UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE CORRALES, an individual; ROSAURA CORRALES, an individual; HEIDI GONZALEZ, individually and as successor-in-interest to Decedent Mizael Corrales; Z.C., a minor by and through Guardian Ad Litem, Amiregh Quezada, individually and as successor-in-interest to Decedent Mizael Corrales; C.C., a minor by and through Guardian Ad Litem, Amiregh Quezada, individually and as successor-in-interest to Decedent Mizael Corrales; A.C., a minor by and through Guardian Ad Litem, Amiregh Quezada, individually and as successor-in-interest to Decedent Mizael Corrales,

Plaintiffs,

v.

COUNTY OF SAN DIEGO, a municipal entity; ANTHONY GARCIA, individually and in his official capacity as a deputy for the San Diego County Sheriff's Department; and DOES 1–50, inclusive, individually and in their official

Case No.: 23-cv-01468-AJB-VET

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

(Doc. No. 18)

capacity as deputies for the San Diego County Sheriff's Department,

Defendants.

Presently before the Court is Defendants County of San Diego (the "County") and Deputy Anthony Garcia's (collectively, "Defendants") motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 18.) Plaintiffs filed an opposition, (Doc. No. 20), to which Defendants replied, (Doc. No. 21). Pursuant to Civil Local Rule 7.1.d.1, the Court finds the instant matter suitable for determination on the papers and without oral argument. For the reasons stated herein, the Court **GRANTS IN PART AND DENIES IN PART** Defendants' motion to dismiss.

I. BACKGROUND[1]

On February 19, 2022, at approximately 9:00 a.m., Decedent Mizael Corrales was parked in a white SUV with two other passengers at a strip mall in Otay Mesa, San Diego, when several uniformed and plainclothes deputies of the San Diego County Sheriff's Department arrived on scene. (Complaint ("Compl."), Doc. No. 1, ¶ 23.) The deputies surrounded the SUV and ordered Decedent and his passengers to get out of the car. (*Id.*) Defendant Garcia, with the aid of other deputies, opened the driver's door, reached into the driver's seat, and grabbed hold of Decedent. (*Id.* ¶ 24.) Garcia and deputies attempted to physically remove Decedent from the car; the two passengers were taken into custody by other deputies. (*Id.*)

Decedent put the SUV into reverse, causing Garcia and another deputy to fall to the ground. (*Id.* ¶ 25.) As Decedent shifted the SUV back into drive, Garcia got to his feet, drew his gun, and aimed at Decedent. (*Id.*) "Then, without warning, Defendant Garcia fired multiple gunshots at Decedent through the front windshield of the SUV." (*Id.*) Plaintiffs

[1] The following allegations are taken from Plaintiffs' Complaint and are construed as true for the limited purpose of ruling on this motion. *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247 (9th Cir. 2013).

assert Decedent was fatally struck, "became incapacitated by the hail of bullets and lost control of the SUV." (*Id.* ¶ 26.) Garcia then "stepped off to the side and stopped shooting as the SUV rolled forward." (*Id.*) As the SUV rolled past Garcia, he "fired an additional ten (10) rounds, if not more, through the open driver side window, striking Decedent several more times." (*Id.* ¶ 27.) The SUV then continued rolling forward until it collided with a parked car and ceased moving. (*Id.*) Decedent thereafter died as a result of the gunshot wounds inflicted by Garcia. (*Id.* ¶ 34.)

II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff's complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "[A] court may dismiss a complaint as a matter of law for '(1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim.'" *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (quoting *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984)). However, a complaint will survive a motion to dismiss if it contains "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In making this determination, a court reviews the contents of the complaint, accepting all factual allegations as true, and drawing all reasonable inferences in favor of the nonmoving party. *See Cedars-Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). Notwithstanding this deference, the reviewing court need not accept legal conclusions as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for a court to assume "the [plaintiff] can prove facts that [he or she] has not alleged." *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). However, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. "In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009)

(quotations and citation omitted).

Where dismissal is appropriate, a court should grant leave to amend unless the plaintiff could not possibly cure the defects in the pleading. *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009).

III. REQUEST FOR JUDICIAL NOTICE

When ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, courts are typically limited to the four corners of the pleadings. *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *abrogated on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991). If "matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d).

However, a court may consider documents incorporated by reference in the complaint or may take judicial notice of facts outside the pleadings without converting the motion to dismiss into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). For example, "on a motion to dismiss a court may properly look beyond the complaint to matters of public record and doing so does not convert a Rule 12(b)(6) motion to one for summary judgment." *Mack*, 798 F.2d at 1282.

Under Federal Rule of Evidence 201, a court may take judicial notice of "a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

Defendants request the Court to take judicial notice of body-worn-camera ("BWC") video underlying the shooting incident giving rise to this lawsuit. (Doc. No. 18-2 at 2.) Plaintiffs oppose, arguing that "any BWC footage . . . falls outside the four corners of the Complaint and supports Plaintiffs' position that whatever is or is not depicted in the BWC is subject to different interpretations and necessary [sic] allows for differing inferences drawn therefrom." (Doc. No. 20 at 27.)

The Court is not persuaded that it may properly consider the Exhibit in ruling on

Defendants' motion brought pursuant to Rules 12(b)(6). The Exhibit is not incorporated by reference in the Complaint, nor does it necessarily rely on this Exhibit. (*See* Compl.) True, the Complaint includes allegations surrounding the incident that is presumably captured in this Exhibit. But it is plain that Defendants offer this Exhibit in an effort to short-circuit the resolution of Plaintiffs' claims. This is impermissible. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003 (9th Cir. 2018); *Keith v. City of San Diego*, No. 22-cv-1226-MMA-DEB, 2023 WL 5618941, at *2 (S.D. Cal. Aug. 30, 2023).

Defendants rely on one case wherein a district court accepted body camera footage submitted in support of a motion to dismiss and relied on such evidence in resolving the motion. *See Lihosit v. Flam*, No. CV-15-01224-PHX-NVW, 2016 WL 2865870 (D. Ariz. May 16, 2016). However, the majority of courts have disagreed and instead have declined to either accept or consider such evidence in resolving motion to dismiss. *See Keith*, 2023 WL 5618941, at *2 (collecting cases).

Additionally, the Court is not convinced the Exhibit is a public record "of the type whose accuracy cannot reasonably be questioned, such that the Court may judicially notice assertions of fact from the footage." *Rodriguez v. Cnty. of Santa Cruz*, No. 22-cv-07836-JST, 2023 WL 4687197, at *3 (N.D. Cal. July 20, 2023). It is apparent the parties dispute what occurred, and Defendants offer this Exhibit to challenge the factual accuracy of Plaintiffs' allegations. (*See, e.g.*, Doc. No. 20 at 27.) This goes beyond the scope of a motion to dismiss and "far beyond the usual purposes of judicial notice." *Knickerbocker v. U.S. Dep't of Interior*, No. 1:16–cv–01811–DAD–JLT, 2018 WL 836307, at *6 (E.D. Cal. Feb. 13, 2018). Therefore, the Court finds this Exhibit is not itself, nor does it contain, facts proper for judicial notice. Defendants' request for judicial notice is **DENIED**.

IV. DISCUSSION

Defendants seek dismissal of claims 1 (Section 1983 – excessive force), 2 (Section 1983 – denial of medical care), 3 (Section 1983 – interference with familial relationship), and 6 (violation of the Bane Act) against Defendant Garcia for failure to state a claim. (Doc. No. 18-1 at 10.) Defendants further seek to dismiss Plaintiffs' first and third claims

on the basis of qualified immunity. (*Id.*) Defendants also seek dismissal of claim 4 (*Monell*) against the County. The Court will address each of these arguments in turn.

A. Claims Against Deputy Garcia

Plaintiffs bring three claims under 42 U.S.C. § 1983—the first for excessive force, the second for denial of medical care, and the third for interference with familial relationship—against Deputy Garcia and Doe Defendants. (*See generally* Compl.)

To state a claim under Section 1983, a plaintiff must allege both that (1) the defendant was acting under color of state law at the time the complained of act was committed, and (2) the defendant's conduct deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States. *See Jensen v. City of Oxnard*, 145 F.3d 1078, 1082 (9th Cir. 1998). Under Section 1983, a defendant deprives another of a constitutional right if the defendant "does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that *causes* the deprivation of which [the plaintiff complains]." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). "The inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation." *Id.*

Additionally, Plaintiffs bring state law claims for wrongful death; violation of the California Bane Civil Rights Act ("Bane Act"), California Civil Code § 52.1; assault/battery; intentional infliction of emotional distress; and negligence against Garcia. (*See generally* Compl.)

1. Federal Claims

a. Claim 1: Excessive Force

Plaintiffs first bring a Section 1983 claim for excessive force in violation of the Fourth Amendment of the United States Constitution against Garcia, alleging he deprived Decedent of his right to be free from excessive force. (Compl. ¶ 56.) Defendants argue lethal force was reasonable as a matter of law because it was necessary to stop an imminent

threat of death or serious injury to Garcia, other deputies, and bystanders. (Doc. No. 18-1 at 15.)

To state a claim for excessive force, a plaintiff must establish that the defendants, acting under color of state law, violated their Fourth Amendment rights by using unreasonably excessive force during arrest. *See Graham v. Connor*, 490 U.S. 386, 396 (1989). However, a plaintiff's Fourth Amendment rights are not violated if the use of force is "objectively reasonable" that is, the force used was necessary "in light of the facts and circumstances confronting [the officers], without regard to their underlying intent or motivation." *Id.* at 397. Courts should consider the "facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985)).

Here, Plaintiffs allege Garcia and deputies "pulled onto Decedent's person attempting to remove Decedent from the car by physical force." (Compl. ¶ 24.) Decedent then put the SUV into reverse, knocking Garcia and another deputy to the ground. (*Id.* ¶ 25.) As Decedent shifted the SUV back into drive, "Garcia quickly got to his feet, drew his gun, and aimed directly at Decedent. Then, without warning, Defendant Garcia fired multiple gunshots at Decedent through the front windshield of the SUV." (*Id.*) Plaintiffs allege on information and belief that "Decedent became incapacitated by the hail of bullets and lost control of the SUV." (*Id.* ¶ 26.) When the SUV then rolled past Garcia, he "fired an additional ten (10) rounds, if not more, through the open driver side window, striking Decedent several more times." (*Id.* ¶ 27.) The SUV then continued rolling forward until it collided with a parked car and stopped moving. (*Id.*) Decedent was unarmed at all relevant times.

Defendants' argument regarding the reasonableness of the officers' conduct pertains to the merits of Plaintiffs' claim and not the sufficiency of their Complaint. The substantive merit of the Complaint or cause of action is not a relevant inquiry in the context of a

dismissal motion. *See Walker v. City of Fresno*, No. 1:09-cv-1667-OWW-SKO, 2010 WL 3341861, at *4 (E.D. Cal. Aug. 23, 2010). Reasonableness is additionally an issue of fact. *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir. 1984) (the judgment of reasonableness in Section 1983 actions against police which are predicated on Fourth Amendment violations is a question of fact for the jury); *Pearson v. City of San Diego*, No.: 18cv56-MMA (JMA), 2018 WL 2011040, at *3 (S.D. Cal. Apr. 30, 2018) (same). While Defendants may be entitled to summary judgment as to their argument that Defendants' conduct was "reasonable" or "justified" at a later stage of the litigation, a Motion to Dismiss is not the appropriate procedural vehicle to test the merits of Plaintiffs' Complaint and the claims asserted therein. *See Navarro*, 250 F.3d at 732 (motion to dismiss is concerned with a claim's sufficiency rather than its substantive merits).

Plaintiffs have set forth sufficient factual allegations that the lethal force used was objectively unreasonable. Accordingly, the Court **DENIES** Defendants' motion to dismiss Plaintiffs' claim for a Fourth Amendment violation.

b. Claim 2: Denial of Medical Care

Plaintiffs bring a second Section 1983 claim for denial of medical care against Garcia. Defendants argue Plaintiffs' medical aid claims must be analyzed under the Fourth Amendment reasonableness standard, but Plaintiffs have brought this claim under the Fourteenth Amendment, which does not apply. (Doc. No. 18-1 at 16.) Defendants further assert Plaintiffs should not be granted leave to amend this claim because deputies called for an ambulance and rendered CPR, even though Decedent had expired during the shooting. (*Id.* at 17.)

Claims for the denial of medical assistance after an arrest are analyzed under the Fourth Amendment. *Tatum v. City & Cnty. of San Francisco*, 441 F.3d 1090, 1098–99 (9th Cir. 2006). Officers must provide objectively reasonable post-arrest care to an apprehended suspect. *Id.* "The Ninth Circuit has not precisely defined the contours of what it means to provide 'objectively reasonable post-arrest care.'" *Henriquez v. City of Bell*, CV 14-196-GW(SSx), 2015 WL 13357606, at *6 (C.D. Cal. Apr. 16, 2015) (citation omitted).

However, the Fourth Amendment analysis generally concerns whether the defendant's conduct was reasonable under the totality of the circumstances, viewed from the perspective of a reasonable person on the scene. *See Plumhoff v. Rickard*, 572 U.S. 765, 774–75 (2014); *Tatum*, 441 F.3d at 1098 ("Just as the Fourth Amendment does not require a police officer to use the least intrusive method of arrest, neither does it require an officer to provide what hindsight reveals to be the most effective medical care for an arrested suspect.") (citations omitted). Typically, an arresting officer who "promptly summons the necessary medical assistance has acted reasonably for purposes of the Fourth Amendment." *Tatum*, 441 F.3d at 1099.

Here, Plaintiffs fail to provide any factual allegations in support of this claim and thus fail to adequately state a claim. Thus, the Court **GRANTS** Defendants' motion to dismiss Plaintiffs' second claim **WITH LEAVE TO AMEND**.

c. Claim 3: Interference with Familial Relationship

Plaintiffs bring a Section 1983 claim for interference with familial relationship against Garcia. Plaintiffs allege Garcia caused Decedent's death, depriving Plaintiffs Jose and Rosaura Corrales of their parent-child relationship (as Decedent's parents), Plaintiff Heidi Gonzalez of her husband-wife relationship, and Plaintiffs Z.C. and C.C. of their parent-child relationship (as Decedent's children). (Compl. ¶¶ 80–90.)

"It is well established that a parent has a fundamental liberty interest in the companionship and society of his or her child and that the state's interference with that liberty interest without due process of law is remediable under 42 U.S.C. § 1983." *Lee v. City of Los Angeles*, 250 F.3d 668, 685 (9th Cir. 2001) (internal citations, quotations, and alterations omitted). To plead such a substantive due process claim requires a plaintiff to allege the liberty deprivation was caused by the government "in such a way that 'shocks the conscience' or 'interferes with rights implicit in the concept of ordered liberty.'" *Nunez v. City of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)); *see also Luis v. Cnty. of San Diego*, No. 318-cv-0246-CAB-(JMA), 2018 WL 1920323, at *6 (S.D. Cal. Apr. 24, 2018) ("As the Ninth Circuit has

explained, conduct that 'shocks that conscience' is that which 'either consciously or through complete indifference disregards the risk of an unjustified deprivation of liberty.'") (citation omitted).

Defendants argue Plaintiffs fail to state a claim because Garcia's conduct does not "shock the conscience." (Doc. No. 18-1 at 18.) To determine whether the alleged actions shock the conscience, a court must first ask "whether the circumstances are such that actual deliberation is practical." *Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008) (quoting *Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 372 (9th Cir. 1998) (internal quotation marks omitted)). If the situation's circumstances allow for actual deliberation, the defendant's "deliberate indifference" may suffice to shock the conscience. *Id.* Conversely, where the situation requires the defendant to make repeated snap judgments in response to an escalating situation, the defendant must have acted with a purpose to harm unrelated to legitimate law enforcement objectives in order to shock the conscience. *Id.* at 1140. "The 'purpose to harm' standard applies when the official 'encounters fast paced circumstances presenting competing public safety obligations,' such as when police officers are in high speed car chases or situations with active shooters." *Dees v. Cnty. of San Diego*, No. 314-cv-0189-BEN-DHB, 2017 WL 168569, at *3 (S.D. Cal. Jan. 17, 2017) (quoting *Porter*, 546 F.3d at 1139).

Defendants argue the "purpose to harm" standard should apply because "the facts in the complaint describe a rapidly evolving set of facts" and the "entire time for all the following events is 10 seconds: decedent reversed the car, dragging and knocking over the deputies, Garcia stood up, the decedent began driving forward again, and the shots are fired." (Doc. No. 18-1 at 19.)

The Complaint alleges Garcia acted both "with deliberate indifference" and "with purpose to inflict harm." (Compl. ¶ 86); *see Gibson v. Las Vegas Metro. Police Dep't*, No. 2:12–cv–00900–GMN–CWH, 2013 WL 876291, at *3 (D. Nev. Mar. 7, 2013) ("to successfully plead a violation of [plaintiff's] fundamental right to familial association under the Fourteenth Amendment, Plaintiff may plead either or both standards").

Here, application of the purpose-to-harm standard is clearly appropriate. Within a matter of seconds, the situation evolved from an attempt to physically remove Decedent from the car to a situation involving an accelerating vehicle in close proximity to officers on foot. Taking the factual allegations as true and making all reasonable inferences, Plaintiffs fail to sufficiently allege that Garcia's shooting of the Decedent was with a purpose to harm unrelated to legitimate law enforcement objectives, in light of the fact they allege the Decedent's vehicle was in motion when Garcia shot at Decedent. However, because it is not clear from the pleadings that Plaintiffs cannot cure the deficiencies identified above, the Court **DISMISSES** this claim **WITH LEAVE TO AMEND**.

d. Qualified Immunity

Defendants also seek dismissal of Plaintiffs' first and third Section 1983 claims based on qualified immunity. "In determining whether an officer is entitled to qualified immunity, [courts] consider (1) whether there has been a violation of a constitutional right; and (2) whether that right was clearly established at the time of the officer's alleged misconduct." *Lal v. California*, 746 F.3d 1112, 1116 (9th Cir. 2014) (citing *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). Courts may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson*, 555 U.S. at 236. If either prong is dispositive, the court need not analyze the other prong. *See id.* at 239.

At this time, the Court only analyzes Garcia's entitlement to qualified immunity for those claims Plaintiffs have adequately pled, as it is not clear there has been a violation of a constitutional right as to the other claims. *See Beattie v. Armenta*, No. 14cv02310 WQH(RBB), 2015 WL 10319088, at *10 (S.D. Cal. July 27, 2015) (finding that discussion of qualified immunity was premature for claims dismissed with leave to amend).

A right is clearly established if "the law was 'sufficiently clear' that every 'reasonable official would understand that what he is doing' is unlawful." *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). "The Supreme Court has 'repeatedly . . . stressed the importance of resolving

immunity questions at the earliest possible stage in litigation." *Dunn v. Castro*, 621 F.3d 1196, 1199 (9th Cir. 2010) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)). However, the Ninth Circuit has found that "[d]etermining claims of qualified immunity at the motion-to-dismiss stage raises special problems for legal decision making." *Keates v. Koile*, 883 F.3d 1228, 1234 (9th Cir. 2018). "When, as here, defendants assert qualified immunity in a motion to dismiss under Rule 12(b)(6), dismissal is not appropriate unless we can determine, based on the complaint itself, that qualified immunity applies." *O'Brien v. Welty*, 818 F.3d 920, 936 (9th Cir. 2016) (internal citation and quotation marks omitted).

Here, the Court has found Plaintiffs have alleged plausible allegations sufficient to state a Fourth Amendment excessive force claim. Therefore, it would be premature for the Court to find that Defendants are entitled to qualified immunity at this stage under the first prong of a qualified immunity analysis. *See id.* "Once an evidentiary record has been developed through discovery, defendants will be free to move for summary judgment based on qualified immunity." *Id.*

2. State Claim: California's Bane Act

California's Bane Act, California Civil Code § 52.1, provides that a person "whose exercise or enjoyment" of constitutional rights has been interfered with "by threat, intimidation, or coercion" may bring a civil action for damages and injunctive relief. *Id.* The essence of such a claim is that "the defendant, by the specified improper means . . . tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or force the plaintiff to do something he or she was not required to do." *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860, 883 (2007). The elements of an excessive force claim under Section 52.1 are essentially the same as under Section 1983, *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1105 (9th Cir. 2014), though a Bane Act claim additionally requires a showing of "a specific intent to violate the arrestee's right to freedom from unreasonable seizure," *Reese v. Cnty. of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018) (citation omitted). "[R]eckless disregard for a person's constitutional rights is evidence of a specific intent to deprive that person of those rights." *Reese*, 888 F.3d at

1043 (quoting *United States v. Reese*, 2 F.3d 870, 885 (9th Cir. 1993)).

Furthermore, the Ninth Circuit specifically addressed a Bane Act claim based on excessive force in *Reese v. County of Sacramento*, and again clarified that the Bane Act does not "require[] coercion independent from the constitutional violation." 888 F.3d at 1045. Here, Plaintiffs have sufficiently pled an excessive force claim against Garcia. Accordingly, Defendants' motion to dismiss Plaintiffs' Bane Act claim is **DENIED**.

B. *Monell* Claim Against the County

Defendants assert Plaintiffs' *Monell* claim fails because it does not identify a specific widespread custom that caused the claimed violations. (Doc. No. 18-1 at 20.) Plaintiffs oppose, asserting the Complaint alleges sufficient facts to support an unconstitutional policy or practice, a failure to train law enforcement officers, and ratification. (Doc. No. 20 at 19.)

Cities, counties, and other local government entities are subject to claims under Section 1983. *Monell v. Dep't of Social Servs. of the City of New York*, 436 U.S. 658 (1978). While municipalities, their agencies and their supervisory personnel cannot be held liable under Section 1983 on any theory of respondeat superior or vicarious liability, they can, however, be held liable for deprivations of constitutional rights resulting from their formal policies or customs. *Id.* at 691–93. Liability only attaches where the municipality itself causes the constitutional violation through "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy . . . ." *Id.* at 694.

Three separate theories of *Monell* liability may be alleged against a municipality: (1) an unconstitutional policy, custom, or practice; (2) inadequate training; and/or (3) ratification. *See Rodriguez v. Cnty. of Los Angeles*, 891 F.3d 776, 802–03 (9th Cir. 2018). "First, a local government may be liable if 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflict[ed] the injury.'" *Id.* (quoting *Monell*, 436 U.S. at 694). "Second, a local government can fail to train employees in a manner that amounts to

'deliberate indifference' to a constitutional right, such that 'the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.'" *Id.* (quoting *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)). "Third, a local government may be held liable if 'the individual who committed the constitutional tort was an official with final policy-making authority or such an official ratified a subordinate's unconstitutional decision or action and the basis for it.'" *Id.* (quoting *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1097 (9th Cir. 2018)).

Plaintiffs allege *Monell* liability under all three theories: (1) an unconstitutional policy, custom, or practice, (2) inadequate training, and (3) ratification. (Compl. ¶¶ 93–102.) Defendants solely move to dismiss Plaintiffs' unconstitutional policy, custom, or practice theory of liability. (*See* Doc. No. 18-1 at 20 ("Plaintiffs have failed to allege facts to show the plausible existence of a policy, custom or practice that caused a violation of their rights.").)

To establish liability on the part of governmental entities based on an unconstitutional policy or custom, a plaintiff must allege "(1) that he possessed a constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this policy 'amounts to deliberate indifference' to the plaintiff's constitutional right; and (4) that the policy is the 'moving force behind the constitutional violation.'" *Oviatt By and Through Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting *City of Canton*, 489 U.S. at 389–91). Even if there is no formal or written official policy, a public entity may be liable for a "longstanding practice or custom which constitutes the standard operating procedure of the local government entity." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (quoting *Gillette v. Delmore*, 979 F.2d 1342, 1346–47 (9th Cir. 1992)). The custom or practice must "be so 'persistent and widespread' that it constitutes a 'permanent and well settled city policy.'" *Id.* (quoting *Monell*, 436 U.S. at 691). "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct

has become a traditional method of carrying out policy." *Id.*

Here, the Complaint alleges Decedent was subject to the unconstitutional use of excessive lethal force. Defendant County has a practice or custom of employing and retaining sheriff's deputies, detectives, and other personnel who have dangerous propensities for abusing their authority and mistreating citizens by failing to follow written policies, including the use of excessive and deadly force. (Compl. ¶ 96(a).) It has and maintains a policy, custom, or practice of detaining and arresting individuals without probable cause or reasonable suspicion, and unjustifiably uses excessive force, with deliberate indifference to individuals' rights, safety, and welfare. (*Id.* ¶ 96(f).) Decedent was severely harmed and lost his life as a result of these unconstitutional policies and practices. (*Id.* ¶ 97.)

Plaintiffs have not identified a formal policy of the County but appear to allege a practice or custom. (*See id.*) To allege a longstanding practice or custom which constitutes the standard operating procedure of a local government entity, Plaintiffs must allege more than a single, isolated incident. *See Meehan v. Los Angeles Cnty.*, 856 F.2d 102, 107 (9th Cir. 1988) (two incidents were insufficient to establish *Monell* custom); *see Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 935–36 (S.D. Cal. Dec. 23, 2022) (granting motion to dismiss *Monell* claim based on single instance of alleged unconstitutional conduct); *Lunn v. City of Los Angeles*, 629 F. Supp. 3d 1007, 1014 (C.D. Cal. Sept. 20, 2022) (granting motion to dismiss *Monell* claim based on policy, practice, or custom because the complaint only described one incident of unconstitutional activity which is not sufficient to impose liability under *Monell*). Here, because Plaintiffs only allege Decedent's single incident in support of the County's custom or practice, the Court **GRANTS** Defendants' motion to dismiss the *Monell* claim based on an unconstitutional practice or custom for failure to state a claim **WITH LEAVE TO AMEND**.

C. Doe Pleading

Lastly, Defendants move to dismiss Doe Defendants 1–25 and 26–50 on the grounds that Plaintiffs' allegations against the Does fail to meet federal pleading standards. (Doc.

No. 18-1 at 25.)

The Court is persuaded that Plaintiffs' allegations against the Doe Defendants could withstand a motion to dismiss as they "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Defendants rely on *Keavney v. County of San Diego*, No. 3:19cv1947-AJB-BGS, 2020 WL 4192286, at *4–5 (S.D. Cal. July 20, 2020), for the proposition that, to withstand a motion to dismiss, a plaintiff must allege specific facts regarding how each doe defendant violated his rights. *Id.* However, *Keavney* is distinguishable from this case as the court in that case *sua sponte* dismissed claims against doe defendants pursuant to *in forma pauperis* screening because plaintiff "fail[ed] to even minimally explain how any of the unidentified parties he seeks to sue personally caused a violation of his constitutional rights." *Keavney*, 2020 WL 4192286, at *4–5. Defendants also rely on *Cavanaugh v. County of San Diego*, No.: 3:18-cv-02557-BEN-LL, 2020 WL 6703592, at *25 & n.20 (S.D. Cal. Nov. 12, 2020), which also *sua sponte* dismissed Does 1 through 50. *Cavanaugh* is also distinguishable here, as the court noted "[g]iven two and a half years have passed and Plaintiffs have had three attempts to frame the complaint, it seems unlikely that Plaintiffs are still looking for unnamed defendants believed to have violated [the decedent]'s rights." *Cavanaugh*, 2020 WL 6703592, at *25.

Here, the Court finds Plaintiffs' groupings are descriptive enough to withstand a motion to dismiss. For example, Plaintiffs allege Doe Defendants 1–25 are sheriff's deputies and/or detectives for Defendant County who "proximately caused the injuries and damages by reason on negligent, careless, deliberately indifferent, intentional, or willful misconduct" "or by reason of direct or imputed negligence or vicarious fault or breach of duty arising out of the matters herein alleged." (Compl. ¶¶ 15, 96(c), (e).) Moreover, Plaintiffs assert Doe Defendants 26–50 are County Sheriff's Department supervisorial officers who were responsible for the training, supervision, and/or conduct of the deputies and/or agents involved in the conduct alleged. (*Id.* ¶¶ 16, 94.)

Accordingly, the Court **DENIES** Defendants' motion to dismiss Doe Defendants.

V. CONCLUSION

For the reasons set forth above, the Court **GRANTS IN PART AND DENIES IN PART** Defendants' motion to dismiss. No later than **Thursday, February 16, 2024**, Plaintiffs may file a first amended complaint which cures the pleading deficiencies identified in this Order. Defendants must file a responsive pleading no later than **March 1, 2024**.

IT IS SO ORDERED.

Dated: February 1, 2024

Hon. Anthony J. Battaglia
United States District Judge