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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JESSICA THOMAS, as guardian on
behalf of minor CARLY JO THOMAS,
Plaintiff,
v.
COUNTY OF SAN DIEGO; DOES 1
through 20, inclusive,
Defendants.

Case No.: 20-cv-1979-CAB-MDD

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT**

[Doc. No. 19]

This matter is before the Court on Defendant County of San Diego's motion to dismiss Plaintiff's first amended complaint. [Doc. No. 19.] The motion has been fully briefed and the Court finds it suitable for determination on the papers submitted and without oral argument. *See* S.D. Cal. CivLR 7.1(d)(1). For the reasons set forth below, Defendant's motion to dismiss is **GRANTED**.

1 **I. BACKGROUND**

2 Plaintiff Jessica Thomas, as guardian on behalf of minor Carly Jo Thomas,¹ filed
3 this action against Defendants County of San Diego and DOES 1 through 20² on October
4 7, 2020. [Doc. No. 1.] After the County moved to dismiss Plaintiff’s original complaint
5 on March 22, 2021, the parties jointly moved for an extension of time for Plaintiff to file
6 an amended complaint, which the Court granted on April 12, 2021. [Doc. Nos. 12, 13, 15.]
7 Plaintiff then filed the First Amended Complaint (“FAC”) on April 26, 2021, thereby
8 mooted the County’s motion to dismiss. [Doc. Nos. 12, 16.] The FAC asserts claims for:
9 (1) “negligence – wrongful death,” brought against all individual Doe Defendants; (2)
10 municipal liability for failure to provide medical care, brought against the County of San
11 Diego under 42 U.S.C. § 1983; (3) municipal liability for unconstitutional custom, policy,³
12 or practice, brought against the County of San Diego under 42 U.S.C. § 1983; and (4)
13 municipal liability for failure to train, brought against the County of San Diego under 42
14 U.S.C. § 1983. [Doc. No. 16 ¶¶ 25-60.]

15 The FAC alleges that on May 27, 2019, Jeremy Scott Thomas, father of minor Carly
16 Jo Thomas, was booked into San Diego Central Jail for an unidentified crime. [*Id.* ¶ 13.]
17 Upon being booked into Central Jail, Mr. Thomas informed “[Doe] Defendants that he had
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20 ¹ The original complaint named “Carly Jo Thomas, a minor, by and through her Guardian ad Litem,
21 Jessica Thomas” as the plaintiff. [Doc. No. 1.] Plaintiff concurrently filed a motion to appoint Jessica
22 Thomas as guardian ad litem of Carly Jo Thomas, which the Court denied on October 8, 2020. [Doc.
23 Nos. 2, 4.] The FAC’s caption states that the plaintiff is “Jessica Thomas, as guardian on behalf of
24 minor, Carly Jo Thomas,” but then states in the first paragraph that the plaintiff is “Carly Jo Thomas, a
25 minor, by and through her Guardian ad Litem, Jessica Thomas.” [Doc. No. 16 ¶ 1.] Because Plaintiff
26 claims this was a “scrivener’s error on deleting the term ‘ad Litem’ from the first paragraph of the
27 FAC,” the Court disregards the first paragraph and considers the plaintiff to be Jessica Thomas, suing on
28 behalf of Carly Jo Thomas as her general guardian. FED. R. CIV. P. 17(c)(1)(A).

² Pursuant to the FAC, DOES 1 through 20 are “duly appointed law enforcement officers and/or
employees or agents of COUNTY OF SAN DIEGO, subject to oversight and supervision by COUNTY
OF SAN DIEGO’s elected and non-elected officials.” [Doc. No. 16 ¶ 18.]

³ Although the FAC states that Plaintiff’s third claim is for “municipal liability for unconstitutional
custom, **practice**, or practice” in the subheading, this appears to be a typographical error based on the
subsequent body paragraphs, which allege that the County “knowingly maintained, enforced and applied
an official recognized custom, **policy** and practice” (emphasis added). [Doc. No. 16 ¶ 39.]

1 a history of narcotic drug addiction and was concerned that he would suffer from drug
2 withdrawal while incarcerated.” [Id. ¶ 14.] Two days later, on May 29, 2019 at
3 approximately 4:00 AM, Mr. Thomas complained to Doe Defendants that he was
4 experiencing “pain and symptoms, including chest pain.” [Id. ¶ 17.] He was immediately
5 transported to the medical unit of the Central Jail where he was kept “for approximately
6 six hours without medical care.” [Id.] Mr. Thomas was then discharged back to his cell at
7 10:18 AM and remained there “until he was found unresponsive in his cell sometime
8 between 10:56 a.m. and 11:09 a.m.” [Id.] Upon being found unresponsive, Mr. Thomas
9 was transported by paramedics to the UCSD Medical Center Emergency Department,
10 where “resuscitation efforts failed and [he] was pronounced dead at 12:07 p.m.” [Id.]

11 On May 10, 2021, the County of San Diego moved to dismiss Plaintiff’s FAC with
12 prejudice. [Doc. No. 19.] The County argues that the FAC should be dismissed for failure
13 to make “simple, concise, and direct” allegations under Rule 8(d), failure to meet
14 procedural prerequisites for suing as Mr. Thomas’ successor in interest, and failure to state
15 a claim under Rule 12(b)(6). The motion is now fully briefed and ripe for resolution.

16 II. LEGAL STANDARD

17 The familiar standards on a motion to dismiss apply here. To survive a motion to
18 dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted
19 as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
20 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Thus, the
21 Court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings
22 in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine*
23 *Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). On the other hand, the Court is “not bound
24 to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678
25 (quoting *Twombly*, 550 U.S. at 555). Nor is the Court “required to accept as true allegations
26 that contradict exhibits attached to the Complaint or matters properly subject to judicial
27 notice, or allegations that are merely conclusory, unwarranted deductions of fact, or
28 unreasonable inferences.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir.

1 2010). “In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual
2 content, and reasonable inferences from that content, must be plausibly suggestive of a
3 claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th
4 Cir. 2009) (quotation marks omitted).

5 **III. DISCUSSION**

6 **A. “Negligence – Wrongful Death” Claim Against Doe Defendants**

7 Plaintiff’s first claim for “negligence – wrongful death” alleges that Doe Defendants
8 negligently failed to provide Mr. Thomas with appropriate medical care “while he was
9 suffering from a serious medical condition unrelated to narcotic drug addition [sic],”
10 thereby causing Mr. Thomas’ death from heart disease. [Doc. No. 16 ¶¶ 25-30.] The
11 County argues that Plaintiff’s claim is “replete with errors that confuse the issues,” lacks a
12 concise and simple statement of the allegations and relief sought, and fails to adequately
13 allege the capacity in which Plaintiff brings this claim, thereby warranting dismissal under
14 Rule 8. [Doc. No. 19-1 at 9-10.]

15 A wrongful death claim is a state law statutory claim that compensates specified
16 heirs of the decedent for losses suffered as a result of the decedent’s death. *LAOSD*
17 *Asbestos Cases*, 240 Cal. Rptr. 3d 1, 11 (2018). California law provides that the decedent’s
18 surviving children (among other heirs) have standing to assert a claim for his death caused
19 by the wrongful act or neglect of another. CAL. CIV. PROC. CODE § 377.60. Under
20 California Code of Civil Procedure section 377.61, “damages for wrongful death are
21 measured by the financial benefits the heirs were receiving at the time of death, those
22 reasonably to be expected in the future, and the monetary equivalent of loss of comfort,
23 society, and protection.” *Boeken v. Philip Morris USA Inc.*, 159 Cal. Rptr. 3d 195, 198-99
24 (2013).

25 First, the County argues that because negligence and wrongful death are distinct
26 claims under California law, Plaintiff’s claim for “negligence – wrongful death” is too
27 ambiguous to withstand scrutiny under Rule 8(d). [Doc. No. 19-1 at 10.] However, to
28 establish a cause of action for wrongful death, the plaintiff must plead “the tort (negligence

1 or other wrongful act), the resulting death, and the damages, consisting of the pecuniary
2 loss suffered by the heirs.” *Lattimore v. Dickey*, 191 Cal. Rptr. 3d 766, 773 (2015) (internal
3 citations and italics omitted); *see also Novak v. Cont’l Tire N.*, 231 Cal. Rptr. 3d 324, 328
4 (2018) (“In any action for wrongful death resulting from negligence, the complaint must
5 contain allegations as to all the elements of actionable negligence.”). Therefore, Plaintiff
6 is required to plead negligence as an element of her wrongful death claim, and the Court
7 declines to dismiss her first cause of action on these grounds.

8 Second, the County argues that Plaintiff has not clearly alleged her identity or the
9 capacity in which she brings her claim. [Doc. No. 19-1 at 9-10.] A child of a decedent has
10 standing in her individual capacity to bring a wrongful death claim and recover her own
11 “losses suffered as a result of a decedent’s death.” *LAOSD Asbestos Cases*, 240 Cal. Rptr.
12 3d at 11. However, damages sought in a representative capacity for harm suffered by the
13 decedent are not recoverable under a wrongful death claim. *See Herd v. Cnty. of San*
14 *Bernardino*, 311 F. Supp. 3d 1157, 1163-64 (C.D. Cal. 2018) (dismissing wrongful death
15 claim where plaintiff sought to recover on her own behalf for alleged denial of medical
16 treatment to the decedent).

17 The FAC does not expressly state whether Plaintiff’s first cause of action is brought
18 in her individual capacity as Mr. Thomas’ child, or in a representative capacity as the
19 successor in interest to Mr. Thomas’ estate. Plaintiff asserts that because of Doe
20 Defendants’ conduct, “Decedent was caused to suffer severe pain and suffering and
21 ultimately died.” [Doc. No. 16 ¶ 30.] This language suggests that Plaintiff seeks
22 compensation in a representative capacity for Mr. Thomas’ pain and suffering. Yet in the
23 same sentence, Plaintiff states that Mr. Thomas “lost his ability to provide financial and
24 personal support,” including “the loss of his love, companionship, comfort, care,
25 assistance, protection, affection, society, moral support, and guidance to his minor
26 daughter, Plaintiff, CARLY JO THOMAS, and will continue to be so deprived for the
27 remainder of her natural life.” [*Id.*] This language suggests that Plaintiff seeks damages
28 for her own loss, which may only be recovered in her individual capacity under a wrongful

1 death claim. Because it is unclear in what capacity Plaintiff pursues her claim and what
2 damages she seeks to recover under that claim, Plaintiff has failed to provide a “short and
3 plain statement of the claim showing that [she] is entitled to relief.” FED. R. CIV. P. 8(a)(2).
4 Her claim thus warrants dismissal, with leave to amend to state her cause of action clearly
5 and concisely. *See Carrigan v. Cal. State Legislature*, 263 F.2d 560, 565-66 (9th Cir. 1959)
6 (holding that the trial court has discretion to determine whether there has been reasonable
7 compliance with Rule 8).

8 Finally, the County argues that Plaintiff does not sufficiently specify the identity or
9 role of any Doe Defendant in the alleged wrongdoing that caused Mr. Thomas’ harm. [Doc.
10 No. 19-1 at 12.] The Court agrees. While Plaintiff may refer to unknown defendants as
11 “Does” at this stage, she must nevertheless “allege specific facts showing how each
12 particular doe defendant violated [her] rights.” *Keavney v. Cnty. of San Diego*, No. 3:19-
13 cv-01947-AJB-BGS, 2020 WL 4192286, at *4 (S.D. Cal. July 21, 2020) (internal citations
14 omitted); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (a plaintiff must “set forth
15 specific facts” as to each individual defendant’s wrongdoing). The FAC vaguely claims
16 that all twenty Doe Defendants acted negligently by “refusing to provide medical care to
17 [Mr. Thomas] while he was suffering from a serious medical condition.” [Doc. No. 16 ¶
18 27.] However, Plaintiff has not clearly pleaded how each Doe Defendant acted negligently
19 to cause Mr. Thomas’ harm, as she does not link any particular negligent act to any specific
20 individual actor. Without these supporting factual allegations, the Court cannot “draw the
21 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
22 U.S. at 678.

23 Plaintiff’s wrongful death claim fails to plead sufficient factual content for both the
24 Court and Defendants to understand the allegations made and damages sought.
25 Accordingly, the motion to dismiss is **GRANTED** as to Plaintiff’s first cause of action,
26 with leave to amend to provide a clear and concise statement of the allegations against each
27 individual Doe Defendant and the relief sought.

1 **B. 42 U.S.C. § 1983 Claims Against County of San Diego**

2 Plaintiff’s second, third, and fourth claims are brought against the County of San
3 Diego under 42 U.S.C. § 1983 seeking municipal liability for failure to provide medical
4 care, unconstitutional custom, policy or practice, and failure to train, respectively. [Doc.
5 No. 16 ¶¶ 25-60.] The County first argues that Plaintiff failed to comply with procedural
6 prerequisites to bring suit as Mr. Thomas’ successor in interest. [Doc. No. 19-1 at 13.]
7 The County further argues that all three § 1983 causes of action fail to state a claim under
8 Rule 12(b)(6) because Plaintiff (1) fails to allege a specific constitutional violation to
9 support her claims of municipal liability; (2) fails to state a claim for deliberate indifference
10 to a serious medical need; and (3) fails to allege a policy, pattern, or practice sufficient to
11 support a *Monell* claim against the County. [*Id.* at 13-19.]

12 **1. Plaintiff’s Standing to Bring a Survival Action Under § 1983**

13 A decedent’s estate may bring a survival action under § 1983 to vindicate the
14 decedent’s constitutional rights and “recover damages on behalf of the decedent for injuries
15 that the decedent has sustained.” *Davis v. Bender Shipbuilding & Repair Co.*, 27 F.3d 426,
16 429 (9th Cir. 1994). “A claim under 42 U.S.C. § 1983 survives the decedent if the claim
17 accrued before the decedent’s death, and if state law authorizes a survival action.” *Tatum*
18 *v. City & Cnty. of San Francisco*, 441 F.3d 1090, 1093 n.2 (9th Cir. 2006). “The party
19 seeking to bring a survival action bears the burden of demonstrating that a particular state’s
20 law authorizes a survival action and that the plaintiff meets that state’s requirements for
21 bringing a survival action.” *Hayes v. Cnty. of San Diego*, 736 F.3d 1223, 1228–29 (9th
22 Cir. 2013) (citation omitted).

23 Under California law, “a cause of action that survives the death of the person entitled
24 to commence an action or proceeding passes to the decedent’s successor in interest . . . ,
25 and [a survival] action may be commenced by the decedent’s personal representative or, if
26 none, by the decedent’s successor in interest.” CAL. CIV. PROC. CODE § 377.30. A plaintiff
27 bringing a survival action must establish her standing by executing and filing an affidavit
28 or declaration under penalty of perjury stating, among other things, facts to support that the

1 affiant is either the decedent’s successor in interest⁴ or is authorized to act on the successor
2 in interest’s behalf in the action. CAL. CIV. PROC. CODE § 377.32. The affidavit or
3 declaration must also be accompanied by a certified copy of the decedent’s death
4 certificate. *Id.*

5 Plaintiff filed this action on October 7, 2020, then filed the FAC on April 26, 2021.
6 [Doc. Nos. 1, 16.] On April 12, 2021, six months after filing the original complaint,
7 Plaintiff filed the “Affidavit of Jessica Thomas Oursuant [sic] to California Code of Civil
8 Procedure section 377.32.” [Doc. No. 14.] The affidavit did not expressly comply with
9 the requirements of section 377.32(5), instead stating:

10 “I am the natural mother of Carly Jo Thomas, who is a minor and the sole heir
11 and Jeremy Scott Thomas’ successor in interest and Carly Jo Thomas is the
12 only living child of Jeremy Scott Thomas, as defined in Section 377.11 of the
13 California Code of Civil Procedure. As the biological mother of Carly Jo
14 Thomas, who is eleven (11) years of age, . . . I am authorized to act on behalf
of Carly Jo Thomas with respect to Jeremy Scott Thomas’ interest in the
instant action.”

15 [*Id.* at 2.] The affidavit did not attach a certified copy of Mr. Thomas’ death certificate due
16 to an alleged delay in delivery. [*Id.*] Plaintiff requested permission to file the death
17 certificate with the Court as soon as she received it. [*Id.*]

18 On May 27, 2021, Plaintiff filed a second “Affidavit of Jessica Thomas Oursuant
19 [sic] to California Code of Civil Procedure section 377.32,” stating the same basis for her
20 standing as the paragraph quoted above. [Doc. No. 21.] Plaintiff also attached a certified
21 copy of Mr. Thomas’ death certificate. [*Id.* at 5-8.] The next day, Plaintiff filed her
22 opposition to the County’s motion to dismiss, stating that she “seeks leave to file a further
23 affidavit to include the certified death certificate, which was received by the California
24 Health Department this week.” [Doc. No. 22 at 8.] The County argues that the Court
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27 ⁴ For purposes of a survival action, the successor in interest “means the beneficiary of the decedent’s
28 estate or other successor in interest who succeeds to a cause of action or to a particular item of the
property that is the subject of a cause of action.” CAL. CIV. PROC. CODE § 377.11.

1 should dismiss Plaintiff’s survival claims because Plaintiff has conceded that “dismissal is
2 proper so that she can file the required declaration and death certificate” to establish her
3 standing. [Doc. No. 23 at 3.]

4 Even if the FAC could otherwise avoid dismissal, Plaintiff has failed to comply with
5 the requirements of section 377.32 to establish her standing to bring a survival action.
6 Plaintiff did not file an affidavit attaching the requisite certified copy of Mr. Thomas’ death
7 certificate until May 27, 2021—nearly eight months after the filing of her initial complaint
8 and one month after filing the FAC. Further, although Plaintiff states that she is authorized
9 to act on behalf of Carly Jo Thomas with respect to Mr. Thomas’ interest in the action, she
10 has not alleged sufficient facts (beyond conclusory statements) to establish that Carly Jo
11 Thomas is Mr. Thomas’ successor in interest. *See generally* CAL. PROB. CODE §§ 6401,
12 6402. Accordingly, Plaintiff’s § 1983 survival claims are **DISMISSED** with leave to
13 amend, subject to Plaintiff refiling an affidavit that complies with section 377.32.

14 **2. Municipal Liability for § 1983 Violations**

15 In *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 691 (1978), the Supreme Court
16 held that a municipality may be liable for a § 1983 violation if the plaintiff can show that
17 a “policy or custom” of the municipality led to his injury, thereby creating the legal doctrine
18 known as “*Monell* liability.” Thus, a local government entity may be held liable under §
19 1983 when “action pursuant to official municipal policy of some nature cause[s] a
20 constitutional tort.” *Oviatt v. Pearce*, 954 F.2d 1470, 1473–74 (9th Cir. 1992) (quoting
21 *Monell*, 436 U.S. at 691). However, a local government entity cannot be held liable when
22 the plaintiff has not adequately alleged that some constitutional right was infringed.
23 *Monzon v. City of Murrieta*, 978 F.3d 1150, 1164 (9th Cir. 2020); *see also City of Los*
24 *Angeles v. Heller*, 475 U.S. 796, 799 (1986) (noting that if the officer inflicted no
25 constitutional injury on the plaintiff, it is “inconceivable” that the government entity could
26 be liable to the plaintiff).

27 **a. Mr. Thomas’ Alleged Constitutional Injury**

28 As discussed above, Plaintiff has not clearly pleaded any specific action taken by

1 any Doe Defendant that would amount to negligence, much less any action that would
2 amount to a constitutional violation. For example, under Plaintiff’s claim for failure to
3 provide medical care, the FAC states that the County employed and retained as deputy
4 sheriffs and other personnel those who had “dangerous propensities for abusing their
5 authority and for mistreating inmates who they believed were drug addicts by failing to
6 provide medical care necessary to treat symptoms they believed were related to withdrawal
7 from narcotics.” [Doc. No. 16 ¶ 33.] This conclusory statement is unsupported by any
8 specific factual allegation in the FAC. Plaintiff alleges that as soon as Mr. Thomas
9 complained of “pain and symptoms” to Doe Defendants, he was taken to the jail’s medical
10 unit until he was discharged back to his cell six hours later. [*Id.* ¶ 17.] When Mr. Thomas
11 was found unresponsive in his cell shortly thereafter, he was immediately transported to
12 the UCSD Medical Center Emergency Department. [*Id.*] While Plaintiff does not state
13 what happened while Mr. Thomas was in the jail’s medical unit, she also does not plead
14 any facts to support an allegation that the County’s deputy sheriffs mistreated inmates
15 believed to be drug addicts by failing to provide them medical care.⁵ The Court cannot
16 merely assume, absent some concrete factual allegation, that any Defendant’s action
17 amounts to a constitutional violation on which to base a § 1983 claim. *See Iqbal*, 556 U.S.
18 at 678 (“A pleading that offers labels and conclusions . . . will not do. Nor does a complaint
19 suffice if it tenders naked assertions devoid of further factual enhancement.”) (internal
20 citations omitted).

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23 ⁵ To establish a claim of inadequate medical care, a prisoner must first “show a serious medical need by
24 demonstrating that failure to treat a prisoner's condition could result in further significant injury or the
25 unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal
26 citations omitted). If the prisoner establishes a sufficiently serious medical need, he must then “show
27 the [official’s] response to the need was deliberately indifferent.” *Id.* The extent of Plaintiff’s factual
28 allegations regarding Defendants’ alleged failure to provide adequate medical care is that Mr. Thomas
experienced “pain and symptoms, including chest pain,” and then was immediately transported to the
jail’s medical unit where he was kept “for approximately six hours without medical care, before being
‘discharged back to his cell.’” [Doc. No. 16 ¶ 17.] These allegations fall far short of the standard
articulated in *Jett* to state a claim of inadequate medical care.

1 Similarly, Plaintiff fails to allege some constitutional injury to support her fourth
2 cause of action for failure to train. A “failure to train” claim requires that the plaintiff show
3 a constitutional injury that could have been avoided through proper training. *Lee v. City of*
4 *Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001). Plaintiff alleges that the County failed to
5 train its deputy sheriffs “to recogniz[e] the necessity of medical attention to inmates with
6 serious medical conditions, rather than harboring disdain towards inmates suffering from
7 narcotic drug addiction, and to respond appropriately to serious, life threatening symptoms
8 of actual illnesses, rather than treat narcotic drug addicts with careless disregard for their
9 well being [sic], including [Mr. Thomas].” [Doc. No. 16 ¶ 51.] Plaintiff also alleges that
10 the County failed to implement training to remedy “its deputy sheriffs [sic] continued
11 inappropriate attitude towards incarcerated drug addicts, and failure to provide adequate
12 medical care for such inmates.” [*Id.* ¶ 53.]

13 The Court summarized the extent of Plaintiff’s substantive factual allegations above
14 and finds that none of them provide support for these claims. Plaintiff has not pleaded any
15 facts to plausibly allege that the County’s deputy sheriffs “harbor[ed] disdain towards
16 inmates suffering from narcotic drug addiction” or treated Mr. Thomas with “careless
17 disregard” for his wellbeing because of his history of narcotic abuse. Nor do any of the
18 facts provided indicate that Doe Defendants had a “continued inappropriate attitude
19 towards incarcerated drug addicts.” [*Id.*] Rather, the facts Plaintiff did plead suggest that
20 Doe Defendants acted promptly in transporting Mr. Thomas to the medical unit upon
21 notification that he was in pain, and again to the Emergency Department after finding him
22 unresponsive.

23 The FAC does not contain sufficient factual material—beyond “the-defendant-
24 unlawfully-harmed-me accusation[s],” *Iqbal*, 556 U.S. at 678—for the Court to determine
25 if Mr. Thomas suffered a constitutional harm. Without plausible allegations of
26 constitutional injury, Plaintiff cannot establish that proper training would have changed the
27 outcome. Accordingly, Plaintiff’s *Monell* claims warrant dismissal.
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1 1233-34. Plaintiff fails to identify any other evidence to support her contention that the
2 County employed the policies or customs she claims it did.

3 Because the bulk of Plaintiff's allegations amount to no more than conclusory
4 statements couched as factual allegations, Plaintiff's claims cannot survive a motion to
5 dismiss under Rule 12(b)(6). Accordingly, the County's motion to dismiss Plaintiff's three
6 *Monell* claims is **GRANTED**, and Plaintiff's second, third, and fourth causes of action are
7 dismissed.

8 **IV. CONCLUSION**


9 For the reasons set forth above, Defendant's motion to dismiss the FAC is
10 **GRANTED**, and Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**.

11 Defendant County of San Diego is hereby **ORDERED** to provide any reports
12 regarding Mr. Thomas's death and investigations thereof in their **unredacted** state to
13 Plaintiff forthwith, including the Medical Examiner Investigator's Report and the Autopsy
14 Report. If the County believes that a protective order is required, it may make an
15 application to the Court as to what needs to be redacted or provided under a protective
16 order. The County must either provide the unredacted reports to Plaintiff and notify the
17 Court of such, or file a motion for a protective order (with a copy of the unredacted reports
18 at issue provided to the Court in camera), on or before **July 19, 2021**.

19 Plaintiff may file a second amended complaint no later than **twenty-one (21)**
20 calendar days following receipt of the unredacted reports. If Plaintiff chooses not to file
21 an amended complaint by then, the Clerk of Court shall close this case.

22 It is **SO ORDERED**.

23 Dated: July 1, 2021

24 
25 _____
26 Hon. Cathy Ann Bencivengo
27 United States District Judge
28