

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

D.V., et al.,

Plaintiff(s),

v.

CITY OF SUNNYVALE, et al.,

Defendant(s).

Case No. C-14-2155-RMW

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

[Re: Docket No. 11]

Defendant City of Sunnyvale (“Sunnyvale”) moves to dismiss the complaint. Dkt. No. 11 (“Mot.”). Pursuant to Civil Local Rule 7-1(b), the court finds this matter suitable for decision without oral argument and therefore vacates the August 22, 2014 hearing. For the reasons explained below, the court GRANTS IN PART and DENIES IN PART Sunnyvale’s motion to dismiss.

I. BACKGROUND

This civil rights case arises out of an incident occurring in the parking lot of a Sunnyvale Hobee’s restaurant on September 4, 2013. Dkt. No. 1 (“Complaint”) ¶ 13. The complaint alleges that several undercover police officers from a task force including officers from Sunnyvale, the City of Santa Clara, and the County of Santa Clara approached Juan Carlos Ruelas’ truck. *Id.* ¶ 14. Ruelas was unarmed, and, according to the complaint, “was not acting in a threatening manner,” yet

1 at some point during the encounter the police officers fired their guns at Ruelas. *Id.* ¶ 15. Officers
2 then allegedly ordered Ruelas to get out of his truck, even though Ruelas had allegedly been hit by
3 the officers’ gunfire. *Id.* The complaint states that Ruelas complied, but that the officers then opened
4 fire once more, causing Ruelas’ death. *Id.* According to the complaint, the police officers fired a
5 total of approximately 30 bullets at Ruelas (“decendent”). *Id.*

6 Plaintiffs D.V., a minor who is decedent’s son and successor in interest, Jose Luis Ruelas,
7 decedent’s father, and Rebeca Ruelas, decedent’s mother (collectively, “plaintiffs”) filed the instant
8 suit on May 9, 2014. *See* Complaint ¶¶ 3-5. The complaint names as defendants the City of
9 Sunnyvale, the City of Santa Clara, the County of Santa Clara, and John Does 1-50 (collectively,
10 “defendants”), who represent the unidentified police officers present at the incident. *Id.* ¶¶ 6-9.
11 Plaintiffs state that they attempted to identify the officers involved in the incident, but that none of
12 the municipalities were willing to disclose the officers’ names. *Id.* ¶ 9. While the City of Santa Clara
13 and the County of Santa Clara separately answered the complaint, *see* Dkt. Nos. 7 (County of Santa
14 Clara answer), 12 (City of Santa Clara answer), Sunnyvale instead brings the present motion to
15 dismiss. Plaintiffs filed an opposition, Dkt. No. 13, and Sunnyvale filed a reply, Dkt. No. 17. The
16 court held a hearing on August 22, 2014.

17 II. ANALYSIS

18 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency
19 of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering whether the
20 complaint is sufficient to state a claim, the Court must accept as true all of the factual allegations
21 contained in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). However, the Court need
22 not accept as true “allegations that contradict matters properly subject to judicial notice or by
23 exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
24 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). While a complaint
25 need not allege detailed factual allegations, it “must contain sufficient factual matter, accepted as
26 true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl.*
27 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court
28 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678.

1 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task
2 that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

3 **A. Plaintiffs’ Section 1983 Claims**

4 Plaintiffs assert two § 1983 claims against all defendants. Complaint ¶¶ 23-27. Plaintiffs
5 include no allegations that explicitly name any of the municipality defendants, but plaintiffs’ first
6 claim alleges that “[d]efendants DOES 1-25 unreasonably and unlawfully seized and arrested
7 Decedent by shooting him multiple times, causing his untimely death” *Id.*

8 Sunnyvale moves to dismiss plaintiffs’ § 1983 claims, arguing that the complaint states no
9 basis for municipal liability under *Monell v. Department of Social Services of City of New York*, 436
10 U.S. 658 (1978). Plaintiffs in their opposition clarify that “[p]laintiffs do not allege a municipal
11 liability claim,” but that plaintiffs reserve the right to later assert a municipal liability claim if
12 discovery reveals a basis for such a claim. *Opp.* at 5. Because the complaint, by its general use of
13 the term “defendants,” alleges both § 1983 claims against all defendants, the court briefly analyzes
14 municipal liability under § 1983.

15 Plaintiffs do not sufficiently allege a § 1983 claim against Sunnyvale, and thus plaintiffs’
16 first two claims are dismissed as to Sunnyvale. The Supreme Court held in *Monell* that “a
17 municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Monell*, 436 U.S.
18 at 691. Consequently, a municipality cannot be held liable under § 1983 “unless action pursuant to
19 official municipal policy of some nature caused a constitutional tort.” *Id.* Here, plaintiffs do not
20 contend that any official Sunnyvale policy caused the alleged constitutional violations. Complaint
21 ¶¶ 23-27; *Opp.* at 5. Therefore, the court dismisses plaintiffs’ two § 1983 claims as against
22 Sunnyvale.

23 **B. Negligence (Claim 3) and Assault and Battery (Claim 5) Claims**

24 Plaintiffs allege claims for negligence (which plaintiffs also label as a wrongful death claim)
25 and assault and battery against all defendants, including Sunnyvale. Complaint ¶¶ 28-32, 38-40.
26 Sunnyvale argues that plaintiffs’ tort claims are barred by the Government Tort Claims Act because
27 plaintiffs do not plead a statutory basis for Sunnyvale’s liability. Section 815 of the California
28 Government Code states that “[e]xcept as otherwise provided by statute . . . a public entity is not

1 liable for an injury, whether such injury arises out of an act or omission of the public entity or a
2 public employee or any other person.” Cal. Gov’t Code § 815. Therefore, “[u]nder the Government
3 Claims Act (Gov. Code, § 810 et seq.), there is no common law tort liability for public entities in
4 California; instead, such liability must be based on statute.” *Guzman v. Cnty. of Monterey*, 46 Cal.
5 4th 887, 897 (2009). However, the very next section, Cal. Gov’t Code § 815.2, provides that “[a]
6 public entity is liable for injury proximately caused by an act or omission of an employee of the
7 public entity within the scope of his employment if the act or omission would, apart from this
8 section, have given rise to a cause of action against that employee or his personal representative.”
9 Cal. Gov’t Code § 815.2. Sunnyvale is therefore vicariously liable for any assault and battery or
10 negligence by its officers. *Blankenhorn v. City of Orange*, 485 F.3d 463, 488 (9th Cir. 2007)
11 (finding that § 815.2 “clearly allows for vicarious liability of a public entity when one of its police
12 officers uses excessive force in making an arrest”); *Nozzi v. Hous. Auth. of City of Los Angeles*, 425
13 F. App’x 539, 542 (9th Cir. 2011) (holding that public entities “may be held vicariously liable for
14 the negligent acts of their individual employees”).

15 Sunnyvale also argues “the complaint fails to state facts showing compliance with the claim
16 presentation requirements of the [Government] Tort Claims Act.” Mot. at 6. California Government
17 Code § 945.4 states that “no suit for money or damages may be brought against a public entity on a
18 cause of action for which a claim is required to be presented . . . until a written claim therefor has
19 been presented to the public entity and has been acted upon by the board, or has been deemed to
20 have been rejected by the board” Cal. Gov’t Code § 945.4. “[S]ubmission of a claim to a public
21 entity pursuant to section 900 et seq. ‘is a condition precedent to a tort action and the failure to
22 present the claim bars the action.’” *Phillips v. Desert Hosp. Dist.*, 49 Cal. 3d 699, 708 (1989)
23 (quoting *Lutz v. Tri-City Hospital*, 179 Cal. App. 3d 807, 812 (1986)). With respect to the instant
24 motion to dismiss, “failure to allege facts demonstrating or excusing compliance with the claim
25 presentation requirement subjects a claim against a public entity to a demurrer for failure to state a
26 cause of action.” *State v. Superior Court (Bodde)*, 32 Cal. 4th 1234, 1239 (2004).

27 The court notes that the complaint omits any mention of plaintiffs’ compliance with the
28 claim presentation requirement of the Government Tort Claims Act. As just mentioned above, under

1 *Bodde*, the complaint must include facts demonstrating compliance with the claim presentation
2 requirement or the claim will be dismissed. *Bodde*, 32 Cal. 4th at 1239. In their opposition, plaintiffs
3 recognize the presentation requirement and affirm that they submitted their claim to the City of
4 Sunnyvale, which rejected the claim after review. *Opp.* at 8; *see also* Dkt. No. 15-1, Nisenbaum
5 Decl. Exh. A, City of Sunnyvale Notice of Rejection of Claim. “Plaintiffs seek leave to amend the
6 complaint to allege their compliance with the [Government] Tort Claims Act.” *Opp.* at 8.
7 Accordingly, the court grants Sunnyvale’s motion to dismiss as to plaintiffs’ negligence and assault
8 and battery claims.

9 **C. California Civil Code Section 52.1 Claim**

10 Plaintiffs bring a claim against all defendants for violation of California Civil Code § 52.1,
11 commonly known as the Tom Bane Civil Rights Act. Part (a) of § 52.1 prohibits “a person or
12 persons, whether or not acting under color of law, [from] interfere[ing] by threats, intimidation, or
13 coercion, or [from] attempt[ing] to interfere by threats, intimidation, or coercion, with the exercise
14 or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the
15 United States, or of the rights secured by the Constitution or laws of this state” Cal. Civ. Code
16 § 52.1(a). Section 52.1(b), which provides a private right of action for injured individuals, states that

17 Any individual whose exercise or enjoyment of rights secured by the
18 Constitution or laws of the United States, or of rights secured by the
19 Constitution or laws of this state, has been interfered with, or attempted to
20 be interfered with, as described in subdivision (a), may institute and
21 prosecute in his or her own name and on his or her own behalf a civil
22 action for damages, including, but not limited to, damages under Section
23 52, injunctive relief, and other appropriate equitable relief to protect the
24 peaceable exercise or enjoyment of the right or rights secured.

25 Cal. Civ. Code § 52.1(b).

26 Sunnyvale first argues that plaintiffs’ § 52.1 claim should be dismissed because plaintiffs do
27 not allege sufficient facts showing a constitutional rights violation by a Sunnyvale officer. *Mot.* at 8.
28 However, the complaint alleges that several unidentified officers interfered with the decedent’s
constitutional rights “by unnecessarily shooting him multiple times until his untimely death, all
accomplished through force, threats, intimidation and coercion.” Complaint ¶ 34. Plaintiffs state that
they contacted the defendants to determine which officers were involved in the incident, but that

1 none of the defendants were willing to disclose the identities of the involved officers. *Id.* ¶ 9. At this
2 time, plaintiffs cannot ascertain whether Sunnyvale officers, Santa Clara officers, or both caused the
3 decedent’s death. Therefore, by pleading generally that the officers present at the incident are
4 responsible, plaintiffs have sufficiently alleged that Sunnyvale is liable.

5 Second, Sunnyvale contends that the complaint does not include a basis for direct liability
6 against Sunnyvale. In their opposition, plaintiffs clarify that Sunnyvale is only liable under a
7 respondeat superior theory of liability. *Opp.* at 10-12. Courts have consistently held that public
8 entities may be held vicariously liable for a violation of § 52.1, and, more specifically, that cities
9 may be held vicariously liable for police officers’ violations of § 52.1. *See Knapps v. City of*
10 *Oakland*, 647 F. Supp. 2d 1129, 1168-69 (N.D. Cal. 2009) (finding City of Oakland liable under
11 respondeat superior for police officers’ violations of § 52.1); *Santos ex rel. Santos v. City of Culver*
12 *City*, 228 F. App’x 655, 659 (9th Cir. 2007) (remanding for consideration of whether City of Culver
13 City was vicariously liable for violation of § 52.1); *Ohlsen v. Cnty. of San Joaquin*, No. 06-CV-
14 02361 GEB, 2008 WL 2331996, at *5 (E.D. Cal. June 4, 2008) (granting summary judgment for
15 plaintiff that County of San Joaquin is vicariously liable for its employees’ violation of § 52.1).
16 Therefore, Sunnyvale is a proper defendant to plaintiff’s § 52.1 claim.

17 Sunnyvale also asserts that a § 52.1 claim requires threats, coercion, or intimidation separate
18 from the underlying constitutional violation. Sunnyvale contends that plaintiffs’ § 52.1 claim must
19 be dismissed for failure to plead separate threats, coercion, or intimidation. Plaintiffs respond that a
20 § 52.1 does not require separate threats, coercion, or intimidation when the defendants’ actions are
21 intentional, rather than merely negligent.

22 The court finds plaintiffs’ position more persuasive. In *Venegas v. County of Los Angeles*, 32
23 Cal. 4th 820 (2004), the principal California Supreme Court case on § 52.1, the Court held that
24 § 52.1 is “limited to threats, intimidation, or coercion that interferes with a constitutional or
25 statutory right.” *Venegas*, 32 Cal. 4th at 843. “[P]laintiffs need not allege that defendants acted with
26 discriminatory animus or intent, so long as those acts were accompanied by the requisite threats,
27 intimidation, or coercion.” *Id.* The Court concluded that “imposing added limitations on the scope
28 of section 52.1 would appear to be more a legislative concern than a judicial one” *Id.*

1 Against this backdrop, the California Court of Appeal for the Second District decided
2 *Shoyoye v. County of Los Angeles*, 203 Cal. App. 4th 947 (2012), which Sunnyvale cites as its
3 primary support for a rule requiring separate threats, coercion, or intimidation. In *Shoyoye*, the
4 plaintiff alleged that he had been wrongly detained in county jail. *Shoyoye*, 203 Cal. App. 4th at
5 950. The county maintained that the plaintiff’s initial detention was justified, but the county
6 acknowledged that it had detained the plaintiff for an extra 16 days due to a clerical error. *Id.*
7 *Shoyoye* directly presented the issue, avoided by the California Supreme Court, of whether § 52.1
8 applies when a defendant merely acts negligently, with no intent. *Id.* at 957-58. The *Shoyoye* court
9 conceptualized the issue as two related questions: “[1] What type of interference is contemplated
10 by the statute—intentional and callous interference only or also incidental interference brought
11 about by negligent conduct? [(2)] As applicable here, where coercion is inherent in the
12 constitutional violation alleged, as it is in an unreasonably prolonged detention, is the statutory
13 requirement satisfied or does the statute require a showing of coercion independent from the
14 coercion inherent in the wrongful detention itself?” *Id.* at 958. As to the first question, *Shoyoye* held
15 that “[t]he act of interference with a constitutional right must itself be deliberate or spiteful.” *Id.* at
16 959. As to the second question, *Shoyoye* found that § 52.1 “requires a showing of coercion
17 independent from the coercion inherent in the wrongful detention itself.” *Id.* Because the defendant
18 had not acted deliberately to cause the plaintiff’s over-detention and the defendant’s coercion was
19 not independent from the coercion inherent in the plaintiff’s wrongful detention, the court
20 determined that the plaintiff had not proven the requisite elements of his § 52.1 claim. *Id.* at 961-62.

21 Subsequent decisions, especially in this District, have largely limited *Shoyoye* to its first
22 holding, that § 52.1 requires intentional interference with a constitutional right, and not merely
23 negligent acts. For example, a court in this District has held that “*Shoyoye* is best viewed as a carve-
24 out from the general rule stated in *Venegas*.” *Bass v. City of Fremont*, No. 12-CV-04943 TEH, 2013
25 WL 891090, at *6 (N.D. Cal. Mar. 8, 2013). Another court in this district, citing *Bass*, agrees: “the
26 relevant distinction for purposes of the Bane Act is between intentional and unintentional conduct,
27 and . . . *Shoyoye* applies only when the conduct is unintentional.” *M.H. v. Cnty. of Alameda*, No. 11-
28 CV-02868 JST, 2013 WL 1701591, at *7 (N.D. Cal. Apr. 18, 2013) (citing *Bass*, 2013 WL 891090).

1 Although courts have not been unanimous,¹ the great weight of authority in the Northern District of
2 California has followed this path and confined *Shoyoye* to circumstances involving negligent
3 conduct.² The California Court of Appeal for the Second District, returning to the issue, has
4 similarly limited its *Shoyoye* decision, finding that “[t]here is no Bane Act violation ‘where the
5 overdetention occurs because of mere negligence rather than a volitional act intended to interfere
6 with the exercise or enjoyment of the constitutional right.’” *Bender v. Cnty. of Los Angeles*, 217 Cal.
7 App. 4th 968, 979 (2013) (citing *Shoyoye*, 203 Cal. App. 4th at 957-58). This court therefore
8 follows the substantial and growing authority that restricts *Shoyoye* to cases where the defendant’s
9 actions were negligent. Section 52.1 does not require threats, coercion, or intimidation independent
10 from the threats, coercion, or intimidation inherent in the alleged constitutional or statutory
11 violation.

12 Given that *Shoyoye* only applies when the defendant’s actions were negligent or
13 unintentional, resolution of Sunnyvale’s argument is simple. Plaintiffs allege that Sunnyvale
14 violated the decedent’s constitutional rights when unidentified police officers shot and killed the
15 decedent. Complaint ¶¶ 34-35. Plaintiffs state that the police officers at the incident acted

18 ¹ See, e.g., *Rodriguez v. City of Fresno*, 819 F. Supp. 2d 937, 953 (E.D. Cal. 2011) (“The text of the
19 Bane Act and such case authority as the court can find indicates that a cause of action under the act
20 requires a predicate—the application of threat, intimidation or coercion—and an object—
interference with a constitutional or statutory right.”); *Valdez v. City of San Jose*, No. 09-CV-00176
21 KAW, 2013 WL 6108052, at *12 (N.D. Cal. Nov. 18, 2013) (following *Rodriguez*).

22 ² See *Davis v. City of San Jose*, No. 14-CV-02035 BLF, 2014 WL 2859189, at *7 (N.D. Cal. June
23 20, 2014) (“However, the [defendants] ignore the wealth of subsequent case law that has limited
24 *Shoyoye* to its narrow circumstances—case law with which this Court agrees.”); *Brown v. City &
25 Cnty. of San Francisco*, No. 11-CV-02162 LB, 2014 WL 1364931, at *17 (N.D. Cal. Apr. 7, 2014)
26 (“[T]he court finds persuasive the line of cases permitting Bane Act claims based on the same
27 conduct as an underlying constitutional violation.”); *Mateos-Sandoval v. Cnty. of Sonoma*, No. 11-
28 CV-05817 TEH, 2013 WL 3878181, at *8 (N.D. Cal. July 25, 2013) (denying a motion to dismiss
because the defendants’ conduct “was brought about by intentional conduct, not by negligence” and
“was inherently coercive”); *Skeels v. Pilegaard*, No. 12-CV-02175 TEH, 2013 WL 970974, at *4
(N.D. Cal. Mar. 12, 2013) (denying a motion to dismiss because “[t]he harms that [plaintiff] alleges
were not brought about by human error, but rather by intentional conduct, conduct which could be
reasonably perceived as threatening, intimidating, or coercive”); *Holland v. City of San Francisco*,
No. 10-CV-02603 TEH, 2013 WL 968295, at *10 (N.D. Cal. Mar. 12, 2013) (the argument that
Shoyoye requires independent threats, coercion, or intimidation “is based on an overly broad reading
of *Shoyoye*, one which conflicts with California Supreme Court precedent”).

1 intentionally, and there can be no dispute that the officers' lethal encounter with the decedent was
2 coercive. *Id.* ¶¶ 15-16. Therefore, the court denies Sunnyvale's motion as to plaintiffs' § 52.1 claim.

3 **D. Leave to Amend**

4 If the Court determines that the complaint should be dismissed, it must then decide whether
5 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend
6 "should be freely granted when justice so requires," bearing in mind that "the underlying purpose of
7 Rule 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or technicalities."
8 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks omitted).
9 Nonetheless, a court "may exercise its discretion to deny leave to amend due to 'undue delay, bad
10 faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments
11 previously allowed, undue prejudice to the opposing party . . . , [and] futility of amendment.'" *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892-93 (9th Cir. 2010) (alterations in original)
12 (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).
13

14 In their opposition, plaintiffs explicitly seek leave to amend their complaint. Sunnyvale does
15 not contest that plaintiffs are entitled to leave to amend. Plaintiffs have not yet amended their
16 complaint, and several of the amendments necessary to avoid dismissal on the bases given in this
17 order are likely simple. The court therefore grants plaintiffs 21 days leave to amend the complaint.
18 Plaintiffs must cure the deficiencies raised in this order to avoid a second dismissal on identical
19 grounds. However, plaintiffs may also wish to amend the complaint to address other arguments
20 brought by Sunnyvale but not reached by the court at this time.

21 **III. ORDER**

22 For the foregoing reasons, the court GRANTS IN PART and DENIES IN PART
23 Sunnyvale's motion to dismiss. The court grants plaintiffs 21 days leave to amend the complaint.
24 Plaintiffs must file a first amended complaint no later than September 4, 2014.

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27 Dated: August 14, 2014


RONALD M. WHYTE
United States District Judge