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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SUKHWINDER KAUR, individually
and as the successor in
interest for the Decedent
PARMINDER SINGH SHERGILL;
KULBINDER KAUR SOHOTA;
SARABJIT SINGH SHERGILL,

Plaintiffs,

v.

CITY OF LODI; CITY OF LODI
POLICE DEPARTMENT; MARK
HELMS, in his individual
capacity as the Chief of
Police for the City of Lodi;
SCOTT BRATTON, in his
individual capacity as a City
of Lodi Police Officer; ADAM
LOCKIE, in his individual
capacity as a City of Lodi
Police Officer; and DOES 1
through 50, inclusive,

Defendants.

No. 2:14-cv-828-GEB-AC

**ORDER GRANTING IN PART AND
DENYING IN PART THE CITY
DEFENDANTS' MOTION TO DISMISS
AND DENYING THE OFFICER
DEFENDANTS' MOTION TO DISMISS**

Defendants City of Lodi, City of Lodi Police
Department, and Chief of Police Mark Helms (collectively, "the
City Defendants"), and Scott Bratton and Adam Lockie
(collectively, "the Officer Defendants") move in two separate
motions under Federal Rule of Civil Procedure ("Rule") 12(b)(6)

1 for dismissal of certain claims in Plaintiffs'¹ Complaint, and
2 dismissal of certain parties from the action. The motions
3 challenge claims alleged under 42 U.S.C. § 1983, Title II of the
4 Americans with Disabilities Act ("ADA"), and California
5 Government Code sections 815.2 and 820. Plaintiffs oppose the
6 motions.

7 I. LEGAL STANDARD

8 When deciding a motion to dismiss a complaint, a court
9 "inquire[s] whether the complaint's factual allegations, together
10 with all reasonable inferences, state a plausible claim for
11 relief." United States ex rel. Cafasso v. Gen. Dynamics C4 Sys.,
12 637 F.3d 1047, 1054 (9th Cir. 2011) (citing Ashcroft v. Iqbal,
13 556 U.S. 662, 678-79 (2009)). "A claim has facial plausibility
14 when the plaintiff pleads factual content that allows the court
15 to draw the reasonable inference that the defendant is liable for
16 the misconduct alleged." Iqbal, 556 U.S. at 678 (citing Bell Atl.
17 Corp. v. Twombly, 550 U.S. 544, 556 (2007)).

18 When determining the sufficiency of a claim, "[w]e
19 accept factual allegations in the complaint as true and construe
20 the pleadings in the light most favorable to the non-moving
21 party[; however, this tenet does not apply to] . . . legal
22 conclusions . . . cast in the form of factual allegations." Fayer
23 v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (citation omitted)
24 (internal quotation marks omitted). "Therefore, conclusory
25 allegations of law and unwarranted inferences are insufficient to

26
27 ¹ Plaintiffs Sukhwinder Kaur ("Ms. Kaur"), Kulbinder Kaur Sohota ("Ms.
28 Sohota"), and Sarabjit Singh Shergill ("Mr. Shergill") jointly allege the
sixth claim in the Complaint, and Ms. Kaur alone alleges all other claims.
Each Plaintiff is referenced as "Plaintiffs" throughout the order.

1 defeat a motion to dismiss.” Id. (citation omitted) (internal
2 quotation marks omitted); see also Iqbal, 556 U.S. at 678
3 (stating “[a] pleading that offers ‘labels and conclusions’ or ‘a
4 formulaic recitation of the elements of a cause of action will
5 not do’” (quoting Twombly, 550 U.S. at 555)).

6 **II. FACTUAL BACKGROUND**

7 The following allegations in the Complaint are germane
8 to the motions. “[Lodi Police Department] Chief H[elms] is
9 responsible for [the Lodi Police Department]’s policies related
10 to use of force and its officers’ contacts with persons suffering
11 from mental illness-related disabilities.” (Compl. ¶ 43, ECF No.
12 1.) “Chief H[elms] failed to implement and/or to maintain an
13 adequate [Lodi Police Department] policy related to officer
14 contacts with individuals suffering from mental illness-related
15 disabilit[ies] and the use of force on these individuals. Chief
16 H[elms] was either aware of the non-existence or inadequacy of a
17 policy, believing, mistakenly, that it was not necessary or was
18 deliberately indifferent to the non-existence of, or inadequacy
19 of, this type of important policy.” (Id. ¶ 44.)

20 “P[arminster Singh Shergill] [(‘Parminder’)] was a[]
21 . . . disabled Gulf War veteran who suffered [from] post-
22 traumatic stress disorder and depression” (Id. 2:1-2.)

23 “P[arminster] was a qualified individual with a disability under
24 Title II of [the] ADA, and was suffering from a mental illness-
25 related disability at the time of the incident giving rise to
26 this action.” (Id. ¶ 66.)

27 “[Ms. Kaur] is the mother of . . . P[arminster], and
28 possesses a liberty interest in her familial relationship with

1 [him]." (Id. ¶ 72.) "[Ms. Kaur] and [Parminder's siblings] [Ms.
2 Sohota] and [Mr. Shergill] . . . share[d] an intimate human
3 relationship with their son/brother P[arminder]" (Id.
4 ¶ 76.)

5 "On the morning of January 25, 2014, P[arminder] became
6 anxious and his family members wanted him to go to the Veteran's
7 Clinic to receive treatment." (Id. 2:4-5.) "P[arminder]'s sister-
8 in-law[] called 9-1-1 to request assistance in transporting
9 P[arminder] to the Veteran's Clinic." (Id. ¶ 18.) "During the
10 telephone call to 9-1-1, [she] explained that P[arminder] was
11 disabled, manifesting symptoms of mental illness, and needed to
12 be transported to the Veteran's Clinic where he could obtain care
13 and treatment for his disability." (Id. ¶ 19.)

14 "Before [the Officer Defendants] arrived, P[arminder]
15 left the [f]amily [h]ome to walk to the [p]ark." (Id. ¶ 21.) At
16 the home, Parminder's sister-in-law "provided [the Officer
17 Defendants] with the same information she had provided to the
18 dispatcher." (Id. ¶ 23.) The Officer Defendants "told the family
19 that there was nothing they could do because P[arminder] was not
20 home and had not threatened violence to himself or others."
21 (Id. ¶ 24.) The Officer Defendants "told [Parminder's sister-in-
22 law] that if they saw P[arminder] they would try to talk to him";
23 they then "left the [f]amily [h]ome." (Id. ¶ 25.)

24 The Officer Defendants "saw P[arminder] while he was
25 walking through the [p]ark and attempted to detain him."
26 (Id. ¶ 26.) "P[arminder] walked past the officers . . . and began
27 to walk . . . toward his [f]amily [h]ome." (Id. ¶ 28.) The
28 Officer Defendants "pursued P[arminder] with their weapons drawn,

1 following closely behind him, and demanding that he stop and
2 submit to their questioning" (Id. ¶ 29.) "As [the Officer
3 Defendants] followed P[arminder] . . . , [they] repeatedly asked
4 [P]arminder questions and demanded that he stop and answer their
5 questions." (Id.) "P[arminder] suffered extreme and severe
6 emotional distress at the hands of [the Officer Defendants']
7 harassing behavior" (Id. ¶ 91.)

8 "When P[arminder] was a few house-lengths away from the
9 driveway of his [f]amily [h]ome, [the Officer Defendants] yelled
10 at P[arminder] to 'Stop!' P[arminder] responded to [their]
11 commands by turning around to face them." (Id. ¶ 30.)
12 "P[arminder] had his hands up and yelled 'Don't shoot!'"
13 (Id. ¶ 31.) The Officer Defendants "then shot and killed
14 P[arminder]" (Id. ¶ 32.)

15 "Later that same day, through Chief of Police H[elms],
16 the [Lodi Police Department] issued a press statement regarding
17 the shooting and P[arminder]'s subsequent death," which stated,
18 inter alia: "During their contact [Parminder] charged the
19 [Officer Defendants] with [a] knife, and officers were forced to
20 shoot him. . . . Because of the suspect's actions, our officers
21 had no choice and they had to shoot him." (Id. ¶ 39.) Plaintiffs
22 allege that "[t]he above-referenced statements [in the press
23 release] are false." (Id. ¶ 40.)

24 III. DISCUSSION

25 A. The City Defendants' Motion to Dismiss

26 1. Section 1983 Claims Against the Lodi Police 27 Department

28 The City Defendants argue: "[I]t is established that

1 naming a municipal department as a defendant is not an
2 appropriate means of pleading a § 1983 action against a
3 municipality. Thus, naming both the City of Lodi and Lodi Police
4 Department serves no purpose and the [Lodi] Police Department
5 should be dismissed.” (City Defs.’ Mot. 4:10-13 (citation
6 omitted), ECF No. 14.)

7 “[T]he [p]olice [d]epartment’s capacity to be sued in
8 federal court is to be determined by the law of California.”
9 Streit v. Cnty. of L.A., 236 F.3d 552, 565 (9th Cir. 2001)
10 (citing Shaw v. Cal. Dep’t of Alcoholic Beverage Control, 788
11 F.2d 600, 604 (9th Cir. 1986)). California Government Code
12 section 945 prescribes: “A public entity may . . . be sued.”
13 “Municipal police departments are ‘public entities’ under
14 California law and, hence, can be sued in federal court for
15 alleged civil rights violations.” Karim-Panahi v. L.A. Police
16 Dep’t, 839 F.2d 621, 624 n.2 (9th Cir. 1988) (citing Shaw, 788
17 F.2d at 605). Therefore, this portion the motion is denied.

18 The City Defendants also argue for the first time in
19 their reply brief that “even if this court finds that the Lodi
20 Police Department is a su[.]able entity, this court should dismiss
21 [the Lodi Police Department] because [it] [is] duplicative of the
22 City [of Lodi].” (City Defs.’ Reply 4:3-5, ECF No. 26.) However,
23 a “district court need not consider arguments raised for the
24 first time in a reply brief.” Zamani v. Carnes, 491 F.3d 990, 997
25 (9th Cir. 2007). Therefore, this argument is disregarded.

26 **2. Excessive Force Claim**

27 The City Defendants seek dismissal of Plaintiffs’
28 § 1983 claim against the City of Lodi and Chief Helms, in which

1 Plaintiffs allege these Defendants ratified the Officer
2 Defendants' excessive use of force. Specifically, the City
3 Defendants argue this claim "should be dismissed because the mere
4 issuance of a press release is insufficient conduct to constitute
5 . . . ratification." (City Defs.' Mot. 6:17-19 (emphasis added).)

6 The movants' reliance on the indefinite article "a" in
7 this portion of the motion indicates that they seek an advisory
8 opinion. "[T]he federal courts established pursuant to Article
9 III of the Constitution do not render advisory opinions. For
10 adjudication of constitutional issues, concrete legal issues,
11 presented in actual cases, not abstractions, are requisite."
12 Golden v. Zwickler, 394 U.S. 103, 108, (1969) (alteration in
13 original) (internal quotation marks omitted) (quoting United Pub.
14 Workers v. Mitchell, 330 U.S. 75, 89, (1947)).

15 It has long been [that the federal
16 judiciary's] considered practice [is] not to
17 decide abstract, hypothetical or contingent
18 questions, or to decide any constitutional
19 question in advance of the necessity for its
20 decision, or to formulate a rule of
21 constitutional law broader than is required
22 by the precise facts to which it is to be
23 applied, or to decide any constitutional
24 question except with reference to the
25 particular facts to which it is to be
26 applied

22 Ala. State Fed'n of Labor, Local Union No. 103, United Bhd. of
23 Carpenters, 325 U.S. 450, 461 (1945) (citations omitted). Since
24 this portion of the motion seeks an advisory opinion on the
25 issuance of any press release, it is denied.

26 **3. Inadequate Training and Supervision Claim**

27 The City Defendants seek dismissal of Plaintiffs'
28 § 1983 claim against Chief Helms, in which Plaintiffs allege

1 liability for "inadequate . . . training and/or supervision of
2 [the Officer Defendants] regarding contacts with persons
3 suffering from mental illness." (Compl. ¶ 57.) The City
4 Defendants argue, inter alia, "The Complaint contains no facts
5 about . . . how the . . . inadequacies [in mental-illness-related
6 training and supervision] factually resulted in [Parminder]'s
7 death." (City Defs.' Mot. 8:21-24.) In essence, the City
8 Defendants argue Plaintiffs have not alleged a causal connection
9 between the referenced inadequacies in training and supervision
10 and the shooting.

11 To allege the causation element of this claim,
12 Plaintiffs must allege that "action pursuant to official
13 municipal policy of some nature caused [the referenced]
14 constitutional tort"—specifically, "that the policy [was] the
15 'moving force behind the constitutional violation.'" Berry v.
16 Baca, 379 F.3d 764, 769 (9th Cir. 2004) (quoting Brass v. Cnty.
17 of L.A., 328 F.3d 1192, 1198 (9th Cir. 2003); Oviatt v. Pearce,
18 954 F.2d 1470, 1474 (9th Cir. 1992)).

19 The following facts from Plaintiffs' Complaint are
20 relevant to whether Plaintiffs have alleged a causal connection
21 between allegedly inadequate mental-illness-related training and
22 supervision and Parminder's death:

23 When P[arminder] was a few house-lengths away
24 from the driveway of his [f]amily [h]ome,
[the Officer Defendants] yelled at
25 P[arminder] to 'Stop!' P[arminder] responded
to [their] commands by turning around to face
26 them.

27 P[arminder] had his hands up and
yelled "Don't shoot!"

28 [The Officer Defendants] then shot and killed

1 P[arminster]

2 (Compl. ¶¶ 30-32.)

3 These allegations allege that the Officers Defendants
4 shot an individual who had his hands up. The allegations in the
5 Complaint do not contain facts from which a reasonable inference
6 may be drawn that Parminder's mental illness had a causal
7 connection to the shooting, on which this claim is based.
8 Therefore, this portion of the motion is granted.

9 **4. ADA Claim**

10 The City Defendants seek dismissal of Plaintiffs' claim
11 that the City of Lodi and Lodi Police Department failed to
12 accommodate Parminder's disability in violation of Title II of
13 the ADA. Specifically, the City Defendants argue Plaintiffs have
14 failed to allege that Parminder was disabled within the meaning
15 of the ADA since "Plaintiff[s] do[] not aver any facts suggesting
16 that any of his major life activities [were] limited." (City
17 Defs.' Mot. 9:27-10:1.)

18 "[T]o state a prima facie case under the ADA, [a
19 plaintiff] must show that [a person] is disabled within the
20 meaning of the ADA" Nunes v. Wal-Mart Stores, Inc., 164
21 F.3d 1243, 1246 (9th Cir. 1999). "To adequately allege an actual
22 disability under the ADA, a plaintiff must allege two elements:
23 '(1) . . . a physical or mental impairment; and (2) that such
24 impairment substantially limits one or more . . . major life
25 activities.'" Daubert v. City of Lindsay, No. 1:10-cv-01588-AWI-
26 SKO, 2010 WL 4814408, at *2 (E.D. Cal. Nov. 19, 2010) (quoting
27 Wernick v. Fed. Reserve Bank of N.Y., 91 F.3d 379, 383 (2d Cir.
28

1 1996)).

2 Plaintiffs' Complaint contains the following
3 allegations concerning Parminder's impairment. "[Parminder] was
4 a[] . . . disabled Gulf War veteran who suffered [from] post-
5 traumatic stress disorder and depression" (Compl. 2:1-2.)
6 "P[arminder] was a qualified individual with a disability under
7 Title II of [the] ADA, and was suffering from a mental illness-
8 related disability at the time of the incident giving rise to
9 this action." (Id. ¶ 66.)

10 These conclusory allegations are insufficient under the
11 applicable pleading standard to allege facts from which a
12 reasonable inference may be drawn that Parminder suffered from a
13 disability defined in the ADA. Therefore, this portion of the
14 motion is granted.

15 **B. The Officer Defendants' Motion to Dismiss**

16 **1. Unreasonable Provocation Claim**

17 The Officer Defendants seek dismissal of Plaintiffs'
18 § 1983 claim, in which Plaintiffs allege the Officer Defendants
19 "unreasonably, intentionally, and/or recklessly provoked
20 P[arminder] when they were aware that P[arminder] was suffering
21 from a mental illness, and confronted, following, and harassed
22 P[arminder], without probable cause or reasonable suspicion, as
23 P[arminder] attempted to walk to his [f]amily [h]ome from the
24 [p]ark." (Compl. ¶ 62.) The Officer Defendants argue that
25 "ordering the decedent to stop before he reached [his] home was
26 not a Fourth Amendment violation, much less intentional or
27 reckless provocation." (Officer Defs.' Mot. 12:15-17, ECF No.
28 13.) Further, the Officer Defendants argue the circumstances

1 leading up to their encounter with Parminder "gave rise to
2 reasonable suspicion that [Parminder] posed a danger to those
3 inside the home and that violent criminal activity would ensue if
4 he made it back to the home." (Id. 12:9-12.)

5 "[W]here an officer intentionally or recklessly
6 provokes a violent confrontation, if the provocation is an
7 independent Fourth Amendment violation, he may be liable for his
8 [subsequent,] otherwise defensive use of deadly force."
9 Billington v. Smith, 292 F.3d 1177, 1189 (9th Cir. 2002). "Police
10 may detain or seize an individual for brief, investigatory
11 purposes provided the officers making the stop have reasonable
12 suspicion that criminal activity may be afoot." United States v.
13 Johnson, 581 F.3d 994, 999 (9th Cir. 2009) (internal quotation
14 marks omitted). Such a "stop must be justified at its inception
15 and 'reasonably related in scope to the circumstances which
16 justified' the initial stop.'" Hiibel v. Sixth Jud. Dist. Ct. of
17 Nev., Humboldt Cnty., 542 U.S. 177, 188 (2004) (quoting Terry v.
18 Ohio, 392 U.S. 1, 20 (1968)).

19 Further, "law enforcement officers do not violate the
20 Fourth Amendment by merely approaching an individual ... in [a]
21 public place, [and] asking him if he is willing to answer some
22 questions, [or] by putting questions to him if the person is
23 willing to listen" Florida v. Royer, 460 U.S. 491, 497
24 (1983). Moreover, under a "'community caretaking function[],
25 totally divorced from the detention, investigation, or
26 acquisition of evidence relating to the violation of a criminal
27 statute[,]'" . . . , a police officer may have occasion to seize a
28 person . . . in order to ensure the safety of the public and/or

1 the individual." United States v. King, 990 F.2d 1552, 1560 (10th
2 Cir. 1993) (quoting Cady v. Dombrowski, 413 U.S. 433, 441
3 (1973)). "[A] community caretaking stop requires reasonable
4 belief that the person poses a danger to himself or the public."
5 Shields v. Tracy, No. 03-cv-1614-DFL-PAN, 2005 WL 1490300, at *4
6 (E.D. Cal. June 21, 2005).

7 The following facts are relevant to whether Plaintiffs
8 have alleged that, when the Officer Defendants attempted to
9 detain Parminder in the park, they lacked "reasonable suspicion
10 that criminal activity [might] be afoot," Johnson, 581 F.3d at
11 999, or a "reasonable belief that [Parminder] pose[d] a danger to
12 himself or the public." Tracy, 2005 WL 1490300 at *4.
13 "[Parminder] was a[] . . . disabled Gulf War veteran who suffered
14 [from] post-traumatic stress disorder and depression"
15 (Comp. 2:1-2.) "P[arminder]'s sister-in-law[] called 9-1-1 to
16 request assistance in transporting P[arminder] to the Veteran's
17 Clinic." (Id. ¶ 18.) "During the telephone call to 9-1-1, [she]
18 explained that P[arminder] was disabled, manifesting symptoms of
19 mental illness, and needed to be transported to the Veteran's
20 Clinic" (Id. ¶ 19.) When the Officer Defendants arrived
21 at Parminder's home, "[she] provided [the Officer Defendants] the
22 same information she had provided to the dispatcher." (Id. ¶ 23.)
23 The Officer Defendants "told the family that there was nothing
24 they could do because P[arminder] was not home and had not
25 threatened violence to himself or others." (Id. ¶ 24.) The Officer
26 Defendants "told [Parminder's sister-in-law] that if they saw
27 P[arminder] they would try to talk to him." (Id. ¶ 25.) The
28 Officer Defendants "saw P[arminder] while he was walking through

1 the [p]ark and attempted to detain him.” (Id. ¶ 26.)

2 The Officer Defendants have not shown why, under the
3 applicable pleading standard, a reasonable inference may not be
4 drawn from pled facts that, upon encountering Parminder in the
5 park, the Officer Defendants lacked “reasonable suspicion that
6 criminal activity [might] be afoot,” Johnson, 581 F.3d at 999, or
7 a “reasonable belief that [Parminder] pose[d] a danger to himself
8 or the public.” Tracy, 2005 WL 1490300 at *4. Plaintiffs allege
9 in the Complaint that the Officer Defendants stated Parminder had
10 not threatened violence to himself or others, and a reasonable
11 inference cannot be drawn from the facts alleged that Parminder
12 threatened the Officer Defendants. Therefore, this portion of the
13 motion is denied.

14 **a. Qualified Immunity**

15 The Officer Defendants also argue they are entitled to
16 qualified immunity since “there are insufficient facts to show a
17 pre-shooting Fourth Amendment violation even occurred[, and
18 therefore] [u]nder the circumstances presented, there are
19 insufficient facts indicating that a reasonable officer would
20 have believed that ordering the decedent to stop was unlawful.”
21 (Officer Defs.’ Mot. 13:15-19.) The Officer Defendants’
22 conclusory argument that they are entitled to be shielded from
23 Plaintiffs’ liability allegations under the qualified-immunity
24 doctrine is denied since it is unsupported by facts from the
25 Complaint from which reasonable inferences could be drawn.
26 Therefore, this portion of the motion is denied.

27 **2. Deprivation of Association Claim**

28 The Officer Defendants seek dismissal of Plaintiffs’

1 § 1983 claim, in which Plaintiffs allege that by killing
2 Parminder, the Officer Defendants deprived Plaintiffs of a First
3 Amendment right "to continued association" with him. (Compl.
4 ¶ 75.) Specifically, the Officer Defendants argue: A "First
5 Amendment right to continued association with others . . . is not
6 a cognizable legal theory." (Officer Defs.' Mot. 14:14-16
7 (citation omitted) (internal quotation marks omitted).) However,
8 the Ninth Circuit has specifically recognized a parent's "right
9 to familial association under . . . the First . . . Amendment[]." Lee v. City of L.A., 250 F.3d 668, 686 (9th Cir. 2001).
10 Therefore, this portion of the Officer Defendants' motion is
11 denied.
12

13 The Officer Defendants also argue Parminder's siblings,
14 Plaintiffs Ms. Sohota and Mr. Shergill, "are not proper
15 plaintiffs to bring this [§] 1983 [deprivation of association]
16 claim and must be dismissed." (Officer Defs.' Mot. 15:3-4.) The
17 Officer Defendants point to Ward v. City of San Jose, in which
18 the Ninth Circuit held that siblings do not possess a liberty
19 interest in their sibling's companionship under the Fourteenth
20 Amendment substantive due process clause. 967 F.2d 280, 284 (9th
21 Cir. 1991). However, the Officer Defendants have not shown that
22 the principle enunciated in Ward extends to Plaintiffs' First
23 Amendment claims. Therefore, this portion of the motion is
24 denied.

25 In addition, the Officer Defendants argue for the first
26 time in their reply brief that "[t]he Complaint offers no factual
27 allegations that [Parminder]'s siblings or mother had any type of
28 expressive relationship with him." (Officer Defs.' Reply 7:16-18,

1 ECF No. 25.) However, a "district court need not consider
2 arguments raised for the first time in a reply brief." Zamani,
3 491 F.3d at 997. Therefore, this argument is disregarded.

4 **3. Negligent Infliction of Emotional Distress**
5 **Claim**

6 The Officer Defendants seek dismissal of Plaintiffs'
7 claim for negligent infliction of emotional distress ("NIED"), in
8 which Plaintiffs allege "P[arminster] suffered extreme or severe
9 emotional distress at the hands of [the Officer Defendants']
10 harassing behavior immediately before his death." (Compl. ¶ 91.)
11 The Officer Defendants argue: "There are no known California
12 cases that have held that a police officer and suspect share the
13 . . . type of preexisting relationship which would create a duty
14 to avoid negligent infliction of emotional distress. As such, the
15 [required] duty element . . . is missing." (Officer Defs.' Mot.
16 17:7-11.)

17 "[NIED] is a form of the tort of negligence, to which
18 the elements of duty, breach of duty, causation and damages
19 apply." Huggins v. Longs Drug Stores Calif., Inc., 6 Cal. 4th
20 124, 129 (1993). NIED cases fall into two categories. In
21 "[b]ystander' cases . . . the plaintiff [is] not physically
22 impacted or injured, but instead witness[s] someone else being
23 injured due to defendant's negligence." Wooden v. Raveling, 61
24 Cal. App. 4th 1035, 1037 (1998). In "[d]irect victim' cases
25 . . . the plaintiff's claim of emotional distress is not based
26 upon witnessing an injury to someone else, but rather is based
27 upon the violation of a duty owed directly to the plaintiff." Id.
28 at 1038. Plaintiffs' NIED claim is a "direct victim" claim since

1 it is brought on behalf of Parminder. "[A] right to recover for
2 emotional distress as a 'direct victim' arises from the breach of
3 a duty that is assumed by the defendant or imposed on the
4 defendant as a matter of law, or that arises out of the
5 defendant's preexisting relationship with the plaintiff."
6 Huggins, 6 Cal. 4th at 129.

7 The policy considerations to be taken into
8 account in determining whether a duty is
9 imposed by law . . . [include] "*the*
10 *foreseeability of harm to the plaintiff*, the
11 degree of certainty that the plaintiff
12 suffered injury, the closeness of the
13 connection between the defendant's conduct
14 and the injury suffered, the moral blame
15 attached to the defendant's conduct, the
16 policy of preventing future harm, the extent
17 of the burden to the defendant and
18 consequences to the community of imposing a
19 duty to exercise care with resulting
20 liability for breach, and the availability,
21 cost, and prevalence of insurance for the
22 risk involved."

23 Friedman v. Merck & Co., 107 Cal. App. 4th 545, 464-65 (2003)
24 (emphasis in original) (quoting Rowland v. Christian, 69 Cal. 2d
25 108, 113 (1968)).

26 The Officer Defendants' conclusory argument fails to
27 address whether Plaintiffs' factual allegations in the Complaint
28 gave rise to a duty to avoid causing Parminder "extreme and
severe emotional distress . . . [from] harassing behavior
immediately before his death," as alleged in Plaintiffs' NEID
claim. (Compl. ¶ 91.) Therefore, this portion of the motion is
denied.

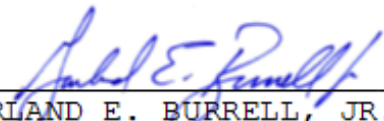
IV. CONCLUSION

For the stated reasons, the City Defendants' motion is
granted in part and denied in part, and the Officer Defendants'

1 motion is denied. However, Plaintiffs are granted fourteen (14)
2 days from the date on which this order is filed to file an
3 amended complaint addressing the deficiencies in any dismissed
4 claim.

5 Dated: August 6, 2014

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GARIAND E. BURRELL, JR.
Senior United States District Judge