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10 Attorneys for Defendants CITY OF VALLEJO, a municipal corporation;
 11 SEAN KENNEY; WAYLON BOYCE, MARK THOMPSON
 individually and in their official capacities as Police Officers for the CITY OF VALLEJO

12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT

14 THE ESTATE OF ANTON BARRETT, by
 15 and through its representatives ANTON
 FRANK BARRETT, PASHANEY
 16 BARRETT AND A.P.B., a minor, by and
 through his guardian ad litem TASHA
 17 PERRY; ANTON FRANK BARRETT,
 individually, PASHANEY BARRETT,
 18 individually and A.P.B., a minor, by and
 through his guardian ad litem, TASHA
 19 PERRY,

Case No.: 2:13-CV-00846-JAM-CKD

**ORDER AFTER HEARING ON
 MOTION FOR SUMMARY
 JUDGMENT/PARTIAL SUMMARY
 JUDGMENT OF ISSUES**

**Date: 4-22-15
 Time: 9:30 a.m.
 Courtroom 6, 14th Floor**

20 Plaintiffs,

Hon. John A. Mendez

21 vs.

**Trial Date: July 20, 2015
 Pre-Trial Conference: June 5, 2015**

22 CITY OF VALLEJO, a municipal
 corporation; SEAN KENNEY; WAYLON
 23 BOYCE, MARK THOMPSON; AND
 DOES 1-50, inclusive; individually and in
 24 their official capacities as Police Officers
 for the CITY OF VALLEJO,

25 Defendants.
 26

27 The Motion for Summary Judgment/Adjudication on behalf of defendants came on for hearing
 28 on April 22, 2015. Kristen K. Preston of Jones & Dyer and Kelly J. Trujillo, Deputy City Attorney for

1 the City of Vallejo appeared on behalf of the Defendants and moving parties. Adante D. Pointer
2 appeared on behalf of the Plaintiffs.

3 The Court, having read and considered the moving and opposing papers and argument presented
4 by counsel at the hearing and good cause appearing hereby makes the following rulings on Defendants'
5 Motion related to causes of action pleaded in Plaintiffs' First Amended Complaint:

6 As to the First Cause of Action, Defendant Kenney's motion is DENIED. Plaintiffs have
7 identified disputes in the evidence as to material facts bearing on Plaintiffs' claim for excessive force;

8 As to the Third Cause of Action, the Defendant Kenney's motion is DENIED. Plaintiffs have
9 identified disputes in the evidence as to material facts bearing on intent to harm, the theory upon which
10 Plaintiffs' pursue their claim for violation of their Fourteenth Amendment rights for deprivation of their
11 familial relationship with the decedent ANTON BARRETT;

12 As to the Fourth Cause of Action, based on the Court's ruling as to the First Cause of Action,
13 Defendant Kenney's motion is DENIED;

14 As to the Fifth Cause of Action, Defendant City of Vallejo's motion is GRANTED. There are is
15 no dispute as to any material issue of fact and, as a matter of law, the Court rules that the Plaintiffs
16 cannot maintain a cause of action for municipal liability arising out of any incident alleged in the
17 complaint.

18 As to the Sixth Cause of Action, Defendant Kenney's motion is DENIED. Plaintiffs have
19 identified disputes in the evidence as to material facts bearing on the essential element of reasonableness
20 of the Defendant's actions;

21 As to the Seventh Cause of Action, Defendant Kenney's motion is GRANTED related to the
22 claims of Plaintiff ESTATE OF ANTON BARRETT. Plaintiff has not identified an act constituting
23 threat, intimidation or violence that is independent of the alleged use of excessive force and, as a matter
24 of law, the Court rules that plaintiff ESTATE OF ANTON BARRETT cannot maintain its claim for
25 violation of California Civil Code section 52.1 (Bane Act);

26 As to the Eighth Cause of Action, Defendant Kenney's motion is GRANTED related to the
27 claims of Plaintiff ESTATE OF ANTON BARRETT. Plaintiff has not identified any dispute in the
28 evidence that Defendant Kenney's alleged conduct was motivated by race and, as a matter of law,

1 Plaintiff ESTATE OF BARRETT cannot maintain its claim for violation of California Civil Code
2 section 51.7. Through counsel Plaintiffs confirm that the allegations contained in this cause of action as
3 to Plaintiff ANTON FRANK BARRETT were not directed at Defendant Kenney.

4 As to the Ninth Cause of Action, Defendant Kenney's motion is DENIED. Plaintiffs have
5 identified disputes in the evidence as to material facts bearing on the essential element of Defendant
6 Kenney's intent to harm decedent ANTON BARRETT;

7 As to the Tenth Cause of Action, Defendant Kenney's motion is DENIED. Plaintiff ESTATE
8 OF ANTON BARRETT has identified disputes in the evidence as to material facts bearing on the
9 essential elements of Plaintiff's claim for assault and battery;

10 As to the Eleventh Cause of Action, Defendant Kenney's motion is GRANTED. There is no
11 dispute in the evidence as to any material fact bearing on the issue of contemporaneous observation by
12 ANTON FRANK BARRETT of injuries to the decedent ANTON BARRETT and, as a matter of law,
13 Plaintiff ANTON FRANK BARRETT cannot maintain a cause of action for negligent infliction of
14 emotional distress;

15 The Court further orders dismissal of the Second Cause of Action in its entirety and dismissal of
16 all DOE defendants.

17 IT IS SO ORDERED.

18
19 Dated: April 29, 2015

/s/ John A. Mendez _____

20 UNITED STATES DISTRICT JUDGE

21 Pursuant to the court's direction, the Order was provided to counsel and approval is indicated by
22 counsel's signature below.

23 Dated: April 28, 2015

LAW OFFICES OF JOHN L. BURRIS

24
25 By: /a/ Adante Pointer
JOHN BURRIS

26 _____
ADANTE POINTER
Attorneys for Plaintiffs