

1 statement pursuant to Federal Rule of Civil Procedure 12(e). *See* Court’s Docket, Doc. No. 13.
2 For the reasons stated herein, that motion will be granted in part and denied in part.

3 **BACKGROUND**

4 This case arises from the death of Rodolfo Medrano (“Decedent”), the brother of
5 Plaintiffs, due to an officer-involved shooting on May 29, 2011, at 2750 South Union Avenue,
6 Bakersfield, CA, 93307. *See* Compl. ¶ 11. Plaintiffs allege Decedent was in a wheelchair when,
7 without warning, unidentified “sheriff officers” employed by the County repeatedly and
8 unjustifiably shot Decedent, causing his death. *Id.* Plaintiffs allege Decedent made no
9 aggressive movements, no furtive gestures, and no physical movements which would suggest to a
10 reasonable officer that he posed a threat of violence. *Id.* ¶ 12. Plaintiffs contend Defendants’
11 actions violated Decedent’s Fourth Amendment right to be free from unreasonable searches and
12 seizures, and deprived them of their Fourteenth Amendment rights to substantive due process,
13 privacy, as well as the fundamental right to familial association with their brother. *Id.* ¶ 19.
14 Plaintiffs further contend Defendants’ actions deprived Decedent of the rights, privileges, and
15 immunities secured to him by Article 1, Section 13, of the California Constitution; and California
16 Civil Code §§ 43 and 52.1. *Id.* ¶ 33. Finally, Plaintiffs allege they have sustained substantial
17 economic and non-economic damages resulting from Decedent’s death due to Defendants’
18 conduct, including funeral and burial expenses. *Id.* ¶¶ 53-54.

19 The County filed the instant motion to dismiss, arguing that the Complaint fails to state a
20 claim against the County because it is so ambiguous and unintelligible, and should therefore be
21 dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). Alternatively, the County
22 contends that the Complaint is so vague, ambiguous, and unintelligible that the County is unable
23 to reasonably frame a responsive pleading thereto and Plaintiffs should be required to provide a
24 more definite statement, pursuant to Federal Rule of Civil Procedure 12(e).
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1 statement are disfavored, and ‘ordinarily restricted to situations where a pleading suffers from
2 unintelligibility rather than want of detail.’ ” *Dri-Eaz Products, Inc. v. Nguyen*, No. C 11–1654Z,
3 2012 U.S. Dist. LEXIS 60860, at *4 (W.D.Wash. May 1, 2012) (quoting *Hayton Farms Inc. v.*
4 *Pro-Fac Corp. Inc.*, No. C10–520–RSM, 2010 U.S. Dist. LEXIS 132167, at *4 (W.D.Wash.
5 Dec. 14, 2010)). A Rule 12(e) motion is proper only if the complaint is so indefinite that the
6 defendant cannot ascertain the nature of the claim being asserted in order to frame a response.
7 *See Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 F.Supp. 940, 949 (E.D.Cal.1981). The Court
8 must deny the motion if the complaint is specific enough to notify defendant of the substance of
9 the claim being asserted. *See Bureerong v. Uvawas*, 922 F.Supp. 1450, 1461 (C.D.Cal.1996).
10 The Court may also deny the motion if the detail sought by a motion for a more definite
11 statement is obtainable through the discovery process. *Beery v. Hitachi Home Electronics*
12 *(America), Inc.*, 157 F.R.D. 477, 480 (C.D.Cal.1993).

13 DISCUSSION

14 A. Motion to Dismiss

15 The County contends the Complaint fails to state a claim against the County under Title
16 42 U.S.C. § 1983; the Tom Bane Civil Rights Act, Cal. Civ. Code § 52.1 (the “Bane Act”); Cal.
17 Civ. Code § 43; Art. 1, § 13 of the California Constitution; or for wrongful death.
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19 1. Section 1983 Claim Against County

20 Local governments can be “persons” subject to liability under 42 U.S.C. § 1983. *Monell*
21 *v. Dep't of Social Servs.*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). However, a
22 local government unit may not be held responsible for the acts of its employees under a
23 respondent superior theory of liability. *Id.* at 691; *Fuller v. City of Oakland*, 47 F.3d 1522, 1534
24 (9th Cir.1995). Rather, to state a claim for municipal liability, a plaintiff must allege that he
25 suffered a constitutional deprivation that was the product of a policy or custom of the local
26 government unit. *See City of Canton, Ohio, v. Harris*, 489 U.S. 378, 385, 109 S.Ct. 1197, 103
27 L.Ed.2d 412 (1989). A Section 1983 plaintiff may establish local government liability based on
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1 official policy or custom only by (1) alleging and showing that a city or county employee
2 committed the alleged constitutional violation under a formal governmental policy or
3 longstanding practice or custom that is the customary operating procedure of the local
4 government entity; (2) establishing that the individual who committed the constitutional tort was
5 an official with final policy-making authority and that the challenged action itself was an act of
6 official governmental policy which was the result of a deliberate choice made among various
7 alternatives; or (3) proving that an official with final policy-making authority either delegated
8 policy-making authority to a subordinate or ratified a subordinate's unconstitutional decision or
9 action and the basis for it. *See Monell*, 436 U.S. at 691; *Gillette v. Delmore*, 979 F.2d 1342,
10 1346-47 (9th Cir. 1992).

11 The County argues the Complaint fails to state a Section 1983 cause of action because
12 Plaintiffs have failed to identify the agents or employees of the County whose actions were
13 consistent with County customs or policy. The County further contends the Complaint fails to
14 identify any policy or custom which resulted in the alleged constitutional violations. Plaintiffs
15 respond that Defendants have not fulfilled their duty under Federal Rule of Civil Procedure 26 to
16 disclose:

17 without awaiting a discovery request. . . the name, and, if known, the address and
18 telephone number of each individual likely to have discoverable information - along with
19 the subjects of that information - that the disclosing party may use to support its claims
20 or defenses, unless the use would be solely for impeachment.

21 Fed. R. Civ. P. 26(a)(1)(A). Plaintiffs contend Defendants have strategically circumvented this
22 duty to provide information within their possession in order to bring the instant motion. The
23 Court agrees that the failure to identify the individual officers allegedly involved is not fatal to
24 Plaintiffs' Section 1983 claim against the County where the Complaint sets forth the date,
25 location, and victim of the shooting, and alleges that the officers involved were employed by the
26 County.

27 To state a claim for *Monell* liability, a plaintiff must allege "a formal governmental policy
28 or a 'longstanding practice or custom which constitutes the standard operating procedure of the

1 Constitution to be free from unreasonable searches and seizures and the right to be free from the
2 use of unreasonable and excessive force.² The County contends Plaintiffs cannot maintain a
3 derivative action on behalf of Decedent because the Bane Act requires the injured party to bring
4 an action “in his own name and on his own behalf.” *See* Cal. Civ. Code § 52.1(b). Although the
5 Complaint specifically states that “[t]his cause of action is brought on behalf of RODOLFO
6 MEDRANO by and through his Successor in Interest, Plaintiffs, who would, but for his death, be
7 entitled to bring this cause of action,” Plaintiffs also argue that they have standing under the Bane
8 Act because their own constitutional rights were injured. Compl. ¶ 31.

9 In *Bay Area Rapid Transit*, the parents of a 19-year-old African-American male shot and
10 killed by a white police officer sought damages for civil rights violations under the Bane Act.
11 *See Bay Area Rapid Transit*, 38 Cal. App. 4th at 142. The parents argued that the officer’s
12 conduct, which resulted in their son’s death, also interfered with their constitutional right to
13 parent. *Id.* at 144. The California Court of Appeal held that while the Bane Act provides a
14 personal cause of action for a victim of a hate crime, it “is not a wrongful death provision” and
15 “does not provide derivative liability for the parents of a victim of a hate crime, or for any other
16 persons not present and not witnessing the actionable conduct.” *Id.* at 144. The cases cited by
17 Plaintiffs in support of their argument that they are entitled to bring a Bane Act claim for their
18 own injuries, as they could under 42 U.S.C. § 1983, are inapposite. In each of those cases, the
19 plaintiffs suing under the Bane Act were themselves victims of the alleged excessive force or
20 false arrest, rather than family members of those victims. *See Medora v. City & County of San*

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22 ² Plaintiffs also cite violation of California Civil Code § 43 as a basis for their Bane Act
claim. Section 43 provides:

23 Besides the personal rights mentioned or recognized in the Government Code, every
24 person has, subject to the qualifications and restrictions provided by law, the right of
25 protection from bodily restraint or harm, from personal insult, from defamation, and
from injury to his personal relations

26 Cal. Civ. Code § 43.
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1 *Francisco*, No. C 06-0558 EDL, 2007 WL 2522319, at *2 (N.D.Cal., Aug. 31, 2007) (plaintiff
2 alleged officers had used excessive force against her); *Cole v. Doe*, 387 F.Supp.2d 1084, 1103
3 (N.D.Cal. 2005) (plaintiff alleged officers had interfered with his right to be free from an
4 unreasonable search or seizure under the California Constitution); *Gillan v. City of San Marino*,
5 147 Cal.App.4th 1033, 1050 (Cal. App. 2007) (plaintiff alleged he was arrested without probable
6 cause). Accordingly, the Court finds that Plaintiffs lack standing to bring a claim under the Bane
7 Act on their own behalf.

8 However, as pleaded, Plaintiffs' Bane Act claim is in the nature of a survival cause of
9 action, rather than a wrongful death cause of action. Unlike wrongful death, a survival claim is
10 not a new cause of action that vests in heirs on the death of the decedent, but rather is a separate
11 and distinct cause of action which belonged to the decedent before death but, by statute, survives
12 that event; the survival statutes do not create a cause of action, but merely prevent abatement of a
13 cause of the injured person and provide for its enforcement by or against the personal
14 representative of the deceased. *Grant v. McAuliffe*, 41 Cal.2d 859, 864, 264 P.2d 944 (Cal.
15 1953); *Quiroz v. Seventh Ave. Center*, 140 Cal.App.4th 1256, 1264-65, 45 Cal.Rptr.3d 222 (Cal.
16 App. 2006). In *Dela Torre v. City of Salinas*, the mother of a woman tasered, shot, and killed by
17 police officers filed suit alleging, among other things, that the defendants had violated the
18 decedent's rights under the Bane Act by interfering with her exercise or enjoyment of various
19 rights secured by the United States and California Constitutions. See No. C-09-00626 RMW,
20 2010 WL 3743762, at *6 (N.D.Cal., Sep. 17, 2010). In *Dela Torre*, the court concluded that the
21 decedent's Bane Act cause of action survived her death under California Code of Civil Procedure
22 § 377.2, and therefore her mother, as successor in interest, had standing to assert a claim for
23 violation of § 52.1 on the decedent's behalf. *Id.* at *7 (citing *Moore ex rel. Moore v. County of*
24 *Kern*, Nos. 1:05-cv-1115-AWI-SMS, 1:06-cv-0120-OWW-SMS, 2007 WL 2802167, at *5-6
25 (E.D.Cal., Sep. 23, 2007)); cf. *Arres v. City of Fresno*, No. CV F 10-1628 LJO SMS, 2011 WL
26 284971, at *26 (E.D.Cal., Jan. 26, 2011) (dismissing Bane Act claim to the extent plaintiffs
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1 sought derivative relief for their own injuries caused by police shooting of decedent); *but see*
2 *Abston v. City of Merced*, No. 09-CV-00511-OWW-GSA, 2009 WL 3398809, at *5-6 (E.D.Cal.,
3 Oct. 20, 2009) (finding that decedent’s wife lacked standing to bring Bane Act claim on behalf of
4 decedent’s estate). While there appears to be some disagreement in this District as to the effect of
5 the *Bay Area Rapid Transit* decision on a plaintiff’s ability to bring a survival cause of action
6 under the Bane Act on behalf of a decedent, the Court agrees with the reasoning set forth in *Dela*
7 *Torre*. Accordingly, the County’s motion to dismiss the Second Cause of Action is denied.

8 4. *Wrongful Death*

9 The County contends the Complaint fails to state a wrongful death cause of action
10 because “[t]he required factual allegations must be such as to reveal the inapplicability of
11 immunities, qualified and/or otherwise, and/or privileges on the part of the agents and/or
12 employees of County.” *See* Court’s Docket, Doc. No. 13 at 8. The County cites no authority in
13 support of this contention. In any event, Plaintiffs allege the decedent was shot by officers
14 employed by the County, and provide detailed factual allegations regarding the nature of the
15 shooting.

16 In California, the cause of action for wrongful death is “a pure creature of the statute” and
17 “exists only so far and in favor of such person as the legislative power may declare.” *Justus v.*
18 *Atchison*, 19 Cal.3d 564, 575 (1977); *Rosales v. Battle*, 113 Cal.App.4th 1178, 1182 (Cal. App.
19 2003); *Chavez v. Carpenter*, 91 Cal.App.4th 1433, 1438-40 (Cal. App. 2001); *Fraizer v. Velkura*,
20 91 Cal.App.4th 942, 945 (Cal. App. 2001). Standing to sue is governed by California Code of
21 Civil Procedure § 377.60, and the categories of persons eligible to bring wrongful death actions
22 are strictly construed. Cal.Code Civ. Pro. § 377.60; *Steed v. Imperial Airlines*, 12 Cal.3d 115,
23 119-20 (Cal. 1974); *Bouley v. Long Beach Memorial Medical Center*, 127 Cal.App.4th 601, 606
24 (Cal. App. 2005); *Chavez*, 91 Cal.App.4th at 1438; *Fraizer*, 91 Cal.App.4th at 945; *Marks v.*
25 *Lyerla*, 1 Cal.App. 4th 556, 559-60 (Cal. App. 1991). The legislative determination as to how far
26 to extend a statutorily created right of action “is conclusive, unless it appears beyond rational
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1 doubt that an arbitrary discrimination between persons or classes similarly situated has been
2 made without any reasonable cause therefor.” *Justus*, 19 Cal.3d at 581; *Holguin v. Flores*, 122
3 Cal.App.4th 428, 437-38 (Cal. App. 2004).

4 Section 377.60 establishes the wrongful death cause of action and delineates who may
5 avail themselves of the action. In relevant part, it reads:

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7 A cause of action for the death of a person caused by the wrongful act or neglect of
8 another may be asserted by any of the following persons or by the decedent's personal
representative on their behalf:

9 (a) The decedent's surviving spouse, domestic partner, children, and issue of deceased
10 children, or, if there is no surviving issue of the decedent, the persons, including the
11 surviving spouse or domestic partner, who would be entitled to the property of the
decedent by intestate succession.

12 (b) Whether or not qualified under subdivision (a), if they were dependent on the
13 decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As
14 used in this subdivision, “putative spouse” means the surviving spouse of a void or
voidable marriage who is found by the court to have believed in good faith that the
marriage to the decedent was valid.

15 Cal.Code Civ. Pro. § 377.60.

16 Probate Code § 6402 sets the order of intestate succession under § 377.60. *See Chavez*, 91
17 Cal.App.4th at 1440; *Frazier*, 91 Cal.App.4th at 946. When there is no surviving spouse or
18 domestic partner, § 6402, in relevant part, provides the following succession:
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20 (a) To the issue of the decedent, the issue taking equally if they are all of the same degree
21 of kinship to the decedent, but if of unequal degree those of more remote degree take in
the manner provided in Section 240.

22 (b) If there is no surviving issue, to the decedent's parent or parents equally.

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24 (c) If there is no surviving issue or parent, to the issue of the parents or either of them, the
25 issue taking equally if they are all of the same degree of kinship to the decedent, but if of
unequal degree those of more remote degree take in the manner provided in Section 240.

26 (d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived
27 by one or more grandparents or issue of grandparents, to the grandparent or grandparents

1 equally, or to the issue of those grandparents if there is no surviving grandparent, the issue
2 taking equally if they are all of the same degree of kinship to the decedent, but if of
unequal degree those of more remote degree take in the manner provided in Section 240.

3 Cal. Prob.Code § 6402(a)-(d). A plaintiff who brings a wrongful death suit as an heir must
4 establish the absence of issue by the decedent and the entitlement or propriety of the heir to seek
5 recovery under § 377.60. *See Nelson v. County of Los Angeles*, 113 Cal.App.4th 783, 789 (Cal.
6 App. 2004); *Coats v. K-Mart Corp.*, 215 Cal.App.3d 961, 969-70 (Cal. App. 1989); *Jolley v.*
7 *Clemens*, 28 Cal.App.2d 55, 74-75 (Cal. App. 1938).

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9 Here, Plaintiffs are brothers of the decedent. A sibling is not the “surviving spouse,
10 domestic partner, children, [or] issue of deceased children.” Cal. Code Civ. P. § 377.60(a). For
11 purposes of the California wrongful death statute, Plaintiffs would have to establish the absence
12 of surviving issue and standing through the intestate succession statute. Under intestate
13 succession, siblings may recover as heirs if there is no issue of the decedent, and no surviving
14 parents of the decedent. Cal. Prob. Code § 6402(c). The Complaint alleges Plaintiffs are
15 successors in interest to Decedent, but there are no specific allegations concerning the existence
16 of any spouse, issue, or surviving parents of Decedent. Accordingly, the Court will grant the
17 County’s motion to dismiss the Third Cause of Action. Plaintiffs shall be granted leave to amend
18 to add factual allegations establishing Plaintiffs’ standing under California Code of Civil
19 Procedure § 377.60(a).

20 **B. Motion for a More Definite Statement**

21 *Rule 12(e) provides that a party may move for a more definite statement when “a*
22 *pleading to which a responsive pleading is permitted is so vague and ambiguous that a party*
23 *cannot reasonably be required to frame a responsive pleading.” Fed.R.Civ.P. 12(e).* The County
24 has set forth a list of what it contends are confusing allegations that prevent it from filing an
25 answer. However, a Rule 12(e) motion is proper only if the complaint is so indefinite that the
26 defendant cannot ascertain the nature of the claim being asserted in order to frame a response.
27 *See Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 F. Supp. 940, 949 (E.D. Cal. 1981). The

1 Court must deny the motion if the complaint is specific enough to notify defendant of the
2 substance of the claim being asserted. *See Bureerong v. Uvawas*, 922 F.Supp. 1450, 1461
3 (C.D.Cal.1996). The Court may also deny the motion if the detail sought by a motion for a more
4 definite statement is obtainable through the discovery process. *Beery v. Hitachi Home*
5 *Electronics (America), Inc.*, 157 F.R.D. 477, 480 (C.D.Cal. 1993).

6 Here, although the Court agrees that portions of the Complaint are inelegantly pleaded,
7 the nature of the claims asserted by Plaintiffs are intelligible and unambiguous. The information
8 sought by the County - specifically, which Doe officers employed by the County are referred to in
9 the Complaint - is available through the discovery process. As discussed above, Plaintiffs
10 contend Defendants have not yet fulfilled their duty under Federal Rule of Civil Procedure 26 to
11 identify individuals likely to have discoverable information. The County, through review of its
12 own records, should be able to ascertain which, if any, of its law enforcement officers responded
13 to the incident involving Rodolfo Medrano on May 29, 2011, at 2750 South Union Avenue in
14 Bakersfield. Thus, the Court finds that because the identities of the County employees allegedly
15 involved can readily be ascertained through the liberal federal discovery procedures, the instant
16 action does not warrant a more definite statement. If, in the course of discovery, the County
17 learns of information that would require it to amend its answer, it may seek opposing counsel's
18 consent or leave of the Court to do so pursuant to Federal Rule of Civil Procedure 15.³

19 CONCLUSION AND ORDER

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. The County's motion to dismiss is GRANTED IN PART and DENIED IN PART;
 - 22 2. The Third Cause of Action is DISMISSED with leave to amend;
 - 23 3. The County's motion for a more definite statement is DENIED;
- 24

25 ³ However, as the County's 12(b)(6) motion will be granted in part, Plaintiffs should
26 endeavor to clarify which persons and entities are referred to if Plaintiffs decide to file an
27 amended complaint. Otherwise, the deficiencies are not so severe that they independently warrant
repleading.

1 4. Plaintiffs shall file any amended complaint within 20 days of the date of service of
2 this Order.

3 IT IS SO ORDERED.

4 Dated: February 1, 2013



SENIOR DISTRICT JUDGE