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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
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13 K.C.A., (by and through his guardian  
14 Amanda Purvis), individually, and as  
15 successor in interest to his father, Mark  
16 Armendo, deceased; PATRICE CLINES,  
individually,

17 Plaintiffs,

18 v.

19 COUNTY OF SAN DIEGO and DOES 1-  
20 50,

21 Defendants.

Case No.: 20-CV-2504 W (BLM)

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS [DOC. 10]**

22 Defendant County of San Diego (the "County") moves to dismiss the First  
23 Amended Complaint ("FAC") under Federal Rule of Civil Procedure 12(b)(6) and strike  
24 immaterial portions under Rule 12(f). Plaintiffs K.C.A. and Patrice Clines ("Ms. Clines")  
25 oppose.

26 The Court decides the matter on the papers submitted and without oral argument.  
27 See Civ. L.R. 7.1(d)(1). For the reasons stated below, the Court **DENIES** the motion to  
28 dismiss [Doc. 10].

1 **I. BACKGROUND**<sup>1</sup>

2 Plaintiffs seek to recover against the County in connection with the death of Mark  
3 Armendo (“Decedent”) while he was a prisoner in the County’s custody. K.C.A., a  
4 minor, is Decedent’s only surviving child and suing through his mother and guardian,  
5 Amanda Purvis. (*FAC* ¶ 4.) In addition to suing individually, K.C.A. sues as Decedent’s  
6 successor in interest to pursue claims that survived Decedent’s death. (*Id.*) Ms. Clines is  
7 Decedent’s mother and is suing individually. (*Id.* ¶ 5.)

8 In June 2020, Decedent was a prisoner in the County’s custody in the Vista jail.  
9 (*Id.* ¶ 11.) At that time, Decedent began experiencing serious medical conditions  
10 including respiratory distress substantially caused by a disease believed to be COVID-19.  
11 (*Id.* ¶ 12.) Plaintiffs allege unknown jail officials were aware of Decedent’s deteriorating  
12 condition but failed to summon or provide the necessary care. (*Id.* ¶ 13.) Decedent  
13 ultimately stopped breathing and “was down in his jail cell for a significant period of  
14 time when discovered by jail staff.” (*Id.* ¶ 14.) On June 29, 2020, Decedent was taken to  
15 the hospital where he tested positive for COVID-19. (*Id.* ¶ 14.) On July 7, 2020, the  
16 County released Decedent from custody. (*Id.*)

17 On August 21, 2020, Decedent died. (*Id.*) Plaintiffs’ allege Decedent suffered  
18 from severe pneumonia and seizures because he had been allowed to drastically  
19 decompensate. (*Id.*)

20 Plaintiffs allege the County “failed to implement the safeguards and protocols  
21 needed to mitigate” the medical risks posed by COVID-19. (*Id.* ¶ 16.) Specifically,  
22 Plaintiffs allege the County failed to:

- 23 a. Implement widespread testing to determine which staff and inmates were  
24 sick and/or contagious; b. Ensure sufficient stocks of hygiene supplies,  
25 cleaning supplies, personal protective equipment, and medical supplies were  
26 available; c. Implement consistent cleaning and sanitization procedures; d.  
Implement consistent adequate quarantine and/or medical isolation

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27  
28 <sup>1</sup> The following allegations are taken from the *FAC* (*FAC* [Doc. 5]).

1 procedures for inmates who have been exposed to and/or tested positive for  
2 COVID-19; e. Ensure adequate social distancing measures were possible  
3 and enforced; f. Refuse to book individuals for low-level, non-violent  
4 offenses; g. Summon/provide medical care capable of addressing COVID-19  
5 and/or transfer inmates to facilities equipped to do so; and h. Consistently  
enforce the above strategies and others outlined by the U.S. Center for  
Disease Control and Prevention for correctional and detention facilities.

6 (*Id.* ¶ 16.)

7 Plaintiffs allege Decedent’s death was substantially contributed to by the County’s  
8 failure to implement recommendations made by the National Commission on  
9 Correctional Health Care (“NCCHC”) in 2017. These failures included: timely review of  
10 inmate deaths; formal peer-review process of deaths by contract medical providers;  
11 tracking medical grievances; tracking correctional officer training; documenting and  
12 enrolling inmates with chronic diseases in specific programs; and providing “suitable  
13 space, supplies, and equipment” for “medical, dental, and mental-health services.” (*Id.*  
14 ¶¶ 25-29.) Plaintiffs also contend the County was aware of prior examples of preventable  
15 inmate deaths due to failures to conduct cell checks, investigate misconduct, and take  
16 appropriate remedial actions. (*Id.* ¶¶ 31-32.)

17 On November 20, 2020, Ms. Clines filed suit in the Superior Court of California,  
18 County of San Diego. [Doc. 1-2.]

19 On November 23, 2020, the County removed the case to this Court based on  
20 Federal Question jurisdiction. [Doc. 1.]

21 On November 30, 2020, the County filed a Motion to Dismiss and Strike. [Doc.  
22 3.]

23 On January 20, 2021, Plaintiffs filed the FAC. (*FAC* [Doc. 5].) Plaintiffs bring  
24 claims for negligence, deliberate indifference to serious medical needs, wrongful death,  
25 and for violations of the Bane Act, 42 U.S.C section 1983 (*Monell*), and substantive due  
26 process.

27 On February 3, 2021, the County renewed its Motion to Dismiss all Plaintiffs’  
28 claims. [Doc. 10.]

1 **II. LEGAL STANDARD**

2 **A. MOTION TO DISMISS UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)**

3 The court must dismiss a cause of action for failure to state a claim upon which  
4 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)  
5 tests the legal sufficiency of the complaint. See Parks Sch. of Bus., Inc. v. Symington, 51  
6 F.3d 1480, 1484 (9th Cir. 1995). A complaint may be dismissed as a matter of law either  
7 for lack of a cognizable legal theory or for insufficient facts under a cognizable theory.  
8 Balisteri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1990). In ruling on the  
9 motion, a court must “accept all material allegations of fact as true and construe the  
10 complaint in a light most favorable to the non-moving party.” Vasquez v. L.A. Cnty., 487  
11 F.3d 1246, 1249 (9th Cir. 2007). But a court is not required to accept legal conclusions  
12 couched as facts, unwarranted deductions, or unreasonable inferences. Papasan v. Allain,  
13 478 U.S. 265, 286 (1986); Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.  
14 2001).

15 Complaints must contain “a short plain statement of the claim showing that the  
16 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Supreme Court has interpreted  
17 this rule to mean that “[f]actual allegations must be enough to rise above the speculative  
18 level.” Bell Atl. Corp. v. Twombly, 550 U.S. 554, 555 (2007). The allegations in the  
19 complaint must “contain sufficient factual matter, accepted as true, to state a claim to  
20 relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing  
21 Twombly, 550 U.S. at 570).

22  
23 **III. DISCUSSION**

24 **A. K.C.A. STANDING**

25 Numerous claims in the FAC are alleged by K.C.A. on behalf of Decedent for  
26 violations of Decedent’s personal rights. The County contends K.C.A. has not satisfied  
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1 the requirements to assert claims on behalf of Decedent’s estate. (*P&A* [Doc. 10-1] 6:19–  
2 25.)<sup>2</sup>

3 “A cause of action that survives the death of the person entitled to commence an  
4 action or proceeding passes to the decedent’s successor in interest.” Cal. Civ. Proc. Code  
5 § 377.30. In order to bring a cause of action as the decedent’s successor in interest, a  
6 plaintiff shall execute and file an affidavit under penalty of perjury stating:

7 (1) The decedent's name.

8 (2) The date and place of the decedent’s death.

9 (3) “No proceeding is now pending in California for administration of  
the decedent's estate.”

10 (4) If the decedent's estate was administered, a copy of the final order  
showing the distribution of the decedent’s cause of action to the successor in  
11 interest.

12 (5) Either of the following, as appropriate, with facts in support  
thereof:

13 (A) “The affiant or declarant is the decedent’s successor in interest (as  
14 defined in Section 377.11 of the California Code of Civil Procedure) and  
succeeds to the decedent’s interest in the action or proceeding.”

15 (B) “The affiant or declarant is authorized to act on behalf of the  
16 decedent’s successor in interest (as defined in Section 377.11 of the  
California Code of Civil Procedure) with respect to the decedent’s interest in  
17 the action or proceeding.”

18 (6) “No other person has a superior right to commence the action or  
19 proceeding or to be substituted for the decedent in the pending action or  
proceeding.”

20 (7) “The affiant or declarant affirms or declares under penalty of  
21 perjury under the laws of the State of California that the foregoing is true  
and correct.”

22 Cal. Civ. Proc. Code § 377.32(a).

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27 <sup>2</sup> The County also argues K.C.A. failed to properly appoint a guardian ad litem. In its Reply, however,  
28 the County concedes that K.C.A. does not need to petition the Court in order for K.C.A.’s mother to act  
as “guardian” in federal court, as opposed to a “guardian ad litem.” (*Reply* [Doc. 15] 3:6–10.)

1 K.C.A. has filed a declaration satisfying the requirements of California Code of  
2 Civil Procedure section 377.30. (*See K.C.A. Decl.* [Doc. 14].) As such, K.C.A. has  
3 standing to assert claims on behalf of Decedent as “successor in interest.”  
4

5 **B. NEGLIGENCE**

6 Plaintiffs allege that unidentified defendants breached their duty of care to  
7 Decedent by failing to summon and provide necessary medical care to treat Decedent’s  
8 serious and obvious medical condition. The County argues it is immune to such a  
9 negligence claim and that the unidentified defendants did not owe a duty to Decedent  
10 under California law. (*P&A* 9:5–7.)

11 Generally, a public entity is not liable for injury “proximately caused by the failure  
12 of the employee to furnish or obtain medical care for a prisoner in [the employee’s]  
13 custody.” Cal. Gov’t Code § 845.6. However, a public entity can be vicariously liable  
14 for the acts of its employees if “the employee knows or has reason to know that the  
15 prisoner is in need of immediate medical care and [the employee] fails to take reasonable  
16 action to summon such medical care.” *Id.*

17 Here, Plaintiffs allege the County and its jail staff were on notice of the dangers of  
18 COVID-19 when, “[i]n or around the end of June 2020, [Decedent] began experiencing  
19 serious and obvious medical conditions requiring immediate care, including respiratory  
20 distress substantially caused by a disease believed . . . to be COVID-19.” (*FAC* ¶¶ 12,  
21 17-23.) Plaintiffs allege the unknown jail officials were aware of Decedent’s serious and  
22 obvious medical condition, but failed to summon and provide the necessary medical care.  
23 (*Id.* ¶ 13.) As a result, “[Decedent] stopped breathing, and he was down in his jail cell for  
24 a significant period of time.” (*Id.* ¶ 14.) “Because he had been allowed to decompensate  
25 so severely, [Decedent] suffered from severe pneumonia and seizures” and died on  
26 August 21, 2020. (*Id.*)  
27  
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1 Plaintiffs allege Decedent was seriously ill well before the time jail staff  
2 summoned medical care for him and that he died as a result. Taken as true, the County  
3 may be held vicariously liable for its jail staff's negligence under such facts.  
4

### 5 C. DELIBERATE INDIFFERENCE

6 Plaintiffs allege that Defendants knew of and disregarded an excessive risk to  
7 Decedent's health and safety. The County argues Plaintiffs have not alleged sufficiently  
8 particularized facts that jail staff had subjective knowledge that Decedent needed medical  
9 care and acted with deliberate indifference to that need. (*Reply* [Doc. 15] 5:4–7.)

10 A prison official's "deliberate indifference to a prisoner's serious illness or injury"  
11 violates the Eighth Amendment. Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002)  
12 (quoting Estelle v. Gamble, 429 U.S. 97, 105 (1976)). "The inmates must demonstrate  
13 that they were confined under conditions posing a risk of objectively, sufficiently serious  
14 harm and that the officials had a sufficiently culpable state of mind in denying the proper  
15 medical care." Clement, 298 F.3d at 904 (internal quotations omitted). A serious  
16 medical need exists when the failure to treat a prisoner "could result in further significant  
17 injury or the unnecessary and wanton infliction of pain." Id. (internal quotations  
18 omitted). Deliberate Indifference is evidenced when "the official knows of and  
19 disregards an excessive risk to inmate health or safety; the official must both be aware of  
20 the facts from which the inference could be drawn that a substantial risk of serious harm  
21 exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 835  
22 (1994).

23 As described above, Plaintiffs have alleged Decedent had COVID-19 and serious  
24 complications, including pneumonia and seizure due to lack of oxygen, which had been  
25 allowed to progress so severely that there was little chance of saving Decedent's life.  
26 Plaintiffs allege Decedent's medical condition was so serious it must have been obvious  
27 to jail staff. (*Id.* ¶ 13.) Drawing all reasonable inferences in Plaintiffs' favor, it is likely  
28 that jail staff knew Decedent was very ill and should have been hospitalized days earlier.



1 As such, Plaintiffs have stated a plausible claim for deliberate indifference to Decedent’s  
2 serious medical needs under the Eighth Amendment.

3  
4 **D. WRONGFUL DEATH**

5 The County’s arguments for dismissal of the wrongful death claim come in two  
6 sentences in its Reply. It states, “Plaintiffs’ wrongful death claim should be dismissed  
7 because they have not alleged sufficient facts supporting liability under either [a Gov’t  
8 Code 845.6 or an Eighth Amendment deliberate indifference] claim.” (*Reply* 5:22–25.)  
9 Plaintiffs have stated facts sufficient to overcome both the underlying claims. The  
10 County’s motion to dismiss the wrongful death claim is denied.

11  
12 **E. BANE ACT VIOLATION**

13 The County challenges the Bane Act claim, arguing that it is devoid of facts  
14 showing intentional interference with Decedent’s rights by threats, intimidation or  
15 coercion. (*P&A* 11:6–9.)

16 Section 52.1 “provides a cause of action for violations of a plaintiff’s state or  
17 federal civil rights committed by ‘threats, intimidation, or coercion.’” Chaudhry v. City  
18 of Los Angeles, 751 F.3d 1096, 1105 (9th Cir. 2014) (quoting Cal. Civ. Code § 52.1).  
19 The Bane Act does not require the “threat, intimidation or coercion” element of the claim  
20 to be transactionally independent from the constitutional violation alleged. Cornell v.  
21 City & Cty. of San Francisco, 17 Cal. App. 5th 766, 799 (2017), as modified (Nov. 17,  
22 2017). However, it does require a specific intent to deprive the victim of enjoying the  
23 interests protected by the violated right. Id. at 803.

24 Here, Plaintiffs have pled facts alleging Defendants’ interfered with Decedent’s  
25 Eighth Amendment rights by unnecessarily holding him in custody despite his obvious  
26 need for medical care. (*FAC* ¶ 14.) Plaintiffs further allege the currently unknown jail  
27 staff were deliberately indifferent to Decedent’s serious medical needs. (*Id.* ¶ 13.)  
28 Plaintiffs have thus pled facts sufficient to state a Bane Act Claim. See M.H. v. Cty. of



1 Alameda, 90 F. Supp. 3d 889, 899 (N.D. Cal. 2013) (denying a motion to dismiss because  
2 “a prisoner who successfully proves that prison officials acted or failed to act with  
3 deliberate indifference to his medical needs in violation of his constitutional rights . . .  
4 adequately states a claim for relief under the Bane Act”).

5 In its Reply, the County argues the Bane Act claim should be dismissed against the  
6 County individually because the County is immune under California Government Code  
7 section 844.6. Section 844.6 provides that “a public entity is not liable for . . . [a]n injury  
8 to any prisoner.” However, as discussed above, section 845.6 provides an exception to  
9 this broad limitation of liability when an employee knows or has reason to know that a  
10 prisoner “is in need of immediate medical care and [the employee] fails to take  
11 reasonable action to summon such medical care.” Cal. Gov’t Code § 845.6. As section  
12 845.6 appears to provide an exception to this immunity, and because Plaintiffs have not  
13 had the opportunity to address the issue, the Court declines to dismiss the County at this  
14 stage. See Greer v. Cty. of San Diego, 2021 WL 615046, at \*9 n.3 (S.D. Cal. Feb. 17,  
15 2021).

#### 17 **F. SUBSTANTIVE DUE PROCESS VIOLATION**

18 Plaintiffs contend that the deliberate indifference to Decedent’s serious medical  
19 risks and needs violated their substantive due process rights, for deprivation of familial  
20 relations, under the Fourteenth Amendment. The County argues Plaintiffs’ “vague and  
21 general allegations regarding cell checks and policies failing to meet NCCHC proposed  
22 standards does not amount to a constitutional violation, yet alone actions that shock the  
23 conscience.” (*P&A* 14:14–16.)

24 Plaintiffs must show that an officer’s conduct “shocks the conscience” to prevail  
25 on a substantive due process claim under the Fourteenth Amendment. See Wilkinson v.  
26 Torres, 610 F.3d 546, 554 (9th Cir. 2010). The “critical consideration [is] whether the  
27 circumstances are such that actual deliberation is practical.” Porter v. Osborn, 546 F.3d  
28 1131, 1137 (9th Cir. 2008). “If so, an officer’s ‘deliberate indifference’ may suffice to

1 shock the conscience and the plaintiff may prevail by showing that the officer  
2 disregarded a known or obvious consequence of his action.” Nicholson v. City of Los  
3 Angeles, 935 F.3d 685, 692–93 (9th Cir. 2019) (internal citations and quotations  
4 omitted).

5 Viewing the totality of evidence in the light most favorable to Plaintiffs, the failure  
6 to provide sufficient medical care violated Plaintiffs’ due process rights. Plaintiffs allege  
7 Decedent’s medical needs were obvious such that “Defendants subjectively knew that  
8 [Decedent] faced serious medical risk and had serious medical needs, including  
9 respiratory distress caused by COVID-19.” (*FAC* ¶ 64.) Despite this knowledge,  
10 Plaintiffs contend, “Defendants were deliberately indifferent to, and/or recklessly  
11 disregarded, [Decedent’s] serious medical risks and needs by, among other things, failing  
12 to provide [Decedent] with sufficient medical care to address his respiratory distress.”  
13 (*Id.* ¶ 65.) Under Plaintiffs’ version of the facts, a rational finder of fact could find that  
14 this was conscious-shocking conduct resulting in Decedent’s death. The County’s  
15 motion to dismiss this claim is denied.

#### 16 17 **G. MONELL CLAIM**

18 Defendants seek to dismiss Plaintiffs’ *Monell* cause of action against the County,  
19 arguing that “Plaintiffs fail to allege facts showing that the alleged [policy and custom]  
20 deficiencies caused Decedent’s death.” (*P&A* 18:19–20.) The Court disagrees.

21 “A municipality may not be held liable under [42 U.S.C. section 1983] solely  
22 because it employs a tortfeasor.” Bd. of Cnty. Com’rs of Bryan Cnty., Okl. v. Brown,  
23 520 U.S. 397, 403 (1997) (referencing Monell, 436 U.S. at 689–92). Instead, a plaintiff  
24 seeking to establish municipal liability under section 1983 must prove that his or her  
25 injury was the result of a municipal policy or custom. *Id.* “Locating a ‘policy’ ensures  
26 that a municipality is held liable only for those deprivations resulting from the decisions  
27 of its duly constituted legislative body or of those officials whose acts may fairly be said  
28 to be those of the municipality.” *Id.* at 403–04.

1           However, a “local governmental body may be liable if it has a policy of inaction  
 2 and such inaction amounts to a failure to protect constitutional rights.” Oviatt By and  
 3 Through Waugh v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) (citing City of Canton v.  
 4 Harris, 489 U.S. 378, 388 (1989)). In order to establish a section 1983 claim against a  
 5 local government entity for failing to act to preserve a constitutional right, the plaintiff  
 6 must establish: (1) a county employee violated plaintiff’s constitutional right; (2) the  
 7 municipality had a policy or custom that amounts to deliberate indifference; and (3) the  
 8 custom or policy is the moving force behind the constitutional violation. Long v. County  
 9 of Los Angeles, 442 F.3d 1178, 1186 (9th Cir.2006) (citing Gibson v. County of Washoe,  
 10 290 F.3d 1175, 1193-94 (9th Cir. 2002)). In the context of a failure to train claim,  
 11 deliberate indifference can be proven “without showing a pattern of constitutional  
 12 violations where ‘a violation of federal rights may be a highly predictable consequence of  
 13 a failure to equip law enforcement officers with specific tools to handle recurring  
 14 situations.” Id. (quoting Board of County Commissioners v. Brown, 520 U.S. 397, 409  
 15 (1997)).

16           Here, Plaintiffs allege the violation of Decedent’s right to adequate medical care  
 17 was caused by the County’s:

- 18           (a) deliberate indifference to the training needs of jail staff, including
- 19           corrections and medical staff; and
- 20           (b) *de facto* customs, practices, and policies of:
  - 21           (i) failing to sufficiently address the realities of COVID-19;
  - 22           (ii) failing to implement the recommendations of oversight
  - 23           organizations (like NCCHC) to bring County healthcare systems up to
  - 24           minimum standards;
  - 25           (iii) failing to coordinate and share critical medical information
  - 26           among jail staff, including a failure to update information-sharing
  - 27           infrastructure (like JIMS);
  - 28           (iv) failing to conduct proper cell checks; and
  - (v) failing to investigate misconduct, [failing to] take appropriate
  - remedial action, and covering up wrongdoing.

(FAC ¶ 72.) The FAC alleges that, by the time Decedent became ill, the County was on  
 notice of serious medical risks arising from COVID-19 and knew its inmates were being

1 routinely deprived of necessary medical rights because of systemic failure in County  
2 jails. (*Id.* ¶¶ 73-78.) Drawing all reasonable inferences in Plaintiffs’ favor, it is plausible  
3 that the foregoing systemic failures were a substantial cause of Decedent’s death.

4 The County also contends that, while Decedent’s estate can recover under *Monell*,  
5 Plaintiffs may not maintain such a claim individually. (*P&A* 20:4–10.) Specifically, the  
6 County argues that the Decedent’s Eighth Amendment claim is personal and only his  
7 survivor can maintain a claim as the representative of his estate. However, Plaintiffs also  
8 have individual Fourteenth Amendment rights which would not have been violated had  
9 Decedent not died. The County can be held liable under *Monell* for a violation of the  
10 Fourteenth Amendment right to substantive due process. See *Shelley v. Cty. of San*  
11 *Joaquin*, 996 F. Supp. 2d 921, 932 (E.D. Cal. 2014) (denying a motion to dismiss a  
12 *Monell* claim for violation of the individual plaintiffs’ substantive due process rights as  
13 the family members of the decedent).

14 The County’s motion to dismiss the *Monell* claim is denied.

#### 15 16 **H. REQUEST TO STRIKE ALLEGATIONS**

17 The County argues allegations in the FAC regarding the NCCHC’s report on  
18 medical services provided, as well as Union Tribune articles referencing the County’s  
19 response to COVID-19 in County jails, should be stricken because they are “immaterial,  
20 impertinent, and scandalous.” (*P&A* 18:27–19:19.)

21 Rule 12(f) allows a court to “strike from a pleading an insufficient defense or any  
22 redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “The  
23 function of a 12(f) motion to strike is to avoid the expenditure of time and money that  
24 must arise from litigating spurious issues by dispensing with those issues prior to trial . . .  
25 .” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (quotation  
26 omitted). Motions to strike are generally disfavored and are “usually . . . denied unless  
27 the allegations in the pleading have no possible relation to the controversy, and may  
28

1 cause prejudice to one of the parties.” See Travelers Cas. & Sur. Co. of Am. v. Dunmore,  
2 2010 WL 5200940, at \*3 (E.D. Cal. 2010).

3 Redundant matter is the needless repetition of assertions. See Travelers, 2010 WL  
4 5200940, at \*3. “Immaterial matter is that which has no essential or important  
5 relationship to the claim for relief or the defenses being plead.” Whittlestone, 618 F.3d at  
6 974 (quotation omitted). “Impertinent matter consists of statements that do not pertain,  
7 and are not necessary, to the issues in question.” Id. (quotation omitted). “Scandalous  
8 matters are allegations ‘that unnecessarily reflect . . . on the moral character of an  
9 individual or state . . . anything in repulsive language that detracts from the dignity of the  
10 court’ . . . and ‘include . . . allegations that cast a cruelly derogatory light on a party or  
11 other person.’” Consumer Solutions REO, LLC v. Hillery, 658 F. Supp. 2d 1002, 1020  
12 (N.D. Cal. 2009) (quoting Cobell v. Norton, 224 F.R.D. 1, 5 (D.D.C. 2004), In re  
13 2TheMart.com Secs. Litig., 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000), respectively).  
14 The court may not strike from the pleadings any disputed and substantial factual or legal  
15 issue. See Whittlestone, 618 F.3d at 973–74 (9th Cir. 2010). Any doubt about whether  
16 the matter under attack raises a factual or legal issue should be resolved in favor of the  
17 non-moving party. See id. at 975 n.2.

18 The County argues allegations regarding general medical care in the jails and  
19 Union Tribune articles are impertinent and immaterial because they have no direct causal  
20 relationship to the claims and defenses involved in this case. The Court disagrees.  
21 Allegations regarding NCCHS’s report card for the County, as well as references to  
22 reporting by the Union Tribune, provide useful background for Plaintiffs’ claims. More  
23 importantly, Plaintiffs’ *Monell* claim depends on proof that the County was on notice of  
24 serious medical risks arising from COVID-19 and knew its inmates were being routinely  
25 deprived of necessary medical rights because of systemic failure in County jails. (*FAC*  
26 ¶¶ 73–78.) The subject allegations are directly relevant to Plaintiffs’ *Monell* claim and  
27 the County will not be prejudiced by them. The request to strike these allegations is  
28 denied.

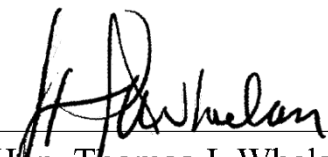
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**IV. CONCLUSION & ORDER**

For the foregoing reasons, the Court **DENIES** the motion to dismiss [Doc. 10].

**IT IS SO ORDERED.**

Dated: August 3, 2021

  
\_\_\_\_\_  
Hon. Thomas J. Whelan  
United States District Judge