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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

K.M.A., et al.,
Plaintiffs,
v.
CITY OF SANTA CRUZ, et al.,
Defendants.

Case No. 17-cv-02090-BLF

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS COMPLAINT,
WITH LEAVE TO AMEND**

[Re: ECF 13]

Defendants move to dismiss Plaintiffs' complaint under Federal Rule of Civil Procedure 12(b)(6). For the reasons stated on the record at the hearing on October 12, 2017 and discussed below, the motion is GRANTED IN PART AND DENIED IN PART, WITH LEAVE TO AMEND.

I. BACKGROUND¹

This action arises from the fatal shooting of Sean Smith Arlt ("Arlt") by a Santa Cruz police officer responding to a 911 call from the home of Arlt's long-time friends Bob and Arlene Shaw. Bob Shaw placed the call on October 16, 2016 after Arlt appeared at the Shaw home, pounded on the door, and said he was "Jesus Christ Superstar." Compl. ¶ 24, ECF 1. Shaw specifically informed the 911 dispatcher that Arlt was mentally unstable. *Id.* Several Santa Cruz police officers responded, including Sergeant Bill Clayton ("Clayton"), Erik Bailey ("Bailey"), Denise Cockrum ("Cockrum"), and Adam Baker ("Baker"). *Id.* ¶ 25. Arlt had picked up a garden rake and started walking down the Shaws' driveway with the rake held over his head. *Id.* ¶ 26. Two unnamed officers deployed Tasers. *Id.* Bailey fired two shots, hitting Arlt in the head and causing his death. *Id.* ¶¶ 26-27.

¹ Plaintiff's well-pled factual allegations are accepted as true for purposes of the motion to dismiss. *See Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011).

1 This lawsuit was filed on April 14, 2017 on behalf of Arlt’s minor son, K.M.A., by and
2 through his mother and next friend Dacia Marler; Arlt’s father, Jeffrey Arlt; and Arlt’s mother,
3 Stacey Smith. Compl., ECF 1. The complaint names as defendants Clayton, Bailey, Cockrum,
4 and Baker; Santa Cruz Police Chief Kevin Vogel (“Vogel”); and the City of Santa Cruz (“the
5 City”). *Id.* The complaint asserts the following claims: (1) a § 1983 claim² by all plaintiffs
6 against Bailey, Clayton, Cockrum, and Baker; (2) a § 1983 claim by all plaintiffs against Vogel for
7 supervisory liability and against the City under *Monell*³; (3) a Bane Act claim by all plaintiffs
8 against Bailey, Clayton, Cockrum, Baker, and the City; (4) a negligence claim by K.M.A. against
9 all defendants; (5) an assault and battery claim by K.M.A. against Bailey, Clayton, Cockrum,
10 Baker, and the City; and (6) a claim for violation of the Americans with Disabilities Act (“ADA”)
11 and the Rehabilitation Act (“RA”) by K.M.A. against the City.

12 **II. LEGAL STANDARD**

13 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
14 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*
15 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
16 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts
17 as true all well-pled factual allegations and construes them in the light most favorable to the
18 plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the
19 Court need not “accept as true allegations that contradict matters properly subject to judicial
20 notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or
21 unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)
22 (internal quotation marks and citations omitted). While a complaint need not contain detailed
23 factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to
24 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
25 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the

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² 42 U.S.C. § 1983.

28 ³ *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658 (1978).

1 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

2 **III. DISCUSSION**

3 Defendants assert that the complaint fails to meet these standards, pointing out several
4 paragraphs of the complaint which Defendants argue contain technical defects or inadequate
5 factual allegations. The Court discussed the asserted deficiencies in detail at the hearing,
6 indicating which require amendment and why, and Plaintiffs’ counsel stated that the deficiencies
7 identified by the Court could be cured by amendment. This order summarizes the discussion on
8 the record and memorializes the Court’s ruling.

9 **A. § 1983 Claim against Officers (Claim 1)**

10 The Court agrees with Defendants that Claim 1, a § 1983 claim asserted against Bailey,
11 Clayton, Cockrum, and Baker, is deficient on several grounds. First, the complaint does not
12 establish that K.M.A. is Arlt’s successor in interest with standing to bring a survival action. The
13 Court notes that this pleading defect easily can be cured because K.M.A. now has obtained the
14 affidavit required under California law to pursue a survival action. *See* Cal. Civ. P. Code §
15 377.32. Second, the claim improperly asserts Arlt’s rights to be free from unreasonable search and
16 seizure under both the Fourth and Fourteenth Amendments when the claim properly is analyzed
17 only under the Fourth Amendment. *See Graham v. Connor*, 490 U.S. 386, 394-95 (U.S. 1989)
18 (excessive force claim properly analyzed under the Fourth Amendment, not the Fourteenth
19 Amendment). The claim asserts that all four officers used excessive force but the complaint does
20 not allege facts showing use of force by any officer except Bailey. *See* Compl. ¶ 26. The
21 allegation that unnamed officers deployed Tasers is insufficient to state a claim for excessive force
22 against Clayton, Cockrum, or Baker. *See id.* The allegations that Clayton, Cockrum, and Baker
23 were “fundamentally involved” and were “integral participants” in the shooting are conclusory.
24 *See id.* ¶ 28. Finally, to the extent that the claim asserts interference with rights to familial
25 association under the First and Fourteenth Amendments, the alleged interference is grounded in
26 the excessive force claim and fails with that claim.

27 Accordingly, the motion to dismiss is GRANTED as to Claim 1.

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1 **B. § 1983 Claim against Vogel and the City (Claim 2)**

2 Defendants contend that Claim 2, a § 1983 claim asserted against Vogel under the theory
3 of supervisory liability and against the City under *Monell*, also is deficient. The Court agrees that
4 the complaint does not make out a claim against Vogel in his individual capacity because it does
5 not allege facts establishing the requisite nexus between Vogel’s conduct and the alleged
6 constitutional violations committed by Bailey and the other officers. *See Starr v. Baca*, 652 F.3d
7 1202, 1208 (9th Cir. 2011). However, the *Monell* claim against the City is adequate for pleading
8 purposes, as the complaint states the alleged policies, practices, and conduct that form the bases
9 for the claim. *See* Compl. ¶ 42.

10 The motion to dismiss is GRANTED IN PART AND DENIED IN PART as to Claim 2.

11 **C. Bane Act (Claim 3)**

12 The Court agrees with Defendants that Claim 3, alleging violation of the Bane Act, Cal.
13 Civ. Code § 52.1, improperly is asserted on behalf of all plaintiffs. Relief under the Bane Act “is
14 limited to plaintiffs who themselves have been the subject of violence or threats.” *BART Dist. v.*
15 *Sup. Ct.*, 38 Cal. App. 4th 141, 144 (1995). Therefore it may be asserted only on Arlt’s behalf.
16 Defendants argue that the claim is insufficient even as to Arlt, because it does not allege violence
17 or intimidation by threat of violence. However, the Court finds the allegations that the officers
18 threatened Arlt to be adequate. *See* Compl. ¶ 49.

19 The motion to dismiss is GRANTED IN PART AND DENIED IN PART as to Claim 3.

20 **D. Negligence (Claim 4), Assault and Battery (Claim 5), and ADA/RA (Claim 6)**

21 The Court is not persuaded by Defendants’ arguments regarding Plaintiffs’ remaining
22 claims for negligence (Claim 4), assault and battery (Claim 5), and violations of the ADA and RA
23 (Claim 6). In the Court’s view, those claims are alleged with adequate specificity to satisfy the
24 applicable pleading standards. The facts alleged, if proved, could give rise to liability for
25 negligence under state law, which considers all circumstances surrounding the use of deadly force.
26 *See Hayes v. Cnty. of San Diego*, 57 Cal. 4th 622, 638-39 (2013). Liability for assault and battery
27 will lie if Plaintiffs prove their claim of excessive force. *See Edson v. City of Anaheim*, 63 Cal.
28 App. 4th 1269, 1272 (1998). While it has identified defects in the excessive force claim, the Court

1 fully expects that those defects will be cured by amendment and that the excessive force claim will
2 go forward. Finally, the Court is satisfied that Plaintiffs have alleged with adequate specificity
3 what reasonable accommodations could have been, but were not, made for Arlt's mental illness.
4 See Compl. ¶¶ 28-29. While those allegations appear in the complaint's general allegations, they
5 are incorporated into the claim for violations of the ADA and RA.

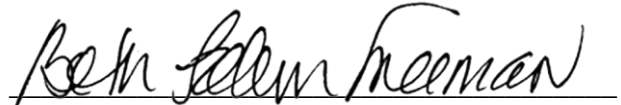
6 Accordingly, the motion to dismiss is DENIED as to Claims 4, 5, and 6.

7 **IV. ORDER**

8 For the reasons discussed above,

- 9 (1) The motion to dismiss is GRANTED as to Claim 1, GRANTED IN PART AND
10 DENIED IN PART as to Claims 2 and 3, and DENIED as to Claims 4, 5, and 6.
11 (2) Leave to amend is GRANTED, and any amended pleading shall be filed on or
12 before November 3, 2017; and
13 (3) Leave to amend is limited to the deficiencies identified in this order. No parties or
14 claims may be added without express leave of the Court.

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16 Dated: October 13, 2017

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18 BETH LABSON FREEMAN
19 United States District Judge
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