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15 **Attorneys for Plaintiff AMY THU BICH LE, Successor in Interest and Individually**

16 **UNITED STATES DISTRICT COURT**  
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 **VAN DINH LE deceased, THROUGH )**  
19 **HIS SUCCESSOR IN INTEREST, )**  
20 **AMY THU BICH LE; and AMY THU )**  
21 **BICH LE, Individually, KEVIN LE, )**  
22 **VIVIAN LE )**

23 **Plaintiffs,**

24 **vs.**

25 **CITY OF ESCONDIDO, a public )**  
26 **entity, CITY OF ESCONDIDO )**  
27 **POLICE CHIEF JIM MAHER in his )**  
28 **individual and official capacities, )**  
**POLICE OFFICER MATTHEW )**  
**NELSON, Individually, and DOES 1 )**  
**through 10, Jointly and Severally, )**

**Defendants.**

**Case No.: '11CV2241 BEN NLS**

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

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2 Plaintiffs, by and through their attorneys, CURD, GALINDO & SMITH LLP and  
3 WYNN LAW GROUP for their Complaint against Defendants, state as follows:

4 **JURISDICTION AND INTRADISTRICT ASSIGNMENT TO SAN DIEGO**

5 1. This is a civil rights wrongful death/survival action arising from Defendants'  
6 wrongful shooting, use of excessive force and negligence, resulting in the death of VAN  
7 DINH LE, Deceased, on March 3, 2011, in the City of ESCONDIDO, SAN DIEGO County,  
8 California. This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth  
9 and Fourteenth Amendments to the United States Constitution, as well as the laws and  
10 Constitution of the State of California. Jurisdiction is founded upon 28 USC §§ 1331 and  
11 1343(a)(3) and (4), and the aforementioned statutory and constitutional provisions.  
12 Plaintiffs further invoke the supplemental jurisdiction of this Court pursuant to 28 USC  
13 §1367 to hear and decide claims arising under state law. The amount in controversy  
14 herein, excluding interest and costs, exceeds the minimum jurisdictional limit of this Court.

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17 **PARTIES AND PROCEDURE**

18 2. Plaintiff AMY THU BICH LE brings these claims individually and as wife and  
19 Successor in Interest for her husband, VAN DINH LE, Deceased. AMY THU BICH LE is a  
20 resident of California and is entitled to bring these claims individually pursuant to California  
21 Code of Civil Procedure §§ 377.30 et seq., 377.60, and federal civil rights law.

22 3. Plaintiffs, KEVIN LE and VIVIAN LE are the adult children of VAN DINH LE,  
23 deceased.

24 4. Plaintiffs herein bring these claims pursuant to California Code of Civil  
25 Procedure sections 377.20 et seq. and 377.60 et seq. which provide for survival and  
26 wrongful death actions. These claims are also brought individually and on behalf of VAN  
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1 DINH LE, Deceased, on the basis of the 42 USC §§ 1983 and 1988, the United States  
2 Constitution, and federal and state civil rights law.

3 5. Defendant CITY OF ESCONDIDO is a public entity established by the laws  
4 and Constitution of the State of California, and owns, operates, manages, directs, and  
5 controls the ESCONDIDO Police Department (“EPD”) which employs other defendants in  
6 this action.

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8 6. Defendant Police Officer MATTHEW NELSON (“Matthew”) at all material  
9 times was employed as a law enforcement officer by Defendant City of ESCONDIDO, and  
10 was acting within the course and scope of that employment. Defendant Matthew is being  
11 sued in his individual capacity.

12 7. Defendants Police Officers DOE 1 through 10 at all material times was  
13 employed as a law enforcement officer by Defendant City of ESCONDIDO, and was acting  
14 within the course and scope of that employment. Defendant DOE 1 is being sued in his  
15 individual capacity.

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17 8. Defendant Chief of Police JIM MAHER (“MAHER”) at all material times was  
18 employed as Chief of Police by Defendant City of ESCONDIDO, and was acting within the  
19 course and scope of that employment. As Chief of Police, Defendant MAHER was a  
20 policy-making official for the City of ESCONDIDO with the power to make official and final  
21 policy for the ESCONDIDO Police Department. Defendant MAHER is being sued in his  
22 individual and official capacities.

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24 9. Plaintiffs are informed and believe and thereon allege that each of the  
25 Defendants sued herein was negligently, wrongfully, and otherwise responsible in some  
26 manner for the events and happenings as hereinafter described, and proximately caused  
27 injuries and damages to Plaintiffs. Further, one or more DOE defendants was at all  
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1           16. This Complaint concerns an extremely tragic incident that began in the early  
2 morning in the City of ESCONDIDO around the residence at 2549 Hamlin Ct., Escondido,  
3 CA. VAN DINH LE, who suffered from MENTAL ILLNESS, was at home and experiencing  
4 the early stages of a mental breakdown. At this time, VAN DINH LE (“Le”) was a disabled  
5 individual in need of medical care and assistance. Concerned for his safety, AMY LE tried  
6 to call 911 but could not get through she then alerted neighbors who did call 911 and  
7 requested an ambulance to take LE to the hospital. LE barricaded himself in a bathroom  
8 in his home.

10           17. Defendant Officers Matthew and DOE 1 through 10 arrived at LE’s residence  
11 before an ambulance arrived. At the time, LE obviously was an emotionally disturbed  
12 and/or medically disabled person, requiring medical care and special police procedures  
13 and tactics. Plaintiff AMY LE attempted to inform the Defendant Officers that she was LE’s  
14 wife, and was trying to get LE transported to the hospital. Defendant Officers Matthew and  
15 DOES 1 through 10 made no attempt to communicate with Plaintiff AMY LE and  
16 responded only by ordering her to “get away.” Acting as a team, Defendant Officers  
17 Matthew and DOES 1 through 10 then ran upstairs to the bathroom and approached LE  
18 who had locked himself in the bathroom, with defendant DOES 1 through 10 approaching  
19 the bathroom door and Defendant Matthew standing near the door. At the time, LE was in  
20 the bathroom, Defendant DOES 1 through 10 pushed the bathroom door open and  
21 startled LE who had a pair of kitchen scissors in his hand.

24           18. Once the bathroom door was opened, Defendant Matthew shot his gun killing  
25 LE without provocation or just cause. At this time, and without provocation or just cause,  
26 Defendants DOES 1 through 10 and Matthew used excessive and unreasonable force  
27 against LE by shooting him, killing him. This tragic and senseless killing took place before  
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1 the sensory perception of LE's wife, Plaintiff AMY LE. At the time he was killed, VAN  
2 DINH LE was a disabled, mentally, emotionally disturbed man in need of medical care. He  
3 had committed no crime.

4 19. Defendant Matthew failed to give any warning to LE, before using deadly  
5 force, even though a warning would have been feasible and proper.

6 20. At the time that Defendant Matthew fired the fatal gunshot at LE, LE did not  
7 pose a significant and immediate threat of death or serious physical injury to Defendants or  
8 to anyone else.

9 21. At all material times, VAN DINH LE, behaved lawfully and peacefully. The  
10 use of deadly force, including the gunshot described herein, was not justified or lawful  
11 under the circumstances.

12 22. Alternatively, or concurrently, Defendants DOES 1 through 10 and Matthew's  
13 own excessive and unreasonable actions created a risk of harm to VAN DINH LE, created  
14 the situation in which Defendants DOES 1 through 10 and Matthew decided to use deadly  
15 force, and caused an escalation of events leading to the shooting death of VAN DINH LE.

16 23. Defendants DOES 1 through 10 and Matthew' conduct herein, including but  
17 not limited to their decision(s) to stop and seize LE, the manner in which they conducted  
18 that stop and seizure, their failure to communicate with Plaintiff AMY LE or other witnesses  
19 present at the location, their use of deadly force, and their other conduct, was contrary to  
20 generally accepted reasonable police procedures and tactics, and caused the wrongful  
21 death of VAN DINH LE.

22 24. At all material times, and alternatively, the actions and omissions of each  
23 defendant were intentional, wanton and/or willful, conscience shocking, reckless,  
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1 malicious, deliberately indifferent to Plaintiffs' rights, done with actual malice, grossly  
2 negligent, negligent, and objectively unreasonable.

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

- 6           a. Wrongful death of VAN DINH LE;
- 7           b. Hospital and medical expenses;
- 8           c. Property damage as a result of the gun shot to Plaintiffs' single family  
9 residence;
- 10           d. Coroner's fees, funeral and burial expenses;
- 11           e. Loss of familial relationships, including loss of love, companionship,  
12 comfort, affection, consortium, society, services, solace, and moral  
13 support;
- 14           f. Loss of economic support;
- 15           g. Violation of constitutional rights;
- 16           h. All damages and penalties recoverable under 42 USC §§ 1983 and  
17 1988, and as otherwise allowed under California and United States  
18 statutes, codes, and common law;
- 19           i. VAN DINH LE's loss of life, pursuant to federal civil rights law;
- 20           j. VAN DINH LE's conscious pain and suffering, pursuant to federal civil  
21 rights law;

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

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

27. By the actions and omissions described above, Defendants DOES 1 THROUGH 10, MATTHEW, 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.;

28. 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 VAN DINH LE,) and others would be violated by their acts and/or omissions.



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- 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.

34. Defendants City of ESCONDIDO, Chief MAHER, and Does 1-10 failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants DOES 1 through 10, Matthew and DOE Defendants, and other EPD personnel, with deliberate indifference to Plaintiffs’ constitutional rights, which were thereby violated as described above.

35. The unconstitutional actions and/or omissions of Defendants DOES 1-10, and other EPD personnel, as described above, were approved, tolerated and/or ratified by policy-making officers for the EPD. Plaintiffs are informed and believe, and thereupon allege, the details of this incident have been revealed to the authorized policy makers within City of ESCONDIDO and the EPD, and that such policy makers have direct

1 knowledge of the fact that the VAN DINH LE shooting was not justified, but rather  
2 represented an unconstitutional display of unreasonable, excessive and deadly force.  
3 Notwithstanding this knowledge, the authorized policy makers within City of ESCONDIDO  
4 and the EPD have approved of Defendants DOES 1 through 10 and Matthew's shooting of  
5 VAN DINH LE, and have made a deliberate choice to endorse Defendants DOES 1  
6 through 10 and Matthew's shooting of VAN DINH LE and the basis for that shooting. By  
7 so doing, the authorized policy makers within City of ESCONDIDO and the EPD have  
8 shown affirmative agreement with the individual defendant officers' actions, and have  
9 ratified the unconstitutional acts of the individual defendant officers.  
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11           36. The aforementioned customs, policies, practices, and procedures, the  
12 failures to properly and adequately hire, train, instruct, monitor, supervise, evaluate,  
13 investigate, and discipline, as well as the unconstitutional orders, approvals, ratification  
14 and toleration of wrongful conduct of Defendants City of ESCONDIDO, Chief MAHER, and  
15 Does 1-10, were a moving force and/or a proximate cause of the deprivations of Plaintiffs'  
16 clearly-established and well-settled constitutional rights in violation of 42 USC §1983, as  
17 more fully set forth in Paragraph 27, above.  
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19           37. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs  
20 of rights described herein, knowingly, maliciously, and with conscious and reckless  
21 disregard for whether the rights and safety of Plaintiffs and others would be violated by  
22 their acts and/or omissions.  
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24           38. As a direct and proximate result of the unconstitutional actions, omissions,  
25 customs, policies, practices and procedures of Defendants City of ESCONDIDO, Chief  
26 MAHER, and Does 1-10 as described above, Plaintiffs sustained serious and permanent  
27 injuries and are entitled to damages, penalties, costs and attorney fees as set forth in  
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1 paragraphs 25, 30 and 31, above, and punitive damages against Defendants DOES 1  
2 through 10, Matthew, and MAHER in their individual capacities.

3 **COUNT THREE**  
4 **-- VIOLATION OF CIVIL CODE §52.1 --**  
5 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

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

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

- 12 a. The right to be free from unreasonable searches and seizures as  
13 secured by the Fourth and Fourteenth Amendments;
- 14 b. The right to be free from excessive and unreasonable force in the  
15 course of arrest or detention as secured by the Fourth and  
16 Fourteenth Amendments;
- 17 c. The right to be free from the unreasonable use of deadly force as  
18 secured by the Fourth and Fourteenth Amendments;
- 19 d. The right to be free of unlawful, reckless, deliberately indifferent,  
20 and conscience shocking deadly force as secured by the  
21 Fourteenth Amendment;
- 22 e. The right to be free from wrongful government interference with  
23 familial relationships, and Plaintiffs' right to companionship and  
24 society with each other, as secured by the First, Fourth and  
25 Fourteenth Amendments;
- 26 f. The right to enjoy and defend life and liberty, acquire, possess and  
27 protect property, and pursue and obtain safety, happiness and  
28 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;

- 1 h. The right to be free from unlawful and unreasonable seizure of  
2 one's person, including the right to be free from unreasonable or  
3 excessive deadly force, as secured by the California Constitution,  
4 Article 1, Section 13;
- 5 i. The right to protection from bodily restraint, harm, or personal  
6 insult, as secured by Cal. Civil Code § 43.

7 41. As a direct and proximate result of Defendants' violation of California Civil  
8 Code §52.1 and of Plaintiffs' rights under the United States and California Constitutions,  
9 Plaintiffs sustained injuries and damages, and against each and every Defendant are  
10 entitled to relief as set forth above at ¶¶ 25, 30 and 31, and punitive damages against  
11 Defendants DOES 1 through 10, Matthew, and Chief MAHER in their individual capacities,  
12 including all damages allowed by California Civil Code §§ 52, 52.1, and California law, not  
13 limited to costs, attorneys fees, and civil penalties.

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

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

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

21 44. At all times, each Defendant owed Plaintiffs the duty to act with reasonable  
22 care.

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

- 25 a. to refrain from using excessive and/or unreasonable force against  
26 VAN DINH LE;
- 27 b. to refrain from unreasonably creating the situation where force,  
28 including but not limited to deadly force, is used;

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- c. to refrain from abusing their authority granted them by law;
- d. to refrain from violating Plaintiffs' rights guaranteed by the United States and California Constitutions, as set forth above, and as otherwise protected by law.

46. Additionally, these general duties of reasonable care and due care owed to Plaintiffs by Defendants City of ESCONDIDO, Chief MAHER, and Does 1-10, include but are not limited to the following specific obligations:

- a. to properly and adequately hire, investigate, train, supervise, monitor, evaluate, and discipline their employees, agents, and/or law enforcement officers to ensure that those employees/agents/officers act at all times in the public interest and in conformance with the law;
- b. to make, enforce, and at all times act in conformance with policies and customs that are lawful and protective of individual rights, including Plaintiffs'.
- c. to refrain from making, enforcing, and/or tolerating the wrongful policies and customs set forth at paragraph 33, above.

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

48. As a direct and proximate result of Defendants' negligence, Plaintiffs sustained injuries and damages, and against each and every Defendant are entitled to relief as set forth above at ¶¶ 25, 30 and 31, and punitive damages against Defendants DOES 1 through 10, Matthew and Chief MAHER in their individual capacities.

**COUNT FIVE**  
**-- ASSAULT AND BATTERY --**  
**ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

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

50. The actions and omissions of Defendants DOES 1 through 10, Matthew, and City of ESCONDIDO as set forth above constitute assault and battery.



1 377.20 et seq., 377.60 et seq., 1021.5, Cal. Civil Code §§ 52 et seq.,  
2 52.1, and as otherwise may be allowed by California and/or federal  
3 law;

- 4 d. Injunctive relief, including but not limited to the following:
- 5 i. an order prohibiting Defendants and their police  
6 officers from unlawfully interfering with the rights of  
7 Plaintiffs and others to be free from unreasonable  
8 searches and seizures and excessive and  
9 unreasonable force;
  - 10 ii. an order requiring Defendants to institute and  
11 enforce appropriate and lawful policies and  
12 procedures for stopping and detaining individuals,  
13 particularly persons with disabilities, persons  
14 experiencing a medical emergency, and emotionally  
15 disturbed persons;
  - 16 iii. an order prohibiting Defendants and their police  
17 officers from engaging in the “code of silence” as  
18 may be supported by the evidence in this case;
  - 19 iv. an order requiring Defendants to train all EPD law  
20 enforcement officers concerning generally accepted  
21 and proper tactics and procedures for the use of  
22 deadly force and this Court’s orders concerning the  
23 issues raised in injunctive relief requests i-iii, above;
  - 24 v. an order requiring Defendants to train all EPD  
25 Officers concerning generally accepted and proper  
26 tactics and procedures for handling emotionally  
27 disturbed persons and this Court’s orders  
28 concerning the issues raised in injunctive relief  
requests i-iii, above;
  - vi. an order requiring Defendants to train all EPD  
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 EPD  
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;

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

DATED: August \_\_\_\_, 2011

**CURD, GALINDO & SMITH, LLP**

/s/ \_\_\_\_\_  
ALEXIS GALINDO  
Attorneys for Plaintiffs  
KEVIN LE and VIVIAN LE

DATED: August \_\_\_\_, 2011

**WYNN LAW GROUP**

/s/ \_\_\_\_\_  
RICHARD WYNN  
Attorneys for Plaintiff AMY THU BICH LE

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**JURY DEMAND**

Plaintiffs hereby request a trial by jury.

DATED: August \_\_\_\_, 2011

**CURD, GALINDO & SMITH, LLP**

/s/ \_\_\_\_\_  
ALEXIS GALINDO  
Attorneys for Plaintiffs  
KEVIN LE and VIVIAN LE

DATED: August \_\_\_\_, 2011

**WYNN LAW GROUP**

/s/ \_\_\_\_\_  
RICHARD WYNN  
Attorneys for Plaintiff AMY THU BICH LE