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**FILED**

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Free  
P.L.

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ISS

15 Attorneys for Plaintiff JOSE MAXIMILIANO LICEA ABACA

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

18 MARIA IRMA DELA TORRE  
19 DECEASED, THROUGH HER  
20 SUCCESSOR IN INTEREST, JOSE  
21 MAXIMILIANO LICEA ABACA; MARIA  
22 DELA TORRE, Individually; and  
23 JOSE MAXIMILIANO LICEA ABACA,  
24 Individually,

No: **09-00626 PVT**

Hon.

**COMPLAINT FOR DAMAGES,  
DECLARATORY, AND INJUNCTIVE  
RELIEF, AND DEMAND FOR JURY  
TRIAL**

Plaintiffs,

vs.

ADR

25 CITY OF SALINAS, a public entity,  
26 CITY OF SALINAS POLICE CHIEF  
27 DANIEL ORTEGA in his individual and  
28 official capacities, POLICE OFFICER  
STEVEN MATTOCKS, Individually,  
POLICE OFFICER ROBERT  
BALAORO, Individually, and DOES 1  
through 10, Jointly and Severally,

Defendants.

GO 44 SEC. N  
NOTICE OF ASSIGNMENT  
TO MAGISTRATE JUDGE SENT

1 Plaintiffs, by and through their attorneys, HADDAD & SHERWIN and CURD,  
2 GALINDO & SMITH LLP, for their Complaint against Defendants, state as follows:

3 **JURISDICTION AND INTRADISTRICT ASSIGNMENT TO SAN JOSE**

4 1. This is a civil rights wrongful death/survival action arising from Defendants'  
5 wrongful shooting, use of excessive force and negligence, resulting in the death of Maria  
6 Irma Dela Torre, Deceased, on July 13, 2008, in the City of Salinas, Monterey County,  
7 California. This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth,  
8 First, and Fourteenth Amendments to the United States Constitution, as well as the laws  
9 and Constitution of the State of California. Jurisdiction is founded upon 28 USC §§ 1331  
10 and 1343(a)(3) and (4), and the aforementioned statutory and constitutional provisions.  
11 Plaintiffs further invoke the supplemental jurisdiction of this Court pursuant to 28 USC  
12 §1367 to hear and decide claims arising under state law.  
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15 **INTRADISTRICT ASSIGNMENT**

16 2. A substantial part of the events and/or omissions complained of herein  
17 occurred in the City of Salinas, Monterey County, California, and this action is properly  
18 assigned to the San Jose Division of the United States District Court for the Northern  
19 District of California, pursuant to Civil Local Rule 3-2(e).

20 **PARTIES AND PROCEDURE**

21 3. Plaintiff JOSE MAXIMILIANO LICEA ABACA brings these claims individually  
22 and as husband and Successor in Interest for his wife, Maria Irma Dela Torre, Deceased.  
23 JOSE MAXIMILIANO LICEA ABACA is a resident of California and is entitled to bring  
24 these claims individually pursuant to California Code of Civil Procedure §§ 377.30 et seq.,  
25 377.60, and federal civil rights law.  
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1           4.       Plaintiff MARIA DELA TORRE is the mother of decedent, Maria Irma Dela  
2 Torre. Plaintiff MARIA DELA TORRE brings these claims individually pursuant to C.C.P. §  
3 377.60 and federal civil rights law. MARIA DELA TORRE is 78 years old. Maria Irma Dela  
4 Torre, or Irma as she called her, was her seventh child. At the time of Decedent's death,  
5 Plaintiff MARIA DELA TORRE was dependent on the Decedent, her daughter, relying on  
6 Decedent for financial and other support.  
7

8           5.       As described above, Plaintiffs herein bring these claims pursuant to  
9 California Code of Civil Procedure sections 377.20 et seq. and 377.60 et seq. which  
10 provide for survival and wrongful death actions. These claims are also brought individually  
11 and on behalf of Maria Irma Dela Torre, Deceased, on the basis of the 42 USC §§ 1983  
12 and 1988, the United States Constitution, and federal and state civil rights law.  
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14           6.       Defendant CITY OF SALINAS is a public entity established by the laws and  
15 Constitution of the State of California, and owns, operates, manages, directs, and controls  
16 the Salinas Police Department ("SPD") which employs other defendants in this action.

17           7.       Defendant Police Officer STEVEN MATTOCKS ("Mattocks") at all material  
18 times was employed as a law enforcement officer by Defendant City of Salinas, and was  
19 acting within the course and scope of that employment. Defendant Mattocks is being sued  
20 in his individual capacity.  
21

22           8.       Defendant Police Officer ROBERT BALAORO ("Balaoro") at all material  
23 times was employed as a law enforcement officer by Defendant City of Salinas, and was  
24 acting within the course and scope of that employment. Defendant Balaoro is being sued  
25 in his individual capacity.

26           9.       Defendant Chief of Police DANIEL M. ORTEGA ("Ortega") at all material  
27 times was employed as Chief of Police by Defendant City of Salinas, and was acting within  
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1 the course and scope of that employment. As Chief of Police, Defendant Ortega was a  
2 policy-making official for the City of Salinas with the power to make official and final policy  
3 for the Salinas Police Department. Defendant Ortega is being sued in his individual and  
4 official capacities.

5  
6 10. Plaintiffs are informed and believe and thereon allege that each of the  
7 Defendants sued herein was negligently, wrongfully, and otherwise responsible in some  
8 manner for the events and happenings as hereinafter described, and proximately caused  
9 injuries and damages to Plaintiffs. Further, one or more DOE defendants was at all  
10 material times responsible for the hiring, training, supervision, and discipline of other  
11 defendants, including Doe Defendants.

12  
13 11. Plaintiffs are informed and believe, and thereon allege, that each of the  
14 Defendants was at all material times an agent, servant, employee, partner, joint venturer,  
15 co-conspirator, and/or alter ego of the remaining Defendants, and in doing the things  
16 herein alleged, was acting within the course and scope of that relationship. Plaintiffs are  
17 further informed and believe, and thereon allege, that each of the Defendants herein gave  
18 consent, aid, and assistance to each of the remaining Defendants, and ratified and/or  
19 authorized the acts or omissions of each Defendant as alleged herein, except as may be  
20 hereinafter otherwise specifically alleged. At all material times, each Defendant was jointly  
21 engaged in tortious activity, resulting in the deprivation of Plaintiffs' constitutional rights  
22 and other harm.

23  
24 12. The acts and omissions of all Defendants as set forth herein were at all  
25 material times pursuant to the actual customs, policies, practices and procedures of the  
26 Salinas Police Department.

1 13. At all material times, each Defendant acted under color of the laws, statutes,  
2 ordinances, and regulations of the State of California.

3 14. Each Plaintiff herein timely and properly filed tort claims pursuant to Cal.  
4 Gov. Code § 910 et seq., and this action is timely filed within all applicable statutes of  
5 limitation.

6 15. This complaint may be pled in the alternative pursuant to FRCivP 8(e)(2).  
7

8 **GENERAL ALLEGATIONS**

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

11 17. This Complaint concerns an extremely tragic incident that began in the early  
12 morning in the City of Salinas around the residence at 1143 #B E. Laurel Drive. Maria  
13 Irma Dela Torre, who suffered from epilepsy, was at home and experiencing the early  
14 stages of a seizure. At this time, Maria Irma Dela Torre ("Maria Irma") was a disabled  
15 individual in need of medical care and assistance. Concerned for her safety, Maria Irma's  
16 family called 911 and requested an ambulance to take Maria Irma to the hospital. Maria  
17 Irma, in a state of confusion due to the onset of the seizure, then ran out of her house and  
18 locked herself in her sister's van that was parked in her driveway.  
19

20 18. Defendant Officers Mattocks and Balaoro arrived at Maria Irma's residence  
21 before an ambulance arrived. At the time, Maria Irma obviously was an emotionally  
22 disturbed and/or medically disabled person, requiring medical care and special police  
23 procedures and tactics. Plaintiff Abaca attempted to inform the Defendant Officers that he  
24 was Maria Irma's husband, and was trying to get Maria Irma transported to the hospital.  
25 Defendant Officers Mattocks and Balaoro made no attempt to communicate with Plaintiff  
26 Abaca and responded only by ordering him to "get away." Acting as a team, Defendant  
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1 Officers Mattocks and Balaoro then approached the van in which Maria Irma had locked  
2 herself, with defendant Balaoro approaching the passenger side and Defendant Mattocks  
3 approaching the driver's side. At the time, Maria Irma was behaving lawfully, and was  
4 seated on the passenger side of the van. Defendant Balaoro then tapped on the window  
5 and ordered Maria Irma out of the van. Complying with this order, Maria Irma exited the  
6 van.  
7

8 19. Once Maria Irma was out of the vehicle in compliance with the order given  
9 her by Defendant Balaoro, Defendant Mattocks drew his gun behind Maria Irma without  
10 provocation or just cause. Maria Irma hesitated and then slowly took a small number of  
11 steps towards the street. At this time, and without provocation or just cause, Defendants  
12 Balaoro and Mattocks used excessive and unreasonable force against Maria Irma by  
13 tasing her and shooting her three times, killing her. This tragic and senseless killing took  
14 place before the eyes of Maria Irma's husband, Plaintiff Abaca. At the time she was killed,  
15 Maria Irma Dela Torre was a Spanish-speaking, disabled, emotionally disturbed woman in  
16 need of medical care. She had committed no crime.  
17

18 20. Defendant Mattocks failed to give any warning to Maria Irma, before using  
19 deadly force, even though a warning would have been feasible and proper.  
20

21 21. At the time that Defendant Mattocks fired gunshots at Maria Irma, Maria  
22 Irma, did not pose a significant and immediate threat of death or serious physical injury to  
23 Defendants or to anyone else.

24 22. At all material times, Maria Irma Dela Torre, behaved lawfully and peacefully.  
25 The use of deadly force, including the gunshots described herein, was not justified or  
26 lawful under the circumstances.  
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1           23.     Alternatively, or concurrently, Defendants Balaoro and Mattocks' own  
2 excessive and unreasonable actions created a risk of harm to Maria Irma Dela Torre,  
3 created the situation in which Defendants Balaoro and Mattocks decided to use deadly  
4 force, and caused an escalation of events leading to the shooting death of Maria Irma Dela  
5 Torre.

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7           24.     Defendants Balaoro and Mattocks' conduct herein, including but not limited  
8 to their decision(s) to stop and seize Maria Irma, the manner in which they conducted that  
9 stop and seizure, their failure to communicate with Plaintiff Abaca or other witnesses in  
10 Spanish, their use of force including Taser, their use of deadly force, and their other  
11 conduct, was contrary to generally accepted reasonable police procedures and tactics, and  
12 caused the wrongful death of Maria Irma Dela Torre.

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14           25.     At all material times, and alternatively, the actions and omissions of each  
15 defendant were intentional, wanton and/or willful, conscience shocking, reckless,  
16 malicious, deliberately indifferent to Plaintiffs' rights, done with actual malice, grossly  
17 negligent, negligent, and objectively unreasonable.

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

- 21
- 22           a.     Wrongful death of Maria Irma Dela Torre;
  - 23           b.     Hospital and medical expenses;
  - 24           c.     Coroner's fees, funeral and burial expenses;
  - 25           d.     Loss of familial relationships, including loss of love, companionship,  
26                 comfort, affection, consortium, society, services, solace, and moral  
27                 support;
  - 28           e.     Loss of economic support;

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- f. Violation of constitutional rights;
- g. All damages and penalties recoverable under 42 USC §§ 1983 and 1988, and as otherwise allowed under California and United States statutes, codes, and common law;
- h. Maria Irma Dela Torre's loss of life, pursuant to federal civil rights law;
- i. Maria Irma Dela Torre's conscious pain and suffering, pursuant to federal civil rights law;

**COUNT ONE**  
**-- 42 USC §1983 --**  
**ALL PLAINTIFFS AGAINST DEFENDANTS BALAORO, MATTOCKS AND DOES 1-10**

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

28. By the actions and omissions described above, Defendants BALAORO, MATTOCKS, and DOES 1-10 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 unreasonable searches and seizures as secured by the Fourth and Fourteenth Amendments;
- b. The right to be free from excessive and unreasonable force in the course of arrest or detention as secured by the Fourth and Fourteenth Amendments;
- c. The right to be free from the use of unlawful deadly force as secured by the Fourth and Fourteenth Amendments;
- d. The right to be free of unlawful, reckless, deliberately indifferent, and conscience shocking deadly force as secured by the Fourteenth Amendment;
- e. 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 First, Fourth and Fourteenth Amendments, and California Code of Civil Procedure §§ 377.20 et seq. and 377.60 et seq.;



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29. 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 Maria Irma Dela Torre, Deceased) and others would be violated by their acts and/or omissions.

30. 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 26, above.

31. The conduct of Defendants Balaoro, Mattocks and DOES 1-10 entitles Plaintiffs to punitive damages and penalties allowable under 42 USC §1983 and Cal. Code of Civil Procedure § 377.20 et seq.

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

**COUNT TWO  
- 42 USC §1983 -  
ALL PLAINTIFFS AGAINST DEFENDANTS CITY OF SALINAS, CHIEF OF POLICE  
DANIEL ORTEGA, AND DOES 1-10**

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

34. The unconstitutional actions and/or omissions of Defendants BALAORO, MATTOCKS and DOES 1-10, as well as other officers employed by or acting on behalf of Defendant City of Salinas, on information and belief, were pursuant to the following customs, policies, practices, and/or procedures of the SPD, stated in the alternative, which were directed, encouraged, allowed, and/or ratified by policy making officers for City of Salinas and the SPD:

a. To use or tolerate the use of excessive and/or unjustified force;

b. To use or tolerate the use of unlawful deadly force;

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- c. To fail to use appropriate and generally accepted law enforcement procedures in handling emotionally disturbed and/or medically disabled persons;
- d. To fail to use appropriate and generally accepted law enforcement procedures in handling disabled persons;
- e. To fail to use appropriate and generally accepted law enforcement procedures in handling persons experiencing medical emergencies;
- f. To cover-up violations of constitutional rights by any or all of the following:
  - i. by failing to properly investigate and/or evaluate complaints or incidents of excessive and unreasonable force, unlawful seizures, and/or handling of emotionally disturbed persons;
  - ii. by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police activity; and
  - iii. 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;
- g. 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,
- h. 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.

35. Defendants City of Salinas, Chief Ortega, and Does 1-10 failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants Balaoro, Mattocks and DOE Defendants, and other SPD personnel, with deliberate indifference to Plaintiffs' constitutional rights, which were thereby violated as described above.

1           36. The unconstitutional actions and/or omissions of Defendants DOES 1-10,  
2 and other SPD personnel, as described above, were approved, tolerated and/or ratified by  
3 policy-making officers for the SPD. Plaintiffs are informed and believe, and thereupon  
4 allege, the details of this incident have been revealed to the authorized policy makers  
5 within City of Salinas and the SPD, and that such policy makers have direct knowledge of  
6 the fact that the Maria Irma Dela Torre shooting was not justified, but rather represented  
7 an unconstitutional display of unreasonable, excessive and deadly force. Notwithstanding  
8 this knowledge, the authorized policy makers within City of Salinas and the SPD have  
9 approved of Defendants Balaoro and Mattocks' shooting of Maria Irma Dela Torre, and  
10 have made a deliberate choice to endorse Defendants Balaoro and Mattocks' shooting of  
11 Maria Irma Dela Torre and the basis for that shooting. By so doing, the authorized policy  
12 makers within City of Salinas and the SPD have shown affirmative agreement with the  
13 individual defendant officers' actions, and have ratified the unconstitutional acts of the  
14 individual defendant officers.  
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17           37. The aforementioned customs, policies, practices, and procedures, the  
18 failures to properly and adequately hire, train, instruct, monitor, supervise, evaluate,  
19 investigate, and discipline, as well as the unconstitutional orders, approvals, ratification  
20 and toleration of wrongful conduct of Defendants City of Salinas, Chief Ortega, and Does  
21 1-10, were a moving force and/or a proximate cause of the deprivations of Plaintiffs'  
22 clearly-established and well-settled constitutional rights in violation of 42 USC §1983, as  
23 more fully set forth in Paragraph 28, above.  
24

25           38. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs  
26 of rights described herein, knowingly, maliciously, and with conscious and reckless  
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1 disregard for whether the rights and safety of Plaintiffs and others would be violated by  
2 their acts and/or omissions.

3 39. As a direct and proximate result of the unconstitutional actions, omissions,  
4 customs, policies, practices and procedures of Defendants City of Salinas, Chief Ortega,  
5 and Does 1-10 as described above, Plaintiffs sustained serious and permanent injuries  
6 and are entitled to damages, penalties, costs and attorney fees as set forth in paragraphs  
7 30-32, above, and punitive damages against Defendants Balaoro, Mattocks, Ortega, and  
8 DOES 1-10 in their individual capacities.  
9

10 **COUNT THREE**  
11 **-- VIOLATION OF CIVIL CODE §52.1 --**  
12 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

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

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

- 19 a. The right to be free from unreasonable searches and seizures as  
20 secured by the Fourth and Fourteenth Amendments;
- 21 b. The right to be free from excessive and unreasonable force in the  
22 course of arrest or detention as secured by the Fourth and  
23 Fourteenth Amendments;
- 24 c. The right to be free from the unreasonable use of deadly force as  
25 secured by the Fourth and Fourteenth Amendments;
- 26 d. The right to be free of unlawful, reckless, deliberately indifferent,  
27 and conscience shocking deadly force as secured by the  
28 Fourteenth Amendment;
- e. The right to be free from wrongful government interference with  
familial relationships, and Plaintiffs' right to companionship and

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society with each other, as secured by the First, Fourth and Fourteenth Amendments;

- f. The right to enjoy and defend life and liberty, acquire, possess and protect property, and pursue and obtain safety, happiness and privacy, as secured by the California Constitution, Article 1, Section 1;
- g. The right to life, liberty and property and not to be deprived of those without due process of law as secured by the California Constitution, Article 1, Section 7;
- h. The right to be free from unlawful and unreasonable seizure of one's person, including the right to be free from unreasonable or excessive deadly force, as secured by the California Constitution, Article 1, Section 13;
- i. The right to protection from bodily restraint, harm, or personal insult, as secured by Cal. Civil Code § 43.

42. 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 ¶¶ 30-32, and punitive damages against Defendants Balaoro, Mattocks, Chief Ortega, and Does 1-10 in their individual capacities, including all damages allowed by California Civil Code §§ 52, 52.1, and California law, not limited to costs, attorneys fees, and civil penalties.

**COUNT FOUR**  
**-- NEGLIGENCE; PERSONAL INJURIES --**  
**ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

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

44. At all times, each Defendant owed Plaintiffs the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

1 45. At all times, each Defendant owed Plaintiffs the duty to act with reasonable  
2 care.

3 46. These general duties of reasonable care and due care owed to Plaintiffs by  
4 all Defendants include but are not limited to the following specific obligations:

- 5 a. to refrain from using excessive and/or unreasonable force against  
6 Maria Irma Dela Torre;
- 7 b. to refrain from unreasonably creating the situation where force,  
8 including but not limited to deadly force, is used;
- 9 c. to refrain from abusing their authority granted them by law;
- 10 d. to use tactics and force appropriate for a disabled, emotionally  
11 disturbed person having a medical emergency;
- 12 e. to refrain from violating Plaintiffs' rights guaranteed by the United  
13 States and California Constitutions, as set forth above, and as  
14 otherwise protected by law.

15 47. Additionally, these general duties of reasonable care and due care owed to  
16 Plaintiffs by Defendants City of Salinas, Chief Ortega, and Does 1-10, include but are not  
17 limited to the following specific obligations:

- 18 a. to properly and adequately hire, investigate, train, supervise, monitor,  
19 evaluate, and discipline their employees, agents, and/or law  
20 enforcement officers to ensure that those employees/agents/officers  
21 act at all times in the public interest and in conformance with law;
- 22 b. to make, enforce, and at all times act in conformance with policies and  
23 customs that are lawful and protective of individual rights, including  
24 Plaintiffs'.
- 25 c. to refrain from making, enforcing, and/or tolerating the wrongful  
26 policies and customs set forth at paragraph 34, above.

27 48. Defendants, through their acts and omissions, breached each and every one  
28 of the aforementioned duties owed to Plaintiffs.

49. As a direct and proximate result of Defendants' negligence, Plaintiffs  
sustained injuries and damages, and against each and every Defendant are entitled to

1 relief as set forth above at ¶¶ 30-32, and punitive damages against Defendants Balaoro,  
2 Mattocks, Chief Ortega, and Does 1-10 in their individual capacities.

3  
4 **COUNT FIVE**  
5 **-- ASSAULT AND BATTERY --**  
6 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

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

9 51. The actions and omissions of Defendants Balaoro, Mattocks, Does 1-10 and  
10 City of Salinas as set forth above constitute assault and battery.

11 52. As a direct and proximate result of Defendants' assault and battery of Maria  
12 Irma Dela Torre, Plaintiffs sustained injuries and damages, and are entitled to relief as set  
13 forth above at ¶¶ 30-32, and punitive damages against all Defendants in their individual  
14 capacities.

15 **COUNT SIX**  
16 **-- VIOLATION OF CALIFORNIA CIVIL CODE §51.7 --**  
17 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

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

20 54. By their acts, omissions, customs, and policies, Defendants Balaoro,  
21 Mattocks, Does 1-10, and City of Salinas, acting in concert/conspiracy, as described  
22 above, violated Plaintiffs' rights secured by California Civil Code §51.7 to be free from any  
23 violence, or intimidation by threat of violence, committed against Maria Irma Dela Torre,  
24 because of her disability, psychiatric condition, and/or language.

25 55. As a direct and proximate result of Defendants' violation of California Civil  
26 Code §51.7, Plaintiffs sustained injuries and damages, and are entitled to relief as set forth  
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1 above at ¶¶ 30-32, and all damages allowed by California Civil Code §§52, 51.7, and  
2 California law, not limited to attorney fees, costs, treble damages, and civil penalties.

3 **COUNT SEVEN**  
4 **-- VIOLATION OF CALIFORNIA CIVIL CODE §51.7 --**  
5 **PLAINTIFF ABACA AGAINST DEFENDANTS BALAORO AND MATTOCKS**  
6 **AND CITY OF SALINAS**

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

9 57. At all times, Defendant Balaoro, Mattocks, and City of Salinas owed Plaintiffs  
10 the duty to act with due care in the execution and enforcement of any right, law, or legal  
11 obligation, and at all times to conduct themselves with reasonable care as described in  
12 paragraphs 46, above.

13 58. Plaintiff Abaca witnessed Defendants' wrongful acts, omissions, and  
14 breaches of their duty of care at the scene as described above, including the wrongful and  
15 traumatic shooting of his wife. During the course of these events, Plaintiff Abaca was  
16 aware that his wife was unarmed, that his wife obviously posed no threat to defendant  
17 officers, that his wife was a disabled and emotionally disturbed person in need of medical  
18 care, and that defendant officers were breaching their duties of care owed to Plaintiff  
19 Abaca and his wife.

20 59. As a direct and proximate result of having witnessed and perceived  
21 Defendants' breaches of duty and wrongful shooting of his wife, Plaintiff Abaca sustained  
22 extreme emotional distress as well as other injuries and damages described herein, and is  
23 entitled to relief as set forth above at ¶¶ 30-32, and punitive damages against Defendants  
24 Balaoro and Mattocks in their individual capacities.  
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1           WHEREFORE, Plaintiffs respectfully request the following relief against each and  
2 every Defendant herein, jointly and severally:

- 3           a.     compensatory and exemplary damages in an amount according to  
4               proof and which is fair, just and reasonable;
- 5           b.     punitive damages under 42 USC §1983 and California law in an  
6               amount according to proof and which is fair, just, and reasonable;
- 7           c.     all other damages, penalties, costs, interest, and attorney fees as  
8               allowed by 42 USC §§ 1983 and 1988, Cal. Code of Civ. Proc. §§  
9               377.20 et seq., 377.60 et seq., 1021.5, Cal. Civil Code §§ 52 et seq.,  
10              52.1, 51.7, and as otherwise may be allowed by California and/or  
11              federal law;
- 12           d.     Injunctive relief, including but not limited to the following:
  - 13              i.     an order prohibiting Defendants and their police  
14                   officers from unlawfully interfering with the rights of  
15                   Plaintiffs and others to be free from unreasonable  
16                   searches and seizures and excessive and  
17                   unreasonable force;
  - 18              ii.    an order requiring Defendants to institute and  
19                   enforce appropriate and lawful policies and  
20                   procedures for stopping and detaining individuals,  
21                   particularly persons with disabilities, persons  
22                   experiencing a medical emergency, and emotionally  
23                   disturbed persons;
  - 24              iii.   an order prohibiting Defendants and their police  
25                   officers from engaging in the "code of silence" as  
26                   may be supported by the evidence in this case;
  - 27              iv.    an order requiring Defendants to train all SPD law  
28                   enforcement officers concerning generally accepted  
                 and proper tactics and procedures for the use of  
                 deadly force and this Court's orders concerning the  
                 issues raised in injunctive relief requests i-iii, above;
  - v.     an order requiring Defendants to train all SPD  
                 Officers concerning generally accepted and proper  
                 tactics and procedures for handling emotionally  
                 disturbed persons and this Court's orders  
                 concerning the issues raised in injunctive relief  
                 requests i-iii, above;

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vi. an order requiring Defendants to train all RPD Officers concerning generally accepted and proper tactics and procedures for handling disabled persons and this Court's orders concerning the issues raised in injunctive relief requests i-iii, above;

vii. an order requiring Defendants to train all RPD Officers concerning generally accepted and proper tactics and procedures for handling persons experiencing a medical emergency and this Court's orders concerning the issues raised in injunctive relief requests i-iii, above;

e. such other and further relief as this Court may deem appropriate.

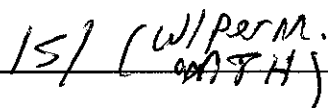
DATED: February 12, 2009

HADDAD & SHERWIN

  
/s/ Michael J. Haddad  
Michael J. Haddad  
Attorneys for Plaintiff  
MARIA DELA TORRE

DATED: February 12, 2009

CURD, GALINDO & SMITH, LLP

  
/s/ Alexis Galindo /s/ (w/perm. [initials])  
ALEXIS GALINDO  
Attorneys for Plaintiff  
JOSE MAXIMILIANO LICEA ABACA


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**JURY DEMAND**

Plaintiffs hereby request a trial by jury.

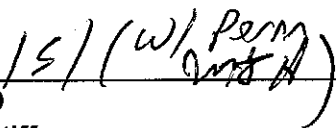
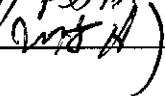
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/s/ Michael J. Haddad  
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