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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JORGE MOLINA, individually and as co-	)	Case No.:
successor-in-interest to Decedent DAVID	)	
MOLINA; and ANTIONETTE MOLINA,	)	COMPLAINT FOR CIVIL RIGHTS
individually and as co-successor-in-interest to	)	VIOLATIONS AND OTHER STATE LAW
Decedent DAVID MOLINA,	)	CLAIMS
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	<u>JURY TRIAL DEMANDED</u>
CITY OF NAPA, a municipal corporation;	)	
CHRISTOPHER SIMAS, individually; and	)	
DOES 1-50, inclusive.	)	
	)	
Defendants.	)	

INTRODUCTION

1. This civil rights and wrongful death action arises out of the December 5, 2018 officer involved shooting of unarmed David Molina. On the date of the incident, Mr. David Molina was attempting to recover a stolen cell phone when the suspected thief called the police alleging he

1 was assaulted. Shortly thereafter, Mr. Molina began to leave the area. Napa Police Officer
2 Christopher Simas responded to the call for service and saw Mr. Molina riding his skateboard
3 away from the area.

4 2. Officer Simas confronted Mr. Molina and pointed his AR-15 assault rifle at the young
5 man, prompting Mr. Molina to run away. Officer Simas then proceeded to chase Mr. Molina into
6 a remote area without waiting for back up. After a brief chase, Mr. Molina surrendered. Officer
7 Simas placed the nose of his AR-15 assault rifle into the dirt and attempted to handcuff Mr.
8 Molina. Officer Simas accidentally discharged his weapon into the dirt, startling himself. In
9 response to the weapons discharge, Officer Simas grabbed his weapon and opened fire on Mr.
10 Molina, who was unarmed and not presenting an imminent threat to anyone.

11 3. Mr. Molina leaves behind his grieving parents, who bring this present action for
12 violations of state and federal law.

13 JURISDICTION

14 4. This action arises under Title 42 of the United States Code, Section 1983. The unlawful
15 acts and practices alleged herein occurred in the City and County of Napa, California, which is
16 within this judicial district. Title 28 United State Code Section 1391 (b) confers venue upon this
17 Court.
18

19 PARTIES

20 5. Decedent, DAVID MOLINA was unmarried and did not have any children at the time of
21 his death.

22 6. Plaintiff, JORGE MOLINA, sues in his individual capacity as Decedent's father and
23 in his representative capacity as a co-successor-in-interest to Decedent pursuant to California
24 Code of Civil Procedure Sections 377.30 and 377.60.

25 7. Plaintiff, ANTIONETTE MOLINA, sues in her individual capacity as Decedent's mother

1 and in her representative capacity as co-successor-in-interest to Decedent pursuant to California
2 Code of Civil Procedure Sections 377.30 and 377.60.

3 8. Defendant CITY OF NAPA (hereinafter "City") is, and at all times herein mentioned, a
4 municipal entity duly organized and existing under the laws of the State of California.

5 9. Defendant CHRISTOPHER SIMAS was, and at all times mentioned herein, is a
6 police officer for the City of Napa and is sued in his individual capacity.

7 10. Plaintiffs are ignorant of the true names and/or capacities of defendants sued herein as
8 DOES 1 through 50, inclusive, and therefore sue said defendants by such fictitious names.
9 Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.
10 Plaintiffs believe and allege that each of the DOE defendants is legally responsible and liable for
11 the incident, injuries and damages hereinafter set forth. Each defendant proximately caused
12 injuries and damages because of their negligence, breach of duty, negligent supervision,
13 management or control and in violation of public policy. Each defendant is liable for his/her
14 personal conduct, vicarious or imputed negligence, fault, or breach of duty, whether severally or
15 jointly, or whether based upon agency, employment, ownership, entrustment, custody, care or
16 control or upon any other act or omission. Plaintiffs will ask leave to amend this complaint
17 subject to further discovery.
18

19 11. In doing the acts alleged herein, Defendants, and each of them acted within the course
20 and scope of their employment for the City of Napa.

21 12. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted
22 under color of authority and/or under color of law.

23 13. Due to the acts and/or omissions alleged herein, Defendants, and each of them, acted as
24 the agent, servant, and employee and/or in concert with each of said other Defendants herein.
25

1 14. Plaintiff timely filed a Government Tort Claim, on June 3, 2019. The claim was never
2 accepted or rejected and more than 45 days has elapsed since the claim filing.

3 **STATEMENT OF FACTS**

4 15. On December 5, 2018, at approximately 1:30 a.m., Decedent David Molina went to
5 retrieve his stolen cell phone, which had been taken earlier in the evening by a known suspect.
6 Mr. Molina contacted the yet-to-be-identified individuals, who were known to be in possession
7 of his phone. Unbeknownst to Mr. Molina, one of the suspected thieves called the Napa Police
8 Department to report an alleged assault.
9

10 16. Mr. Molina had an intellectual disability from a brain injury as a child and had a reduced
11 mental capacity.

12 17. Napa Police Officer Christopher Simas responded to the Kentwood Apartments in Napa,
13 in response to the call for service. Officer Simas located Mr. Molina, who was riding his
14 skateboard. Officer Simas did not engage any deescalation tactics and instead pointed his AR-15
15 rifle at Mr. Molina, who fled in fear.
16

17 18. Without waiting for backup, Officer Simas followed Mr. Molina into a desolate area
18 carrying his AR-15 rifle in his hand. Mr. Molina eventually surrendered and told the officer he
19 was unarmed.

20 19. Officer Simas attempted to handcuff Mr. Molina by placing the nose of his rifle in
21 the dirt. As Officer Simas tried to handcuff Mr. Molina with the rifle precariously balanced, he
22 accidentally discharged his rifle into the dirt, startling himself and Mr. Molina, who pulled away
23 from the Officer once the unwarranted gunfire erupted.

24 20. Officer Simas opened fire on Mr. Molina multiple times with the AR-15 rifle, killing him
25 where he stood. No weapons of any sort were found on or near Mr. Molina's body.

1 21. Plaintiffs are informed and believe and thereon allege that City of Napa, and DOES 26-
2 50, inclusive, breached their duty of care to the public in that they have failed to discipline
3 Defendant Simas and DOES 1-25 inclusive, for their respective misconduct and involvement in
4 the incident described herein, namely shooting an unarmed person who did not pose and threat of
5 imminent harm. Their failure to discipline Defendant Simas and DOES 1-25 inclusive,
6 demonstrates the existence of an entrenched culture, policy or practice of promoting, tolerating
7 and/or ratifying with deliberate indifference, the use of excessive and the fabrication of official
8 reports to cover up the Defendant officer and DOES 1-25's inclusive, misconduct.

9 22. Plaintiffs are informed, believe and thereon allege that members of the City of Napa
10 Police Department, including, but not limited to Defendant Simas and Does 1-25 inclusive
11 and/or each of them, have individually and/or while acting in concert with one another used
12 excessive, arbitrary and/or unreasonable force against David Molina.

13 23. Plaintiffs are further informed, believe and therein allege that as a matter of official
14 policy – rooted in an entrenched posture of deliberate indifference to the constitutional rights of
15 persons who live, work or visit the City of Napa, the CITY has allowed persons to be abused by
16 its Police Officer including Defendant Simas and Does 1-25 and/or each of them, individually
17 and/or while acting in concert with one another.

18 24. Plaintiffs are informed, believe and therein allege that City of Napa exhibits a pattern
19 and practice of using excessive force against citizens and despite these incidents, none of the
20 Officers are ever found in violation of department policy, even under the most questionable of
21 circumstances. Napa Police Department failure to discipline or retrain Defendant Simas is
22 evidence of an official policy, entrenched culture and posture of deliberate indifference toward
23 protecting citizen's rights and the resulting deaths and injuries is a proximate result of the Napa
24
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1 Police Department's failure to properly supervise its Officers and ratify their unconstitutional
2 conduct.

3 25. Plaintiffs are informed, believe and therein allege that City of Napa knew, had reason to
4 know by way of actual or constructive notice of the aforementioned policy, culture, pattern
5 and/or practice and the complained of conduct and resultant injuries/violations.

6 26. Plaintiffs are ignorant of the true names and capacities of Defendant Officers DOES 1
7 Through 25, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs
8 are informed, believe, and thereon allege that each Defendant so named is responsible in some
9 manner for the injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will
10 amend their complaint to state the names and capacities of DOES 1-50, inclusive, when they
11 have been ascertained.

12
13 **DAMAGES**

14 27. As a proximate result of Defendants' conduct, Plaintiffs were mentally and emotionally
15 injured and damaged, including but not limited to Plaintiffs' loss of familial relations,
16 Decedent's society, comfort, protection, companionship, love, affection, solace, and moral
17 support as a consequence of Defendants' violation of Plaintiffs' federal civil rights under 42
18 U.S.C. § 1983 and the Fourteenth Amendment.

19 28. Plaintiff, as successor-in-interest to Decedent, David Molina, is entitled to recover
20 damages pursuant to the Decedent's right of survivorship for the pain and suffering Decedent
21 endured as a result of the violation of Decedent's civil rights.
22

23 29. Plaintiffs found it necessary to engage the services of private counsel to vindicate the
24
25

1 Decedent and Plaintiffs' rights under the law. Plaintiffs are entitled to an award of reasonable
2 attorney's fees and/or costs pursuant to statute(s) in the event that Plaintiffs are the prevailing
3 parties in this action under 42 U.S.C. Sections 1983, 1985, 1986, and 1988.

4 30. The conduct of the Defendant Police Officers was malicious, wanton, and oppressive.
5 Plaintiffs are therefore entitled to an award of punitive damages against said Defendant
6 Officer(s).

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(Fourth Amendment –Survival Action - Excessive Force under 42 U.S.C. Section 1983)**
10 **(Plaintiffs as Co-Successors-in-Interest to Decedent David Molina against Defendant Simas**
11 **and DOES 1-25 inclusive)**

12 31. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 30 of this
13 Complaint.

14 32. When Officer Simas unlawfully shot and killed Decedent without lawful justification or
15 warning, he deprived Decedent of his right to be secure in his person against unreasonable
16 searches and seizures as guaranteed to him under the Fourth Amendment to the United States
17 Constitution. The Defendant Officer's actions were excessive and unreasonable, especially
18 because decedent was unarmed and not an imminent threat to anyone at the time of his death.
19 Decedent was forced to endure conscious pain and suffering from the fatal wound caused by the
20 Defendant Officer's misconduct.

21 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
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SECOND CAUSE OF ACTION

(Fourteenth Amendment – Violations of Plaintiffs’

Right to Familial Relationship under 42 U.S.C. Section 1983)

(Plaintiffs individually against Defendant Simas and DOES 1-25 inclusive)

33. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 32 of this Complaint.

34. Defendants acted under color of state law, and without due process of law, deprived Plaintiffs of their right to a familial relationship with their son, by seizing Decedent by use of unreasonable and unjustifiable deadly force causing injuries that resulted in Decedent’s death in violations of their rights secured by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

(Negligence)

(Plaintiffs as Co-Successor-in-Interest to Decedent David Molina against SIMAS and DOES 1-25 inclusive)

35. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 34 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

36. Defendant Simas and DOES 1-25 inclusive, by and through their respective agents and employees, caused the injuries to David Molina, as a result of their negligent conduct and/or negligent failure to act as set-forth herein, including, but not limited to: failure to use proper tactics and/or employ reasonable police procedures and/or use appropriate force.

37. As an actual and proximate result of said defendants’ negligence, Plaintiffs sustained pecuniary loss and pain and suffering, in an amount according to proof at trial.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Violation of Right To Enjoy Civil Rights)

(Violation of CALIFORNIA CIVIL CODE §52.1)

(Plaintiffs as Co-Successors-in-Interest to Decedent David Molina against Defendant
Simas and DOES 1-25 inclusive)

38. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 37 of this
Complaint.

39. Defendant DOES' above-described conduct constituted interference, and attempted
interference, by threats, intimidation and coercion, with David Molina's peaceable exercise and
enjoyment of rights secured by the Constitution and laws of the United States and the State of
California, in violation of California Civil Code §52.1.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

(Battery)

(Plaintiffs as Co-Successors-in-Interest to Decedent David Molina against Defendant Simas and
DOES 1-25)

40. Plaintiffs re-allege and incorporates by reference paragraphs 1 through 39 of this
complaint.

41. Defendants' above-described conduct constituted a battery.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

JURY DEMAND

42. Plaintiffs hereby demand a jury trial in this action.

PRAYER

WHEREFORE, Plaintiffs pray for relief, as follows:

1. For general damages in a sum to be proven at trial;
2. For special damages, including but not limited to, past, present and/or future wage loss, income and support, medical expenses and other special damages in a sum to be determined according to proof;
3. For punitive damages against the individual Defendant Officers in a sum according to proof;
4. For reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and § 794 (a);
5. Any and all permissible statutory damages;
6. For cost of suit herein incurred; and
7. For such other and further relief as the Court deems just and proper.

October 21, 2019

Law Offices of John L. Burris

/s/ John L. Burris

JOHN L. BURRIS
Attorneys for Plaintiffs