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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
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11 JOSEPH E. VILLAREAL and
MARIA I. SANABIA, individually,
12 and as successors in interest to
SAMUEL VILLAREAL, deceased,
13

14 Plaintiffs,

15 vs.

16 CITY OF INDIO; and DOES 1-10,
inclusive,

17 Defendants.
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Case no.

COMPLAINT FOR DAMAGES

1. Unreasonable Seizure—Excessive Force [42 U.S.C. §1983];
2. Interference With Due Process Right to Familial Relationships [42 U.S.C. § 1983];
3. Municipal Liability for Violation of Civil Rights [42 U.S.C. § 983];
4. Battery;
5. Negligence;
6. Violation of Cal Civ. Code § 52.1;
7. Wrongful Death;

DEMAND FOR JURY TRIAL

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22 JURISDICTION AND VENUE

23 1. This is a civil rights and wrongful death/survival action arising from
24 the shooting death of the plaintiffs’ son, Samuel Villareal (the “decedent”), on or
25 about October 14, 2015 in Indio, California.

26 2. This case arises under 42 U.S.C. §1983. Jurisdiction is conferred
27 upon this Court by 28 U.S.C. §§ 1331 and 1343.
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1 and conspired with each of the other defendants, in doing the wrongful acts
2 complained of herein, as more fully alleged below.

3 FACTS

4 9. At approximately 1:00 p.m. on October 14, 2015, the 18-year-old
5 decedent was sitting in the driver's seat of a car that was then at rest in a paved
6 area of an apartment complex located at the 81900 block of Shadow Palm
7 Avenue in Indio, California. At that time a female was seated in the passenger
8 seat of the car. Respondent Doe 1, an Indio Police Department officer, who the
9 City of Indio and its Police Department have to date declined to publicly
10 identify, approached the car on foot, along with another Indio Police Department
11 officer, whose identity is likewise unknown to plaintiffs at this time. Doe 1
12 positioned himself to the front left side of the car, and the other Indio police
13 officer to the front right side of the car. Without warning or probable cause,
14 Doe 1 then fired one or more shots at decedent through the left driver window
15 area of the car, at least one of which struck him. Respondent Doe 1 shot
16 decedent without provocation, necessity, or justification. Decedent was at all
17 times unarmed, was not reaching for a weapon, and otherwise did not pose a
18 threat of death or serious physical injury to Doe 1, who was in a position of
19 safety to the side of the car, or to any other person, including the second Indio
20 police officer.

21 10. Decedent was treated at the scene and then transported by
22 ambulance to John F. Kennedy Memorial Hospital, where decedent was
23 pronounced dead that same afternoon.

24 11. On information and belief, defendants Does 1-4 seized or caused to
25 be seized the cell telephone of the apartment manager at the location of the
26 shooting who had videotaped the shooting on his telephone, and caused it to be
27 erased. On information and belief, defendants Does 1-4 further seized or caused
28 to be seized the videotapes of security cameras maintained by the management

1 of the apartments at the shooting location, and caused to be erased that portion
2 of the videotapes that included the shooting of decedent.

3 FIRST CLAIM FOR RELIEF UNDER 42 U.S.C. § 1983
4 FOR UNLAWFUL SEIZURE AND EXCESSIVE FORCE

5 (By plaintiffs as successors in interest

6 against all defendants except defendant City of Indio)

7 12. Plaintiffs repeat and reallege and incorporate by reference each and
8 every allegation in paragraphs 1 through 11, inclusive, of this complaint as if
9 fully set forth herein.

10 13. Plaintiffs bring this claim for relief in their capacity as the
11 successors in interest of the decedent, for whom there is no estate opened, under
12 California Code of Civil Procedure § 377.30. The foregoing claim for relief
13 arose in the decedent's favor, and decedent would have been the plaintiff with
14 respect to this claim for relief had he lived.

15 14. The use of the aforesaid force against the decedent was excessive
16 and unreasonable, and deprived decedent of his right to be secure in his person
17 against unreasonable seizures guaranteed him by the Fourth Amendment to the
18 U.S. Constitution, as applied to the states by the Fourteenth Amendment, in
19 violation of Title 42 U.S.C. § 1983.

20 15. As a direct result thereof the aforesaid acts and omissions of
21 defendants decedent suffered great physical and mental injury, fear and
22 emotional distress, trauma, pain, shock to his nervous system, and ultimately
23 death, and loss of the enjoyment of life. Plaintiffs seek damages for said
24 injuries.

25 16. The conduct of defendant Doe 1, as alleged above, was willful,
26 wanton, malicious, and done with reckless disregard for the rights and safety of
27 decedent and the passenger in his car, therefore warranting the imposition of
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1 exemplary damages in an amount according to proof sufficient to punish and
2 make an example.

3 SECOND CLAIM FOR RELIEF UNDER 42 U.S.C. § 1983 FOR
4 DEPRIVATION OF THE SUBSTANTIVE DUE PROCESS RIGHTS OF
5 PLAINTIFFS TO FAMILIAL RELATIONSHIPS WITH THE DECEDENT

6 (By plaintiffs individually against all defendants
7 except defendant City of Indio)

8 17. Plaintiffs repeat and reallege and hereby incorporate by reference
9 each and every allegation contained in paragraphs 1 through 16 of this complaint
10 as if set forth herein in full.

11 18. Plaintiffs had a cognizable interest under the Due Process Clause of
12 the Fourteenth Amendment of the United States Constitution in being free from
13 state actions that deprive them of life, liberty, or property in such a manner as to
14 shock the conscience, including but not limited to, unwarranted state
15 interference in their to a parental and familial relationship with their son, the
16 decedent.

17 19. The use of force against decedent by defendants, acting under color
18 of law, shocks the conscience, was unrelated to any legitimate law enforcement
19 objective, was done with the intent to harm the decedent, and in reckless
20 disregard of the rights of plaintiffs herein.

21 20. The use of said force deprived plaintiffs of their substantive due
22 process rights not to have their familial association infringed upon or interfered
23 with in an unwarranted manner, or to be deprived by the loss of life of their son,
24 thereby depriving them of rights, privileges, and immunities under the U.S.
25 Constitution, in violation of Title 42 U.S.C. § 1983.

26 21. As a direct result of the aforesaid acts of said defendants plaintiffs
27 have suffered and will suffer great physical and mental injury, trauma, pain,
28 shock to their nervous system, anguish, anxiety, humiliation, fear and emotional

1 distress, and the loss of the love, affection, care, society, companionship, and
2 support and affection of their son, all to their damage in an amount according to
3 proof.

4 22. As a further direct result of defendants' acts plaintiffs incurred
5 funeral and burial expenses, in an amount according to proof.

6 23. The conduct of defendants alleged above was willful, wanton,
7 malicious, and done with reckless disregard for the rights and safety of decedent
8 and plaintiffs and therefore warrants the imposition of exemplary damages in an
9 amount according to proof sufficient to punish and make an example.

10 THIRD CLAIM FOR RELIEF UNDER 42 U.S.C. § 1983 FOR
11 UNCONSTITUTIONAL MUNICIPAL CUSTOMS,
12 PRACTICES AND POLICIES

13 (Against defendant City of Indio)

14 24. Plaintiffs hereby repeat and reallege and each and every allegation
15 contained in paragraphs 1 through 23 of this complaint as if set forth herein in
16 full.

17 25. Plaintiffs sue under this claim as successors in interest to decedent.
18 In addition, plaintiffs sue individually in connection with the violation of their
19 own rights under the United States Constitution, as alleged above in the Second
20 Claim for Relief.

21 26. On information and belief, the Chief of Police of the City of Indio
22 or other final policymaker, who had final policymaking authority concerning the
23 acts of the individual defendants, ratified (or will ratify) said acts and the
24 purported bases for them, with actual knowledge of or deliberate indifference to
25 their unconstitutional nature.

26 27. Alternatively, on information and belief, the unconstitutional
27 actions of the individual defendants, as well as other officers employed by or
28 acting on behalf of defendant City of Indio and its Police Department, as alleged

1 above, were the result of the following unconstitutional customs, policies and/or
2 practices on the part of the Police Department of defendant City of Indio:

3 a. the use or tolerance of excessive and deadly force against
4 unarmed individuals;

5 b. the use of unreasonably and unnecessarily aggressive tactics
6 against individuals, such that officers are more likely to use substantial
7 physical, excessive and/or deadly force against those individuals;

8 c. the failure to properly train, instruct, monitor, supervise, and
9 discipline the individual defendants herein, and other officers of
10 defendants, in the proper use of deadly force;

11 d. the deprivation of access to the courts by engaging in a
12 cover-up of violations of constitutional rights, to wit: by allowing,
13 tolerating, and/or encouraging officers to file false reports, make false
14 statements, obstruct and/or interfere with investigations of
15 unconstitutional or unlawful conduct, by withholding and/or concealing
16 material information, and evidence, and otherwise ignoring and/or failing
17 to adequately investigate and discipline unconstitutional or unlawful
18 activity.

19 28. The aforementioned ratification of the individual defendants'
20 actions, as well as the unconstitutional policies, practices and customs of
21 defendant City of Indio alleged above, were a direct and moving cause of the
22 deprivations of decedent's and plaintiffs' clearly established and well-settled
23 constitutional rights, in violation of 42 U.S.C. § 1983.

24 29. As a direct result of the actions alleged herein, decedent was
25 damaged, as alleged above, as were plaintiffs, as further alleged above.

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FIFTH CLAIM FOR RELIEF FOR NEGLIGENCE

(By plaintiffs as successors in interest to decedent
against defendants Does 1-4 and City of Indio)

35. Plaintiffs repeat and reallege and hereby incorporate by reference each and every allegation contained in paragraphs 1 through 15 of this complaint as if set forth herein in full.

36. In their contacts with the decedent the defendants Does 1-4 were required to use reasonable care in seizing the decedent, taking him into custody and using force against him.

37. Defendants Doe 1-4 failed to use appropriate tactics or reasonable care in seizing and shooting the decedent, by, among other things, failing to give a warning, and failing to use other appropriate less lethal tactics than immediately discharging a firearm. The conduct of defendants Does 1-4 in that regard fell below the standard of care of reasonable persons in their profession as sworn police officers, such that defendants Does 1-4 were negligent in the performance of their police tactics and duties.

38. As a direct, legal and proximate result of the aforesaid negligence of defendants Does 1-4, inclusive the decedent suffered injuries and damages.

39. Defendant City of Indio is vicariously liable for the negligence of defendants Does 1-4, inclusive, pursuant to section 815.2(a) of the California Government Code.

1 SIXTH CLAIM FOR RELIEF UNDER CAL. CIV. CODE § 52.1

2 (By plaintiffs as successors in interest to decedent

3 against defendants Doe 1 and City of Indio)

4 40. Plaintiffs repeat and reallege and hereby incorporate by reference
5 each and every allegation contained in paragraphs 1 through 39 of this complaint
6 as if set forth herein in full.

7 41. In violation of California Civil Code section 52.1 defendant Doe 1
8 interfered by violence, threats of violence, intimidation, or coercion, with the
9 exercise or enjoyment of the rights of decedent to be free from unlawful seizures
10 and excessive and unreasonable force, in violation of his rights protected under
11 Article 1, Sections 7 and 13 of the California Constitution, as well as the Fourth
12 Amendment of the United States Constitution.

13 42. On information and belief, defendant Doe 1 intentionally and
14 spitefully committed the above acts to discourage decedent from exercising the
15 above civil rights, to retaliate against him for invoking such rights, or to prevent
16 him from exercising such rights.

17 43. On information and belief, decedent reasonably believed and
18 understood that the acts committed by defendant Doe 1 were intended to
19 discourage him from exercising the above civil rights, to retaliate against him
20 for invoking such rights, or to prevent him from exercising such rights.

21 44. As a direct, legal and proximate result of the aforesaid violations of
22 California Civil Code section 52.1 by defendant Doe 1, decedent was injured
23 and damaged.

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

1 46. The conduct of defendant Doe 1 as alleged above was willful,
2 wanton, malicious, and done with reckless disregard for the rights and safety of
3 decedent and therefore warrants the imposition of exemplary damages in an
4 amount according to proof sufficient to punish and make an example of said
5 defendant.

6 SEVENTH CLAIM FOR RELIEF FOR WRONGFUL DEATH

7 (By plaintiffs individually against defendants Doe 1 and City of Indio)

8 47. Plaintiffs repeat and reallege and hereby incorporate by reference
9 each and every allegation contained in paragraphs 1 through 46 of this complaint
10 as if set forth herein in full.

11 48. Plaintiffs are proper parties with standing, pursuant to Cal. Civ.
12 Proc. Code § 377.60, to pursue this wrongful death claim.

13 49. As a direct result of the acts of defendants alleged above plaintiffs
14 have been damaged, suffering pecuniary loss and other compensable injuries
15 resulting from loss of love, society, comfort, attention, services, and support of
16 the decedent, in an amount in accordance with proof.

17 50. As a further direct result of the acts of defendants, plaintiffs have
18 incurred expenses, including funeral and burial expenses, in an amount
19 according to proof.

20 51. Defendant City of Indio is vicariously liable for the tortious
21 conduct of defendants Does 1, pursuant to section 815.2(a) of the California
22 Government Code.

23 52. The conduct of defendant Doe 1 as alleged above was willful,
24 wanton, malicious, and done with reckless disregard for the rights and safety of
25 decedent and therefore warrants the imposition of exemplary damages in an
26 amount according to proof sufficient to punish and make an example of said
27 defendant.

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PRAYER

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, as follows:

As to all Claims for Relief

1. For compensatory, general, special and incidental damages, in amounts according to proof;
2. For costs of suit incurred, including reasonable attorneys’ fees as to the First, Second, Third and Sixth Causes of Action; and
3. For such other and further relief as this Court deems just and proper.

As to the First, Second, Fourth, Sixth and Seventh Claims for Relief

4. For punitive and exemplary damages against the individual defendant(s) in an amount sufficient to punish defendant(s) and make an example.

Dated: January , 2015

KENNER & GREENFIELD

By /s/
David E. Kenner
Attorneys for Plaintiffs

