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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARMEL GARCIA, an individual; M.Y. AND L.Y., minors by and through their guardian ad litem VANESSA RUIZ; L.Y., a minor by and through his guardian ad litem FRANCISCA URIOSTEGUI,

Plaintiffs,

v.

YUBA COUNTY SHERIFF'S DEPARTMENT; YUBA COUNTY SHERIFF'S DEPUTIES DOES 1-5; CITY OF VACAVILLE; and VACAVILLE POLICE OFFICER DOES 6-10;

Defendants.

Case No. 2:19-cv-02621-KJM-DB

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Date: January 22, 2021
Time: 10:00 a.m.
Courtroom: 3, 15th Floor

Judge: Kimberly J. Mueller

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NOTICE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on January 22, 2021 at 10:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 3 of the above-entitled Court, located at 501 I Street, Sacramento, California, defendants CITY OF VACAVILLE, JULIE BAILEY, CHUCK BAILEY, DUSTIN WILLIS, AND DAVE SPENCER ("the CITY DEFENDANTS") will and hereby do move this Court for an order granting dismissal of the claims specified below and contained in Plaintiffs' first amended complaint ("FAC"), for failure to state any claim upon which relief can be granted. This motion is brought pursuant to Federal Rules of Civil Procedure (FRCP), Rule 12(b), subsection (6), as set forth more fully in the Memorandum of Points and Authorities below, on the ground that dismissal is appropriate because the complaint fails to allege facts sufficient to state claims upon which relief can be granted against Defendant CITY OF VACAVILLE ("the CITY"). This motion is based on this notice, the memorandum of points and authorities, the papers, and pleadings on file herein, and on such oral and documentary evidence as may be adduced at the hearing of this matter.

Pursuant to the Court's standing orders, the CITY DEFENDANTS' counsel attempted to meet and confer with Plaintiffs' counsel to discuss the deficiencies in Plaintiffs' FAC. On November 23, 2020, the CITY DEFENDANTS' counsel emailed Plaintiffs' counsel a detailed analysis of perceived deficiencies in the SAC and requested that Plaintiffs' counsel contact the CITY DEFENDANTS' counsel to discuss these deficiencies. Plaintiffs' counsel did not respond as of the date of this motion.

The CITY DEFENDANTS request a jury trial in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT AND STATEMENT OF ISSUES TO BE DECIDED

Plaintiff Carmel Garcia and minor Plaintiffs M.Y. and L.Y. through their purported guardians ad litem ("Plaintiffs"), bring this action in survivorship on behalf of Decedent Samuel Yasko. (Dkt. No. 28, SAC at ¶¶ 1-3). Plaintiffs bring claims under 42 U.S.C. § 1983 against Defendant City of Vacaville ("the CITY") and individually named police officers for alleged violation of civil rights under 42 U.S.C. §§ 1983 arising out of an incident on December 29, 2017 in which Plaintiffs claim defendants used excessive force in arresting Decedent. Plaintiffs' SAC fails to state facts sufficient to state its claims

asserted against the CITY, relying on "naked assertions" devoid of "further factual enhancement." (*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).) Specifically, dismissal is warranted because Plaintiff's Third Cause of Action fails to state a valid claim against the CITY under *Monell*.

II. STATEMENT OF FACTS ALLEGED BY PLAINTIFF

Plaintiffs allege that on December 29, 2017, Decedent began acting suicidally while working on a construction site with his brother, Mr. Sturgeon and a friend, Mr. Hays. (Dkt. No. 28, SAC at ¶¶ 13-14.) At some point, Decedent fell from a third-story balcony and may have struck his head. (Dkt. No. 28, SAC at ¶ 14.) Decedent began acting "erratically." (Dkt. No. 28, SAC at ¶ 15.) Mr. Sturgeon attempted to persuade Decedent to go to the hospital for several hours until Decedent agreed to get in Mr. Sturgeon's car to be driven from the jobsite. (*Id.*) As Mr. Sturgeon drove, Decedent resumed his suicidal behavior. (Dkt. No. 28, SAC at ¶ 16.) He attempted to strangle himself using the seatbelt. (*Id.*) Mr. Sturgeon pulled over at a gas station and he and Mr. Hays restrained Decedent with straps. (*Id.*) Decedent appeared to calm down, and Mr. Sturgeon continued driving. (*Id.*) Decedent freed himself from his restraints and again attempted to strangle himself using a seatbelt. (Dkt. No. 28, SAC at ¶ 17.) Mr. Sturgeon pulled over at a different gas station in Vacaville. (*Id.*) He and Mr. Hays pulled Decedent out of the vehicle and physically restrained him on the ground. (*Id.*) Mr. Hays called police and reported that Decedent was suicidal and that he and Mr. Sturgeon were attempting to restrain him in the gas station. (*Id.*)

Officer Julie Bailey arrived at the gas station while Mr. Sturgeon were holding Decedent on the ground in a prone position. (Dkt. No. 28, SAC at ¶ 18.) Mr. Hays and Mr. Sturgeon told Officer Julie Bailey that Decedent was suicidal. (*Id.*) Plaintiffs allege that Officer Julie Bailey instructed Mr. Sturgeon to continue applying pressure to Decedent's back as he lay prone. (*Id.*) Officer Chuck Bailey arrived on scene and began kneeling on Decedent's upper torso. (Dkt. No. 28, SAC at ¶ 19.) Sergeant Dave Spencer arrived at the scene next, and all three officers placed their weight on Decedent to restrain him. (Dkt. No. 28, SAC at ¶ 20.) Plaintiffs allege "at least one" of the officers "appear[ed]" to strike or stomp on Decedent. (*Id.*) Plaintiffs further allege Decedent "appear[ed]" to have been Tasered "at some point." (*Id.*)

The officers decided to place Decedent in a WRAP restraint device. (*Id*.) Sergeant Spencer retrieved the WRAP device from his patrol vehicle as Officer Julie Bailey, Chuck Bailey, and a fourth officer, Dustin Willis, placed weight on Decedent to keep him in a prone position. (Dkt. No. 28, SAC at ¶ 21.) As the officers were placing Decedent in the WRAP restraint, he stopped breathing. (*Id*.) After determining Decedent did not have a pulse, officers called for medical assistance. (*Id*.) Decedent was transported to Vacavalley Hospital. (Dkt. No. 28, SAC at ¶ 22.) Decedent remained in a coma for over a week before dying on January 3, 2018. (*Id*.) Plaintiffs allege that the officers' use of force on Decedent ultimately led to his death. (Dkt. No. 28, SAC at ¶ 21.)

Plaintiffs allege that it was the CITY's policy to assign the nearest officer to respond to the scene involving a suspect dealing with a mental health crisis, regardless of whether such an officer had any training in interacting with people with mental problems. (Dkt. No. 28, SAC at ¶ 27.) Plaintiffs allege that the CITY also had a "custom, policy and/or practice" of allowing officers to physically engage a suspect having a mental health crisis without first having to take steps to de-escalate the situation. (Dkt. No. 28, SAC at ¶ 28.) Plaintiffs further allege that the CITY had a policy, custom and practice of allowing multiple officers to apply pressure on a suspect in order to place him or her in handcuffs. (Dkt. No. 28, SAC at ¶¶ 29, 31.) Plaintiffs allege that the CITY also had a policy of allowing its officers to use a WRAP device to restrain suspects in a "hogtie" position. (*Id*.)

Plaintiffs allege that the CITY did not adequately train its officers against the dangers of positional asphyxia in connection with obese suspects placed in a prone position for long periods of time or in connection with the WRAP. (Dkt. No. 28, SAC at ¶ 32.) Finally, Plaintiffs allege that the CITY did not adequately train its officers on how to engage with persons suffering from mental health crises for purposes of minimizing the use of force on such individuals. (Dkt. No. 28, SAC at ¶ 33.)

III. LEGAL ARGUMENT

"A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' … Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" (*Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.) "[A] complaint must contain sufficient factual matter ... to 'state a claim to relief that is plausible on its face.' … The plausibility standard ... asks for more than a sheer possibility that a defendant has acted unlawfully."

(*Iqbal*, 556 U.S. at 678; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).) "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.…Rule 8…does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions'" [Emphasis added.] (*Iqbal*, 556 U.S. at 678-679.)

> [T]o be entitled to the presumption of truth, allegations in a complaint … may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts … the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.

(*Eclectic Prop.'s East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014); *AE ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012); *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).) Plaintiffs' SAC in this case fails to state facts sufficient to state each of the claims asserted. Argument and authorities on these points follows.

A. The Third Cause of Action Fails to State A §1983 Claim Against The CITY

"A municipality cannot be held liable … under § 1983 on a respondeat superior theory." (*Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 691 (1978).) A municipality is subject to liability under §1983 only when a violation of a federally protected right can be attributed to (1) an express municipal policy, such as an ordinance, regulation or policy statement (*Monell*, 436 U.S. at 658); (2) a "widespread practice that, although not authorized by written law or express municipal policy, is 'so permanent and well settled as to constitute a custom or usage' with the force of law" (*City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)); (3) the decision of a person with "final policymaking authority" (*Id.* at 123); or (4) inadequate training that is deliberately indifferent to an individual's constitutional rights (*City of Canton v. Harris*, 489 U.S. 378 (1989).) Plaintiffs must show a sufficient causal connection between the enforcement of the municipal policy or practice and the violation of their federally protected right. (*Harris*, 489 U.S. at 389; *Connick v. Thompson*, 563 U.S. 51, 60 (2011).) "[A] municipality can be liable under § 1983 only where its policies are the moving force behind the constitutional violation." [Emphasis added.] (*Harris*, 489 U.S. at 389; *Bd. of the Cnty. Comm'rs. of Bryan Cnty. v. Brown*, 520 U.S. 397, 404 (1996).) "[R]igorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employees." (*Brown*, 520 U.S. at 405; *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 438 (9th Cir.

1997); *AE ex rel. Hernandez,* 666 F.3d at 636.) Further, municipal liability is contingent on an underlying violation of constitutional rights. (*City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Aguilera v. Baca*, 510 F.3d 1161, 1174 (9th Cir. 2007).)

In their First Amended Complaint ("FAC"), Plaintiffs alleged that the CITY inadequately trains its officers on encounters with people with mental health problems, and that the CITY has a widespread or longstanding custom and practice of failing to assist people with mental health problems. (Dkt. No. 9, FAC at ¶ 25.) On the CITY's motion to dismiss Plaintiffs' FAC, this Court dismissed the third cause of action and ruled that Plaintiffs failed to allege a specific failure of training or any facts tending to show the knowledge of those with responsibility for training the officers in the incident. (Dkt. No. 27, Order at 12:21-22.) This Court further ruled that Plaintiffs did not identify a specific policy or custom beyond alleging the existence of one they claimed caused the harm in this case. (Dkt. No. 27, Order at 12:22-24.)

In their SAC, Plaintiffs attempt to meet their pleading standard by adding further conclusory allegations regarding the CITY's practices and training. Plaintiffs' still fail to allege facts sufficient to state their Third Cause of Action for municipal liability, and therefore this claim must be dismissed without leave to amend.

1. The SAC Fails to Show A CITY Pattern, Policy or Custom

A policy is a "deliberate choice to follow a course of action ... made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." (*Long v. Cty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).) To show municipal liability based on a custom or practice, the critical issue is whether there was a particular custom or practice that was so widespread as to have the force of law. (*Brown,* 520 U.S. at 404.) "It is not sufficient for a plaintiff to identify a custom or policy, attributable to the municipality, that caused his injury. A plaintiff must also demonstrate that the custom or policy was "adhered to with 'deliberate indifference to the constitutional rights of [parties].'" (*Castro v. Cnty. of Los Angeles,* 833 F.3d 1060, 1076 (9th Cir. 2016); *City of Canton,* 489 U.S. at 392.) Further, without allegations of plausible facts supporting a policy or custom, a *Monell* claim should be dismissed. (*AE ex rel.*, 666 F.3d at 637; *Sanchez v. City of Fresno,* 914 F.Supp.2d 1079, 1097, fn.7 (E.D. Cal. 2012); *Young v. City of Visalia*, 687 F.Supp.2d 1141, 1149 (E.D. Cal. 2009).)

Here, Plaintiffs attempt to identify several municipal policies, practices, or customs. They allege that the CITY had a policy to "assign the nearest officer to respond to the scene involving a suspect dealing with a mental health crisis, regardless of whether such an officer had any CIT training" (Dkt. No. 28, SAC at ¶ 27); a "custom, policy and/or practice of allowing its officers to physically engage the suspect having a mental health crisis without first having to take steps to de-escalate the situation" (Dkt. No. 28, SAC at ¶ 28); a policy of "allowing its officers to use a WRAP device to restrain suspects in a 'hogtie' position" (Dkt. No. 28, SAC at ¶¶ 29, 31); and a "policy, custom and practice of allowing multiple officers to apply pressure on a suspect" in order to place him or her in handcuffs. *(Id.)*

These conclusory allegations still are insufficient to support a *Monell* claim. Plaintiffs have alleged no facts showing that that the identified practices were "deliberate choice[s] to follow a course of action … made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Long v. Cty. of Los Angeles*, 442 F.3d at 1185.) Therefore, despite their characterizations of alleged CITY practices as "policies," Plaintiffs have not established the existence of any CITY policy.

Nor are there facts showing the alleged CITY practices were of sufficient duration, frequency, and consistency, that "is 'so permanent and well settled as to constitute a custom or usage' with the force of law." (*Praprotnik*, 485 U.S. 112, 127 (1988); *Brown*, 520 U.S. at 403-404.) The only allegations that the CITY followed the alleged practices or customs is a reference to the instant case. However, unless a custom itself is unconstitutional, or an authorized policymaker committed the unconstitutional act, "[l]iability for improper custom may not be predicated on isolated or sporadic incidents." (*Johnson v. City of Vallejo*, 99 F.Supp.3d 1212, 1218 (E.D. Cal. 2015), *quoting Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) *holding modified by Navarro v. Block*, 250 F.3d 729 (9th Cir. 2001).) Because Plaintiffs have not pled any facts to demonstrate the existence of a CITY policy, practice, or custom sufficient to establish municipal liability, their *Monell* claim must fail.

Plaintiffs also fail to show the identified policies, practices or customs were "adhered to with 'deliberate indifference to the constitutional rights of [parties].'" (*Castro*, 833 F.3d at 1076; *City of Canton*, 489 U.S. at 392.) Plaintiffs merely conclude that the CITY's policies "[amount] to deliberate indifference towards the constitutional rights of individuals, such as Samuel Yasko." (Dkt. No. 28, SAC

at ¶¶ 47-48). Similarly, no facts are alleged showing any causal connection between a CITY custom or practice and the alleged violations. (*See City of Canton*, 489 U.S. at 392.) The sole allegation concerning causation is an unsupported conclusion that "[a]ll of the above policies, customs and practices were moving forces behind the Plaintiff's constitutional injuries …" (Dkt. No. 28, SAC at ¶ 49.) Plaintiffs' formulaic recitations of the elements of deliberate indifference and causation cannot establish those elements. (*See AE ex rel. Hernandez*, 666 F.3d at 636.) Because Plaintiffs fail to establish any of the elements of their *Monell* claim based on a CITY policy, practice, or custom, their claim must be dismissed.

2. The FAC Fails to State A Claim Based on Inadequate Training

"A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." (*Connick*, 563 U.S. at 61.) The "focus must be on adequacy of the training program in relation to the tasks the particular officers must perform. That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program." (*City of Canton*, 489 U.S. at 390-391.) Inadequate training claims require a showing of deliberate indifference to a constitutional right. This standard is met when "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 policymaker of the city can reasonably be said to have been deliberately indifferent to the need." (*Id*. at 390; *Connick*, 563 U.S. at 62.)

> "'[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.'…A less stringent standard of fault for a failure-to-train claim would result in *de facto respondeat superior* liability on municipalities… [¶] A pattern of similar constitutional violations by untrained employees is "ordinarily necessary" to demonstrate deliberate indifference for purposes of failure to train.

(*Connick*, 563 U.S. at 61-62; *see also Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011).) Although this is a high standard, the Supreme Court warned that "To adopt lesser standards of fault and causation would open municipalities to unprecedented liability under §1983. In virtually every instance where a person has had his or her constitutional rights violated … a § 1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident. … Thus, permitting cases against cities for their 'failure to train' employees to go forward under § 1983 on a lesser standard of fault would result in *de facto respondeat superior* liability on municipalities – a result [the Supreme

Court] rejected in *Monell*." (*City of Canton,* 489 U.S. at 391-392.) Inadequate training claims "will **not** be satisfied by merely alleging that the existing training program for a class of employees, such as police officers, represents a policy for which the city is responsible." [Emphasis added.] (*Id.* at 389.)

Here, Plaintiffs allege the CITY did not adequately train its officers on how to engage with persons suffering from mental health crises for purposes of minimizing the use of force on such individuals. (Dkt. No. 28, SAC at ¶ 32.) Plaintiffs further allege the CITY did not adequately train its officers against the dangers of positional asphyxia in connection with obese suspects placed in a prone position for long periods of time or in connection with the WRAP. (Dkt. No. 28, SAC at ¶ 32.)

These conclusory allegations are insufficient to state a *Monell* claim. Plaintiffs still allege no facts showing what the CITY's training was, or that the CITY's training was inadequate. Nor are there factual allegations showing a "pattern of similar constitutional violations by untrained employees [which] is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." (*Connick*, 563 U.S. at 62.) At most, Plaintiffs allege that other police departments in the United States have trained certain officers to respond specifically to calls involving persons with mental health problems. (Dkt. No. 28, SAC at ¶¶ 25-26.) Plaintiffs also allege that the CITY's officers regularly receive calls to assist suspects undergoing mental health crises. (Dkt. No. 28, SAC at ¶ 23.) These allegations do not demonstrate a pattern of constitutional violations sufficient to show the CITY's deliberate indifference. The fact that other police departments provide some of their officers with mental health specific training, and the CITY does not, does not show the CITY "disregarded a known or obvious consequence of [its] action[s]." (*See Connick*, 563 U.S. at 61.)

Plaintiffs further allege a "common danger" of positional asphyxia when weight is placed on a suspect for a prolonged period of time in a prone position, exacerbated when the suspect is restrained with a WRAP device and where the suspect is overweight. (Dkt. No. 28, SAC at ¶ 30.) However, Plaintiffs do not identify any prior instances of positional asphyxia in suspects involving the CITY. Instead, Plaintiffs cite to an online article they contend supports this position. This article is outside the bounds of the complaint, and therefore this Court should not consider it on a motion to dismiss. (*See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). However, even if this Court were to consider the extraneous article an exhibit attached to the complaint, the article states at most that the

"hogtie" position where a suspect lies prone with their hands and ankles bound together behind their back has been linked to suffocation deaths. Plaintiffs do not allege that Decedent was ever placed in the "hogtie" position. A risk of positional asphyxia in suspects placed in a position in which Decedent was never placed cannot show "the need for more or different training is so obvious …" as to amount to deliberate indifference to constitutional rights. (*See City of Canton*, 489 U.S. at 390; *Connick*, 563 U.S. at 62.)

At their core, Plaintiffs allegations are that the CITY could have prevented decedent's death by providing specific training to its officers. However, these are precisely the type of allegations the Supreme Court has held are insufficient to establish municipal liability. "In virtually every instance where a person has had his or her constitutional rights violated …a § 1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident … Thus, permitting cases against cities for their 'failure to train' employees to go forward under § 1983 on a lesser standard of fault would result in *de facto respondeat superior* liability on municipalities – a result [the Supreme Court] rejected in *Monell*." " (*City of Canton*, 489 U.S. at 392.) Here, Plaintiffs' only factual allegations pled in an attempt to support a failure to train theory are that specific training may have prevented the incident. These allegations cannot establish Plaintiffs' *Monell* claim for failure to train.

Finally, Plaintiffs fail to show that the alleged failure to train caused any constitutional violation. Again, Plaintiffs only allegation regarding a causal link between the alleged constitutional violation is the unsupported conclusion that the identified "policies, customs and practices were moving forces behind the Plaintiff's constitutional injuries …" (Dkt. No. 28, SAC at ¶ 59.) This is a legal conclusion, not a factual allegation, and this Court should not accept it as true. (*See Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986).) Because Plaintiffs have not shown a causal link between the alleged failure to train and Plaintiffs' injuries, they cannot establish a necessary element of their *Monell* claim. Therefore, Plaintiffs claim must be dismissed.

When this Court dismissed Plaintiffs' FAC with leave to amend, it allowed Plaintiffs the opportunity to amend their complaint to provide further and adequate support for their *Monell* claim with plausible factual allegations. Plaintiffs still fail to plead any necessary facts to support their *Monell* claim. Plaintiffs demonstrate that there is no set of facts they can plead to support their *Monell* claim.

Because granting leave to amend would be futile, the CITY DEFENDANTS request that this Court dismiss Plaintiffs' *Monell* claim without leave to amend.

IV. CONCLUSION

For the reasons set forth above, the CITY DEFENDANTS respectfully submit that the instant motion to dismiss Plaintiffs' Third Cause of Action in their SAC should be granted without leave to amend.

Dated: November 30, 2020

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

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