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ATTORNEY FOR (Name): John Bauer and Rose Bauer

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS: 1225 Fallon St.
MAILING ADDRESS: 1225 Fallon St.
CITY AND ZIP CODE: Oakland, 94612
BRANCH NAME: Rene C. Davidson Courthouse

CASE NAME:
Bauer, et al. v. City of Pleasanton, et al.

**ENDORSED
FILED
ALAMEDA COUNTY**
JUN 20 2019
CLERK OF THE SUPERIOR COURT
By TANIA PIERCE

CASE NUMBER:
Rg 19023662
JUDGE:
DEPT:

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input checked="" type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 9

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 19, 2019
Jayme L. Walker
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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Attorneys for Plaintiffs
JOHN AND ROSE BAUER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

JOHN BAUER, an individual and as Successor
in Interest of Jacob Bauer, deceased; ROSE
BAUER, an individual and as Successor in
Interest of Jacob Bauer, deceased;

Plaintiffs,

vs.

CITY OF PLEASANTON; PLEASANTON
POLICE DEPARTMENT; DAVE SPILLER;;
and DOES 1 to 90, inclusive;

Defendants.

Case No. *Rg 19023662*

COMPLAINT FOR DAMAGES

1. Wrongful Death (Battery)
2. Wrongful Death (Negligence)
3. Unreasonable Search and Seizure—
Excessive Force (42 U.S.C. §1983)
4. Unreasonable Search and Seizure—
Denial of Medical Care (42 U.S.C.
§1983)
5. Substantive Due Process (42 U.S.C.
§1983)
6. Municipal Liability for
Unconstitutional Custom, Practice or
Policy (42 U.S.C. §1983)
7. Violation of Bane Act (Cal. Civil Code
§52.1)
8. Negligent Hiring, Training or
Supervision
9. Intentional Infliction of Emotional
Distress

DEMAND FOR JURY TRIAL

**ENDORSED
FILED
ALAMEDA COUNTY
JUN 20 2019
CLERK OF THE SUPERIOR COURT
By TANIA PIERCE Deputy**

1 **INTRODUCTORY STATEMENT**

2 John and Rose Bauer's son, Jacob Bauer, was in a period of crisis with rapidly
3 deteriorating mental health. Mr. and Mrs. Bauer were desperate to get help for their son and
4 contacted Pleasanton Police no less than four times to notify them of their son's condition and
5 to try to get their son committed for mental health evaluation and treatment. Because Jacob
6 was not a danger to himself or others, Pleasanton Police told Mr. and Mrs. Bauer there was
7 nothing they could do.

8 Just a few weeks later, Pleasanton Police Officers responded to a complaint about
9 Jacob causing a disturbance at a grocery store. Although Jacob was unarmed, Pleasanton
10 police officers violently restrained Jacob Bauer, tasered him and pinned him to the ground by
11 kneeling on his body while he cried out in pain. During the altercation, Jacob was never a
12 threat of harm to any of the officers. Eventually, as Jacob Bauer laid unconscious, an officer
13 struck him in the legs with his baton and then stomped on his chest three times. Pleasanton
14 police officers denied paramedics access to render medical care and Jacob died as a result of
15 the violent assault and excessive force used on him by police.

16 COMES NOW Plaintiffs JOHN BAUER and ROSE BAUER, and for causes of action
17 against Defendants, and each of them, complain and allege as follows:

18 **PARTIES**

19 1. Plaintiff John Bauer ("John") is an individual who resides in Alameda County
20 California. John was the father of Jacob Bauer ("Jacob"), deceased, and is entitled to the
21 property of Jacob under the laws of intestate succession as Jacob has no surviving spouse,
22 domestic partner, children, or issue of deceased children. John sues in his individual capacity
23 as the father of decedent Jacob Bauer and as a successor in interest to Jacob Bauer. John seeks
24 wrongful death damages and survival damages under federal and state law.

25 2. Plaintiff Rose Bauer ("Rose") is an individual who resides in Alameda County
26 California. Rose was the mother of Jacob Bauer ("Jacob"), deceased, and is entitled to the
27 property of Jacob under the laws of intestate succession as Jacob has no surviving spouse,
28 domestic partner, children, or issue of deceased children. Rose sues in her individual capacity

1 as the mother of decedent Jacob Bauer and as a successor in interest to Jacob Bauer. Rose
2 seeks wrongful death damages and survival damages under federal and state law.

3 3. John and Rose are from time to time referred to in this Complaint as
4 "Plaintiffs."

5 4. Defendants City of Pleasanton ("Pleasanton"), Pleasanton Police Department
6 ("PPD"), and DOES 1 through 10, were public entities, duly organized and existing under and
7 by virtue of the laws of the State of California.

8 5. Defendant Dave Spiller ("Spiller"), an individual, was at all times mentioned
9 herein the Chief of Police for PPD.

10 6. Plaintiffs are informed and believe, and thereon allege, that at all times relevant
11 herein Spiller, DOES 11 through 50, and each of them, were residents of the State of
12 California, and were police officers, employees, agents, servants, policy makers, supervisors
13 and representatives of Pleasanton and/or PPD. Spiller, an individual, was at all relevant times
14 Chief of Police of PPD. Spiller had supervisory authority and control over DOES 11 through
15 50. Each Defendant is sued in his or her individual capacity as well as official capacity.

16 7. At all times relevant herein, Defendants DOES 11 through 50, and each of
17 them, were acting under color of law, to wit, under the color of the statutes, ordinances,
18 regulations, policies, customs, practices and usages of Pleasanton and PPD. Said DOE
19 defendants were acting within the course and scope of their employment with Pleasanton and
20 PPD and the wrongful acts hereinafter described flow from the very exercise of their authority.
21 Each Defendant was also acting as an employee, agent and representative of each and every
22 other Defendant herein, and in doing the acts herein alleged were acting with the permission,
23 consent, ratification, and authority of their co-defendants.

24 8. Plaintiffs are informed and believe, and thereon allege, that at all times relevant
25 herein, Spiller and DOES 30 through 50 were supervisors and policy makers for PPD.

26 9. Plaintiffs are ignorant of the true names and capacities of Defendants sued
27 herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious
28 names. Plaintiff is informed and believes and thereupon alleges, that each of the fictitiously

1 named Defendants is legally responsible, intentionally, negligently, or in some other
2 actionable manner, for the events and happenings hereinafter referred to, and thereby legally
3 caused the injuries, damages, and violations and/or deprivation of the rights hereinafter
4 alleged. Plaintiff will seek leave of Court to amend this Complaint and state the true names
5 and/or capacities of said fictitiously named Defendants when the same have been ascertained.

6 10. Pursuant to Government Code Section 910, Plaintiffs filed a Claim for
7 Damages with Pleasanton in proper form and within the applicable statutory period.
8 Pleasanton has denied Plaintiffs' claims, and Plaintiffs now bring the within action.

9 **JURISDICTION AND VENUE**

10 11. This court has jurisdiction of federal claims under 42 USC § 1983. *Martinez v.*
11 *California*, (1980) 444 US 277, 283 n.7; *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 173, fn.
12 10.

13 12. At all relevant times, Defendants' conduct complained of herein occurred in the
14 County of Alameda, California.

15 **DEMAND FOR JURY TRIAL**

16 13. Plaintiffs hereby demand trial of this matter by jury.

17 **GENERAL ALLEGATIONS**

18 14. Plaintiffs are informed and believe, and thereon allege, that on or about August
19 1, 2018, at the direction of Pleasanton, PPD, Spiller, and/or DOES 1 through 10, Spiller and/or
20 DOES 11 through 50 were dispatched to Raley's located at 5420 Sunol Blvd., Pleasanton, CA
21 94566 in response to reports of a disturbance by Jacob.

22 15. Plaintiffs are informed and believe, and thereon allege, that when Spiller,
23 and/or DOES 11 through 50 detained Jacob, he was located on the corner of Sunol Blvd. and
24 Mission Dr. across from Spee Dee Oil Change located at 44 Mission Dr, Pleasanton, CA
25 94566. Spiller and/or DOES 11 through 50 then restrained Jacob's hands and legs, placed a
26 spit mask over his mouth, and used a stun gun and taser on him several times without
27 legitimate reason, probable cause, or provocation.

1 16. Jacob Bauer was unarmed and posed no immediate threat of death or serious
2 injury to officers or any other person at the time police used excessive force to restrain him.
3 After being fully restrained, Spiller and/or DOES 11 through 50 hit Jacob with a baton and
4 stomped on his chest several times without legitimate reason or provocation.

5 17. As a result of the conduct of Spiller and/or DOES 11 through 50, Jacob died.
6 Prior to his death, he also suffered injuries including, but not limited to, contusions and severe
7 emotional distress.

8 18. On information and belief, Jacob Bauer never threatened anyone prior to being
9 subjected to deadly force by Defendants Spiller and/or DOES 11 through 50. He was not
10 suspected of any serious crime, officers did not observe him commit any crime, and there was
11 no information that Jacob had harmed anyone.

12 19. The involved officers DOES 11 through 50 subjected Jacob Bauer to deadly
13 force even though he was not an immediate threat of death or serious bodily injury to the
14 officers or anyone else and there were less lethal options available. The officers DOES 11
15 through 50 used lethal force on Jacob Bauer despite their actual or constructive notice that he
16 was in a mental health crisis and they should deploy crisis intervention rather than lethal force.
17 In doing so, Defendants did not show a reverence for human life.

18 20. When Jacob Bauer became unresponsive after excessive lethal force,
19 Defendants DOES 11 through 50 did not provide or summon timely medical attention to
20 Jacob Bauer who was unresponsive and turning blue. Defendants DOES 11 through 50 did
21 not allow and prevented responding medical personnel on scene to timely render medical care
22 to Jacob.

23 21. Prior to his death, Plaintiffs were extremely close to Jacob. Jacob lived with
24 Plaintiffs and Plaintiffs enjoyed his company, their conversations, and having him in their
25 lives. Plaintiffs relied on Jacob for love, companionship, comfort, society, affection, solace
26 and moral support. As a direct result of Jacob's death, Plaintiffs suffered and continue to
27 suffer damages including, but not limited to, funeral expenses, compensation for the loss of
28 their son's love, companionship, comfort, affection, society, solace and moral support.

1 **FIRST CAUSE OF ACTION**
2 **WRONGFUL DEATH OF JACOB CAUSED BY BATTERY**
3 **(Plaintiffs Against Pleasanton, PPD, Spiller, and DOES 1 through 50)**

4 22. Plaintiffs hereby reallege and incorporate each and every allegation set forth in
5 paragraphs 1 through 21 as though fully set forth herein.

6 23. On or about August 1, 2018, Spiller, and/or DOES 11 through 50 restrained
7 Jacob's hands and legs, placed a spit mask over his mouth, and used a stun gun and taser on
8 him several times without legitimate reason, probable cause, or provocation. After being fully
9 restrained, Spiller, and/or DOES 11 through 50 hit Jacob with a baton and stomped on his
10 chest several times without legitimate reason or provocation.

11 24. Plaintiffs are informed and believe, and thereon allege, Jacob did not consent to
12 said acts of Spiller, and/or DOES 11 through 50.

13 25. Pursuant to Government Code § 815.2, Pleasanton, PPD, Spiller, DOES 1
14 through 50, and each of them are vicariously liable for the conduct of Spiller, and/or DOES 11
15 through 50, described above as Spiller, and/or DOES 11 through 50 were acting within the
16 course and scope of their employment.

17 26. As a proximate result of the aforementioned acts of Defendants, Jacob died.

18 27. Prior to his death, Plaintiffs were extremely close to Jacob. Jacob lived with
19 Plaintiffs and Plaintiffs enjoyed his company, their conversations, and having him in their
20 lives. Plaintiffs relied on Jacob for love, companionship, comfort, society, affection, solace
21 and moral support. As a direct result of Jacob's death, Plaintiffs suffered and continue to
22 suffer damages including, but not limited to, funeral expenses, compensation for the loss of
23 their son's love, companionship, comfort, affection, society, solace and moral support.

24 WHEREFORE, Plaintiffs pray for damages against Pleasanton, PPD, Spiller, and
25 DOES 1 through 50, and each of them, as set forth below.

26 **SECOND CAUSE OF ACTION**
27 **WRONGFUL DEATH CAUSED BY NEGLIGENCE**
28 **(Plaintiffs Against All Defendants)**

29 28. Plaintiffs hereby reallege and incorporate each and every allegation set forth in
30 paragraphs 1 through 27 as though fully set forth herein.

1 29. Due to the trust and authority given to chief of police, and police officers by
2 virtue of their position, Spiller, and/or DOES 11 through 50, had a special relationship with
3 Jacob and owed a duty of care to Jacob who detrimentally relied on said Defendants to provide
4 medical care, protect him and to use reasonable force, if necessary.

5 30. Spiller and/or DOES 11 through 50 breached their duty of care when on or
6 about August 1, 2018, Spiller and/or DOES 11 through 50 restrained Jacob's hands and legs,
7 placed a spit mask over his mouth, and used a stun gun and taser on him several times without
8 legitimate reason or provocation. After being fully restrained, Spiller and/or DOES 11 through
9 50 hit Jacob with a baton and stomped on his chest several times without legitimate reason or
10 provocation.

11 31. Plaintiffs are informed and believe, and thereon allege, that Spiller and/or
12 DOES 11 through 50 also breached their duty of care when they refused access to render
13 medical care for Jacob. This delay in treatment due to Spiller and DOES 11 through 50's
14 refusal to allow medical professionals access to Jacob contributed to his death.

15 32. Plaintiffs are informed and believe, and thereon allege, that at no time was
16 Jacob a threat to himself, the police officers, and/or others, and the use of force against Jacob
17 was unreasonable, unnecessary, excessive, malicious, and/or for the purpose of inflicting pain
18 on Jacob.

19 33. By the actions and/or inactions described herein, Spiller and/or DOES 11
20 through 50, negligently, carelessly, recklessly, intentionally, and/or in any other actionable
21 manner, used excessive force on Jacob.

22 34. Pursuant to Government Code § 815.2, Pleasanton, PPD, Spiller, DOES 1
23 through 10, 11 through 50, and each of them are vicariously liable for the conduct of Spiller,
24 DOES 11 through 50, described above as Spiller, and/or DOES 11 through 50 were acting
25 within the course and scope of their employment.

26 35. As a proximate result of the aforementioned acts of Defendants, Jacob died.

27 36. Prior to his death, Plaintiffs were extremely close to Jacob. Jacob lived with
28 Plaintiffs and Plaintiffs enjoyed his company, their conversations, and having him in their

1 lives. Plaintiffs relied on Jacob for love, companionship, comfort, society, affection, solace
2 and moral support. As a direct result of Jacob's death, Plaintiffs suffered and continue to
3 suffer damages including, but not limited to, funeral expenses, compensation for the loss of
4 their son's love, companionship, comfort, affection, society, solace and moral support.

5 WHEREFORE, Plaintiffs pray for damages against Pleasanton, PPD,
6 Spiller and DOES 1 through 50, and each of them, as set forth below.

7 **THIRD CAUSE OF ACTION**
8 **WRONGFUL DEATH CAUSED BY EXCESSIVE FORCE IN VIOLATION OF CIVIL**
9 **RIGHTS,**
10 **42 U.S.C. §§ 1983, 1988**
11 **(Plaintiffs Against Spiller, and DOES 11 through 50)**

12 37. Plaintiffs hereby reallege and incorporate each and every allegation set forth in
13 paragraphs 1 through 36 as though fully set forth herein.

14 38. Under the Fourth Amendment to the United States Constitution, Jacob had a
15 right to be free from unjustified, unauthorized and/or excessive force by law enforcement and
16 to be free from unreasonable searches and seizures by law enforcement. Under the Fourteenth
17 Amendment to the United States Constitution, Jacob had a right not to be deprived of life or
18 liberty without due process of law including, but not limited to, unreasonable seizures and
19 searches.

20 39. On or about August 1, 2018, Spiller and/or DOES 11 through 50, restrained
21 Jacob's hands and legs, placed a spit mask over his mouth, and used a stun gun and taser on
22 him several times without legitimate reason, probable cause, or provocation. After being fully
23 restrained, Spiller and/or DOES 11 through 50 hit Jacob with a baton and stomped on his chest
24 several times without legitimate reason or provocation.

25 40. Thereafter, Plaintiffs are informed and believe, and thereon allege, medical first
26 responders arrived on the scene. Plaintiffs are informed and believe, and thereon allege, that
27 Spiller and/or DOES 11 through 50 refused medical first responders access to Jacob to
28 evaluate and treat him. This delay in treatment due to Spiller and DOES 11 through 50's
refusal for medical access to Jacob contributed to his death.

1 41. Plaintiff s are informed and believe, and thereon allege, at no time was Jacob a
2 threat to himself, the police officers, and/or others, and the use of force against Jacob was
3 unreasonable, unnecessary, excessive, malicious, and/or for the purpose of inflicting pain on
4 Jacob.

5 42. Plaintiffs are informed and believe, and thereon allege, that at no time did Jacob
6 attempt to resist arrest or offer violence to Spiller and/or DOES 11 through 50, and each of
7 them.

8 43. The aforementioned conduct by Pleasanton, PPD, Spiller, and/or
9 DOES 11 through 50 constitutes a violation of Jacob's Fourth and Fourteenth Amendment
10 rights to be free from unjustified, unauthorized and/or excessive force by law enforcement, to
11 be free from unreasonable searches and seizures by law enforcement, and his right not to be
12 deprived of life or liberty without due process of law, in violation of 42 U.S.C. § 1983. Said
13 violations infringed on Jacob's personal liberty rights.

14 44. By the actions and/or inactions described herein, Spiller and/or DOES 11
15 through 50, negligently, carelessly, recklessly, intentionally, and/or in any other actionable
16 manner, used excessive force on Jacob in violation of his constitutional rights.

17 45. As a proximate result of the aforementioned acts of Defendants, Jacob died.

18 46. Plaintiffs are informed and believe, and thereon allege, that the conduct of
19 Spiller and/or DOES 11 through 50, and/or each of them, was intentional, malicious,
20 oppressive, and/or done with a conscious or reckless disregard for the rights of Jacob. As a
21 result, Plaintiffs are entitled to recover all damages provided for the violation of these rights
22 and for Jacob's personal injuries, including but not limited to, general and special damages
23 according to proof, costs of suit, and attorney fees under 42 U.S.C. § 1988. Plaintiffs are also
24 entitled to recover punitive damages against Spiller and/or DOES 11 through 50.

25 47. Prior to his death, Plaintiffs were extremely close to Jacob. Jacob lived with
26 Plaintiffs and Plaintiffs enjoyed his company, their conversations, and having him in their
27 lives. Plaintiffs relied on Jacob for love, companionship, comfort, society, affection, solace
28 and moral support. As a direct result of Jacob's death, Plaintiffs suffered and continue to

1 suffer damages including, but not limited to, funeral expenses, compensation for the loss of
2 their son's love, companionship, comfort, affection, society, solace and moral support.

3 WHEREFORE, Plaintiffs pray for damages against Spiller, and/or DOES 11 through
4 50, and each of them, as set forth below.

5 **FOURTH CAUSE OF ACTION**
6 **Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)**
7 (Against Defendants Spiller and Does 11-50)

8 48. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 47
9 of this Complaint with the same force and effect as if fully set forth herein.

10 49. The denial of medical care by Spiller and DOES 11 through 50 deprived
11 DECEDENT of his right to be secure in his person against unreasonable searches and seizures as
12 guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and
13 applied to state actors by the Fourteenth Amendment.

14 50. As a result, DECEDENT suffered extreme mental and physical pain and suffering
15 and eventually suffered a loss of life and earning capacity. Plaintiffs have also been deprived of
16 the life-long love, companionship, comfort, support, society, care, and sustenance of
17 DECEDENT, and will continue to be so deprived for the remainder of their natural lives.
18 Plaintiffs are also claiming funeral and burial expenses.

19 51. Defendants Spiller and DOES 11 through 50 knew that failure to provide timely
20 medical treatment to DECEDENT could result in further significant injury or the unnecessary and
21 wanton infliction of pain, but disregarded that serious medical need, causing DECEDENT great
22 bodily harm and death.

23 52. After severely beating Decedent and stomping on his chest, Spiller and DOES 11
24 through 50 did not timely summon or provide timely medical attention for DECEDENT, who
25 was unconscious and turning blue, and Spiller and Does 11-50 also did not allow and prevented
26 responding medical personnel on-scene to timely render medical aid/assistance to DECEDENT.

27 53. The conduct of Defendants Spiller and DOES 11 through 50 was willful, wanton,
28 malicious, and done with reckless disregard for the rights and safety of DECEDENT and

1 therefore warrants the imposition of exemplary and punitive damages as to Defendants Spiller
2 and DOES 11 through 50.

3 54. Plaintiffs bring this claim as successors-in-interest to DECEDENT and seek both
4 survival and wrongful death damages for the violation of DECEDENT's rights.

5 55. Plaintiffs also seek attorney's fees under this claim.

6 **FIFTH CAUSE OF ACTION**
7 **Substantive Due Process (42 U.S.C. § 1983)**
8 **(Against Defendants Spiller and Does 11-50)**

9 56. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through
10 55 of this Complaint with the same force and effect as if fully set forth herein.

11 57. Plaintiffs had a cognizable interest under the Due Process Clause of the
12 Fourteenth Amendment of the United States Constitution to be free from state actions that
13 deprive him of life, liberty, or property in such a manner as to shock the conscience, including
14 but not limited to, unwarranted state interference in Plaintiff's familial relationship with their
15 son, DECEDENT. As a result of the excessive force by Defendants Spiller and DOES 11
16 through 50, DECEDENT died. Plaintiffs were thereby deprived of their constitutional right of
17 familial relationship with DECEDENT.

18 58. Defendants Spiller and DOES 11 through 50, acting under color of state law, thus
19 violated the Fourteenth Amendment rights of Plaintiffs to be free from unwarranted interference
20 with their familial relationship with DECEDENT.

21 59. The aforementioned actions of Defendants Spiller and DOES 11 through 50, along
22 with other undiscovered conduct, shock the conscience, in that they acted with deliberate
23 indifference to the constitutional rights of DECEDENT and Plaintiffs with purpose to harm
24 unrelated to any legitimate law enforcement objective.

25 60. Defendants Spiller and DOES 11 through 50, acting under color of state law, thus
26 violated the Fourteenth Amendment rights of DECEDENT and Plaintiffs.

27 61. As a direct and proximate cause of the acts of Defendants Spiller and DOES 11
28 through 50, Plaintiffs suffered extreme and severe mental anguish and pain and have been injured
in mind and body. Plaintiffs have also been deprived of the life-long love, companionship,

1 comfort, support, society, care and sustenance of DECEDENT, and will continue to be so
2 deprived for the remainder of their natural lives. Plaintiffs are also claiming funeral and burial
3 expenses.

4 62. As a result of the conduct of Defendants Spiller and DOES 11 through 50, they are
5 liable for DECEDENT'S injuries because they were integral participants in the denial of due
6 process.

7 63. The conduct of Defendants Spiller and DOES 11 through 50 was willful, wanton,
8 malicious, and done with reckless disregard for the rights and safety of DECEDENT and
9 Plaintiffs and therefore warrants the imposition of exemplary and punitive damages as to
10 Defendants Spiller and/or DOES 11 through 50.

11 64. Plaintiffs bring this claim individually and seek wrongful death and survival
12 damages for the violation of Plaintiffs' rights.

13 65. Plaintiffs also seek attorney fees under this claim.

14 **SIXTH CAUSE OF ACTION**
15 **VIOLATION OF CIVIL RIGHTS FOR UNCONSTITUTIONAL CUSTOM OR**
16 **POLICY, 42 U.S.C. §§ 1983, 1988**
(Plaintiffs Against Pleasanton, PPD, Spiller, and DOES 1 through 10 and DOES 30
through 50)

17 66. Plaintiffs hereby reallege and incorporate each and every allegation set forth in
18 paragraphs 1 through 65 as though fully set forth herein.

19 67. Under the Fourth Amendment to the United States Constitution, Jacob had a
20 right to be free from unjustified, unauthorized and/or excessive force by law enforcement and
21 to be free from unreasonable searches and seizures by law enforcement. Under the Fourteenth
22 Amendment to the United States Constitution, Jacob had a right not to be deprived of life or
23 liberty without due process of law including, but not limited to, unreasonable seizures and
24 searches.

25 68. On or about August 1, 2018, Spiller, and/or DOES 11 through 50, restrained
26 Jacob's hands and legs, placed a spit mask over his mouth, and used a stun gun and taser on
27 him several times without legitimate reason, probable cause, or provocation. After being fully
28

1 restrained, Spiller and/or DOES 11 through 50 hit Jacob with a baton and stomped on his chest
2 several times without legitimate reason or provocation.

3 69. Thereafter, Plaintiffs are informed and believe, and thereon allege, that medical
4 first responders arrived on the scene. Plaintiffs are informed and believe, and thereon allege,
5 that Spiller and/or DOES 11 through 50 refused access to Jacob to evaluate and treat him.
6 This delay in treatment due to Spiller and DOES 11 through 50's refusal for medical access to
7 Jacob contributed to his death.

8 70. Plaintiffs are informed and believe, and thereon allege, at no time was Jacob a
9 threat to himself, the police officers, and/or others, and the use of force against Jacob was
10 unreasonable, unnecessary, excessive, malicious, and/or for the purpose of inflicting pain on
11 Jacob.

12 71. Plaintiffs are informed and believe, and thereon allege, that at no time did
13 Jacob attempt to resist arrest or offer violence to Spiller, and/or DOES 11 through 50, and each
14 of them.

15 72. By the actions and/or inactions described herein, Spiller and/or DOES
16 11 through 50, negligently, carelessly, recklessly, intentionally, and/or in any other actionable
17 manner, used excessive force on Jacob in violation of his constitutional rights.

18 73. Plaintiffs further allege that Pleasanton, PPD, Spiller, DOES 1 through 10 and
19 30 through 50 and each of them, acting with gross negligence and with reckless and deliberate
20 indifference to the rights and liberties of the public in general and of Jacob in particular,
21 knowingly maintained, enforced, and applied a policy and practice of:

- 22 a. Employing and retaining police officers who said Defendants at all times herein
23 knew, or reasonably should have known, had dangerous propensities for abusing
24 and/or neglecting their authority and committing acts of excessive force;
- 25 b. Inadequately supervising, training, controlling, assigning, and disciplining police
26 officers who said Defendants knew, or in the exercise of reasonable care should
27 have known, had the afore-described propensities and character traits;
- 28

- 1 c. Maintaining grossly inadequate procedures for reporting, supervising,
2 investigating, reviewing, disciplining and controlling the conduct of the police
3 officers particularly with respect to illegal acts and acts of excessive force;
4 d. Fostering and encouraging a policy, pattern, and practice of violence through their
5 official positions, which proximately resulted in the excessive force on Jacob.
6 e. By having and maintaining an unconstitutional policy, custom and practice of using
7 excessive force, including deadly force, which also is demonstrated by inadequate
8 training regarding these subjects. The policies, customs and practices of
9 Pleasanton, PPD, Spiller and DOES 1-10 were done with deliberate indifference to
10 individuals' safety and rights.

11 74. At all times prior to August 1, 2018, Spiller, DOES 1 through 10, 30 through 50
12 and each of them, were policy makers for Pleasanton and PPD and knew or should have
13 reasonably known that Spiller and/or DOES 11 through 50 had a propensity to violate the civil
14 rights of persons and/or to fail to prevent the violations of civil rights by others, including but
15 not limited to, excessive, unreasonable and/or unjustified use of force, yet failed to adequately
16 train, retrain, monitor, supervise, and discipline said Defendants.

17 75. Pleasanton, PPD, Spiller, DOES 1 through 10, 30 through 50 and each of them,
18 have, as a matter of policy, custom and/or practice, with deliberate and reckless indifference,
19 failed to properly sanction or discipline police officers, including Spiller and/or DOES 11
20 through 50, for violations of the constitutional rights of citizens, and have tolerated, ratified,
21 permitted and condoned systematic misuse of force, excessive force by sheriffs, deputies, and
22 police officers thereby causing them to engage in said unlawful conduct.

23 76. Pleasanton, PPD, Spiller, DOES 1 through 10, 30 through 50 and each of them,
24 had knowledge that some or all of the wrongs described in detail above, were about to be
25 committed, had the power to prevent or aid in the prevention of commission of said wrongful
26 acts and by reasonable diligence could have prevented the aforementioned wrongs, but
27 neglected and/or refused to prevent, or aid in the prevention of commission of said wrongs.
28

1 77. The aforementioned conduct by Pleasanton, PPD, Spiller, and/or DOES 11
2 through 50 constitutes a violation of Jacob's Fourth and Fourteenth Amendment rights to be
3 free from unjustified, unauthorized and/or excessive force by law enforcement, to be free from
4 unreasonable searches and seizures by law enforcement, and his right not to be deprived of life
5 or liberty without due process of law, in violation of 42 U.S.C. § 1983. Said violations
6 infringed on Jacob's personal liberty rights.

7 78. Plaintiffs bring this claim individually and seek wrongful death and survival
8 damages for the violation of Plaintiffs' rights.

9 79. Plaintiffs also seek attorney fees under this claim.

10 WHEREFORE, Plaintiffs pray for damages against Pleasanton, PPD Spiller and/or
11 DOES 1 through 10, 30 through 50 and each of them, as set forth below.

12 **SEVENTH CAUSE OF ACTION**
13 **VIOLATION OF CIVIL RIGHTS, CALIFORNIA CIVIL CODE § 52.1**
 (Plaintiffs Against Pleasanton, PPD, Spiller and DOES 1 through 50)

14 80. Plaintiffs hereby reallege and incorporate each and every allegation set forth in
15 paragraphs 1 through 79 as though fully set forth herein.

16 81. California Civil Code, section 52.1 (the Bane Act) prohibits any person from
17 interfering with another person's exercise or enjoyment of his constitutional rights by threats,
18 intimidation, or coercion, or by the use of unconstitutionally excessive force.

19 82. Under the Fourth Amendment to the United States Constitution, Jacob had a
20 right to be free from unjustified, unauthorized and/or excessive force by law enforcement and
21 to be free from unreasonable searches and seizures by law enforcement. Under the Fourteenth
22 Amendment to the United States Constitution, Jacob had a right not to be deprived of life
23 and/or liberty without due process of law including, but not limited to, unreasonable seizures
24 and searches. Under Article I, Section 13 of the California Constitution, Jacob had a right to
25 be secure in his person, house, papers, and effects against unreasonable seizures and searches.

26 83. On or about August 1, 2018, Spiller and/or DOES 11 through 50, restrained
27 Jacob's hands and legs, placed a spit mask over his mouth, and used a stun gun and taser on
28 him several times without legitimate reason, probable cause, or provocation. After being

1 fully restrained, Spiller and/or DOES 11 through 50 hit Jacob with a baton and stomped on
2 his chest several times without legitimate reason or provocation.

3 84. Thereafter, Plaintiffs are informed and believe, and thereon allege, that medical
4 first responders arrived on the scene. Plaintiffs are informed and believe, and thereon allege,
5 that Spiller and/or DOES 11 through 50 refused medical access to Jacob to evaluate and treat
6 him. This delay in treatment due to Spiller and DOES 11 through 50's refusal for medical
7 access to Jacob contributed to his death.

8 85. Plaintiffs are informed and believe, and thereon allege, at no time was Jacob a
9 threat to himself, the police officers, and/or others, and the use of force against Jacob was
10 unreasonable, unnecessary, excessive, malicious, and/or for the purpose of inflicting pain on
11 Jacob.

12 86. Plaintiffs are informed and believe, and thereon allege, that at no time did
13 Jacob attempt to resist arrest or offer violence to Spiller and/or DOES 11 through 50,
14 and each of them.

15 87. By the actions and/or inactions described herein, Spiller and/or DOES 1
16 through 50, negligently, carelessly, recklessly, intentionally, and/or in any other actionable
17 manner, used excessive force on Jacob in violation of his constitutional rights. Spiller and/or
18 DOES 1 through 50, while working as police officers for the CITY Police Department, and
19 acting within the course and scope of their duties, interfered with or attempted to interfere with
20 the rights of DECEDENT to be free from unreasonable searches and seizures, to equal
21 protection of the laws, to access to the courts, and to be free from state actions that shock the
22 conscience, by threatening or committing acts involving violence, threats, coercion, or
23 intimidation. DECEDENT had a mental illness and was a victim of prejudice by PPD, Spiller
24 and/or DOES 1 through 50 against mentally ill individuals.

25 88. Plaintiffs allege that by doing the acts described herein above, Spiller and/or
26 DOES 11 through 50 misused and took advantage of their force and authority as police
27 officers, and/or as agents of a government agency with the intent to intimidate Jacob and cause
28 him to be afraid of Spiller and/or DOES 11 through 50. Said conduct constitutes a violation of

1 Jacob's right under the Fourth Amendment to be free from unjustified, unauthorized and/or
2 excessive force by law enforcement and his right under the Fourth and Fourteenth Amendment
3 and his right under Article I, Section 13 of the California Constitution to be free from
4 unreasonable searches and seizures by law enforcement which infringed on Jacob's personal
5 liberty rights.

6 89. As a proximate result of the conduct of Spiller and/or DOES 11 through 50,
7 Jacob was required to and did employ physicians to examine, treat, and care for him, and did
8 incur medical and incidental expenses.

9 90. Plaintiffs are entitled to an award of statutory damages and attorneys' fees
10 under California Civil Code Sections 52 and 52.1.

11 91. Pursuant to Government Code § 815.2, Pleasanton, PPD, Spiller, DOES 1
12 through 50, and each of them are vicariously liable for the conduct of Spiller and/or DOES 11
13 through 50, described above as Spiller and/or DOES 11 through 50 were acting within the
14 course and scope of their employment.

15 92. The aforementioned acts of Spiller and/or DOES 11 through 50, were done by
16 them knowingly, intentionally, and maliciously, for the purpose of harassment, oppression,
17 and inflicting injury upon Jacob, and in reckless, wanton, and callous disregard of Jacob's
18 safety, security, and civil rights. By reason thereof, Plaintiffs claim exemplary and punitive
19 damages from said Defendants in an amount according to proof at trial.

20 WHEREFORE, Plaintiffs pray for damages against Pleasanton, PPD, Spiller,
21 and/or DOES 1 through 50, and each of them, as set forth below.

22 **EIGHTH CAUSE OF ACTION**
23 **NEGLIGENT HIRING, RETENTION, SUPERVISION, TRAINING**
24 **(Plaintiffs Against Defendants Pleasanton, PPD, Spiller, DOES 1 through 50)**

25 93. Plaintiffs hereby reallege and incorporate each and every allegation set forth in
26 paragraphs 1 through 92 as though fully set forth herein.

27 94. Plaintiffs are informed and believe, and thereon allege, Pleasanton, PPD,
28 Spiller, DOES 1 through 50, and each of them, owed the public in general, and Jacob in
particular, a duty to use reasonable and due care in carefully selecting, retaining, and

1 supervising their agents and/or servants and/or employees, including Spiller and/or DOES 11
2 through 50, and owed Jacob a duty to continuously review and evaluate the competency and
3 fitness of their agents and/or servants and/or employees, and to insure that their agents and/or
4 servants and/or employees are fit and competent for the tasks for which they were hired.

5 95. Plaintiffs are informed and believe, and thereon allege, that prior to the events
6 described herein above, Pleasanton, PPD, Spiller and DOES 11 through 50, and each of them,
7 had actual and/or constructive notice of the propensities of Spiller and/or DOES 11 through
8 50, to commit the above described acts and to abuse their position and authority, and failed to
9 take reasonable steps to prevent the same, in complete disregard of the rights and safety of the
10 public in general and of Jacob in particular.

11 96. Plaintiffs are informed and believe, and thereon allege, that by hiring and
12 employing Spiller and/or DOES 11 through 50, to a position of trust and special authority with
13 the public, Pleasanton, PPD, Spiller and/or DOES 1 through 50, and each of them, held Spiller
14 and/or DOES 11 through 50 out to the public in general and to Jacob in particular, as
15 competent and trustworthy.

16 97. Plaintiffs are further informed and believe, and thereon allege, that Spiller
17 and/or DOES 1 through 50, and each of them, had a duty to supervise their staff, agents, and
18 employees, including Spiller and/or DOES 11 through 50, because it placed them in a unique
19 position of trust, confidence, and authority, under which the public in general, and Jacob in
20 particular, supposed himself to be safe from excessive and unreasonable seizures.

21 98. Plaintiffs are informed and believe, and thereon allege, that Pleasanton, PPD,
22 Spiller, DOES 1 through 10, and each of them, negligently and/or carelessly, and/or recklessly,
23 and/or in any other actionable manner, failed to properly ensure the character, quality, ability,
24 fitness and competence of their servants, agents, and employees, including Spiller and DOES
25 11 through 50.

26 99. Plaintiffs are further informed and believe, and thereon allege, that Pleasanton,
27 PPD, Spiller, DOES 1 through 50, and each of them, failed to monitor and supervise their
28 agents, servants, and employees, including Spiller and/or DOES 11 through 50 in order to

1 reasonably insure that the public in general, and Plaintiffs in particular, would be protected
2 from wrongful conduct and from excessive force and unreasonable searches.

3 100. Plaintiffs are informed and believe, and thereon allege, that Pleasanton, PPD,
4 Spiller, DOES 1 through 50, and each of them, did nothing to stop Spiller and/or DOES 11
5 through 50, from using excessive force, conducting unreasonable searches, doing wrongful
6 conduct, and failing to provide medical treatment when needed, even after they knew, or
7 should have known, of Spiller and/or DOES 11 through 50's deviant propensities.

8 101. Pleasanton, PPD, Spiller, DOES 1 through 50, and each of them, negligently
9 and carelessly hired, employed, retained, trained, supervised, assigned, controlled, and
10 negligently and carelessly failed to adequately discipline Spiller and/or DOES 11 through 50,
11 even though Pleasanton, PPD, Spiller and/or DOES 1 through 50, and each of them, knew, or
12 in the exercise of reasonable diligence should have known, that all said Defendants had a
13 propensity for using unnecessary, unreasonable, excessive force and searches and doing
14 wrongful conduct, and were otherwise vicious and unfit to be given the responsibilities of
15 police officers and/or agents of a government agency. Nevertheless, Pleasanton, PPD, Spiller,
16 DOES 1 through 50, , and each of them, negligently, carelessly, recklessly, and/or with a
17 reckless disregard for the public safety, including Jacob, employed and supervised said
18 Defendants, and assigned said Defendants to duties which enabled each of them to use
19 unreasonable, unnecessary and excessive force, conduct unreasonable searches, failure to
20 provide medical care when needed, and/or to do wrongful conduct, proximately causing severe
21 injuries to Plaintiffs.

22 102. As a proximate result of the conduct of Spiller and/or DOES 11 through 50,
23 Jacob was required to and did employ physicians to examine, treat, and care for him, and did
24 incur medical and incidental expenses.

25 103. On August 1, 2018, after the foregoing cause of action arose in his favor,
26 Jacob, who would have been the plaintiff in this action if he had lived, died.

27 WHEREFORE, Plaintiffs pray for damages against Defendants, and each of them, as
28 set forth below.

NINTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Plaintiffs Against Pleasanton, PPD, Spiller and DOES 1 through 50)

104. Plaintiffs hereby reallege and incorporate each and every allegation set forth in paragraphs 1 through 103 as though fully set forth herein.

105. On or about August 1, 2018, Spiller and/or DOES 11 through 50, restrained Jacob's hands and legs, placed a spit mask over his mouth, and used a stun gun and taser on him several times without legitimate reason, probable cause, or provocation. After being fully restrained, Spiller and/or DOES 11 through 50 hit Jacob with a baton and stomped on his chest several times without legitimate reason or provocation.

106. Thereafter, Plaintiffs are informed and believe, and thereon allege, that medical first responders arrived on the scene. Plaintiffs are informed and believe, and thereon allege, that Spiller and/or DOES 11 through 50 refused medical access to Jacob to evaluate and treat him. This delay in treatment due to Spiller and DOES 11 through 50's refusal for medical access to Jacob contributed to his death.

107. Plaintiffs are informed and believe, and thereon allege, at no time was Jacob a threat to himself, the police officers, and/or others, and the use of force against Jacob was unreasonable, unnecessary, excessive, malicious, and/or for the purpose of inflicting pain on Jacob.

108. Plaintiffs are informed and believe, and thereon allege, that at no time did Jacob attempt to resist arrest or offer violence to Spiller and/or DOES 11 through 50, and each of them.

109. The conduct of Spiller and/or DOES 11 through 50 as described above was outrageous, and done with the intent of causing, or reckless disregard to the probability of causing, severe emotional distress. Plaintiffs are informed and believe said conduct did actually cause Jacob to suffer severe emotional distress.

110. Plaintiffs allege that by doing the acts described herein above, Spiller and/or DOES 11 through 50 misused and took advantage of their force and authority as police officers, sheriffs, and/or as agents of a government agency. Plaintiffs further allege that said

1 Defendants were only able to approach, detain, imprison, and use excessive force on Jacob,
2 due to the force and authority of the positions they held.

3 111. Pursuant to Government Code § 815.2, Pleasanton, PPD, Spiller, and DOES 1
4 through 50, and each of them are vicariously liable for the conduct of Spiller, and/or DOES 11
5 through 50, described above as Spiller and/or DOES 11 through 50 were acting within the
6 course and scope of their employment.

7 112. As a proximate result of the aforementioned acts of Spiller and/or
8 DOES 11 through 50, Plaintiffs are informed and believe Jacob suffered humiliation, mental
9 anguish, and severe emotional and physical distress, and was injured in mind and body all to
10 Jacob's damage.

11 113. The aforementioned acts of Spiller and/or DOES 11 through 50 were
12 done by them knowingly, intentionally, and maliciously, for the purpose of harassment,
13 oppression, and inflicting injury upon Jacob, and in reckless, wanton, and callous disregard of
14 Jacob's safety, security, and Civil Rights. By reason thereof, Plaintiffs claim exemplary and
15 punitive damages from said Defendants in an amount according to proof at trial.

16 114. On August 1, 2018, after the foregoing cause of action arose in his favor,
17 Jacob, who would have been the plaintiff in this action if he had lived, died.

18 WHEREFORE, Plaintiffs pray for damages against Pleasanton, PPD, Spiller, and
19 DOES 1 through 50, and each of them, as set forth below.

20 **PRAYER FOR RELIEF**

21 Wherefore Plaintiffs pray for damages as follows:

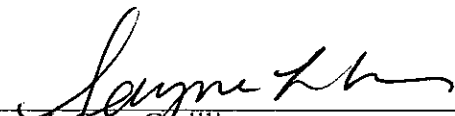
- 22 1. For special damages;
- 23 2. For general damages;
- 24 3. For punitive damages against Spiller and DOES 11 through 50 according to
25 proof;
- 26 4. For costs of suit and reasonable attorneys' fees pursuant to 42 U.S.C. section
27 1988 and other relevant statutes, including a contingency fee enhancement beyond the
28 lodestar;

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- 5. For prejudgment interest at the legal rate; and
- 6. For such other and further relief as the Court deems appropriate.

DATE: June 19, 2019

GWILLIAM IVARY CHIOSSO CAVALLI & BREWER



J. Gary Gwilliam
Jayme E. Walker
Attorneys for Plaintiffs
JOHN AND ROSE BAUER