

C.D. Michel – SBN 144258
Sean A. Brady – SBN 262007
Anna M. Barvir – SBN 268728
Matthew D. Cubeiro – SBN 291519
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorneys for Plaintiff Ana Patricia Fernandez

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANA PATRICIA FERNANDEZ, an
individual,

Plaintiff,

v.

LOS ANGELES COUNTY, THE LOS
ANGELES COUNTY SHERIFF'S
DEPARTMENT, WYATT WALDRON,
an individual, JOHN ROTH, an
individual, SUSAN O'LEARY BROWN,
an individual, ALEX VILLANUEVA, in
his Official Capacity as Sheriff of Los
Angeles County, RICHARD LEON, an
individual, MURRAY JACOB, an
individual, DAVID ROACH, an
individual, SALVADOR MORENO IV,
an individual, JASON AMES, an
individual, KYLE DINGMAN, an
individual, NICHOLAS SAYLOR, an
individual, and DOES 8-20,

Defendants.

Case No.: 2:20-cv-09876 DMG (PDx)

**FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF AND
DAMAGES:**

- 1. VIOLATION OF THE EIGHTH
AMENDMENT [42 U.S.C. § 1983];**
- 2. VIOLATION OF THE FOURTH
AMENDMENT [42 U.S.C. § 1983];**
- 3. NEGLIGENCE [CAL. CIVIL CODE
§ 1714];**
- 4. BREACH OF BAILMENT [CAL.
CIVIL CODE § 1813, ET SEQ.];**
- 5. TRESPASS TO CHATTELS**
- 6. FAILURE TO TRAIN**
- DEMAND FOR JURY TRIAL**

1 Plaintiff Ana Patricia Fernandez, through her counsel, brings this action against
 2 Defendants Los Angeles County, the Los Angeles County Sheriff's Department, Deputy
 3 Wyatt Waldron, Detective John Roth, Susan O'Leary Brown, Richard Leon, Murray
 4 Jacob, David Roach, Salvador Moreno IV, Jason Ames, Kyle Dingman, Nicholas Saylor,
 5 and Sheriff Alex Villanueva, in his official capacity, and makes the following allegations:

6 **JURISDICTION AND VENUE**

7 1. The Court has original jurisdiction of this civil action under 28 U.S.C. § 1331,
 8 because the action arises under the Constitution and laws of the United States, thus raising
 9 federal questions. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42
 10 U.S.C. § 1983 since this action seeks to redress the deprivation, under color of the laws,
 11 statutes, ordinances, regulations, customs and usages of the state of California and
 12 political subdivisions thereof, of rights, privileges or immunities secured by the United
 13 States Constitution and by Acts of Congress.

14 2. Plaintiff's claim for declaratory relief is authorized by 28 U.S.C. § 2201, and her
 15 claim for attorneys' fees is authorized by 42 U.S.C. § 1988.

16 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because
 17 the entirety of the events or omissions giving rise to Plaintiff's claims occurred in this
 18 district.

19 4. Plaintiff submitted a Government Tort Claim form to the county of Los Angeles
 20 on February 24, 2020. The county served its rejection of Plaintiff's claim on April 28,
 21 2020, giving Plaintiff until October 28, 2020 to bring this action under California
 22 Government Code § 945.6.

23 **PARTIES**

24 5. Plaintiff Ana Patricia Fernandez is a resident of Los Angeles County, California,
 25 and a law-abiding citizen of the United States who is not prohibited from owning firearms.
 26 She is the widow of Manuel Fernandez and the Trustee of the Fernandez Trust.

27 6. Defendant County of Los Angeles ("the County") is, and at time relevant hereto
 28 was, a political subdivision of the United States, organized and existing under the laws of

1 the state of California, with its principal place of business in this judicial district. The
2 County legally responsible for the operation of the Los Angeles Sheriff's Department
3 pursuant to official decision-making channels, in policy, practices, customs, or law.

4 7. Defendant Los Angeles County Sheriff's Department ("LASD") is a local
5 government entity created under the laws of the state of California and an agency of
6 defendant County of Los Angeles. LASD is a political subdivision of Defendant County.
7 LASD oversees the storage of firearms recovered or seized by its personnel in Los
8 Angeles County, and also enforces the administrative fee required by Defendant County
9 for the return of recovered or seized firearms to their lawful owners.

10 8. Defendant Alex Villanueva is an employee of Defendant County of Los Angeles
11 and currently holds the title of Sheriff of LASD. Defendant Villanueva is, and at all times
12 relevant to this complaint was, one of the ultimate policy makers for Defendant LASD. He
13 is directly responsible for promulgating, enforcing, and continuing the policies of the
14 LASD, including the unlawful policies and procedures complained of herein. Villanueva
15 is sued solely in his official capacity.

16 9. Defendant Wyatt Waldron is, and at all times relevant to this complaint was,
17 employed by Defendant LASD. He currently holds the title of "Deputy." Plaintiff is
18 informed and believes, and on that basis alleges that, at all times relevant to this
19 complaint, Defendant Waldron was acting in the course and scope of his employment with
20 Defendant LASD. And he is, and was at certain times identified below, acting under color
21 of state law within the meaning of 42 U.S.C. § 1983.

22 10. Defendant John M. Roth is, and at all times relevant to this complaint was,
23 employed by Defendant LASD. He is, and all times relevant to this complaint was,
24 employed as a "Detective." Plaintiff is informed and believes, and on that basis alleges
25 that, in his role as detective, Defendant Roth investigated whether Plaintiff's seized
26 firearms were lawful to possess, requiring that he handle and inspect the firearms, and at
27 some point, damaged Plaintiff's property. Plaintiff is informed and believes, and on that
28 basis alleges that, at all times relevant to this complaint, Defendant Roth was acting in the

1 course and scope of his employment with Defendant LASD. And he is, and was at certain
2 times identified below, acting under color of state law within the meaning of 42 U.S.C. §
3 1983.

4 11. Defendant Susan O’Leary Brown is, and at all times relevant to this complaint
5 was, employed by Defendant LASD. She is, and at all time relevant to this complaint was,
6 employed as a Property Custodian at the Palmdale Sheriff Station, where Plaintiff’s
7 firearm property was stored for at least some of the time it was in the custody of
8 Defendant LASD. Defendant O’Leary Brown informed Plaintiff of the LASD Palmdale
9 Station’s price list (\$54 per firearm) and LASD’s general policy that the prices reflected
10 on the price list must be paid before the firearms could be released to Plaintiff. Defendant
11 O’Leary Brown also coordinated with Plaintiff regarding the release of her firearms,
12 which eventually occurred at the Palmdale Sheriff Station. Plaintiff is informed and
13 believes, and on that basis alleges that, at all times relevant to this complaint, Defendant
14 O’Leary Brown was acting in the course and scope of her employment with Defendant
15 LASD. And she is, and was at certain times identified below, acting under color of state
16 law within the meaning of 42 U.S.C. § 1983.

17 12. Doe 1, who has now been identified as Defendant Richard Leon is, and at all
18 times relevant to this complaint was, employed by Defendant LASD. Plaintiff is informed
19 and believes, and on that basis alleges that, in his role as an employee of Defendant
20 LASD, Defendant Leon handled and at some point damaged Plaintiff’s property. Plaintiff
21 is informed and believes, and on that basis alleges that, at all times relevant to this
22 complaint, Defendant Leon was acting in the course and scope of his employment with
23 Defendant LASD. And he is, and was at certain times identified below, acting under color
24 of state law within the meaning of 42 U.S.C. § 1983.

25 13. Doe 2, who has now been identified as Defendant Murray Jacob is, and at all
26 times relevant to this complaint was, employed by Defendant LASD. Plaintiff is informed
27 and believes, and on that basis alleges that, in his role as an employee of Defendant
28 LASD, Defendant Jacob handled and at some point damaged Plaintiff’s property.

1 Plaintiff is informed and believes, and on that basis alleges that, at all times relevant to
2 this complaint, Defendant Jacob was acting in the course and scope of his employment
3 with Defendant LASD. And he is, and was at certain times identified below, acting under
4 color of state law within the meaning of 42 U.S.C. § 1983.

5 14. Doe 3, who has now been identified as Defendant David Roach is, and at all
6 times relevant to this complaint was, employed by Defendant LASD. Plaintiff is informed
7 and believes, and on that basis alleges that, in his role as an employee of Defendant
8 LASD, Defendant Roach handled and at some point damaged Plaintiff's property.
9 Plaintiff is informed and believes, and on that basis alleges that, at all times relevant to
10 this complaint, Defendant Roach was acting in the course and scope of his employment
11 with Defendant LASD. And he is, and was at certain times identified below, acting under
12 color of state law within the meaning of 42 U.S.C. § 1983.

13 15. Doe 4, who has now been identified as Defendant Salvador Moreno IV is, and at
14 all times relevant to this complaint was, employed by Defendant LASD. Plaintiff is
15 informed and believes, and on that basis alleges that, in his role as an employee of
16 Defendant LASD, Defendant Moreno handled and at some point damaged Plaintiff's
17 property. Plaintiff is informed and believes, and on that basis alleges that, at all times
18 relevant to this complaint, Defendant Moreno was acting in the course and scope of his
19 employment with Defendant LASD. And he is, and was at certain times identified below,
20 acting under color of state law within the meaning of 42 U.S.C. § 1983.

21 16. Doe 5, who has now been identified as Defendant Jason Ames is, and at all
22 times relevant to this complaint was, employed by Defendant LASD. Plaintiff is informed
23 and believes, and on that basis alleges that, in his role as an employee of Defendant
24 LASD, Defendant Ames handled and at some point damaged Plaintiff's property. Plaintiff
25 is informed and believes, and on that basis alleges that, at all times relevant to this
26 complaint, Defendant Ames was acting in the course and scope of his employment with
27 Defendant LASD. And he is, and was at certain times identified below, acting under color
28 of state law within the meaning of 42 U.S.C. § 1983.

1 17. Doe 6, who has now been identified as Defendant Kyle Dingman is, and at all
2 times relevant to this complaint was, employed by Defendant LASD. Plaintiff is informed
3 and believes, and on that basis alleges that, in his role as an employee of Defendant
4 LASD, Defendant Dingman handled and at some point damaged Plaintiff's property.
5 Plaintiff is informed and believes, and on that basis alleges that, at all times relevant to
6 this complaint, Defendant Dingman was acting in the course and scope of his employment
7 with Defendant LASD. And he is, and was at certain times identified below, acting under
8 color of state law within the meaning of 42 U.S.C. § 1983.

9 18. Doe 7, who has now been identified as Defendant Nicholas Saylor is, and at all
10 times relevant to this complaint was, employed by Defendant LASD. Plaintiff is informed
11 and believes, and on that basis alleges that, in his role as an employee of Defendant
12 LASD, Defendant Dingman handled and at some point damaged Plaintiff's property.
13 Plaintiff is informed and believes, and on that basis alleges that, at all times relevant to
14 this complaint, Defendant Dingman was acting in the course and scope of his employment
15 with Defendant LASD. And he is, and was at certain times identified below, acting under
16 color of state law within the meaning of 42 U.S.C. § 1983.

17 19. Doe 8, whose identity is not yet known to Plaintiff, is, and at all times relevant
18 to this complaint was, employed by Defendant LASD. Plaintiff is informed and believes,
19 and on that basis alleges, that Doe 7 was employed as a property custodian at LASD's
20 Whittier warehouse, or was employed in another similar role that involves overseeing
21 property at that warehouse, where Plaintiff's firearms were stored. Plaintiff is informed
22 and believes, and on that basis alleges, at all times relevant to this complaint, Doe 7 was
23 acting in the course and scope of their employment with Defendant LASD. And he or she
24 is, and was at certain times identified below, acting under color of state law within the
25 meaning of 42 U.S.C. § 1983.

26 20. The true names or capacities—whether individual, corporate, associate, or
27 otherwise—of the Defendants named herein as Does 9-20, are presently unknown to
28 Plaintiff, and are therefore sued by these fictitious names. Plaintiff prays for leave to

1 amend this Complaint to show the true names or capacities of these Defendants if and
 2 when they have been determined. Such additional Defendants could include individuals
 3 who were responsible for the damage caused to the firearms, or officials responsible for
 4 imposing the excessive fine on Plaintiff.

5 **FACTUAL ALLEGATIONS**

6 **[Right to Be Free from Unreasonable Seizures]**

7 21. The Fourth Amendment to the United States Constitution provides in part that
 8 “[t]he right of the people to be secure in their persons, houses, papers, and effects, against
 9 unreasonable searches and seizures, shall not be violated.”

10 22. “A ‘seizure’ of property . . . occurs when ‘there is some meaningful interference
 11 with an individual's possessory interests in that property.’ ” *Soldal v. Cook County*, 506
 12 U.S. 56, 61 (1992) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)).

13 23. “The destruction of property is ‘meaningful interference’ constituting a seizure
 14 under the Fourth Amendment, *Jacobsen*, 466 U.S. at 124-25; *Bonds v. Cox*, 20 F.3d 697,
 15 701-02 (6th Cir. 1994), because the destruction of property by state officials poses as
 16 much of a threat, if not more, to people’s right to be “secure . . . in their effects” as does
 17 the physical taking of them.” Indeed, “[l]aw enforcement activities that unreasonably
 18 damage or destroy personal property, thereby ‘seizing’ it within the meaning of the Fourth
 19 Amendment, may give rise to liability under § 1983.” *Newsome v. Erwin*, 137 F. Supp.
 20 2d 934, 941 (S. D. Ohio 2000).

21 24. Further, it is well established that “[a] seizure lawful at its inception can
 22 nevertheless violate the Fourth Amendment because the manner of execution
 23 unreasonably infringes possessory interests protected by the Fourth Amendment[.]”
 24 *United States v. Jacobsen*, 466 U.S. 109, 124 (1984) (citing *United States v. Place*, 462
 25 U.S. 696, 707-10 (1983)). Indeed, “[a] seizure is justified under the Fourth Amendment
 26 only to the extent that the government’s justification holds force. Thereafter, the
 27 government must cease the seizure or secure a new justification.” *Brewster v. Beck*, 859
 28 F.3d 1194, 1197 (9th Cir. 2017). If it cannot, a seizure reasonable at its inception becomes

1 an unreasonable one. *Id.* at 1196-97.

2 **[Right to Be Free from Excessive Fines]**

3 25. The Eighth Amendment to the United States Constitution states: “Excessive bail
4 shall not be required, nor excessive fines imposed, nor cruel and unusual punishments
5 inflicted.” U.S. Const., amend. VIII. This amendment prohibits the federal government
6 from imposing unduly harsh penalties on criminal defendants.

7 26. The Supreme Court of the United States recently ruled that the Eighth
8 Amendment right to be free from excessive fines is incorporated against the states through
9 the Fourteenth Amendment. *Timbs v. Indiana*, -- U.S. --, 139 S. Ct. 683 (2019).

10 27. “A forfeiture is unconstitutionally excessive ‘if it is grossly disproportional to
11 the gravity of a defendant’s offense.’ ” *United States v. Viloski*, 814 F.3d 104, 110 (2d Cir.
12 2016) (quoting *United States v. Bajakajian*, 524 U.S. 321, 334 (1998)).

13 28. As the Supreme Court held in *Austin v. United States*, 509 U.S. 602, 610 (1993),
14 “a civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather
15 can only be explained as also serving either retributive or deterrent purposes, is
16 punishment, as we have come to understand the term.” (emphasis added.)

17 **[State Law and the County’s \$54 Firearm Storage Fee]**

18 29. Under California law, cities, counties, and state agencies “may adopt
19 regulation[s], ordinance[s], or resolution[s] imposing a charge equal to its administrative
20 costs relating to the seizure, impounding, storage, or release of any firearm, ammunition
21 feeding device, or ammunition.” Cal. Penal Code § 33880(a).

22 30. Any fee set by local authorities to recover these costs, however, “shall not
23 exceed the actual costs incurred for the expenses directly related to taking possession of a
24 firearm, storing the firearm, and surrendering possession of the firearm to a licensed
25 firearms dealer or to the owner.” Cal. Penal Code § 12021.3 (repealed and superseded by
26
27
28

1 the similarly phrased Cal. Penal Code § 33880 in 2012).¹

2 31. On November 22, 2005, relying on then-section 12021.3, the Los Angeles
3 County Board of Supervisors adopted a \$54 per-firearm “administrative fee” to “recover
4 the costs of the seizure, storage and return of a firearm.”

5 32. The County does not charge a storage fee for non-firearm items to be returned.

6 33. In a letter to the Board in support of the fee’s enactment, then-Sheriff Leroy D.
7 Baca stated that several different classifications of LASD personnel are involved in the
8 processing of firearms, from the initial booking to the storage and release.

9 34. A cost breakdown attached to Sheriff Baca’s letter alleged that, for each firearm
10 seized, a deputy spends about 20 minutes “booking” the firearm, a station clerk spends
11 about 5 minutes entering information to DOJ/AFS databases, an evidence custodian then
12 spends about 5 minutes verifying that the information was correct, about 20 minutes
13 updating records and preparing the firearm for release from the station, and then 5 more
14 minutes preparing to transfer the property to Central Property and Evidence.

15 35. According to then-Sheriff Baca’s cost breakdown, at the Central Property and
16 Evidence Unit, another evidence custodian spends about 10 minutes verifying information
17 and storing each firearm and a typist clerk spends about 5 minutes entering information
18 into an unspecified “database.”

19 36. According to then-Sheriff Baca’s cost breakdown, to prepare a gun for release
20 from Central Property, an evidence custodian spends approximately 10 minutes verifying
21 and updating records and a typist clerk spends another approximately 10 minutes updating
22 “databases.”

23 37. According to then-Sheriff Baca’s cost breakdown, all this work adds up to a
24

25
26 ¹ The relevant portion of section 33880 now reads: “The fee under subdivision (a)
27 shall not exceed the actual costs incurred for the expenses directly related to taking
28 possession of any firearm, ammunition feeding device, or ammunition, storing it, and
surrendering possession of it to a licensed firearms dealer or to the owner.” Cal. Penal
Code § 33880(b).

1 claimed 90 minutes of staff time per gun (55 minutes at the station level and 35 minutes
2 Central Property), adding up to \$54.45 per firearm when taking the hourly pay of each
3 employee into account.

4 38. Then-Sheriff Baca also wrote that “an analysis of firearms evidence processing
5 over a four-year period revealed that potentially 500 guns per year would be eligible for
6 the administrative fee” and that “[a] \$54 fee would yield additional revenue of
7 approximately \$27,000 each year.”

8 39. Per California Penal Code section 12021.3, a fee cannot exceed the *actual* costs
9 an agency *directly* incurs related to the firearm seizure, storage, and return. In passing the
10 fee, the Board of Supervisors expected that about 500 firearms *in total* would be subject to
11 the fee annually. It is thus clear that the County’s administrative fee, as calculated, was
12 never intended to apply to a firearm collection of hundreds of firearms seized from a
13 single firearm owner. It was mainly contemplating the seizure of either individual firearms
14 or small collections from many different sources.

15 40. Under both the original California Penal Code section 12021.3, and the newer
16 section 33880, enactment and enforcement of the administrative fee is discretionary.
17 Localities do not have to impose a fee, and if they do, they may waive it for those
18 claiming recovered firearms that were reported stolen, illustrating that the statute
19 recognizes that the fee may be inappropriate when levied against blameless victims of
20 firearm theft.

21 41. Other localities have imposed only the DOJ fee that lessens for each additional
22 firearm.

23 42. For example, according to their website, the city of Redondo Beach charges only
24 the California DOJ fee under the Law Enforcement Gun Release (LEGR) Program of \$20
25 per firearm, with the fee for the release of each subsequent firearm being just an additional
26 \$3. It charges no fee beyond that, and if the firearms are released directly to an FFL, then
27 even that fee is not charged. *See* City of Redondo Beach, Recover Firearms,
28 https://www.redondo.org/depts/police/police_services/property_and_evidence/recover_firearms

earms.asp (last accessed Oct. 26, 2020); *see also* California Dep't of Justice, Bureau of Firearms, Law Enforcement Release Application 3, *available at* <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/ler.pdf> (last accessed Oct. 26, 2020).

[Defendants' Handling of Plaintiffs' Firearms & Resulting Damage]

43. Plaintiff's deceased husband, Manuel Fernandez, was prohibited from owning firearms, ammunition, magazines, and speed loaders due to prior felony convictions stemming from 2009.

44. According to an investigation report by Special Agent Alvaro Arreola, the California Department of Justice Bureau of Firearms' database Armed Prohibited Persons (APPS) identified Mr. Fernandez as a prohibited person potentially in possession of firearms.

45. The APPS database indicated that Mr. Fernandez had purchased 41 firearms before becoming prohibited, and that there was no record existed that any of them had been transferred from his possession after his felony conviction.

46. According Mr. Arreola's report, the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) received an anonymous tip on May 30, 2018, indicating that Mr. Fernandez was in possession of a large collection of firearms. The same tip was also received by Defendant LASD on or around June 10, 2018.

47. On June 11, 2018, Defendant Deputy Wyatt Waldron presented a statement of probable cause to the Los Angeles Superior Court, and the Honorable Judge Lisa Chung issued a warrant for the search of Mr. Fernandez's residence.

48. On June 14, 2018, Defendants Waldron, Roth, and Does 8-20 executed the search warrant at Mr. Fernandez's residence.

49. During the course of the June 14, 2018 search, Defendants Waldron, Roth, and Does 9-20 discovered Mr. Fernandez's firearm collection. They arrested Mr. Fernandez and seized more than 400 firearms.

50. On information and belief, Plaintiff alleges that Defendants Waldron, Roth, and Does 8-20 damaged Plaintiffs' firearms either during the execution of the warrant and

1 seizure of the firearms or when transporting the firearms to the first station where they
2 stored, which Plaintiff believes to be the Palmdale Sheriff's Station, but could also have
3 been another station.

4 51. Under separate warrants, Defendants Waldron, Roth, and Does 8-20 executed
5 three later searches of the Fernandez property on June 15, 2018, June 21, 2018, and June
6 29, 2018. These later searches resulted in the seizure of dozens more firearms, as well as
7 ammunition magazines and speed loaders.

8 52. On information and belief, Plaintiff alleges that Defendants Waldron, Roth, and
9 Does 8-20 damaged the later-seized firearms either during the execution of the warrant
10 and seizure of the firearms or when transporting the firearms to the first station where they
11 stored, which Plaintiff believes to be the Palmdale Sheriff's Station, but could also have
12 been another station.

13 53. Between June 14, 2018, and June 28, 2014, Plaintiffs' firearms arrived at the
14 Palmdale Sheriff's Station, where Defendants Ames, Dingman, Jacob, Leon, Moreno,
15 O'Leary Brown, Roach, Roth, and Saylor booked them into LASD custody. *See* County of
16 Los Angeles Sheriff's Department Evidence and Property Page, Palmdale Station.

17 54. Plaintiff is informed and believes, and on that basis alleges that Defendants
18 Ames, Dingman, Jacob, Leon, Moreno, O'Leary Brown, Roach, Roth, Saylor, and Does
19 8-20 each handled the firearms during their processing.

20 55. On information and belief, Plaintiff alleges that Defendants Ames, Dingman,
21 Jacob, Leon, Moreno, O'Leary Brown, Roach, Roth, Saylor, and Does 8-20 were each
22 responsible for seeing to it that each firearm they handled was stored properly and safely
23 but did not do so despite written department policies regarding the proper storage of
24 firearms in LASD custody

25 56. Based on an email sent to Plaintiff's counsel by Defendant O'Leary Brown in
26 March 2019, Plaintiff is informed and believes, and on that basis alleges, that all the
27 seized firearms were at some point transferred to LASD's warehouse in Whittier for
28

1 storage and were, during that time, in the care of either Defendant O’Leary Brown, Doe 8,
2 or both.

3 57. Defendants Ames, Dingman, Jacob, Leon, Moreno, O’Leary Brown, Roach,
4 Roth, Saylor, and Does 8-20 were property custodians with LASD, either at the Palmdale
5 Station or the Whittier Warehouse, during the time that Plaintiff’s firearms were in LASD
6 custody or were otherwise responsible for properly storing, handling, and safeguarding the
7 firearms, but failed to do so.

8 58. Plaintiff is informed and believes, and on that basis alleges that, in his role as
9 detective, Defendant Roth and Doe 9 investigated whether Plaintiff’s seized firearms were
10 lawful to possess and thus not contraband, if possessed by a person not otherwise
11 prohibited from possessing firearms.

12 59. Having investigated the legality of the seized firearms, Defendant Roth and Doe
13 9 prepared a “supplemental report,” where he reported his findings that 458 of the seized
14 firearms were legal to possess, and thus not contraband.

15 60. On information and belief, Defendants Roth and Doe 9 handled the firearms in
16 the course of examining them to determine if they were legal to own in California and, at
17 some point during the examination and/or handling, damaged Plaintiffs’ firearms.

18 61. After Plaintiffs paid Defendant County’s required \$54-per-firearm fee (as
19 alleged further below), Plaintiff requested that all the lawful firearms (i.e., those firearms
20 not determined to be unlawful to possess under state law) be transferred to Carol Watson’s
21 Orange Coast Auctions, a properly licensed firearm dealer, to be sold at auction.

22 62. To effectuate the transfer to Orange Coast Auctions, Defendants transferred the
23 firearms from the Whittier warehouse to the Palmdale Sheriff Station, and they were then
24 released to Orange Coast Auctions.

25 63. Upon release of the firearms to Carol Watson’s Orange Coast Auctions, Plaintiff
26 discovered the extent of the damage to her firearms that resulted from being in LASD
27 custody through photographs taken by auction house personnel at the police station
28 showing how poorly the firearms were transported and stored by Defendants LASD,

1 Ames, Dingman, Jacob, Leon, Moreno, O’Leary Brown, Roach, Roth, Saylor, Waldron
2 and Does 8-20

3 64. For instance, photographs show dozens of long guns were packed together
4 tightly in plastic bins. Photographs also revealed that handguns were thrown haphazardly
5 on top of each other; they were not stored in separate envelopes that would have protected
6 them from damage.

7 65. Orange Coast Auctions estimated that the damage to the firearms caused by
8 Defendants’ poor storage, handling, and transport of them while in LASD custody
9 resulted in them selling for approximately \$96,000 less than they would have had they not
10 been damaged.

11 66. Defendants’ storage of the firearms was in violation of LASD’s written policies
12 described in the Department’s “Manual of Policy and Procedures” (“the Manual”).
13 Volume 5, Chapter 4 of the Manual describes the LASD’s policies for storage of property
14 and evidence.

15 67. Volume 5, Chapter 4, Subtopic 070.00 of the Manual states that “all
16 property/evidence items shall be stored in a secure manner in a secure facility.” It goes on
17 to state that “high value items” must be stored in a safe.

18 68. To the extent the firearm collection was damaged because it was so large,
19 Subtopic 070.30 would also apply, which explains that when property and evidence
20 involved in a case is of such a large bulk or quantity that it is not feasible to store at a
21 station or unit, the watch commanders “shall contact Central Property and Evidence (CPE)
22 and arrange for immediate transfer.”

23 69. Defendants’ storage of the firearms also conflicted with guidelines for evidence
24 and property handling from the California Commission on Peace Officer Standards and
25 Training (“the Commission”).

26 70. The Commission advises that “[a]gencies must develop specific guidelines
27 detailing the acceptable methods for the receipt, packaging and storing of evidence and
28 property that meet both agency needs and judicial standards.” Cal. Comm’n on Peace

Officer Standards & Training, Law Enforcement Evidence & Property Management Guide 4-1 (3d ed. 2013), *available at* <https://www.crime-scene-investigator.net/PDF/law-enforcement-evidence-and-property-management-guide.pdf>.

71. The Commission’s guideline entitled Guideline 4.3: Firearms Handling Procedures, directs agencies to package firearms into appropriate gun boxes. *Id.* at 4-4. “[A] firearm must be rendered unloaded and safe with the action open and placed in a specifically designed firearms storage container (e.g., cardboard gun box or similar container), and secured to the container using nylon ties.” *Id.* at 4-5.

72. Plaintiff is informed and believes, and on that basis alleges, that Defendant LASD has neither investigated nor disciplined any of its employees who handled the firearms for violating any of its written storage policies or other guidance regarding the proper storage of property in LASD custody, including firearms and property of significant value.

73. Given the disregard for their own written policies and guidelines and that, to Plaintiffs’ knowledge, Defendant LASD has neither investigated nor disciplined its employees who handled the firearms for violating its written storage policies, Plaintiff alleges that it is Defendants’ longstanding (though unwritten) policy or custom to store firearms haphazardly without care for any damage that may result notwithstanding any written policy or guidance on the subject.

[Plaintiff’s Payment of the County’s \$54-Per-Firearm Fee]

74. On September 27, 2018, after Mr. Fernandez was charged for his unlawful possession of firearms, but before any trial could begin, he passed away.

75. The charges against Mr. Fernandez were dismissed due to his death.

76. Upon Mr. Fernandez’s death, any interest in the seized firearms passed to Plaintiff, as she was the trustee of the Fernandez Trust.

77. In order for Plaintiff to retrieve the seized firearms that were not contraband, 451 in total, Defendants demanded that Plaintiff pay Defendant County’s “fee” of \$54 *per firearm*—or \$24,354.

1 78. Indeed, counsel for Plaintiff spoke with Defendant O’Leary Brown, the property
2 custodian for the LASD Palmdale Sheriff’s Station, who informed Plaintiff’s counsel of
3 Palmdale Station’s price list reflecting the fee of \$54 per firearm for the return of firearm
4 property and LASD’s general policy that the prices reflected on the price list must be paid
5 before the firearms could be released to Plaintiff.

6 79. There are myriad problems with how the County’s “administrative fee” was
7 applied to Plaintiffs’ firearms.

8 80. First, the work performed for each firearm appears to have been duplicative,
9 with various employees seemingly entering the same information and updating the same
10 databases.

11 81. Second, no reasonable reduction was given in consideration of the fact that
12 hundreds of firearms were all taken from the same individual. Unlike a situation where a
13 single stray firearm is recovered and has to be processed, much of the work here was the
14 same for each firearm, which would cut down on the amount of time necessary to process
15 each firearm.

16 82. For the per-firearm fee to not be in violation of state law, it must not exceed the
17 actual administrative costs incurred by LASD. Yet LASD per-firearm fee rests on the
18 assumption that the processing the 451 firearms that were returned to Plaintiff took them
19 *more than 675 employee hours*, despite the fact that all the firearms came from the same
20 source.

21 83. What’s more, the Board of Supervisors plainly never contemplated a situation
22 such as this where hundreds of firearms all came from one source. As then-Sheriff Baca
23 wrote, “an analysis of firearms evidence processing over a four-year period revealed that
24 potentially 500 guns per year would be eligible for the administrative fee. A \$54 fee
25 would yield additional revenue of approximately \$27,000 each year.” Here, Plaintiff has
26 paid almost that entire amount on her own, just to retrieve her own property.

27 84. In refusing to reduce the fee to reflect that all of the firearms came from the
28 same person and required less work to process, the LASD fee as applied to Plaintiff

1 exceeded the actual administrative costs borne by LASD in violation of California Penal
2 Code section 33880 and became unconstitutionally excessive as applied to Plaintiff.

3 85. Insofar as the so-called “fee” exceeded the actual administrative costs borne by
4 LASD, its existence can only be punitive in nature. *See Austin*, 509 U.S. at 610 (“[A] civil
5 sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only
6 be explained as also serving either retributive or deterrent purposes, is punishment, as we
7 have come to understand the term.”).

8 86. Plaintiff, through her counsel, thus expressed to Defendants that Plaintiff was
9 willing to pay a reduced fee that more reasonably reflected the actual administrative costs
10 of Defendants’ processing and storing the firearm collection.

11 87. Defendants refused to negotiate a lower fee amount, stating that there was no
12 discretion to lower the per-firearm fee regardless of the circumstances because it was set
13 by county ordinance, leaving Plaintiff no other option to take possession of her property
14 but to pay the full amount of \$24,354.

15 88. On December 9, 2019, Plaintiff’s counsel sent a letter to Deputy County Counsel
16 Lana Choi of the Sheriff’s Legal Advisory Unit, informing Defendants that Plaintiff
17 would pay the full amount of the demanded “administrative fees” “under protest in order
18 to get the firearms out of the possession of the county” and “to stop any claim that the
19 continued storage of the firearms justifie[d] the current or any additional storage fees.”
20 But Plaintiff’s counsel repeated that Plaintiff remained open to negotiating a lower fee
21 with the County.

22 89. In summary, Plaintiff had to pay over \$24,000 for the “service” of Defendants
23 storing her firearms so poorly that nearly \$100,000 in damage was done to them.

24 **DECLARATORY JUDGMENT ALLEGATIONS**

25 90. There is an actual and present controversy between the parties. Plaintiff contends
26 that Defendant LASD’S per-firearm fee of \$54, imposed under Penal Code section 33880,
27 constitutes an excessive and punitive fine as applied to a large collection of firearms all
28 seized from a single owner who was never convicted of any charges. Plaintiff thus desires

1 a judicial declaration that California Penal Code section 33880, as applied here by
 2 Defendants, violates Plaintiff's rights under the Eighth Amendment. Plaintiff also desires
 3 a declaration that the County's fee, at minimum, violates the clear mandate of Penal Code
 4 section 33880 against charging a fee greater than the actual administrative costs related to
 5 processing and storing the firearms.

6 91. Plaintiff also contends that Defendants' refusal to release the firearms to Plaintiff
 7 upon her husband's death and the dismissal of all charges violated the Fourth Amendment
 8 prohibition on unreasonable seizures. Regardless of the legality of the original search and
 9 seizure, Defendants had no probable cause to continue the seizure of Plaintiffs' property
 10 after Mr. Fernandez's death because the fee they sought to extract from Plaintiffs was
 11 unreasonably excessive under all the circumstances—including Defendants'
 12 extraordinarily poor storage and handling of Plaintiffs' firearm collection that resulted in
 13 about \$96,000 of damage to the property. Plaintiff thus desires a judicial declaration that
 14 Defendants violated Plaintiff's rights under the Fourth Amendment.

15
 16 **FIRST CLAIM FOR RELIEF**
Violation of Eighth Amendment Right to Be Free from Excessive Fines
42 U.S.C. § 1983, U.S. Const.
 17 (Against Defendants Los Angeles County, LASD, and Villanueva)

18 92. Plaintiff realleges and incorporates by reference the allegations contained in
 19 Paragraphs 1 through 91, inclusive, as though fully set forth below.

20 93. The Eighth Amendment states: "Excessive bail shall not be required, nor
 21 excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const.,
 22 amend. VIII. This amendment prohibits the federal government from imposing unduly
 23 harsh penalties on criminal defendants. It has been incorporated against state and local
 24 governments via the Fourteenth Amendment. *Timbs*, 139 S. Ct. 683.

25 94. California Penal Code section 33880, which authorizes Defendants to charge a
 26 fee for seizing, storing, and returning firearms, prohibits localities from charging more
 27 than their actual administrative costs for doing so.

28 95. Plaintiff's late husband, Manuel Fernandez, had his collection of hundreds of

1 firearms seized pursuant to a warrant by Defendants LASD, Waldron, Roth, and Does 9-
2 20.

3 96. Before any conviction, however, Mr. Fernandez passed away, Defendants
4 dismissed the charges against him, and full ownership of the seized firearm collection
5 passed on to Plaintiff. In order to secure the release of her firearms, however, Plaintiff had
6 to pay LASD an “administrative fee” \$54 per firearm for each of 451 firearms—for a total
7 fee of \$24,354.

8 97. Plaintiff is informed and believes, and on that basis alleges that the costs for
9 processing and storage Plaintiffs’ firearms were substantially lower than the actual
10 processing costs associated with the typical seizure of hundreds of firearms coming from
11 hundreds of different individuals—the type of situation Defendant Los Angeles County
12 had in mind when it adopted the fee. Moreover, according to a conversation with
13 Defendant O’Leary Brown, Defendants do not charge a storage fee for property other than
14 firearms, conflicting with the contention that the fee is meant simply to reimburse
15 Defendants for their storage costs.

16 98. Defendants refused to reduce the fee or even negotiate in good faith to come to a
17 reasonable arrangement, citing that the fee was set by Defendant County’s duly adopted
18 ordinance—an official policy—and they had no discretion to reduce it.

19 99. In charging substantially more for the return of the firearms than the costs
20 Defendants had borne to seize, process, and store them, the “administrative fee” became
21 unconstitutionally excessive and punitive in violation of the Eighth Amendment under the
22 standard set by *Austin v. United States*, 509 U.S. 602, 610 (1993).

23 100. It is the official policy of Defendants County, LASD, and Sheriff Villanueva to
24 charge a fee of \$54 per firearm for the release of seized firearms, and County and LASD
25 personnel have no discretion to reduce the fee to reflect the Defendants’ actual costs. In
26 levying the entire \$54 per-firearm fee and refusing to lower it even though it was
27 excessive and punitive as applied to Plaintiff, Defendants Ames, Dingman, Jacob, Leon,
28 Moreno, O’Leary Brown, Roach, Roth, Saylor, Waldron, and Does 8-20 were thus

1 following the official policy set by Defendant County and enforced by Defendants LASD
2 and Sheriff Villanueva.

3 101. Alternatively, to the extent it is *not* the policy of Defendants County, LASD, and
4 Sheriff Villanueva that County and LASD employees lack discretion to reduce the \$54
5 per-firearm-fee, Defendants County, LASD, and Sheriff Villanueva failed to properly
6 screen, train, and/or supervise their officers and personnel, including Defendants Ames,
7 Dingman, Jacob, Leon, Moreno, O’Leary Brown, Roach, Roth, Saylor, Waldron, and
8 Does 8-20 with regard to the applicable written policies, guidelines, and laws.

9 102. As a result of such failures to train, Defendants failed to apply the written
10 policies, guidelines, and laws that led to Plaintiff’s harm—*i.e.*, the violations of
11 her constitutional rights described herein including, inter alia, the Eighth Amendment
12 right to be free from excessive fines.

13 103. As a direct and proximate consequence of the acts of Defendants County,
14 LASD, and Villanueva, their agents and employees, Plaintiff suffered significant financial
15 loss and is entitled to compensation for that loss.

16 **SECOND CLAIM FOR RELIEF**
17 **Violation of Fourth Amendment Right to be Secure from Unreasonable Seizures**
18 **42 U.S.C. § 1983**
(Against All Defendants)

19 104. Plaintiff realleges and incorporates by reference the allegations contained in
20 Paragraphs 1 through 105, inclusive, as though fully set forth below.

21 105. The Fourth Amendment provides in part that “[t]he right of the people to be
22 secure in their persons, houses, papers, and effects, against unreasonable searches and
23 seizures, shall not be violated.”

24 106. “A ‘seizure’ of property . . . occurs when ‘there is some meaningful interference
25 with an individual’s possessory interests in that property.’ ” *Soldal v. Cook County*, 506
26 U.S. 56, 61 (1992) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). So
27 regardless of the legality of the initial seizure, a seizure legal at inception can later become
28 unlawful if the government lacks probable cause to continue a seizure past a certain point

1 or unreasonably damages or destroys personal property.

2 107. During the execution of various valid search warrants, Defendants seized
3 firearms from Plaintiff's now-deceased husband, and proceeded to transport, handle, and
4 store them with extreme negligence or reckless disregard for their condition.

5 108. Defendants' disregard for their own written policies on storage of firearms and
6 failure to discipline any employee for such disregard indicates that the custom and
7 longstanding practice of Defendants LASD and Sheriff Villaneuva is to haphazardly store
8 seized firearms, regardless of what their written policies or guidelines state. The Supreme
9 Court in *Monell* held that municipalities may be held liable under section 1983 for
10 constitutional violations resulting from not just official county policy, but also customs.
11 (*Benavidez v. Cty. of San Diego* (9th Cir. 2021) 993 F.3d 1134, 1153.)

12 109. Defendants lacked probable cause to continue to withhold the firearms after the
13 death of Mr. Fernandez, the dismissal of the charges against him, and the transfer of the
14 firearms' ownership to Plaintiff because the levying of the County's \$54 per-firearm fee
15 was unconstitutional as applied to Plaintiff. The once lawful seizure became an
16 unconstitutional one. The failure to return Plaintiffs' firearms once probable cause
17 evaporated and Plaintiff demanded their return violates the Fourth Amendment.

18 110. Further, when Defendants released the firearms to Plaintiff, they had lost about
19 \$96,000 in value due to the damage done to them during their storage and/or during their
20 transport to and from Defendants' storage facilities. The damage to Plaintiffs' seized
21 property by Defendants violates the Fourth Amendment.

22 111. At all times herein mentioned, Defendants County, LASD, and Villaneuva
23 authorized and ratified the wrongful acts of the individual defendants and Does 8-20. The
24 individual Defendants' wrongful conduct was the result of policies, practices, and customs
25 of Defendants County, LASD, and Villanueva—notwithstanding the official Defendants'
26 written policies.

27 112. Defendants County, LASD, and Sheriff Villanueva failed to properly screen,
28 train and/or supervise their officers and personnel, including Defendants Ames, Dingman,

Jacob, Leon, Moreno, O’Leary Brown, Roach, Roth, Saylor, Waldron, and Does 8-20 with regard to such written policies, guidelines, and laws. Their officers and personnel thus wrongly applied an excessive fine on the Fernandez firearms, and also stored them poorly resulting in extensive damage.

113. As a result of such failures to train, Defendants Ames, Dingman, Jacob, Leon, Moreno, O’Leary Brown, Roach, Roth, Saylor, Waldron, and Does 8-20 failed to apply the official Defendants’ written policies, guidelines, and laws, leading to Plaintiff’s harm—*i.e.*, the violations of her constitutional rights described herein including, inter alia, the violation of her constitutional rights including, inter alia, the Fourth Amendment right to be free from unreasonable searches and seizures.

114. Plaintiff’s constitutional rights were violated as a proximate result of the deliberate indifference of Defendants County, LASD, and Villaneuva in the training and supervision of its officers, detectives, and employees as regards the handling and storage of seized firearms in LASD custody per LASD policy and state guidelines

115. As a direct and proximate consequence of the acts of Defendants’ agents and employees, Plaintiff suffered a severe financial loss and is entitled to compensation for that loss.

THIRD CLAIM FOR RELIEF
Negligence
California Civil Code § 1714
(Against All Defendants)

116. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 115, inclusive, as though fully set forth below.

117. Upon the seizure of Plaintiff’s property, Defendants had a legal duty to use due care in transporting and storing that property, including the 451 firearms that Plaintiff eventually had to pay over twenty thousand dollars to retrieve.

118. Defendants breached that duty by failing to properly store the firearms while they were in their care and during their transport, as they packed the long guns all together in bins and stacked pistols on top of each other. This was done with disregard to

1 Defendant LASD'S policy manual, the California Commission on Peace Officer
2 Standards and Training's guidelines for handling seized property, and constitutional
3 protections against unlawful seizures.

4 119. Defendants' breach was the direct and proximate cause of Plaintiff's resulting
5 harm of \$96,000 in lost value when the firearms were sold at auction.

6 120. Defendants County of Los Angeles, LASD, and Sheriff Villanueva are liable for
7 the actions or omissions of their employees under California Government Code section
8 815.2, which states that "[a] public entity is liable for injury proximately caused by an act
9 or omission of an employee of the public entity within the scope of his employment if the
10 act or omission would, apart from this section, have given rise to a cause of action against
11 that employee or his personal representative."

12 121. Defendants' negligence or reckless disregard of their duty of care was the main
13 factor in causing Plaintiff's harm, and Plaintiff is entitled to compensation for the
14 resulting financial loss.

15
16 **FOURTH CLAIM FOR RELIEF**
17 **Breach of Bailment**
18 **California Civil Code § 1813, et seq.**
19 **(Against All Defendants)**

20 122. Plaintiff realleges and incorporates by reference the allegations contained in
21 Paragraphs 1 through 121, inclusive, as though fully set forth below.

22 123. By seizing her late husband's firearms, Defendants created an involuntary
23 bailment of that property.

24 124. Defendants, as bailees, had sole actual and physical possession and custody of
25 the firearms.

26 125. Defendants, as bailees, failed to adequately care for the firearms, transporting
27 and storing them in such a way that tremendous damage resulted to them.

28 126. Defendants breached the bailment because they returned the firearms to Plaintiff
in damaged condition that they had caused.

127. Defendants County of Los Angeles, LASD, and Sheriff Villanueva are liable for

1 the actions or omissions of their employees under California Government Code section
2 815.2, which states that “[a] public entity is liable for injury proximately caused by an act
3 or omission of an employee of the public entity within the scope of his employment if the
4 act or omission would, apart from this section, have given rise to a cause of action against
5 that employee or his personal representative.”

6 128. Defendants’ breach of bailment caused Plaintiff’s harm in the form of damage to
7 her property, and Plaintiff is entitled to compensation for the resulting financial loss.

8 **FIFTH CLAIM FOR RELIEF**
9 **Trespass to Chattels**
(Against All Defendants)

10 129. Plaintiff realleges and incorporates by reference the allegations contained in
11 Paragraphs 1 through 128, inclusive, as though fully set forth below.

12 130. Except for a few firearms that are not at issue here, Plaintiff lawfully owned the
13 firearms seized following the death of her husband. A seizure of property is an
14 interference to possessory interests only, and not ownership rights, such that Defendants,
15 or any of them, never had an ownership interest in Plaintiff’s firearms. Defendants only
16 had a possessory interest in the firearms from the time they were seized up through the
17 time Plaintiff’s husband passed away, which made her eligible as a matter of law to
18 receive the firearms.

19 131. Any damage that resulted to the firearms while they were in Defendants’
20 possession was an intentional and substantial interference with Plaintiff’s enjoyment of
21 her property and constituted a trespass to chattels.

22 132. Plaintiff did not consent to Defendants’ interference with her ownership rights to
23 her property.

24 133. Plaintiff seeks a remedy against Defendants for their wrongful exercise of
25 control over Plaintiff’s personal property by demanding an excessive fine be paid prior to
26 its return, and the resulting damage to that property.

27 134. Defendants County of Los Angeles, LASD, and Sheriff Villanueva are liable for
28 the actions or omissions of their employees under California Government Code section

815.2, which states that “[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.”

135. Plaintiff was harmed in the form of lost value to the firearms due to the damage done to them while they were in the possession of Defendants. Plaintiff is entitled to compensation for her loss.

SIXTH CLAIM FOR RELIEF
Failure to Train

(Against Defendants Los Angeles County, LASD, and Alex Villanueva)

136. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 136, inclusive, as though fully set forth below.

137. Defendants County, LASD, and Villanueva are responsible for the operations, practices, and customs of the Los Angeles Sheriff’s Department.

138. Defendants LASD and Villanueva are also responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and control of the personnel and officers under their supervision and command, including the personnel who forced Plaintiff to pay an excessive fine to retrieve her firearms, and the personnel who poorly stored and transported her firearms, resulting in damage to them.

139. On information and belief, Defendants, and each of them, will deny that in committing the acts and omissions against Plaintiff described herein, including the violations of the Fourth and Eighth Amendments described above.

140. Defendants County, LASD, and Villanueva, and each of them, had notice of the applicable state law regarding the imposition of administrative fees under Penal Code section 33880, as the \$54 fee that is one of the subjects of this litigation exists based on the authority granted by that section.

141. Defendants Los Angeles County, LASD, and Villanueva, and each of them, also had notice of LASD policies described in the Department’s “Manual of Policy and Procedures”, specifically, the sections pertaining to the policies for storage of property

1 and evidence. Further, they had notice of the guidelines laid out by the California
 2 Commission on Peace Officer Standards and Training in their “Law Enforcement
 3 Evidence and Property Management Guide,” specifically, the portions discussing firearm
 4 handling and storage procedures.

5 142. Notwithstanding such notice, Defendants failed to properly screen, train and/or
 6 supervise their officers and personnel, including Defendants Ames, Dingman, Jacob,
 7 Leon, Moreno, O’Leary Brown, Roach, Roth, Saylor, Waldron, and Does 8-20, with
 8 regard to such written policies, guidelines, and laws. Their officers and personnel thus
 9 wrongly applied an excessive fine on the Fernandez firearms, and also stored them poorly
 10 resulting in extensive damage. Failure to train constitutes a basis for *Monell* liability
 11 where the failure amounts to deliberate indifference to the rights of those who deal with
 12 municipal employees. (*Benavidez v. Cty. of San Diego* (9th Cir. 2021) 993 F.3d 1134,
 13 1153-1154.)

14 143. As a result of such failures to train, Defendants Ames, Dingman, Jacob, Leon,
 15 Moreno, O’Leary Brown, Roach, Roth, Saylor, Waldron, and Does 8-20 failed to properly
 16 apply the written policies, guidelines, and laws of Defendants County, LASD, and
 17 Villanueva, leading to Plaintiff’s harm. Plaintiff resultantly suffered violations of
 18 her constitutional rights including, inter alia, the Eight Amendment right to be free from
 19 excessive fines and the Fourth Amendment right to be free from unreasonable searches
 20 and seizures.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray that this Court:

23 1. Enter a declaratory judgment that California Penal Code section 33880(a), as
 24 applied to Plaintiff Fernandez by way of Defendants’ \$54 per-firearm “administrative
 25 fee,” was punitive and constituted an excessive fine in violation of Plaintiffs’ rights under
 26 the Eighth Amendment to the United States Constitution;

27 2. Enter a declaratory judgment that Defendants’ \$54 per-firearm “administrative
 28 fee,” as applied to Plaintiff, violates California Penal Code section 33880(a) and its

1 express mandate that such fees do not exceed the actual costs incurred for the seizure,
2 impounding, storage, or release of any firearm, ammunition feeding device, or
3 ammunition;

4 3. Enter a declaratory judgment that Defendants' conduct as complained of in this
5 complaint violates Plaintiffs' rights under the Fourth Amendment to the United States
6 Constitution;

7 4. Award compensatory and general damages, in an amount to be proven at trial,
8 against Defendants Los Angeles County and LASD and against each Defendant sued in
9 his or her personal capacity;

10 5. Award exemplary and punitive damages, in an amount to be proven at trial,
11 against Defendants Los Angeles County and LASD and against each of the individual
12 Defendants sued in his or her personal capacity;

13 6. Award reasonable attorneys' fees and costs of suit, according to proof;

14 7. Award interest; and

15 8. Grant any such other and further relief as the Court may deem proper.

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Federal Rule of Civil Procedure 38 and Central District Local Rule 38-
18 1, Plaintiff hereby demands a trial by jury in the above-captioned action of all issues
19 triable by jury.

20
21 Dated: October 12, 2021

MICHEL & ASSOCIATES, P.C.

22 

23 _____
24 Anna M. Barvir
25 Counsel for Plaintiff Ana Patricia
26 Fernandez
27
28

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case Name: *Fernandez, v. Los Angeles County, et al.*
Case No.: 2:20-cv-09876 DMG (PDx)

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**FIRST AMENDED COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES**

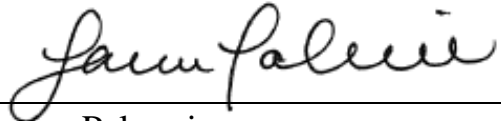
on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Henry Patrick Nelson
nelson-fulton@nelson-fulton.com
Amber Logan
amberlogan@nelson-fulton.com
Nelson & Fulton
3435 Wilshire Blvd., Suite 2800
Los Angeles, CA 90010

*Attorneys for Los Angeles County, Los Angeles County Sheriff's Department, Sheriff
Alex Villanueva, Deputy Wyatt Waldron, Deputy John Roth, Susan O'Leary Brown*

I declare under penalty of perjury that the foregoing is true and correct.

Executed October 12, 2021.



Laura Palmerin