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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MANUELA CANCINO CONTRERAS)
MORALES, individually and as)
Successor-In-Interest to Ruben Mesa)
Morales, deceased; RUBEN ALEJANDRO)
MORALES, individually and as)
Successor-In-Interest to Ruben Mesa)
Morales, deceased, by and through his)
Guardian Ad Litem, Manuela Cancino)
Contreras Morales,)

Plaintiffs,

vs.

CITY OF DELANO, a municipal)
corporation; CITY OF DELANO POLICE)
DEPARTMENT, an entity of unknown)
business organization; MARK P.)
DEROSIA, individually and in his capacity)
as Chief of Police of the City Of Delano)
Police Department; JOSE MEJIA,)
individually and in his capacity as a reserve)
officer of the City Of Delano Police)
Department; SHAUN MANUELE,)
individually and in his capacity as an)
officer of the City Of Delano Police)
Department; COUNTY OF KERN, a)
municipal corporation; and DOES 1)
through 50, inclusive,)

Defendants.

Case No. 1:10-cv-1203-AWI-JLT
ORDER GRANTING MOTION FOR
APPOINTMENT AS GUARDIAN AD LITEM
ORDER GRANTING MOTION TO PROCEED
IN FORMA PAUPERIS
ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

(Docs. 3, 4)

1 **I. Background**

2 Plaintiffs are proceeding with a civil rights action pursuant to 42 U.S.C. § 1983. In their
3 complaint, they allege that Ruben Mesa Morales was shot and killed unlawfully by law
4 enforcement officers. Plaintiff Manuela Cancino Contreras Morales alleges that she was the wife
5 of the decedent and that Ruben Alejandro Morales¹ was the decedent’s minor child. (Doc. 1 at 2)

6 Before the Court are two motions, both filed on June 30, 2010. In the first, Plaintiff
7 Manuela Cancino Contreras Morales seeks appointment as the guardian ad litem for her minor
8 child, Ruben Alejandro Morales. (Doc. 4) In the second, Ms. Morales seeks permission to
9 proceed in this action in forma pauperis (“IFP”). (Doc. 3)

10 **II. Motion for appointment of guardian ad litem**

11 In support of her motion, Ms. Morales attests that her child, Ruben, is seven years old and
12 is the sole surviving child of Plaintiffs’ decedent, Ruben Mesa Morales.² (Doc. 4 at 2) Ms.
13 Morales asserts that she is the sole provider and caretaker of the child and is willing and able to
14 take on the role of guardian ad litem for the boy. Id.

15 Based upon these sworn representations, the Court **GRANTS** Ms. Morales’ request to be
16 appointed as the guardian ad litem for her son, Plaintiff Ruben Alejandro Morales.

17 **III. Motion to proceed in forma pauperis**

18 On June 30, 2010, Plaintiffs filed an application to proceed in forma pauperis pursuant to
19 28 U.S.C. § 1915. (Doc. 3) In support of this motion, Plaintiff, Ms. Morales, asserted that she
20 lives in Zacatecas, Mexico where she is employed as a teacher. (Doc. 3 at 2-3) She earns \$700
21 per month and uses this money to support herself and her two minor children. (Doc. 3 at 2) As
22 she can, she provides financial support for her parents and her mother-in-law also. (Doc 3 at 3)
23 Also, her son, Ruben, receives \$1,057 per month in benefits from Social Security due to his
24

25 ¹Counsel is reminded of the privacy concerns for minor children outlined in Local Rule 140.
26 Counsel is ordered to review the Rule and determine whether redaction of the child’s name should
occur in future filings.

27 ²Ms. Morales asserted that the child’s birth certificate was attached to her motion but it was
not.

1 father's death. Id. Ms. Morales owns a small home in Mexico, valued at \$10,900, and a car
2 worth about \$800. Id. After paying her husband's funeral expenses out of life insurance policy
3 benefits, she maintains the balance of the insurance proceeds in a savings account in the amount
4 of \$4,600. Id.

5 Based upon the declaration submitted, the Court finds that Ms. Morales has satisfied the
6 indigency requirements of 28 U.S.C. § 1915 and that Plaintiff is unable to pay the costs of
7 commencing this action. Accordingly, Plaintiff's IFP motion is **GRANTED**.

8 **IV. The Court is required to screen Plaintiff's complaint.**

9 The Court is required to review a case filed IFP. 28 U.S.C. §1915(a); 28 U.S.C. 1915(e).
10 The Court must review the complaint and dismiss the action if it is frivolous or malicious, fails to
11 state a claim on which relief may be granted, or seeks monetary relief against a defendant who is
12 immune from such relief. 28 U.S.C. § 1915 (e)(2)(B); see Noll v. Carlson, 809 F. 2d 1446, 1448
13 (9th Cir. 1987 (citing Franklin v. Murphy, 745 F. 2d 1221, 1228 (9th Cir. 1984)). If the Court
14 determines that the complaint fails to state a claim, leave to amend may be granted to the extent
15 that the deficiencies of the complaint can be cured by amendment. Lopez v. Smith, 203 F.3d
16 1122, 1127-1128 (9th Cir. 2000) (en banc).

17 **A. Section 1983 complaint**

18 Plaintiff's complaint seeks damages under 42 U.S.C. § 1983. To warrant relief under
19 §1983, plaintiffs must show that the defendants' acts or omissions caused the deprivation of the
20 their constitutionally protected rights. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993). "A
21 person deprives another of a constitutional right, within the meaning of section 1983, if he does
22 an affirmative act, participates in another's affirmative acts, or omits to perform an act which he
23 is legally required to do that causes the deprivation of which [the plaintiff complains]." Id.
24 There must be an actual causal connection or link between the actions of each defendant and the
25 deprivation alleged to have been suffered by plaintiffs. See Monell v. Department of Social
26 Services, 436 U.S. 658, 691-692 (1978)(citing Rizzo v. Goode, 432 U.S. 362, 370-371(1976)).

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1 **B. Rule 8(a)**

2 Section 1983 complaints are governed by the notice pleading standard in Federal Rule of
3 Civil Procedure 8(a). Although the Federal Rules of Civil Procedure adopt a flexible pleading
4 policy, a complaint must give fair notice and state the elements of plaintiffs’ claim plainly and
5 succinctly. Jones v. Community Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). In
6 other words, the complaint must give the defendants fair notice of what constitutes the plaintiffs’
7 claims and the grounds upon which they rests. Although a complaint need not outline all of the
8 elements of a claim, it must be possible to infer from the allegations that all of the elements exist
9 and that plaintiffs are entitled to relief under a viable legal theory. Walker v. South Cent. Bell
10 Telephone Co., 904 F.2d 275, 277 (5th Cir. 1990).

11 In Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949, (2009), the Court observed,

12 [T]he pleading standard Rule 8 announces does not require “detailed factual
13 allegations,” but it demands more than an unadorned,
14 the-defendant-unlawfully-harmed-me accusation. [Citations]. A pleading that
15 offers “labels and conclusions” or “a formulaic recitation of the elements of a
16 cause of action will not do.” [Citation]. Nor does a complaint suffice if it tenders
17 “naked assertion[s]” devoid of “further factual enhancement.” [Citation].

18 The Court further clarified that,

19 a complaint must contain sufficient factual matter, accepted as true, to “state a
20 claim to relief that is plausible on its face.” [Citation]. A claim has facial
21 plausibility when the plaintiff pleads factual content that allows the court to draw
22 the reasonable inference that the defendant is liable for the misconduct alleged.
23 [Citation]. The plausibility standard is not akin to a “probability requirement,” but
24 it asks for more than a sheer possibility that a defendant has acted unlawfully.
25 [Citation]. Where a complaint pleads facts that are “merely consistent with” a
26 defendant’s liability, it “stops short of the line between possibility and plausibility
27 of ‘entitlement to relief.’”

28 Id. The Court instructed, “When there are well-pleaded factual allegations, a court should
29 assume their veracity and then determine whether they plausibly give rise to an entitlement to
30 relief. Id. at 1950. However, the conclusions contained in the pleading “are not entitled to the
31 assumption of truth.” Id.

32 **C. Analysis**

33 **i. Summary of the Allegations**

1 Plaintiffs allege that their decedent, Ruben Alejandro Morales, was shot and killed by
2 members of the Delano Police Department on July 6, 2009. (Doc. 1 at 6-7) At the time, the
3 decedent rented a room in the home of Maria Nunez. Id. When Ms. Nunez arrived home at about
4 midnight, she noticed that the front door was ajar and there were lights flickering inside. Id.
5 When the police arrived, Nunez reported that the decedent was lawfully inside. Id. However,
6 after other officers inspected the home and “cleared it,” officers Mejia and Manuele entered the
7 residence from the backyard. Id. When they encountered the decedent in his bedroom, Mejia
8 shot him at “point-blank” range. Id.

9 After the shooting, the decedent lay on the floor awaiting medical assistance but it was
10 not provided in a timely fashion. (Doc. 1 at 7-8) Eventually the Delano Police officers requested
11 medical attention and medical personnel were dispatched by the County of Kern. Id. When the
12 medical personnel arrived, the decedent was still alive. Id. The Kern County personnel
13 transported the decedent to Delano Regional Medical Center where he died. Id.

14 Based upon these factual allegations, the Plaintiffs seek to impose liability under 42 USC
15 § 1983 for violations of the decedents’ Fourth, Fourteenth and Eighth Amendments rights and for
16 violations of their Fourth and Fourteenth Amendment rights. They seek to impose liability based
17 upon state law claims for wrongful death, battery and negligence also.

18 **ii. The Alleged Defendants**

19 Plaintiffs name Delano police officers, Jose Mejia and Shaun Manuele, in their individual
20 capacities. They name also, Delano Police Chief, Mark Derosia, in his individual capacity, the
21 City of Delano and the City of Delano Police Department. Finally, they name the County of
22 Kern.

23 **iii. The complaint does not state a claim for violation of the decedent’s**
24 **Eighth Amendment rights.**

25 The Eighth Amendment’s protection against cruel and unusual punishment applies only
26 to convicted prisoners. Graham v. Connor, 490 U.S. 386, 395 n.10 (1989); Bell v. Wolfish, 441
27 U.S. 520, 535 (1979). As to pretrial detainees, it is the Fourteenth Amendment’s Due Process

1 Clause that protects against excessive force that amounts to punishment. Graham, 490 U.S. at
2 395 n. 10; Gibson v. County of Washoe, 290 F.3d 1175, 1197 (9th Cir. 2002). On this basis, the
3 Ninth Circuit has determined that the Fourth Amendment’s standards set the applicable
4 constitutional limitations for considering claims of excessive force . Gibson, 290 F.3d at 1197;
5 Short v. Sanzberro, 2009 U.S. Dist. LEXIS 122519 at *8 (E.D. Cal. 2009).

6 In the first cause of action, Plaintiffs allege that the decedent suffered violations of his
7 Eighth Amendment rights when Mejia shot him and when the officers failed to immediately
8 summon medical care to the scene. (Doc. 1 at 10-12) However, the complaint does not allege
9 that the decedent was a convicted inmate. (Doc. 1 at 7) To the contrary, it alleges that the
10 incident occurred in the decedent’s home after he had returned home from work. Id. Therefore,
11 the Eighth Amendment does not apply and the claims based thereon are **DISMISSED**.

12 **iv. Plaintiffs have failed to state a cause of action against the County of**
13 **Kern**

14 In the complaint, Plaintiffs allege that when the Delano Police officers called for medical
15 attention for the decedent, the County of Kern dispatched medical personnel to the scene of the
16 shooting. (Doc. 1 at 8) They allege that “Kern County medical personnel” arrived at the scene
17 and, at that time, the decedent was still alive. Id. The personnel took the decedent to Delano
18 Regional Medical Center where he died. Id. These are the entirety of the allegations related to
19 the acts attributed to the County of Kern at the scene of the shooting. Notably, although the
20 complaint alleges that Kern County maintained unconstitutional customs or policies, there are no
21 allegations of any unlawful acts that caused the alleged damages.³ Therefore, the Court will
22 **DISMISS** all claims related to the County of Kern with leave to amend.

23 **v. The complaint is vague because Plaintiffs has failed to attach “Exhibit**
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25 ³Moreover, the Court is concerned that Plaintiffs are confusing private ambulance personnel
26 with employees of the County of Kern. Nevertheless, the Plaintiffs’ contention that the County of
27 Kern employed medical personnel whose job entailed transporting patients to area hospitals,
although contrary to the Court’s knowledge of first responders in this area, may be sufficient if
supported by factual allegations. For example, Plaintiffs should provide additional details that
outline which of Kern County’s personnel took unlawful action or, at a minimum, what department
within the County did so.

1 and local governmental entities. Martin Schwartz and John Kirklin, Section 1983
2 Litigation: Claims Defenses and Fees, § 5.2 (2d ed. 1991). However, the term
3 “persons” does not encompass municipal departments. “Naming a municipal
department as a defendant is not an appropriate means of pleading a § 1983 action
against a municipality.” Stump v. Gates, 777 F. Supp. 808, 816 (D. Colo. 1991).

4 Likewise, this Court has held repeatedly that although a governmental entity is a proper
5 defendant in §1983 litigation, its agencies are not. Hunter v. County of Sacramento, 2006 U.S.
6 Dist. LEXIS 74383 at *11 (E.D. Cal. Sept. 29, 2006); Wallace v. Sacramento Sheriff, 2007 U.S.
7 Dist. LEXIS 79263 at *1 (E.D. Cal. Oct. 12, 2007); Gonzalez v. Merced County, 2009 U.S. Dist.
8 LEXIS 40307 at *3, n. 1 (E.D. Cal. May 13, 2009); Garcia v. City of Merced, 2009 U.S. Dist.
9 LEXIS 88277 at *5, n 4 (E.D. Cal. Sept. 25, 2009). Because the Court is granting leave to
10 amend, Plaintiffs will be permitted to clarify this point and omit reference to the Delano Police
11 Department, if appropriate.

12 C. Conclusion

13 In summary, the Court must dismiss Plaintiffs’ complaint as to all defendants because it
14 is vague and, as such, they have failed to state a cognizable claim. Moreover, the claims based
15 upon the Eighth Amendment are not proper in this instance. Finally, the complaint fails to state a
16 claim against the County of Kern and the pleading ambiguity regarding the Delano Police
17 Department must be corrected.

18 However, the Court will grant Plaintiffs an opportunity to amend the complaint to address
19 the above deficiencies. Plaintiffs are informed that the Court cannot refer to a prior pleading in
20 order to make Plaintiffs’ amended complaint complete. Local Rule 220 requires that an amended
21 complaint be complete in itself without reference to any prior pleading. This is because, as a
22 general rule, an amended complaint supercedes the original complaint. See Loux v. Rhay, 375
23 F.2d 55, 57 (9th Cir. 1967). Once Plaintiffs file an amended complaint, the original pleading no
24 longer serves any function in the case. Therefore, in an amended complaint, as in an original
25 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

26 Accordingly, it is hereby **ORDERED** that:

27 1. Plaintiffs’ complaint is **DISMISSED WITH LEAVE TO AMEND**; and

