John T. Masterson, Bar #007447
Ashley E. Caballero-Daltrey, Bar #036449
JONES, SKELTON & HOCHULI P.L.C.
40 N. Central Avenue, Suite 2700
Phoenix, Arizona 85004
Telephone: (602) 263-7331
Fax: (602) 200-7846
jmasterson@jshfirm.com
adaltrey@jshfirm.com

Attorneys for Defendants City of Phoenix, Bobbi Cozad, Oscar Jimenez, Brett Lingenfelter, Alonso Lopez, Roszell Mosley, Todd Stevens, and Andrew Williams

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Laura Gonzalez, individually and on behalf of the statutory beneficiaries of Ramon Timothy Lopez, and in her capacity as the Personal Representative of the Estate of Ramon Timothy Lopez,

Plaintiffs,

v.

City of Phoenix, a municipality; Bobbi Cozad, an individual; Oscar Jimenez, an individual; Brett Lingenfelter, an individual; Alonso Lopez, an individual; Roszell Mosley, an individual; Todd Stevens, an individual; and Andrew Williams, an individual,

Defendants.

No. 2:21-cv-01340-MTL-DMF

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants City of Phoenix, Bobbi Cozad, Oscar Jimenez, Brett Lingenfelter, Alonso Lopez, Roszell Mosley, Todd Stevens, and Andrew Williams, pursuant to Fed. R. Civ. P. 56, move for summary judgment on all of Plaintiffs' claims.

This case arises out of an interaction between decedent Ramon "Timothy" Lopez and City of Phoenix Police Department Officers on August 4, 2020. On that day, City of Phoenix Police Officers received reports of a man acting erratically, looking into vehicles,

and grabbing his genitals. Officers located Lopez in the area reported and he matched the description of the suspect. When the officers approached Lopez to look into the reports, Lopez ran away. Seconds later, Lopez ran into a liquor store. As an officer approached the door to the store, Lopez ran out and threw a stolen drink on the officer. He then, and again, ran away. The officer who had been assaulted ran after him. Lopez ran into and out of the busy street while the officer followed. Lopez was eventually apprehended in the middle of the street and he continued to vigorously resist arrest and the officer's attempts to handcuff him. Other officers arrived on the scene and Lopez still continued to struggle and resist efforts to control and handcuff him. Lopez resisted with a "superhuman strength" that is consistent with the massive amount of methamphetamine found in his blood after the incident.

The officers called for the fire department because they were concerned that Lopez was on drugs. Once the officers had finally handcuffed Lopez, they placed him in a police vehicle and moved him across the street to a nearby parking lot, out of the busy street and into the shade. When they pulled him from the vehicle, he was still breathing but was unresponsive.

As set forth below, Defendants are entitled to summary judgment on all of Plaintiffs' claims. Their uses of force were objectively reasonable, but even if they were not, the officers are entitled to qualified immunity. Plaintiffs' claims against the City of Phoenix fail because there is no evidence in the record of unconstitutional practices, customs, or policies. This Motion is supported by Defendants' Separate Statement of Facts ("DSOF"), and attachments thereto, which are incorporated by reference.

I. RELEVANT FACTUAL BACKGROUND

A. Officers Arrive On Scene After Reports Of Man Acting Erratically.[1]

On August 4, 2020, Officers Stevens, Williams, and Mosley responded to a call that a man was acting erratically and staring through windows of locked cars while grabbing

[1] To the extent Plaintiff offers any testimony that contradicts what is plainly viewed on the body cameras in the record, it cannot create any issue of material fact. *See Scott v. Harris*,

his genitals. **[DSOF ¶ 1.]** Once at the scene, the Officers watched as Ramon "Timothy" Lopez emptied the contents of a wallet and threw the wallet on the ground. **[DSOF ¶ 2.]** They did not know whether he had stolen the wallet, but they were concerned, based on his behavior and the earlier report, that he might have. **[DSOF ¶ 3.]** Officer Stevens approached Lopez in his patrol car and asked him what he was doing. **[DSOF ¶ 4.]** Lopez acted erratically and began running between vehicles, and Stevens followed slowly in his vehicle. **[DSOF ¶ 5.]** At one point, Lopez ran into a short wall and fell down. **[DSOF ¶ 6.]** After he got up, Lopez ran through traffic and across the street to a liquor store. **[DSOF ¶ 7.]** Given his actions, officers believed that Lopez was high, possibly on methamphetamines. **[DSOF ¶ 8.]**

B. <u>After Attempting a Consensual Encounter and Failing, Officer Stevens Takes Lopez Down.</u>

Lopez next entered the liquor store and Officer Stevens followed and exited his vehicle. **[DSOF ¶ 9.]** Lopez quickly left the liquor store with a drink in hand. **[DSOF ¶ 10.]** When he saw Officer Stevens, Lopez threw the drink on him and started running away. **[DSOF ¶ 11.]** Officer Stevens followed. **[DSOF ¶ 12.]** Officer Stevens told Lopez to stop running. **[DSOF ¶ 13.]** Lopez *continued* to throw the contents of his drink at Officer Stevens. **[DSOF ¶ 14.]** Officer Stevens believed this was intentional. **[DSOF ¶ 15.]**

As Lopez was running into traffic for the second time during their foot chase, Officer Stevens reached out to grab onto Lopez and fell to his knees, which brought Lopez to the ground on his back. **[DSOF ¶ 16.]** Officer Stevens and Lopez were in the middle of a very busy street. **[DSOF ¶ 17.]** Officers Williams and Mosley caught up with Lopez and Officer Stevens in the middle of the street. **[DSOF ¶ 18.]** Officer Stevens took a moment

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550 U.S. 372, 380–81 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."); *see also Spencer v. Pew*, No. CV 20-00385-PHX-DGC (CDB), 2021 WL 927661, at *5 (D. Ariz. Mar. 11, 2021) (finding, based on video evidence, that suspect had resisted arrest despite testimony otherwise).

to catch his breath once they arrived. **[DSOF ¶ 19.]** He called for backup while Officers Williams and Mosley held Lopez. **[DSOF ¶ 20.]**

C. Officers Restrain Lopez While He Resists Arrest.

Lopez continued to resist arrest by tensing up, swinging his arms, and trying to kick as officers attempted to handcuff him. **[DSOF ¶ 21.]** The officers' body worn cameras captured part of the struggle between them and Lopez once he was on the ground. **[DSOF ¶ 22.]** Lopez can be seen resisting the officers and holding onto the contents of the wallet he had thrown away, keeping them out of officers' hands. **[DSOF ¶ 23.]** Officer Williams had to take Lopez's arm and hold it to control him as he struggled. **[DSOF ¶ 24.]** Officer Mosley held on to Lopez's other arm. **[DSOF ¶ 25.]** An officer can be heard saying "he'll try and bite you." **[DSOF ¶ 26.]**

Officers moved Lopez to a seated position so that they could handcuff him with his hands behind his back, which Lopez resisted. **[DSOF ¶ 27.]** Officer Mosley said, "chill, chill." **[DSOF ¶ 28.]** Officer Mosley warned him that he would tase him if he did not comply. **[DSOF ¶ 29.]** Lopez kicked Officer Stevens during the struggle. **[DSOF ¶ 30.]** Officer Stevens believed that the kick was intentional. **[DSOF ¶ 31.]** Officer Williams radioed for additional officers to block the street, because traffic was still moving around them during the struggle. **[DSOF ¶ 32.]**

Officer Stevens then calmly told Lopez "roll over, roll over man, roll over, roll over." **[DSOF ¶ 33.]** Lopez did not comply. **[DSOF ¶ 34.]** Officers worked together to flip him over. **[DSOF ¶ 35.]** They spoke calmly as they coordinated their efforts and put Lopez facedown on the pavement. **[DSOF ¶ 36.]** Once he was flipped, officers were finally able to handcuff him. **[DSOF ¶ 37.]**[2] After handcuffing him, Officer Stevens placed Lopez in a recovery position by holding up his upper body. **[DSOF ¶ 39.]** Lopez was continuing

[2] It appears from the video that Officer Stevens put his handcuffs on Lopez but the video is not clear. **[DSOF ¶ 38.]**

to struggle and Officer Stevens asked if anyone had a RIPP restraint.[3] **[DSOF ¶ 40.]** Lopez tried to kick and move while Officer Williams was holding him and would move his legs if they were not held down. **[DSOF ¶ 44.]** Officer Stevens told Lopez he had to relax. **[DSOF ¶ 45.]**

Several officers—including Officers Lopez, Cozad, Jimenez, and Lingenfelter—arrived on scene in response to the call for back up. **[DSOF ¶ 46.]** Officer Jimenez arrived with a RIPP restraint and Officer Stevens stepped back. **[DSOF ¶ 47.]**

While officers were waiting to apply the RIPP restraint, Officer Mosley held Lopez down for approximately 80 seconds using his knee for control. **[DSOF ¶ 48.]** From the video, it appears that one of his legs was on Lopez's leg. **[DSOF ¶ 49.]** Lopez was continuing to kick and resisting arrest. **[DSOF ¶ 50.]** Officer Mosley did not place all of his weight on Lopez. **[DSOF ¶ 51.]** At the same time, Officer Stevens held Lopez in a recovery position. **[DSOF ¶ 52.]**

D. Officers Apply the RIPP Restraint As Lopez Continues To Resist.

Several officers assisted in putting the RIPP restraint on Lopez. **[DSOF ¶ 53.]** Officers were unable to properly buckle the restraint to the handcuffs because Lopez kept grabbing onto it and was trying to kick. **[DSOF ¶ 54.]** Multiple officers instructed Lopez not to grab onto the strap. **[DSOF ¶ 55.]** Officer Jimenez ultimately clipped the restraint back on the strap around Lopez's ankles. **[DSOF ¶ 56.]** Officers' body worn camera shows that there was still significant space between Lopez's wrists and ankles and, thus, Lopez was not "hogtied." **[DSOF ¶ 57.]** Officer Jimenez later testified that he needed to get Lopez out of the street quickly because of all of the traffic and the danger to Lopez and the officers. **[DSOF ¶ 58.]** While they were applying the RIPP restraint, Mosley used pressure from his

[3] A RIPP restraint is used to subdue a suspect who is resisting arrest and kicking. **[DSOF ¶ 41.]** The suspect's ankles are crossed and placed into the restraint. **[DSOF ¶ 42.]** A long strap is then connected from the suspect's ankles to the suspect's wrists and attached to the handcuffs with a clip. **[DSOF ¶ 43.]**

knees on Lopez's lower back and leg to try and control him, which lasted no longer than 47 seconds. **[DSOF ¶ 59.]** Lopez was not struggling to breathe while Officer Mosley was controlling him. **[DSOF ¶ 60.]**

Around the same time as the RIPP restraint was being applied, Officer Cozad asked for someone to call for fire because she was concerned that Lopez was on drugs. **[DSOF ¶ 61.]** Officer Williams made the call. **[DSOF ¶ 62.]**

E. Officers Move Lopez To A Nearby Parking Lot To Get Him Out of the Street and Into the Shade.

Officer Cozad suggested that they move Lopez to a nearby Walgreens' parking lot to get him out of the street into the shade while they waited for the fire department to arrive. **[DSOF ¶ 63.]** The takedown had happened in the middle of a busy street and traffic was still flowing around everyone in both directions. **[DSOF ¶ 64.]** Lopez continued to kick and try to grab anything he could and would not cooperate with officers. **[DSOF ¶ 65.]** Officers sought to get Lopez to walk, at first, but he did not do so. **[DSOF ¶ 66.]**[4] Officers told Lopez to "sit up, buddy" and "sit up man, relax," and tried to pull him to his feet. **[DSOF ¶ 68.]**

Lopez did not cooperate, and the officers decided to lift Lopez up and carry him to the back of Officer Lopez's Tahoe. **[DSOF ¶ 69.]** Lopez kicked Officer Mosley in the chest while they were moving him into the Tahoe. **[DSOF ¶ 70.]** Officer Lingenfelter helped guide Lopez's head, turning his head to the side so that he could breathe. **[DSOF ¶ 71.]** Officer Lingenfelter later testified that Lopez was placed face down because he was acting limp at that point and if he had been placed on his side, he could have rolled off into the foot area of the car and officers were concerned about his balance. **[DSOF ¶ 72.]** The air conditioning was on and working in the Tahoe. **[DSOF ¶ 73.]** Officers Lopez and Cozad

[4] It is possible for an individual restrained with a RIPP restraint to walk. **[DSOF ¶ 67.]**

then drove to the Walgreens' parking lot. **[DSOF ¶ 74.]** The drive took a little over a minute. **[DSOF ¶ 75.]**

F. Officers Attempt To Get A Response From Lopez And Remove Him From the Vehicle.

When they arrived at Walgreens, Officers Lopez and Cozad checked on Lopez. **[DSOF ¶ 76.]** He was breathing, but he appeared less alert than before. **[DSOF ¶ 77.]** Officer Cozad later testified that suspects will sometimes appear to be unresponsive in the back of vehicles so that they are not removed. **[DSOF ¶ 78.]** Officers Cozad and Lopez removed Timothy Lopez from the vehicle and spoke to him. **[DSOF ¶ 79.]** Office Lopez used a sternum rub to try and get a response. **[DSOF ¶ 80.]** Lopez made noise in response. **[DSOF ¶ 81.]** Officers Lopez and Cozad removed the RIPP restraint. **[DSOF ¶ 82.]** Officer Lopez attempted another sternum nub. **[DSOF ¶ 83.]** Lopez was still breathing. **[DSOF ¶ 84.]** Officers then sat him up against the Tahoe and Officer Cozad poured water on Lopez's head to cool him down. **[DSOF ¶ 85.]** The fire department arrived minutes later and gave Lopez prompt medical attention. **[DSOF ¶ 86.]** Only six minutes passed between the time that Lopez was handcuffed until the RIPP restraint was removed. **[DSOF ¶ 87.]** Lopez was transported and declared dead at the hospital. **[DSOF ¶ 88.]** A toxicology report revealed large amounts of methamphetamine in his blood. **[DSOF ¶ 89.]**

G. The City's Hiring, Training, Supervision, And Retention of The Individual Defendants.

Prior to being hired by the City, the officers involved had never been disciplined for use of force in any other circumstance. **[DSOF ¶ 90.]** The officers disclosed all pertinent employment and personal history information to the City of Phoenix. **[DSOF ¶ 91.]** Furthermore, all officers have direct supervision from a higher-ranked officer and receive yearly reviews and evaluations. **[DSOF ¶ 92.]**

The City of Phoenix Police Department has a variety of policies relating to administrative action, training, and discipline. **[DSOF ¶ 93.]** This includes policies on use of

force, restraining suspects, transporting restrained suspects, and the potential of positional asphyxia. **[DSOF ¶ 94.]**

The officers received training on these policies and were certified by AZPOST. **[DSOF ¶ 95.]** Office Lingenfelter had been investigated for use of force in one previous instance. **[DSOF ¶ 96.]** None of the other officers had any relevant use of force issues or discipline prior to the incident. **[DSOF ¶ 97.]**

II. PLAINTIFFS' FOURTH AMENDMENT UNLAWFUL SEIZURE CLAIM FAILS AS A MATTER OF LAW.[5]

A. Officers Had Probable Cause To Detain Lopez, Who Had Been Acting Erratically, Assaulted An Officer, and Ran Into Traffic.

Probable cause to arrest or detain is an absolute defense to any § 1983 claim against police officers for wrongful seizure. *Hutchinson v. Grant*, 796 F.2d 288, 290 (9th Cir. 1986); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998); *see also Hart v. Parks*, 450 F.3d 1059, 1065–66 (9th Cir. 2006) ("Probable cause exists when the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the plaintiff had committed or was committing an offense." (cleaned up)). Probable cause for any criminal offense is enough, regardless of the stated reasons for an arrest. *Edgerly v. City & County of San Francisco*, 599 F.3d 946, 954 (9th Cir. 2010).

Here, officers had probable cause to arrest Lopez.[6] Officers Stevens, Williams, and Mosley arrived on a scene after a call that a man was acting erratically, peering into cars,

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[5] Plaintiffs' Complaint brings a single count which alleges violations of Lopez's Fourth Amendment rights against unlawful seizures, false arrest, and the use of excessive force. A Fourth Amendment excessive force claim, which is analyzed under the *Graham* factors, must be separately analyzed from Plaintiffs' Fourth Amendment seizure claim. *See Velazquez v. City of Long Beach*, 793 F.3d 1010, 1024 (9th Cir. 2015). Thus, even in the event the Court finds that the seizure was improper (which it was not), the reasonableness of the force used is independent of whether the seizure itself was proper and should be adjudicated pursuant to the applicable *Graham* standards set forth below.

[6] Officer Stevens seized Lopez. Officers Cozad, Jimenez, Lingenfelter, and Lopez did not arrive until Timothy Lopez was detained. Plaintiffs have alleged, however, that all officers were involved in Lopez's arrest. These arguments apply equally to all officers, because under

and scratching his genitals. Officers did not initially arrest Lopez. They watched him to see if he was acting strangely, as the caller had stated. Lopez acted erratically while officers observed him. He removed the contents of a wallet, threw the wallet down, and then ran away from officers between vehicles. Officer Stevens attempted a consensual encounter, but Lopez did not respond and, instead, ran into traffic on a very busy road, posing a danger to himself and others in a violation of Ariz. Rev. Stat. § 28-793. *See also State v. Davenport*, No. 2 CA-CR 2019-0096, 2019 WL 6359624, at *2 (Ariz. Ct. App. Nov. 27, 2019) (explaining that an officer may make an arrest for jaywalking, which is a traffic violation under Arizona law). Officers had probable cause to arrest Lopez at that point.[7] *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.").

Officer Stevens followed Lopez to a liquor store, and Lopez ran into the store and then ran out quickly with a stolen bottle. Officers Stevens thus additionally had probable cause to believe that Lopez had stolen the bottle given how quickly he ran into and out of the store. Furthermore, running from an officer during a pursuit is a violation of Arizona law. *See* Ariz. Rev. Stat. § 13-2508. Also, Lopez threw liquid from his bottle on Officer Stevens twice and ran into traffic again. Officer Stevens had probable cause to arrest Lopez for assault on an officer because he was throwing the liquid on him. Ariz. Rev. Stat. §§ 13-1203, 13-1204, 13-2508. As officers were handcuffing Lopez, he was pulling away, grabbing onto the RIPP restraint, and trying to kick, which all constitute resisting arrest in violation of Arizona law.

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the collective knowledge doctrine if one officer has probable cause to seize a suspect, all officers have probable cause. *See United States v. Ramirez*, 473 F.3d 1026, 1032–33 (9th Cir. 2007).

[7] The officers arguably had probable cause to arrest Lopez based on his behavior with the wallet and the call saying he was looking into vehicles. They certainly had reasonable suspicion to conduct a *Terry* stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). But as described in more detail below, Officers Stevens did not seize Lopez until *after* he witnessed multiple criminal actions.

Ariz. Rev. Stat. § 13-2508. Finally, given Lopez's erratic behavior, a reasonable officer could have believed (and indeed, the officers all testified that they did believe) that Lopez was high on methamphetamine. *See* Ariz. Rev. Stat. § 13-3407.

Officers had probable cause to seize and arrest Lopez for numerous offenses and, accordingly, Plaintiffs' Fourth Amendment claim based on the seizure or arrest of Lopez fails as a matter of law.

B. The Officers Are Entitled To Qualified Immunity For The Seizure of Lopez.

The defense of qualified immunity requires judgment in favor of a government employee unless the employee's conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).[8] The defense is designed to protect "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Indeed, if reasonable officers could disagree on whether the defendant's conduct was lawful, immunity applies. *Reynolds v. County. of San Diego*, 84 F.3d 1162, 1170 (9th Cir. 1996), *overruled on other grounds by Acri v. Varian Assocs., Inc.*, 114 F.3d 999 (9th Cir. 1997)). Moreover, clearly established law "must be particularized to the facts of the case," and "should not be defined at a high level of generality." *White v. Pauly*, 580 U.S. 73, 78–79 (2017) (cleaned up); *see also City of Tahlequah v. Bond*, 142 S. Ct. 9, 11–12 (2021) ("We have repeatedly told courts not to define clearly established law at too high a level of generality."); *Shafer v. County of Santa Barbara*, 868 F.3d 1110, 1117 (9th Cir. 2017) (a right is clearly established when case law has been "earlier developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that what he is doing violates federal law"). Finally, Plaintiff has the burden to identify a case that puts officers on notice that their *specific* conduct was unlawful. *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 8 (2021).

[8] Whether a reasonable officer could believe the defendant's conduct was lawful is an *objective* inquiry for the court. *Id.* at 819.

No case put the officers on notice that they lacked probable cause to arrest Lopez. *See Reed v. Lieurance*, 863 F.3d 1196, 1204–05 (9th Cir. 2017) ("[I]f an officer makes an arrest without probable cause, he or she may be entitled to qualified immunity as long as it is reasonably arguable that there was probable cause for the arrest.").

III. PLAINTIFF'S § 1983 EXCESSIVE FORCE CLAIM FAILS.

A. The Officers' Use of Force Was Objectively Reasonable Under The Circumstances.

Courts analyze Fourth Amendment claims of excessive force under an objective reasonableness standard. *Scott*, 550 U.S. at 381. The Court must balance the extent of the intrusion on the individual's Fourth Amendment rights against the government's interests in determining whether the officer's conduct was objectively reasonable based on the totality of the circumstances. *Espinosa v. City & County of San Francisco*, 598 F.3d 528, 537 (9th Cir. 2010) (citing *Graham v. Connor*, 490 U.S. 386, 396–97 (1989)). The Ninth Circuit has set forth a three-step test to determine objective reasonableness:

> First, we must assess the severity of the intrusion on the individual's Fourth Amendment rights by evaluating the type and amount of force inflicted. Next, we must evaluate the government's interests by assessing (1) the severity of the crime; (2) whether the suspect posed an immediate threat to the officers' or public's safety; and (3) whether the suspect was resisting arrest or attempting to escape. Third, we balance the gravity of the intrusion on the individual against the government's need for that intrusion. Ultimately, we must balance the force that was used by the officers against the need for such force to determine whether the force used was greater than is reasonable under the circumstances.

Id. (cleaned up). "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396–97.

The foregoing *Graham* factors are not exclusive. *Lowry v. City of San Diego*, 858 F.3d 1248, 1257 (9th Cir. 2017). Courts also "examine the totality of the circumstances and consider whatever specific factors may be appropriate in a particular case, whether or not listed in *Graham*." *Glenn v. Washington County*, 673 F.3d 864, 872 (9th Cir. 2011) (cleaned up). One pertinent factor is the availability of other tactics to subdue the suspect. *See Bryan v. MacPherson*, 630 F.3d 805, 831 (9th Cir. 2010); *see also Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) ("In some cases, for example, the availability of alternative methods of capturing or subduing a suspect may be a factor to consider."), *disapproved of on other grounds by Lemos v. County of Sonoma*, 40 F.4th 1002 (9th Cir. 2022). Importantly, officers "are not required to use the least intrusive degree of force possible." *Forrester v. City of San Diego*, 25 F.3d 804, 807 (9th Cir. 1994).

Whether use of force was "objectively reasonable" turns on "whether the degree of force used was necessary; in other words, whether the degree of force used was warranted by the governmental interests at stake." *Deorle v. Rutherford*, 272 F.3d 1272, 1282 (9th Cir. 2001) A court may decide reasonableness as a matter of law if, "in resolving all factual disputes in favor of the plaintiff, the officer's force was 'objectively reasonable' under the circumstances." *Jackson v. City of Bremerton*, 268 F.3d 646, 651 n.1 (9th Cir. 2001). This includes whether it was reasonable for the officer "to believe—at the point when events were rapidly unfolding—that someone was at risk of serious physical harm." *Mitchell v. Miller*, 790 F.3d 73, 80 (1st Cir. 2015).

1. Officer Stevens' Takedown.

A takedown maneuver is a modest to intermediate deployment of force and is routinely found appropriate where a suspect is refusing lawful commands and is threatening the officer or community at large. *See, e.g.*, *O'Doan v. Sanford*, 991 F.3d 1027, 1037 (9th Cir. 2021); *see also Silva v. City & Cnty. of Honolulu*, 851 F. App'x 697, 699 (9th Cir. 2021) (intermediate use of force appropriate where there is a risk to the community). A takedown that is somewhat uncoordinated may be a slightly higher use of force, but is still considered a

"modest to intermediate" use of force. *Stickney v. City of Phoenix*, No. CV 20-01401-PHX-SMB (DCB), 2023 WL 2976943, at *17 (D. Ariz. Mar. 17, 2023). Such a maneuver may nevertheless be reasonable where officers cannot reasonably use a more controlled leg sweep. *Id.* at *19.

Here, Officer Stevens took Lopez down after Lopez had thrown liquid on him (an aggravated assault under Ariz. Rev. Stat. § 13-1204(F)), run away from him, and run into traffic. Officer Stevens also believed that Lopez was high on methamphetamine. Lopez posed an immediate threat to safety because he was running into a busy street with a lot of traffic and could have seriously injured himself or the people in cars trying to avoid him. He also posed an immediate threat to officers, as he had thrown his drink onto Officer Stevens in an attempt to flee. Officer Stevens had attempted a consensual encounter before Lopez ran away (twice), and had issued lawful commands to tell Lopez to stop running, which Lopez ignored. *Shafer v. County of Santa Barbara*, 868 F.3d 1110, 1117 (9th Cir. 2017) (officer does not violate any clearly established right "when he progressively increases his use of force from verbal commands to an arm grab, and then a leg sweep maneuver, when a misdemeanant refuses to comply with the officer's orders . . . in a challenging environment").

Officer Stevens' takedown was appropriate under the circumstances because he needed to stop Lopez and had limited options—especially given that he had tried to contact Lopez and speak to him from his patrol vehicle before following him on foot and tried to speak with him again at the liquor store. Furthermore, Lopez had ignored his lawful commands to stop. Although his takedown was not as controlled as a leg sweep, he could not reasonably use a leg sweep in the midst of a foot pursuit in heavy traffic. *See Stickney*, 2023 WL 2976943, at *19. This modest use of force was reasonable under the circumstances.

2. Use of Handcuffs.[9]

Use of handcuffs is generally considered a minimal use of force. *Yaroshinsky v. City of Los Angeles*, 21-56173, 2022 WL 17248095, at *1 (9th Cir. Nov. 28, 2022) (noting that handcuffing producing a rotator cuff disorder was a "minimal" use of force); *LaLonde v. County of Riverside*, 204 F.3d 947, 964 (9th Cir. 2000) (Although "[h]andcuffs are uncomfortable and unpleasant," they are a "standard practice, everywhere.") (Trott, J., concurring and dissenting in part); *Hulstedt v. City of Scottsdale*, 884 F. Supp. 2d 972, 1006 (D. Ariz. 2012) ("Defendants had probable cause to arrest David, and handcuffing is a regular procedure during an arrest. There is no material issue of fact as to whether the handcuffing was itself legitimate, and no allegation that the handcuffing was conducted in a manner that constituted excessive force.")

This case is similar to *Stickney*, where Plaintiffs also alleged that officers used excessive force in handcuffing a suspect. But there, as the court explained, "Although the officers could have and did infer from Casey's behavior that Casey was emotionally disturbed or under the influence of drugs, this does not make their use of modest physical force to try to detain him unreasonable after Arnold's non-physical attempts to do so proved ineffective." *See Stickney*, 2023 WL 2976943, at *16. Indeed, there, as here, the suspect "had either ignored or refused to comply" with officers' verbal commands and accordingly, "a reasonable officer confronted with these facts could have inferred that any additional warnings or attempts to reason with Casey would also be ineffective and that some degree of physical force was required to get him to comply." *Id.*

Here, officers handcuffed Lopez after he had already run away twice and resisted arrested while ignoring officer commands. Lopez kicked Officer Stevens after he took him to the ground and a reasonable officer could have perceived these actions "as actively resisting arrest and aggravated assault, both violent felonies." *Id.* at *18. Officer Stevens also

[9]Based on the record, it appears that Officers Stevens handcuffed Lopez. However, several officers were on scene and the situation was rapidly unfolding.

issued multiple lawful commands to Lopez to comply and he did not do so. *See id.* at *19 ("Considering the totality of the circumstances, the government interest at stake in detaining Casey, which started out as modest, heightened when Casey failed to comply with Arnold's verbal requests and Arnold's subsequent warnings that the officers would have to force him into handcuffs if he did not comply."). As seen on video, Lopez continued to struggle and kick at the officers. The officers believed that Lopez was high on drugs because of his erratic behavior. The officers' minimal use of pressure to help control him while he was handcuffed was not unreasonable given his lack of compliance. Given the high governmental interest and the officers' reasonable fear of their own safety, the minimal use of force in handcuffing Lopez was reasonable under the circumstances.

3. Officer Mosley's Use of Pressure To Control Lopez After Handcuffing.

Officer Mosley's use of force by placing his knee on Lopez's lower back and hamstring was brief (47 seconds) and certainly not life threatening. *See Stickney*, 2023 WL 2976943, at *23 ("[T]he amount of force Arnold used while kneeling with his right knee on Casey's shoulder blade was much less severe than the life-threatening force used in *Drummond* [*v. City of Anaheim*, 343 F.3d 1052, 1056 (9th Cir. 2003)]."[10]). In this case there is no evidence that Lopez was harmed as a result of Officer Mosley briefly holding him down by placing his knee upon him. *See Krakauer v. City of Flagstaff*, No. CV-20-08090-PCT-GMS (ESW), 2022 WL 4118663, at *12–13 (D. Ariz. June 6, 2022) (explaining that head strikes can become deadly force depending on how they are employed, but that the absence of injuries can suggest a lesser degree of force). As a result, the amount of force at issue fell well below the threshold of deadly force, and should be determined to be a minimal use of force.

[10] In *Drummond*, the court found that officers who "continued to press" weight on the neck and torso of a handcuffed suspect who was laying on the ground was "severe." *Drummond*, 343 F.3d at 1056–57. But as the court in *Stickney* correctly found, that case is distinguishable from a case such as this one which involved only one officer who was kneeling and using a control hold rather than the combined weight of two officers on the neck and torso of a suspect.

Officer Mosley's use of pressure to control and hold Lopez was reasonable under the circumstances. As described above, the officers were dealing with a rapidly unfolding scene and Lopez had failed to heed multiple officer commands. Lopez continued to resist even after he was handcuffed, including attempting to kick and bite officers. Lopez grabbed onto the RIPP restraint as officers attempted to apply it and did not cooperate. Lopez was still breathing and Officer Mosley did not press all of his weight onto Lopez's body. Instead, Officer Mosley placed his knee on Lopez's lower back and leg only to help control him. Officer Mosley's intrusion was brief but necessary as the officers tried to control Lopez and this use of force was objectively reasonable under the circumstances.

4. Application of the RIPP Restraint.[11]

Application of the RIPP restraint in this case is a separate use of force than Officer Mosley's use of force in holding Lopez down. Several officers assisted with applying the RIPP restraint. A RIPP restraint is more restrictive than handcuffs but, by itself, still only a minimal use of force.

Application of the RIPP restraint was reasonable under the circumstances given the rapidly unfolding situation and the danger of being in the roadway with traffic still coming by. Officers wanted to move Lopez out of the road as soon as possible, but he had failed to heed multiple officer commands and was still kicking and tensing up and resisting the officers. Officers did not have a less intrusive means to control and move Lopez. Application of the RIPP restraint was reasonable under the circumstances.

5. Moving to the Walgreens' Parking Lot.

At this stage of the interaction, officers did not use force at all and, instead, placed Lopez in the back of a vehicle. Plaintiffs appear to have a claim premised on the fact that he was in a "prone position" in the back of the car for the short amount of time (less than

[11] Officer Jimenez appears to have been responsible for attaching the RIPP restraint, however, other officers assisted with crossing Lopez's legs and holding him while it was applied because he was struggling and resisting.

two minutes) that it took officers to move Lopez out of the street and to the Walgreens parking lot. Although application of pressure on a prone individual could be a use of force, *see, e.g.*, *Drummond*, 343 F.3d at 1056, Defendants are aware of no case that states that merely moving a suspect face down in a vehicle is a use of force.

Here, officers needed to move Lopez out of a busy street while they waited for the fire department to come and provide medical care. Putting him in the vehicle was the only way to do so, and they could not remove the RIPP restraint given how Lopez was resisting them. Officer Lingenfelter turned Lopez's head so that he was not entirely facedown even though he was on his stomach. The entire drive took less than two minutes. Thus, even if moving Lopez to the Walgreen's parking lot could be seen as a use of force, it was reasonable under the circumstances.

6. Officers Did Not Have An Opportunity To Intercede.

Bystanding officers can only be held liable in situations involving excessive force if they had an opportunity to intercede. *Hughes v. Rodriguez*, 31 F.4th 1211, 1223 (9th Cir. 2022). Additionally, any claim for failure to intervene must be based on an underlying constitutional violation. *Tobias v. Arteaga*, 996 F.3d 571, 583 (9th Cir. 2021).

As discussed above, none of the officers' actions amounted to constitutional violations. But even if they had, the other officers did not have a meaningful opportunity to intercede. Officers arrived in response to a call for backup and were required to get involved in a rapidly evolving situation. *See Stickney*, 2023 WL 2976943, at *30 (finding no meaningful opportunity to intervene where "the remaining officers all arrived after Rodarme had already made an urgent call for backup, and when they came on the scene, they immediately engaged in various uses of force to attempt to gain control of Casey in what had become a tense, rapidly evolving situation."). Additionally, officers called for the fire department early on in the interaction consistent with City of Phoenix policy to ensure that help would arrive, because they were concerned that Lopez was on drugs. *See Price v. County of San Diego*, 990 F. Supp.

1230, 1247 (S.D. Cal. 1998) ("methamphetamine abuse precipitated this entire case. If Price had not abused methamphetamine, he would not have acted in a bizarre fashion, the deputies never would have arrived, and none of the incidents of this case would have transpired"). There is no evidence that officers could have intervened and failed to do so.

B. The Individual Officers Are Entitled To Qualified Immunity.

As explained above, Plaintiffs must provide *specific* case law with similar facts to demonstrate that the officers were on notice that their conduct violated an individual's constitutional rights. *See supra* § II(b). Moreover, in the Fourth Amendment excessive force context, "specificity is especially important," *Mullenix v. Luna*, 577 U.S. 7, 12 (2015), and "thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue," *Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018) (cleaned up); *see also Ventura v. Rutledge*, 978 F.3d 1088, 1091 (9th Cir. 2020)

1. Takedown Maneuver

As stated above, the Ninth Circuit has held, under similar facts, that a takedown maneuver on an actively aggressive suspect was constitutional. *See e.g., O'Doan*, 991 F.3d at 1037–38; *Stickney*, 2023 WL 2976943, at *19. It is Plaintiffs' burden to show some other case with substantially similar facts that put the officers on notice that their conduct would have violated Plaintiffs' rights. That case does not exist and officers are entitled to qualified immunity for the use of a takedown maneuver.

2. Handcuffs

As discussed above, multiple cases hold that the use of handcuffs is a routine part of policing and not a constitutional violation. Officers are entitled to qualified immunity for handcuffing Lopez because no case put them on notice that handcuffing a suspect who resists arrests violates clearly established law. *See also Stickney*, 2023 WL 2976943, at *29 (finding qualified immunity for officers who handcuffed and placed a RIPP restraint on a suspect).

3. Use Of Pressure

No case put Officer Mosley on notice that briefly putting his knees on Lopez to control him violated Lopez's constitutional rights. On the contrary, the court in *Stickney* found that officers had qualified immunity in a case strikingly similar to this one: "Therefore, to the extent Arnold, Rodarme, and Long used excessive force when they applied weight to Casey's back to hold Casey down in a prone position while he continued to resist, these officers are entitled to qualified immunity on the ground that the right of an actively resistant subject to be free from such positional restraints was not clearly established." *Stickney*, 2023 WL 2976943, at *27.

4. RIPP Restraint

Again, *Stickney* is on all fours with this case. In a decision from this year, *Stickney* found no cases "that firmly establish that attempting to attach a RIPP restraint from a prone subject's ankles to his handcuffs while the subject continues to resist violates clearly established law." *Stickney*, 2023 WL 2976943, at *29. Other circuits are in accord and have found that existing precedent does not demonstrate "a clearly established right of a detainee to be free from prone restraint while resisting." *Lombardo v. City of St. Louis*, 38 F.4th 684, 690 (8th Cir. 2022), *cert. denied sub nom. Lombardo v. City of St. Louis, Missouri*, 143 S. Ct. 2419 (2023). Officers are therefore entitled to qualified immunity for application of the RIPP restraint.

5. Moving Lopez to Walgreens

As above, Defendants are aware of no case that establishes that moving a suspect in a vehicle facedown is a use of force, let alone an unconstitutional use of force. Additionally, the officers were trying to move Lopez out of the street and into the shade to get help for him as quickly as possible. To the extent that moving him is construed as a use of force, the officers are entitled to qualified immunity.

6. Failure to Intervene

Qualified immunity is appropriate when an officer cannot intervene: "failure-to-intervene liability is reserved for circumstances where the use of excessive force extends over a 'relatively longer period of time,' such that other officers in the vicinity have a reasonable opportunity to observe it, recognize its impermissible character, and take action to stop it." *Andrich v. Kostas*, 470 F. Supp. 3d 1048, 1061–62 (D. Ariz. 2020) (discussing *Knapps v. City of Oakland*, 647 F. Supp. 2d 1129 (N.D. Cal. 2009)). As described above, this was a rapidly unfolding interaction. The officers had no reason to intervene because no constitutional violation occurred here, but, even if it had, the officers did not have time to meaningfully intervene.

IV. SUMMARY JUDGMENT IS APPROPRIATE ON PLAINTIFFS' FAMILIAL SOCIETY AND COMPANIONSHIP CLAIM.

A. Plaintiff's Fourteenth Amendment Claim Fails Because There Is No Evidence That Officers Acted With A Purpose to Harm.

To prevail on their Fourteenth Amendment claims, Plaintiffs must "prove that the officers' use of force shocked the conscience." *Gonzalez v. City of Anaheim*, 747 F.3d 789, 797 (9th Cir. 2014) (cleaned up). When, as a practical matter, the officer does not have time to deliberate, "a use of force shocks the conscience *only* if the officer[] had a 'purpose to harm'" the plaintiff for reasons unrelated to legitimate law enforcement objectives. *Id.* at 797–98. If the officer did have time to deliberate, a plaintiff can only prevail with a showing that that the officer "disregarded a known or obvious consequence of his action." *Nicholson v. City of Los Angeles*, 935 F.3d 685, 692–93 (9th Cir. 2019). Regardless, a plaintiff must have more than speculation as to improper motive to survive summary judgment. *Gonzalez*, 747 F.3d. at 797–98. Thus, a plaintiff bringing an excessive force claim under the Fourteenth Amendment faces a more difficult standard than a plaintiff bringing the same claim under the Fourth Amendment. *See Ochoa v. City of Mesa*, 26 F.4th 1050, 1056–57 (9th Cir. 2022).

Here, it is undisputed that the officers were responding to a rapidly unfolding situation and did not have time to deliberate. Officer Stevens had to make a split-second decision to take down Lopez after he ran away from him and into traffic on a busy street, where he posed a danger to himself, the public, and the officers. Once on the ground, Lopez was attempting to bite and kick officers and struggled against them as they attempted to restrain him. *See Stickney*, 2023 WL 2976943, at *31–32 (finding that officers did not have time to deliberate while the suspect resisted attempts to control him). Accordingly, Plaintiffs must show that officers acted with a purpose to harm Lopez unrelated to legitimate law enforcement objectives.

Here, as in *Stickney*, Plaintiffs have no evidence that the officers acted with anything less than legitimate law enforcement objectives. *Id.* The record is clear that the officers were trying to apprehend and control Lopez before he could hurt himself or others. The officers also called for the fire department early in the encounter as they suspected Lopez was on drugs and might need medical assistance. They also moved him out of the busy, dangerous street, and into the shade of a nearby parking lot. Without any evidence that that Defendants acted with a purpose to harm, Plaintiffs' familial association claim fails.

B. Officers Are Entitled To Qualified Immunity On Plaintiffs' Fourteenth Amendment Claims.

Even if Plaintiffs could somehow establish the officers acted outside of legitimate law enforcement objectives (of which there is no evidence) the officers are entitled to qualified immunity for their acts because no similar case put them on notice that their conduct violated Plaintiffs' Fourteenth Amendment rights.

V. SUMMARY JUDGMENT IS APPROPRIATE ON PLAINTIFFS' *MONELL* CLAIM.

A. Plaintiffs' *Monell* Claims Fail Because There Is No Individual Officer Liability.

Under 42 U.S.C. § 1983, if there is no constitutional violation, the municipality cannot be held liable as a matter of law. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986);

see also Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). Here, because the Plaintiffs suffered no constitutional violation by the individual Defendants summary judgment is appropriate on Plaintiffs' *Monell* claim. *See Daily v. City of Phoenix*, No. CV-14-00825-PHX-SPL, 2017 WL 6527298 at *9 (D. Ariz. Aug. 8, 2017) *affirmed in part, reversed in part on other grounds*, 765 Fed. App'x. 325 (9th Cir. 2019).

B. Plaintiffs' *Monell* Claims Fail On The Merits.

Ordinarily, a single constitutional deprivation "is not sufficient to impose liability under *Monell*, unless proof of the incident includes proof that it was caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policymaker." *Okla. City v. Tuttle*, 471 U.S. 808, 824 (1985). Thus, to establish that the City is liable under § 1983, Plaintiffs must prove: (1) that Plaintiffs possessed a constitutional right of which they were deprived; (2) that the City had a policy; (3) that this policy amounts to deliberate indifference to the constitutional right; and (4) that the policy is the moving force behind the constitutional violation. *See Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011).

1. Failure to Train.

To establish a "policy" of inadequate training, Plaintiff must offer evidence of the local government was aware of a high probability of harm if the government failed to act. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 389–90 (1989). "A pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of failure to train[.]" *Flores v. County of Los Angeles.*, 758 F.3d 1154, 1159 (9th Cir. 2014) (citation omitted). After all, "[w]ithout notice that a course of training is deficient in a particular respect, decision makers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights." *Connick v. Thompson*, 563 U.S. 51, 62 (2011). In addition, Plaintiff must identify the specific deficiency in the City's training or supervision and establish that the deficiency directly caused the constitutional

deprivation. *See City of Canton*, 489 U.S. at 385–86. Plaintiffs must also show the City made a "conscious" or "deliberate" policy decision knowing this incident would likely result. *Id.* at 389. Thus, municipal liability "is at its most tenuous where a claim turns on a failure to train." *Connick*, 563 U.S. at 61. Simply put, the City cannot be held liable absent sufficient evidence of a "program-wide inadequacy in training." *Blankenhorn v. City of Orange*, 485 F.3d 463, 484–85 (9th Cir. 2007).

Here, Plaintiffs' *Monell* training claim fails because they cannot refute that the individual officers completed all training requirements for AZPOST certification. *See Mendez v. County of San Bernardino*, 540 F.3d 1109, 1123 (9th Cir. 2008) (affirming dismissal where plaintiff failed to controvert evidence that officer's training met state POST requirements), *overruled on other grounds*, *Arizona v. ASARCO LLC*, 773 F.3d 1050 (9th Cir. 2014); *Hillbloom v. County of Fresno*, No. CV F 07–1467 LJO SMS, 2010 WL 4481770, at *11, 34 (E.D. Cal. Nov. 1, 2010); *see also Ward v. Still*, No. 2:10–CV–7, 2012 WL 37518, *13–14 (E.D. Tenn. 2012) ("If . . . police officers were certified by the POST Commission, then the issue of the adequacy *vel none* of their training is resolved.").

In addition, the record lacks evidence of any pattern of deficient training to put the City on notice that its training and policies regarding police procedures, restraint of suspects, or use of force were deficient. *See Flores*, 758 F.3d at 1159. Specifically, the City's policy on use of force properly instructed the individual officers on the appropriate scope of force with takedown maneuvers and restraint, including the potential of positional asphyxia. *See Stickney,* 2023 WL 2976943, at *39–*41 (finding that the City of Phoenix had trained its officers in numerous areas including positional asphyxia). Additionally, the City maintained policies on restraint and transportation of restrained suspects.

The record lacks evidence of prior incidents that would put the City on notice that its policies were deficient . Indeed, the court in *Stickney* specifically reviewed cases that allegedly involved positional asphyxia and the City of Phoenix and concluded that none of

those cases could have put the City of notice that its training was insufficient or that it was deliberately indifferent to the need for additional training. *Id.* at *41.

Accordingly, there was no formal or informal policy, practice, or custom by the City that was the moving force behind Plaintiffs' injuries. Further, there was no formal or informal policy, practice, custom, or procedure that constituted deliberate indifference toward Plaintiffs' rights. To the extent Plaintiff asserts *Monell* liability on the ground that the officers failed to follow the City's policies and procedures, such an argument cannot establish *Monell* liability. *See City of Canton*, 489 U.S. at 390–91.

2. Negligent Hiring.

Plaintiffs' claim for negligent hiring also fails. The Supreme Court has warned courts against finding municipalities liable for a single hiring decision. *Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 410–11 (1997). Instead, a plaintiff must demonstrate deliberate indifference in hiring, and liability is only proper where "adequate scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the decision to hire the applicant would be the deprivation of a third party's federally protected right." *Id.* at 412.

Here, there is no evidence that the City failed to properly hire any of the individuals involved, let alone that it found any plainly obvious consequence that the applicant would deprive Plaintiffs' federally protected rights. The City conducted background checks on all of the Individual Defendants. Nothing in the background checks showed that the individual officers would deprive Plaintiffs' federally protected rights.

3. Failure to Supervise.

"Usually, a failure to supervise gives rise to section 1983 liability only in situations in which there is a history of widespread abuse." *Bowen v. Watkins*, 669 F.2d 979, 988 (5th Cir.1982) (emphasis added); *see also Santos ex rel. Santos v. City of Culver City*, 228 Fed. App'x. 655, 659 (9th Cir. 2007) (affirming the district court's grant of summary judgment on

a *Monell* claim under the "moving force" prong because there was no evidence of a causal link between city's policies and the officer's actions).

Here, the record demonstrates that the individual Defendants were adequately and routinely supervised while they were in the field. Moreover, no evidence shows the City should have provided additional supervision to these officers because of any relevant prior actions by the Individual Defendants. Defendants are unaware of any authority requiring officers to be continuously operating under an acting supervisor at every second while on duty. Moreover, even if such supervision were required, such purported failure amounts to a single incident of officer misbehavior, which cannot establish *Monell* liability as a matter of law. *McDade v. West*, 223 F.3d 1135, 1141 (9th Cir. 2000); *Vasquez v. City of Santa Paula*, 2015 WL 12734071, 2015 WL 12734071, at *3 (C.D. Cal. Mar. 11, 2015). Plaintiffs also fail to allege a specific deficiency in the City's policies, training, and supervision that directly caused the constitutional deprivation. But even assuming they did, Plaintiffs do not plead any facts that show that such a policy is so widespread that it demonstrates a claim under *Monell.* Nor will Plaintiffs be able to show that any alleged failure to train or supervise amounted to a deliberate indifference to the rights of persons with whom the officers may encounter.

4. Ratification.

To the extent that Plaintiffs' Complaint could be construed as including a claim based on ratification, Plaintiffs must show that an authorized policymaker approved both a subordinate's decision and the basis for it. *City of St. Louis v. Praprotnik,* 485 U.S. 112, 127 (1988). This requires a showing that the decision triggering § 1983 liability "was the product of a conscious, affirmative choice to ratify the [unconstitutional] conduct in question." *Haugen v. Brosseau*, 351 F.3d 372, 393 (9th Cir. 2003) (internal quotation marks omitted), *rev'd on other grounds*, *Brosseau v. Haugen*, 543 U.S. 194 (2004). In addition, the Ninth Circuit has held that merely failing to discipline individual officers accused of unconstitutional conduct does not amount to ratification. *Haugen*, 351 F.3d at 393. Rather, Plaintiffs must show the City made a

deliberate choice to endorse the officers' actions and the bases for them as its own policy. *Gillette v. Delmore*, 979 F.2d 1342, 1348 (9th Cir. 1992).

Here, there was no unconstitutional decision the City could ratify. The individual officers did not use excessive force or otherwise violate Plaintiffs' constitutional rights. There is also no evidence that the City had a policy that tolerated or ratified Defendants' conduct. In fact, the City enacted policies to ensure discipline for out-of-policy conduct. The City did not ratify any conduct at issue in this action. Summary judgment is appropriate on Plaintiffs' *Monell* claim.

VI. SUMMARY JUDGMENT IS PROPER ON PLAINTIFFS' WRONGFUL DEATH CLAIM.

A. Plaintiff's Wrongful Death Claim Based On the Conduct of the Officers' Fails.

Plaintiffs' wrongful death claim fails for the same reasons the excessive force claim fails: Defendants' use of force was objectively reasonable under the circumstances. *See Marquez v. City of Phoenix*, 693 F.3d 1167, 1176 (9th Cir. 2013) (holding that because officers acted reasonably in using force, the plaintiffs' wrongful death claim could not succeed under Arizona law); *Miller v. Clark County*, 340 F.3d 959, 968 n.14 (9th Cir. 2003) (affirming the district court's judgment for the defendants on plaintiffs' state tort claims because they fell "along with [plaintiff]'s rejected federal Fourth Amendment claim.").

Arizona's justification statutes also preclude civil liability for "engaging in conduct otherwise justified" under Arizona law. *See* Ariz. Rev. Stat. § 13-413. Under Arizona law, officers are immunized for using even deadly force during an arrest or detention where necessary to prevent a person from harming others. *See* Ariz. Rev. Stat. § 13-410(C); *Marquez*, 693 F.3d at 1176. Thus, summary judgment is appropriate on any claim against the City based on vicarious liability for the officers.

B. The City of Phoenix is entitled to summary judgment on any claims for negligent supervision and training.

Plaintiffs argue that the City is additionally liable because it negligently supervised and trained the individual Defendants. Since Plaintiffs' liability theories against the individual Defendants fail, Plaintiffs' derivative claims for negligent supervision and training necessarily fail. *See Kuehn v. Stanley*, 91 P.3d 346, 352 ¶21 (Ariz. Ct. App. 2004); *Mulhern v. Scottsdale*, 799 P.2d 15, 18 (App. 1990). In any event, as argued above, the record is devoid of any evidence that the City was negligent in its supervision or training of the individual Defendants.

1. There was no negligent supervision by the City.

Under Arizona law, a claim for negligent supervision fails if the employee's act was not foreseeable. *See Pruitt v. Pavelin*, 85 P.2d 1347, 1354 (Ariz. Ct. App. 1984). Here, the individual Defendants had never been disciplined for a use of force prior to this incident. Therefore, any allegedly improper act by the individual Defendants was not foreseeable by the City as a matter of law. Thus, Plaintiffs' negligent supervision claim fails.

2. There was no negligent training by the City.

To prevail on a negligent training claim in Arizona, a plaintiff must show a defendant's training or lack thereof was negligent and that such negligent training was the proximate cause of a plaintiff's injuries. *Inmon v. Crane Rental Servs., Inc.*, 67 P.3d 726, 733 ¶ 28 (Ariz. Ct. App. 2003), *disapproved of on a different ground*, *Tarron v. Bowen Mach. & Fabricating*, 235 P.3d 1030 (Ariz. 2010). A showing of an employee's incompetence is not enough; the plaintiff must also present evidence showing what training should have been provided, and that its omission proximately caused the plaintiff's injuries. *Id.; see also Guerra v. State*, 323 P.3d 765, 773 ¶¶ 29–32 (App. 2014), *partially vacated on other grounds*, 348 P.3d 423 (Ariz. 2015) (summary judgment appropriate where Plaintiff failed to make a showing that training given to DPS Officers or omitted from their training, was negligent). Summary judgment is appropriate on Plaintiffs' wrongful death claim.

VII. PLAINTIFFS ARE NOT ENTITLED TO PUNITIVE DAMAGES.

Punitive damages are unavailable against the individual Officers under federal law because Plaintiffs' § 1983 claims fail, as explained above. Moreover, the Complaint is devoid of any allegations that any of the officers acted with the requisite "evil motive" or "callous indifference" to warrant punitive damages under § 1983. *Smith v. Wade*, 461 U.S. 30, 56 (1983). Punitive damages are not available for § 1983 claims against public entities or public employees sued in their official capacities. *See, e.g., City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981) ("a municipality is immune from punitive damages under 42 U.S.C. § 1983").

Under Arizona law, "[n]either a public entity nor a public employee acting within the scope of his employment is liable for punitive or exemplary damages." Ariz. Rev. Stat. § 12-820.04; *see also Yanes v. Maricopa County*, 294 P.3d 119, 125 ¶ 23 (App. 2012) ("Punitive damages are not available against public entities or employees under Arizona law."). Plaintiff has not alleged that the officers were acting outside of the scope of their employment, and punitive damages are not available.

VIII. CONCLUSION

Based on the foregoing, Defendants City of Phoenix, Bobbi Cozad, Oscar Jimenez, Brett Lingenfelter, Alonso Lopez, Roszell Mosley, Todd Stevens, and Andrew Williams respectfully request that this Court grant them summary judgment on Plaintiffs' Complaint in its entirety.

DATED this 28th day of July, 2023.

JONES, SKELTON & HOCHULI, P.L.C.

By /s/ Ashley E. Caballero-Daltrey

John T. Masterson
Ashley E. Caballero-Daltrey
40 N. Central Avenue, Suite 2700
Phoenix, Arizona 85004
Attorneys for Defendants City of Phoenix, Bobbi Cozad, Oscar Jimenez, Brett Lingenfelter, Alonso Lopez, Roszell Mosley, Todd Stevens, and Andrew Williams

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2023, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

Joel B. Robbins, Esq.
Jesse M. Showalter, Esq.
ROBBINS CURTIN MILLEA & SHOWALTER, LLC
301 E. Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
joel@rcmslaw.com
jesse@rcmslaw.com
Attorneys for Plaintiff

Michael F. Bonamarte, IV, Esq.
Michael Shanahan , Esq.
LEVIN & PERCONTI
325 N. La Salle Drive, #300
Chicago, Illinois 60654
mfb@levinperconti.com
mls@levinperconti.com
(Admitted Pro Hac Vice)
Attorneys for Plaintiff

Benjamin L. Crump, Esq.
BEN CRUMP LAW, PLLC
122 S. Calhoun Street
Tallahassee, Florida 32301
court@bencrump.com
(Admitted Pro Hac Vice)
Attorney for Plaintiff

/s/Karen Gawel