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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL T. SMITH, as Personal
Representative of the Estate of JEANA
MICHELLE ROGERS, deceased, et al.,

Plaintiffs,

v.

NAPHCARE, INC., an Alabama
Corporation, et al.,

Defendants.

CASE NO. 3:22-cv-05069-DGE

ORDER GRANTING
DEFENDANTS KITSAP COUNTY
AND NAPHCARE’S MOTIONS TO
DISMISS (DKT. NOS. 51, 68) AND
DENYING KITSAP COUNTY’S
PARTIAL MOTION FOR
SUMMARY JUDGMENT (DKT.
NO. 54)

I INTRODUCTION

This matter comes before the Court on Defendant Kitsap County’s Motion to Dismiss for Failure to State a Claim (Dkt. No. 51), Motion for Partial Summary Judgment (Dkt. No. 54), and Defendants NaphCare and NaphCare’s Out-of-State Leadership’s Motion to Dismiss for Failure to State a Claim and Lack of Personal Jurisdiction (Dkt. No. 68). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the record and

1 hereby GRANTS Defendants’ Motions to Dismiss and DENIES Kitsap County’s Partial Motion
2 for Summary Judgment.

3 II BACKGROUND

4 This action arises out of the suicide of Jeana Michelle Rogers (“Jeana Rogers”) while she
5 was a pretrial detainee at Kitsap County Jail (“Jail”). (Dkt. No. 41 at 15.) Plaintiffs are Michael
6 T. Smith, as personal representative for the Estate of Jeana Michelle Rogers, and Jeana Rogers’
7 surviving four minor children. (*Id.* at 3.)

8 Defendants are Kitsap County, a municipal corporation responsible for administering the
9 Kitsap County Jail and NaphCare, Inc. (“NaphCare”), the healthcare provider at the Jail at the
10 time of Jeana Rogers’ death. (*Id.* at 3–12.) There are also several individual Defendants who
11 were either employed by Kitsap County or NaphCare at the time of Jeana Rogers’ death.

12 Jeana Rogers was a member of the Suquamish Tribe. (*Id.* at 13.) She had a history of
13 mental illness, including diagnoses of bipolar disorder and major depressive disorder, and had
14 been receiving mental health treatment at the Suquamish Tribal Wellness Center between
15 October 2017 through September 2018. (*Id.*)

16 On September 2, 2018, Jeana Rogers was booked at the Jail and was placed in psychiatric
17 care. (*Id.*) Jeana was released from the Jail but was re-booked on October 27, 2018 after being
18 arrested by Kitsap County Sheriff’s Officers. (*Id.*)

19 Throughout the next two months, Jeana Rogers had many encounters with mental health
20 professionals and officers at the Jail. On December 9, 2018, Jeana Rogers was seen by a mental
21 health professional after submitting a medical kite and reporting that she was experiencing
22 depression. (*Id.* at 14.) She was seen by a mental health professional again on January 10, 2019.
23 (*Id.*) On January 17, 2019, she was given an infraction after being observed by Defendant Sara
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1 Timmons entering a bathroom with a blanket around her shoulders. (*Id.*) On January 24, 2019,
2 she again saw a mental health professional where she was observed as “clearly disorganized in
3 her thoughts with delusional content.” (*Id.*) On January 27, 2019, Defendant Jordan Campbell
4 responded to Jeana Rogers pushing the emergency button in her cell. (*Id.*)

5 On February 19, 2019, Jeana Rogers spoke with Defendant Melanie Daniels during a
6 walk-through of her cell. (*Id.*) Jeana Rogers told Defendant Daniels that was “depressed” and
7 that she “should just have a heart attack and then it’ll be resolved.” (*Id.*) Defendant Daniels
8 reported this to her supervisor Defendant Wade Schroath. (*Id.*)

9 Later that day, Defendant Daniels observed Jeana Rogers picking toilet paper out of the
10 vent above the toilet in her cell. (*Id.* at 15.) Three-and-a-half hours later, Defendant Elvia
11 Decker found Jeana Rogers unconscious with a mattress cover around her neck on top of the
12 toilet in her cell. (*Id.*) Jeana Rogers was moved to Harrison Hospital where she was pronounced
13 dead the next day. (*Id.*)

14 Plaintiffs sue Defendants Kitsap County, several named and unnamed Kitsap County
15 employees, NaphCare, NaphCare’s Out-of-State Leadership¹ executives, and NaphCare
16 employees working at the Jail when Jeana Rogers was detained. Plaintiffs have brought claims
17 under 42 U.S.C. § 1983, 42 U.S.C. § 12132 (Americans with Disabilities Act), and 29 U.S.C. §
18 701 (Rehabilitation Act), and for negligence, gross negligence, and medical negligence.

19 Plaintiffs filed their Complaint on February 1, 2022. (Dkt. No. 1.) Plaintiffs filed their
20 Amended Complaint on April 19, 2022. (Dkt. No. 41.) On May 19, 2022, Kitsap County moved
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22 ¹ The NaphCare’s Out-of-State Leadership Defendants are Defendants Jim McClane, Susanne
23 Moore, Marsha Burgess, Amber Simpler, Jeffrey Alvarez, Bradford McLane, Cornelius
24 Henderson, and Gina Savage. Plaintiffs also identify these individuals as “NaphCare
Policymaking Defendants.” (Dkt. 41 at 12.)

1 to dismiss and for partial summary judgment. (Dkt. Nos. 51, 54.) On June 16, 2022, Defendants
2 NaphCare and Naphcare’s Out-of-State Leadership filed their own Motion to Dismiss. (Dkt. No.
3 68.)

4 III DISCUSSION

5 A. Legal Standard

6 1. Federal Rule of Civil Procedure 12(b)(6)

7 Federal Rule of Civil Procedure 12(b) motions to dismiss may be based on either the lack
8 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
9 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). Material
10 allegations are taken as admitted and the complaint is construed in the plaintiff’s favor. *Keniston*
11 *v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983) (citations omitted). “While a complaint attacked
12 by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s
13 obligation to provide the grounds of his entitlement to relief requires more than labels and
14 conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl.*
15 *Corp. v. Twombly*, 550 U.S. 544, 554–55 (2007) (citations omitted).

16 2. Federal Rule of Civil Procedure 8(a)

17 Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain “a short plain
18 statement of the claim showing that the pleader is entitled to relief.” To comply with Federal
19 Rule of Civil Procedure 8(a)(2), a plaintiff “must plead a short and plain statement of the
20 elements of his or her claim, identifying the transaction or occurrence giving rise to the claim
21 and the elements of the prima facie case[.]” *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 840
22 (9th Cir. 2000). Although Federal Rule of Civil Procedure 8 “encourages brevity, the complaint
23 must say enough to give the defendant ‘fair notice of what the plaintiff’s claim is and the
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1 grounds upon which it rests.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 319
2 (2007) (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005)).

3 **B. Plaintiffs Fail to Adequately Allege an Americans with Disabilities Act Claim**
4 **Against Kitsap County**

5 Title II of the Americans with Disabilities Act (“ADA”) provides that “no qualified
6 individual with a disability shall, by reason of such disability, be excluded from participation in
7 or be denied the benefits of the services, programs, or activities of a public entity, or be subjected
8 to discrimination by any such entity.” 42 U.S.C. § 12132. To state a claim of disability
9 discrimination under Title II, a plaintiff must allege four elements:

10 (1) the plaintiff is an individual with a disability; (2) the plaintiff is otherwise
11 qualified to participate in or receive the benefit of some public entity’s services,
12 programs, or activities; (3) the plaintiff was either excluded from participation in
or denied the benefits of the public entity’s services, programs, or activities, or was
otherwise discriminated against by the public entity; and (4) such exclusion, denial
of benefits, or discrimination was by reason of the plaintiff’s disability.

13 *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (citations omitted).

14 Kitsap County moves to dismiss Plaintiffs’ ADA claim contending that “[t]he Complaint
15 does not state Ms. Rogers was excluded from participation in any services, programs, or
16 activities. The Complaint also fails to allege any facts to suggest that Ms. Rogers was excluded
17 from any such activities by reason of a disability.” (Dkt. No. 51 at 6.) Additionally, NaphCare
18 alleges that Plaintiffs have not adequately alleged that Jeana Rogers had a disability. (Dkt. No.
19 68 at 18.)

20 Plaintiffs’ Response puts forth two arguments: 1) Jeana Rogers had a disability and
21 despite being seen by doctors and mental health professionals, “no interventions or treatment
22 were provided[,]” and 2) “Kitsap County and NaphCare failed to institute adequate policies and
23

1 procedure or train its employees on how to accommodate individuals with disabilities, such as
2 Jeana.” (Dkt. No. 65 at 6–7.)

3 1. Plaintiffs Fail to Allege Jeana Rogers Had a Qualifying Disability

4 An individual has a qualifying disability under the ADA if the individual: (1) has a
5 physical or mental impairment that substantially limits one or more of the individual’s major life
6 activities; (2) has a record of such an impairment; or (3) is regarded as having such an
7 impairment. 42 U.S.C. § 12102(1).

8 The determination of whether an impairment substantially limits a major life activity
9 requires an individualized assessment. 29 C.F.R. § 1630.2(j). A major life activity is a function
10 “such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking,
11 breathing, learning, and working.” § 1630.2(i). The ADA Amendments Act of 2008 clarified
12 what it means to be substantially limited by an impairment:

13 An impairment is a disability within the meaning of this section if it substantially
14 limits the ability of an individual to perform a major life activity as compared to
15 most people in the general population. An impairment need not prevent, or
16 significantly or severely restrict, the individual from performing a major life
17 activity in order to be considered substantially limiting. Nonetheless, not every
18 impairment will constitute a disability within the meaning of this section.
19 § 1630.2(j)(ii).

20 Plaintiffs here contend Jeana Rogers had a qualifying disability because she had “a well-
21 documented history of serious mental illness, including diagnoses of bipolar disorder and major
22 depressive disorder.” (Dkt. No. 41 at 13.) Although the FAC states that Jeana Rogers had a
23 history of mental illness, there are no allegations that such mental illness substantially limited a
24 major life activity. The FAC does state that on January 24, 2019 a mental health professional
noted that they witnessed Jeana Rogers being “clearly disorganized in her thoughts with
delusional content.” (*Id.* at 14.) However, as alleged in the FAC, the Court finds that Plaintiffs

1 have not adequately alleged that Jeana Rogers mental impairments caused her to be substantially
2 limited in a major life activity. Perhaps such mental impairments described in the FAC did in
3 fact cause Jeana Rogers to be substantially limited in a major life activity, however the FAC has
4 failed to make such allegations.

5 Thus, the Court finds that Plaintiffs have failed to adequately allege a disability under the
6 ADA.²

7 2. Plaintiffs Fail to Adequately Allege Jeana Rogers was Denied Benefits or
8 Discriminated Against Based on an Alleged Disability

9 The plain language of the ADA requires that the exclusion or discrimination at issue be
10 “by reason of such disability.” 42 U.S.C. § 12132. “The ADA prohibits discrimination because
11 of disability, not inadequate treatment for disability.” *Simmons v. Navajo Cnty., Ariz.*, 609 F.3d
12 1011, 1022 (9th Cir. 2010), *overruled in part on other grounds by Castro v. Cnty. of Los*
13 *Angeles*, 833 F.3d 1060 (9th Cir. 2016) (citations omitted).

14 Kitsap County alleges that the FAC fails to provide factual allegations that the Jail
15 excluded Jeana Rogers from services or programs it provided based on a disability. (Dkt. No. 51
16 at 6.) The FAC alleges that Jeana Rogers was placed in “general population” despite having

17 ² Plaintiffs cite *Palacios v. Cnty. of San Diego*, 2020 WL 4201686, at *13 (S.D. Cal. July 22,
18 2020) and *Carter v. Cain*, 2019 WL 846053, at *11 (M.D. La. Feb. 21, 2019) in support of their
19 argument that they have adequately alleged Jeana Rogers had a disability. (Dkt. No. 65 at 6.)
20 But in *Palacios v. Cty. of San Diego*, the court found a pretrial detainee had a qualified disability
21 after plaintiff pled “he suffered from a mental impairment that substantially limited his
22 neurological functions and other major life activities. Defendants were actually aware of [the
23 detainee]’s disability on March 18, 2019, including knowledge that [the detainee] was diagnosed
24 with schizophrenia, had a history of suicidality, and was actively suicidal.” Complaint at 24,
Palacios v. City of San Diego, No. 20-450 (S.D. Cal. March 10, 2020). In *Carter v. Cain*, the
court found the plaintiff’s history of “mental illness, psychosis, paranoia, acute anxiety, [and]
hallucinations, and that he was at high risk of suicide” qualified as a disability under the ADA
because “[the p]laintiff’s allegations describe how Terrance Carter’s mental illness caused him
debilitating anxiety and even interfered with his ability to perceive reality.” 2019 WL 846053, at
*11 (M.D. La. Feb. 21, 2019).

1 serious mental illness. (Dkt. No. 41 at 13.) The FAC also alleges that while at the Jail Jeana
2 Rogers was seen by mental health professionals several times but that “[n]o interventions or
3 treatment were provided.” (*Id.* at 14.) These factual allegations do not allege that Jeana Rogers
4 was “excluded from participation in or denied the benefits of the public entity’s services,
5 programs, or activities, or was otherwise discriminated against by the public entity[.]”
6 *Thompson*, 295 F.3d at 895. Instead, Plaintiffs allege that Jeana Rogers was placed in general
7 population and not properly treated for her mental health issues, which is not actionable under
8 the ADA.

9 3. Plaintiffs Allegation that Defendants Violated the ADA by Failing to Train its
10 Employees

11 Plaintiffs also allege Kitsap County and NaphCare are liable under the ADA under a
12 *Monell* failure to train theory that they “failed to institute adequate policies and procedure or
13 train its employees on how to accommodate individuals with disabilities, such as Jeana.” (Dkt.
14 Nos. 41 at 28; 65 at 7–8.) But as this Order has found that Plaintiffs have not adequately alleged
15 Jeana Rogers had a disability or that Plaintiffs adequately stated a *Monell* failure to train claim,
16 discussed below Section III.D., the Court need not address those arguments at this time.

17 Thus, Plaintiffs’ Americans with Disabilities Act claim is DISMISSED with leave to
18 amend.

19 **C. Plaintiffs Fail to State a Rehabilitation Act Claim**

20 A plaintiff bringing a Rehabilitation Act claim thus “must show that ‘(1) he is an
21 individual with a disability; (2) he is otherwise qualified to receive the benefit; (3) he was denied
22 the benefits of the program solely by reason of his disability; and (4) the program receives
23 federal financial assistance.’” *Updike v. Multnomah Cnty.*, 870 F.3d 939, 949 (9th Cir. 2017)
24 (quoting *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001)). “The standards used to

1 determine whether an act of discrimination violated the Rehabilitation Act are the same
2 standards applied under the Americans with Disabilities Act.” *Coons v. Sec’y of U.S. Dep’t of*
3 *Treasury*, 383 F.3d 879, 884 (9th Cir. 2004). Therefore, for the same reasons discussed above,
4 Plaintiffs fail to state a Rehabilitation Act Claim against Kitsap County.³

5 **D. 42 U.S.C. § 1983 Claims**

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege facts showing: (1) the
7 conduct about which they complain was committed by a person acting under the color of state
8 law; and (2) the conduct deprived them of a federal constitutional or statutory right. *Wood v.*
9 *Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989). In addition, a plaintiff must allege that they
10 suffered a specific injury as a result of the conduct of a particular defendant, and they must allege
11 an affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423
12 U.S. 362, 371–72, 377 (1976).

13 A pretrial detainee has a substantive due process right under the 14th Amendment to be
14 protected from harm during custody. *Castro*, 833 F.3d at 1067. As relevant here, that right may
15 be violated by a correctional facility’s failure to adequately address the detainee’s medical needs,
16 including an imminent risk of suicide. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1122–
17 23 (9th Cir. 2018). In this Circuit, such claims are “evaluated under an objective deliberate
18 indifference standard.” *Id.* 1124–25. Specifically,

19 the elements of a pretrial detainee’s medical care claim against an individual
20 defendant under the due process clause of the Fourteenth Amendment are: (i) the
21 defendant made an intentional decision with respect to the conditions under which
22 the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk
of suffering serious harm; (iii) the defendant did not take reasonable available
measures to abate that risk, even though a reasonable official in the circumstances

23 ³ Plaintiffs indicated in their Response to NaphCare’s Motion to Dismiss that they “agree to
24 dismiss their Americans with Disabilities Act (“ADA”) and Rehabilitation Act (“RA”) claims
against NaphCare.” (Dkt. No. 71 at 5.)

1 would have appreciated the high degree of risk involved—making the
2 consequences of the defendant’s conduct obvious; and (iv) by not taking such
measures, the defendant caused the plaintiff’s injuries.

3 *Id.* at 1125. As for the third element, the Ninth Circuit has explained that a plaintiff must ““prove
4 more than negligence but less than subjective intent—something akin to reckless disregard.”” *Id.*
5 (citation omitted).

6 1. Plaintiffs’ Allegations Against the Individual Defendants Fail to Satisfy the
7 Pleading Requirements of Federal Rule of Civil Procedure 8(a)

8 The purpose of the “short, plain statement” pleading standard is to put defendants on
9 notice of the claims alleged against them and the grounds upon which those claims rest.
10 *Twombly*, 550 U.S. at 555. The Court finds the FAC impermissibly lumps all Defendants
11 together and presents legal conclusions without factual support. (*See generally* Dkt. No. 41 at
12 24–28.) For example, paragraph 110 states that “Kitsap Jailer Defendants, Kitsap Defendants
13 Doe, and NaphCare Defendants Doe knew that Jeana faced a substantial risk of harm or death
14 due to her serious mental health condition, yet callously disregarded that risk by failing to take
15 reasonable measures to abate it.” (*Id.* at 24.) The FAC provides no factual allegations to support
16 these legal conclusions. For instance, the only factual allegation against Defendant Decker, one
17 of the Kitsap Jailer Defendants, was that she “found Jeana unconscious in a standing position on
18 top of her cell’s toilet with her back against the wall.” (*Id.* at 15.) There are no factual
19 allegations in the FAC that Defendant Decker knew of Jeana Rogers’ history of mental illness or
20 that she made any intentional decisions related to her confinement. Nor does the FAC explain
21 how Defendants who had no interaction with Jeana Rogers would have known about her history
22 of mental illness or how they failed to take reasonable measures to abate the risks associated with
23 her mental illness.

1 This type of exercise can be applied to the majority of the conclusory allegations made in
2 paragraphs 109 through 127. In short, rather than providing factual allegations that puts each
3 Defendant on notice as to what conduct they are alleged to have committed or were aware of
4 (and how they were aware), broad conclusory allegations are made as to all individual
5 Defendants.

6 The Court therefore DISMISSES Plaintiffs § 1983 claims against all individual
7 Defendants with leave to amend.

8 2. Plaintiffs Fail to Adequately Plead a *Monell* Claim

9 Local government entities may be sued under Section 1983 for monetary or equitable
10 relief where “action pursuant to official municipal policy of some nature cause[s] a constitutional
11 tort.” *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 690–94 (1978) (stating
12 that the unconstitutional acts of a government agent cannot, standing alone, lead to municipal
13 liability; the policy of the governmental entity of which the official is an agent must be the
14 “moving force [behind] the constitutional violation”); *City of Canton, Ohio v. Harris*, 489 U.S.
15 378, 385 (1989) (requiring “a direct causal link between a municipal policy or custom and the
16 alleged constitutional deprivation”).

17 “To impose *Monell* liability on a municipality under Section 1983, plaintiff must prove:
18 (1) [that he] had a constitutional right of which he was deprived; (2) the municipality had a
19 policy; (3) the policy amounts to deliberate indifference to his constitutional right; and (4) the
20 policy is the moving force behind the constitutional violation.” *Gordon v. Cnty. of Orange*, 6
21 F.4th 961, 973 (9th Cir. 2021) (quotations omitted).

22 A plaintiff can satisfy *Monell*’s policy requirement in one of three ways. First, the
23 plaintiff can prove that the local government employee committed the alleged constitutional
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1 violation “pursuant to an expressly adopted official policy.” *Id.* (quotations omitted). Second,
2 the plaintiff can establish that the local government employee committed the alleged
3 constitutional violation under a “longstanding practice or custom.” *Id.* (quotations omitted).
4 “Such circumstances may arise when, for instance, the public entity ‘fail[s] to implement
5 procedural safeguards to prevent constitutional violations’ or, sometimes, when it fails to train its
6 employees adequately.” *Id.* (quotations omitted). Third, the plaintiff can prove that “the
7 individual who committed the constitutional tort was an official with final policy-making
8 authority or such an official ratified a subordinate’s unconstitutional decision or action and the
9 basis for it.” *Id.* at 974 (quotations omitted).

10 To adequately plead a *Monell* claim against a local governmental entity, the
11 complaint “must contain sufficient allegations of underlying facts to give fair notice and to
12 enable the opposing party to defend itself effectively,” and “the factual allegations that are taken
13 as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the
14 opposing party to be subjected to the expense of discovery and continued litigation.”
15 *A.E. ex rel. Hernandez v. Cty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (internal quotation
16 marks and citation omitted). Following *A.E.*, district courts have accordingly required plaintiffs
17 to “specify the content of the policies, customs, or practices the execution of which gave rise to
18 [the] Constitutional injuries.” *Mateos-Sandoval v. County of Sonoma*, 942 F. Supp. 2d 890, 899
19 (N.D. Cal. 2013).

20 Here, the FAC refers to many policies and customs that Plaintiffs allege were followed
21 by the individual Defendants. (Dkt. No. 41 at 18–28.) But many of these alleged policies and
22 customs are not supported by factual allegations of how they gave rise to the constitutional
23 violations alleged by Plaintiffs. For example, paragraph 118 alleges that “Kitsap County,
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1 NaphCare, and their Policymaking and Supervising Defendants had an unwritten policy of
2 understaffing and indifference to inmate supervision that was maintained with deliberate
3 indifference.” (*Id.* at 26.) But the FAC provides no factual allegations that the Jail was
4 understaffed or that understaffing amounted to deliberate indifference that was the moving force
5 behind Jeana Rogers’ death.

6 Paragraph 83 states that “Kitsap County, NaphCare, and their Policymaking and
7 Supervisory Defendants failed to enforce policies and procedures for suicide prevention,
8 including, but not limited to, policies and procedures for prisoner intake and monitoring of
9 prisoners.” (*Id.* at 20.) But the FAC provides no factual allegations of Jeana Rogers’ intake
10 beyond that she was “placed in general population” after she was booked. (*Id.* at 13.) Paragraph
11 80 states that “Kitsap County, NaphCare, and their Policymaking and Supervisory Defendants
12 maintained a policy of not regularly monitoring inmates[,]” but there are no factual allegations
13 that failing to regularly monitor inmates was the moving force behind Jeana Rogers’ death.

14 Furthermore, despite the many allegations that the Kitsap Policymaking Defendants
15 “approved and ratified the acts and omissions of the employees[,]” there are no factual
16 allegations within the FAC to support these allegations. (*Id.* at 4–5.)

17 In short, Plaintiffs put forth numerous policies without supporting factual allegations or
18 how the policies are the moving force behind the constitutional violations.

19 3. Persistent and Widespread

20 To base *Monell* liability on a longstanding practice or custom, the custom must be
21 “persistent and widespread” if it “constitutes a ‘permanent and well settled city policy.’”
22 *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (quoting *Monell*, 436 U.S. at 691). “[I]solated
23 or sporadic incidents” cannot form the basis for a custom. *Id.* Rather, the custom must rest on

1 “practices of sufficient duration, frequency and consistency that the conduct has become a
2 traditional method of carrying out policy.” *Id.* (citing *Bennett v. City of Slidell*, 728 F.2d 762,
3 767 (5th Cir. 1984)).

4 Defendants argue that “there are insufficient facts plead to establish that Kitsap County
5 acted deliberately indifferent with respect to Jeana Rogers’ rights through a widespread custom
6 or practice.” (Dkt. No. 51 at 19.) The FAC alleges “Kitsap County, NaphCare, and their
7 Policymaking and Supervising Defendants knew of this excessive risk to inmate health and
8 safety because it was obvious and because numerous other inmates had been injured and/or
9 killed as a result of these inadequacies in the past.” (Dkt. No. 41 at 25.) The FAC points to
10 another incident in 2017 when an inmate attempted suicide using a mattress cover like Jeana
11 Rogers. (*Id.* at 17.)

12 The FAC fails to provide factual allegations for how many of these practices or customs
13 were so persistent and widespread that they were well settled policy of the Jail. The FAC only
14 points to one other incident of a suicide at the Jail. The FAC fails to explain how each of these
15 practices or customs was also present during that incident.

16 Similarly, a municipality may only be liable under § 1983 for failure to train its
17 employees when evidence shows a “deliberate indifference” to the rights of its inhabitants, so
18 there was an “obvious” need for more or different training without which the constitutional was
19 likely to occur. *City of Canton, Ohio*, 489 U.S. at 389–90. Without additional allegations, the
20 FAC does not indicate an obvious need for additional training.

21 Thus, Plaintiffs’ *Monell* claims are DISMISSED with leave to amend.
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1 **E. Negligence**

2 Kitsap County raises similar concerns about Plaintiffs’ negligence claims. Besides noting
3 that all Defendants’ alleged actions are lumped together, Defendants assert there is a “failure to
4 articulate any conduct of any individual as being negligent.” (Dkt. No. 51 at 23.) In response,
5 Plaintiffs assert “the negligence alleged in Plaintiffs’ FAC [is] meticulously well-defined. The
6 FAC lists a number of policies and national standards that were violated while Jeana was in the
7 County’s care and custody, and identifies whether it was the County, its contractor, or an
8 individual employee that violated the applicable standard.” (Dkt. No. 65 at 19.)

9 First, paragraphs 134 through 147 fail to distinguish between the asserted negligence,
10 gross negligence, and medical negligence theories or the standard alleged to apply under each
11 theory. (Dkt. 41 at 29–31.) Second, these paragraphs also impermissibly lump all Defendants
12 together rather than identify a person’s alleged conduct that makes Defendant Kitsap County
13 vicariously liable on the theory of respondeat superior. The term “Defendants” alone cannot
14 show Kitsap County’s liability for negligence as it does not provide factual allegations about
15 which Defendants are responsible for what conduct. For example, Plaintiffs allege that
16 “Defendants breached that duty, and were negligent, when they failed to adequately treat Jeana’s
17 psychiatric needs. Because Jeana’s psychiatric needs were entirely ignored, Defendants were
18 grossly negligent.” (*Id.* at 30.) Without further detail, the Court cannot discern which individual
19 Defendants Plaintiffs are referring to and why their conduct is attributable to Kitsap County. It
20 also is unclear how such conduct amounts to Kitsap County being liable for gross or medical
21 negligence rather than only negligence.

22 Therefore, Plaintiffs’ negligence claims are DISMISSED with leave to amend.
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1 **F. Personal Jurisdiction Over Individual NaphCare Defendants**

2 NaphCare asserts that Plaintiffs have failed to make a prima facie showing of personal
3 jurisdiction over NaphCare’s Out-of-State Leadership. (Dkt. No. 68 at 5–11.)

4 When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the
5 plaintiff bears the initial burden of showing that jurisdiction is appropriate. *Schwarzenegger v.*
6 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). A plaintiff cannot simply rest on the
7 bare allegations of its complaint, but must come forward with facts, by affidavit or otherwise,
8 supporting personal jurisdiction. *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787
9 (9th Cir. 1977). When resolving such a motion on written materials, the court need “only inquire
10 into whether the plaintiff’s pleadings and affidavits make a prima facie showing of personal
11 jurisdiction.” *Schwarzenegger*, 374 F.3d at 800 (internal quotation and citation omitted).

12 “Federal courts apply state law to determine the bounds of their jurisdiction over a
13 party.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (citing Fed. R. Civ.
14 P. 4(k)(1)(A)). Washington’s long-arm statute, Washington Revised Code § 4.28.185, “extends
15 jurisdiction to the limit of federal due process.” *Shute v. Carnival Cruise Lines*, 783 P.2d 78, 82
16 (Wash. 1989). The due process clause grants the court jurisdiction over defendants who have
17 “certain minimum contacts . . . such that the maintenance of the suit does not offend ‘traditional
18 notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316
19 (1945) (quotations omitted).

20 Personal jurisdiction can be based on either general jurisdiction or specific jurisdiction.
21 Plaintiff does not allege NaphCare’s Out-of-State Leadership are subject to general jurisdiction.
22 Thus, only specific jurisdiction is at issue.

1 “The inquiry whether a forum State may assert specific jurisdiction over a nonresident
2 defendant ‘focuses on the relationship among the defendant, the forum, and the litigation.’”
3 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting
4 *Walden v. Fiore*, 571 U.S. 277, 283–84 (2014)). Two principles guide this inquiry: first, “the
5 relationship must arise out of contacts that the ‘defendant *himself*’ creates with the forum”
6 state. *Walden*, 571 U.S. at 284 (emphasis in original) (quoting *Burger King Corp. v. Rudzewicz*,
7 471 U.S. 462, 475 (1985)). In other words, plaintiffs’ or third parties’ contacts with the forum
8 state cannot be the basis for jurisdiction over the defendant. *Id.* This is because due process in
9 this context “principally protect[s] the liberty of the nonresident defendant—not the convenience
10 of plaintiffs or third parties.” *Id.* Second, the “‘minimum contacts’ analysis looks to the
11 defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who
12 reside there.” *Id.* at 285.

13 The Ninth Circuit applies a three-part test to determine whether the exercise
14 of specific jurisdiction over a nonresident defendant is appropriate: (1) the defendant has either
15 purposefully directed his activities toward the forum or purposely availed himself of the
16 privileges of conducting activities in the forum; (2) the claims arise out of the defendant’s forum-
17 related activities; and (3) exercise of jurisdiction is reasonable. *Axiom*, 874 F.3d at 1068
18 (citations and quotations omitted).

19 For “purposeful direction,” courts apply the three-part test from *Calder v. Jones*, 465 U.S.
20 783 (1984), which asks whether the defendant (1) committed an intentional act, (2) expressly
21 aimed at the forum, (3) causing harm that it knows is likely to be suffered there. *Axiom*, 874
22 F.3d at 1069.

1 NaphCare moved to dismiss arguing that “[t]he Complaint makes no allegations that
2 NaphCare’s Out-of-State Leadership purposefully availed themselves of Washington State in any
3 way[,]” because “all of the allegations against NaphCare’s Out-of-State Leadership concern their
4 general responsibilities in operating NaphCare on a nationwide basis” and not “any intentional
5 acts that were taken by NaphCare’s Out-of-State Leadership” (Dkt. No. 68 at 9–10.)

6 It does appear NaphCare has raised significant issues of the lack of purposeful direction
7 and intentional acts by most of, if not all, NaphCare’s Out-of-State Leadership Defendants.
8 Indeed, after NaphCare’s Motion to Dismiss raised the issue, Plaintiffs’ Response only offered
9 support for one of the NaphCare Out-of-State Leadership Defendants—Jim McLane. (Dkt. No.
10 71 at 13.)

11 Considering Plaintiffs are being given leave to amend (*see infra*, Section III.H.), the
12 Court will reserve on this issue until after Plaintiffs have filed their new amended complaint. At
13 which point, the NaphCare Out-of-State Leadership Defendants should renew their motion if
14 they believe the new amended complaint fails to establish personal jurisdiction.

15 **G. Motion for Summary Judgment**

16 The Local Rules disfavor contemporaneous dispositive motions on discrete issues.
17 LCR(7)(e) (“Absent leave of the court, a party must not file contemporaneous dispositive
18 motions, each one directed toward a discrete issue or claim.”). Thus, the Court will not decide
19 Defendant’s Motion for Partial Summary Judgment (Dkt. No. 54) for now. If Defendants later
20 move for summary judgment, Defendants should include those arguments raised in Defendant’s
21 Motion for Partial Summary Judgment.

22 **H. Leave to Amend**

1 As a general rule, when a court grants a motion to dismiss, the court should dismiss the
2 complaint with leave to amend. *See Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051
3 (9th Cir. 2003) (citing Fed. R. Civ. P. 15(a)). The policy favoring amendment is to be applied
4 with “extreme liberality.” *Id.* (citations omitted). In making its determination, a court should
5 consider five factors: bad faith, undue delay, prejudice to the opposing party, futility of
6 amendment, and whether the plaintiff has previously amended the complaint. *Nunes v. Ashcroft*,
7 375 F.3d 805, 808 (9th Cir. 2004) (citations omitted).

8 The Court finds that the factors favor granting Plaintiffs leave to amend the FAC. There
9 are no allegations of bad faith or undue delay. (Dkt. No. 73 at 10.) Furthermore, although
10 Plaintiffs have already amended once, further amendment is necessary so that both the
11 Defendants and the Court can better understand Plaintiffs’ allegations.


12 Thus, Plaintiffs are directed to file a new amended complaint by **August 12, 2022**.

13 IV CONCLUSION

14 Accordingly, and having considered Defendants’ motions, the briefing of the parties, and
15 the remainder of the record, the Court finds and ORDERS that Defendants’ Motions to Dismiss
16 is GRANTED.

- 17 1. Defendants’ Motions to Dismiss (Dkt. No. 51, 68) are GRANTED.
- 18 2. Kitsap County’s Partial Motion for Summary Judgment (Dkt. No. 54) is DENIED.
- 19 3. Plaintiffs are instructed to file a new amended complaint by August 12, 2022.

20 Dated this 28th day of July 2022.

21 
22 _____
23 David G. Estudillo
24 United States District Judge