

FILED

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11 Attorneys for Plaintiffs MICHAEL TAYLOR
12 And MINDI HILBORN

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

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17 MICHAEL TAYLOR, as an
18 individual and as a successor in
19 interest to TREVOR TAYLOR;
20 MINDI HILBORN, an individual and
21 as successor in interest to TREVOR
22 TAYLOR,

20 Plaintiffs,

21 v.

22 CITY OF COLTON, a municipal
23 entity; TODD SMITH, an individual,
24 LOU GAMACHE, an individual,
25 STEVE DAVIS, an individual,
26 CHUCK DEDIANOUS, an
27 individual, JOE GONZALES, an
28 individual, RAY MENDEZ, an
individual, JACK MORENBERG, an
individual, STEVE WARD, an
individual, and DOES 1 to 10,
inclusive

Defendants.

Case No. 5:13-cv-01330 PSG (AJW)
Assigned to: Honorable Philip S. Gutierrez

FIRST AMENDED COMPLAINT FOR:

- (1) Excessive Force (42 U.S.C. § 1983);
- (2) Municipal Liability (42 U.S.C. § 1983);
- (3) Failure to Train (42 U.S.C. § 1983);
- (4) Battery (California Civil Code Section 43);
- (5) Intentional Infliction of Emotional Distress;
- (6) Wrongful Death.

JURY TRIAL DEMANDED

1 COMES NOW, Plaintiffs MICHAEL TAYLOR and MINDI HILBORN,
2 individually and as successors in interest to TREVOR TAYLOR'S ESTATE
3 (collectively "Plaintiffs"), who hereby complain against Defendants CITY OF
4 COLTON, TODD SMITH, LOU GAMACHE, STEVE DAVIS, CHUCK
5 DEDIANOUS, JOE GONZALES, RAY MENDEZ, JACK MORENBERG, STEVE
6 WARD, and DOES 1 through 10, inclusive, and each of them (collectively
7 "DEFENDANTS") as follows:

8 **PARTIES**

9 1. Plaintiff MICHAEL TAYLOR is, and at all relevant times mentioned here, has
10 been an individual residing in the County of San Bernardino, California, and is the
11 natural father and successor in interest to Trevor Taylor.

12 2. Plaintiff MINDI HILBORN is, and at all relevant times mentioned here, has
13 been an individual residing in the County of San Bernardino, California, and is the
14 natural mother and successor in interest to Trevor Taylor.

15 3. Plaintiffs are informed and believe that at all relevant times mentioned here,
16 Defendant CITY OF COLTON ("CITY"), is a municipal corporation duly organized
17 and existing under the laws of the State of California and situated in the County of
18 San Bernardino.

19 4. Mr. TAYLOR and Ms. HILBORN are informed and believe that at all relevant
20 times mentioned here, CITY operates the Colton Police Department ("CPD") as an
21 agency and department of the Defendant CITY. For the purposes of this action, and
22 in said capacity, Defendant CITY is responsible for and administers the CPD, which
23 in turn promulgates policies and practices for patrolling and policing various areas of
24 San Bernardino County, including but not limited to the area near the 6900 block of
25 San Francisco and Highland in Colton, California.

26 5. Plaintiffs are informed and believe that at all relevant times mentioned here,
27 Defendant TODD SMITH ("SMITH") is an officer, employee, and agent of the CPD
28 and CITY.

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1 6. Mr. TAYLOR and Ms. HILBORN are informed and believe that at all
2 relevant times mentioned here, Defendant LOU GAMACHE (“GAMACHE”) is an
3 officer, employee, and agent of the CPD and CITY, holding the rank of Sergeant.

4 7. Plaintiffs are informed and believe that at all relevant time mentioned here,
5 Defendant STEVE DAVIS (“DAVIS”) is an officer, employee, and agent of the CPD
6 and CITY, holding the rank of Sergeant.

7 8. Mr. TAYLOR and Ms. HILBORN are informed and believe that at all relevant
8 times, Defendant CHUCK DEDIANOUS (“DEDIANOUS”) is an officer, employee,
9 and agent of the CPD and CITY, holding the rank of Lieutenant.

10 9. Plaintiffs are informed and believe that at all relevant times, Defendant JOE
11 GONZALES (“GONZALES”) is an officer, employee, and agent of the CPD and
12 CITY, holding the rank of Lieutenant.

13 10. Mr. TAYLOR and Ms. HILBORN are informed and believe that at all relevant
14 times, Defendant RAY MENDEZ (“MENDEZ”) is an officer, employee, and agent
15 of the CPD and CITY, holding the rank of Detective.

16 11. Plaintiffs are informed and believe, and therefore allege, that at all relevant
17 times, Defendant JACK MORENBERG (“MORENBERG”) is an officer, employee,
18 and agent of the CPD and CITY, holding the rank of Detective.

19 12. Mr. TAYLOR and Ms. HILBORN are informed and believe that at all relevant
20 times, Defendant STEVE WARD (“WARD”) is an officer, employee, and agent of
21 the CITY, and is the Chief of the CPD.

22 13. Defendants CITY, through its component departments, and WARD, as chief of
23 the CPD, run, operate, train, oversee, administer, supervise, investigate, and are
24 otherwise responsible for the conduct of CPD officers and employees, including both
25 acts and omissions of CPD officers, employees and agents and other CPD workers.

26 14. Plaintiffs are informed and believe that Defendants MORENBERG,
27 MENDEZ, GONZALES, and DEDIANOUS are supervisory officers of the CPD and
28 each trains, oversees, administers, supervises, investigates, and is otherwise

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1 responsible for the conduct of CPD officers with subordinate ranks including, but not
2 limited to, Defendants DAVIS, GAMACHE, and SMITH and DOES 1 through 10.

3 15. Mr. TAYLOR and Ms. HILBORN are informed and believe that at all times
4 relevant, Defendants CITY and WARD each possessed the power and authority to
5 adopt policies and prescribe rules, regulations and practices affecting all facets of the
6 training, supervision, control, employment, assignment and removal of individual
7 members of the CPD, including those individuals charged with patrolling and
8 policing the community, and to assure that said actions, policies, rules, regulations,
9 practices and procedures of the CPD and its employees and agents comply with the
10 laws and constitutions of the United States and the State of California.

11 16. Plaintiffs are informed and believe that at all times relevant, Defendants
12 WARD, MORENBERG, MENDEZ, GONZALES, and DEDIANOUS, DOES 1
13 through 10 and each of them, had the duty and responsibility to ensure that their
14 duties were carried out consistent with all United States and California laws, were
15 charged with the responsibility of maintaining the fitness and discipline of individual
16 members of the CPD, including those individuals charged with patrolling and
17 policing the community, of ensuring that individual members of the CPD, including
18 those individuals charged with patrolling and policing the community, complied with
19 the policies and procedures of the CITY and CPD, of ensuring that individual
20 members of the CPD, including those individuals charged with patrolling and
21 policing the community, were aware of the policies and procedures of the CITY and
22 CPD, of ensuring that individual members of the CPD, including those individuals
23 charged with patrolling and policing the community, were properly trained in the
24 policies and procedures of the CITY and CPD, and of ensuring that individual
25 members of the CPD, including those individuals charged with patrolling and
26 policing the community, complied with all laws of the United States and California.

27 17. The true names and capacities of Defendants sued as DOES 1 through 10,
28 inclusive, are unknown to Plaintiffs, who therefore sue these Defendants by their

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1 fictitious names pursuant to California Code of Civil Procedure §474. Plaintiffs are
2 informed and believe that each of the fictitiously named Defendants is responsible in
3 some manner for the occurrences alleged and that Plaintiffs' damages alleged were
4 legally caused by those Defendants. Plaintiffs will seek permission of this Court to
5 amend this Complaint to show these true names and capacities when they have been
6 determined. Each reference in this Complaint to "Defendant," "Defendants" or a
7 specifically named Defendant shall include reference to all Defendants, including
8 fictitiously named Defendants, unless the context indicates otherwise.

9 18. CPD police officers ("OFFICERS"), sued here as DOES 1 to 10, are and were
10 at all relevant times mentioned here, officers, sergeants, captains, commanders,
11 lieutenants, and/or civilian employees, agents, and representatives of CPD, acting
12 within their capacity as supervisory employees or policymaking authorities, agents
13 and servants of Defendant CITY. These Defendants are sued individually and in
14 their capacity as police officers, sergeants, captains, lieutenants, commanders, and/or
15 other officers, employees, agents or representatives of CITY. Each of DOES 1 to 10
16 was a supervisory officer or policymaking authority that, at all relevant times
17 mentioned here, was acting under color of law, under the color of statutes,
18 ordinances, regulation, policies, customs, practices, and usages of Defendant CITY,
19 its CPD and the State of California.

20 19. At all relevant time mentioned here, Defendant police officers of the CPD
21 employed and organized unlawful and illegal customs and practices of excessive
22 force, making false arrests, and intentionally causing emotional distress upon
23 innocent victims. Mr. TAYLOR and Ms. HILBORN are informed and believe and
24 hereon allege that this misconduct was known by, encouraged, tolerated and/or
25 condoned by Defendants CITY, CPD, WARD, MORENBERG, MENDEZ,
26 GONZALES, DEDIANOUS, and DOES 1 to 10.

27 20. At all relevant time mentioned here, Defendant police officers of the CPD
28 were acting within the course and scope of their employment as peace officers and

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1 employees of the CITY, which is liable under the principles of *respondeat superior*
2 for these employees' tortious conduct pursuant to section 815.2 of the California
3 Government Code.

4 21. Prior to bringing this suit, Mr. TAYLOR and Ms. HILBORN complied with
5 the California Government Claims Statute by filing a claim with the City of Colton
6 on or about December 14, 2012. That claim was rejected by the CITY on May
7 9,2013. This Complaint is therefore filed timely.

8 22. Mr. TAYLOR and Ms. HILBORN bring this action as a survival action, as the
9 successors in interest of their son Trevor Taylor (“Trevor”), pursuant to California
10 *Code of Civil Procedure* § 377.30, and as a wrongful death action as Trevor’s sole
11 heirs, pursuant to California *Code of Civil Procedure* § 377.60.

12 23. Mr. TAYLOR and Ms. HILBORN are successors in interest to Trevor Taylor
13 for purposes of bringing a survival action and PLAINTIFFS have or will file the
14 affidavit(s) pursuant to California Code of Civil Procedure Section 377.32.

15 **STATEMENT OF FACTS**

16 24. On July 31, 2012 at 11:15 a.m., 21-year-old Trevor was driving car in Colton,
17 California that had been reported stolen.

18 25. At around the Ninth and "G" street intersection in Colton, California,
19 Defendants DAVIS, GAMACHE, SMITH, DOES 1 through 10 and/or other police
20 officers tried to pull Trevor over.

21 26. The CPD officers began pursuing Trevor in a high-speed chase, when Trevor
22 did not stop immediately.

23 27. Defendants DAVIS, GAMACHE, SMITH and DOES 1 through 10 followed
24 Trevor to the end of a cul-de-sac, and surrounded Trevor’s car after Trevor began
25 backing up his vehicle.

26 28. The CPD officers caused Trevor to stop his car.

27 29. Defendants DAVIS, GAMACHE, SMITH and DOES 1 through 10 felt
28 sufficiently comfortable to approach Trevor’s car while giving him verbal

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1 instructions.

2 30. The CPD officers heard Trevor agree to comply with their instructions.

3 31. Defendants DAVIS, GAMACHE, SMITH and DOES 1 through 10 watched
4 Trevor raise his hands in the air to surrender to them. The Defendants saw that
5 Trevor was unarmed.

6 32. Defendants GAMACHE, SMITH and DOES 1 through 10 then opened fire on
7 Trevor as he was surrendering to them. Indeed, the Defendants' barrage of gunfire
8 was so reckless that bullets struck a dog that was lying on the front seat of the car.

9 33. As a legal result of the shooting by Defendants GAMACHE, SMITH and
10 DOES 1 through 10, Trevor was struck multiple times in the head and chest,
11 sustaining serious injury to his mind and body. Defendants GAMACHE, SMITH
12 and DOES 1 through 10 fired at least 20 gunshots at Trevor.

13 34. As a further legal result of being shot by Defendants GAMACHE, SMITH and
14 DOES 1 through 10, Trevor eventually died. Trevor did not die immediately and
15 instead suffered severe pain to his mind and body prior to his death, in an amount to
16 be determined according to proof at trial.

17 35. Mr. TAYLOR and Ms. HILBORN are informed and believe that Defendant
18 DAVIS did not feel that Trevor's action then presented an immediate deadly threat to
19 himself or others, justifying the use of deadly force against Trevor. Thus, Defendant
20 DAVIS never fired at Trevor, though DAVIS did not attempt to stop his fellow
21 officers from executing Trevor after Trevor's surrender.

22 36. Plaintiffs are informed and believe that, at the time by Defendants
23 GAMACHE, SMITH and DOES 1 through 10 intentionally opened fire at Trevor,
24 the Defendants did not know, or could not have known, whether there were innocent
25 people in the car and within the line of fire.

26 37. Defendants GAMACHE, SMITH and DOES 1 through 10 negligently,
27 recklessly and unreasonably concluded that Trevor presented a deadly threat to their
28 safety, thereby justifying the use of deadly force against him.

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1 38. As an alternative theory of responsibility, the Plaintiffs are informed and
2 believe that Defendants GAMACHE, SMITH and DOES 1 through 10 each pointed
3 their weapons at Trevor and decided to fire not because he reasonably believed that
4 his life was then in immediate danger, but in response to hearing gunshots then being
5 fired by another of the Defendants then at the scene. This unjustified use of deadly
6 force is known as “contagious fire” legally resulted in the damages, injuries and
7 harms described here.

8 39. Trevor did nothing to justify this use of deadly force against him. He had
9 committed no crime or public offense, so as to justify this use of deadly force. He
10 had not posed a reasonable threat to any of the Defendants, or any other person, so as
11 to justify this use of deadly force. He was unarmed, and had raised up both of his
12 hands surrendering to the Defendants when Defendants GAMACHE, SMITH and
13 DOES 1 through 10 chose to open fire on him. This conduct justifies the awarding of
14 punitive damages against the individual Defendants in an amount to be determined
15 according to proof at trial.

16 40. Mr. TAYLOR and Ms. HILBORN are informed and believe that the use of
17 deadly force was in violation of well-established law and principles of proper police
18 conduct.

19 41. As a direct and legal result of the acts and/or omissions of each of the
20 Defendants as described above, Mr. TAYLOR and Ms. HILBORN have each
21 sustained pecuniary losses resulting from the loss of Trevor’s love, comfort, society,
22 care, assistance, protection, companionship, guidance, attention, moral support, and
23 financial support, all in an amount to be determined according to proof at trial.

24 42. Mr. TAYLOR and Ms. HILBORN are informed and believe that Trevor was
25 summarily executed by Defendants GAMACHE, SMITH and DOES 1 through 10
26 without lawful reason and in violation of principles of universally recognized and
27 applicable human rights, in violation of treaties to which the United States is a party,
28 and in violation of the United States Constitution, the California Constitution, United

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1 States common and statutory law, and California common and statutory law.

2 43. Plaintiffs are informed and believe that each of the Defendants and DOES 1
3 through 10 falsified police reports or otherwise made false statements in order to
4 cover for their use of excessive and unnecessary deadly force and attempted to create
5 a false excuse for using deadly force.

6 44. Mr. TAYLOR and Ms. HILBORN are informed and believe and therefore
7 allege that DEFENDANTS falsified police reports or otherwise made false
8 statements in order to incorrectly and falsely claim that they believed that Trevor was
9 reaching for a weapon or that police officers or anyone was in danger.

10 45. Mr. TAYLOR and Ms. HILBORN are informed and believe that Defendant
11 DAVIS was aware of the fact that Defendants GAMACHE, SMITH and DOES 1
12 through 10 were prepared to fire shots at Trevor and were prepared to act with deadly
13 force against Trevor, that DAVIS knew or should have known that Defendants
14 GAMACHE, SMITH and DOES 1 through 10 intended to shoot and kill Trevor, that
15 DAVIS knew or should have known that Trevor was at great risk of great bodily
16 injury or death, and that DAVIS knew or should have known that Defendants
17 GAMACHE, SMITH and DOES 1 through 10 were police officers acting at that
18 time in a manner inconsistent with United States and California law.

19 46. Plaintiffs are informed and believe that Defendant DAVIS was, in fact, also
20 engaged in conduct outside the law, acting with complicity from other Defendants,
21 including Chief WARD, and the CITY, that, like his colleagues Defendants
22 GAMACHE, SMITH and DOES 1 through 10, subjected citizens to excessive force
23 and violated their rights with impunity and with full knowledge that they would not
24 be brought to account or held responsible by their supervisors or the City for their
25 misconduct, even if such misconduct resulted in the death of citizens.

26 47. Plaintiffs are informed and believe that Defendant DAVIS had an opportunity
27 to warn Trevor of the impending shooting by Defendants GAMACHE, SMITH and
28 DOES 1 through 10, but DAVIS failed to warn Trevor and negligently and

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1 intentionally failed to take action to stop Defendants GAMACHE, SMITH and
2 DOES 1 through 10 from using excessive and unnecessary deadly force against
3 Trevor, all resulting in Trevor's death.

4 48. Mr. TAYLOR and Ms. HILBORN are informed and believe that Trevor's
5 death at the hands of Defendants was not the first time that officers of the CPD, and,
6 in fact Defendants DAVIS, GAMACHE, SMITH and DOES 1 through 10, had been
7 involved with other shootings of unarmed citizens.

8 49. Mr. TAYLOR and Ms. HILBORN are informed and believe that each and
9 every DEFENDANT, including the CITY, WARD, and the supervisory police officer
10 Defendants, knew or should have known that there was a problem with the CPD of
11 applying excessive and unnecessary force, including excessive deadly force, to
12 persons in violation of state and federal law, but that Defendants took no action to
13 prevent further applications of excessive deadly force, Defendants took no action to
14 properly and fairly investigate applications of excessive force, the Defendants took
15 no action to train police officers to avoid use of excessive force, and they took no
16 action to hold officers to account for use of excessive force, including excessive
17 deadly force.

18 50. Mr. TAYLOR and Ms. HILBORN are informed and believe and therefore
19 allege that police officers with the CPD, including SMITH, DAVIS, and
20 GAMACHE, did and do understand or reasonably believe that they can commit acts
21 of excessive force and that their supervisors, the CPD, WARD, and the CITY will
22 not just tacitly approve of the excessive force, but that their supervisors, the CPD,
23 WARD, and the CITY will affirmatively act on their behalf to ensure that police
24 officers with the CPD are not and will not be held to proper account for application
25 of excessive force.

26 51. As a further legal result of the acts and/or omissions alleged in this complaint,
27 Mr. TAYLOR and Ms. HILBORN have sustained damages for funeral and burial
28 expenses, all in an amount to be determined according to proof at trial.

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1 52. Mr. TAYLOR and Ms. HILBORN are informed and believe that Defendants
2 CITY, CPD, WARD, MORENBERG, MENDEZ, GONZALES, DEDIANOUS,
3 failed to properly investigate the misconduct of Defendants DAVIS, GAMACHE,
4 SMITH and DOES 1 through 10.

5 53. Plaintiffs allege that each of Defendants CITY, CPD, WARD, MORENBERG,
6 MENDEZ, GONZALES, DEDIANOUS, Defendants DAVIS, GAMACHE, SMITH
7 and DOES 1 through 10 ratified and condoned all of these Defendants' misconduct,
8 all in accordance with a policy, practice and procedure of the CITY to permit, allow
9 and ratify such misconduct, including when such misconduct is challenged by
10 citizens' complaints.

11
12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF CONSTITUTIONAL RIGHT TO BE FREE FROM**
14 **UNREASONABLE AND EXCESSIVE FORCE**

15 **(42 U.S.C. § 1983)**

16 **(Against Defendants SMITH, GAMACHE, and DAVIS)**

17 54. Mr. TAYLOR and Ms. HILBORN hereby re-allege and incorporate by
18 reference as though fully set forth here all prior paragraphs of this Complaint.

19 55. Plaintiffs bring this claim as a survival action pursuant to California Code of
20 Civil Procedure section 377.30, and as a wrongful death action pursuant to California
21 Code of Civil Procedure section 377.60.

22 56. This action is brought pursuant to 42 U.S.C. § 1983, and the Fourth and
23 Fourteenth Amendments of the United States Constitution.

24 57. On and before July 31, 2012, Trevor possessed the right, guaranteed by the
25 Fourth and Fourteenth Amendments of the United States Constitution, to be free
26 from unreasonable seizures in the form of excessive force by police officers acting
27 under the color of law.

28 58. Trevor also had the clearly established Constitutional right under the

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1 Fourteenth Amendment to bodily integrity and to be free from excessive force by law
2 enforcement.

3 59. On or about July 31, 2012, Defendants SMITH, GAMACHE, and DAVIS
4 violated Trevor's constitutional rights when they unlawfully, unreasonably, and
5 without justification used excessive force by fatally wounding Trevor with multiple
6 shots to the head and chest as set forth above.

7 60. Although the fatal shots were fired by SMITH and/or GAMACHE, DAVIS
8 aided and abetted SMITH and GAMACHE in their use of excessive force and
9 participated in the excessive force against Trevor that resulted in Trevor's death.

10 61. The use of excessive force against Trevor by SMITH, GAMACHE, and
11 DAVIS was entirely unjustified by any actions of said Trevor and was an
12 unreasonable and excessive use of force.

13 62. SMITH, GAMACHE, and DAVIS subjected Trevor to the aforementioned
14 deprivations by either actual malice, deliberate indifference or a reckless disregard of
15 Trevor's rights under the Federal Constitution.

16 63. SMITH, GAMACHE, and DAVIS acted at all relevant times knowing full
17 well that the established practices, customs, procedures and policies of the CITY and
18 the CPD, as well as of their supervisors within the CPD, would allow a cover-up and
19 allow the continued use of illegal force in violation of the Fourth and Fourteenth
20 Amendments of the Constitution of the United States and the laws of the State of
21 California.

22 64. As a direct and legal result of the acts alleged above, Trevor suffered severe
23 bodily injury and his death and suffered damages to be proven at trial.

24 65. As a further direct and legal result of the acts alleged above, Mr. TAYLOR
25 and Ms. HILBORN have been deprived of the love, affection, care, society, service,
26 comfort, support, right to support, companionship, solace or moral support, as well as
27 other benefits and assistance of Trevor. PLAINTIFFS have also incurred burial and
28 funeral expenses. Mr. TAYLOR and Ms. HILBORN were damaged as a legal result

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1 of the aforesaid acts and omissions in an amount and manner to be shown according
2 to proof at trial.

3 66. The aforementioned acts of SMITH, GAMACHE, and DAVIS were willful,
4 wanton, malicious, and oppressive, and justify the award of exemplary or punitive
5 damages as against them.

6 **SECOND CAUSE OF ACTION**

7 **MUNICIPAL LIABILITY UNDER 42 U.S.C. § 1983**

8 **(Against Defendant CITY)**

9 67. Mr. TAYLOR and Ms. HILBORN hereby re-allege and incorporate by
10 reference as though fully set forth here all prior paragraphs of this Complaint.

11 68. PLAINTIFFS bring this claim as a survival action pursuant to California Code
12 of Civil Procedure section 377.30, and as a wrongful death action pursuant to
13 California Code of Civil Procedure section 377.60.

14 69. At all relevant times, Defendants SMITH, GAMACHE, and DAVIS were
15 agents and employees of Defendant CITY, and were carrying out the acts alleged
16 above while acting under color of the authority and color of law, regulations,
17 customs, and usages of the CITY.

18 70. At the time of the excessive force against Trevor, Defendant CITY had in
19 place and had ratified, policies, procedures, customs and practices by which the
20 CITY and its police department would not discipline, prosecute or in any reasonable
21 way take corrective or responsive action to known incidents and/or complaints of
22 excessive force.

23 71. The acts or omissions of DEFENDANTS, and each of them, as alleged above
24 regarding the use of excessive force were either: (a) caused by inadequate and
25 arbitrary training, supervision, or discipline of officers by the CITY; (b) caused by
26 deliberate indifference of the CITY; (3) consistent with, and done pursuant to, a
27 custom or de facto policy of the CITY; or, (4) ratified by final decision makers of the
28 CITY.

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1 72. The foregoing acts, omissions and systematic deficiencies are policies and
2 customs of Defendant CITY, and as such cause Defendant CITY's and CPD's police
3 officers to believe that excessive force, against a detainee or citizen is permissible
4 and that such misconduct would not be honestly and properly investigated, all with
5 the foreseeable result that the CITY's officers would engage in violation of civil
6 rights of citizens and residents of this state.

7 73. As a direct and legal result of the acts alleged above, Trevor suffered severe
8 bodily injury and his death. As a further direct and legal result of the acts alleged
9 above, Mr. TAYLOR and Ms. HILBORN have been deprived of the love, affection,
10 care, society, service, comfort, support, right to support, companionship, solace or
11 moral support, as well as other benefits and assistance of Trevor. Plaintiffs have also
12 incurred burial and funeral expenses.

13 74. PLAINTIFFS were damaged as a legal result of the aforesaid acts and
14 omissions in an amount and manner to be shown according to proof at trial.

15
16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO TRAIN UNDER 42 U.S.C. § 1983**

18 **(Against Defendants CITY, WARD, MORENBERG, MENDEZ, GONZALES,**
19 **DEDIANOUS, and DOES 1 to 10)**

20 75. Mr. TAYLOR and Ms. HILBORN hereby re-allege and incorporate by
21 reference as though fully set forth here all prior paragraphs of this Complaint.

22 76. PLAINTIFFS bring this claim as a survival action pursuant to California Code
23 of Civil Procedure section 377.30, and as a wrongful death action pursuant to
24 California Code of Civil Procedure section 377.60.

25 77. This cause of action is brought pursuant to 42 U.S.C § 1983, with
26 PLAINTIFFS seeking to redress a deprivation under color of law of a right, privilege
27 or immunity secured to Trevor, respectively, by the First, Fourth and Fourteenth
28 Amendments to the United States Constitution.

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1 78. Defendants CITY, WARD, MORENBERG, MENDEZ, GONZALES,
2 DEDIANOUS, and DOES 1 to 10 violated Trevor's constitutional rights, as alleged
3 above, by, among other things, failing to train as follows:

4 79. PLAINTIFFS are informed, believe and therefore allege that each of
5 DEFENDANTS with the CITY and the CPD regularly engage in the misdeeds set
6 forth in paragraphs 1 through 88 above;

7 80. PLAINTIFFS are informed, believe and therefore allege that Defendants
8 CITY, WARD, MORENBERG, MENDEZ, GONZALES, DEDIANOUS, and DOES
9 1 to 10, and each of them, had ample reason to know, based upon complaints, claims
10 for damages, an identical incident involving a different Trevor that occurred less than
11 a month prior, *inter alia*, that the CITY's officers and/or employees regularly
12 engaged in the misdeeds set forth in paragraphs 1 through 89 here above.

13 81. Mr. TAYLOR and Ms. HILBORN are informed, believe and therefore allege
14 that Defendants CITY, WARD, MORENBERG, MENDEZ, GONZALES,
15 DEDIANOUS, and DOES 1 to 10, and each of them, have failed to properly train
16 their respective employees, officers, subordinate officers, managers and supervisors
17 as to the legal requirements and protections applicable to persons as set forth in the
18 United States and California Constitutions, and other laws set forth in this complaint.

19 82. Mr. TAYLOR and Ms. HILBORN are informed, believe and therefore allege
20 that Defendants CITY, WARD, MORENBERG, MENDEZ, GONZALES,
21 DEDIANOUS, and DOES 1 to 10, and each of them, have failed to properly
22 supervise and control the actions of their respective employees, officers, subordinate
23 officers, managers and supervisors in order to ensure that they comply with the legal
24 requirements and protections applicable to persons as set forth in the United States
25 and California Constitutions, and other laws set forth in this complaint.

26 83. Plaintiffs allege that these failures are the result of deliberate indifference to
27 the rights of citizens on the part of Defendants CITY, WARD, MORENBERG,
28 MENDEZ, GONZALES, DEDIANOUS, and DOES 1 to 10, by each of them and by

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1 and through their decision makers and subordinates.

2 84. The foregoing unconstitutional failures to train were a direct and legal cause of
3 harm to Trevor and Mr. TAYLOR and Ms. HILBORN.

4 85. Plaintiffs specifically allege that Defendants’ failures to train, as described
5 above, were within each of their control and within the Defendants’ feasibility to
6 alter, adjust and/or correct so as to prevent some or all of the unlawful acts and
7 injuries complained of above by Mr. TAYLOR and Ms. HILBORN.

8 86. As a direct and legal result of the acts alleged above, Trevor suffered severe
9 bodily injury and his death. As a further direct and legal result of the acts alleged
10 above, Mr. TAYLOR and Ms. HILBORN have been deprived of the love, affection,
11 care, society, service, comfort, support, right to support, companionship, solace or
12 moral support, as well as other benefits and assistance of Trevor.

13 87. Mr. TAYLOR and Ms. HILBORN were damaged as a legal result of the
14 aforesaid acts and omissions in an amount and manner to be shown according to
15 proof at trial.

16 88. The aforementioned acts of Defendants WARD, MORENBERG, MENDEZ,
17 GONZALES, DEDIANOUS, and DOES 1 to 10 were willful, wanton, malicious,
18 and oppressive, and justify the award of exemplary or punitive damages as against
19 WARD, MORENBERG, MENDEZ, GONZALES, DEDIANOUS, and DOES 1 to
20 10.

21 **FOURTH CAUSE OF ACTION**

22 **BATTERY (California Civil Code Section 43)**

23 **(Against Defendants CITY, SMITH, GAMACHE, and DAVIS)**

24 89. Mr. TAYLOR and Ms. HILBORN hereby re-allege and incorporate by
25 reference as though fully set forth here all prior paragraphs of this Complaint.

26 90. Plaintiffs bring this claim as a survival action pursuant to California Code of
27 Civil Procedure section 377.30, and as a wrongful death action pursuant to California
28 Code of Civil Procedure section 377.60.

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1 91. In committing the acts alleged above, Trevor was violently, wrongfully, and
2 intentionally battered by Defendants SMITH and GAMACHE, and each of them, by
3 firing multiple rounds of live ammunition at Trevor with the intent to inflict serious
4 and bodily injury, striking him multiple times in the head and chest, causing Trevor
5 great bodily harm and death.

6 92. DAVIS aided and abetted SMITH and GAMACHE in the commission of their
7 illegal acts as alleged above and thus DAVIS is equally liable for those unlawful acts.

8 93. At all times relevant hereto, Defendants SMITH, GAMACHE, and DAVIS
9 were acting within the course and scope of their employment as peace officers and
10 employees of the CITY, which is liable under the principles of respondeat superior
11 for said employees' tortious conduct pursuant to section 815.2 of the California
12 Government Code.

13 94. Both prior to and during the time in which Trevor was shot; Trevor did not
14 consent to the use of force used upon him. In committing the acts described above,
15 Defendants subjected Trevor to unreasonable harm to his person, in violation of
16 California Civil Code Section 43.

17 95. As a direct and legal result of the acts alleged above, Trevor suffered severe
18 bodily injury and his death. As a further direct and legal result of the acts alleged
19 above, Mr. TAYLOR and Ms. HILBORN have been deprived of the love, affection,
20 care, society, service, comfort, support, right to support, companionship, solace or
21 moral support, as well as other benefits and assistance of Trevor.

22 96. Mr. TAYLOR and Ms. HILBORN were damaged as a legal result of the
23 aforesaid acts and omissions in an amount and manner to be shown according to
24 proof at trial.

25 97. The aforementioned acts of Defendants SMITH, GAMACHE, and DAVIS
26 were willful, wanton, malicious, and oppressive, and justify the award of exemplary
27 damages as against the SMITH, GAMACHE, and DAVIS.
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FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against Defendants CITY, SMITH, GAMACHE, and DAVIS)

98. Mr. TAYLOR and Ms. HILBORN hereby re-allege and incorporate by reference as though fully set forth here all prior paragraphs of this Complaint.

99. Plaintiffs bring this claim as a survival action pursuant to California Code of Civil Procedure section 377.30.

100. The above-described acts of Defendants SMITH, GAMACHE, and DAVIS, and each of them, were outrageous, intentional, unlawful, malicious, and committed for the express purpose of causing Trevor to suffer increased mental anguish and emotional and physical distress, or with reckless disregard for the probability of causing emotional distress, and represented conduct which goes beyond all possible bounds of decency.

101. DAVIS aided and abetted SMITH and GAMACHE and DOES 1 through 10 in the commission of their illegal acts as alleged above and thus DAVIS is equally liable for those unlawful acts.

102. At all times relevant hereto, Defendants SMITH, GAMACHE, and DAVIS and DOES 1 through 10 were acting within the course and scope of their employment as employees of the CITY, which is liable under the principles of *respondeat superior* for said employees' tortious conduct pursuant to section 815.2 of the California Government Code.

103. As a direct and legal result of the acts alleged above, Trevor suffered severe and serious emotional distress and damages in an amount to be proven at trial. Defendants' actions were a substantial factor in causing the Trevor's serious emotional distress.

104. The aforementioned acts of Defendants SMITH, GAMACHE, and DAVIS were willful, wanton, malicious, and oppressive, and justify the award of exemplary damages as against SMITH, GAMACHE, and DAVIS.

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SIXTH CAUSE OF ACTION

WRONGFUL DEATH

(Against All DEFENDANTS)

105. Mr. TAYLOR and Ms. HILBORN hereby re-allege and incorporate by reference as though fully set forth here all prior paragraphs of this Complaint.

106. Plaintiffs bring this claim as a wrongful death action pursuant to California Code of Civil Procedure section 377.60.

107. Mr. TAYLOR and Ms. HILBORN bring this claim based on each of the Defendants' negligence and/or willful misconduct.

108. As a result of the aforementioned acts and omissions each of the Defendants Trevor was shot and killed on July 31, 2012. As alleged above, the shooting and death of Trevor was the legal result of the Defendants' willful misconduct and the Defendants' absence of due care for the safety of others, including Trevor, and was done in a reckless, unlawful, and/or negligent manner, and was without any legal or just cause.

109. As a direct and legal result of the acts and/or omissions alleged above, Mr. TAYLOR and Ms. HILBORN have sustained damages consisting of (1) the value of lost financial and other support from the Trevor according to proof; (2) the value of gifts or benefits that the Trevor would have provided according to proof; (3) the value of funeral and burial expenses according to proof; and (4) the loss of society, comfort, and protection according to proof.

PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For compensatory and other economic damages in an amount according to proof;
2. For punitive and exemplary damages against the individual Defendants in an amount according to proof;

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- 1 3. For general and special damages in an amount according to proof;
- 2 4. For all damages that Trevor would have been able to recover from
- 3 Defendants had he lived, according to proof;
- 4 5. For all damages for lost support of Trevor according to proof;
- 5 6. For all damages for the value of gifts or benefits that the Trevor would
- 6 have provided according to proof;
- 7 7. For all damages for the loss of Trevor’s love, comfort, society, care,
- 8 assistance, protection, companionship, guidance, attention, moral support,
- 9 and financial support, all in an amount to be determined according to
- 10 proof at trial;
- 11 8. For medical, funeral, and burial costs, in an amount to be determined
- 12 according to proof;
- 13 9. For costs of suit incurred here;
- 14 10. For pre-judgment and post-judgment interest;
- 15 11. For an award of attorneys’ fees as may be available by contract or statute;
- 16 and
- 17 12. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Mr. TAYLOR and Ms. HILBORN hereby demand trial by jury.

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Dated: January 19, 2014

THE LAYFIELD LAW FIRM, APC

By: /s/ Philip J. Layfield
Philip J. Layfield, Esq.
Antonio Castillo III, Esq.
Attorneys for Plaintiff Michael Taylor