

1 Dana L. Douglas, SBN 158548  
2 Diana Lopez, SBN 267337  
3 James F. Rumm, SBN 224412  
4 **DOUGLAS, LOPEZ & RUMM, LLP**  
5 333 S. Anita Drive, Suite 780  
6 Orange, CA 92868  
7 Telephone: (714) 634-3800  
8 Facsimile: (866) 927-0571

9 Attorney for Plaintiffs

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**10/15/2012** at 09:58:31 AM  
Clerk of the Superior Court  
By Fidel Ibarra, Deputy Clerk

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

CHRISTINE VILLEGAS, a minor, by  
and through her Guarding Ad Litem,  
MIGUEL VILLEGAS; RICEZEN  
VILLEGAS, a minor, by and through his  
Guarding Ad Litem MIGUEL  
VILLEGAS; DANIEL VILLEGAS, a  
minor, by and through his Guarding Ad  
Litem MIGUEL VILLEGAS; ESTATE  
OF BERNIE CERVANTES VILLEGAS,

Plaintiffs,

vs.

CITY OF ANAHEIM, a California  
municipal entity; ANAHEIM POLICE  
DEPARTMENT, a California municipal  
entity; JOHN WELTER; OFFICER DOE  
1; OFFICER DOE 2; OFFICER DOE 3;  
OFFICER DOE 4; OFFICER DOE 5; and  
Does 1-10, inclusive,

Defendants.

CASE NO: 30-2012-00605031-CU-PP-CJC

**CIVIL COMPLAINT FOR  
DAMAGES FOR:**

1. **WRONGFUL DEATH**
2. **NEGLIGENCE**
3. **NEGLIGENT HIRING,  
RETENTION AND TRAINING**
4. **DEPRIVATION OF CIVIL  
RIGHTS UNDER COLOR OF  
LAW**
5. **DEPRIVATION OF CIVIL  
RIGHTS UNDER COLOR OF  
LAW (MONELL CLAIM)**

**DEMAND FOR JURY TRIAL**

Judge Derek W. Hunt

**C-24**

CHRISTINE VILLEGAS, a minor, RICEZEN VILLEGAS, a minor, and DANIEL  
VILLEGAS, a minor, by and through their Guardian Ad Litem MIGUEL VILLEGAS and the  
ESTATE OF BERNIE CERVANTES VILLEGAS allege as follows:

1 **INTRODUCTION**

2 1. Plaintiffs seek judgment against Defendants the City of Anaheim, Anaheim Police  
3 Department, John Welter, Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4, Officer  
4 Doe 5 and DOES 1-10 Defendants, for the wrongful death as the result of shooting and  
5 subsequent death of Bernie Cervantes Villegas by officers of the Anaheim Police Department on  
6 January 7, 2012 in the City of Anaheim, California.

7 2. It is herein alleged that Defendants, Officer Doe 1, Officer Doe 2, Officer Doe 3,  
8 Officer Doe 4 and Officer Doe 5, without legal cause or excuse, unreasonably shot and killed  
9 decedent Bernie Cervantes Villegas, on January 7, 2012.

10 **THE PARTIES**

11 3. At all times herein mentioned, Plaintiff Christine Villegas is, and was, an  
12 individual residing in the County of Orange, State of California and a surviving natural daughter  
13 of decedent Bernie Cervantes Villegas. Plaintiff Christine Villegas is an “heir at law” of  
14 decedent Bernie Cervantes Villegas and is one of the surviving “children” of decedent Bernie  
15 Cervantes Villegas as that term is defined by California Code of Civil Procedure Section  
16 377.60(a) and elsewhere, born on February 4, 1998 and has legal standing to maintain an action  
17 for wrongful death based upon the death of her father, Bernie Cervantes Villegas, under  
18 California Code of Civil Procedure Section 377.60.

19 4. At all times herein mentioned, Plaintiff Ricezen Villegas is, and was, an  
20 individual residing in the County of Orange, State of California and a surviving natural son of  
21 decedent Bernie Cervantes Villegas. Plaintiff Ricezen Villegas is an “heir at law” of decedent  
22 Bernie Cervantes Villegas and is one of the surviving “children” of decedent Bernie Cervantes  
23 Villegas as that term is defined by California Code of Civil Procedure Section 377.60(a) and  
24 elsewhere, born on August 6, 1999 and has legal standing to maintain an action for wrongful  
25 death based upon the death of his father, Bernie Cervantes Villegas, under California Code of  
26 Civil Procedure Section 377.60.

27 5. At all times herein mentioned, Plaintiff Daniel Villegas is, and was, an individual  
28 residing in the Country of the Philippines and a surviving natural son of decedent Bernie

1 Cervantes Villegas. Plaintiff Daniel Villegas is an "heir at law" of decedent Bernie Cervantes  
2 Villegas and is one of the surviving "children" of decedent Bernie Cervantes Villegas as that  
3 term is defined by California Code of Civil Procedure Section 377.60(a) and elsewhere, born on  
4 April 2, 2005, and has legal standing to maintain an action for wrongful death based upon the  
5 death of his father, Bernie Cervantes Villegas, under California Code of Civil Procedure Section  
6 377.60.

7 6. Plaintiff, The Estate of Bernie Cervantes Villegas appears by and through its  
8 successors-in-interests and representatives Christine Villegas, a minor, Ricezen Villegas, a  
9 minor, and Daniel Villegas through their Guardian Ad Litem Miguel Villegas.

10 7. Upon information and belief, defendant, City of Anaheim ("Anaheim"), is and  
11 was, at all times relevant to the matters alleged in this complaint, a municipal entity organized  
12 under the laws of the State of California, County of Orange, and the public employer of the  
13 police officers named as defendants in this action.

14 8. Upon information and belief, defendant, Anaheim Police Department ("Police  
15 Department"), is and was, at all times relevant herein to the matters alleged in this complaint, a  
16 separate department of Defendant Anaheim, organized under the law of the State of California,  
17 County of Orange, City of Anaheim.

18 9. Upon information and belief, defendant, Officer John Welter ("Welter"), was at  
19 all times relevant to the matters alleged in this complaint, the Chief of Police of Defendant  
20 Anaheim Police Department. Defendant Welter was individually and in his official capacity as  
21 Chief of Police, Anaheim Police Department, the head policy maker of the Anaheim Police  
22 Department.

23 10. Upon information and belief, defendant, Officer Doe 1, is and was, at all times  
24 relevant herein to the matters alleged in this complaint, a police officer with the Anaheim Police  
25 Department. At all times herein mentioned, Defendant Officer Doe 1 is, and was, a police  
26 officer employed by Defendants Anaheim and Police Department and, in doing the things herein  
27 alleged, was acting within the course and scope of his employment and was acting under color of  
28 law. Plaintiffs are unaware of the true name of Officer Doe 1 and Plaintiffs will amend this

1 complaint to allege said defendant's true name becomes known to them.

2 11. Upon information and belief, defendant, Officer Doe 2, is and was, at all times  
3 relevant herein to the matters alleged in this complaint, a police officer with the Anaheim Police  
4 Department. At all times herein mentioned, Defendant Officer Doe 2 is, and was, a police  
5 officer employed by Defendants Anaheim and Police Department and, in doing the things herein  
6 alleged, was acting within the course and scope of his employment and was acting under color of  
7 law. Plaintiffs are unaware of the true name of Officer Doe 2 and Plaintiffs will amend this  
8 complaint to allege said defendant's true name becomes known to them.

9 12. Upon information and belief, defendant, Officer Doe 3, is and was, at all times  
10 relevant herein to the matters alleged in this complaint, a police officer with the Anaheim Police  
11 Department. At all times herein mentioned, Defendant Officer Doe 3 is, and was, a police  
12 officer employed by Defendants Anaheim and Police Department and, in doing the things herein  
13 alleged, was acting within the course and scope of his employment and was acting under color of  
14 law. Plaintiffs are unaware of the true name of Officer Doe 3 and Plaintiffs will amend this  
15 complaint to allege said defendant's true name becomes known to them.

16 13. Upon information and belief, defendant, Officer Doe 4, is and was, at all times  
17 relevant herein to the matters alleged in this complaint, a police officer with the Anaheim Police  
18 Department. At all times herein mentioned, Defendant Officer Doe 4 is, and was, a police  
19 officer employed by Defendants Anaheim and Police Department and, in doing the things herein  
20 alleged, was acting within the course and scope of his employment and was acting under color of  
21 law. Plaintiffs are unaware of the true name of Officer Doe 4 and Plaintiffs will amend this  
22 complaint to allege said defendant's true name becomes known to them.

23 14. Upon information and belief, defendant, Officer Doe 5, is and was, at all times  
24 relevant herein to the matters alleged in this complaint, a police officer with the Anaheim Police  
25 Department. At all times herein mentioned, Defendant Officer Doe 5 is, and was, a police  
26 officer employed by Defendants Anaheim and Police Department and, in doing the things herein  
27 alleged, was acting within the course and scope of his employment and was acting under color of  
28 law. Plaintiffs are unaware of the true name of Officer Doe 5 and Plaintiffs will amend this

1 complaint to allege said defendant's true name becomes known to them.

2 15. In addition to the facts alleged in the following paragraphs, the following  
3 defendants are all sued in their individual and official capacities and all acted within the scope of  
4 their employment and under color of state law, to wit, under color of statutes, ordinances,  
5 regulations, policies, customs and usages of the State of California and/or the City of Anaheim:

6 a. Defendant Welter, at all times relevant herein, the Chief of Police of the City of  
7 Anaheim;

8 b. Defendants Anaheim Police Department Officer Doe 1, Officer Doe 2, Officer  
9 Doe 3, Officer Doe 4 and Officer Doe 5 and others, the identity and number of  
10 whom are presently unknown to Plaintiffs, were, at all times relevant herein to the  
11 matters alleged in this complaint, employed as police officers by Defendant  
12 Anaheim and Police Department.

13 16. Plaintiffs are unaware of the true names and capacities of those defendants sued  
14 herein as DOE defendants. Plaintiffs will amend this complaint to allege said defendants' true  
15 names and capacities when that information becomes known to them. Plaintiffs are informed  
16 and believe, and thereon allege, that these DOE defendants are legally responsible and liable for  
17 the incident, injuries and damages hereinafter set forth, and that each of said defendants legally  
18 and approximately caused the injuries and damages by reason of negligent, careless, deliberately  
19 indifferent, intentional, willful or wanton misconduct, including the negligent, careless,  
20 deliberately indifferent, intentional, willful and wanton misconduct in creating and otherwise  
21 causing the incidents, conditions and circumstances hereinafter set forth, by reason of direct or  
22 imputed negligence or vicarious fault or breach of duty arising out of the matters herein alleged.  
23 Plaintiffs will seek leave to amend this complaint to set forth said true names and identities of the  
24 unknown DOE defendants when they are ascertained.

25 17. Plaintiffs are informed and believe, and thereon allege, that, at all times herein  
26 mentioned, each of the defendants was the agent and/or employee and/or co-conspirator of each  
27 of the remaining defendants, and in doing the things hereinafter alleged, was acting within the  
28 scope of such agency, employment and/or conspiracy and with the permission and consent of the

1 other co-defendants. The acts of each of the Defendants were adopted by and ratified by the  
2 remaining Defendants.

3 18. Defendants Anaheim, Police Department and Welter either encouraged, assisted,  
4 ratified and/or with deliberate indifference failed to prevent any of the acts complained of herein.

5 **FACTS COMMON TO ALL COUNTS**

6 19. On January 7, 2012, decedent, Bernie Cervantes Villegas, was in the City of  
7 Anaheim, in the parking lot of the apartment complex where he lived at 3633 W. Ball Rd., when  
8 he was killed by Anaheim police SWAT officers.

9 20. At approximately 11:00 p.m. on January 7, 2012, Decedent, Bernie Cervantes  
10 Villegas was in the parking area behind his apartment, talking with two friends who were sitting  
11 in a car parked in the lot.

12 21. At that time, Plaintiffs are informed, believe and thereon allege that Decedent  
13 Villegas had a small BB gun, which was a present for his son, plaintiff Ricezen Villegas.

14 22. Plaintiffs are informed, believe and thereon allege that Defendants Officer Doe 1,  
15 Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 (whose names are currently  
16 unknown to Plaintiffs), who are believed to be part of the Police Department SWAT Unit, ran  
17 down a 200-foot alleyway, and rounded the corner and swarmed into the area of the parking lot  
18 where decedent Bernie Cervantes Villegas was standing next to a parked car, talking to two  
19 friends who were seated in the parked vehicle.

20 23. Decedent was not threatening anyone, brandishing a firearm, in possession of any  
21 firearm or other weapon, or in any way posing a danger to the Defendant Officers, himself or  
22 others.

23 24. Plaintiffs are informed, believe and thereon allege that Defendants Officer Doe 1,  
24 Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 failed to ascertain whether or not  
25 Decedent, Bernie Cervantes Villegas, had a firearm, whether or not he was a threat to himself or  
26 to others, or whether there was any danger whatsoever.

27 25. Plaintiffs are informed, believe and thereon allege that Defendants Officer Doe 1,  
28 Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 failed to follow reasonable police

1 procedures, and instead shot and killed Bernie Cervantes Villegas where he stood, talking to  
2 friends, as soon as they rounded the corner into the parking lot area.

3 26. Plaintiffs are informed, believe and thereon allege that Bernie Cervantes Villegas  
4 had no interaction with the officers.

5 27. Plaintiffs are informed, believe and thereon allege that as soon as Defendants  
6 Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 swarmed into the  
7 parking lot area, they shot Bernie Cervantes Villegas and killed him.

8 28. Plaintiffs are informed, believe and thereon allege that as soon as Defendants  
9 Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 did not give any  
10 commands, warnings or instructions before shooting and killing decedent, Bernie Cervantes  
11 Villegas.

12 29. Plaintiffs are informed, believe and thereon allege that as soon as Defendants  
13 Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 did not attempt to  
14 ascertain whether decedent, Bernie Cervantes Villegas, had, brandished, used or threatened  
15 anyone with a firearm or deadly weapon of any kind.

16 30. Plaintiffs are informed, believe and thereon allege that as soon as Defendants  
17 Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 did not give  
18 decedent, Bernie Cervantes Villegas, any opportunity to save his life.

19 31. Plaintiffs are informed, believe and thereon allege that as soon as Defendants  
20 Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 did not give any  
21 demands to decedent, Bernie Cervantes Villegas, prior to shooting and killing him.

22 32. Plaintiffs are informed, believe and thereon allege that decedent, Bernie Cervantes  
23 Villegas, did not resist officers in any way.

24 33. In fact, Plaintiffs are informed, believe and thereon allege that decedent, Bernie  
25 Cervantes Villegas, had no time or opportunity to comply with officers, as they made no  
26 instructions, requests or demands of decedent, and instead simply shot him as they rushed into  
27 the parking lot.  
28

1           34.     Plaintiffs are informed, believe and thereon allege that only after Defendants  
2 Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 shot decedent,  
3 Bernie Cervantes Villegas, did they give any instructions, and those were only to the friends that  
4 decedent had been speaking with.

5           35.     Plaintiffs are informed, believe and thereon allege that those friends were sitting  
6 in a car that was parked in the parking lot, and which decedent, Bernie Cervantes Villegas, was  
7 standing next to, conversing with them.

8           36.     Plaintiffs are informed, believe and thereon allege that after Defendants Officer  
9 Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 shot and killed Bernie  
10 Cervantes, said officers shouted instructions to the friends in the car that they were to exit the  
11 vehicle and surrender, which they did.

12           37.     The unprovoked gunshots by Defendants Officer Doe 1, Officer Doe 2, Officer  
13 Doe 3, Officer Doe 4 and Officer Doe 5 resulted proximately and directly in the death of Bernie  
14 Cervantes Villegas.

15           38.     Plaintiffs are informed, believe and thereon allege that following the incident,  
16 Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5,  
17 created a blatantly false story that Bernie Cervantes Villegas had a shotgun, that he had waved or  
18 pointed a gun at officers, and that he had tried to threaten or attack officers, and this story was  
19 provided to the news media.

20           39.     Obviously, the story provided to the press is completely erroneous as Bernie  
21 Cervantes Villegas had no firearm, and held only a small BB gun by the end of the barrel,  
22 pointed upward while he stood and talked with friends, and as such he was not brandishing a  
23 weapon or threatening officers, or anyone else, in any manner.

24           40.     Plaintiffs are informed and believe that in the course of detaining Bernie  
25 Cervantes Villegas, Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and  
26 Officer Doe 5 unnecessarily and unjustifiably shot Bernie Cervantes Villegas, causing his death.  
27  
28



1           41. Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and  
2 Officer Doe 5's conduct was intentional, reckless and in violation of Bernie Cervantes Villegas'  
3 rights.

4           42. Plaintiffs are informed and believe that the force used by Defendants Officer Doe  
5 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 was unjustified and excessive.

6           43. Bernie Cervantes Villegas was unarmed, had committed no crime (nor was he  
7 subsequently charged with a crime) and was not a threat to the safety of Defendants or others.

8           44. Plaintiffs are informed and believe that Bernie Cervantes Villegas was not under  
9 the influence of alcohol, medication or a controlled substance at the time and place of this  
10 incident.

11           45. As a direct and proximate result of the aforementioned acts of Defendants, and  
12 each of them, Bernie Cervantes Villegas suffered the following injuries and damages for which  
13 Plaintiffs may recover:

- 14           a. Violation of Bernie Cervantes Villegas' Constitutional Rights;
- 15           b. Loss of the life of Bernie Cervantes Villegas including the value of his life;
- 16           c. Conscious physical pain, suffering and emotional trauma during the incident of  
17           January 7, 2012 until his death.
- 18           d. Decedent Bernie Cervantes Villegas' medical bills incurred attempting to save his  
19           life.

20           46. As a direct and proximate result of the actions of Defendants, and each of them,  
21 Plaintiffs have also suffered the following injuries, including but not limited to:

- 22           a. Loss of love, aide, comfort and society due to the death of decedent Bernie  
23           Cervantes Villegas, according to proof;
- 24           b. Loss of economic support of decedent Bernie Cervantes Villegas; and
- 25           c. Funeral and burial expenses according to proof.

26           47. Defendants Anaheim and Police Department are liable through the application of  
27 *respondeat superior* pursuant to Sections 815.2, 820 and 825 of the California Government Code  
28

1 for the acts of its employees named herein who at all times alleged herein were acting within the  
2 course and scope of their employment with said public entities.

3 48. On June 28, 2012, a claim was presented by Plaintiffs to Defendant Anaheim  
4 pursuant to and in substantial compliance with California Government Code section 910 for  
5 damages sustained as a result of the incident set forth below. On August 13, 2012, said claim  
6 was rejected by operation of law, and the current Complaint is timely filed as to all State claims.  
7 All prerequisite California Government Code claims filing requirements in relation to this case  
8 have been satisfied as to Defendants Anaheim and Police Department, Officer Doe 1, Officer  
9 Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 and Police Chief John Welter.

10 **FIRST CAUSE OF ACTION**

11 (By All Plaintiffs Against All Defendants and DOES 1-10

12 **For INTENTIONAL WRONGFUL DEATH (C.C.P. §377.60))**

13 49. Plaintiffs repeat and reallege each and every allegation of the foregoing  
14 paragraphs 1 through 50 as though fully set forth hereinafter.

15 50. On or about January 7, 2012, defendants, and each of them, acting within the  
16 course and scope of their employment with the Anaheim Police Department, forcefully assaulted  
17 Plaintiffs' decedent, Bernie Cervantes Villegas, and, Plaintiffs are informed and believe, that in  
18 the course of assaulted Plaintiffs' decedent, Defendants Officer Doe 1, Officer Doe 2, Officer  
19 Doe 3, Officer Doe 4 and Officer Doe 5, fatally shot Plaintiffs' decedent by applying  
20 unnecessary, intentional and unsafe use of force upon Plaintiffs' decedent, Bernie Cervantes  
21 Villegas. As a result of Defendants' actions Plaintiffs' decedent, Bernie Cervantes Villegas, died  
22 shortly thereafter.

23 51. Moreover, as a legal, direct and proximate cause of the aforesaid conduct,  
24 Plaintiffs have suffered, and continue to suffer the loss of Plaintiffs' decedent, Bernie Cervantes  
25 Villegas.

26 52. Said assault and battery was not consented to by Plaintiffs' decedent, Bernie  
27 Cervantes Villegas, nor was the defendants' infliction of serious bodily injury upon Plaintiffs'  
28 decedent privileged or immunized by the laws of the State of California.

1 53. Each of the individual defendants and the municipal defendants acted in concert  
2 and without authorization of law and each of the individual defendants, separately and in concert,  
3 acted willfully, knowingly, with reckless disregard and callous indifference, and purposely with  
4 the intent to deprive Plaintiffs of his rights and privileges, and did in fact violate the  
5 aforementioned rights and privileges, entitling Plaintiffs to exemplary and punitive damages  
6 against the individual defendants Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and  
7 Officer Doe 5 in an amount to be proven at the trial of this matter.

8 54. As a direct and proximate result of the actions of Defendants, and each of them,  
9 Plaintiffs have also suffered the following injuries, including but not limited to:

- 10 a. Loss of love, aide, comfort and society due to the death of decedent, Bernie  
11 Cervantes Villegas, according to proof;
- 12 b. Loss of economic support of decedent Bernie Cervantes Villegas; and
- 13 c. Funeral and burial expenses according to proof.

14 **SECOND CAUSE OF ACTION**

15 **(By Plaintiffs Against All Defendants and DOES 1-10 For NEGLIGENT WRONGFUL**  
16 **DEATH (C.C.P. §377.60))**

17 55. Plaintiffs repeat and reallege each and every allegation of the foregoing  
18 paragraphs 1 through 56 as though fully set forth hereinafter.

19 56. On or about January 7, 2012, defendants Officer Doe 1, Officer Doe 2, Officer  
20 Doe 3, Officer Doe 4 and Officer Doe 5 so negligently attempted to restrain and detain by use of  
21 deadly force upon Bernie Cervantes Villegas so as to cause him serious bodily injury, and  
22 ultimately his death.

23 57. As a direct, legal and proximate result of defendants' negligence, Plaintiffs'  
24 decedent, Bernie Cervantes Villegas, suffered, bodily injuries, mental injuries and emotional  
25 distress and died from his injuries on January 7, 2012.

26 58. At all times herein mentioned, Defendants Officer Doe 1, Officer Doe 2, Officer  
27 Doe 3, Officer Doe 4 and Officer Doe 5 violated Anaheim Police Department procedures with  
28 regard to the use of deadly force that Defendants recklessly and/or negligently caused injuries

1 and the eventual death of Bernie Cervantes Villegas.

2 59. As a direct and proximate result of the actions of Defendants, and each of them,  
3 Plaintiffs have suffered the following injuries, including but not limited to:

- 4 a. Loss of love, aide, comfort and society due to the death of decedent Bernie  
5 Cervantes Villegas, according to proof;
- 6 b. Loss of economic support of decedent Bernie Cervantes Villegas; and
- 7 c. Funeral and burial expenses according to proof.

8 **THIRD CAUSE OF ACTION**

9 (By Plaintiffs Against Defendants ANAHEIM, POLICE DEPARTMENT and WELTER For  
10 **NEGLIGENT HIRING, TRAINING AND RETENTION leading to For WRONGFUL**  
11 **DEATH (C.C.P. §377.60))**

12 60. Plaintiffs repeat and reallege each and every allegation of the foregoing  
13 paragraphs 1 through 61 as though fully set forth hereinafter.

14 61. Plaintiffs are informed and believe and thereon allege that Defendants Anaheim,  
15 Police Department and Welter were aware of the unfitness of Defendants Officer Doe 1, Officer  
16 Doe 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5 and that Defendants Anaheim, Police  
17 Department and Welter, as a policy, custom and practice of Defendants Anaheim and Police  
18 Department continued to employ and utilize Defendants Officer Doe 1, Officer Doe 2, Officer  
19 Doe 3, Officer Doe 4 and Officer Doe 5 resulting in the death of Bernie Cervantes Villegas.

20 62. At all times herein mentioned, Defendants City of Anaheim, Police Department  
21 and Welter were negligent in supervising the conduct of Defendants Officer Doe 1, Officer Doe  
22 2, Officer Doe 3, Officer Doe 4 and Officer Doe 5, resulting in the injuries and death of Bernie  
23 Cervantes Villegas.

24 63. Plaintiffs are informed and believe, and thereon allege, that on or before January  
25 7, 2012, Defendants Anaheim, Police Department and Welter so negligently hired, trained,  
26 supervised, employed and/or managed Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3,  
27 Officer Doe 4 and Officer Doe 5 by failing and refusing to train Anaheim Police Department  
28 officers in proper restraint techniques and use of deadly force to ensure that they did not pose an

1 unreasonable risk of serious bodily injury; in that the defendants knew or, in the exercise of  
2 reasonable diligence, should have known, that these officers were dangerous and violent  
3 employees, prone to use unnecessary force, and in a manner that demonstrated callous disregard  
4 for the rights and safety of civilian citizens, and assault and batter persons and/or use  
5 unnecessary, unreasonable, and/or unlawful physical force without reasonable justification.

6 64. As a legal, direct and proximate result of the aforementioned negligence by  
7 defendants, and each of them, Plaintiffs' decedent, Bernie Cervantes Villegas, suffered bodily  
8 injuries, mental injuries and emotional distress and died from his injuries.

9 65. As a direct and proximate result of the actions of Defendants, and each of them,  
10 Plaintiffs have suffered the following injuries, including but not limited to:

- 11 a. Loss of love, aide, comfort and society due to the death of decedent Bernie  
12 Cervantes Villegas, according to proof;
- 13 b. Loss of economic support of decedent Bernie Cervantes Villegas; and
- 14 c. Funeral and burial expenses according to proof.

#### 15 **FOURTH CAUSE OF ACTION**

16 (By All Plaintiffs Against All Defendants For **DEPRIVATION OF CIVIL RIGHTS UNDER**  
17 **COLOR OF LAW** [42 USC §§1981, 1983, 1985, 1986 and 1988 including Wrongful Death and  
18 Survival under Federal Violation of Civil Rights])

19 66. Plaintiffs repeat and reallege each and every allegation of the foregoing  
20 paragraphs 1 through 67 as though fully set forth hereinafter.

21 67. This cause of action is to redress a deprivation, under color of authority, statute,  
22 ordinance, regulation, policy, custom, practice or usage of a right, privilege and immunity  
23 secured to Plaintiffs by the Fourth, Fifth and Fourteenth Amendments to the United States  
24 Constitution and the Constitution and laws of the State of California.

25 68. At all times mentioned herein, Defendants Anaheim and Police Department  
26 employed the individual defendants, Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3,  
27 Officer Doe 4 and Officer Doe 5, herein. Said defendants provided their individual defendant  
28

1 employees and agents with official badges and identification cards which designated and  
2 described the bearers as employees of Defendants Anaheim and Police Department.

3 69. During all times mentioned herein, the individual defendants, and each of them,  
4 separately and in concert, acted under color and pretense of law, under color of the statutes,  
5 ordinances, regulations, policies, practices, customs and usages of the State of California, City of  
6 Anaheim. Each of the individual defendants here, separately and in concert, deprived decedent  
7 Bernie Cervantes Villegas and Plaintiffs of the rights, privileges and immunities secured to them  
8 by the Fourth and Fourteenth Amendments to the United States Constitution and the laws of the  
9 United States and the Constitution and laws of the State of California.

10 70. On or about January 7, 2012, Defendant Officers forcibly detained and seriously  
11 injured decedent Bernie Cervantes Villegas, as described above, all of which constituted  
12 excessive, unjustifiable, and unreasonable force in violation of decedent Bernie Cervantes  
13 Villegas' right to be free from unreasonable searches and seizures, and his due process right to  
14 be free from arbitrary deprivations of life, liberty, property and the pursuit of happiness. The  
15 above referenced alleged conduct was done with deliberate indifference and/or intentionally by  
16 Defendant Officers, Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4 and  
17 Officer Doe 5.

18 71. At all times herein relevant, and prior thereto, Defendants Welter, Police  
19 Department and Anaheim had a duty to:

- 20 a. Train Anaheim Police Department officers to respect and protect the Federal  
21 constitutional and California constitutional and statutory rights of citizens,  
22 arrestees and detainees;
  - 23 b. Supervise Anaheim Police Department officers to assure that they do not use  
24 excessive force, and do not assault and batter citizens;
  - 25 c. Supervise Anaheim Police Department officers to assure that they respect and  
26 protect the Federal constitutional and California constitutional and statutory  
27 rights of citizens, arrestees and detainees;
- 28

- d. Not continue to employ officers of the Anaheim Police Department with a propensity for violence and use of excessive force;
- e. Refrain from the use of restraint techniques that can pose an unreasonable risk of serious bodily injury, and constitute the use of unreasonable force;

72. To the contrary, Defendants Welter, Police Department and Anaheim have illustrated their willful and deliberate indifference to the constitutional rights of decedent Bernie Cervantes Villegas and Plaintiffs by the following:

- a. By failing, neglecting and refusing to train Anaheim Police Department officers to respect and protect the Federal constitutional and California constitutional and statutory rights of citizens, arrestees and detainees;
- b. By failing, neglecting and refusing to supervise Anaheim Police Department officers to assure that they do not use excessive force, and do not assault and batter citizens;
- c. By failing, neglecting and refusing to supervise Anaheim Police Department officers to assure that they respect and protect the Federal constitutional and California constitutional and statutory rights of citizens, arrestees and detainees;
- d. By failing, neglecting and refusing to terminate Anaheim Police Department officers with a propensity for violence and history of use of excessive force;
- e. By instituting a policy of excessive force and harm against individuals in an attempt to intimidate the less affluent residents of Anaheim.

73. The above acts or omissions of Defendant Officers were undertaken while under color of state law and resulted in the violation of Plaintiffs' constitutional rights, as stated herein. Likewise, the customs, practices, policies, and decisions of Defendants Welter, Police Department and Anaheim alleged herein and as applied to Plaintiffs, resulted in violation of Plaintiffs' decedent's constitutional rights.

74. At all times herein mentioned, there was no need for the force utilized against Plaintiffs' decedent Bernie Cervantes Villegas. There was no crime committed by Bernie

1 Cervantes Villegas and, Bernie Cervantes Villegas did not pose an immediate threat to the safety  
2 of the Defendant Officers or others.

3 75. The above acts, omissions, customs, practices and/or decisions of the defendants,  
4 and each of them, while carried out under color of law, have no justification or excuse in law, an  
5 instead constitute a gross abuse of governmental authority and power, shock the conscience, are  
6 fundamentally unfair, arbitrary, and oppressive, and unrelated to any activity in which  
7 governmental officers may appropriately and legally undertake in the course of protecting  
8 persons, property, or ensuring civil order. The above acts, omissions, decisions, customs,  
9 practices and/or policies were consciously chosen from among various alternatives.

10 76. Each of the individual defendants and the municipal defendants acted in concert  
11 and without authorization of law and each of the individual defendants, separately and in concert,  
12 acted willfully, knowingly, with reckless disregard and callous indifference, and purposely with  
13 the intent to deprive Plaintiffs' decedent of his rights and privileges, and did in fact violate the  
14 aforementioned rights and privileges, entitling Plaintiffs to exemplary and punitive damages  
15 against the individual Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe 4  
16 and Officer Doe 5 in an amount to be proven at the trial of this matter.

17 77. As a direct, proximate result of the aforesaid acts, omissions, customs, practices,  
18 policies and decisions of the defendants, and each of them, Plaintiffs have suffered, and continue  
19 to suffer, the loss of Plaintiffs' decedent, Bernie Cervantes Villegas, who died because of  
20 Defendants' actions. Additionally, due to the aforesaid acts, omissions, customs, practices,  
21 policies and decisions, Plaintiffs' decedent, Bernie Cervantes Villegas, was disabled from  
22 pursuing his usual occupation.

23 78. Plaintiffs may maintain causes of action under 42 U.S.C. §1983 as a Federal  
24 Survival Action and recover damages for the value of the decedent's life and the decedent's pain  
25 and suffering under cases interpreting 42 U.S.C. 1983 including *Robertson v. Wegmann* (1978)  
26 436 U.S. 584, 595; *Bass v. Wallenstein* (7<sup>th</sup> Cir. 1985) 769 F.2d 1173, 1190; *Guyton v. Phillips*  
27 (N.V. Cal. 1981) 532 F.Supp 1154, 1167-1168 [disapproved on other grounds by *Peraza v.*  
28 *Delameter* (9<sup>th</sup> Cir. 1984) 722 F.2d 1455]; *Garcia v. Whitehead* (C.D. Cal. 1997) 961 F.Supp



1 230, 233; *Bell v. City of Milwaukee* 746 F.2d 1205, 1235-1240 (7<sup>th</sup> Cir. 1985); *McFadden v.*  
2 *Sanchez* (2<sup>nd</sup> Cir. 1983) 710 F.2d 907, 911; and *Jaco v. Bloechile* (6<sup>th</sup> Cir. 1984) 739 F.2d 239,  
3 245.

4 79. At all times herein mentioned, Plaintiffs are entitled to recover damages for the  
5 value of decedent Bernie Cervantes Villegas' life, as well as for decedent Bernie Cervantes  
6 Villegas' pain and suffering. This includes pain and suffering of decedent and the value of the  
7 loss of his life, which Plaintiffs allege to be in excess of twenty million dollars (\$20,000,000.00).

8 80. As a direct and proximate result of the actions of Defendants, and each of them,  
9 Plaintiffs have also suffered the following injuries, including but not limited to:

- 10 a. Loss of love, aide, comfort and society due to the death of decedent, Bernie  
11 Cervantes Villegas, according to proof;
- 12 b. Loss of economic support of decedent, Bernie Cervantes Villegas; and
- 13 c. Funeral and burial expenses according to proof.

14 81. Additionally, Plaintiffs have been forced to incur substantial amounts for  
15 attorneys' fees, investigation expenses, and other expenses in the vindication of Plaintiffs'  
16 constitutional rights. Plaintiffs are entitled to and hereby demand costs, attorneys' fees and  
17 expenses pursuant to 42 U.S.C. § 1988.

18 **FIFTH CAUSE OF ACTION**

19 (By All Plaintiffs Against Defendants Anaheim, Police Department and Welter and Does 1-10  
20 for **DEPRIVATION OF CIVIL RIGHTS UNDER COLOR OF LAW (MONELL CLAIM)**

21 [42 USC §§1983, 1985, 1986, 1988 including Wrongful Death and Survival under Federal  
22 Violation of Civil Rights])

23 82. Plaintiffs repeat and reallege each and every allegation of the foregoing  
24 paragraphs 1 through 83 as though fully set forth hereinafter.

25 83. At all times herein mentioned, Defendants Anaheim and the Police Department  
26 maintained a custom, policy and practice to allow the violation of the Civil rights of individuals  
27 whom they were detaining, including applying excessive force against individuals in the less  
28 affluent neighborhoods of Anaheim, in an attempt to harass and intimidate those individuals. All

1 of these actions were done in violation of Plaintiffs' decedent, Bernie Cervantes Villegas' Civil  
2 Rights under Color of State Law and constituted a systematic custom, policy, practice and  
3 procedure instituted for the denial of the Civil Rights of Plaintiffs' decedent and others.

4 84. Each of the individual defendants and the municipal defendants acted in concert  
5 and without authorization of law and each of the individual defendants, separately and in concert,  
6 acted willfully, knowingly, with reckless disregard and callous indifference, and purposely with  
7 the intent to deprive Plaintiffs' decedent, Bernie Cervantes Villegas, of his rights and privileges,  
8 and did in fact violate the aforementioned rights and privileges, entitling Plaintiffs to exemplary  
9 and punitive damages against the individual Defendants Officer Doe 1, Officer Doe 2, Officer  
10 Doe 3, Officer Doe 4 and Officer Doe 5 in an amount to be proven at the trial of this matter.

11 85. As a direct and proximate result of the aforementioned acts of Defendants, and  
12 each of them, Bernie Cervantes Villegas suffered the following injuries and damages, which  
13 Plaintiffs allege to be in excess of twenty million dollars (\$20,000,000.00), for which Plaintiffs  
14 may recover:

- 15 a. Violation of Bernie Cervantes Villegas' Constitutional Rights under the Fourth,  
16 Fifth, Eighth and Fourteenth Amendments to the United States Constitution to be  
17 free from unreasonable search and seizure of his person and summary, cruel and  
18 unusual punishment;
- 19 b. Loss of the life of Bernie Cervantes Villegas including the value of his life;
- 20 c. Conscious physical pain, suffering and emotional trauma during the incident of  
21 January 7, 2012 through his death.

22 86. As a direct and proximate result of the actions of Defendants, and each of them,  
23 Plaintiffs have also suffered the following injuries, including but not limited to:

- 24 a. Loss of love, aide, comfort and society due to the death of decedent, Bernie  
25 Cervantes Villegas, according to proof;
  - 26 b. Loss of economic support of decedent Bernie Cervantes Villegas; and
  - 27 c. Funeral and burial expenses according to proof.
- 28

1           87.     Additionally, Plaintiffs have been forced to incur substantial amounts for  
2 attorneys' fees, investigation expenses, and other expenses in the vindication of Plaintiffs'  
3 constitutional rights. Plaintiffs are entitled to and hereby demands costs, attorneys' fees and  
4 expenses pursuant to 42 U.S.C. § 1988.  
5

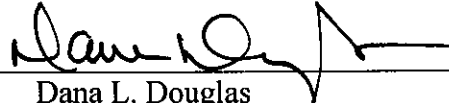
6           **WHEREFORE**, Plaintiffs pray for judgment against defendants as follows:

- 7           1.     General damages for violation of Bernie Cervantes Villegas' Constitutional  
8                 Rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the United  
9                 States Constitution to be free from unreasonable search and seizure of his person  
10                and summary, cruel and unusual punishment in the sum of \$20,000,000.00;
- 11           2.     General damages for loss of the life of Bernie Cervantes Villegas including the  
12                value of his life in an amount according to proof at the time of trial;
- 13           3.     General damages for conscious physical pain, suffering and emotional trauma  
14                during the incident of January 7, 2012 through Bernie Cervantes Villegas' death  
15                in an amount according to proof at the time of trial;
- 16           4.     Loss of love, aid, comfort and society due to the death of decedent Bernie  
17                Cervantes Villegas, according to proof;
- 18           5.     Loss of economic support of decedent Bernie Cervantes Villegas in an amount  
19                according to proof at the time of trial;
- 20           6.     Funeral and burial expenses according to proof;
- 21           7.     Decedent Bernie Cervantes Villegas' medical bills incurred attempting to save his  
22                life.
- 23           8.     Punitive damages to punish and make an example of the individual officer  
24                defendants, Defendants Officer Doe 1, Officer Doe 2, Officer Doe 3, Officer Doe  
25                4 and Officer Doe 5 in an amount according to proof at the time of trial;
- 26           9.     Attorneys' fees, investigation expenses, costs, and other expenses in the  
27                vindication of Plaintiffs' Constitutional Rights under 42 U.S.C. §1988 in an  
28                amount according to proof at the time of trial;

10. For other general damages in an amount according the proof at trial;
11. For other special damages in an amount according to proof at trial;
12. For pre-judgment and post-judgment interest; and
13. For such other and further relief as the Court may deem just and proper.

Dated: October 8, 2012

**DOUGLAS, LOPEZ & RUMM, LLP**

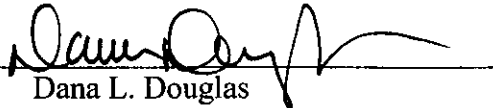
By:   
Dana L. Douglas  
Diana Lopez  
James F. Rumm  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs, Christine Villegas, Ricezen Villegas and Daniel Villegas, by and through their  
Guardian Ad Litem Miguel Villegas and the Estate of Bernie Cervantes Villegas, hereby demand  
a trial by jury.

Dated: October 8, 2012

**DOUGLAS, LOPEZ & RUMM, LLP**

By:   
Dana L. Douglas  
Diana Lopez  
James F. Rumm  
Attorneys for Plaintiffs