

United States District Court
For the Northern District of California

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF GLENN SWINDELL, et)	Case No. 15-CV-897-SC
al.,)	
)	ORDER GRANTING IN PART AND
Plaintiffs,)	DENYING IN PART DEFENDANT'S
)	<u>MOTION TO DISMISS</u>
v.)	
)	
COUNTY OF SONOMA, DOES 1 through)	
10, inclusive,)	
Defendants.)	
)	
)	
)	

Now before the Court is Defendant County of Sonoma's (the "County") motion to dismiss Plaintiff Estate of Glen Swindell, et al.'s ("Plaintiffs") First Amended Complaint ("FAC"). ECF No. 19 ("Mot."). The motion is fully briefed¹ and suitable for disposition without oral argument pursuant to Local Rule 7-1(b). For the reasons set forth below, the County's motion is GRANTED IN PART and DENIED IN PART. Some of Plaintiffs' claims are DISMISSED WITH PREJUDICE, while others are DISMISSED WITH LEAVE TO AMEND, as specified below.

¹ ECF Nos. 24 ("Opp'n"), 25 ("Reply").

1 **I. BACKGROUND**

2 As it must on a Rule 12(b)(6) motion, the Court assumes the
3 truth of the following facts taken from Plaintiffs' First Amended
4 Complaint. ECF No. 6 ("FAC").

5 On the evening of May 16, 2014, Glenn Swindell and his wife,
6 Sarah Swindell, had an argument while driving home from a work
7 function. Upon arriving home, Glenn and his two children entered
8 their home as Sarah delayed in exiting the vehicle. Glenn locked
9 the front door of the house, and the argument continued as Sarah
10 stood outside. Sarah then called 911, reported the incident --
11 which she stated was nonviolent -- and requested assistance in
12 getting her children.

13 The responding sheriff deputies ("deputies") made contact with
14 Glenn through a locked door in the home, and convinced him to
15 release his children. Glenn then demanded that the deputies leave.
16 He also made clear that he had a fear of law enforcement, stating
17 that he was afraid they would shoot him as they had shot a
18 thirteen-year-old child, Andy Lopez.

19 At some point, the deputies and their supervisors learned that
20 Glenn was the lawful owner of two firearms. They also searched his
21 Facebook page and falsely reported to other deputies that Glenn had
22 made disparaging statements about law enforcement. Angered and
23 frustrated, the deputies and their supervisors undertook a plan to
24 punish Glenn for refusing to speak with them or let them into his
25 home.

26 In order to secure a search and arrest warrant, the deputies
27 and their supervisors fabricated evidence and lied about the
28 circumstances relating to the incident, including

1 a) That Glenn Swindell had committed a battery upon Sarah
2 Swindell;

3 b) That Glenn Swindell had imprisoned Sarah Swindell;

4 c) That Sarah Swindell felt fearful and intimidated by
5 Glenn Swindell's actions;

6 d) That Glenn Swindell had barricaded himself in his
7 home;

8 e) That Glenn Swindell had cut off communications with
9 Sheriff personnel whom were present at his home and
10 property;

11 f) That Glenn Swindell had used his firearms in
12 committing a felony; and

13 g) That Glenn Swindell had committed a public offense.

14 At some point during the incident, Sarah Swindell approached
15 the deputies and requested that the situation be deescalated. In
16 response, the deputies threatened to take Sarah's children from her
17 if she failed to cooperate.

18 The deputies and their supervisors then summoned the Sonoma
19 County Sheriff's Office SWAT. Approximately 50 officers responded.
20 Upon arriving at the scene, one of the SWAT supervisors exclaimed,
21 "Why don't you just kill the fucker!" The SWAT team then proceeded
22 to use a military assault vehicle, concussion bombs, and chemical
23 agents to break down the garage door and enter the Swindell home.

24 Upon gaining entry, the SWAT unit learned that Glenn was in
25 the attic, that he feared the police would kill him, and that he
26 was armed. At no time, however, did Glenn indicate that he
27 intended to harm anyone.

28 After Glenn refused to come out, the SWAT unit began to pump
gas into the attic. Given his extreme fear of the police, the
deputies and SWAT officers knew that Glenn was unlikely to leave

///
///

1 the attic notwithstanding the extreme pain that the gas would
2 inflict.

3 After suffering intense mental and physical anguish as a
4 result of the gas, Glenn took his own life with a single gunshot to
5 the head. After Glenn died, the deputies interrogated Sarah
6 Swindell at length as to her relationship with her husband while
7 withholding from her that he had died.

8 On June 16, 2015, Plaintiffs filed their complaint in this
9 action against the County of Sonoma and unnamed Defendants 1
10 through 10, alleging eleven claims for relief. Plaintiff Estate of
11 Glenn Swindell brings claims one through four under 42 U.S.C. §
12 1983 for alleged violations of Glenn's Fourth, Fourteenth, First,
13 and Second Amendment rights, respectively, against the deputies,
14 their supervisors, and the responding SWAT units. Plaintiff Estate
15 of Glenn Swindell also brings the fifth claim for relief alleging
16 municipal liability for unconstitutional customs and practices
17 under 42 U.S.C. § 1983 against the County, the deputies, their
18 supervisors, and the responding SWAT units. The sixth claim for
19 relief is brought by Glenn Swindell's family -- Plaintiffs Sarah
20 Swindell, Deborah Belka, G.S., M.S., J.S., Deann Walund, and Tyler
21 Swindell -- under 42 U.S.C. § 1983 alleging that the County, the
22 deputies, their supervisors, and the responding SWAT units
23 interfered with their familial integrity in violation of their
24 Fourteenth Amendment Due Process rights. The seventh claim for
25 relief is brought under 42 U.S.C. § 1983 by Plaintiff Sarah
26 Swindell against the deputies, their supervisors, and the
27 responding SWAT units for violations of her Fourth Amendment
28 rights. Although it is not clear from the Complaint, it appears

1 that all Plaintiffs bring the eighth, ninth, and tenth claims for
2 relief. Those claims are against the County, the deputies, their
3 supervisors, and the responding SWAT units for, respectively,
4 assault and battery, wrongful death, and civil rights violations
5 under Cal. Civ. Code Section 52.1. The eleventh claim for relief
6 is brought by Plaintiffs Sarah Swindell, G.S., M.S., J.S., Tyler
7 Swindell, and Deborah Belka against the County, the deputies, their
8 supervisors, and the responding SWAT units for survivorship.

9
10 **II. LEGAL STANDARD**

11 A motion to dismiss under Federal Rule of Civil Procedure
12 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
13 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
14 on the lack of a cognizable legal theory or the absence of
15 sufficient facts alleged under a cognizable legal theory."
16 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
17 1988). "When there are well-pleaded factual allegations, a court
18 should assume their veracity and then determine whether they
19 plausibly give rise to an entitlement to relief." Ashcroft v.
20 Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court
21 must accept as true all of the allegations contained in a complaint
22 is inapplicable to legal conclusions. Threadbare recitals of the
23 elements of a cause of action, supported by mere conclusory
24 statements, do not suffice." Id. (citing Bell Atl. Corp. v.
25 Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a
26 complaint must be both "sufficiently detailed to give fair notice
27 to the opposing party of the nature of the claim so that the party
28 may effectively defend against it" and "sufficiently plausible"

1 such that "it is not unfair to require the opposing party to be
2 subjected to the expense of discovery." Starr v. Baca, 652 F.3d
3 1202, 1216 (9th Cir. 2011).

4 When granting a motion to dismiss, a court is generally
5 required to grant the plaintiff leave to amend. Cook, Perkiss &
6 Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 246-47
7 (9th Cir. 1990). Leave to amend may be denied for undue delay, bad
8 faith, repeated failure to cure deficiencies by previous amendments
9 allowed, futility of the amendment, or prejudice. Foman v. Davis,
10 371 US 178, 182 (1962); Abagninin v. AMVAC Chem. Corp., 545 F3d
11 733, 742 (9th Cir. 2008). In determining whether amendment would
12 be futile, the court examines whether the complaint could be
13 amended to cure the defect requiring dismissal "without
14 contradicting any of the allegations of [the] original complaint."
15 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990).

16
17 **III. DISCUSSION**

18 Defendants' motion asks the Court to dismiss Plaintiffs' FAC
19 for failure to state a claim in their fifth, sixth, ninth, tenth,
20 and eleventh claims for relief. The Court addresses each in turn.

21 **A. Fifth Claim for Relief: Municipal Liability for**
22 **Unconstitutional Customs and Practices Under 42 U.S.C. §**
23 **1983**

24 A plaintiff asserting a Section 1983 claim against a
25 municipality must plead factual content that would allow the Court
26 to draw a reasonable inference that: (1) the plaintiff has suffered
27 a deprivation of a constitutional right; and (2) the violation of
28 that right was caused by the enforcement of a municipal policy or

1 practice, the decision of an official with final policy making
2 authority, or inadequate training amounting to deliberate
3 indifference to a plaintiff's constitutional rights. See Monell v.
4 Dept. of Social Services, 436 U.S. 658, 694 (1978).

5 **1. Deprivation of a Constitutional Right**

6 Plaintiffs' fifth claim for relief alleges violations of Glenn
7 Swindell's First, Second, Fourth, and Fourteenth Amendment rights.
8 Defendants argue that the FAC does not state facts showing a
9 violation of Glenn Swindell's Second or Fourteenth Amendment
10 rights.

11 The "Second Amendment protects the right to possess a handgun
12 in the home for the purpose of self-defense." McDonald v. City of
13 Chicago, 561 U.S. 742, 790 (2010). The FAC alleges that sheriff
14 deputies knew that Glenn lawfully owned firearms and assumes, in
15 conclusory fashion, that the alleged unlawful search and seizure
16 must have been, in part, retaliation for owning firearms.

17 Plaintiffs' conclusory allegations are insufficient to state a
18 claim based on a violation of the Second Amendment. Moreover,
19 Plaintiffs do not allege facts showing an interference with Glenn's
20 right to possess a gun. To the contrary, the FAC states that Glenn
21 kept multiple guns in his home. Accordingly, to the extent that
22 Plaintiffs' fifth claim for relief relies on purported Second
23 Amendment violations, it is DISMISSED WITHOUT PREJUDICE.

24 As to alleged Fourteenth Amendment violations, Plaintiffs
25 clarify in their Opposition that the Fourteenth Amendment is
26 relevant to their fifth claim for relief only insofar as the
27 Fourteenth Amendment applies the First, Second, and Fourth
28 Amendments to the states. Opp'n at 8-9. Plaintiffs therefore do

1 not allege an independent Fourteenth Amendment violation.
2 Accordingly, their fifth claim for relief as to purported
3 Fourteenth Amendment violations is DISMISSED WITHOUT PREJUDICE.

4 Defendants do not challenge Plaintiffs' fifth claim for relief
5 as to alleged First and Fourth Amendment violations. Thus, the
6 fifth claim for relief survives only as to those allegations.

7 **2. Municipal Policy or Practice**

8 The Supreme Court has held that a municipality is subject to
9 liability under Section 1983 only when a violation of a federally
10 protected right can be attributed to (1) an express municipal
11 policy, such as an ordinance, regulation, or policy statement (see
12 Monell, 436 U.S. at 658); (2) a "widespread practice that, although
13 not authorized by written law or express municipal policy, is 'so
14 permanent and well settled as to constitute a custom or usage' with
15 the force of law" (City of St. Louis v. Praprotnik, 485 U.S. 112,
16 127 (1988)); (3) the decision of a person with "final policymaking
17 authority" (id. at 123); or (4) inadequate training that is
18 deliberately indifferent to an individual's constitutional rights
19 (City of Canton v. Harris, 489 U.S. 378 (1989)). In addition,
20 there must be a sufficient causal connection between the
21 enforcement of the municipal policy or practice and the violation
22 of the plaintiff's federally protected right. See Bd. of County
23 Comm'rs v. Brown, 520 U.S. 397, 400 (1997); City of Canton v.
24 Harris, 489 U.S. 378, 389 (1989).

25 The FAC alleges that Plaintiffs were harmed as a result of a
26 widespread County custom or practice, decisions made by sheriff
27 deputies and ratified by their supervisors and other high ranking
28 County officials, and the County's failure to properly train

1 officers on the use of force amounting to deliberate indifference
2 to individuals' constitutional rights. See Opp'n at 10. The Court
3 addresses each in turn.

4 **a. Custom or Practice**

5 In Monell, the Supreme Court recognized that Section 1983
6 municipal liability may be based on a municipal "custom or usage"
7 having the force of law, even though it has "not received formal
8 approval through the body's official decision-making channels."
9 Monell, 436 U.S. at 690. More recently, the Supreme Court
10 acknowledged that "an act performed pursuant to a 'custom' that has
11 not been formally approved by an appropriate decisionmaker may
12 fairly subject a municipality to liability on the theory that the
13 relevant practice is so widespread as to have the force of law."
14 Bd. of County Comm'rs, 520 U.S. at 404. The critical issue is
15 whether there was a particular custom or practice that was "so well
16 settled and widespread that the policymaking officials of the
17 municipality can be said to have either actual or constructive
18 knowledge of it yet did nothing to end the practice." Bordanaro v.
19 McLeod, 871 F.2d 1151, 1156 (1st Cir. 1989).

20 Plaintiffs allege that "there exists an insidious custom and
21 practice within the Sonoma County Sheriff's department of
22 interrogating the family members of persons they have killed and
23 extracting from them through lies and subterfuge information which
24 would be only helpful to the defense of a civil case." FAC ¶ 78.
25 Without more, however, Plaintiffs' conclusory assertion that "there
26 exists" a widespread practice is insufficient. Furthermore, it
27 fails to assert facts establishing that the practice caused the
28 alleged rights violations in this case. Interrogating Glenn's

1 surviving family members, after the fact, could not have been "the
2 moving force" behind the alleged violations of Glenn's rights given
3 that the violations at issue -- the alleged unlawful search and
4 seizure, the alleged excessive use of force, and so on -- would
5 have already occurred by that point. See Monell, 436 U.S. at 694.

6 The FAC also alleges that the County has a widespread practice
7 of (a) "retaliating against private citizens who exercise their
8 Second Amendment rights to keep and bear arms in their homes for
9 the purpose of self-defense" (FAC ¶ 65), and (b) of using "abusive
10 militarized police tactics when responding to minor service calls"
11 (Opp'n at 11). Once again, Plaintiffs' assertions are conclusory
12 and fail to allege facts showing a practice beyond the incident in
13 this case.

14 For the forgoing reasons, Plaintiffs' allegations of
15 unconstitutional practices within the County are DISMISSED WITHOUT
16 PREJUDICE.

17 **b. Decision By Final Policymaker**

18 The Supreme Court has held that municipal liability may be
19 based on a single decision by a municipal official who has final
20 policymaking authority. Praprotnik, 485 U.S. at 123; Pembaur v.
21 City of Cincinnati, 475 U.S. 469, 480 (1986). Whether an official
22 has final policy-making authority is an issue of law to be
23 determined by the court by reference to state and local law. See
24 Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989);
25 Praprotnik, 485 U.S. at 123. The mere fact that a municipal
26 official has discretionary authority is not a sufficient basis for
27 imposing municipal liability. See Pembaur, 475 U.S. at 481-82
28 ("The fact that a particular official -- even a policymaking

1 official -- has discretion in the exercise of particular functions
2 does not, without more, give rise to municipal liability based on
3 an exercise of the discretion."); Killinger v. Johnson, 389 F.3d
4 765, 771 (7th Cir. 2004) ("mere authority to implement pre-existing
5 rules is not authority to set policy"). In order for a
6 subordinate's decision to be attributable to the government entity
7 through ratification, "the authorized policymakers must approve the
8 decision and the basis for it Simply going along with
9 discretionary decisions made by one's subordinates . . . is not a
10 delegation to them of authority to make policy." Praprotnik, 485
11 U.S. at 128-30; see also Gillette v. Delmore, 979 F.2d 1342, 1348
12 (9th Cir. 1992) (concluding that mere inaction on part of policy
13 maker "does not amount to 'ratification' under Pembaur and
14 Praprotnik"); Christie v. Iopa, 176 F.3d 1231 (9th Cir. 1999)
15 (holding that ratification requires showing approval by a policy
16 maker, not a mere refusal to overrule a subordinate's action).

17 Here, Plaintiffs allege that the deputies worked "hand-in-hand
18 with their supervisors." Opp'n at 11. In addition, Plaintiffs
19 point to their allegation that a SWAT supervisor declared his
20 intent to kill Glenn upon arriving at the location. Id.

21 Plaintiffs do not allege facts, however, establishing that any of
22 the alleged decisions that led to Glenn's death were made by an
23 official with final policymaking authority pursuant to state or
24 local law. Moreover, they do not allege facts establishing that a
25 subordinate's decision leading to Glenn's death was ratified by a
26 municipal officer with final policy making authority. Accordingly,
27 Plaintiffs' fifth claim for relief for municipal liability based on

28 ///

1 "policymakers' ratification of the deputies' unconstitutional acts"
2 is DISMISSED WITHOUT PREJUDICE. See Opp'n at 10.

3 **c. Inadequate Training**

4 In City of Canton v. Harris, the Supreme Court held that
5 deliberately indifferent training may give rise to Section 1983
6 municipal liability. 489 U.S. 378 (1989). To make a claim based
7 on inadequate training, the plaintiff must demonstrate specific
8 training deficiencies and either (1) a pattern of constitutional
9 violations of which policy-making officials can be charged with
10 knowledge, or (2) that training is obviously necessary to avoid
11 constitutional violations, e.g., training on the constitutional
12 limits on a police officer's use of deadly force. See Canton, 489
13 U.S. at 390. The plaintiff must also show that "the need for more
14 or different training was so obvious, and the inadequacy so likely
15 to result in the violation of constitutional rights," as to amount
16 to a municipal policy of deliberate indifference to citizens'
17 constitutional rights. Id. Finally, the plaintiff must also
18 demonstrate a sufficiently close causal connection between the
19 deliberately indifferent training and the deprivation of the
20 plaintiff's federally protected right. Id. at 391-92.

21 Defendants argue that "Plaintiffs' amended complaint is
22 devoid of facts showing what the training was, any prior similar
23 acts or other basis to show the need for more or different
24 training, [or that] the alleged inadequacy [was] likely to result
25 in constitutional violations." Mot. at 9. Plaintiffs' FAC,
26 however, makes several allegations along those lines:
27 "Defendant was aware that the responding Sheriff Deputies and
28 various other Sheriff's Office personnel, including the responding

1 SWAT unit, had not received proper and necessary training in
2 responding to minor service calls pertaining to domestic disputes
3 and effectively dealing with individuals who are in a crisis,
4 including safely defusing anxious and hostile behavior; deciphering
5 when behavior escalates; reinforcing preventative techniques and
6 practicing the principles of non-harmful physical intervention."
7 FAC ¶ 74. The FAC further alleges that the County "knew that such
8 untrained deputies would escalate minor service calls by creating
9 violent confrontations leading to injury or death." FAC ¶ 75.
10 These allegations are sufficient to satisfy the requirements of
11 Rule 8. Further, they relate to an area -- police training on the
12 use of force -- where training is obviously necessary to avoid
13 constitutional violations such that a lack of adequate training
14 could constitute deliberate indifference. Finally, Plaintiffs have
15 alleged facts sufficient to establish that the lack of training
16 could have caused the alleged injuries in this case.

17 Accordingly, Defendants' motion as to Plaintiffs' allegations
18 of inadequate training is DENIED.

19 **3. Claims for Damages to Surviving Plaintiffs**

20 Constitutional rights are personal rights which cannot be
21 vicariously asserted. See Plumhoff v. Richard, 34 S.Ct. 2012, 2011
22 (2014); Rakas v. Illinois, 439 U.S. 128, 138-43 (1978). Plaintiffs
23 do not dispute this and argue in their Opposition that their fifth
24 claim for relief asserts a Section 1983 claim on behalf of "the
25 Estate, not other plaintiffs." Opp'n at 13. Defendants point out,
26 however, that Plaintiffs' fifth claim for relief includes language
27 stating that, as a result of the alleged constitutional violations,
28 Glenn Swindell's "wife, children and mother, the present

1 Plaintiffs, suffered the loss of his love, affection, society and
2 moral support." FAC ¶ 80. Thus, the Court DISMISSES Plaintiffs'
3 fifth claim for relief WITH PREJUDICE to the extent that it asserts
4 claims on behalf of the surviving plaintiffs.

5 **B. Sixth Claim for Relief: Municipal Liability Under 42**
6 **U.S.C. § 1983 for Interference with Familial Integrity**

7 Plaintiffs' sixth claim for relief is brought by Glenn
8 Swindell's family members -- Sarah Swindell, Deborah Belka, G.S.,
9 M.S., J.S., Deann Walund, and Tyler Swindell -- under 42 U.S.C. §
10 1983 alleging that the County, the deputies, their supervisors, and
11 the responding SWAT units interfered with their familial integrity
12 in violation of their Fourteenth Amendment Due Process rights. The
13 Due Process Clause of the Fourteenth Amendment protects the private
14 realm of family life from unwarranted state interference (see Meyer
15 v. Nebraska, 262 U.S. 390, 400 (1923)) and includes the right to
16 marry (Obergefell v. Hodges, 135 S. Ct. 2584, (June 26, 2015)), the
17 right to direct the upbringing of one's children (Pierce v. Society
18 of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534
19 (1925)), and the right to live together as a family (Moore v. City
20 of East Cleveland, 431 U.S. 494 (1977)).

21 Plaintiffs' allegations do not establish interference with
22 their Fourteenth Amendment right to familial integrity. True,
23 Defendants' actions allegedly caused the death of Glenn Swindell --
24 surviving plaintiffs' father, son, and husband. The Court is not
25 aware of any case, however, finding a Fourteenth Amendment
26 violation where a family member has been wrongfully killed as a
27 result of state action. Accordingly, Plaintiffs' sixth claim for
28 relief is DISMISSED WITH PREJUDICE.

1 **C. Ninth Claim for Relief: Wrongful Death**

2 **1. Claims by Glenn Swindell's Mother, Deborah Belka**

3 The ninth cause of action for wrongful death is asserted on
4 behalf of all plaintiffs, including Glenn Swindell's mother,
5 Deborah Belka. FAC ¶¶ 11, 108. Defendants argue that Ms. Belka
6 does not have standing under California law to bring a wrongful
7 death claim.

8 "In California, an action for wrongful death is governed
9 solely by statute, and the right to bring such an action is limited
10 to those persons identified therein." Scott v. Thompson, 184
11 Cal.App.4th 1506, 1510 (2010). Specifically, standing to sue for
12 wrongful death is governed by California Code of Civil Procedure
13 Section 377.60, which authorizes causes of action "to be brought by
14 decedent's personal representative 'or' any of a defined list of
15 persons that includes a decedent's spouse, children, or heirs."
16 Moreland v. Las Vegas Metro. Police Dep't, 159 F.3d 365, 370 (9th
17 Cir. 1998). Where a decedent leaves issue, "his parents would not
18 be his heirs at all and therefore not entitled to maintain [a
19 wrongful death] action at all." Chavez v. Carpenter, 91 Cal. App.
20 4th 1433, 1440 (2001). There is one exception, however:
21 "Regardless of their status as heirs, parents may sue for the
22 wrongful death of their child 'if they were dependent on the
23 decedent.'" Id. at 1445; see also Foster v. City of Fresno, 392 F.
24 Supp. 2d 1140, 1146 (E.D. Cal. 2005). "'Dependence' refers to
25 financial rather than emotional dependency . . . [and] a parent
26 'must show that they were actually dependent, to some extent, upon
27 the decedent for the necessities of life.'" Foster, 392 F. Supp.
28 2d at 1146; Chavez, 91 Cal. App. 4th at 1445 ("Financial dependency

1 should be the test for parents who are not heirs of the
2 decedent.").

3 Glenn Swindell left a surviving spouse and children. Further,
4 there are no facts alleged that Ms. Belka was financially dependent
5 on Glenn such that the exception under Section 377.60(b) could
6 apply. Accordingly, Plaintiffs' wrongful death claim as to Deborah
7 Belka is DISMISSED WITH PREJUDICE.

8 **2. Claims Against the County for Direct Liability**

9 The Complaint asserts a wrongful death claim against the
10 County for vicarious liability under Cal. Gov. Code § 815.2. It
11 also attempts to assert a claim, however, against the County
12 directly. See FAC ¶¶ 114-120. "Except as otherwise provided by
13 statute, a public entity is not liable for an injury, whether such
14 injury arises out of an act or omission of the public entity or a
15 public employee or any other person." Cal. Gov. Code, § 815(a).
16 "Thus, in California, all government tort liability must be based
17 on statute" Hoff v. Vacaville Unified School Dist., 19
18 Cal. 4th 925, 932 (1998).

19 Section 815.2 provides only for the County's vicarious
20 liability for the acts of its employees; it does not authorize
21 Plaintiffs' direct liability claim against the County. See FAC ¶¶
22 113-122. Because Plaintiffs fail to state any statutory basis for
23 a negligence or wrongful death claim against the County directly,
24 Plaintiffs' ninth claim for relief is DISMISSED WITHOUT PREJUDICE
25 to the extent that it asserts claims against the County directly.
26 Its claim for vicarious liability survives, however.

27 ///

28 ///

1 D. Tenth Claim for Relief: Civil Rights Violations Under The
2 Bane Act, Cal. Civ. Code Section 52.1

3 1. Failure to State a Claim

4 The Bane Act, California Civil Code Section 52, provides a
5 right to relief when someone "interferes by threats, intimidation,
6 or coercion . . . with the exercise or enjoyment by any individual
7 or individuals of rights secured by the Constitution or laws of the
8 United States, or of the rights secured by the Constitution or laws
9 of this state." The elements of a claim for relief are: 1) an act
10 of interference with a legal right by 2) intimidation, threats or
11 coercion. Haynes v. City and County of San Francisco, No. 09-0174,
12 2010 WL 2991732, at *6 (N.D. Cal. Jul.28, 2010); Jones v. Kmart
13 Corp., 17 Cal. 4th 329 (1998).

14 The California Court of Appeal held in Shoyoye v. County of
15 Los Angeles that "where coercion is inherent in the constitutional
16 violation alleged . . . the statutory requirement of 'threats,
17 intimidation, or coercion' is not met. The statute requires a
18 showing of coercion independent from the coercion inherent in the
19 wrongful detention itself." 203 Cal.App.4th 947, 959 (2012). In
20 Bender v. County of Los Angeles, the California Court of Appeal
21 held that where an arrest is unlawful and excessive force is used,
22 a claim is stated under California Civil Code Section 52.1. 217
23 Cal. App. 4th 968, 977-978 (2013).

24 Defendants argue that Plaintiffs' tenth claim for relief
25 should be dismissed under Shoyeye because it "fails to show
26 threats, coercion or intimidation independent from the underlying
27 claims of unlawful search and seizure." Mot. at 14. Like Bender,
28 however, Plaintiffs allege excessive force in addition to an

1 unlawful search and seizure, including that Defendants used a
2 military assault vehicle, concussion bombs, and chemical agents to
3 enter Glenn Swindell's home and that they unnecessarily pumped gas
4 into the attic which ultimately led Glenn to take his own life.
5 Accordingly, Defendants' motion to dismiss Plaintiffs' tenth claim
6 for relief for failure to state a claim is DENIED.

7 **2. Standing**

8 Plaintiffs assert their tenth claim for relief on behalf of
9 all plaintiffs, including all surviving plaintiffs. Defendants
10 argue that "the surviving plaintiffs have no standing to assert a
11 Section 52.1 wrongful death claim [Because] Section 52.1(b)
12 specifically limits any cause of action to persons in his or her
13 own name and on his or her own behalf." Mot. at 14. Plaintiffs do
14 not dispute Defendants' argument.

15 Defendants are correct that relief under "the Bane Act . . .
16 is limited to plaintiffs who themselves have been the subject of
17 violence or threats." Bay Area Rapid Transit Dist. v. Super. Ct.,
18 38 Cal. App. 4th 141, 144 (1995). Accordingly, Plaintiffs' tenth
19 claim for relief as to all surviving plaintiffs is DISMISSED WITH
20 PREJUDICE. Their claim on behalf of the Estate of Glenn Swindell,
21 however, survives.

22 **E. Eleventh Claim for Relief: Survivorship**

23 Plaintiffs' eleventh claim for relief is for survivorship
24 under Cal. Civ. Proc. Code § 377.30. "[A] survivor cause of
25 action," however, "is not a new cause of action that vests in the
26 heirs on the death of the decedent. . . . The survival statutes do
27 not create a cause of action." Quiroz v. Seventh Ave. Ctr., 140
28 Cal. App. 4th 1256, 1264 (2006). Instead, the survivorship

1 statutes simply provide a means for a decedent's survivors to
2 assert "a separate and distinct cause of action which belonged to
3 the decedent before death." Id. In short, there is no such thing
4 as a claim for "survivorship." Accordingly, Plaintiffs' eleventh
5 cause of action is DISMISSED WITH PREJUDICE.

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

IV. CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss is GRANTED IN PART and DENIED IN PART.

The following claims are DISMISSED WITH PREJUDICE:

- Fifth Claim for Relief to the extent it asserts claims for damages on behalf of the surviving plaintiffs
- Sixth Claim for Relief
- Ninth Claim for Relief to the extent it asserts claims on behalf of Deborah Belka
- Eleventh Claim for Relief

The following claims are DISMISSED WITHOUT PREJUDICE:

- Fifth Claim for Relief to the extent it relies on purported violations of the Second and Fourteenth Amendments, to the extent it asserts a claim based on an unconstitutional custom or practice, and to the extent it asserts a claim based on ratification
- Ninth Claim for Relief to the extent it asserts claims against the County directly

Defendants' motion to dismiss is otherwise DENIED.

Accordingly, leave to amend is GRANTED only as to the fifth and ninth claims for relief as specified above. Plaintiffs may file a second amended complaint within thirty (30) days. Failure to file a second amended complaint within the time allotted may result in dismissal with prejudice.

IT IS SO ORDERED.

Dated: October 21, 2015



UNITED STATES DISTRICT JUDGE