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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BAO XUYEN LE, individually and as  
Personal Representative of the Estate of  
Tommy Le; HOAI "SUNNY" LE;  
DIEU HO; UYEN LE; KIM TUYET LE;  
QUOC NGUYEN; TAM NGUYEN;  
DUNG NGYUEN; and JEFFERSON HO

Plaintiffs,

v.

REVEREND DR. MARTIN LUTHER  
KING, JR. COUNTY; and KING  
COUNTY DEPUTY SHERIFF CESAR  
MOLINA,

Defendants.

C18-55 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable  
Thomas S. Zilly, United States District Judge:

(1) Defendant King County's motion for summary judgment, docket no. 78, is  
GRANTED in part, STRICKEN in part, DENIED in part, and DEFERRED in part, as  
follows:

(a) With regard to the wrongful death and survival actions asserted by  
Bao Xuyen Le as Personal Representative of the Estate of Tommy Le (Second  
Cause of Action), King County's motion for summary judgment, which was  
unopposed on the subject, is GRANTED, the wrongful death action is  
DISMISSED with prejudice, *see* RCW 4.20.020, and damages for pain and  
suffering, anxiety, emotional distress, and/or humiliation suffered by Tommy Le  
will not be recoverable in the survival action, *see* RCW 4.20.046(1);

1 (b) With regard to any immunity from suit pursuant to RCW 4.24.420,  
2 King County's motion for summary judgment is STRICKEN as moot;

3 (c) With regard to whether King County Deputy Sheriff Cesar Molina  
4 used excessive force in tasing and/or shooting Tommy Le (First Cause of  
5 Action), and whether any use of excessive force deprived Le's parents of a liberty  
6 interest in the companionship and society of their son (First Cause of Action), the  
7 Court concludes that genuine disputes of material fact exist, and King County's  
8 motion for summary judgment on those issues is DENIED;

9 (d) With regard to plaintiffs' assertion that King County is liable under  
10 *Monell v. Dep't of Soc. Servs. of N.Y.C.*, 436 U.S. 658 (1978), and its progeny,  
11 King County's motion for summary judgment is DEFERRED; and

12 (e) With regard to the outrage claim (Third Cause of Action), King  
13 County's motion for summary judgment is DEFERRED.

14 (2) Defendant Deputy Molina's motion for summary judgment, docket no. 87,  
15 is GRANTED in part, DENIED in part, and DEFERRED in part, as follows:

16 (a) With regard to the wrongful death and survival actions asserted by  
17 Bao Xuyen Le as Personal Representative of the Estate of Tommy Le (Second  
18 Cause of Action), Deputy Molina's motion for summary judgment, which joined  
19 in King County's motion for summary judgment, which was unopposed on the  
20 subject, is GRANTED as set forth in Paragraph 1(a), above;

21 (b) With regard to plaintiffs' claim of outrage (Third Cause of Action),  
22 Deputy Molina's motion for summary judgment is GRANTED, and such claim is  
23 DISMISSED with prejudice as to Deputy Molina; plaintiffs' outrage claim is not  
based on any actions taken by Deputy Molina, and plaintiffs have described no  
theory pursuant to which they seek to hold Deputy Molina liable for outrage, *see*  
Plas.' Resp. at 75-80 (docket no. 127);

(c) With regard to whether Deputy Molina used excessive force in  
tasing and/or shooting Tommy Le (First Cause of Action), and whether any use  
of excessive force deprived Le's parents of a liberty interest in the companionship  
and society of their son (First Cause of Action), the Court concludes that genuine  
disputes of material fact exist, and Deputy Molina's motion for summary  
judgment on those issues is DENIED; and

(d) With regard to Deputy Molina's assertion of qualified immunity, his  
motion for summary judgment is DEFERRED.

1 (3) At oral argument, scheduled for May 9, 2019, at 10:00 a.m., counsel shall  
2 be prepared to address the deferred portions of the pending motions,<sup>1</sup> as well as whether  
3 the Court may and/or should defer ruling until trial on Deputy Molina’s assertion of  
4 qualified immunity.

5 (4) Pursuant to the parties’ stipulation, docket no. 144, the deadline for  
6 defendants to serve their pretrial statements is EXTENDED to May 7, 2019.

7 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of  
8 record.

9 Dated this 26th day of April, 2019.

10 William M. McCool  
11 Clerk

12 s/Karen Dews  
13 Deputy Clerk

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14 <sup>1</sup> In connection with the issue of whether King County has *Monell* liability, counsel shall be  
15 prepared to address (i) at the relevant time, who was an official with final policy-making  
16 authority for King County, (ii) whether King County can be liable under *Monell* when King  
17 County Sheriff Mitzi Johanknecht did not explicitly accept or reject the findings of the Use of  
18 Force Review Board, and (iii) whether a factual dispute exists concerning plaintiff’s assertion  
19 that the Use of Force Review Board’s process was flawed or a “sham,” and, if so, what facts are  
20 in dispute. *See Larez v. L.A.*, 946 F.2d 630 (9th Cir. 1991); *McRorie v. Shimoda*, 795 F.2d 780  
21 (9th Cir. 1986); *German v. Roberts*, 2017 WL 6547472 (W.D. Wash. Dec. 22, 2017); *Kaur v.*  
22 *City of Lodi*, 263 F. Supp. 3d 947 (E.D. Cal. 2017); *Thomas v. Cannon*, 2017 WL 2289081  
23 (W.D. Wash. May 25, 2017); *Edenfield v. Estate of Willets*, 2006 WL 1041724 (D. Haw.  
Apr. 14, 2006); *Long v. City & Cty. of Honolulu*, 378 F. Supp. 2d 1241 (D. Haw. 2005); *Mendez*  
*v. Cty. of San Bernardino*, 2005 WL 5801541 (C.D. Cal. Apr. 4, 2005); *Kanae v. Hodson*, 294  
F. Supp. 2d 1179 (D. Haw. 2003). With respect to the outrage claim, counsel shall be prepared  
to address (i) whether King County has a qualified privilege with respect to the press releases at  
issue and any other communications with the media and public, *see Bender v. City of Seattle*,  
99 Wn.2d 582, 601-02, 664 P.2d 492 (1983), and (ii) whether Le’s mother, one of his aunts  
(Uyen Le), and his siblings, who were not present when King County Detective Chris Johnson  
allegedly made the statements on which the outrage claim is partially based, are outside the class  
of persons entitled to assert such claim, *see* Restatement (Second) of Torts § 46(2)(a) & cmt. 1  
(AM. LAW INST. 1965) (cited with approval in *Grimsby v. Samson*, 85 Wn.2d 52, 59-60, 530 P.2d  
291 (1975)); *see also Reid v. Pierce Cty.*, 136 Wn.2d 195, 202-04, 961 P.2d 333 (1998).