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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

VALERIANO CAMPOS ELVIRA,
et al.,

Plaintiffs,

v.

CITY OF ESCONDIDO, *et al.*,

Defendants.

Case No. 14-cv-00081-BAS(NLS)

**ORDER GRANTING IN PART
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT**

[ECF No. 30]

Plaintiffs Valeriano Campos Elvira and Celia Martinez Rosales bring this civil rights action under 42 U.S.C. § 1983 and California state law against Defendants City of Escondido (“City”), Officer Marco Fuentes, and Officer Patrick Hand. (First Am. Compl., ECF No. 14.) This action arises out of a police shooting that caused the death of Plaintiffs’ son, Pedro Martinez Campos. (*Id.*) Defendants move for summary judgment on each of Plaintiffs’ six claims. (ECF No. 30.) Plaintiffs oppose. (ECF No. 39.) After hearing oral argument (ECF No. 45), the Court **GRANTS IN PART** Defendants’ motion for the following reasons.

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1 **I. BACKGROUND**

2 Plaintiffs Valeriano Campos Elvira and Celia Martinez Rosales are the parents
3 of Decedent Pedro Martinez Campos (“Campos”). (Joint Statement of Undisputed
4 Facts (“JSUF”) ¶ 1, ECF No. 40-1.) At the time of the incident, Mr. Campos was an
5 unmarried, twenty-nine year old Mexican national living in the United States. (*Id.* ¶
6 2.) In January 2013, Mr. Campos “began an online chat room relationship with
7 Josephina Zwer.” (*Id.* ¶ 3.) Mr. Campos and Ms. Zwer “met in person approximately
8 four times and communicated over the phone and in writing via text messaging
9 multiple times per day.” (*Id.* ¶ 5.) During their relationship, Ms. Zwer perceived that
10 Mr. Campos “was lonely and had few friends.” (*Id.* ¶ 6.)

11 Near the end of April 2013, Ms. Zwer told Mr. Campos “that she did not want
12 to continue the relationship with him for various reasons including [his] anger and
13 control issues and her potential reconciliation with her husband.” (JSUF ¶ 7.) Mr.
14 Campos repeatedly told her “that he wanted to be with her and that if she ended the
15 relationship, he would hurt or kill himself.” (*Id.* ¶ 8.)

16
17 **A. 9-1-1 Call**

18 “On the evening of May 4, 2013, starting around 5:45 p.m. and ending around
19 7:43 p.m., [Mr. Campos] initiated a series of phone text messages and phone calls
20 with Ms. Zwer.” (JSUF ¶ 9.) The gist of these messages was that Mr. Campos
21 “wanted to continue the relationship with her, but if he couldn’t, he didn’t want to
22 live anymore and was going to hurt himself.” (*Id.* ¶ 12.) One of the text messages,
23 sent at 7:43 p.m., provided that Mr. Campos “had a piece of paper in his pocket for
24 her that said goodbye.” (*Id.* ¶ 11.) Ms. Zwer told Mr. Campos via text message “that
25 she did not want to have any further contact with him and to leave her alone.” (*Id.* ¶
26 10.)

27 That same night, Mr. Campos “placed a hang-up 9-1-1 call from his cell
28 phone” to the Escondido Police Department. (JSUF ¶ 13.) During a callback from the

1 police dispatcher in which a Spanish interpreter assisted the dispatcher, Mr. Campos
2 “asked for police to come to Washington Avenue and Citrus Avenue in the City and
3 said there would be a ‘tragedy’ or ‘misfortune’ if they didn’t come to the location
4 and hung up again.” (*Id.* ¶ 14; *see also* 9-1-1 Call, Defs.’ Ex. 1A, ECF No. 30-8.) Mr.
5 Campos “did not identify himself or any specific problem for which he needed the
6 police.” (JSUF ¶ 15.)

7
8 **B. Initial Encounter**

9 Then, around 10:47 p.m., the police department dispatched Officers Patrick
10 Hand and Paul Smyth via a radio call regarding “an incomplete 9-1-1 call received
11 from a male requesting police assistance at Washington Avenue and Citrus Avenue
12 in the City of Escondido.” (JSUF ¶ 16.) The responding officers did not receive “any
13 specific details as to the type of assistance needed by the caller.” (*Id.* ¶ 17.) Officers
14 Hand and Smyth drove to the designated area in their marked police vehicles and
15 while wearing their official uniforms. (*Id.* ¶ 18.) Another officer, Officer Marco
16 Fuentes, advised the police dispatch that he would also respond to the call to assist
17 with translation services. (*Id.* ¶ 19.)

18 When Officer Hand arrived in the area of Washington Avenue and Citrus
19 Avenue, “he noticed a male in the street near the sidewalk on Washington. Another
20 vehicle driving eastbound on Washington in front of Officer Hand swerved around
21 the male in the street.” (JSUF ¶ 20.) The officer “believed that the individual he saw
22 in the road might be the individual who requested help and that he was trying to flag
23 down a regular citizen.” (*Id.*) “Officer Hand activated his overhead lights, pulled over
24 and parked his car after noticing that one of [Mr. Campos]’s hands was underneath
25 his sweatshirt and the other hand was in his pocket.” (*Id.* ¶ 21.)

26 After exiting his vehicle with his flashlight, Officer Hand approached Mr.
27 Campos and asked him “if he needed any help and if he had called the police.” (JSUF
28 ¶ 22.) Mr. Campos replied, “no, no, no,” and he “continued to walk away from the

1 officer towards Trovita Court.” (*Id.*) Officer Hand then advised Mr. Campos “that he
2 wanted to talk to him and to have a seat so he could help him.” (*Id.*) Mr. Campos
3 responded in Spanish, and “Officer Hand told him that he did not speak Spanish, but
4 that a translator would be coming.” (*Id.*)

5
6 **C. Code 3 Cover**

7 Mr. Campos continued to walk down the street on the sidewalk. (JSUF ¶ 23.)
8 “At first using a low key calm voice to gain compliance, Officer Hand asked [Mr.
9 Campos] to sit down.” (*Id.*) Because it was dark and Mr. Campos’s hands “were
10 hidden from the officer by his sweatshirt,” Officer Hand also instructed him to show
11 his hands for safety reasons. (*Id.*) Mr. Campos “continued walking, looking down
12 and ignoring the officer’s commands.” (*Id.*) The officer and Mr. Campos were
13 walking in a quiet residential neighborhood, “with the only lighting coming from
14 nearby street lights and the ambient lighting from the adjacent homes.” (*Id.* ¶ 24.)
15 Some residents were outside of their homes. (*Id.*) As Mr. Campos walked down
16 Trovita Court, “he passed by residents and they moved away from the sidewalk.” (*Id.*
17 ¶ 25.) During this time, Mr. Campos “switched positions with his hands underneath
18 his sweatshirt several times.” (*Id.*)

19 Because Mr. Campos did not comply with Officer Hand’s command to see his
20 hands, Officer Hand raised his voice and demanded Mr. Campos show his hands in
21 “what little Spanish [Officer Hand] know[s], saying ‘manos, manos, manos, arriba.’”
22 (Hand Decl. ¶ 9, ECF No. 30-4.) Mr. Campos “raised his right hand and then lifted
23 up his sweatshirt and revealed he was holding the handle of a knife with his left hand
24 with the blade pointed towards his stomach.” (*Id.*) Mr. Campos “did not stop walking,
25 did not put the knife away, or communicate with [Officer Hand] as to his intentions
26 in Spanish or English.” (*Id.*) Therefore, Officer Hand was concerned Mr. Campos
27 “could use that knife against himself or the nearby residents should he immediately
28 launch an attack.” (*Id.*)

1 With this concern, Officer Hand relayed by radio to dispatch that the subject
2 at the location had a knife and requested Code 3 cover—which signifies a need for
3 immediate assistance from other officers. (Hand Decl. ¶ 9; *see also* Police Dispatch
4 Call at 03:08–03:11, Defs.’ Ex. 1B, ECF No. 30-8 (“Code 3 he’s got a knife.”); JSUF
5 ¶ 26.) After making this request, Officer Hand “transitioned from his flashlight to his
6 handgun that was equipped with a flashlight under the barrel.” (JSUF ¶ 27.) “Officer
7 Hand positioned himself approximately 12 – 15 feet away” from Mr. Campos while
8 walking south with him. (*Id.* ¶ 28.) As he walked backwards while facing Mr.
9 Campos, Officer Hand continued to tell him to “get down on the ground.” (*Id.*)
10 Officer Hand wanted to stop Mr. Campos’s advancement “as there were individuals
11 outside in the area.” (*Id.*)

12 During this time, Mr. Campos “would stop for a moment and then continue
13 walking as the sounds of the sirens of additional police vehicles could be heard in the
14 distance.” (JSUF ¶ 29.) He “kept switching his hands back and forth from underneath
15 his sweatshirt.” (*Id.*) Officer Hand and Mr. Campos “continued to walk down the
16 sidewalk together, facing each other,” as the officer kept his gun aimed at Mr.
17 Campos and continuously ordered him in a raised voice to “stop and get on the
18 ground.” (*Id.* ¶ 30.) By this time, Officer Smyth had arrived on the scene. (Smyth
19 Decl. ¶ 8, ECF No. 30-5.) Officer Smyth commanded Mr. Campos in a loud voice to
20 “get on the ground or drop the knife.” (JSUF ¶ 30.) “At this instance, Officer Hand
21 stopped moving.” (*Id.* ¶ 31.)

22 23 **D. Arrival of Officer Fuentes**

24 Officer Fuentes—the officer who had replied to the police dispatch that he
25 would respond to the call to provide translation services—arrived in the area around
26 this time. (JSUF ¶¶ 19, 32.) He came running towards the location of Mr. Campos
27 and “had activated his body camera shortly before arriving on scene.” (*Id.* ¶ 32.)

28 //

1 As depicted in the footage from his body camera, Officer Fuentes arrives on
2 scene, exits his vehicle, and turns towards Officer Hand’s parked patrol car. (Footage
3 from Officer Fuentes’s Body Camera (“Fuentes Video”), Defs.’ Ex. 3 at 00:27–
4 00:35, ECF No. 30-11; *see also* Fuentes Decl. ¶ 7, ECF No. 30-3 (authenticating
5 body camera footage and describing arrival on the scene).) Because Officer Fuentes
6 does not see Officer Hand and the subject near Officer Hand’s parked patrol car,
7 Officer Fuentes begins walking towards the intersection of Washington Avenue and
8 Trovita Court. (Fuentes Decl. ¶ 8; *see also* Fuentes Video at 00:35–00:40.) Officer
9 Fuentes saw what he believed to be Officer Hand’s flashlight “quite a ways down
10 Trovita Court.” (Fuentes Decl. ¶ 8.) From that position, Officer Fuentes states he
11 could see the subject—Mr. Campos—and it appeared that Officer Hand was trying
12 to walk backwards. (*Id.* ¶ 9.) Officer Fuentes started running down the sidewalk and
13 then into the street towards the location of Officer Hand and Mr. Campos. (Fuentes
14 Decl. ¶ 9; *see also* Fuentes Video at 00:41–01:04.) While running, Officer Fuentes
15 “could hear the officers ordering [Mr. Campos] to get on the ground several times.”
16 (Fuentes Decl. ¶ 9; *see also* Fuentes Video at 00:48–01:05; Transcript of Video
17 Footage at 2:11–18, ECF No. 30–12 (transcribing commands heard on body camera
18 footage, including “Get on the ground,” and “Get the fuck on the ground”); Fuentes
19 Decl. ¶ 7 (providing foundation for audio transcript).)

20 As Officer Fuentes moved into the middle of the street and “positioned
21 [himself] in the street at a 90-degree angle from Officer Hand who was still on the
22 sidewalk,” he noticed Mr. Campos “had his right hand in and/or under his shirt or
23 sweatshirt.” (Fuentes Decl. ¶ 10.) Mr. Campos looked at Officer Fuentes for a
24 moment, back at Officer Hand, and then “began to pull his hand out from underneath
25 his shirt or sweatshirt.” (*Id.* ¶¶ 10–11.) The “movement of his right hand in his
26 waistband indicated to [Officer Fuentes] that he was trying to pull out some weapon.”
27 (*Id.* ¶ 11.) Mr. Campos “appeared to struggle to get his right hand out from
28 underneath his shirt or sweatshirt.” (*Id.*)

1 Officer Smyth deployed his Taser at Mr. Campos, “but it did not cause any
2 noticeable effect on his body movements as would be expected” when a Taser is
3 successfully deployed. (JSUF ¶ 34.) Officer Fuentes’s “body camera recorded the
4 hissing sound of the Taser shot by Officer Smyth who was standing to [his] left.” (*Id.*
5 ¶ 33; *see also* Fuentes Video at 01:07–01:09.) Mr. Campos “was standing still when
6 the Taser was deployed and facing the officers surrounding him.” (JSUF ¶ 33.)

7 Mr. Campos then turned towards Officer Hand and started rushing at the
8 officer. (Fuentes Video at 01:08–01:10; *see also* Smyth Decl. ¶¶ 13–14; Hand Decl.
9 ¶ 13; Fuentes Decl. ¶ 12.) Officers Hand and Fuentes fired their weapons at Mr.
10 Campos “as Officer Hand tried to move into the street and out of the line” of Mr.
11 Campos’s movement. (JSUF ¶ 35.) Mr. Campos “eventually dropped to the ground.”
12 (*Id.*) Moments later, Officer Fuentes can be heard stating, “He’s got a knife still in
13 his right hand, knife still in the right hand.” (Fuentes Video at 01:18–01:22.) At the
14 time Mr. Campos “moved in the direction of Officer Hand, the officers only had 1-2
15 seconds to make the decision to shoot,” and “Officer Hand had no physical barrier to
16 protect himself from [Mr. Campos]’s advancement.” (JSUF ¶¶ 36, 37.) Although the
17 incident is described in detail here, only three to four minutes elapsed from the time
18 Officer Hand arrived on the scene to when shots were fired. (Hand Decl. ¶ 14; *see*
19 *also* Police Dispatch Call at 00:38–04:39.)

20 The officers administered first aid to Mr. Campos until paramedics arrived on
21 the scene shortly thereafter. (JSUF ¶ 38.) Mr. Campos had a handwritten note to Ms.
22 Zwer in his pocket that effectively said “he loved her and today would be his last
23 day.” (*Id.* ¶¶ 39, 40.)

24 25 **E. Use of Force Policy**

26 “At the time of the incident, the City’s Police Department had written policies
27 governing the use of force and Tasers.” (JSUF ¶ 43.) “The City’s Use of Force Policy,
28 Department Instruction No. 1.24, in effect at the time of this incident, allows for the

1 use of deadly force when an officer has probable cause to believe that such force is
2 necessary to protect himself or others from death or seriously bodily harm.” (*Id.* ¶
3 44.) The City’s Taser policy “allowed for deployment when a suspect poses an
4 immediate threat to the safety of an officer and [deployment would be] consistent
5 with the department’s use of force policy.” (*Id.* ¶ 45.) “In written discovery, Plaintiffs
6 have identified no specific pre-shooting tactical errors made by the Defendants.” (*Id.*
7 ¶ 46.)

8
9 **F. Plaintiffs’ Claims**

10 On January 1, 2014, Plaintiffs commenced this action. (ECF No. 1.) They filed
11 a First Amended Complaint on November 10, 2014, that contains the following
12 claims:

- 13 1. Violation of Civil Rights Causing Wrongful Death against all Defendants;
- 14 2. Failure to Supervise, Unlawful Policies, Customs and Habits Causing
15 Constitutional Violations (*Monell* Claim) against Defendant City;
- 16 3. Negligence Causing Wrongful Death against Defendants Hand and
17 Fuentes;
- 18 4. Battery against Defendants Hand and Fuentes;
- 19 5. Violation of California Civil Code Section 52.1 against all Defendants; and
- 20 6. Civil Conspiracy against all Defendants.

21 (First Am. Compl. ¶¶ 26–53, ECF No. 14.) Defendants move for summary judgment
22 in their favor on all of Plaintiffs’ claims. (ECF No. 30.)

23
24 **II. LEGAL STANDARD**

25 Summary judgment is appropriate under Rule 56(c) where the moving party
26 demonstrates the absence of a genuine issue of material fact and entitlement to
27 judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477
28 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law,

1 it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
2 242, 248 (1986). A dispute about a material fact is genuine if “the evidence is such
3 that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248.

4 A party seeking summary judgment always bears the initial burden of
5 establishing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.
6 The moving party can satisfy this burden in two ways: (1) by presenting evidence
7 that negates an essential element of the nonmoving party’s case; or (2) by
8 demonstrating that the nonmoving party failed to make a showing sufficient to
9 establish an element essential to that party’s case on which that party will bear the
10 burden of proof at trial. *Id.* at 322–23. “Disputes over irrelevant or unnecessary facts
11 will not preclude a grant of summary judgment.” *T.W. Elec. Serv., Inc. v. Pac. Elec.*
12 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

13 If the moving party meets this initial burden, the nonmoving party cannot
14 defeat summary judgment merely by demonstrating “that there is some metaphysical
15 doubt as to the material facts.” *Matsushita Electric Indus. Co., Ltd. v. Zenith Radio*
16 *Corp.*, 475 U.S. 574, 586 (1986); *see also Triton Energy Corp. v. Square D Co.*, 68
17 F.3d 1216, 1221 (9th Cir. 1995) (“The mere existence of a scintilla of evidence in
18 support of the nonmoving party’s position is not sufficient.”) (citing *Anderson*, 477
19 U.S. at 252). Rather, the nonmoving party must “go beyond the pleadings and by ‘the
20 depositions, answers to interrogatories, and admissions on file,’ designate ‘specific
21 facts showing that there is a genuine issue for trial.’” *Celotex*, 477 U.S. at 324
22 (quoting former Fed. R. Civ. P. 56(e)).

23 When making this determination, the court must view all inferences drawn
24 from the underlying facts in the light most favorable to the nonmoving party. *See*
25 *Matsushita*, 475 U.S. at 587. “Credibility determinations, the weighing of evidence,
26 and the drawing of legitimate inferences from the facts are jury functions, not those
27 of a judge, [when] he [or she] is ruling on a motion for summary judgment.”
28 *Anderson*, 477 U.S. at 255.

1 **III. ANALYSIS**

2 **A. Section 1983 Claim – Individual Officers¹**

3 Plaintiffs’ first claim for relief under 42 U.S.C. § 1983 alleges Officers Hand
4 and Fuentes (1) violated Mr. Campos’s Fourth Amendment rights and (2) deprived
5 Plaintiffs of their right to a familial relationship with their son under the Fourteenth
6 Amendment. “Public officials are immune from suit under 42 U.S.C. § 1983 unless
7 they have ‘violated a statutory or constitutional right that was clearly established at
8 the time of the challenged conduct.’” *City & Cty. of S.F., Cal. v. Sheehan*, --- U.S. --
9 -, 135 S. Ct. 1765, 1774 (2015) (quoting *Plumhoff v. Rickard*, 572 U.S. ---, 134 S.
10 Ct. 2012, 2023 (2014)). “An officer ‘cannot be said to have violated a clearly
11 established right unless the right’s contours were sufficiently definite that any
12 reasonable official in [his] shoes would have understood that he was violating it,’
13 meaning that ‘existing precedent . . . placed the statutory or constitutional question
14 beyond debate.’” *Id.* (alteration in original) (citation omitted) (quoting *Plumhoff*, 134
15 S. Ct. at 2023; *Ashcroft v. al-Kidd*, 563 U.S. ---, 131 S.Ct. 2074, 2083 (2011)).

16 To determine whether an officer is entitled to qualified immunity, the court
17 employs a two-step test: first, it decides “whether the officer violated a plaintiff’s
18 constitutional right; if the answer to that inquiry is ‘yes,’” then the court proceeds to
19 “determine whether the constitutional right was ‘clearly established in light of the
20 specific context of the case’ at the time of the events in question.” *Mattos v.*
21 *Agarano*, 661 F.3d 433, 440 (9th Cir. 2011) (en banc) (quoting *Robinson v. York*, 566
22 F.3d 817, 821 (9th Cir. 2009)). The court has discretion to address either prong of the
23 two-step qualified immunity analysis first. *Id.*

24 //

25 _____
26 ¹ Plaintiffs bring their first claim under 42 U.S.C. § 1983 against not only the individual
27 officers, but also the City. (First Am. Compl. ¶¶ 26–32.) However, because the City cannot be held
28 liable on a theory of respondeat superior and this claim does not contain *Monell* allegations,
Plaintiffs’ first claim against the City fails. See *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658,
691 (1978). Thus, summary judgment in favor of the City on this claim is appropriate. The Court
instead addresses the City’s potential liability under *Monell* in Section III.B below.

1 Here, the Court first analyzes the threshold issue of whether Officers Hand and
2 Fuentes violated either Mr. Campos’s Fourth Amendment rights or Plaintiffs’
3 Fourteenth Amendment rights.

4 5 **1. Fourth Amendment – Deadly Force²**

6 Plaintiffs’ Fourth Amendment claim, brought on behalf of Mr. Campos, hinges
7 on whether it was objectively reasonable for Officer Hand and Officer Fuentes to
8 shoot Mr. Campos. (*See* First Am. Compl. ¶¶ 11–13, 26–32.) The officer who
9 deployed the Taser against Mr. Campos prior to shots being fired—Officer Smyth—
10 is not a defendant in this case. (*Id.* ¶¶ 4–8.) Accordingly, the Court focuses on Officer
11 Hand’s and Fuentes’s use of deadly force against Mr. Campos and whether this force
12 violated the Fourth Amendment.

13 “Under the Fourth Amendment, police may use only such force as is
14 objectively reasonable under the circumstances.” *Scott v. Henrich*, 39 F.3d 912, 914
15 (9th Cir. 1994). “An officer’s use of deadly force is reasonable only if ‘the officer
16 has probable cause to believe that the suspect poses a significant threat of death or
17 serious physical injury to the officer or others.’” *Gonzalez v. City of Anaheim*, 747
18 F.3d 789, 793 (9th Cir. 2014) (en banc) (quoting *Scott*, 39 F.3d at 914). “Factors
19 relevant to assessing whether an officer’s use of force was objectively reasonable
20 include ‘the severity of the crime at issue, whether the suspect poses an immediate
21 threat to the safety of the officers or others, and whether he is actively resisting arrest
22 or attempting to evade arrest by flight.’” *Id.* (quoting *Graham v. Connor*, 490 U.S.

23
24 ² “Fourth Amendment rights are personal rights which . . . may not be vicariously asserted.”
25 *Alderman v. United States*, 394 U.S. 165, 174 (1969). “In § 1983 actions, however, the survivors
26 of an individual killed as a result of an officer’s excessive use of force may assert a Fourth
27 Amendment claim on that individual’s behalf if the relevant state’s law authorizes a survival
28 action.” *Moreland v. Las Vegas Metro. Police Dep’t*, 159 F.3d 365, 369 (9th Cir. 1998). “The party
seeking to bring a survival action bears the burden of demonstrating that a particular state’s law
authorizes a survival action and that the plaintiff meets that state’s requirements for bringing a
survival action.” *Id.* Here, California state law authorizes a survival action, and there is no dispute
that Plaintiffs are the successors-in-interest to Mr. Campos’s estate. Therefore, they may assert a
Fourth Amendment excessive force claim on Mr. Campos’s behalf. *See, e.g., id.*

1 386, 396 (1989)). The most important factor is “whether the suspect posed an
2 ‘immediate threat to the safety of the officers or others.’” *Mattos*, 661 F.3d at 441 (en
3 banc) (quoting *Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir. 2005) (en banc)).
4 “These factors are not exclusive.” *Gonzales*, 747 F.3d at 793. Instead, the court must
5 “consider the totality of the circumstances.” *Id.* at 793–94 (citing *Bryan v.*
6 *MacPherson*, 630 F.3d 805, 826 (9th Cir. 2010)).

7 In general, the Ninth Circuit has recognized “that an officer must give a
8 warning before using deadly force ‘whenever practicable.’” *Gonzales*, 747 F.3d at
9 794 (quoting *Harris v. Roderick*, 126 F.3d 1189, 1201 (9th Cir. 1997)). “Also
10 relevant to reasonableness are the ‘alternative methods of capturing or subduing a
11 suspect’ available to the officers.” *Id.* (quoting *Smith*, 394 F.3d at 703).

12 Moreover, “[l]aw enforcement officials may not kill suspects who do not pose
13 an immediate threat to their safety or to the safety of others simply because they are
14 armed.” *Harris v. Roderick*, 126 F.3d 1189, 1204 (9th Cir. 1997). However, “where
15 a suspect threatens an officer with a weapon such as a gun or a knife, the officer is
16 justified in using deadly force.” *Smith*, 394 F.3d at 704 (collecting cases). “If the
17 person is armed—or reasonably suspected of being armed—a furtive movement,
18 harrowing gesture, or serious verbal threat might create an immediate threat.” *George*
19 *v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013). Yet, “a simple statement by an officer
20 that he fears for his safety or the safety of others is not enough; there must be
21 objective factors to justify such a concern. In short, an officer’s use of force must be
22 objectively reasonable based on his contemporaneous knowledge of the facts.”
23 *Deorle v. Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001). The court takes “the
24 perspective of an officer on the scene without the benefit of 20/20 hindsight and
25 consider[s] that ‘police officers are often forced to make split-second judgments—in
26 circumstances that are tense, uncertain, and rapidly evolving—about the amount of
27 force that is necessary in a particular situation.’” *Gonzalez*, 747 F.3d at 794 (quoting
28 *Graham*, 490 U.S. at 396–97).

1 Because the excessive force inquiry ordinarily “requires a jury to sift through
2 disputed factual contentions, and to draw inferences therefrom,” the Ninth Circuit
3 has emphasized that “summary judgment . . . in excessive force cases should be
4 granted sparingly.” *Smith*, 394 F.3d at 701 (citing *Santos v. Gates*, 287 F.3d 846, 853
5 (9th Cir. 2002)). However, where there is no genuine issue of material fact, the
6 question of whether or not an officer’s actions were objectively reasonable is a “pure
7 question of law.” *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011)
8 (quoting *Scott v. Harris*, 550 U.S. 372, 381 n.8 (2007)).

9 In this case, the Court first addresses whether there is a genuine issue of
10 material fact that prevents the Court from resolving Plaintiffs’ Fourth Amendment
11 claim at the summary judgment stage. The Court then individually analyzes Officer
12 Hand’s and Officer Fuentes’s use of force to determine whether each officer’s use of
13 force was reasonable.

14
15 **a. Genuine Issue of Material Fact**

16 Under the summary judgment standard, Defendants bear the initial burden of
17 demonstrating there is no genuine issue of material fact as to Plaintiffs’ Fourth
18 Amendment claim. *See Celotex*, 477 U.S. at 323. Here, the Court finds Defendants
19 meet their initial production burden. Therefore, the burden shifts to Plaintiffs to go
20 beyond the pleadings and “set forth specific facts showing that there is a genuine
21 issue for trial.” *See Anderson*, 477 U.S. at 250; *accord, e.g., U.S. Postal Serv. v. Ester*,
22 --- F.3d ---, 2016 WL 4709869, at *8 (9th Cir. 2016).

23 To meet their burden, Plaintiffs “must do more than simply show that there is
24 some metaphysical doubt as to the material facts.” *See Matsushita*, 475 U.S. at 586.
25 “Where the record taken as a whole could not lead a rational trier of fact to find for
26 [Plaintiffs], there is no ‘genuine issue for trial.’” *See id.* at 587 (quoting *First Nat.*
27 *Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288 (1968)). “The mere existence of
28 a scintilla of evidence in support of [Plaintiffs’] position will be insufficient[.]” *See*

1 *Anderson*, 477 U.S. at 252. Thus, “there is no issue for trial unless there is sufficient
2 evidence favoring [Plaintiffs] for a jury to return a verdict for [them]. If the evidence
3 is merely colorable, or is not significantly probative, summary judgment may be
4 granted.” *See McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1173 (9th Cir.
5 2016) (alteration omitted) (quoting *R.W. Beck & Assocs. v. City & Borough of Sitka*,
6 27 F.3d 1475, 1480 n.4 (9th Cir.1994)).

7 Here, the Court finds there is no genuine issue of material fact that precludes
8 the Court from determining whether Officers Hand’s and Fuentes’s conduct was
9 objectively reasonable as a matter of law. The parties have stipulated to almost every
10 fact underlying the incident. (*See JSUF* ¶¶ 1–47.) Thus, Plaintiffs do not dispute that
11 Officer Hand saw movements indicating that Mr. Campos was holding something
12 under his sweatshirt. (*Id.* ¶¶ 21, 23, 25.) It is similarly undisputed that Officer Hand
13 radioed to dispatch that Mr. Campos “had a knife,” and that Officer Smyth
14 commanded Mr. Campos “in a loud voice to get on the ground or drop the knife.”
15 (*Id.* ¶¶ 26, 31.) Further, several seconds after Mr. Campos rushed at Officer Hand
16 and the two officers shot Mr. Campos, Officer Fuentes can be heard on the footage
17 from his body camera warning that Mr. Campos still has a knife in his right hand.
18 (Fuentes Video at 01:18–01:22.) Nevertheless, in their Opposition and at oral
19 argument, Plaintiffs principally argued that there is a genuine issue of material fact
20 because Plaintiffs claim there is a dispute as to whether or not Mr. Campos had a
21 knife. In particular, Plaintiffs argue “indeed, whether there was ever a knife in Mr.
22 Campos’ hand is a factual dispute in this case. Whether [D]efendants conspired to
23 cover up the fact that they shot an unarmed man and planted a weapon at the scene
24 is another factual dispute that cannot be resolved in a motion for summary judgment.”
25 (*Opp’n* 20:3–9.)

26 The Court rejects Plaintiffs’ claim that there is a genuine issue of material fact
27 for several reasons. Initially, whether or not Mr. Campos in fact had a knife is not
28 dispositive. If Mr. Campos was “reasonably suspected of being armed,” then his

1 rushing towards an officer could create an immediate threat that justifies the use of
2 deadly force. *See George*, 736 F.3d at 838; *accord Dague v. Dumesic*, 286 F. App'x
3 395, 396 (9th Cir. 2008) (concluding that, regardless of whether or not their
4 perception “was in fact correct,” the defendant officers were entitled to qualified
5 immunity because their decision to shoot was based on “their perception that [the
6 decedent] made a threatening movement with the hand he kept concealed during the
7 stand-off”).

8 Moreover, none of Plaintiffs’ evidence disputes what transpired during the
9 moments in which Mr. Campos rushed at Officer Hand and was shot by the officers—
10 the key moments upon which the Court’s ultimate conclusion rests. In arguing that
11 Mr. Campos did not have a knife when he was rushing at Officer Hand, Plaintiffs
12 rely on an unsigned declaration and primarily an assortment of hearsay statements.³
13 However, even if all of this evidence is admissible, it does not create a genuine issue
14 of material fact.

15 For example, Plaintiffs state that “three persons residing at 582 Trovita Court
16 . . . saw that Mr. Campos was unarmed when he went past their residence being
17 followed by Officer Hand.” (Opp’n 6:22–7:1.) Plaintiffs rely on a “Follow-Up
18 Investigation” report to make this claim (*see id.* 7:1–3), but this report is
19
20

21 ³ Defendants object to Plaintiffs’ counsel’s unsigned declaration filed in support of
22 Plaintiffs’ Opposition. (Defs.’ Objs. 3:15–3:23, ECF No. 40-2.) Rule 56(c) provides a party may
23 support its factual positions by citing to “affidavits or declarations.” Fed. R. Civ. P. 56(c)(1); *see*
24 *also* Fed. R. Civ. P. 56(c)(4). To be adequate, a declaration must be signed by the person making
25 the statement as true under penalty of perjury, dated, and substantially in the form specified by
26 statute. *See* 28 U.S.C. § 1746. Plaintiffs’ counsel’s declaration does not comply with 28 U.S.C. §
27 1746 because it is not signed, and it also does not comply with this Court’s rule regarding electronic
28 signatures—Section 2(f) of the Court’s Electronic Case Filing Administrative Policies and
Procedures Manual. Moreover, Plaintiffs’ counsel has not made any effort to rectify this problem.
He has not responded to Defendants’ objection, filed an adequate declaration, or requested
permission to do so. Therefore, the Court sustains Defendants’ objection. *See* 28 U.S.C. § 1746;
see also, e.g., Wilson v. City of Merced, No. CV F07-1235LJODLB, 2008 WL 4737159, at *4 (E.D.
Cal. Oct. 28, 2008) (“An unsigned declaration is inadmissible to oppose a [motion for] summary
judgment.”).

1 inadmissible.⁴ Yet, even if the Court were to consider this report and accept the
2 statements contained within the report as true, these statements do not create a
3 genuine issue of material fact because none of the residents was an eye witness to the
4 shooting or contests what was occurring during the moments before the shooting.

5 Specifically, the report’s entry for 582 Trovita Ct. discusses interviews with
6 four residents—Mr. Tan Huyhn, Mr. Lam Huynh, Ms. Nu Luc, and Ms. Thanh
7 Huynh. (*Id.*) When interviewed, Mr. Tan Huynh stated he “did not witness the actual
8 shooting,” and “he did not see Suspect Pedro Campos in the street.” (*Id.*) Mr. Tan
9 Hunyh’s mother, Ms. Nu Luc, “mentioned that she heard something, but not gunshots
10 and she did not see anything.” (*Id.*) Thus, these summarized statements do not support
11 Plaintiffs’ claim that there is a genuine issue of material fact.

12 The other two residents, Mr. Lam Huynh and Ms. Thanh Huynh, state they
13 saw Officer Hand and Mr. Campos while unloading their car after arriving home.
14 (Opp’n Ex. H at 2–3 (582 Trovita Ct.)) Mr. Lam Huynh executed a declaration that
15 mirrors several of the statements that the investigative report contains. (Huynh Decl.,
16 ECF No. 39-2.) In his declaration, Mr. Lam Huynh states he “did not hear the man
17 [(Mr. Campos)] respond to the officer or saw this subject with any weapons.” (*Id.* ¶

18
19 ⁴ Defendants object to Plaintiffs’ Exhibit H—an investigation report—because it contains
20 multiple levels of hearsay, including “summaries of various unverified statements” (Defs.’
21 Objs. 5:10–24.) A party may object to evidence submitted in opposition to a motion for summary
22 judgment when “the material cited . . . cannot be presented in a form that would be admissible in
23 evidence.” Fed. R. Civ. P. 56(c)(2). Upon objection, the proponent of the evidence has the burden
24 “to show that the material is admissible as presented or to explain the admissible form that is
25 anticipated.” *Id.* advisory committee note to 2010 amendment. Here, Plaintiffs do not respond to
26 Defendants’ objection, and the Court agrees that Exhibit H contains hearsay. *See* Fed. R. Evid.
27 801(c). Further, the public records hearsay exception is inapplicable because Plaintiffs are relying
28 on the report for summaries of hearsay statements made by third parties. *See, e.g., United States v.*
Pazsint, 703 F.2d 420, 424 (9th Cir. 1983); *accord Shehada v. Tavss*, 965 F. Supp. 2d 1358, 1374
(S.D. Fla. 2013) (recognizing that while factual findings in “internal affairs reports are generally
admissible[,] . . . summaries of interviews . . . are [] double hearsay that cannot be admitted at trial
or considered on summary judgment”). Therefore, the Court sustains Defendants’ objection to
Plaintiffs’ Exhibit H. *See Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 778–79 (9th Cir. 2002)
(affirming the district court’s exclusion of exhibits that contained hearsay at summary judgment
phase and noting that the plaintiff could not rely on one of the exhibits “because it is inadmissible
hearsay”).

1 1.) Because the reasonableness inquiry requires the Court to consider “exactly what
2 was happening when the shot[s] [were] fired,” the Court must place Mr. Huynh’s
3 statements into the timeline of events that unfolded involving the officers and Mr.
4 Campos. *See Gonzales*, 747 F.3d at 794.

5 Upon doing so, the Court notes that Mr. Lam Huynh was also not an eye
6 witness to the shooting. (*See* Huynh Decl. ¶ 3.) While unloading his car at home on
7 the night of the incident, Mr. Lam Huynh “did not s[ee] [Mr. Campos] with any
8 weapons.” (*Id.* ¶ 1.) He then entered his home with his wife and child. (*Id.* ¶ 3.) When
9 Mr. Lam Huynh “went back outside to get something from [his] car, [t]here were
10 now a number of police cars at the intersection of Washington and Trovita Court and
11 [he] could hear voices down the street from [him] where the shooting occurred.” (*Id.*)
12 Therefore, by this time, Officer Fuentes had or was arriving on the scene. (*See*
13 Fuentes Video at 00:27–00:35; Fuentes Decl. ¶ 7.) Mr. Lam Huynh heard the
14 officers’ commands that were captured on Officer Fuentes’s body camera and are
15 described above. (*See* Huynh Decl. ¶ 3; *see also* Fuentes Video at 00:48–01:05.) He
16 “then heard the gunshots.” (Huynh Decl. ¶ 3.)

17 Accordingly, Mr. Lam Huynh’s declaration, like the statements from other
18 residents, does not dispute what was happening during the moments when Officer
19 Fuentes and Officer Hand employed deadly force against Mr. Campos—the key
20 moments upon which the Court ultimately concludes the officers’ conduct was
21 reasonable as a matter of law below. *See MacEachern v. City of Manhattan Beach*,
22 623 F. Supp. 2d 1092, 1104 (C.D. Cal. 2009) (finding no genuine issue of material
23 fact where two witnesses stated they did not see a knife in the decedent’s hands prior
24 to the confrontation with the officer because these witnesses could “not see [the
25 decedent]’s hands at the time of the confrontation”). Although she has not filed a
26 declaration and the Court can examine only the summary of her interview, the Court
27 reaches the same conclusion after reviewing Ms. Thanh Huynh’s statements. She
28 reports that she did not see anything in Mr. Campos’s hands when she was outside

1 her home by her car and her husband, but she later went inside their house—where
2 she then heard gunshots. (*See* Opp’n Ex. H at 2–3 (582 Trovita Ct.).) Therefore, she,
3 too, was not an eye witness to the shooting and does not dispute what was happening
4 during the moments before the shooting. Thus, her statements also do not create a
5 genuine issue of material fact. *See MacEachern*, 623 F. Supp. 2d at 1104.

6 The Court similarly concludes that Plaintiffs’ other evidence does not raise a
7 genuine issue of material fact.⁵ At best, Plaintiffs have put forth a “scintilla of
8 evidence” in support of their position, *see Anderson*, 477 U.S. at 252, which is
9 “merely colorable” and is “not significantly probative” to create a genuine issue of
10 material fact, *see McIndoe*, 817 F.3d at 1173.

11 Furthermore, the Court does not adopt Plaintiffs’ version of the facts—their
12 claim that that Defendants’ conspired to cover up the fact that they shot an unarmed
13 man and planted a weapon at the scene—because this version “is blatantly
14 contradicted by the record, so that no reasonable jury could believe it.” *See Scott*, 550
15 U.S. at 380. To determine whether their conduct was reasonable, the Court takes “the
16 perspective of [the] officer[s] on the scene without the benefit of 20/20 hindsight.”
17 *See Gonzales*, 747 F.3d at 794. However, to the extent that Plaintiffs claim there is
18 an overarching conspiracy at issue that involves a planted knife and police cover up,
19 the remainder of the record is relevant. This evidence includes an Escondido Police
20 Department Laboratory Request that states no fingerprints were found on a knife that
21 is presumably the knife found at the scene. This report does not change the Court’s
22 conclusion that no reasonable jury could accept Plaintiffs’ theory, however, because
23 of the abundance of other evidence in the record. This evidence includes, among
24 other items: Officer Hand’s report to dispatch before the shooting that Mr. Campos
25 had a knife; Officer Fuentes’s warning about a knife in Mr. Campos’s hand seconds
26 after the shooting; the statements from multiple officers that Officer Fuentes kicked

27
28 ⁵ Many of Defendants’ remaining objections to Plaintiffs’ evidence are well taken. However, because the Court reaches its ultimate conclusion in this Order regardless of whether or not these objections are sustained, the Court need not rule on each of Defendants’ objections.

1 the knife out of Mr. Campos’s hand after giving his warning; the statement from the
2 Escondido Fire Department’s report that a knife was observed near Mr. Campos
3 when responders arrived on the scene; Mr. Campos’s statements to Ms. Zwer before
4 the 9-1-1 call; and Mr. Campos’s handwritten note in his pocket. When the entire
5 record is considered, as opposed to only what the officers knew prior to using deadly
6 force, no reasonable jury could adopt Plaintiffs’ theory that the officers shot an
7 unarmed man and then quickly, within seconds, conspired to plant a knife and cover
8 up the fact afterwards. *See Harris*, 550 U.S. at 380; *see also MacEachern*, 623 F.
9 Supp. 2d at 1109 (finding no reasonable jury could accept the plaintiff’s claim that
10 the defendants “conspired to cover-up the true facts related to the shooting” in a case
11 involving several similar unsupported conspiracy allegations).

12 In sum, the Court finds there is no genuine issue of material fact that precludes
13 the Court from determining whether Officers Fuentes’s and Hand’s actions were
14 reasonable as a matter of law.

15
16 **b. Reasonableness**

17 **i. Officer Fuentes’s Use of Force**

18 The Court turns to whether each officer’s use of deadly force was reasonable.
19 The Court takes the perspective of Officer Fuentes “on the scene without the benefit
20 of 20/20 hindsight.” *See Graham*, 490 U.S. at 396. Officer Fuentes advised the police
21 dispatch that he would respond to the 9-1-1 call placed by Mr. Campos to assist with
22 translation services. (JSUF ¶ 19.) He did not receive “any specific details as to the
23 type of assistance needed by the caller.” (*Id.* ¶ 17.) However, before he arrived, he
24 heard Officer Hand’s relay to dispatch that the subject had a knife and that he needed
25 backup. (*Id.* ¶ 26; *see also* Fuentes Decl. ¶ 6.)

26 Then, as depicted in the footage from his body camera, Officer Fuentes hurries
27 to the scene. (Fuentes Decl. ¶¶ 5–8; *see also* Fuentes Video at 00:08–00:35.) Upon
28 arriving, he runs towards the location of Officer Hand and Mr. Campos as he hears

1 the other officers shouting commands in the distance. (Fuentes Decl. ¶¶ 8–9; *see also*
2 Fuentes Video at 00:35–1:05.) Officer Fuentes then sees Mr. Campos, who had his
3 “right hand in and/or under his shirt or sweatshirt . . . beg[in] to pull his hand out
4 from underneath his shirt or sweatshirt.” (Fuentes Decl. ¶ 11.) This movement
5 indicates to him that Mr. Campos is “trying to pull out some weapon,” and Mr.
6 Campos appears “to struggle to get his right hand out from underneath his shirt or
7 sweatshirt.” (*Id.*) Officer Smyth discharges his Taser, but it appears to be ineffective.
8 (JSUF ¶ 34.) Mr. Campos then turns towards Officer Hand and starts rushing towards
9 the officer. (Fuentes Decl. ¶¶ 12–13; Fuentes Video at 01:08–01:10; *see also* Smyth
10 Decl. ¶¶ 13–14; Hand Decl. ¶ 13.) At this point, Officer Fuentes cannot clearly see
11 what is in Mr. Campos’s hand but fears that Mr. Campos is “going to stab Officer
12 Hand with a knife or [] [is] going to pull out another weapon to inflict great bodily
13 harm on the officer.” (Fuentes Decl. ¶ 12.) He therefore fires at Mr. Campos “as
14 Officer Hand trie[s] to move into the street and out of the line of [Mr. Campos]’s
15 movement.” (JSUF ¶ 35; *see also* Fuentes Video at 01:09–1:11.)

16 Here, the Court finds Officer Fuentes’s use of deadly force did not violate the
17 Fourth Amendment. The “most important” factor in determining whether Officer
18 Fuentes’s use of force was objectively reasonable is whether Mr. Campos “posed ‘an
19 immediate threat to the safety of the officers or others.’” *See Mattos*, 661 F.3d at 441
20 (en banc) (quoting *Smith*, 394 F.3d at 702 (en banc)). Officer Fuentes believed that
21 Mr. Campos posed an immediate threat to the safety of Officer Hand when Mr.
22 Campos began rushing at the officer, and this belief is supported by objective factors.
23 Officer Fuentes heard Officer Hand advise dispatch that the individual had a knife
24 and that he needed backup, but that fact is not necessary for him to have a reasonable
25 suspicion that Mr. Campos was armed. Officer Fuentes also witnessed Mr. Campos
26 make a movement indicating that he was trying to pull out a weapon, and he saw,
27 after an unsuccessful Taser attempt, Mr. Campos pull out his hand from underneath
28 his clothing as he started rushing at Officer Hand.

1 Moreover, as seen in the footage from his body camera, Officer Fuentes
2 encountered circumstances that were “tense, uncertain, and rapidly evolving.” *See*
3 *Graham*, 490 U.S. at 396. He perceived Mr. Campos making a “threatening
4 movement” with his hand. *See Dague*, 286 F. App’x at 396. Moments later, Mr.
5 Campos rushed towards Officer Hand. Thus, whether or not Officer Fuentes’s
6 perception that Mr. Campos was withdrawing a weapon “was in fact correct,” his
7 decision to shoot Mr. Campos “is the type of split-second judgment’ which [this
8 Court] cannot second-guess.” *See id.* at 396; *see also Graham*, 490 U.S. at 396–97
9 (“The calculus of reasonableness must embody allowance for the fact that police
10 officers are often forced to make split-second judgments . . . about the amount of
11 force that is necessary in a particular situation.”).

12 Further, when Mr. Campos was rushing at Officer Hand, it was not feasible for
13 Officer Fuentes to give a warning prior to discharging his weapon. Officer Fuentes
14 had only “1-2 seconds to make the decision to shoot.” (JSUF ¶ 35.) Therefore,
15 although “an officer must give a warning before using deadly force ‘whenever
16 practicable,’” it was not practicable here. *See Gonzales*, 747 F.3d at 794 (quoting
17 *Harris*, 126 F.3d at 1201).

18 Last, the Court recognizes that an officer’s awareness that an individual is
19 emotionally disturbed is another factor that is relevant to the reasonableness inquiry.
20 *See, e.g., Glenn v. Wash. Cty.*, 673 F.3d 864, 875 (9th Cir. 2011). Officer Fuentes,
21 however, did receive any specific details as to the type of assistance needed by the 9-
22 1-1 caller, and he was on the scene for less than sixty seconds before shots were fired.
23 Officer Fuentes therefore had no indication that Mr. Campos was despondent and
24 had stated before he called 9-1-1 that “he didn’t want to live anymore and was going
25 to hurt himself.” (JSUF ¶ 12.) Consequently, this factor does not weigh against
26 concluding Officer Fuentes’s use of deadly force was reasonable.

27 Accordingly, based on the totality of the circumstances, the Court concludes
28 Officer Fuentes’s use of deadly force did not violate Mr. Campos’s Fourth

1 Amendment rights as a matter of law. Thus, the inquiry ends here, and summary
2 judgment on Plaintiffs’ Fourth Amendment claim in favor of Officer Fuentes is
3 appropriate. *See, e.g., Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (“In some
4 cases, a discussion of why the relevant facts do not violate clearly established law
5 may make it apparent that . . . the relevant facts do not make out a constitutional
6 violation at all.”)

7
8 **ii. Officer Hand’s Use of Force**

9 The Court similarly steps into the shoes of Officer Hand to determine whether
10 his use of force was reasonable. During the encounter fully-described above, Officer
11 Hand responds to “an incomplete 9-1-1 call from a male requesting police
12 assistance,” but he does not receive “any specific details as to the type of assistance
13 needed by the caller.” (JSUF ¶¶ 16–17.) He arrives to find a male near the sidewalk
14 in the street. (*Id.* ¶ 20.) A vehicle driving eastbound in front of Officer Hand swerves
15 around Mr. Campos. (*Id.*) Believing Mr. Campos is the man who called 9-1-1, Officer
16 Hand pulls over and parks his patrol car “after noticing that one of [Mr. Campos]’s
17 hands [is] underneath his sweatshirt and the other hand [is] in his pocket.” (*Id.* ¶ 21.)
18 Officer Hand then tries to speak with Mr. Campos, tries to have him sit down so that
19 he can help him, and then asks Mr. Campos to show his hands for safety reasons
20 because it is dark and his hands are hidden. (*Id.* ¶¶ 22–23.) He also observes Mr.
21 Campos switching positions with his hands underneath his sweatshirt several times.
22 (*Id.* ¶ 25.)

23 Officer Hand then sees a knife, requests Code 3 cover, and positions himself
24 “approximately 12 – 15 feet away” from Mr. Campos while walking south with him.
25 (JSUF ¶ 29.) He continuously orders Mr. Campos to “stop and get on the ground,”
26 and Officer Smyth also commands Mr. Campos to “get on the ground or drop the
27 knife.” (*Id.* ¶ 30.) Then, as Officer Fuentes arrives, Officer Smyth deploys his Taser,
28 but it is ineffective. (*Id.* ¶¶ 32–35.) From Officer Hand’s perspective—a different

1 angle than that captured by Officer Fuentes’s body camera—Mr. Campos “lift[s] the
2 knife and beg[ins] to run directly towards [Officer Hand] on the sidewalk with the
3 knife lifted at his waist and pointed towards [Officer Hand].” (Hand Decl. ¶ 13.)
4 Officer Hand then fires his weapon at Mr. Campos “two times as [he] [is] trying to
5 move into the street and out of his line of movement.” (*Id.*; *see also* JSUF ¶ 35.)

6 Here, for many of the same reasons that are articulated above in connection
7 with Officer Fuentes’s use of force, the Court concludes Officer Hand’s use of force
8 was reasonable. Again, the key factor in determining whether this use of force was
9 reasonable is whether Mr. Campos posed an immediate threat to the safety of the
10 officer or others. *See Mattos*, 661 F.3d at 441. From Officer Hand’s perspective, he
11 saw Mr. Campos had a knife during the earlier portion of the encounter, and he then
12 saw Mr. Campos lift the knife and begin to run directly towards him after Officer
13 Smyth’s unsuccessful Taser deployment. Thus, given that Officer Hand perceived
14 that Mr. Campos was threatening him with a weapon and running towards him, his
15 use of deadly force was justified. *See Smith*, 394 F.3d at 689 (“[W]here a suspect
16 threatens an officer with a weapon such as a gun or a knife, the officer is justified in
17 using deadly force.”). In addition, like Officer Fuentes, it was not practicable for
18 Officer Hand to give a warning prior to using deadly force because he had only “1-2
19 seconds to make the decision to shoot.” (JSUF ¶ 35.)

20 As to Mr. Campos’s distressed emotional state, Officer Hand similarly did not
21 know that Mr. Campos had expressed suicidal tendencies to Ms. Zwer the night of
22 the incident. Unlike Officer Fuentes, however, Officer Hand did have interactions
23 with Mr. Campos during a period of only a few minutes that could have indicated
24 Mr. Campos was emotionally distressed. That said, Officer Hand’s circumstances are
25 distinguishable from cases where officers are clearly put on notice that they are
26 dealing with an emotionally troubled individual—such as where dispatch warns
27 officers that the subject is “(1) suicidal and very intoxicated, (2) ha[s] a history of
28 suicide attempts, and (3) [is] the son of the [9-1-1] caller rather than a criminal

1 intruder.” *See Glenn*, 673 F.3d at 875. Further, there was no one at the scene, such as
2 a family member, to “explicitly [tell the] officers that [Mr. Campos] was ‘only
3 threatening to hurt himself.’” *See id.* And, critically, this is not a case where Mr.
4 Campos was only threatening himself. When he rushed towards Officer Hand, the
5 risk calculus changed, and Officer Hand’s use of force was reasonable—
6 notwithstanding that the officer may have had some indication that he was dealing
7 with an emotionally distressed individual. He had no physical barrier to protect
8 himself from Mr. Campos’s advancement, and Officer Hand was forced to make the
9 “type of split-second judgment’ which [this Court] cannot second-guess.” *See Dague*,
10 286 F. App’x at 396; *see also Graham*, 490 U.S. at 396–97 (“The calculus of
11 reasonableness must embody allowance for the fact that police officers are often
12 forced to make split-second judgments . . . about the amount of force that is necessary
13 in a particular situation.”). Moreover, Plaintiffs have not produced evidence of any
14 “specific pre-shooting tactical errors made by the Defendants.” (*See JSUF* ¶ 46.)

15 Thus, based on the totality of the circumstances, the Court concludes Officer
16 Hand’s use of deadly force did not violate the Fourth Amendment as a matter of law.
17 Consequently, summary judgment on Plaintiffs’ Fourth Amendment claim in favor
18 of Officer Hand is warranted.

20 2. Fourteenth Amendment – Familial Association

21 Plaintiffs also assert on their own behalf—as Mr. Campos’s parents—that they
22 have been deprived of a familial relationship with Mr. Campos in violation of their
23 Fourteenth Amendment right to substantive due process. This claim “requires the
24 plaintiffs to prove that the officers’ use of force ‘shock[ed] the conscience.’”
25 *Gonzalez*, 747 F.3d at 797 (alteration in original) (quoting *Porter v. Osborn*, 546 F.3d
26 1131, 1137 (9th Cir. 2008)). Where the officers do “not have time to deliberate, a use
27 of force shocks the conscience only if the officers had a ‘purpose to harm’ the
28 decedent for reasons unrelated to legitimate law enforcement objectives.” *Id.*; *accord*

1 *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010) (“[W]here a law enforcement
2 officer makes a snap judgment because of an escalating situation, his conduct may
3 only be found to shock the conscience if he acts with a purpose to harm unrelated to
4 legitimate law enforcement objectives.”). Summary judgment on a Fourteenth
5 Amendment familial association claim is appropriate if (1) the “purpose to harm”
6 requirement applies, and (2) the plaintiffs “produce[] no evidence that the officers
7 had any ulterior motives for using force against” the decedent. *See Gonzales*, 747
8 F.3d at 797–98.

9 Here, Officers Hand and Fuentes are entitled to summary judgment on
10 Plaintiffs’ Fourteenth Amendment claim because a reasonable jury could not find
11 that the officers’ use of force shocks the conscience. Initially, this conclusion is
12 warranted because Plaintiffs’ Fourteenth Amendment claim is subject to a higher
13 standard than their Fourth Amendment claim brought on Mr. Campos’s behalf.
14 Because Officer Hand’s and Officer Fuentes’s use of force was reasonable for the
15 reasons discussed above, Plaintiffs cannot satisfy the more stringent “shocks the
16 conscience” standard.

17 In addition, summary judgment on this claim is appropriate regardless of the
18 Court’s conclusion as to Plaintiffs’ Fourth Amendment claim. Once the situation
19 escalated and Mr. Campos started rushing at Officer Hand, it is undisputed that both
20 Officer Hand and Officer Fuentes “only had 1-2 seconds to make the decision to
21 shoot.” (JSUF ¶ 37.) Therefore, both Officer Hand and Officer Fuentes “did not have
22 time to deliberate,” and their “use of force shocks the conscience only if the officers
23 had a ‘purpose to harm’ [Mr. Campos] for reasons unrelated to legitimate law
24 enforcement objectives.” *See Gonzalez*, 747 F.3d at 797.

25 Plaintiffs cannot satisfy the “purpose to harm” requirement here. They provide
26 no evidence that either Officer Hand or Officer Fuentes had a purpose to harm Mr.
27 Campos for reasons unrelated to legitimate law enforcement objectives. For example,
28 Plaintiffs neither argue nor provide evidence that Officer Hand or Officer Fuentes

1 used the force at issue to “bully” Mr. Campos or to “get even.” *See Wilkinson*, 610
2 F.3d at 554. Further, Plaintiffs do not address their Fourteenth Amendment claim in
3 their Opposition, and they submitted on this issue at oral argument.

4 Accordingly, because Plaintiffs provide no evidence that Officer Hand’s or
5 Officer Fuentes’s use of force shocks the conscience, the officers are entitled to
6 summary judgment on this claim. *See Gonzalez*, 747 F.3d at 797 (holding the district
7 court properly granted summary judgment on the plaintiffs’ Fourteenth Amendment
8 claim where “[t]he plaintiffs produced no evidence that the officers had any ulterior
9 motives for using force against [the decedent]”).

10
11 **B. Section 1983 Monell Claim – City of Escondido**

12 Plaintiffs also bring a claim against the City under 42 U.S.C. § 1983 and
13 *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658
14 (1978). In *Monell*, “the Supreme Court held that a municipality may not be held liable
15 for a § 1983 violation under a theory of respondeat superior for the actions of its
16 subordinates.” *Castro v. Cty. of L.A.*, --- F.3d ---, 2016 WL 4268955 (9th Cir. 2016)
17 (en banc). Instead, a municipality is responsible for a constitutional violation only
18 when an “action [taken] pursuant to [an] official municipal policy of some nature”
19 caused the violation. *Monell*, 436 U.S. at 691. Further, the plaintiff must demonstrate
20 that the policy of the municipality “reflects deliberate indifference to the
21 constitutional rights of its inhabitants.” *City of Canton v. Harris*, 489 U.S. 378, 392
22 (1989).

23 Thus, in order to establish that the City is liable under 42 U.S.C. § 1983,
24 Plaintiffs must prove: (1) that Mr. Campos or Plaintiffs possessed a constitutional
25 right of which he or they were deprived; (2) that the City had a policy; (3) that this
26 policy amounts to deliberate indifference to the constitutional right; and (4) that the
27 policy is the moving force behind the constitutional violation. *See Dougherty v. City*
28 *of Covina*, 654 F.3d 892, 900 (9th Cir. 2011). “A policy can be one of action or

1 inaction.” *Long v. Cty. of L.A.*, 442 F.3d 1178, 1185 (9th Cir. 2006) (citing *City of*
2 *Canton*, 489 U.S. at 388). Further, the policy at issue may be either formal or
3 informal. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). An informal
4 policy exists when a plaintiff can “prove the existence of a widespread practice that,
5 although not authorized by written law or express municipal policy, is ‘so permanent
6 and well settled as to constitute a ‘custom or usage’ with the force of law.’” *Id.*
7 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167–68 (1970)).

8 In this case, summary judgment on Plaintiffs’ *Monell* claim against the City is
9 appropriate for two reasons. First, because the Court has concluded Plaintiffs’ and
10 Mr. Campos’s constitutional rights were not violated, Plaintiffs cannot demonstrate
11 a deprivation of a constitutional right to serve as the foundation for their *Monell*
12 claim. *See Dougherty*, 654 F.3d at 900 (noting a plaintiff must prove that there has
13 been a deprivation of a constitutional right to establish municipal liability).

14 Second, independent of whether or not a constitutional right has been violated,
15 Plaintiffs provide no evidence to support their *Monell* claim. Plaintiffs do not point
16 to any formal policy of the City that was a moving force behind the alleged
17 constitutional violations. Rather, in their Opposition, Plaintiffs generally argue that
18 the City failed to train Officers Hand and Fuentes. (Opp’n 21:14–21.) A “[f]ailure
19 to train may amount to a policy of ‘deliberate indifference’ if the need to train was
20 obvious and the failure to do so made a violation of constitutional rights likely.”
21 *Dougherty*, 654 F.3d at 900 (citing *City of Canton*, 489 U.S. at 390). “Mere
22 negligence in training or supervision, however, does not give rise to a *Monell* claim.”
23 *Id.*

24 Here, Plaintiffs provide no evidence that the City failed to train its officers,
25 including Officers Hand and Fuentes. (*See* Opp’n 21:14–21.) For example, Plaintiffs
26 do not submit evidence that the City’s training program was inadequate in the first
27 instance or that the lack of training amounted to a policy of deliberate indifference.
28 *See, e.g., Johnson v. Hawe*, 388 F.3d 676, 686 (9th Cir. 2004) (concluding there was

1 a genuine issue of fact as to the plaintiff’s *Monell* claim because the plaintiff offered
2 expert testimony that a “self-training” program amounted to a “failure to train” for
3 purposes of municipal liability); *see also Flores v. Cty. of L.A.*, 758 F.3d 1154, 1159
4 (9th Cir. 2014) (noting the plaintiff “must demonstrate a ‘conscious’ or ‘deliberate’
5 choice on the part of a municipality in order to prevail on a failure to train claim,”
6 such as that the municipality “disregarded the known or obvious consequence that a
7 particular omission in [its] training program would cause [municipal] employees to
8 violate citizens’ constitutional rights” (second alteration in original)). Moreover,
9 when asked at oral argument about the dearth of evidence to support their *Monell*
10 claim, Plaintiffs referred back to their papers and therefore submitted on this claim
11 as well.

12 Accordingly, because Plaintiffs provide no evidence that the City had a policy,
13 including a failure to train officers, that amounted to deliberate indifference as to
14 Plaintiffs’ or Mr. Campos’s constitutional rights, summary judgment in favor of the
15 City on this claim is warranted. *See, e.g., Sandoval v. Las Vegas Metro. Police Dep’t*,
16 756 F.3d 1154, 1168 (9th Cir. 2014) (affirming grant of summary judgment against
17 the plaintiffs on their *Monell* claim because their “bare-bones allegations of
18 municipal liability” were insufficient to establish municipal liability).

19
20 * * *

21 The Court has resolved all of Plaintiffs’ claims that provide a basis for original
22 jurisdiction. Under 28 U.S.C. § 1367, the Court may “decline to exercise
23 supplemental jurisdiction” over Plaintiffs’ remaining four state law claims if it “has
24 dismissed all claims over which it has original jurisdiction.” *See also, e.g., Sanford*
25 *v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (“[I]n the usual case in
26 which all federal-law claims are eliminated before trial, the balance of factors to be
27 considered under the pendent jurisdiction doctrine . . . will point toward declining to
28 exercise jurisdiction over the remaining state-law claims.”). Here, all of Plaintiffs’


1 federal claims will be eliminated before trial because the Court is granting summary
2 judgment on Plaintiffs' first and second claims. In addition, the Court declines to
3 exercise supplemental jurisdiction over Plaintiffs' California state law negligence,
4 battery, Civil Code Section 52.1, and civil conspiracy claims. *See* 28 U.S.C. §
5 1367(c)(3). Consequently, these four state law claims will be dismissed without
6 prejudice.

7
8 **IV. CONCLUSION**

9 In light of the foregoing, the Court **GRANTS IN PART** Defendants' motion
10 for summary judgment (ECF No. 30). Specifically, the Court grants summary
11 judgment in favor of Defendants on Plaintiffs' first claim. The Court also grants
12 summary judgment in favor of the City on Plaintiffs' second claim. Further, the
13 Court declines to exercise supplemental jurisdiction over Plaintiffs' third, fourth,
14 fifth, and sixth claims brought under California state law and therefore dismisses
15 these claims without prejudice. Thus, the Court does not reach Defendants' request
16 for summary judgment on Plaintiffs' state law claims. The Clerk of the Court is
17 directed to enter judgment accordingly and close this case.

18 **IT IS SO ORDERED.**

19
20 **DATED: September 30, 2016**


Hon. Cynthia Bashant
United States District Judge