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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Mariah Inzunza,

10 Plaintiff,

11 v.

12 Pima County, et al.,

13 Defendants.
14

No. CV-22-00512-TUC-SHR

Order Re: Doc. 43

15 Plaintiff Mariah Inzunza brought this action through counsel for and on behalf of
16 the estate of her sibling, Sylvestre Miguel Inzunza, IV (“Sylvestre”), and Sylvestre’s
17 beneficiaries pursuant to 42 U.S.C. § 1983 and Arizona state law. (Doc. 39.) Defendant
18 Pima County Sheriff Chris Nanos, in his official capacity, filed a Motion to Dismiss *Monell*
19 Claim (Count II) for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules
20 of Civil Procedure. (Doc. 43.) The Motion is fully briefed. (Docs. 47, 48.)

21 **I. Second Amended Complaint**

22 As relevant to the Motion to Dismiss, Plaintiff alleges the following.

23 **A. Sylvestre’s Incarceration**

24 On January 27, 2022, Sylvestre was arrested and booked into the Pima County Adult
25 Detention Center (the “Jail”) at approximately 2:00 p.m. (Doc. 39 ¶ 112.) At all relevant
26 times, Sylvestre was a pretrial detainee. (*Id.* ¶ 117.) During the booking process, Sylvestre
27 was required to strip down and submit to a full-body scan; Sylvestre did not bring Fentanyl
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1 pills into the Jail, but within 24 hours he acquired at least two blue Fentanyl pills from
2 someone in the Jail. (*Id.* ¶¶ 113–16, 119.)

3 On January 28, 2022, shortly before 4:00 p.m., an officer arrived at Sylvestre’s cell
4 and believed Sylvestre was asleep on the top bunk but then noticed Sylvestre was pale in
5 the face, sweating profusely, and unresponsive when officers tried to wake him. (*Id.*
6 ¶¶ 120–22.) An officer called for assistance, and nine canisters of Narcan were
7 administered to Sylvestre, who regained consciousness and was transported to St. Mary’s
8 hospital. (*Id.* ¶¶ 123–25.) Medical personnel determined Sylvestre had overdosed on
9 Fentanyl. (*Id.* ¶ 126.) Corrections staff searched Sylvestre’s cell and found a small blue
10 pill, which officers recognized as resembling a type of illicit Fentanyl pill then in wide
11 circulation in the community. (*Id.* ¶ 127.) Sylvestre was in the hospital for about 24 hours,
12 stabilized, and then transported back to the Jail, where he was housed in the infirmary until
13 January 30, 2022, when the Jail’s medical provider determined Sylvestre was stable enough
14 to leave the infirmary. (*Id.* ¶¶ 129, 140–41.)

15 Sylvestre was then housed in 2-Delta pod, the designated detoxification unit at that
16 time, and as of February 1, 2022, 2-Delta pod was on administrative lockdown. (*Id.*
17 ¶¶ 143–44, 160.) Administrative lockdowns take place for reasons unrelated to a
18 detainee’s misbehavior, and Jail administrators regularly relied on administrative
19 lockdown procedures due to staffing shortages. (*Id.* ¶¶ 145, 148.) During lockdowns,
20 detainees are unable to leave their cells to socialize with other detainees in the dayroom,
21 cannot easily communicate with corrections officers, and, if a detainee is housed alone and
22 becomes incapacitated in the cell, there is no cellmate to notice and yell for immediate
23 attention. (*Id.* ¶¶ 149, 152, 155.) Sylvestre was assigned to a cell without a cellmate, mere
24 days after he overdosed on Fentanyl acquired inside the jail, and correctional staff were
25 aware of these facts when they assigned Sylvestre to the cell alone. (*Id.* ¶ 157.)

26 Upon information and belief, there was no LPN employed by Defendant NaphCare
27 or equivalent staff person stationed in the 2-Delta pod between 3:00 p.m. on February 1,
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1 2022 and 6:00 a.m. on February 2, 2022, and no NaphCare staff member entered
2 Sylvestre's cell during that time. (*Id.* ¶¶ 161–62, 164.)

3 On February 1, 2022, Defendant Montano, a Corrections Officer (CO), arrived at
4 the Jail around 3:00 p.m. to start a double shift in 2-Delta pod. (*Id.* ¶¶ 165–66.) Montano
5 first observed Sylvestre between 3:00 p.m. and 4:00 p.m., noted Sylvestre exhibited the
6 signs traditionally associated with someone who is detoxing, and strongly suspected
7 Sylvestre was experiencing the effects of withdrawal. (*Id.* ¶¶ 176–77.) Montano did not
8 interact with Sylvestre after about 4:00 p.m. that day, knew Sylvestre was assigned to a
9 cell alone, and made no effort to re-assign Sylvestre to ensure he had a cellmate. (*Id.*
10 ¶¶ 178–180.) Between 4:00 p.m. and 10:00 p.m. that day, Defendant Montano conducted
11 periodic pod rounds and walked past Sylvestre's cell, but Montano did not speak with
12 Sylvestre or otherwise check to determine Sylvestre was responsive. (*Id.* ¶ 182.) Upon
13 information and belief, no other personnel entered Sylvestre's cell between 4:00 p.m. and
14 10:00 p.m. that day. (*Id.* ¶ 183–84.) For an unknown reason, Defendant Montano left the
15 2-Delta pod between 10:00 p.m. and 11:00 p.m. on February 1, 2022, and for an unknown
16 length of time between 10:00 p.m. and 11:00 p.m., there was no coverage or any
17 supervision from uniformed COs within the 2-Delta pod, which had approximately 63
18 detainees locked in their cells. (*Id.* ¶¶ 186–90.)

19 On February 1, 2022, Defendant CO Cordero arrived at the Jail at 11:00 p.m. to start
20 a scheduled shift in 2-Delta pod and to relieve Defendant Montano, but Cordero discovered
21 there was no one there to relieve. (*Id.* ¶¶ 192–93.) Shortly after 11:00 p.m., Defendant
22 Cordero's attention was diverted by a suspected drug overdose of another detainee
23 (referred to as John Doe) in 2-Delta pod. (*Id.* ¶ 194.) An emergency medical alert was
24 triggered for John Doe, and during this medical emergency, no other CO assisted in
25 conducting rounds within 2-Delta pod, leaving approximately 62 detainees without regular
26 supervision while locked in their cells. (*Id.* ¶¶ 195–96.) Because John Doe had been
27 detained for several days before that night, Defendant Cordero knew John Doe had
28 acquired drugs within the Jail, dangerous drugs were present within the pod, and Sylvestre

1 had overdosed days earlier. (*Id.* ¶¶ 197–98, 200.) Defendant Cordero observed Sylvestre
2 lying on his bunk several times between midnight and 5:00 a.m., but made no effort to
3 confirm Sylvestre was responsive, to check on his wellbeing, or to speak with Sylvestre.
4 (*Id.* ¶ 201.) Cordero made no effort to re-assign Sylvestre to ensure he had a cellmate, and
5 Cordero did not search Sylvestre’s cell after John Doe was transported to the hospital, even
6 knowing John Doe had just overdosed from narcotics likely obtained inside 2-Delta pod
7 and Sylvestre had acquired narcotics inside the jail just days earlier. (*Id.* ¶¶ 203, 205.)

8 Upon information, Sylvestre consumed Fentanyl inside his cell in 2-Delta pod
9 between 3:00 p.m. on February 1, 2022 and 3:00 a.m. on February 2, 2022. (*Id.* ¶ 207.)
10 Upon information and belief, Sylvestre acquired the Fentanyl within the Jail. (*Id.* ¶ 208.)
11 Sylvestre died in the cell, and the medical examiner determined Sylvestre’s death was the
12 result of a drug overdose. (*Id.* ¶¶ 209–210.)

13 **B. Jail Staffing**

14 During the 12 months prior to Sylvestre’s death, the Pima County Sheriff’s
15 Department struggled to maintain constitutionally minimal staffing levels within the Jail.
16 (*Id.* ¶ 60.) The Pima County Board of Supervisors provides Defendant Nanos with a budget
17 for approximately 440 full-time uniformed COs at the Jail, but upon information and belief,
18 the number of COs declined from approximately 370 officers in September 2021 to
19 approximately 335 COs in early February 2022, a shortage of approximately 105. (*Id.*
20 ¶¶ 62–63.) Corrections Sergeant Thomas Frazier observed in December 2021, “[w]e
21 cannot effectively run the facility at the low staffing levels,” there were not enough COs
22 “to reach minimum staffing on a daily basis,” and some employees were forced to work
23 18-hour shifts multiple times a week. (*Id.* ¶ 64.) CO Carlos Delgado also commented if
24 staffing levels were to decrease from the number existing in December 2021, “we would
25 not have the bodies to give [detainees] the proper care that they are entitled to.” (*Id.* ¶ 65.)
26 The staffing levels decreased further after Delgado’s comment. (*Id.* ¶ 66.)

27 Defendant Nanos’s independent decision to require all uniformed COs to obtain
28 COVID-19 vaccinations was a moving force behind the catastrophically low staffing levels

1 at the Jail in January and February 2022. (*Id.* ¶ 76.) Upon information and belief, 17
2 uniformed COs were terminated during the first week of January 2022 as a result of the
3 vaccination mandate and another 30-40 additional officers voluntarily resigned prior to
4 January 1, 2022 as a direct result of the vaccination mandate. (*Id.* ¶¶ 77–78.) The COVID-
5 19 vaccination mandate reduced staffing levels at the Jail by approximately 10-15% in
6 addition to the already dangerously low staff levels prior to the mandate. (*Id.* ¶¶ 79–80.)
7 By late January 2022, the Jail had at least 25% fewer uniformed COs than the Pima County
8 Board of Supervisors considered to be fully staffed. (*Id.* ¶ 81.) Upon information and
9 belief, the Jail employed approximately 320 COs during late January and early February
10 2022 when Sylvestre was housed at the Jail, or roughly 120 fewer officers than what is
11 traditionally considered to be fully staffed. (*Id.* ¶ 83.)

12 Within the Jail, a pod is a grouping of cells clustered around a pod common area,
13 and the Jail was designed to have at least one CO assigned to a pod at all times. (*Id.* ¶ 84.)
14 After Sylvestre died, Defendant Nanos acknowledged jail administrators were “setting
15 [officers] up for failure” because “we have one officer for every two or three pods some
16 shifts.” (*Id.*)

17 **C. Prior Deaths and Drug Overdoses at the Jail**

18 Upon information and belief, at least three detainees at the Jail died in custody in
19 2021 and early 2022, prior to Sylvestre’s death, from methamphetamine and opiate
20 overdoses. (*Id.* ¶ 85.) In May 2021, Justin Crooke was found unresponsive, cold, and stiff
21 in his cell, indicating several hours had elapsed and COs failed to conduct adequate welfare
22 rounds that day. (*Id.* ¶ 86.) Toxicology reports indicated Mr. Crooke consumed drugs
23 shortly before his death. (*Id.*) In October 2021, Jacob Miranda was found unresponsive in
24 his cell, and his death was ruled a Fentanyl overdose. (*Id.* ¶ 87.) Upon information and
25 belief, Mr. Miranda was found hours after he died, again suggesting COs failed to conduct
26 the necessary welfare rounds. (*Id.*) On January 10, 2022, Pedro Xavier Martinez-Palacios
27 was transported to a local hospital after consuming Fentanyl inside the Jail, and he died
28 several days later in the hospital. (*Id.* ¶ 88.) Upon information and belief, COs found him

1 only after irreversible damage occurred, suggesting they had not conducted welfare rounds
2 with adequate frequency. (*Id.*) These three deaths were the proverbial “canary in the
3 coalmine,” alerting policymakers and jail administrators to a risk of serious harm. (*Id.* ¶
4 91.)

5 During the months leading up to Sylvestre’s death, three other detainees were
6 discovered by COs inside their cells under circumstances suggesting a drug overdose. (*Id.*
7 ¶ 89.) Weldon Ellis, Cruz Patino, and William Omegar were all found unresponsive in
8 their jail cells during 2021. (*Id.* ¶ 90.)

9 From January 2021 to February 2, 2022, the jail transported 26 detainees to the local
10 hospital on an emergency basis for drug overdoses. (*Id.* ¶ 92.)

11 **D. Drugs Found Inside the Jail**

12 On multiple occasions since 2021, Defendant Nanos acknowledged Fentanyl was
13 finding its way into the Jail and was quoted in a newspaper article dated March 1, 2022, as
14 stating, “it is a tiny pill and sometimes people are going to get that by us. We are doing
15 everything we can to keep that nasty drug out of there. But it is tough.” (*Id.* ¶ 93 and n.2.)

16 Upon information and belief, during the months leading up to Sylvestre’s death, the
17 Fentanyl and other illegal drugs consumed by detainees inside the Jail primarily arrived at
18 the facility by way of Jail employees and/or Jail contractors, and it was widely known
19 among uniformed COs there existed a subset of uniformed COs and/or jail contractors who
20 were engaged in smuggling contraband into the Jail for personal profit. (*Id.* ¶¶ 96-97.) In
21 2014, former CO Arturo Martinez was charged with smuggling contraband into the Jail,
22 and in 2018, former CO Martin Lopez was charged with smuggling narcotics into the Jail.
23 (*Id.* ¶ 98.)

24 In the months leading up to Sylvestre’s death, family and friends were not permitted
25 to have in-person, face-to-face visitation with Jail detainees; consequently, no contraband
26 could have entered the facility during those months via civilian visitors to the facility. (*Id.*
27 ¶ 99.) In the months leading up to Sylvestre’s death, all incoming Jail detainees were
28 screened with a full-body scanner designed to detect foreign objects hidden in body

1 cavities, and the scanner is sensitive enough to detect a small baggie or balloon that has
2 been intentionally swallowed. (*Id.* ¶¶ 102–03.)

3 Defendant Nanos has considered implementing routine scans of his own employees
4 when they enter the facility at the beginning of a work shift but has declined to do so. (*Id.*
5 ¶ 104.) Although Defendant Nanos has said he worries searching guards could be
6 interpreted as infringing on guards’ civil rights, courts have upheld the broad authority of
7 jail and prison administrators to search any person entering the facility, including staff. (*Id.*
8 ¶¶ 105–06.) Upon information and belief, Defendant Nanos maintained an
9 unconstitutional custom and practice of permitting Jail personnel to smuggle dangerous
10 narcotics into the facility, thereby creating a substantial risk of serious harm to a large
11 number of detainees who purchased and consumed these narcotics inside the Jail. (*Id.* ¶
12 107.) As a result of this smuggling activity, the already-low number of COs were forced
13 to divert attention away from regular pod rounds to address drug-related emergencies
14 resulting in fewer rounds being conducted and a greater probability a CO will pass by cells
15 for a routine welfare check only after irreversible harm has occurred. (*Id.* ¶¶ 108–09.)
16 When an overdose occurs, a CO is forced to divert their attention away from everyone
17 else—drug-addicted and non-addicted detainees alike. (*Id.* ¶ 111.)

18 **E. Count Two**

19 Count Two, the subject of Defendant Nanos’s Motion to Dismiss, asserts a policy,
20 practice, or custom claim against Defendant Nanos in his official capacity pursuant to
21 *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690 (1978).
22 Plaintiff alleges that as Pima County’s final policymaker, Defendant Nanos maintained an
23 unwritten custom of maintaining unconstitutionally low staffing levels resulting in
24 inadequate pod rounds being conducted by uniformed COs. (Doc. 39 ¶ 217–18.) Plaintiff
25 alleges Defendant Nanos maintained an unwritten custom of permitting frequent
26 administrative lockdowns, wherein detainees would be locked in their cells for entire 8-
27 hour and 16-hour shifts resulting in an increased risk of detainees dying from serious
28 medical needs. (*Id.* ¶ 219.) Plaintiff further alleges Defendant Nanos maintained an

1 unwritten custom of permitting Jail employees and/or independent contractors to smuggle
2 narcotics into the Jail, thereby creating a substantial risk of harm. (*Id.* ¶ 220.) Plaintiff
3 alleges these customs are unconstitutional because they present a substantial risk of serious
4 harm to pretrial detainees, are deliberately indifferent to the serious medical needs of
5 detainees like Sylvestre, who experience withdrawal and substance addiction, and that each
6 of these customs was a moving force behind the constitutional violation suffered by
7 Sylvestre. (*Id.* ¶ 221.)

8 **II. Legal Standards**

9 **A. 12(b)(6) Standard**

10 Dismissal of a complaint, or any claim within it, for failure to state a claim under
11 Federal Rule of Civil Procedure 12(b)(6) may be based on either a “‘lack of a cognizable
12 legal theory’ or ‘the absence of sufficient facts alleged under a cognizable legal theory.’”
13 *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121–22 (9th Cir. 2008) (quoting
14 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)). In determining
15 whether a complaint states a claim under this standard, the allegations in the complaint are
16 taken as true and the pleadings are construed in the light most favorable to the nonmovant.
17 *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007). A
18 pleading must contain “a short and plain statement of the claim showing that the pleader is
19 entitled to relief.” Fed. R. Civ. P. 8(a)(2). But “[s]pecific facts are not necessary; the
20 statement need only give the defendant fair notice of what . . . the claim is and the grounds
21 upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (internal quotation
22 omitted). To survive a motion to dismiss, a complaint must state a claim that is “plausible
23 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); see *Bell Atlantic Corp. v.*
24 *Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff
25 pleads factual content that allows the court to draw the reasonable inference that the
26 defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

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1 **B. *Monell* Standard**

2 In *Monell*, the Supreme Court held a local government entity “may not be sued
3 under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when
4 execution of a government’s policy or custom, whether made by its lawmakers or by those
5 whose edicts or acts may fairly be said to represent official policy, inflicts the injury that
6 the government as an entity is responsible under § 1983.” 436 U.S. at 694; *see Connick v.*
7 *Thompson*, 563 U.S. 51, 60 (2011) (“local governments are responsible only for their own
8 illegal acts”). A municipality cannot be held vicariously liable for its employees’ actions.
9 *Connick*, 563 U.S. at 60 (citations omitted).

10 “[M]unicipalities may be liable under § 1983 for constitutional injuries pursuant to
11 (1) an official policy; (2) a pervasive practice or custom; (3) a failure to train, supervise, or
12 discipline; or (4) a decision or act by a final policymaker.” *Horton by Horton v. City of*
13 *Santa Maria*, 915 F.3d 592, 602–03 (9th Cir. 2019). Where *Monell* liability is based on a
14 policy or custom, a plaintiff must allege several threshold requirements: “(1) that [the
15 plaintiff] possessed a constitutional right of which [s]he was deprived; (2) that the
16 municipality had a policy; (3) that this policy amounts to deliberate indifference to the
17 plaintiff’s constitutional right; and (4) that the policy is the moving force behind the
18 constitutional violation.” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011).

19 “A policy of inaction or omission may be based on failure to implement procedural
20 safeguards to prevent constitutional violations.” *Tsao v. Desert Palace, Inc.*, 698 F.3d
21 1128, 1143 (9th Cir. 2012) (citation omitted). In an “omission” case, a plaintiff must show,
22 in addition to a constitutional violation, that the municipality’s policy of inaction “amounts
23 to deliberate indifference to the plaintiff’s constitutional right, and that the policy caused
24 the violation, in the sense that the municipality could have prevented the violation with an
25 appropriate policy.” *Id.* (internal quotations omitted).

26 **III. Discussion**

27 Defendant Nanos argues Plaintiff’s *Monell* claim fails under any of the three
28 alternative theories of alleged unconstitutional customs or practices of (1) permitting Jail

1 employees and contractors to smuggle dangerous narcotics into the Jail; (2) maintaining
2 low staffing levels; or (3) utilizing frequent administrative lockdowns to control staffing
3 shortages. (Doc. 43 at 7.) Plaintiff responds she has adequately pleaded the existence of
4 two of these customs—narcotics smuggling and understaffing—and these customs were
5 the moving forces being Sylvestre’s death. (Doc. 47 at 2.)

6 Plaintiff does not address Defendants’ argument regarding administrative
7 lockdowns. The failure of a represented party to respond to an issue can be deemed a
8 concession to the opposing party’s argument resulting in waiver of the issue. *See, e.g., Doe*
9 *v. Dickenson*, No. CV-07-1998-PHX-GMS, 2008 WL 4933964, at *5 (D. Ariz. 2008)
10 (“[t]he Court is entitled to treat Plaintiffs’ failure to respond as waiver of the issue and
11 consent to Defendants’ argument”); *Currie v. Maricopa Cnty. Cmty. College Dist.*, No.
12 CV-07-2093-PHX-FJM, 2008 WL 2512841, at *2 n.1 (D. Ariz. 2008) (“Plaintiff does not
13 respond to this argument, and her failure to do so serves as an independent basis upon
14 which to grant [the] motion”); LRCiv 7.2(i) (if “the unrepresented party or counsel does
15 not serve and file the required answering memoranda, . . . such non-compliance may be
16 deemed a consent to the denial or granting of the motion and the Court may dispose of the
17 motion summarily”).

18 Because Plaintiff concedes she has not adequately pleaded a *Monell* claim regarding
19 the use of administrative lockdowns, the Court will only address whether Plaintiff has
20 adequately stated a *Monell* claim with respect to the narcotics smuggling and Jail staffing
21 allegations.

22 **A. Constitutional Injury**

23 Because Sylvestre was a pretrial detainee at the relevant time, his claim arises under
24 the Fourteenth Amendment’s Due Process Clause. *See Kingsley v. Hendrickson*, 576 U.S.
25 389, 391 (2015); *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018);
26 *Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1067–68 (9th Cir. 2016). The governing standard
27 is a purely objective standard. *See Kingsley*, 576 U.S. at 397–99; *Gordon*, 888 F.3d at
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1 1124–25; *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 600, 602 (9th Cir. 2019).

2 Under the Fourteenth Amendment, a pretrial detainee must show:

3 (1) The defendant made an intentional decision with respect to the conditions
4 under which the plaintiff was confined;

5 (2) Those conditions put the plaintiff at substantial risk of suffering serious
6 harm;

7 (3) The defendant did not take reasonable available measures to abate the
8 risk, even though a reasonable official in the circumstances would have
9 appreciated the high degree of risk involved—making the consequences of
the defendant’s conduct obvious; and

10 (4) By not taking such measures, the defendant caused the plaintiff’s injuries.

11 *Castro*, 833 F.3d at 1071. “With respect to the third element, the defendant’s conduct must
12 be objectively unreasonable, a test that will necessarily ‘turn[] on the facts and
13 circumstances of each particular case.’” *Id.*

14 Neither party addresses whether Sylvestre suffered a constitutional injury. Plaintiff
15 alleges Sylvestre was placed alone in a cell after suffering a drug overdose, was not
16 sufficiently monitored by Jail COs or medical staff, acquired drugs within the Jail, and
17 because he was not monitored, Sylvestre died in his cell from a Fentanyl overdose. These
18 allegations are sufficient to state a Fourteenth Amendment claim and support the first prong
19 of a *Monell* violation—that Sylvestre suffered a constitutional injury. Next the Court must
20 determine whether Plaintiff has sufficiently alleged this constitutional injury was the result
21 of a custom or policy of allowing drugs to be smuggled into the Jail or from understaffing.

22 **B. Smuggling Drugs**

23 Plaintiff alleges, upon information and belief, Fentanyl and other illegal drugs
24 “primarily arrived to the facility by way of jail employees and/or jail contractors,” it was
25 widely known among COs that there existed a subset of COs and/or jail contractors “who
26 were engaged in smuggling contraband into the [Jail] for personal profit,” and there was a
27 “documented history of [COs] smuggling contraband into the jail.” Plaintiff alleges two
28 specific instances of Jail employees smuggling items into the Jail. One incident occurred

1 in 2014, when Plaintiff alleges former CO Martinez was charged with smuggling
2 contraband into the Jail. The other was in 2018, when Plaintiff alleges former CO Lopez
3 was charged with smuggling narcotics into the Jail.

4 Defendant argues under Arizona law, “contraband” is an extremely broad term that
5 encompasses many things, including dangerous drugs, but also intoxicating liquor, deadly
6 weapons, wireless communication devices, or articles “whose use or possession would
7 endanger the safety, security or preservation of order in a correction facility.” (Doc. 43 at
8 8–9 (quoting Ariz. Rev. Stat. § 13-2501(1)).) Because the definition of “contraband” is so
9 broad, Defendant argues Plaintiff has only alleged one example of an employee smuggling
10 narcotics into the Jail, and that occurred in 2018. (*Id.*)

11 Plaintiff responds the Second Amended Complaint provides extensive support to
12 infer Jail employees were responsible for smuggling narcotics into the Jail at the time
13 Sylvestre died. (Doc. 47 at 3.) Plaintiff argues her allegations eliminate the possibility
14 dangerous drugs were entering the Jail through visitors or detainees and that Defendant
15 Nanos refused to implement screens of his own employees. (*Id.*)

16 The two instances of staff being charged with smuggling contraband and drugs into
17 the Jail in 2014 and 2018 are too distant in time from Sylvestre’s death to establish a policy,
18 pattern, or practice. Likewise, Plaintiff’s allegations it was widely known among COs that
19 there was a subset of COs and/or jail contractors “who were engaged in smuggling
20 contraband into the [Jail] for personal profit,” is vague and unsupported by any specific
21 allegation supporting this was common knowledge. But Plaintiff alleges in the four months
22 prior to Sylvestre’s death in February 2022, there were two detainee deaths in the Jail
23 caused by Fentanyl and a third death in May 2021 in which a detainee died from a drug
24 overdose. Plaintiff further alleges in 2021, the year before Sylvestre died, 26 detainees
25 were taken from the Jail to the hospital for drug overdoses, including three detainees whom
26 Plaintiff names. This number of deaths and overdoses from drugs, including Fentanyl, in
27 the year prior to Sylvestre’s death provided notice of a problem with illicit drugs in the Jail.
28 Plaintiff’s allegations detainees were thoroughly searched via body scans and no in-person

1 visits to detainees were allowed in the months prior to Sylvestre’s death supports that
2 detainees and visitors were not bringing illicit drugs into the Jail and further supports the
3 inference that the only other individuals entering the Jail—Jail staff and/or contractors—
4 were the likely source of illicit drugs. The allegations Defendant Nanos considered, but
5 declined, to subject incoming Jail employees and contractors to a search supports the
6 inference of a policy of inaction to address a likely, potential source of drugs coming into
7 the Jail. The alleged failure to address the frequent overdoses and deaths in the Jail from
8 illicit drugs by declining to screen a potential source of those drugs supports the inference
9 this policy of inaction was deliberately indifferent to the health and safety of the detainees
10 in the Jail and was the moving force behind Sylvestre’s death.

11 Accordingly, Plaintiff has sufficiently stated a *Monell* claim in Count Two based on
12 the alleged smuggling of drugs into the Jail by Jail staff and/or contractors.

13 **C. Low Staffing Levels**

14 Plaintiff alleges although the Pima County Board of Supervisors budgeted for 440
15 full-time uniformed COs at the Jail, by the time Sylvestre was incarcerated there in
16 February 2022, there were only 335 COs. Plaintiff alleges even in September 2021, before
17 the vaccine mandate, there were only 370 COs. Plaintiff quotes corrections staff as saying
18 in December 2021, for example, that “We cannot effectively run the facility at the low
19 staffing levels” and that there were not enough COs “to reach minimum staffing on a daily
20 basis.” Plaintiff also quotes Defendant Nanos as stating, after Sylvestre’s death, jail
21 administrators were “setting [officers] up for failure” because “we have one officer for
22 every two or three pods some shifts.”

23 While these allegations of low staffing levels are concerning, Plaintiff has not
24 sufficiently alleged Sylvestre’s death was the result of a custom or policy of inadequate
25 staffing. That is because Plaintiff alleges Defendant Montano made periodic rounds
26 between 4:00 p.m. and 10:00 p.m. on February 1, 2022, and walked past Sylvestre’s cell
27 during those rounds, but Montano did not speak with Sylvestre or otherwise check to
28 determine Sylvestre was responsive. Plaintiff further alleges between midnight and 5:00

1 a.m. on February 2, 2022, Defendant Cordero observed Plaintiff several times lying on his
2 bunk, but Cordero made no efforts to confirm Sylvestre was responsive, to check on
3 Sylvestre's wellbeing, or to speak with Sylvestre. These allegations support that
4 Sylvestre's death was attributable to individual Defendants Montano and Cordero's actions
5 or inactions, and not that low staffing levels were the moving force behind Sylvestre's
6 death.

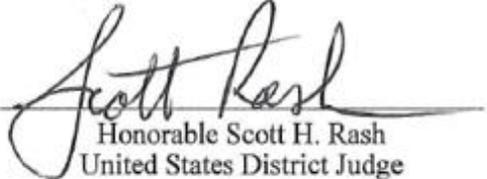
7 Accordingly, Plaintiff fails to state a *Monell* claim related to alleged inadequate
8 staffing.

9 **IT IS ORDERED** Defendants' Motion to Dismiss *Monell* Claim (Count II)
10 (Doc. 43) is **GRANTED IN PART AND DENIED IN PART** as set forth in this Order.

11 **IT IS FURTHER ORDERED** Defendants shall file their Response to Plaintiff's
12 Second Amended Complaint no later than 14 days from this Order.

13 Dated this 15th day of November, 2023.

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Honorable Scott H. Rash
United States District Judge