

1 JOHN L. BURRIS, Esq., CA State Bar No. 69888
2 BENJAMIN NISENBAUM, Esq., CA State Bar No. 222173
3 JAMES COOK, Esq., CA State Bar No. 300212
4 LAW OFFICES OF JOHN L. BURRIS
5 7677 Oakport Street, Suite 1120
6 Oakland, California 94621
7 Telephone: (510) 839-5200
8 Facsimile: (510) 839-3882
9 john.burris@johnburrislaw.com
10 bnisenbaum@gmail.com
11 james.cook@johnburrislaw.com

12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 MARIA TERESA GONZALEZ,
16 individually; and H.G., a minor, by and
17 through her guardian ad litem, LILLIAN
18 TEGIO,

19 Plaintiffs,

20 v.

21 COUNTY OF STANISLAUS, a municipal
22 corporation; JEFF DIRKSE, individually,
23 and in his capacity as Sheriff for COUNTY
24 OF STANISLAUS; CHAD LEWIS,
25 individually, and in his capacity as a
26 Sheriff's Deputy for COUNTY OF
27 STANISLAUS; BRANDON SILVA,
28 individually, and in his capacity as a
Sheriff's Deputy for COUNTY OF
STANISLAUS; MICHAEL SIERRA,
individually, and in his capacity as a
Sheriff's Deputy for COUNTY OF
STANISLAUS; FERNANDO GOMEZ,
individually, and in his capacity as a
Sheriff's Deputy for COUNTY OF
STANISLAUS; ROGER COFFMAN,
individually, and in his capacity as a
Sheriff's Deputy for COUNTY OF

Case No.

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF CIVIL RIGHTS AND
WRONGFUL DEATH**

JURY TRIAL DEMANDED

1 STANISLAUS; STEVEN NOEL,
2 individually, and in his capacity as a
3 Sheriff's Deputy for COUNTY OF
4 STANISLAUS; CRAIG VALERA,
5 individually, and in his capacity as a
6 Sheriff's Deputy for COUNTY OF
7 STANISLAUS; JOSHUA BORBA,
8 individually, and in his capacity as a
9 Sheriff's Deputy for COUNTY OF
10 STANISLAUS; and, and DOES 1-100,
11 inclusive,

Defendants.

12 INTRODUCTION

13 In the early morning of September 27, 2020 in Modesto, California, Defendants CHAD
14 LEWIS and BRANDON SILVA, two COUNTY OF STANISLAUS Sheriff's Department
15 deputies, shot and killed 41-year-old ELOY GONZALEZ, JR. outside of a building near the 800
16 block of Business Park Drive. Mr. GONZALEZ, who was experiencing homelessness and had a
17 history of severe mental illness, was approached by COUNTY OF STANISLAUS sheriff's
18 deputies who were reportedly responding to a silent burglary alarm in the area. Mr. GONZALEZ
19 had set up a make-shift cardboard shelter along an exterior wall of one of the office buildings.
20 When deputies approached Mr. GONZALEZ's area, they immediately started yelling profanities
21 and threats at him, ordering him to put his hands up and walk forward. Mr. GONZALEZ,
22 exhibiting confusion at the deputies' inflammatory and combative behavior towards him, showed
23 them his empty hands and asked what was going on. Despite no indication of any threat, deputies
24 continued to demand that Mr. GONZALEZ walk out of his cardboard enclave with his hands on
25 his head. Mr. GONZALEZ remained sitting in place, with his hands visible, calmly speaking to
26 the deputies and informing them that he wanted to stay exactly where he was. Mr. GONZALEZ
27 told the deputies that his father owned the building, and made other statements that made it
28

1 obvious he was mentally impaired. There was no indication that Mr. GONZALEZ had
2 committed any crime whatsoever, and had not threatened anyone.

3 Despite the obvious signals that indicated Mr. GONZALEZ did not understand the full
4 reality of what was happening, the deputies continued to escalate the situation. Multiple
5 additional deputies arrived at the scene, including a K-9 unit, and they continued to yell at Mr.
6 GONZALEZ. At no point did the deputies attempt to use de-escalation tactics. Instead of
7 backing away from Mr. GONZALEZ, who was surrounded, the defendants slowly encroached
8 on him, irrationally compressing the zone of safety and time.

9 One deputy stated that he saw an object located underneath Mr. GONZALEZ's
10 belongings and asked, "Is that a knife?" to which another deputy responded, "It looks like some
11 kind of tool." Mr. GONZALEZ was still sitting down, his hands empty. Though there was every
12 opportunity for the deputies to create time and space and employ the de-escalation tactics all
13 California police officers are trained to use, especially when responding to mentally impaired
14 people, the deputies did the opposite and unreasonably escalated the situation. The police K-9
15 dog barked continuously as the deputies yelled commands at Mr. GONZALEZ.

16 One of the deputies then discharged a beanbag shotgun at Mr. GONZALEZ .
17 Immediately after the beanbag shot, the deputies began rushing to tackle Mr. GONZALEZ and
18 continued screaming at him. Mr. GONZALEZ responded by picking up the tool, but never
19 wielded the tool in an offensive manner. Defendants CHAD LEWIS and BRANDON SILVA
20 both fired multiple fatal gunshots at Mr. GONZALEZ, even though he had already been tackled
21 and restrained. Mr. GONZALEZ later died in a hospital as a result of the wholly unnecessary
22 gunshot wounds.

23 Mr. GONZALEZ posed no significant threat of imminent harm to anyone when
24 Defendants killed him. This Complaint seeks redress for the malicious killing of Mr.
25 GONSALEZ by Defendants, punitive damages against Defendants LEWIS and SILVA, and re-
26 training and policy change by Defendant COUNTY OF STANISLAUS to ensure that its police
27 officers properly use the weapons de-escalation training it provides them to handle people like
28 Mr. GONSALEZ in a reasonable and safe manner, instead of simply killing them.

JURISDICTION

1
2 1. This action arises under Title 42 of the United States Code, Section 1983.
3 Jurisdiction is conferred upon this Court by Title 28 of the United States Code, Sections 1331
4 and 1343. The unlawful acts and practices alleged herein occurred in the County of Stanislaus,
5 California, which is within this judicial district.

PARTIES

6
7 2. Plaintiff MARIA TERESA GONZALEZ is the mother of Decedent ELOY
8 GONZALEZ, JR. She brings this action on her own behalf.

9 3. Minor Plaintiff H.G. is the minor daughter and the successor-in-interest to
10 Decedent ELOY GONZALEZ, JR.. She is being represented in this action by her Guardian Ad
11 Litem, LILLIAN TEGIO.

12 4. Decedent ELOY GONZALEZ, JR. and each of the Plaintiffs identified in this
13 action are citizens of the United States of America.

14 5. Defendant COUNTY OF STANISLAUS (“COUNTY” herein) is a municipal
15 corporation, duly organized and existing under the laws of the State of California. Under its
16 authority, the COUNTY operates the COUNTY OF STANISLAUS Sheriff’s Department.

17 6. At all times mentioned herein, Defendant JEFF DIRKSE (“DIRKSE”) was
18 employed by Defendant COUNTY OF STANISLAUS as Sheriff for the COUNTY. He is being
19 sued in his official capacity as Sheriff for the COUNTY. Plaintiffs contend that Defendant
20 DIRKSE was personally on notice of the Unconstitutional deficiencies in Defendant COUNTY’s
21 policies, practices and training regarding the use of force and the reasonable continuing use of
22 available less-lethal alternatives that would render lethal force unreasonable, but with deliberate
23 indifference failed to correct said Unconstitutional deficiencies.

24 7. Defendant CHAD LEWIS (“LEWIS” herein), is and was at all times
25 herein mentioned a sheriff’s deputy employed by Defendant COUNTY OF STANISLAUS. He is
26 being sued individually and in his official capacity as a sheriff’s deputy for the COUNTY.
27 Plaintiffs contend Defendant LEWIS, who was present at the scene of the subject-incident and
28 fired his lethal firearm and shot Decedent multiple times killing him, used excessive force

1 unrelated to a legitimate law enforcement purpose and with reckless disregard for Decedent
2 ELOY GONZALEZ, JR.'s rights, was an integral participant in the use of unreasonable force
3 against Decedent ELOY GONZALEZ, JR., and was negligent.

4 8. Defendant BRANDON SILVA ("SILVA" herein), is and was at all times
5 herein mentioned a sheriff's deputy employed by Defendant COUNTY OF STANISLAUS. He is
6 being sued individually and in his official capacity as a sheriff's deputy for the COUNTY.
7 Plaintiffs contend Defendant SILVA, who was present at the scene of the subject-incident and
8 fired his lethal firearm and shot Decedent multiple times killing him, used excessive force
9 unrelated to a legitimate law enforcement purpose and with reckless disregard for Decedent
10 ELOY GONZALEZ, JR.'s rights, was an integral participant in the use of unreasonable force
11 against Decedent ELOY GONZALEZ, JR., and was negligent.

12 9. Defendant MICHAEL SIERRA ("SIERRA" herein), is and was at all times
13 herein mentioned a sheriff's deputy and employed by Defendant COUNTY OF STANISLAUS.
14 He is being sued individually and in his official capacity as a sheriff's deputy for the COUNTY.
15 Plaintiffs contend Defendant SIERRA, who was a Field Training Officer present at the scene of
16 the subject-incident, was armed with a taser deployed, and did not fire his taser, either because
17 Decedent ELOY GONZALEZ, JR. was not a sufficient threat for a Taser to be fired, or because
18 Defendants CHAD LEWIS and BRANDON SILVA fired their handguns prematurely, and
19 unreasonably, before Defendant SIERRA could fire his Taser. Plaintiffs further contend
20 Defendant SIERRA was an integral participant in the use of Unreasonable Force against
21 Decedent ELOY GONZALEZ, JR., and with deliberate indifference failed to intervene in the use
22 of unreasonable force by Defendants LEWIS and SILVA, despite having reasonable opportunity
23 to do so, and was negligent.

24 10. Defendant FERNANDO GOMEZ ("GOMEZ" herein), is and was at all times
25 herein mentioned a sheriff's deputy and employed by Defendant COUNTY OF STANISLAUS.
26 He is being sued individually and in his official capacity as a sheriff's deputy for the COUNTY.
27 Plaintiffs contend Defendant GOMEZ, who was a Field Training Officer
28 present at the scene of the subject-incident and fired a less-than-lethal bean bag shotgun at

1 Decedent, was an integral participant in the subject-incident and with deliberate indifference
2 failed to reasonably supervise defendant officers and failed to intervene to prevent the use of
3 unreasonable force against Decedent ELOY GONZALEZ, JR., despite having the reasonable
4 opportunity to do so, and was negligent.

5 11. Defendant ROGER COFFMAN (“COFFMAN” herein), is and was at all times
6 herein mentioned a sheriff’s deputy employed by Defendant COUNTY OF STANISLAUS. He is
7 being sued individually and in his official capacity as a sheriff’s deputy for the COUNTY.
8 Plaintiffs contend Defendant COFFMAN, who was present at the scene of the subject-incident
9 and fired a less-lethal bean bag shotgun at Decedent, was an integral participant in the use of
10 unreasonable force against Decedent ELOY GONZALEZ, JR., failed to intervene in the use of
11 unreasonable force against Decedent ELOY GONZALEZ, JR., and was negligent.

12 12. Defendant STEVEN NOEL (“NOEL” herein), is and was at all times
13 herein mentioned a sheriff’s deputy employed by Defendant COUNTY OF STANISLAUS. He is
14 being sued individually and in his official capacity as a sheriff’s deputy for the COUNTY.
15 Plaintiffs contend Defendant NOEL, who was present at the scene of the subject-incident, was an
16 integral participant in the use of unreasonable force against Decedent ELOY GONZALEZ, JR.,
17 failed to intervene in the use of unreasonable force against Decedent ELOY GONZALEZ, JR.,
18 and was negligent.

19 13. Defendant CRAIG VALERA (“VALERA” herein), is and was at all times
20 herein mentioned a sheriff’s deputy employed by Defendant COUNTY OF STANISLAUS. He is
21 being sued individually and in his official capacity as a sheriff’s deputy for the COUNTY.
22 Plaintiffs contend Defendant VALERA, who was present at the scene of the subject-incident,
23 was an integral participant in the use of unreasonable force against Decedent ELOY
24 GONZALEZ, JR., failed to intervene in the use of unreasonable force against Decedent ELOY
25 GONZALEZ, JR., and was negligent.

26 14. Defendant JOSHUA BORBA (“BORBA” herein), is and was at all times
27 herein mentioned a sheriff’s deputy employed by Defendant COUNTY OF STANISLAUS. He is
28 being sued individually and in his official capacity as a sheriff’s deputy for the COUNTY.

1 Plaintiffs contend Defendant BORBA, who was present at the scene of the subject-incident, was
2 an integral participant in the use of unreasonable force against Decedent ELOY GONZALEZ,
3 JR., failed to intervene in the use of unreasonable force against Decedent ELOY GONZALEZ,
4 JR., and was negligent.

5 15. Defendant BRYAN CUMMINGS (“CUMMINGS” herein), is and was at all
6 times herein mentioned a sheriff’s deputy employed by Defendant COUNTY OF
7 STANISLAUS. He is being sued individually and in his official capacity as a sheriff’s deputy for
8 the COUNTY. Plaintiffs contend Defendant CUMMINGS, who was present at the scene of the
9 subject-incident, was an integral participant in the use of unreasonable force against Decedent
10 ELOY GONZALEZ, JR., failed to intervene in the use of unreasonable force against Decedent
11 ELOY GONZALEZ, JR., and was negligent.

12 16. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1
13 through 100, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs
14 are informed and believe and thereon allege that each Defendant so named is responsible in some
15 manner for the injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will
16 amend their complaint to state the names and capacities of DOES 1-100 inclusive, when they
17 have been ascertained.

18 17. In engaging in the conduct described herein, Defendant sheriff’s deputies acted
19 under the color of law and in the course and scope of their employment with the COUNTY. In
20 engaging in the conduct described herein, Defendant sheriff’s deputies exceeded the authority
21 vested in them as sheriff’s deputies under the United States and California Constitutions and as
22 sheriff’s deputies employed by Defendant COUNTY.

23 24 **ADMINISTRATIVE PREREQUISITES**

25 18. Plaintiffs are required to comply with an administrative tort claim requirement
26 under California law. Plaintiffs filed a claim against COUNTY OF STANISLAUS on March 26,
27 2021. COUNTY OF STANISLAUS rejected Plaintiffs’ claim on May 6, 2021. Plaintiffs have
28 exhausted all administrative remedies pursuant to California Government Code Section 910.

STATEMENT OF FACTS

1
2 19. On the morning of September 27, 2020, around 5:00 a.m., Defendants CHAD
3 LEWIS and BRANDON SILVA, deputies for the COUNTY OF STANISLAUS Sheriff’s
4 Department, killed Decedent ELOY GONZALEZ, JR. in an officer-involved Shooting. Mr.
5 GONZALEZ was sitting in a make-shift cardboard shelter outside of an office park building in
6 Modesto. Deputies were reportedly responding to a silent burglary alarm in the area when they
7 came across Mr. GONZALEZ, who was camped out behind bushes near an exterior wall of a
8 building.

9 20. Mr. GONZALEZ had been homeless for two to three years at this point, and he
10 struggled from severe mental illness including psychosis and an unspecified mood disorder. Mr.
11 GONZALEZ had a history of 5150 admittances, and he was observed by doctors to be “gravely
12 disabled.” Despite indications of “poor insight and judgement,” doctors described Mr.
13 GONAZLEZ to be “non-hostile” and “not a violence/danger to others.”

14 21. The COUNTY OF STANISLAUS Sheriff’s Department was responding to a
15 silent burglary alarm near the 800 Block of Business Park Drive in Modesto, California when
16 multiple deputies came across Mr. GONZALEZ outside of a building next to his cardboard
17 shelter. Mr. GONZALEZ was not suspected of having any involvement in the potential burglary.

18 22. Mr. GONZALEZ noticed the multiple sheriff’s deputies walking near him and
19 said, “Hey, what’s up man?” Immediately, the deputies told Mr. GONZALEZ to put his hands
20 up. Mr. GONZALEZ exhibited confusion at the deputies’ combative behavior towards him, and
21 he tried to figure out what was happening. Deputies immediately started screaming profanities at
22 Mr. GONZALEZ, telling him to put his hands up and saying, “You’re going to get tased.” Mr.
23 GONZALEZ responded with, “For what?” and then he held up his hands to show the deputies
24 that he was not holding any objects.

25 23. Despite no indication of any threat, deputies continued to demand that Mr.
26 GONZALEZ walk out of his cardboard enclave with his hands on his head. Mr. GONZALEZ
27 remained standing in place, with his hands visible, telling the deputies that his father owned the
28 building and stating, “I’m staying outside for a reason,” and “I’m sitting down because this is all

1 I got. This is all I got.” Mr. GONZALEZ then sat down on the sidewalk ledge, continuing to
2 speak to the deputies in a calm tone of voice, with his hands still visible the entire time.

3 24. One deputy told Mr. GONZALEZ that he would be arrested if he did not comply.
4 Mr. GONZALEZ responded, “Well you’re going to have to explain that to the President.”
5 Despite this signal that Mr. GONZALEZ may not have understood the reality of what was
6 happening and was exhibiting diminished mental capacity, sheriff’s deputies continued to
7 escalate the situation.

8 25. Multiple additional sheriff’s deputies arrived at the scene, including a K-9 unit.
9 The deputies continued to threaten Mr. GONZALEZ, yelling things like, “Show us your hands or
10 we’ll send the dog.” Mr. GONZALEZ, still with his hands visible to the deputies, responded,
11 “My hands are right here.” His hands remained empty.

12 26. A yet-to-be-identified deputy then shouted, “I got lethal.” As the K-9 handler
13 continued to threaten to release the dog on Mr. GONZALEZ, Mr. GONZALEZ exclaimed, “I’m
14 an innocent man.” The police K-9 dog barked continuously.

15 27. At this time, other deputies exclaimed that they saw an object located
16 underneath Mr. GONZALEZ’s belongings. One deputy asked, “Is that a knife?” to which
17 another deputy responded, “It looks like some kind of tool.” Seconds later, a deputy discharged
18 a beanbag shotgun at Mr. GONZALEZ. Immediately after the beanbag shot, the deputies rushed
19 to tackle Mr. GONZALEZ, screaming at him and piling on top of him. Mr. GONZALEZ
20 remained seated but picked up a wood-handled tool when the Defendants rushed him. He never
21 threatened anyone with it, and held it defensively only. At this moment, Deputies Chad LEWIS
22 and Brandon SILVA both fired multiple gunshots at Mr. GONZALEZ. As a result of the
23 incident, Mr. GONZALEZ suffered multiple gunshot wounds and died at the hospital. Mr.
24 GONZALEZ suffered extreme conscious pain, suffering and emotional distress caused by the
25 shooting prior to his death.

26 28. Plaintiffs contend that at most less-lethal force was reasonable under these
27 circumstances, and every reasonable officer would know that lethal force was unreasonable,
28 because Mr. GONZALEZ was not actively threatening anyone nor was anyone in imminent risk

1 of serious harm or death, except Mr. GONZALEZ from the Defendants. Defendants were clearly
2 on notice that Mr. GONZALEZ was mentally impaired, because it was obvious, but totally failed
3 to create distance and time, instead compressing the distance and time frame. Defendants were
4 required to take Mr. GONZALEZ's mental impairment into consideration, and utterly failed to
5 do so, instead irrationally escalating their use of force to lethal force.

6 29. Furthermore, Deputy SILVA has a history of using lethal force as a COUNTY OF
7 STANISLAUS Sheriff's Deputy, and COUNTY OF STANISLAUS has been on notice of his
8 repeated use of excessive force. Nevertheless, the COUNTY has failed to discipline, re-train or
9 otherwise remediate Deputy SILVA regarding the reasonable use of force including lethal force.
10 The COUNTY's negligence and indifference in this regard is a proximate cause of Plaintiffs'
11 injuries and resulting damages.

12 30. Plaintiffs further allege that Decedent's death was the proximate result of
13 Defendant COUNTY's failure to reasonably train their sheriff's deputies in the proper and
14 reasonable use of force, failure to reasonably train their sheriff's deputies in responding to
15 mentally impaired people, and using force in a manner to reasonably avoid killing people.
16 Plaintiffs further allege that these substantial failures reflect Defendant COUNTY's policies
17 implicitly ratifying and/or authorizing the use of excessive force by its sheriff's deputies and the
18 failure to reasonably train sheriff's deputies employed by Defendant COUNTY in compliance
19 with the Americans with Disabilities Act in making arrests, detentions, or conducting 5150's¹.

20 31. The shooting and killing of Decedent ELOY GONZALEZ, JR. described herein
21

22 ¹ Plaintiffs note that the COUNTY recently released its officer-involved shooting review of the subject-incident,
23 which claimed the defendants were justified in shooting and killing Mr. GONZALEZ. On its face, the COUNTY's
24 report, prepared by its own District Attorney, purporting to justify the killing of Mr. GONZALEZ by its own
25 sheriff's deputies, misstates the law and the facts of the case as demonstrated on video to reach its phony, self-
26 serving conclusion. The D.A.'s report asserts, as one part of its rationale: "Society cannot tolerate an individual's
27 rebuff of its laws" with regard to Mr. GONZALEZ's apparent failure to outright comply with Defendants orders.
28 Yet, Federal law in the 9th Circuit require police officers to take into account whether a person's lack of compliance
is caused by apparent mental impairment, as opposed to treating it as an indicator of threatening conduct, while
California Penal code section 835a requires officers to use lethal force only when necessary, and that tactical
repositioning by police officers may be required if it would eliminate any threat posed by a subject. The District
Attorney's report misapprehends section 835a, ignores relevant 9th Circuit law, and demonstrates an abuse of
discretion and bias such that the California Attorney General should intervene and conduct its own review of the
shooting.

1 was brutal, malicious, and done without just provocation or cause, proximately causing
2 Plaintiffs' injuries and resulting damages.

3 **DAMAGES**

4 32. Plaintiffs were physically, mentally, emotionally and financially injured and
5 damaged as a proximate result of Decedent ELOY GONZALEZ, JR.'s wrongful death,
6 including, but not limited to, the loss of decedent's familial relationships, comfort, protection,
7 companionship, love, affection, solace, and moral support. In addition to these damages,
8 Plaintiffs are entitled to recover for the reasonable value of funeral and burial expenses, pursuant
9 to C.C.P. Sections 377.60 and 377.61.

10 33. Plaintiffs are entitled to recover wrongful death damages pursuant to C.C.P.
11 Sections 377.60 and 377.61 and Probate Code Section 6402(b).

12 34. Pursuant to C.C.P. Sections 377.30, 377.32, and 377.34, Plaintiffs are further
13 entitled to recover for damages incurred by decedent before he died as the result of being
14 assaulted and battered, for deprivation without due process of Decedent's right to life, and to any
15 penalties or punitive damages to which decedent would have been entitled to recover, had he
16 lived. Plaintiffs are further entitled to recover for Decedent's own pain and suffering and
17 emotional distress incurred as a consequence of Defendants' violations, preceding Decedent's
18 death.

19 35. The conduct of the Defendant Deputies was malicious, wanton, and oppressive.
20 Plaintiffs are therefore entitled to an award of punitive damages against said individual
21 Defendants.

22 36. Plaintiffs found it necessary to engage the services of private counsel to vindicate
23 their rights, and the rights of decedent, under the law. Plaintiffs are therefore entitled to recover
24 all attorneys' fees incurred in relation to this action pursuant to Title 42 United States Code
25 Section 1988.

26 **FIRST CAUSE OF ACTION**

27 (42 U.S.C. Section 1983- Excessive Force)

28 (Minor Plaintiff H.G. as successor-in-interest to Decedent ELOY GONZALEZ, JR. against
Defendants LEWIS, SILVA, and DOES 1-50)

1 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

2
3 THIRD CAUSE OF ACTION

(*Monell* - 42 U.S.C. Section 1983)

4 (Minor Plaintiff H.G. individually and as successor-in-interest to Decedent, against Defendants
5 COUNTY, DIRKSE, and DOES 51-100)

6 42. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1
7 through 41 of this Complaint.

8 43. Plaintiff is informed and believe and thereon allege that high ranking
9 COUNTY OF STANISLAUS officials, including Sheriff DIRKSE, high ranking sheriff's
10 supervisors, DOES 51 through 100, and/or each of them, knew and/or reasonably should have
11 known about repeated acts of misconduct by Defendant Deputy SILVA, Defendants DOES 1-50,
12 and/or each of them.

13
14 44. Plaintiff is further informed and believe and thereon allege that high ranking
15 COUNTY OF STANISLAUS officials, including Sheriff DIRKSE and high ranking sheriff's
16 department supervisors, DOES 51-100, and/or each of them, knew and/or reasonably should
17 have known that their sheriff's deputies, including Defendants SILVA and DOES 1-50, were
18 either untrained or improperly trained and that Defendant COUNTY maintained deficient
19 customs in the use of force in the following areas:

- 20
21 a. Permitting sheriff's deputies who demonstrate a pattern of using
22 unreasonable force, such as Defendant SILVA who had a prior fatal officer-
23 involved-shooting two years prior, to continue on patrol and pose a danger to
24 the public of continuing to use excessive force without remediation,
25 retraining, or discipline;
26
27 b. That reasonable available less lethal weapons are required to be used
28

1 against subjects who do not pose an imminent threat of serious injury or harm
2 even if one less-lethal weapon has been used unsuccessfully;

3 c. That where reasonable opportunities for de-escalation of potentially
4 threatening subjects exist, including the reasonable redeployment and/or re-
5 location of sheriff's deputies; the use of effective communication that is not
6 confrontational, escalating, or demanding; reasonably creating time and
7 distance to help de-escalate, to allow the use of effective communication, and
8 to allow the continuing opportunity to use less-lethal weapons, they must be
9 employed to defuse a potential threat in place of lethal force;
10

11 d. That the failure of a subject, especially one who is known or appears to be
12 suffering from a mental impairment, to comply with orders while not
13 presenting an imminent threat of serious injury or harm, does not justify the
14 use of lethal force;
15

16 e. That subjects suffering from a known mental disability must be provided
17 reasonable accommodations under the ADA by police officers in the course of
18 effecting an arrest, detention, or other seizure, if such accommodations are
19 practical and reasonable under the circumstances, that would mitigate or
20 eliminate any threat or danger to the subject as well as those posed by the
21 subject.
22

23
24 45. These policy, practice and training failures were a substantial factor and moving
25 force in the violation of Mr. GONZALEZ's rights, culminating in his shooting death on
26 September 27, 2020 by Defendant Deputies.

27 46. Despite having such notice, Plaintiff is informed and believes and thereon alleges
28

1 that Defendants COUNTY, DIRKSE, DOES 51-100, and/or each of them, approved, ratified,
2 condoned, encouraged, sought to cover up, and/or tacitly authorized the continuing pattern and
3 practice of misconduct and/or civil rights violations by COUNTY OF STANISLAUS Sheriff's
4 Department deputies.

5 47. Plaintiff is further informed and believes and thereon alleges that as a result of the
6 deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendants
7 LEWIS, SILVA, and DOES 1-50, and/or each of them, and the policy, practice, and training
8 deficiencies identified herein, Defendants DIRKSE, DOES 51-100, and/or each of them,
9 encouraged these deputies to continue their course of misconduct, resulting in the violation of the
10 Plaintiff's rights as alleged herein.
11

12 48. Plaintiff further alleges Defendants DIRKSE, DOES 51-100, and/or each of them,
13 were notice of Constitutional defects in their training of COUNTY OF STANISLAUS sheriff's
14 deputies, including, but not limited to, using excessive force, covering up the use of excessive
15 force, failing to use reasonable less-intrusive alternatives to lethal force such as the Tasers
16 Defendants LEWIS and SILVA possessed, and improperly relying on information provided by
17 informants in using force.
18

19 49. The aforementioned acts and/or omissions and/or deliberate indifference by high
20 ranking COUNTY OF STANISLAUS officials, including high ranking COUNTY OF
21 STANISLAUS Sheriff's Department supervisors, Defendants DIRKSE, DOES 51-100, and each
22 of them resulted in the deprivation of Plaintiff's constitutional rights including, but not limited
23 to, the following:
24

- 25 a. The right to be free from unreasonable searches and seizures, as guaranteed by
26 the Fourth Amendment to the United States Constitution;
27
28

1 (Wrongful Death - Negligence)
2 (Minor Plaintiff H.G. individually, and as successor-in-interest to Decedent, against Defendants
3 LEWIS, SILVA, and DOES 1-50)

4 54. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 53
5 of this Complaint, except for any and all allegations of intentional, malicious, extreme,
6 outrageous, wanton, and oppressive conduct by defendants, and any and all allegations
7 requesting punitive damages.

8 55. At all times herein mentioned, Defendants LEWIS, SILVA, and DOES 1-50,
9 inclusive, were subject to a duty of care to avoid causing unnecessary physical harm and distress
10 to persons through their use of force and making of arrests, and to act reasonably in their pre-
11 shooting tactics and when shooting their guns or otherwise using force. The wrongful conduct of
12 Defendants, as set forth herein, did not comply with the standard of care to be exercised by
13 reasonable persons, proximately causing plaintiff to suffer injuries and damages as set forth
14 herein. Pursuant to Government Code Section 815.2(a), Defendant COUNTY is vicariously
15 liable to Plaintiff for her injuries and damages suffered as alleged herein, incurred as a proximate
16 result of the aforementioned wrongful conduct of Defendants.
17
18

19 56. Defendants shot and killed Decedent despite the absence of a threat to any
20 Defendant deputies or any other person. Because Decedent died leaving one issue, Minor
21 Plaintiff H.G, is his successor-in-interest with standing to sue for his wrongful death under
22 California state law.
23

24 57. Defendants' negligent actions and/or negligent failure to act within the scope and
25 course of their employment with Defendant COUNTY, as set forth above, proximately caused
26 the death of Decedent. Defendant COUNTY is liable under *respondeat superior*.
27

28 58. As an actual and proximate result of said Defendants' negligence, and the death of

1 Decedent, Plaintiffs sustained a pecuniary loss resulting from the loss of comfort, society,
2 attention, services, and support of Decedent, in an amount according to proof of trial.

3 59. As a further actual and proximate result of said Defendants' negligence, Plaintiff
4 incurred funeral and burial expenses, in an amount according to proof at trial.

5 60. Pursuant to California C.C.P. Sections 377.60 and 377.61, Plaintiffs brought this
6 action, and claims damages from said Defendants for the wrongful death of Decedent, and the
7 resulting injuries and damages.
8

9 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
10

11 SIXTH CAUSE OF ACTION
12 (Violation of California Civil Code Section 52.1)
13 (Minor Plaintiff H.G. as successor-in-interest to Decedent, against Defendants LEWIS, SILVA,
14 COUNTY, and DOES 1-50)

15 61. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 60
16 of this Complaint.

17 62. The conduct of Defendants LEWIS, SILVA, and DOES 1-50, inclusive, as
18 described herein, acting in the course and scope of their employment for Defendant COUNTY,
19 violated California Civil Code Section 52.1, in that they interfered with Decedent ELOY
20 GONZALEZ, JR.'s exercise and enjoyment of his civil rights, through use of wrongful and
21 excessive force, and failure to make any proper or reasonable arrest of said Decedent, all
22 accomplished through force, threats, intimidation, and coercion.
23

24 63. As a direct and proximate result of Defendants' violation of Civil Code § 52.1,
25 Mr. GONZALEZ suffered violations of his constitutional rights, and suffered damages as set
26 forth herein.

27 64. Since this conduct occurred in the course and scope of their employment,
28

1 Defendant COUNTY is therefore liable to Plaintiff pursuant to *respondeat superior*.

2 65. Plaintiff is entitled to injunctive relief and an award of reasonable
3 attorney's fees pursuant to Civil Code § 52.1(h).

4 66. Plaintiff is entitled to treble damages, but in no case less than \$4,000.00 and an
5 award of reasonable attorney's fees pursuant to Civil Code § 52(a).

6 67. Under the provisions of California Civil Code §52(b), Defendants are liable for
7 punitive damages for each violation of Civil Code §52.1, reasonable attorney's fees and an
8 additional \$25,000.00 penalty per violation.
9

10 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.
11

12
13 SEVENTH CAUSE OF ACTION
(Wrongful Death - Battery)

14 (Minor Plaintiff H.G. individually, and as successor-in-interest to Decedent, against Defendants
15 LEWIS, SILVA, COUNTY, and DOES 1-50)

16 68. Plaintiff hereby re-alleges and incorporate by reference herein paragraphs 1
17 through 67 of this Complaint.

18 69. Defendant Deputies LEWIS and SILVA while working in their capacity as
19 sheriff's deputies for the COUNTY OF STANISLAUS, and acting within the course and scope
20 of their duties, intentionally shot and killed Decedent without a lawful basis.
21

22 70. As a result of the actions of the Defendants, Decedent suffered physical injuries
23 and was killed. Defendant Deputies LEWIS and SILVA did not have legal justification for using
24 force against Decedent, and Defendants' uses of force while carrying out their sheriff's deputy
25 duties were unreasonable uses of force. Defendant COUNTY is liable under principles of
26 *respondeat superior*.
27

28 71. As a direct and proximate result of Defendants' assault and battery of Decedent,

1 Plaintiff sustained injuries and damages, and is entitled to relief as set forth above.

2 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

3
4 **JURY DEMAND**

5 72. Plaintiffs hereby demand a jury trial in this action.

6 **PRAYER**

7 WHEREFORE, Plaintiffs pray for relief, as follows:

- 8 1. For general damages in a sum according to proof;
9 2. For special damages in a sum according to proof;
10 3. For punitive damages in a sum according to proof;
11 4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988 and Civil Code
12 Section 52.1;
13 5. For injunctive relief;
14 6. For cost of suit herein incurred; and
15 7. For such other and further relief as the Court deems just and proper.

16
17
18 Dated: July 14, 2021

LAW OFFICES OF JOHN L. BURRIS

19
20 /s/ JOHN L. BURRIS

John L. Burris

Benjamin Nisenbaum

James Cook

Attorneys for Plaintiffs

MARIA TERESA GONZALEZ, et al.