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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SHIRLEY NEWMAN and ANTHONY BUTLER,

NO. CIV. 2:09-3441 WBS KJN

Plaintiffs,

MEMORANDUM AND ORDER RE:
MOTION FOR SUMMARY JUDGMENT,
SUMMARY ADJUDICATION, OR
PARTIAL SUMMARY JUDGMENT AND
MOTION IN LIMINE

v.

SAN JOAQUIN DELTA COMMUNITY COLLEGE DISTRICT; DANIELE RULEY; JAMES WOOD; and DOES 1 through 100, inclusive,

Defendants.

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Plaintiffs Shirley Newman and Anthony Butler brought this action against defendants San Joaquin Delta Community College District ("Delta College"), Daniele Ruley, and James Wood, asserting claims for excessive force, unreasonable seizure, and disability discrimination under federal and state law. Presently before the court are Delta College and Ruley's joint motion for summary judgment or partial summary judgment pursuant to Federal Rule of Civil Procedure 56, Wood's motion for summary

1 judgment or summary adjudication pursuant to Rule 56, and
2 plaintiffs' motion in limine.

3 I. Factual and Procedural Background

4 On March 13, 2008, plaintiffs, who have lived together
5 since 2000, were attending classes in separate classrooms at
6 Delta College when Newman began to suffer from anxiety. Newman,
7 a 43-year-old woman with a history of mental illness, sought out
8 Butler to comfort her.¹ An instructor in Butler's classroom
9 called campus police when Newman stated at one point that she was
10 going to hurt someone. (See Meleyco Decl. Ex. J (classroom
11 instructor deposition transcript), at 11-22, Ex. U (police
12 dispatcher deposition transcript), at 21-23.) The dispatcher
13 told the police officers that the wife was upset and crying and
14 on the "verge of being violent towards her husband." (Medina
15 Decl. Ex. 20, at Ex. 2.)

16 According to plaintiffs, they were walking quietly and
17 calmly to the classroom door as they held each other when the
18 individual defendants arrived. (See Meleyco Decl. Ex. E (Butler
19 deposition transcripts), at Feb. 27, 2009, dep. tr. 91-92, Ex. J,
20 at 23-24.) Butler complied with Delta College police officer
21 Wood's orders to come with him, but was slammed to the ground and
22 dragged into the hallway by Woods and Delta College police
23 officer Ruley. Newman states that Ruley then pulled her through
24 the classroom door and slammed her against the hallway wall three

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26 ¹ Before this incident, San Joaquin In Home Support
27 Services had granted Newman twenty-four-hour "protective
28 supervision" by Butler. Butler states that he enrolled in
classes to be near Newman when Delta College would not allow him
to sit inside or outside Newman's classrooms. (Butler Decl. in
Opp'n to Delta College & Ruley's Mot. ("Butler Decl. I") ¶ 4.)

1 times, while using racially derogatory language. Plaintiffs were
2 released after five to ten minutes. (See id. Ex. E, at Feb. 27,
3 2009, dep. tr. 94-104, Apr. 5, 2011, dep. tr. 196-210, 223, 250,
4 Aug. 12, 2009, dep. tr. 94-101; id. Ex. R (Newman deposition
5 transcripts), at Apr. 12, 2009, dep. tr. 191-200, 244-57, Apr.
6 20, 2009, dep. tr. 384-386; Butler Decl. in Opp'n to Delta
7 College & Ruley's Mot. ("Butler Decl. I") ¶¶ 16, 23-25, Exs. E-F
8 (Online Citizen Complaint Forms); Newman Decl. in Opp'n to Delta
9 College & Ruley's Mot. ("Newman Decl. I") ¶¶ 4-8, 19, 32-38, Exs.
10 E-F (Online Citizen Complaint Forms); Butler Decl. in Opp'n to
11 Wood's Mot. ("Butler Decl. II") ¶¶ 6-10; Newman Decl. in Opp'n to
12 Wood's Mot. ("Newman Decl. II") ¶¶ 6-17; see also Meleyco Decl.
13 Ex. BB (deposition transcript of witness to incident), at 11-12;
14 id. Ex. B (deposition transcript of witness to incident), at
15 14-33, 52-55.)

16 According to defendants, plaintiffs were disturbing the
17 other students and Butler failed to comply with Wood's orders and
18 appeared to be dragging Newman to the classroom door as she
19 pushed away from him. Newman, screaming and crying, then tried
20 to get to Butler while Wood was questioning him in the hallway.

21 On March 14, 2008, after meeting with Newman, a vice
22 president at Delta College temporarily suspended her for student
23 misconduct. The vice president required Newman to submit
24 documentation that supported her claim that she was receiving
25 mental help. (See Michel Decl. ¶¶ 4-5, Ex. A-B.) Newman did not
26 submit sufficient documentation and was notified on March 17,
27 2008, that she was suspended through the summer 2008 semester.
28 Following numerous appeals, the president of Delta College

1 rescinded the suspension later that summer.

2 Delta College's Disabled Students Program and Services
3 ("DSPS") office now permits Newman to have Butler attend classes
4 with her. The DSPS office had previously accommodated Newman
5 with extended test-taking time and allowed her to use the
6 elevators.

7 Defendants removed the case to this court on December
8 11, 2009. Plaintiffs assert a 42 U.S.C. § 1983 claim for
9 excessive force and unreasonable seizure as well as state law
10 claims for battery, false imprisonment, intentional infliction of
11 emotional distress, and negligent infliction of emotional
12 distress against all defendants. Newman also asserts claims for
13 violations of the Americans with Disabilities Act ("ADA"), 42
14 U.S.C. §§ 12101-12183, section 504 of the Rehabilitation Act, 29
15 U.S.C. § 794, California's Unruh Civil Rights Act ("Unruh Act"),
16 see Cal. Civil Code § 51, California's Disabled Persons Act
17 ("DPA"), see id. § 54.1, and California Government Code section
18 11135 against Delta College. See Cal. Gov't Code § 11135.

19 II. Discussion

20 Summary judgment is proper "if the movant shows that
21 there is no genuine dispute as to any material fact and the
22 movant is entitled to judgment as a matter of law." Fed. R. Civ.
23 P. 56(a). A material fact is one that could affect the outcome
24 of the suit, and a genuine issue is one that could permit a
25 reasonable jury to enter a verdict in the non-moving party's
26 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
27 (1986). The party moving for summary judgment bears the initial
28 burden of establishing the absence of a genuine issue of material

1 fact and can satisfy this burden by presenting evidence that
2 negates an essential element of the non-moving party's case.
3 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

4 Alternatively, the moving party can demonstrate that the
5 non-moving party cannot produce evidence to support an essential
6 element upon which it will bear the burden of proof at trial.

7 Id.

8 Once the moving party meets its initial burden, the
9 burden shifts to the non-moving party to "designate 'specific
10 facts showing that there is a genuine issue for trial.'" Id. at
11 324 (quoting then-Fed. R. Civ. P. 56(e)). To carry this burden,
12 the non-moving party must "do more than simply show that there is
13 some metaphysical doubt as to the material facts." Matsushita
14 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).
15 "The mere existence of a scintilla of evidence . . . will be
16 insufficient; there must be evidence on which the jury could
17 reasonably find for the [non-moving party]." Anderson, 477 U.S.
18 at 252.

19 In deciding a summary judgment motion, the court must
20 view the evidence in the light most favorable to the non-moving
21 party and draw all justifiable inferences in its favor. Id. at
22 255. "Credibility determinations, the weighing of the evidence,
23 and the drawing of legitimate inferences from the facts are jury
24 functions, not those of a judge . . . ruling on a motion for
25 summary judgment" ² Id.

27 ² Plaintiffs request judicial notice, see Fed. R. Evid.
28 201, of eleven documents. (Pls.' Req. for Judicial Notice Exs.
A-K.) The court declines to take judicial notice of these

1 A. Evidentiary Objections

2 Pursuant to Federal Rule of Civil Procedure 56(c)(2),
3 "[a] party may object that the material cited to support or
4 dispute a fact cannot be presented in a form that would be
5 admissible in evidence." Fed. R. Civ. P. 56(c)(2) (emphasis
6 added).

7 The parties have filed numerous evidentiary objections,
8 many of which are particularly improper on summary judgment. See
9 Burch v. Regents of Univ. of Cal., 433 F. Supp. 2d 1110, 1119-20
10 (E.D. Cal. 2006) (Shubb, J.). Objections to evidence on the
11 ground that the evidence is irrelevant, speculative,
12 argumentative, or constitutes an improper legal conclusion are
13 all duplicative of the summary judgment standard itself. All of
14 these objections are overruled as moot.

15 Delta College and Ruley object to many of the exhibits
16 attached to plaintiffs' counsel's declaration: (1) deposition
17 transcripts and exhibits, (2) expert reports and CVs, and (3)
18 documents produced by Delta College, such as (a) e-mails among
19 Delta College police officers after the incident, (b) the
20 internal affairs investigation report and related documents, and
21 (c) documents pertaining to the tasing of a mentally ill

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23 documents because judicial notice is not necessary to resolve the
24 motions.

25 Wood requests judicial notice of four documents, only
26 three of which he attached to the request. (Wood's Req. for
27 Judicial Notice Exs. 1, 3-4.) The court declines to judicially
28 notice the decision from the California Department of Health
Services because it is not necessary to the resolution of the
motions. The court denies the request to judicially notice the
publications from the California Commission on Peace Officer
Standards and Training ("POST") because they are incomplete
copies of the publications.

1 student. (See Delta College & Ruley's Objections to Meleyco
2 Decl.) The court overrules the objections to these exhibits
3 because plaintiffs may be able to present this evidence at trial
4 in a form that would be admissible. See Fed. R. Civ. P.
5 56(c)(2). The court also overrules Delta College and Ruley's
6 objections to statements in plaintiffs' counsel's declaration.

7 The court overrules Delta College and Ruley's
8 objections contained within their response to plaintiffs'
9 statement of undisputed facts. (See Delta College & Ruley's
10 Objections to Pls.' Evidence in Supp. of their Opp'n to Defs.'
11 Mot. for Summ. J. or Partial Summ. J.)

12 The court overrules plaintiffs' objections to Wood's
13 declaration, (see Pls.' Opp'n to Wood Decl. Submitted in Supp. of
14 Wood's Mot. for Summ. J./Adjudication), and plaintiffs'
15 objections contained within their response to Wood's statement of
16 undisputed facts, (see Pls.' Statement of Disputed & Undisputed
17 Material Facts in Opp'n to Wood's Mot. for Summ. J. or Partial
18 Summ. J.), except for 11, which objects on the ground that the
19 diagnosis of Newman in the cited evidence was not made by a
20 qualified expert. The court sustains this objection. The court
21 overrules plaintiffs' objections contained in their response to
22 Delta College and Ruley's statement of undisputed facts, (Pls.'
23 Statement of Disputed & Undisputed Material Facts in Opp'n to
24 Delta College & Ruley's Mot. for Summ. J. or Partial Summ. J.),
25 except for 25. The court sustains objection 25 to the transcript
26 of the classroom instructor's call to police. The parties
27 dispute its authenticity.

28 B. Plaintiffs' § 1983 Claim

1 In relevant part, § 1983 provides:

2 Every person who, under color of any statute, ordinance,
3 regulation, custom, or usage, of any State . . . ,
4 subjects, or causes to be subjected, any citizen of the
5 United States . . . to the deprivation of any rights,
6 privileges, or immunities secured by the Constitution and
7 laws, shall be liable to the party injured in an action
8 at law, suit in equity or other proper proceeding for
9 redress

6 42 U.S.C. § 1983. While § 1983 is not itself a source of
7 substantive rights, it provides a cause of action against any
8 person who, under color of state law, deprives an individual of
9 federal constitutional rights or limited federal statutory
10 rights. 42 U.S.C. § 1983; Graham v. Connor, 490 U.S. 386, 393-94
11 (1989).

12 1. Individual Defendants

13 a. Excessive Force

14 Under the Fourth Amendment, police may use only such
15 force during an arrest as is objectively reasonable under the
16 circumstances, as judged by a reasonable officer at the scene.
17 Graham, 490 U.S. at 396-97. Excessive force claims require
18 "balanc[ing] the amount of force applied against the need for
19 that force." Bryan v. MacPherson, 630 F.3d 805, 823-24 (9th Cir.
20 2010) (quoting Meredith v. Erath, 342 F.3d 1057, 1061 (9th Cir.
21 2003)) (internal quotation marks omitted). Summary judgment
22 should be granted sparingly on excessive force claims. See
23 Gregory v. Cnty. of Maui, 523 F.3d 1103, 1106 (9th Cir. 2008).

24 In considering the need for the force, the court
25 considers three non-exclusive factors: "the severity of the crime
26 at issue, whether the suspect poses an immediate threat to the
27 safety of the officers or others, and whether he is actively
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1 resisting arrest or attempting to evade arrest by flight.”

2 Bryan, 630 F.3d at 826 (quoting Graham, 490 U.S. at 396)

3 (internal quotation marks omitted). The safety factor is the
4 most important factor. Id.

5 Here, on March, 13, 2008, when Newman began suffering
6 from anxiety, she sought out Butler, who was in a classroom down
7 the hall. Butler attempted to comfort Newman. The classroom
8 instructor then brought them into a side office. In the office,
9 Newman rummaged through the items on the desk and stated that she
10 was going to hurt someone. The classroom instructor then called
11 Delta College police.

12 Wood and Ruley received a call about a husband and wife
13 disturbing the peace. The dispatcher said the wife was upset and
14 crying and on the “verge of being violent towards her husband.”
15 (Medina Decl. Ex. 20, at Ex. 2.)

16 According to plaintiffs, plaintiffs then walked calmly
17 and quietly through the classroom as other students were working,
18 stopping briefly to grab Butler’s backpack. Butler was holding
19 Newman in a “hugging position”; Newman was crying quietly and
20 clinging to Butler’s shirt.

21 Before plaintiffs were able to exit the classroom, the
22 individual defendants arrived on the scene. Newman then got
23 behind Butler, still in physical contact with him. Butler
24 requested some space from the individual defendants. Wood
25 ordered Butler to come with him. Butler stated, “Okay. But my
26 wife is very, very ill. We have to kind of go slow,” (Meleyco
27 Ex. E, at Feb. 27, 2009, dep. tr. 94:19-20), and then took a step
28 toward Wood. Wood then repeated his order in a more commanding

1 tone and grabbed Butler's arm. Wood then "[s]lammed," (id. Ex.
2 E, at Apr. 5, 2011, dep. tr. 205:19), Butler to the ground with
3 the assistance of Ruley, who pulled Butler's shirt over his head.
4 Ruley also pushed Newman away from Butler as Newman tried to hold
5 on to him. The individual defendants then dragged Butler, who
6 was lying face-down, approximately seven feet through the
7 classroom door and down the hallway, at which point Wood stood
8 Butler upright.

9 Ruley then returned to the classroom to find Newman,
10 who had remained in the same spot. Ruley grabbed Newman's arm or
11 wrist and forcefully pulled her through the classroom door,
12 allegedly injuring Newman's shoulder. Ruley then continued to
13 pull Newman down the hallway, in the opposite direction of Wood
14 and Butler. Grabbing Newman at the shoulders, Ruley slammed
15 Newman against the hallway wall three times, allegedly causing
16 injury to her lower back that later required surgery.³ Ruley
17 told Newman multiple times to "[s]hut your black ass up," (id.
18 Ex. R, Apr. 12, 2011, dep. tr. 196:17-18), and called her a
19 "[b]itch." (Id. Ex. B, at 23:24.) Newman claims that she never
20 attempted to get away from or resist Ruley.

21 Butler explained to Wood that his wife was mentally ill
22 and what had happened. A professor and a student who knew Newman
23 attempted to explain Newman's circumstances to Ruley. (See
24 Meleyco Decl. Exs. O, B.) Plaintiffs were detained for five to
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27 ³ Following the surgery, Newman has had difficulty
28 walking and generally uses a wheelchair. She also has had
difficulty controlling her bowel and bladder functions and has
had numbness in her genital area.

1 ten minutes before being released.⁴

2 Under plaintiffs' version of the facts, the government
3 interest in the use of force was minimal. See Bryan, 630 F.3d at
4 826. The only possibly applicable crimes were the misdemeanors
5 of failing to comply with an order, resisting arrest, disturbing
6 the peace, or battery. "While 'the commission of a misdemeanor
7 offense is not to be taken lightly, it militates against finding
8 the force used to effect an arrest reasonable where the suspect
9 was also nonviolent and posed no threat to the safety of the
10 officers or others.'" Id. at 828-29 (quoting Headwaters Forest
11 Def. v. Cnty. of Humboldt, 240 F.3d 1185, 1204 (9th Cir. 2000),
12 vacated and remanded on other grounds sub nom. Cnty. of Humboldt
13 v. Headwaters Forest Def., 534 U.S. 801 (2001)). Plaintiffs'
14 evidence suggests that they did not pose a threat to the officers
15 and did not resist or attempt to flee before or after the
16 individual defendants began to use force. Moreover, if the
17 individual defendants knew that Newman was "acting out" from a
18 mental illness, the Ninth Circuit has indicated that less

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23 ⁴ Defendants' version of the events differ. It appeared
24 that Newman was pushing away from Butler as Butler dragged her
25 toward the exit. She also was screaming and crying when she went
26 behind Butler when the officers arrived. When Wood was
27 questioning Butler in the hallway, Newman was trying to get to
28 Butler.

26 The parties' facts overlap in some respects. It
27 appears undisputed that Butler was still holding Newman when Wood
28 first pulled his arm. It also appears undisputed that after
Ruley pulled Newman into the hallway, Newman was crying and
screaming for Butler.

1 intrusive means may be more appropriate.⁵ See id. at 829
2 (discussing use of intermediate force).

3 While the force used was not deadly or intermediate, it
4 involved slamming Butler to the ground and dragging him and
5 pulling Newman and slamming her against the wall three times.
6 Under plaintiffs' version of the events, there is a genuine
7 dispute regarding the reasonableness of the force under the
8 balancing test set forth in Graham.

9 Section 1983 requires "personal participation." Jones
10 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). While Wood did
11 not touch Newman, Wood initiated the use of force against Butler
12 and a jury could reasonably infer that he participated in the
13 subsequent use of force against Newman. Accordingly, the court
14 will deny the individual defendants' motions for summary judgment
15 on the § 1983 claim for excessive force.

16 b. Unreasonable Seizure

17 An investigatory stop under Terry v. Ohio, 392 U.S. 1
18 (1968), only requires reasonable suspicion; an arrest requires
19 probable cause. See Washington v. Lambert, 98 F.3d 1181, 1885-86
20 (9th Cir. 1996).

21 To determine whether a seizure was a Terry stop or an
22 arrest, the "general consideration" is that a Terry stop is brief
23 and of a minimally intrusive nature. United States v.

24
25 ⁵ The individual defendants may have known that Newman
26 was mentally ill from how Newman was acting. Moreover, Newman
27 was wearing a "medic-alert" bracelet and Butler informed the
28 individual defendants that his wife was ill. Plaintiffs have
also presented evidence suggesting that Ruley may have learned
about Newman's mental illness before March 13, 2008, when she
responded to a call involving Newman.

1 Guzman-Padilla, 573 F.3d 865, 884 (9th Cir. 2009). Beyond this
2 general consideration, the courts usually use two inquiries to
3 determine whether a seizure was a Terry stop or arrest. Id.
4 "First, it is well-established that intrusive measures may
5 convert a stop into an arrest if the measures would cause a
6 reasonable person to feel that he or she will not be free to
7 leave after brief questioning--i.e., that indefinite custodial
8 detention is inevitable." Id. "Second, because '[t]he purpose
9 of a Terry stop is to allow the officer to pursue his
10 investigation without fear of violence,' 'we allow intrusive and
11 aggressive police conduct without deeming it an arrest . . . when
12 it is a reasonable response to legitimate safety concerns on the
13 part of the investigating officers.'" Id. (quoting United States
14 v. Taylor, 716 F.2d 701, 708 (9th Cir. 1983), and United States
15 v. Miles, 247 F.3d 1009, 1012-13 (9th Cir. 2001)) (alterations in
16 original) (citation omitted).

17 Here, a trier of fact could find that the Terry stop
18 transformed into an arrest. As the facts are shown by
19 plaintiffs, nothing had occurred that would make the officers
20 fear for their safety, justifying aggressive conduct. See
21 Guzman-Padilla, 573 F.3d at 883; see, e.g., United States v.
22 Ricardo D., 912 F.2d 337, 340 (9th Cir. 1990).

23 "Probable cause to arrest exists when officers have
24 knowledge or reasonably trustworthy information sufficient to
25 lead a person of reasonable caution to believe that an offense
26 has been or is being committed by the person being arrested."
27 United States v. Lopez, 482 F.3d 1067, 1072 (9th Cir. 2007).

28 Under plaintiffs' version of the events, the only fact

1 supporting probable cause would have been the information the
2 individual defendants received from the student dispatcher.
3 However, once they arrived on the scene, the individual
4 defendants would have seen that plaintiffs were calmly and
5 quietly walking toward the classroom exit. According to
6 plaintiffs, Butler complied with Wood's orders. There is a
7 genuine dispute with respect to whether probable cause existed to
8 arrest either plaintiff for any crime. Accordingly, the court
9 will deny the individual defendants' motions for summary judgment
10 on the unreasonable seizure claim.

11 c. Qualified Immunity

12 A court may not determine qualified immunity at the
13 summary judgment stage when there is a factual dispute as to "the
14 facts and circumstances within an officer's knowledge" or "what
15 the officer and claimant did or failed to do." Up!/Portland v.
16 Bagley, 988 F.2d 868, 873 (9th Cir. 1993); see Wilkins v. City of
17 Oakland, 350 F.3d 949, 956 (9th Cir. 2003); see, e.g., Castillo
18 v. City of Oakland, No. C 09-4679, 2010 WL 4316176, at *3 (N.D.
19 Cal. Oct. 26, 2010); Begzad v. City of Hayward, No. C03-2163,
20 2005 WL 350961, * 7 (N.D. Cal. Feb. 14, 2005). Here, there are
21 multiple factual disputes regarding what the individual
22 defendants and plaintiffs did or failed to do and what the
23 individual defendants knew, thus precluding the court from
24 determining the issue of qualified immunity.

25 2. Monell Claim

26 "In a Monell claim, there are three ways to show a
27 policy or custom of a [public entity]: (1) by showing 'a
28 longstanding practice or custom which constitutes the 'standard

1 operating procedure' of the local government entity'; (2) 'by
2 showing that the decision-making official was, as a matter of
3 state law, a final policymaking authority whose edicts or acts
4 may fairly be said to represent official policy in the area of
5 decision'; or (3) 'by showing that an official with final
6 policymaking authority either delegated that authority to, or
7 ratified the decision of, a subordinate.'" Rosenbaum v. City &
8 Cnty. of San Francisco, 484 F.3d 1142, 1155 (9th Cir. 2007).

9 A policy is a deliberate choice made by the entity and can be one
10 of action or inaction. See Long v. Cnty. of Los Angeles, 442
11 F.3d 1178, 1185 (9th Cir. 2006).

12 While not exactly clear from their opposition,
13 plaintiffs appear to base their Monell claim on Delta College's
14 police policy or custom regarding handling mentally ill people,
15 including the use of force. Plaintiffs appear to only rely on a
16 failure-to-train theory under City of Canton v. Harris, 489 U.S.
17 378 (1989), and ratification.

18 "To impose liability . . . under Canton, a plaintiff
19 must show: (1) that [defendant's] employee violated [the
20 plaintiff]'s rights; (2) that the [defendant] has customs or
21 policies that amount to deliberate indifference (as that phrase
22 is defined by Canton); and (3) that these policies were the
23 moving force behind the employee's violation of [the plaintiff]'s
24 constitutional rights, in the sense that the [the defendant]
25 could have prevented the violation with an appropriate policy."
26 Gibson v. Cnty. of Washoe, Nev., 290 F.3d 1175, 1194 (9th Cir.
27 2002).

28 The deliberate indifference standard is met when "the

1 need for more or different training is so obvious, and the
2 inadequacy so likely to result in the violation of constitutional
3 rights, that the policymakers of the [entity] can reasonably be
4 said to have been deliberately indifferent to the need." Canton,
5 489 U.S. at 390 (emphases added). "A plaintiff [] might succeed
6 in proving a failure-to-train claim without showing a pattern of
7 constitutional violations where 'a violation of federal rights
8 may be a highly predictable consequence of a failure to equip law
9 enforcement officers with specific tools to handle recurring
10 situations.'" Long, 442 F.3d at 1186 (quoting Bd. of Cnty.
11 Comm'rs v. Brown, 520 U.S. 397, 409 (1997)).

12 Here, one of plaintiffs' police experts, Joseph
13 McNamara, makes the general observation about how frequently
14 police officers encounter mentally ill people and opines that
15 police officers should be trained on how to handle them.
16 (Meleyco Decl. Ex. UU (McNamara expert report). Plaintiffs point
17 to the fact that the Marc Bromme, who was chief of police at the
18 time of the incident, acknowledged that the approach used to deal
19 with mentally healthy people may not be effective with mentally
20 ill people. (Id. Ex. D (Bromme deposition transcript), at
21 142:12-18.) Plaintiffs' expert McNamara states, for example,
22 that touching a mentally ill person may cause the person to
23 erupt, while having the opposite effect on a mentally healthy
24 person. (Id. Ex. UU.)

25 Plaintiffs point out that Delta College did not require
26 continuing education training of police officers or have a policy
27 in its police manual specifically addressing mentally ill people
28 before this incident and still does not. (Id. Exs. D (Bromme

1 deposition transcript), at 47:13-20, DD (Zwickey deposition
2 transcript), at 116:2-9.) The California Commission on Peace
3 Officer Standards and Training requires twenty-hours of
4 continuing education training, with some of these hours
5 discretionary on what topics a police department may cover. (Id.
6 Ex. P (McNamara deposition transcript), at July 18, 2011, dep.
7 tr. 159:17-160:10. McNamara recommends forty hours beyond the
8 required twenty-four hours of continuing education be devoted to
9 handling mentally ill people. (Id.)

10 In support of their failure-to-train theory, plaintiffs
11 also point to four categories of post-incident evidence. See
12 Henry v. Cnty. of Shasta, 132 F.3d 512, 519 (9th Cir. 1997),
13 amended on denial of rehearing, 132 F.3d 512 (9th Cir. 1998)
14 (“[P]ost-event evidence is not only admissible for purposes of
15 proving the existence of a municipal defendant’s policy or
16 custom, but is highly probative with respect to that inquiry.”).
17 First, neither the police chief at the time nor the next police
18 chief took corrective action. With respect to Newman
19 specifically, an e-mail from the chief of police told his
20 officers that Newman had a mental illness, but did not instruct
21 them to handle her differently from mentally healthy people.
22 (Meleyco Decl. Ex. GG (e-mails).) Second, a series of e-mails
23 among Delta College officials, including police officers,
24 suggests that they pre-judged what had occurred. (Id.)

25 Third, the internal affairs investigation, conducted by
26 a police officer who may have pre-judged the incident,
27 “exonerated” the individual defendants. (Id. Ex. JJ (internal
28 affairs report).) The chief of police reviewed the report and

1 agreed with it in letters to plaintiffs. (See Butler Decl. II
2 Exs. G-H. Fourth, in April of 2011, three years after the
3 incident, Delta College police tasered a mentally ill person.
4 (Meleyco Decl. Ex. II.)

5 In response to the failure-to-train theory, Delta
6 College argues that plaintiffs have not presented evidence that
7 contact with mentally ill people was a recurring situation.
8 Delta College police officers, including the individual
9 defendants, received all legislatively-mandated training, such as
10 basic and field training. (See Ruley Decl. ¶¶ 2-12; Wood Decl.
11 in Supp. of Delta College & Ruley's Mot. ¶¶ 2-9; Di Piero Decl.
12 ¶¶ 2-10; Greenwood Decl. ¶¶ 2-10; Vasquez Decl. ¶¶ 2-8.) Basic
13 and field training includes training on how to handle mentally
14 ill people.

15 Delta College argues that plaintiffs do not have
16 sufficient evidence of deliberate indifference, noting that
17 plaintiffs do not cite past constitutional violations.

18 The court finds that plaintiffs' evidence to prove its
19 failure-to-train theory is relatively weak and relies on general
20 observations about the frequency with which police officers
21 encounter mentally ill people. Moreover, plaintiffs have not
22 argued that the basic and field training with respect to mentally
23 ill people is insufficient as a matter of content; plaintiffs
24 simply argue for more training and a policy in the manual.
25 Additionally, their post-incident evidence is far from as
26 probative as the evidence was in Henry.

27 Nonetheless, drawing all inferences in plaintiffs'
28 favor, the court finds that the failure to have any continuing

1 education training on handling mentally ill people and the
2 failure to address the issue at all in the police manual creates
3 at least triable issues with respect to whether Delta College's
4 failure to train amounted to deliberate indifference and was the
5 "moving force" behind the constitutional violations. Cf. Abston
6 v. City of Merced, No. 1:09-cv-00511, 2011 WL 2118517, at *15
7 (E.D. Cal. May 24, 2011) (Wanger, J.). Plaintiffs have gone
8 beyond presenting evidence of the failure to train one officer,
9 which is insufficient standing alone. See Blankenhorn v. City of
10 Orange, 485 F.3d 463, 484 (9th Cir. 2007). Accordingly, the
11 court will deny Delta College's motion for summary judgment on
12 the Monell claim.⁶

13 C. Plaintiffs' Battery Claim

14 "Claims that police officers used excessive force in
15 the course of an arrest, investigatory stop or other 'seizure' of
16 a free citizen are analyzed under the reasonableness standard of
17 the Fourth Amendment to the United States Constitution." Munoz
18 v. City of Union City, 120 Cal. App. 4th 1077, 1102 (1st Dist.
19 2009); see also Austin B. v. Escondido Union Sch. Dist., 149 Cal.
20 App. 4th 860, 879 (2007) (discussing joint tortfeasor liability).
21 Accordingly, because the court will deny defendants' motions for
22 summary judgment on the excessive force claim, the court will
23 deny defendants' motions with respect to this claim.⁷

24
25 ⁶ Because plaintiffs have a viable Monell claim under the
26 failure-to-train theory, the court declines to decide whether
27 plaintiffs have grounds for Monell liability under ratification.

28 ⁷ By statute, a public entity is vicariously liable for
injuries caused by their employees within the scope of
employment, unless the employee is immune from liability. See
Cal. Gov't Code § 815.2. Accordingly, Delta College will be

1 D. Plaintiffs' False Imprisonment Claim

2 "The elements of a tortious claim of false imprisonment
3 are: (1) the nonconsensual, intentional confinement of a person,
4 (2) without lawful privilege, and (3) for an appreciable period
5 of time, however brief." Easton v. Sutter Coast Hosp., 80 Cal.
6 App. 4th 485, 496 (1st Dist. 2000); see also Harden v. S.F. Bay
7 Area Rapid Transit Dist., 215 Cal. App. 3d 7, 15 (1st Dist. 1989)
8 (discussing joint tortfeasor liability). "Pursuant to California
9 Penal Code § 847(b)(1), a police officer shall not be held
10 civilly liable for false arrest . . . if the police officer had
11 reasonable cause to believe the arrest was lawful"
12 Turner v. Oakland Police Officers, No. C 09-03652, 2010 WL
13 234898, at *5 (N.D. Cal. Jan. 14, 2010). "Reasonable cause to
14 arrest exists when the facts known to the arresting officer would
15 lead a reasonable person to have a strong suspicion of the
16 arrestee's guilt." Id. For the reasons discussed with respect
17 to the unreasonable seizure claim, the court will deny
18 defendants' motions with respect to the false imprisonment claim.

19 E. Plaintiffs' Intentional Infliction of Emotional
20 Distress Claim

21 The elements for the tort of intentional infliction of
22 emotional distress are "(1) extreme and outrageous conduct by the
23 defendant with the intention of causing, or reckless disregard of
24 the probability of causing, emotional distress; (2) the
25 plaintiff's suffering severe or extreme emotional distress; and
26 (3) actual and proximate causation of the emotional distress by
27 _____
28 liable to the extent the individual defendants are liable for the
state law torts.

1 the defendant's outrageous conduct." Christensen v. Super. Ct.,
2 54 Cal. 3d 868, 904 (1991) (quoting Davidson v. City of
3 Westminister, 32 Cal. 3d 197, 209 (1982)). An unprovoked attack
4 by a police officer could be considered extreme and outrageous
5 conduct. See Graves v. City of Stockton, No. Civ. 04-0430 DFL
6 KJM, 2006 WL 768831, at *5 (E.D. Cal. Mar. 27, 2006) (Levi, J.);
7 Lewis v. City of Portland, No. Civ. 99-1279-AS, 2000 WL 254004,
8 at *3 (D. Or. Jan.21, 2000). Plaintiffs have presented evidence
9 that they suffer from emotional distress. While Butler's
10 emotional distress seems to be significantly less than Newman's,
11 it is sufficient. See Graves, 2006 WL 768831, at *6.
12 Accordingly, the court will deny defendants' motions for summary
13 judgment on this claim.

14 F. Plaintiffs' Negligent Infliction of Emotional Distress
15 Claim

16 Plaintiffs treat this claim as a general negligence
17 claim. "The elements of a negligence cause of action are: (1) a
18 legal duty to use due care; (2) a breach of such legal duty; (3)
19 the breach was the proximate or legal cause of the resulting
20 injury; and (4) actual loss or damage resulting from the breach
21 of the duty of care."⁸ Megarqee v. Wittman, 550 F. Supp. 2d
22 1190, 1209 (E.D. Cal. 2008) (O'Neill, J.). Under California law,
23 police officers have a duty not to use excessive force. Knapps
24 v. City of Oakland, 647 F. Supp. 2d 1129, 1164 (N.D. Cal. 2009).
25 "[W]hether an officer breached such duty is 'analyzed under the
26

27 ⁸ Wood argues that plaintiffs' claim is barred by
28 contributory negligence or assumption of the risk. The court
finds triable issues of fact with respect to these affirmative
defenses.

1 reasonably standard of the Fourth Amendment to the United
2 Constitution.'" Id. (quoting David v. City of Fremont, Nos. C
3 05-46 CW, C 05-956, 2006 WL 2168329, *21 (N.D. Cal. July 31,
4 2006)). For the reasons discussed above with respect to the
5 excessive force claim, the court will deny defendants' motions
6 for summary judgment on the negligence claim.

7 G. Newman's ADA and Rehabilitation Act Claims against
8 Delta College

9 In the education context, "[t]o make out a prima facie
10 case under either the ADA or Rehabilitation Act [a plaintiff]
11 must show that (1) she is disabled under the Act; (2) she is
12 'otherwise qualified' to remain a student at the [] School, i.e.,
13 she can meet the essential eligibility requirements of the
14 school, with or without reasonable accommodation; (3) she was
15 dismissed solely because of her disability; and (4) the [] School
16 receives federal financial assistance (for the Rehabilitation Act
17 claim), or is a public entity (for the ADA claim)." Zukle v.
18 Regents of Univ. of Cal., 166 F.3d 1041, 1045 (9th Cir. 1999)
19 (explaining 29 U.S.C. § 794 (Rehabilitation Act provision) and 42
20 U.S.C. § 12132 (ADA provision)).

21 The ADA regulations require a public entity to "make
22 reasonable modifications in policies, practices, or procedures
23 when the modifications are necessary to avoid discrimination on
24 the basis of disability, unless the public entity can demonstrate
25 that making the modifications would fundamentally alter the
26 nature of the services, program, or activity." 28 C.F.R. §
27 35.130(b)(7); see also 34 C.F.R. § 104.44(a).

28 Here, Newman bases her ADA and Rehabilitation Act

1 claims on Delta College (1) suspending Newman from attending
2 classes following the March 13, 2008, incident, (2) "failing to
3 conduct a proper analysis of her disability which resulted in a
4 failure to recognize her need for a caregiver to be present in
5 classes with her," and (3) failing to provide "regular and
6 consistent counseling to ensure her academic progress." (Pls.'
7 Opp'n to Delta College & Ruley's Mot. at 96:8-13.)

8 Newman met with someone from Delta College's DSPS
9 office on June 29, 2007. Newman told Roger Keeney that she had
10 psychological problems. The only documentation Keeney required
11 was a letter from the Social Security Administration confirming
12 that she was receiving disability benefits. (See Meleyco Decl.
13 Ex. N (Keeney dep. trans.), at 19, 25-26, 33-34.) DSPS's
14 guidelines allow for a student to be accompanied to class by a
15 caregiver, but Newman was not offered this accommodation until
16 after the incident. Newman was allowed some accommodations
17 before the incident, such as extended test-taking time.

18 While it appears undisputed that Newman never
19 specifically requested that a caretaker accompany her to class or
20 academic counseling, there appears to be a genuine dispute as to
21 whether Delta College engaged in good faith in the interactive
22 process. The Ninth Circuit has explained what is required of a
23 public entity as follows:

24 If [the plaintiff] is disabled, the [public entity] also
25 had a duty to engage in an interactive process to
26 consider his requested accommodations. As we have
27 explained in the context of our employment cases, once
28 the need for accommodation has been established, there is
a mandatory obligation to engage in an informal
interactive process "to clarify what the individual needs
and identify the appropriate accommodation." This
interactive process is triggered upon notification of the

1 disability and the desire for accommodation. An employer
2 who fails to engage in such an interactive process in
3 good faith may incur liability "if a reasonable
4 accommodation would have been possible."

5 Vinson v. Thomas, 288 F.3d 1145, 1154 (9th Cir. 2002) (quoting
6 Barnett v. U.S. Air, Inc., 228 F.3d 1105, 1112, 1114, 1116 (9th
7 Cir. 2000)) (addressing 28 C.F.R. § 35.130(b)(7)) (citations
8 omitted) (emphasis added).

9 Newman's theory is, had Delta College engaged in good
10 faith in the interactive process, the incident of March, 13,
11 2008, may have been prevented. If the incident had been
12 prevented, Newman would not have been suspended. The Ninth
13 Circuit has noted the connection between the failure to
14 accommodate and termination in the employment context. See
15 Humphrey v. Mem'l Hosps. Ass'n, 239 F.3d 1128, 1138-39 (9th Cir.
16 2001) ("Often the two claims, are, from a practical standpoint,
17 the same. . . . In this case, MHA's stated reason for Humphrey's
18 termination was absenteeism and tardiness. For purposes of the
19 ADA, with a few exceptions, conduct resulting from a disability
20 is considered to be part of the disability, rather than a
21 separate basis for termination. The link between the disability
22 and termination is particularly strong where it is the employer's
23 failure to reasonably accommodate a known disability that leads
24 to discharge for performance inadequacies resulting from that
25 disability."). Thus, the genuine issue with respect to the
26 failure to accommodate leads the court to deny Delta College's
27 motion for summary judgment as to the ADA and Rehabilitation Act
28

1 claims.⁹

2 H. Newman's California's Unruh Act and DPA Claim against
3 Delta College

4 "The DPA and the Unruh Act¹⁰ both focus on ensuring
5 that persons with disabilities have equal access to public
6 businesses, facilities, and other accommodations." Bass v. Cnty.
7 of Butte, 458 F.3d 978, 980 (9th Cir. 2006); see Cal. Civil Code
8 §§ 51, 54.1; see generally Molski v. Arciero Wine Grp.
9 164 Cal. App. 4th 786, 792 (2d Dist. 2008) (explaining how
10 remedies differ under Unruh Act and DPA); C.B. v. Sonora School
11 Dist., 691 F. Supp. 2d 1123, 1154 (E.D. Cal. 2009) (Wanger, J.)
12 (same).

13 Violations of the ADA generally constitute violations
14 of the Unruh Act and DPA. See Cal. Civ. Code §§ 51(f), 54(c);

16 ⁹ While not raised by Delta College, the court notes that
17 "[t]o recover monetary damages under Title II of the ADA or the
18 Rehabilitation Act, a plaintiff must prove intentional
19 discrimination on the part of the defendant," and the standard
20 for intentional discrimination is deliberate indifference.
21 Duvall v. Cnty. of Kitsap, 260 F.3d 1124, 1138 (9th Cir. 2001).
22 "Deliberate indifference requires both knowledge that a harm to a
23 federally protected right is substantially likely, and a failure
24 to act upon that likelihood." Id. at 1139. Thus, to recover
25 monetary damages at trial on the ADA and Rehabilitation Act
26 claims, Newman must prove intentional discrimination.

23 ¹⁰ The Unruh Act provides that "[a]ll persons within the
24 jurisdiction of this state are free and equal, and no matter what
25 their . . . disability . . . are entitled to the full and equal
26 accommodations, advantages, facilities, privileges, or services
27 in all business establishments of every kind whatsoever." Cal.
28 Civ. Code § 51(b).

26 The DPA provides that "[i]ndividuals with disabilities
27 shall be entitled to full and equal access, as other members of
28 the general public, to accommodations, advantages, facilities, .
and other places to which the general public is invited"
Cal. Civ. Code § 54.1.

1 Bass, 458 F.3d 978. But see Bass 458 F.3d 978 (holding that the
2 Acts do not extend to ADA employment violations).

3 Here, based on her opposition, it appears that Newman's
4 Unruh Act and DPA claims are based solely on the ADA violation.
5 Because Newman has a triable ADA claim, the court will deny the
6 motion with respect to these state law claims.¹¹

7 I. California Government Code Section 11135

8 Remedies for violations of California Government Code
9 section 11135, which prohibits entities receiving funding from
10 the state from discriminating based on disability, are limited to
11 "a civil action for equitable relief." Cal. Gov't Code § 11139.

12 Here, at the oral argument, Newman's counsel stated
13 that the only equitable relief Newman seeks is an injunction
14 requiring training of Delta College police officers. Delta
15 College's only argument for summary judgment on this claim is
16 that Newman will not be entitled to equitable relief under
17 California Civil Code section 3422 (describing grounds for a
18 permanent injunction). See Cal. Civil Code § 3422. However,
19 Delta College has not demonstrated based on the evidence that

20
21 ¹¹ However, to the extent the Unruh Act and DPA claims are
22 based on violations of Title II of the ADA, Newman will have to
23 prove intentional discrimination at trial to recover damages.
24 See C.B. v. Sonora Sch. Dist., 691 F. Supp. 2d 1123, 1155 (E.D.
25 Cal. 2009) (Wanger, J.) ("[T]o the extent that the Complaint may
26 be construed to allege a violation of the Unruh Civil Rights Act
27 or the Disabled Persons Act based on a violation of the ADA,
28 because the Complaint alleges a violation of Title II of the ADA,
Plaintiff must plead and prove intentional discrimination in
order to state a claim for relief in the First Cause of
Action."). If Newman's claims are not based on ADA violations,
then whether Newman must prove intent to recover damages is based
on whether the claim is brought under the DPA or Unruh Act. See
Molski v. Arciero Wine Grp., 164 Cal. App. 4th 786, 792 (2d Dist.
2008) (explaining that Unruh Act requires intent and DPA does
not).

1 Newman, who remains a student at Delta College, will not be
2 entitled to equitable relief.

3 J. California's Government Claims Act

4 In denying Wood's motion to dismiss in this action,
5 this court held:

6 Plaintiffs' efforts substantially complied with the
7 Government Claims Act because plaintiffs' complaints
8 alerted Delta College to the basis of the claims against
9 Delta College, Ruley, and Wood, and the amount of
10 damages that plaintiffs were seeking. In plaintiffs'
11 Online Citizen Complaint form, Newman even specifically
12 identified Wood and Ruley and the officers who used
13 force against her and arrested her. Under the facts as
14 alleged, Delta College should have been aware that a
15 monetary claim was being asserted against it and had
16 sufficient information such that it could thoroughly
17 investigate plaintiffs' claims. Plaintiffs accordingly
18 have sufficiently alleged substantial compliance with
19 the claims presentation requirements of the Government
20 Claims Act.

21 Newman v. San Joaquin Delta Cmty. College Dist., No. CIV.
22 2:09-3441, 2010 WL 3633737, at *6 (E.D. Cal. Sept. 14, 2010).

23 Even if the court only considers the documents received
24 by Delta College,¹² these documents include: (1) "Unlawful
25 Discrimination Complaint Forms,"¹³ (Butler Decl. II Exs. L1-L2);
26 (2) a March 21, 2008, letter, titled "Civil Rights Violation,"¹⁴

27 ¹² Delta College has not argued that the vice presidents
28 and deans whom received these documents were the wrong people.
See Cal. Gov't Code § 915.

¹³ Plaintiffs alleged discrimination based on mental
disability, physical disability, and race. Butler requested
"compensation for the Police Brutality." (Butler Decl. II Exs.
L1-L2.)

¹⁴ This letter describes the incident and suspension and
states that Delta College knew that Newman was disabled. The
letter concludes: "We feel that our civil and human rights have
been grossly violated by the police of Delta College and the
Administration. We would like your help, guidance, and Any type
of advice you have to help us. Be advised that we are not
willing to turn the other cheek in regards to this incident.

1 (id. Ex. C); (3) a May 21, 2008, letter, titled "Civil Rights
2 Violations, Unfair and Illegal Treatment of a Mentally and
3 Physically Handicapped Student,"¹⁵ (id. Ex. K); (4) "Statement of
4 Damages (Personal Injury or Wrongful Death)" forms,¹⁶ (id. Exs.
5 01-02; Newman Decl. II 01-02); and (5) numerous letters from
6 Newman appealing her suspension. (See, e.g., Newman Decl. II
7 Exs. D, D1.) Butler states that a vice president at Delta
8 College refused to assist him "in trying to 'extract money from
9 Delta College.'" (Butler Decl. II ¶ 13.)

10 In response to the Unlawful Discrimination Complaint
11 Forms, a Delta College vice president wrote a letter to
12 plaintiffs. The letter described the incident and subsequent
13 suspension: "Ms. Newman and Mr. Butler feel their civil and human
14 rights have been grossly violated by the police and
15 administration of Delta College." The official concluded: "We
16 found that the Campus Police acted appropriately given their
17 training and procedures for similar situations." (Id. Ex. Q.)

18 Taking the documents together, which the court
19 reasonably infers was intended, plaintiffs substantially complied

20 _____
21 Whatever it takes they should be held accountable for the
22 beatings in the classroom and any difficulties as a result of."
(Id. Ex. C.)

23 ¹⁵ This letter describes the incident, suspension, and
24 Newman's disability, and alleges that the individual defendants'
25 and College's conduct was based on race and Newman's disability.
26 The letter states that "this Complaint against SJDC and the DCPD
27 . . . is not going away or [to] be swept under the rug." The
28 letter concludes by asking for someone to intervene on
plaintiffs' behalf. (Id. Ex. K.)


¹⁶ Butler sought \$2 million in general damages for pain,
suffering, inconvenience, and emotional distress and \$50 million
in punitive damages; Newman sought \$2 million in general damages
and \$50 million in punitive damages.

1 or Delta College failed to notify plaintiffs of any deficiencies
2 in the "claims as presented," thus waiving the requirement. See
3 City of San Jose v. Super. Ct., 12 Cal. 3d 447, 456-57 (1974)
4 (discussing substantial compliance); Wood v. Riverside Gen.
5 Hosp., 25 Cal. App. 4th 1113, 1118 (4th Dist. 1994) (same); City
6 of San Jose v. Super. Ct., 12 Cal. 3d 447, 456-57 (1974) (same);
7 Loehr v. Ventura Cnty. Cmty. Coll. Dist., 147 Cal. App. 3d 1071,
8 1083 (2d Dist. 1983) (same); Alliance Fin. v. City & Cnty. of San
9 Francisco, 64 Cal. App. 4th 635, 643 (1st Dist. 1998) (discussing
10 waiver); Santos v. Merritt College, No. C-07-5227, 2008 WL
11 4570708, at *5 (N.D. Cal. Oct. 14, 2008) (same). Accordingly,
12 the court will deny defendants' motion for summary judgment on
13 presentment-requirement grounds.¹⁷

14 IT IS THEREFORE ORDERED that Delta College and Ruley's
15 motion for summary judgment or partial summary judgment be, and
16 the same hereby is, DENIED.

17 IT IS FURTHER ORDERED that Wood's motion for summary
18 judgment or adjudication be, and the same hereby is, DENIED.

19 DATED: August 31, 2011



20 WILLIAM B. SHUBB

21 UNITED STATES DISTRICT JUDGE

22 _____
23 ¹⁷ A remaining issue is damages and causation. The court
24 declines to address defendants' argument that punitive damages
25 are not justified. See Fed. R. Civ. P. 56(g) (If a court does
26 not grant all relief requested by a motion for summary judgment,
27 "it may enter an order stating any material fact--including an
28 item of damages or other relief--that is not genuinely in dispute
and treating the fact as established in the case.") (emphasis
added).

The court also declines to address Wood's arguments
with respect to whether Butler is entitled to loss of consortium
damages and whether plaintiffs suffered actual damages and, if
so, whether defendants caused them.