

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN BRASLEY, et al.,
Plaintiffs,
v.
CITY OF STOCKTON, et al.,
Defendants.

No. 2:20-cv-01967-JAM-CKD

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

This Court has previously stated that it "does not take lightly that '[o]ur country is now in the midst of a serious examination of the violations of due process and equal protection rights of Black Americans'" and has recognized that "the burden of aggressive and intrusive police action falls disproportionately on African-American . . . males." Weaver v. City of Stockton, 2020 WL 5763763 at *6 (E.D. Cal. Sept. 28, 2020) (internal citations omitted). Yet, the Court also acknowledged in Weaver that what may shock the Country's conscience - "to have Black Americans singularly threatened with grave bodily injury . . . [by] police who are charged to protect and serve all Americans" - does not always shock the conscience

1 by substantive due process standards. Id.

2 This Court is bound by the demanding legal standard for
3 substantive due process claims. Accordingly, when presented
4 with a motion to dismiss claims based on substantive due process
5 violations, as it was in Weaver, and is now in the present
6 action against the City of Stockton, the Court must apply this
7 demanding standard.

8 Before the Court is the City of Stockton, Patrick Frondo,
9 Abel Hinojos, and Daniel Burke's ("Defendants") Motion to Dismiss
10 Plaintiffs' second claim for loss of familial association in
11 violation of the Fourteenth Amendment. Mot., ECF No. 6. Kevin
12 Brasley, Antonia Brasley, Preston Gregory, Tomia Gayles Sagote,
13 Herman Gayles, Kevin Brasley Jr., Antonio Brasley, Kenneth
14 Brasley, Isaac Brasley, Antevin Brasley, Mary Bryant, and
15 Kevousie Brasley ("Plaintiffs") opposed. Opp'n, ECF No. 11.
16 Defendants replied. Reply, ECF No. 12. For the reasons set
17 forth below, the Court GRANTS Defendants' Motion to Dismiss.¹

18
19 I. BACKGROUND

20 On September 20, 2019, the Stockton Police Department
21 received a 911 call about a domestic violence incident at the
22 apartment complex where Plaintiffs Kevin Brasley, his wife
23 Antonia, and several of their children lived. Compl. ¶¶ 11, 12,
24 ECF No. 1. The description of the suspect given to the officers
25 was: black male around 30 years old, about 5'4 and 135 pounds,

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for February 9, 2021.

1 dark complexion, bald and clean-shaven, and wearing a blue shirt.
2 Id. ¶ 13. Officers Frondo and Hinojos were dispatched to
3 investigate. Id. ¶ 14. The officers' presence at the apartment
4 complex drew a crowd of twenty to thirty spectators. Id. After
5 speaking with the victim, the officers confirmed the suspect's
6 physical description. Id. ¶ 15. However, because the suspect
7 had fled the complex, the officers did not make an arrest and
8 left. Id. ¶ 16. When the suspect returned shortly thereafter,
9 the officers were again dispatched. Id. ¶¶ 16, 17. Among the
10 crowd still gathered outside were Plaintiffs Kevin Brasley, his
11 wife, and their sons, Isaac, Kenneth, Antevin, and Antonio. Id.
12 ¶ 19.

13 When Officer Frondo exited from his patrol vehicle, he
14 singled out Kevin Brasley and ordered him to walk over to the
15 vehicle. Id. ¶¶ 21, 23. Other than being a black male, Mr.
16 Brasley did not match the description of the suspect; at the
17 time, Mr. Brasley was 49 years old, about 5'9 and 190 pounds,
18 with gray hair and gray facial hair, a light complexion, and
19 wearing a black shirt. Id. ¶ 22.

20 Mr. Brasley complied with Frondo's orders, putting his hands
21 on the hood of the patrol car and spreading his feet. Id. ¶¶ 23,
22 24. As Frondo was searching Mr. Brasley's body, Frondo tripped
23 and fell to the ground, pulling Brasley down to the ground with
24 him. Id. ¶¶ 25, 26. Frondo rolled himself on top of Brasley,
25 his body covering Brasley's face and preventing him from
26 breathing. Id. ¶ 27. When Frondo did not stand up right away,
27 Brasley raised his hands in the air to show he was not resisting
28 or posing any threat and turned his head to the side in order to

1 breathe. Id. ¶¶ 28, 29. Officer Hinojos headed quickly over to
2 where Brasley and Frondo remained entangled on the ground and hit
3 Mr. Brasley's raised arm with a baton. Id. ¶ 29. The baton
4 strike broke a bone in Mr. Brasley's left arm. Id.

5 Meanwhile, Officer Burke had arrived, as spectators were
6 yelling that the police had the wrong person. Id. ¶¶ 30, 34-36.
7 The victim of the domestic violence incident specifically told
8 Burke that the officers had the "wrong man," but Burke did
9 nothing. Id. ¶ 36. Brasley was arrested, id. ¶ 37, taken first
10 to the San Joaquin General Hospital, id. ¶¶ 39-40, then to the
11 San Joaquin County Jail where he was held overnight, id. ¶¶ 41-
12 49.

13 Kevin Brasley now brings this Section 1983 action on behalf
14 of himself, his mother, his wife, and his nine children. See
15 Compl. While the complaint contains nine causes of action, the
16 present Motion concerns only the second: a Fourteenth Amendment
17 Substantive Due Process Claim for Familial Association brought by
18 all Plaintiffs against Officers Burke, Frondo, and Hinojos.
19 Compl. ¶¶ 58-66. Defendants move to dismiss the second cause of
20 action, and in turn dismiss Plaintiffs Mary Bryant, Preston
21 Gregory, Tomia Gayles Sagote, Herman Gayles, Kevin Brasley Jr.,
22 and Kevousie Brasley, from this action. Mot. at 9.

24 II. OPINION

25 A. Legal Standard

26 Federal Rule of Civil Procedure 8(a)(2) requires "a short
27 and plain statement of the claim showing that the pleader is
28 entitled to relief." Fed. R. Civ. Proc. 8(a)(2). Courts must

1 dismiss a suit if the plaintiff fails to "state a claim upon
2 which relief can be granted." Fed. R. Civ. Proc. 12(b)(6). To
3 defeat a Rule 12(b)(6) motion to dismiss, a plaintiff must
4 "plead enough facts to state a claim to relief that is plausible
5 on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570
6 (2007). This plausibility standard requires "factual content
7 that allows the court to draw a reasonable inference that the
8 defendant is liable for the misconduct alleged." Ashcroft v.
9 Iqbal, 556 U.S. 662, 678 (2009). "At this stage, the Court
10 "must accept as true all of the allegations contained in a
11 complaint." Id. But it need not "accept as true a legal
12 conclusion couched as a factual allegation." Id.

13 B. Analysis

14 As a threshold matter, Defendants characterize their leading
15 argument as one about standing. Mot. at 5; Reply at 2-3.
16 However, upon review of the "standing" sections of Defendants'
17 Motion and Reply, the Court finds that Defendants' arguments
18 though couched as standing arguments, are more properly
19 considered as failure to state a claim arguments. For instance,
20 Defendants argue in the "standing" section of the Motion: "there
21 has been no deprivation of life, liberty or property necessary to
22 state a valid substantive due process claim." Mot. at 5.

23 (emphasis added). Accordingly, the Court finds it appropriate to
24 consider Defendants' "standing" arguments as part of the 12(b)(6)
25 analysis below.

26 Defendants argue that Plaintiffs fail to state a Fourteenth
27 Amendment substantive due process claim for loss of familial
28 association and thus this claim must be dismissed. Mot. at 5-8;

1 Reply at 2-3. Plaintiffs insist that as the wife, mother, and
2 children of Kevin Brasley, respectively, Antonia Brasley, Mary
3 Bryant, Preston Gregory, Tomia Gayles Sagote, Herman Gayles,
4 Kevin Brasley Jr., Antonio Brasley, Kenneth Brasley, Isaac
5 Brasley, Antevin Brasley, and Kevousie Brasley have a
6 constitutionally protected liberty interest in the companionship
7 and society of their husband, son, and father. Opp'n at 6-7.
8 They allege that Defendants violated this interest, rendering
9 Kevin Brasley "physically and emotionally unable to provide the
10 same level or quality of companionship, comfort, and society to
11 his mother and wife and children than before he was injured."
12 Compl. ¶ 64. The two specific examples of loss of familial
13 association Plaintiffs have pled are: (1) Kevin Brasley has been
14 "physically unable to assume his pre-injury role in executing and
15 leading the family cookouts like the family enjoyed 2-3 times per
16 month before he was injured"; and (2) Kevin Brasley has been
17 "unable to take his sons on their nearly annual fishing trip, or
18 help them work on their homes and cars, or get out of the house
19 for birthday parties and holiday get togethers." Id.

20 Under the Fourteenth Amendment, official conduct that
21 "shocks the conscience" in depriving close family members of a
22 liberty interest in the companionship and society of a family
23 member is cognizable as a violation of due process. Wilkinson v.
24 Torres, 610 F.3d 546, 554 (9th Cir. 2010) (internal quotations
25 and citations omitted). The Ninth Circuit has instructed: "In
26 determining whether [the officer's conduct] shocks the
27 conscience, the court must first ask whether the circumstances
28 are such that actual deliberation [by the officer] is practical.

1 Where actual deliberation is practical, then an officer's
2 'deliberate indifference' may suffice to shock the conscience.
3 On the other hand, where a law enforcement officer makes a snap
4 judgment because of an escalating situation, his conduct may only
5 be found to shock the conscience if he acts with a purpose to
6 harm unrelated to legitimate law enforcement objectives." Id.;
7 see also Estate of Ozuna v. Cty. of Stanislaus, 392 F.Supp.3d
8 1162, 1176 (E.D. Cal. 2019).

9 The parties dispute which of these two standards, deliberate
10 indifference or purpose to harm, applies. Opp'n at 4-5; Reply at
11 3-4. However, the Court finds it unnecessary to resolve this
12 dispute because under either standard, Plaintiffs have not
13 alleged facts from which it could plausibly find that Defendants'
14 actions against Kevin Brasley shocked the conscience. Here,
15 Plaintiff's allegations - even the most egregious ones (1) that
16 Officer Frondo singled Mr. Brasley out despite the fact he did
17 not match the description of the suspect other than generally
18 being a black male, Compl. ¶¶ 21-23; (2) that Officer Hinojos
19 swung a baton and broke Mr. Brasley's arm despite the fact he was
20 not resisting and merely trying to breathe as Officer Frondo
21 remained on top of him, id. ¶¶ 27-29; and (3) that Defendants
22 arrested Mr. Brasley despite being informed by many onlookers,
23 including the victim, that they had the wrong guy, id. ¶¶ 30, 34-
24 36 - simply do not rise to the level of a substantive due process
25 violation under the settled caselaw. Likewise, Plaintiffs'
26 allegations regarding the loss of familial association, id. ¶ 64,
27 come up short. Indeed, the authority Plaintiffs cite to confirms
28 as much. Opp'n at 7 (citing to Lee v. City of Los Angeles, 250

1 F.3d 668 (9th Cir. 2001)). In Lee, Los Angeles Police officers
2 arrested plaintiff-son, who was severely mentally disabled such
3 that his plaintiff-mother had been appointed as his conservator,
4 then proceeded to mistakenly identify him as a fugitive wanted by
5 the New York Police and extradite him to New York where he was
6 wrongfully incarcerated for two years. Id. at 677-678. His
7 mother spent those two years searching for him. Id. The Ninth
8 Circuit found these allegations sufficient to state a loss of
9 familial association claim. Id. at 686.

10 The Court agrees with Defendants that the facts of Lee are
11 "oceans apart" from the allegations here. Reply at 3. Here,
12 unlike in Lee, there is no allegation that Mr. Brasley had a
13 mental incapacity that Defendants ignored, no allegation that Mr.
14 Brasley was wrongfully incarcerated for two years, and no
15 allegation that his family members did not know where he was for
16 two years and were deprived of his companionship for that period
17 of time. Rather, Mr. Brasley was held in custody at the San
18 Joaquin County Jail for one night. Compl. ¶¶ 41-49. While the
19 Court takes as true the allegation Mr. Brasley is now "physically
20 and emotionally unable to provide the same level or quality of
21 companionship, comfort, and society to his mother, wife and
22 children than before he was injured," id. ¶ 64, this is simply
23 not enough to state a claim, even under Plaintiffs' own cited
24 caselaw. It bears repeating that substantive due process
25 standards are demanding and do not impose liability "whenever
26 someone cloaked with state authority causes harm." Weaver, 2020
27 WL 5763763 at *6 (internal citations omitted).

28 Because the caselaw requires far more than what Plaintiff

1 has alleged here, the Court DISMISSES Plaintiffs' Fourteenth
2 Amendment familial association claim.

3 C. Leave to Amend

4 The Court need not grant leave to amend where amendment
5 would be futile. Deveraturda v. Globe Aviation Sec. Servs., 454
6 F.3d 1043, 1049 (9th Cir. 2006). As discussed above, what has
7 been alleged by Plaintiffs here is far from what the caselaw
8 requires to state a claim. Further, in opposition, Plaintiffs
9 did not proffer any facts that might lead the Court to believe
10 Plaintiffs could add allegations to avoid dismissal on 12(b)(6)
11 grounds. See Opp'n. Accordingly, the Court finds amendment
12 would be futile and DISMISSES Plaintiffs' second claim with
13 prejudice.

14

15 III. ORDER

16 For the reasons set forth above, the Court GRANTS WITH
17 PREJUDICE Defendants' Motion to Dismiss.

18 IT IS SO ORDERED.

19 Dated: February 12, 2021

20

21



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

22

23

24

25

26

27

28