

1 This matter comes before the Court on Defendant Glenn Medical
2 Center, Inc.'s ("Defendant's") Motion to Dismiss (Doc. 28)
3 Plaintiffs' Estate of Jessie P. Contreras, by and through his
4 Special Administrator, Leonor Contreras, and Leonor Contreras
5 individually, mother of Jessie P. Contreras ("Plaintiffs") First
6 Amended Complaint ("FAC") (Doc. 6) for failure to state a claim
7 pursuant to Federal Rule of Civil Procedure. Plaintiffs oppose the
8 motion. The matter was calendared for hearing on August 18, 2010,
9 and ordered submitted on the briefs.¹ For the reasons set forth
10 below, Defendant's motion is granted in part, and denied in part.
11

12 I. FACTUAL AND PROCEDURAL BACKGROUND

13 Decedent Jessie P. Contreras ("Decedent") was an inmate in
14 Glenn County Jail ("the jail") at the time of his death on August
15 6, 2008. Decedent was admitted to the jail for misdemeanor
16 offenses on July 30, 2008. Plaintiffs allege that Decedent
17 indicated at the time of his intake at the jail, and thereafter,
18 that he was mentally unstable and suicidal. Decedent was placed in
19 a single cell with sheets and a bed, and no video camera for
20 monitoring the cell. Plaintiffs allege that a jail officer noted
21 in a computer log that Decedent had advised he was suicidal, yet no
22 mental health or other health care was provided, Decedent was not
23 placed in a safety or isolation cell, nor was he monitored on a
24 suicide watch program. On August 4, 2008, Decedent was found in
25 his cell, hanging from a bed sheet. He was taken to the hospital
26 and died in the hospital on August 6, 2008. Plaintiffs bring

27 _____
28 ¹ This motion was determined to be suitable for decision without
oral argument. E.D. Cal. L.R. 230(g).

1 survivor claims for civil rights violations under 42 U.S.C. § 1983,
2 and pendent state law survivor claims. Additionally, Plaintiffs
3 ask for leave to amend the FAC to include Decedent's minor
4 daughter, J.A.L.A., as a plaintiff. Plaintiffs allege that
5 Defendant bears responsibility for Decedent's death, because
6 Defendant is the contracted medical care provider for the jail, and
7 is responsible for providing medical and mental health training to
8 staff at the jail. The Court has previously ruled (Docs. 30, 31)
9 on motions to dismiss by defendants County of Glenn, Glenn County
10 Sheriff's Department, Sheriff Larry Jones, and officers Timothy
11 Asbury, Philip Revolinsky, Richard Warren, Harold White, Dee Dee
12 Nelson and Emmanuel Chavez. See Contreras, ex rel. Contreras v.
13 County of Glenn, 2010 WL 2816378 (E.D. Cal. July 16, 2010); Estate
14 of Contreras, ex rel. Contreras v. County of Glenn, 2010 WL 2816246
15 (E.D. Cal. July 16, 2010). Pursuant to those orders, Plaintiffs
16 will be filing a Second Amended Complaint within twenty (20) days
17 of the date of this Order.

18 19 II. OPINION

20 A. Legal Standard

21 Motion to Dismiss

22 A party may move to dismiss an action for failure to state a
23 claim upon which relief can be granted pursuant to Federal Rule of
24 Civil Procedure section 12(b)(6). In considering a motion to
25 dismiss, the court must accept the allegations in the complaint as
26 true and draw all reasonable inferences in favor of the plaintiff.
27 Scheuer v. Rhodes, 416 U.S. 232, 236 (1975), overruled on other
28 grounds by Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405

1 U.S. 319, 322 (1972). Assertions that are mere "legal
2 conclusions," however, are not entitled to the assumption of truth.
3 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009), citing Bell Atl.
4 Corp. v. Twombly, 550 U.S. 544, 555 (2007). To survive a motion to
5 dismiss, a plaintiff needs to plead "enough facts to state a claim
6 to relief that is plausible on its face." Twombly, 550 U.S. at
7 570. Dismissal is appropriate where the plaintiff fails to state a
8 claim supportable by a cognizable legal theory. Balistreri v.
9 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

10 Upon granting a motion to dismiss for failure to state a
11 claim, the court has discretion to allow leave to amend the
12 complaint pursuant to Federal Rule of Civil Procedure section
13 15(a). "Dismissal with prejudice and without leave to amend is not
14 appropriate unless it is clear . . . that the complaint could not
15 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc.,
16 316 F.3d 1048, 1052 (9th Cir. 2003).

17 Section 1983

18 To prevail in a 42 U.S.C. § 1983 civil action against state
19 actors for the deprivation of "rights, privileges, or immunities
20 secured by the Constitution and laws, a plaintiff must show that
21 (1) acts by the defendants (2) under color of state law (3)
22 deprived him of federal rights, privileges or immunities and (4)
23 caused him damage. Section 1983 is not itself a source of
24 substantive rights, but merely provides a method for vindicating
25 federal rights elsewhere conferred. Accordingly, the conduct
26 complained of must have deprived the plaintiff of some right,
27 privilege or immunity protected by the Constitution or laws of the
28 United States." Thornton v. City of St. Helens, 425 F.3d 1158,

1 1163-64 (9th Cir. 2005) (internal citations omitted).

2 Standing

3 As an initial matter, Defendant challenges Leonor Contreras'
4 standing in her individual capacity to bring the first and second
5 claims for relief under 42 U.S.C. § 1983. The Court addressed
6 Leonor Contreras' lack of individual standing in its previous
7 orders. See Contreras, ex rel. Contreras, 2010 WL 2816378 at *2;
8 Estate of Contreras, ex rel. Contreras, 2010 WL 2816246 at *2. For
9 the reasons stated in the Court's previous orders, Leonor Contreras
10 in her individual capacity lacks standing to bring the first and
11 second claims, and lacks standing to bring the survival action
12 portions of the fifth, sixth, seventh and eighth claims for relief.

13
14 B. Claims for Relief

15 1. Fourteenth Amendment Violation, First Claim for
16 Relief

17 The first claim for relief alleges a violation of 42 U.S.C.
18 § 1983, based on deliberate indifference to serious medical needs,
19 health and safety, in violation of Decedent's Fourteenth Amendment
20 substantive due process rights. Defendant argues that this claim
21 should be dismissed, because the Eighth Amendment, not the
22 Fourteenth Amendment, applies to inmates such as Decedent. The FAC
23 alleges that Decedent was serving jail time for misdemeanor
24 offenses. FAC ¶17.

25 The status of a detainee determines the appropriate standard
26 for evaluating allegations of deliberate indifference. Gary H. v.
27 Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987). "Claims of failure
28 to provide care for serious medical needs, when brought by a

1 detainee . . . who has been neither charged nor convicted of a
2 crime, are analyzed under the substantive due process clause of the
3 Fourteenth Amendment.” Lanier v. City of Fresno, 2010 WL 3957472,
4 *5 (E.D. Cal. Oct. 8, 2010) (quoting Lolli v. County of Orange, 351
5 F.3d 410, 418-419 (9th Cir. 2003). The Eighth Amendment applies to
6 convicted prisoners, whereas the Fourteenth Amendment standard
7 applies to conditions of confinement when detainees have not been
8 convicted. Hegstrom, supra.

9 Plaintiffs do not specifically address Defendant’s motion to
10 dismiss the first claim for relief. Instead, Plaintiffs combine
11 the first and second claims for relief, arguing that neither should
12 be dismissed. Plaintiffs focus their argument on the second claim
13 for relief, and offer no opposition to Defendant’s argument that
14 the allegations of the FAC indicate that Decedent was not a
15 pretrial detainee subject to the Fourteenth Amendment protections,
16 but rather an inmate serving his sentence, thus subject only to
17 Eighth Amendment protection.

18 Taking the allegations of the FAC as true, and drawing all
19 inferences in favor of Plaintiffs, as the Court is required to do,
20 the Court finds that the First Claim for Relief in the FAC fails to
21 state a section 1983 claim for violation of the Fourteenth
22 Amendment. Given the FAC’s allegations that Decedent was serving
23 jail time for misdemeanor offenses, he is protected by the Eighth
24 Amendment rather than the Fourteenth Amendment. Accordingly, the
25 motion to dismiss the First Claim for Relief is GRANTED WITH
26 PREJUDICE.

27 2. Eighth Amendment Violation, Second Claim for Relief

28 The Second Claim for Relief alleges a violation of 42

1 U.S.C. § 1983 based on deliberate indifference to serious medical
2 needs, health and safety, in violation of Decedent's Eighth
3 Amendment right to protection from cruel and unusual punishment.
4 The FAC alleges that Defendant is under contract with the jail to
5 provide medical care and mental health care, including implementing
6 a system of screening for mental health needs and delivering mental
7 health care to inmates. The FAC further alleges Decedent indicated
8 his suicidal inclination, and this was noted in his record by jail
9 employees, yet no steps were taken to provide him with any mental
10 health care, place him in a special cell, or monitor him.
11 Defendant argues that the FAC contains no allegation of wrongdoing
12 by any of Defendant's employees. Defendant also argues that the
13 FAC does not make any allegation that Defendant or its employees
14 were aware of Decedent or his medical and mental health needs,
15 therefore Defendant lacks the requisite intent required for
16 deliberate indifference.

17 Under 42 U.S.C. § 1983, to maintain an Eighth Amendment claim
18 based on prison medical treatment, an inmate must show deliberate
19 indifference to serious medical needs. Jett v. Penner, 439 F.3d
20 1091, 1096 (9th Cir. 2006) (internal citations omitted). In the
21 Ninth Circuit, the test for deliberate indifference consists of two
22 parts. First, the plaintiff must show a serious medical need by
23 demonstrating that failure to treat a prisoner's condition could
24 result in further significant injury or the unnecessary and wanton
25 infliction of pain. Second, the plaintiff must show the
26 defendant's response to the need was deliberately indifferent.
27 This second prong-defendant's response to the need was deliberately
28 indifferent-is satisfied by showing (a) a purposeful act or failure

1 to respond to a prisoner's pain or possible medical need and
2 (b) harm caused by the indifference." Id. Accordingly, an Eighth
3 Amendment violation is comprised of both an objective component and
4 a subjective component. Coleman v. Wilson, 912 F. Supp. 1282, 1298
5 (E.D. Cal. 1995). The objective component turns on whether the
6 deprivation of a particular medical need is sufficiently serious.
7 Id. The objective component of deliberate indifference is a mixed
8 question of law and fact, and may turn on whether the mental health
9 care delivery system in place at a jail facility was so deficient
10 that it deprived seriously mentally ill inmates of access to
11 adequate health care. Id. Courts then utilize a six component
12 test to determine if a mental health care delivery system is
13 minimally adequate. Id. With respect to the subjective component,
14 an official cannot be found liable under the Eighth Amendment for
15 denying an inmate humane conditions of confinement unless the
16 official knows of and disregards an excessive risk to inmate health
17 or safety; the official must be aware of facts from the inference
18 could be drawn that a substantial risk of serious harm exists, and
19 he must also draw the inference. Id. at 1299. However, "where the
20 evidence before the district court proves the objective component
21 of an Eighth Amendment violation, the defendants could not
22 plausibly persist in claiming lack of awareness any more than
23 prison officials who state during litigation that they will not
24 take reasonable measures to abate an intolerable risk of which they
25 are aware could claim to be subjectively blameless for purposes of
26 the Eighth Amendment." Id.

27 Additionally, a private entity that contracts with the
28 government to provide medical and mental health care may be

1 considered a state actor whose conduct constitutes state action
2 under Section 1983. Jensen v. Lane County, 222 F.3d 570, 574-575
3 (9th Cir. 2000). Courts have developed various tests for
4 determining whether an individual or entity's actions are state
5 action. Id.

6 The FAC alleges that Defendant employs a psychiatrist and
7 other medical personnel to treat jail inmates pursuant to a
8 contract with the jail. According to the allegations of the FAC,
9 Defendant maintains a contract with the jail to implement delivery
10 of physical and mental health services to inmates, and the contract
11 called for Defendant to regularly schedule trainings for all
12 security and health services staff, including identification and
13 management of suicidal behavior. The FAC further alleges that the
14 contract called for potentially suicidal inmates to be placed on
15 suicide watch and monitored by security staff every 15 minutes, by
16 health care staff every 8 hours, and by mental health staff within
17 24 hours. According to Plaintiffs, Defendant did not develop or
18 provide the trainings and programs for jail personnel. FAC ¶¶ 23-
19 24.

20 Defendant argues that the FAC fails to allege that Defendant
21 or any of its employees were aware of Decedent's substantial
22 medical need and purposefully failed to provide medical care to
23 address that need. The FAC and the opposition brief continually
24 refer to "defendants" as having become aware of Decedent's suicidal
25 inclinations, which Defendant contends is an attempt to lump Glenn
26 Medical Center staff together with jail officials, and attribute
27 facts known to individual jail officials to Glenn Medical
28 personnel, without any basis.

1 At this stage in the pleadings, the Court will not engage in
2 an extensive analysis of the adequacy of the mental health system
3 in place at the jail. The allegations of the FAC are sufficient at
4 this stage to permit the Court to infer that Defendant's actions
5 qualify as state action under section 1983, and that Plaintiffs
6 have plead a plausible Eighth Amendment claim. The FAC has
7 sufficiently alleged that Defendant employs a psychiatrist and
8 other staff to treat jail inmates, and was charged with
9 implementing the delivery of medical and mental health care to
10 inmates. Thus the Court may infer from the allegations of the FAC
11 that after it was noted in Decedent's file that he was suicidal,
12 Defendant may bear some responsibility for the failure to provide
13 care which led to Decedents' death. Accordingly, the motion to
14 dismiss the second claim for relief is DENIED.

15 3. Fourteenth Amendment Violation, Third Claim for
16 Relief

17 The third claim for relief is plead on behalf of Leonor
18 Contreras in her individual capacity as Decedent's mother. The
19 claim is brought under 42 U.S.C. § 1983 and alleges violation of
20 Leonor Contreras's substantive due process rights under the
21 Fourteenth Amendment, for loss of the parent/child relationship.

22 "It is well established that a parent has a fundamental
23 liberty interest in the companionship and society of his or her
24 child and that the state's interference with that liberty interest
25 without due process of law is remediable under 42 U.S.C. § 1983."
26 Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). "The
27 constitutional interest in familial companionship and society
28 protects against deprivations that are a result of unwarranted

1 state interference.” Robbins v. City of Hanford, 2006 WL 1716220
2 *14 (E.D. Cal. June 19, 2006) (internal citations omitted). Where
3 a claim for interference with familial relationships is integrally
4 predicated upon, or entwined with, other conduct that is alleged to
5 be unconstitutional, a finding that the other conduct was
6 constitutional generally will preclude recovery for interference
7 with familial relationship. Id.

8 Here, the third claim for relief is predicated upon a finding
9 that Decedent’s rights were violated by Defendant’s deliberate
10 indifference and cruel and unusual punishment. Defendant alleges
11 that because Plaintiffs’ first and second claims for violation of
12 the Fourteenth and Eighth Amendments fail, so to must the third
13 claim for relief fail. However, because the Court is not
14 dismissing the Eighth Amendment claim, this claim may serve as a
15 basis for Leonor Contreras to maintain the third claim for relief.
16 Accordingly, the motion to dismiss the third claim for relief is
17 DENIED.

18 4. Municipal/Supervisory Liability, Fourth Claim for
19 Relief

20 The fourth claim for relief alleges municipal and
21 supervisory liability under 42 U.S.C. § 1983. Defendant argues that
22 this claim is duplicative of the other section 1983 claims, as it
23 is unclear what Plaintiffs are pleading. The Court’s previous
24 order dismissed the fourth claim for relief with leave to amend.
25 See Estate of Contreras ex rel. Contreras, 2010 WL 2816246 at *2.
26 For the reasons set forth in the previous order, this claim is
27 DISMISSED, with leave to amend.

1 5. Wrongful Death/Professional Negligence/Medical
2 Malpractice, Fifth Claim for Relief

3 Plaintiffs' fifth claim for relief is captioned as a claim for
4 wrongful death, professional negligence and medical malpractice.
5 The claim is brought on behalf of the Estate of Jessie P.
6 Contreras, and on behalf of Leonor Contreras. Defendant argues
7 that this claim should be dismissed because the FAC lacks
8 allegations of a duty owed by Defendant to Decedent. However, as
9 noted in Plaintiffs' opposition, the allegations that Defendant was
10 responsible for providing medical and mental health care for
11 incarcerated individuals such as Decedent, provide the allegations
12 of a duty.

13 In a medical malpractice action, the plaintiff must establish:
14 "1) the duty of the professional to use such skill, prudence, and
15 diligence as other members of his profess commonly possess and
16 exercise; (2) a breach of that duty; (3) a proximate causal
17 connection between the negligent conduct and the resulting injury;
18 and (4) actual loss or damage resulting from the professional's
19 negligence." Johnson v. Vo, 2009 WL 840398, *3 (E.D. Cal. Mar. 30,
20 2009). The standard of care in a medical malpractice case requires
21 that medical service providers exercise that degree of skill,
22 knowledge and care ordinarily possessed and exercised by members of
23 their profession under similar circumstances. Id. A professional
24 negligence claim likewise requires the same standard of care.
25 Flowers v. Torrance Memorial Hospital Medical Center, 8 Cal. 4th
26 992, 998 (1994).

27 Plaintiffs have alleged in the FAC that Defendant owed a duty
28 to Decedent to provide medical and mental health care, and that

1 failure to provide this care when Decedent needed it caused his
2 death. Defendant argues that the FAC does not allege any contact
3 between Defendant's employees and Decedent. However, given the
4 allegations of the FAC that Defendant employed a psychiatrist and
5 other medical personnel to treat inmates, Plaintiffs have
6 sufficiently plead a duty to provide care that was breached. The
7 allegations are sufficient at this stage of the pleadings to
8 support a claim for medical malpractice/professional negligence.
9 Accordingly, the motion to dismiss the fifth claim against
10 Defendant is DENIED. However, the Court notes that the
11 clarification requested in its previous order applies to this order
12 as well. See Estate of Contreras ex rel. Contreras, 2010 WL
13 2816246 at *2-3. Plaintiffs will amend the fifth, sixth, seventh
14 and eighth claims to clarify that Leonor Contreras brings the
15 claims only in her capacity as administrator of the estate of
16 Jessie P. Contreras, and not in her individual capacity. Further,
17 Plaintiffs will amend to clarify who is bringing the wrongful death
18 survivor action portion of these claims.

19 6. Wrongful Death, Negligence, Negligence Per Se, Sixth
20 Claim for Relief

21 Plaintiffs' sixth claim alleges that all defendants,
22 including Defendant Glenn Medical Center, had a duty to manage the
23 jail in a manner so as to prevent what happened to Decedent, and
24 they breached that duty. The FAC states that "Said duty is defined
25 by California State Law, law enforcement standards, administrative
26 regulations and medical standards." FAC. ¶51. As discussed above,
27 the FAC alleges that Defendant breached its duty to provide medical
28 and mental health care to Decedent when he was incarcerated and

1 needed such care. Defendant contends that the claim fails because
2 Plaintiffs did not name specific statutes or regulations that were
3 allegedly violated. Plaintiffs contend that this argument
4 addresses only the negligence per se aspect of the claim, and not
5 the wrongful death or general negligence aspects. Plaintiffs
6 further argue that they are not required to name specific statutes
7 that were violated in order to plead a negligence per se claim.

8 Negligence per se is not an independent cause of action.
9 Rather, negligence per se is an evidentiary doctrine that
10 establishes a presumption of negligence based on the violation of a
11 statute. Spencer v. DHI Mortg. Co., Ltd., 624 F. Supp. 2d 1153,
12 1161-62 (E.D. Cal. 2009). California Evidence Code Section 669(a)
13 addresses negligence per se, providing that a presumption of
14 failure to exercise due care exists if (1) defendant violated a
15 statute, ordinance, or regulation of a public entity, (2) the
16 violation proximately caused death or injury to person or property,
17 (3) the death or injury resulted from an occurrence of the nature
18 which the statute, ordinance or regulation was designed to prevent,
19 and (4) the person suffering the death or injury to his person or
20 property was one of the class of persons for whose protection the
21 statute, ordinance or regulation was adopted. Spencer, 624 F.
22 Supp. 2d at 1162. Additionally, an underlying claim of ordinary
23 negligence must be viable before the presumption of negligence of
24 Evidence Code Section 669 can be employed. Id. (citations
25 omitted). The elements of a cause of action for general negligence
26 are (1) a legal duty to use reasonable care, (2) breach of that
27 duty, and (3) proximate cause between the breach and (4) the
28 plaintiff's injury. Id. at 1161. The existence of a legal duty to

1 use reasonable care in a particular factual situation is a question
2 of law for the court to decide. Id. (citing Vasquez v. Residential
3 Investments, Inc., 118 Cal.App.4th 269, 278 (2004)).

4 Here, Plaintiffs have not stated which statute or regulation
5 was allegedly violated, thus the Court cannot determine whether
6 they have adequately plead facts to support a claim of negligence
7 per se. Accordingly, the negligence per se aspect of this claim is
8 DISMISSED, with leave to amend if Plaintiffs can identify a
9 specific statute or regulation that was violated. As to the
10 ordinary negligence aspect of the claim, the FAC pleads adequate
11 facts to maintain a claim for ordinary negligence at this early
12 stage of the pleadings. Defendant's motion to dismiss the ordinary
13 negligence portion is DENIED. Thus, Defendant's motion to dismiss
14 the sixth claim is GRANTED in part and DENIED in part, with leave
15 to amend.

16 7. Negligent Supervision, Training, Hiring and
17 Retention, Seventh Claim for Relief

18 The seventh claim for relief alleges that Defendant was
19 negligent in its supervision, training, hiring and retention of
20 employees at the jail. Defendant argues that this claim should be
21 dismissed because the FAC does not allege the involvement of any of
22 Defendant's employees in caring for Decedent. However, Plaintiffs
23 note that the FAC alleged that Defendant employs a psychiatrist and
24 medical personnel to treat jail inmate. Plaintiffs argue that
25 Defendant's negligence in hiring, training, supervising and
26 retaining these individuals harmed Decedent. The FAC further
27 alleges that Defendant was under contract to develop a training
28 program to identify and treat potentially suicidal inmates.

1 Plaintiffs contend that the negligent delivery of these suicide
2 prevention services and treatment injured Decedent.

3 An employer may be liable to a third person for the employer's
4 negligence in hiring or retaining an employee who is incompetent or
5 unfit. Roman Catholic Bishop v. Superior Court, 42 Cal.App.4th
6 1556, 1565 (1996). Liability is based upon the facts that the
7 employer knew or should have known that hiring the employee created
8 a particular risk or hazard and that particular harm materializes.
9 Doe v. Capital Cities, 50 Cal.App.4th 1038, 1054 (1996).

10 While the FAC raises broad allegations of negligence, it does
11 not raise allegations that Defendant knew or should have known of
12 the particularized risk of hiring or retaining specific employees.
13 As to the negligent supervision claim, the FAC likewise lacks
14 allegations that Defendant knew or should have known that is was
15 negligent in supervising or training specific employees.
16 Accordingly, the motion to dismiss the seventh claim is GRANTED,
17 with leave to amend.

18 8. Wrongful Death, Failure to Furnish/Summon Medical
19 Aid, Eighth Claim for Relief

20 The FAC alleges that Defendant failed to summon medical
21 care upon discovering Decedent hanging in his cell (but alive and
22 with a pulse), in violation of "California State Law and
23 specifically California Government Code 845.6." FAC ¶57.
24 California Government Code § 845.6 states that a public employee or
25 public entity where the employee is acting within the scope of
26 his/her employment is liable if the employee knows or has reason to
27 know that a prisoner is in need of immediate medical care and fails
28 to take reasonable action to summon such care. Liability under

1 section 845.6 is limited to public employees or public entities.
2 Johnson v. City of Los Angeles, 143 Cal.App.3d 298, 317 (1983).
3 However, Defendant is an independent contractor with the jail, and
4 independent contractors are not employees subject to liability
5 under code sections such as § 845.6 that provide for liability
6 against public employees. Gov. Code 810.2; 811.4.

7 Plaintiffs argue that liability is not contingent on a finding
8 that Defendant is liable under § 845.6, because the claim also
9 alleges in general terms that Defendant violated California state
10 law. However, as Defendant is not subject to liability under
11 § 845.6, and the FAC does not articulate what other state law
12 Plaintiffs' are referring to, the claim is DISMISSED, with leave to
13 amend.

14 15 III. ORDER

16 For the reasons set forth above, Defendant's motion to dismiss
17 is GRANTED in part and DENIED in part.

- 18 • The motion to dismiss the first claim is GRANTED WITH
19 PREJUDICE.
- 20 • The motion to dismiss the second claim is DENIED.
- 21 • The motion to dismiss the third claim is DENIED.
- 22 • The motion to dismiss the fourth claim is GRANTED, with
23 leave to amend.
- 24 • The motion to dismiss the fifth claim is DENIED.
- 25 • The motion to dismiss the sixth claim is GRANTED, with
26 leave to amend as to negligence per se, and DENIED as to
27 ordinary negligence.
- 28 • The motion to dismiss the seventh claim is GRANTED, with

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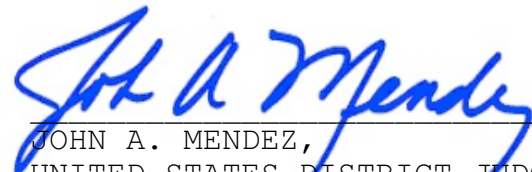
leave to amend.

- The motion to dismiss the eighth claim is GRANTED, with leave to amend.
- Plaintiffs will amend the fifth, sixth, seventh and eighth claims to clarify that Leonor Contreras brings the claims only in her capacity as administrator of the estate of Jessie P. Contreras, and not in her individual capacity. Further, Plaintiffs will amend to clarify who is bringing the wrongful death survivor action portion of these claims.

The Second Amended Complaint must be filed within twenty (20) days of the date of this order.

IT IS SO ORDERED.

Dated: December 1, 2010



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE