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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FLORENTINA PELAYO, individually,
and as successor in interest to Decedent
PETRICA MUNTEAN,

Plaintiff,

vs.

CITY OF ANAHEIM; KENNETH
JOHNSON; ALEXANDRIA
GONZALEZ; DARREN LEE; PETER
WANN; MICHAEL FLEET;
BRENDAN THOMAS; HEATHER
SCAGLIONE; BARTMAN HORN; and
DOES 1 through 10, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES FOR:

1. Unreasonable Seizure of Person [Detention and Arrest - 42 U.S.C. § 1983]
2. Unreasonable Seizure of Person – Excessive Force [42 U.S.C. § 1983]
3. Violation of Substantive Due Process – Interference with Familial Relationship [42 U.S.C. § 1983]
4. Violation of Americans with Disabilities Act
5. Municipal Liability – Ratification [42 U.S.C. § 1983]

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- 6. Municipal Liability – Inadequate Training (42 U.S.C. 42 § 1983)
- 7. Municipal Liability – Unconstitutional Custom, Practice or Policy [42 U.S.C. 42 § 1983]
- 8. Wrongful Death [Cal. Civ. Proc. Code § 377.60]
- 9. False Arrest / False Imprisonment
- 10. Battery
- 11. Violation of Cal. Civil Code § 52.1
- 12. Negligence

JURY TRIAL DEMANDED

COMES NOW Plaintiff Florentina Pelayo and shows this honorable court the following:

JURISDICTIONAL ALLEGATIONS

1. As this action is brought under 42 U.S.C. § 1983, this court has jurisdiction over this case under its federal question jurisdiction pursuant to 28 U.S.C. § 1331.

2. As the incidents complained of in this action occurred in the County of Orange, State of California, within the territorial jurisdiction of this court, venue properly lies in this court pursuant to 28 U.S.C. § 1391(b)(2).

3. As plaintiff’s claims brought under California state law arise out of the same transactions and occurrences, and out of a common nucleus of operative

1 facts as the plaintiff's federal question claims, this court has jurisdiction over the
2 plaintiff's California State law claims under its supplemental jurisdiction pursuant
3 to 28 U.S.C. § 1367, and otherwise pursuant to *Mine Workers v. Gibbs*.
4

5 4. Plaintiff filed her Government Tort Claim for Damages with defendant City
6 of Anaheim less than six months after the April 12, 2018 incident complained of in
7 this case, and this action was filed less than six months following the denial of said
8 Government Tort Claim for Damages by defendant City of Anaheim.
9
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11 **GENERAL ALLEGATIONS**

12 5. Plaintiff Florentina Pelayo, hereinafter also referred to as "PELAYO" or
13 "plaintiff PELAYO", is a natural person, who, at all times complained of in this
14 action, resided in the County of Orange, State of California.
15

16 6. PELAYO is the legal and natural mother of Decedent Petrica Muntean
17 ("MUNTEAN").
18

19 7. PELAYO sues now in her individual capacity as the mother of
20 MUNTEAN, and also as successor-in-interest to MUNTEAN. PELAYO seeks
21 both survival and wrongful death damages under federal and state law.
22

23 6. Petrica Muntean, hereinafter referred to as "MUNTEAN" or "DECEDENT
24 MUNTEAN", died intestate on April 27, 2018, as a direct and proximate result of
25 the conduct of the defendants complained of in this action, which took place on
26 April 13, 2018.
27
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7. Defendant City of Anaheim, hereinafter also referred to as "CITY", is a

1 municipal entity located in the State of California; within the territorial jurisdiction
2 of this court.

3
4 8. Defendant Kenneth Johnson, hereinafter also referred to as
5 “JOHNSON”, is, and at all times complained of herein, was, a peace officer
6 employed by the Anaheim Police Department, acting as an individual person under
7 the color of state law, in his individual capacity and was acting in the course of and
8 within the scope of his employment with defendant CITY.
9
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11 9. Defendant Officer Alexandria Gonzalez, hereinafter also referred to as
12 “GONZALEZ”, is, and at all times complained of herein, was, a peace officer /
13 police officer employed by the Anaheim Police Department, acting as an
14 individual person under the color of state law, in his individual capacity and was
15 acting in the course of and within the scope of her employment with defendant
16 CITY.
17
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19 10. Defendant Darren Lee, hereinafter also referred to as “LEE”, is, and at
20 all times complained of herein, was, a peace officer / police officer employed by
21 the Anaheim Police Department, acting as an individual person under the color of
22 state law, in his individual capacity and was acting in the course of and within the
23 scope of his or her employment with defendant CITY.
24
25

26 11. Defendant Peter Wann, hereinafter also referred to as “WANN”, is, and
27 at all times complained of herein, was, a peace officer / police officer and a
28 Sergeant and a supervisor employed by the Anaheim Police Department, acting as

1 an individual person under the color of state law, in his individual capacity and was
2 acting in the course of and within the scope of his employment with defendant
3
4 CITY.

5 12. Defendant Michael Fleet, hereinafter also referred to as “FLEET”, is, and
6
7 at all times complained of herein, was, a peace officer / police officer employed by
8
9 the Anaheim Police Department, acting as an individual person under the color of
10
11 state law, in his individual capacity and was acting in the course of and within the
12
13 scope of his employment with defendant CITY.

14 13. Defendant Brendan Thomas, hereinafter also referred to as “THOMAS”, is,
15
16 and at all times complained of herein, was, a peace officer / police officer
17
18 employed by the Anaheim Police Department, acting as an individual person under
19
20 the color of state law, in his individual capacity and was acting in the course of and
21
22 within the scope of his employment with defendant CITY.

23 14. Defendant Heather Scaglione, hereinafter also referred to as
24
25 “SCAGLIONE”, is, and at all times complained of herein, was, a peace officer /
26
27 police officer employed by the Anaheim Police Department, acting as an
28
29 individual person under the color of state law, in his individual capacity and was
30
31 acting in the course of and within the scope of her employment with defendant
32
33 CITY.

34 15. Defendant Bartman Horn, hereinafter also referred to as “HORN”, is, and

1 at all times complained of herein, was, a peace officer / police officer employed by
2 the Anaheim Police Department, acting as an individual person under the color of
3 state law, in his individual capacity and was acting in the course of and within the
4 scope of his employment with defendant CITY.
5

6
7 16. Defendants DOES 1 through 6, inclusive, are sworn peace officers
8 and / or police officers and/or investigators and/or Special Officers and/or a
9 dispatchers and/or some other public officer, public official or employee of
10 defendant CITY and/or otherwise employed by the Anaheim Police Department,
11 who in some way committed some or all of the tortious actions (and constitutional
12 violations) complained of in this action, and/or are otherwise responsible for and
13 liable to plaintiff for the acts complained of in this action, whose identities are, and
14 remain unknown to plaintiff, who will amend her complaint to add and to show the
15 actual names of said DOE defendants when ascertained by plaintiff.
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19 17. At all times complained of herein, DOES 1 through 6, inclusive, were
20 acting as individual persons acting under the color of state law, pursuant to their
21 authority as sworn peace officers and/or police officers and/or Special Officers
22 and/or Supervisors (i.e. Sergeants, Lieutenants, Captains, Commanders, etc.)
23 and/or dispatchers, employed by the Anaheim Police Department, and were acting
24 in the course of and within the scope of their employment with defendant CITY.
25
26

27
28 18. Defendants DOES 7 through 10, inclusive, are sworn peace officers
and/or the Chief and/or Assistant Chiefs and/or Commanders and/or Captains

1 and/or Lieutenants and/or Sergeants and/or other Supervisory personnel and/or
2 policy making and/or final policy making officials, employed by Anaheim Police
3 Department and/or defendant CITY, who are in some substantial way liable and
4 responsible for, or otherwise proximately caused and/or contributed to the
5 occurrences complained of by plaintiff in this action, such as via supervisory
6 liability (i.e. failure to properly supervise, improperly directing subordinate
7 officers, approving actions of subordinate officers), via bystander liability (failing
8 to intervene in and stop unlawful actions of their subordinates and/or other
9 officers), and such as by creating and/or causing the creation of and/or contributing
10 to the creation of the policies and/or practices and/or customs and/or usages of the
11 Anaheim Police Department for, *inter alia*,: 1) for unlawfully seizing persons; 2)
12 for using excessive force on persons; 3) failing to comply with the Americans with
13 Disabilities Act; 4) fabricating evidence; and 5) covering up tortious conduct by
14 Anaheim Police Department peace officers.

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21 19. At all times complained of herein, DOES 7 through 10, inclusive,
22 were acting as individual persons acting under the color of state law, pursuant to
23 their authority as the Chief and/or the Assistant Chiefs and/or Captains and/or
24 Lieutenants and/or Sergeants and/or other Supervisory personnel and/or policy
25 making and/or final policy making officials with the Anaheim Police Department,
26 and/or some other public official(s) with defendant CITY, and were acting in the
27 course of and within the scope of their employment with defendant CITY.
28

1 20. At all times complained of herein, defendants DOES 7 through 10,
2 inclusive, were acting as individual persons under the color of state law; under and
3
4 pursuant to their status and authority as peace officers and/or Supervisory peace
5 officers (as described herein, above and below), and/or policy making peace
6 officers, with the Anaheim Police Department and/or otherwise with defendant
7
8 CITY¹.

9 21. Plaintiff is presently unaware of the identities of DOES 1 through 10,
10 inclusive, and will amend her complaint to add and to show the actual names of
11 said DOE defendants, when made known to plaintiff.
12

13 22. In addition to the above and foregoing, defendants JOHNSON,
14 GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN, and
15 DOES 1 through 6, inclusive, acted pursuant to a conspiracy, agreement and
16 understanding and common plan and scheme to deprive the plaintiff and
17
18 MUNTEAN of their federal Constitutional and statutory rights, and California
19 constitutional and statutory state law rights, as complained of in this action.
20
21

22 23. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
23 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, acted in joint
24 and concerted action to so deprive the plaintiff of those rights as complained of
25
26
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¹ Such as a CITY executive officer.

1 herein; all in violation of 42 U.S.C. § 1983, and otherwise in violation of United
2 States (Constitutional and statutory) law and California (Constitutional and
3 statutory) state law.
4

5 24. Said conspiracy / agreement / understanding / plan / scheme / joint
6 action / concerted action, above-referenced, was a proximate cause of the violation
7 of the plaintiff's federal and state constitutional and statutory rights, as complained
8 of herein.
9

10
11 **FIRST CAUSE OF ACTION**
12 **VIOLATION OF 42 U.S.C. § 1983**
13 **Violation of Fourth Amendment Rights –**
14 **Unlawful / Unreasonable Seizure of Person**
15 **[Survivorship Claim Pursuant to Cal. Civ. Proc. Code § 377.30]**
16 **(By Plaintiff Florentina Pelayo as Successor-in-Interest to Petrica Muntean**
17 **against Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,**
18 **THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive)**

19 25. Plaintiff hereby realleges and incorporates by reference the allegations
20 set forth in paragraphs 1 through 24, inclusive, above, as if set forth in full herein.

21 26. On April 12, 2019, plaintiff's decedent MUNTEAN began suffering a
22 mental / emotional crisis at his home in Anaheim, California.

23 27. MUNTEAN's mother, PELAYO, became so concerned for
24 MUNTEAN'S mental condition that she dialed 9-1-1, and requested assistance
25 from the Anaheim Police Department with her son.
26

27 28. Anaheim Police Department Officers Vincent Nguyen and Alan
28 Valdiserri responded to the call for service. Officers Nguyen and Valdserri

1 contacted PELAYO. MUNTEAN was over 25 yards away from the officers when
2 they made contact with PELAYO.
3

4 29. Officers Nguyen and Valdiserri then approached MUNTEAN.
5 MUNTEAN then walked away from the officers. The officers were not able to
6 relocate MUNTEAN, and advised other Anaheim Police Department officers to be
7 on the look-out for MUNTEAN.
8

9 30. On the following day, April 13, 2018, Anaheim Police Department
10 dispatch allegedly received a call of a disturbance at the Carl's Jr. Restaurant
11 located at 275 South Harbor Boulevard, Anaheim, California. Defendants
12 JOHNSON, GONZALEZ and DOES 1 through 6, inclusive, responded to the call
13 and spoke with employees of the Carl's Jr. restaurant.
14
15

16 31. The employees told JOHNSON, GONZALEZ and DOES 1 through 6,
17 inclusive, that a transient had made a disturbance and fled the restaurant.
18

19 32. After speaking with the employees, JOHNSON, GONZALEZ and
20 DOES 1 through 6, inclusive, went outside of the restaurant and noticed
21 MUNTEAN in the parking lot. JOHNSON, GONZALEZ and DOES 1 through 6,
22 inclusive, did not know who MUNTEAN was at that time.
23
24

25 33. When JOHNSON, GONZALEZ and DOES 1 through 6, inclusive,
26 approached MUNTEAN (not knowing who he was), they seized him without any
27 information suggesting that MUNTEAN had committed a crime, or that criminality
28 was otherwise afoot regarding MUNTEAN.

1 34. GONZALEZ immediately drew her pistol and pointed it at
2 MUNTEAN. JOHNSON immediately began giving MUNTEAN orders, including
3 “Sit down!”
4

5 35. JOHNSON’s, GONZALEZ’ and DOES 1 through 6, inclusive, use of
6 force and seizure was made without having seen MUNTEAN commit a crime, and
7 they did not know that they were dealing with MUNTEAN.
8

9 36. MUNTEAN repeatedly told the officers, “I didn’t do nothing.” Any
10 reasonable person who was observing MUNTEAN’s behavior would have realized
11 that MUNTEAN was suffering from a mental crisis, was severely mentally
12 disturbed and was suffering from a mental disorder.
13
14

15 37. MUNTEAN then began walking down a nearby alley-way.

16 38. Defendants LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN
17 and DOES 1 through 6, inclusive, then arrived on scene.
18

19 39. JOHNSON, GONZALEZ, LEE, WANN, FLEET, THOMAS,
20 SCAGLIONE, HORN and DOES 1 through 6, inclusive, then began chasing
21 MUNTEAN down the alley with their guns pointed at him, including a shotgun.
22 The officers also had a patrol car chasing MUNTEAN down the alley-way.
23
24

25 40. The defendants were all screaming commands at MUNTEAN;
26 exacerbating his mental crisis. Defendant SCAGLIONE even began shooting
27 rubber bullets at MUNTEAN. Over 14 rounds of rubber bullets and bean bags
28 were shot at MUNTEAN, notwithstanding the fact that none of the defendants

1 were aware of any criminal activity committed by MUNTEAN, and
2 notwithstanding the fact that MUNTEAN had not threatened anyone or committed
3 any violent or dangerous acts towards anyone.
4

5 41. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
6 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, continued to
7 chase MUNTEAN on foot, with their guns drawn and pointed at MUNTEAN until
8 MUNTEAN was cornered against a wall. MUNTEAN then hid behind a vehicle
9 out of reasonable fear from the defendants; especially after having been shot 14
10 times with non-lethal weapons.
11

12 42. While MUNTEAN was hiding behind a vehicle, defendants
13 THOMAS, HORN and DOES 1 through 6, inclusive, began firing their handguns
14 at MUNTEAN.
15

16 43. MUNTEAN suffered multiple gunshot wounds, including a gunshot
17 wound to his neck and brain stem.
18

19 44. MUNTEAN was taken to University of California, Irvine, Medical
20 Center. MUNTEAN lived for an approximate fourteen painful additional days until
21 he ultimately died on April 27, 2019, as a result of the gunshot wounds.
22

23 45. As complained of herein above, none of the defendants to this action
24 had a warrant for MUNTEAN's arrest, nor probable cause to believe that
25 MUNTEAN had committed a crime, nor reasonable suspicion that MUNTEAN
26
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1 was a danger to anyone or anything, nor even a reasonable suspicion of criminality
2 afoot by MUNTEAN.
3

4 46. Accordingly, the seizure of MUNTEAN by defendants JOHNSON,
5 GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and
6 DOES 1 through 6, inclusive, by use of force, constituted an unlawful and
7 unreasonable seizure of MUNTEAN, in violation of his rights under the Fourth
8 Amendment to the United States Constitution.
9

10
11 47. Plaintiff PELAYO brings this claim as successor-in-interest to
12 MUNTEAN, and seeks survival damages, including physical and mental pre-death
13 pain and suffering, loss of life, and loss of enjoyment of life, and wrongful death
14 damages for the violation of MUNTEAN's rights.
15

16 48. As a direct and proximate result of defendants' actions, above-
17 referenced, MUNTEAN incurred severe (and ultimately fatal) bodily injury, severe
18 physical, mental and emotional pain, suffering and distress, and other special and
19 general damages and expenses in an amount to be proven at trial which is in excess
20 of \$5,000,000.00.
21

22
23 49. The actions by said defendants were committed maliciously,
24 oppressively and in reckless disregard of MUNTEAN's constitutional rights,
25 sufficient for an award of punitive / exemplary damages against all defendants and
26 each of them, save for defendant CITY, in an amount to be proven at trial which is
27 in excess of \$5,000,000.00.
28

SECOND CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1983

Violation of Fourth Amendment Rights -

Excessive/Unreasonable Use of Force on Person

[Survivorship Claim Pursuant to Cal. Civ. Proc. Code § 377.30]

**(By Plaintiff Florentina Pelayo as Successor-in-Interest to Petrica Muntean
against Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive)**

50. Plaintiff hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 49 inclusive, above, as if set forth in full herein.

51. As shown above, when defendants JOHNSON, GONZALEZ and DOES 1 through 6, inclusive, initially seized MUNTEAN, defendant GONZALEZ immediately pointed her gun at MUNTEAN, without any legal justification for doing so.

52. Furthermore, JOHNSON, GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, chased MUNTEAN with a patrol vehicle, and with their guns drawn and pointed at MUNTEAN. None of the force used against MUNTEAN at this point was justified, including threatening him with deadly force (i.e. pointing their pistols at MUNTEAN).

53. Finally, defendants THOMAS, HORN and DOES 1 through 6, inclusive, shot and killed MUNTEAN when he was merely hiding behind a vehicle and terrified by the unjustified and excessive force displayed by the defendants toward him, including pointing their pistol / rifles / shotguns at MUNTEAN, and

1 shooting him with rubber bullets and bean bags; all without provocation.

2 54. The actions of defendants JOHNSON, GONZALEZ, LEE, WANN,
3 FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, as
4 complained above herein, constituted a violation of MUNTEAN's rights under the
5 Fourth Amendment to the United States Constitution to be free from the use of
6 unlawful and unreasonable and excessive force upon his person.
7

8 55. Plaintiff PELAYO brings this claim as Successor-in-Interest to
9 MUNTEAN, and seeks survival damages, including physical and mental pre-death
10 pain and suffering, loss of life, and loss of enjoyment of life, and wrongful death
11 damages for the violation of MUNTEAN's rights. MUNTEAN incurred other
12 special and general damages and expenses in an amount to be proven at trial which
13 is in excess of \$15,000,000.00.
14

15 56. The actions by said defendants were committed maliciously,
16 oppressively and in reckless disregard of MUNTEAN's constitutional rights,
17 sufficient for an award of punitive / exemplary damages against all defendants and
18 each of them, save for Defendant CITY, in an amount to be proven at trial which is
19 in excess of \$5,000,000.00.
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25 **THIRD CAUSE OF ACTION**
26 **VIOLATION OF 42 U.S.C. § 1983**

27 **Violation of Fourteenth Amendment to United States Constitution**
28 **Interference With Parent-Child Relationship**
(By Plaintiff Florentina Pelayo, individually against Defendants JOHNSON,
GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and
DOES 1 through 6, inclusive)

COMPLAINT FOR DAMAGES

1 57. Plaintiff hereby realleges and incorporates by reference the allegations
2 set forth in paragraphs 1 through 56, inclusive, above, as if set forth in full herein.
3

4 58. The unlawful killing of plaintiff's deceased son, MUNTEAN, by
5 JOHNSON, GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE,
6 HORN and DOES 1 through 6, inclusive, deprived plaintiff MUNTEAN of her
7 Parent – Child Relationship, guaranteed to her under the Fourteenth Amendment to
8 the United States Constitution.
9
10

11 59. The use of unreasonable force upon MUNTEAN that resulted in the
12 unlawful killing of him by defendants JOHNSON, GONZALEZ, LEE, WANN,
13 FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, was
14 done intentionally, was done in a manner that constituted the use of unreasonable
15 force, and was done in a manner that constituted a deliberate indifference to and
16 reckless disregard of MUNTEAN's life and to said Child-Parent Relationship, and
17 constituted outrageous behavior that was shocking to the conscience.
18
19

20 60. The unlawful killing of MUNTEAN by JOHNSON, GONZALEZ,
21 LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
22 inclusive, above-referenced, also caused plaintiff to suffer the loss of
23 MUNTEAN's love, society, solace and comfort, companionship, as well as caused
24 her to suffer great mental, emotional and distress, pain and suffering, all in an
25 amount to be shown at trial in excess of \$15,000,000.
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1 61. The unlawful killing of MUNTEAN by JOHNSON, GONZALEZ,
2 LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
3 inclusive, above-referenced, was done maliciously and in reckless disregard of
4 plaintiff's constitutional rights, sufficient for an award of punitive damages against
5 said defendants (save CITY); all in an amount to be shown at trial, in excess of
6 \$5,000,000.
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10 **FOURTH CAUSE OF ACTION**
11 **VIOLATION OF 42 U.S.C. § 1983**

12 **Violation of 42 U.S.C. § 12101, et seq. Americans With Disabilities Act**
13 **[Survivorship Claim Pursuant to Cal. Civ. Proc. Code § 377.30]**
14 **(By Plaintiff Florentina Pelayo as Successor-in-Interest to Petrica Muntean**
15 **against Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,**
16 **THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive)**

17 62. Plaintiff hereby realleges and incorporates by reference the allegations
18 set forth in paragraphs 1 through 61, inclusive, above, as if set forth in full herein.

19 63. Congress enacted the Americans With Disabilities Act ("ADA") upon
20 finding, among other things, that "society has tended to isolate and segregate
21 individuals with disabilities" and that such forms of discrimination continue to be a
22 "serious and pervasive social problem." 42 U.S.C. § 12101(a) (2).

23 64. In response to these findings, Congress explicitly stated that the
24 purpose of the ADA is to provide "a clear and comprehensive national mandate for
25 the elimination of discrimination against individuals with disabilities" and "clear,
26 strong, consistent, enforceable standards addressing discrimination against
27 individuals with disabilities." 42 U.S.C. § 12101(b) (1)-(2).
28

1 65. Title II of the ADA provides in pertinent part: “[N]o qualified
2 individual with a disability shall, by reason of such disability, be excluded from
3 participation in or be denied the benefits of the services, programs, or activities of
4 a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §
5 12132.
6

7
8 66. Pursuant to Title II public entities are required to provide meaningful
9 access to their programs, services and activities. Among the requirements to
10 provide meaningful access, public entities must modify their policies and
11 procedures when necessary to accommodate disability related needs, also known as
12 “reasonable accommodation.” 28 C.F.R. § 35.130(b)(7). Public entities cannot
13 provide programs, services or benefits to a person with a disability that are not
14 equal to those provided to others or deny a person with a disability the opportunity
15 to participate in programs, services or activities. 28 C.F.R. § 35.130(b)(1)(iii).
16 Moreover, public entities are required to administer their programs, services and
17 activities in the most integrated setting appropriate. *Id.* at § 35.130(d).
18
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21

22 67. At all times relevant to this action, the City of Anaheim / Anaheim
23 Police Department is a “public entity” within the meaning of Title II of the ADA
24 and provides a program, service or activity to the general public.
25

26 68. At all times relevant, including at the time of each alleged violation of
27 the ADA, MUNTEAN was a qualified individual with a disability within the
28 meaning of the ADA in that he was diagnosed with various mental illnesses.

1 69. Title II of the ADA prohibits discrimination against a qualified
2 individual because of the known disability of an individual with whom the
3 qualified individual is known to have a relationship or association.
4

5 70. At all times relevant herein, MUNTEAN was a qualified person with
6 a disability or was regarded as having a disability and Defendants knew of his
7 disability, based upon his behavior and statements made by PELAYO on April 12,
8 2019.
9

10 71. At all times relevant, including at the time of each alleged violation of
11 the ADA, the City of Anaheim / Anaheim Police Department provided services,
12 programs and activities and was obligated to provide MUNTEAN with the
13 reasonable accommodations that he needed in order to enjoy meaningful access to
14 the benefits of a public services.
15

16 72. Defendants acted in violation of Title II of the Americans with
17 Disabilities Act not only through failing to provide reasonable accommodations
18 and supports for MUNTEAN, but by punishing MUNTEAN, including physically,
19 for the City of Anaheim's / Anaheim Police Departments' failure to accommodate
20 his disability. This physical punishment constituted, among other things, the
21 excessive and unlawful force inflicted upon MUNTEAN.
22

23 73. Accordingly, Defendants have violated Title II of the Americans with
24 Disabilities Act, and Plaintiff thereon alleges that Defendants committed the acts
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1 and omissions alleged herein with intent and/or deliberate indifference to
2 MUNTEAN's rights.
3

4 74. The unlawful killing of MUNTEAN by JOHNSON, GONZALEZ,
5 LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
6 inclusive, above-referenced, also caused plaintiff to suffer the loss of
7
8 MUNTEAN's love, society, solace and comfort, companionship, as well as caused
9
10 her to suffer great mental, emotional and distress, pain and suffering, all in an
11 amount to be shown at trial in excess of \$15,000,000.

12 75. The unlawful killing of MUNTEAN by JOHNSON, GONZALEZ,
13 LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
14 inclusive, above-referenced, was done maliciously and in reckless disregard of
15
16 plaintiff's constitutional rights, sufficient for an award of punitive damages against
17
18 said defendants (save CITY); all in an amount to be shown at trial, in excess of
19
20 \$5,000,000.

21 **FIFTH CAUSE OF ACTION**
22 **VIOLATION OF 42 U.S.C. § 1983**
23 **Municipal Liability (*Monell Liability*) — Ratification**
24 **(By Plaintiff Florentina Pelayo, Individually and as Successor-in-Interest to**
25 **Petrica Muntean, Against Defendants CITY and DOES 7-10)**

26 76. Plaintiff hereby realleges and incorporates by reference the allegations
27 set forth in paragraphs 1 through 75, inclusive, above, as if set forth in full herein.
28

1 81. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
2 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, acted under
3 the color of law.
4

5 82. The acts of Defendants JOHNSON, GONZALEZ, LEE, WANN,
6 FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive,
7 deprived MUNTEAN and PELAYO of their particular rights under the United
8 States Constitution.
9

10 83. Upon information and belief, a final policymaker, acting under the color
11 of law, who had final policymaking authority concerning the acts of Defendants
12 JOHNSON, GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE,
13 HORN and DOES 1 through 6, inclusive, ratified the individual officers' acts and
14 the bases for them. Upon information and belief, the final policymaker knew of
15 and specifically approved of the individual officer defendants' acts.
16
17

18 84. Upon information and belief, a final policymaker has determined (or will
19 determine) that the acts of defendants JOHNSON, GONZALEZ, LEE, WANN,
20 FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, were
21 "within policy."
22
23

24 85. Upon information and belief, a final policymaker has ratified the use of
25 excessive deadly force by their officers, including finding that use of deadly force
26 acceptable when juries have found the force to be excessive.
27
28

1 86. By reason of the aforementioned acts and omissions, including
2 unlawfully seizing, shooting and killing of MUNTEAN, PELAYO has suffered
3 loss of the love, companionship, comfort, care, society, training, guidance, and past
4 and future support of MUNTEAN.
5

6 87. The aforementioned acts and omissions also caused MUNTEAN to
7 suffer great bodily injury, including severe physical, mental and emotional pain
8 and suffering, loss of enjoyment of life, and death, and PELAYO stands in his
9 shoes as his successor-in-interest to make those claims particular to him.
10

11 88. Accordingly, defendants CITY and DOES 7 through 10, inclusive, are
12 liable to plaintiff for compensatory damages under 42 U.S.C. § 1983.
13

14 89. Plaintiff PELAYO brings this claim as successor-in-interest to
15 MUNTEAN, and seeks survival damages, including physical and mental pre-death
16 pain and suffering, loss of life, and loss of enjoyment of life, and wrongful death
17 damages for the violation of MUNTEAN's rights.
18

19 90. Plaintiff PELAYO brings this claim as successor-in-interest to
20 MUNTEAN, and seeks survival damages, including physical and mental pre-death
21 pain and suffering, loss of life, and loss of enjoyment of life, and wrongful death
22 damages for the violation of MUNTEAN's rights. MUNTEAN incurred other
23 special and general damages and expenses in an amount to be proven at trial which
24 is in excess of \$15,000,000.00.
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1 **SIXTH CAUSE OF ACTION**

2 **(42 U.S.C. § 1983)**

3 **Municipal Liability (*Monell Liability*) — Failure to Train**
4 **(Against Defendants CITY and DOES 7-10 by Plaintiff Florentina Pelayo,**
5 **Individually and as Successor-in-Interest to Petrica Muntean)**

6 91. Plaintiff hereby realleges and incorporates by reference the allegations
7 set forth in paragraphs 1 through 90, inclusive, above, as if set forth in full herein.

8 92. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
9 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, acted under
10 the color of law.

11 93. The acts of Defendants JOHNSON, GONZALEZ, LEE, WANN,
12 FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive,
13 deprived MUNTEAN and PELAYO of their particular rights under the United
14 States Constitution, as described above in plaintiff's First, Second, Third and
15 Fourth Causes of Action, as described above.

16 94. The training policies of CITY were not adequate to train its peace
17 officers to handle the usual and recurring situations with which they must deal.

18 95. For example, CITY trains it's police officers to shoot and kill persons
19 who present a possible or potential danger to it's officers, even when such persons
20 do not present such a threat of danger that a reasonably well trained police officer
21 would have believed that such persons so shot and killed presented an imminent
22 threat of it's officers suffering great bodily injury or death.
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1 96. Defendant CITY was deliberately indifferent to the obvious
2 consequences of its failure to train its officers adequately, to wit; the wrongful,
3 unlawful and unconstitutional killing of persons who did not present an imminent
4 threat to Anaheim Police Department officers suffering great bodily injury or
5 death.
6

7
8 97. The failure of CITY to provide adequate training caused the deprivation
9 of MUNTEAN's and PELAYO's rights by JOHNSON, GONZALEZ, LEE,
10 WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
11 inclusive; that is, defendants' failure to train is so closely related to the deprivation
12 of MUNTEAN's and PELAYO's rights as to be the moving force that caused the
13 ultimate injury; in this case, the shooting and death of MUNTEAN.
14

15
16 98. On information and belief, CITY failed to train JOHNSON,
17 GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and
18 DOES 1 through 6, inclusive, properly and adequately, in that they were trained to
19 shoot and kill persons who did not present such a threat of danger that a reasonably
20 well trained police officer would have believed that such persons so shot and killed
21 presented an imminent threat of it's officers suffering great bodily injury or death.
22

23
24 99. By reason of the aforementioned acts and omissions, PELAYO and
25 MUNTEAN have suffered loss of love, companionship, comfort, care, society,
26 training, guidance, and past and future support. The aforementioned acts and
27
28

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

3
4 100. Accordingly, Defendants CITY and DOES 7 through 10, inclusive,
5 are liable to PELAYO for compensatory damages under 42 U.S.C. § 1983.

6
7 101. Plaintiff PELAYO brings this claim both individually, and as
8 successor-in-interest to MUNTEAN, and seeks survival damages, including
9 physical and mental pre-death pain and suffering, loss of life, and loss of
10 enjoyment of life, and wrongful death damages for the violation of MUNTEAN's
11 rights. MUNTEAN incurred other special and general damages and expenses in an
12 amount to be proven at trial which is in excess of \$15,000,000.00.

13
14
15 102. The unlawful killing of MUNTEAN by JOHNSON, GONZALEZ,
16 LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
17 inclusive, above-referenced, also caused plaintiff to suffer the loss of
18 MUNTEAN's love, society, solace and comfort, companionship, as well as caused
19 her to suffer great mental, emotional and distress, pain and suffering, all in an
20 amount to be shown at trial in excess of \$15,000,000.

21
22
23 103. The unlawful killing of MUNTEAN by JOHNSON, GONZALEZ,
24 LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
25 inclusive, above-referenced, was done maliciously and in reckless disregard of
26 plaintiff's constitutional rights, sufficient for an award of punitive damages against
27
28

1 said defendants (save CITY); all in an amount to be shown at trial, in excess of
2 \$5,000,000.
3

4 **SEVENTH CAUSE OF ACTION**

5 **(42 U.S.C. § 1983)**

6 **Municipal Liability (*Monell Liability*) — Unconstitutional Custom,
7 **Practice and/or Policy**
8 **(Against Defendants CITY and DOES 7-10 by Plaintiff Florentina Pelayo,
9 Individually and as Successor-in-Interest to Petrica Muntean)****

10 104. Plaintiff hereby realleges and incorporates by reference the allegations
11 set forth in paragraphs 1 through 103, inclusive, above, as if set forth in full herein.

12 105. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
13 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, acted under
14 the color of law.

15 106. The acts of Defendants JOHNSON, GONZALEZ, LEE, WANN,
16 FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive,
17 deprived MUNTEAN and PELAYO of their particular rights under the United
18 States Constitution.
19

20 107. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
21 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, acted
22 pursuant to an expressly adopted official policy or a longstanding practice or
23 custom of CITY for using deadly force upon persons when the under
24 circumstances of the situation, the use of deadly force is not justified.
25
26
27
28

1 108. Defendants CITY and DOES 7 through 10, inclusive, together with
2 other CITY policymakers and supervisors, maintained, *inter alia*, the following
3 unconstitutional customs, practices and policies:
4

5 (a) Using excessive force, including excessive deadly force on a regular
6 basis, making such use of unreasonable force standard operating
7 procedure;

8 (b) Providing inadequate training regarding the use of deadly force;

9 (c) Failing to properly conduct encounter individuals with mental
10 illnesses or other disabilities;

11 (d) Providing inadequate training regarding encounters with individuals
12 with mental illnesses or other disabilities;

13 (e) Employing and retaining as peace officers individuals such as
14 JOHNSON, GONZALEZ, LEE, WANN, FLEET, THOMAS,
15 SCAGLIONE, HORN and DOES 1 through 6, inclusive, who Defendant
16 CITY at all times material herein knew or reasonably should have
17 known had dangerous propensities for abusing their authority and for
18 using excessive force and unlawfully seizing persons;

19 (f) Inadequately supervising, training, controlling, assigning, and
20 disciplining CITY peace officers, and other personnel, including
21 JOHNSON, GONZALEZ, LEE, WANN, FLEET, THOMAS,
22 SCAGLIONE, HORN and DOES 1 through 6, inclusive, who Defendant
23 CITY knew or in the exercise of reasonable care should have known had
24 the aforementioned propensities and character traits;

25 (g) Failing to adequately discipline CITY peace officers, including
26 Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
27 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, for
28

1 the above-referenced categories of misconduct, including “slaps on the
2 wrist” discipline that is so slight as to be out of proportion to the
3 magnitude of the misconduct, and other inadequate discipline that is
4 tantamount to encouraging misconduct;

5 (h) Announcing that unjustified shootings are “within policy,” including
6 shootings that were later determined in court to be unconstitutional;

7 (i) Even where shootings are determined in court to be unconstitutional,
8 refusing to discipline, terminate, or retrain the officers involved;

9 (j) Encouraging, accommodating, or facilitating a “blue code of
10 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,” or
11 simply “code of silence,” pursuant to which peace officers do not report
12 other officers’ errors, misconduct, or crimes. Pursuant to this code of
13 silence, if questioned about an incident of misconduct involving another
14 officer, while following the code, the officer being questioned will claim
15 ignorance of the other officers’ wrongdoing;

16 (k) Maintaining a policy of inaction and an attitude of indifference
17 towards soaring numbers of police shootings, including by failing to
18 discipline, retrain, investigate, terminate, and recommend officers for
19 criminal prosecutions who participate in shootings of unarmed people.
20

21 109. For example, in the following cases, Anaheim Police Department
22 police officers shot persons wrongfully, unlawfully and unconstitutionally shot and
23 killed many persons, including the shootings of:
24

- 25 1) David Raya on August 16, 2011
- 26 2) Bernie Villegas on January 7, 2012
- 27 3) Roscoe Cambridge on January 19, 2012
- 28 4) Gerardo Pineda on February 24, 2012
- 5) Martin Angel Hernandez on March 6, 2012

- 1 6) Manuel Angel Diaz on July 21, 2012
- 2 7) Joel Acevedo on July 22, 2012
- 3 8) Pedro Meja, Jr. on October 21, 2012
- 4 9) Marcel Ceja on November 4, 2013
- 5 10) John Raymond Celis on February 23, 2013
- 6 11) Robert Andrew Moreno on March 20, 2014
- 7 12) Jose Luis Segura, Jr. on July 12, 2014
- 8 13) Thomas Steen Parker on September 19, 2014
- 9 14) Monique Jane Deckard on March 8, 2015
- 10 15) Paul Anthony Anderson on April 4, 2015
- 11 16) Rene Alvulez Garcia on June 8, 2015
- 12 17) Juan Carlos Linares on October 15, 2015
- 13 18) Gustavo Adolfo Najera on February 9, 2016
- 14 19) Danny Rendon on February 20, 2016
- 15 20) Edward De La Riva on March 6, 2016
- 16 21) Adalid Flores on November 19, 2016
- 17 22) Gerardo Ramos on November 25, 2017
- 18 23) Eliuth Nava Penaloza on July 21, 2018
- 19 24) Rickey Rodrigues on March 15, 2019

17 110. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
18 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, were not
19 disciplined, reprimanded, restrained, suspended or otherwise penalized in
20 connection with MUNTEAN's death.
21

22 111. By reason of the aforementioned acts and omissions, PELAYO and
23 MUNTEAN suffered loss of love, companionship, comfort, care, society, training,
24 guidance, and past and future support. The aforementioned acts and omissions also
25 caused MUNTEAN's pain and suffering, loss of enjoyment of life, and death.
26
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1 112. Defendants CITY and DOES 7-10, together with various other
2 officials, whether named or unnamed, had either actual or constructive knowledge
3 of the deficient policies, practices and customs alleged in the paragraphs above.
4 Despite having knowledge as stated above, these defendants condoned, tolerated
5 and through actions and inactions thereby ratified such policies. Said defendants
6 also acted with deliberate indifference to the foreseeable effects and consequences
7 of these policies with respect to the constitutional rights of MUNTEAN, PELAYO
8 and other individuals similarly situated.
9

10
11
12 113. By perpetrating, sanctioning, tolerating and ratifying the outrageous
13 conduct and other wrongful acts, DOES 7-10 acted with intentional, reckless, and
14 callous disregard for the life of MUNTEAN and for MUNTEAN's and PELAYO's
15 constitutional rights. Furthermore, the policies, practices, and customs
16 implemented, maintained, and still tolerated by Defendants CITY and DOES 7-10
17 were affirmatively linked to and were a significantly influential force behind the
18 injuries of MUNTEAN and PELAYO.
19
20
21

22 114. Accordingly, Defendants CITY and DOES 7-10, inclusive, are liable to
23 plaintiff for compensatory damages under 42 U.S.C. § 1983.
24

25 115. Plaintiff PELAYO brings this claim as successor-in-interest to
26 MUNTEAN, and seeks survival damages, including physical and mental pre-death
27 pain and suffering, loss of life, and loss of enjoyment of life, and wrongful death
28 damages for the violation of MUNTEAN's rights. MUNTEAN incurred other

1 special and general damages and expenses in an amount to be proven at trial which
2 is in excess of \$15,000,000.00.

3
4 **EIGHTH CAUSE OF ACTION**

5 **False Arrest / False Imprisonment**

6 **Under California State Law**

7 **(By Plaintiff Florentina Pelayo as Successor-in-Interest to Petrica Muntean**
8 **against Defendants CITY, JOHNSON, GONZALEZ, LEE, WANN, FLEET,**
9 **THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive)**

10 116. Plaintiff hereby realleges and incorporates by reference the allegations
11 set forth in paragraphs 1 through 115, inclusive, above, as if set forth in full herein.

12 117. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
13 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, did not have
14 probable cause or reasonable suspicion to believe that MUNTEAN had committed
15 a crime.

16 118. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
17 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, restrained,
18 brutalized and deprived MUNTEAN of his liberty.

19 119. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
20 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, intentionally
21 deprived MUNTEAN of his freedom of movement by use of physical force and
22 violence.

23 120. MUNTEAN did not consent to said deprivation of his freedom of
24 movement by Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
25
26
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1 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, or to the use
2 of force and violence upon him.
3

4 121. MUNTEAN suffered harm because of said deprivation of his freedom
5 of movement by Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
6 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive.
7

8 122. The actions committed by Defendants JOHNSON, GONZALEZ,
9 LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
10 inclusive, as complained of herein, constituted a false arrest / false imprisonment
11 of MUNTEAN under California state law.
12

13 123. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
14 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, are liable to
15 MUNTEAN/PELAYO for said false arrest / false imprisonment, pursuant to Cal.
16 Government Code §§ 815.2(a), 815.6, 820, 820.2, 820.8, and otherwise pursuant to
17 the common-law.
18

19 124. Plaintiff PELAYO brings this claim as successor-in-interest to
20 MUNTEAN, and seeks survival damages, including physical and mental pre-death
21 pain and suffering, loss of life, and loss of enjoyment of life, and wrongful death
22 damages for the violation of MUNTEAN's rights. MUNTEAN incurred other
23 special and general damages and expenses in an amount to be proven at trial which
24 is in excess of \$15,000,000.00.
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1 125. The actions by said defendants were committed maliciously,
2 oppressively and in reckless disregard of MUNTEAN’s constitutional rights,
3 sufficient for an award of punitive / exemplary damages against all defendants and
4 each of them, save for Defendant CITY, in an amount to be proven at trial which is
5 in excess of \$5,000,000.00.
6

7
8 **NINTH CAUSE OF ACTION**
9 **Wrongful Death**
10 **(Cal. Civil Proc. Code § 377.60)**
11 **Under California State Law**

12 **(By Plaintiff Florentina Pelayo, individually, against Defendants CITY,**
13 **THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive)**

14 126. Plaintiff hereby realleges and incorporates by reference the allegations
15 set forth in paragraphs 1 through 125, inclusive, above, as if set forth in full herein.

16 127. THOMAS, HORN and DOES 1 through 6, inclusive, while working as
17 peace officers for CITY, and acting within the course and scope of their duties,
18 intentionally shot MUNTEAN multiple times with their pistols, and used
19 unreasonable and excessive force against him.
20

21 128. THOMAS, HORN and DOES 1 through 6, inclusive, had no legal
22 justification for using force against MUNTEAN, and their use of force while
23 carrying out their duties as peace officers was an unreasonable and nonprivileged
24 use of force, and, under the circumstances, was outrageous, and constituted a
25 breach of said defendants’ duties to use due care toward members of the public
26 similarly situated.
27
28

1 129. SCAGLIONE and DOES 1 through 6, inclusive, while working as a
2 peace officer for CITY, and acting within the course and scope of her duties,
3 intentionally shot MUNTEAN multiple times and used unreasonable and excessive
4 force against him with a bean bag gun and rubber bullets.
5

6 130. SCAGLIONE and DOES 1 through 6, inclusive, had no legal
7 justification for using force against MUNTEAN, and their use of force (i.e.
8 shooting MUNTEAN with rubber bullets) while carrying out their duties as peace
9 officers was an unreasonable and nonprivileged use of force.
10

11 131. As a direct and proximate result of the conduct of THOMAS, HORN,
12 SCAGLIONE and DOES 1 through 6, inclusive, as alleged above, MUNTEAN
13 sustained severe, and ultimately terminal physical injuries, and died from said
14 injuries.
15

16 132. CITY is vicariously liable for the wrongful acts of THOMAS, HORN,
17 SCAGLIONE and DOES 1 through 6, inclusive, pursuant to sections 815.2(a),
18 820, 820.2, 820.8 of the California Government Code, as well as pursuant to Cal.
19 Civil Proc. Code § 377.60.
20

21 133. The conduct of THOMAS, HORN, SCAGLIONE and DOES 1
22 through 6, inclusive, was malicious, wanton, oppressive, and accomplished with a
23 conscious disregard for the rights of plaintiff and MUNTEAN, entitling plaintiff
24
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1 PELAYO, individually, to an award of exemplary and punitive damages, against
2 defendants THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive².
3

4 134. The actions of said defendants in shooting and killing of MUNTEAN,
5 caused plaintiff PELAYO to suffer the loss of the society, comfort, solace, society
6 and love of MUNTEAN, as well as special damages such as funeral / burial
7 expenses and other associated special damages.
8

9 135. The actions by said defendants were committed maliciously,
10 oppressively and in reckless disregard of MUNTEAN’s constitutional rights,
11 sufficient for an award of punitive / exemplary damages against all defendants and
12 each of them, save for defendant CITY, in an amount to be proven at trial which is
13 in excess of \$5,000,000.00.
14
15

16 **TENTH CAUSE OF ACTION**

17 **Negligence**

18 **Under California State Law**

19 **(Cal. Civil Code § 1714)**

20 **(By Plaintiff Florentina Pelayo as Successor-in-Interest to Petrica Muntean**
21 **against Defendants CITY, JOHNSON, GONZALEZ, LEE, WANN, FLEET,**
22 **THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive)**

23 136. Plaintiff hereby realleges and incorporate by reference the allegations
24 set forth in paragraphs 1 through 135, inclusive, above, as if set forth in full herein.
25
26
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² But not defendant CITY.

1 137. Police officers, including Defendants, have a duty to use reasonable
2 care to prevent harm or injury to others. This duty includes using appropriate
3 tactics, giving appropriate commands, giving warnings, and not using any force
4 unless necessary, using less than lethal options, and only using deadly force as a
5 last resort.
6
7

8 141. Defendants breached this duty of care. Upon information and belief, the
9 actions and inactions of defendants were negligent and reckless, including but not
10 limited to:
11

- 12 (a) the failure to properly and adequately assess the need to detain, arrest,
13 and use force or deadly force against MUNTEAN;
- 14 (b) the negligent tactics and handling of the situation with MUNTEAN,
15 including pre-shooting negligence;
- 16 (c) the negligent detention, arrest, and use of force, including deadly force,
17 against MUNTEAN;
- 18 (e) the failure to properly train and supervise employees, both professional
19 and non-professional, including DOE Officers;
- 20 (f) the failure to ensure that adequate numbers of employees with
21 appropriate education and training were available to meet the needs of and
22 protect the rights of MUNTEAN;
- 23 (g) the negligent handling of evidence and witnesses; and
24 (h) the negligent communication of information during the incident.

25 142. As a direct and proximate result of defendants' conduct as alleged
26 above, and other undiscovered negligent conduct, MUNTEAN was caused to
27 suffer severe pain and suffering and ultimately died. Also as a direct and proximate
28

1 result of defendants' conduct as alleged above, Plaintiff suffered emotional distress
2 and mental anguish, and incurred substantial medical bills and costs and other
3 special damages, in an amount to be proven at trial which is in excess of
4 \$15,000,000.00.
5

6
7 **ELEVENTH CAUSE OF ACTION**

8 **Battery**

9 **Under California State Law**

10 **(By Plaintiff Florentina Pelayo as Successor-in-Interest to Petrica Muntean
11 against Defendants Against, CITY, THOMAS, HORN, SCAGLIONE and
12 DOES 1 through 6, inclusive)**

13 143. Plaintiff hereby realleges and incorporates by reference the allegations
14 set forth in paragraphs 1 through 142, inclusive, above, as if set forth in full herein.

15 144. THOMAS, HORN and DOES 1 through 6, inclusive, while working as
16 peace officers for CITY, and acting within the course and scope of their duties,
17 intentionally shot MUNTEAN multiple times and used unreasonable and excessive
18 force against him.
19

20 145. As a result of the actions of THOMAS, HORN and DOES 1 through
21 6, inclusive, MUNTEAN suffered severe pain and suffering, loss of enjoyment of
22 life, and ultimately died of his injuries. THOMAS, HORN and DOES 1 through 6,
23 inclusive, had no legal justification for using force against MUNTEAN, and their
24 use of force while carrying out their duties as peace officers was an unreasonable
25 and nonprivileged use of force.
26
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1 146. SCAGLIONE and DOES 1 through 6, inclusive, while working as a
2 peace officer for CITY, and acting within the course and scope of her duties,
3 intentionally shot MUNTEAN multiple times and used unreasonable and excessive
4 force against him with a bean bag gun and rubber bullets.
5

6 147. As a result of the actions of THOMAS, HORN and DOES 1 through
7 6, inclusive, MUNTEAN suffered severe pain and suffering. SCAGLIONE and
8 DOES 1 through 6, inclusive, had no legal justification for using force against
9 MUNTEAN, and their use of force while carrying out their duties as peace officers
10 was an unreasonable and nonprivileged use of force.
11

12 148. As a direct and proximate result of the conduct of THOMAS, HORN,
13 SCAGLIONE and DOES 1 through 6, inclusive, as alleged above, MUNTEAN
14 sustained injuries and died from his injuries and also lost his earning capacity.
15 MUNTEAN also incurred substantial medical bills and costs, loss of life, and loss
16 of enjoyment of life.
17

18 149. CITY is vicariously liable for the wrongful acts of THOMAS, HORN,
19 SCAGLIONE and DOES 1 through 6, inclusive, pursuant to sections 815.2(a) and
20 820 of the California Government Code.
21

22 150. The conduct of THOMAS, HORN, SCAGLIONE and DOES 1
23 through 6, inclusive, was malicious, wanton, oppressive, and accomplished with a
24 conscious disregard for the rights of plaintiff and MUNTEAN, entitling Plaintiff
25
26
27
28

1 PELAYO, individually, and as successor-in-interest to MUNTEAN, to an award of
2 exemplary and punitive damages, save CITY.
3

4 151. The actions by said defendants were committed maliciously,
5 oppressively and in reckless disregard of MUNTEAN's constitutional rights,
6 sufficient for an award of punitive / exemplary damages against all defendants and
7 each of them, save for defendant CITY, in an amount to be proven at trial which is
8 in excess of \$5,000,000.00.
9
10

11 **TWELFTH CAUSE OF ACTION**

12 **Violation of Cal. Civil Code § 52.1**

13 **Under California State Law**

14 **(By Plaintiff Florentina Pelayo as Successor-in-Interest to Petrica Muntean**
15 **against Defendants Against, CITY, THOMAS, HORN, SCAGLIONE and**
16 **DOES 1 through 6, inclusive)**

17 152. Plaintiff hereby realleges and incorporates by reference the allegations
18 set forth in paragraphs 1 through 151, inclusive, above, as if set forth in full herein.

19 153. On information and belief, Defendants JOHNSON, GONZALEZ, LEE,
20 WANN, FLEET, THOMAS, SCAGLIONE, HORN and DOES 1 through 6,
21 inclusive while working for the CITY and acting within the course and scope of
22 their duties, intentionally committed acts of violence against MUNTEAN,
23 including by chasing him down while pointing their guns at him and shooting
24 rubber bullets and bean bags at him and by shooting him without justification or
25 excuse, by integrally participating and failing to intervene in the above violence.
26
27
28

1 154. Defendants JOHNSON, GONZALEZ, LEE, WANN, FLEET,
2 THOMAS, SCAGLIONE, HORN and DOES 1 through 6, inclusive, interfered
3 with MUNTEAN's civil rights to be free from unreasonable searches and seizures,
4 to due process, to equal protection of the laws, to medical care, to be free from
5 state actions that shock the conscience, and to life, liberty, and property.
6
7

8 155. On information and belief, defendants intentionally and spitefully
9 committed the above acts to discourage MUNTEAN from exercising his civil
10 rights, to retaliate against him for invoking such rights, or to prevent him from
11 exercising such rights, which they were fully entitled to enjoy.
12
13

14 156. On information and belief, MUNTEAN reasonably believed and
15 understood that the violent acts committed by Defendants JOHNSON,
16 GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and
17 DOES 1 through 6, inclusive were intended to discourage him from exercising the
18 above civil rights, to retaliate against him, or invoking such rights, or to prevent
19 him from exercising such rights.
20
21

22 157. As a proximate and direct result of defendants' actions, MUNTEAN,
23 suffered loss of life, and loss of enjoyment of life, and wrongful death damages for
24 the violation of MUNTEAN's rights. MUNTEAN incurred other special and
25 general damages and expenses in an amount to be proven at trial which is in excess
26 of \$15,000,000.00.
27
28

1 158. The actions by said defendants were committed maliciously,
 2 oppressively and in reckless disregard of MUNTEAN's constitutional rights,
 3 sufficient for an award of punitive / exemplary damages against all defendants and
 4 each of them, save for defendant CITY, in an amount to be proven at trial which is
 5 in excess of \$5,000,000.00.
 6

8 157. In addition, as a result of the actions of defendants JOHNSON,
 9 GONZALEZ, LEE, WANN, FLEET, THOMAS, SCAGLIONE, HORN and
 10 DOES 1 through 6, inclusive, as complained of herein, constituted a violation of
 11 California Civil Code § 52.1, and, therefore, plaintiff is entitled an award of treble
 12 compensatory damages against said defendants, and each of them.
 13
 14

15 **WHEREFORE**, plaintiff prays for judgment as follows:

- 16 a) For a judgment against all defendants for compensatory damages
- 17 in an amount in excess of \$15,000,000.00;
- 18 b) For a judgment against all defendants, save defendant CITY, for
- 19 punitive damages in an amount in excess of \$5,000,000.00;
- 20 c) For an award of reasonable attorney's fees and costs;
- 21 d) For a trial by jury; and
- 22 e) For such other and further relief as this honorable court deems just
- 23 and equitable.
- 24

25 _____
 GREGORY PEACOCK

26 _____
 JERRY L. STEERING