where AYALA was standing well over a car-length away. In
12 response to AYALA's command, DECEDENT began to turn in the direction of
13 AYALA. However, before DECEDENT was fully turned, without provocation and
14 despite DECEDENT being unarmed with his hands up in surrender, AYALA shot
15 DECEDENT six times: three times in the back; once in the side, and two bullets
16 entering the front of DECEDENT's torso. At no time did this unarmed DECEDENT
17 pose a threat of serious bodily injury or death to AYALA.

18 21. On information and belief, AYALA failed to issue a warning that deadly
19 force was going to be used before shooting the DECEDENT, despite it being feasible
20 to do so.

21 22. In the immediate aftermath of AYALA's use of deadly force, when it
22 was readily evident that DECEDENT was seriously injured, a video recording shows
23 that AYALA failed to perform life saving measures or to immediately summon
24 medical care to treat the DECEDENT. The delay of expert medical care and
25 assistance for the DECEDENT was a contributing cause of DECEDENT's harm,
26 injury, pain, suffering and ultimate death. DECEDENT died in front of Plaintiff
27 BRIONA LEWIS, who arrived shortly after the shooting to find her father dying
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1 and/or dead on the street.

2 23. In the aftermath of the shooting death of their father, and while
3 PLAINTIFFS and other grieving family members visited the site of the shooting to
4 grieve, place flowers and tokens of love to commemorate DECEDENT's life,
5 DEFENDANTS engaged in acts of intimidation and harassment against
6 PLAINTIFFS, by (a) having multiple officers in multiple vehicles circle and
7 congregate adjacent to the memorial; (b) by lining up in a show of force and callously
8 laughing, yelling and glaring at PLAINTIFFS and family members, in a show of
9 visible presence, while PLAINTIFFS mourned; (c) engaging in hide-and-seek
10 maneuvers and making repeated vehicle passes by the memorial; (d) threatening
11 witnesses not to communicate or cooperate with PLAINTIFFS or their counsel in
12 collecting video evidence or statements from adjacent business establishments; and (e)
13 following Plaintiffs and DECEDENT's loved ones home from the memorial.

14 24. Thereafter, Defendants authored and published a false narrative of the
15 incident to the general public, with the objective of persuading and misleading the
16 public and potential jurors that DECEDENT somehow provoked this incident, and
17 that AYALA was justified in using deadly force against the DECEDENT, all of which
18 is based on false and fabricated facts.

19 25. PLAINTIFFS are the DECEDENT's successors-in-interest as defined in
20 Section 377.11 of the California Code of Civil Procedure and succeeds to the
21 DECEDENT's interest in this action as the natural children of the DECEDENT.

22 **FIRST CLAIM**

23 **Excessive Force-Fourth Amendment**

24 **(42 U.S.C. § 1983)**

25 **(Against All Defendants)**

26 26. PLAINTIFFS repeat, reallege, and incorporates by reference the
27 allegations contained in all previous paragraphs as though fully set forth at length

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1 herein.

2 27. On October 2, 2020, Defendant AYALA was employed as a sheriff's
3 deputy of Defendant COUNTY. AYALA used excessive force against the
4 DECEDENT when AYALA shot at the DECEDENT six times in the absence of
5 reasonable suspicion or probable cause and failed to provide timely, appropriate
6 medical attention and care to the DECEDENT. Defendant AYALA's unjustified use
7 of force deprived DECEDENT of his right to be secure in his person against
8 unreasonable searches as guaranteed to the DECEDENT under the Fourth
9 Amendment to the United States Constitution and applied to state actors by the
10 Fourteenth Amendment.

11 28. As a result of the Defendant AYALA's actions, DECEDENT suffered
12 unprecedented physical pain and emotional distress up to the time of his death, loss of
13 enjoyment of life, loss of life and loss of earning capacity.

14 29. The conduct of Defendant AYALA was willful, wanton, malicious and
15 done with reckless disregard for the rights and safety of DECEDENT, and therefore
16 warrants the imposition of exemplary and punitive damages as to Defendant
17 AYALA.

18 30. The use of force, namely the shooting, was excessive and unreasonable,
19 and the DECEDENT posed no immediate threat of death or serious bodily injury to
20 AYALA or to any other individual at the time of the shooting, as DECEDENT was
21 unarmed, was complying with directions issued by AYALA and was in a position of
22 surrender. Further, Defendant AYALA's shooting violated not only his training but
23 that of standard police officer training.

24 31. PLAINTIFFS bring this claim as successors-in-interest to the
25 DECEDENT, and seek both survival damages, including pre-death pain and
26 suffering, emotional distress, loss of life and loss of enjoyment of life, for the
27 violation of DECEDENT's rights.

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1 32. As a direct and proximate result of Defendants conduct, as alleged
2 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
3 reasonable attorney's fees and costs of suit.

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5 **SECOND CLAIM**

6 **Substantive Due Process (42 U.S.C. § 1983)**

7 (Against All Defendants)

8 33. PLAINTIFFS repeat, reallege, and incorporate by reference the
9 allegations contained in all previous paragraphs as though fully set forth at length
10 herein.

11 34. PLAINTIFFS had a cognizable interest under the Due Process Clause of
12 the Fourteenth Amendment of the United States Constitution to be free from state
13 actions that deprive them of life, liberty, or property in such a manner as to shock the
14 conscience, including but not limited to unwarranted state interference in
15 PLAINTIFFS familial relationship with their father, DECEDENT.

16 35. The aforementioned actions of Defendant AYALA along with other
17 undiscovered and discovered conduct, namely threats and intimidation incited by
18 Defendant COUNTY, shock the conscience, in that they acted with deliberate
19 indifference to the constitutional rights of PLAINTIFFS, and with purpose to harm
20 unrelated to any legitimate law enforcement objective.

21 36. As a direct and proximate result of these actions, DECEDENT
22 experienced pain and suffering and eventually died. Defendant AYALA and
23 COUNTY thus violated the substantive due process rights of PLAINTIFFS to be free
24 from unwarranted interference with their familial relationship with DECEDENT.

25 37. As a direct and proximate cause of the acts of Defendant AYALA and
26 COUNTY, PLAINTIFFS suffered emotional distress, mental anguish, and pain.
27 PLAINTIFFS have also been deprived of having the life-long love, companionship,
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1 comfort, support, society, care, and sustenance of DECEDENT, and will continue to
2 be so deprived for the remainder of their natural lives.

3 38. The conduct of Defendant AYALA and COUNTY were willful, wanton,
4 malicious, and done with reckless disregard for the rights and safety of the
5 DECEDENT and PLAINTIFFS and therefore warrants the imposition of exemplary
6 and punitive damages as to Defendant AYALA.

7 39. PLAINTIFFS bring this individually for the interference with their
8 relationship with their DECEDENT father and seek wrongful death damages for the
9 violation of PLAINTIFFS' rights.

10 40. As a direct and proximate result of Defendants conduct, as alleged
11 herein, Plaintiffs have been compelled to retain legal counsel, and are entitled to
12 reasonable attorney's fees and costs of suit.

13 **THIRD CLAIM**

14 **Municipal Liability (Monell)**

15 **Inadequate Training, Ratification, Unconstitutional Custom and Practice**

16 **(42 U.S.C. § 1983)**

17 **(Against All Defendants)**

18 41. PLAINTIFFS repeat, reallege, and incorporate by reference the
19 allegations contained in all previous paragraphs as though fully set forth at length
20 herein.

21 42. Defendant AYALA acted under color of law.

22 43. The action of Defendant AYALA deprived DECEDENT and
23 PLAINTIFFS of their particular rights under the United States Constitution.

24 44. A final policymaker, acting under the color of law, who had final
25 policymaking authority concerning the acts of Defendant AYALA, ratified Defendant
26 AYALA's acts and the basis for them. The final policymaker knew of and
27 specifically approved Defendant AYALA's acts.

1 45. Defendant COUNTY failed to adequately and properly train its Deputies
2 to handle the usual and recurring situations with which they must deal, or how, when
3 and under what circumstances lethal and nonlethal use of force is warranted. in the
4 event that such force was warranted.

5 46. Defendant COUNTY was deliberately indifferent to the obvious
6 consequences of its failure to train its officers adequately.

7 47. The failure of Defendant COUNTY to provide adequate training,
8 including training with regards to use of force caused the deprivation of the
9 DECEDENT's and PLAINTIFFS' rights by Defendant AYALA; that is, Defendants'
10 failure to train is so closely related to the deprivation of the DECEDENT's and
11 PLAINTIFFS rights as to be the moving force that caused the ultimate injury.

12 48. On information and belief, with respect to Deputy AYALA, Defendant
13 COUNTY failed to properly and adequately discipline, reprimand, retrained, suspend,
14 or otherwise penalize conduct and actions in connection with the DECEDENT's
15 death.

16 49. Defendant COUNTY and Deputy AYALA together with other
17 COUNTY policy makers and supervisors, maintained, inter alia, engaged in the
18 following unconstitutional customs, practices, and policies:

- 19 (a) Use of excessive deadly force;
20 (b) Providing inadequate training regarding the use of deadly force;
21 (c) Employing and retaining as police officers individuals, such as
22 Defendant AYALA, who Defendant COUNTY at all times
23 material herein knew or reasonably should have known had
24 dangerous propensities for abusing their authority and for using
25 excessive force;
26 (d) Inadequately supervising, training, controlling, assigning, and
27 disciplining COUNTY officers, and other personnel, including
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Defendant AYALA, who Defendant COUNTY knew or in the exercise of reasonable care should have known had the aforementioned propensities and character traits;

- (e) Maintaining grossly inadequate procedures for reporting, supervising, investigating, reviewing, disciplining and controlling misconduct by COUNTY officers, namely Defendant AYALA;
- (f) Failing to adequately discipline Defendant AYALA regarding the magnitude of the misconduct, and other inadequate discipline that is tantamount to encouraging misconduct;
- (g) Announcing that unjustified shootings are “within policy,” including shootings that were later determined in court to be unconstitutional;
- (h) Even where shootings are determined in court to be unconstitutional, refusing to discipline, terminate, or retrain the officers involved;
- (i) Maintaining a policy of inaction and an attitude of indifference towards soaring numbers of police shootings, including by failing to discipline, retrain, investigate, terminate, and recommend officers for criminal prosecution who participate in unjustified shootings;
- (j) Failing to properly train police officers to use nonlethal force and to maintain their equipment concerning nonlethal force.

50. By reason of the aforementioned acts and omissions, PLAINTIFFS have suffered loss of the love, companionship, affection, comfort, care, society, training, guidance and past and future support of DECEDENT. The aforementioned acts and

1 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
2 and death.

3 51. Both Defendants, COUNTY and AYALA, together with various
4 officials whether named or unnamed, had either actual or constructive knowledge of
5 the deficient policies, practices and customs alleged in the paragraphs above.

6 52. By information and belief Defendant COUNTY has knowingly retrieved
7 and withheld surveillance camera footage from various establishments, asking that
8 this be withheld from the PLAINTIFFS' attorneys. Despite having knowledge as
9 stated above, these defendants condoned, tolerated and through actions and inactions
10 thereby ratified such policies. Said defendants acted with deliberate indifference to
11 the foreseeable effects and consequences of these actions and policies with respect to
12 the constitutional rights of DECEDENT, PLAINTIFFS, and other individuals
13 similarly situated.

14 53. By perpetrating, sanctioning, tolerating, and ratifying the outrageous
15 conduct and other wrongful acts, Defendant AYALA acted with intentional, reckless,
16 and callous disregard for the life of DECEDENT and for DECEDENT's and
17 PLAINTIFFS' constitutional rights. Furthermore, the policies, practices, and customs
18 implemented, maintained, and still tolerated by Defendants COUNTY and AYALA
19 were affirmatively linked to and were a significantly influential force behind the
20 injuries of DECEDENT and PLAINTIFFS, including but not limited to Defendant
21 AYALA's use of deadly force, against DECEDENT.

22 54. Accordingly, Defendants COUNTY, AYALA, and DOES 1-20
23 inclusive, each are liable to PLAINTIFFS for compensatory damages under 42
24 U.S.C. § 1983.

25 55. PLAINTIFFS bring this claim as successors-in-interest to DECEDENT,
26 and seek both survival damages, including pre-death pain and suffering, emotional
27 distress, loss of life, and loss of enjoyment of life, and wrongful death damages under
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1 this claim.

2 56. As a direct and proximate result of Defendants conduct, as alleged
3 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
4 reasonable attorney's fees and costs of suit.

5 **FOURTH CLAIM**

6 **Battery (Wrongful Death)**

7 (Against all Defendants)

8 57. PLAINTIFFS repeat, reallege, and incorporate by reference the
9 allegations contained in all previous paragraphs as though fully set forth at length
10 herein.

11 58. Defendant AYALA, while working as an officer of COUNTY in its
12 Sheriff's Department and acting within the course and scope of his duties,
13 intentionally conducted an unwarranted traffic stop of the DECEDENT, without
14 reasonable suspicion and probable cause, before using unreasonable and excessive
15 force in shooting at DECEDENT six times: three times in the back; once in the side,
16 and two bullets entering the front of DECEDENT's torso. As a result of the actions
17 of Defendant AYALA, DECEDENT ultimately died from his injuries. Defendant
18 AYALA had no legal justification for using force against the DECEDENT, and the
19 use of force exercised while carrying out his duties as a sheriff officer was an
20 unreasonable and non-privileged use of force.

21 59. As a direct and proximate result of the conduct of Defendant AYALA as
22 alleged above, DECEDENT sustained injuries and ultimately died, cutting off
23 DECEDENT's earning capacity.

24 60. COUNTY is vicariously liable for the wrongful acts of Defendant
25 AYALA pursuant to section 815.2(a) of the California Government Code, which
26 provides that a public entity is liable for the injuries caused by its employees within
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1 the scope of the employment if the employee's act would subject him or her to
2 liability.

3 61. The conduct of Defendant AYALA was malicious, wanton, oppressive,
4 and accomplished with a conscious disregard for the rights of the PLAINTIFFS and
5 DECEDENT, entitling the PLAINTIFFS, individually and as successors-in-interest to
6 DECEDENT, to an award of exemplary and punitive damages as to Defendants DOE
7 OFFICERS.

8 62. PLAINTIFFS bring this claim individually and as successors-in-interest
9 to DECEDENT and seek wrongful death damages under this claim.

10 **FIFTH CLAIM**

11 **Negligence (Wrongful Death)**

12 (Against All Defendants)

13 63. PLAINTIFFS repeat, reallege, and incorporate by reference the
14 allegations contained in all previous paragraphs as though fully set forth at length
15 herein.

16 64. Sheriff officers, including DEFENDANT AYALA and DOES, have a
17 duty to use reasonable care to prevent harm or injury to others. This duty includes
18 using appropriate tactics, giving appropriate commands, giving warnings, and
19 avoiding use of any force unless necessary, using non-lethal force and less than lethal
20 alternative, and only using deadly force as a last resort.

21 65. Defendant AYALA breached this duty of care. Upon information and
22 belief, the actions and inactions of Defendant AYALA were negligent and reckless,
23 including but not limited to:

24 (a) failure to properly and adequately assess the need to detain, arrest
25 and use force or deadly force against DECEDENT;

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- 1 (b) negligent tactics and handling of the situation with DECEDENT,
- 2 including the pre traffic stop and search and the detention
- 3 interaction;
- 4 (c) negligent failure to non-lethal force to neutralize the situation;
- 5 (d) negligent use of deadly force, against DECEDENT;
- 6 (e) failure to provide prompt medical care to DECEDENT;
- 7 (f) failure to properly train and supervise employees, both
- 8 professional and non-professional, including Defendant AYALA
- 9 (g) negligent handling of evidence and witnesses; and
- 10 (h) negligent communication of information during and after the
- 11 incident.

12 66. As a direct and proximate result of Defendants' conduct as alleged
13 above, and other undiscovered negligent conduct, DECEDENT ultimately died, and
14 PLAINTIFFS suffered emotional distress and mental anguish. PLAINTIFFS have
15 also been deprived of the life-long love, companionship, comfort, support, society,
16 care and sustenance of DECEDENT, and will continue to be so deprived for the
17 remainder of their natural lives

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

23 68. PLAINTIFFS bring this claim individually and as successors-in-interest
24 to DECEDENT and seek wrongful death damages under this claim.

25 **SIXTH CLAIM**

26 **Violation of the Bane Act**

27 **Cal. Civil Code § 52.1**

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(Against All Defendants)

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2 69. PLAINTIFFS repeat, reallege, and incorporate by reference the
3 allegations contained in all previous paragraphs as though fully set forth at length
4 herein.

5 70. California Civil Code, Section 52.1 (the Bane Act), prohibits any person
6 from using violent acts or threatening to commit violent acts in retaliation against
7 another person for exercising that person's constitutional rights.

8 71. On information and belief, Defendant AYALA, while working for
9 COUNTY and acting within the course and scope of his duties, intentionally
10 committed and attempted to commit acts of violence against the DECEDENT or
11 acted in reckless disregards of the DECEDENT's civil rights initiating an
12 unwarranted traffic stop in the absence of reasonable suspicion or probable cause, by
13 making the erroneous determination that lethal force was warranted under the
14 circumstances; by firing six fatal shots in the continued absence of justification or
15 excuse; to finally denying DECEDENT timely and necessary medical care.

16 72. When Defendant AYALA engaged in the above actions, they interfered
17 with the DECEDENT's civil rights to be free from unreasonable searches and
18 seizures, to due process, to equal protection of the laws, to medical care, to be free
19 from state actions that shock the conscience, and to life, liberty and property.

20 73. On information and belief, Defendant AYALA intentionally, spitefully,
21 and willfully committed the above acts to discourage and prevent DECEDENT from
22 exercising his civil rights, to retaliate against DECEDENT for invoking such rights,
23 to prevent DECEDENT from exercising such rights, or acted in reckless disregard of
24 DECEDENT's civil rights, which he was fully entitled to enjoy.

25 74. On information and belief, the DECEDENT reasonably believed and
26 understood that the violent acts committed by Defendant AYALA, inclusive were
27 intended to discourage DECEDENT from exercising the above civil rights, to
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1 retaliate against them, or invoking such rights, or to prevent them from exercising
2 such rights.

3 75. Defendant AYALA successfully interfered with the above civil rights of
4 DECEDENT.

5 76. The conduct of Defendant AYALA was a substantial factor in causing
6 DECEDENT's harms, losses, injuries, and damages.

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

12 78. The conduct of Defendant AYALA was malicious, wanton, oppressive
13 and accomplished with a conscious disregard for DECEDENT's rights, justifying an
14 award of exemplary and punitive damages against Defendant AYALA.

15 79. PLAINTIFFS bring this claim as successor-in-interest to DECEDENT
16 and seeks survival damages, including emotional distress and loss of enjoyment of
17 life under this claim. PLAINTIFFS also seeks treble damages.

18 80. As a direct and proximate result of Defendants conduct, as alleged
19 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
20 reasonable attorney's fees and costs of suit.

21 **SEVENTH CLAIM**

22 **Violation of the Ralph Civil Rights Act**

23 **Cal. Civil Code § 51.7**

24 (Against All Defendants)

25 81. PLAINTIFFS repeat, reallege and incorporate by reference the
26 allegations contained in all previous paragraphs as though fully set forth at length
27 herein.

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1 82. On or about the above stated dates, and sometime prior thereto,
2 DEFENDANTS and each of them violated DECEDENT'S and PLAINTIFFS' civil
3 rights guaranteed by the United States Constitution, federal law, the California
4 Constitution and the laws of the State of California thereby providing a civil cause of
5 action against defendant under California Civil Code Section 51.7.

6 83. DEFENDANTS, while working as deputies or agents for the COUNTY,
7 and acting within the course and scope of their official duties, interfered with or
8 attempted to interfere with the rights of DECEDENT and PLAINTIFFS to be free
9 from unreasonable searches and seizures, unreasonable excessive force by threatening
10 or committing acts involving violence, coercion or intimidation on the basis of a
11 protected class, such as race.

12 84. On information and belief, DECEDENT reasonably believed that if he
13 exercised his constitutional rights to be free from unreasonable seizures, arrests,
14 searches and/or excessive force Defendants would commit acts involving violence,
15 threats, coercion, or intimidation against his person.

16 85. On information and belief, Defendants seized, searched, arrested, used
17 force against and/or injured DECEDENT to prevent DECEDENT from exercising his
18 rights or to retaliate against DECEDENT for having exercised his rights.

19 86. Upon information and belief, a substantial and motivating reason for
20 Defendants use of excessive force, unlawful detention, search and arrest was due to
21 their being emboldened to commit misconduct to misuse and abuse their authority or
22 power by taking advantage of some weakness or disability or misfortune of the
23 DECEDENT because of DECEDENT's race or national origin in reckless disregard
24 of DECEDENT's rights, accompanied by ill will or spite, and was executed with
25 unnecessary harshness or severity warranting punitive damages.

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1 87. As a proximate result of the aforementioned acts of DEFENDANTS, and
2 each of them, PLAINTIFFS suffered damage in a sum according to proof, and are
3 entitled to the general, special, and exemplary damages and statutory damages.

4 88. Defendant COUNTY is vicariously liable for the wrongful acts of
5 Defendant AYALA pursuant to section 815.2 of the California Government Code,
6 which provides that a public entity is liable for the injuries caused by its employees
7 within the scope of the employment if the employee's act would subject him or her.

8 89. As a direct and proximate result of Defendants conduct, as alleged
9 herein, PLAINTIFFS have been compelled to retain legal counsel, and are entitled to
10 reasonable attorney's fees and costs of suit as provided by Civil Code section 52.1(h).

11 **EIGHTH CLAIM**

12 **Intentional Infliction of Emotional Distress**

13 (Against All Defendants)

14 90. PLAINTIFFS repeat, reallege and incorporate by reference the
15 allegations contained in all previous paragraphs as though fully set forth at length
16 herein.

17 91. DEFENDANTS were deputy officers who were acting in the course and
18 scope of their employment and on behalf of Defendant COUNTY with all requisite
19 authority conferred upon them by Defendant COUNTY.

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

24 93. DEFENDANTS knew or had reason to know that the aforementioned
25 unprivileged acts and omissions would cause PLAINTIFFS severe and ongoing
26 mental and emotional distress. The above-mentioned acts were committed by
27 DEFENDANTS were extreme and outrageous with willful intention and/or reckless

1 disregard that PLAINTIFFS would, or the probability that PLAINTIFFS would suffer
2 severe emotional and mental distress as a result.

3 94. By virtue of Defendants' positions and employment, Defendant
4 COUNTY knew of or reasonably should have known of, authorized, adopted,
5 approved and/or ratified Defendants' wrongful, unlawful and unconstitutional
6 conduct before, during and/or after it occurred. PLAINTIFFS are informed and
7 believe and thereon allege that the aforementioned acts and omissions of Defendants
8 were willful, malicious, intentional, oppressive, knowingly false and were done in
9 willful and conscious disregard of PLAINTIFFS' rights thereby justifying the award
10 of punitive damages against Defendants and each of them.

11 95. Defendants knew or should have known that severe emotional distress
12 would result from their conduct; or Defendants gave little or no thought to the
13 probable effects of their conduct.

14 96. Defendants aforementioned conduct was a substantial factor in causing
15 PLAINTIFFS severe emotional distress.

16 97. As sheriff officers, Defendants abused a position of authority that gave
17 Defendants real or apparent power to affect PLAINTIFFS' interests;

18 98. As a direct and proximate result of the DEFENDANTS' actions,
19 PLAINTIFFS' sustained severe mental and emotional distress, thereby justifying an
20 award of compensatory, special and punitive damages in an amount to be proven at
21 trial.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFFS request entry of judgement in their favor and
24 against the DEFENDANTS, as follows:

- 25 1. For compensatory damages in an amount to be proven at trial, including
26 both survival damages and wrongful death damages under federal and
27 state law;

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2. For economic damages:
 - a. Medical and funeral expenses
 - b. Loss the DECEDENT's expected earnings
 - c. Loss the DECEDENT's benefits, namely pension plans and/or medical coverage
 - d. Loss of an inheritance caused by the untimely death
 - e. The value of the goods and services the DECEDENT would have provided
3. For various non-economic damages:
 - a. Damages for the PLAINTIFFS' mental anguish, pain and suffering
 - b. Loss of care, protection, guidance, advice, training, and nurturing
 - c. Loss of DECEDENT's love, society, and companionship
4. For pre-judgment and post-judgment interest at the legal rate;
5. For reasonable attorney's fees, including litigation expenses;
6. For costs of suit; and
7. For such further other relief as the Court may deem just, proper, and appropriate.

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Dated: March 18, 2021

Respectfully submitted,
TONI JARAMILLA, A Professional Law Corp.
ALEXANDER MORRISON + FEHR LLP

By: J. Bernard Alexander, III

Toni J. Jaramilla

J. Bernard Alexander, III

Attorneys for Plaintiffs
MICKEL ERICH LEWIS JR, ORIONA LEWIS
and BRIONA LEWIS

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: March 18, 2021

Respectfully submitted,

ALEXANDER MORRISON + FEHR LLP

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