

1 **FACTUAL BACKGROUND**

2 This case arises out of an encounter between South Gate police officers and
3 Coronel, Aguilar’s son, on May 25, 2011. (FAC ¶ 9.) South Gate police came to
4 Coronel’s home after he called 911 and made suicidal remarks. (*Id.*) Police were
5 purportedly informed that Coronel was very “despondent” and “agitated” and that he
6 suffered from serious mental and emotional problems. (*Id.*) Despite this information,
7 Aguilar contends that police arrived in an aggressive and confrontational manner,
8 targeting Coronel with a laser sight from a taser gun when he opened the front door
9 holding a knife he had apparently used on himself. (FAC ¶¶ 9–10.) Coronel reacted
10 by fleeing out the back door, and police gave chase. (FAC ¶¶ 10–11.) Though he did
11 not threaten anyone, Coronel was cornered in a small courtyard behind a home down
12 the street. (FAC ¶ 11.) At that time, Officer Tait attempted to hit Coronel with a taser
13 but missed. (*Id.*) Officer Dahlia then hit Coronel with several rounds from a bean-
14 bag shotgun. (*Id.*) According to the officers, Coronel was about 6 to 10 feet away
15 when he subsequently “lunged” forward with the knife. (*Id.*) Two officers collided
16 with each other and fell, at which point officers Bedetti and Bolar allegedly shot
17 Coronel 15 times. The shots hit Coronel’s front and back, resulting in his death. (*Id.*)

18 Following her son’s death, Aguilar asserts that South Gate police covered up
19 the shooting and failed to discipline the officers involved. (FAC ¶ 12.) She alleges
20 “this incident is representative of police officers who were not adequately prepared
21 nor trained to deal with this situation particularly involving an acutely distressed
22 person with clear mental health and or intoxication issues, including a possible threat
23 of self injury or suicide.” (FAC ¶ 13.) Further, she contends that the officers’ use of
24 force was unjustified, unreasonable, and excessive. (FAC ¶ 15.)

25 Aguilar, as the mother and sole heir of Coronel, filed a Complaint in Los
26 Angeles Superior Court against the City of South Gate on November 5, 2012. (ECF
27 No. 1, Ex. A.) The City removed the case to this Court on federal-question grounds.
28 (*Id.*) On May 10, 2013, Aguilar filed a First Amended Complaint, adding Officers

1 Edward Bolar, Marcelo Bedetti, Sandra Dahlia, David Scott, and Robert Tait to the
2 list of defendants. (ECF No. 28.) On May 29, 2013, Scott, Tait, and Dahlia each filed
3 Motions to Dismiss under Rule 12(b)(6). (ECF Nos. 39, 40, 41.) The Court now
4 decides these Motions together.

5 II. LEGAL STANDARD

6 Dismissal under Rule 12(b)(6) can be based on “the lack of a cognizable legal
7 theory” or “the absence of sufficient facts alleged under a cognizable legal theory.”
8 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint
9 need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short
10 and plain statement—to survive a motion to dismiss for failure to state a claim under
11 Rule 12(b)(6). *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003); Fed. R. Civ. P.
12 8(a)(2). For a complaint to sufficiently state a claim, its “[f]actual allegations must be
13 enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v.*
14 *Twombly*, 550 U.S. 544, 555 (2007). While specific facts are not necessary so long as
15 the complaint gives the defendant fair notice of the claim and the grounds upon which
16 the claim rests, a complaint must nevertheless “contain sufficient factual matter,
17 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
18 *Iqbal*, 556 U.S. 662, 678 (2009).

19 *Iqbal’s* plausibility standard “asks for more than a sheer possibility that a
20 defendant has acted unlawfully,” but does not go so far as to impose a “probability
21 requirement.” *Id.* Rule 8 demands more than a complaint that is merely consistent
22 with a defendant’s liability—labels and conclusions, or formulaic recitals of the
23 elements of a cause of action do not suffice. *Id.* Instead, the complaint must allege
24 sufficient underlying facts to provide fair notice and enable the defendant to defend
25 itself effectively. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The
26 determination whether a complaint satisfies the plausibility standard is a “context-
27 specific task that requires the reviewing court to draw on its judicial experience and
28 common sense.” *Iqbal*, 556 U.S. at 679.

1 Although police officers in California have a duty to use reasonable care in
2 employing deadly force, *Grudt v. City of L.A.*, 2 Cal.3d 575, 587–88 (1970), it’s
3 unclear whether this duty also applies to tactics *preceding* the use of deadly force,
4 particularly when conducting a welfare check on a suicidal person. In a case currently
5 pending before the Ninth Circuit the Ninth Circuit recently certified the following
6 question to California Supreme Court: “Whether under California negligence law,
7 sheriff’s deputies owe a duty of care to a suicidal person when preparing,
8 approaching, and performing a welfare check on him.” *Hayes v. County of San Diego*,
9 658 F.3d 867, 869 (9th Cir. 2011). Upon granting the Ninth Circuit’s request, the
10 California Supreme Court restated the question as follows: “Whether under California
11 negligence law, liability can arise from tactical conduct and decisions employed by
12 law enforcement preceding the use of deadly force.” California Courts, Appellate
13 Courts Case Information, *Hayes v. Cnty. of San Diego*, Case No. S193997, available
14 at [http://www.appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_](http://www.appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1982541&doc_no=S193997)
15 [id=1982541&doc_no=S193997](http://www.appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1982541&doc_no=S193997) (last visited Aug. 5, 2013). This question is currently
16 pending before the California Supreme Court, which is expected to issue a decision
17 soon. *Id.*

18 The California Supreme Court’s upcoming decision will necessarily apply to
19 this case. Although Officers Scott, Tait, and Dahlia did not fire the lethal bullets, they
20 each participated in the tactical conduct and decisions leading up to the shooting.
21 Depending on the California Supreme Court’s ruling, the officers’ pre-shooting
22 conduct might form the basis of liability for Coronel’s wrongful death. The Court
23 therefore deems it appropriate to allow Aguilar’s wrongful-death claim to stand for the
24 time being. Defendants Scott, Tait, and Dahlia’s Motions to Dismiss Plaintiff’s
25 wrongful-death claim are therefore **DENIED**.

26 **B. Negligence**

27 Officer Scott moves to dismiss Aguilar’s negligence claim on the grounds that
28 it is vague and conclusory. (Scott Mot. 6–7.)

1 Aguilar has pled that each of the officers, including Officer Scott, did not use
2 reasonable care in their response to Coronel’s distress call. (FAC ¶¶ 29–30.) In
3 support, Aguilar cites the officers’ refusal to allow family members to talk to Coronel,
4 their pursuit, and their decision to corner Coronel. (*Id.* ¶ 29.) Aguilar’s FAC supports
5 the reasonable inference that Officer Scott participated in or directed these actions.
6 But these actions occurred prior to the actual shooting. As discussed above, whether
7 officers can be held liable for conduct preceding their use of deadly force is a question
8 pending before the California Supreme Court. Therefore, for the reasons discussed
9 above, the Court deems it appropriate to allow Aguilar’s negligence claim to stand for
10 the time being. Defendant Scott’s Motion to Dismiss Plaintiff’s negligence claim is
11 therefore **DENIED**.

12 **C. Assault and Battery**

13 Officer Scott argues Aguilar’s Complaint does not plead sufficient facts to show
14 Scott assaulted or battered Coronel. (Scott Mot. 8.) Specifically, Scott argues the
15 Complaint fails to allege that Scott used or attempted to use any force at all. (*Id.* at 9.)
16 Scott also argues that even if he had attempted or threatened to use force, such action
17 would have been reasonable. (*Id.* at 8.)

18 Under California law, “[a]n assault is an incipient or inchoate battery; a battery
19 is a consummated assault.” *People v. Colantuono*, 7 Cal. 4th 206, 216 (1994). Here,
20 the FAC clearly illustrates the attempted and actual uses of force against Coronel:
21 Officer Tait fired his Taser, Officer Dahlia fired her beanbag shotgun, and Officers
22 Bedetti and Bolar fired their sidearms. But the FAC is not clear how Officer Scott
23 used or attempted to use force against Coronel.

24 Nevertheless, Aguilar argues in her Opposition that Scott can be liable for
25 assault and battery because his actions constituted “aiding and abetting.” (Opp’n to
26 Scott’s Mot. 14.) All “who aid, abet, counsel or encourage [a principal actor or actual
27 assailant] are equally liable with him to the injured party.” *Turner v. Whittel*, 2 Cal.

28 ///

1 App. 2d 585, 589 (1934). But despite the contentions in her Opposition, Aguilar’s
2 FAC itself does not allege this purported “aiding and abetting” claim. The Court
3 therefore **DISMISSES** Aguilar’s assault-and-battery claim as alleged against Scott,
4 but does so without prejudice.

5 **D. Tom Bane Civil Rights Act**

6 Officer Scott moves to dismiss Aguilar’s claim for violation of the Tom Bane
7 Civil Rights Act. The Bane Act is an anti-hate-crime statute providing that “a person
8 may bring a cause of action ‘in his own name and on his or her own behalf’ against
9 anyone who ‘interferes by threats, intimidation or coercion, with the exercise or
10 enjoyment’ of any constitutional or statutory right.” *Bay Area Rapid Transit Dist. v.*
11 *Superior Court*, 38 Cal. App. 4th 141, 144 (1995) (citing Cal. Civ. Code § 52.1).
12 Aguilar’s Bane Act claim alleges Defendants interfered with Coronel’s rights and
13 thereby deprived Plaintiff of “love, society, comfort, companionship, affection,
14 service and support of decedent in an amount to be proven at trial.” (FAC ¶ 43.)

15 Scott argues, as the City did in its earlier motion to dismiss, that Aguilar’s Bane
16 Act claim must necessarily fail because it does not specify how Scott used improper
17 means (threats, intimidation, or coercion) to interfere with Coronel’s rights. The
18 Court need not reach the merits of Scott’s argument because Aguilar’s Bane Act claim
19 is already ruinously flawed.

20 The court in *Bay Area Rapid Transit* refused to recognize derivative Bane Act
21 liability where parents sued police officers who killed their son. *Bay Area Rapid*
22 *Transit*, 38 Cal. App. 4th at 144. The court held “[t]he Bane Act is simply not a
23 wrongful death provision. It clearly provides for a *personal* cause of action for the
24 victim of a hate crime.” *Id.* As such, the Bane Act provides no derivative cause of
25 action for parents of a hate-crime victim. *Id.*

26 Some courts, however, have made distinctions between a derivative wrongful-
27 death cause of action and a survival cause of action. Unlike a derivative wrongful-
28 death claim, a survival claim is one that belonged to the decedent before death and

1 survives by statute in the decedent’s personal representative. *Medrano v. Kern Cnty.*
2 *Sheriff’s Officer*, No. 1:12-CV-00564AWIJLT, 2013 WL 433119, at *4 (E.D. Cal.,
3 Feb. 1, 2013) (citations omitted) (ruling decedent’s parents’ Bane Act claim to be
4 survival cause of action where it was brought on decedent’s behalf, but finding parents
5 lack standing to bring the claim on their own behalf); *see also Dela Torre v. City of*
6 *Salinas*, No. C-09-00626RMW, 2010 WL 3743762, at *6–7 (N.D. Cal., Sept. 17,
7 2010) (Bane Act claim is a survival cause of action where asserted in decedent’s name
8 and on her behalf).

9 Here, Aguilar seeks damages under the Bane Act only for loss of
10 companionship and support of her son. Thus, even though Aguilar alleges Defendants
11 violated Coronel’s constitutional and statutory rights, she does not bring the claim in
12 his name or on his behalf; instead, she seeks damages for *herself*. As pleaded,
13 Aguilar’s claim is therefore in the nature of a wrongful-death claim, and consequently
14 must be dismissed. Scott’s Motion to Dismiss Aguilar’s Bane Act claim is
15 **GRANTED**. Further, while no party—including the County—specifically raised this
16 issue here or in the earlier motion to dismiss, the Court’s reasoning applies to the
17 entire claim as it is alleged against all Defendants. Aguilar’s Bane Act claim is
18 therefore **DISMISSED WITHOUT PREJUDICE** in its entirety.

19 **E. § 1983 Liability**

20 The FAC alleges that each Defendant violated Aguilar and Coronel’s Fourth, Eighth,
21 and Fourteenth Amendment rights, in violation of 42 U.S.C. § 1983. (FAC ¶¶ 47–51.)
22 Defendants Officers Scott and Tait move to dismiss those claims, but focus entirely on
23 “unreasonable force”—words that do not even appear in the FAC. (Scott Mot. 11–13;
24 Tait Mot. 5–8.) Not only has Aguilar pled sufficient facts to demonstrate Defendants
25 used excessive force, *Graham v. Connor*, 490 U.S. 386 (1989), she has also
26 established that Officers Scott and Tait were integral participants in the violation of
27 Coronel’s constitutional rights. *Boyd v. Benton Cnty.*, 374 F.3d 773, 780 (9th Cir.
28 2004).

1 To state a § 1983 claim, a plaintiff must allege (1) the violation of a rights
2 secured by the Constitution and laws of the United States and (2) the person who
3 committed the alleged deprivation was acting under color of state law. *West v. Atkins*,
4 487 U.S. 42, 48 (1988). Both moving officers concede that the FAC establishes that
5 they were acting under color of state law, so the Court turns to the alleged
6 constitutional violation. (Scott Mot. 12, Tait Mot. 6.)

7 A state actor deprives another of a constitutional right, “within the meaning of
8 §1983, if he does an affirmative act, participates in another’s affirmative acts, or omits
9 to perform an act which he is legally required to do that causes the deprivation of
10 which complaint is made.” *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d
11 1175, 1183 (9th Cir. 2007) (internal quotation marks and citations omitted). Mere
12 bystanders will not be found to have caused injury, but actors who were “integral
13 participants” in the constitutional violation can be liable under § 1983. *Hopkins v.*
14 *Bonvicino*, 573 F.3d 752, 770 (9th Cir. 2009); *see Boyd*, 374 F.3d at 780.

15 An officer’s action does not need to rise to the level of a constitutional violation
16 to constitute integral participation. *Boyd*, 374 F.3d at 780. Instead, it requires
17 “fundamental involvement” in the conduct that allegedly caused the violation. *Id.*
18 Individual officers are fundamentally involved in the conduct of another officer when
19 they “provide some affirmative physical support at the scene of the alleged violation
20 and when they are aware of the plan to commit the alleged violation or have reason to
21 know of such a plan, but do not object.” *Monteilh v. Cnty. of L.A.*, 820 F. Supp. 2d
22 1081, 1089 (C.D. Cal. 2011).

23 Officers Scott and Tait assert that the FAC lacks the factual specificity required
24 to establish that they individually participated in any constitutional violation. (Scott
25 Mot. 13, Tait Mot. 8.) The FAC alleges that “the police” had weapons drawn and
26 demanded Coronel drop his knife; “Defendants” targeted him with the laser sight that
27 caused him to retreat to the courtyard, and then cornered and closed in around him.
28 (FAC ¶¶ 10–11.) All five officers were tightly positioned, facing him. (FAC ¶ 11.)

1 Officer Tait attempted to hit Coronel with a Taser and Officer Dahlia fired multiple
2 rounds with a bean-bag shotgun. (*Id.*) The FAC does not allege that Officer Scott
3 objected. (*Id.*) When Coronel supposedly lunged at the line of officers, Officers
4 Bedetti and Bolar killed him by shooting him 15 times in the front and back. (*Id.*)
5 Neither of the officers bringing the instant motion objected. (*Id.*)

6 Although neither Officer Scott nor Tait fired the shots that killed Coronel, the
7 FAC sufficiently alleges that both were “fundamentally involved” in the violation by
8 providing affirmative physical support at the scene. *Monteilh*, 820 F. Supp. 2d at
9 1089. First, the officers were not only armed, but had their weapons drawn. (FAC
10 ¶ 10.) They did not “simply remain outside,” *Jones v. Williams*, 297 F.3d 930, 939
11 (9th Cir. 2002), but actively followed, cornered, and closed in around Coronel. (FAC
12 ¶¶ 10–11.); *Boyd*, 374 F.3d at 780 (“[I]n *James ex rel. James v. Sadler*, 909 F.2d 834
13 (5th Cir.1990), cited with approval by *Chuman*, [76 F.3d 292 (9th Cir. 1996),] the
14 court held that officers who provided armed backup during an unconstitutional search
15 were ‘integral’ to that search, and were therefore participants rather than mere
16 bystanders.”) Officer Tait even went so far as attempting to hit him with a Taser.
17 (FAC ¶ 11.); see *Castaneda v. Douglas Cnty. Sherriff’s Investigator Rory Planeta*,
18 No. 1:12-CV-00428-LJO-SKO, 2007 WL 160816, at *7 (D. Nev. Jan. 17, 2007).
19 They were potentially integral participants, not simple bystanders.

20 The moving officers rely heavily on the fact that they are not individually or
21 specifically alleged to have “wronged” Coronel. (Tait Mot. 8, Scott Mot. 12.)
22 Though the FAC does not always name which officer committed each specific act
23 during the incident—instead often referring to all of officers as “Defendants” or the
24 “police”—such specificity is not required at this stage. *Sanchez v. City of Fresno*, No.
25 1:12-CV-00428-LJO-SKO, 2013 WL 2100560, at *7 (E.D. Cal. May, 14 2013); see
26 *Starr*, 652 F.3d at 1217; *Gallagher v. City of Winlock*, Wash., 287 F. App’x 568, 577
27 (9th Cir. 2008) (“Without deposing the defendants, the plaintiffs have not had a fair
28 opportunity to sort out the roles of the various officers.”).

1 For the foregoing reasons, Officers Scott and Tait's Motions to Dismiss the
2 §1983 claim is **DENIED**.

3 **IV. CONCLUSION**

4 For the reasons discussed above, the Court **GRANTS** Defendant Scott's motion
5 to dismiss Aguilar's claim for assault and battery, which is dismissed with leave to
6 amend as to Defendant Scott only. The Court also **GRANTS** Scott's motion as to
7 Aguilar's Bane Act claim, which is dismissed with leave to amend against all
8 Defendants (including the City of South Gate), notwithstanding any Defendant's
9 failure to move to dismiss that claim. The Court **DENIES** Defendant Scott, Tait, and
10 Dahlia's motions to dismiss on all other grounds.

11 Aguilar may file a Second Amended Complaint no later than August 19, 2013,
12 to amend her Bane Act claim against all defendants and to amend her assault-and-
13 battery claim against Defendant Scott. Aguilar is not permitted leave to amend any
14 other claim.

15 In light of the Court's ruling on these motions to dismiss and the now-altered
16 state of the pleadings, Defendants' pending motion for summary judgment (ECF
17 No. 56) is hereby **DENIED WITHOUT PREJUDICE**. Defendants may renew their
18 motion any time before the dispositive-motion cut-off date established below.

19 Finally, because the Court grants Aguilar leave to amend while discovery is
20 ongoing, the Court amends the case-management schedule in this matter as follows:

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1	01/28/14	Trial at 9:00 a.m.
2	01/23/14	File Final Trial Exhibit Stipulation
3	01/17/14	Hearing on Motions in Limine at 2:30 p.m.
4	01/06/14	Final Pretrial Conference at 2:30 p.m.
5		Motions in Limine to be Filed
6		Proposed Voir Dire Questions & Agreed-to Statement of Case
7	12/30/13	Lodge Pretrial Conference Order & Pretrial Exhibit Stipulation
8		File Trial briefs
9		File Contentions of Fact & Law
10		Exhibit & Witness Lists
11		File Status Report Regarding Settlement
12		File Agreed Upon Set of Instructions & Verdict Forms
13		File Joint Statement Regarding Disputed Instructions, Verdicts, etc...
14		
15	12/09/13	Last Day for Hearing Motions
16	11/04/13	Last Date to Conduct <i>Mandatory</i> Settlement Conference
17	10/28/13	Discovery Cut-Off for <i>All</i> Discovery
18	06/24/13	Last Date to Amend Pleadings or Add Parties (Expired)

19
20
21 **IT IS SO ORDERED.**

22
23 August 7, 2013

24
25 
26 _____
27 **OTIS D. WRIGHT, II**
28 **UNITED STATES DISTRICT JUDGE**