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

MARTY EMMONS and MAGGIE
EMMONS,

Plaintiffs,

vs.

CITY OF ESCONDIDO; EPD Chief
of Police CRAIG CARTER; former
EPD Chief of Police JIM MAHER;
EPD Sgt. KEVIN TOTH; EPD
Officers ROBERT CRAIG, HUY
QUACH, JAKE HOUCHIN and
JOSEPH LEFFINWELL,

Defendants.

CASE NO. 14cv1662 JM(DHB)

ORDER DENYING MOTION FOR
RELIEF FROM CLAIMS FILING
REQUIREMENT OF CALIFORNIA
GOVERNMENT CODE §945.4;
DENYING MOTION TO DISMISS
(CT. DKT. 4) AS MOOT

Plaintiffs Marty Emmons (“Mr. Emmons”) and his daughter Maggie Emmons (“Ms. Emmons”) move for relief from the claim filing requirements of California Government Code §945.4. Defendants City of Escondido, Craig Carter, Kevin Toth, Robert Craig, Huy Quach, Jake Houchin and Joseph Leffinwell oppose the motion. Pursuant to Local Rule 7.1(d)(1), the court finds the matters presented appropriate for decision without oral argument. For the reasons set forth below, the court denies the motion for relief from the claims filing requirements of Government Code §954.4 and denies the pending motion to dismiss as moot. (Ct. Dkt. 4).

BACKGROUND

On May 27, 2014, Plaintiffs commenced this federal question action by alleging six causes of action for violation of the Civil Rights Act, 42 U.S.C. §1983, and one

1 claim for violation of the Bane Act, Cal. Civil Code §§52.1 and 52.3. Precisely one
2 year prior to filing the complaint, on May 27, 2013, Plaintiffs allege that Defendants
3 violated their civil rights when police officers responded to a 911 call. On that date,
4 the mother of Ms. Emmons' roommate, Trina Douglas, while speaking with her
5 daughter, Ametria Douglas, called 911 to report what she believed was an on-going
6 fight at the apartment. Trina Douglas "called 911 in the hopes that someone would
7 check on the well-being of her daughter." (Compl. ¶23).

8 Officers Craig and Houchin were dispatched to conduct a welfare check on the
9 occupants of the residence. Upon arrival the Officers encountered Ametria Douglas,
10 the subject of the 911 call, in the pool with Ms. Emmons' children. Ametria Douglas
11 allegedly told the officers that "she was fine and there was no need to go inside Ms.
12 Emmons' residence." Nevertheless, [the Officers] proceeded to the door of Ms.
13 Emmons' residence. (Compl. ¶24). Unbeknownst to the Officers, Mr. Emmons was
14 inside the residence with his daughter.

15 Ms. Emmons denied the Officers request to enter the residence. Ms. Emmons
16 spoke to the Officers through a window on the side of her residence and continued to
17 refuse entry to the residence. (Compl. ¶30). The Officers insisted on entering the
18 premises and informed Ms. Emmons that additional police officers would respond and
19 would force entry into the residence unless they were allowed to enter the residence.
20 (Compl. ¶29). Ms. Emmons insisted that the Officers needed a search warrant before
21 entering the home. (Compl. ¶32). By this time Sergeant Toth and Officers Leffinwell
22 and Quach responded to the call for support.

23 Mr. Emmons then "unlocked and opened the front door, and exited his
24 daughter's residence through the front door. Officer Craig stepped up and demanded
25 that Mr. Emmons not close the door. As Mr. Emmons stepped out, Officer Craig then
26 attempted to force the door open with his foot. Mr. Emmons brushed past Officer
27 Craig and closed the door behind him." (Compl. ¶35). Officer Craig then "grabbed
28 Mr. Emmons and forced him to the ground," injuring his back. (Compl. ¶36). The

1 Officers then entered and searched the residence.

2 Mr. Emmons was arrested and cited for violation of Penal Code §148(a) for
3 resisting and delaying a peace officer and then released. (Compl. 44). The District
4 Attorney's Office dismissed the case against Mr. Emmons in February 2014.

5 Based upon this generally described conduct Plaintiffs allege six civil rights
6 claims: (1) unlawful seizure, arrest, and detention; (2) excessive force; (3) unreasonable
7 search without a warrant; (4) municipal liability under Monell; (5) failure to train; and
8 (6) failure to supervise and discipline. Plaintiffs also allege a single state law claim for
9 violation of the Bane Act.

10 DISCUSSION

11 Under California's Government Claims Act, Government Code § 810 et seq., a
12 claim for monetary damages against a public entity and its employees must be brought
13 within six months of accrual of the cause of action. The failure to do so bars the
14 plaintiff from bringing suit against that entity. Government Code § 945.4. The policy
15 underlying the claims presentation requirements is to afford prompt notice to public
16 entities. This permits early investigation and evaluation of the claim and informed
17 fiscal planning in light of prospective liabilities. California Restaurant Management
18 Systems v. City of San Diego, 195 Cal.App.4th 1581, 1591 (2011). Only after the
19 public entity's board has acted upon or is deemed to have rejected the claim may the
20 injured person bring a lawsuit alleging a cause of action in tort against the public entity.
21 Id.

22 If a claim is not timely presented, the claimant has two potential remedies. First,
23 under § 911.4, "[w]hen a claim that is required by Section 911.2 to be presented not
24 later than six months after the accrual of the cause of action is not presented within that
25 time, a written application may be made to the public entity for leave to present that
26 claim. The application shall be presented to the public entity ... within a reasonable
27 time not to exceed one year after the accrual of the cause of action and shall state the
28 reason for the delay."

1 The second remedy, purportedly applicable to Plaintiffs, places the burden on
2 Plaintiffs to show that the failure to present the claim in a timely manner was due to
3 mistake, inadvertence, surprise or excusable neglect. Government Code §946.6.
4 “Once it has been shown that an application for leave to file a late claim was made
5 within a reasonable time and that the failure to present a timely claim was through
6 mistake, inadvertence, surprise or excusable neglect, the burden shifts to the public
7 entity to establish by a preponderance of the evidence that it would be prejudiced if the
8 court relieves the petitioner from the six-month claim presentation requirements.”
9 Renteria v. Juvenile Justice, Department of Corrections and Rehabilitation, 135
10 Cal.App.4th 903, 909–910 (2006). This provision is “designed to prevent the claim
11 statutes as serving as a trap for laymen, unlearned in the law, ignorant of the claim
12 requirement and [] unaware of the existence of a tenable cause of action.” Syzemore
13 v. County of Sacramento, 55 Cal.App.3d 517, 524 (1976).

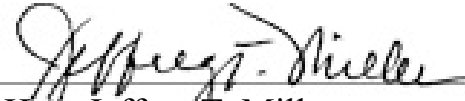
14 Applying Government Code §946.6, the court concludes that Plaintiffs fail to
15 show that relief from the claims filing requirement is warranted under the
16 circumstances. First, Plaintiffs submit no admissible evidence as to the reasons for
17 their failure to comply with the claims filing requirements. Plaintiffs submit the
18 inadmissible hearsay declaration of their counsel in an attempt to establish the
19 prerequisites for Government Code §946.6 relief. Second, even if the court considered
20 the arguments of counsel, Plaintiffs would not prevail. In broad brush, counsel
21 articulates two reasons why Plaintiffs should be excused from the claims filing
22 requirements: (1) they are unsophisticated and unaware of the claims filing
23 requirements and (2) they were afraid to consult with an attorney until after Mr.
24 Emmons’ case was resolved. The fact that Plaintiffs were unaware of the claims filing
25 requirement, without more, does not establish mistake, inadvertence, surprise or
26 excusable neglect. Drummond v. County of Fresno, 193 Cal.App.3d 1406, 1412
27 (1987) (ignorance of the claim filing requirement is no excuse). Similarly, the fact that
28 Plaintiffs may have been afraid to consult with an attorney until after the resolution of

1 the criminal matter is not a cognizable excuse. Plaintiffs must demonstrate that they
2 acted with minimal diligence in pursuing a potential claim. The attorney's declaration
3 is silent on any efforts taken by Plaintiffs to diligently pursue their claim. The court
4 also notes that Mr. Emmons' case was dismissed in February 2014 but he waited
5 another three months before commencing this action. These circumstances fail to
6 establish mistake, inadvertence, surprise or excusable neglect to relieve Plaintiffs from
7 the claims filing requirements.

8 In sum, the court denies the motion for relief from the claims filing requirement
9 of California Government Code §945.4 and denies the pending motion to dismiss as
10 moot (Ct. Dkt. 4).¹

11 **IT IS SO ORDERED.**

12 DATED: October 17, 2014

13 
14 Hon. Jeffrey T. Miller
United States District Judge

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28 ¹ The court notes that Defendants' motion to dismiss is based upon the same grounds raised by Plaintiffs herein.