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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Yolanda Ericson, et al.,

10 Plaintiffs,

11 v.

12 Phoenix, City of, et al.,

13 Defendants.

No. CV-14-01942-PHX-JAT

**ORDER**

14 Pending before the Court is Defendants' Motion to Dismiss Negligence Claim,  
15 (Doc. 11). The Court now rules on the motion.

16 **I. BACKGROUND**

17 This case arises from an altercation between City of Phoenix police officers and  
18 Miguel<sup>1</sup> Ruiz ("Decedent") on July 28, 2013. (Doc. 7 at 7). As a result of the altercation,  
19 Decedent died. (*Id.* at 9). Plaintiffs allege that the City of Phoenix police officers used  
20 excessive force and the use of such force caused Decedent's death. (*Id.* 10–13). Plaintiff,  
21 Yolanda Ericson,<sup>2</sup> is Decedent's mother, beneficiary, and representative of his estate. (*Id.*  
22 at 3). She also acts on behalf of Decedent's minor daughter, A. R. (*Id.*). Plaintiff, Canon  
23 Ruiz, is Decedent's son. (*Id.*). Defendants are the City of Phoenix and the individual  
24 police officers involved in the altercation. (*Id.*). Plaintiffs' Complaint presents four claims  
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27 <sup>1</sup> The Court notes that the parties have referred to Miguel Ruiz as "Michael"  
throughout their correspondence and briefing with the Court.

28 <sup>2</sup> The Court spells Ericson the same way it is spelled in the caption, but notes that  
Plaintiffs have spelled the name differently (Erickson).

1 for relief, including common law negligence and statutory wrongful death pursuant to  
2 A.R.S. §§ 12-611–13. (*Id.* at 14, 17). On September 30, 2014, Defendants filed a motion  
3 requesting the Court to dismiss Plaintiffs’ common law negligence claim under Federal  
4 Rule of Procedure 12(b)(6). (Doc. 11).

## 5 **II. LEGAL STANDARD**

6 The Court may dismiss a complaint for failure to state a claim under Rule 12(b)(6)  
7 if the claim lacks a cognizable legal theory or there are insufficient facts to support a  
8 cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.  
9 1990). To survive a 12(b)(6) motion for failure to state a claim, a complaint must meet  
10 the requirements of Rule 8(a)(2). Rule 8(a)(2) requires a “short and plain statement of the  
11 claim showing that the pleader is entitled to relief,” so that the defendant has “fair notice  
12 of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,  
13 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

14 Although a complaint attacked for failure to state a claim does not need detailed  
15 factual allegations, the pleader’s obligation to provide the grounds for relief requires  
16 “more than labels and conclusions, and a formulaic recitation of the elements of a cause  
17 of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). The factual  
18 allegations of the complaint must be sufficient to raise a right to relief above a  
19 speculative level. *Id.*

20 To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
21 which, if accepted as true, states a claim to relief that is “plausible on its face.” *Ashcroft*  
22 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). Facial plausibility  
23 exists if the pleader pleads factual content that allows the court to draw the reasonable  
24 inference that the defendant is liable for the misconduct alleged. *Id.* Plausibility does not  
25 equal “probability,” but plausibility requires more than a sheer possibility that a  
26 defendant acted unlawfully. *Id.* “Where a complaint pleads facts that are ‘merely  
27 consistent’ with a defendant’s liability, it ‘stops short of the line between possibility and  
28 plausibility of entitlement to relief.’” *Id.* (citing *Twombly*, 550 U.S. at 557).

1 In deciding a motion to dismiss under Rule 12(b)(6), a court must construe the  
2 facts alleged in the complaint in the light most favorable to the drafter of the complaint  
3 and the court must accept all well-pleaded factual allegations as true. *See Shwarz v.*  
4 *United States*, 234 F.3d 428, 435 (9th Cir. 2000). Nonetheless, courts do not have to  
5 accept as true a legal conclusion couched as a factual allegation. *Papasan v. Allain*, 478  
6 U.S. 265, 286 (1986).

### 7 **III. ANALYSIS**

8 Defendants assert that Plaintiffs' negligence claim should be dismissed because  
9 "simple negligence . . . in tort [is not a valid basis] for recovering the type of loss of  
10 consortium and other damages" that Plaintiffs seek. (Doc. 11 at 4). Rather, such "a cause  
11 of action exists only by virtue of the Arizona Wrongful Death Act." (Doc. 16 at 6).  
12 Plaintiffs argue that it is too early in the litigation to determine whether Defendants were  
13 negligent or grossly negligent and that any potential "discrepancies can be solved with  
14 proper jury instructions." (Doc. 15 at 5). Alternatively, Defendants contend that "Arizona  
15 courts have established a common-law immunity from mere negligence for police  
16 officers." (Doc. 11 at 3).

17 There is no common law right of action for wrongful death. *See Helenar v.*  
18 *Superior Court In & For the Cnty. Of Maricopa*, 504 P.2d 928, 930 (Ariz. 1972);  
19 *Solomon v. Harmon*, 489 P.2d 236, 238 (Ariz. 1971); *In re Lister's Estate*, 195 P. 1113,  
20 1113 (Ariz. 1921); *see also Covey Gas & Oil Co. v. Checketts*, 187, F.2d 561, 562 (9th  
21 Cir. 1951) ("Recovery for damages from death by such negligence did not exist in the  
22 common law at the time of the adoption of the Constitution of the United States.").  
23 Rather, the right of action for wrongful death is purely statutory. *Gomez v. Leverton*, 509  
24 P.2d 735, 737 (Ariz. Ct. App. 1973). "Arizona's wrongful death act, A.R.S. § 12-611,  
25 confers an original and distinct claim for the damages sustained by named beneficiaries."  
26 *Huebner v. Deuchle*, 514 P.2d 470, 470-71 (Ariz. 1973). Under Arizona's wrongful  
27 death act, a plaintiff may recover damages for "loss of love, affection, companionship,  
28 consortium, personal anguish and suffering." *Vasquez v. State*, 206 P.3d 753, ¶ 16 (Ariz.

1 Ct. App. 2008) (quoting *Mullen v. Posada Del Sol Heath Care Ctr.*, 819 P.2d 985, 986  
2 (Ariz. Ct. App. 1991)).

3 Plaintiffs' negligence claim amounts to a wrongful death claim. Plaintiffs allege  
4 that Defendants' negligence caused Decedent's death, and as a result, Plaintiffs "have  
5 been deprived of the continued companionship and familial society of their son and/or  
6 father and have suffered and will continue to suffer in a future loss of love, affection,  
7 companionship, care, protection and guidance." (Doc. 7 at ¶ 109). In Arizona, however,  
8 damages for the negligent killing of a human being may not be brought under a common  
9 law negligence claim. See *Helonar*, 504 P.2d at 930. Instead, the Arizona wrongful death  
10 act, A.R.S. §§ 12-611–13, provides the exclusive remedy for wrongful death claims.  
11 *Huebner*, 5514 P.2d at 549–50. Therefore, Plaintiffs' negligence claim is dismissed for  
12 failure to state a claim.

13 Having held that Plaintiffs may not pursue their negligence claim, the Court does  
14 not reach the issue of whether Arizona law enforcement officers may be held liable for  
15 simple negligence.

16 **IV. CONCLUSION**

17 Based on the foregoing,

18 **IT IS ORDERED** that Defendants' Motion to Dismiss Negligence Claim  
19 (Doc. 11) is **GRANTED**.

20 Dated this 19th day of December, 2014.

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25 **James A. Teilborg**  
26 **Senior United States District Judge**  
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