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CENTRAL DIST. OF CALIF.
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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 RICHARD A. COLLENDER and
16 YEN P. COLLENDER, individually
17 and as successors-in-interest of
18 JULIAN STANLEY COLLENDER,

18 Plaintiffs,

19 v.

20
21
22 CITY OF BREA, a local public entity,
23 DETECTIVES SHAWN NEEL,
24 DAVID DICKINSON, BRIAN
25 PARKER AND AUSTIN PHILLIPS
26 AND OFFICERS JESSE GARDUNA,
27 TRAVIS LEEVER, LAMARRA
28 TINNIN AND DARNESHA
MONTGOMERY, individually, DOES
1-10, individually,

Defendants.

CASE NO. SACV 11-00530-RNB
FIRST AMENDED COMPLAINT
DEMAND FOR JURY TRIAL

- (1) Unreasonable Use of Deadly Force and Denial of Medical Care (42 U.S.C. § 1983)
- (2) Deprivation of Life Without Due Process (42 U.S.C. § 1983)
- (3) Interference with Parent-Child Relationship (42 U.S.C. § 1983)
- (4) Wrongful Death (Cal. Civ. Proc. Code § 377.60)
- (5) Battery
- (6) Negligence
- (7) Violation of Bane Act
- (8) Unreasonable Search and Seizure - Search, Detention, False Arrest and Excessive Force (42 U.S.C. § 1983)
- (9) Unreasonable Search and Seizure - Warrantless Search (42 U.S.C. § 1983)
- (10) Intentional Infliction of Emotional Distress

BY FAX

COPY

1
2 Richard A. Collender and Yen P. Collender ("Plaintiffs" or "Richard" and
3 "Yen" respectively), upon information and belief, allege the following:

4 **INTRODUCTION**

5 1. This case challenges the unjustified shooting and killing of Plaintiffs'
6 son Julian Stanley Collender ("Julian") by Defendant Shawn Neel, and the
7 subsequent unlawful arrest, detention, search, abusive treatment and excessive
8 force used against Plaintiffs after their son's death. At the time of the shooting,
9 Julian was unarmed and was complying with the officers' directions to surrender
10 outside the family's home in Yorba Linda. Julian posed no imminent threat of
11 death or physical injury to the officers present, or to anyone else. The use of
12 deadly force against Julian by Defendants under these circumstances was both
13 unconstitutional and violated clearly established law that would have been known
14 to any reasonable police officer.

15 **JURISDICTION AND VENUE**

16 2. This case arises under 42 U.S.C. §1983 and California law. This Court
17 has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331. This
18 Court has subject matter jurisdiction over Plaintiffs' pendent state law claims
19 under 28 U.S.C. § 1367.

20 3. Venue is proper in this District pursuant to 28 U.S.C. §1391 (b) and (e)
21 in that (1) the unlawful actions challenged herein occurred in the Central District;
22 and (2) all of the parties reside in the Central District.

23 **PARTIES**

24 4. Plaintiffs Richard Collender and Yen Collender bring this action
25 individually and as heirs and the sole successors-in-interest to their son Julian
26 Stanley Collender. Plaintiffs assert all survival claims and rights under California
27 law, which survive Julian's death pursuant to California Code of Civil Procedure §
28 377.30 and any survival claims they may bring under 42 U.S.C. §1983 in their

1 capacities as the successors in interest to their son.

2 5. At all relevant times, Plaintiffs and their son Julian were residents of
3 Orange County, California.

4 6. Defendant City of Brea (“Brea”) is a municipality duly organized under
5 the laws of the State of California. At all relevant times, Defendants Neel,
6 Dickinson, Parker, Phillips, Garduna, Leever, Tinnin and Montgomery and Does
7 1-10 were officers and employees of Brea. Liability under California law for
8 Defendant Brea and its employees, including the individual named defendants, is
9 based upon California Government Code § 815.2 and § 820, Penal Code §§ 149,
10 240 and/or 242 and/or Civil Code §§ 43 and/or 52.1. Plaintiffs timely filed a tort
11 claim with Defendant Brea and have complied with the requirements of the
12 California Tort Claims Act.

13 7. At all relevant times, Defendants Neel, Dickinson, Parker, Phillips,
14 Garduna, Leever, Tinnin and Montgomery, and Does 1-10 were members of the
15 Brea Police Department (“BPD”) and were duly authorized Brea employees and
16 agents, acting under color of law within the course and scope of their respective
17 duties as BPD police officers and with the complete authority and ratification of
18 Defendant Brea. The true names of Defendant Does 1-10 are unknown to
19 Plaintiffs. Plaintiffs will seek leave to amend this complaint to show the true
20 names and capacities of these defendants when they have been ascertained. Each
21 of the fictitious named Defendants is responsible for some part of the conduct and
22 liabilities alleged herein.

23 8. Plaintiffs are informed and believe and thereon allege that each
24 Defendant is, and at all times mentioned was, the agent, employee, representative,
25 successor and/or assignee of each other Defendant. Each Defendant, in doing the
26 acts, or in omitting to act as alleged in this Complaint, was acting within the scope
27 of his or her actual or apparent authority or the alleged acts and omission of each
28 Defendant as agent subsequently were ratified and adopted by each other

1 Defendant as principal. Plaintiffs are informed and believe that each of the
2 individual Defendants was in some way responsible for the constitutional
3 violations and torts alleged in this complaint. Defendants Dickinson, Parker and
4 Phillips were supervisors on the scene of this incident and were also responsible
5 for not taking action to prevent the constitutional violations and torts committed
6 against Plaintiffs.

7 9. In committing the acts alleged in this complaint Defendants acted
8 knowingly, maliciously and with reckless or callous disregard for the
9 constitutional rights of Plaintiffs and of Plaintiffs' son Julian justifying an award
10 of punitive damages under federal and California law against each individual
11 Defendant.

12 MONELL ALLEGATIONS

13 10. Based upon the principles set forth in *Monell v. New York City*
14 *Department of Social Services*, 436 U.S. 658 (1978), Brea is liable for all injuries
15 sustained by Plaintiffs as set forth herein. Brea bears liability because its policies,
16 practices and/or customs were a cause of Julian's death and Plaintiffs' injuries.
17 Brea and its officials maintained or permitted one or more of the following official
18 policies or customs:

19 A. Failure to provide adequate training and supervision to police officers
20 with respect to constitutional limits on the use of deadly force;

21 B. Failure to provide adequate training and supervision to police officers
22 with respect to constitutional limits on use of force, arrest, search, and detention;

23 C. Failure to adequately discipline or retrain officers involved in
24 misconduct;

25 D. Selection, retention, and assignation of officers with demonstrable
26 propensities for excessive force, violence, dishonesty, and other misconduct;

27 E. Condonation and encouragement of officers in the belief that they can
28 violate the rights of persons, such as Plaintiffs, with impunity, and that such

1 conduct will not adversely affect their opportunities for promotion and other
2 employment benefits.

3 F. Ratification by the highest levels of authority of the specific
4 unconstitutional acts alleged in this complaint and, in particular, the ratification of
5 the unjustified shooting of Julian Stanley Collender.

6 **FACTUAL ALLEGATIONS**

7 11. On June 30, 2010, after midnight, Defendant Shawn Neel fatally shot
8 25-year-old Julian Stanley Collender outside his family's Yorba Linda home when
9 his arms were raised in surrender in response to commands issued by BPD officers
10 at the scene. Julian was unarmed and in the process of returning home from an
11 errand. The bullet, fired from a high-powered Heckler & Koch G36 .223 caliber
12 assault rifle, entered Julian's torso through the front as Julian turned to face the
13 source of the police commands. Julian collapsed to the pavement only yards from
14 his front door. As Julian lay mortally wounded on the pavement, BPD police
15 officers surrounded and handcuffed him as he lay bleeding on the pavement..
16 Julian complied with police commands by softly responding "yes" to police
17 questions even though he was near death. At approximately 12:30 AM, shortly
18 after the shooting, a paramedic examined Julian and found him unresponsive,
19 without pulse, and not breathing. Julian was pronounced dead at approximately
20 1:30 AM by an attending doctor at the Kaiser Medical Center.

21 12. Before his death, Julian was a bright, extroverted, and intellectually
22 curious young man who pursued interests in art, music, skateboarding,
23 photography and filmmaking. He had friends in all walks of life. Julian was very
24 close to his parents, family and friends. His death has been devastating to his
25 parents, family and friends.

26 13. At the time of the shooting, Julian was unarmed and surrendering by
27 stopping, and turning to face police officers with his arms raised. Julian posed no
28 imminent threat of death or physical injury to the officers present, or to anyone

1 else. The use of deadly force in this case was unreasonable and excessive.
2 Defendants acted with deliberate indifference to Julian's health and safety and his
3 constitutional rights in a manner that shocks the conscience.

4 14. The chain of events which led to Julian's shooting began approximately
5 three hours prior to the shooting when BPD Detective Johnson received a call on
6 his cell phone from 18 year-old Christopher Cooper. Plaintiffs are informed and
7 believe that Cooper accused Julian of robbing him and two friends, Brianna
8 McCarthy and Michael Peter Foss, earlier that evening in the parking lot of an E-Z
9 Takeout Burger in Yorba Linda.

10 15. Detective Johnson requested that BPD detectives and officers,
11 including Officer Salcido and Defendant Neel, go to the Collender's residence in
12 Yorba Linda based on the information Cooper provided to him.

13 16. Julian was at home that evening with two friends. Julian left his home
14 to complete an errand, leaving his friends in his bedroom, and returned sometime
15 after midnight. He drove east and downhill towards his home when a police car
16 turned on its lights as Julian was nearing his house. Julian stopped his car in the
17 middle of the street and left his car. In response to police commands, Julian
18 stopped, turned, and raised his arms in the air. As his arms were raised in
19 surrender Defendant Neel fired the fatal shot described above using his high-
20 powered assault rifle. No other officer fired a shot during the incident. Julian was
21 unarmed when he was shot.

22 17. At the time of the shooting, Plaintiff Yen Collender was in her
23 bedroom. She heard a bang through her window from up the street. Yen went to
24 check on Julian in his room and one of Julian's friends told her that she thought
25 Julian had been shot. Yen exited the house dressed in her knee-length nightgown
26 and robe to see what had happened. She is a slight woman and she was obviously
27 unarmed. At no time did Yen present a threat to the officers or to anyone else, and
28 no reasonable officer could have believed she posed such a threat.

1 18. As soon as Yen exited the house, officers began yelling different
2 commands at her. Officers pointed guns at her and shone bright lights at her
3 making it difficult for her to see anything. She obeyed all the instructions she
4 received and walked towards the officers as she was commanded to do. When
5 she reached the officers, Defendant Garduna grabbed Yen, spun her around and
6 pulled her backwards. He slammed her on to the hood of a police car. Defendant
7 Garduna cuffed Yen tightly enough to leave severe bruises on her wrists for some
8 time after the incident. After she was handcuffed in this manner, Defendant
9 Montgomery shoved Yen into a police car and left her there for approximately one
10 and a half hours. Defendants Parker and Phillips were supervisors on the scene
11 and intentionally did not release her long after it was clear that she posed no threat
12 to officers on the scene or anyone else. She was given no information about what
13 was happening or about what had happened to her son, as he lay dying nearby,
14 causing her great emotional distress. As a result of Defendants' actions, Yen
15 suffered extreme emotional and physical distress, as well as physical injuries.

16 19. At the time of the shooting, Plaintiff Richard Collender was asleep.
17 After his wife left the house, he was awakened by the dog barking and went to the
18 living room. The police shone bright lights into the living room and ordered all of
19 the occupants to come out of the house with their hands up. Richard complied
20 with these orders. Outside the house, officers pointed guns at him. Defendant
21 Leever handcuffed him tightly enough to cut his wrists, causing him pain and
22 suffering. Richard was only wearing pants when he left his home. He was not
23 allowed to put on a shirt or shoes while Defendants Leever and Tinnin detained
24 him in a squad car for as long as an hour. Defendants Parker and Phillips
25 supervised his detention and intentionally failed to order his release long after they
26 knew that he posed no threat to officers or anyone else. The officers on the scene,
27 including Defendants, refused to let him know the status of his son or give him
28 any information about what was happening or about why he and his wife were

1 being detained. At all times, Richard complied with police commands, and
2 presented no threat to Defendants or anyone else. Defendants' actions caused
3 Richard extreme emotional and physical distress, as well as physical injuries.

4 20. Shortly after the shooting, Officers Garduna, Dickinson, Gettleson, and
5 Montgomery entered and searched the Collender house without Plaintiffs' consent
6 and refused to allow Plaintiffs to return to their home for an unreasonable period
7 of time. Defendant Dickinson was in charge of the search team and, on
8 information and belief, was responsible for the decision not to allow Plaintiffs
9 back into their home.

10 21. Once Plaintiffs were released from detention, the officers on the scene
11 refused to tell them the status of their son, what happened, or to which hospital he
12 had been taken. Officers did not allow Plaintiffs to get more substantial clothing,
13 wallets, keys, or any other items. Although all the occupants had been removed
14 from their home, officers refused to allow Plaintiffs back into their home. Finally,
15 Detective Phillips called Plaintiffs over and coldly told them, "Your son is at
16 Kaiser and he's dead." He then turned abruptly and walked away, without any
17 display of human emotion.

18 22. Plaintiffs obtained a ride and clothing from a neighbor, who drove them
19 to the Kaiser Medical Center.

20 23. When Plaintiffs arrived at the Kaiser Medical Center, officers refused to
21 let them see their son's body. Instead, they were shown a photograph of Julian's
22 face so they could identify the body. After Plaintiffs continued insisting on
23 seeing their son's body, the officers finally allowed them to see Julian's body for
24 no more than 20 seconds while standing eight feet away. The officers indicated
25 they would use force against Richard and Yen if they stayed longer than 20
26 seconds or attempted to get closer to the body. Officers claimed that the body was
27 a "crime scene." This callous behavior only intensified the emotional distress
28 Plaintiffs suffered as they could not even approach their son.

1 is based upon Plaintiffs' allegations that Brea's policies or customs were a cause of
2 the injuries suffered by Julian and Plaintiffs herein, as set forth in paragraph 10
3 above.

4 30. As a direct and legal result of Defendants' acts and omissions, Plaintiffs
5 suffered damages, including, without limitation, loss of earnings and earning
6 capacity, loss of enjoyment of life, pain and suffering, physical injuries and
7 sickness, emotional distress, medical expenses, funeral and burial expenses,
8 attorneys' fees, costs of suit, other pecuniary losses not yet ascertained and the loss
9 of Julian's love, affection, society and companionship.

10 31. Plaintiffs are informed and believe and thereon allege that the acts of
11 the individual Defendants were willful, malicious, intentional, oppressive, reckless
12 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
13 and safety and those of their son, justifying the awarding of punitive and
14 exemplary damages in an amount to be determined at time of trial.

15 32. Plaintiffs bring this claim as successors-in-interest to Julian, and
16 seek both survival and wrongful death damages under federal law for the violation
17 of Julian's rights. Plaintiffs also seek attorney fees under this claim.

18 **SECOND CLAIM FOR RELIEF**

19 **Deprivation of Life Without Due Process**

20 **(42 U.S.C. § 1983)**

21 **(By Plaintiffs in their capacities as successors-in-interest to Julian**

22 **Collender)**

23 **(Against Defendants Neel , Brea and Does 1-10)**

24 33. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
25 32 of this Complaint with the same force and effect as if fully set forth herein.

26 34. Defendants acted within the course and scope of their duties as BPD
27 officers when they intentionally shot and killed Julian. Julian was unarmed. Julian
28 was surrendering to their authority when he was shot by Defendant Neel without

1 justification. Julian posed no imminent threat of danger to Defendants or anyone
2 else. Their actions deprived Julian of his life without due process of law.

3 35. Defendants' deprivation of Julian's life without due process of law
4 caused him extreme pain and suffering, and loss of life, earning capacity and his
5 relationship with his parents, friends and family. Defendants' actions also
6 deprived Plaintiffs of the life-long love, companionship, support, society, care, and
7 sustenance of their son Julian, and they will continue to be so deprived for the
8 remainder of their lives.

9 36. As a result of their conduct, Defendants are liable for Julian's injuries,
10 either because they were integral participants in the deprivation of life without due
11 process, or because they failed to intervene to prevent these violations.

12 37. The claim against Defendant and other unknown BPD employees is
13 based upon Plaintiffs' allegations that Brea's policies or customs were a cause of
14 the injuries suffered by Julian and Plaintiffs herein, as set forth in paragraph 10
15 above.

16 38. As a direct and legal result of Defendants' acts and omissions, Plaintiffs
17 suffered damages, including, without limitation, loss of earnings and earnings
18 capacity, loss of enjoyment of life, pain and suffering, physical injuries and
19 sickness, emotional distress, medical expenses, funeral and burial expenses,
20 attorneys' fees, costs of suit, other pecuniary losses not yet ascertained and the loss
21 of Julian's love, affection, society and companionship.

22 39. Plaintiffs are informed and believe and thereon allege that the acts of the
23 individual Defendants were willful, malicious, intentional, oppressive, reckless
24 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
25 and safety and those of their son, justifying the awarding of punitive and
26 exemplary damages in an amount to be determined at time of trial.

27 40. Plaintiffs bring this claim as successors-in-interest to Julian, and
28 seek both survival and wrongful death damages under federal law for the violation

1 of Julian's rights. Plaintiffs also seek attorneys' fees under this claim.

2 **THIRD CLAIM FOR RELIEF**

3 **Interference with Parent-Child Relationship**

4 **(42 U.S.C. § 1983)**

5 **(By Plaintiffs in their individual capacities)**

6 **(Against Defendants Neel, Brea and Does 1-10)**

7 41. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
8 40 of this Complaint with the same force and effect as if fully set forth herein.

9 42. By wrongfully shooting and killing Julian while he was unarmed and
10 surrendering to police, and preventing Plaintiffs from being with him during the
11 last minutes of his life, Defendants deprived Plaintiffs' of their Fourteenth
12 Amendment right of familial relationship with Julian. Defendants' acted with
13 deliberate indifference to Plaintiffs' rights and/or their unlawful conduct shocks
14 the conscience.

15 43. Defendants' interference with the parent-child relationship caused
16 Julian extreme pain and suffering, and loss of life and earning capacity.
17 Defendants' actions also deprived Plaintiffs of the life-long love, companionship,
18 support, society, care, and sustenance of their son Julian, and they will continue to
19 be so deprived for the remainder of their lives.

20 44. As a result of their conduct, Defendants are liable for Julian's injuries,
21 either because they were integral participants in the interference with the parent-
22 child relationship, or because they failed to intervene to prevent these violations.

23 45. The claim against Defendant and other unknown BPD employees is
24 based upon Plaintiffs' allegations that Brea's policies or customs were a cause of
25 the injuries suffered by Julian Stanley Collender and Plaintiffs herein, as set forth
26 in paragraph 10 above.

27 46. As a direct and legal result of Defendants' acts and omissions, Plaintiffs
28 suffered damages, including, without limitation, loss of earnings and earnings

1 capacity, loss of enjoyment of life, pain and suffering, physical injuries and
2 sickness, emotional distress, medical expenses, funeral and burial expenses,
3 attorneys' fees, costs of suit, other pecuniary losses not yet ascertained and the loss
4 of Julian's love, affection, society and companionship.

5 47. Plaintiffs are informed and believe and thereon allege that the acts of the
6 individual Defendants were willful, malicious, intentional, oppressive, reckless
7 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
8 and safety and those of their son, justifying the awarding of punitive and
9 exemplary damages in an amount to be determined at time of trial.

10 48. Plaintiffs bring this claim in their individual capacity for wrongful
11 death damages and all other damages and other remedies available to them under
12 federal law.

13 **FOURTH CLAIM FOR RELIEF**

14 **Wrongful Death**

15 **(Cal. Civ. Proc. Code § 377.60)**

16 **(By Plaintiffs in their individual capacities as heirs of Julian Collender)**

17 **(Against Defendants Neel, Brea and Does 1-10)**

18 49. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
19 48 of this Complaint with the same force and effect as if fully set forth herein.

20 50. Defendants shot and killed Julian despite the absence of a threat to
21 themselves or others. Julian was unarmed and surrendering at the time of the
22 shooting. Because Julian died intestate, unmarried, and without issue, Plaintiffs
23 are the proper persons to sue for his wrongful death under California state law.

24 51. As the sole heirs of their son, Julian Collender, Plaintiffs assert
25 wrongful death actions against all Defendants pursuant to C.C.P. §§ 377.60 *et seq.*
26 This claim is based upon the fact that Defendants' negligent, reckless and
27 wrongful acts and omissions, as alleged herein, were a direct and legal cause of
28 Julian's death and the resulting damages to Plaintiffs. As a result of their conduct,

1 Defendants are liable for Plaintiffs' injuries, either because they were integral
2 participants in the wrongful conduct, or because they failed to intervene to prevent
3 these violations.

4 52. Plaintiffs are informed and believe and thereon allege that the acts of the
5 individual Defendants were willful, malicious, intentional, oppressive, reckless
6 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
7 and safety, thereby justifying the awarding of punitive and exemplary damages in
8 an amount to be determined at time of trial.

9 53. As a direct and legal result of Defendants' acts and omissions, Plaintiffs
10 suffered damages, including, without limitation, loss of earnings and earnings
11 capacity, loss of enjoyment of life, pain and suffering, physical injuries and
12 sickness, emotional distress, medical expenses, funeral and burial expenses,
13 attorneys' fees, costs of suit, other pecuniary losses not yet ascertained and the loss
14 of Julian's love, affection, society and companionship.

15 54. Plaintiffs seek both survival and wrongful death damages and all other
16 damages and remedies available under state law.

17 **FIFTH CLAIM FOR RELIEF**

18 **Battery**

19 **(By Plaintiffs in their capacity as successors-in-interest to Julian Collender**
20 **and in their individual capacities)**

21 **(Against All Defendants)**

22 55. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
23 54 of this Complaint with the same force and effect as if fully set forth herein.

24 56. Defendants, while working as police officers for Brea and acting within
25 the course and scope of their duties, intentionally shot and killed Julian. The
26 shooting was an unreasonable use of force against Julian to which he did not
27 consent and constituted battery against Julian.

28 57. Defendants' battery caused Julian extreme pain and suffering, and loss

1 of life and earning capacity. Defendants' actions also deprived Plaintiffs of the
2 life-long love, companionship, support, society, care, and sustenance of their son
3 Julian, and they will continue to be so deprived for the remainder of their lives.

4 58. Defendants, while working as BPD police officers and acting within the
5 course and scope of their duties, grabbed Yen, spun her around, slammed her on a
6 car hood, cuffed her tightly enough to bruise her, and forced her into the backseat
7 of a patrol vehicle. Defendants also grabbed Richard, cuffed him tightly enough
8 to cut his wrists, and forced him into the backseat of a patrol vehicle. These
9 actions were an unreasonable use of force against Plaintiffs to which they did not
10 consent and constituted battery against them.

11 59. Defendants' battery caused Plaintiffs' extreme mental and emotional
12 distress, as well as physical injuries and/or physical sickness. As a direct and legal
13 result of Defendants' acts and omissions, Plaintiffs suffered damages, including,
14 without limitation, loss of earnings and earning capacity, loss of enjoyment of life,
15 pain and suffering, physical injuries and sickness, emotional distress, medical
16 expenses, funeral and burial expenses, attorneys' fees, costs of suit, other
17 pecuniary losses not yet ascertained and the loss of Julian's love, affection, society
18 and companionship.

19 60. Plaintiffs are informed and believe and thereon allege that the acts of the
20 individual Defendants were willful, malicious, intentional, oppressive, reckless
21 and/or were done in willful and conscious disregard of the rights, welfare and
22 safety of plaintiffs, thereby justifying the awarding of punitive and exemplary
23 damages in an amount to be determined at time of trial.

24 61. As a result of their conduct, Defendants are liable for Julian's and
25 Plaintiffs' injuries, either because they were integral participants in the battery, or
26 because they failed to intervene to prevent these violations.

27 62. Plaintiffs bring this claim as successors-in-interest to Julian, and seek
28 both survival and wrongful death damages under state law.

1 **SIXTH CLAIM FOR RELIEF**

2 **Negligence**

3 **(By Plaintiffs in their capacities as successors-in-interest to Julian Collender**
4 **and in their individual capacities)**

5 **(Against All Defendants)**

6 63. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
7 62 of this Complaint with the same force and effect as if fully set forth herein.

8 64. Defendants owed a duty of care toward Plaintiffs and Julian, and were
9 required to use reasonable diligence to ensure that Plaintiffs and Julian were not
10 harmed by Defendants' acts or omissions. Defendants' actions and omissions
11 were negligent and reckless, including but not limited to:

- 12 a. the failure to properly assess the need to use force or deadly force
- 13 against Julian;
- 14 b. the negligent tactics and handling of the situation with Julian;
- 15 c. the negligent use of force, including deadly force, against Julian;
- 16 d. the failure to properly train, supervise and discipline employees,
- 17 including the individual Defendants;
- 18 e. the negligent search of Plaintiffs' home;
- 19 f. the negligent treatment of Plaintiffs in the immediate aftermath of
- 20 their son's death;
- 21 g. the failure to provide timely medical assistance to Julian; and
- 22 h. the negligent hiring, retention and assignment of its employees,
- 23 including the individual defendants.

24 65. Defendants' conduct caused Julian, without limitation, extreme pain
25 and suffering, and loss of life, enjoyment of life, pain and suffering and earning
26 capacity. Defendants' actions also deprived Plaintiffs of the life-long love,
27 companionship, support, society, care, and sustenance of their son Julian, and they
28 will continue to be so deprived for the remainder of their lives. Defendants'

1 conduct also caused Plaintiffs' extreme emotional and physical distress and
2 humiliation.

3 66. As a result of their conduct, Defendants are liable for Julian's and
4 Plaintiffs' injuries, either because they were integral participants in the negligence,
5 or because they failed to intervene to prevent these violations.

6 67. Plaintiffs bring this claim as successors-in-interest to Julian, and seek
7 both survival and wrongful death damages under state law.

8 **SEVENTH CLAIM FOR RELIEF**

9 **Violation of Bane Act**

10 **(Cal. Civil Code § 52.1)**

11 **(By Plaintiffs in their capacities as successors-in-interest to Julian Collender
12 and in their individual capacities)**

13 **(Against All Defendants)**

14 68. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
15 67 of this Complaint with the same force and effect as if fully set forth herein.

16 69. As alleged herein, Defendants interfered by threats, intimidation, or
17 coercion with Plaintiffs' and Plaintiffs' decedent's rights under state and federal
18 laws and under the state and federal Constitution, including, without limitation,
19 the right to be free from excessive force, unreasonable search and seizure, false
20 arrest, the right to due process, and the right to bodily integrity, including their
21 rights under Civil Code Section 43, Penal Code Sections 149, 240 and 242, and
22 their rights under the Fourth and Fourteenth Amendments to the United States
23 Constitution and their rights under Article 1, Sections 1, 7 and/or 13 of the
24 California Constitution.

25 70. Defendants' conduct caused Julian extreme pain and suffering, and loss
26 of life and earning capacity. Defendants' actions also deprived Plaintiffs of the
27 life-long love, companionship, support, society, care, and sustenance of their son
28 Julian, and they will continue to be so deprived for the remainder of their lives.

1 Defendants' conduct also caused Plaintiffs extreme emotional and physical
2 distress.

3 71. As a result of their conduct, Defendants are liable for Julian's and
4 Plaintiffs' injuries, either because they were integral participants in the
5 misconduct, or because they failed to intervene to prevent these violations.

6 72. As a direct and legal result of Defendants' acts and omissions,
7 Plaintiffs suffered damages, including, without limitation, loss of earnings and
8 earning capacity, loss of enjoyment of life, pain and suffering, physical injuries
9 and sickness, emotional distress, medical expenses, funeral and burial expenses,
10 attorneys' fees, costs of suit, other pecuniary losses not yet ascertained and the loss
11 of Julian's love, affection, society and companionship.

12 73. Plaintiffs are informed and believe and thereon allege that the acts of
13 the individual Defendants were willful, malicious, intentional, oppressive, reckless
14 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
15 and safety and those of their son, thereby justifying the awarding of punitive and
16 exemplary damages in an amount to be determined at time of trial.

17 74. Plaintiffs bring this claim as successors-in-interest to Julian, and seek
18 both survival and wrongful death damages under state law.

19 **EIGHTH CLAIM FOR RELIEF**

20 **Unreasonable Search and Seizure—Search, Detention, False Arrest and**

21 **Excessive Force**

22 **(42 U.S.C. § 1983)**

23 **(By Plaintiffs in their individual capacities)**

24 **(Against All Defendants)**

25 75. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
26 74 of this Complaint with the same force and effect as if fully set forth herein.

27 76. Defendants detained and arrested Plaintiffs in violation of their rights to
28 be secure in their persons against unreasonable searches and seizures by grabbing

1 them, pointing guns at them, handcuffing them, and detaining them in squad cars
2 for unreasonable periods of time, in view of their neighbors, and while dressed in
3 only their night clothes, and then refusing to allow them to return to their home.

4 77. Defendants' conduct caused Plaintiffs extreme physical injury and
5 sickness as well as extreme emotional distress and humiliation.

6 78. As a result of their conduct, Defendants are liable for Plaintiffs'
7 injuries, either because they were integral participants in the misconduct, or
8 because they failed to intervene to prevent these violations.

9 79. Plaintiffs are informed and believe and thereon allege that the acts of the
10 individual Defendants were willful, malicious, intentional, oppressive, reckless
11 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
12 and safety, thereby justifying the awarding of punitive and exemplary damages in
13 an amount to be determined at time of trial.

14 80. As a direct and legal result of Defendants' acts and omissions,
15 Plaintiffs have suffered damages, including, without limitation, loss of earnings
16 and earning capacity, loss of enjoyment of life, pain and suffering, emotional
17 distress, medical expenses, funeral expenses, attorneys' fees, costs of suit, other
18 pecuniary losses not yet ascertained.

19 **NINTH CLAIM FOR RELIEF**

20 **Unreasonable Search and Seizure—Warrantless Search**

21 **(42 U.S.C. § 1983)**

22 **(By Plaintiffs in their individual capacities)**

23 **(Against All Defendants)**

24 81. Plaintiffs repeat and reallege each and every allegation in paragraphs 1-
25 80 of this Complaint with the same force and effect as if fully set forth herein.

26 82. Defendants made a warrantless, non-consensual entry into Plaintiffs'
27 residence and denied them re-entry for an unreasonable amount of time. Plaintiffs
28 were forced to stand outside their home for hours in full view of their neighbors

1 wearing only their night clothes. Plaintiffs were not allowed to re-enter their
2 home, even to get more substantial clothes, wallets, or keys.

3 83. Defendants' conduct also caused Plaintiffs' extreme emotional and
4 physical distress and humiliation.

5 84. The claim against defendant Brea and other unknown BPD employees is
6 based upon Plaintiffs' allegations that Brea's policies or customs were a cause of
7 the injuries suffered by Julian and Plaintiffs herein, as set forth in paragraph 10
8 above.

9 85. As a result of their conduct, Defendants are liable for Plaintiffs'
10 injuries, either because they were integral participants in the misconduct, or
11 because they failed to intervene to prevent these violations.

12 86. As a result of their conduct, Defendants are liable for Plaintiffs'
13 injuries, either because they were integral participants in the misconduct, or
14 because they failed to intervene to prevent these violations.

15 87. Plaintiffs are informed and believe and thereon allege that the acts of the
16 individual Defendants were willful, malicious, intentional, oppressive, reckless
17 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
18 and safety, thereby justifying the awarding of punitive and exemplary damages in
19 an amount to be determined at time of trial.

20 88. As a direct and legal result of Defendants' acts and omissions, and each
21 of them, Plaintiffs have suffered damages, including, without limitation, loss of
22 earnings and earning capacity, loss of enjoyment of life, pain and suffering,
23 emotional distress, medical expenses, funeral expenses, attorneys' fees, costs of
24 suit, other pecuniary losses not yet ascertained.

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1 because they failed to intervene to prevent these violations.

2 94. Plaintiffs are informed and believe and thereon allege that the acts of the
3 individual Defendants were willful, malicious, intentional, oppressive, reckless
4 and/or were done in willful and conscious disregard of Plaintiffs' rights, welfare
5 and safety, thereby justifying the awarding of punitive and exemplary damages in
6 an amount to be determined at time of trial.

7 95. As a direct and legal result of Defendants' acts and omissions, Plaintiffs
8 have suffered damages, including, without limitation, loss of earnings and earning
9 capacity, loss of enjoyment of life, pain and suffering, physical injuries and
10 sickness, emotional distress, medical expenses, funeral and burial expenses,
11 attorneys' fees, costs of suit, other pecuniary losses not yet ascertained and the loss
12 of Julian's love, affection, society and companionship.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs' request entry of judgment in their favor and
15 against Defendants as follows:

16 a. For compensatory damages, including both survival damages and
17 wrongful death damages under federal and state law, and interest, in an amount to
18 be determined at trial;


19 b. For punitive damages against individual Defendants in an amount to be
20 proven at trial;

21 c. For reasonable costs of this suit and attorneys' fees; and

22 d. For such further relief as the Court may deem just, proper, and
23 appropriate.

24 Dated: July 26, 2011

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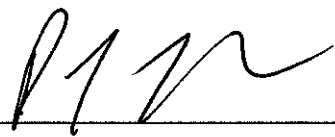
By Paul L. Hoffman
Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: July 26, 2011



By Paul L. Hoffman
Attorney for Plaintiffs