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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

J.P., a minor by her guardian ad litem)	1:09-CV-1538 AWI DLB
RICARDO BALDERAS, et al.,)	
)	
Plaintiffs,)	ORDER ON DEFENDANTS’
v.)	MOTION FOR SUMMARY
)	JUDGMENT
CITY OF PORTERVILLE, et al.,)	
)	(Doc. No. 37)
Defendants.)	

This civil rights lawsuit arises from a fatal shooting involving members of the City of Porterville Police Department and decedent Eusebio Prieto (“Prieto”). Natalie Prieto and minors J.P., R.B, and S.B., who are all relatives of Prieto, filed suit in this Court against the City of Porterville (“the City”), Sergeant John Hall (“Hall”), Sergeant Jeff Dowling (“Dowling”), Sergeant Larry Rodriguez, and Chief Chuck McMillan. The active complaint is the Second Amended Complaint (“SAC”). Plaintiffs allege state law claims for negligence and battery, and claims under 42 U.S.C. § 1983 for violation of the Fourth Amendment (excessive force) and Fourteenth Amendment (familial relationship) and *Monell* liability. Defendants now move for summary judgment. For the reasons that follow, Defendants’ motion will be granted, and the Clerk will be directed to close this case.

1 **FACTUAL BACKGROUND**¹

2 On July 24, 2008, sometime in the late morning, Prieto drove his vehicle at an estimated
3 80 m.p.h. directly towards on-coming traffic.² DUMF 1; SAC ¶ 17. Prieto was driving towards
4 City police officer Kris Contreras (“Contreras”). See Contreras Depo. 18:7-8. Contreras was in
5 an unmarked police vehicle that had lights and a siren. See Contreras Depo. 16:7-16. Prieto
6 swerved his car, causing it to hit the curb where it sustained damage, including two popped tires.
7 See id. at 19:20-25. Contreras turned his lights and siren on, turned his car around, and followed
8 Prieto’s vehicle. See id. at 21:5-15. Contreras got on the radio and broadcasted that a vehicle
9 had almost hit him head-on and was traveling eastbound in a westbound lane at a high rate of
10 speed. See id. at 20:5-18. Hall heard Contreras on the radio, and recalled that Contreras said that
11 he was in pursuit and attempting to stop a car that had “tried to take him head-on.” See Hall
12 Depo. 15:6-10. Prieto’s vehicle came to a stop about a half mile after passing Contreras due to
13 what Contreras perceived to be mechanical failure. See Contreras Depo. 19:19-25. Prieto’s
14 vehicle was near a Foster Farm’s plant.

15 Contreras drew his gun and ordered Prieto to exit the vehicle. See id. at 25:24-26:14.
16 Prieto armed himself with a screwdriver and exited his vehicle. See DUMF 2. Ignoring
17 commands to “stop” and to “drop your weapon,” Prieto lunged or “jabbed forward” at Contreras
18 with the screwdriver. See DUMF 3; Padilla Depo. 24:6-14. Contreras backed away from Prieto.
19 See DUMF 4. Ignoring commands, Prieto yelled “shoot me, kill me.” See DUMF 5. Eventually
20 Prieto ran from Contreras towards civilians and the Foster Farms parking lot, and other police
21 officers began to arrive with their sirens on. See Padilla Depo. 28:14-29:11. Contreras opined
22 that Prieto could not move very fast, in part because Prieto was heavy set, and characterized
23 Prieto’s top speed as “barely moving” because of Prieto’s size. See PAMF’s 49-50.

24
25 _____
26 ¹“DUMF” is “Defendants’ Undisputed Material Fact,” and “PAMF” is “Plaintiffs’ Additional Material
27 Fact.” Also, there are numerous objections made to the proposed facts. Unless otherwise explained in more detail, a
28 citation to evidence or a DUMF or a PAMF indicates that any objections made thereto are overruled.

²The parties do not provide a precise time frame for the shooting. However, Hall testified that the
transaction occurred during “business hours,” and Foster Farms employee Claudia Ramos testified that the events
occurred close to lunch time. See Hall Depo. 79:15-16; Ramos Depo. 37:4-8.

1 Contreras informed Hall and Dowling (who had arrived) that Prieto had charged or “come
2 at” him with a screwdriver. See DUMF 7; Contreras Depo. 42:25-43:4. Hall, Dowling, and
3 Contreras pursued Prieto on foot. PAMF 24. The officers followed Prieto into the Foster Farms
4 parking lot, and Contreras radioed dispatch to contact Foster Farms and tell them to “lock down.”
5 See Contreras Depo. 44:17-25. All three officers had their guns drawn. PAMF 31. In the
6 parking lot, Prieto repeated to the officers, “you’re going to have to kill me or just shoot me,” and
7 then Prieto stabbed himself in the neck with the screwdriver. See Hall Depo. 32:7-33:3;
8 DUMF’s 8, 9. After seeing this behavior, Hall radioed dispatch to send an officer with a Taser
9 weapon. See PAMF 29; Hall Depo. 33:4-8.

10 Prieto and the officers continued walking through the parking lot and the officers were
11 telling him that they were the police, to stop, to drop the weapon, and not to move, but Prieto
12 kept going through the parking lot, stabbed himself in the neck “a couple more” times, and said
13 that the officers would have to shoot or kill him. See Hall Depo. 33:17-34:3. Prieto’s neck was
14 bleeding heavily. See PAMF 32. Hall believed that Prieto was acting like he was “crazy” or
15 under the influence of drugs, see Hall Depo. 49:7-11, and Dowling believed that Prieto’s
16 behavior may be due to the use of a stimulant like methamphetamine or cocaine.³ See Dowling
17 Depo. 10:13-19.

18 Prieto began walking down a sidewalk as the officers moved to a grassy area near Prieto.
19 See PAMF 35. The officers told Prieto to stop, that they were police officers, to don’t go any
20 further, and to drop the screwdriver. See Hall Depo. 36:8-11. However, Prieto did not comply
21 and continued to head towards the front of the Foster Farms building while stabbing himself and
22 saying that the officers were going to have to shoot him or kill him. See id. at 36:13-18. Hall
23 positioned himself between Prieto and the door of the Foster Farms building. See id. at 36:19-
24 37:7. Hall wanted to prevent Prieto from getting inside where employees would be, and he
25 wanted to try to change Prieto’s direction back to the parking lot. See id. & 56:12-22. At some
26 point, City police officers John Benas (“Benas”), Rick Carrillo (“Carrillo”), and Mark Lightfoot

27
28 ³Toxicology reports confirmed the presence of methamphetamine in Prieto’s system. See DUMF 11;
Hartman Depo. 87:20-89:23; cf. Boyd v. City & County of San Francisco, 576 F.3d 938, 944 (9th Cir. 2009).

1 (“Lightfoot”) arrived on the scene.

2 The officers continued to give commands to Prieto. See Hall Depo. 52:4-9 (“We were
3 giving him commands the entire time. . . . Commands were continuous pretty much from the
4 moment we got out of the car all the way up to the very end.”). It appeared to Carrillo that Prieto
5 was not “paying attention” to the officers and was in “sort of a daze.” See Carrillo Depo. 9:10-
6 14. Prieto advanced on Hall with the screwdriver raised. See Hall Depo. 49:4-14, 55:10-17;
7 Benas Depo. 33:4-34:12. Hall explained:

8 He starts to come towards me, and I don’t know if he’s coming towards me to
9 attack me with the screwdriver, or if he’s trying to go over the top of me to get . . .
10 inside and attack someone inside. He had already been plunging that screwdriver
11 in his neck. His mannerisms, he was acting like he was either under the influence
of drugs, he was acting crazy, and he’s obviously extremely dangerous, and he
starts to come forward to me, and at that point I felt like he was either going to kill
me, or get inside and kill somebody in there. So, I fired.

12 Hall Depo. 49:4-14. At the time that Prieto turned towards Hall, Lightfoot perceived that Prieto
13 posed a threat to Hall. See Lightfoot Depo. 15:7-11, 16:3-10. Hall was approximately 8 to 10
14 feet away from Prieto at the time Hall fired this shot.⁴ See DUMF 13. Although Prieto was not
15 running at Hall at the time of the shot, Prieto was advancing on Hall. See PAMF 47; Hall Depo.
16 54:16-55:17.⁵ The single shot caused Prieto to momentarily pause, hunch/slump over, and then
17 continue walking in another direction. See PAMF 61; Hall Depo. 53:3-8. Hall did not fire a
18 second shot because Prieto’s forward movement stopped, and Hall believed that Prieto was no
19 longer trying to get into the business and was no longer an immediate threat to Hall. See id. at

21 ⁴Relying on PAMF 54, Plaintiffs contend that Hall was about 2 feet in front of Dowling at the time of this
22 shot. PAMF 54 relies on a single excerpt from Dowling’s deposition. However, the Dowling deposition excerpt is
actually referring to different shots fired by Hall. See Dowling Depo. 26:1-28:25, 31:19-32:21.

23 ⁵Plaintiffs contend that at the time of this shot by Hall, Prieto never made any aggressive gestures towards
24 the officers. Plaintiffs rely exclusively on PAMF 38, which in turn is supported only by the deposition testimony of
25 William Linley, a Foster Farms employee. However, it is unclear when Linley actually began observing Prieto and
26 the officers. Linley testified that he was standing outside of the guard shack, he tried to close the gate, he was told to
27 get inside, and then he “did a 180” back to the guard shack where he went inside and locked the door. See Linley
28 Depo. 15:6-16:17. Prieto then went through the gate and passed the guard shack. See Linley Depo. 16:14-20, 17:8-
16. Critically, Linley testified that he did not see or hear gunshots at any time prior to Prieto reaching the gate/guard
shack. See id. at 16:21-17:7. This shot by Hall occurred before Prieto reached the gate/guard shack. Linley’s
testimony is insufficient to establish that he observed Prieto at the time Hall fired this shot because (1) it is not clear
that Linley’s testimony deals with the relevant time frame, (2) Linley “did a 180” back to the guard shack and away
from Prieto and the officers, and (3) Linley’s testimony affirmatively demonstrates that he neither saw nor heard
Hall’s gunshot. See Linley Depo. 15:6-17:16, 35:1-37:1. As to this shot by Hall, PAMF 38 is not established.

1 54:5-12. Both before and after Hall’s shot, Prieto was injuring himself with the screwdriver.

2 See PAMF 41.

3 Prieto continued walking and went through an opening in a gate that was next to a guard
4 shack. See PAMF’s 64, 65; Hall Depo. 75:6-15, 77:2-4; Linley Depo. 17:8-16. William Linley,
5 a Foster Farms employee, was inside the guard shack. See Linley Dep. 16:14-17. As Prieto
6 walked passed the guard shack, Prieto and Linley were face to face through the guard shack
7 window. See id. at 17:11-16. When Linley saw Prieto “face to face,” Linley felt “real fear.”
8 See id. Linley explained that he was afraid for Prieto and for anyone who came into contact with
9 Prieto because Prieto looked like someone who was not himself and “had a look of extreme
10 anger” or who was “out of his mind.” Id. at 18:6-14. Linley stated that the expression on
11 Prieto’s face indicated an intention of expressing anger in some fashion, and even if the intention
12 was not to hurt someone, Prieto looked like he could do so. See id. at 18:17-22. Nevertheless,
13 Prieto passed by the guard shack without attempting to open the door or window, and entered a
14 courtyard area. See PAMF’s 65-66.⁶

15 In the courtyard, Prieto passed several doors without trying to enter, including some that
16 had people standing behind them. See PAMF 71. Prieto stopped at a set of double doors, which
17 led to an employee break room.⁷ See Linley Depo. 24:4-8. At that time of day, there could have
18 been as many as 50 employees in the break room, and the doors were unlocked. See id. at 15:19-
19 16:8, 23:14-16; Ramos Depo. 36:10-12. Contreras testified that, by the time Prieto reached the
20 double door area, Prieto looked tired, “[a]mong a lot of other things.” See Contreras Depo. 67:1-
21 3. Also, around the time that Prieto entered the courtyard, officer Robert Craig arrived on the
22 scene and joined the other officers. See PAMF 70. Craig arrived with a bean bag shotgun
23 because he knew that a request for less lethal options had been made when he heard the request

24 _____
25 ⁶It was Benas’s “belief” that Prieto went this way because it was the only direction in which officers were
not impeding his travel. See Benas Depo. 36:16-25.

26 ⁷There was actually a second set of double doors beyond the first set where Prieto was. See PAMF 80. The
27 first double door had light tint and led to the break room. See id. at 24:4-8. Prieto was at the first set of double
doors with the light tint. See Linley Depo. 24:4-8. The doors open both inward and outward. See id. at 20:11-13.
28 Nearby was another set of double doors that had a heavier tint, and that led to the reception and executive offices
area. See id. at 23:19-24:17.

1 for a Taser over the radio. See PAMF 68.

2 In the Foster Farms reception area, receptionist Claudia Ramos heard someone yell “lock
3 the doors,” and she looked out the window towards the courtyard and saw a man enter the
4 courtyard through the gate while being pursued by other men with guns. See Ramos Depo.
5 10:10-16, 12:3-13:25. Ramos later recognized Prieto as a former Foster Farms employee. See
6 id. at 14:12-16. Ramos held the doors closed with the help of other employees, including Marty
7 Weakley. See Ramos Depo. 33:16-24; Weakley Depo. 21:16-25. Weakley heard Prieto ignore
8 multiple commands to stop, and was holding the door shut because, in his words, there were
9 women in the reception area. See Weakley Depo. 21:16-23:12. Ramos testified that she kept
10 holding the doors shut, even when she knew it was Prieto, because of the way Prieto looked and
11 because of the officers’ pursuit. See Ramos Depo. 34:1-35:24. Ramos and Weakley saw Prieto
12 make his way to the double doors of the break room. See Ramos Depo. 14:17-15:7; Weakley
13 Depo. 20:23-21:2. Weakley thought that Prieto was staggering and did not look coherent.
14 See Weakley Depo. 19:25-20:4, 21:10-12. Ramos testified that Prieto did not look angry, but
15 looked unstable and had an expression that she had never seen before.⁸ See Ramos Depo. 33:3-
16 15. Ramos testified that they held the door shut, even when they recognized Prieto, because it
17 was possible that Prieto would come to them and it looked “like [Prieto] was going to do
18 something.” Id. at 34:1-18. Ramos was afraid of Prieto. See id. at 34:19-20.

19 At the double doors, the officers surrounded Prieto in a semi-circle. See Lightfoot Depo.
20 19:2-9. Hall, Benas, and Contreras could see people behind the double doors, but Craig,
21 Dowling, and Carrillo did not see anyone through the tint of the double doors.⁹ See Benas Depo.
22 42:4-44:8; Carrillo Depo. 18:23-19:1; Contreras Depo. 65:5-66:25; Craig Depo. 46:16-21;
23 Dowling Depo. 29:22-30:3; Hall Depo. 77:1-17. However, Carrillo testified that in the course of
24 the investigation, it was determined that there were employees behind the double doors in the
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26 ⁸Ramos was familiar with Prieto from his time at Foster Farms. Ramos testified that she had seen Prieto
27 angry on prior occasions, and that Prieto did not have that angry look on his face. See Ramos Depo. 31:17-33:15.

28 ⁹Additionally, Ramos (from the reception area) and Linley (from the guard shack) could not see if there
were employees in the break room. See Linley Depo. 24:24-25:2; Ramos Depo. 22:16-20.

1 break room. See Carrillo Depo. 18:18-22. Hall testified that he had concerns about Prieto
2 getting inside the double doors. See Hall Depo. 79:21-80:8. Hall explained: “Again, concern
3 being if he gets inside. I know there’s got to be people inside, and concern being if he gets inside
4 he’s going to hurt somebody or kill somebody, and we can’t let him get inside based on
5 everything he’s been doing at that point.” Id. at 80:4-8. The officers gave Prieto commands,
6 including to stop, to drop the screwdriver, and to not to go inside. See id. at 80:3-4; Contreras
7 91:10-18; Maniss Depo. 17:12-18. Linley testified that he heard an officer yell, “Stop. Don’t go
8 in there. We’ll shoot. Don’t go in there.” DUMF 16. However, neither Hall, Dowling,
9 Contreras, nor Carrillo recall saying or hearing a warning that shots would be fired.¹⁰ See
10 Carrillo Depo. 15:5-8; Contreras 92:3-9; Dowling Depo. 31:1-15; Hall Depo. 82:19-25. Prieto
11 ignored the commands. See Hall Depo. 80:10.

12 Ramos (who was in the reception area) testified that Prieto did not get close enough to
13 open the double doors, but Prieto was reaching for the door. See Ramos Depo. 22:8-15.
14 However, other witnesses, such as Weakley (who was also in the reception area) and Carrillo
15 testified that Prieto reached for the door handle, and the door jiggled or rattled, but did not open.
16 See PAMF 93; see also Benas Depo. 48:8-18 (Prieto touched and moved the door); Contreras
17 Depo. 85:22-86:4 (Prieto touched and moved the door); Craig Depo. 29:9-19 (Prieto touched and
18 moved the door); Hall Depo. 80:9-13 (Prieto started to pull the doors open); Linley Depo. 19:25-
19 20:7 (Prieto grabbed the handle, but cannot recall if the door ever opened).

20 When Prieto was near the door and began reaching for the handle, Craig and other
21 officers came up behind Prieto, and Craig announced, “bean bag, bean bag, bean bag.” See Craig
22 Depo. 28:1-8. Prieto was just over an arm’s reach from the door handle. See id. Yelling “bean
23 bag” communicated to other officers that Craig was about to discharge his bean bag shotgun.
24 See PAMF 82. Lightfoot (who was a few feet away from Dowling) and Benas heard Craig yell
25 “bean bag,” and Benas also began to yell “bean bag.” See PAMF’s 85, 86. The officers around
26 Craig made a subtle movement and provided Craig with a clear line of site to Prieto. See Craig

27
28 ¹⁰Dowling told another officer that he would shoot if Prieto went through the double doors. See PAMF
124.

1 Depo. 28:25-29:8. However, Hall and Dowling did not hear anyone yell “bean bag,” and
2 Contreras has no recollection of hearing anyone yell “bean bag.” See Contreras Depo. 86:25-
3 87:2; Dowling Depo. 27:2-4; Hall Depo. 73:8-12. Also, about at this time, officer Joshua Maniss
4 and his K-9 unit arrived and took a position about 7 to 8 feet from Prieto. See Maniss Depo.
5 10:19-22.

6 According to Craig, once Prieto touched the door handle, Craig fired the bean bag
7 shotgun. See Craig 28:5-17.¹¹ Craig fired four bean bag rounds in quick succession from a
8 distance of about 10 feet, and hit Prieto three times.¹² See PAMF 98; Craig Depo. 39:10-16.
9 Craig believed that the second shot caused Prieto to turn around, and Craig continued to fire until
10 he believed that Prieto had given up. See Craig Depo. 39:10-40:21. Also at the time that Hall
11 saw Prieto touching the door handle, Hall testified that he fired his gun at Prieto between 4 and 5
12 times in order to prevent Prieto from entering the break room. See Hall Depo. 79:24-80:18. Hall
13 fired in rapid succession. See Hall Depo. 92:7-9. Dowling was 2 to 3 feet from Hall when Hall
14 fired. See PAMF 121. Dowling got in position and fired one shot after Hall had fired multiple
15 shots. See PAMF 117; Dowling Depo. 23:17-20. Dowling testified that he believed that Prieto
16 would be a danger to anyone in the building. See id. at 23:9-23. Dowling saw Hall firing and
17 did not think that Hall’s shots were having an effect on Prieto. See Dowling Depo. 23:9-23,
18 25:10-16. By the time Dowling fired, Prieto was starting to fall down, so Dowling did not
19 believe that there was a need to fire more than the one shot. See id. at 23:19-23. Contreras
20 testified that there were numerous shots fired and that he could not say when exactly Prieto went
21 down, but Prieto did drop down sometime during the gun shots. See Contreras Depo. 103:13-23;
22 PAMF 116. Craig testified that Prieto slumped down after Craig had fired his last shot, that is
23 the fourth bean bag round. See Craig Depo. 41:12-15. Craig testified that Prieto did not drop
24 quickly, but instead started to slump down. See id. at 42:4-11. Prieto died as a result of multiple

26 ¹¹Craig indicated that he began yelling “bean bag” when Prieto was at an arm’s distance from the double
27 doors’s handle. See Craig Depo. 28:5-17. By the time Craig finished yelling, Prieto had moved the “arm’s distance”
and was touching the handle. See id.

28 ¹²The bean bag projectile is a nylon rectangular sack containing gel beads and is considered nonlethal.
PAMF 100.

1 gun shot wounds.¹³ PAMF 136.

2 The precise sequence of the shots is unknown. The sound of the bean bag shotgun is
3 much louder and much more distinct than a handgun. PAMF 113. While Craig was firing the
4 bean bag shotgun, he did not hear other shots being fired, and did not hear shots in the courtyard
5 prior to his firing the bean bag shotgun. See Craig Depo. 33:12-22, 43:12-15. Contreras has no
6 understanding of whether the handguns or the bean bag shotgun was fired first. See Contreras
7 85:1-4. In fact, Contreras testified that he did not know that Craig had fired the bean bag shotgun
8 until after the incident. See id. at 80:21-81:4.¹⁴ As part of the internal investigation of the
9 incident, Benas indicated that the shotgun was fired “momentarily” before the handguns. See
10 Benas Depo. 51:19-22. Benas testified that the shots from the shotgun and the shots from the
11 handguns were “very close” and “almost simultaneous.” Id. at 50:21-51:2. Benas could not
12 distinguish between the shotgun and the handguns because there were multiple shots being fired
13 at the time. See id. at 52:1-7. Lightfoot testified that he could not recall whether Craig fired
14 first, whether Hall and Dowling fired first, or whether the shots were fired simultaneously. See
15 Lightfoot Depo. 22:23-23:2. Dowling believed that he heard another weapon, other than his and
16 Hall’s respective handguns, being discharged during the handgun shots. See Dowling Depo.

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18 ¹³There were a total of six gunshot wounds to Prieto’s body. See PAMF 138. Additionally, the wounds on
19 Prieto’s neck were consistent with a screwdriver and were described as “superficial,” with the deepest being 3/4”
20 deep. See PAMF 137; Hartman Depo. 72:4-73:1.

21 ¹⁴Plaintiff contends that Contreras told an investigator from the district attorney’s office that Craig fired the
22 bean bag rounds, and then there was a second volley fired by Hall and Dowling. See PAMF 112. This PAMF is
23 supported by a warrant affidavit that was made by an investigator. See Plaintiffs’ Ex. U. The affidavit states in part:
24 “Mr. Prieto attempted to open the door and make entry at which time less lethal munitions were deployed by [Craig].
25 Mr. Prieto attempted to get into the door again at which time [Hall] and [Dowling] fired their sidearms striking Mr.
26 Prieto.” Id. The affidavit does not attribute these specific sentences to Contreras. The investigator declared that he
27 took notes of what Contreras told him, and the notes were incorporated into the affidavit. See Plaintiffs’ Ex. J.
28 Contreras denies making such statements. See Contreras Depo. 80:3-8. Defendants object to PAMF 112 and the
evidence cited in support of it as being “triple hearsay.” The affidavit is problematic. It is clear that the investigator
was not a percipient witness. Rather, the investigator relies on notes he made about what Contreras purportedly told
him, and is incorporating those notes into the affidavit. See id. Plaintiffs are using the affidavit to try and establish
the order of the shots. However, there appears to be hearsay, and Plaintiffs have identified no exception. Further,
Contreras has denied that he told the investigator that bean bag shots were fired first and that handgun shots were
fired second. See Contreras Depo. 80:3-8. To the extent that Plaintiffs are using Exhibit U and what Contreras
allegedly told the investigator to establish the order of shots, Defendants’ hearsay objection will be sustained.
However, even if the Court were to consider Exhibit U, the relevant section of the affidavit does not state how much
time lapsed between the volleys, nor does the affidavit indicate at what point Prieto slumped down, nor does the
affidavit discuss the effects of the bean bag rounds.

1 27:5-11. Hall was unaware of the bean bag gun. See Hall Depo. 73:8-12. Hall did hear two
2 other discharges of weapons, but he could not tell if the discharges came from two other weapons
3 or one other weapon. See id. at 90:22-91:4. Carrillo did not specifically see anyone firing, and
4 he could not tell whether the shots that he had heard were from the handguns or the shotgun. See
5 Carrillo Depo. 16:6-11.

6 Foster Farms employee Marty Weakley testified that he heard two sequences of shots –
7 one volley was fired, which caused Prieto to turn, and a second volley was fired after Prieto tried
8 to get through the door a second time. See Weakley Depo. 27:4-31:4, 35:15-36:1. Weakley saw
9 the bean bags land on the ground during the first volley, and assumed that no handguns were
10 fired because Prieto seemed unaffected by that volley.¹⁵ See id. at 34:8-21. Weakley testified
11 that he did not see bean bags after the second volley, and after the second volley, Prieto slumped
12 over. See id. at 35:15-36:1. Weakley did not recall the lapse in time between the first and
13 second volley. See id. at 30:20-25. Similarly, Linley testified that he perceived two volleys, with
14 a “brief pause” of no more than ten seconds between the volleys. See Linley Depo. 20:14-21:18.
15 Linley could not tell which officers were firing, and that it seemed like they all fired. See id.
16 Linley explained that the officers fired both volleys at times when Prieto had either touched or
17 was reaching for the door. See id. at 20:3-7, 22:8-18. Linley did not know whether the shotgun
18 was fired, but did see handguns fired during the first and second volleys. See id. at 25:15-26:24.
19 Linley testified that it was not until the second volley that Prieto went down. See id. at 21:1-7.

20 At the time the shots were fired, Maniss had been in position with his K-9 unit for about 3
21 to 5 seconds. See Maniss Depo. 18:17-21, 20:4-10. Maniss’s dog was barking and focused on
22 Prieto. See PAMF 88. However, Maniss did not believe that deployment of the dog was
23 appropriate due to the close proximity of the other officers. See Maniss Depo. 15:17-16:1.

24 Additionally, at the time of the shots, Prieto was never able to open the double doors and
25

26 ¹⁵Plaintiffs’ PAMF 109 posits that the first volley of shots was all bean bag rounds. See PAMF 109.
27 Excerpts from Weakley’s deposition is the only evidence cited in support of PAMF 109. However, as stated above,
28 Weakley assumed that only bean bag rounds were fired during the first volley because the volley was ineffective, and
Weakley assumed that if live rounds had been fired, Prieto would have gone to the ground. See Weakley Depo.
27:24-28:7, 34:8-21. PAMF 109 is based on a lay assumption of how Prieto would likely react to the gunshots.
PAMF 109 has an insufficient basis and, as such, is not established.

1 never had any part of his body inside the double doors. See PAMF’s 96-97. Prieto never
2 acknowledged or responded to the officers’ commands. PAMF 128. Prieto never verbally
3 threatened anyone at the scene, and there was no information that Prieto had injured anyone other
4 than himself. See PAMF’s 130-131. Prieto did not make an aggressive move towards the
5 officers at the time of these shots. See PAMF 38; Footnote 5 *supra*. At the time shots were
6 fired, Prieto was holding the screwdriver in his hand, but was not doing anything with it. See
7 PAMF 94. Also at the time these shots were fired, Contreras believed that Prieto was a threat to
8 the people in the break room because Prieto “was already homicide [sic], suicidal, and he had
9 already been shot once, and he made no attempt to comply with our demands or surrender.”
10 Contreras Depo. 83:25-84:5. Similarly, Linley testified that he was thankful that the officers
11 fired because he “was very, very fearful that [Prieto] was going to make it inside the break
12 room,” and Linley was concerned for the employees who were inside. Linley Depo. 31:23-32:8.
13

14 SUMMARY JUDGMENT FRAMEWORK

15 Summary judgment is appropriate when it is demonstrated that there exists no genuine
16 issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.
17 Fed. R. Civ. P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Fortyone v.
18 American Multi-Cinema, Inc., 364 F.3d 1075, 1080 (9th Cir. 2004). The party seeking summary
19 judgment bears the initial burden of informing the court of the basis for its motion and of
20 identifying the portions of the declarations (if any), pleadings, and discovery that demonstrate an
21 absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986);
22 Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007). A fact is “material” if it
23 might affect the outcome of the suit under the governing law. See Anderson v. Liberty Lobby,
24 Inc., 477 U.S. 242, 248-49 (1986); United States v. Kapp, 564 F.3d 1103, 1114 (9th Cir. 2009).
25 A dispute is “genuine” as to a material fact if there is sufficient evidence for a reasonable jury to
26 return a verdict for the non-moving party. Anderson, 477 U.S. at 248; Freecycle Sunnyvale v.
27 Freecycle Network, 626 F.3d 509, 514 (9th Cir. 2010).

28 Where the moving party will have the burden of proof on an issue at trial, the movant

1 must affirmatively demonstrate that no reasonable trier of fact could find other than for the
2 movant. Soremekun, 509 F.3d at 984. Where the non-moving party will have the burden of
3 proof on an issue at trial, the movant may prevail by presenting evidence that negates an essential
4 element of the non-moving party’s claim or by merely pointing out that there is an absence of
5 evidence to support an essential element of the non-moving party’s claim. See James River Ins.
6 Co. v. Schenk, P.C., 519 F.3d 917, 925 (9th Cir. 2008); Soremekun, 509 F.3d at 984; Nissan Fire
7 & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1105-06 (9th Cir. 2000). If a moving party fails
8 to carry its burden of production, then “the non-moving party has no obligation to produce
9 anything, even if the non-moving party would have the ultimate burden of persuasion.” Nissan
10 Fire, 210 F.3d at 1102-03. If the moving party meets its initial burden, the burden then shifts to
11 the opposing party to establish that a genuine issue as to any material fact actually exists. See
12 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); Nissan Fire, 210
13 F.3d at 1103. The opposing party cannot “rest upon the mere allegations or denials of [its]
14 pleading’ but must instead produce evidence that ‘sets forth specific facts showing that there is a
15 genuine issue for trial.’” Estate of Tucker v. Interscope Records, 515 F.3d 1019, 1030 (9th Cir.
16 2008) (quoting Fed. R. Civ. Pro. 56(e)).

17 The opposing party’s evidence is to be believed, and all reasonable inferences that may be
18 drawn from the facts placed before the court must be drawn in favor of the opposing party. See
19 Anderson, 477 U.S. at 255; Matsushita, 475 U.S. at 587; Stegall v. Citadel Broad, Inc., 350 F.3d
20 1061, 1065 (9th Cir. 2003). Nevertheless, inferences are not drawn out of the air, and it is the
21 opposing party’s obligation to produce a factual predicate from which the inference may be
22 drawn. See Sanders v. City of Fresno, 551 F.Supp.2d 1149, 1163 (E.D. Cal. 2008); UMG
23 Recordings, Inc. v. Sinnott, 300 F.Supp.2d 993, 997 (E.D. Cal. 2004). “A genuine issue of
24 material fact does not spring into being simply because a litigant claims that one exists or
25 promises to produce admissible evidence at trial.” Del Carmen Guadalupe v. Agosto, 299 F.3d
26 15, 23 (1st Cir. 2002); see Galen v. County of Los Angeles, 477 F.3d 652, 658 (9th Cir. 2007);
27 Bryant v. Adventist Health System/West, 289 F.3d 1162, 1167 (9th Cir. 2002). Further, a
28 “motion for summary judgment may not be defeated . . . by evidence that is ‘merely colorable’ or

1 ‘is not significantly probative.’” Anderson, 477 U.S. at 249-50; Hardage v. CBS Broad. Inc., 427
2 F.3d 1177, 1183 (9th Cir. 2006). Additionally, the court has the discretion in appropriate
3 circumstances to consider materials that are not properly brought to its attention, but the court is
4 not required to examine the entire file for evidence establishing a genuine issue of material fact
5 where the evidence is not set forth in the opposing papers with adequate references. See
6 Simmons v. Navajo County, 609 F.3d 1011, 1017 (9th Cir. 2010); Gordon v. Virtumundo, Inc.,
7 573 F.3d 1040, 1058 (9th Cir. 2009); Southern Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885,
8 889 (9th Cir. 2003); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir.
9 2001). If the nonmoving party fails to produce evidence sufficient to create a genuine issue of
10 material fact, the moving party is entitled to summary judgment. Nissan Fire, 210 F.3d at 1103.

11 12 **DEFENDANTS’ MOTION**

13 **I. Fourth Amendment – Excessive Force**

14 Defendants’ Argument

15 Hall and Dowling argue that they used objectively reasonable force. Prieto had
16 endangered Contreras and other motorists and had lunged at Contreras with a screwdriver. Prieto
17 defied commands, and instead told officers to shoot him. Prieto stabbed himself multiple times
18 in the neck, and was under the influence of methamphetamine. Prieto advanced on Hall and the
19 entry to Foster Farms with a weapon in hand. Despite being shot one time, Prieto continued
20 going and advanced to a set of doors that lead to a break room and Foster Farms employees.
21 Prieto continued to disobey commands, and attempted to open the doors before being shot. It
22 was Prieto’s decisions, and no one else’s, that caused the use of force. Prieto had every
23 opportunity to stop and avoid the shooting, but he did not stop. Further, Foster Farms employees
24 were afraid, even when they realized Prieto was a former employee. While other force options
25 may have been available, the exigency of Prieto attempting to enter the break room where
26 employees were located outweighed trying to use other force options.

27 Plaintiffs’ Opposition

28 Plaintiffs argue that the facts are profoundly disputed. The evidence indicates that Prieto

1 did not pose an immediate threat of death or serious injury to Hall during the first shot or to any
2 third parties during the other shots. A jury could conclude Prieto was simply walking away from
3 the officers injuring himself with the screwdriver, and he never threatened or charged anyone at
4 the time of Hall's first shot. Likewise, a jury could conclude that the fatal gun shots by Dowling
5 and Hall were fired after Prieto had been incapacitated by several bean bag projectiles and he had
6 slumped to the ground. Potential threats to occupants of the break room is too speculative and
7 contradicted by the record.

8 In terms of specific factors and considerations, the force used was the greatest possible,
9 and thus requires the highest justification. Deadly force is not justified simply because a suspect
10 has a weapon, or because the officers desire to diffuse a situation quickly, or because the officers
11 merely state that they fear for their safety, or because a mentally disturbed individual is acting out
12 or acting suicidal. Here, there was no need for the gunshots. Prieto never lunged at anyone, he
13 was not about to stab someone, and he never posed an immediate threat to anyone in the
14 building. Further, when the final shots were fired, they came from 45 degrees above his mid and
15 upper back, after he had slumped to the ground.¹⁶ A reasonable jury could conclude that Prieto
16 never threatened anyone with the screwdriver but himself, and thus, it was not necessary to shoot
17 and kill Prieto. Additionally, the Ninth Circuit has advised that it is appropriate to consider
18 whether a warning was given before deadly force was used. Here, no warning was given, even
19 though it was practical to do so. Prieto was not about to open the door and stab anyone, and
20 Dowling had time to tell another officer that he would fire if Prieto went through the doors. A
21 warning was more important in this case because the officers were in plain clothes and they did
22 not identify themselves as police. Also, the officers had other force options available. Maniss
23 was on scene with his K-9 unit, and Craig deployed the bean bag. In fact, the evidence indicates
24 that the bean bag was gaining Prieto's compliance.

25 With respect to qualified immunity, the evidence demonstrates a Fourth Amendment
26

27 ¹⁶According to Dr. Hartman (who performed the autopsy), Prieto had six gun shot wounds. PAMF 138.
28 One wound was to the front abdomen with a horizontal trajectory. See PAMF's 143-145. One gunshot was at a 45
degree upward angle, and was the only shot that went from right to left. See PAMF's 140-141. The four remaining
wounds had a downward trajectory, with two having a 45 degree downward trajectory. See PAMF's 146-149.

1 violation. The evidence also shows that it would have been clear to a reasonable officer that it
2 was unconstitutional to shoot to kill a person who was suffering from a mental illness and
3 engaging in self-harming behavior with a screwdriver, but not threatening the officers with a
4 weapon. This is true of Hall’s first gun shot, as well as the subsequent gun shots.

5 Legal Standard

6 1. Excessive Force

7 All claims that law enforcement officers used excessive force, either deadly or non-
8 deadly, in the course of an arrest, investigatory stop, or other seizure of a citizen are to be
9 analyzed under the Fourth Amendment and its standard of objective reasonableness. See Scott v.
10 Harris, 550 U.S. 372, 381-83 (2007); Graham v. Connor, 490 U.S. 386, 395 (1989). Cases that
11 involve deadly force do not fit into their own separate category with their own set of “rigid pre-
12 conditions” that must be met, rather the key is whether the officer’s actions were reasonable.
13 See Scott, 550 U.S. at 382-83; Price v. Sery, 513 F.3d 962, 968 (9th Cir. 2008). The pertinent
14 question in excessive force cases is whether the use of force was “objectively reasonable in light
15 of the facts and circumstances confronting [the officers], without regard to their underlying intent
16 or motivation.” Graham, 490 U.S. at 397; Blankenhorn v. City of Orange, 485 F.3d 463, 477
17 (9th Cir. 2007). The objective inquiry into reasonableness is highly fact specific. See Scott, 550
18 U.S. at 383; Wilkinson v. Torres, 610 F.3d 546, 551 (9th Cir. 2010). “We first assess the
19 quantum of force used to arrest [the plaintiff]” and then “measure the governmental interests at
20 stake by evaluating a range of factors.” Davis v. City of Las Vegas, 478 F.3d 1048, 1054 (9th
21 Cir. 2007). Factors that are considered in assessing the government interests at stake include, but
22 are not limited to, “the severity of the crime at issue, whether the suspect poses an immediate
23 threat to the safety of the officers or others, and whether he is actively resisting arrest or
24 attempting to evade arrest by flight.” Graham, 490 U.S. at 396; Blankenhorn, 485 F.3d at 477;
25 Davis, 478 F.3d at 1054. Further, where it is or should be apparent that an individual is
26 emotionally or mentally unstable, that is a factor that must be considered in determining the
27 reasonableness of the force employed. See Drummund v. City of Anaheim, 343 F.3d 1052, 1058
28 (9th Cir. 2003). “In some cases . . . , the availability of alternative methods of capturing or

1 subduing a suspect may be a factor to consider.” Smith v. City of Hemet, 394 F.3d 689, 701 (9th
2 Cir. 2005). However, police officers “are not required to use the least intrusive degree of force
3 possible” as long as the force actually used was reasonable. Forrester v. City of San Diego, 25
4 F.3d 804, 807 (9th Cir. 1994); see Gregory v. County of Maui, 523 F.3d 1103, 1107 (9th Cir.
5 2008). That is, a reasonable use of force “encompasses a range of conduct, and the availability of
6 a less-intrusive alternative will not render conduct unreasonable.” Wilkinson, 610 F.3d at 551.
7 It may also be appropriate to consider the parties “‘relative culpability,’ i.e. which party created
8 the dangerous situation and which party is more innocent, may also be considered.” Espinosa v.
9 City & County of San Francisco, 598 F.3d 528, 537 (9th Cir. 2010); see Scott, 550 U.S. at 384.
10 Reasonableness “must be judged from the perspective of a reasonable officer on the scene, rather
11 than with the 20/20 vision of hindsight.” Graham, 490 U.S. at 396; Wilkinson, 610 F.3d at 550.
12 “The calculus of reasonableness must embody allowance for the fact that police officers are often
13 forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly
14 evolving – about the amount of force that is necessary in a particular situation.” Graham, 490
15 U.S. at 396-97; Wilkinson, 610 F.3d at 550. “Force is excessive when it is greater than is
16 reasonable under the circumstances.” Santos v. Gates, 287 F.3d 846, 854 (9th Cir. 2002).

17 2. Qualified Immunity

18 Qualified immunity protects “government officials . . . from liability for civil damages
19 insofar as their conduct does not violate clearly established statutory or constitutional rights of
20 which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982);
21 Phillips v. Hust, 477 F.3d 1070, 1079 (9th Cir. 2007); Brittain v. Hansen, 451 F.3d 982, 987 (9th
22 Cir. 2006). The “concern of the immunity inquiry is to acknowledge that reasonable mistakes
23 can be made,” and that it is “often difficult for an officer to determine how the relevant legal
24 doctrine will apply to the factual situation that he faces.” Estate of Ford v. Ramirez-Palmer, 301
25 F.3d 1043, 1049 (9th Cir. 2002).

26 A court employs a tiered analysis for determining qualified immunity. See Saucier v.
27 Katz, 533 U.S. 194, 200-02 (2001); Skoog v. County of Clackamas, 469 F.3d 1221, 1229 (9th
28 Cir. 2006); Brittain, 451 F.3d at 987. However, lower courts need not strictly follow the tiered

1 sequence in analyzing qualified immunity, but instead may dispose of the issue at step two
2 without addressing step one. Pearson v. Callahan, 129 S.Ct. 808, 821 (2009); Moss v. United
3 States Secret Service, 572 F.3d 962, 968 n.5 (9th Cir. 2009). Under the first step, the court
4 determines whether, “taken in the light most favorable to the party asserting the injury, do the
5 facts show the officer’s conduct violated a constitutional right?” Saucier, 533 U.S. at 201;
6 Phillips, 477 F.3d at 1079; Skoog, 469 F.3d at 1229. The first step is a question of fact. Dunn v.
7 Castro, 621 F.3d 1196, 1199 (9th Cir. 2010); Tortu v. Las Vegas Metro. Police Dep’t, 556 F.3d
8 1075, 1085 (9th Cir. 2009). If the answer is “no,” then the inquiry ends and the plaintiff cannot
9 prevail; if the answer is “yes,” the court continues the analysis. See Saucier, 533 U.S. at 201;
10 Blankenhorn v. City of Orange, 485 F.3d 463, 471 (9th Cir. 2007).

11 Under the second step, the court determines “whether the right was clearly established,”
12 and applies an “objective but fact-specific inquiry.” Inouye v. Kemna, 504 F.3d 705, 712 (9th
13 Cir. 2007); see Saucier, 533 U.S. at 202; Brittain, 451 F.3d at 988. The second step is a question
14 of law. See Dunn, 621 F.3d at 1199; Tortu, 556 F.3d at 1085. The critical question is whether
15 “the contours of the right were sufficiently clear that a reasonable official would understand that
16 what he is doing violates the right.” Saucier, 533 U.S. at 202; Phillips, 477 F.3d at 1079.
17 Whether a right is clearly established must be “undertaken in light of the specific context of the
18 case, not as a broad general proposition.” Saucier, 533 U.S. at 201; Skoog, 469 F.3d at 1229-30.
19 In making this determination, the court considers the state of the law at the time of the alleged
20 violation, but it is unnecessary for the precise conduct in question to have been previously held
21 unlawful. See Inouye, 504 F.3d at 712; Devereaux v. Perez, 218 F.3d 1045, 1052 (9th Cir.
22 2000). Further, the court considers the “information possessed” by the officer at the time of his
23 conduct. See Hunter v. Bryant, 502 U.S. 224, 227 (1991); Anderson v. Creighton, 483 U.S. 635,
24 641 (1987); Edgerly v. City & County of San Francisco, 495 F.3d 645, 654 (9th Cir. 2007). If
25 the officer could have reasonably, but mistakenly, believed that his conduct did not violate a
26 clearly established constitutional right, then the officer will receive qualified immunity. See
27 Saucier, 533 U.S. at 205-06; Skoog, 469 F.3d at 1229; Jackson v. City of Bremerton, 268 F.3d
28 646, 651 (9th Cir. 2001). As a wholly objective inquiry, see Brittain, 451 F.3d at 988, the

1 “‘subjective beliefs’ of the actual officer are . . . irrelevant.” Inouye, 504 F.3d at 712; see
2 Anderson, 483 U.S. at 641. Thus, qualified immunity applies “if ‘a reasonable officer could have
3 believed [the action] to be lawful, in light of clearly established law and the information the . . .
4 officer[] possessed.’” Lawrence v. United States, 340 F.3d 952, 956-57 (9th Cir. 2003); see also
5 Hunter, 502 U.S. at 227. Whether the law was “clearly established” and whether an officer could
6 have a reasonable, albeit mistaken, belief that his conduct was lawful are questions of law for the
7 court to decide on summary judgment when the pertinent material facts are undisputed. See
8 Franklin v. Fox, 312 F.3d 423, 437 (9th Cir. 2002); LaLonde v. County of Riverside, 204 F.3d
9 947, 953-954 (9th Cir. 2000); Act Up!/Portland v. Bagley, 988 F.2d 868, 873 (9th Cir. 1993).

10 Discussion

11 1. Fourth Amendment Violation

12 a. Hall’s First Shot

13 As indicated above, the Court must examine not only certain enumerated considerations,
14 but also any other pertinent consideration that is part of the totality of the circumstances.

15 First, the use of force identified by Plaintiffs is the first gun shot fired by Hall prior to
16 Prieto entering the courtyard. There is no dispute that this quantum of force is very significant.
17 It is in fact deadly force, although this shot did not kill Prieto.

18 Second, at the time Hall fired the shot, there was at least one felony involved. Based on
19 Prieto coming at Contreras with the screwdriver, California Penal Code § 245(d), assault with a
20 deadly weapon on a peace officer, was clearly involved.¹⁷ This is a significant and serious felony
21 that is inherently violent, and Hall was aware of the conduct. See DUMF 7; Hall Depo. 31:19-
22 23. Additionally, it would appear that the misdemeanors of willful resistance or obstruction
23 under Penal Code § 148(a)(1), and reckless driving under Vehicle Code § 23103, would be at
24 issue. Generally, misdemeanor offenses do not justify significant uses of force. See Bryan v.
25 McPherson, 630 F.3d 805, 828-29 (9th Cir. 2010). As a general proposition, reckless driving
26 and obstruction are not inherently violent. However, there are myriad ways of committing these

27
28 ¹⁷Although Contreras may have been in plain clothes, his car had lights and a siren and he utilized the light
and siren when he turned his car around and pursued Prieto. See Contreras Depo. 16:7-16, 21:5-15.

1 offenses. In this case, reckless driving was committed when Prieto was traveling the wrong
2 direction and towards on-coming traffic going around 80 m.p.h. The risk of serious injury due to
3 a high speed head-on collision from such conduct was high, and was a possibility faced directly
4 by Contreras. Hall was aware that Prieto had driven at Contreras “head on.” See Hall Depo.
5 15:6-10. As committed by Prieto, this was a significant offense. Further, Prieto refused to
6 follow the officers’ lawful commands to “stop” and to “drop” his weapon/screwdriver. Despite
7 this, Prieto kept walking and never dropped the screwdriver. This offense is more significant
8 than a typical obstruction case because the officers were attempting to disarm Prieto of the
9 weapon that he had used to come at Contreras. Accordingly, Prieto’s reckless driving and
10 obstruction provide a greater governmental interest than typical misdemeanors.

11 Third, in terms of the threat posed by Prieto, Hall testified that Prieto was not running at
12 him when he fired the shot, and Prieto was 8 to 10 feet away from Hall. See Hall Depo. 45:16-
13 55:17; DUMF 13. However, Hall was aware that Prieto had charged at Contreras with the
14 screwdriver. See DUMF 7; Contreras Depo. 42:25-43:4; Hall Depo. 31:19-23. Further, Hall
15 testified that Prieto’s body had twisted and it looked like he was about to charge Hall. See Hall
16 Depo. 49:4-14, 55:10-17. When Hall fired the shot, he did so because Prieto had advanced on
17 Hall with the screwdriver raised. See id.; Benas Depo. 32:25-34:12. Lightfoot confirmed that
18 Prieto had turned towards Hall. See Lightfoot Depo. 15:7-16:10. Prieto had stabbed himself in
19 the neck with the screwdriver. See Hall Depo. 49:4-14; Benas Depo. 32:25-34:12. Both Hall
20 and Lightfoot believed that Prieto posed a threat to Hall when Hall fired the shot. See Hall
21 Depo.49:4-14, 54:5-12; Lightfoot Depo. 16:3-10. Hall was positioned in front of an entrance that
22 led into the Foster Farms facility. See Hall Depo. 36:19-37:7. Hall believed that if Prieto got
23 through him and entered through the doors, Prieto would be a threat to those inside. See id.

24 Fourth, Prieto was either resisting or actively evading the officers. The officers were
25 giving continuous commands to Prieto to stop and to drop his weapon, yet Prieto never did so
26 and kept moving. See Hall Depo. 52:4-9. Prieto had refused to obey commands to stop from the
27 time that he exited his vehicle, to the time he ran to the Foster Farms facility, to the time of
28 Hall’s shot. See id.

1 Fifth, it does not appear that Hall warned Prieto that he would shoot if Prieto did not stop.
2 It is not clear how practical a warning would have been. Nevertheless, it is significant that Prieto
3 had ignored the constant warnings up until this point, and that Prieto had told the officers that
4 they would have to shoot him. See Hall Depo. 32:7-33:3, 52:4-9.

5 Sixth, Prieto appeared to be either “crazy” or under the influence of drugs. In fact, he was
6 under the influence of drugs. As just noted, Prieto told the officers that they would have to shoot
7 him, and after Prieto said that, he began stabbing himself in the neck with the screwdriver. See
8 Hall Depo. 32:7-33:3, 52:4-9. Prieto clearly was not in a normal frame of mind.

9 Seventh, it is unknown what alternative, less lethal means were available to Hall at this
10 time. While Hall radioed for a Taser weapon, there is no indication that a Taser was ever
11 present. Further, while it is possible that Hall could have moved out of Prieto’s way, Hall was
12 behind an entrance that would have provided a means for Prieto to enter the Foster Farms plant.

13 Eighth, Prieto bears considerable responsibility for this shot being fired. At any point up
14 to the shooting, if Prieto had simply not advanced on Hall, or more importantly if he would have
15 only obeyed any of the numerous commands and actually stopped and dropped the screwdriver,
16 the shot would not have been fired.

17 Under the totality of the circumstances, Hall did not violate the Fourth Amendment. As
18 mentioned above, a serious and violent felony offense was at issue, as well as significant
19 misdemeanors. Prieto was not responding to any requests to stop and to drop his weapon. Prieto
20 had already used the screwdriver in an attempt to stab Contreras, and Prieto had actually stabbed
21 himself in the neck with the screwdriver. Prieto’s conduct was dangerous, and although it
22 appeared that Prieto was mentally impaired, that impairment (which was due to
23 methamphetamine) added to the danger of the situation in that Prieto was refusing to obey
24 commands, and had acted in a violent and destructive manner in response to commands. While
25 Plaintiffs contend that Prieto made no aggressive movements towards Hall, the evidence does not
26 support the assertion. As discussed above, Linley neither saw nor heard the shot fired by Hall,
27 and had momentarily turned away from the scene. As such it is not reasonable to assume that
28 Linley observed the incident with Prieto at this relevant stage. On the other hand, both Hall and

1 Lightfoot saw Prieto’s conduct, Prieto still had the screwdriver, and Prieto was coming towards
2 Hall with the screwdriver raised. Both of these officers believed that Prieto posed a threat to
3 Hall. Given Prieto’s behavior, the evidence supports this conclusion. It is true that Prieto was 8
4 to 10 feet away from Hall. However, Hall’s back was to an entrance of the plant, and a distance
5 of 8 to 10 feet can be traversed quickly. There is no dispute that there were people in the Foster
6 Farms plant at this time, nor is there any evidence to suggest that Hall’s concern about Prieto
7 entering the plant was fanciful or unreasonable. This incident occurred during working hours,
8 and Prieto’s behavior clearly supports a reasonable and legitimate concern for the safety of those
9 in the plant. Cf. Elliot v. Leavit, 99 F.3d 64, 644 (4th Cir. 1996) (“[T]he Fourth Amendment
10 does not require omniscience. Before employing deadly force, police must have sound reason to
11 believe that the suspect poses a serious threat to their safety or the safety of others. Officers need
12 not be absolutely sure, however, of the nature of the threat or the suspect’s intent to cause them
13 harm”); cf. also Wilkinson, 610 F.3d at 553 (quoting *Elliot* with approval). Additionally,
14 there is no indication what less lethal options may have been available, nor is there any indication
15 that less lethal means were a viable option. Also, given Prieto’s appearance, his refusal to follow
16 any commands, his statement that the officers were going to have to shoot him, and his self
17 destructive behavior, there is no indication that Hall’s failure to warn Prieto before firing the
18 single gun shot is significant. There is nothing to indicate that Prieto would have heeded this
19 command and actually stopped. Finally, if Prieto had only obeyed and stopped, the shot would
20 not have been fired.

21 Under the totality of these circumstances, Hall did not violate the Fourth Amendment
22 when he fired this gun shot. See Graham, 490 U.S. at 396-97; Wilkinson, 610 F.3d at 551-53;
23 Elliot, 99 F.3d at 644.

24 b. Fatal Shots

25 Again, just as it did above, the Court must examine various enumerated considerations as
26 well as any other pertinent consideration that is part of the totality of the circumstances.

27 First, the additional uses of force identified by Plaintiffs are the gunshots fired by Hall
28 and Dowling. Firing a handgun is a significant quantum of force that constitutes deadly forces.

1 A significant justification is necessary for the firing of a firearm.

2 Second, the crimes involved remained the same from the time of the first shot. The facts
3 indicated that the serious and violent felony of assaulting a police officer with a deadly weapon
4 (Penal Code § 245(d)), as well as the misdemeanors of willful resistance or obstruction (Penal
5 Code § 148(a)(1)) and reckless driving (Vehicle Code § 23103), were at issue. As discussed
6 above, the manner in which Prieto committed these misdemeanor offenses increases their
7 severity and the government's interest in stopping Prieto.

8 Third, in terms of the threat posed by Prieto, Prieto did not make any aggressive moves
9 towards the officers at this time, the officers had formed a semi-circle around Prieto, Prieto did
10 not say anything to the officers, and Prieto did not brandish the screwdriver at the officers. As
11 such, Prieto did not pose an imminent threat to the officers at the time of the fatal shots. In terms
12 of the threat to those in the plant, there were individuals in the break room and Prieto was in front
13 of the break room doors. Ramos and Linley testified that the doors would not have been locked.
14 Hall, Contreras, and Benas saw employees (though no one specific) in the break room area, and
15 further investigation confirmed that employees were present at that time. See Benas Depo. 42:4-
16 44:8; Carrillo Depo. 18:18-22; Contreras Depo. 65:5-66:25; Hall Depo. 77:1-17. Prieto was still
17 armed with the screwdriver. PAMF 94. Importantly, Prieto was attempting to gain access into
18 the plant/break room. Plaintiffs acknowledge that witnesses vary regarding whether Prieto had
19 actually touched the handle. Of the evidence cited to the Court, the only witness who testified
20 that Prieto did not actually touch the handle was Ramos, but even she testified that Prieto was at
21 least reaching for the door handle.¹⁸ See Ramos Depo. 22:8-15. Further, of the two witnesses
22 who believed that two volleys were fired, both testified that it was the second volley that brought
23 Prieto down, and each volley was fired in response to Prieto attempting to get through the doors.
24 See Linley Depo. 20:3-22:18; Weakley Depo. 27:4-31:4, 35:15-36:1. Because of Prieto's prior
25 behavior, Hall feared that Prieto would pose a serious risk to those inside the plant. See Hall
26 Depo. 80:4-8. Contreras believed that, based on Prieto's behavior, that Prieto was a threat to

27
28 ¹⁸Plaintiffs do not take a concrete position regarding whether Prieto actually touched the door handle,
and are content to point out that Prieto was not able to open the doors. See Court's Docket Doc. No. 40 at 4:13-18.

1 people in the plant. See Contreras Depo. 83:25-84:5. After seeing Prieto face to face at the
2 guard shack, Linley was afraid of what Prieto would do to the employees in the break room if
3 Prieto managed to get inside. See Linley Depo. 31:23-32:8.

4 Fourth, Prieto was either resisting or actively evading the officers. Prieto never obeyed
5 the constant commands of the officers to “stop.” Prieto kept moving, and was attempting to enter
6 the double doors into the plant/break room area when the shots were fired. See Craig Depo.
7 28:5-17; Hall Depo. 79:24-80:18.

8 Fifth, with respect to warnings, the officers testified that they warned Prieto to stop, to
9 drop the screwdriver, and to not go inside the plant. See Hall Depo. 80:3-4; Contreras Depo.
10 91:10-18; Maniss Depo. 17:12-18. Further, Linley testified that he heard an officer warn Prieto
11 to “not go in there” or that the officers would shoot. See DUMF 16. Plaintiffs contend that none
12 of the officers warned Prieto that shots would be fired. See PAMF 123. However, the broad
13 proposition that “none of the officers warned” is not supported by the cited evidence. It is true
14 that the testimonies of Hall, Dowling, and Contreras indicate that those officers did not warn
15 Prieto that shots would be fired, and Carrillo testified that he simply did not hear such a warning.
16 However, Plaintiffs do not account for officers Lightfoot, Benas, Craig, or Maniss. These
17 officers were at the scene, yet there is no evidence cited regarding what commands they may
18 have issued to Prieto. That one officer may not have heard the warning, and other officers
19 themselves did not give the warning, does not mean that the warning was not given by another
20 officer. Hall, Contreras, Carrillo, and Dowling’s respective testimonies do not contradict Linley.

21 Sixth, as Prieto walked passed the guard shack, he looked extremely angry and “out of his
22 mind,” and Linley felt “real fear” for anyone who came into contact with Prieto. See Linley
23 Depo. 18:6-22. Ramos testified that, although Prieto did not have his normal look of anger,
24 Prieto looked unstable and she was afraid of him. See Ramos Depo. 33:3-34:20. Other officers
25 described Prieto as “out of it” or “in a daze” or like he was on drugs. Further, Prieto had
26 continued to stab himself with the screwdriver after he was shot by Hall with the prior single
27 shot. See PAMF 41. It is clear that Prieto’s state of mind remained abnormal.

28 Seventh, there were less lethal options on-scene. Although the Taser weapon apparently

1 never arrived, Craig was present with his bean bag shotgun, and Maniss was present with a K-9
2 unit. However, Maniss testified that using the K-9 unit was not a viable option because of the
3 close proximity of the other officers. See Maniss Depo. 15:17-16:1. There is no evidence to
4 contradict this assessment. As such, the Court can only conclude that use of the K-9 was not a
5 viable option.

6 Eighth, Prieto again bears significant responsibility for this shooting. The evidence is
7 uncontradicted that no shots of any kind were fired until Prieto attempted to enter the plant
8 (either by reaching for the doors according to Ramos, or by actually touching the doors according
9 to every other witness). Prieto was warned numerous times to stop, to drop the weapon, and to
10 not enter the plant. Again, if Prieto had obeyed any of those commands, especially the numerous
11 commands to stop, no shots would have been fired.

12 Additionally, in connection with Plaintiffs' concerns regarding a warning, Plaintiffs point
13 out that Contreras, Dowling, and Hall were in "plain clothes." See PAMF's 26-28. However,
14 Contreras utilized the lights and siren of his car when he pursued Prieto's vehicle, and Prieto
15 later came at Contreras with the screwdriver. See Contreras Depo. 21:5-15, 24:6-26:14. Further,
16 prior to the single shot fired by Hall, Hall yelled that he was the police. See Hall Depo. 33:17-
17 34:3, 36:8-11. Also, it does not appear that Craig was in plain clothes. Finally, Linley testified
18 that it was "pretty apparent" that the officers involved were the police, and there was no doubt in
19 his mind of that fact. See Linley Depo. 12:17-13:1.

20 Under the totality of the circumstances, there is no Fourth Amendment violation. As
21 explained above, a serious and violent felony, as well as significant misdemeanors, were
22 involved. As he had done previously, Prieto refused to obey or comply with any of the
23 commands that the officers gave. This includes a warning that Prieto would be shot if he entered
24 the double doors.¹⁹ This shows a very high level of culpability. If at any time prior to the shots

26 ¹⁹As discussed above, Plaintiffs do not adequately dispute the assertion that some officer yelled for Prieto to
27 not go through the doors, or else they would shoot. However, even if the Court were to find that there is a genuine
28 dispute on the issue of a warning, the result would not change. Prieto was attempting to go through the doors and
enter the plant. Given Prieto's prior conduct, the officers could not let that happen. The officers had been giving
Prieto warnings and commands since Prieto exited his car. Prieto never obeyed. In fact, his only response was
defiance, either through ignoring the officers or stating that the police would have to kill him and then stabbing

1 being fired at the double doors Prieto had simply stopped and dropped the screwdriver, he would
2 not have been shot. Further, while Plaintiffs focus on Prieto's non-aggressive conduct towards
3 the officers at that point, they overlook entirely Prieto's prior aggressive conduct and the
4 presence of employees in the break room. There is no evidence that the break room door was
5 locked, and the evidence is actually to the contrary. Further, there is no genuine dispute that
6 employees were actually in the break room. Three of the officers, including Hall, saw people in
7 the break room, and it was later determined that employees were there. Hall was worried about
8 the safety of the employees. Not only was Hall's concern shared by other officers, it also was
9 shared by Foster Farms employees. Linley vividly expressed his fears for those in the break
10 room, Ramos was afraid of Prieto even though she was familiar with him, and Weakley was
11 holding the door shut to keep Prieto out in order to protect the women inside. Moreover, as
12 discussed previously, Prieto had come at or attempted to stab Contreras with the screwdriver, and
13 had driven his vehicle head on towards Contreras. Prieto had also stabbed himself in the neck
14 with the screwdriver and informed officers that they would have to kill him. Prieto had also been
15 shot one other time by Hall, yet still kept going. These are objective facts that demonstrate the
16 clear danger posed by Prieto. Hall's fear for the employees inside was entirely reasonable and
17 justified. Plaintiffs' attempt to characterize Prieto as simply in a daze, possibly suffering from a
18 mental illness, and not a threat to anyone is belied by the entirety of the record.²⁰ Cf. Wilkinson,
19 610 F.3d at 551, 553 ("sanitized version of the incident cannot control summary judgment when
20 the record as a whole does not support that version"). At the time any shots were fired, be they
21 from the shotgun or from the handguns, Prieto was attempting to enter the break room doors
22 where he would have encountered employees. His behavior was erratic, unpredictable, and
23 dangerous. It was clearly appropriate for the officers to attempt to prevent Prieto from entering
24 the plant. Further, time was of the essence because Prieto was attempting to enter through the

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26
27 himself in the neck. There is no reason to think that a warning at this point (while Prieto was attempting to enter)
would have altered the course of events or had any effect whatsoever.

28 ²⁰The Court notes that there is no evidence that Prieto actually suffered from a mental illness, rather, the
evidence confirms the officers' (including Hall) suspicions that Prieto was under the influence of drugs.

1 double doors. Although the officers may not have known for certain how many people were
2 inside, and may not have known for certain whether the door was locked, absolute certainty is not
3 required. Cf. Wilkinson, 610 F.3d at 553; Elliot, 99 F.3d at 644. Several officers, including
4 Craig, believed that Prieto had begun to jiggle the handle, and at a minimum he was reaching for
5 the doors. Indeed, according to Linley and Weakley, Prieto actually made two attempts to open
6 the door, and both attempts prompted the officers to fire. See Linley Depo. 21:1-7, 25:15-26:24;
7 Weakley Depo. 34:8-36:1. Given the presence of employees in the break room, and the obvious
8 danger posed to the employees by Prieto, the officers were not required to wait and see whether
9 Prieto could successfully open the doors.

10 In terms of less lethal options, Craig deployed his bean bag shotgun against Prieto.
11 Plaintiffs contend that the bean bag actually caused Prieto to slump over and to “give up,”
12 thereby making the additional use of the handguns unnecessary and unreasonable.²¹ Plaintiffs
13 rely on the deposition testimony of Craig for this argument. Officer Craig testified that he
14 believed his bean bag rounds caused Prieto to turn around, to grimace, and after the fourth shot
15 had been fired, to go down/slump over. See Craig Depo. 39:10-40:21. However, Craig was not
16 aware of any other shots being fired, and there is no testimony from Craig which would indicate
17 whether he ever knew that handguns had been fired. See Craig Depo. 33:12-22, 43:12-15. In
18 fact, when asked what he did after Prieto had gone down (which was after Craig had fired the
19 fourth bean bag round), Craig stated that he kept his shotgun sighted on Prieto, and then Dowling
20 ordered Prieto to lay on his stomach, but Prieto was unresponsive. See Craig Depo. 41:25-42:11,
21 47:5-23. Craig testified that Dowling kicked the screwdriver out of Prieto’s hands, and then
22 checked Prieto’s vitals. See id. at 47:5-23. There is no testimony about waiting until the other
23 officers finished firing, or that the other officers actually fired. As for the other officers,
24 Contreras believed that Prieto began to drop sometime during the gunshots, but has no
25 understanding of whether the handguns or the shotgun was fired first. See Contreras Depo. 85:1-
26 4, 103:13-23; PAMF 116. Benas believed that the handguns and the shotgun were fired very

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28 ²¹However, at other points, Plaintiffs posit that Prieto began to drop during the gunshots. See PAMF 116.

1 close in time and almost simultaneously, but possibly the shotgun was momentarily being fired
2 first. See Benas Depo. 50:21-51:22. Carrillo could not differentiate between the shotgun and the
3 handguns shots. See Carrillo Depo. 16:6-11. Lightfoot could not recall what weapons were fired
4 first. See Lightfoot Depo. 22:23-23:2. Dowling was aware that another weapon other than
5 Hall's handgun was being fired. See Dowling Depo. 27:5-11. Hall was unaware of the shotgun,
6 but was aware of two other discharges. See Hall Depo. 73:8-12, 90:22-91:4. With respect to the
7 third party non-police officer witnesses, Weakley and Linley testified that Prieto slumped down
8 during the handguns being fired, but Linley did not know if the shotgun was fired at all, and
9 Weakley assumed the shotgun was fired first simply because the first volley did not affect Prieto.
10 See Linley Depo. 21:1-7, 25:15-26:24; Weakley Depo. 34:8-36:1. In light of the testimony, the
11 record as a whole does not support Craig's belief that his fourth shotgun round caused Prieto to
12 drop/slump over and give up. Cf. Wilkinson, 610 F.3d at 551, 553. The record as a whole
13 indicates that, at best, Prieto slumped over as both the shotgun and handgun shots were being
14 fired. At worst, the record indicates (through Linley and Weakley and Contreras) that Prieto
15 slumped during the gun shots, and that the shotgun was ineffective (other than causing Prieto to
16 briefly turn towards the officers) because Prieto again attempted to open the doors. The record
17 does not support the conclusion that the bean bag shotgun was effective in stopping Prieto.²²

18 Finally, Plaintiffs argue in part that the downward angle of some of the bullet wounds
19 indicate that Prieto was down, and therefore no longer a danger. The evidence is unclear at
20 exactly what point in time Prieto dropped. Craig believed that Prieto went down just after the
21 fourth bean bag round, and Contreras testified that Prieto went down sometime during the gun
22 shots. See Craig Depo. 42:4-11; Contreras Depo. 103:18-23; PAMF 116. Craig and Hall both
23 testified that they fired in quick or rapid succession. See PAMF 98; Hall Depo. 92:7-9. Dowling
24 testified that he fired because he did not believe that Hall's shots were effective, and only fired

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26 ²²Nor would the facts of this case require the officers to first try the bean bag shotgun before using the
27 handguns. There is no dispute that Prieto was trying to enter the break room area. As discussed above, given
28 Prieto's dangerous behavior, the officers had to act quickly to prevent Prieto from entering. The danger posed by
Prieto to those in the plant was very real, and was recognized not only by the police, but by actual Foster Farms
employees as well. The use of deadly force was reasonable, irrespective of the availability of the bean bag shotgun.
See Wilkinson, 610 F.3d at 551; Gregory, 523 F.3d at 1107; Forrester, 25 F.3d at 807.

1 one time because as he fired, Prieto was dropping. See Dowling Depo. 23:9-23, 25:10-16.
2 Dowling and Craig also testified that the fatal shooting happened very quickly. See Dowling
3 Depo. 34:23-24; Craig Depo. 42:4-11; see also Contreras Depo. 103:5-9 (when asked whether
4 shooting was justified, answering “you’re talking a matter of split seconds . . . it was dependent
5 on [Prieto] entering that break room . . .”). Additionally, Craig testified that when Prieto
6 dropped, he did not drop quickly, but instead Prieto just started to slump down. See Craig Depo.
7 42:4-11. Contreras indicated that he saw Prieto drop “almost instantly” once Contreras noticed
8 blood from the shots on Prieto. See Contreras Depo. 92:16-19. Under the facts identified, this
9 was clearly a quickly evolving situation. It appears that multiple shots were fired because the
10 first shot(s) were not effective, and it appears that all shots were fired in rapid succession in order
11 to stop Prieto from entering the plant/break room. That is, the shots were fired to end the threat
12 posed by Prieto and his attempt(s) to enter the plant/break room area. The evidence does not
13 suggest mindless shooting. In this quickly evolving situation, that some of the shots may have hit
14 Prieto as he was slumping or had dropped is not sufficient to show excessive force. Cf.
15 Wilkinson, 610 F.3d at 552-53 (rejecting under the facts of the case a rule that officers are
16 required to reevaluate after each shot whether a threat has been eliminated); Elliot, 99 F.3d at 643
17 (concluding that firing multiple shots “does not suggest the officers shot mindlessly as much as it
18 indicates that they sought to ensure the elimination of a deadly threat.”).²³

19 Under the totality of these circumstances, Hall and Dowling did not violate the Fourth
20 Amendment when they fired these shots. See Graham, 490 U.S. at 396-97; Wilkinson, 610 F.3d
21 at 551-53; Elliot, 99 F.3d at 643-44.

22 2. Qualified Immunity

23 Alternatively, the Court believes that qualified immunity is appropriate. Plaintiffs
24 contend that qualified immunity is improper because it would be clear to a reasonable officer that
25 it is unconstitutional to shoot to kill a person who is suffering from a mental illness and engaging
26 in self-harming behavior with a screwdriver, but not threatening the officers. However,

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28 ²³Wilkinson relied on Elliot and utilized the quoted material from Elliot as part of a parenthetical citation.
See Wilkinson, 610 F.3d at 552-53.

1 Plaintiffs' characterization of what occurred in this case is unsupported and unreasonable. Cf.
2 Wilkinson, 610 F.3d at 551, 553.

3 Prieto's conduct was not simply self-destructive. He had driven the wrong direction
4 towards on coming traffic at a high speed, and he had charged or come at Contreras with the
5 screwdriver. That is, Prieto had attempted to stab Contreras. Prieto never obeyed any command,
6 including commands to stop, but instead kept going, told the officers that they would have to kill
7 him, and then stabbed himself in the neck. When Hall fired the first shot, it is not genuinely
8 disputed that Prieto was advancing on Hall. Hall was concerned for his safety and the safety of
9 those in the plant because Hall was standing in front of an entrance. Lightfoot confirmed the
10 threat posed to Hall. Further, after Hall fired the shot and Prieto made his way to the courtyard
11 and the double doors, Linley, Ramos, and Weakley were all afraid of Prieto and what Prieto
12 might do to those in the plant. Prieto ignored commands, including a command to not enter the
13 double doors, and attempted to enter the plant/break room area. There is no genuine dispute that
14 there were people behind the double doors in the break room, and Hall knew this. From the
15 moment Prieto exited his vehicle to the moment that the last shot was fired, Prieto was armed
16 with the screwdriver. Prieto's behavior was erratic, unstable, unpredictable, and dangerous.
17 Both the police and the civilian witnesses were fearful and recognized the clear and present
18 danger that Prieto posed to the employees in the plant/break room area.

19 In light of these facts, it would not be clear to a reasonable officer in Dowling's position
20 and in Hall's position (at both times when Hall fired) that the shots fired would violate the Fourth
21 Amendment. Saucier, 533 U.S. at 201-06; Skoog, 469 F.3d at 1229-30; Lawrence, 340 F.3d at
22 956-57. As such, qualified immunity for Dowling and Hall is appropriate. See id.

23 24 **II. Fourteenth Amendment**

25 Defendants have not expressly moved for summary judgment on the Fourteenth
26 Amendment claim. Nevertheless, Plaintiffs' Fourteenth Amendment claim is predicated on
27 Prieto's death through the allegedly "unjustified shooting" by Hall and Dowling. See SAC ¶¶ 31,
28 34-35. In light of the finding that Hall and Dowling did not violate the Fourth Amendment when

1 they shot Prieto, there is no Fourteenth Amendment violation. Where a claim for interference
2 with familial relationships is integrally predicated upon, or entwined with, other conduct that is
3 alleged to be unconstitutional, a finding that the other conduct was constitutional generally will
4 preclude recovery for interference with familial relationship. See Gausvik v. Perez, 392 F.3d
5 1006, 1008 (9th Cir. 2004); Schaefer v. Goch, 153 F.3d 793, 799 (7th Cir. 1998) (“Because we
6 have concluded that Sergeant Goch did not violate Kathy Nislowski’s rights under the
7 Constitution, her parents’ claims based on the loss of her society and companionship necessarily
8 fail as well.”). Further, while the standards for reviewing claims under the Fourth Amendment
9 and the Fourteenth Amendment are not identical, a finding that conduct was objectively
10 reasonable leads to the conclusion that the same conduct does not offend the more stringent
11 standard applicable to substantive due process claims. Brittain v. Hansen, 451 F.3d 982, 997 (9th
12 Cir. 2006); Moreland v. Las Vegas Metro. Police Dep’t, 159 F.3d 365, 371 & n.4 (9th Cir. 1998).
13 The evidence does not indicate that Hall and/or Dowling acted with a purpose to harm that was
14 unrelated to the legitimate law enforcement objective of neutralizing the threat that Prieto posed
15 to those in the plant/break room area. See Wilkinson, 610 F.3d at 554. Plaintiffs cannot recover
16 under this claim. Summary judgment is therefore appropriate. See id.; Brittain, 451 F.3d at 997;
17 Gausvik, 392 F.3d at 1008; Moreland, 153 F.3d at 799; Schaefer, 153 F.3d at 799.

18 19 **III. Monell Liability**

20 Plaintiffs state that they do not oppose summary judgment/dismissal of their *Monell*
21 claims. See Opposition at 1:19. In light of Plaintiffs’ express non-opposition, the Court will
22 grant summary judgment on this claim.²⁴

23 24 **IV. State Law Battery & Negligence**

25 *Defendants’ Argument*

26 Defendants argue that the battery and negligence claims are the mirror image of the
27

28 ²⁴Also, since the Court has found that the officers did not violate the Constitution, *Monell* liability is not possible. Los Angeles v. Heller, 475 U.S. 796 (1986); Simmons, 609 F.3d at 1021; Jackson, 268 F.3d at 653-54.

1 excessive force claim. California courts analyze battery claims against police officers under the
2 same reasonableness standards of the Fourth Amendment. For the same reasons that summary
3 judgment was appropriate with regard to excessive force, so too is it appropriate with respect to
4 the state law claims. Additionally, in reply, Defendants point out that California appellate courts
5 have rejected negligence claims against the police based on the officers' tactical decisions.

6 Plaintiffs' Opposition

7 Plaintiffs argue that summary judgment as to the battery claim is inappropriate for the
8 same reasons that summary judgment on the excessive force claim is inappropriate. Also, with
9 respect to negligence, Plaintiffs argue that the Ninth Circuit has reaffirmed the viability of state
10 law negligence claims against police officers based on pre-shooting tactics. Although the Ninth
11 Circuit did not expressly state the duty, it is the ordinary duty of care. Here, the negligent
12 conduct that precipitated the use of deadly force "includes but is not limited to" – (1) not verbally
13 identifying themselves as police officers while in plain clothes and pointing guns at Prieto, (2)
14 cornering Prieto into locations where deadly force was used allegedly because of the path that
15 Prieto took, (3) not warning Prieto that he would be shot if he did not comply, (4) not waiting for
16 less lethal force to arrive and/or be effective, (5) and not properly communicating regarding the
17 availability of less lethal options.

18 Discussion

19 1. Battery

20 Battery is a state law tort counterpart to a 42 U.S.C. §1983 excessive force claim. See
21 Sanders, 551 F.Supp.2d at 1179; Munoz v. City of Union City, 120 Cal.App.4th 1077, 1102 n.6
22 (2004); Susag v. City of Lake Forest, 94 Cal.App.4th 1401, 1412-13(2002); Edson v. City of
23 Anaheim, 63 Cal.App.4th 1269, 1274 (1998). Because the Court has found no Fourth
24 Amendment violation, summary judgment in favor of Defendants on Plaintiffs' state counterpart
25 cause of action for battery is appropriate.²⁵ See Johnson v. County of Los Angeles, 340 F.3d 787,

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27 ²⁵The City is also a named defendant under this cause of action through application of the vicarious liability
28 provision of California Government Code § 815.2. However, an employer cannot be held vicariously liable unless
the employee is found responsible/liable, and a finding that exonerates the employee also exonerates the employer.
See Lathrop v. Healthcare Partners Medical Group, 114 Cal.App.4th 1412, 1423 (2004); Perez v. City of Huntington

1 794 (9th Cir. 2003); Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 922 (9th Cir.
2 2002); Saman v. Robbins, 173 F.3d 1150, 1156 n.6 (9th Cir. 1999); Sanders, 551 F.Supp.2d at
3 1179.

4 2. Negligence

5 As an initial matter, Plaintiffs' citation to *Hayes v. County of San Diego*, 638 F.3d 688
6 (9th Cir. 2011), is no longer proper. After this motion was taken under submission, the Ninth
7 Circuit withdrew its *Hayes* opinion, certified a question to the California Supreme Court
8 regarding the viability of negligence claims against police officers, stayed the case, and
9 maintained jurisdiction over the appeal. See Hayes v. County of San Diego, - - - F.3d - - -, 2011
10 U.S. App. LEXIS 11987 (9th Cir. June 14, 2011). Accordingly, the first *Hayes* opinion does not
11 control resolution of this cause of action.

12 Two California appellate courts have held that the type of pre-shooting negligence claim
13 alleged by Plaintiffs is precluded because no duty is owed by the police. See Munoz v. City of
14 Union City, 120 Cal.App.4th 1077 (2004); Adams v. Fremont, 68 Cal.App.4th 243 (1999).
15 However, the Ninth Circuit's subsequent *Hayes* certification opinion casts some doubt as to
16 whether the California Supreme Court would agree with *Munoz* and *Adams*. See Hayes, - - -
17 F.3d - - -, 2011 U.S. App. LEXIS 11987. In light of the *Hayes* certification opinion, the Court
18 will assume without deciding that Hall and Dowling owed Prieto a duty to use due care with
19 respect to their pre-shooting tactics.

20 The elements of actionable negligence are: (1) a legal duty to use due care; (2) a breach of
21 that duty; (3) causation; and (4) damages. See Ladd v. County of San Mateo, 12 Cal.4th 913,
22 917 (1996); Brown v. Ransweiler, 171 Cal.App.4th 516, 534 (2009). Ordinarily, the issues of
23 breach and causation are questions of fact for the jury. See Lindstrom v. Hertz Corp., 81
24 Cal.App.4th 644, 652 (2004). However, in an appropriate case in which there is insufficient
25 evidence, a defendant's lack of negligence may be determined on summary judgment. See
26 Brown, 171 Cal.App.4th at 535-38; Lindstrom, 81 Cal.App.4th at 652. Plaintiffs have identified

27 _____
28 Park, 7 Cal.App.4th 817, 819-20 (1992); Davison v. Diamond Match Co., 10 Cal.App.2d 218, 221-224 (1935).
Because Hall and Dowling did not commit battery, the City cannot be vicariously liable for battery. See id.

1 five acts that they claim show actionable negligence.

2 First, Plaintiffs contend that Hall and Dowling were negligent in not verbally identifying
3 themselves as police officers. However, as noted above, prior to the very first shot, Hall yelled
4 “police” twice while he was ordering Prieto to stop. Further, Contreras had utilized the lights
5 and siren on his car as he followed and confronted Prieto. Finally, Linley stated that it was
6 “pretty apparent” that the individuals following Prieto were police officers, and he had no doubts
7 as to this fact. The evidence does not support actionable negligence under this theory.

8 Second, Plaintiffs contend that Hall and Dowling cornered Prieto into places where
9 deadly force would have to be used. However, there is insufficient evidence that Hall and
10 Dowling cornered Prieto into improper locations, or that Hall and Dowling’s movements were
11 negligent or a breach of proper police protocol. Moreover, the location itself did not require the
12 use of deadly force. Instead, Prieto’s continuous refusal to follow lawful and proper commands
13 to stop, as well as his attempted entrance into the plant/break room area, is what necessitated the
14 use of deadly force. The evidence does not support actionable negligence under this theory.

15 Third, Plaintiffs contend that Hall and Dowling were negligent in failing to warn Prieto
16 that he would be shot if he did not comply. However, as explained above, while neither Hall nor
17 Dowling so warned Prieto, some officer did warn Prieto not to go into the plant or else the
18 officers would shoot. Thus, Prieto was warned. Alternatively, and also as explained above, at no
19 point in the entire encounter with Prieto, beginning from the exit from his automobile, did Prieto
20 comply with any command given by any officer. Instead, Prieto came at Contreras with the
21 screwdriver, kept moving, said the officers would have to shoot him, and then stabbed himself in
22 the neck. There is absolutely no indication that any additional warning that Prieto would be shot
23 if he did not comply would have made any difference whatsoever. The evidence does not
24 support actionable negligence under this theory.

25 Fourth, Plaintiffs contend that Hall and Dowling were negligent for failing to wait for less
26 lethal force options to either arrive or be effective. However, the evidence establishes that Prieto
27 was attempting to enter the plant/break room area at the time shots were fired. As discussed
28 extensively above, Prieto’s behavior showed that he represented a real and imminent threat to the

1 employees. Given Prieto's behavior, it would not have been reasonable for the officers to wait
2 and see whether Prieto could get in through the double doors. Use of deadly force at that point
3 was reasonable as a matter of law, irrespective of less lethal options.²⁶ See Wilkinson, 610 F.3d
4 at 551; Gregory, 523 F.3d at 1107; Forrester, 25 F.3d at 807. The evidence does not support
5 actionable negligence under this theory.

6 Fifth, Plaintiffs contend that Hall and Dowling were negligent for not properly
7 communicating as to the availability of less lethal options. As the Court has explained, Prieto's
8 conduct and attempts to enter the plant/break room area made him a real and imminent threat to
9 those inside. The officers, as well as the Foster Farms employees, had real and legitimate fears
10 about what Prieto would do if he managed to enter the plant. Because Prieto was at the doors
11 and attempting to enter, use of deadly force was reasonable, irrespective of any less lethal option
12 available or communication about less lethal options.²⁷ See Wilkinson, 610 F.3d at 551;
13 Gregory, 523 F.3d at 1107; Forrester, 25 F.3d at 807. The evidence does not establish actionable
14 negligence under this theory.

15 Because the evidence does not show that Hall and Dowling were negligent with respect to
16 Prieto and their pre-shooting tactics, summary judgment on Plaintiffs' negligence claim is
17 appropriate.²⁸ Brown, 171 Cal.App.4th at 535-38; Lindstrom, 81 Cal.App.4th at 652.

19 CONCLUSION

20 With respect to the Fourth Amendment claim against Hall for his initial single shot
21 against Prieto, summary judgment is appropriate. The crimes involved, Prieto's failure to
22

23 ²⁶Further, Linley and Weakley's testimony indicate that the bean bag rounds were ineffective.

24 ²⁷To the extent that Plaintiffs may be referring to Maniss and his K-9 unit, Maniss's testimony establishes
25 that use of the K-9 unit was not a viable option.

26 ²⁸The City is also a named defendant under this cause of action through application of the vicarious liability
27 provision of California Government Code § 815.2. However, an employer cannot be held vicariously liable unless
28 the employee is found responsible/liable, and a finding that exonerates the employee also exonerates the employer.
See Lathrop, 114 Cal.App.4th at 1423; Perez, 7 Cal.App.4th at 819-20 (1992); Davison, 10 Cal.App.2d at 221-224.
Because Hall and Dowling were not negligent, the City cannot be vicariously liable for negligence. See id.; Davis v.
Pine Mtn. Lumber Co., 273 Cal.App.2d 218, 227 (1969).

1 comply with commands, Prieto's behavior, Hall's position in front of an entrance, and Prieto's
2 advancing on Hall with the screwdriver made Hall's single gun shot reasonable. Alternatively,
3 the law was not so clearly established that, given the facts confronting Hall, a reasonable officer
4 in his position would know that the single shot violated the Fourth Amendment.

5 With respect to the fatal shots by Hall and Dowling, summary judgment is appropriate.
6 The crimes involved, Prieto's failure to comply with commands and warnings, Prieto's behavior,
7 the presence of employees in the plant/break room area, Prieto's attempts to enter the double
8 doors, and Prieto's possession of the screwdriver, made Hall's and Dowling's gun shots
9 reasonable. Alternatively, the law was not so clearly established that, given the facts confronting
10 Hall and Dowling, a reasonable officer in their position would know that the gun shots violated
11 the Fourth Amendment.

12 With respect to the Fourteenth Amendment claim, summary judgment is appropriate.
13 The Fourteenth Amendment and the Fourth Amendment claims are intertwined. The evidence
14 shows reasonable conduct by the police, and does not indicate an intent to harm that is unrelated
15 to legitimate law enforcement objectives.

16 With respect to the *Monell* claim, Plaintiffs have withdrawn this claim. Additionally, in
17 the absence of a constitutional violation, there is no *Monell* liability. Therefore, summary
18 judgment as to this claim is appropriate.

19 With respect to the state law battery claim, a battery claim is a state tort counterpart to a
20 Fourth Amendment excessive force claim. Because there was no excessive force and the officers
21 acted reasonably, there is no liability for state law battery. Therefore, summary judgment as to
22 this claim is appropriate.

23 With respect to state law negligence for the officers' pre-shooting conduct, the Court
24 assumes without deciding that Hall and Dowling owed Prieto a duty of due care regarding pre-
25 shooting tactics. However, the five acts/courses of conduct identified by Plaintiffs are
26 insufficient to establish negligence by Hall and Dowling. Therefore, summary judgment as to
27 this claim is appropriate.

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1 Accordingly, IT IS HEREBY ORDERED that Defendants' motion of summary judgment
2 is GRANTED in favor of Defendants on all claims, and the Clerk shall CLOSE this case.

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4 IT IS SO ORDERED.

5 Dated: July 5, 2011



CHIEF UNITED STATES DISTRICT JUDGE

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