

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF DWAYNE ZACHARY,
LINDA LAMPKIN; DWAYNELA'
Ta'SHAY ZACHARY THOMAS;
AUGUSTINE ZACHARY; SHAMIKA
THOMAS; AILEEN ELDORA
ZACHARY; DWAYNE ZACHARY;
LARRY MARTWAINE ZACHARY;
JOSHUA CLERANCE ZACHARY

No. 2:06-cv-01652-MCE-EFB

Plaintiffs,

v.

MEMORANDUM AND ORDER

COUNTY OF SACRAMENTO; CITY OF
SACRAMENTO; SACRAMENTO COUNTY
SHERIFF'S DEPARTMENT; LOU
BLANAS, individually and in
his official capacity as
SACRAMENTO COUNTY SHERIFF;
SACRAMENTO POLICE DEPARTMENT;
ALBERT NAJERA, individually
and in his official capacity
as CHIEF OF POLICE OF THE CITY
OF SACRAMENTO; SACRAMENTO
SHERIFF OFFICERS DOES 1-24;
SACRAMENTO POLICE OFFICERS
DOES 50-99; and ADDITIONAL
DOES 100-150, inclusive.

Defendants.

-----oo0oo-----

1 Through the present action, Plaintiffs seek redress for
2 several federal and state law claims alleging that Defendants
3 violated Plaintiffs' civil rights during the course of responding
4 to a domestic disturbance call at the home of the now deceased
5 Dwayne Zachary. Presently before the Court is a Motion by
6 Defendants County of Sacramento, Craig Harmon, Brent Jarvis,
7 Brett Spaid, Rebecca Purdy, Jeremy Day, Kenneth Wight, Matthew
8 Tallman, Andrew Croley, Kevin Jordan, Bill Myers, Donald Vagt and
9 Lou Blanas ("Defendants") for Summary Judgment or, in the
10 alternative, Summary Adjudication of issues, pursuant to Federal
11 Rule of Civil Procedure 56. For the reasons set forth below
12 Defendants' Motion is denied in part and granted in part.¹
13

14 **BACKGROUND**
15

16 On August 4, 2005, Officers Tallman, Spaid and Harmon
17 responded to a domestic disturbance call at the apartment of
18 Dwayne Zachary. Upon arrival, Zachary opened the door naked and
19 made offensive comments to the officers. He was thereafter
20 handcuffed and seated on the couch as the officers checked the
21 apartment. When it was determined that Zachary was unarmed and
22 did not present a threat, the officers uncuffed Zachary and
23 returned to their cars.

24 ///

25 ///

26 _____
27 ¹ Because oral argument will not be of material assistance,
28 the Court ordered this matter submitted on the briefing. E.D.
Cal. Local Rule 230(g).

1 As the officers were leaving the apartment complex, Zachary
2 ran outside of his apartment wearing only a bathrobe. Zachary
3 was sweating and behaving in an erratic manner. The officers
4 ordered Zachary to stop running and to show his hands. Zachary
5 repeatedly refused to comply with their commands. Zachary then
6 turned and ran back to his apartment.

7 The officers chased after Zachary as a result of his failing
8 to obey their commands and because they were unable to determine
9 if he had some sort of weapon. The officers eventually caught up
10 with Zachary in the apartment and attempted to subdue him. In
11 attempting to subdue Zachary, Officer Tallman used his Taser.
12 The Taser had no effect and Zachary began to run to another part
13 of the apartment. Officer Spaid followed and used a Taser on
14 Zachary a second time, again to no avail. Soon after, Officers
15 Jordan, Jarvis, Croley and Day arrived at the apartment. Jordan
16 shouted a warning to Zachary and then used a Taser on him for the
17 third time. It also had no effect. Harmon then began to hit
18 Zachary with his baton in an effort to subdue him. According to
19 Plaintiffs, several officers beat and punched Zachary in his
20 head, body, and mouth, dislodging his teeth. During the
21 struggle, the officers double cuffed Zachary and placed him under
22 maximum restraints. Zachary was held face down, stomach to the
23 ground, with his ankles strapped toward his waist in a "hog-tie"
24 manner.

25 ///
26 ///
27 ///
28 ///

1 During the altercation, Plaintiff Shamika Thomas, Zachary's
2 adult daughter, arrived at the home and could see through the
3 front door that there were officers inside. She alleges she
4 could hear screaming and fighting. Shamika claims she asked
5 deputies if she could speak to her father, but they refused.

6 She then states she watched the altercation from an open
7 kitchen window on the north side of the premises where she could
8 hear fighting and see deputies making "fighting type movements."
9 According to Plaintiffs, Shamika heard her father cry out and
10 call for his "baby girl" before he went silent.

11 After a period of time, the Officers observed that Zachary
12 was not breathing. The officers immediately began CPR and called
13 for an ambulance. Zachary was rushed to a nearby hospital but
14 was pronounced dead later that evening. The Coroner's Final
15 Report listed the cause of death as "[s]udden cardiac arrest
16 while being restrained prone after physical altercation with
17 police that included [the] use of [T]asers, due to excited
18 delirium due to acute cocaine and MDMA intoxication." The
19 present action followed.

20 Defendants now move for summary judgment or summary
21 adjudication of Plaintiffs' claims. Specifically, Officer Brett
22 Spaid and Sheriff Lou Blanas move for summary judgment on all
23 causes of action. Defendant County of Sacramento moves for
24 summary adjudication of Plaintiffs' First, Second, Third, Eighth,
25 Ninth, Tenth, and Eleventh Causes of Action.

26 ///

27 ///

28 ///

1 The remaining Defendants, Officers Harmon, Jarvis, Purdy, Day,
2 Tallman, Croley, Jordan, Wight, Vagt, and Lt. Meyers, move for
3 summary adjudication of Plaintiffs' Eighth, Ninth, and Tenth
4 Causes of Action.

5
6 **STANDARD**
7

8 The Federal Rules of Civil Procedure provide for summary
9 judgment when "the pleadings, the discovery and disclosure
10 materials on file, and any affidavits show that there is no
11 genuine issue as to any material fact and that the movant is
12 entitled to a judgment as a matter of law." Fed. R. Civ. P.
13 56(c). One of the principal purposes of Rule 56 is to dispose of
14 factually unsupported claims or defenses. *Celotex Corp. v.*
15 *Catrett*, 477 U.S. 317, 323-324 (1986).

16 Rule 56 also allows a court to grant summary adjudication on
17 part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party
18 claiming relief may move...for summary judgment on all or part of
19 the claim."); see also *Allstate Ins. Co. v. Madan*, 889 F. Supp.
20 374, 378-79 (C.D. Cal. 1995); *France Stone Co., Inc. v. Charter*
21 *Township of Monroe*, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

22 The standard that applies to a motion for summary
23 adjudication is the same as that which applies to a motion for
24 summary judgment. See Fed. R. Civ. P. 56(a), 56(c); *Mora v.*
25 *ChemTronics*, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998).

26 ///

27 ///

28 ///

1 A party seeking summary judgment always bears the
2 initial responsibility of informing the district court
3 of the basis for its motion, and identifying those
4 portions of "the pleadings, depositions, answers to
interrogatories, and admissions on file together with
the affidavits, if any," which it believes demonstrate
the absence of a genuine issue of material fact.

5 *Celotex Corp. v. Catrett*, 477 U.S. at 323 (quoting Rule 56(c)).

6 If the moving party meets its initial responsibility, the burden
7 then shifts to the opposing party to establish that a genuine
8 issue as to any material fact actually does exist.

9 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
10 585-87 (1986); *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S.
11 253, 288-89 (1968).

12 In attempting to establish the existence of this factual
13 dispute, the opposing party must tender evidence of specific
14 facts in the form of affidavits, and/or admissible discovery
15 material, in support of its contention that the dispute exists.
16 Fed. R. Civ. P. 56(e). The opposing party must demonstrate that
17 the fact in contention is material, i.e., a fact that might
18 affect the outcome of the suit under the governing law, and that
19 the dispute is genuine, i.e., the evidence is such that a
20 reasonable jury could return a verdict for the nonmoving party.
21 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251-52
22 (1986); *Owens v. Local No. 169, Assoc. of Western Pulp and Paper*
23 *Workers*, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way,
24 "before the evidence is left to the jury, there is a preliminary
25 question for the judge, not whether there is literally no
26 evidence, but whether there is any upon which a jury could
27 properly proceed to find a verdict for the party producing it,
28 upon whom the onus of proof is imposed."

1 Anderson, 477 U.S. at 251 (quoting Schuylkill and Dauphin
2 Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)). As the
3 Supreme Court explained, “[w]hen the moving party has carried its
4 burden under Rule 56(c), its opponent must do more than simply
5 show that there is some metaphysical doubt as to the material
6 facts....Where the record taken as a whole could not lead a
7 rational trier of fact to find for the nonmoving party, there is
8 no ‘genuine issue for trial.’” Matsushita, 475 U.S. at 586-87.

9 In resolving a summary judgment motion, the evidence of the
10 opposing party is to be believed, and all reasonable inferences
11 that may be drawn from the facts placed before the court must be
12 drawn in favor of the opposing party. Anderson, 477 U.S. at 255.
13 Nevertheless, inferences are not drawn out of the air, and it is
14 the opposing party’s obligation to produce a factual predicate
15 from which the inference may be drawn. Richards v. Nielsen
16 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),
17 aff’d, 810 F.2d 898 (9th Cir. 1987).

18 ANALYSIS

19 A. Section 1983 Claims (First, Second, and Third Causes of 20 Action)

21 1. County of Sacramento

22
23
24 Section 1983 of Title 42 of the U.S. code authorizes private
25 parties to enforce their constitutional rights against defendants
26 who acted under the color of state law. 42 U.S.C. § 1983. A
27 plaintiff may hold a municipality liable under section 1983 for
28 its official acts pursuant to policy, regulation, custom or usage.

1 Chew v. Gates, 27 F.3d 1432, 1444 (9th Cir. 1994) (citing Monell
2 v. Dept. of Soc. Serv. of City of N.Y., 436 U.S. 658, 690-91
3 (1978)). The municipality policy need only cause the
4 constitutional violation; it need not be unconstitutional per se.
5 Jackson v. Gates, 975 F.2d 648, 654 (9th Cir. 1992). A policy
6 "causes" an injury where it is "the moving force" behind the
7 constitutional violation. Monell 436 U.S. at 694. Alternatively,
8 a municipality may also be liable for failing to act, thereby
9 exhibiting "deliberate indifference" to constitutional rights.
10 City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989).

11 Here, the County seeks summary adjudication of Plaintiffs'
12 claim arguing that it cannot be held liable under Section 1983
13 because it had in place an elaborate system of policies and
14 training procedures as to the proper use of force during arrest.

15 However the focus here is not on the County's stated
16 policies but on its "customs." Plaintiffs have alleged evidence
17 of several Taser-related deaths in the Sacramento area in the
18 past five years and point out the County policy allows for the
19 use of Tasers whenever there is a "tactical advantage," thus
20 giving officers wide discretion in the use of force. This makes
21 it disputable whether the County had a "custom", either actively
22 or by omission, of having officers employ excessive force in
23 arrests.

24 There is a triable issue of fact as to whether the County of
25 Sacramento failed to act or is liable under its customs. Summary
26 adjudication on this issue is denied.

27 ///

28 ///

1 **2. Sheriff Lou Blanas**

2
3 Plaintiffs allege that Defendant Sheriff Lou Blanas is
4 similarly liable under Section 1983 due to his supervisory role
5 as Sheriff of Sacramento County. A supervisor is liable for
6 constitutional violations by his subordinates if the supervisor
7 participated in or directed the violations, or knew of the
8 violations and failed to act to prevent them. Taylor v. List,
9 880 F.2d 1040, 1045 (9th Cir. 1989). There is no respondent
10 superior liability under § 1983. Id.

11 Defendants argue that Blanas was not present and therefore
12 did not direct or set in motion any chain of events that resulted
13 in a constitutional injury.

14 However Plaintiffs, although admitting that there is no
15 direct respondent superior liability, argue that the evidence of
16 Taser-related deaths in Sacramento alerted the Sheriff that
17 constitutional violations were occurring, and yet he failed to
18 change anything about the County's policies. By signing off on
19 the County's Taser training and customs of use, Plaintiffs assert
20 that Blanas authorized, and therefore directed and participated
21 in, the violation of Plaintiffs' civil rights.

22 A reasonable jury could find that Blanas should have taken
23 some level of action to help prevent the further occurrence of
24 Taser-related deaths, and that his failure to do so resulted in
25 the constitutional violations alleged. There is a triable issue
26 of fact as to whether Blanas knew of the violations and failed to
27 act to prevent them. Summary adjudication on the matter is
28 denied.

1 **3. Officer Brett Spaid**

2
3 As an initial matter, there is a dispute over the applicable
4 standard of law under which to evaluate the actions of Defendant
5 Officer Brett Spaid. Moving parties seek to apply a Fourth
6 Amendment reasonableness standard whereas Plaintiffs call for a
7 substantive due process analysis under the Fourteenth Amendment.
8 Plaintiffs have alleged use of excessive force in violation of
9 both Fourth and Fourteenth Amendment rights.

10 Certain substantive due process claims might be preempted if
11 the same claims could be decided under an explicit textual source
12 of constitutional protection rather than under the generalized
13 notion of substantive due process. Action Apartment Association,
14 Inc. v. Santa Monica Rent Control Board, 509 F.3d 1020, 1024-25
15 (9th Cir. 2007) (citing Graham v. Connor, 490 U.S. 386, 395
16 (1989)). In the context of excessive force claims, the Supreme
17 Court has held that all such allegations are to be analyzed under
18 the Fourth Amendment "reasonableness" standard, rather than a
19 "substantive due process" approach, even in cases where
20 plaintiff's complaint alleges violation of both the Fourth
21 Amendment and the Due Process Clause. Graham, 490 U.S. at 394-395
22 (referencing its ruling in Tennessee v. Garner, 471 U.S. 1, 5
23 (1985)).

24 ///
25 ///
26 ///
27 ///
28 ///

1 "Because the Fourth Amendment provides an explicit textual source
2 of constitutional protection against physically intrusive
3 governmental conduct," that Amendment "must be the guide for
4 analyzing these claims." Graham, 490 U.S. at 395.²

5 Accordingly, the Fourth Amendment's "reasonableness"
6 standard will apply. In so doing, a court must consider the
7 totality of the circumstances and balance the nature and quality
8 of the intrusion on the individual's Fourth Amendment interests
9 against the importance of the governmental interests alleged to
10 justify the intrusion. U.S. v. Guzman-Padilla, 573 F.3d 865,
11 876-77 (9th Cir. 2009) (citing Samson v. California, 547 U.S.
12 843, 848 (2006); and Scott v. Harris, 550 U.S. 372, 383 (2007)).
13 The "reasonableness" inquiry in an excessive force case is an
14 objective one; the question is whether the officers' actions are
15 "objectively reasonable: in light of the facts and circumstances
16 confronting them." Forrester v. City of San Diego, 25 F.3d 804,
17 806 (citing Graham, supra, 490 U.S. at 396-97.)

18 Spaid seeks summary adjudication of Plaintiffs' claim
19 arguing that the facts on record demonstrate that he used
20 reasonable force on Zachary.

21 ///

22 _____
23 ² Plaintiffs' reliance on Chavez v. Martinez, 538 U.S. 760
24 (2003), as standing for the notion that "egregious official
25 conduct" that "shock[s] the conscious" may violate the due
26 process clause, is misapplied in this case. The "shocks the
27 conscious" test used in Chavez, as well as in County of
28 Sacramento v. Lewis, 523 U.S. 833 (1998), to which Chavez refers,
was applied to circumstances in which a due process analysis was
already found to be the relevant standard. Here, Plaintiffs'
allegation of excessive force necessarily invokes a Fourth
Amendment "reasonableness" standard, preempting the "shocks the
conscious" test that would be applied to a due process claim.

1 To support his claim, Spaid points to Plaintiffs' own police
2 practices expert, Roger Clark, as concurring that Spaid's use of
3 a Taser and a kick in an attempt to stop Zachary was reasonable,
4 albeit not the best tactic. Plaintiffs, however, counter that
5 several material issues remain in dispute including a
6 determination of whether Spaid intended to harm Zachary, whether
7 Spaid wrongfully ignored the alleged warnings of his partners,
8 and whether Spaid was required, under the circumstances, to
9 intervene when fellow officers continued to struggle with
10 Zachary. The "totality of the circumstances" inquiry attendant
11 to an excessive force claim inherently calls for multitude of
12 factual determinations.

13 There is a triable issue of fact as to whether Spaid's
14 actions were "objectively reasonable" in light of the
15 circumstances confronting him. Summary adjudication is denied.
16

17 **4. Section 1983 Familial Relationships**

18
19 Plaintiffs also allege a claim for loss of familial
20 relationship as recognized under the Fourteenth Amendment. A
21 substantive due process claim may be asserted by the survivors of
22 a person killed by law enforcement based on the related
23 deprivation of their liberty interest arising out of their
24 relationship with deceased. Moreland v. Las Vegas, 159 F.3d 365,
25 371 (9th Cir. 1998).

26 ///

27 ///

28 ///

1 Both parents and children of such a deceased person have been
2 found to have a constitutionally protected liberty interest in
3 their familial relationship under the Fourteenth Amendment.
4 Curnow By and Through Curnow v. Ridgecrest Police, 952 F.2d 321,
5 325 (9th Cir. 1991).

6 However, as Defendants correctly point out, siblings may
7 not bring such a claim under Section 1983. Siblings have no
8 cognizable liberty interest in the companionship and society of a
9 deceased brother. See Ward v. City of San Jose, 967 F.2d 280,
10 283-84 (9th Cir. 1991) (citing Bell v. City of Milwaukee, 746
11 F.2d 1205 (7th Cir.1984)); see also Rentz v. Spokane County, 438
12 F. Supp. 2d 1252, 1255 (E.D. Wash. 2006). As such, Plaintiff
13 Linda Lampkin, as the sister of Zachary, lacks standing. Summary
14 adjudication as to her specific claim is granted.

15
16
17 **B. Wrongful Death and Assault and Battery (Sixth and**
18 **Seventh Causes of Action)**

19 **1. Sheriff Lou Blanas**

20 Defendant Sheriff Lou Blanas seeks summary adjudication of
21 Plaintiffs' claims of wrongful death and assault and battery. In
22 so doing, Blanas cites California Government Code § 820.8 which
23 states "a public employee is not liable for an injury caused by
24 the act or omission of another person." Blanas therefore argues
25 that he cannot be held liable for his officers' actions when he
26 was not present at the time.

27 ///

28 ///

1 However, California Government Code § 820.8 goes on to
2 clarify that “[n]othing in this section exonerates a public
3 employee from liability for injury proximately caused by his own
4 negligent or wrongful act or omission.” In determining
5 individual liability, the Ninth Circuit has held that a
6 supervising officer can be held liable “if he knowingly refused
7 to terminate a series of acts by others, which he knew or
8 reasonably should have known would cause others to inflict a
9 constitutional injury.” Dubner v. City and County of San
10 Francisco, 266 F.3d 959, 968 (9th Cir. 2001) (citing Watkins v.
11 City of Oakland, 145 F.3d 1087, 1093 (9th Cir. 1998)).

12 A supervisor may also be held liable for his “own culpable action
13 or inaction in the training, supervision, or control of his
14 subordinates, for his acquiescence in the constitutional
15 deprivations of which the complaint is made, or for conduct that
16 showed a reckless or callous indifference to the rights of
17 others.” Larez v. City of Los Angeles, 946 F.2d 630 (9th Cir.
18 1991) (citations omitted).

19 Here, Plaintiffs assert that Blanas was on notice that there
20 had been several Taser-related deaths in Sacramento in the years
21 preceding Zachary's death, and that eight deaths in California
22 had occurred under similar circumstances. Plaintiffs argue that
23 Blanas's failure to change his training policies or address Taser
24 use amounted to deliberate “indifference to the rights of others”
25 making him individually liable, as supervising officer, for the
26 wrongful death and assault and battery of Dwayne Zachary.

27 ///

28 ///

1 The determination of whether Blanas was placed on notice is
2 a factual inquiry, not a legal one. Therefore, there is a
3 triable issue as to whether Blanas exhibited "indifference to the
4 rights of others." Summary adjudication is denied.

5
6 **2. Officer Brett Spaid**

7
8 In response to Plaintiffs' claim for wrongful death,
9 Defendants argue that Officer Brett Spaid did not participate in
10 restraining Zachary, which they claim was the act that ultimately
11 led to Zachary's death. Plaintiffs argue that Spaid is liable
12 for initiating the struggle and using a Taser on Zachary multiple
13 times.

14 Because a reasonable jury could find that Spaid's
15 participation was a factor in Zachary's death, summary
16 adjudication is denied.

17 Similarly, in response to Plaintiffs' claim for assault and
18 battery, Defendants argue that Spaid's actions were "reasonable"
19 under the circumstances. This too requires a factual
20 determination. As such, it is also a question for the jury and
21 summary adjudication is denied.

22
23 **C. False Arrest and False Imprisonment (Sixth and Seventh**
24 **Causes of Action) as to All Defendants**

25 Defendants argue that Plaintiffs cannot make a viable claim
26 for false arrest and false imprisonment because there was
27 probable cause to take Zachary into custody.

28 ///

1 Probable cause exists when the "facts and circumstances
2 within the officers' knowledge... are sufficient to warrant a
3 prudent person, or one of reasonable caution, in believing, in
4 the circumstances shown, that the suspect has committed, is
5 committing, or is about to commit an offense." Michigan v.
6 DeFillippo, 433 U.S. 31, 37 (1979).

7 Resultantly, a false arrest and false imprisonment claim
8 rests heavily on a determination of the factual circumstances
9 present. Both parties dispute several facts surrounding
10 Zachary's arrest as well as the credibility of the officers
11 relaying those facts. Determinations of these facts is once
12 again a question for the jury and not this Court. Summary
13 adjudication is denied.

14
15 **D. Intentional Infliction of Emotional Distress and**
16 **Negligent Infliction of Emotional Distress (Tenth and**
17 **Twelfth Causes of Action)**

18
19 **1. All Defendants**

20 Plaintiff Shamika Thomas brings claims for both intentional
21 infliction of emotional distress and negligent infliction of
22 emotional distress based on being present at the apartment where
23 her father was being beaten, and allegedly watching and listening
24 to the altercation from a kitchen window before being instructed
25 by officers to leave.

26 ///

27 ///

28 ///

1 To state a claim for intentional infliction of emotional
2 distress, a plaintiff must allege conduct which is especially
3 calculated to cause, and does cause, mental distress of a very
4 serious kind. Ochao v. Superior Court, 39 Cal. 3d 159, 165
5 (1985). Defendants argue that because the actions were not
6 directed at Thomas, she therefore does not have a claim for
7 intentional infliction of emotional distress.

8 The Court agrees with the Defendants. There are no facts
9 upon which to assert such an allegation that the Officers were
10 aware of Thomas's presence at the time of her father's arrest and
11 that they were intentionally trying to cause mental distress.
12 Summary adjudication is granted.

13

14 **2. Sheriff Lou Blanas and Officer Brett Spaid**

15

16 Defendants Sheriff Lou Blanas and Officer Brett Spaid
17 specifically move for summary adjudication of Thomas's claim for
18 negligent infliction of emotional distress. They do so on the
19 basis that they were not physically involved in the altercation
20 restraining Zachary.

21 To succeed on a claim for negligent infliction of emotional
22 distress, plaintiffs must show serious emotional distress
23 actually and proximately caused by wrongful conduct by a
24 defendant who should have foreseen that the conduct would cause
25 such distress. Cole v. Fair Oaks Fire Protection Dist., 43 Cal.
26 3d 148, 155 (1987).

27 ///

1 Thomas alleges that Blanas is liable for negligence related to
2 his failure to take appropriate action to train deputies about
3 the dangers of using Tasers on individuals exhibiting signs of
4 excited delirium. Thomas further alleges that Spaid, although
5 not participating in restraining Zachary, did participate in use
6 of a Taser and kicking him.

7 The liability of Blanas and Spaid rests on whether they
8 committed "wrongful conduct", whether that conduct caused Thomas
9 serious emotional distress, and whether Blanas and Spaid should
10 have foreseen that their conduct would cause such distress.

11 Summary adjudication on these issues is granted.

12
13 **E. Negligent Training, Hiring, Discipline, and Retention**
14 **(Eleventh Cause of Action)**

15 Finally, Plaintiffs allege the tort of negligent training
16 against Sheriff Lou Blanas and County of Sacramento. Defendants
17 argue that their training and policies are a matter committed to
18 their discretion.

19 Specifically, California Government Code § 820.2 states that
20 design of a training program, hiring decisions, and disciplinary
21 decisions are the kind that require discretion at the highest
22 level. Plaintiffs, however, argue that this broad discretion is
23 tempered by the fact that even after being made aware of recent
24 Taser-related deaths in the area Defendants failed to take
25 action.

26 ///

27 ///

28 ///

1 Therefore, Plaintiffs argue that the jury should be allowed to
2 decide whether Defendants had the discretion to ignore the
3 mounting incidents and still not change training.

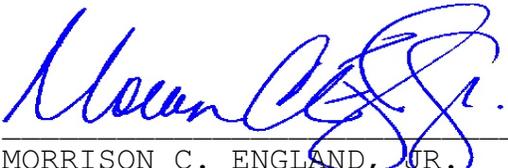
4 There is a triable issue of fact regarding whether the
5 reports of recent deaths placed Blanas and the County on notice
6 such that they were required to change their policies. A
7 reasonable jury may find that their failure to act was negligent.
8 Summary adjudication is denied.

9
10 **CONCLUSION**

11
12 For the reasons set forth above, Defendants' Motion for
13 Summary Judgment (Docket No. 86) is GRANTED as to Plaintiff Linda
14 Lampkin's claim for violation of Section 1983, Plaintiff Shamika
15 Thomas claims for intentional infliction of emotional distress
16 and negligent infliction of emotional distress and DENIED as to
17 all other claims.

18 IT IS SO ORDERED.

19 Dated: April 2, 2010

20
21 
22 MORRISON C. ENGLAND, JR.
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28