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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VALLEY SURGICAL CENTER LLC.,	)	Case No. CV 13-02265 DDP (AGRx)
a California Limited	)	
Liability Company,	)	
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
	)	<b>TO DISMISS IN PART AND DENYING IN</b>
v.	)	<b>PART</b>
	)	
COUNTY OF LOS ANGELES, a	)	
government entity, et al.,	)	
	)	[Dkt. 210]
Defendants.	)	

Presently before the Court is Defendants County of Los Angeles (the "County"), Lakshamanan Sathyavagiswaran, Adrian Marinovich, Raffi Djabourian, Denis C. Astarita, Selma Calmes, John Kades, and Ed Winter (collectively, "Defendants")'s Motion to Dismiss Valley Surgical Center, LLC. ("Valley")'s Second Amended Complaint ("SAC"). Having considered the parties' submissions and heard oral argument, the Court adopts the following order.

**I. BACKGROUND**

This case arises out of an investigation conducted by the Los Angeles County Coroner's Office (the "Coroner's Office") into the death of Paula Rojas ( "Rojas"). On September 8, 2011, Rojas, a 55 year old woman, underwent laparoscopic surgery at Valley for

1 the placement of an adjustable gastric Lap-Band to treat  
2 longstanding obesity. (SAC ¶ 12.) The surgery lasted  
3 approximately 30 minutes. (Id.) At the end of surgery, the  
4 surgeon closed the incisions, seeing no indications of bleeding or  
5 cardiac complications. (Id.) At 10:55 a.m., approximately 70  
6 minutes after the procedure was completed, Rojeski suffered  
7 pulseless electrical activity ("PEA") and cardiac arrest. (Id.)

8 Valley alleges that within 24 hours of her death, Rojeski's  
9 sister authorized two separate agencies to harvest Rojeski's organs  
10 and body parts. (Id. ¶ 15.) The first agency, One Legacy, removed  
11 the bones in Rojeski's limbs as well as the skin from her abdomen  
12 and back. (Id.) The second agency, Doheny Eye & Tissue, removed  
13 Rojeski's heart valves and pericardium on September 9, 2011, the  
14 day after the procedure. (Id.) On September 9, 2011, after the  
15 organ and tissue harvesting was completed the Coroner's Office took  
16 possession of Rojeski's body. (Id. ¶ 16.) The Coroner's Office  
17 performed an autopsy on September 12, 2011. (Id.) Valley contends  
18 that Defendants Djabourian and Marinovich were present and that  
19 Defendant Sathyavagiswaran directed and controlled the autopsy,  
20 including the permission to harvest organs and tissue. (Id. ¶ 16.)  
21 Valley further contends that the Coroner's Office failed to  
22 supervise, monitor or limit the harvesting as required under  
23 Coroner protocols and instead only requested that the "recovery  
24 avoid[s] operation site." (Id. ¶ 50.) The autopsy showed that  
25 Rojeski suffered a 4 mm perforation of her lower abdomen aorta.  
26 (Id. ¶ 17.) While Defendants Djabourian and Marinovich did not  
27 state their opinion as to what caused the aortic perforation,  
28 Valley asserts that the likely causes were "(a) a negligently

1 misguided surgical instrument which caused [] Rojeski to bleed into  
2 retroperitinum for 60 minutes during her recovery followed by  
3 cardiac arrest; or (b) a perforation from vigorous cardiac massage  
4 from the paramedics following cardiac arrest." (Id.). Valley  
5 argues that although both possible causes of the aortic perforation  
6 show that Rojeski's death was caused by an accident, Defendants  
7 Sathavagiswaran, Winter, Kades, Djabourian, Astarita, and Calmes  
8 attempted to attribute Rojeski's death to homicide for most of the  
9 investigation (Id. ¶¶ 17-18.) Following the autopsy, Rojeski's  
10 body was released to her sister and was buried on September 13,  
11 2011. (Id. ¶ 16.)

12 On October 17, 2011, the Coroner's Office received an  
13 anonymous letter alleging that during Rojeski's surgery: (1) oxygen  
14 tanks were empty; (2) anesthetic fluids leaked onto the floor; (3)  
15 the anesthesiologist recorded false information; (4) the monitoring  
16 equipment was broken; and (5) that Rojeski suffered cardiac arrest  
17 much earlier than reported. (Id. ¶ 19.) Valley argues that the  
18 letter was written by Dyanne Deule ("Deule") and that Deule  
19 informed the Coroner's Office that she was not present during the  
20 surgery and had no proof of the allegations contained in the  
21 letter.<sup>1</sup> (Id. ¶ 20.) Valley further argues that Defendants  
22 interviewed nurses who were present during Rojeski's surgery in  
23 April 2012, and they informed the Defendants that nothing stated in

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26 <sup>1</sup> On January 17, 2012 Deule filed a lawsuit against Valley.  
27 (SAC ¶ 26.) Deule alleged that she was subjected to employment  
28 retaliation after complaining about Valley's medical services.  
(Id.) Deule admitted that she had complained to the Coroner's  
Office regarding Rojeski and claimed Valley retaliated against her  
in response. (Id.)

1 the letter occurred during the procedure. (Id.) Valley contends  
2 that this shows that the anonymous letter was false.

3 In late November 2011, Defendant Kades informed Valley that  
4 the Coroner's Office wished to inspect Valley's premises with an  
5 anesthesia consultant, Defendant Calmes. (Id. ¶ 21.) On December  
6 1, 2011 Valley responded to the Coroner's Office, protesting the  
7 assignment of Defendant Calmes as the anesthesia consultant, citing  
8 "her lack of professional competence and personal and competitive  
9 bias against Valley and surgical centers." (Id.; SAC Ex. 1.)

10 Valley contends that on December 5, 2011, in retaliation for its  
11 protest regarding Calmes, Defendant Kades, under the supervision of  
12 Defendants Sathyavagiswaran and Winter, issued a Coroner's  
13 subpoena. (Id. ¶ 21.) The subpoena sought medical records of  
14 Rojeski as well as an inspection of Valley's premises. (Id. ¶ 22.)  
15 Valley alleges that Defendants used the subpoena to unlawfully  
16 compel a search. (Id.) Valley further alleges that Defendants  
17 Winter and Kades admitted at the inspection that their sole purpose  
18 in issuing the subpoena was to force Valley to allow Defendant  
19 Calmes onto Valley property. (Id. ¶ 23.) During the search,  
20 Valley contends that Defendants became aware of evidence  
21 demonstrating that the anonymous letter was false. (Id. ¶ 25.)

22 Valley contends that Defendants leaked the information to the  
23 media despite the security hold on the case. (Id. at 28) Valley  
24 alleges that despite a security hold on the Rojeski case, on April  
25 6, 2012 media outlets published stories that the Coroner's Office  
26 had referred Rojeski's case to the Los Angeles Police Department  
27 (the "LAPD") Robbery-Homicide division. (Id. ¶ 27.) Valley  
28 further asserts that on May 11, 2012 news outlets reported that

1 LAPD homicide detectives were assigned to investigate the Rojeski  
2 death to determine whether a crime had been committed. (Id.)  
3 Valley contacted the LAPD and was informed that Valley was under  
4 criminal investigation for homicide. (Id. ¶ 28.)

5 On August 7, 2012, the LAPD informed the Coroner's Office that  
6 it was continuing to investigate Rojeski's death. (Id. ¶ 38.)  
7 Valley alleges that the LAPD requested a 60-day security hold on  
8 the case and that the Coroner's Office refused to communicate with  
9 Valley as a result. (Id.) Despite the LAPD security hold, Valley  
10 alleges that Defendant Calmes, with the assistance of Defendants  
11 Sathyavagiswaran, Winter, Kades, Djabourian, and Marinovich, gave  
12 two retaliatory presentations. (Id.) Calmes' first presentation,  
13 "What's an Anesthesiologist Doing at the Morgue," took place on  
14 August 8, 2012. (Id. ¶ 39.) During this presentation Calmes  
15 allegedly stated that there were "a number of deaths" at 1-800-GET-  
16 THIN centers, which included Valley, and that the investigations  
17 were ongoing. (Id. ¶ 41.) The second, "Ambulatory Surgery  
18 Disasters" took place on September 21, 2012. (Id.) At this  
19 presentation, Calmes made similar allegations regarding surgery  
20 centers affiliated with 1-800-GET-THIN. (Id. ¶ 42.) Valley  
21 contends that Calmes acted under color of state law and violated  
22 the security hold in these presentations. (Id.)

23 Valley alleges that two weeks before the September 21, 2012  
24 presentation it submitted another letter, protesting the Coroner's  
25 investigation. (Id. ¶ 43.) Valley included information regarding  
26 Rojeski's medical history, including records that demonstrated that  
27 Rojeki had a history of using prescription weight loss medication  
28

1 which caused her significant cardiac damage.<sup>2</sup> (Id.) Despite  
2 providing this information to Defendants, Valley contends that  
3 Defendants refused to investigate Rojeski's medical history and  
4 instead continued their attempts to blame Valley for Rojeski's  
5 death. (Id. ¶ 35.)

6 On January 15, 2013 the Coroner's Office agreed to meet with  
7 Valley. (Id. ¶ 44.) Defendant Winter allegedly admitted to  
8 revealing the contents of the autopsy report to Rojeski's sister  
9 and agreed to release a copy of the final report to Valley's  
10 counsel. (Id.) The report found: that homicide could not be ruled  
11 out as cause of death, that the attending surgeon and  
12 anesthesiologist were grossly negligent and should be referred to  
13 the California Medical Board, and that Valley departed from the  
14 standard of care based on the anonymous letter. (Id. ¶ 45.)  
15 Additionally, the report contained a separate opinion by Defendant  
16 Calmes that erroneously stated that anesthesia was not given for  
17 the last hour and a half of Rojeski's surgery. (Id. ¶ 60.) Valley  
18 alleges that Calmes' opinion was clearly contradicted by the  
19 operating records, which showed that surgery ended much earlier and  
20 that anesthesia had been administered for the entire length of  
21 surgery. (Id. ¶¶ 61-63.) Valley further alleges that Calmes based

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22  
23 <sup>2</sup> Valley contends that after conducting an independent  
24 investigation it discovered that Rojeski was a lead plaintiff in a  
25 lawsuit against the manufacturer of the weight loss medication she  
26 had been taking since 2001. (SAC ¶¶ 29-30.) According to Valley,  
27 the filings in that case demonstrate that Rojeski suffered abnormal  
28 echocardiography showing aortic regurgitation and heart valve  
damage. (Id. ¶ 30.) Valley maintains that Rojeski never disclosed  
any of this information nor did she inform Valley that on August  
11, 2011 she visited the emergency room complaining of radiating  
pain in her neck and shoulders, heart palpitations and an abnormal  
EKG. (Id. ¶ 33.) Valley asserts that Rojeski's medical history  
did not make her a good candidate for laparoscopic surgery. (Id.)

1 her entire portion of the report on the anonymous letter. (Id. ¶  
2 64.) Valley contends that the other pathologists who contributed  
3 to the report relied on Calmes' findings, despite knowing they were  
4 false. (Id. ¶ 67-70.) After Valley received a copy of the report  
5 it retained seven experts to review it. (Id. ¶ 46.) Valley's  
6 experts criticized the report's reliance on the anonymous letter  
7 and concluded that the Rojas's death was the result of an  
8 accident, not homicide. (Id. ¶¶ 46-47.) Valley also alleges that  
9 the report failed to mention that the organ, bone and tissue  
10 harvesting rendered the autopsy and the doctor's conclusions  
11 unreliable. (Id. ¶ 48.)

12 On April 1, 2013, the Coroner's Office issued a supplemental  
13 autopsy report. (Id. ¶ 71.) Valley alleges that the supplemental  
14 report only partially retracted the errors in the original report,  
15 and that it was internally inconsistent and a deliberate  
16 misrepresentation of the facts surrounding Rojas's death. (Id.  
17 ¶¶ 71-78.) Valley further alleges that the supplemental report  
18 continued to rely on the anonymous letter and included the original  
19 report without explaining the errors it contained. (Id. ¶ 73.)

20 Valley has filed a SAC for violation of civil rights under 42  
21 U.S.C. section 1983 against the individual defendants, violations  
22 of civil rights under 42 U.S.C. section 1983 against the Los  
23 Angeles County Coroner and Defendant Sathyavagiswaran in his  
24 official capacity, violation of California Civil Code section 52.1,  
25 defamation, intentional interference with prospective economic  
26 advantage, and negligent interference with prospective economic  
27 advantage. Defendants now move to dismiss Valley's SAC for failure  
28 to state a claim.

1 **II. LEGAL STANDARD**

2 A complaint will survive a motion to dismiss when it contains  
3 "sufficient factual matter, accepted as true, to state a claim to  
4 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
5 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
6 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
7 "accept as true all allegations of material fact and must construe  
8 those facts in the light most favorable to the plaintiff." Resnick  
9 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
10 need not include "detailed factual allegations," it must offer  
11 "more than an unadorned, the-defendant-unlawfully-harmed-me  
12 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
13 allegations that are no more than a statement of a legal conclusion  
14 "are not entitled to the assumption of truth." Id. at 679. In  
15 other words, a pleading that merely offers "labels and  
16 conclusions," a "formulaic recitation of the elements," or "naked  
17 assertions" will not be sufficient to state a claim upon which  
18 relief can be granted. Id. at 678 (citations and internal  
19 quotation marks omitted).

20 "When there are well-pleaded factual allegations, a court  
21 should assume their veracity and then determine whether they  
22 plausibly give rise to an entitlement of relief." Id. at 679.  
23 Plaintiffs must allege "plausible grounds to infer" that their  
24 claims rise "above the speculative level." Twombly, 550 U.S. at  
25 555. "Determining whether a complaint states a plausible claim for  
26 relief" is a "context-specific task that requires the reviewing  
27 court to draw on its judicial experience and common sense." Iqbal,  
28 556 U.S. at 679.



1 **III. ANALYSIS**

2 A. Fourth Amendment Claim

3 After Rojeski's death, the Coroner issued a subpoena that  
4 sought medical records and an inspection of certain medical  
5 equipment. (SAC 22). The Coroner did not request that Valley  
6 bring medical equipment to the Coroner's office, but rather  
7 inspected and seized certain equipment at Valley's facility. (SAC  
8 23.) Valley asserts that this inspection constituted an unlawful  
9 search in violation of the Fourth Amendment. (Id.)

10 The parties appear to agree that the Coroner has the power to  
11 subpoena witnesses and to compel those witnesses to produce "any  
12 books, records, documents, or other things under the control of the  
13 witness which, in the opinion of the coroner, are necessary to the  
14 conduct of the inquest . . . ." Cal. Gov't Code Sec. 27498(a).  
15 The crux of Valley's argument appears to be that although the  
16 Coroner could subpoena Valley to produce the medical equipment, he  
17 could not inspect the equipment at Valley's office without first  
18 obtaining an inspection warrant pursuant to California Code of  
19 Civil Procedure Sec. 1822.50-1822.57.<sup>3</sup> (Opp. at 8.) That  
20 framework, however, is not applicable to the Coroner's  
21 investigation at issue here. Section 1822.50 defines an inspection  
22 warrant as a signed order directing an official to conduct an  
23 inspection "relating to building, fire, safety, plumbing,  
24 electrical, health, labor, or zoning" laws and regulations. Cal.  
25 Code Civ. Pro 1822.50. Valley does not assert, nor does it appear,  
26 that a Coroner's investigation falls into any of these categories.

27 \_\_\_\_\_  
28 <sup>3</sup> The court considers the Coroner's investigation as  
administrative in nature.

1 California courts have recognized the existence of two  
2 different sets of rules regarding administrative searches, one  
3 concerning regulatory schemes of general application and another  
4 regarding specific, licensed industries. People v. Firstenberg,  
5 155, 92 Cal.App.3d 570, 578-579 (1979). The administrative warrant  
6 scheme of which Section 1822.50 is a part was established to govern  
7 situations regarding the former. Id. Coroner's inspections,  
8 however, are not the product of general regulations akin to fire or  
9 housing inspections, but rather are specifically tailored to  
10 determine the circumstances, manner, and cause of death of a  
11 particular decedent. See Camara v. Municipal Court of City and  
12 County of San Francisco, 387 U.S. 523 (1967); See v. City of  
13 Seattle, 387 U.S. 541 (1967); Cal. Gov't Code Sec. 27498(a). The  
14 cases cited by Valley, too, are inapposite.

15 Valley's argument, therefore, depends solely on a narrow  
16 reading of Government Code Section 27498(a) that would permit the  
17 Coroner to subpoena "other things," including medical equipment,  
18 "forthwith or at such time and place as the coroner appoints," but  
19 not permit the coroner to inspect such equipment on-site. Notably,  
20 Valley does not appear to argue for such an interpretation, and  
21 neither party has addressed the issue directly. Instead, the  
22 parties dispute whether the individual Defendants are entitled to  
23 qualified immunity from Valley's Fourth Amendment claim. Because  
24 Valley has provided no authority, and indeed no real argument, for  
25 a constrained reading of Section 27498(a) that would not include an  
26 administrative search power, the court concludes that a reasonable  
27 officer could well have believed Section 27498(a) to include such  
28 authority. Accordingly, the individual Defendants are entitled to

1 qualified immunity. See Ashcroft v. Al-Kidd, 131 S.Ct. 2074, 2083  
2 (2011); Pearson v. Callahan, 555 U.S. 223, 231 (2009).

3 B. Retaliation Claims

4 The SAC alleges that Defendants retaliated against Valley for  
5 its objections to Defendant Calmes' involvement and for its  
6 criticism of the investigation and autopsy report. Valley alleges  
7 that retaliatory acts included the search described above,  
8 Defendant Calmes' two public presentations, the leaking of the  
9 existence of a homicide investigation, and the issuance of a flawed  
10 supplemental autopsy report. (Opp. at 17.)

11 "To allege a First Amendment retaliation claim under § 1983 a  
12 plaintiff must show: '(1) he engaged in constitutionally protected  
13 activity; (2) as a result, he was subjected to adverse action by  
14 the defendant that would chill a person of ordinary firmness from  
15 continuing to engage in the protected activity; and (3) there was a  
16 substantial causal relationship between the constitutionally  
17 protected activity and the adverse action.'" Gallardo v. Hanford  
18 Joint Union School Dist. No. 12-cv-1612 GSA, 2015 WL 641657 (E.D.  
19 Cal. Feb. 13, 2015) (quoting Pinard v. Clatskanie School Dist. 6J,  
20 467 F.3d 755, 770 (9th Cir.2006); see also Ford v. City of Yakima,  
21 706 F.3d 1188, 1193 (9th Cir. 2013).

22 Defendants raise a threshold plausibility challenge to  
23 Valley's allegations, focused largely on the motivation element of  
24 the retaliation claims. The court agrees that certain of Valley's  
25 allegations are, at best, conceivable, rather than plausible. See  
26 Iqbal, 556 U.S. at 680. Valley alleges, for example, that  
27 Defendants issued the supplemental autopsy report in retaliation  
28 for Valley's critique of the original report. (Opp. at 24-25.)

1 The "obvious alternative explanation," however, is that Defendants  
2 made changes to the report because it considered Valley's critique.  
3 Valley, having asked that Defendants amend the report, cannot now  
4 plausibly claim retaliation simply because Defendants did not adopt  
5 Valley's position in its entirety.

6 Nor does the SAC address the deficiencies highlighted by the  
7 court in its prior dismissal of claims regarding Defendant Calmes'  
8 two public presentations. Valley does not adequately allege how  
9 Calmes' references to deaths at ambulatory surgery centers like  
10 Valley was plausibly motivated by a desire to chill protected  
11 activity. Valley argues that "the timing and nature" of Calmes'  
12 speeches are sufficient to support an inference of retaliatory  
13 motive. The court disagrees. Valley alleges that Calmes' first  
14 speech in August 2012 was given in retaliation for Valley's letter  
15 objecting to Dr. Calmes' involvement on December 1, 2011, over  
16 eight months earlier. Although Valley argues that gaps of even  
17 eleven months can support an inference of retaliation, that  
18 argument is not persuasive. First, the cases Valley cites are  
19 employment cases. See, e.g., Coszalter v. City of Salem, 320 F.3d  
20 968, 977-978 (9th Cir. 2003). Second, as even those cases  
21 acknowledge, "a specified time period cannot be a mechanically  
22 applied criterion," as the gap supporting an inference will vary  
23 with the circumstances. Id. at 978. Valley's conclusory assertion  
24 that "the presentation criticizing Valley was clearly retaliatory,  
25 based on the circumstances" is not convincing in light of the  
26 eight-month separation and relative opacity of Calmes' remarks.  
27 While the issue is a closer one with respect to Calmes' second  
28 presentation, which followed a second Valley protest letter by two

1 weeks, the circumstances of the presentation do not support an  
2 inference of retaliation. Calmes did not single Valley out, but  
3 rather referred to a group of 1-800-GET-THIN centers and made  
4 reference to an investigation that was already public knowledge.  
5 The nature of the speech, therefore, does not support the  
6 allegation that Calmes acted with the intent to dissuade Valley  
7 from criticizing the Rojeski investigation.

8 Other of Valley's allegations regarding retaliation, however,  
9 are sufficient to survive a Motion to Dismiss. Valley alleges that  
10 Defendants retaliated by "inciting a false homicide investigation"  
11 and leaking the existence of that investigation to the press in  
12 April, 2012, just over four months after Valley's initial protest  
13 letter. The timing of this alleged adverse action might support an  
14 inference of retaliatory motive, although the issue is a close one.  
15 However, Valley also makes numerous allegations regarding the  
16 medical evidence. In short, the SAC alleges that Defendants had  
17 sufficient information to know that homicide was not a potential  
18 cause of Rojeski's death. Assuming that to be true, as the court  
19 must at this juncture, Defendants' actions could be explained by  
20 retaliatory animus.

21 The administrative search discussed at length, above, occurred  
22 on December 5, just four days after Valley objected to Dr. Calmes.  
23 Although the court has rejected Valley's arguments regarding the  
24 lack of an administrative warrant, other facts regarding the search  
25 do support a retaliation claim. In addition to the timing of the  
26 search, the SAC alleges that Defendants Winter and Kades stated at  
27 the time of the search that the only reason they issued the  
28 subpoena was to "compel Valley to allow Dr. Calmes onto the

1 premises." (SAC p. 23.) Given that the purpose of Valley's  
2 December 1 letter was primarily to object to Dr. Calmes' very  
3 involvement in the investigation, it is unclear whether Defendants  
4 would otherwise have issued a subpoena to guarantee her access to  
5 Valley's facilities.

6 Accordingly, Valley's retaliation claims regarding the  
7 administrative search and the leaking of the existence of a  
8 homicide investigation premised on an obviously flawed report  
9 survive.

10 C. Monell Claims

11 Valley argues that its Monell claim is premised on Defendant  
12 Sathyavagiswaran's acts as a final policy maker and ratifier of his  
13 subordinates' actions, and on the existence of a custom or  
14 practice. To the extent Defendants argue that there are no  
15 constitutional violations, the motion must fail, for the reasons  
16 discussed above regarding Valley's retaliation claims. Further,  
17 the SAC alleges that Sathyavagiswaran personally instructed  
18 Defendant Kades to search Valley's premises because of his close  
19 personal friendship with Defendant Calmes. (SAC p. 86.) That act,  
20 undertaken as the final policymaker, could support a Monell claim.

21 The remainder of Valley's Monell allegations, however, are  
22 conclusory, and are not entitled to the presumption of truth.  
23 Perhaps cognizant of this deficiency, Valley's ratification  
24 argument consists of a single sentence asserting, without  
25 explanation, that "Sathyavagiswaran ratified his subordinate's  
26 unconstitutional actions." (Opp. 28.) References to several  
27 paragraphs of the factual allegations of the SAC, which do not  
28 mention Sathyavagiswaran, do little to sustain Valley's

1 ratification claim. Valley's conclusory custom and practice  
2 allegation fares no better, and is supported only by Valley's brief  
3 argument that the acts alleged here somehow constitute an  
4 unspecified "custom or usage of which Defendant Sathyavagiswaran  
5 must have been aware."

6 Accordingly, Valley's Monell allegation regarding  
7 Sathyavagiswaran's personal acts as final policymaker are  
8 adequately pled. The remainder of the Monell claims are dismissed  
9 with prejudice.

10 D. State law claims

11 Defendants raise several arguments regarding Valley's state  
12 law claims. The factual predicate for those claims, however, is  
13 somewhat uncertain. Valley appears to acknowledge that it did not  
14 timely present certain facts underpinning its claims to the state.  
15 Valley further appears to acknowledge that, absent leave to amend  
16 to allege delayed discovery or equitable tolling, certain claims  
17 for damages may be barred, and requests leave to amend. Valley's  
18 request is granted. The court will reserve discussion of state law  
19 claims until such time as the scope of those claims has been  
20 determined.

21 **IV. CONCLUSION**

22 For the reasons stated above, Defendants' Motion is GRANTED in  
23 part and DENIED in part. Plaintiff's Fourth Amendment claim is  
24 DISMISSED, with prejudice. Plaintiff's retaliation claims  
25 regarding Defendant Calmes' presentations and the amended autopsy  
26 report are DISMISSED, with prejudice. Plaintiff's Monell claims  
27 regarding custom, usage, or practice and ratification are  
28 DISMISSED, with prejudice. Plaintiff shall file an amended

1 complaint consistent with this Order and addressing the state law  
2 issues within fourteen days of the date of this Order.

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5 IT IS SO ORDERED.

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8 Dated: March 31, 2016



DEAN D. PREGERSON  
United States District Judge

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