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16 KING, District Judge:

17 In this civil rights action, plaintiffs bring several claims
18 against various groups of defendants, including the City Defendants
19 (Humphreys, Nice, City of Portland, Tri-Met, Potter & Sizer), the
20 County Defendants (Burton & Multnomah County), the County Nurses
21 (Eath & Gayman), and the AMR Defendants (AMR, Stucker, and
22 Hergert). The claims arise from a September 17, 2006 incident in
23 which James P. Chasse, Jr. (Chasse), died in police custody.

24 Presently, all of the parties move for summary judgment as to
25 certain claims. The specifics of the motions are discussed below.

26 First, while I previously told the parties during a telephone
27 conference that I would not consider any motions directed to a
28 claim or issue that I have previously bifurcated for trial at a

1 later date, I formalize that ruling here. I deny any motion
2 directed toward a claim that has been bifurcated, but I grant leave
3 to renew these motions following the first trial.

4 Accordingly, I deny the City Defendants' motion directed to
5 all of the section 1983 claims brought against the City (not
6 Humphreys and Nice). Also, I deny the City Defendants' motion
7 directed to any claims brought against Sizer and Potter as
8 individual defendants. I deny the City Defendants' motion as to
9 the statutory disability discrimination claims brought in
10 plaintiff's seventh claim for relief. I further deny the City
11 Defendants' motion as to the injunctive relief claim.

12 I also deny the County's motion for summary judgment on all of
13 the section 1983 claims brought against it, as well as on the
14 statutory disability discrimination claim asserted in plaintiff's
15 seventh claim for relief. I deny the AMR Defendants' summary
16 judgment motion directed to any of the section 1983 claims brought
17 against AMR (not Hergert and Stucker). Finally, I also deny the
18 AMR Defendants' motion for summary judgment as to the statutory
19 disability discrimination claims in plaintiff's seventh claim for
20 relief.

21 Second, even though briefing on the summary judgment motions
22 is not yet complete, I deny some portions of some of the motions at
23 this juncture because a review of the motions shows the presence of
24 disputed facts, or opposing but reasonable inferences from facts,
25 that should be resolved by the jury. No further briefing of these
26 motions is allowed. I also grant some portions of some of the
27 motions because the issues are questions of law that may be
28 resolved without further briefing.

1 the existence of a material issue of fact implausible, that party
2 must come forward with more persuasive evidence to support his
3 claim than would otherwise be necessary. Id.; In re Agricultural
4 Research and Tech. Group, 916 F.2d 528, 534 (9th Cir. 1990);
5 California Architectural Bldg. Prod., Inc. v. Franciscan Ceramics,
6 Inc., 818 F.2d 1466, 1468 (9th Cir. 1987).

7 DISCUSSION

8 I. Plaintiffs' Motion as to the City Defendants

9 Plaintiffs move for summary judgment against Humphreys on
10 their first claim for relief, alleging unconstitutional Fourth
11 Amendment violations, and against the City on their eleventh and
12 twelfth claims for relief, alleging false imprisonment and battery,
13 respectively.

14 I deny the motion as to the first claim because I find
15 disputed issues of fact, or varying inferences to be drawn from the
16 facts, as to (1) whether this was a Terry-investigative stop
17 requiring reasonable suspicion of criminal activity, or an arrest
18 requiring probable cause; Martinelli v. City of Beaumont, 820 F.2d
19 1491, 1494 (9th Cir. 1987) ("The question whether Martinelli's
20 decision was a Terry stop or a custodial interrogation presents an
21 issue of fact for the jury"); (2) whether Humphreys had reasonable
22 suspicion that criminal activity was afoot, or whether Humphreys
23 had probable cause to arrest; Harper v. City of Los Angeles, 533
24 F.3d 1010, 1022 (9th Cir. 2008) ("in a section 1983 action the
25 factual matters underlying the judgment of reasonableness generally
26 mean that probable cause is a question for the jury"), Choi v.
27 Gaston, 220 F.3d 1010, 1012 (9th Cir. 2000) (evidence was
28 sufficient to give rise to jury question on whether officers had

1 reasonable suspicion to stop the plaintiff); (3) whether
2 Humphreys's force was unconstitutionally excessive; Smith v. City
3 of Hemet, 394 F.3d 689, 700-01 (9th Cir. 2005) ("[b]ecause the
4 excessive force inquiry nearly always requires a jury to sift
5 through disputed factual contentions, and to draw inferences
6 therefrom, we have held on many occasions that summary judgment .
7 . . in excessive force cases should be granted sparingly . . .
8 because such cases almost always turn on a jury's credibility
9 determinations.") (internal quotation, brackets, and citations
10 omitted); see also Scott v. Harris, 550 U.S. 372, 382-83 (2007) (no
11 separate Fourth Amendment analysis for cases involving "deadly
12 force"; "all that matters is whether [the officer's] actions were
13 reasonable").

14 As to the false imprisonment claim, plaintiffs argue that
15 because Humphreys had no reasonable suspicion to stop Chasse, the
16 "confinement" of Chasse was unlawful. Because there are disputed
17 factual issues which preclude a determination of reasonable
18 suspicion or probable cause as a matter of law, the unlawfulness of
19 Chasse's confinement as a matter of law can also not be determined.
20 I deny plaintiffs' motion on this claim.

21 Plaintiffs' motion as to the battery claim depends on the
22 ability to determine as a matter of law that Humphreys's use of
23 force was not justified. For the same reason that I deny
24 plaintiffs' motion on the Fourth Amendment and false imprisonment
25 claims, I deny it as to the battery claim.

26 II. The City Defendants' Motion

27 Nice and Humphreys move for summary judgment on plaintiffs'
28 second claim for relief which alleges that Nice and Humphreys, and

1 others, unconstitutionally deprived plaintiff of adequate medical
2 care in violation of the Fourth Amendment. Nice and Humphreys
3 contend that because they immediately summoned necessary medical
4 help for Chasse each time it appeared that he needed it, no
5 reasonable jury could find in plaintiffs' favor on this claim. I
6 disagree. At a minimum, I note that the record in the case
7 indicates that there is a dispute about what information Nice,
8 Burton, and Humphreys provided to the emergency medical technicians
9 (EMTs) who arrived at NW 13th and Everett. If plaintiffs
10 demonstrate that the officers failed to provide all pertinent
11 information to the EMTs about Chasse's condition, such facts could
12 be relevant to a jury's determination of Humphreys's and Nice's
13 liability on this claim. Moreover, the undisputed evidence is that
14 Humphreys and Burton intended to take Chasse to Portland Adventist
15 Hospital from the jail, rather than to a closer hospital. This
16 fact could also be relevant to a jury's determination on this
17 claim. Thus, I deny Humphreys's and Nice's motion directed to
18 plaintiffs' second claim.

19 Next, Nice and Humphreys move for summary judgment on
20 plaintiff's fourth claim for relief which alleges a Fourteenth
21 Amendment violation for conduct that "shocks the conscience." The
22 precise contours of this claim are unclear in the Amended
23 Complaint. However, even as presently framed, for the reasons
24 explained in the November 5, 2008 Opinion & Order on motions to
25 dismiss, I grant this motion to the extent the claim is brought by
26 Mark Chasse.

27 I also grant the motion to the extent the claim is brought by
28 Chasse's estate. Chasse's estate has challenged Humphreys's and

1 Nice's conduct in effecting the arrest of Chasse in the first claim
2 for relief alleging a violation of the Fourth Amendment. Chasse's
3 estate separately challenges Humphrey's and Nice's alleged failure
4 to provide medical care to Chasse in the second claim for relief.
5 Plaintiff cites the Fourth Amendment as the applicable
6 constitutional provision in the second claim.

7 I do not decide at this time whether the proper constitutional
8 provision for plaintiffs' second claim against Humphreys and Nice
9 is the Fourth Amendment, which applies to a broad range of police
10 conduct in effecting an arrest, Fontana v. Haskin, 262 F.3d 871,
11 878-79 (9th Cir. 2001) ("the Fourth Amendment protects a criminal
12 defendant after arrest on the trip to the police station";
13 "[b]eyond the specific proscription of excessive force, the Fourth
14 Amendment generally proscribes unreasonable intrusions on one's
15 bodily integrity") (internal quotation omitted), or is the
16 substantive due process clause of the Fourteenth Amendment, which
17 applies specifically to issues of medical care for pretrial
18 detainees, and for which the Ninth Circuit relies on standards used
19 in similar claims brought by convicted persons under the Eighth
20 Amendment. E.g., Lolli v. County of Orange, 351 F.3d 410, 418-19
21 (9th Cir. 2003) ("[c]laims of failure to provide care for serious
22 medical needs, when brought by a detainee . . . who has been
23 neither charged nor convicted of a crime, are analyzed under the
24 substantive due process clause of the Fourteenth Amendment"); see
25 also Hudson v. City of Salem, No. CV-07-226-ST, 2009 WL 1227770, at
26 *10 (D. Or. May 1, 2009) ("The Ninth Circuit has adopted the Eighth
27 Amendment standard for providing necessary medical care to
28 prisoners as a 'minimum standard of care' for determining the

1 rights of a pretrial detainee to the same.") (citing Jones v.
2 Johnson, 781 F.2d 769, 771 (9th Cir. 1986)).

3 Regardless of which of these two constitutional provisions
4 guides the second claim, the estate cannot maintain a separate
5 "shocks the conscience" substantive due process claim under the
6 Fourteenth Amendment, as a matter of law, when the conduct at issue
7 is governed by the specific Fourth Amendment standards used to
8 evaluate police conduct, and the specific Fourteenth Amendment due
9 process/Eighth Amendment standards specifically applicable to
10 pretrial detainee medical care claims. Graham v. Connor, 490 U.S.
11 386, 395 (1989) (where specific constitutional amendment provides
12 "explicit textual source of constitutional protection" against a
13 particular sort of government behavior, that amendment controls the
14 analysis for the claim); see also Albright v. Oliver, 510 U.S. 266,
15 271-72 (1994) (discussing the limited scope of substantive due
16 process rights and expressing "reluctan[ce] to expand the concept")
17 (internal quotation omitted); Armendariz v. Penman, 75 F.3d 1311,
18 1325-26 (9th Cir. 1996) (en banc) ("[s]ubstantive due process
19 analysis has no place in contexts already addressed by explicit
20 textual provisions of constitutional protection, regardless of
21 whether the plaintiff's potential claims under those amendments
22 have merit."); Wright v. Town of Southbridge, No. 07-40305-FDS,
23 2009 WL 415506, at *3 n.4 (D. Mass. Jan. 15, 2009) (where
24 substantive due process claim is coextensive with claim under a
25 specific constitutional provision, court considers only the

1 specific claim).¹

2 Finally, to the extent plaintiffs' fourth claim is brought by
3 Chasse's parents James P. Chasse and Linda Gerber, I deny the
4 motion. Porter v. Osborn, 546 F.3d 1131, 1136 (9th Cir. 2008),
5 noted the parents' Fourteenth Amendment right to associate with
6 their adult son, the same type of claim asserted by Chasse's
7 parents in this case. This is an entirely distinct constitutional
8 interest. To the extent the parents' claim is based on the same
9 facts as those asserted in support of the first and second claims
10 for relief, for the reasons previously explained, I conclude that
11 there are issues of fact or inferences to be drawn from the facts,
12 that preclude summary judgment to Nice and Humphreys on the
13 parents' substantive due process claim as alleged in the fourth
14 claim for relief.

15 The remaining parts of the City defendants' motion that are
16 not part of the second trial in this case, are the motions by the
17 City against plaintiffs' intentional infliction of emotional
18 distress and false imprisonment claims. I deny the City's motion
19 as to these claims because there are disputed issues of fact, or
20 inferences from the facts, that cannot be resolved as a matter of
21 law on summary judgment and which are relevant to a determination
22 of, inter alia, whether the conduct at issue constituted an
23 extraordinary transgression of the bounds of socially tolerable

24
25 ¹ Even if the inadequate medical care claim against the
26 officers is governed by the substantive due process clause of the
27 Fourteenth Amendment and not the Fourth Amendment, the rule from
28 Graham and the cases cited above should nonetheless apply here
because the Ninth Circuit relies on specific Eighth Amendment
standards in deciding these particular inadequate medical care
substantive due process claims by pretrial detainees.

1 conduct and whether the confinement of Chasse was unlawful.

2 III. Burton's Motion

3 Burton moves against plaintiffs' first claim (Fourth Amendment
4 seizure and excessive force), second claim (Fourth Amendment
5 failure to provide adequate medical care), fourth claim (Fourteenth
6 Amendment "shocks the conscience" substantive due process), and
7 fifth claim (Fourteenth Amendment equal protection based on mental
8 illness). For the reasons explained in connection with the other
9 motions already discussed, I deny the motion as to the first and
10 second claims. And, for the reasons previously explained, I grant
11 the motion on the fourth claim to the extent it is brought by
12 Chasse's estate and I deny the motion to the extent it is brought
13 by Chasse's parents. I previously granted the motion to dismiss
14 brought by Burton on this claim to the extent it was brought by
15 Mark Chasse.

16 The only separate argument by Burton that I note is his
17 qualified immunity argument. Burton is not entitled to qualified
18 immunity if (1) his conduct violated a constitutional right, and
19 (2) that right was "clearly established" at the time of the
20 constitutional violation. Saucier v. Katz, 533 U.S. 194, 201
21 (2001). Here, taking all facts and inferences in light most
22 favorable to plaintiffs, I cannot say that no reasonable juror
23 would conclude that no constitutional rights were violated in
24 regard to plaintiffs' first and second claims. Thus, on that basis
25 alone, Burton is not entitled to qualified immunity on those
26 claims.

27 IV. The County's Motion

28 The County moves for summary judgment on the false

1 imprisonment and battery claims. For the reasons discussed above,
2 I deny the motions because of the presence of disputed facts, or
3 differing inferences to be drawn from the facts.

4 V. Eath's and Gayman's Motion

5 Eath and Gayman move for summary judgment on plaintiffs'
6 second claim for relief alleging unconstitutionally inadequate
7 medical care under the Fourth Amendment, on plaintiffs' third claim
8 for relief alleging unconstitutionally inadequate medical under the
9 Fourteenth Amendment, on plaintiffs' fourth claim relief alleging
10 a "shocks the conscience" violation of substantive due process
11 rights under the Fourteenth Amendment, and on plaintiffs' fifth
12 claim for relief alleging an equal protection violation based on
13 Chasse's mental illness, under the Fourteenth Amendment.

14 I grant the nurses' motion on the second claim because
15 inadequate medical care provided by the nurses to a pretrial
16 detainee does not arise under the Fourth Amendment but instead, as
17 noted above, is protected by the substantive due process clause of
18 the Fourteenth Amendment, under the standards used to evaluate
19 similar claims by convicted persons under the Eighth Amendment.
20 Under the cases cited previously above, while it is less clear
21 whether the inadequate medical care claim brought against the
22 officers involved in Chasse's seizure is governed by the Fourth or
23 Fourteenth Amendments (an issue I need not resolve now), because
24 the Fourth Amendment provides the relevant law only for officers'
25 conduct in searches, seizures, and arrests (regardless of how
26 broadly courts have interpreted such conduct), there is no basis
27 for contending that actions by jail nurses who played no part in
28 effecting the seizure of Chasse, are governed by the Fourth

1 Amendment. Thus, Eath's and Gayman's motion as to the second claim
2 for relief is granted.

3 As to the fourth claim, alleging a "shocks the conscience"
4 substantive due process claim, I grant the motion for the reasons
5 articulated above, to the extent the claim is brought by Mark
6 Chasse and Chasse's estate. I deny the motion to the extent it is
7 brought by Chasse's parents.

8 VI. AMR's, Hergert's, and Stucker's Motion

9 Hergert and Stucker move for summary judgment on plaintiffs'
10 second claim alleging constitutionally inadequate medical treatment
11 in violation of the Fourth Amendment, on plaintiffs' fourth claim
12 alleging a "shocks the conscience" violation of the substantive due
13 process clause of the Fourteenth Amendment, and on plaintiffs'
14 fifth claim alleging a Fourteenth Amendment equal protection
15 violation based on Chasse's mental illness.

16 I agree with Hergert and Stucker that plaintiffs' claim for
17 allegedly unconstitutionally inadequate medical treatment by
18 Hergert and Stucker is not governed by the Fourth Amendment because
19 Hergert and Stucker were not participants in Chasse's seizure.
20 Thus, I grant the motion as to the second claim.

21 As previously explained, a claim such as this against Hergert
22 and Stucker should be governed by the Fourteenth Amendment
23 substantive due process clause, applying Eighth Amendment standards
24 used for similar claims brought by convicted persons. In this
25 case, plaintiffs' third claim for relief makes such allegations.
26 But, plaintiffs did not name Hergert and Stucker as defendants in
27 that claim. Because a specific constitutional provision governs
28 the claim plaintiffs are precluded from bringing it as a "shocks

1 the conscience" substantive due process claim. Thus, I grant
2 summary judgment to Hergert and Stucker on the fourth claim to the
3 extent it is brought by Chasse's estate. For the reasons
4 previously articulated, I also grant the motion as to the fourth
5 claim to the extent it is brought by Mark Chasse. I deny the
6 motion at this time to the extent it is brought by Chasse's
7 parents.

8 CONCLUSION

9 Plaintiffs' motion as to the City Defendants (#639) is denied.
10 The City Defendants' motion (#640) is denied in part and granted in
11 part. Burton's motion (#642) is denied in part and granted in
12 part. Eath's and Gayman's motion (#655) is denied in part and
13 granted in part. The AMR Defendants' motion (#661) is denied in
14 part and granted in part. The County's motion (#644) is denied as
15 to the state claims.

16 Any motions, or portions of motions, not resolved in this
17 Opinion, are to be briefed according to the previously-established
18 schedule.

19 IT IS SO ORDERED.

20 Dated this 3rdday of June, 2009.

21
22
23 /s/Garr M. King
24 Garr M. King
25 United States District Judge
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28