

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RUDOLPH B. ZAMORA JR.,

Plaintiff,

v.

CITY OF BONNEY LAKE, BONNEY  
LAKE POLICE DEPARTMENT, PIERCE  
COUNTY, PIERCE COUNTY SHERIFF'S  
OFFICE, BONNEY LAKE POLICE  
OFFICER ERIC ALFANO, and PIERCE  
COUNTY SHERIFF SHANDON WRIGHT,

Defendants.

No. 3:11-cv-05495 RBL

ORDER ON DEFENDANTS' MOTION TO  
DISMISS  
[Dkt. #7]

**INTRODUCTION**

THIS MATTER comes before the Court upon Defendant Pierce County's Motion to Dismiss under Rule 12(b)(6) for failure to state a claim. [Dkt. #7]. Defendants City of Bonney Lake and Bonney Lake Police Officer Eric Alfano join in Pierce County's Motion. [Dkt. #8]. The Court has reviewed the materials submitted in support of and in opposition to the Motion. For the reasons below, the Court GRANTS Defendants' Motion to Dismiss in part and DENIES in part.

**BACKGROUND**

**1. Events at the Zamora Home**

Plaintiff Rudolph B. Zamora, Jr. is an individual residing in Pierce County, Washington. Defendant City of Bonney Lake is a municipal entity, operating Defendant Bonney Lake Police

1 Department. Defendant Pierce County is a municipal entity, operating Defendant Pierce County  
2 Sheriff's Office. Defendant Eric Alfano is named in the complaint as an officer of the BLPD,  
3 and Defendant Shandon Wright is named in the complaint as a Deputy Sheriff in the Pierce  
4 County Sheriff's Office.

5 Plaintiff's Complaint makes the following allegations:

6 On June 5, 2009, the Bonney Lake Police Department received a phone call from a  
7 worried citizen who believed her boyfriend, Plaintiff Rudolph Zamora, Jr., to be suicidal and  
8 potentially intending to engage in gunfire with the police. At approximately 5:00 a.m.,  
9 Defendants Officer Eric Alfano and Deputy Shandon Wright, as well as several other officers  
10 and deputies, arrived at the residence of Rudolph Zamora, Sr., Plaintiff's father. The Zamora  
11 property consists of three distinct residences: a main house, a small residence behind, and a guest  
12 house.

13 As law enforcement officers approached the main residence in their patrol vehicles, they  
14 used loudspeakers to awaken Zamora, Sr., instructing him to come outside the house. Zamora,  
15 Sr. did so without threat or resistance and confirmed that no one had been injured prior to the  
16 arrival of law enforcement. He was then secured in a patrol car, and two handguns were  
17 retrieved from his residence.

18 The law enforcement officers then proceeded to awaken the brother of Zamora, Sr. and  
19 required him to leave the residence. They next encountered Amanda Leigh Winn, who was  
20 leaving the guest house. They told her to raise her hands and move away from the building.  
21 They asked whether anyone else was in the house and whether everyone was alright. Winn told  
22 the officers that her boyfriend, the Plaintiff, was asleep on the couch in the front room and that  
23 everyone was alright. She told officers there were no weapons in the home.

24 Defendants Alfano and Wright then went to the door of the house where they observed  
25 the Plaintiff just then awaking from the commotion on the property. Plaintiff alleges that after  
26 assuring themselves he was not injured, Defendants Alfano and Wright came into the residence  
27 and made demands of the Plaintiff. When he did not respond in a sufficiently timely manner, the  
28

1 officers twice deployed tasers on him. Plaintiff alleges he then fell to the ground, sustaining  
2 injury.

## 3 **2. Procedural Background**

4 Plaintiff commenced this action against Defendants City of Bonney Lake, Pierce County,  
5 Bonney Lake Police Department, Pierce County Sheriff's Office, Bonney Lake Police Officer  
6 Alfano, and Pierce County Deputy Sheriff Wright. Against the municipalities, Plaintiff's  
7 Complaint asserts federal § 1983 claims of vicarious liability for the officers' use of excessive  
8 force in violation of Plaintiff's Fourth Amendment rights; a state vicarious liability claim for the  
9 officers' actions in committing assault, battery, and use of excessive force; and negligence  
10 claims for failure to properly supervise and train their employees. Against Officer Alfano and  
11 Deputy Wright, Plaintiff's Complaint asserts § 1983 claims for use of excessive force and  
12 invasion of privacy in violation of Plaintiff's Fourth Amendment rights, and state tort claims of  
13 assault, battery, and use of excessive force; negligence; false arrest; and outrage.

14 Defendants Pierce County and Bonney Lake seek dismissal of Plaintiff's claims under  
15 Rule 12(b)(6). They argue that Plaintiff's § 1983 claims against the County and City—which  
16 rest on a *respondeat superior* theory—are not viable because *respondeat superior* liability does  
17 not exist under § 1983. Defendants argue that, even assuming Plaintiff means to assert a § 1983  
18 municipal liability *Monell* claim, it fails because Plaintiff has not alleged a municipal policy or  
19 custom to support a *Monell* claim. They argue that Plaintiff thus cannot state a federal claim  
20 against the County and City under § 1983.

21 Defendant Pierce County also argues it is not vicariously liable for its employee's actions  
22 under state law. The County argues that Plaintiff has failed to assert facts showing that  
23 Defendant Wright was acting under the direction and control of any entity other than the Bonney  
24 Lake Police Department. As such, the County argues that an exception to state vicarious liability  
25 applies, and Plaintiff therefore has no state vicarious liability claim against the County.

26 Defendants Pierce County and Bonney Lake argue Plaintiff has failed to allege sufficient  
27 facts to support a negligence claim against them.

## DISCUSSION

Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal theory or absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although the Court must accept as true the Complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper [Rule 12(b)(6)] motion. *Vasquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnote omitted). This requires a plaintiff to plead "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*).

### 1. Claims Against Pierce County and the City of Bonney Lake

#### a. § 1983 Claims Against the County and City

Plaintiff asserts federal § 1983 claims against County and City for their officers' use of excessive force and invasion of privacy in violation of Plaintiff's Fourth Amendment rights. Plaintiff erroneously bases its § 1983 claims against the County and City on the doctrine of *respondeat superior*, which is unavailable. Under federal law, the County and City are not vicariously liable for the acts of Alfano and Wright. In order to set forth a claim against a municipality under 42 U.S.C. § 1983, a plaintiff must show that the defendant's employees or agents acted through an official custom, pattern or policy that permits deliberate indifference to, or violates, the plaintiff's civil rights; or that the entity ratified the unlawful conduct. *See Monell v. Department of Social Servs.*, 436 U.S. 658, 690-91 (1978); *Larez v. City of Los Angeles*, 946

1 F.2d 630, 646-47 (9<sup>th</sup> Cir. 1991). A municipality is not liable unless “action pursuant to official  
 2 municipal policy of some nature caused a constitutional tort.” *Monell*, 436 U.S. at 691. A  
 3 plaintiff must show that “through its *deliberate* conduct, the municipality was the ‘moving force’  
 4 behind the injury alleged.” *Board of Cnty. Comm’rs of Bryan County, Oklahoma v. Brown*, 520  
 5 U.S. 397, 404 (1997).

6 Plaintiff makes no assertion that there is a policy or custom at play here or that  
 7 Defendants Alfano and Wright acted in accordance with such County or City policies. Where  
 8 the Complaint does not contain allegations of police action in conformity with a municipality’s  
 9 “official policy, conduct or practice,” dismissal is proper. *Arpin v. Santa Clara Valley Transp.*  
 10 *Agency*, 361 F.3d 912, 925 (9<sup>th</sup> Cir. 2001).

11 Plaintiff has failed to allege that any official policy was a moving force behind the  
 12 officers’ actions, and therefore, Plaintiff has not alleged that these entities are liable under  
 13 *Monell*. Plaintiff’s § 1983 claims against the County and City are DISMISSED, but Plaintiff  
 14 shall be permitted to file an amended Complaint asserting a *Monell* claim within ten days.

15 **b. State Law Vicarious Liability Claim Against the County and City**

16 Plaintiff claims the County and City are vicariously liable under Washington law for the  
 17 actions of Alfano and Wright in committing assault, battery, and use of excessive force. Plaintiff  
 18 claims that the officers were acting within the scope of their employment, making the County  
 19 and City liable under the doctrine of *respondeat superior*. Pierce County acknowledges that  
 20 state law makes a municipal employer liable for the actions of its employees within the scope of  
 21 their employment. However, the County argues that Plaintiff’s claim fails based upon the  
 22 County’s factual allegation that Deputy Wright was not acting within the scope of his county  
 23 employment. Pierce County puts forward a factual defense, alleging instead that Wright was  
 24 under the direction and control of Bonney Lake during the incident giving rise to this suit. The  
 25 County argues it is thereby relieved of liability.

26 Factual defenses cannot be made on a motion to dismiss. The County makes summary  
 27 judgment arguments, which are inappropriate here. On a thorough reading of the Complaint,  
 28 there is no basis to dismiss the vicarious liability claim against either the County or City.

1 Defendants' Motion to Dismiss state law vicarious liability claims against the municipalities for  
2 assault, battery, and use of excessive force is DENIED.

3 **c. State Law Negligence Claims Against the County and City**

4 Plaintiff asserts negligence claims against the County and City. Plaintiff argues the  
5 municipalities were negligent in failing to properly supervise their employees, failing to instruct  
6 in proper use and deployment of a taser weapon, and failing to institute protocols and procedures  
7 for the use of such weapons.

8 The County and City argue that these claims are simply legal conclusions without factual  
9 support in the Complaint. Defendants argue that Plaintiff has failed to make a showing that the  
10 County's and City's actions met state law elements of negligence.

11 This Court is not bound to accept legal conclusions couched as factual allegations. *See*  
12 *Twombly*, 550 U.S. at 555. However, on a favorable review of allegations regarding the  
13 officers' conduct, there are sufficient facts alleged in Plaintiff's Complaint "to raise a reasonable  
14 expectation that discovery will reveal evidence" of negligence in supervising, instructing, and  
15 implementing protocols and procedures. *Id.* at 556.

16 Again, Defendants wish to argue a summary judgment motion. However, Plaintiff need  
17 only assert sufficient facts to plausibly support negligence claims. Given the allegations Plaintiff  
18 makes regarding the officers' actions, it is plausible that the municipalities were negligent in  
19 supervising and training. Defendants will have the future opportunity to file summary judgment  
20 motions. Until that time, there is insufficient basis to dismiss these claims. Defendants' Motion  
21 to Dismiss Plaintiff's negligence claims against the County and City is DENIED.

22 **2. Claims Against Bonney Lake Police Officer Eric Alfano**

23 Officer Eric Alfano joins the County and City's Motion to Dismiss. The arguments  
24 raised in Defendants' Motion are not applicable to Officer Alfano. Alfano's Motion to Dismiss  
25 is DENIED.

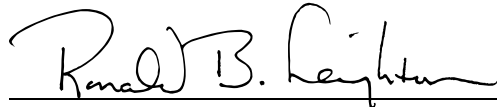
**CONCLUSION**

The municipal Defendants' Motion to Dismiss federal § 1983 claims against the County and City is GRANTED. Municipal Defendants' Motion to Dismiss the state law vicarious liability claim against the County and City for assault, battery, and use of excessive force is DENIED. Municipal Defendants' Motion to Dismiss state law negligence claims against the County and City is DENIED. Defendant Alfano's Motion to Dismiss is DENIED.

For the reasons stated above, Defendants' Motion to Dismiss is GRANTED in part and DENIED in part. Plaintiff is hereby permitted to amend its Complaint in order to assert a *Monell* claim.

**IT IS SO ORDERED.**

Dated this 8<sup>th</sup> day of November, 2011.

A handwritten signature in black ink, reading "Ronald B. Leighton". The signature is written in a cursive, flowing style. The first name "Ronald" is written with a large, prominent "R". The middle initial "B." is written in a smaller, more compact script. The last name "Leighton" is written with a long, sweeping "L" and a trailing flourish.

RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE