

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 26 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

TIMOTHY S. TOFAUTE; DAVID DIXON,

No. 18-15268

Plaintiffs-Appellants,

D.C. No. 1:16-cv-01627-DAD-  
SKO

v.

COUNTY OF MADERA; et al.,

MEMORANDUM\*

Defendants-Appellees.

Appeal from the United States District Court  
for the Eastern District of California  
Dale A. Drozd, District Judge, Presiding

Submitted November 18, 2019\*\*

Before: CANBY, TASHIMA, and CHRISTEN, Circuit Judges.

Timothy S. Tofaute and David Dixon appeal pro se from the district court's judgment dismissing their 42 U.S.C. § 1983 action alleging federal and state law claims arising from their arrest and criminal prosecution. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1915(e)(2)(B)(ii). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed plaintiffs’ malicious prosecution claim against defendant former District Attorney Keitz on the basis of prosecutorial immunity because plaintiffs failed to allege facts sufficient to show that Keitz’s alleged conduct was not “intimately associated with the judicial phase of the criminal process . . . .” *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *Broam v. Bogan*, 320 F.3d 1023, 1029 (9th Cir. 2003) (“A prosecutor is absolutely immune from liability for failure to investigate the accusations against a defendant before filing charges.”).

The district court properly dismissed plaintiffs’ malicious prosecution claims against defendants Anderson and Blehm because plaintiffs failed to allege facts sufficient to show that former District Attorney Keitz did not “exercise[] independent judgment in determining that probable cause for [plaintiffs’] arrest exist[ed] . . . .” *Smiddy v. Varney*, 665 F.2d 261, 266 (9th Cir. 1981), *overruled on other grounds by Beck v. City of Upland*, 527 F.3d 853, 865 (9th Cir. 2008); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face” (citation and internal quotation marks omitted)).

The district court properly dismissed plaintiffs’ failure-to-train claim against

Madera County because plaintiffs failed to allege facts sufficient to show that the County policymakers were personally involved in causing their injury, were aware that any training program was inadequate, or that a pattern of similar incidents existed. *See Connick v. Thompson*, 563 U.S. 51, 61-62 (2011) (noting that actual or constructive notice that a training program causes city employees to violate citizens' constitutional rights and a pattern of similar constitutional violations by untrained employees are usually necessary for a failure-to-train claim); *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013) (county may be liable under § 1983 “when the plaintiff was injured pursuant to an expressly adopted official policy, a long-standing practice or custom, or the decision of a final policymaker” (citation and internal quotation marks omitted)); *see also Iqbal*, 556 U.S. at 678.

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**