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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;

Defendants.*

No. 2:14-cv-00828-GEB-AC

**ORDER DENYING ENTITY DEFENDANTS'
MOTION AND GRANTING OFFICER
DEFENDANTS' MOTION TO DISMISS
PORTIONS OF THE SECOND AMENDED
COMPLAINT**

Defendants City of Lodi and City of Lodi Police
Department (collectively, the "Entity Defendants")¹ seek

* The caption has been amended according to the automatic dismissal of Doe
Defendants prescribed in the Status Order. (Status Order 3:2-4, ECF No. 24.)

¹ Defendant Chief Helms also joins in the Entity Defendants' motion.
However, the ADA claim is not alleged against Chief Helms, and Plaintiff
argues "all references by [the Entity Defendants] to [Chief] Helms in
this . . . motion should be stricken since he cannot challenge the Monell
claims. (Pl.'s Opp'n to Entity Defs.' Mot. 4:12, ECF No. 52.) Chief Helms does
not respond to this argument in his reply brief. "Monell does not concern
liability of individuals." Guillory v. Cnty. of Orange, 731 F.2d 1379, 1382
(9th Cir. 1984). Therefore, Defendant Helms cannot challenge the Monell
claims, and he is not a proper movant to the Entity Defendants' dismissal
motion.

1 dismissal under Federal Rule of Civil Procedure ("Rule") 12(b)(6)
2 of Plaintiff Sukhwinder Kaur's² Monell claims³ based on the
3 alleged (1) failure to enact adequate policies or practices to
4 educate police officers on how to interact with mentally ill
5 persons, and (2) deficient training and supervision of police
6 officers' contact with mentally ill persons; and Plaintiff's
7 claim alleged under Title II of the Americans with Disabilities
8 Act ("ADA"), in which Plaintiff alleges the Entity Defendants
9 failed to reasonably accommodate the Decedent Paraminder Singh
10 Shergill's disability during his interaction with Defendants
11 Scott Bratton and Adam Lockie (the "Officer Defendants").

12 The Officer Defendants separately seek dismissal of
13 Plaintiff's Fourth Amendment provocation claim under Rule
14 12(b)(6).

15 Each dismissal motion is addressed separately below.

16 I. LEGAL STANDARD

17 "To survive a motion to dismiss, a complaint must
18 contain sufficient factual matter, accepted as true, to state a
19 claim to relief that is plausible on its face." Caviness v.
20 Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir.
21 2010) (citing Ashcroft v. Iqbal, 556 U.S. 662 (2009)). "A claim
22

23 ² Each of the claims challenged in the referenced motions is "asserted by
24 Plaintiff Sukhwinder Kaur, as successor in interest for the Decedent Parminder
Singh Shergill." (SAC ¶¶ 74, 89, 94, ECF No. 47.)

25 ³ "Monell liability refers to the liability of [local governing
26 bodies]. . . under 42 U.S.C. § 1983 where [an] official policy or custom
27 causes a constitutional [injury], see Monell v. Dep't of Social Servs., 436
28 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)." Angle v. Alameda Cnty.
Med. Ctr., No. C 07-250 SI, 2008 WL 413738, at *3 n.2 (N.D. Cal. Feb. 13,
2008).

1 has facial plausibility when the plaintiff pleads factual content
2 that allows the court to draw the reasonable inference that the
3 defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
4 at 678 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556
5 (2007)).

6 "For purposes of a motion to dismiss, we accept all
7 well-pleaded allegations of material fact as true and construe
8 them in the light most favorable to the nonmoving party."
9 Sateriale v. R.J. Reynolds Tobacco Co., 697 F.3d 777, 783 (9th
10 Cir. 2012).

11 [Further,] the court need not accept as true
12 conclusory allegations, nor make unwarranted
13 deductions or unreasonable inferences. But so
14 long as the plaintiff alleges facts to
15 support a theory that is not facially
16 implausible, the court's skepticism is best
17 reserved for later stages of the proceedings
when the plaintiff's case can be [evaluated]
on evidentiary grounds. "[A] well-pleaded
complaint may proceed even if it strikes a
savvy judge that actual proof of those facts
is improbable, and that a recovery is very
remote and unlikely."

18 In re Gilead Sciences Secs. Litig., 536 F.3d 1049, 1057 (9th Cir.
19 2008) (citation omitted) (quoting Twombly, 550 U.S. at 557).

20 **II. FACTUAL ALLEGATIONS**

21 The following factual allegations in the Second Amended
22 Complaint ("SAC") are relevant to the motions.

23 The Decedent Paraminder Singh Shergill ("Parminder")
24 was a veteran receiving treatment for post-traumatic stress
25 disorder and schizophrenia, which manifested as periodic
26 "depression and agitation." (SAC 2:3-4, ¶ 5.) Paraminder
27 "experienced the symptoms of his mental illness periodically
28 since 2003. When manifesting symptoms of his mental illness,

1 P[araminder] would become depressed and anxious, but he never
2 exhibited any violent tendencies or threatened violence to
3 himself or others." (SAC ¶ 17.) "During his episodes of manifest
4 mental illness, P[araminder] appeared not to comprehend what was
5 being said to him or to be capable of responding appropriately."
6 (Id.)

7 On January 25, 2014, Paraminder "manifested the
8 symptoms of his mental illness." (SAC ¶ 20.) Parminder's family
9 called 9-1-1 to request assistance in transporting him to the
10 Veteran's Clinic to obtain treatment, telling the 9-1-1 operator
11 that Parminder "was disabled, manifesting symptoms of his mental
12 illness, acting 'crazy,' and needed to be transported" to the
13 Clinic. (SAC 2:6-10, ¶¶ 21-22.)

14 When the Officer Defendants arrived, Parminder's family
15 informed them that he had gone to the park. (SAC 2:10-13, ¶ 26.)
16 The Officer Defendants told Parminder's family "that there was
17 nothing they could do" in response to their request for
18 assistance because Parminder was not a threat to himself or
19 others, but stated that they would "try to talk with him" if they
20 saw him. (SAC 2:13-15, ¶¶ 27-28.)

21 The Officer Defendants "saw P[araminder] while he was
22 walking through the Park and attempted to . . . question him."
23 (SAC ¶ 30.) When the Officer Defendants "initially confronted
24 P[araminder], he walked away from the officers, crossed the
25 street . . . , and began to walk . . . towards his Family Home. He
26 did not respond to the [Officer Defendants'] verbal
27 directions . . . and continued to walk despite [their] attempts
28 to get him to stop by following him and yelling at him." (SAC ¶

1 32.)

2 When under stress, Parminder, like other
3 mentally ill persons, typically exhibited
4 symptoms of his mental illness, conducting
himself in delusional, irrational and non-
compliant ways

5 (SAC ¶ 36.)

6 The Officer Defendants "had not been trained to
7 understand, assess, and respond, without lethal force, to the
8 types of irrational and non-compliant behavior which is typically
9 exhibited by mentally ill persons . . . in their interactions
10 with law enforcement." (SAC ¶ 33.) "This training, which is
11 widely available and implemented throughout the nation," (SAC ¶
12 33), includes instruction on:

13 (1) maintaining physical distance from
14 mentally ill subjects (termed
"comfort zones" or "boundaries"); (2)
15 engaging in non-threatening
communications . . . ; (3) managing the
16 contact . . . by deliberately pulling back,
and allowing the subject more time to
17 respond, . . . ; (4) calling and consulting
for advice or bringing to the scene persons
18 trained in crisis intervention or others
trained in how appropriately to deal with
19 mentally ill persons . . . ; [and] (5) having
at hand and using non-lethal weapons to
20 control mentally ill subjects . . . , which
will typically modify the irrational behavior
21 of such subjects and bring about compliance,
thereby rendering lethal force unnecessary.

22 (SAC ¶ 34.)

23 Had [the Officer Defendants] been adequately
24 trained to deal with persons suffering from
mental illness . . . they would have realized
25 that [Parminder] would not respond to
commands in a traditional way, that he would
26 become upset by intrusive voices, and that he
would become scared or paranoid when being
27 followed by armed officers and ordered to
follow commands and directions Had
28 [they] received proper training they would
have known there were multiple options

1 available to them both prior to and after
2 confronting P[araminder]. [The Officer
3 Defendants] pursued none of these available
4 options, due to their deficient training
5 related to contacts and confrontations with
6 mentally ill persons.

7 (SAC ¶ 37.) "Instead of using any of the techniques listed above,
8 or others in which they should have been trained," the Officer
9 Defendants "followed closely behind P[araminder] and repeatedly
10 yelled at [him], demanding that [he] submit to their
11 questioning." (SAC ¶ 38.) The Officer Defendants "drew their
12 police-issued firearms and trained them on P[araminder], as he
13 was facing away from the officers and continued to walk towards
14 his Family Home." (Id.)

15 The Officer Defendants "continued to pursue P[araminder]
16 in an aggressive manner, . . . by shouting commands, closely
17 following, and brandishing firearms trained on Parminder." (SAC ¶
18 39.) "Due to [the Officer Defendants' actions] Parminder became
19 increasingly upset and afraid, exacerbating the symptoms of his
20 mental illness. . . ." (Id.) When "approximately six house-
21 lengths separate[d] P[aramidner] from his Family Home[,] " the
22 Officer Defendants yelled "Stop!" (SAC ¶¶ 42-43.) As Parminder
23 "turn[ed] around to face them," "he held his hands in the air and
24 stated 'Don't Shoot!'" (SAC ¶¶ 43-44.) "Before P[araminder] could
25 complete the 180° turn to face [the Officer Defendants], [they]
26 both opened fire on P[araminder]." (SAC ¶ 45.)

27 III. DISCUSSION

28 A. The Entity Defendants' Dismissal Motion

The Entity Defendants seek "dismiss[al of] Plaintiff's
[ADA] claim[] . . . and the Monell claims related to inadequate

1 mental health training [and policies/procedures,]" arguing that
2 "[a]fter two attempts to amend the complaint to put forth factual
3 allegations that there was a [causal] connection between the
4 shooting and [Paraminder's] mental illness, the [SAC] still falls
5 short[; t]he [SAC] does not add any additional *facts* that connect
6 the alleged wrongful conduct to [Paraminder's] mental health."
7 (Entity Defs.' Mem. P.&A. Supp. Mot. Dismiss SAC 2:4-10, ECF No.
8 49-1.) Specifically, the Entity Defendants contend the SAC fails
9 to state an ADA claim "because [Plaintiff] fails to [allege] how
10 [Paraminder] was discriminated against by reason of his
11 disability[; Plaintiff] fails to state how accommodating
12 [Paraminder's] mental illness would have changed the Officer[s']
13 decision to shoot him." (Id. at 5:21-25 (citations omitted).) The
14 Entity Defendants similarly argue Plaintiff has not alleged a
15 Monell claim because the SAC "fail[s] to plead how the alleged
16 deficiencies were the moving force behind the constitutional
17 injury." (Id. at 7:6-9.)

18 Plaintiff rejoins that the Entity "Defendants construe
19 Parminder's killing in a vacuum, focusing solely on the facts
20 alleged to exist moments before Parminder was shot to death."
21 (Pl.'s Opp'n to Entity Defs.' Mot. 8:12-13.) Plaintiff counters
22 as follows concerning the Monell claims:

23 [The Entity] Defendants ignore the context of
24 the encounter, which has been exhaustively
25 pled as a build-up from the time that the
26 Officer Defendants encountered Parminder to
27 the time that the shooting occurred.
28 Plaintiff[] ha[s] pled that, had adequate
policies or practices[and/or training] been
adopted by [the Entity] Defendants, the
entire encounter between Parminder and the
Officer Defendants[] would not have occurred
in the manner it did, and Parminder would not

1 have been shot and killed. [The Entity]
2 Defendants refuse to face these allegations,
3 merely labeling them "legal conclusions and
4 speculations." [The Entity] Defendants are
5 incorrect, because Plaintiff['s] allegations
6 specifically explain how the deficient
7 polic[ies/training] caused the harm
8 identified, i.e., that the encounter between
9 Parminder and the Officer Defendants would
10 never have occurred or would have been
11 defused without resort to the lethal force
12 which resulted in Parminder's death.

13 (Id. at 9:12-22, see also id. at 10:25-28.) Plaintiff similarly
14 responds concerning the ADA claim as follows:

15 [The Entity] Defendants' argument
16 demonstrates a failure to comprehend the
17 scope of Plaintiff['s] ADA claim. Plaintiff[]
18 are alleging that Parminder's ADA rights were
19 violated not only by Officer Defendants'
20 shooting, but also by every tactic employed
21 by the Officer Defendants prior to the
22 shooting, beginning when Officer Defendants
23 chose to confront Parminder in the park.

24 (Id. at 14:28-15:5.)

25 "A government entity may not be held liable under 42
26 U.S.C. § 1983, unless a policy, practice, or custom of the entity
27 can be shown to be **a moving force** behind a violation of
28 constitutional rights." Dougherty v. City of Covina, 654 F.3d
892, 900 (9th Cir. 2011) (emphasis added) (citing Monell, 436
U.S. at 694). "For a policy to be the moving force behind the
deprivation of a constitutional right, the identified deficiency
in the policy must be closely related to the ultimate injury."
Long v. Cnty. of L.A., 442 F.3d 1178, 1190 (9th Cir. 2006)
(citation omitted).

26 To plead a prima facie case of disability
27 discrimination under the ADA, a plaintiff must allege, *inter*
28 *alia*, that "he was . . . discriminated against by the public

1 entity; and . . . such . . . discrimination was **by reason of**
2 **[his] disability.**" E.R.K. ex rel. R.K. v. Haw. Dep't of Educ.,
3 728 F.3d 982, 992 (9th Cir. 2013) (emphasis added) (quoting
4 McGary v. City of Portland, 386 F.3d 1259, 1265 (9th Cir. 2004)).
5 "[T]he phrase 'by reason of' [as used] in the [ADA] establishes a
6 'motivating factor' causal standard for liability" Martin
7 v. Cal. Dep't of Veteran Affairs, 560 F.3d 1042, 1048 (9th Cir.
8 2009).

9 Here, Plaintiff alleges that when the Officer
10 Defendants encountered Parminder, they confronted him and, as a
11 result of his mental illness, Parminder was non-compliant. (SAC
12 ¶¶ 36, 38.) Plaintiff further alleges the Officer Defendants
13 "continued to pursue P[araminder] in an aggressive manner, . . .
14 by shouting commands, closely following, and brandishing firearms
15 trained on P[araminder,]" and that if the Officer Defendants had
16 been properly trained to appreciate the effect Parminder's mental
17 illness had on his behavior, they would have responded
18 differently. (SAC ¶¶ 33, 36, 39.) Specifically, Plaintiff alleges
19 they would have "maintain[ed] physical distance [from him], . . .
20 engag[ed] in non-threatening communications, . . . allow[ed]
21 [him] more time to respond . . . , call[ed] and consult[ed] [with
22 a person who is trained in how to] . . . deal with mentally ill
23 persons without the use of lethal force . . . , [and] use[d] non-
24 lethal weapons to control" Parminder. (SAC ¶¶ 33-34.)

25 The Officer Defendants have not shown that these
26 allegations, together with all reasonable inferences that can be
27 drawn therefrom, do not plausibly allege that the alleged
28 inadequate policies/practices and training was a moving force

1 behind Plaintiff's alleged constitutional injuries, and that
2 Paraminder's disability was a motivating factor in his alleged
3 discriminatory treatment. Therefore, the Entity Defendants'
4 dismissal motion is DENIED.

5 **B. The Officer Defendants' Dismissal Motion**

6 The Officer Defendants seek dismissal of Plaintiff's
7 Fourth Amendment provocation claim, arguing, *inter alia*,
8 "[w]here an officer intentionally or recklessly provokes a
9 violent confrontation, if the provocation is an *independent*
10 Fourth Amendment violation, he may be liable for his
11 [subsequent,] otherwise defensive use of deadly force[,]'
12 Billington v. Smith (9th Cir. 2002) 292 F.3d 1177, 1189[,]” and
13 “the [Second Amended Complaint (“SAC”)] fails to state facts
14 sufficient to constitute an *independent* Fourth Amendment
15 [v]iolation because it fails to [allege] the Decedent was seized
16 prior to the shooting.” (Officer Defs.’ Mem. P.&A. Supp. Mot.
17 Dismiss SAC 8:5-9, 13:5-8; ECF No. 48-1 (second use of brackets
18 in original) (emphasis added).) The Officer Defendants contend:

19 A person is not seized for purposes of
20 the Fourth Amendment unless, by means of
21 physical force or show of authority, his
22 freedom of movement is restrained. [Absent]
23 physical force, a subject must submit to an
24 assertion of police authority in order for
25 there to be a seizure. Without compliance,
26 there is no seizure. . . .

27

28 Here, the pleaded facts are such that no
independent Fourth Amendment violation
occurred prior to [the Officer Defendants']
shooting of [Paraminder] because no seizure
occurred.

After receiving a 9-1-1 call from the
Decedent's family . . . , [the Officer

1 Defendants] located [Paraminder and] . . .
2 attempted to detain and question [him, but
he] did not comply. . . .

3 At this point in the chronological
4 sequence of events there are no allegations
that [Paraminder] submitted to the [Officer
Defendants'] authority

5 The SAC goes on to allege that
6 [Paraminder] did not respond to the [Officer
Defendants'] verbal directions . . . and
7 continued to walk despite [their] attempts to
8 get him to stop by following him and yelling
at him. . . .

9 [The Officer Defendants] then continued
10 to pursue [Paraminder] by shouting commands,
11 closely following, and brandishing firearms
12 trained on the Decedent. . . . [T]his does
13 not constitute a seizure because [Paraminder]
14 continued to walk away from the officers with
15 no indication that he was submitting to their
16 authority.

17 Finally, as [Paraminder] was
18 approximately six house lengths from the
19 family home, [the Officer Defendants] yelled
20 at him to stop from approximately twenty feet
21 away. While simultaneously putting his hands
22 in the air, stating "don't shoot" and
23 beginning to turn around, [Paraminder] was
24 shot and killed by [the Officer Defendants].

25 [T]his act is pleaded as occurring
26 contemporaneously with the shooting. In fact,
27 [Paraminder] was shot before he could
28 complete the 180° turn to face [the
Defendant] Officers

29

30 Because no pre-shooting seizure is
31 pleaded, the . . . [p]rovocation claim should
32 be dismissed.

33 (Id. at 8:13-13:21 (quotation marks, citations, and alteration
34 omitted).)

35 Plaintiff rejoins that the "Officer Defendants [are]
36 renew[ing an earlier] motion to dismiss [Plaintiff's provocation
37 claim], in violation of the 'law of the case,'" by "ask[ing] this
38

1 Court . . . to consider their arguments which it previously and
2 explicitly rejected." (Pl.'s. Opp'n to Officer Defs.' Mot. 3:25-
3 28, ECF No. 51.) Plaintiff contends "[t]his Court previously
4 rejected Officer Defendants' motion to dismiss . . . finding that
5 Plaintiff[] had properly stated a[] . . . provocation claim."
6 (Id. at 4:23-24.) Plaintiff further counters that even "[i]f the
7 Court is inclined to consider Officer Defendants' motion to
8 dismiss Plaintiff['s] [provocation] claim[,] . . . the motion is
9 . . . without merit." (Id. at 6:17-18.) Plaintiff argues:

10 In this case, [the] SAC alleges that
11 Officer Defendants' pre-shooting conduct
12 directed at Paraminder whom they knew was
13 suffering from mental illness, which included
14 bullying tactics in the form of confronting,
15 harassing, stalking, and pointing firearms at
16 Paraminder as he walked away from the Officer
17 Defendants towards his home, constituted an
18 independent Fourth Amendment violation
19 provoking a response from Paraminder which
20 precipitated the Officer Defendants' use of
21 deadly force.

22 (Id. at 7:21-26 (emphasis omitted).)

23 The Officer Defendants reply, *inter alia*, that the law
24 of the case doctrine does not apply because "Defendants' initial
25 motion to dismiss Plaintiff['s] provocation claim did not raise
26 the issue of whether [Paraminder] was seized prior to the
27 shooting . . . Defendants raise th[is] issue[] now in light of
28 the new factual allegations in the [SAC]." (Officer Defs.' Reply
29 1:20-25, ECF No. 53.) The Officer Defendants argue: "the new
30 factual allegation[] that the [Decedent] was . . . shot '[b]efore
31 [he] could complete the 180° turn to face [the Officer
32 Defendants] . . . g[a]ve rise to new arguments that have never
33 been considered by the court in this case." (Id. at 2:19-25.)

1 “The law of the case doctrine is a judicial invention
2 designed to aid in the efficient operation of court affairs.
3 Under the doctrine, a court is generally precluded from
4 reconsidering an issue previously decided by the same court, or a
5 higher court in the identical case.” United States v. Lummi
6 Nation, 763 F.3d 1180, 1184 (9th Cir. 2014) (internal quotation
7 marks and citations omitted). “The ‘law of the case [doctrine]
8 acts as a bar only when the issue in question was actually
9 considered and decided [previously].’” United Steelworkers of Am.
10 v. Retirement Income Plan for Hourly-Rated Employees of Asarco,
11 Inc., 512 F.3d 555, 564 (9th Cir. 2008) (quoting United States v.
12 Cote, 51 F.3d 178, 181 (9th Cir. 1995)). Here, the Court “ha[s]
13 not previously decided” whether Paraminder was seized prior to
14 the shooting since the Officer Defendants did not raise that
15 argument as a basis for their motion to dismiss the original
16 Complaint. United States v. Lepp, 446 F. App’x 44, 46 (9th Cir.
17 2011) (citing Cote, 51 F.3d at 181). Therefore, the Officer
18 Defendants’ current dismissal motion is not precluded by the law
19 of the case doctrine, and the Court considers its merits.

20 “[W]here an officer intentionally or recklessly
21 provokes a violent confrontation, *if the provocation is an*
22 *independent Fourth Amendment violation*, he may be held liable for
23 his [subsequent,] otherwise defensive use of deadly force.”
24 Billington, 292 F.3d at 1189 (emphasis added). “In such a case,
25 the officer’s *initial* unconstitutional provocation . . . would
26 proximately cause the *subsequent* application of deadly force.”
27 Id. at 1191 (emphasis added).

1 In deciding whether Plaintiffs have alleged an
2 *independent* Fourth Amendment violation as required to plead a
3 provocation claim, the Court must determine whether Paraminder
4 was seized prior to the Officer Defendants' use of deadly force.
5 Cf. United States v. McClendon, 713 F.3d 1211, 1215 (9th Cir.
6 2013) (emphasis added) (reviewing a district court's denial of a
7 suppression motion, stating "[i]n deciding whether evidence is
8 the product of an unlawful seizure, we first determine whether
9 the defendant was seized at the time the handgun was discarded").

10 The general rule is that a person has
11 been 'seized' within the meaning of the
12 Fourth Amendment only if, in view of all of
13 the circumstances surrounding the incident, a
14 reasonable person would have believed that he
was not free to leave. This determination is
a necessary, but not a sufficient, condition
for seizure. In addition, some form of
touching or submission is also required.

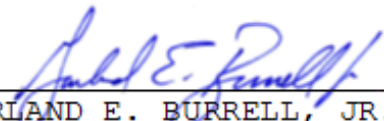
15 Id. (internal quotation marks and citations omitted). "A police
16 officer may make a seizure by a show of authority and without the
17 use of physical force, but there is no seizure without actual
18 submission; otherwise, there is at most an attempted seizure, so
19 far as the Fourth Amendment is concerned." Brendlin v. Cal., 551
20 U.S. 249, 254 (2007); see, e.g., United States v. McClendon, 713
21 F.3d 1211, 1215 (9th Cir. 2013) (holding an individual was not
22 seized "when [police] officers drew their guns and told him he
23 was under arrest" "where . . . [he] walk[ed] away from and
24 refuse[d] to comply with the commands of [the] officers").

25 Here, Plaintiff has not alleged facts, which plausibly
26 state Paraminder was seized prior to the Officer Defendants' use
27 of deadly force. Therefore, the Officer Defendants' motion to
28 dismiss Plaintiff's Fourth Amendment provocation claim (Second

1 Claim) is GRANTED. However, Plaintiff is granted fourteen (14)
2 days leave from the date on which this order is filed to file a
3 Third Amended Complaint addressing the referenced deficiencies in
4 the Fourth Amendment provocation claim.

5 Dated: June 16, 2015

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