

**TENTATIVE Order Regarding Motion to Dismiss**

Defendant City of Garden Grove (“Garden Grove”) filed a motion to dismiss the Complaint of Plaintiff Diecenia Chavez (“Diecenia Chavez”) and Plaintiff Rafael Chavez (“Rafael Chavez”) (together– “Plaintiffs”). Mot., Dkt. No. 13. Plaintiffs opposed the motion. See Opp’n, Dkt. No. 16. Garden Grove replied. See Reply, Dkt. No. 17.

For the following reasons, the Court **GRANTS in part and DENIES in part** the motion.

**I. BACKGROUND**

The following facts are alleged in Plaintiffs’ complaint.

Diecenia Chavez and Rafael Chavez are the natural mother and father of Rafael Chavez Franco (“Decedent”), and are suing in a representative capacity as successors-in-interest to Decedent. Compl. ¶ 2.

On or about August 22, 2019, Decedent was wrongfully shot and killed by Garden Grove police officers, Does 1 through 10, who unjustifiably used excessive deadly force. Id. ¶ 8. Westminster police officers, Does 1 through 10<sup>1</sup>, also “played an integral and fundamental role in Decedent’s wrongful shooting and killing.” Id.

The Police Officers were in pursuit of Decedent, who was driving a vehicle through Westminster, but the officers “never took steps to de-escalate the situation and instead shot a volley of gunfire without incitement or justification.” Id. After the gunfire, Decedent’s vehicle struck a block wall located behind a church in Westminster, and Decedent was later pronounced dead. Id. The Police Officers did not timely summon medical care for Decedent, which caused Decedent extreme physical and emotional pain and suffering. Id. ¶ 20.

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<sup>1</sup>The Complaint appears to refer to Does 1 through 10 as some combination of Garden Grove and Westminster police officers. For clarity, this Order will refer to Does 1 through 10 as the “Police Officers.”

Throughout these events, the Police Officers acted in concert to wrongfully shoot and kill Decedent as a result of Garden Grove and Westminster's negligent and inadequate training of their police departments. Id.

Prior to the shooting, the Police Officers did not give "any loud and adequate warning" to Decedent and shot and killed him without justification. Id. ¶ 9. Decedent was unarmed at the time he was shot and killed, and prior to the shooting there were no reports to or from the Garden Grove or Westminster Police Departments that Decedent had caused harm to any persons or property, or that Decedent presented an immediate threat of death or serious bodily injury to anyone. Id.

Plaintiffs allege that Garden Grove, Westminster, and their respective police departments were obligated to provide proper training to their police officers. Id. ¶ 10. Plaintiffs allege that the intentional and negligent conduct the Police Officers was a result of the negligent employment, negligent retention, negligent training, and negligent supervision of by Garden Grove and Westminster. Id. Specifically, Garden Grove and Westminster failed to train their police officers as to "proper police tactics, proper situational awareness, proper use of force, proper use of deadly force, and proper arrest procedures." Id. ¶ 11. Moreover, Garden Grove and Westminster failed to train the police officers to de-escalate situations with civilians so as to avoid the use of force and deadly force. Id. Garden Grove, Westminster, and the cities' respective police chiefs and other high ranking police officials failed to train the Police Officers in conformity with the Peace Officers Standards and Training (POST), and thereby ratified, condoned and acquiesced in the negligent or excessive use of force by the police officers. Id. ¶ 12. The failures in training were the proximate cause of the shooting of Decedent. Id. ¶ 13.

As a result of the above described conduct, Plaintiffs have suffered the loss of love, companionship, affection, comfort, care, society, training, guidance, and moral support of Decedent. Id. ¶ 21.

Plaintiffs bring nine causes of action: (1) a 42 U.S.C. §1983 claim pursuant to the Fourth Amendment for excessive force; (2) a 42 U.S.C. §1983 claim pursuant to the Fourteenth Amendment for interference with familial relations; (3) a 42 U.S.C. §1983 claim for violation of federal civil rights; (4) a 42 U.S.C. §1983 claim of municipal liability for ratification; (5) a 42 U.S.C. §1983 claim of municipal liability for failure to train; (6) a 42 U.S.C. §1983 claim of municipal

liability for unconstitutional custom or policy; (7) a battery (wrongful death) claim; (8) a negligence (wrongful death) claim; and (9) a claim for violation of the Bane Act (Cal. Civil Code § 52.1 and California common law). Id. ¶¶ 27–104.

Garden Grove moves to dismiss the first, second, and third claims with respect to the City, and moves to dismiss the second and third claims altogether for facial deficiency. See Mot, Dkt. No. 13, at 7–9.

## II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state “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). A claim has “facial plausibility” if the plaintiff pleads facts that “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal, 556 U.S. at 678. Nor must the Court “accept as true a legal conclusion couched as a factual allegation.” Id. at 678–80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must “determine whether they plausibly give rise to an entitlement to relief.” Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” Id.

## III. DISCUSSION

### A. The First, Second, and Third Claims with Respect to Garden Grove

Garden Grove first argues that Plaintiffs’ first, second, and third claims, all of which are brought under 42 U.S.C. §1983, should be dismissed with respect to the City of Garden Grove. See Mot, Dkt. No. 13, at 7. Specifically, Garden Grove argues that a public entity cannot be held liable under a *respondeat superior* theory

of liability for the wrongdoings of its employees. Id. Instead, Garden Grove argues, for a claim against a public entity to be sufficient, a plaintiff must plead an existing unconstitutional policy and a causal connection between that policy and the alleged constitutional deprivation. Id. at 8.

Garden Grove is correct. “Pursuant to 42 U.S.C. § 1983, a local government may be liable for constitutional torts committed by its officials according to municipal policy, practice, or custom.” Weiner v. San Diego Cnty., 210 F.3d 1025, 1028 (9th Cir. 2000) (citing Monell v. Dep’t of Social Servs. of N.Y., 436 U.S. 658, 690–91 (1978)). The Ninth Circuit has delineated this standard into four requirements that a plaintiff must show to impose municipal liability under § 1983: “(1) that the plaintiff possessed a constitutional right of which she 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.” Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997) (alterations and internal quotation marks omitted); see also City of Canton v. Harris, 489 U.S. 378, 388–89 (1989). Under a ratification theory “the plaintiff may prove that an official with final policy-making authority ratified a subordinate’s unconstitutional decision or action and the basis for it.” Gillette v. Delmore, 979 F.2d 1342, 1346–47 (9th Cir. 1992) (per curiam) (citing City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988)). Alternatively, liability may be based on a policy, practice or custom of omission amounting to deliberate indifference. Gibson v. Cnty. of Washoe, Nev., 290 F.3d 1175 (9th Cir. 2002).

In their complaint, Plaintiffs purport to bring their first three causes of action against “all Defendants.” See Compl. ¶¶ 27, 35, 42. However, in their opposition to Garden Grove’s motion to dismiss, Plaintiffs state that they are not seeking Monell liability with respect to the first, second, or third cause of action. See Opp’n, Dkt. No. 16, at 2. As such, Plaintiffs appear to willingly abandon these claims. Moreover, as Garden Grove notes, Plaintiffs failed in their Complaint to allege the requisite municipal policy, practice, or custom that might give rise to Monell liability.

Accordingly, the Court **GRANTS** Garden Grove’s motion to dismiss Plaintiff’s first, second, and third causes of action as they apply to the City of Garden Grove, with prejudice.

## B. The Second and Third Claims

Garden Grove next argues that the second and third causes of action are facially deficient. See Mot, Dkt. No. 13, at 8. Specifically, Garden Grove contends that Plaintiffs allege insufficient facts to support their due process claims because conduct must “shock the conscience” in order to give rise to Fourteenth Amendment liability, and Plaintiffs’ alleged facts do not suggest behavior that rises to this level. Id. In response, Plaintiffs argue that official conduct that deprives a family member of the society and companionship of another does shock the conscience. Opp’n, Dkt. No. 16, at 4.

To prevail on a Fourteenth Amendment substantive due process claim, the plaintiff must show that: (1) the government deprived the plaintiff of “life, liberty, or property;” and (2) the government’s behavior shocks the conscience. Brittain v. Hansen, 451 F.3d 982, 991 (9th Cir. 2006). “The Ninth Circuit recognizes that a parent has a constitutionally protected liberty interest under the Fourteenth Amendment in the companionship and society of his or her child.” Curnow v. Ridgecrest Police, 952 F.2d 321, 325 (9th Cir. 1991).

Garden Grove argues that the Police Officers in this case made a snap judgment based on an escalating situation, and that accordingly their conduct can only shock the conscious if it is found that they acted with a purpose to harm unrelated to law enforcement objectives. Mot, Dkt. No. 13, at 9. Plaintiffs counter that the “purpose to harm” standard can be met where it is shown that the Police Officers intended to inflict force beyond what was necessary for legitimate law enforcement purposes. Opp’n, Dkt. No. 16, at 4.

“To determine whether the use of force was objectively reasonable, the court balances the ‘nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.’” Vos v. City of Newport Beach, 892 F.3d 1024, 1030 (9th Cir. 2018) cert. denied sub nom. City of Newport Beach v. Vos, 139 S. Ct. 2613 (quoting Graham v. Connor, 490 U.S. 386, 396 (1989)). “The use of deadly force implicates the highest level of Fourth Amendment interests both because the suspect has a ‘fundamental interest in his own life’ and because such force ‘frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment.’” Id. at 1031 (quoting A.K.H. ex rel. Landeros v. City of Tustin, 837 F.3d 1005, 1011 (9th Cir. 2016)).

Here, Plaintiffs allege that the Police Officers used unjustifiable and excessive force on Decedent that resulted in his death. Compl. ¶ 8. Plaintiffs have alleged that Decedent was unarmed at the time he was shot, and that he was posing no risk to the safety of the officers or anyone else. Id. ¶ 9. Furthermore, Plaintiffs have alleged that the Police Officers took no steps to de-escalate the situation and that they shot at Decedent without warning or incitement. Id. ¶ 8. At this stage, Plaintiffs must merely plead sufficient facts to plausibly support an inference that the Police Officers' use of force, allegedly resulting in Decedent's death, greatly intruded upon Plaintiffs' constitutional interests. Plaintiffs has met this burden. Whether the force was in fact reasonable need not and cannot be answered at this stage.

Thus, the Court finds that Plaintiffs have stated claims under the Fourth and Fourteenth Amendments that are plausibly entitled to relief. Accordingly, the Court **DENIES** the motion as to second and third causes of action against the Police Officers.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court **GRANTS in part and DENIES in part** the motion.

#### **IT IS SO ORDERED.**

**Effective immediately all oral arguments are VACATED. The Court will continue to post tentatives in the afternoon of the Court day prior to the scheduled hearing (e.g., Friday afternoon for Monday hearings). Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. the day following the scheduled hearing (e.g., Tuesday 5:00 p.m. for a Monday hearing) stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted. The Court asks for the parties' understanding and patience in these difficult times.**