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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 MARIO GONZALEZ, et al.,
16 Plaintiff,
17 v.
18 CITY OF ALAMEDA, et al.,
19 Defendants.

Case No. 4:21-CV-09733 DMR

**DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT RE PLAINTIFFS'
MARIO GONZALEZ, ET AL., CLAIMS OTHER
THAN THE 14TH AMENDMENT CLAIMS
[FRCP RULE 56]**

Date: August 10, 2023
Time: 1:00 p.m.
Place: Via Zoom

Hon. Donna M. Ryu

NOTICE OF MOTION AND ISSUES TO BE DECIDED

1
2 TO PLAINTIFFS AND THEIR ATTORNEYS-OF-RECORD: PLEASE TAKE NOTICE that on
3 June 8, 2023, at 1:00 p.m., defendants City of Alameda and Alameda Police Officers Eric McKinley,
4 James Fisher and Cameron Leahy will and hereby do move this Court for an order granting summary
5 judgment as in favor of Defendants and against Plaintiffs on Plaintiffs' claims brought under 42 U.S.C.
6 §1983 for violation of their First and Fourth Amendment rights and claims brought under state law. This
7 motion is brought pursuant to Federal Rules of Civil Procedure, Rule 56, as set forth more fully in the
8 Memorandum of Points and Authorities below, on the grounds that summary judgment is warranted
9 because the uncontroverted evidence establishes that: (1) Decedent MG's detention and arrest were
10 supported by reasonable suspicion and probable cause, respectively; (2) the force used was objectively
11 reasonable under the totality of circumstances; (3) the officers are entitled to qualified immunity; and (4)
12 the state law claims fail because Decedent's detention and arrest were lawful and the force used was
13 objectively reasonable, and the officers had no duty to implement alternate tactics.

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MEMORANDUM OF POINTS AND AUTHORITIES**I. STATEMENT OF UNDISPUTED FACTS**

On April 19, 2021, at approximately 10:30 a.m., McKinley was dispatched for reports of a Hispanic male subject, decedent Mario Gonzalez (“MG”), who was talking to himself, possibly having a mental crisis and/or intoxicated. (Deposition of Eric McKinley (“EM”) 57:25-58:25, 59:9-61:2; Deposition of Cameron Leahy (“CL”) 40:13-41:4; Deposition of Charlie Clemmens (“CC”) 30:3-5, 32:17-33:4.) McKinley activated his body worn video recorder on arrival. (EM 61:22-25.) MG was facing away, and McKinley quietly shut the car door to observe MG, analyze the situation and reason for the 911 call. (EM 62:1-9.) MG was wearing an inside-out jacket, combing a hat on his head, talking to himself and shuffling around near grocery store baskets on the ground. (EM 62:10-15.) An open container that appeared to be a one-gallon liquor bottle with two cups of liquor missing was near MG. (EM 63:2-64:3.) To build a rapport, assess MG’s responses and the best course of action, McKinley introduced himself, asked how MG was doing and explained someone called concerned MG was not feeling well. (EM 64:13-25.) McKinley did not see weapons on MG, but he was wearing baggy clothes covering his waistband and he was close to numerous objects that could be used as weapons, including another glass bottle. (EM 65:8-18.) MG was unable to complete sentences, spoke in vague phrases and talked about different things. McKinley stood eight to ten feet away and calmly repeated that he needed to identify MG, ensure he did not feel like hurting himself or anyone else, ensure his safety and that he would not continue drinking in the park. (EM 66:5-22.) McKinley believed MG was intoxicated and drinking in the park because of the open liquor container, his slurred speech, inability to connect his sentences, his bloodshot and watery eyes and the alcohol odor on his breath. (EM 67:6-68:7, 72:18-22, 82:14-17.) Two Walgreens baskets with bottles of alcohol that still had store security caps attached were on the ground near MG and McKinley believed the alcohol might be stolen. (EM 68:12-69:18.) McKinley continued interacting with MG, asking his name to assess his responses and possible medical condition and to determine his identity and whether he had any outstanding warrants or other reason to detain him. MG continued saying nonsensical things and appeared mentally confused and unable to have a conversation. (EM 71:11-17, 73:9-74:15, 76:12-25.) McKinley believed MG was intoxicated, unable to safely care for himself and had possibly stolen liquor, and that reasonable suspicion supported MG’s continued detention. (EM 75:3-14.)

When Fisher arrived, McKinley was talking to MG, the exchange appeared “low key” and Fisher observed to assess the situation. (JF 44:6-14, 47:9-12, 48:11-16; CC 36:9-37:3.) Fisher also could not see whether MG was

1 armed because his sweatshirt concealed his waistband. MG was leaning over twisting a bottle cap in one of the
2 baskets, raising Fisher's concern because the bottles were large plastic or glass. (JF 47:23-48:10, 54:24-55:6.) Fisher
3 saw the alcohol bottles with security caps in Walgreens baskets near MG, and noticed that one was uncapped and
4 appeared to be missing some alcohol. Fisher had difficulty hearing MG from his position, and MG did not appear to
5 be answering basic questions like his name. MG's speech was abnormal, he appeared unable to answer questions and
6 appeared to have difficulty keeping his balance, causing Fisher to believe MG was intoxicated, and that he might fall
7 off a wooden stump he moved onto. (JF 49:3-50:25, 52:10-53:5, 55:17-56:20.) Given the security caps on the alcohol
8 bottles and Walgreens across the street, Fisher believed reasonable suspicion existed to warrant further investigation
9 of possible theft. (JF 53:16-19, 54:1-4.)

10 Based on their observations of MG's behavior, the bottles of alcohol, odor of alcohol on MG's breath,
11 objective signs of intoxication, and their training and experience, the officers believed MG was under the influence of
12 alcohol and unable to care for himself, and McKinley decided to detain him for public intoxication in violation of PC
13 §647(f) and place him in handcuffs. (EM 79:22-80:4, 80:11-20; JF 56:21-58:15, 60:3-61:2.) APD policies do not
14 permit officers to cite and release subjects who are under the influence and unable to care for themselves or others.
15 (CL 24:13-25.) McKinley grabbed his left wrist with his right hand to signal the arrest to Fisher, and they approached
16 MG as he stood on a stump. McKinley grabbed MG's left arm and Fisher grabbed his right, and they tried to bring
17 his hands behind his back as they explained what was happening. (EM 81:9-12, 84:7-10, 85:2-9; JF 58:19-24, 62:12-
18 63:14.) MG tensed his muscles, but Fisher got his right hand behind his back. MG resisted McKinley's control,
19 tensing his left arm and keeping it rigid in front of his body, and his bulky clothes covering his wrist to his knuckles,
20 prevented McKinley from gripping him and moving his left arm back. (EM 85:15-86:14; JF 64:6-22, 65:16-66:10.)
21 MG's resistance increased as he tried to pull his left arm in front of him and appeared to be trying to grab his
22 waistband, and he bent over at the waist to pull away from the officers. Fisher felt himself pulled along with MG as
23 he refused to put his left arm behind his back. Fisher tried to de-escalate the situation by speaking calmly and politely
24 and repeatedly asking MG to put his arm behind his back and stop resisting. (EM 87:9-88:6; JF 66:11-25; 67:10-24.)
25 MG continued struggling and the officers decided to place him on the ground to try to control his movement. Fisher
26 unsuccessfully attempted a leg sweep, lost control of MG's right arm as he struggled and had difficulty regaining
27 control because MG continued moving around with increasing aggressiveness, nearly elbowing Fisher in the face,
28 and preventing Fisher from gaining even a general control of MG's right arm. McKinley used a leg sweep causing

1 MG to fall and the officers fell to the ground with him. (EM 89:18-90:16; JF 68:8-69:8, 104:25-105:6; CC 37:13-
2 38:14.)

3 Clemmens was a civilian ride-along with Fisher, and when he saw MG and the officers fall, he moved to
4 their location and saw MG on his front side moving his head around. McKinley was on MG's left holding his arm
5 and McKinley asked Clemmens to control MG's legs. (EM 98:10-15; CC 38:15-20, 40:15-42:1.) Clemmens laid his
6 chest across the back of MG's knees to try to stop him moving his legs, but MG continued moving and pushing with
7 his legs, pushing himself forward, and MG was so big his legs moved everything whenever he moved. (CC 43:8-
8 44:19, 45:3-7.)

9 Fisher's right leg was pinned under MG's body, and he struggled to free himself from under MG and gain
10 control of MG's right arm. (JF 69:20-70:5; CC 42:2-7.) When Fisher managed to get out from under MG he rested
11 his chest on a part of MG's back, keeping most of his bodyweight on his lower body and off MG as he continued
12 trying to use all his strength to pull MG's right arm back. (JF 70:6-12, 71:2-18.) Fisher rotated so his knee and shin
13 were on MG's shoulder, not his back, placing some weight on MG's right shoulder by alternately using his arm,
14 chest and knee as he tried to pull MG's arm out from under his body and gain control of his arm to move it to his
15 lower back. Fisher was extremely exhausted from struggling with MG and he used all his strength to bring MG's arm
16 behind his back as MG continued to resist. (JF 74:10-75:15, 76:8-19, 77:2-12; EM 97:16-98:9; CC 42:8-23.) Fisher
17 purposely avoided putting his knee on MG's back to avoid his spinal area or prolonged weight on MG's back, and he
18 kept his knee and shin at an angle on MG's left shoulder. (JF 77:14-20, 78:4-21, 82:23-83:4; CC 43:3-7.) Fisher tried
19 to overcome MG's resistance and to stop MG from moving and thrashing about. MG's struggle caused Fisher's knee
20 to slip off his shoulder on the ground. (JF 83:5-84:1.)

21 As MG was prone on his front side on the ground, McKinley placed his knees on either side of MG's hips
22 and his weight on MG's buttocks to try to prevent him from rolling over, and he tried to move MG's left hand behind
23 his back. (EM 91:3-92:15, 94:8-11; JF 79:3-8.) MG continued physically resisting with all his force, rolling over,
24 attempting to bring his knees up to his chest and moving around, lifting McKinley off the ground as he sat on MG's
25 buttocks. (EM 92:16-23, 93:2-7, 111:8-112:4; JF 78:22-79:2, 79:20-25.) MG kicked his legs around, lifted his hips
26 up, and tried to roll over away from the officers while trying to pull both his hands forward and under himself.
27 McKinley believed MG was trying to stand up or access his waistband area, which had not been searched for
28 weapons because MG had immediately struggled and resisted from the moment officers touched him. (EM 103:5-

1 104:11, 105:25-106:7.) McKinley briefly placed his left knee and a small amount of weight over MG's lower hip
2 area to counter MG's efforts to roll over. (EM 95:6-19.) As McKinley straddled MG's buttocks, MG managed to lift
3 McKinley off the ground 3 or 4 times. (EM 99:5-11.) McKinley finally managed to move MG's left arm to his back
4 while Fisher moved MG's right arm back and they were able to handcuff him. (EM 95:6-19, 103:5-8.) McKinley put
5 some weight on the back of MG's elbow to hold his arm in place on the ground. (EM 96:11-97:2.) McKinley only
6 straddled MG's buttocks for 10-15 seconds during the struggle to gain control of MG's arms and he did not put any
7 weight on any part of MG's back. (EM 97:3-15, 101:10-102:1, 131:3-7.)

8 After MG was handcuffed, Fisher's bodyweight was primarily on the ground, not on MG, and MG
9 continued moving, struggling and appeared to be trying to bring his knees to his chest, causing his body to rise, and at
10 various times Fisher said, "He's lifting my whole body weight up." Clemmens saw Fisher on his knees up in the air,
11 and McKinley believed MG was trying to get up and out of their control despite Fisher's efforts to control him. (EM
12 98:20-99:4; JF 88:16-90:16; CC 46:19-47:13.) McKinley moved to MG's left side to continue talking to him, trying
13 to calm him and monitor his breathing. MG appeared to breathe without difficulty and he continued talking, speaking
14 in multiple-word sentences and taking full breaths. (EM 93:13-24, 106:8-16; JF 80:1-5, 80:14-18; CC 48:1-9.)
15 McKinley was on his knees with his head down near MG's head where he could see his face and nose, and he saw
16 MG's head moving and his lips opening and closing as he spoke. (EM 99:12-101:2.) MG continued struggling and
17 answering questions, he did not sound like he was gasping or having difficulty breathing or giving short answers, and
18 he said his name was Alberto. Some of MG's statements still did not make sense. (EM 99:21:100:13; CC 48:1-11.)

19 Based on an attempted radio transmission, when Leahy arrived on scene he believed a physical altercation
20 occurred. He saw Fisher on MG's right with his knee on MG's shoulder, McKinley on MG's left and Clemmens
21 laying with his chest on the back of MG's calf area; all three struggling to control MG. (CL 47:4-49:1, 53:3-10, 55:7-
22 56:6; CC 49:10-15.) MG appeared to be actively attempting to break free of the officers' control by bending his
23 knees and pushing upwards towards the sky despite being handcuffed. (EM 102:21-24; JF 81:3-8; CL 56:7-57:4.)
24 Based on training and experience the officers knew that handcuffed subjects in prone positions still had the ability to
25 get up. (CL 57:5-14.) Leahy also saw the bottles of alcohol with security caps intact in the Walgreens baskets and one
26 bottle that appeared open and partially consumed, and he believed the incident possibly involved theft and/or public
27 intoxication. (CL 57:15-58:13.) Clemmens warned Leahy how strong and resistive MG was moving his legs, and
28 Leahy took over trying to control MG's legs as Clemmens simultaneously moved away. (CL 59:3-19, 60:21-61:13.)

1 Leahy placed his knees and shins perpendicularly over MG's calves and immediately tried to cross MG's ankles for
2 greater control of his legs and to prepare for application of a WRAP device. (CL 64:3-65:1, 65:23-66:1.) McKinley
3 continued talking to MG trying to deescalate the situation and calm him down, but MG still actively struggled and
4 moved his legs, and the officers did not have physical control over him. (CL 61:14-62:6.) McKinley appeared to be
5 moving to again straddle MG's buttocks, and Fisher shouted, "No, no, no, no. Weight no, weight no weight no
6 weight" and "We have no weight on this chest," because he was very aware to avoid placing weight on subject's
7 neck, spine and back to prevent asphyxiation. (JF 90:17-92:7, 93:2-94:7, 95:14-21, 96:4-97:14; CL 78:10-19.)

8 Leahy felt he never had control of MG's legs, as he continued kicking his legs with such force his whole
9 body moved. Leahy stated MG was still kicking and ordered him to stop kicking. MG lifted both feet and Leahy off
10 the ground and violently and intentionally thrust his feet up towards his upper body. (EM 104:7-11; JF 105:11-14;
11 CL 60:24-61:4, 66:11-22, 70:14-71:14, 75:11-14.) Leahy likened MG's unusual level of strength to lift his feet with
12 Leahy on his calves to subjects under the influence of methamphetamine. (CL 71:15-72:1.) Fisher asked if they could
13 roll MG on his side, and given MG's violent leg movements, Leahy responded "I don't want to lose what I got." (JF
14 100:23-101:12, 112:23-113:3; CL 66:23-67:5, 72:15-25.) Leahy believed it was necessary to maintain whatever level
15 of control of MG's legs he was able to manage with his left hand on MG's ankles, his shins across MG's calves and
16 the balls of his feet on the ground when MG was not lifting him off the ground. (CL 73:13-74:7.)

17 Fisher held MG in a prone position for 3-4 seconds, then held MG's right elbow; Leahy had his weight on
18 MG's legs. (EM 106:17-107:6.) MG still was not under control and continued moving his legs and body around
19 despite being handcuffed, and Fisher kept his right knee and shin angled on MG's shoulder, occasionally resting his
20 right forearm along MG's back to control his right arm. (JF 81:9-21, 82:13-84:6, 86:8-87:6.) MG was kept in a prone
21 position because he still was moving, struggling and kicking, and the officers did not have physical control of him
22 and he appeared to be intentionally moving and actively resisting the officers' efforts to control him. (JF 84:2-22,
23 85:17-23, 86:8-22,104:16-24.) The officers decided to use a WRAP device; a fabric restraint wrapped around a
24 subject's ankles and torso, to control combative subjects that are not safely restrained with handcuffs due to thrashing
25 or kicking that could injure themselves or the officers and rendering it unsafe to move or place them in a vehicle.
26 (EM 112:16-113:5; JF 81:15-21.) Given that MG continued to actively resist and struggle, attempted to roll over onto
27 his side and used his legs to kick, pull or push his body, it was unsafe to roll MG on his side, as he could injure
28 himself or the officers and he was kept in a prone position to wait for a WRAP device to be brought out of a patrol

1 vehicle while McKinley continued to monitor his breathing. (EM 104:23-105:8, 113:18-114:6, 115:12-16, 115:22-
2 25, 116:7-24; JF 82:13-22, 101:18-102:11; CL 76:4-19.) McKinley knew to avoid restraining MG in a way that
3 could asphyxiate him and he continued to monitor MG's breathing because it was not safe to roll him onto his side.
4 (EM 104:23-105:8.) He also looked to ensure that no one was putting weight on MG's back or shoulders and
5 constantly monitored where the officers' bodies were in relation to MG. (EM 107:20-108:7.) McKinley continually
6 spoke to MG down at MG's head level and he was being cognizant of MG's face and ability to breathe. MG
7 continued answering questions with one or two syllable responses and he did not sound like he was gasping for
8 breath. (CL 68:22-69:12.)

9 MG continued trying to push up with his legs right up until he suddenly stopped talking and moving.
10 McKinley immediately rolled MG onto his side, told the other officers "He's going unresponsive" and checked for a
11 pulse, then rolled MG onto his back and started chest compressions. (EM 121:6-122:7, 122:16-18; JF 113:24-114:4;
12 CL 78:20-23, 78:24-79:2.) Leahy administered two doses of Narcan to counteract unknown narcotics MG may have
13 taken. Leahy radioed they were starting CPR, and later took over chest compressions. (CL 84:20-85:18.) The officers
14 had talked to MG for 9 minutes before attempting to detain him, struggled upright with him for almost 3 minutes,
15 handcuffed him on the ground in under 2 minutes, then held him waiting for the wrap for 3:45 seconds as he
16 continued to move and vocalize when he suddenly went unresponsive. 16 seconds elapsed between his last
17 vocalization and going unresponsive. (Begault Decl. ¶6, BWC videos.)

18 The officers' actions throughout were in accordance with their training. Before the incident, APD officers,
19 including Defendants, received the following POST approved training: training re persons with mental illness
20 (Russell Wise Depo. "RW" 20:3-21, 22:6-24, 24:1-32:11); de-escalation techniques (RW 33:6-37:16, 40:6-41:23);
21 dealing with subjects exhibiting mental health issues and available resources to assist in dealing with individuals
22 suffering mental illness (RW 37:21-39:12, 41:24-42:6, 82:1-13); use of force and dealing with subjects in prone
23 position, including moving a subject to a recovery position once they were under control (RW 53:10-54:25); limiting
24 the use of body weight to control subject on the ground to avoid placing weight on the head, neck and spine (RW
25 55:17-56:17, 64:9-65:7); use of WRAP restraints (RW 56:23-57:18, 72:25-74:4); ground control techniques
26 (RW59:17-65:7); avoiding positional asphyxiation including avoiding body weight on a subject's head, neck and
27 spine, visually monitoring subjects and assessing their breathing and looking for signs of distress (RW 65:20-67:16,
28 71:3-72:12). Based on the training, Defendants knew to avoid keeping a subject in a prone position for long periods

1 of time, to limit the number of officers on top of a subject in a prone position, positioning their body weight on
2 shoulder blades and legs to avoid the head, neck and spine, and to continuously monitor a subject's breathing and
3 vital signs. (RW 112:16-114:2.) At the time of the incident, the Alameda Police Department had the following
4 relevant policies in place: APD Policy 300 Use of Force, 300.3.2 (RW 44:5-46:3, 48:10-51:17), Policy 466.3
5 recognizing signs of mental health issues (RW 75:4-77:1), resources available regarding mental health professionals
6 (RW 77:2-78:1), dealing with persons under the influence or experiencing mental health crisis (RW 78:2-81:25),
7 Policy 306 Handcuffing and Restraints (Exh. B), Policy 308 Control Devices and Techniques (Exh. C), Policy 466
8 Crisis Intervention Incidents (Exh. D).

9 II. LEGAL ARGUMENT

10 A. Plaintiffs' §1983 Claims for Violation of the First and Fourth Amendments are Meritless

11 1. MG's Detention and Attempted Arrest Were Reasonable and Lawful

12 First, MG's detention was supported by reasonable suspicion and lawful. A detention is lawful when it is
13 supported by reasonable suspicion based on the totality of the circumstances showing "a 'particularized and objective
14 basis' for suspecting legal wrongdoing." (*Navarette v. California*, 572 U.S. 393, 396-397 (2014); *U.S. v. Arvizu*, 534
15 U.S. 266, 273 (2002).) "[T]he likelihood of criminal activity need not rise to the level required for probable cause,
16 and it falls considerably short of satisfying a preponderance of the evidence standard," and it "need not rule out the
17 possibility of innocent conduct." (*Id.* at 274, 277; *Navarette*, 572 U.S. at 397, 403.) The totality of circumstances
18 known to the officers supported a reasonable suspicion to suspect MG of theft and/or public intoxication. (*Navarette*,
19 572 U.S. at 396-397; *Arvizu*, 534 U.S. at 273.) Walgreens baskets containing alcohol bottles with security caps were
20 found with MG across the street from a Walgreens store, MG was in a public area and exhibited signs of being
21 intoxicated and smelled of alcohol. Reasonable suspicion that MG may have stolen the alcohol from Walgreens
22 and/or was intoxicated in public thus supported his detention.

23 Second, probable cause supported MG's arrest, as the totality of circumstances showed a probability of
24 criminal activity. "[P]robable cause" means "a seizure made under circumstances which warrant suspicion...it is
25 clear that 'only the probability and not a prima facie showing of criminal activity is the standard of probable cause.'" (*Illinois v. Gates*, 462 U.S. 213, 235 (1983).) "**Probable cause 'is not a high bar.'**" (*D.C. v. Wesby*, 138 S.Ct. 577,
26 586 (2018), emphasis added.) "For information to amount to probable cause, it does not have to be conclusive of
27 guilt, and it does not have to exclude the possibility of innocence..." (*Garcia v. Cnty. of Merced*, 639 F.3d 1206,
28

1 1209 (9th Cir. 2011).) All that is required is that—as here—the facts fall on the side of probability. (*Beier v. City of*
2 *Lewiston*, 354 F.3d 1058, 1065 (9th Cir. 2004).) An officer who observes criminal conduct may arrest the offender,
3 even if the pertinent offence carries only a minor penalty. (*Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001).)
4 If the facts known to an arresting officer are sufficient to create probable cause, the arrest is lawful regardless of the
5 officer’s subjective reasons for it, even if it is not the same as, or even closely related to, the precise offense stated by
6 the arresting officer at the time of arrest. (*Devenpeck v. Alford*, 543 U.S. 146, 153 (2004).) As long as the totality of
7 facts show probable cause exists supporting arrest on *some* basis, the crime specified for arrest or eventual charges is
8 irrelevant, and the arrest is lawful. (*Id.*)

9 The totality of circumstances objectively showed a probability MG committed a theft of the liquor and/or
10 that he was intoxicated in public in violation of Penal Code §647. Probable cause also existed to support MG’s arrest
11 for delaying, obstructing or resisting the officers in the performance of their duties in violation of PC §148. Evidence
12 conclusively establishing his guilt was not required. As the officers testified and the video evidence shows, MG was
13 across the street from a Walgreens store, he had Walgreen’s baskets that held alcohol bottles with security caps still
14 attached, and he would not provide the officers his name, identification or information. MG was warned he would be
15 taken into custody if they could not identify him. MG had an odor of alcohol on him, and he was unable to give
16 coherent answers, he appeared to continually redirect the conversations to avoid giving information, and when
17 officers moved to detain him he physically resisted. Given the totality of these circumstances probable cause existed
18 to reasonably believe MG committed theft of the alcohol, that he was intoxicated in public and/or delaying or
19 obstructing the officers’ efforts to investigate possible theft and whether he was intoxicated in public, and for
20 physically resisting efforts to detain him, regardless of the offense specified by the officers. (*Devenpeck*, 543 U.S. at
21 153-155; *see also A.B. v. Cnty. of San Diego*, (2020 WL 5847551 *1 (S.D. Cal., Oct. 1, 2020), *aff’d* 2022 WL
22 1055558 (9th Cir. Apr. 8, 2022), discussed *infra*.) The unlawful seizure claims are unsupported against the
23 officers, particularly Leahy, who was not present during MG’s detention or attempted arrest, and he cannot be held
24 liable on a “team effort” theory which lumps all the defendants together. (*Hopkins v. Bonvicino*, 573 F.3d 752, 770
25 (9th Cir. 2009).)

26 **2. No Excessive Force Was Used Against MG**

27 “A claim that law-enforcement officers used excessive force to effect a seizure is governed by the
28 Fourth Amendment’s ‘reasonableness’ standard.” (*Plumhoff v. Rickard*, 572 U.S. 765, 774 (2014); *Graham v.*

1 *Connor*, 490 U.S. 386 (1989).) “[D]etermining the objective reasonableness of a particular seizure...requires
2 analyzing the totality of the circumstances” (*Plumhoff*, 572 U.S. at 774), which include “the severity of the
3 crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and
4 whether he is actively resisting arrest or attempting to evade arrest by flight.” (*Graham*, 490 U.S. at 394.)
5 “Ultimately, the ‘most important’ Graham factor is whether the suspect posed an ‘immediate threat to the
6 safety of the officers or others.’” (*Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011).)

7 “The reasonableness of the use of force is evaluated under an ‘objective’ inquiry that pays “careful attention
8 to the facts and circumstances of each particular case.’ *Graham*, 490 U.S., at 396...” (*Cnty. of Los Angeles v.*
9 *Mendez*, 581 U.S. 420, 428, (2017).) “Objective reasonableness [is] based upon the information the officers had
10 when the conduct occurred.” (*Id.*; *Saucier v. Katz*, 533 U.S. 194, 207 (2001).) Reasonableness “must be judged from
11 the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...The calculus of
12 reasonableness must [allow] for the fact that police officers are often forced to make split-second judgments--in
13 circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a
14 particular situation.” (*Graham*, 490 U.S. at 396-397; *Monzon v. City of Murrieta*, 978 F.3d 1150, 1158 (9th Cir.
15 2020).) The Fourth Amendment does not prohibit a police officer’s use of reasonable force during an arrest. “[T]he
16 right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical
17 coercion or threat thereof to effect it.” (*Graham*, 490 U.S. at 396.)

18 In *Tatum v. City & Cnty. of San Francisco*, 441 F.3d 1090, 1098 (9th Cir. 2006), the Ninth Circuit
19 recognized that “[r]estraining a person in a prone position is not, in and of itself, excessive force when the person
20 restrained is resisting arrest.” The Court found using a control hold to effect handcuffing and keeping the decedent in
21 a prone position for a minute-and-a-half after he was handcuffed, not noticing he rolled from his side onto his back or
22 that he stopped breathing, and not performing CPR was not excessive force. (*Id.* at 1097.) The decedent in *Tatum*
23 kicked the door of a police station despite an officer’s orders to stop, did not respond when asked what he was doing
24 and continued kicking the door. The officer pulled him from the door and again asked what he was doing, but
25 decedent did not reply and walked away after being told to leave. He then returned to kick the door. Based on his odd
26 behavior and physical symptoms, officers suspected he was intoxicated or under the influence. The officer again
27 pulled him from the door and explained he could be arrested if he continued. He did not respond and the officer asked
28 for his identification, but he did not comply. The officer said he would be placed in handcuffs and placed one of his

1 arms behind his back, but he then spun to his left, partially escaping the officer's grasp. He was ordered to stop
2 resisting but he continued turning and struggling as he was told to calm down. The officer then forced him to the
3 ground. Other officers arrived to assist and placed him in handcuffs. He was kept on his stomach for about a minute-
4 and-a-half after he was handcuffed, then turned and laid on his side two minutes later. An ambulance was requested
5 when he started breathing heavily and his eyes were bulging. An officer monitored his condition as his breathing
6 became shallow. Officers continued to monitor him while waiting for the ambulance, but no officer attempted CPR.
7 Paramedics arrived ten minutes later and found decedent was not breathing. (*Tatum*, 441 F.3d at 1092-1093.) The
8 Court found positioning decedent on his stomach for approximately a minute-and-a-half, after a control hold was
9 used and he was handcuffed, and then laying him on his side, was objectively reasonable and not excessive force. (*Id.*
10 at 1097.) Relying on *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586 (7th Cir. 1997), the Court found the case
11 factually similar and persuasive. Phillips suffered from several medical conditions "not observable to the untrained
12 eye," including physical conditions and schizophrenia. Police were called to a hotel where he was staying and found
13 him visibly shaking and sweating, and unresponsive when asked his name. Officers grabbed his wrists to secure him,
14 and he resisted and struggled. Officers managed to handcuff him and place him face down on the floor for at least
15 two or three minutes, as they monitored him and called his name every twenty to thirty seconds. When paramedics
16 arrived, Phillips was not breathing and later died. The Seventh Circuit found "the officers' conduct was 'an
17 objectively reasonable response to the escalating situation they faced.'" (*Tatum*, 441 F.3d at 1098.) The Ninth Circuit
18 found the rationale of *Phillips* "applie[d] with persuasive force" and concluded "it was objectively reasonable for the
19 officers to position [the decedent] on his stomach for approximately ninety seconds." Decedent kicked and struggled
20 throughout the officers' efforts to handcuff him, and the officers needed to incapacitate him to protect him and
21 themselves. **Notably, there was no evidence "that any officer applied crushing pressure to [his] back or neck as
22 he lay prone...[He] lay on his stomach at most for just over a minute" and was then laid on his side. (*Id.*)** The Court
23 was unaware of any authority finding that simply laying a suspect on his stomach can constitute excessive force.
24 There was no evidence officers applied more force than necessary to restrain decedent, and positioning him on his
25 stomach for about 90 seconds was objectively reasonable under the circumstances. The officers also exercised
26 objectively reasonable care in monitoring decedent, and even if they did not notice that he rolled onto his back or that
27 he stopped breathing, officers monitored him after he was secured in handcuffs and called for an ambulance when he
28 appeared in distress. Absent evidence they ignored his deteriorating medical condition, it was objectively reasonable

1 for the officers to monitor his medical condition as they did even if they did not provide CPR. (*Id.* at 1098-99.)

2 In *A.B., supra*, the court found no excessive force under similar circumstances that included significantly
3 more substantial force than used in the instant case. Deputies responding to reports of a man “acting strangely”
4 contacted decedent, who was fidgety, unable to hold a coherent conversation and showed signs of being under the
5 influence. The deputy determined decedent was either mentally ill, under the influence or both, and sought to
6 handcuff him for further evaluation. The deputy told decedent to put his hands behind his back and attempted to
7 handcuff him, but decedent pulled away and turned towards the deputy, and the deputy pushed him down to a seated
8 position, where he continued resisting and tried to rise. Another deputy approached the struggle, yelled a warning he
9 would deploy a taser and deployed the taser from 7 feet away. Decedent momentarily doubled over, moved towards
10 the first deputy, then ran into a parking lot. Deputies followed and again deployed the taser, with no effect. A deputy
11 tackled him as he fled, decedent got up and tried to get away and a struggle ensued. The deputy struck decedent’s
12 face three times with a closed fist, which did not subdue him. Deputies continued struggling with decedent and
13 several civilians intervened to assist. Deputies and civilians tried to handcuff him but only managed to handcuff one
14 wrist. A deputy struck decedent’s hands, head and shoulders with his fists, and then with a sap at close range.
15 Additional deputies arrived and replaced the citizens. Several deputies applied downward force to control decedent’s
16 movements, including one deputy applying downward pressure with his left knee to decedent’s left shoulder and
17 incorporating his right hand as decedent increased his resistance and movement; another used his hands to apply
18 downward pressure to control decedent’s upper back to prevent him from rising, varying the level of pressure in
19 response to his level of resistance. Deputies managed to connect two pairs of handcuffs as he continued struggling. A
20 deputy tried to control decedent’s upper body with downward force on his left elbow and his hands to control
21 decedent’s head; another pushed decedent’s legs towards the ground to control his legs; cord cuffs were applied on
22 his ankles to secure him in “maximum restraints” (ankles secured with a cord attached to waist to restrict leg
23 movement). A deputy used his hands and knee to apply pressure to decedent’s right arm, another tried to control his
24 left arm by holding and applying pressure to his bicep with both hands. Decedent continued struggling and kicked a
25 deputy in the chest as they tried to put him in maximum restraints and they decided to apply more secure restraints.
26 Deputies noticed decedent stopped moving and put him in a recovery position on his side and monitored his pulse
27 and breathing. As they waited for paramedics, deputies monitored his breathing and pulse and observed both were
28 shallow and slow. Naloxone was administered for a possible overdose, a second dose was later administered, and he

1 was returned to a prone position to reduce the handcuffs to one pair and to pat him down. After finishing this process,
2 he was returned to recovery position and his shallow breathing and slow pulse did not change. Paramedics took twice
3 as long as usual to arrive and life saving measures were unsuccessful. (*Id.* at *2-*4.)

4 The court found the use of restrains, body weight and pressure, and positioning decedent in a prone position
5 and on his side were objectively reasonable under the totality of circumstances, given his continued struggle and
6 resistance. The court rejected plaintiffs' argument that the force was excessive based on claims "there was no serious
7 or violent crime at issue," noting the "argument is not well-taken, as it minimizes the seriousness of [decedent's]
8 increasing resistance to apprehension. The same is true for Plaintiffs' assertion that [he] 'posed no immediate threat'
9 or had not [shown] 'any aggressive behavior towards anyone,'...which the video and undisputed testimonial
10 evidence overwhelmingly refute." (*Id.* at *18.) The evidence showed the deputies "escalated their use of force in
11 direct correlation to [decedent's] continued resistance." (*Id.*) The court found case authorities the plaintiffs cited
12 distinguishable, because although one "involved a similar prolonged application of weight on a handcuffed man," the
13 subject there resisted in a "non-violent, non-combative manner." (*Id.*) All of the cases plaintiffs cited involved
14 subjects who were not resisting. (*Id.* at *18-*19.) By contrast, decedent was suspected of being under the influence
15 and resisted detention in an antagonistic manner for nearly the entire encounter, including during the process of
16 securing him in handcuffs and restraints. Although the decedent stated during the struggle he could not breath, the
17 video showed his active resistance to restraint and detention, and the deputies **were not placing their full body**
18 **weight on his back or neck at any point, but only exerting downward pressure with their hands as he**
19 **struggled.** (*Id.*)

20 The officers' conduct in the instant case similarly was objectively reasonable under the totality of
21 circumstances known to them at the time. The evidence is undisputed that MG refused to comply with orders,
22 physically resisted handcuffing, pulled and struggled to break free from the officers, continued forcefully struggling,
23 moving his body, kicking his legs and fighting against attempts to bring his hands behind his back for handcuffing.
24 Even after the officers finally managed to handcuff MG, he continued to move around, tried to roll on his side and
25 violently kicked his legs, moving with such force it lifted Fisher and Leahy up off the ground and moved the officers
26 as they tried to stop his movement. McKinley initially straddled MG's buttocks to use his weight to stop MG's
27 movement as he struggled to pull MG's arm back against MG's attempts to pull his arms forward and under himself.
28 After MG finally was handcuffed, McKinley immediately moved off his buttocks and placed a knee on his left

1 shoulder, trying to maintain some control as MG continued to struggle and move around. Fisher only rested a portion
2 of his bodyweight on MG's back as he struggled to pull MG's arm out from under him and back for handcuffing,
3 keeping most of his body weight on the ground, and later angled his knee against MG's shoulder to try to counter his
4 continued vigorous struggling and attempts to move away even after he was handcuffed. Leahy merely placed his
5 shins across the back of MG's knees to control his legs, but MG continued violently moving his legs and Leahy
6 never had MG's legs under control. MG continued struggling and moving until he suddenly was unconscious. The
7 officers immediately turned him on his side approximately 18 seconds after his last vocalization and began CPR 24
8 seconds later. The undisputed evidence shows MG's increasing resistance to apprehension, from refusing to obey
9 orders and pulling away at the outset, to continually struggling, trying to pull away, refusing to allow his hands to be
10 cuffed, kicking, attempting to raise his body, roll and get up. The force the officers used trying to overcome his
11 physical resistance was in direct correlation to MG's continued resistance. The undisputed evidence establishes the
12 officers did not place their full body weight on MG's back, neck or head, MG never said he could not breathe, he
13 continued communicating, moving around and did not exhibit signs he was having difficulty breathing, and officers
14 monitored his breathing throughout. MG struggled and resisted against efforts to stop his movements throughout, and
15 the officers did not keep him in a prone position for any appreciable time after he stopped struggling, turning him to
16 his side within 18 seconds after he became unconscious. There is no evidence officers ignored MG's deteriorating
17 medical condition. As in *Tatum*, *Phillips* and *A.B.*, the use of commensurate force to overcome MG's continual
18 resistance was objectively reasonable under the totality of circumstances.

19 Plaintiffs may argue that the force was unreasonable because MG did not commit a serious crime, threaten
20 the officers or act aggressively. As the court noted in *A.B.*, however, such argument minimizes the seriousness of
21 MG's increasing resistance to apprehension, as shown by the evidence depicting his increased resistance from
22 refusing to cooperate for handcuffing, physically pulling away and resisting and continuing to struggle against being
23 handcuffed, kicking, and trying to rise and move about. (*A.B.*, 2020 WL 5847551 at *18; *see also Tatum*, 441 F.3d at
24 1095-1096.) Plaintiffs also will argue, contrary to the video recordings and the officers' and witness testimony, the
25 officers' placed their whole body weight on MG. There is no evidence to support their assertions, and their
26 speculation, conjecture and unfounded interpretation of the video evidence is unavailing. Speculation that MG's
27 movements that appeared to be resistance and struggling were merely a response to the officers' actions, or suggested
28 he was having difficulty breathing, is unsupported by evidence and ignores the objective standard applicable to

1 evaluate the officers' conduct based on the information known to them at the time. (*Mendez*, 1581 U.S. at 428.)
2 MG never said he had difficulty breathing and he did not display symptoms of difficult breathing before he
3 suddenly went unconscious. There is no evidence suggesting any officer used more force than necessary to
4 restrain MG in response to his continued resistance.

5 **3. M.G.C.'s First Amendment Rights Were Not Violated**

6 Where a claim for interference with familial relationships is integrally predicated upon, or entwined with,
7 other allegedly unconstitutional conduct, a finding that the other conduct was not unconstitutional generally will
8 preclude recovery for interference with familial relationship. (*Gausvik v. Perez*, 392 F.3d 1006, 1008 (9th Cir. 2004);
9 *Lee v. City of Los Angeles*, 250 F.3d 668, 685 (9th Cir. 2001).) M.B.C.'s claims for interference with familial
10 association are integrally predicated upon and entwined with MG's §1983 claims because no conduct was directed at
11 M.G.C., and his claims arise out the alleged violation of MG's rights. M.G.C.'s First Amendment claims thus fail to
12 the same extent MG's §1983 claims fail. Moreover, "there appears to be 'no Ninth Circuit case setting out
13 specifically the conduct or elements that constitute violation of familial association under the First Amendment.'" (*Kaur v. City of Lodi*, 263 F.Supp.3d 947, 973 (E.D. Cal. 2017).) Courts thus have concluded that "First Amendment
14 rights to familial association are measured by the same standard as Fourteenth Amendment rights to familial
15 association based on the Ninth Circuit's analysis in *Lee*." (*Id.*) M.G.C.'s First Amendment claim for interference with
16 familial association rights, therefore, fails for the same reasons the 14th Amendment claims fail, as set forth in
17 Defendants' previously filed moving and reply papers in support of partial summary judgment on that issue, and
18 which are incorporated herein by reference.

20 **B. The Officers Are Entitled to Qualified Immunity**

21 To defeat qualified immunity, the law must be "clearly established in light of the specific context of the
22 case' at the time of the events in question." (*Mattos*, 661 F.3d at 440.) **It is Plaintiff's burden to show the law was**
23 **clearly established so "every reasonable official would [have understood] that what he is doing violates that**
24 **right."** (*Reichle v. Howards*, 566 U.S. 658, 664 (2012), emphasis added.) "In other words, existing precedent must
25 have placed the statutory or constitutional question beyond debate." (*Id.*; *Ashcroft v. al-Kidd*, 563 U.S. 731, 741
26 (2011).) Whether the law was clearly established "must be [determined] in light of the specific context of the case,
27 not as a broad general proposition." (*Saucier v. Katz*, 533 U.S. 194, 205 (2001), overruled in part re mandatory
28 analysis procedure; *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).) The Supreme Court has "repeatedly told courts

1 not to define clearly established law at a high level of generality.” (*City of Escondido v. Emmons*, 139 S.Ct. 500, 503
 2 (2019); *Kisela v. Hughes*, 138 S.Ct. 1148, 1152 (2018); *Mattos*, 661 F.3d at 442; *Reese v. Cnty. of Sacramento*, 888
 3 F.3d 1030, 1036-1040 (9th Cir. 2018).)

4 [C]learly established law must be “particularized” to the facts of the case. . . . [It requires] a case where an
 5 officer acting under similar circumstances . . . was held to have violated the [Constitution] . . . [such that] “**in
 the light of pre-existing law the unlawfulness must be apparent.**” . . . [Emphasis added.]

6 (*White v. Pauly*, 137 S.Ct. 548, 552 (2017).) Where a case presents a “unique set of facts and circumstances,” this
 7 alone should be an indication that an officer’s conduct did not violate a “clearly established” right. (*Id.* 552.)

8 Plaintiffs cannot identify any factually similar authority finding any of the officers’ conduct objectively
 9 unreasonable under the totality of the particular circumstances facing the officers and clearly prohibited, such that
 10 every reasonable officer would have understood, beyond debate, that Fisher, McKinley and Leahy’s individual
 11 actions were unlawful. Plaintiffs cannot show any case authority that clearly prohibited: 1) McKinley’s conduct in
 12 grabbing MG’s arm, moving him to the ground, straddling his buttocks, struggling to pull his arm back for
 13 handcuffing and placing a knee on his shoulder at various points as MG strenuously struggled and attempted to
 14 escape the officers’ control, 2) Fisher’s conduct of grabbing MG’s arm, moving him to the ground, struggling to pull
 15 his arm back for handcuffing, placing his knee on MG’s elbow and later placing a knee on his shoulder to prevent
 16 him rolling and getting up, or 3) Leahy’s conduct in placing his shins on the back of MG’s calves to try to stop his
 17 violent kicking and moving around, or 4) keeping MG in a prone position as long as he continued to physically
 18 struggle against efforts to control his movements while still being able to talk and breathe without apparent difficulty.
 19 Accordingly, the law was not clearly established that any of the officers’ conduct under the particular circumstances
 20 of this case was objectively unreasonable. Indeed, the Ninth Circuit’s decision in *Tatum* shows the officers’ conduct
 21 was objectively reasonable and *not excessive*, and at the very least, *Tatum* shows the issue is not clearly established.
 22 Each officer thus is entitled to qualified immunity.

23 Plaintiffs’ reliance on *Drummond v. City of Anaheim*, 343 F.3d 1052 (2003), is unavailing, as the facts are
 24 dissimilar and easily distinguishable. Drummond had a known history of mental illness and officers sought to take
 25 him into custody “for his own safety,” knocking him down and cuffing him behind his back as he lay on his stomach
 26 while “**Drummond offered no resistance.**” (*Id.* at 1054.) Even though Drummond was of smaller stature,
 27 handcuffed on his stomach and never resisted at any time, an officer put his knee and body weight on Drummond’s
 28 back. Another officer much larger than Drummond also put his knees and body weight on him, with one knee on his

1 neck. (*Id.*) Drummond repeatedly said he could not breathe and they were choking him, and he asked for water, but
2 they continued putting weight on his back and neck. “[T]wenty minutes after Drummond was taken down,”
3 officers applied a hobble restraint on his ankles, and he lost consciousness a minute later. (*Id.* at 1055.) Once
4 Drummond was on the ground he did not resist and there was no need for further physical force. (*Id.* at 1058.) While
5 “some force was surely justified” in restraining him to prevent injury to himself or the officers, “he did not physically
6 resist at all, [and] the officers’ use of their body weight . . . for a prolonged period of time and despite his pleas for air
7 was excessive. (*Id.* at 1059.) *Drummond* is plainly factually dissimilar from this case and fails to show clearly
8 established law applicable in this case. The differences in *Drummond* and this case “‘leap from the page,’ and
9 attempts to rely on [it] to constitute clearly established law ‘does not pass the straight-face test.’” (*Kisela*, 138
10 S.Ct. at 1154.) The facts in *Drummond* are materially dissimilar from the instant case and are not squarely on
11 point. *Drummond* thus fails to show clearly established law prohibiting each of the officers’ conduct in the
12 particular circumstances of this case.

13 The court in *A.B.* rejected similar reliance on *Drummond* to defeat qualified immunity, concluding the
14 deputies did not have “fair notice” their actions were unconstitutional. (*A.B.*, 2020 WL 5847551 at *19, citing
15 *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004).) “[A]s explained above, in Fourth Amendment excessive force
16 cases, ‘police officers are entitled to qualified immunity *unless existing precedent ‘squarely governs’ the specific facts*
17 *at issue.*’ *Kisela*, 138 S.Ct. at 1153 . . . *West v. City of Caldwell*, 931 F.3d 978, 983 (9th Cir. 2019). *Drummond* does
18 not ‘squarely govern’ the facts of this case.” (*A.B.*, 2020 WL 5847551 at *19.)

19 The facts of *Drummond* are critically different . . . First, the Deputy Defendants did not know for
20 certain whether [decedent] suffered from a mental illness, but merely suspected that he was under the
21 influence of drugs, mentally ill or both. **Most significantly, [decedent] was initially combative and**
22 **actively resisted detention** in a public place with numerous civilians nearby, therefore, the
23 government’s need to intrude upon [his] Fourth Amendment rights was substantially greater than that
24 in *Drummond*. **Even as the Deputy Defendants used physical force to restrain [decedent], he**
25 **continued to resist, repeatedly lifting his upper body and head off the ground. . . . [Decedent’s]**
26 **behavior throughout the encounter is a key distinguishing factor.** The facts in *Drummond*
27 **indicate a materially different scenario.** (*Id.* at *19, emphasis added.)

24 MG’s conduct in this case is akin to the conduct of the decedents in *Tatum* and *A.B.*, and likewise
25 shows “a materially different scenario” than *Drummond*. Unlike *Drummond*, MG was not compliant, and he
26 physically resisted the officers’ efforts to detain him throughout the encounter. MG was not kept prone for
27 an extended time, and he did not state he could not breathe or exhibit signs of difficult breathing. *Drummond*
28 is not factually similar and does not “squarely govern” the facts of this case.

1 Plaintiffs cannot meet their burden to satisfy the Supreme Court’s requirement to show factually similar
2 case authority that “squarely governs,” clearly prohibiting any of the officers’ conduct under the particular
3 circumstances of this case. Each of the officers is entitled to qualified immunity on the §1983 claims.

4 **C. Plaintiffs’ Third Count for Violation of Cal. Civ. Code §52.1 Is Meritless**

5 Section 52.1 proscribes interference or attempted interference by threats, intimidation or coercion
6 with rights secured by the Constitution or U.S. laws. (Civ Code, §52.1(a); *Austin B. v. Escondido Union Sch.*
7 *Dist.*, 149 Cal.App.4th 860, 883 (2007); *Barsamian v. City of Kingsburgh*, 597 F.Supp.2d 1054, 1057 (E.D.
8 Cal. 2009).) It does not extend to regular tort actions. (Civ Code, §52.1(a); *Shoyoye v. Cnty. of Los Angeles*,
9 203 Cal.App.4th 947 (2012); *Venegas v. Cnty. of Los Angeles*, 32 Cal.4th 820, 843 (2004).) The Ninth Circuit
10 notably has clarified that a claim for violation of §52.1 “requires a specific intent to violate the arrestee’s right
11 to freedom from unreasonable seizure.” (*Reese*, 888 F.3d at 1043.) Plaintiff thus must present evidence to
12 establish that a defendant had a specific intent to use excessive force by showing “that the defendants
13 ‘intended not only the force but its unreasonableness, its character as ‘more than necessary under the
14 circumstances’” or “a reckless disregard for a person’s constitutional rights.” (*Id.* at 1044, 1045.) Plaintiffs
15 have no evidence of any civil rights violation, and no evidence that any officer intended to use more force
16 than was necessary under the totality of circumstances. The §52.1 claim is unsupported.

17 Plaintiffs’ §52.1 claim asserted by M.G.C. on his own behalf also is untenable. Plaintiffs claim the
18 officers “violated **Plaintiff’s and Decedent’s** rights under...§52.1,” “this count is **brought by Plaintiff**
19 **individually**,” “[MG] and Plaintiff’s right to be free from wrongful government interference with familial
20 relationships, and...right to companionship and society with each other as secured by the First and Fourteenth
21 Amendments,” and “Defendants violated Plaintiff’s and [MG’s] rights by...violating [their] rights to familial
22 association.” (Doc. No. 11, ¶¶53-54, emphasis added.) M.G.C. has no standing to assert a §52.1 claim on his
23 own behalf as a matter of law, as §52.1 “only provides for a personal cause of action for the person who has
24 been subjected to violence or threats which interfered with that person’s constitutional rights.” (*Tolosko-*
25 *Parker v. Cnty. of Sonoma*, 2009 WL 498099 at *5 (N.D. Cal. 2009), citing *BART Dist. v. Superior Court*, 38
26 Cal.App.4th 141, 144 (1995).) Section 52.1(c) specifically limits claims to persons “in his or her own name
27 and on his or her own behalf.” Bane Act relief “is limited to plaintiffs who themselves have been the subject
28 of violence or threats.” (*BART Dist.*, 38 Cal.App.4th at 144.) Derivative liability is improper under §52.1. (*Id.*

1 at 144-145.) It is undisputed that Defendants used no force against M.G.C. personally, thus he has no standing
2 to assert §52.1 claims on his own behalf and such claims are unsupported.

3 **D. Plaintiffs' Negligence Claim Is Meritless**

4 Negligence requires “that there must be a *legal duty* owed to the person injured and a breach of that duty
5 which is the proximate cause of the resulting injury.” (*J.L. v. Children’s Inst., Inc.*, 177 Cal.App.4th 388, 396 (2009);
6 *Lopez v. City of Los Angeles*, 196 Cal.App.4th 675, 685 (2011).) Whether a legal duty exists is decided as a matter of
7 law to be resolved by the court. (*Greyhound Lines, Inc. v. Dept. of the Cal. Highway Patrol*, 213 Cal.App.4th 1129,
8 1135-1136 (2013).) Under Penal Code §835a, subsecs. (b) and (d), peace officers are entitled to use reasonable force
9 to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance, and an officers
10 duty is only to use reasonable force under the totality of the circumstances. (*Gotlick v. State of California*, 82
11 Cal.App.5th 1127, 1139 (2022).) Based on the undisputed facts and the totality of circumstances in this case,
12 the officers had no legal duty to allow MG to flee the scene, resist detention and arrest, or to refrain from
13 attempting to physically stop him from leaving, attempting to handcuff him, using force that directly
14 corresponded with his level of resistance, placing him in a prone position on the ground to overcome his
15 struggling and resistance, using their partial body weight on the areas they did to try to prevent him from
16 struggling, resisting and moving his arms legs and body to avoid the officers’ control, or keeping him in a
17 prone position as he continued to struggle and did not exhibit any signs of difficult breathing.

18 Further, the undisputed evidence establishes the officers’ conduct was reasonable under the circumstances,
19 and they did not breach any duty. “While it is easy, with the benefit of hindsight, to make suggestions as to how
20 [officers] might have responded differently in the situation, the fact that...officers [are] making these decisions in real
21 time and in response to rapidly changing circumstances is a factor to consider in determining the reasonableness of
22 their actions.” (*Brown v. Ransweiler*, 171 Cal.App.4th 516, 537 (2009).) “The law has never been applied to
23 suggest that there is only one reasonable action that an officer may take under a given set of circumstances. There will
24 virtually always be a *range* of conduct that is reasonable...It would be unreasonable to require police officers in the
25 field to engage in the sort of complex calculus that would be necessary to determine the ‘best’ or most effective and
26 least dangerous method of handling an immediate and dangerous situation, particularly when officers are forced to
27 make split-second decisions under tense and often perilous conditions.” (*Id.* at 537-538.) “As long as an officer’s
28 conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or

1 she choose the ‘most reasonable’ action or the conduct that is the least likely to cause harm and at the same time the
2 most likely to result in the successful apprehension of a violent suspect, in order to avoid liability for negligence.”
3 (*Hayes v. Cnty. of San Diego*, 57 Cal.4th 622, 632 (2013); *Brown*, 171 Cal.App.4th at 537-538.) “Law enforcement
4 personnel have a degree of discretion as to how they choose to address a particular situation. Summary judgment is
5 appropriate when the trial court determines that, viewing the facts most favorably to the plaintiff, no reasonable juror
6 could find negligence.” (*Hayes*, 57 Cal.4th at 632.) “The test of reasonableness in this context is an objective one,
7 viewed from the vantage of a reasonable officer on the scene. It is also highly deferential to the police officer’s need
8 to protect himself and others: ‘[Reasonableness] must be judged from the perspective of a reasonable officer on the
9 scene, rather than with the 20/20 vision of hindsight...[and] must embody allowance for the fact that police officers
10 are often forced to make split-second judgments...about the amount of force that is necessary in a particular situation.
11 (*Martinez v. Cnty. of Los Angeles*, 47 Cal.App.4th 334, 343 (1996); *Graham*, 490 U.S. at 396-397; PC §835a(a)(5).)
12 “The Supreme Court’s definition of reasonableness is therefore ‘comparatively generous to the police in cases where
13 potential danger, emergency conditions or other exigent circumstances are present...In effect, ‘the Supreme Court
14 intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of
15 protection in close cases.” (*Martinez*, 47 Cal.App.4th at 343-344; *Brown*, 171 Cal.App.4th at 527-528; *Lopez*, 196
16 Cal.App.4th at 686.)

17 Moreover, Section 835a recognizes that an officer’s decision to use force must be carefully evaluated to
18 ensure that it is consistent with law and agency policies. (PC §835a(a)(3).) Accordingly, given that the officers’
19 tactics were objectively reasonable, consistent with the law and APD training and policies, and comported with the
20 officers’ training, their conduct was not excessive and did not breach any duty of care. Consistent with their training
21 and APD policies, the officers did not place any weight on MG’s head, neck or back, and contrary to Plaintiffs’
22 claims, they were not required to immediately turn MG on his side irrespective of his continued resistance and
23 struggling. The undisputed evidence fails to show a legal duty requiring the officers to refrain from the tactics used or
24 to use alternate tactics, and fails to show breach of any duty.

25 **E. The Fifth Count for Assault and Battery is Unsupported by Evidence**

26 Assault is “a demonstration of an unlawful intent by one person to inflict immediate injury on the
27 person of another then present.” (*So v. Shin*, 212 Cal.App.4th 652, 668 (2013).) Words alone are inadequate.
28 (*Plotnik v. Meihaus*, 208 Cal.App.4th 1590, 1604 (2012).) Battery “is any intentional, unlawful and harmful

