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December 3, 2012

Molly C. Dwyer, Clerk of the Court  
Office of the Clerk  
James R. Browning Courthouse  
U.S. Court of Appeals  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: Maxwell v. County of San Diego  
Case No. 10-56671  
Decision Filed September 13, 2012  
Panel: Judges Farris, Clifton, and Ikuta  
Appellants' Opposition to Petition for Rehearing and Rehearing En Banc (ECF # 43)

Dear Ms. Dwyer:

Plaintiff-Appellants submit this Fed. R. App. Proc. 28(j) letter in connection with the Opposition to the Petition for Rehearing and Rehearing En Banc they filed on November 28, 2012.

In that Opposition, Plaintiffs responded to an issue raised for the first time by Defendants-Appellees in their Petition for Rehearing and Rehearing En Banc. To respond to that issue, they submitted a supplemental excerpt of record containing two pleadings from the District Court's docket that had not been previously relevant. These are: (1) Plaintiffs' Notice of Motion and Motion for Leave to File an Amended Complaint, with supporting pleadings (dated 11/07/08); and (2) a Scheduling Order (dated 10/07/08).

The Clerk's Office subsequently informed Plaintiffs' counsel that a supplemental excerpt of record was the incorrect procedure and that they should have utilized a Fed. R. App. Proc. 28(j) letter. Accordingly, the two pleadings are attached hereto and are submitted with this letter.

The relevance of the pleadings is as follows: Defendants have suggested that Plaintiffs amended their Complaint to name Defendants Bradley Avi and Jeremy Felber because of the dismissal of the Defendant Viejas Tribe. In actuality, it was Plaintiffs' discovery of the identity of Avi and Felber that prompted Plaintiffs to seek leave to amend, not the dismissal of Viejas.

DMWEST #9470519 v2

Molly C. Dwyer, Clerk of the Court

December 3, 2012

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Specifically, Plaintiffs filed their complaint in December 2007. (ER 312). Viejas filed its motion to dismiss in January 2008. (ER 338.) The District Court granted Viejas's motion to dismiss in June 2008. (ER 56-58). On September 5, 2008, Defendant County of San Diego produced documents that for the first time disclosed the identities of the potentially liable individual emergency medical responders, including Avi and Felber. (*See* MPA ISO Motion for Leave to File an Amended Complaint (attached hereto) at 4:1-9; Scheduling Order (attached hereto)). Any motion to amend was due on November 9, 2008 under the District Court's Scheduling Order. (*Id.*) Plaintiffs thus moved for leave to substitute the now-identified individual defendants – including the Viejas Fire employees – on November 7, 2008, in accordance with the District Court's deadline and based upon the discovery of their identities. (*See* ER 341).

Very truly yours,

/s/ Daniel M. Benjamin

Daniel M. Benjamin

DMB:km

cc: Phillip C. Samouris  
Morris G. Hill  
Kevin M. Osterberg  
Thomas L. Murphy  
Sanford Kingsley  
Sarah Thompson



1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 8, 2008, at 2:30 p.m., or as soon thereafter  
3 as the matter may be heard, in the courtroom of the Honorable John A. Houston, United States  
4 District Court Judge, located at 940 Front Street, San Diego, California, Plaintiffs JIM  
5 MAXWELL and KAY MAXWELL, Individually and as guardians of TREVER ALLEN  
6 BRUCE and KELTEN TANNER BRUCE; and JIM MAXWELL, as executor Of the ESTATE  
7 OF KRISTIN MARIE MAXWELL-BRUCE ("Plaintiffs") will and hereby do, move the Court  
8 for an order granting leave to file an amended complaint pursuant to Federal Rule of Civil  
9 Procedure 15.

10 This motion is made for the following reasons and is based on the following grounds:  
11 (1) Plaintiffs seek to: (1) add a cause of action for *Monell* liability against the County of San  
12 Diego for failure to provide adequate training, pursuant to *City of Canton v. Harris*, 489 U.S.  
13 378 (1989); (2) substitute San Diego County Sheriff's Department Captain Greg Reynolds,  
14 Lieutenant Anthony Salazar, Sergeant M. Knobbe, Deputy Jeffrey Jackson, Deputy Warren  
15 Voth, Deputy G. Kneeshaw, Deputy William Reilly, and Deputy L. Rodriguez in place of DOE  
16 defendants 1-8; and (3) substitute Alpine Fire Protection District employees Brian Boggeln,  
17 Colby Ross, Chip Howell, and Michael Mead in place of DOE defendants 26-29; and (4)  
18 substitute Viejas Fire employees Bradley Avi and Jeremy Felber in place of DOE defendants  
19 30-31. Defendants will not be prejudiced if Plaintiffs' the motion is granted.

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1 This Motion is based on this Notice of Motion, the attached Memorandum of Points and  
2 Authorities, the [Proposed] First Amended Complaint lodged concurrently herewith as Exhibit  
3 A to the Memorandum, the papers and pleadings on file in this matter, and any such oral and  
4 documentary evidence as may be presented prior to, or at the time of, the hearing on this  
5 matter.

6 Dated: November 7, 2008

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10 By: /s/Teresa M. Gillis

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Attorneys for PLAINTIFFS

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

JIM MAXWELL and KAY MAXWELL, Individually and as guardians of TREVER ALLEN BRUCE and KELTEN TANNER BRUCE; and JIM MAXWELL, as executor of the ESTATE OF KRISTIN MARIE MAXWELL-BRUCE,	) Case No. 07 CV-2385-JAH (WMc) ) ) <b>MEMORANDUM OF POINTS AND</b> ) <b>AUTHORITIES IN SUPPORT OF</b> ) <b>PLAINTIFFS' MOTION FOR LEAVE</b> ) <b>TO FILE AN AMENDED COMPLAINT</b> )
Plaintiff,	) Date: December 8, 2008
vs.	) Time: 2:30 P.M.
	) Courtroom: 11
COUNTY OF SAN DIEGO; ALPINE FIRE PROTECTION DISTRICT; DEPUTY LOWELL BRYAN "SAM" BRUCE; DOES 1-50,	) Complaint Filed: December 19, 2007 ) Trial Date: )
Defendants.	)

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

By this motion, Plaintiffs seek leave to file a First Amended Complaint ("FAC," attached hereto as Exhibit A). The FAC would (1) add a cause of action for *Monell* liability against the County of San Diego for failure to provide adequate training, pursuant to *City of Canton v. Harris*, 489 U.S. 378 (1989); (2) substitute San Diego County Sheriff's Department Captain Greg Reynolds, Lieutenant Anthony Salazar, Sergeant M. Knobbe, Deputy Jeffrey Jackson, Deputy Warren Voth, Deputy G. Kneeshaw, Deputy William Reilly, and Deputy L. Rodriguez in place of DOE defendants 1-8; and (3) substitute Alpine Fire Protection District employees Brian Boggeln, Colby Ross, Chip Howell, and Michael Mead in place of DOE defendants 26-29; and (4) substitute Viejas Fire employees Bradley Avi and Jeremy Felber in place of DOE defendants 30-31. Defendants will not be prejudiced if Plaintiffs' motion is granted.

### II. STATEMENT OF FACTS

Defendant County of San Diego ("Defendant" or "County") Sheriff's deputy Lowell Bryan Bruce ("Bruce") shot his wife Kristin Maxwell Bruce ("Kristin") in the jaw at the home of Kristin's parents Jim Maxwell ("Jim") and Kay Maxwell ("Kay") on December 14, 2006. (Complaint, ¶¶ 1, 31.) Kristin was seriously injured, but she was able to walk to the telephone and call "911." (Complaint, ¶¶ 3, 32.) The San Diego County Sheriff's Department responded, and when it arrived minutes later, it locked down the scene of the shooting. (Complaint, ¶¶ 3, 35, 36.)

While acting under color of law and in the course and scope of their employment, Sheriff's deputies locked down the scene of the shooting and refused to allow Kristin to be transported to the hospital. (Complaint, ¶¶ 13, 36.) They refused to allow Jim or Kay to see or speak with Kristin. (Complaint, ¶ 37.) When Jim tried to walk down his driveway to see

1 his wife, an unknown defendant Sheriff's deputy hit him with a baton and pepper-sprayed him  
2 in the face. (Complaint, ¶¶ 37, 67, 72.)

3 Defendants showed deliberate indifference to Kristin's obvious medical needs, and  
4 they provided her with grossly negligent emergency medical care. (Complaint, ¶¶ 38, 41.)  
5 As a result, Kristin suffocated and drowned in her own blood; she died at the scene nearly an  
6 hour after being shot, while still in the deputies' custody. (Complaint, ¶ 3, 38.) The  
7 Maxwells found out their daughter had died only after the news media had already reported it,  
8 and Defendants caused the news media to believe that Jim was a suspect who had been  
9 arrested for the shooting of his daughter. (Complaint, ¶¶ 37, 78, 84.)

### 10 **III. PROCEDURAL BACKGROUND**

11 Plaintiffs filed their complaint on December 19, 2007, asserting causes of action for  
12 (1) violation of 42 U.S.C. § 1983 (right of association), (2) 42 U.S.C. § 1983 (Monell  
13 liability) (based on negligent hiring and providing defendant Bruce with a weapon), (3)  
14 wrongful death, (4) survival action, (5) gross negligence, (6) 42 U.S.C. § 1983 (excessive  
15 force), (7) battery; (8) intentional infliction of emotional distress, and (9) negligent infliction  
16 of emotional distress.

17 On January 10, 2008, Defendant County of San Diego filed a motion to dismiss  
18 Plaintiffs' first, second, third and fourth causes of action, and Defendant Alpine Fire Protection  
19 District filed a motion to dismiss and/or sever and dismiss for lack of federal question or  
20 supplemental jurisdiction. On January 24, 2008, defendant Viejas Fire Department filed a  
21 motion to dismiss Plaintiffs' claims for lack of subject matter jurisdiction, based on sovereign  
22 immunity.

23 On June 3, 2008, the Court issued an order that: (1) granted Defendant Viejas Fire  
24 Department's motion to dismiss; (2) denied Defendant Alpine Fire Protection District's motion  
25 to dismiss and/or sever; and (3) granted Defendant County of San Diego's motion to dismiss as  
26 to Plaintiff's second cause of action only. The Court also denied Defendant County of San  
27 Diego's motion for a more definite statement.

On September 5, 2008, pursuant to the Court's Order Following Early Neutral Evaluation Conference, Setting Rule 26 Compliance and Notice of Case Management Conference, Defendant County of San Diego produced approximately 380 pages of documents. These documents identified to Plaintiffs for the first time the identities of the individual deputies and emergency medical responders who were present at Plaintiffs' home on the night of December 14, 2006, and whose actions form basis of Plaintiffs' complaint. On October 7, 2008, the Court issued a Scheduling Order that provided that "[a]ny motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before November 9, 2008."

#### IV. THE COURT SHOULD GRANT PLAINTIFFS LEAVE TO AMEND

##### A. Leave to Amend Should Be Granted As Justice Requires

Rule 15(a) of the Federal Rules of Civil Procedure expressly states that leave to amend "shall be freely given when justice so requires." *Accord Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990); *Friedlander v. Nims*, 755 F.2d 810, 813 (11th Cir. 1985). Leave to amend should be liberally granted. *Scott v. Eversole Mortuary*, 522 F.2d 1110 (9th Cir.1975).

##### B. Plaintiffs May Properly Assert a Violation of 42 U.S.C. § 1983 against the County, Based on the County's Failure to Provide Adequate Training.

The second cause of action in Plaintiffs' proposed First Amended Complaint asserts a claim for violation of 42 U.S.C. § 1983, based on the County's failure to provide adequate training. Inadequacy of police training may serve as the basis for § 1983 liability where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989); *Munger v. City of Glasgow*, 227 F.3d 1082, 1088 (9th Cir. 2000). To prevail on a claim under *City of Canton*, a plaintiff "must have sufficiently alleged that: (1) [he] was deprived of his constitutional rights by the City acting under color of state law; (2) that the City has customs or policies which amount to deliberate indifference to [his] constitutional rights; and (3) that these policies were

1 the moving force behind the constitutional violations.” *Estate of Amos v. City of Page*, 257  
2 F.3d 1086, 1094 (9th Cir. 2001) (internal quotes omitted).

3 Plaintiffs’ FAC adequately alleges the elements of a violation of 42 U.S.C. § 1983  
4 based on the County’s failure to adequately train its sheriff’s deputies. Specifically, Plaintiffs  
5 allege that: Defendant County implicitly or explicitly adopted a custom or policy of vesting  
6 with the deputy in charge of a crime scene the authority to determine when injured persons at  
7 the crime scene should be allowed to be removed from the crime scene or transported to a  
8 hospital; defendant County vested such authority with the deputy in charge of a crime scene  
9 without providing adequate training to recognize when it would be medically necessary for  
10 injured persons at a crime scene to be allowed to be removed from the crime scene or  
11 transported to a hospital; defendant County’s failure to provide adequate training was reckless  
12 or grossly negligent; defendant County’s failure to adequately train its officers amounts to  
13 deliberate indifference of the rights of the individuals its officers come into contact with; and  
14 defendant County’s failure to train its officers caused the Defendants who were employed by  
15 the Sheriff’s Department to fail to allow Kristin to be transported for appropriate medical  
16 treatment in a timely manner. (FAC, ¶¶ 47-51.) Therefore, Plaintiffs may properly assert a  
17 violation of 42 U.S.C. § 1983 against the County, based on the County’s failure to provide  
18 adequate training to its deputies.

19 C. **It is Appropriate to Amend the Complaint to Reflect the True Names of the**  
20 **Individual “DOE” Defendants.**

21 As set forth above, Plaintiffs only recently discovered the identities of the individual  
22 deputies and emergency medical personnel who responded to their home and participated in the  
23 events that took place on the night of December 14, 2006. Because the relief sought by  
24 Plaintiffs against these individuals arises out of the occurrences forming the subject of the  
25 Complaint, Plaintiffs are entitled to add these persons as defendants. Fed. R. Civ. P. 20(a)(2).

26 Indeed, as the facts may show, these persons may be necessary parties who must be  
27 joined under Fed. R. Civ. P. 19(a)(1). The inquiry contemplated by Rule 19 is a practical one

1 addressed to the sound discretion of the trial court. *Frazier v. City of Norfolk*, 236 F.R.D. 273,  
2 275 (E.D. Va. 2006). In exercising its discretion, the trial court must consider the plaintiff's  
3 interest in choosing the parties to the action, the present defendant's interest, the interest of the  
4 potential but absent party, and the public's interest in complete, consistent and efficient  
5 adjudication of disputes. *Bakia v. Los Angeles County*, 687 F.2d 299, 301 (9th Cir. 1982);  
6 *Frazier*, 236 F.R.D. 273 at 275.

7 In *Frazier*, an arrestee brought a Section 1983 action against city for violations of his  
8 Fourth Amendment rights and resulting physical injury inflicted by officers in connection with  
9 his arrest. *Frazier*, 236 F.R.D. 273 at 274. In his original complaint, plaintiff named the City  
10 of Norfolk and the individual officers who inflicted the injuries upon him as defendants. *Id.*  
11 Simultaneously with his federal complaint, plaintiff filed a complaint in state court against the  
12 individual police officers, seeking damages for excessive force, assault and battery, gross  
13 negligence, and conspiracy. *Id.* Eventually, plaintiff voluntarily dismissed the police officers  
14 from his federal claim and left the city as the sole defendant. *Id.* Shortly after plaintiff  
15 dismissed the officers from the action, the city filed a motion pursuant to Rule 19(a) to bring  
16 the police officers back into the lawsuit. *Id.*

17 The *Frazier* court held that compulsory joinder of police officers was warranted, stating  
18 that "[a]s the perpetrators of the alleged constitutional injury on which the city's liability was  
19 allegedly based, the officers' presence in the action was plainly desirable[.]" *Id.* at 276. The  
20 Court further stated that "as a practical matter, the city could have less interest than the officers  
21 in defending the constitutionality of the officers' conduct because even if arrestee suffered  
22 constitutional injury at the hands of the officers, the city could escape liability for the injury by  
23 showing that the officers did not act pursuant to official policy or custom." *Id.*

24 The present case is analogous to *Frazier*, since the sheriff's deputies on scene were the  
25 ones who sealed the scene of the crime and they were the ones who did not let anyone,  
26 including the victim, leave the scene for over an hour after the shooting. Further, it was the  
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1 deputies who allegedly clubbed and sprayed Mr. Maxwell with mace. Therefore, the sheriff  
2 deputies are the perpetrators of the injuries complained of by Plaintiffs in this case.

3 Adding these individual defendants would not destroy the court's jurisdiction, as this is  
4 not a diversity jurisdiction case, and it would aid in the determination of whether the deputies  
5 were acting pursuant to official policy or custom. If the County claims that the officers were  
6 not acting pursuant to official policy or custom in order to limit its liability, the officers have an  
7 interest in showing that they did follow official policy or custom. Clearly, then, the individual  
8 Sheriff's deputies' interests are affected by this suit and they are necessary parties.

9 Finally, with respect to all of the individuals Plaintiffs seek to join, joining them would  
10 protect the Plaintiffs from the possibility of having to file multiple suits and would aid in  
11 judicial economy.

12 **D. Viejas Fire Department Employees Are Not Immune From Suit**

13 Sovereign immunity does not shield individual members of a federally-recognized  
14 Indian tribe, or the tribe's employees, from lawsuits against them in their individual capacity:  
15 "[E]ven if [a] tribe and its instrumentalities are immune, the individual officers of the tribe will  
16 not be immune unless they were 'acting in their representative capacity and within the scope of  
17 their authority.'" *State of Alaska, ex rel. Yukon Flats School Dist. v. Native Village of Venetie*,  
18 856 F.2d 1384, 1387 (9th Cir. 1988), quoting *Hardin v. White Mountain Apache Tribe*, 779  
19 F.2d 476, 479 (9th Cir. 1985). Therefore, sovereign immunity would not protect individual  
20 employees of the Viejas Fire Department, if, for example, their actions with respect to Kristin  
21 Maxwell-Bruce, were outside the scope of authority extended to them by the Viejas Fire  
22 Department.

23 In sum, San Diego County Sheriff deputies, Alpine Fire Protection employees and the  
24 Viejas Fire Department personnel should be joined in this action as defendants. Joining the  
25 individual deputies and emergency medical responders would not destroy the court's  
26 jurisdiction, and the individuals are subject to the service of process here in San Diego County.  
27 Therefore, the Court should permit Plaintiffs to amend their complaint to add these individuals  
28

who were at the scene of the incident and who took an active role in the events of December 14, 2006.

**E. Defendants Will Not Be Prejudiced If Plaintiffs' Motion Is Granted.**

To justify denial of leave to amend, the prejudice suffered by the opposing party must be substantial. *See, e.g., Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). In addition, "[a]ny prejudice to the nonmovant must be weighed against the prejudice to the moving party by not allowing the amendment." *Bell v. Allstate Life Ins. Co.*, 160 F.3d 452, 454 (8th Cir. 1998).

Defendants will not be prejudiced if Plaintiffs' motion is granted. The parties have only recently exchanged initial disclosures. None of the parties has propounded any written discovery, and the parties have not taken any depositions. No trial date has been set, and the final Pretrial Conference is not until November 16, 2009.

By contrast, Plaintiffs will suffer great prejudice if this motion is denied, as Plaintiffs will be prevented from asserting a meritorious claim and from seeking relief from the individuals who are potentially responsible for Plaintiffs' injuries.

**V. THE FIRST AMENDED COMPLAINT SHOULD BE DEEMED FILED AS OF THE DATE OF THIS MOTION**

Plaintiffs submit herewith a Proposed Order, granting leave to amend the Complaint and to deem the proposed First Amended Complaint filed as of the date of this motion, November 7, 2008. This relief is requested out of an abundance of caution with respect to the possibility of a running of the statute of limitations on December 14, 2008. If this Motion is not decided before that date, the Plaintiffs respectfully request that the Court order the First Amended Complaint filed as of November 7, 2008, as provided on the proposed Order.

1 **VI. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs request that the Court grant their motion for  
3 leave to amend their complaint.

4  
5 Dated: November 7, 2008

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**EXHIBIT A**

**Page 1**

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 individually and as guardians of TREVER  
 ALLEN BRUCE and KELTEN TANNER  
 BRUCE; and JIM MAXWELL, as executor  
 Of the ESTATE OF KRISTIN MARIE  
 MAXWELL-BRUCE

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

JIM MAXWELL and KAY MAXWELL,  
 individually and as guardians of TREVER  
 ALLEN BRUCE and KELTEN TANNER  
 BRUCE; and JIM MAXWELL, as executor  
 of the ESTATE OF KRISTIN MARIE  
 MAXWELL-BRUCE,

Plaintiff,

v.

COUNTY OF SAN DIEGO; ALPINE FIRE  
 PROTECTION DISTRICT; DEPUTY  
 LOWELL BRYAN "SAM" BRUCE;  
 GREGORY REYNOLDS; ANTHONY  
 SALAZAR; M. KNOBBE; JEFFREY  
 JACKSON; WARREN VOTH; GARY  
 KNEESHAW; WILLIAM REILLY; L.  
 RODRIGUEZ; BRIAN BOGGELN; COLBY  
 ROSS; CHIP HOWELL; MICHAEL MEAD;  
 BRADLEY AVI; JEREMY FELBER; DOES  
 9-25 San Diego County Employees; and  
 DOES 32-100,

Defendants.

CASE NO. 07-cv-2385-JAH(WMc)

FIRST AMENDED COMPLAINT FOR:

- (1) 42 U.S.C. § 1983 (right of association);
- (2) 42 U.S.C. § 1983 (*Monell* liability);
- (3) Wrongful death;
- (4) Survival action;
- (5) Gross negligence;
- (6) 42 U.S.C. § 1983 (excessive force);
- (7) Battery;
- (8) Intentional Infliction of Emotional Distress;
- (9) Negligent Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

JIM MAXWELL and KAY MAXWELL, individually and as guardians of TREVER ALLEN BRUCE and KELTEN TANNER BRUCE; and JIM MAXWELL, as executor of the ESTATE OF KRISTIN MARIE MAXWELL-BRUCE (collectively "Plaintiffs"), for the Complaint against defendants County of San Diego (the "County"), County employees Gregory Reynolds, Anthony Salazar, M. Knobbe, Jeffrey Jackson, Warren Voth, Gary Kneeshaw, William Reilly and L. Rodriguez, Alpine Fire Department ("Alpine Fire"), Alpine Fire employees Brian Boggeln, Colby Ross, Chip Howell and Michael Mead; Viejas Fire Department employees Bradley Avi and Jeremy Felber, Deputy Lowell Bryan "Sam" Bruce, DOES 9-25 San Diego County Employees, DOES 32-100 (all defendants collectively, "Defendants") allege as follows:

### INTRODUCTION

1. As of December 14, 2006, Lowell Bryan "Sam" Bruce ("Bruce" or "Deputy Bruce") was a San Diego County Deputy Sheriff assigned to the Las Colinas Detention Facility ("Las Colinas") in San Diego. On the evening of December 14, 2006, Bruce left Las Colinas and took his County-issued weapon home. Later that same evening, Bruce shot his 38-year old wife Kristin Marie Maxwell-Bruce ("Kristin") in the jaw. Bruce shot his wife Kristin in front of their 4-year old son, Kelten, in the home owned by Kristin's parents, Jim and Kay Maxwell ("Jim" and "Kay" or, collectively, the "Maxwells").

2. The County hired Bruce as a Deputy Sheriff to fill a vacancy at Las Colinas after Bruce twice failed the County's psychological evaluation. Prior to hiring Bruce, the County was experiencing difficulties in filling vacancies in the County's jail facilities. The County clearly understood and appreciated that he was unfit for duty and prone to violence, but hired him anyway. Not only did the County recklessly hire Bruce, but thereafter provided him with a Glock handgun, and allowed him to take it home with him. December 14 was one of the nights Bruce was permitted to take that weapon home, and, as a result, at least six lives were forever altered.

3. After Bruce fired his shot, Kristin was seriously injured, but able to walk to the telephone and call "911." The San Diego Sheriff's Department (the "Sheriff's Department")

1 responded, but the scene of the shooting quickly became a scene of chaos and disorder  
 2 under the direction and control of the Sheriff's Department after Sheriff's Deputies  
 3 learned one of their own was the shooter. Sheriff's Deputies locked down the scene and  
 4 refused to let Kristin be taken to the hospital. Meanwhile, emergency medical responders  
 5 from Alpine Fire and Viejas Fire as well as from the Sheriff's Department allowed Kristin to  
 6 suffocate and drown in her own blood. Kristin died nearly an hour after dialing "911."

7 4. Defendants also prevented Kristin's parents – Jim and Kay Maxwell - from  
 8 seeing, speaking to, or comforting Kristin during the last hour of her life. Moreover, they  
 9 kept Jim and Kay Maxwell from each other in this critical time. In fact, after Jim Maxwell  
 10 learned that his daughter had died, he attempted to walk to where his wife was being held by  
 11 Sheriff's Deputies. As Jim Maxwell attempted to walk down his driveway to see his wife,  
 12 one of the Sheriff's Deputies pepper-sprayed him in the face and then clubbed him in order to  
 13 keep him from his wife in this critical time. As a result, Kay Maxwell found out only after the  
 14 news media already knew that her daughter had died.

15 5. Plaintiffs assert numerous claims arising from these gruesome and unsettling  
 16 facts, based upon both tort and statutory law, and upon both federal and state law. Plaintiffs –  
 17 Kristin's two sons, Kristin's parents, and, upon a wrongful death claim, Kristin herself – pray  
 18 for damages against Defendants, and hope to obtain at least some relief from the catastrophe  
 19 Defendants caused.

#### 20 THE PARTIES

21 6. Plaintiffs Jim and Kay Maxwell are residents of the County of San Diego,  
 22 within this judicial district. Jim Maxwell is the legal guardian of Trever Allen Bruce and  
 23 Kelten Tanner Bruce, Kristin's children. The Maxwells are also Kristin's successors-in-  
 24 interest under Cal. Code Civ. Proc. § 377.11.

25 7. Plaintiffs are informed and believe and on that basis allege that the County of  
 26 San Diego is, and at all relevant times was, a political subdivision of the State of California,  
 27 and that the County is within this judicial district. Plaintiffs are further informed and believe  
 28 that defendants Gregory Reynolds, Anthony Salazar, M. Knobbe, Jeffrey Jackson, Warren

1 Voth, Gary Kneeshaw, William Reilly and L. Rodriguez were, at all relevant times herein,  
2 employed by the County and acting under color of law and within the course and scope of  
3 their employment.

4 8. Plaintiffs are informed and believe and on that basis allege that Defendant  
5 Alpine Fire Protection District ("Alpine Fire") is a fire department organized and existing  
6 pursuant to California Health and Safety Code §§ 13800 *et seq.*, and that it is headquartered  
7 within this judicial district. Plaintiffs are further informed and believe that defendants Brian  
8 Boggeln, Colby Ross, Chip Howell and Michael Mead were, at all relevant times herein,  
9 employed by Alpine Fire and acting within the course and scope of their employment.

10 9. Plaintiffs are informed and believe and on that basis allege that dismissed  
11 defendant Viejas Fire Department ("Viejas Fire") is a fire department wholly-owned and  
12 operated by the Viejas Band of Kumeyaay Indians, a federally recognized Indian tribe.  
13 Defendants Bradley Avi and Jeremy Felber were employed by Viejas Fire but are sued here in  
14 their individual capacities.

15 10. Plaintiffs are informed and believe and on that basis allege that, at all relevant  
16 times, Defendant Lowell Bryan "Sam" Bruce ("Bruce" or "Deputy Bruce") was a Deputy  
17 Sheriff employed by the County of San Diego Sheriff's Department and an agent and  
18 employee of the County, and that he has resided, at all times relevant to this action, within this  
19 judicial district.

20 11. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 9-  
21 25 San Diego County Employees and DOES 32-50, inclusive, and therefore sue these  
22 defendants by such fictitious names. Plaintiffs will amend their complaint to allege the true  
23 names and capacities of those defendants when the same has been ascertained.

24 12. Plaintiffs are informed and believe, and on that basis allege, that DOES 9-25  
25 San Diego County Employees and DOES 32-100, and each of them, are responsible in some  
26 manner for the occurrences alleged herein and proximately caused Plaintiffs' damages.  
27 Plaintiffs are further informed and believe, and on that basis allege, that Defendants acted at  
28 all times mentioned herein as the actual and/or ostensible agents, employees, servants or

1 representatives of each other and, in doing the activities alleged herein, acted within the scope  
2 of their authority as agents and employees, and with the permission and consent of each other.

3 13. Plaintiffs are informed and believe, and on that basis allege, that at all times  
4 mentioned herein all Defendants acted under color of law, statute, ordinance, regulations,  
5 customs and usages of the State of California and County of San Diego.

6 **JURISDICTION AND VENUE**

7 14. The Court has jurisdiction over Plaintiffs' federal law claims pursuant to 28  
8 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over Plaintiffs' state law claims  
9 pursuant to 28 U.S.C. § 1367(a).

10 15. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), as  
11 Defendants reside within this judicial district and the acts that form the basis of Plaintiffs'  
12 claims occurred in this judicial district.

13 16. Plaintiffs have timely complied with all government claim requirements, as set  
14 forth in California Government Code §§ 900 *et seq.* Plaintiffs received written rejection of  
15 their claims within six months of the filing of this complaint.

16 **GENERAL ALLEGATIONS**

17 17. Plaintiffs are informed and believe that in or about 1993, Bruce submitted an  
18 application for employment with the County for the position of Corrections Deputy Sheriff.  
19 As part of the application process, the County performed a background investigation and  
20 psychological evaluation of Bruce.

21 18. Plaintiffs are informed and believe that as part of the application process,  
22 Bruce underwent and failed the psychological evaluation, and, for that reason, the County  
23 denied employment to Bruce. Plaintiffs are informed and believe that pursuant to civil service  
24 rules established by the County, Bruce underwent a second psychological evaluation, which  
25 he also failed.

26 19. Plaintiffs are informed and believe that the psychological evaluations  
27 administered by the County revealed a history of physical violence on the part of Bruce and  
28

1 test results that indicated to the County that Bruce would tend to resort to violence as a way of  
2 resolving interpersonal differences with others.

3 20. Plaintiffs are informed and believe that after his failure of the psychological  
4 evaluation administered by the County, Bruce applied for and was rejected for a position with  
5 the San Diego Police Department.

6 21. Plaintiffs are informed and believe that after his failure of the psychological  
7 evaluation administered by the County, Bruce applied for and was rejected for a position with  
8 the San Diego Harbor Police.

9 22. Plaintiffs are informed and believe that after his failure of the psychological  
10 evaluation administered by the County, Bruce applied for and was rejected for a position with  
11 the California Highway Patrol.

12 23. Plaintiffs are informed and believe that after his failure of the psychological  
13 evaluation administered by the County, Bruce applied for and was rejected for a position with  
14 the San Diego Sheriff's Department a second time.

15 24. Plaintiffs are informed and believe that after his failure of the psychological  
16 evaluation administered by the County, Bruce applied for and was rejected for a position with  
17 the Los Angeles Police Department.

18 25. Plaintiffs are informed and believe that after his failure of the psychological  
19 evaluation administered by the County, Bruce applied for and was rejected for a position with  
20 the Chula Vista Police Department.

21 26. Plaintiffs are informed and believe that after his failure of the psychological  
22 evaluation administered by the County, Bruce applied for and was rejected for a position with  
23 the California Highway Patrol a second time.

24 27. Plaintiffs are informed and believe that after his failure of the psychological  
25 evaluation administered by the County, Bruce applied for and was rejected for a position with  
26 the Everett, Washington Police Department.

1           28.     Plaintiffs are informed and believe that after his failure of the psychological  
2     evaluation administered by the County, Bruce applied for and was rejected for a position with  
3     the Kent, Washington Police Department.

4           29.     Plaintiffs are informed and believe that after his failure of the psychological  
5     evaluation administered by the County, Bruce applied for and was rejected for a position with  
6     the Washington State Patrol.

7           30.     Plaintiffs are informed and believe that despite its knowledge of Bruce's prior  
8     failure of two psychological evaluations and his lack of psychological fitness, and despite its  
9     knowledge that Bruce had applied to and been rejected for employment by at least eight other  
10    law enforcement agencies, the County decided to hire Bruce as a San Diego County Sheriff's  
11    Deputy and provide him with a deadly weapon which he ultimately used to shoot his wife.

12                           **THE NIGHT OF DECEMBER 14, 2006**

13           31.     On December 14, 2006, Bruce took his County-issued service weapon home  
14     with him from Las Colinas and fired a shot at his wife Kristin. His County-issued bullet hit  
15     Kristin in the jaw, severely injuring her. At the time, Kristin and Bruce were living at the  
16     Maxwells' home in Alpine, California. At the time Bruce shot Kristin, Jim and Kay, as well  
17     as Kristin and Bruce's two young sons, Trever Allen Bruce, and Kelten Tanner Bruce, ages  
18     seven and four respectively, were home. In fact, Bruce shot Kristin directly in front of  
19     Kelten, one of their two sons.

20           32.     With her jaw bleeding, Kristin was able to walk to a telephone and dial "911."

21           33.     Shortly after Bruce shot Kristin with his County-issued weapon, Jim Maxwell  
22     – seeing his daughter bleeding – confronted Bruce about the seriousness of the injury to which  
23     Bruce responded in substance that the injury was not a life-threatening injury.

24           34.     Bruce – rather than calling "911" or requesting medical assistance for his  
25     victim wife – instead called a supervisor at the Sheriff's Department and confessed to his  
26     employer that he had just shot his wife.

1           35.     The Sheriff's Department and emergency medical responders from Alpine Fire  
2 and Viejas Fire responded to the Maxwell home. At the time they responded, Kristin was still  
3 alive.

4           36.     Sheriff's Deputies Jeffrey Jackson, William Reilly, M. Knobbe and Gary  
5 Kneeshaw, acting within the course and scope of their employment and under the supervision,  
6 command and cooperation of Sheriff's Captain Reynolds and Sheriff's Lieutenant Salazar and  
7 Sheriffs' Deputies Rodriguez and Voth, locked down the scene of the shooting, and failed and  
8 refused to let Kristin be taken to the hospital. As a result, Kristin died at the scene, nearly an  
9 hour after she called for help. During the last hour of Kristin's life, Defendants refused to let  
10 her parents see her, refused to let them speak to her or comfort her, and refused to let Jim and  
11 Kay Maxwell see, speak to or comfort each other.

12           37.     Sheriff's Deputies Jackson, Reilly, Knobbe and Kneeshaw, acting within the  
13 course and scope of their employment, and under the supervision, command and cooperation  
14 of Sheriff's Captain Reynolds and Sheriff's Lieutenant Salazar and Sheriffs' Deputies  
15 Rodriguez and Voth, assaulted, restrained, and otherwise mistreated the Maxwells as they  
16 sought to find out the status of their daughter's condition. Jim Maxwell was pepper-sprayed  
17 in the face and clubbed by Defendant Kneeshaw while he sought information about his  
18 daughter. Defendants' incompetence or arrogance even caused the news media to believe Jim  
19 was a "suspect," despite that Sheriff's Deputies clearly understood that Bruce had been  
20 Kristin's shooter. Meanwhile, Kay Maxwell was kept without any information and away  
21 from her daughter, learning that she died only after the news media knew that her daughter  
22 was dead. The Maxwells were unlawfully detained and falsely imprisoned, kept away from  
23 their daughter by Defendants acting in the course and scope of their employment. Kristin's  
24 young boys were also mistreated by Defendants. These actions caused emotional distress to  
25 these Plaintiffs.

26           38.     Each of the Defendants who responded to the 911 call, including the Sheriff's  
27 Department employees, the Alpine Fire and Viejas Fire employees, and/or agents of the  
28 Sheriff's Department and Alpine Fire, caused Kristin's death by performing emergency

1 medical services, including but not limited to first aid, medical treatment, rescue procedures,  
2 transportation, and other necessary and related activities, in a grossly negligent manner.

3 39. Last but certainly not least, Bruce himself acted with a willful and conscious  
4 disregard of the rights and safety of his wife Kristin, the Maxwells, and his sons Trever Allen  
5 Bruce and Kelten Tanner Bruce. He subjected these members of his own family to cruel and  
6 unjust hardship in conscious disregard of their rights.

7 **FIRST CAUSE OF ACTION**

8 (Violation of 42 U.S.C. § 1983 (Right of Association) –

9 against Defendants County of San Diego, San Diego County Employees Gregory Reynolds,  
10 Anthony Salazar, M. Knobbe, Jeffrey Jackson, Warren Voth, Gary Kneeshaw, William Reilly  
11 and L. Rodriguez and San Diego County Employees 9-25)

12 40. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 of this  
13 Complaint, as if fully set forth at this point.

14 41. By their actions on the scene at the Maxwell residence on December 14 and  
15 15, 2006, as described above, Sheriff's Deputies Jeffrey Jackson, William Reilly, M. Knobbe,  
16 Gary Kneeshaw, L. Rodriguez and Warren Voth, and Sheriff's Captain Gregory Reynolds and  
17 Sheriff's Lieutenant Anthony Salazar, prevented Kristin from receiving proper medical  
18 treatment, falsely imprisoned Kristin and the Maxwells, and prevented the Maxwells from  
19 association with their daughter in the last hour of her life.

20 42. Sheriff's Deputies Jeffrey Jackson, William Reilly, M. Knobbe, Gary  
21 Kneeshaw, L. Rodriguez and Warren Voth, and Sheriff's Captain Gregory Reynolds and  
22 Sheriff's Lieutenant Anthony Salazar each were on the scene at the Maxwell residence and  
23 participated in the actions taken on December 14 and 15, 2006, described above. In addition,  
24 each of these Defendants was in a position to prevent or stop other Defendants from violating  
25 the constitutional rights of Kristin and the Maxwells, but they knowingly failed to do so.

26 43. Plaintiffs are informed and believe, and on that basis allege, that Defendants,  
27 acting under color of state law, deprived Plaintiffs of the right to familial relationships in  
28 violation of the Fourth Amendment, and without due process in violation of the Fourteenth

1 Amendment, by use of unreasonable, unjustified force and violence, and by deliberate  
2 indifference to medical needs, causing injuries and failing to treat injuries, which resulted in  
3 the death of Kristin Maxwell-Bruce, in violation of the rights, privileges and immunities  
4 secured by the Fourth and Fourteenth Amendments to the United States Constitution.

5 44. As a result of the wrongful acts of Defendants, and each of them, Plaintiffs  
6 have suffered and continue to suffer general damages, including grief, emotional distress, loss  
7 of the care, comfort, affection and society, and special damages, including loss of protection  
8 and support, in an amount to be determined according to proof at trial.

9 45. In doing the foregoing wrongful acts, Defendants, and each of them, acted in  
10 reckless and callous disregard and deliberate indifference for the constitutional rights of  
11 Kristin Maxwell-Bruce. The wrongful acts were willful, oppressive, fraudulent, and  
12 malicious, thus warranting the award of exemplary and punitive damages against each  
13 defendant, except for governmental entity defendants, in an amount adequate to punish the  
14 wrongdoers and deter future misconduct.

15  
16 **SECOND CAUSE OF ACTION**

17 (Violation of 42 U.S.C. § 1983

18 (Failure to Train) –

19 against Defendant County of San Diego)

20 46. Plaintiffs reallege and incorporate by reference paragraphs 1 through 45 of this  
21 Complaint, as if fully set forth at this point.

22 47. Plaintiffs are informed and believe, and on that basis allege, that Defendant  
23 County implicitly or explicitly adopted a custom or policy of vesting with the deputy in  
24 charge of a crime scene the authority to determine when injured persons at the crime scene  
25 should be allowed to be removed from the crime scene or transported to a hospital.

26 48. Plaintiffs are informed and believe, and on that basis allege, that County vested  
27 such authority with the deputy in charge of a crime scene without providing adequate training  
28

1 to recognize when it would be medically necessary for injured persons at a crime scene to be  
2 allowed to be removed from the crime scene or transported to a hospital.

3 49. Defendant County's failure to provide adequate training was reckless or  
4 grossly negligent.

5 50. Defendant County's failure to adequately train its officers amounts to  
6 deliberate indifference of the rights of the individuals its officers come into contact with.

7 51. Defendant County's failure to train its officers caused the Defendants who  
8 were employed by the Sheriff's Department to fail to allow Kristin to be transported for  
9 appropriate medical treatment in a timely manner.

10 52. As a result of the wrongful act of Defendant County, Plaintiffs have suffered  
11 and continue to suffer general damages, including grief, emotional distress, loss of the care,  
12 comfort, affection and society, and special damages, including loss of protection and support,  
13 in an amount to be determined according to proof at trial.

14 **THIRD CAUSE OF ACTION**

15 (Wrongful death – By Jim Maxwell and Kay Maxwell, as guardians  
16 of Trevor Allen Bruce and Kelten Tanner Bruce – against all Defendants)

17 53. Plaintiffs reallege and incorporate by reference paragraphs 1 through 52 of this  
18 Complaint, as if fully set forth at this point.

19 54. Plaintiffs are informed and believe, and on that basis allege, that as a proximate  
20 result of the acts and omissions of Defendants, including gross negligence in the provision of  
21 emergency services, Kristin Maxwell-Bruce suffered loss of life.

22 55. As a proximate result of the acts and omissions of Defendants, including gross  
23 negligence in the provision of emergency services, and the death of Kristin Maxwell-Bruce,  
24 Trevor Allen Bruce and Kelten Tanner Bruce have suffered and continue to suffer loss of the  
25 care, comfort, affection, society, protection and support of their mother, Kristin Maxwell-  
26 Bruce, in an amount to be determined according to proof at trial.

27 ///

28 ///

**FOURTH CAUSE OF ACTION**

(Survival action - By Jim Maxwell, as executor of the

Estate of Kristin Marie Maxwell-Bruce – against all Defendants)

56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 55 of this Complaint, as if fully set forth at this point.

57. Plaintiffs are informed and believe, and on that basis allege, that as a proximate result of the acts and omissions of Defendants, including gross negligence in the provision of emergency services, Kristin Maxwell-Bruce died of injuries she sustained on December 14, 2006.

58. As a proximate result of the acts and omissions of Defendants, including gross negligence in the provision of emergency services, Kristin Maxwell-Bruce suffered compensable damages prior to her death, in an amount to be determined at trial according to proof.

**FIFTH CAUSE OF ACTION**

(Gross Negligence – against Defendants Alpine Fire, Brian Boggeln, Colby Ross, Chip

Howell, Michael Mead, Bradley Avi, Jeremy Felber and DOES 32-35)

59. Plaintiffs reallege and incorporate by reference paragraphs 1 through 58 of this Complaint, as if fully set forth at this point.

60. Plaintiffs are informed and believe, and on that basis allege, that Defendants Alpine Fire, Brian Boggeln, Colby Ross, Chip Howell, Michael Mead, Bradley Avi and Jeremy Felber, and each of them, had a duty to provide emergency medical services to Kristin Maxwell-Bruce upon arriving at her home.

61. Plaintiffs are informed and believe, and on that basis allege, that Defendants Alpine Fire, Brian Boggeln, Colby Ross, Chip Howell, Michael Mead, Bradley Avi and Jeremy Felber, and each of them, were grossly negligent in their treatment of Kristin Maxwell-Bruce.

62. As a proximate result of the acts and omissions of Defendants Alpine Fire, Brian Boggeln, Colby Ross, Chip Howell, Michael Mead, Bradley Avi and Jeremy Felber, and each of them, Kristin Maxwell-Bruce suffered loss of life.

63. As a further proximate result of the acts and omissions of Defendants Alpine Fire, Brian Boggeln, Colby Ross, Chip Howell, Michael Mead, Bradley Avi and Jeremy Felber, including the grossly negligent provision of emergency medical services, and the death of Kristin Maxwell-Bruce, Jim Maxwell, Kay Maxwell, Trever Allen Bruce and Kelten Tanner Bruce have suffered and continue to suffer loss of the care, comfort, affection, society, protection and support of their daughter and mother, Kristin Maxwell-Bruce, in an amount to be determined according to proof at trial.

**SIXTH CAUSE OF ACTION**

(42 U.S.C. § 1983 (Excessive Force) – by

Jim Maxwell against Defendants County of San Diego, Gary Kneeshaw

DOES 9-25 San Diego County employees)

64. Plaintiffs reallege and incorporate by reference paragraphs 1 through 63 of this Complaint, as if fully set forth at this point.

65. Plaintiffs are informed and believe, and on that basis allege, that Defendant County has adopted policies, procedures, practices or customs within the San Diego County Sheriff's Department that allow, among other things, the use of excessive force when other more reasonable and less drastic methods are available.

66. On or about December 14, 2006, Defendant Gary Kneeshaw and DOES 9-25 San Diego County employees, acting under color of state law, sprayed Jim Maxwell in the face with pepper spray and clubbed him as he was walking down his driveway in order to prevent him from seeing and comforting his wife.

67. The actions of Defendants amounted to deliberate indifference to the rights of Jim Maxwell to be free of excessive force and unreasonable seizure under the Fourth and Fourteenth Amendments to the United States Constitution.

68. As a result of the deliberate indifference to Jim Maxwell's rights by Defendant County and its agents, servants and employees, including, but not limited to Defendants Gary Kneeshaw and DOES 9-25 San Diego County Employees, and each of them, Jim Maxwell suffered great mental and physical pain and suffering, in an amount to be determined according to proof at trial.

**SEVENTH CAUSE OF ACTION**

(Battery - by Jim Maxwell against Defendants

County of San Diego, Gary Kneeshaw DOES 9-25 San Diego County employees)

69. Plaintiffs reallege and incorporate by reference paragraphs 1 through 68 of this Complaint, as if fully set forth at this point.

70. Plaintiffs are informed and believe, and on that basis allege, that Defendant Gary Kneeshaw and each of the Defendants sued herein as DOES 9-25 San Diego County Employees, inclusive, were the agents and employees of Defendant County and were at all times acting within the purpose and scope of such agency and employment on or about December 14, 2006 when they responded to a 911 call at Jim Maxwell's home in response to the claim that Defendant Bruce shot his wife Kristin Maxwell-Bruce.

71. Plaintiffs are informed and believe, and on that basis allege, that Defendant Kneeshaw and DOES 9-25 San Diego County Employees, in the course of responding to the 911 call, intentionally sprayed Jim Maxwell in the face with pepper spray and then clubbed him.

72. At no time did Jim Maxwell consent to any of the acts of Defendant Kneeshaw and DOES 9-25 San Diego County Employees alleged above.

73. As a proximate result of the acts of Defendant Kneeshaw and DOES 9-25 San Diego County Employees, Jim Maxwell has suffered physical injuries, pain and mental suffering.

74. The foregoing wrongful acts were willful, oppressive, fraudulent, and malicious, thus warranting the award of exemplary and punitive damages against each

1 defendant, except for governmental entity defendants, in an amount adequate to punish the  
2 wrongdoers and deter future misconduct.

3  
4 **EIGHTH CAUSE OF ACTION**

5 (Intentional Infliction of Emotional

6 Distress - against all Defendants)

7 75. Plaintiffs reallege and incorporate by reference paragraphs 1 through 74 of this  
8 Complaint, as if fully set forth at this point.

9 76. Plaintiffs are informed and believe, and on that basis allege, that Defendant  
10 Bruce, by shooting his wife, Kristin Maxwell-Bruce, in their home, which resulted in her  
11 eventual death, intended to cause, or recklessly disregarded the probability of causing, mental  
12 anguish and emotional and physical distress to Kristin Maxwell-Bruce, Jim Maxwell, Kay  
13 Maxwell, Trevor Allen Bruce and Kelten Tanner Bruce, all of whom resided in the home  
14 where Defendant's act occurred, and were present in the home at the time it occurred.

15 77. Plaintiffs are informed and believe, and on that basis further allege, that all  
16 remaining Defendants, by their acts and omissions, including gross negligence in the  
17 provision of emergency services to Kristin Maxwell-Bruce, unlawful detainment and false  
18 imprisonment of Jim Maxwell and Kay Maxwell, and causing the media to believe that Jim  
19 Maxwell was a suspect who had been arrested for the shooting of his daughter, engaged in  
20 outrageous, non-privileged conduct with reckless disregard of the probability of causing  
21 mental anguish, and emotional and physical distress to Kristin Maxwell-Bruce, Jim Maxwell,  
22 Kay Maxwell, Trevor Allen Bruce and Kelten Tanner Bruce, all of whom resided in the home  
23 where Defendant's conduct occurred, and all of whom were present in the home at the time  
24 and witnessed Defendants' conduct.

25 78. As a proximate result of Defendants' conduct, Kristin Maxwell-Bruce, Jim  
26 Maxwell, Kay Maxwell, Trevor Allen Bruce and Kelten Tanner Bruce suffered severe  
27 physical and emotional distress and mental suffering; and Jim Maxwell, Kay Maxwell, Trevor  
28

1 Allen Bruce and Kelten Tanner Bruce continue to suffer severe physical and emotional  
2 distress and mental suffering.

3 79. As a further direct and proximate result of Defendants' conduct, Plaintiffs  
4 were, and will be, caused to retain the services of other medical professionals and to incur  
5 reasonable expenses for the care and treatment of said injuries sustained, in an amount  
6 presently unknown to Plaintiffs, but to be proven at trial.

7 80. The foregoing wrongful acts were willful, oppressive, fraudulent, and  
8 malicious, thus warranting the award of exemplary and punitive damages against each  
9 defendant, except for governmental entity defendants, in an amount adequate to punish the  
10 wrongdoers and deter future misconduct.

11 **NINTH CAUSE OF ACTION**

12 (Negligent Infliction of Emotional

13 Distress - against all Defendants)

14 81. Plaintiffs reallege and incorporate by reference paragraphs 1 through 80 of this  
15 Complaint, as if fully set forth at this point.

16 82. Plaintiffs are informed and believe, and on that basis allege, that Defendant  
17 Bruce knew or should have known that by shooting his wife, Kristin Maxwell-Bruce, in their  
18 home, which resulted in her eventual death, would cause Kristin Maxwell-Bruce, Jim  
19 Maxwell, Kay Maxwell, Trever Allen Bruce and Kelten Tanner Bruce, all of whom resided in  
20 the home where Defendant's act occurred, and all of whom were present in the home at the  
21 time and witnessed Defendants' conduct, to suffer mental anguish and emotional and physical  
22 distress.

23 83. Plaintiffs are informed and believe, and on that basis further allege, that  
24 remaining Defendants knew or should have known that their acts and omissions, including  
25 gross negligence in the provision of emergency services to Kristin Maxwell-Bruce, unlawful  
26 detainment and false imprisonment of Jim and Kay Maxwell, and causing the media to  
27 believe that Jim Maxwell was a suspect who had been arrested for the shooting of his  
28 daughter, would cause Kristin Maxwell-Bruce, Jim Maxwell, Kay Maxwell, Trever Allen

Bruce and Kelten Tanner Bruce, all of whom resided in the home where Defendant's ongoing acts and omissions occurred, and all of whom were present in the home at the time and witnessed Defendants' conduct, to suffer mental anguish and emotional and physical distress.

84. As a proximate result of the acts and omissions of Defendants, Kristin Maxwell-Bruce, Jim Maxwell, Kay Maxwell, Trever Allen Bruce and Kelten Tanner Bruce suffered shock, fear and mental anguish; and Jim Maxwell, Kay Maxwell, Trever Allen Bruce and Kelten Tanner Bruce continue to suffer severe physical and emotional distress and mental suffering.

WHEREFORE, Plaintiffs pray for judgment as follows:

FOR THE FIRST, SECOND AND SIXTH CAUSES OF ACTION:

1. For compensatory damages, according to proof at trial;
2. For exemplary and punitive damages;
3. For attorneys fees;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court may deem just and proper.

FOR THE THIRD CAUSE OF ACTION:

1. For damages for the loss of care, comfort, affection, society, protection and support of Kristin Maxwell-Bruce;
2. For exemplary and punitive damages;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

FOR THE FOURTH, SEVENTH AND EIGHTH CAUSES OF ACTION:

1. For general and special damages, according to proof at trial;
2. For exemplary and punitive damages;
3. For costs of suit incurred herein; and

1           4.       For such other and further relief as the Court may deem just and proper.

2  
3       FOR THE FIFTH AND NINTH CAUSES OF ACTION:

- 4           1.       For compensatory damages, according to proof at trial;  
5           2.       For costs of suit incurred herein; and  
6           3.       For such other and further relief as the Court may deem just and proper.

7  
8                               **DEMAND FOR JURY TRIAL**

9       Plaintiffs hereby submit this demand that this action be tried in front of a jury, pursuant to  
10       Federal Rule of Civil Procedure 38 and Civil L.R. 38.1.

11  
12       Dated: November 7, 2008

CHARLES G. LA BELLA  
TERESA M. GILLIS  
LA BELLA & McNAMARA, LLP

TODD D. THIBODO  
LAW OFFICES OF TODD D. THIBODO  
A PROFESSIONAL CORPORATION

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14  
15  
16  
17  
18                               By: \_\_\_\_\_  
19                               Teresa M. Gillis  
20                               Charles G. La Bella  
21                               Attorney for PLAINTIFFS  
22  
23  
24  
25  
26  
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28

PROOF OF SERVICE

*Maxwell v. County of San Diego, et al.*

United States District Court of the Southern District of California

Case Number: 07 CV-2385-JAH (WMc)

I, Patricia A. Schussler, declare as follows:

I am an employee of a member of the bar of this Court at whose direction was made in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 401 West "A" Street, Suite 1150, San Diego, California 92101.

On November 7, 2008, I served the foregoing document(s) described as:

- 1) **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT;**
- 2) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT (with EXHIBIT A)**

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Stephen M. Caine  
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*Counsel for Defendant Alpine Fire  
Protection District*

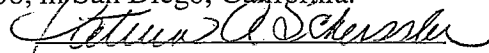
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*Counsel for Defendant County of San  
Diego*

☒ **BY EMAIL/ ECF** by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them via email as indicated above.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed November 7, 2008, in San Diego, California.

  
Patricia A. Schussler

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JIM MAXWELL and KAY MAXWELL,  
individually and as guardians of TREVER  
ALLEN BRUCE and KELTEN TANNER  
BRUCE, et al.

Plaintiff,

v.

COUNTY OF SAN DIEGO; et al.,

Defendants.

Case No. 07cv2385 JAH (WMc)

**SCHEDULING ORDER**

Pursuant to Rule 16.1 of the Local Rules, a Case Management Conference was held on October 6, 2008. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

**IT IS HEREBY ORDERED:**

\*\*\* Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be *filed* on or before ***November 9, 2008***.

1. The parties shall disclose the identity of their respective experts in writing by ***May 12, 2009***. The date for the disclosure of the identity of rebuttal experts shall be on or before ***May 26, 2009***. The written designations shall include the name, address and telephone number of the expert and a reasonable summary of the testimony the expert is expected to provide. The list shall also include the normal rates the expert charges for deposition and trial testimony. **The**

parties must identify any person who may be used at trial to present evidence pursuant to Fed. R. Evid. 702, 703 and 705, respectively. This requirement is not limited to retained experts.

2. On or before **June 26, 2009**, each party shall comply with the disclosure provisions in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. **This disclosure requirement applies to all persons retained or specifically employed to provide expert testimony or whose duties as an employee of the part regularly involve the giving of expert testimony.**

3. Any party shall supplement its disclosure regarding contradictory or rebuttal evidence under Rule 26(a)(2)(c) on or before **July 15, 2009**.

4. **Please be advised that failure to comply with this section or any other discovery order of the court may result in the sanctions provided for in Fed.R.Civ.P.37 including a prohibition on the introduction of experts or other designated matters in evidence.**

5. All discovery, including experts, shall be completed by all parties on or before **August 14, 2009**. "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cut-off date, *so that it may be completed* by the cut-off date, taking into account the times for service, notice and response as set forth in the Federal Rules of Civil Procedure. Counsel shall promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Local Rule 26.1(a). All discovery motions shall be filed within 30 days after counsel have met and conferred and reached an impasse with regard to any particular discovery issue, but in no event shall discovery motions be filed more than 30 days after the close of discovery.

6. A Mandatory Settlement Conference shall be conducted on **April 13, 2009 at 9:30 a.m.** in the chambers of Magistrate Judge William McCurine, Jr. Counsel shall submit confidential settlement briefs **directly** to chambers at [efile\\_mccurine@casd.uscourts.gov](mailto:efile_mccurine@casd.uscourts.gov) no later than **April 6, 2009**. The briefs shall set forth the party's statement of the case and the party's

1 settlement position, including the last offer or demand made by that party and a separate  
 2 statement of the offer or demand the party is prepared to make at the Settlement Conference.  
 3 Settlement Conference briefs shall not exceed ten (10) pages in length, and shall *not* include  
 4 exhibits or attachments. All parties and claims adjusters for insured defendants and  
 5 representatives with complete authority to enter into a binding settlement, as well as the principal  
 6 attorney (s) responsible for the litigation, must be present and legally and factually prepared to  
 7 discuss and resolve the case at the Mandatory Settlement Conference. **Any special**  
 8 **arrangements desired in cases where settlement authority rests with a governing body shall**  
 9 **be proposed in advance.**

10 7. All other pretrial motions must be filed on or before ***September 14, 2009.*** (*In*  
 11 *intellectual property cases, this would include claims construction hearings.*) Please be advised  
 12 that counsel for the moving party must obtain a motion hearing date from the law clerk of the  
 13 judge who will hear the motion. Be further advised that the period of time between the date you  
 14 request a motion date and the hearing date may vary from one district judge to another. Please  
 15 plan accordingly. For example, you should contact the judge's law clerk in advance of the  
 16 motion cut-off to calendar the motion. Failure to make a timely request a motion date may result  
 17 in the motion not being heard.

18 8. Counsel shall file their Memoranda of Contentions of Fact and Law and take any  
 19 other action required by Local Rule 16.1 (f) (2) on or before ***October 26, 2009.***

20 9. Counsel shall comply with the Pre-trial disclosure requirements of Federal Rule  
 21 of Civil Procedure 26(a)(3) on or before ***October 26, 2009.***

22 10. Counsel shall meet and take the action required by Local Rule 16.1 (f) (4) on or  
 23 before ***November 2, 2009.***

24 11. Objections to Pre-trial disclosures shall be filed no later than ***November 9, 2009.***

25 12. The Proposed Final Pretrial Conference Order required by Local Rule 16.1 (f) (6)  
 26 shall be prepared, served, and lodged on or before ***November 9, 2009.***

27 13. The final Pretrial Conference is scheduled on the calendar of **Judge John A.**  
 28 **Houston** on **November 16, 2009 at 2:30 p.m.** The trial date will be given at the Pretrial

1 Conference.

2 14. A post trial settlement conference before a magistrate judge may be held within  
3 30 days of verdict in the case.


4 15. The dates and times set forth herein will not be modified except for good cause  
5 shown.

6 16. Dates and times for hearings on motions should be approved by the Court's clerk  
7 before notice of hearing is served.

8 17. Briefs or memoranda in support of or in opposition to any pending motion shall  
9 not exceed twenty-five (25) pages in length without leave of a district court judge. No reply  
10 memorandum shall exceed ten (10) pages without leave of a district court judge. Briefs and  
11 memoranda exceeding ten (10) pages in length shall have a table of contents and a table of  
12 authorities cited.

13 **IT IS SO ORDERED.**

14 DATED: October 7, 2008

15   
16 Hon. William McCurine, Jr.  
17 U.S. Magistrate Judge  
18 United States District Court  
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9th Circuit Case Number(s) 10-56671

**NOTE:** To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

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### CERTIFICATE OF SERVICE

#### When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) Dec 4, 2012 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) s/ Daniel M. Benjamin

\*\*\*\*\*

### CERTIFICATE OF SERVICE

#### When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)