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as individuals, and Tammy Hike, as Guardian
6 Ad Litem for H.R., a minor, and as the personal
representative of Michael Robert Rosa, deceased
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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11

12
13 EVELYN ROSA and ROBERT ROSA as
individuals, and TAMMY HIKE, as
14 Guardian ad Litem for H.R., a minor, and
as the personal representative of
15 MICHAEL ROBERT ROSA, deceased,

16 Plaintiffs,

17 v.

18 CITY OF SEASIDE and SEASIDE
POLICE DEPARTMENT, CITY OF
19 DEL REY OAKS and DEL REY OAKS
POLICE DEPARTMENT, MONTEREY
20 PENINSULA AIRPORT DISTRICT and
MONTEREY PENINSULA AIRPORT
21 POLICE DEPARTMENT, CITY OF
MONTEREY and MONTEREY POLICE
22 DEPARTMENT, COUNTY OF
MONTEREY and MONTEREY
23 COUNTY SHERIFF'S DEPARTMENT,
DEL REY OAKS POLICE CHIEF RON
24 LANGFORD, MONTEREY POLICE
CHIEF CARLO CUDIO, MONTEREY
25 SHERIFF MIKE KANALAKIS AND
SEASIDE POLICE CHIEF ANTHONY
26 J. SELLECITO, SEASIDE POLICE
OFFICERS MATTHEW DOZA, NICK
27 BORGES, and CHARLTON, DEL REY
OAKS POLICE OFFICER RUSSELL
28 VANZANTEN, AIRPORT POLICE

Case No. C 05-03577 PVT

SECOND AMENDED
COMPLAINT FOR DAMAGES
FOR:

1. 42 U.S.C. § 1983 –
WRONGFUL DEATH
2. 42 U.S.C. § 1983 –
SURVIVAL ACTION;
3. 42 U.S.C. § 1983 –
DEPRIVATION OF THE
RIGHTS OF PLAINTIFFS'
TO FAMILIAL
RELATIONSHIPS WITH
THE DECEDENT
4. CAL. CIV. CODE § 52.1;
5. ASSAULT and BATTERY;
6. POLICE NEGLIGENCE
7. PRODUCTS LIABILITY –
NEGLIGENCE
8. PRODUCTS LIABILITY –
STRICT LIABILITY

1 (continued)
2 DEPARTMENT OFFICER JEFF
3 POWELL, MONTEREY POLICE
4 OFFICER KATIE REYES, MONTEREY
5 COUNTY SHERIFF'S DEPUTIES JOE
6 PALAZZOLO and IRONS, TASER
INTERNATIONAL, INC., and DOES 1
to 10,

Defendants.

DEMAND FOR JURY TRIAL

7 **JURISDICTION**

8 1. Jurisdiction against the governmental defendants (that is all defendants
9 other than Taser International, Inc.) is conferred upon this Court by 28 U.S.C. §
10 1331(federal question) and 1343(3) (civil rights). The state law claims for relief are
11 within the supplemental jurisdiction of the Court, pursuant 28 U.S.C. § 1367.

12 2. The claims against Taser International, Inc., are within the supplemental
13 jurisdiction of the Court pursuant to 28 U.S.C. § 1367.

14 **VENUE**

15 3. Plaintiffs' claims herein arises out of an incident involving various police
16 officers and deputy sheriffs, in the County of Monterey, State of California, and within
17 this judicial district.

18 **PARTIES**

19 4. Plaintiffs Evelyn Rosa and Robert Rosa are competent adults who appear
20 as individuals. They are the parents of the decedent.

21 5. Tammy Hike is a competent adult who appears here on behalf of H.R., the
22 minor child of decedent Michael Robert Rosa and his successor in interest pursuant to
23 Cal. Civ. Proc. Code § 377.11.

24 6. Defendant City of Seaside is a government entity operating pursuant to
25 the laws of California. Defendant Seaside Police Department is a public agency subject
26 to suit.

27 7. Defendant City of Del Rey Oaks is a government entity operating pursuant
28 to the laws of California. Defendant Del Rey Oaks Police Department is a public

1 agency subject to suit.

2 8. Defendant Monterey Peninsula Airport District is a government entity
3 operating pursuant to the laws of California. Defendant Airport Police Department is
4 a public agency subject to suit.

5 9. Defendant City of Monterey is a government entity operating pursuant to
6 the laws of California. Defendant Monterey Police Department is a public agency
7 subject to suit.

8 10. Defendant County of Monterey is a government entity operating pursuant
9 to the laws of California. Defendant Monterey Sheriff's Department is a public agency
10 subject to suit.

11 11. Defendant Ron Langford is the Del Rey Oaks Chief of Police , defendant
12 Carlo Cudio is the Monterey Chief of Police, defendant Mike Kanalakis is the Monterey
13 County Sheriff and defendant Anthony J. Sellecito is the Seaside Chief of Police. Each
14 is the decision maker for one of the defendant public agencies.

15 12. Defendants Matthew Doza, Nick Borges, and Charlton are Seaside police
16 officers, defendant Russell VanZanten is a Del Rey Oaks police officer, defendant Jeff
17 Powell is a Monterey Peninsula Airport police officer, defendant Katie Reyes is a
18 Monterey Police officer, and defendants Joe Palazzolo and Irons are Monterey County
19 Sheriff's deputies. In doing the acts herein alleged, they acted within the scope of their
20 agency and employment, and under color of state law.

21 13. Defendant Taser International, Inc., is a Delaware Corporation with its
22 principal place of business in the State of Arizona. As alleged herein, Taser
23 International defectively manufactured and marketed the unreasonably dangerous
24 "Advanced Taser" with which individual defendants repeatedly shocked the decedent,
25 proximately causing his death, as alleged herein.

26 14. Plaintiffs sue defendants Does 1 to 10 by their fictitious names and will
27 amend this complaint to allege their true identities when ascertained.

28

1 **FACTS**

2 **A. General Allegations on Policy and Practice**

3 15. Plaintiffs are informed and believe, and on the basis of such information
4 and belief allege, that the governmental entity defendants and their decision makers,
5 with deliberate indifference, gross negligence, and reckless disregard to the safety,
6 security, and constitutional and statutory rights of the decedent, plaintiffs, and all
7 persons similarly situated, maintained, enforced, tolerated, permitted, acquiesced in, and
8 applied policies, practices, or customs and usages of, among other things,

- 9 a. Subjecting people to unreasonable uses of force against their persons.
- 10 b. Selecting, retaining, and assigning employees with demonstrable
11 propensities for excessive force, violence, and other misconduct;
- 12 c. Failing to adequately train, supervise, and control employees in the
13 dangers of repeated taser shocks and positional asphyxia, including, without
14 limitation, the use of potentially lethal tactics, including multiple taser shocks
15 followed by chest compressions, for the taking into custody of persons such as
16 plaintiffs' decedent, who are perhaps intoxicated, but not otherwise engaged in
17 criminal activity, and who may have pre-existing medical conditions which make
18 such tactics unreasonably dangerous.
- 19 d. Failing to adequately discipline officers involved in misconduct; and
- 20 e. Condoning and encouraging officers in the belief that they can violate the
21 rights of persons such as the decedent in this action with impunity, and that such
22 conduct will not adversely affect their opportunities for promotion and other
23 employment benefits.

24 16. Plaintiffs are informed and believe, and on the basis of such information
25 and belief allege, that the entity defendants and their decision makers ordered,
26 authorized, acquiesced in, tolerated, permitted or maintained custom and usages
27 permitting the other defendants herein to engage in the unlawful and unconstitutional
28 actions, policies, practices, and customs or usages set forth in the foregoing paragraph.

1 Defendants' conduct as alleged herein constitutes a pattern of constitutional violations
2 based either on a deliberate plan by defendants or on defendants' deliberate
3 indifference, gross negligence, or reckless disregard to the safety, security, and rights
4 of plaintiffs and their decedent.

5 **B. Allegations Regarding the Death of Michael Rosa.**

6 17. During the evening hours of August 29, 2004, the decedent, Michael Rosa,
7 was at his parents' home. He began acting erratically, perhaps because of the effects of
8 methamphetamine. A neighbor reported his bizarre (but not criminal) actions. Various
9 police officers from the defendant agencies responded to the scene. The officers knew
10 that the decedent was in emotional and physical distress, and had no reason to believe
11 he was engaged in any criminal conduct more serious than the personal use of illegal
12 substances or that he was armed and posed any danger to them. After pursuing Mr. Rosa
13 through the neighborhood, defendant officers caught up with him on a small hillside
14 behind a home and near a public street. At that time no officer or member of the public
15 was endangered in any significant way by Mr. Rosa's irrational actions. At least two
16 officers shocked the decedent repeatedly with their Taser weapons. Thereafter, they
17 compressed his chest on the ground with sufficient force to cause bruising. The net
18 effect of the Taser shocks and police restraint procedures was to kill the decedent.

19 18. Throughout this incident, decedent presented with a medical problem, not
20 a law enforcement problem. Defendants acted in deliberate indifference to his medical
21 needs, as alleged below.

22 **C. Allegations Regarding Damages.**

23 19. Plaintiffs have lost support, decedent's love, comfort and society, and have
24 sustained emotional distress, all in amounts in accordance with proof. Plaintiffs have
25 incurred burial and other related expenses. The decedent sustained general damages,
26 including the loss of enjoyment of his life, in an amount in accordance with proof.

27 20. The conduct of the individual defendants was willful, malicious,
28 oppressive and in reckless disregard for the constitutional rights of plaintiffs and the

1 decedent himself, thus justifying punitive damages against the defendants (except the
2 immune entity defendants) in an amount in accordance with proof.

3 **D. Allegations Regarding Exhaustion of Administrative Remedies**

4 21. Plaintiffs timely filed administrative claims with each of the entity
5 defendants pursuant to Cal. Gov't Code § 910. Each claim has been denied.

6 **FIRST CLAIM FOR RELIEF**

7 (42 U.S.C. § 1983 – WRONGFUL DEATH)

8 (All defendants except Taser International, Inc.)

9 22. Defendants, acting under color of state law, deprived the decedent of
10 rights, privileges, and immunities secured by the Constitution and laws of the United
11 States, including those secured by the Fourth and Fourteenth Amendments to the
12 Constitution, by, among other things, subjecting the decedent to excessive force; and
13 acting with deliberate indifference to the decedent's medical needs.

14 23. The foregoing wrongful acts of defendants killed the decedent.

15 24. Plaintiff H.R., through her Guardian ad Litem, Tammy Hike, is a proper
16 party with standing pursuant to Cal. Civ. Proc. Code § 377.60 (incorporated herein by
17 virtue of 42 U.S.C. § 1988), to pursue remedies for wrongful death, including pecuniary
18 loss and other compensable injuries resulting from loss of society, comfort, attention,
19 services, and support of the decedent.

20 25. As a further proximate result of the acts of defendants, as alleged above,
21 plaintiff H.R. has incurred expenses, including funeral and burial expenses, in an
22 amount in accordance with proof.

23 26. In doing the foregoing wrongful acts, defendants, and each of them, acted
24 in reckless and callous disregard for the constitutional rights of the decedent. The
25 wrongful acts, and each of them, were willful, oppressive, fraudulent, and malicious,
26 thus warranting the award of punitive damages against each individual defendant (but
27 not the entity defendants, which are immune from such damages) in an amount
28 adequate to punish the wrongdoers and deter future misconduct.

1 **THIRD CLAIM FOR RELIEF**

2 (42 U.S.C. § 1983 – DEPRIVATION OF THE RIGHTS OF
3 PLAINTIFFS TO FAMILIAL RELATIONSHIPS WITH THE DECEDENT)

4 (All defendants except Taser International, Inc.)

5 33. Defendants, acting under color of state law, deprived plaintiffs of their
6 rights to familial relationships in violation of the Fourth Amendment and without due
7 process of law in violation of the Fourteenth Amendment by use of unreasonable,
8 unjustified force and violence, causing injuries which resulted in the decedent’s death,
9 all without provocation, and all in violation of rights, privileges, and immunities
10 secured by the Fourth and Fourteenth Amendments to the United States Constitution.

11 34. As a proximate result of the foregoing wrongful acts of defendants, and
12 each of them, plaintiffs sustained general damages, including grief, emotional distress
13 and pain and suffering and loss of comfort and society, and special damages, including
14 loss of support, in an amount in accordance with proof.

15 35. In doing the foregoing wrongful acts, defendants, and each of them, acted
16 in reckless and callous disregard for the constitutional rights of plaintiffs. The wrongful
17 acts, and each of them, were willful, oppressive, fraudulent, and malicious, thus
18 warranting the award of punitive damages against each individual defendant (but not
19 the entity defendants, which are immune from such damages) in an amount adequate
20 to punish the wrongdoers and deter future misconduct.

21 **FOURTH CLAIM FOR RELIEF**

22 (CAL. CIV. CODE § 52.1)

23 (All defendants except Taser International, Inc.)

24 36. The United States Constitution, Amendment IV, and the Cal. Const. Art.
25 I § 13 guarantees the right of persons to be free from excessive force. Both constitutions
26 guarantee the right to appropriate medical attention for people in police custody.
27 Defendants, by engaging in the wrongful conduct alleged herein, denied these right to
28 the decedent and plaintiffs, thus giving rise to claims for damages pursuant to Cal. Civ.

1 Code § 52.1.

2 37. As a direct and proximate cause of the aforementioned acts of defendants,
3 decedent and plaintiffs were injured as set forth above, and are entitled to statutory
4 damages under Cal. Civ. Code § 52, as well as compensatory and punitive damages
5 according to proof.

6 38. In doing the foregoing wrongful acts, defendants, and each of them, acted
7 in reckless and callous disregard for the constitutional rights of plaintiffs. The wrongful
8 acts, and each of them, were willful, oppressive, fraudulent, and malicious, thus
9 warranting the award of punitive damages against each individual defendant (but not
10 the entity defendants, which are immune from such damages) in an amount adequate
11 to punish the wrongdoers and deter future misconduct.

12 **FIFTH CLAIM FOR RELIEF**

13 (ASSAULT AND BATTERY)

14 (All defendants except Taser International, Inc.)

15 39. Defendants assaulted and battered the decedent, causing his death.

16 40. As a direct and proximate cause of the aforementioned acts of defendants,
17 decedent, plaintiffs were injured as set forth above, and are entitled to compensatory
18 and punitive damages according to proof.

19 **SIXTH CLAIM FOR RELIEF**

20 (POLICE NEGLIGENCE)

21 (All defendants except Taser International, Inc.)

22 41. By virtue of the foregoing, defendants owed decedent and plaintiffs a duty
23 of due care, and that duty was breached in that defendants' negligence and failure to
24 exercise due care in dealing with the decedent proximately caused his death.

25 42. As a direct and proximate cause of the aforementioned acts of defendants,
26 decedent and plaintiffs were injured as set forth above, and are entitled to compensatory
27 damages according to proof.

28

1 **SEVENTH CAUSE OF ACTION**

2 **(PRODUCTS LIABILITY – NEGLIGENCE)**

3 **(Against Defendant Taser International, Inc., and Does)**

4 43. At all times herein mentioned, defendant Taser International, Inc., and
5 Does were engaged in the business and profession of designing, manufacturing, selling,
6 distributing, installing, fabricating, assembling, buying, inspecting, testing, servicing
7 repairing, marketing, warranting and advertising Taser electronic shock weapons which
8 these defendants knew or, in the exercise of reasonable care should have known, would
9 be used without inspection for defects or dangers in their parts, mechanisms or design.
10 Defendants' product is unreasonably dangerous and defective for use on human beings
11 because, among other reasons, it was sold without warnings as to the effect of multiple
12 shocks, the danger of shocking people who are under the influence of drugs, and the
13 effects of Taser shocks on respirations such that the weapon, when used in combination
14 with chest compression techniques cause unnecessary deaths.

15 44. Defendant Taser International, Inc., and Does sold Taser ordnance to local
16 law enforcement agencies such as defendants without adequate warning of or training
17 in its potential for causing death and great bodily injury.

18 45. At all times herein mentioned, defendant Taser International, Inc., and
19 Does negligently and carelessly designed, manufactured, sold, distributed, installed,
20 fabricated, assembled, bought, inspected, altered, maintained, serviced, tested, repaired,
21 marketed, warranted, and advertised their unreasonably dangerous and defective Taser
22 ordnance, in that it was capable of causing, and in fact did cause, personal injuries to
23 persons while being used in a manner reasonably foreseeable, thereby rendering the
24 product unsafe and dangerous for use in its intended manner.

25 46. As alleged above, defendants shocked decedent Michael Rosa repeatedly
26 while he was in an irrational and delirious state. As a direct and proximate result of the
27 aforementioned conduct of defendant Taser International, Inc., and Does, alone and in
28 combination with the wrongful conduct of the other defendants as alleged above,

1 plaintiffs were injured and sustained damages as alleged herein, including the killing
2 of decedent Michael Rosa.

3 47. Plaintiffs are informed and believe and thereon allege that defendants
4 Taser International, Inc., and Does acted in a despicable, malicious and oppressive
5 manner, in conscious disregard of the rights of Michael Rosa and other people whom
6 they knew, or reasonably should have known, were likely to be shocked with Taser
7 ordnance by law enforcement officers not adequately warned or trained about the
8 extreme and unreasonable danger of this product, and that the weapons posed an
9 unreasonable risk of serious bodily injury or death to people such as Mr. Rosa.

10 48. Based on these facts, defendants Taser International, Inc., and Does knew
11 that the Taser ordnance could not be used safely for the purposes for which it was
12 intended, and that this weapon was defective and dangerous, but despite that
13 knowledge, in conscious disregard of the safety of the public, defendants Taser
14 International, Inc., and Does placed this product on the market without warning
15 customers or the unknowing public of the defects and dangers, and knew when it did
16 so that this weapon would be sold to and used by law enforcement agencies without
17 adequate knowledge of its defects and dangers, and expressly and impliedly represented
18 that it was safe for the purpose for which it was intended. In doing the things
19 aforementioned, defendants Taser International, Inc., and Does were guilty of malice
20 and oppression and despicable conduct, and plaintiffs are therefore entitled to recover
21 exemplary and punitive damages in an amount to be determined at trial.

22 **EIGHTH CAUSE OF ACTION**

23 (PRODUCTS LIABILITY – STRICT LIABILITY)

24 (Against Defendants Taser International, Inc., and Does)

25 49. Defendants Taser International, Inc., and Does designed, manufactured,
26 sold, distributed, installed, fabricated, assembled, bought, inspected, tested, serviced,,
27 marketed, warranted, and advertised the subject Taser ordnance which contained design
28 and/or manufacturing defects, which were capable of causing, and in fact did cause,

1 personal injuries to people while being used in the manner reasonably foreseeable,
2 thereby rendering same unsafe and dangerous for its intended use.

3 50. As a direct and proximate result of the above-described defects in the
4 subject product, as aforementioned, and the conduct of defendants Taser International,
5 Inc., and Does as alleged above, in combination with the wrongful conduct of the other
6 defendants, plaintiffs and their decedent sustained serious personal injuries and other
7 injuries as alleged herein.

8 51. With respect to the subject ordnance, defendants Taser International, Inc.,
9 and Does were the designers, assemblers, manufacturers, sellers, distributors, installers,
10 fabricators, buyers, inspectors, testers, servicers, repairers, marketers, maintainers,
11 warrantors, and/or advertisers thereof, or were otherwise involved in the stream of
12 commerce to the extent that the laws of the State of California impose strict liability in
13 tort for injuries caused by defects therein.

14 52. Plaintiffs are informed and believe and thereon allege that defendants
15 Taser International, Inc., and Does knew that the Taser weapon's design, manufacture,
16 assembly, marketing and distribution by them was defective and dangerous; that each
17 of the defendants knew that because of the defects, the weapon could not be used safely
18 for the purpose for which it was intended; that defendants, and each of them, knowing
19 that its weapon was defective and dangerous, in conscious disregard of the safety of the
20 public placed this product on the market without warning customers or the unknowing
21 public of the defects and dangers and knew when it did so that this weapon would be
22 sold and used without knowledge of the defects and dangers; and that defendants and
23 each of them, by placing the defective and dangerous weapon on the market, expressly
24 and impliedly represented that it was safe for the purpose for which it was intended. The
25 other defendants herein, in purchasing and using the defective weapon as herein alleged,
26 did rely on each of the defendants' representations. In doing the things aforementioned,
27 defendant Taser International, Inc., and Does and each of them, were guilty of malice,
28 oppression and fraud, and plaintiffs are therefore entitled to recover exemplary and

