

1 JOHN L. BURRIS, Esq./ State Bar #69888
2 BENJAMIN NISENBAUM, Esq./State Bar #222173
3 LAW OFFICES OF JOHN L. BURRIS
4 Airport Corporate Centre
5 7677 Oakport Street, Suite 1120
6 Oakland, California 94621
7 Telephone: (510) 839-5200 Facsimile: (510) 839-3882

8 JAMES B. CHANIN, Esq./ State Bar #76043
9 Law Offices of James B. Chanin
10 3050 Shattuck Avenue
11 Berkeley, California 94705
12 Telephone: (510) 848-4752 Facsimile: (510) 848-5819
13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT

15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 L.S., individually and as successor-in-interest
17 to Decedent ERIK SALGADO by and through
18 her guardian ad litem Michael Colombo;
19 BRIANNA COLOMBO and FELINA
20 RAMIREZ Parent of decedent,

Case No. 3:20-cv-04637 VC

**SECOND-AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATION OF CIVIL
RIGHTS AND WRONGFUL DEATH.
JURY TRIAL DEMANDED**

21 Plaintiffs,

22 vs.

23 RICHARD HENDERSON, individually;
24 ERIC HULBERT, individually; DONALD
25 SAPUTA, individually, DOES 4-25, inclusive,

26 Defendants.

27 /
28 **INTRODUCTION**

On June 2, 2020, in broad daylight, Defendant California Highway Patrol Officers RICHARD HENDERSON, ERIC HULBERT, and DONALD SAPUTA, opened fire on a red Dodge with license plates that had been reported lost or stolen, and which they were attempting to stop in their unmarked vehicles. The Dodge was contained and had effectively come to rest when the Defendants HENDERSON, HULBERT and SAPUTA initiated a hail of gunfire on the driver and passenger of the car, firing at least 40 gunshots at the vehicle, at a time when no

1 officer or civilian was in any danger, and Defendants had no reason to believe anyone inside the
2 vehicle was armed with any weapon. Even the theft of the vehicle (or its license plates), for
3 which the occupants of the vehicles were not suspected, did not occur by means of violence.
4 Indeed, Defendants were only aware that the license plate attached to the vehicle had been
5 reported lost or stolen, not the vehicle itself. Decedent ERIK SALGADO, the driver of the other
6 vehicle, was the father of a young daughter. He was shot at least 18 times and was dead at the
7 scene. His girlfriend, Plaintiff BRIANNA COLOMBO was in the passenger seat. Defendants
8 shot her 3 times, including in the abdomen.

9 Defendants gave no warning they would shoot before they opened fire, intentionally
10 positioned themselves at angles around the red Dodge where they would not shoot each other,
11 and fired away over an extended period of time, executing Mr. SALGADO and severely injuring
12 Plaintiff COLOMBO. The extended shooting by Defendants HENDERSON, HULBERT and
13 SEPUTA was deliberately indifferent to human life, premeditated, and criminal.

14 On July 3, 2016, Defendant HENDERSON shot and killed another young man, 19-year-
15 old Pedro Villanueva, under similar alleged circumstances in Fullerton, CA. Defendant
16 HENDERSON is a defendant in that civil rights action currently pending in Federal court in the
17 Central District of California (USDC-CACD Case No. 8:17-cv-01302-JLS-KES, currently on
18 interlocutory appeal at the 9th Circuit following the denial of Defendants Motion for Summary
19 Judgment based on qualified immunity, 9th Circuit Docket No. 19-55225). Neither incident was
20 captured by bodycam or dash-cam video. Disturbingly, Defendant HENDERSON in that prior
21 shooting made the exact same false claim as all three shooting Defendants make in the instant
22 shooting, that he lost sight of a fellow officer while performing a felony stop of a vehicle.
23 Defendant Henderson also inaccurately claimed that an officer in the Villanueva case had been
24 run over by the vehicle in order to justify his shooting, when that did not happen. In the instant
25 case, all three shooting defendant officers make the same inaccurate claim, when in fact the
26 officer they all claimed thought had been run over had moved out of the potential path of the
27 Dodge and onto a sidewalk, and the Dodge had veered away from that officer, prior to the
28 shooting.

I. JURISDICTION

1
2 1. This action arises under Title 42 of the United States Code, Sections 1983.
3 Jurisdiction is conferred upon this Court by Title 28 of the United States Code, Sections 1331
4 and 1343. The unlawful acts and practices alleged herein occurred in the City of Oakland,
5 County of Alameda, California, which is within this judicial district.

II. PARTIES

6
7 2. Plaintiff herein, L.S., is and was at all times herein mentioned a citizen of the
8 United States residing in California. She is a minor and is the daughter and Successor-in-Interest
9 to Decedent ERIK SALGADO, who died intestate and unmarried. Mr. SALGADO was 23 years
10 old when he was killed by Defendants. She is represented in the instant action by and through her
11 Guardian ad Litem MICHAEL COLOMBO.

12 3. Plaintiff herein, BRIANNA COLOMBO, is and was at all times herein mentioned
13 a citizen of the United States residing in California. Ms. COLOMBO is 23 years old.

14 4. Plaintiff FELINA RAMIRIZ is Decedent SALGADO's mother and asserts
15 violation of her 14th Amendment rights against interference with the familial relationship with
16 her son caused by the conscience-shocking killing of her son.

17 5. Minor Plaintiff L.S., as Decedent ERIK SALGADO's only child, is his only
18 Successor-in-Interest as defined in California Code of Civil Procedure section 377.11 and
19 succeeds to Decedent ERIK SALGADO's interest in the instant action pursuant to California
20 Code of Civil Procedure section 377.32. Minor Plaintiff L.S. has complied with the requirements
21 of California Code of Civil Procedure section 377.22 to establish her standing. Plaintiffs have
22 complied with all administrative state law claim requirements for California state law causes of
23 action.

24 6. Defendant RICHARD HENDERSON ("HENDERSON") is and was at all times
25 mentioned herein a police officer employed by the State of California as an Officer for the
26 California Highway Patrol ("CHP"). Defendant HENDERSON was acting in the course and
27 scope of employment as a police officer for the CHP at the time of the subject-incident shooting.

1 reported as lost or stolen. Defendants had no information that the vehicle was taken by force,
2 that Mr. SALGADO was involved with any robbery, or how Mr. SALGADO came to be in
3 possession of the red Dodge, or the license plate attached to it.

4 10. A police K-9 vehicle driving North on Cherry Street incidentally blocked the path
5 of the red Dodge's travel while defendant followed it. Defendants planned to avoid a "pincer"
6 trap, recognizing the high risk involved in using their police vehicles to try to pin a vehicle from
7 the front and the rear. A CHP truck containing CHP officer Michael Diehl and other officers was
8 driving behind the K-9 vehicle. The red Dodge was effectively in the "pincer" defendants had
9 planned to avoid. Defendants made no effort to back out of the "pincer". Instead, Defendants
10 went through with purportedly unplanned "pincer" trap they specifically intend to avoid
11 performing. The CHP truck containing Officer Diehl stopped behind the K-9 vehicle in the
12 roadway. Vehicles parked properly next the curb on the both sides of the street were on either
13 side of the K-9 vehicle and CHP truck. Defendant HENDERSON's vehicle stopped behind the
14 red Dodge. Defendant HENDERSON a Sig-Sauer M400 slung over his right shoulder, sat in the
15 passenger seat of the police vehicle directly behind the red Dodge.

16 11. The red Dodge attempted to navigate past the K-9 vehicle in front of it, and while
17 attempting to pass slightly bumped into the unmarked car. The car then backed up and slightly
18 bumped into a CHP car directly behind it. Officer Diehl exited the CHP truck and ran toward the
19 driver's door of the K-9 vehicle. Thereafter Mr. SALGADO again attempted to squeeze by the
20 K-9 vehicle, and the CHP truck behind it. Officer Diehl noted that Mr. SALGADO could have
21 taken one of two paths to drive past the vehicles: One in which Officer Diehl would be in danger
22 of being run over by the red Dodge if he did not move, and another in which he would not be in
23 danger of being run over from the red Dodge even if he did not move. Following CHP training
24 and policy, which dictates that officers move out of the way of a moving vehicle if that would
25 eliminate the danger of being run over and they are able to do so, Officer Diehl scrambled
26 backwards and over the hood of a parked vehicle and onto the sidewalk. Officer Diehl looked
27 back and saw that the red Dodge had taken the alternate route, the route that would not have led
28 to Officer Diehl being run over. In any event, after the red Dodge passed him, and Officer Diehl

1 was on the sidewalk, he ran back toward the red Dodge, which was coming rest, saw Defendant
2 HENDERSON pointing his rifle at the red Dodge from behind the red Dodge, and then
3 scrambled out of the way again to avoid being shot by Defendant HENDERSON, who he saw
4 and heard open fire on the red Dodge. Neither Officer Diehl, nor anyone else, was in any
5 danger at that time of being run over by the red Dodge. No shots were fired by any officer until
6 after Officer Diehl had moved to a position of safety, and Mr. SALGADO had veered away from
7 the position Officer Diehl had been in at the side of the K-9 vehicle an appreciable time before
8 any shots were fired.

9 12. Defendant HENDERSON claimed he saw the red Dodge run over Officer Diehl,
10 while he was behind the red Dodge. He claimed he mistakenly believed Officer Diehl was
11 Defendant HULBERT, and claims he held his fire to avoid striking the officer, while yelling for
12 Defendant Officer SAPUTA to shoot. Defendant HENDERSON ran toward the back of the red
13 Dodge, and opened fire with his rifle when he got to within 5-10 feet of the back of the red
14 Dodge, specifically aiming where he the driver's center mass would have been located.
15 Defendant HENDERSON emptied his rifle, firing all 30 shots from the full 30 cartridge
16 magazine, striking Decedent several times center mass.

17 13. Defendant SAPUTA, who had run at an angle toward the rear of the driver's side
18 of the red Dodge also had a rifle pointed at it. Defendant SAPUTA opened fire on the red Dodge,
19 aiming at the driver's side. Meanwhile, Officer Diehl had moved to a position of safety, and after
20 the red Dodge veered away from Officer Diehl's prior position, when no one was in immediate
21 danger from the red Dodge.

22 14. Defendant HULBERT had been driving in the same vehicle as Officer Diehl.
23 Defendant HULBERT later claimed he lost sight of Officer Diehl and assumed that Officer Diehl
24 had been run over by the red Dodge. Meanwhile, Officer Diehl had moved to a position of
25 safety, and that the red Dodge had veered away from Officer Diehl's prior position. Defendant
26 HULBERT fired 16 rounds into the driver's side of the red Dodge when no one was in
27 immediate danger from the red Dodge.
28

1 25. In doing the acts complained of herein, Defendants HENDERSON, SAPUTA,
2 HULBERT, and DOES 4-25, inclusive, and/or each of them, acted under color of law to deprive
3 Plaintiffs of certain constitutionally protected rights, including, but not limited to:

- 4 a. The right to be free from unreasonable searches and seizures, as guaranteed by the
5 Fourth and Fourteenth Amendments to the United States Constitution;
6 b. The right not to be deprived of life or liberty without due process of law, as
7 guaranteed by the Fifth and Fourteenth Amendments to the United States
8 Constitution;
9

10 25. Said rights are substantive guarantees under the First, Fourth, Fifth and/or
11 Fourteenth Amendments to the United States Constitution.

12 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

13 SECOND CAUSE OF ACTION

14 (14th Amendment Substantive Due Process- Right to Familial Relationship)
15 (Plaintiffs L.S. individually and FELINA RAMIREZ, Against Defendants HENDERSON,
16 SAPUTA, HULBERT, and DOES 4-25)

17 26. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 25 of
18 this Complaint.

19 27. Defendants HENDERSON, SAPUTA, HULBERT, and DOES 4-25 acting under
20 color of law, and without due process of law deprived Plaintiffs of their right to a familial
21 relationship with Decedent by use of unreasonable, unjustified deadly force and violence,
22 causing injuries which resulted in decedent's death, all without provocation, in violation of the
23 Fourteenth Amendment to the United States Constitution. Defendants HENDERSON, SAPUTA,
24 HULBERT, and DOES 4-25 acted with an intent to harm Decedent unrelated to legitimate law
25 enforcement purposes in killing Decedent.
26
27
28

1 28. As a proximate result of defendants' conduct, Plaintiffs suffered damages as
2 hereinafter set forth.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

4 THIRD CAUSE OF ACTION
5 (C.C.P. Section 377.60 and 377.61)
6 (Wrongful Death – Negligence

7 Minor Plaintiff L.S. individually, against Defendants HENDERSON, SAPUTA,
8 HULBERT, and DOES 4-25)

9 29. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 28 of
10 this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,
11 wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive
12 damages.

13 30. Defendants HENDERSON, SAPUTA, HULBERT, and DOES 4-25 shot and
14 killed Decedent despite the absence of a threat to any defendant officers or any other person at
15 the moment of the shooting. Because Decedent died with issue, Minor Plaintiff L.S. is his
16 successor-in-interest with standing to sue for his wrongful death under California state law.
17 Furthermore, Defendant HENDERSON was the incident supervisor, the most senior officer at
18 the scene, and directed all officers at the scene, including co-defendants SAPUTA and
19 HULBERT. All defendants owed Decedent a duty to act reasonably in their tactical actions and
20 conduct preceding the subject-incident, and Defendant HENDERSON, as the senior officer and
21 incident supervisor, owed a duty to act reasonably in that capacity as well. Defendant
22 HENDERSON directed the use of lethal force when no threat existed, or if any threat had
23 existed, had ended. Had Defendant HENDERSON acted reasonably as the incident supervisor,
24 he would have prevented Defendant HULBERT, SAPUTA, and his own rash and unreasonable
25 use of lethal force.
26

1 31. As an actual and proximate result of said Defendants' negligence, and the death of
2 Decedent, Plaintiffs sustained a pecuniary loss resulting from the loss of comfort, society,
3 attention, services, and support of Decedent, in an amount according to proof of trial.

4 32. As a further actual and proximate result of said Defendant' negligence, Plaintiffs
5 incurred funeral and burial expenses, in an amount according to proof at trial.

6 33. Pursuant to California C.C.P. Sections 377.60 and 377.61, Plaintiffs brought this
7 action, and claims damages from said Defendants for the wrongful death of Decedent, and the
8 resulting injuries and damages.
9

10 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

11 FOURTH CAUSE OF ACTION
12 (Violation of California Civil Code Section 52.1
13 Minor Plaintiff L.S. as successor in interest to Decedent, against Defendants
14 HENDERSON, SAPUTA, HULBERT, and DOES 4-25)

15 34. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 33 of
16 this Complaint.

17 35. Defendants' above-described conduct constituted interference, and attempted
18 interference, by threats, intimidation, and coercion, with the Decedent's peaceable exercise and
19 enjoyment of rights secured by the Constitution and laws of the United States and the State of
20 California, in violation of California Civil Code § 52.1.

21 36. As a direct and proximate result of Defendants' violation of Civil Code § 52.1,
22 Decedent suffered violations of his constitutional rights, and suffered damages as set forth
23 herein.
24

25 37. Plaintiffs are entitled to injunctive relief and an award of their reasonable
26 attorney's fees pursuant to Civil Code § 52.1(h).
27
28

1 38. Plaintiffs are entitled to treble damages, but in no case less than \$4,000.00 and an
2 award of reasonable attorney's fees pursuant to Civil Code § 52(a).

3 39. Under the provisions of California Civil Code §52(b), defendants are liable for
4 punitive damages for each violation of Civil Code §52.1, reasonable attorney's fees and an
5 additional \$25,000.00 penalty per violation.

6 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

7
8 **FIFTH CAUSE OF ACTION**
(Wrongful Death-Battery)

9 Minor Plaintiff L.S. against Defendant HENDERSON, SAPUTA, HULBERT, and
DOES 4-25)

10 40. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1
11 through 39 of this Complaint.

12
13 41. Defendants HENDERSON, SAPUTA, HULBERT, and DOES 4-25, while
14 working in their capacity as police officers for the State of California and acting within the
15 course and scope of their duties, intentionally shot, and killed Decedent without a lawful basis.

16 42. As a result of the actions of the Defendant, Decedent suffered physical injuries
17 and was killed. Defendants HENDERSON, SAPUTA, HULBERT, and DOES 4-25 did not have
18 legal justification for using force against Decedent, and Defendants' use of force while carrying
19 out their police officer duties was an unreasonable use of force.

20
21 43. As a direct and proximate result of Defendants' assault and battery of Decedent
22 sustained injuries and damages and are entitled to relief as set forth above.

23 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

24 **V. JURY DEMAND**

25 44. Plaintiffs hereby demand a jury trial in this action.

VI. PRAYER

WHEREFORE, Plaintiff prays for relief, as follows:

1. For general damages in a sum according to proof;
2. For special damages in a sum according to proof;
3. For punitive damages in a sum according to proof;
4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988 and Civil Code section 52.1;
5. For the costs of suit herein incurred; and
6. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICES OF JOHN L. BURRIS

Dated: June 30, 2021

/s/Benjamin Nisenbaum

Ben Nisenbaum

Attorney for Plaintiffs