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JAIME REYES JR., MIRELLA REYES and  
8 JAIME REYES SR.

9  
10  
11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**

13 JAIME REYES JR., Deceased,  
14 THROUGH HIS SUCCESSORS IN  
INTEREST MIRELLA REYES and  
15 JAIME REYES SR.; MIRELLA  
REYES, Individually; and JAIME  
16 REYES SR., Individually,

17 Plaintiffs,

18 vs.

19 CITY OF FRESNO, a public entity,  
20 CITY OF FRESNO POLICE CHIEF  
JERRY DYER, FRESNO POLICE  
21 OFFICER JUAN AVILA, FRESNO  
POLICE OFFICER MIGUEL  
22 ALVAREZ, individually, and DOES 3  
through 10, Jointly and Severally,

23 Defendants.  
24  
25  
26

No: 1:13-CV-00418-LJO-SKO

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND DECLARATORY  
RELIEF, AND DEMAND FOR JURY  
TRIAL**

1 Plaintiffs, by and through their attorneys, HADDAD & SHERWIN for their First  
2 Amended Complaint against Defendants, state as follows:  
3

4 **JURISDICTION AND INTRADISTRICT ASSIGNMENT TO SAN JOSE**  
5

6 1. This is a civil rights wrongful death/survival action arising from Defendants'  
7 wrongful shooting, use of excessive force and other wrongful acts, resulting in the death of  
8 Jaime Reyes, Jr., Deceased, on June 6, 2012, in the City of Fresno, Fresno County,  
9 California. This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth  
10 and Fourteenth Amendments to the United States Constitution, as well as the laws and  
11 Constitution of the State of California. Jurisdiction is founded upon 28 USC §§ 1331 and  
12 1343(a)(3) and (4), and the aforementioned statutory and constitutional provisions.  
13 Plaintiffs further invoke the supplemental jurisdiction of this Court pursuant to 28 USC  
14 §1367 to hear and decide claims arising under state law.  
15

16 **INTRADISTRICT ASSIGNMENT**

17 2. A substantial part of the events and/or omissions complained of herein  
18 occurred in the City of Fresno, Fresno County, California, and this action is properly  
19 assigned to the Fresno Division of the United States District Court for the Eastern District  
20 of California, pursuant to Civil Local Rule 120(d).  
21

22 **PARTIES AND PROCEDURE**

23 3. Plaintiff MIRELLA REYES is the mother of decedent, JAIME REYES, JR.  
24 Plaintiff MIRELLA REYES brings these claims individually and as a Successor in Interest  
25 for her son, Jaime Reyes, Jr., Deceased, pursuant to C.C.P. §§ 377.60, 377.30, and  
26 federal civil rights law. MIRELLA REYES is a resident of the State of California.  
27  
28

1           4.       Plaintiff JAIME REYES, SR. is the father of decedent, JAIME REYES, JR.  
2       Plaintiff JAIME REYES, SR. brings these claims individually and as Successor in Interest  
3       for his son, Jaime Reyes, Jr., Deceased, pursuant to C.C.P. §§ 377.60, 377.30, and  
4       federal civil rights law. JAIME REYES, SR. is a resident of the State of California.

5           5.       Each Plaintiff herein brings these claims pursuant to California Code of Civil  
6       Procedure sections 377.20 et seq. and 377.60 et seq. which provide for survival and  
7       wrongful death actions. These claims are also brought individually and on behalf of Jaime  
8       Reyes, Jr., Deceased, on the basis of the 42 USC §§ 1983 and 1988, the United States  
9       Constitution, and federal and state civil rights law.

10          6.       Defendant CITY OF FRESNO is a public entity established by the laws and  
11       Constitution of the State of California, and owns, operates, manages, directs, and controls  
12       the Fresno Police Department ("FPD") which employs other defendants in this action.

13          7.       Defendant Police Officer JUAN AVILA ("Avila") at all material times was  
14       employed as a law enforcement officer by Defendant City of Fresno, and was acting within  
15       the course and scope of that employment. Defendant Avila is being sued in his individual  
16       capacity.

17          8.       Defendant Police Officer MIGUEL ALVAREZ ("Alvarez") at all material times  
18       was employed as a law enforcement officer by Defendant City of Fresno, and was acting  
19       within the course and scope of that employment. Defendant Alvarez is being sued in his  
20       individual capacity

21          9.       Defendant DOE Police Officers ("Doe Officers") at all material times were  
22       employed as a law enforcement officers by Defendant City of Fresno, and were acting  
23       within the course and scope of that employment. Doe Defendant Police Officers are being  
24       sued in their individual capacities.

1           10. Defendant Chief of Police JERRY DYER ("Dyer") at all material times was  
2 employed as Chief of Police by Defendant City of Fresno, and was acting within the course  
3 and scope of that employment. As Chief of Police, Defendant Dyer was a policy-making  
4 official for the City of Fresno with the power to make official and final policy for the Fresno  
5 Police Department. Defendant Dyer is being sued in his individual capacity.  
6

7           11. The true names and capacities of Defendants sued herein as DOES 3-10  
8 ("DOE defendants") are unknown to Plaintiffs, who therefore sue said Defendants by such  
9 fictitious names, and Plaintiffs will seek leave to amend this complaint to show their true  
10 names and capacities when the same are ascertained. Each DOE defendant was an  
11 employee/agent of the City of Fresno, and at all material times acted within the course and  
12 scope of that relationship.  
13

14           12. Plaintiffs are informed and believe and thereon allege that each of the  
15 Defendants sued herein was negligently, wrongfully, and otherwise responsible in some  
16 manner for the events and happenings as hereinafter described, and proximately caused  
17 injuries and damages to Plaintiffs. Further, one or more DOE defendants was at all  
18 material times responsible for the hiring, training, supervision, and discipline of other  
19 defendants, including Doe Defendants.  
20

21           13. Plaintiffs are informed and believe, and thereon allege, that each of the  
22 Defendants was at all material times an agent, servant, employee, partner, joint venturer,  
23 co-conspirator, and/or alter ego of the remaining Defendants, and in doing the things  
24 herein alleged, was acting within the course and scope of that relationship. Plaintiffs are  
25 further informed and believe, and thereon allege, that each of the Defendants herein gave  
26 consent, aid, and assistance to each of the remaining Defendants, and ratified and/or  
27 authorized the acts or omissions of each Defendant as alleged herein, except as may be  
28

1 hereinafter otherwise specifically alleged. At all material times, each Defendant was jointly  
2 engaged in tortious activity, resulting in the deprivation of Plaintiffs' constitutional rights  
3 and other harm.

4 14. The acts and omissions of all Defendants as set forth herein were at all  
5 material times pursuant to the actual customs, policies, practices and procedures of the  
6 Fresno Police Department.

7 15. At all material times, each Defendant acted under color of the laws, statutes,  
8 ordinances, and regulations of the State of California.

9 16. Each Plaintiff herein timely and properly filed tort claims pursuant to Cal.  
10 Gov. Code § 910 et seq., and this action is timely filed within all applicable statutes of  
11 limitation.

12 17. This complaint may be pled in the alternative pursuant to FRCivP 8(d)(2).

13 **GENERAL ALLEGATIONS**

14 18. Plaintiffs reallege each and every paragraph in this complaint as if fully set  
15 forth here.

16 19. This Complaint concerns a tragic incident that began in the mid- afternoon in  
17 the City of Fresno around the residence at 4929 E. Burns Avenue. Four Fresno police  
18 officers, Defendant Officers Avila, Alvarez and DOES 3-4, arrived at the home of Plaintiffs  
19 Mirella Reyes and Jaime Reyes, Sr (hereinafter, "Jaime Sr."). Two of these Defendant  
20 Officers approached Mirella and asked regarding the whereabouts of her son, Decedent  
21 Jaime Reyes Jr. (hereinafter, "Jaime Jr."). Jaime Jr., who was neither present nor dwelling  
22 at 4929 E. Burns Avenue at that time, was suspected in the burglary of a neighbor's home.  
23 Mirella advised the Defendant Officers that Jaime Jr. was not at her home and that Jaime  
24 Jr. was suffering from mental disturbance due to methamphetamine use.  
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1           20. Defendant Officers Avila, Alvarez and DOES 3-4 then left Mirella and Jaime  
2 Sr.'s home and, upon information and belief, began looking for Jaime Jr. in the  
3 neighborhood.

4           21. Defendant Officers Avila and Alvarez, upon information and belief, then  
5 made contact with Jaime Jr. who was approximately two blocks from his parents' home,  
6 walking along Church Ave. At the time, Jaime Jr. obviously was an emotionally disturbed  
7 and/or intoxicated person, requiring special police procedures and tactics. Jaime Jr.  
8 began to run away from the Defendant Officers Avila and Alvarez, who were approaching  
9 Jaime Jr. while inside their police cruiser, driving east on Church Ave.  
10

11           22. As Jaime Jr. ran along the sidewalk across the street from the residence at  
12 4769 Church Ave., Defendant Officers Avila and Alvarez pulled their vehicle up next to  
13 him, and on information and belief, said something to Jaime, Jr., who continued to run  
14 away from them. Defendant Officers Avila and Alvarez parked their vehicle and exited their  
15 car. At this time, each Officer had his gun drawn and pointed at Jaime Jr. who was  
16 carrying nothing in his hands and was running with his back to the officers.  
17

18           23. As Jaime Jr. continued to run east on Church Ave. and away from Defendant  
19 Officers Avila and Alvarez, Defendant Officers DOES 3-4 pulled onto Church Ave. from  
20 Chestnut Street and headed west, cutting Jaime Jr. off. Defendant DOES 3-4 then  
21 stopped their car and exited the vehicle with their guns drawn and pointed at Jaime Jr.  
22 Now surrounded, Jaime Jr. turned north, hopped the chain-link fence that ran along  
23 Church Ave., and ran into an empty football field from Defendant Officers Avila, Alvarez  
24 and DOES 3-4. As he ran, Jaime Jr.'s back was toward the officers and it should have  
25 been clear to all officers that he was carrying nothing in his hands.  
26  
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1           24.     Despite the fact that Jaime Jr. was running from Defendant Officers Avila,  
2 Alvarez and DOES 3-4 with his back to them and with nothing in his hands, Defendant  
3 Officers Avila, Alvarez and DOES 3-4, acting as a team without provocation or just cause,  
4 used excessive and unreasonable force against Jaime Jr. by firing a volley of gunshots at  
5 Jaime Jr., one of which, on information and belief, hit Jaime Jr., who then fell face-down on  
6 the ground. According to Fresno Police Reports, all gunshots were fired by Defendant  
7 Avila. When Defendant Avila opened fire on Jaime Jr., there was a chain-link fence and a  
8 distance of, on information and belief, greater than 5 yards between the officers and Jaime  
9 Jr. Jaime Jr. had not made any threatening gestures or statements, and had simply been  
10 running away from the officers with open hands. Defendant Alvarez and/or DOES 3-4 had  
11 the opportunity to intervene both verbally and physically to stop this use of excessive force  
12 by Defendant Avila and/or others, and did not intervene.  
13

14           25.     Several moments later, while Jaime Jr. lay motionless on the ground, was  
15 clearly unarmed, and represented no threat of injury or harm to Defendant Officers or  
16 others, Defendant Officers Avila, Alvarez and DOES 3-4 again, without provocation or just  
17 cause, and acting as a team, used excessive and unreasonable force against Jaime Jr.  
18 and fired another volley of gunshots at Jaime Jr., at least one of which, on information and  
19 belief, struck Jaime Jr. According to Fresno Police Reports, all gunshots at this time were  
20 fired by Defendant Avila. Defendant Alvarez and/or DOES 3-4 had the opportunity to  
21 intervene both verbally and physically to stop this use of excessive force by Defendant  
22 Avila and/or others, and did not intervene.  
23

24           26.     When he was shot and laying on the ground, Jaime Jr. was an emotionally  
25 disturbed, and/or intoxicated person in need of urgent medical care and in the custody of  
26 Defendant Officers Avila, Alvarez and DOES 3-4. Despite the life-threatening injuries  
27  
28

1 Jaime Jr. had sustained, Defendant Officers did not provide Jaime Jr. with any medical  
2 assistance, but rather approached him to frisk and then handcuff him as he lay severely  
3 wounded on the ground. Several minutes elapsed before Defendant Officers took any  
4 steps to provide, request, seek, or secure first aid for him. Upon information and belief, 20  
5 minutes went by before paramedics arrived to take Jaime Jr. to the hospital. After having  
6 suffered extreme conscious pain and suffering, Jaime Jr. was pronounced dead after  
7 emergency open heart surgery failed to save his life.  
8

9 27. Defendant Officers Avila, Alvarez and DOES 3-4 failed to give any warning to  
10 Jaime Jr. before using deadly force, even though a warning would have been feasible and  
11 proper.  
12

13 28. At the time that Defendant Officer Avila, and possibly other Defendant  
14 officers, fired gunshots at Jaime Jr., Jaime Jr. did not pose a significant and immediate  
15 threat of death or serious physical injury to Defendants or to anyone else. The use of  
16 deadly force, including the gunshots described herein, was not justified or lawful under the  
17 circumstances.  
18

19 29. Alternatively, or concurrently, Defendant Officers Avila, Alvarez and DOES 3-  
20 4's own excessive and unreasonable actions created a risk of harm to Jaime Jr., created  
21 the situation in which Defendant Officers Avila, Alvarez and DOES 3-4 decided to use  
22 deadly force, and caused an escalation of events leading to the shooting death of Jaime  
23 Reyes, Jr.  
24

25 30. Alternatively, or concurrently, Defendant Officers Avila, Alvarez and DOES 3-  
26 4 were integral participants in the use of deadly force, including the gunshots described  
27 herein, against Jaime Jr. Further, each of these Defendant Officers failed to intervene to  
28 stop, prevent, or report the use of excessive and unreasonable force by other officers.



1           31. Officers Avila, Alvarez and DOES 3-4's conduct herein, including but not  
2 limited to their decision(s) to stop and seize Jaime Jr., the manner in which they conducted  
3 that stop and seizure, their use of deadly force, their failure to provide care for the serious  
4 medical needs of their prisoner, and their other conduct, was contrary to generally  
5 accepted reasonable police procedures and tactics, and caused the wrongful death of  
6 Jaime Reyes, Jr.  
7

8           32. At all material times, and alternatively, the actions and omissions of each  
9 defendant were intentional, wanton and/or willful, conscience shocking, reckless,  
10 malicious, deliberately indifferent to Plaintiffs' rights, done with actual malice, grossly  
11 negligent, negligent, and objectively unreasonable.  
12

13           33. As a direct and proximate result of each Defendant's acts and/or omissions  
14 as set forth above, Plaintiffs sustained the following injuries and damages, past and future,  
15 among others:

- 16           a. Wrongful death of Jaime Reyes, Jr.;
- 17           b. Hospital and medical expenses;
- 18           c. Coroner's fees, funeral and burial expenses;
- 19           d. Loss of familial relationships, including loss of love, companionship,  
20 comfort, affection, society, services, solace, and moral support;
- 21           e. Violation of constitutional rights;
- 22           f. All damages and penalties recoverable under 42 USC §§ 1983 and  
23 1988, and as otherwise allowed under California and United States  
24 statutes, codes, and common law;
- 25           g. Jaime Reyes, Jr.'s loss of life, pursuant to federal civil rights law; and  
26           h. Jaime Reyes, Jr.'s conscious pain and suffering, pursuant to federal  
27 civil rights law.  
28

**COUNT ONE**  
**-- 42 USC §1983 --**  
**ALL PLAINTIFFS AGAINST DEFENDANTS AVILA, ALVAREZ, DOE OFFICERS 3-4**  
**AND DOES 5-10**

34. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

35. By the actions and omissions described above, Defendants Avila, Alvarez and DOES 3-10 violated 42 USC §1983, depriving Plaintiffs of the following clearly-established and well-settled constitutional rights protected by the Fourth and Fourteenth Amendments to U.S. Constitution:

- a. The right to be free from excessive and unreasonable force, including deadly force, in the course of arrest or detention as secured by the Fourth Amendment;
- b. The right to be free from unlawful, reckless, deliberately indifferent, and conscience shocking deadly force as secured by the Fourteenth Amendment; and
- c. The right to be free from wrongful government interference with familial relationships, and Plaintiffs' right to companionship, society and support of each other, as secured by the Fourth and Fourteenth Amendments, and California Code of Civil Procedure §§ 377.20 et seq. and 377.60 et seq.

36. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs of rights described herein, knowingly, maliciously, and with conscious and reckless disregard for whether the rights and safety of Plaintiffs (individually and on behalf of Jaime Reyes, Jr., Deceased) and others would be violated by their acts and/or omissions.

37. As a direct and proximate result of Defendants' acts and/or omissions as set forth above, Plaintiffs sustained injuries and damages as set forth at paragraph 33, above.

1           38.     The conduct of Defendants Avila, Alvarez and DOES 3-10 entitles Plaintiffs  
2 to punitive damages and penalties allowable under 42 USC §1983 and Cal. Code of Civil  
3 Procedure § 377.20 et seq.

4           39.     Plaintiffs are also entitled to reasonable costs and attorney fees under 42  
5 USC §1988 and applicable California codes and laws.

6  
7                                   **COUNT TWO**  
8                                   **- 42 USC §1983 –**  
9                                   **ALL PLAINTIFFS AGAINST DEFENDANTS CITY OF FRESNO, CHIEF OF POLICE**  
10                                   **JERRY DYER, AND DOES 5-10**

11           40.     Plaintiffs reallege each and every paragraph in this complaint as if fully set  
12 forth here.

13           41.     The unconstitutional actions and/or omissions of Defendants Avila, Alvarez  
14 and DOES 3-10, as well as other officers employed by or acting on behalf of Defendant  
15 City of Fresno, on information and belief, were pursuant to the following customs, policies,  
16 practices, and/or procedures of the FPD, stated in the alternative, which were directed,  
17 encouraged, allowed, and/or ratified by policy making officers for City of Fresno and the  
18 FPD, including Chief of Police Jerry Dyer:

- 19                   a.     To use or tolerate the use of excessive and/or unjustified force;
- 20                   b.     To use or tolerate the use of unlawful deadly force;
- 21                   c.     To fail to use appropriate and generally accepted law enforcement  
22 procedures in handling emotionally disturbed, mentally incapacitated,  
23 and/or intoxicated persons;
- 24                   d.     To fail to use appropriate and generally accepted law enforcement  
25 procedures in handling persons experiencing medical emergencies;
- 26                   e.     To cover-up violations of constitutional rights by any or all of the  
27 following:
- 28                           i.   by failing to properly investigate and/or evaluate complaints or  
incidents of excessive and unreasonable force, officer-involved  
shootings, law enforcement related deaths, unlawful seizures,

and/or handling of emotionally disturbed and/or intoxicated persons;

ii. by failing to promptly, independently, thoroughly, and properly investigate and address officer involved shootings and other law enforcement related deaths;

iii. by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police activity; and

iv. by allowing, tolerating, and/or encouraging police officers to: fail to file complete and accurate police reports; file false police reports; make false statements; intimidate, bias and/or "coach" witnesses to give false information and/or to attempt to bolster officers' stories; and/or obstruct or interfere with investigations of unconstitutional or unlawful police conduct, by withholding and/or concealing material information;

f. To allow, tolerate, and/or encourage a "code of silence" among law enforcement officers and police department personnel, whereby an officer or member of the department does not provide adverse information against a fellow officer or member of the department; and,

g. To use or tolerate inadequate, deficient, and improper procedures for handling, investigating, and reviewing complaints of officer misconduct made under California Government Code § 910 et seq.

Alternatively, Defendants City of Fresno, Chief Dyer, and Does 5-10 failed to have and enforce lawful and proper policies, procedures, and training programs, despite the clear and obvious need for such, to prevent recurring and foreseeable violations of rights of the type described herein, and to prevent the unconstitutional customs, policies, and practices set forth above in this paragraph.

42. Defendants City of Fresno, Chief Dyer, and Does 5-10 failed to properly train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants Avila, Alvarez and DOES 3-10, and other FPD personnel, with deliberate indifference to Plaintiffs' constitutional rights, which were thereby violated as described above.

43. The unconstitutional actions and/or omissions of Defendants Avila, Alvarez and DOES 3-10, and other FPD personnel, as described above, were approved, tolerated

1 and/or ratified by policy-making officers for the FPD, including Chief Dyer. Plaintiffs are  
2 informed and believe, and thereupon allege, the details of this incident have been revealed  
3 to the authorized policy makers within City of Fresno and the FPD, and that such policy  
4 makers have direct knowledge of the fact that the Jaime Reyes, Jr. shooting was not  
5 justified, but rather represented an unconstitutional use of unreasonable, excessive and  
6 deadly force. Notwithstanding this knowledge, the authorized policy makers within City of  
7 Fresno and the FPD have approved Defendants Avila, Alvarez and DOES 3-4's shooting  
8 of Jaime Reyes, Jr., and have made a deliberate choice to endorse Defendants Avila,  
9 Alvarez and DOES 3-4's shooting of Jaime Reyes, Jr. and the basis for that shooting. By  
10 so doing, the authorized policy makers within City of Fresno and the FPD, and Chief Dyer,  
11 have shown affirmative agreement with the individual defendant officers' actions, and have  
12 ratified the unconstitutional acts of the individual defendant officers.  
13  
14

15 44. The aforementioned customs, policies, practices, and procedures, the  
16 failures to properly and adequately train, instruct, monitor, supervise, evaluate, investigate,  
17 and discipline, as well as the unconstitutional orders, approvals, ratification and toleration  
18 of wrongful conduct of Defendants City of Fresno, Chief Dyer, and Does 5-10, were a  
19 moving force and/or a proximate cause of the deprivations of Plaintiffs' clearly-established  
20 and well-settled constitutional rights in violation of 42 USC §1983, as more fully set forth in  
21 Paragraph 35, above.  
22

23 45. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs  
24 of rights described herein, knowingly, maliciously, and with conscious and reckless  
25 disregard for whether the rights and safety of Plaintiffs and others would be violated by  
26 their acts and/or omissions.  
27  
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46. As a direct and proximate result of the unconstitutional actions, omissions, customs, policies, practices and procedures of Defendants City of Fresno, Chief Dyer, and Does 5-10 as described above, Plaintiffs sustained serious and permanent injuries and are entitled to damages, penalties, costs and attorney fees as set forth in paragraphs 37-39, above.

**COUNT THREE**  
**-- VIOLATION OF CIVIL CODE §52.1 --**  
**ALL PLAINTIFFS AGAINST DEFENDANTS CITY OF FRESNO, AVILA, ALVAREZ,**  
**DOES 3-10**

47. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

48. By their acts, omissions, customs, and policies, each Defendant acting in concert/conspiracy, as described above, violated Plaintiffs' rights under California Civil Code §52.1, and the following clearly-established rights under the United States Constitution and the California Constitution:

- a. The right to be free from excessive and unreasonable force, including deadly force, in the course of arrest or detention as secured by the Fourth Amendment and by the California Constitution, Article 1, Section 13;
- b. The right to protection from bodily restraint, harm, or personal insult, as secured by Cal. Civil Code § 43.

49. Defendants violated Plaintiffs' rights by the following multiple, independent and cumulative acts constituting threats, intimidation, or coercion:

- a. Defendants Avila, Alvarez and DOES 3-4 pointing their guns at Jaime Jr. in the absence of any threat or justification whatsoever;
- b. using excessive, unreasonable and unjustified force against Jaime Jr. by firing gunshots at Jaime Jr. in the absence of any immediate threat, including firing additional unnecessary gunshots at Jaime Jr. when he was lying motionless on the ground;

- c. denying Jaime Jr. prompt and necessary medical care after Defendant DOE Officers 1-4 shot Jaime Jr. while Jaime Jr. was their prisoner, in desperate need of such care, and unable to provide or obtain such care for himself;
- d. causing Jaime Jr.'s wrongful death due to the acts described in subparagraphs a-c above;
- e. failing to intervene to stop, prevent, or report the use of excessive and unreasonable force by other officers;
- f. creating, through their own excessive and unreasonable actions, a risk of harm to Jaime Jr., by Defendants Avila, Alvarez and DOES 3-4's decision to use deadly force, and officers' wrongful conduct causing an escalation of events that led to the shooting death of Jaime Reyes, Jr.

50. As a direct and proximate result of Defendants' violation of California Civil Code §52.1 and of Plaintiffs' rights under the United States and California Constitutions, Plaintiffs sustained injuries and damages, and against each and every Defendant are entitled to relief as set forth above at paragraphs 36-39, and punitive damages against Defendants Avila, Alvarez, DOES 3-10 in their individual capacities, including all damages allowed by California Civil Code §§ 52, 52.1, and California law, not limited to costs, attorneys fees, treble damages, and civil penalties.

**COUNT FOUR**  
**-- NEGLIGENCE; PERSONAL INJURIES --**  
**ALL PLAINTIFFS AGAINST DEFENDANTS AVILA, ALVAREZ, DOES 3-10 AND CITY OF FRESNO**

51. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

52. At all times, Defendants Avila, Alvarez, DOES 3-10 and City of Fresno owed Plaintiffs the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

53. At all times, Defendants Avila, Alvarez, DOES 3-10 and City of Fresno owed Plaintiffs the duty to act with reasonable care.

1           54.    These general duties of reasonable care and due care owed to Plaintiffs by  
2 Defendants include but are not limited to the following specific obligations:

- 3                   a.    to refrain from using excessive and/or unreasonable force against  
4 Jaime Reyes, Jr.;
- 5                   b.    to refrain from unreasonably creating the situation where force,  
6 including but not limited to deadly force, is used;
- 7                   c.    to refrain from abusing their authority granted them by law;
- 8                   d.    to use tactics and force appropriate for a emotionally disturbed,  
9 mentally incapacitated, and/or intoxicated person;
- 10                  e.    to refrain from violating Plaintiffs' rights guaranteed by the United  
11 States and California Constitutions, as set forth above, and as  
otherwise protected by law.

12           55.    Additionally, these general duties of reasonable care and due care owed to  
13 Plaintiffs by Defendants City of Fresno and Does 5-10, include but are not limited to the  
14 following specific obligations:

- 15                   a.    to properly and adequately hire, investigate, train, supervise, monitor,  
16 evaluate, and discipline their employees, agents, and/or law  
17 enforcement officers to ensure that those employees/agents/officers  
act at all times in the public interest and in conformance with law;
- 18                   b.    to make, enforce, and at all times act in conformance with policies and  
19 customs that are lawful and protective of individual rights, including  
20 Plaintiffs'.
- 21                   c.    to refrain from making, enforcing, and/or tolerating the wrongful  
22 policies and customs set forth at paragraph 41, above.

23           56.    Defendants, through their acts and omissions, breached each and every one  
24 of the aforementioned duties owed to Plaintiffs.

25           57.    As a direct and proximate result of Defendants' negligence, Plaintiffs  
26 sustained injuries and damages, and against each and every Defendant are entitled to  
27 relief as set forth above at paragraphs 36-39, and punitive damages against Defendants  
28 Avila, Alvarez, DOES 3-4, Chief Dyer, and Does 5-10 in their individual capacities.



**COUNT FIVE**  
**-- ASSAULT AND BATTERY --**  
**ALL PLAINTIFFS AGAINST DEFENDANTS AVILA, ALVAREZ, DOES 3-4 AND CITY**  
**OF FRESNO**

58. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

59. The actions and omissions of Defendants Avila, Alvarez and DOES 3-4 and City of Fresno as set forth above constitute assault and battery.

60. As a direct and proximate result of Defendants' assault and battery of Jaime Reyes, Jr., Plaintiffs sustained injuries and damages, and are entitled to relief as set forth above at paragraphs 36-39, and punitive damages against Defendants in their individual capacities.

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1 WHEREFORE, Plaintiffs respectfully request the following relief:

- 2 a. against each and every Defendant herein, jointly and severally,  
3 compensatory and exemplary damages in an amount according to  
4 proof and which is fair, just and reasonable;
- 5 b. against Defendants Avila, Alvarez, DOES 3-10, punitive damages  
6 under 42 USC §1983 and California law in an amount according to  
7 proof and which is fair, just, and reasonable;
- 8 c. against each and every Defendant, jointly and severally, all other  
9 damages, penalties, costs, interest, and attorney fees as allowed by  
10 42 USC §§ 1983 and 1988, Cal. Code of Civ. Proc. §§ 377.20 et seq.,  
11 377.60 et seq., 1021.5, Cal. Civil Code §§ 52 et seq., 52.1, and as  
12 otherwise may be allowed by California and/or federal law;
- 13 d. such other and further relief as this Court may deem appropriate.

14 DATED: October 31, 2013

HADDAD & SHERWIN

15 /s/ Michael J. Haddad

16 Michael J. Haddad

17 Attorneys for Plaintiff

18 JAIME REYES, JR., MIRELLA REYES and

19 JAIME REYES, SR.

**JURY DEMAND**

Plaintiffs hereby request a trial by jury.

DATED: October 31, 2013

HADDAD & SHERWIN

/s/ Michael J. Haddad

Michael J. Haddad

Attorneys for Plaintiff

JAIME REYES, JR., MIRELLA REYES and  
JAIME REYES, SR.