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REGINALD RAFE NICHOLAS PAYNE,
INDIVIDUALLY AND AS SUCCESSOR-IN-
INTEREST TO THE ESTATE OF REGINALD
DAMONE PAYNE, HARRIETT JEFFERSON, AND
RUFUS JEFFERSON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

REGINALD RAFE NICHOLAS PAYNE,
individually and as Successor-In-
Interest to THE ESTATE OF
REGINALD DAMONE PAYNE;
HARRIETT JEFFERSON; and RUFUS
JEFFERSON,

Plaintiffs,

v.

CITY OF SACRAMENTO; DAVID
MOWER; JOHN HELMICH; KEVIN
MOORMAN; JEFFREY KLEIN; SCOTT
CARAVALHO; SEAN HOLLEMAN;
CLINTON SIMONS; ERIC MUNSON,
and DOES 11-20,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. Unreasonable Search and Seizure—
Detention and Arrest (42 U.S.C. §
1983)
2. Unreasonable Search and Seizure—
Excessive Force (42 U.S.C. § 1983)
3. Unreasonable Search and Seizure—
Denial of Medical Care (42 U.S.C.
§ 1983)
4. Substantive Due Process—(42
U.S.C. § 1983)
5. Municipal Liability for
Unconstitutional Custom, Practice,
or Policy (42 U.S.C. § 1983)
6. Municipal Liability— Failure to
Train (42 U.S.C. § 1983)
7. False Arrest/False Imprisonment
8. Battery (Wrongful Death)
9. Negligence (Wrongful Death)
10. Violation of Bane Act (Cal. Civil
Code § 52.1)
11. Violation of Ralph Act (Cal. Civil
Code § 52.7)
12. Violation of Unruh Civil Rights Act
(Cal. Civil Code §§ 51, 52)

13. Negligent Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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6 1. Plaintiffs REGINALD RAFF NICHOLAS PAYNE, individually and as
7 Successor-In-Interest to THE ESTATE OF REGINALD DAMONE PAYNE,
8 HARRIETT JEFFERSON, and RUFUS JEFFERSON, for their complaint against
9 Defendants CITY OF SACRAMENTO, DAVID MOWER, JOHN HELMICH, KEVIN
10 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
11 CLINTON SIMONS, ERIC MUNSON, DOES 11-20, inclusive, allege as follows:

12 **INTRODUCTION**

13 2. This civil rights action seeks compensatory and punitive damages and
14 injunctive relief against Defendants for violating various rights under the United
15 States Constitution and state law in connection with the death of the DECEDENT
16 Reginald Damone Payne.

17 **JURISDICTION**

18 3. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
19 1343 and 2201. The Court has pendent jurisdiction and supplemental jurisdiction
20 over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1367.
21 This Court is empowered to grant injunctive and declaratory relief pursuant to 28
22 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 65. Plaintiffs' claim for attorneys' fees is
23 authorized by 42 U.S.C. §1988.

24 4. All administrative remedies have been exhausted. In compliance with
25 California Government Code § 910 *et seq.*, PLAINTIFFS REGINALD RAFF
26 NICHOLAS PAYNE, HARRIETT JEFFERSON and RUFUS JEFFERSON have filed
27 administrative claims for damages under the California Tort Claims Act with the
28 CITY OF SACRAMENTO, which denied these claims in writing on or about

1 November 20, 2020.

2 5. The events giving rise to the claims alleged in this Complaint arose in
3 the County of Sacramento, California. Venue therefore lies in the United States
4 District Court for the Eastern District of California, Sacramento Division, pursuant
5 to 28 U.S.C. § 84(a) and 28 U.S.C. § 1391(b)(2).

6 **THE PARTIES**

7 6. At all relevant times, Reginald Damone Payne (“DECEDENT”) was an
8 individual residing in the County of Sacramento, California.

9 7. Plaintiff REGINALD RAFF NICHOLAS PAYNE is the surviving
10 natural child of the DECEDENT and brings these claims in his individual capacity as
11 well as on behalf of the ESTATE OF REGINALD DAMONE PAYNE in his capacity
12 as successor-in-interest to DECEDENT. REGINALD RAFF NICHOLAS PAYNE is a
13 resident of the State of California and commences this action pursuant to the
14 California Code of Civil Procedure §§377.30, 377.60, and federal civil rights law.
15 REGINALD RAFF NICHOLAS PAYNE seeks both survival and wrongful death
16 damages under federal and state law.

17 8. Plaintiff HARRIET JEFFERSON is the surviving mother of
18 DECEDENT and brings these claims in her individual capacity. HARRIET
19 JEFFERSON is a resident of the County of Sacramento, State of California, and
20 seeks wrongful death damages under federal and state law.

21 9. Plaintiff RUFUS JEFFERSON is the surviving father of DECEDENT
22 and brings these claims in his individual capacity. RUFUS JEFFERSON is a
23 resident of the County of Sacramento, State of California, and seeks wrongful death
24 damages under federal and state law.

25 10. Defendant CITY OF SACRAMENTO (“CITY”) is and was a duly
26 organized public entity, form unknown, existing under the laws of the State of
27 California. At all relevant times, CITY was the employer of Defendants DAVID
28 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT

1 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON, who
2 were CITY police officers, fire fighters, paramedics and/or emergency medical
3 technicians. At all relevant times, CITY was the employer of Defendants DOES 11-
4 20, who were supervisory officers, and/or managerial, supervisory, and
5 policymaking employees of the Sacramento Police Department, the Sacramento
6 Police Department, the Emergency Medical Services Division of the Sacramento Fire
7 Department and/or the CITY.

8 11. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
9 JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
10 ERIC MUNSON, and DOES 11-20 were, at all relevant times, duly authorized
11 employees and agents of CITY who were acting under color of law within the course
12 and scope of their respective duties and with the complete authority and ratification
13 of their principal, Defendant CITY.

14 12. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
15 JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
16 ERIC MUNSON, and DOES 11-20 were, at all relevant times, duly authorized
17 employees and agents of CITY subject to oversight and supervision by CITY's elected
18 and nonelected officials.

19 13. In doing the acts and failing and omitting to act as hereinafter
20 described, Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
21 JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
22 ERIC MUNSON, and DOES 11-20 were acting on the implied and actual permission
23 and consent of CITY.

24 14. At all times mentioned herein, each and every Defendant employee or
25 agent of the CITY was the agent of each and every other Defendant employee or
26 agent of the CITY, and had the legal duty to oversee and supervise the hiring,
27 conduct and employment of each and every Defendant employee or agent of the
28 CITY.

1 15. The true names, capacities, or involvement, whether individual,
2 corporate, governmental, or associate of the Defendants named herein as DOE, are
3 unknown to Plaintiffs who therefore sue said Defendants by such fictitious names.
4 Plaintiffs pray leave to amend this complaint to show their true names and
5 capacities, when the same have been finally determined

6 **FACTUAL ALLEGATIONS**

7 16. On the evening of February 25, 2020, HARRIET JEFFERSON called
8 911 to request emergency medical services for her son, the DECEDENT, a diabetic in
9 medical distress due to low blood sugar. Defendant CITY dispatched Defendants
10 JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
11 and ERIC MUNSON, employees of the Sacramento Fire Department and/or its
12 Emergency Medical Services Division, to HARRIET JEFFERSON's residence at 5330
13 25th Street in Sacramento, California.

14 17. Upon arriving at the scene, rather than provide care or treatment to
15 DECEDENT, said employees and agents of Defendant CITY requested the assistance
16 of the Sacramento Police Department, which dispatched a single police officer,
17 Defendant KEVIN MOORMAN. This officer did not enter the residence upon arrival,
18 but rather requested backup and waited more than five minutes for another two
19 CITY police officers, Defendants JOHN HELMICH and DAVID MOWER, to arrive.
20 The officers confirmed that there was no suspicion of a crime.

21 18. The three CITY police officers entered the residence and briefly spoke
22 with HARRIET JEFFERSON and RUFUS JEFFERSON. The officers then walked
23 into a back room of the residence, where DECEDENT was sitting on a couch
24 conscious but in an apparent state of mental incapacity. Approximately 30-40
25 seconds after the officers entered the room, DECEDENT slid off the couch and onto
26 the ground. The police officers then used force to restrain him on the floor in the
27 prone position. Defendant Officer DAVID MOWER applied handcuffs while another
28 officer tied DECEDENT'S ankles together.

1 19. At no time herein was DECEDENT a direct threat to any employee or
2 agent of the CITY. At no time herein was DECEDENT physically aggressive towards
3 the officers, nor did DECEDENT stand from his seated position or advance towards
4 the officers.

5 20. All three officers continued to hold DECEDENT face down on the floor
6 for several minutes as DECEDENT sobbed. During this time, DECEDENT was still
7 conscious and perceived the restraint on his liberty. Even so, DECEDENT did not act
8 combatively towards the officers while they restrained him, and did not resist. As the
9 Emergency Medical Services personnel watched, the officers kept DECEDENT in the
10 prone position despite the known potential for respiratory arrest and death from
11 asphyxia or aspiration.

12 21. Shortly afterward, DECEDENT exhibited an acute change in his
13 medical presentation. That is, he stopped moving altogether and was unconscious
14 and unresponsive. Still, the officers forcefully held him to the ground in the prone
15 position. Despite the presence of Emergency Medical Services personnel, there was
16 no effort to adequately assess and understand DECEDENT's changed presentation.
17 There were no attempts at resuscitation.

18 22. After several more minutes with DECEDENT unconscious and
19 unresponsive, in the prone position, DECEDENT was lifted onto a gurney and
20 further physically restrained.

21 23. DECEDENT never regained consciousness. He was transported via
22 ambulance to Sutter Medical Center, where he was officially pronounced dead on
23 March 3, 2020. The immediate cause of death on the death certificate is "acute
24 respiratory failure."

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FIRST CAUSE OF ACTION

**Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)
(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott
Carvalho, Sean Holleman, Clinton Simons, and Eric Munson)**

24. Plaintiffs repeat and reallege each and every prior paragraph of this Complaint with the same force and effect as if fully set forth herein.

25. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON caused DECEDENT to be detained, and they attempted to arrest DECEDENT in violation of his right to be secure in his person against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

26. Despite the time they had to reflect, Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON, acting under color of law and exercising their power as government actors, subjected Plaintiffs to their arbitrary and wrongful conduct as set out above, which conduct (a) was a substantial departure from professional judgment, and (b) was with deliberate disregard of what they knew was a high risk of death or serious personal injury. The conduct of Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON shocks the conscience.

27. As a result of the conduct of DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON, they are liable for DECEDENT's injuries because they were integral participants to the violations of DECEDENT's rights. The DECEDENT was detained without reasonable suspicion as said Defendants

1 attempted to arrest DECEDENT without probable cause.

2 28. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN
3 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
4 CLINTON SIMONS, and ERIC MUNSON was willful, wanton, malicious, and done
5 with reckless disregard for the rights and safety of DECEDENT and therefore
6 warrants the imposition of exemplary and punitive damages as to DAVID MOWER,
7 JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO,
8 SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON.

9 29. Accordingly, Defendants DAVID MOWER, JOHN HELMICH, KEVIN
10 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
11 CLINTON SIMONS, and ERIC MUNSON are each liable to Plaintiffs for
12 compensatory and punitive damages, including both survival damages and wrongful
13 death damages, under 42 U.S.C. § 1983.

14 30. Plaintiffs also seek attorney fees under this claim.

15 **SECOND CAUSE OF ACTION**

16 **Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)**
17 **(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott**
18 **Carvalho, Sean Holleman, Clinton Simons, and Eric Munson)**

19 31. Plaintiffs repeat and reallege each and every prior paragraph of this
20 Complaint with the same force and effect as if fully set forth herein.

21 32. The conduct of Defendants DAVID MOWER, JOHN HELMICH, KEVIN
22 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
23 CLINTON SIMONS, and ERIC MUNSON deprived DECEDENT of his right to be
24 secure in his persons against unreasonable searches and seizures as guaranteed to
25 DECEDENT under the Fourth Amendment to the United States Constitution and
26 applied to state actors by the Fourteenth Amendment.

27 33. The unreasonable use of force by Defendants DAVID MOWER, JOHN
28 HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN

1 HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON deprived the DECEDENT
2 of his right to be secure in his person against unreasonable searches and seizures as
3 guaranteed to DECEDENT under the Fourth Amendment to the United States
4 Constitution and applied to state actors by the Fourteenth Amendment.

5 34. As a result, DECEDENT suffered extreme mental and physical pain and
6 suffering, loss of enjoyment of life and eventually suffered a loss of life and of earning
7 capacity. Plaintiffs have also been deprived of the life-long love, companionship,
8 comfort, support, society, care, and sustenance of DECEDENT, and will continue to
9 be so deprived for the remainder of their natural lives.

10 35. The conduct of Defendants DAVID MOWER, JOHN HELMICH, KEVIN
11 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
12 CLINTON SIMONS, and ERIC MUNSON was willful, wanton, malicious, and done
13 with reckless disregard for the rights and safety of DECEDENT and therefore
14 warrants the imposition of exemplary and punitive damages as to Defendants
15 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
16 SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
17 MUNSON.

18 36. Plaintiffs seek both survival and wrongful death damages for the
19 violation of DECEDENT's rights.

20 37. Plaintiffs also seek attorney fees under this claim.

21 **THIRD CAUSE OF ACTION**

22 **Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)**
23 **(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott**
24 **Carvalho, Sean Holleman, Clinton Simons, and Eric Munson)**

25 38. Plaintiffs repeat and reallege each and every prior paragraph of this
26 Complaint with the same force and effect as if fully set forth herein.

27 39. The denial of medical care by Defendants DAVID MOWER, JOHN
28 HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN

1 HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON deprived DECEDENT of his
2 right to be secure in his person against unreasonable searches and seizures as
3 guaranteed to DECEDENT under the Fourth Amendment to the United States
4 Constitution and applied to state actors by the Fourteenth Amendment.

5 40. As a result, DECEDENT suffered extreme mental and physical pain and
6 suffering and eventually suffered a loss of life and earning capacity. Plaintiffs have
7 also been deprived of the life-long love, companionship, comfort, support, society,
8 care, and sustenance of DECEDENT, and will continue to be so deprived for the
9 remainder of their natural lives.

10 41. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
11 JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
12 and ERIC MUNSON knew that failure to provide timely medical treatment to
13 DECEDENT could result in further significant injury or the unnecessary and wanton
14 infliction of pain, but disregarded that serious medical need, causing DECEDENT
15 great bodily harm and death.

16 42. The conduct of Defendants DAVID MOWER, JOHN HELMICH, KEVIN
17 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
18 CLINTON SIMONS, and ERIC MUNSON was willful, wanton, malicious, and done
19 with reckless disregard for the rights and safety of DECEDENT and therefore
20 warrants the imposition of exemplary and punitive damages as to Defendants
21 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
22 SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
23 MUNSON.

24 43. Plaintiffs seek both survival and wrongful death damages for the
25 violation of DECEDENT's rights.

26 44. Plaintiffs also seek attorney fees under this claim.

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FOURTH CAUSE OF ACTION

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

(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott Carvalho, Sean Holleman, Clinton Simons, and Eric Munson)

45. Plaintiffs repeat and reallege each and every prior paragraph of this Complaint with the same force and effect as if fully set forth herein.

46. REGINALD RAFE NICHOLAS PAYNE had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive him of life, liberty, or property in such a manner as to shock the conscience, including but not limited to, unwarranted state interference in Plaintiff's familial relationship with his father, DECEDENT.

47. HARRIET JEFFERSON had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive him of life, liberty, or property in such a manner as to shock the conscience, including but not limited to, unwarranted state interference in Plaintiff's familial relationship with her son, DECEDENT.

48. RUFUS JEFFERSON had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive him of life, liberty, or property in such a manner as to shock the conscience, including but not limited to, unwarranted state interference in Plaintiff's familial relationship with his son, DECEDENT.

49. As a result of the excessive force and other conduct by Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON complained of herein, DECEDENT died. Plaintiffs were thereby deprived of their constitutional right of familial relationship with DECEDENT.

50. DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY

1 KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
2 MUNSON, acting under color of state law, thus violated the Fourteenth Amendment
3 rights of REGINALD RAFF NICHOLAS PAYNE, HARRIET JEFFERSON and
4 RUFUS JEFFERSON to be free from unwarranted interference with their familial
5 relationship with DECEDENT.

6 51. The aforementioned actions of DAVID MOWER, JOHN HELMICH,
7 KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
8 CLINTON SIMONS, and ERIC MUNSON, along with other undiscovered conduct,
9 shock the conscience, in that they acted with deliberate indifference to the
10 constitutional rights of DECEDENT and Plaintiffs REGINALD RAFF NICHOLAS
11 PAYNE, HARRIET JEFFERSON and RUFUS JEFFERSON with purpose to harm
12 unrelated to any legitimate law enforcement objective.

13 52. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
14 JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
15 and ERIC MUNSON, acting under color of state law, thus violated the Fourteenth
16 Amendment rights of DECEDENT and Plaintiffs.

17 53. As a direct and proximate cause of the acts of Defendants DAVID
18 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
19 CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON ,
20 Plaintiffs suffered extreme and severe mental anguish and pain and have been
21 injured in mind and body. Plaintiffs have also been deprived of the life-long love,
22 companionship, comfort, support, society, care and sustenance of DECEDENT, and
23 will continue to be so deprived for the remainder of their natural lives.

24 54. As a result of the conduct of DAVID MOWER, JOHN HELMICH,
25 KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
26 CLINTON SIMONS, and ERIC MUNSON, said Defendants they are liable for
27 DECEDENT'S injuries because they were integral participants in the denial of due
28 process.

1 and ERIC MUNSON, whom Defendants DOES 11-20, at all times material herein
2 knew or reasonably should have known had dangerous propensities for abusing their
3 authority, for mistreating citizens, for racial discrimination, for use of excessive force,
4 and for being reckless and careless in the provision of medical aid;

5 b. Of inadequately supervising, training, controlling, assigning, and
6 disciplining CITY police officers and other personnel who Defendant CITY knew or in
7 the exercise of reasonable care should have known had the aforementioned
8 propensities and character traits;

9 c. By failing to adequately train personnel, including DAVID
10 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
11 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON, and
12 failing to institute appropriate policies regarding restraints and the use of excessive
13 force;

14 d. By failing to adequately train personnel, including DAVID
15 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
16 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON, and
17 failing to institute appropriate policies regarding the rendering of medical aid in
18 emergencies;

19 e. By failing to adequately train personnel, including DAVID
20 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
21 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON, and
22 failing to institute appropriate policies regarding racial discrimination; and

23 f. By having and maintaining an unconstitutional policy, custom,
24 and practice of using excessive force and improper restraint, which also is
25 demonstrated by inadequate training regarding these subjects.

26 60. These policies, customs, and practices of CITY and DOES 11-20 were
27 done with a deliberate indifference to individuals' safety and rights.

28 61. By reason of the aforementioned policies and practices of Defendants

1 CITY and DOES 11-20, DECEDENT was severely injured and subjected to pain and
2 suffering and lost his life.

3 62. Defendants DOES 11-20, together with various other officials, whether
4 named or unnamed, had either actual or constructive knowledge of the deficient
5 policies, practices and customs alleged in the paragraphs above. Despite having
6 knowledge as stated above these defendants condoned, tolerated and through actions
7 and inactions thereby ratified such policies. Said Defendants also acted with
8 deliberate indifference to the foreseeable effects and consequences of these policies
9 with respect to the constitutional rights of DECEDENT, Plaintiffs, and other
10 individuals similarly situated.

11 63. By perpetrating, sanctioning, tolerating and ratifying the outrageous
12 conduct and other wrongful acts, Defendants DOES 11-20, acted with an intentional,
13 reckless, and callous disregard for the life of DECEDENT, and DECEDENT's and
14 Plaintiffs' constitutional rights. Defendants DOES 11-20, each of their actions were
15 willful, wanton, oppressive, malicious, fraudulent, and extremely offensive and
16 unconscionable to any person of normal sensibilities.

17 64. Furthermore, the policies, practices, and customs implemented and
18 maintained and still tolerated by Defendants DOES 11-20, were affirmatively linked
19 to and were a significantly influential force behind the injuries of DECEDENT and
20 Plaintiffs.

21 65. The unconstitutional actions and/or omissions of Defendants DAVID
22 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
23 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON were
24 pursuant to and a result of the patterns, customs, policies, practices, and/or
25 procedures of the Defendant CITY, which were directed, encouraged, allowed, and/or
26 ratified by policy making officers for the CITY including, but not limited to, DOES
27 11-20. Such patterns, customs, policies, practices, and/or procedures, including but
28 not limited to, failing to institute and require proper and adequate training and

1 supervision policies for responding to a person suffering a medical emergency who
2 needs to be restrained in order to administer medical aid, thereby increasing the
3 chance of deadly consequences in violation of the United States Constitution.

4 66. Defendant CITY directed, encouraged, and allowed these customs,
5 policies, practices, and/or procedures with deliberate indifference to the fundamental
6 rights individuals have, including Plaintiffs, and despite the high likelihood that
7 someone would be killed as a result.

8 67. By reason of the aforementioned acts and omissions of Defendants
9 DOES 11-20, Plaintiffs have suffered loss of love, companionship, affection, comfort,
10 care, society, and future support.

11 68. Accordingly, Defendants DOES 11-20, each are liable to Plaintiffs for
12 compensatory damages under 42 U.S.C. § 1983.

13 69. Plaintiffs seek wrongful death and survival damages under this claim.

14 70. Plaintiffs also seek attorney fees under this claim.

15 **SIXTH CAUSE OF ACTION**

16 **Municipal Liability— Failure to Train (42 U.S.C. § 1983)**

17 **(Against Defendants CITY and DOES 11-20)**

18 71. Plaintiffs repeat and reallege each and every prior paragraph of this
19 Complaint with the same force and effect as if fully set forth herein.

20 72. While acting under the color of state law and within the course and
21 scope of their employment as police officers, fire fighters, paramedics and emergency
22 service technicians for the CITY, DAVID MOWER, JOHN HELMICH, KEVIN
23 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
24 CLINTON SIMONS, and ERIC MUNSON deprived DECEDENT of his rights and
25 liberties secured to him by the Fourth and Fourteenth Amendments, including his
26 right to be free from excessive force and unreasonable search and seizure.

27 73. The training policies of the defendant CITY were not adequate to train
28 its personnel, including but not limited to, DAVID MOWER, JOHN HELMICH,

1 KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
2 CLINTON SIMONS, and ERIC MUNSON. As a result, CITY personnel, including
3 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
4 SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
5 MUNSON, are not able to handle the usual and recurring situations with which they
6 must deal, including rendering medical aid in emergencies and safely restraining
7 persons in medical emergencies. These inadequate training policies existed prior to
8 the date of this incident and continue to this day.

9 74. Defendant CITY was deliberately indifferent to the known or obvious
10 consequences of its failure to adequately train its personnel, including DAVID
11 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
12 CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON .

13 75. The failure of the Defendant CITY to provide adequate training with
14 regards to restraints and the rendering of emergency medical aid caused the
15 deprivation of the Plaintiff's rights by DAVID MOWER, JOHN HELMICH, KEVIN
16 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
17 CLINTON SIMONS, and ERIC MUNSON. In other words, the Defendant's failure to
18 train is so closely related to the deprivation of the Plaintiffs' rights as to be the
19 moving force that caused the ultimate injury.

20 76. By failing to provide adequate training to CITY's personnel, including
21 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
22 SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
23 MUNSON, Defendants DOES 11-20, acted with an intentional, reckless, and callous
24 disregard for the life of DECEDENT, and DECEDENT's and Plaintiffs' constitutional
25 rights. Defendants DOES 11-20, each of their actions were willful, wanton,
26 oppressive, malicious, fraudulent, and extremely offensive and unconscionable to any
27 person of normal sensibilities.

28 77. By reason of the aforementioned acts and omissions of Defendants

1 DOES 11-20, Plaintiffs have suffered loss of love, companionship, affection, comfort,
2 care, society, and future support.

3 78. Accordingly, Defendants DOES 11-20, each are liable to Plaintiffs for
4 compensatory damages under 42 U.S.C. § 1983.

5 79. Plaintiffs seek wrongful death and survival damages under this claim.

6 80. Plaintiffs also seek attorney fees under this claim.

7 **SEVENTH CAUSE OF ACTION**

8 **False Arrest/False Imprisonment (Cal. Govt. Code § 820 and Common Law)**
9 **(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott**
10 **Carvalho, Sean Holleman, Clinton Simons, and Eric Munson and CITY)**

11 81. Plaintiffs repeat and reallege each and every prior paragraph of this
12 Complaint with the same force and effect as if fully set forth herein.

13 82. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
14 JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
15 and ERIC MUNSON, while working as police officers, fire fighters, paramedics
16 and/or emergency medical technicians for CITY, and acting within the course and
17 scope of their duties, intentionally deprived DECEDENT of his freedom of movement
18 by use of force, threats of force and unreasonable duress. Defendants DAVID
19 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
20 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON
21 unreasonably detained DECEDENT in the prone position despite the known
22 potential for respiratory arrest and death from asphyxia or aspiration. Defendants
23 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
24 SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
25 MUNSON also detained DECEDENT without reasonable suspicion. There was an
26 attempt by DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY
27 KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
28 MUNSON to arrest DECEDENT without probable cause and, in fact, without even

1 suspicion of a crime.

2 83. DECEDENT did not knowingly or voluntarily consent to his detention
3 or attempted arrest. On information and belief DECEDENT did not feel that he was
4 free to leave as he lay dying on the ground. Defendants DAVID MOWER, JOHN
5 HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN
6 HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON deprived DECEDENT, who
7 was unarmed, of his liberty without justification. Further, Defendants DAVID
8 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
9 CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON did
10 not have probable cause to believe that DECEDENT, specifically, had committed any
11 crime.

12 84. The conduct against DECEDENT by Defendants DAVID MOWER,
13 JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO,
14 SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON was a substantial
15 factor in causing the harm of DECEDENT, namely his death.

16 85. CITY is vicariously liable for the wrongful acts of Defendants DAVID
17 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
18 CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON
19 pursuant to section 815.2(a) of the California Government Code, which provides that
20 a public entity is liable for the injuries caused by its employees within the scope of
21 the employment if the employee's act would subject him or her to liability.

22 86. The conduct of Defendants DAVID MOWER, JOHN HELMICH, KEVIN
23 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
24 CLINTON SIMONS, and ERIC MUNSON was malicious, wanton, oppressive, and
25 accomplished with a conscious disregard for the rights of DECEDENT, entitling
26 Plaintiffs to an award of exemplary and punitive damages.

27 87. Plaintiffs are seeking both survival and wrongful death damages under
28 this claim.

EIGHTH CAUSE OF ACTION

Battery (Cal. Govt. Code § 820 and Common Law)

(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott Carvalho, Sean Holleman, Clinton Simons, and Eric Munson and CITY)

88. Plaintiffs repeat and reallege each and every prior paragraph of this Complaint with the same force and effect as if fully set forth herein.

89. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON, while working as police officers, fire fighters, paramedics and/or emergency medical technicians for CITY, and acting within the course and scope of their duties, intentionally touched DECEDENT and caused DECEDENT to be touched with the intent to harm or offend him, and to deprive DECEDENT of his freedom of movement by use of force, threats of force and unreasonable duress.

Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON unreasonably detained DECEDENT in the prone position despite the known potential for respiratory arrest and death from asphyxia or aspiration.

Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON also detained DECEDENT without reasonable suspicion. There was an attempt by DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON to arrest DECEDENT without probable cause and, in fact, without even suspicion of a crime.

90. DECEDENT did not knowingly or voluntarily consent to his touching, detention or attempted arrest.

91. As a direct and proximate result of Defendants' conduct as alleged above, Plaintiffs suffered extreme and severe mental anguish and pain and have

1 been injured in mind and body. Plaintiffs also have been deprived of the life-long
2 love, companionship, comfort, support, society, care and sustenance of DECEDENT,
3 and will continue to be so deprived for the remainder of their natural lives.

4 92. CITY is vicariously liable for the wrongful acts of Defendants DAVID
5 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
6 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON
7 pursuant to section 815.2(a) of the California Government Code, which provides that
8 a public entity is liable for the injuries caused by its employees within the scope of
9 the employment if the employee's act would subject him or her to liability.

10 93. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN
11 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
12 CLINTON SIMONS, and ERIC MUNSON was malicious, wanton, oppressive, and
13 accomplished with a conscious disregard for the rights of Plaintiffs and DECEDENT,
14 entitling Plaintiffs, individually and as successors-in-interest to DECEDENT, to an
15 award of exemplary and punitive damages.

16 94. Plaintiffs bring this claim both individually and as successors-in-
17 interest to DECEDENT and seek both survival and wrongful death damages.

18 **NINTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

21 95. Plaintiffs repeat and reallege each and every prior paragraph of this
22 Complaint with the same force and effect as if fully set forth herein.

23 96. The actions and inactions of the Defendants were negligent, including
24 but not limited to:

25 a. The failure to properly and adequately train employees, including
26 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
27 SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, ERIC MUNSON
28 and DOES 11-20, with regards to the use of force, restraint and the provision of

1 emergency medical services;

2 b. The failure to properly and adequately assess the need to detain,
3 arrest, and use force against DECEDENT;

4 c. The negligent tactics and handling of the situation with
5 DECEDENT, including racial discrimination, unreasonable and improper restraint
6 and the provision of medical services in violation of applicable standards of care;

7 d. The negligent detention, arrest, and use of force against
8 DECEDENT;

9 e. The failure to provide and/or summon prompt medical care to
10 DECEDENT; and

11 f. The failure to properly train and supervise employees, both
12 professional and non-professional, including DAVID MOWER, JOHN HELMICH,
13 KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
14 CLINTON SIMONS, ERIC MUNSON and DOES 1-20.

15 97. Defendant CITY failed to properly hire, train, instruct, monitor, and
16 supervise DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY
17 KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, ERIC
18 MUNSON and other of its employees, including DOES 11-20, with deliberate
19 indifference to Plaintiffs' constitutional rights, which were thereby violated as
20 described above.

21 98. As a direct and proximate result of Defendants' conduct as alleged
22 above, Plaintiffs suffered extreme and severe mental anguish and pain and have
23 been injured in mind and body. Plaintiffs also have been deprived of the life-long
24 love, companionship, comfort, support, society, care and sustenance of DECEDENT,
25 and will continue to be so deprived for the remainder of their natural lives.

26 99. CITY is vicariously liable for the wrongful acts of Defendants DAVID
27 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
28 CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, ERIC MUNSON and

1 DOES 11-20 pursuant to section 815.2(a) of the California Government Code, which
2 provides that a public entity is liable for the injuries caused by its employees within
3 the scope of the employment if the employee's act would subject him or her to
4 liability.

5 100. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN
6 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
7 CLINTON SIMONS, ERIC MUNSON and DOES 11-20 was malicious, wanton,
8 oppressive, and accomplished with a conscious disregard for the rights of Plaintiffs
9 and DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
10 DECEDENT, to an award of exemplary and punitive damages.

11 101. Plaintiffs bring this claim both individually and as successors-in-
12 interest to DECEDENT and seek both survival and wrongful death damages.

13 **TENTH CAUSE OF ACTION**

14 **Violation of Bane Act (Cal. Civil Code § 52.1)**

15 **(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott**
16 **Carvalho, Sean Holleman, Clinton Simons, and Eric Munson)**

17 102. Plaintiffs reallege each and every paragraph in this complaint as if fully
18 set forth here.

19 103. California Civil Code section 52.1, et seq., also known as the Bane Act,
20 provides that any individual whose exercise or enjoyment of rights secured by the
21 Constitution or laws of the United States, or of rights secured by the Constitution or
22 laws of California, has been interfered with, or attempted to be interfered with, by a
23 person or persons, whether or not acting under color of law, may institute and
24 prosecute a civil action for damages, including, but not limited to, injunctive relief,
25 and other appropriate equitable relief to protect the peaceable exercise or enjoyment
26 of the right or rights secured, including appropriate equitable and declaratory relief
27 to eliminate a pattern or practice of conduct.

28 104. The conduct of each Defendant in restraining DECEDENT in the prone

1 position, and in doing or failing to do the other wrongful acts herein alleged
2 including, but not limited to the failure to medically assess DEFENDANT when he
3 stopped moving and exhibited a drastically changed clinical presentation and the
4 failure to provide medical services in accord with the applicable standards of care,
5 was done for the purpose of interfering with and attempting to interfere with
6 DECEDENT's rights under the Fourth and Fourteenth Amendments to be free from
7 unreasonable seizure and excessive force, and with Plaintiffs' rights to familial
8 associations under the First and Fourteenth Amendments, and for these reasons
9 violated Plaintiffs' rights under California Civil Code section 52.1(b).

10 105. At no time did DECEDENT pose an immediate threat of death or
11 serious bodily injury and DECEDENT never verbally threatened anyone. There is
12 direct and circumstantial evidence that DAVID MOWER, JOHN HELMICH, KEVIN
13 MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN,
14 CLINTON SIMONS, and ERIC MUNSON intentionally violated DECEDENT's
15 rights under § 1983 by unlawfully detaining him, by attempting to unlawfully arrest
16 him, by unreasonably, unsafely and improperly restraining him in the prone position,
17 by failing to assess his medical condition and by providing medical services in
18 violation of applicable standards of care.

19 106. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
20 JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
21 and ERIC MUNSON, while working as police officers, fire fighters, paramedics
22 and/or emergency medical technicians for CITY, and acting within the course and
23 scope of their duties, intentionally deprived DECEDENT of his freedom of movement
24 by use of force, threats of force and unreasonable duress. Defendants DAVID
25 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
26 CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC MUNSON
27 unreasonably detained DECEDENT in the prone position despite the known
28 potential for respiratory arrest and death from asphyxia or aspiration. Defendants

1 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
2 SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
3 MUNSON also detained DECEDENT without reasonable suspicion. There was an
4 attempt by DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY
5 KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
6 MUNSON to arrest DECEDENT without probable cause and, in fact, without even
7 suspicion of a crime. DECEDENT, an African-American male, was also racially
8 profiled by said Defendants.

9 107. Plaintiffs are informed and believe and thereon allege that the
10 Defendants' wrongful acts were done knowingly and intentionally and for the
11 purpose of inflicting injury on DECEDENT.

12 108. As a result, DECEDENT was caused to suffer extreme mental and
13 physical pain and suffering and eventually suffered a loss of life and of earning
14 capacity. Plaintiffs have also been deprived of the life-long love, companionship,
15 comfort, support, society, care, and sustenance of DECEDENT, and will continue to
16 be so deprived for the remainder of their natural lives.

17 109. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN
18 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
19 CLINTON SIMONS, and ERIC MUNSON was a substantial factor in causing the
20 harms, losses, injuries, and damages of DECEDENT and Plaintiffs.

21 110. CITY is vicariously liable for the wrongful acts of Defendants DAVID
22 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
23 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, ERIC MUNSON and
24 DOES 11-20 pursuant to section 815.2(a) of the California Government Code, which
25 provides that a public entity is liable for the injuries caused by its employees within
26 the scope of the employment if the employee's act would subject him or her to
27 liability.

28 111. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN

1 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
2 CLINTON SIMONS, ERIC MUNSON and DOES 11-20 was malicious, wanton,
3 oppressive, and accomplished with a conscious disregard for the rights of Plaintiffs
4 and DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
5 DECEDENT, to an award of exemplary and punitive damages.

6 112. Plaintiffs bring this claim both individually and as successors-in-
7 interest to DECEDENT and seek both survival and wrongful death damages.

8 113. Plaintiffs also seek the statutory civil penalties set forth in Civil Code
9 Section 52.1, attorney's fees and costs incurred herein.

10 **ELEVENTH CAUSE OF ACTION**

11 **Violation of Ralph Act (Cal. Civil Code §51.7)**

12 **(Against All Defendants)**

13 114. Plaintiffs reallege each and every paragraph in this complaint as if fully
14 set forth here.

15 115. California Civil Code section 51.7, also known as the Ralph Act,
16 provides all persons with the right to be free from any violence, or intimidation by
17 threat of violence, committed against their persons or property because of their race
18 or other protected, actionable characteristic, or because another person perceives
19 them to have one or more of those characteristics.

20 116. California Civil Code section 52(b) provides that whoever denies the
21 right provided in Civil Code section 51.7, or aids, incites, or conspires in that denial,
22 is liable for each and every offense for the actual damages suffered by any person
23 denied that right and, in addition, the following: (1) an amount to be determined by a
24 jury, or a court sitting without a jury, for exemplary damages; (2) a civil penalty of
25 twenty-five thousand dollars (\$25,000) to be awarded to the person denied the right
26 provided by section 51.7 in any action brought by the person denied the right; and (3)
27 attorney's fees as may be determined by the court.

28 117. Defendant CITY and its officials and employees committed violent acts

1 against DECEDENT, including but not limited to, handcuffing Mr. Payne in the
2 prone position and kneeling on his back.

3 118. A substantial motivating reason for Defendants' conduct was their
4 perception of DECEDENT's race, color, or other protected, actionable characteristic.

5 119. As a result, DECEDENT was caused to suffer extreme mental and
6 physical pain and suffering and eventually suffered a loss of life and of earning
7 capacity. DECEDENT and Plaintiffs have been deprived of life, liberty, civil rights,
8 family relations and equal protection under the law. Plaintiffs have also been
9 deprived of the life-long love, companionship, comfort, support, society, care, and
10 sustenance of DECEDENT, and will continue to be so deprived for the remainder of
11 their natural lives.

12 120. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN
13 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
14 CLINTON SIMONS, ERIC MUNSON and DOES 11-20 was a substantial factor in
15 causing the harms, losses, injuries, and damages of DECEDENT and Plaintiffs.

16 121. CITY is vicariously liable for the wrongful acts of Defendants DAVID
17 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
18 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, ERIC MUNSON and
19 DOES 11-20 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.

23 122. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN
24 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
25 CLINTON SIMONS, ERIC MUNSON and DOES 11-20 was malicious, wanton,
26 oppressive, and accomplished with a conscious disregard for the rights of Plaintiffs
27 and DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
28 DECEDENT, to an award of exemplary and punitive damages.

1 123. Plaintiffs bring this claim both individually and as successors-in-
2 interest to DECEDENT and seek both survival and wrongful death damages.

3 124. Plaintiffs also seek the statutory civil penalties set forth in Civil Code
4 Section 51.7, including actual damages in an amount to be proven at trial, a civil
5 penalty of twenty-five thousand dollars (\$25,000), and attorney's fees.

6 **TWELFTH CAUSE OF ACTION**

7 **Violation of Unruh Civil Rights Act (Cal. Civil Code §§ 51, 52)**

8 **(Against All Defendants)**

9 125. Plaintiffs reallege each and every paragraph in this complaint as if fully
10 set forth here.

11 126. Defendants denied, or aided or incited a denial of, DECEDENT's full
12 and equal privileges and services. The conduct complained of herein constitutes
13 unlawful racial discrimination against DECEDENT and Plaintiffs. A substantial
14 motivating reason for Defendants' conduct was their perception of DECEDENT's and
15 Plaintiffs' race, color, or other protected, actionable characteristic.

16 127. As a result, DECEDENT was caused to suffer extreme mental and
17 physical pain and suffering and eventually suffered a loss of life and of earning
18 capacity. DECEDENT and Plaintiffs have been deprived of life, liberty, civil rights,
19 family relations and equal protection under the law. Plaintiffs have also been
20 deprived of the life-long love, companionship, comfort, support, society, care, and
21 sustenance of DECEDENT, and will continue to be so deprived for the remainder of
22 their natural lives.

23 128. The culpable and unlawful conduct of DAVID MOWER, JOHN
24 HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT CARAVALHO, SEAN
25 HOLLEMAN, CLINTON SIMONS, ERIC MUNSON and DOES 11-20 was a
26 substantial factor in causing the harms, losses, injuries, and damages of DECEDENT
27 and Plaintiffs.

28 129. CITY is vicariously liable for the wrongful acts of Defendants DAVID

1 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
2 CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS, ERIC MUNSON and
3 DOES 11-20 pursuant to section 815.2(a) of the California Government Code, which
4 provides that a public entity is liable for the injuries caused by its employees within
5 the scope of the employment if the employee's act would subject him or her to
6 liability.

7 130. The conduct of DAVID MOWER, JOHN HELMICH, KEVIN
8 MOORMAN, JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN,
9 CLINTON SIMONS, ERIC MUNSON and DOES 11-20 was malicious, wanton,
10 oppressive, and accomplished with a conscious disregard for the rights of Plaintiffs
11 and DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
12 DECEDENT, to an award of exemplary and punitive damages.

13 131. Plaintiffs bring this claim both individually and as successors-in-
14 interest to DECEDENT, and seek both survival and wrongful death damages.

15 132. Plaintiffs also seek the statutory civil penalties set forth in Civil Code
16 Section 52 including, but not limited to, treble damages.

17 **THIRTEENTH CAUSE OF ACTION**

18 **Negligent Infliction of Emotional Distress (Cal. Govt. Code § 829)**
19 **(Against David Mower, John Helmich, Kevin Moorman, Jeffrey Klein, Scott**
20 **Carvalho, Sean Holleman, Clinton Simons, Eric Munson and City)**

21 133. Plaintiffs reallege each and every paragraph in this complaint as if fully
22 set forth here.

23 134. Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
24 JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
25 and ERIC MUNSON negligently caused physical injury and death to DECEDENT.

26 135. HARRIET JEFFERSON was present at the scene, which is her
27 residence, when DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
28 JEFFREY KLEIN, SCOTT CARVALHO, SEAN HOLLEMAN, CLINTON SIMONS,

1 and ERIC MUNSON negligently caused physical injury and death to DECEDENT,
2 her son, and HARRIET JEFFERSON was aware that DECEDENT was being
3 injured.

4 136. RUFUS JEFFERSON was present at the scene, which is his residence,
5 when Defendants DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
6 JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
7 and ERIC MUNSON negligently caused physical injury and death to DECEDENT,
8 his son, and RUFUS JEFFERSON was aware that DECEDENT was being injured.

9 137. As a result of being present at the scene and perceiving her son,
10 DECEDENT, being restrained while unresponsive and unconscious, HARRIET
11 JEFFERSON suffered serious emotional distress, including but not limited to,
12 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and
13 shame.

14 138. As a result of being present at the scene and perceiving his son,
15 DECEDENT, being restrained while unresponsive and unconscious, RUFUS
16 JEFFERSON suffered serious emotional distress, including but not limited to,
17 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and
18 shame.

19 139. On information and belief, any ordinary reasonable person would be
20 unable to cope with seeing their son restrained and treated in the manner in which
21 DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN,
22 SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, and ERIC
23 MUNSON with respect to DECEDENT, particularly at their own residence and in
24 response to a call for help to 911.

25 140. CITY is vicariously liable for the wrongful acts of Defendants DAVID
26 MOWER, JOHN HELMICH, KEVIN MOORMAN, JEFFREY KLEIN, SCOTT
27 CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS, ERIC MUNSON and
28 DOES 11-20 pursuant to section 815.2(a) of the California Government Code, which

1 provides that a public entity is liable for the injuries caused by its employees within
2 the scope of the employment if the employee's act would subject him or her to
3 liability.

4 141. HARRIET JEFFERSON and RUFUS JEFFERSON bring this claim
5 individually and seek damages under this claim as individuals.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for request entry of judgment in their favor and
8 against Defendants CITY, DAVID MOWER, JOHN HELMICH, KEVIN MOORMAN,
9 JEFFREY KLEIN, SCOTT CARAVALHO, SEAN HOLLEMAN, CLINTON SIMONS,
10 ERIC MUNSON and DOES 11-20, inclusive, as follows:

11 1. Issue a declaratory judgment that Defendants' conduct as complained of
12 herein was a violation of DECEDENT's and Plaintiffs' rights under the United States
13 and California Constitutions and the laws of the United States and California;

14 2. Issue an injunction ordering Defendant CITY to establish effective
15 preventative mechanisms to ensure that improper restraints are not used in
16 emergency medical situations in the future, including, but not limited to the
17 following:

18 a. Requiring that all police officers, fire fighters, paramedics and
19 emergency medical technicians participate in regular and recurring training to
20 assure that they do not use excessive force in restraining citizens in medical
21 emergencies and do not unreasonably restrain patients in the prone position;

22 b. Requiring that all paramedics and emergency medical technicians
23 participate in regular and recurring training to assure that they adequately assess
24 changed clinical presentations while responding to medical emergencies and provide
25 emergency medical services in accordance with applicable standards of care;

26 c. Requiring that all police officers, fire fighters, paramedics and
27 emergency medical technicians participate in regular and recurring training to
28 assure that they do not act due to bias based on race or ethnicity; and

1 d. Establishing a mechanism for internal discipline of officers who
2 are found to have engaged in racial discrimination;

3 3. Award compensatory and general damages against Defendants and each
4 of them, for Plaintiffs in an amount to be determined according to proof;

5 4. Award treble damages pursuant to California Civil Code § 52(a) against
6 Defendants and each of them, for Plaintiffs in an amount to be determined according
7 to proof;

8 5. Award exemplary and punitive damages against all Defendants sued in
9 their individual capacities in an amount to be proven at trial;

10 6. Award Plaintiffs their costs, expenses and reasonable attorney fees
11 pursuant to 42 U.S.C. § 1988, California Civil Codes §§ 52(b) and 52.1(h) and
12 California Code of Civil Procedure § 1021.5; and

13 7. Grant such other and further relief as the Court may deem just and
14 proper.

15
16 Dated: February 17, 2022

WALKUP, MELODIA, KELLY & SCHOENBERGER

17
18 By: /s/ Khaldoun A. Baghdadi

19 KHALDOUN A. BAGHDADI
20 JOSEPH NICHOLSON
21 Attorneys for Plaintiffs
22 REGINALD RAFE NICHOLAS PAYNE,
23 INDIVIDUALLY AND AS SUCCESSOR-IN-
24 INTEREST TO THE ESTATE OF
25 REGINALD DAMONE PAYNE, HARRIETT
26 JEFFERSON, AND RUFUS JEFFERSON
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Federal Rules of Civil Procedure, Plaintiffs demand trial by jury for all the issues plead herein so triable.

Dated: February 17, 2022 WALKUP, MELODIA, KELLY & SCHOENBERGER

By: /s/ Khaldoun A. Baghdadi
KHALDOUN A. BAGHDADI
JOSEPH NICHOLSON
Attorneys for Plaintiffs
REGINALD RAFE NICHOLAS PAYNE,
INDIVIDUALLY AND AS SUCCESSOR-IN-
INTEREST TO THE ESTATE OF
REGINALD DAMONE PAYNE, HARRIETT
JEFFERSON, AND RUFUS JEFFERSON

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

REGINALD RAPE NICHOLAS PAYNE, individually and as Successor-In-Interest to THE ESTATE OF REGINALD DAMONE PAYNE; HARRIETT JEFFERSON; and RUFUS JEFFERSON

(b) County of Residence of First Listed Plaintiff Sacramento (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Khaldoun A. Baghdadi, Joseph A. Nicholson Walkup, Melodia, Kelly & Schoenberger 650 California St, 26th Fl San Francisco, CA 94108, 415-981-7210

DEFENDANTS

CITY OF SACRAMENTO; DAVID MOWER; JOHN HELMICH; KEVIN MOORMAN; JEFFREY KLEIN; SCOTT CARVALHO; SEAN HOLLEMAN; CLINTON SIMONS; ERIC MUNSON, and DOES 11-20

County of Residence of First Listed Defendant Sacramento (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983. Brief description of cause: Civil rights action for compensatory and punitive damages and injunctive relief; death of Reginald Damone Payne.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Troy L. Nunley DOCKET NUMBER 2:20-cv-02364-TLN-JDP

DATE 02/17/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Khaldoun A. Baghdadi

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:22-at-00107 Document 1-1 Filed 02/17/22 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.