

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**United States District Court
Central District of California**

B.M., a minor by and through her
Guardian Ad Litem NORMA DE LA
CRUZ, individually and as successor in
interest to GILBERT MESA; and
VERONICA MESA,

Plaintiffs,

v.

COUNTY OF SAN BERNARDINO;
JONATHAN M. SUSANTO; and DOES
1-10,

Defendants.

Case No. 2:16-cv-6331-ODW (DTB)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS [29]**

I. INTRODUCTION

Before the Court is Defendants County of San Bernardino and Jonathan
Susanto's Motion to Dismiss. (ECF No. 29.) While Plaintiffs failed to timely oppose
the Motion, C.D. Cal. L.R. 7-9, the Court nonetheless addresses the merits of
Defendants' arguments. For the reasons discussed below, the Court **GRANTS IN
PART** and **DENIES IN PART** the Motion.¹

¹ After reviewing the papers submitted in support of the Motion, the Court deems the Motion
appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 **II. FACTUAL BACKGROUND**

2 On March 27, 2015, Gilbert Mesa and his ex-girlfriend, Dalia Reyes, “had a
3 dispute and ensuing altercation” that resulted in Mesa cutting himself with a knife.
4 (First Am. Compl. (“FAC”) ¶ 22.) Deputies from the San Bernardino County Sheriff’s
5 Department (“SBSD”), including Deputy Susanto, were summoned to treat Mesa for
6 his hand laceration. (*Id.* ¶ 23.) The deputies ultimately brought Mesa to the Big Bear
7 Valley Community Hospital, where a doctor treated Mesa’s injury. (*Id.* ¶ 24.) During
8 this visit, the treating physician did not treat, or even note, any injuries to Mesa’s
9 head. (*Id.* ¶ 24.) In fact, the physician affirmatively noted that Mesa did not have any
10 other skin injuries. (*Id.*, Ex. A.) The next day, Mesa arrived with his mother at the
11 Big Bear Jail to give a statement to the SBSB regarding his dispute with Reyes. (*Id.*
12 ¶ 26.) After the interview, Deputy Susanto arrested Mesa and booked him into the Big
13 Bear Jail. (*Id.*) Deputy Susanto allegedly told Mesa’s mother that Mesa “had to be
14 punished for what he did to Dalia Reyes.” (*Id.*)

15 Plaintiffs allege that sometime between 5:30 p.m. and 8:50 p.m. that night,
16 Deputy Susanto “assaulted and severely beat Mesa in the back of the head,” which
17 caused a laceration that required five staples to close. (*Id.* ¶ 29.) Plaintiffs allege that
18 during this timeframe, another inmate at the jail “observed Mesa, standing inside his
19 cell, wearing nothing but a pair of boxers, and surrounded by several deputies,” and
20 that this was the “prelude” to the assault on Mesa. (*Id.* ¶ 30.) At approximately 8:50
21 p.m., Mesa hung himself by his shoelaces. (*Id.* ¶ 31.) Mesa was still alive when the
22 deputies found him, and he was transported to the Big Bear Valley Community
23 Hospital for treatment. (*Id.* ¶¶ 31, 33.) Despite treatment, Mesa died two days later.
24 (*Id.* ¶ 33.)²

25 Plaintiffs originally filed an action against the County in this Court on March
26 11, 2016. (*See* Compl., *B.M. v. County of San Bernardino*, No. 5:16-cv-00446-ODW-

27 ² While Plaintiffs previously asserted several theories of liability against Defendants relating to
28 Mesa’s suicide, Plaintiffs do not appear to do so in this iteration of the complaint.

1 DTB (C.D. Cal. Mar. 11, 2016), ECF No. 1 (hereinafter *B.M. I.*) The Court granted
2 the County’s Motion to Dismiss with leave to amend on June 22, 2016. (Order, *B.M.*
3 *I*, ECF No. 21.) After Plaintiffs failed to timely file an amended complaint, the Court
4 dismissed the case without prejudice. (Minute Order, *B.M. I*, ECF No. 22.) A month
5 later, Plaintiffs refiled the action. (ECF No. 1.) Upon Motion by Defendants, the
6 Court dismissed each of Plaintiffs’ claims—some with leave to amend, and some
7 without. (ECF No. 22.) After Plaintiffs filed a timely First Amended Complaint,
8 Defendants again moved to dismiss. (ECF No. 29.) Plaintiffs failed to timely oppose
9 the Motion, which is now before the Court for decision.

10 III. LEGAL STANDARD

11 A court may dismiss a complaint under Federal Rule of Civil Procedure
12 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to support
13 an otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d
14 696, 699 (9th Cir. 1990). To survive a dismissal motion, a complaint need only satisfy
15 the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement
16 of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). However, the factual
17 “allegations must be enough to raise a right to relief above the speculative level.” *Bell*
18 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint must “contain
19 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on
20 its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

21 The determination whether a complaint satisfies the plausibility standard is a
22 “context-specific task that requires the reviewing court to draw on its judicial
23 experience and common sense.” *Id.* at 679. A court is generally limited to the
24 pleadings and must construe all “factual allegations set forth in the complaint . . . as
25 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d
26 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,
27 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden*
28 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

1 As a general rule, a court should freely give leave to amend a complaint that has
2 been dismissed. Fed. R. Civ. P. 15(a). However, a court may deny leave to amend
3 when it “determines that the allegation of other facts consistent with the challenged
4 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
5 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see also Lopez v. Smith*, 203 F.3d
6 1122, 1127 (9th Cir. 2000).

7 IV. DISCUSSION

8 Plaintiffs bring two claims against Defendants: (1) violation of the Eighth and
9 Fourteenth Amendment under 42 U.S.C. § 1983; and (2) conspiracy to violate Mesa’s
10 civil rights under § 1983. (FAC ¶¶ 35–48.) Defendants move to dismiss each claim.
11 The Court considers each claim in turn.

12 A. Violation of the Eighth and Fourteenth Amendments

13 As Defendants note, claims of excessive force against pretrial detainees (such
14 as Mesa) “are analyzed under the Fourteenth Amendment Due Process Clause, rather
15 than under the Eighth Amendment.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir.
16 1998). “[T]he Due Process Clause protects a pretrial detainee from the use of
17 excessive force that amounts to punishment.” *Graham v. Connor*, 490 U.S. 386, 395
18 n.10 (1989). “[S]uch ‘punishment’ can consist of actions taken with an ‘expressed
19 intent to punish.’ . . . [I]n the absence of an expressed intent to punish, a pretrial
20 detainee can nevertheless prevail by showing that the actions are not ‘rationally
21 related to a legitimate nonpunitive governmental purpose’ or that the actions ‘appear
22 excessive in relation to that purpose.’” *Kingsley v. Hendrickson*, 135 S. Ct. 2466,
23 2473 (2015) (citations omitted); *see generally Bell v. Wolfish*, 441 U.S. 520, 561
24 (1979).

25 Here, Plaintiffs state sufficient facts to support a claim for violation of Due
26 Process. Plaintiffs allege that Defendants assaulted Mesa after arresting him, resulting
27 in a head wound that required five staples to close. Plaintiffs further allege that the
28 physician who treated Mesa the day before his arrest affirmatively noted that Mesa

1 had “no other injuries” on his skin apart from the laceration on his hand, suggesting
2 that Mesa’s injury occurred during his detention. (FAC ¶ 24, Ex. A.) Assuming the
3 truth of these allegations, it is difficult to conceive how the use of force that causes
4 such injury could be “rationally related to a legitimate nonpunitive government
5 purpose.” *Kingsley*, 135 S. Ct. at 2473.

6 To be fair, Plaintiffs’ theory is not without its shortcomings. As Defendants
7 point out, the presence of deputies in Mesa’s cell (as observed by the anonymous
8 inmate) hardly shows that an assault in fact took place, as there are innumerable other
9 (and perfectly lawful) explanations for their presence in his jail cell. *See Iqbal*, 556
10 U.S. at 682. Moreover, Plaintiffs’ theory relies on the rather doubtful scenario that
11 within only a three-hour period, the deputies (1) assaulted Mesa, (2) treated the
12 resulting head laceration, and (3) brought him back to his cell (after which Mesa hung
13 himself). But while doubtful, it is nevertheless still *plausible*, which is all that is
14 required at the pleading stage. *See id.* at 678.

15 **B. Conspiracy to Violate Civil Rights**

16 In order to state a claim for conspiracy under § 1983, a litigant must first
17 establish an underlying constitutional violation. *Lacey v. Maricopa Cnty.*, 693 F.3d
18 896, 935 (9th Cir. 2012). Once Plaintiffs do so, they must show “that the conspiring
19 parties reached a unity of purpose or a common design and understanding, or a
20 meeting of the minds in an unlawful arrangement.” *Id.* at 935.

21 In its prior order dismissing Plaintiffs’ Complaint, the Court concluded that
22 Plaintiffs had not pleaded sufficient facts in support of their conspiracy claim. While
23 Plaintiffs reassert their conspiracy claim in their First Amended Complaint, they have
24 not included any additional facts tending to show a conspiracy. Thus, the Court
25 dismisses this claim without leave to amend. *Abagninin v. AMVAC Chem. Corp.*, 545
26 F.3d 733, 742 (9th Cir. 2008) (“Leave to amend may . . . be denied for repeated failure
27 to cure deficiencies by previous amendment.”).

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the reasons discussed above, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' Motion to Dismiss. (ECF No. 29.) The Court dismisses without leave to amend Plaintiffs' first claim insofar as it is based on the Eighth Amendment. The Court also dismisses without leave to amend Plaintiffs' second claim for conspiracy. Defendants' Motion is otherwise denied. Defendants should answer Plaintiffs' First Amended Complaint with seven days of this Order.

IT IS SO ORDERED.

January 18, 2017



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE