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FILED
 SUPERIOR COURT
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

AUG 30 2011

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 COUNTY OF SAN BERNARDINO

17 ESTATE OF ALLEN KEPHART by and
 through his Successor in Interest CAROL
 18 KEPHART; ALFRED and CAROL
 KEPHART, as heirs at law of decedent
 19 ALLEN KEPHART,

20 Plaintiff,

21 v.

22 COUNTY OF SAN BERNARDINO; SAN
 BERNARDINO COUNTY SHERIFF'S
 23 DEPARTMENT; DEPUTY ISMAEL DIAZ,
 in his individual capacity, SERGEANT
 24 BRYAN LANE, in his individual capacity;
 DEPUTY MICHAEL GARDEA, in his
 25 individual capacity; and DOES 1 through 50,
 Inclusive,

26 Defendant.

Case No. CIVDS1110314

COMPLAINT FOR SURVIVAL AND
 WRONGFUL DEATH DAMAGES DUE
 TO:

1. ASSAULT & BATTERY
2. NEGLIGENCE
3. VIOLATIONS OF CIVIL CODE §52.1

DEMAND FOR JURY TRIAL

DECLARATION OF CAROL KEPHART
 AS SUCCESSOR-IN-INTEREST TO
 ALLEN KEPHART; DECLARATION
 OF THOMAS A. SCHULTZ

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1 Plaintiffs, THE ESTATE OF ALLEN KEPHART by and through his Successor in Interest
2 CAROL KEPHART, and ALFRED KEPHART and CAROL KEPHART, as heirs at law of
3 decedent ALLEN KEPHART, bring this Action against Defendants COUNTY OF SAN
4 BERNARDINO; SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT; DEPUTY
5 ISMAEL DIAZ, an individual, SERGEANT BRYAN LANE, an individual; DEPUTY MICHAEL
6 GARDEA, an individual; and DOES 1 through 50, Inclusive, and each of them. Plaintiff
7 complains and alleges as follows:

8 **GENERAL ALLEGATIONS**

9 1. At all relevant times mentioned herein, Plaintiffs CAROL KEPHART, ALFRED
10 KEPHART and plaintiff's decedent ALLEN KEPHART, were residents of the State of California,
11 County of San Bernardino.

12 2. At all relevant times mentioned herein, Defendants COUNTY OF SAN
13 BERNARDINO and SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT were, and
14 are, municipal corporations organized and existing under the laws of the State of California.

15 3. At all relevant times mentioned herein, Defendants DEPUTY ISMAEL DIAZ,
16 SERGEANT BRYAN LANE, and DEPUTY MICHAEL GARDEA, were employed by the
17 Defendants COUNTY OF SAN BERNARDINO and SAN BERNARDINO COUNTY
18 SHERIFF'S DEPARTMENT, acting in the course and scope of their employment for such
19 municipal corporations and under color of state law. These defendants are being sued herein in
20 their individual capacity.

21 4. At all relevant times, CAROL KEPHART was the mother, and ALFRED
22 KEPHART was the father, of decedent ALLEN KEPHART, who had neither a spouse or children,
23 thereby qualifying CAROL KEPHART as a Successor-in-Interest, for purposes of maintaining a
24 claim for survival damages. Further, for these same reasons, at all relevant times, CAROL
25 KEPHART and ALFRED KEPHART, are the heirs at law of the decedent, for purposes of
26 wrongful death damages.

27 5. The true names and capacities, whether individual, plural, corporate, partnership,
28 associate, or otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiffs who therefore

1 sue said Defendants by such fictitious names. The full extent of the facts linking such fictitiously
2 sued Defendants is unknown to Plaintiffs. Plaintiffs are informed and believe, and thereon allege,
3 that each of the Defendants designated herein as a DOE was, and is, in some actionable manner
4 responsible for the events and happenings hereinafter referred to, and thereby legally and
5 proximately caused the hereinafter described injuries and damages to Plaintiffs. Plaintiffs will
6 hereafter seek leave of the Court to amend this Complaint to show the Defendants' true names and
7 capacities after the same have been ascertained. Plaintiffs are informed and believe, and thereon
8 allege, that at all times mentioned herein, Defendants and DOES 1 through 50, inclusive, and each
9 of them, were agents, servants, employees, successors in interest, and/or joint venturers of their
10 co-Defendants, and were, as such, acting within the course, scope, and authority of said agency,
11 employment, and/or venture.

12 6. On June 27, 2011, a Claim for Damages was presented pursuant to and in
13 substantial compliance with California Government Code §910 for damages sustained as a result
14 of the incident alleged herein. Said claims were rejected on or about July 13, 2011, thus giving
15 Plaintiffs standing to present these claims.

16 7. This Complaint concerns an incident which occurred during the afternoon hours of
17 May 10, 2011 occurring just on Highway 18, at or near the Valero Gas Station, in Rim Forest,
18 California, in the County of San Bernardino.

19 8. On or shortly before 3:00 p.m., decedent ALLEN KEPHART was driving his
20 vehicle in a normal, orderly and lawful fashion. At about this time, ALLEN KEPHART honked
21 his vehicle's horn at a police vehicle being driven by defendant DEPUTY ISMAEL DIAZ when
22 DEPUTY ISMAEL DIAZ turned in front of him at the intersection. Angered by this, DEPUTY
23 ISMAEL DIAZ initiated an unauthorized traffic stop, without any justification. In this regard,
24 DEPUTY ISMAEL DIAZ maneuvered his police vehicle behind ALLEN KEPHART's vehicle
25 and turned on his police vehicle lights. In response to this ALLEN KEPHART, looked for a place
26 to pull over, but there was no roadway shoulder for him to do so safely, so ALLEN KEPHART
27 proceeded in a slow fashion to the Valero Gas station, which was in close proximity to where they
28 were and would allow him enough space to safely pull over.

1 9. ALLEN KEPHART and his family have lived in the area where the events
2 described above and below occurred for over thirty years. ALLEN KEPHART was well known
3 person in the community and was known by all, including the officers involved in this incident, to
4 be a kind hearted and non-violent.

5 10. As ALLEN KEPHART pulled into the Valero Gas Station, suddenly and without
6 warning or provocation, Defendant DEPUTY ISMAEL DIAZ, pulled his gun out and ordered
7 ALLEN KEPHART to get out of his vehicle at gunpoint. Confused by this action, ALLEN
8 KEPHART raised his hands in the air. DEPUTY ISMAEL DIAZ then proceeded to move up
9 behind ALLEN KEPHART and proceeded to throw ALLEN KEPHART face first to the ground.
10 DEPUTY ISMAEL DIAZ was then joined by DEPUTY MICHAEL GARDEA and SERGEANT
11 BRYAN LANE.

12 11. DEPUTY ISMAEL DIAZ, SERGEANT BRYAN LANE and DEPUTY
13 MICHAEL GARDEA, then began using their County Issued Taser weapons on ALLEN
14 KEPHART, again without provocation or justification. Over a period of approximately 10
15 minutes, they tased ALLEN KEPHART repeatedly, expending five cartridges using multiple
16 tasers at the same time, shooting him in the upper back, neck and head and inflicting great pain on
17 ALLEN KEPHART, who was overheard screaming for help. At this time, while numerous
18 witnesses were observing the attack upon ALLEN KEPHART, one or more witnesses pleaded
19 with the officers to stop or they would kill him, which additional cries for help unfortunately they
20 ignored. ALLEN KEPHART stopped breathing and died at the Valero Gas Station in Rim Forest
21 following this attack..

22 12. While this was occurring, additional deputies employed by the County of San
23 Bernardino harassed ALLEN KEPHART by laughing and refusing to stop the abuse committed
24 upon ALLEN KEPHART, further injuring ALLEN KEPHART's psyche and causing him
25 emotional distress, while the aforementioned physical abuse was occurring.

26 13. Both prior to and during the time in which ALLEN KEPHART was stopped with
27 his the officer's gun drawn, thrown to the ground, physically abused and tased, ALLEN
28 KEPHART posed no reasonable threat of violence to any of the Defendants nor to any other

1 individual.

2 14. As a result of the conduct above, ALLEN KEPHART went into respiratory and/or
3 cardiac arrest at or about and between 3:10 p.m. to 3:15 p.m., which was the officers involved
4 were aware of. For a period of 10 to 15 minutes, while ALLEN KEPHART was in obvious
5 respiratory and/or cardiac arrest, the officers involved failed to perform any CPR and failed to call
6 for emergency medical assistance until approximately 3:28 p.m.

7 15. At approximately 3:32 p.m., emergency medical personnel finally arrived, but by
8 the time they did, ALLEN KEPHART had no blood pressure, no pulse and no respirations. The
9 emergency medical personnel performed resuscitative measures to ALLEN KEPHART in the field
10 from between 3:32 p.m. and 3:50 p.m. at which time they transported ALLEN KEPHART to
11 Mountains Community Hospital.

12 16. Upon arrival to the hospital at 4:00 p.m., ALLEN KEPHART was noted by the
13 medical personnel there to have a bloody face with 2 taser wires still stuck in his periscapular area.
14 By this time, ALLEN KEPHART still had no pulse and his heart was in a systole with his pupils
15 fixed and dilated. Resuscitative efforts continued at the hospital until 4:25 p.m. and ALLEN
16 KEPHART was pronounced dead at 4:27 p.m. on May 10, 2011.

17
18 **FIRST CAUSE OF ACTION**

19 **SURVIVAL AND WRONGFUL DEATH (BATTERY) - C.C.P. §377.30 and 377.60**

20 **By Plaintiffs Against DEPUTY ISMAEL DIAZ; DEPUTY MICHAEL GARDEA;**

21 **SERGEANT BRYAN LANE and DOES 1 through 10**

22 17. Plaintiffs restate and incorporate by reference allegations 1 through 16 in this
23 Complaint as if set forth in full at this point.

24 18. Plaintiffs are informed and believe, and thereupon allege, that Defendants
25 DEPUTY ISMAEL DIAZ; DEPUTY MICHAEL GARDEA; SERGEANT BRYAN LANE and
26 DOES 1 through 10, and each of them, deliberately used excessive force against ALLEN
27 KEPHART without lawful excuse and justification, and willfully and unlawfully committed a
28 battery on the person of ALLEN KEPHART. At the time of the aforementioned battery, ALLEN

1 KEPHART posed absolutely no threat to Defendants or anyone else whatsoever.

2 19. The conduct of Defendants DEPUTY ISMAEL DIAZ; DEPUTY MICHAEL
3 GARDEA; SERGEANT BRYAN LANE and DOES 1 through 10, and each of them, described
4 herein above, was done within the course and scope of their employment, agency and/or service
5 with Defendants COUNTY OF SAN BERNARDINO and/or COUNTY OF SAN BERNARDINO
6 SHERIFF'S DEPARTMENT, and under color of their authority, and Defendants COUNTY OF
7 SAN BERNARDINO and/or COUNTY OF SAN BERNARDINO SHERIFF'S DEPARTMENT,
8 and each of them, are, therefore, vicariously liable for same under Government Code §§815.2,
9 815.3 and 820.

10 20. As a direct and proximate result of the aforesaid conduct of the Defendants, and
11 each of them, and the resultant death of ALLEN KEPHART, Plaintiffs have suffered loss of
12 earnings and earnings capacity of ALLEN KEPHART, have incurred liability for funeral and
13 burial expenses, and sustained mental injuries, including, but not limited to, loss of love, affection,
14 comfort, care, companionship, and support of their beloved son, as well as loss of financial
15 support, in an amount to be determined.

16 21. Plaintiffs further suffered loss of the reasonable pecuniary value of future earnings
17 of ALLEN KEPHART, and Plaintiffs will continue to incur such liability and sustain such
18 damages for an indefinite time in the future, all to their special damages and amounts to be
19 determined.

20 22. The aforementioned acts of Defendants DEPUTY ISMAEL DIAZ; DEPUTY
21 MICHAEL GARDEA; SERGEANT BRYAN LANE and DOES 1 through 10 were done by them
22 knowingly, intentionally, and maliciously, for the purpose of harassment, oppression and inflicting
23 injury upon ALLEN KEPHART, and in reckless, wanton and callous disregard of his safety,
24 security and Civil Rights. ALLEN KEPHART survived for a period of time and, therefore,
25 suffered extreme physical and mental pain prior to his horrible death. Plaintiffs therefore claim
26 exemplary and punitive damages from the individual Defendants in an amount according to proof
27 at trial in excess of the jurisdictional minimum of this court.

28 ///

1 27. Plaintiffs further suffered loss of the reasonable pecuniary value of future earnings
2 of ALLEN KEPHART, and Plaintiffs will continue to incur such liability and sustain such
3 damages for an indefinite time in the future, all to their special damages and amounts to be
4 determined.

5 28. The aforementioned acts of Defendants DEPUTY ISMAEL DIAZ; DEPUTY
6 MICHAEL GARDEA; SERGEANT BRYAN LANE and DOES 1 through 10 were done by them
7 knowingly, intentionally, and maliciously, for the purpose of harassment, oppression and inflicting
8 injury upon ALLEN KEPHART, and in reckless, wanton and callous disregard of his safety,
9 security and Civil Rights. ALLEN KEPHART survived for a period of time and, therefore,
10 suffered extreme physical and mental pain prior to his horrible death. Plaintiffs therefore claim
11 exemplary and punitive damages from the individual Defendants in an amount according to proof
12 at trial in excess of the jurisdictional minimum of this court.

13 29. Pursuant to Cal. Civ. Code §52(b)(2) Plaintiffs are further entitled to a civil penalty
14 of \$25,000.00.

15
16 **PRAYER**

17 **WHEREFORE**, plaintiffs request relief as follows, and according to proof, against each
18 defendant:

- 19 1. General and compensatory damages in an amount according to proof against all
20 defendants;
- 21 2. Hospital and medical expenses against all defendants;
- 22 3. Funeral and burial expenses against all defendants;
- 23 4. Loss of household services and other special damages in an amount according to proof
24 against all defendants;
- 25 5. Statutory damages, including damages pursuant to Civil Code §§52(b)(2), 52(b)(3) and
26 52.1(b);
- 27 6. Costs of suit and prejudgment interest as awardable by law, against all defendants;
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- 7. Exemplary and punitive damages against each defendant, other than the County of San Bernardino Sheriff's Department and the County of San Bernardino, in an amount according to proof;
- 8. Attorneys' fees, including pursuing to Civil Code §§52(b)(3) and 52.1(h); and
- 9. Such other relief as may be warranted or as is just and proper.

DATED: August 30, 2011

Respectfully submitted,

PANISH SHEA & BOYLE LLP

By: 
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Attorneys for PLAINTIFF

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all causes of action.

DATED: August 30, 2011

Respectfully submitted,

PANISH SHEA & BOYLE LLP

By: 

Thomas A. Schultz
Attorneys for PLAINTIFF