

1 DAVID K. COHN, ESQ.  
STATE BAR NO. 68768  
2 CHAIN | COHN | STILES  
1430 Truxtun Avenue  
3 Bakersfield, CA 93301  
Telephone: (661) 323-4000  
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5 Attorneys for Claimants  
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9 In the Matter of the Disputed Claim of  
10 SALVADOR SILVA; MERRI SILVA;  
CHRISTOPHER SILVA; "T.G."; "M.L.S.,"  
11 "C.J.S.," "C.R.S.," and "E.Z.S.," minors, by  
and through their Guardian ad Litem, "T.G."

12 Claimants,  
13

14 v.

15 COUNTY OF KERN;

16 Respondents.

CLAIM FOR WRONGFUL DEATH  
DAMAGES

[Government Code 910 et. seq.]

17 TO THE CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN:

18 This claim is being brought pursuant to Government Code Section 910 et seq., and all  
19 other pertinent code sections of the codes, statutes and laws of the State of California.  
20

21 A. The names and addresses of claimants:

22 Salvador Silva (Father)  
5901 Alder Point Street  
23 Bakersfield, CA 93313

24 Merri Silva (Mother)  
4171 California Avenue, Apartment 21  
25 Bakersfield, CA 93301

26 ///

1 Christopher Silva (Brother)  
2 4171 California Avenue, Apartment 21  
3 Bakersfield, CA 93301

4 In order to protect the privacy of the decedent's significant other and the decedent's four  
5 children, their names and address have not been disclosed. The decedent's significant other will  
6 be referred to as "T.G.," and the decedent's four children will be referred to as: "M.L.S.,"  
7 "C.J.S.," "C.R.S.," and "E.Z.S."

8 All of the abovementioned parties will be collectively referred to as "CLAIMANTS."

9 B. The post office address to which the claimants want all notices to be sent is:

10 David K. Cohn, Esq.  
11 Chain | Cohn | Stiles  
12 1430 Truxtun Avenue  
13 Bakersfield, CA 93301

14 C. The date, place and other circumstances giving rise to this claim are as follows:

- 15 1. **DATE:** On or about May 7, 2013.  
16 2. **PLACE:** At the intersection of Flower Street and Palm Street in Bakersfield,  
17 CA, County of Kern, California.  
18 3. **CIRCUMSTANCES:**

19 On or about May 7, 2013, at approximately 11 p.m., DAVID SILVA was asleep in front  
20 of a house across the street from Kern Medical Center, at the intersection of Flower Street and  
21 Palm Street in Bakersfield, California. Soon thereafter, a Sheriff's Deputy reported to the scene  
22 and proceeded to knuckle-rub DAVID SILVA on his chest, causing him to wake up and appear  
23 flustered. In the ensuing several minutes, this Sheriff's Deputy, along with five other Sheriff's  
24 Deputies, a Sergeant, and two California Highway Patrol Officers proceeded to use unreasonable  
25 and excessive force in striking DAVID SILVA with batons several times all over his body, while  
26 he screamed for his life and repeatedly begged the officers to stop. DAVID SILVA was also

1 attacked by a K-9 dog accompanying one of the Sheriff's Deputies, and was even hog-tied  
2 during this period of time. After being repeatedly beaten, bitten and hog-tied, DAVID SILVA  
3 stopped breathing and after significant delay was taken to Kern Medical Center, where he was  
4 pronounced dead at 12:44 a.m.

5 In light of the foregoing, CLAIMANTS contend that DAVID SILVA died as a  
6 consequence of the unreasonable and excessive force used by the six Sheriff's Deputies, the  
7 Sergeant, and the two California Highway Patrol Officers. The names of the Sheriff's Deputies  
8 involved in the beating are: DEPUTIES RYAN GREER, TANNER MILLER, JEFFREY  
9 KELLY, LUIS ALMANZA, BRIAN BROCK, and DAVID STEPHENS. The name of the  
10 Sergeant involved in the beating is SGT. DOUGLAS SWORD. CLAIMANTS further contend  
11 that the Sheriff's Deputies and the Sergeant, whose names are known to the KERN COUNTY  
12 SHERIFF'S OFFICE and the COUNTY OF KERN, were acting in the course and scope of their  
13 employment with the COUNTY OF KERN at the time that excessive force was used. Moreover,  
14 CLAIMANTS contend that the Sheriff's Deputies and the Sergeant personally witnessed,  
15 perceived, and were aware of such conduct at the time that it occurred, and:  
16

- 17 (a) Assaulted, battered, struck, kicked, punched, kneed, choked and/or negligently  
18 touched, and used excessive, and cumulatively or in some cases ultimately deadly,  
19 force upon DAVID SILVA without adequate cause, reason or justification;  
20  
21 (b) Knowingly, willfully, intentionally and/or negligently failed and refused to intervene  
22 or make any effort to stop or prevent other such members, employees and/or agents  
23 from assaulting, battering, striking, kicking, punching, kneeling, choking and/or  
24 negligently touching DAVID SILVA;  
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(c) Knowingly, willfully, intentionally and/or negligently failed and refused to timely and properly report the wrongful conduct of other such members, employees and/or agents; and

(d) Knowingly, willfully and intentionally aided, abetted and entered into a conspiracy to assault, batter and inflict emotional distress on DAVID SILVA, as well as conceal and "cover-up" the wrongful conduct of other such members, employees and/or agents.

CLAIMANTS also contend that the COUNTY OF KERN was negligent in hiring, training, and supervising the six Sheriff's Deputies and the Sergeant. Both the KERN COUNTY SHERIFF'S OFFICE and the COUNTY OF KERN are responsible for implementing, maintaining, sanctioning and/or condoning a policy, custom or practice under which the deputies committed the aforementioned illegal or wrongful acts. The KERN COUNTY SHERIFF'S OFFICE and the COUNTY OF KERN maintained or permitted an official policy or custom of knowingly permitting the occurrence of the type of wrong set forth above, and based upon the principles set forth herein.

Furthermore, the negligence and other wrongful conduct on the part of the Sheriff's Deputies, the Sergeant, the KERN COUNTY SHERIFF'S OFFICE, the COUNTY OF KERN, and each of them, is not limited to those negligent/intentional acts or omissions on the part of the known and unknown public employees involved in the assaulting and battering, but also includes the negligent hiring, retaining, appointing, selecting, training, disciplining and/or supervising of their deputies, officers, employees and/or agents. The KERN COUNTY SHERIFF'S OFFICE and the COUNTY OF KERN had constructive or actual notice of several of the Sheriff's Deputies and/or Sergeant's prior misconduct, and their failure to take appropriate measures in

1 response to such instances of prior misconduct created a continuing danger to the general public  
2 of incidents like the one that forms the basis of this claim. The foregoing acts and omissions on  
3 the part of the KERN COUNTY SHERIFF'S OFFICE and the COUNTY OF KERN, and each of  
4 them, were the direct, proximate and legal cause of the damages sustained by DAVID SILVA.

5 CLAIMANTS allege the following against the Sheriff's Deputies, the Sergeant, the  
6 KERN COUNTY SHERIFF'S OFFICE, and the COUNTY OF KERN: (1) unreasonable and  
7 excessive use of force in violation of the Fourth and Fourteenth Amendments, pursuant to 42  
8 U.S.C. §§ 1983, 1988; (2) conspiracy to violate civil rights under federal law, pursuant to 42  
9 U.S.C. §§ 1983, 1988; (3) wrongful death under California law; (4) violation of the Bane Civil  
10 Rights Act, California Civil Code § 52.1; (5) assault and battery, under California law; (6)  
11 negligence, under California law; (7) conspiracy, under California law; (8) false arrest, under  
12 California law; (9) false imprisonment, under California law; and (10) failure to summon  
13 medical assistance, under California law.

14  
15 The injuries suffered by CLAIMANTS include damages in excess of \$10,000 resulting  
16 from the loss of love, affection, society, service, comfort, support, right of support, expectations  
17 of future support and counseling, companionship, solace and mental support, as well as other  
18 benefits and assistance of the decedent, DAVID SILVA. With respect to the six Sheriff's  
19 Deputies and the Sergeant, CLAIMANTS request exemplary damages. CLAIMANTS also  
20 request survival damages and attorneys' fees.

21  
22 Jurisdiction of this claim lies in the United States District Court, Eastern District of  
23 California, under 42 U.S.C. §§ 1983, 1988, pursuant to 28 U.S.C. §§1331, 1343. The United  
24 States District Court, Eastern District of California, has supplemental jurisdiction over California

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1430 Truxtun Avenue, Suite 100  
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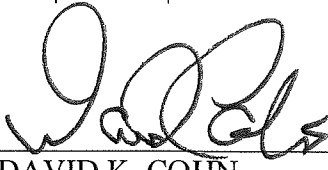
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state law claims pursuant to 28 U.S.C. § 1376(a). Alternatively, jurisdiction of this claim lies in the Superior Court of California, County of Kern, Metropolitan Division, Unlimited Civil.

I, DAVID K. COHN, the undersigned, am a person bringing this claim on behalf of the CLAIMANTS.

DATED: June 14, 2013

CHAIN | COHN | STILES

By:   
DAVID K. COHN  
Attorney for Claimant

CHAIN | COHN | STILES  
1430 Truxtun Avenue, Suite 100  
Bakersfield, CA 93301-2348  
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PROOF OF SERVICE BY HAND DELIVERY  
1013a (3) CCP Revised 5/1/88  
STATE OF CALIFORNIA, COUNTY OF KERN:

I am employed in the County of Kern, State of California. I am over the age of 18 years and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, California 93301.

On June 14, 2013, I caused to be hand delivered the foregoing document described as CLAIM FOR WRONGFUL DEATH DAMAGES on the interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Clerk of the Board of Supervisors  
COUNTY OF KERN  
1115 Truxtun Avenue, 5<sup>th</sup> Floor  
Bakersfield, CA 93301

Executed on June 14, 2013, at Bakersfield, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Barbara Hass  
BARBARA HASS

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