

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

GUADALUPE FONSECA and PAULA  
FONSECA,

Plaintiff,

vs.

CITY OF FRESNO,

Defendant.

CASE NO. CV F 010-147 LJO DLB

**ORDER ON DEFENDANT’S MOTION TO  
DISMISS (Doc. 14)**

**INTRODUCTION**

Plaintiffs Guadalupe Fonseca (“Mr. Fonseca”) and his mother Paula Fonseca (“Ms. Fonseca”) (collectively “plaintiffs”) bring this action pursuant to 42 U.S.C. §1983 (“Section1983”), alleging violations of their federal and civil rights. In addition, plaintiffs assert several tort claims against defendant City of Fresno (“City”). City moves to dismiss plaintiffs’ complaint pursuant to Fed. R. Civ. P. (“Rule”) 12(b)(6) on several grounds. Plaintiffs failed to oppose City’s motion to dismiss. This Court considered City’s motion on the record, vacates the June 10, 2009 hearing pursuant to Local Rule 230(g), and issues the following order. For the following reasons, this Court GRANTS and DENIES in part City’s motion and DISMISSES plaintiffs’ complaint. The Court GRANTS plaintiffs leave to amend. Plaintiffs shall file an amended complaint no later than June 22, 2010.

///

1 **BACKGROUND**<sup>1</sup>

2 On December 12, 2008, Mr. Fonseca, a Latino male with mental retardation, walked out of his  
3 house in Fresno, California to take out the trash. Unnamed City police officers and unnamed California  
4 Highway Patrol officers (collectively “law enforcement officials”), while on duty, detained and arrested  
5 Mr. Fonseca just outside the doorway to his residence for no reason and without probable cause. Mr.  
6 Fonseca alleges that the law enforcement officials did not advise Mr. Fonseca that he was under arrest  
7 and failed to issue a warning or command prior to the arrest. Ms. Fonseca observed the entire incident.  
8 She advised the law enforcement officials that Mr. Fonseca was developmentally disabled. Mr. Fonseca  
9 was unarmed and made no threats to the law enforcement officials. Notwithstanding the fact that Mr.  
10 Fonseca neither resisted them nor attempted to flee, the law enforcement officials forcibly grabbed Mr.  
11 Fonseca, slammed him to the ground, punched him, and kicked him. The law enforcement officials  
12 handcuffed Mr. Fonseca and took him into custody.

13 As a result of the wrongful detention, arrest, use of excessive force, failure to provide appropriate  
14 medical care, and cover-up, Mr. Fonseca suffered serious injuries. Notably, Mr. Fonseca was comatose  
15 for eight days. Despite having knowledge of his injuries, the law enforcement officers purposefully failed  
16 to report the use of force immediately, and did not seek medical attention for Mr. Fonseca. Ms. Fonseca,  
17 as a result of observing the incident, suffered a heart attack while in the hospital with the comatose Mr.  
18 Fonseca.

19 Based on the above, plaintiffs asserts the following claims against City:

- 20 1. Unreasonable Search and Seizure–Detention and Arrest, Section 1983;
- 21 2. Unreasonable Search and Seizure–Excessive Force and Denial of Medical Care, Section  
22 1983;
- 23 3. Conspiracy to Violate Civil Rights, Section 1983;
- 24 4. Due Process–Conspiracy to Cover-up, Section 1983;
- 25 5. Municipal Liability for Custom, Practice, or Policy, Section 1983;
- 26 6. False Arrest;

---

27 <sup>1</sup>The facts are derived from the complaint, which this Court accepts as true in this Fed. R. Civ. P. 12(b)(6) motion.  
28 *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).



1 *Twombly*, 550 U.S. 554, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (internal citations  
2 omitted). Thus, “bare assertions ... amounting to nothing more than a ‘formulaic recitation of the  
3 elements’... are not entitled to an assumption of truth.” *Iqbal*, 129 S.Ct. at 1951 (quoted in *Moss v.*  
4 *United States Secret Serv.*, 2009 U.S.App. LEXIS 15694, \* 14 (9th Cir.2009)). A court is “free to  
5 ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal  
6 conclusions cast in the form of factual allegations.” *Farm Credit Services v. American State Bank*, 339  
7 F.3d 765, 767 (8th Cir.2003) (citation omitted).

8 Moreover, a court “will dismiss any claim that, even when construed in the light most favorable  
9 to plaintiff, fails to plead sufficiently all required elements of a cause of action.” *Student Loan Marketing*  
10 *Ass’n v. Hanes*, 181 F.R.D. 629, 634 (S.D.Cal.1998). In practice, “a complaint ... must contain either  
11 direct or inferential allegations respecting all the material elements necessary to sustain recovery under  
12 some viable legal theory.” *Twombly*, 550 U.S. at 562, 127 S.Ct. at 1969 (quoting *Car Carriers, Inc. v.*  
13 *Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir.1984)).

14 With these standards in mind, this Court considers City’s challenges to the complaint.

#### 15 **Substantive Due Process**

16 Included in the second cause of action, Ms. Fonseca alleges that the law enforcement officials  
17 deprived her of her Fourteenth Amendment substantive due process rights by interfering with her  
18 familial relationship with Mr. Fonseca. Under the Fourteenth Amendment substantive due process  
19 analysis, parents have a constitutionally-protected liberty interest in the care and custody of their  
20 children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). “The state’s interference with that liberty  
21 interest without due process of law is remediable under 42 U.S.C. §1983.” *Lee v. City of Los Angeles*,  
22 250 F.3d 668, 686 (9th Cir. 2001) (citation omitted) (mother who searched for child after alleged false  
23 arrest stated claim for interference with familial relationship).

24 Accepting the truth of the allegations, Ms. Fonseca has stated a substantive due process claim.  
25 Ms. Fonseca alleges that the law enforcement officials falsely arrested her son, wrongfully detained him,  
26 and caused him to be comatose for eight days. Under these circumstances, Ms. Fonseca has stated a  
27 claim for interference with familial relationship. *See Lee*, 250 F.3d at 686. Accordingly, City’s motion  
28 to dismiss this claim is denied.

1 **Conspiracy**

2 Plaintiffs’ third cause of action appears to allege multiple claims under the caption of  
3 “conspiracy.” In support of the conspiracy claim, Plaintiffs allege that the law enforcement officials  
4 conspired to deprive them of their constitutional rights and conspired to cover up their wrongdoing.  
5 In addition, Plaintiffs allege that the law enforcement officials conspired to deprive Plaintiffs of their  
6 equal protection because of their “Latino race.” To survive a motion to dismiss, however, a “mere  
7 allegation of conspiracy without factual specificity is insufficient.” *Karim-Panahi v. Los Angeles Police*  
8 *Dept.*, 893 F.2d 621, 626 (9th Cir. 1988). “To state a claim for conspiracy to violate constitutional  
9 rights, the plaintiff must state specific facts to support the existence of the claimed conspiracy.” *Olsen*  
10 *v. Idaho State Bd. of Medicine*, 363 F.3d 916, 929 (9th Cir. 2004) (quotations omitted). Here, Plaintiffs  
11 fail to plead specific facts regarding the details of the alleged conspiracy or conspiracies. Such “naked  
12 assertion[s]” without “further factual enhancement” is insufficient to state a claim. *Twombly*, 550 U.S.  
13 at 557. Accordingly, this Court dismisses Plaintiffs’ conspiracy claim.

14 **Denial of Access to Courts**

15 Plaintiffs’ fourth cause of action alleges that the law enforcement officials conspired to deprive  
16 them of their right of access to the courts under the Due Process Clause of the Fourteenth Amendment  
17 to the United States Constitution. As a result of this conspiracy, Plaintiffs allege, they were forced to  
18 incur costs and expenses to investigate and prosecute their claims. Plaintiffs charge that any inability  
19 to recover on their claims will be a direct result of the actions of the officers to cover up their violations  
20 of Plaintiffs’ constitutional rights.

21 Plaintiffs fail to state facts to support a denial of access to courts claim. As City points out, the  
22 fact that Plaintiffs filed this action suggests otherwise. Accordingly, the Court dismisses this claim.

23 **Municipal Liability**

24 A municipality cannot be liable under Section 1983 on a respondeat superior theory unless a  
25 plaintiffs’ injuries were the result of a municipal “policy or custom.” “[L]ocal governing bodies . . . can  
26 be sued directly under §1983 for monetary, declaratory, or injunctive relief where, as here, the action that  
27 is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or  
28 decision officially adopted and promulgated by that body’s officers.” *Monell v. Department of Social*

1 *Services*, 436 U.S. 658, 98 S.Ct. 2018 (1978). “The existence of a policy, without more, is insufficient  
2 to trigger local government liability under section 1983.” *Oviatt v. Pearce*, 954 F.2d 1470, 1477 (9th  
3 Cir. 1992). “[O]fficial policy must be ‘the moving force of the constitutional violation’ in order to  
4 establish the liability of a government body under § 1983.” *Polk County v. Dodson*, 454 U.S. 312, 326,  
5 102 S.Ct. 445 (1981) (quoting *Monell*, 436 U.S. at 694, 98 S.Ct. 2018). Thus, to establish Section 1983  
6 municipal liability, a plaintiff must establish: (1) a violation of constitutional rights occurred; (2) a  
7 municipal policy or custom exists; (3) a causal nexus between the constitutional rights violation and the  
8 municipal custom or policy. *City of Canton v. Harris*, 489 U.S. 378, 385-86 (1989).

9 City argues that Ms. Fonseca fails to state a claim for municipal liability against City because  
10 she has failed to allege a constitutional violation. As this Court found above, however, Ms. Fonseca  
11 states a claim for violation of her substantive due process right to familial association. Nevertheless,  
12 this Court finds that Plaintiffs fail to plead adequately the existence of a policy or custom that existed  
13 and failed to detail a causal nexus between that policy or custom and the constitutional violation.  
14 Accordingly, this Court dismisses the municipal liability claim.

### 15 **Negligence**

16 To state a claim for negligence, Plaintiffs must allege that: (1) defendant had a duty to conform  
17 to a standard of conduct to protect plaintiff; (2) the defendant failed to meet this duty of care; (3) the  
18 defendant’s failure was the proximate and legal cause of the resulting injury; and (4) the plaintiff was  
19 damaged. *Ladd v. County of San Mateo*, 12 Cal. 4th 913, 917 (1996).

20 Unless specifically provided by statute, “a public entity is not liable for injury, whether such  
21 injury arises out of an act or omission of the public entity or a public employee or any other person.” Cal.  
22 Gov. Code §815(a). Under California law, City can be held vicariously liable for the torts of an  
23 employee. Cal. Gov. Code §815.2(a). However, a direct negligence cause of action against City,  
24 including a cause of action for negligent training and supervision, cannot be maintained because there  
25 is no existing statute providing for such liability. *Munoz v. City of Union City*, 120 Cal. App. 4th 1077,  
26 1112-15 (2004). Accordingly, this Court dismisses Plaintiffs negligence claim, based on the facts  
27 alleged, to the extent that Plaintiffs assert a direct negligence claim against City.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Leave to Amend**

Under Fed.R.Civ.P. 15(a)(2), this Court generally gives leave to amend “freely” and “when justice so requires,” even if the plaintiff fails to request leave to amend. This Court may, in its discretion, deny leave to amend when amendment of the claims would be futile. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir.2008). This Court grants Plaintiffs leave to amend the complaint to address the deficiencies herein identified.

**CONCLUSION AND ORDER**

For the reasons discussed above, this Court:

1. GRANTS in part and DENIES in part City’s motion to dismiss;
2. DISMISSES Plaintiffs’ conspiracy, denial of access to courts, municipal liability, and direct negligence claims against City;
3. GRANTS Plaintiffs leave to amend;
4. ORDERS Plaintiffs, no later than June 22, 2010, to file and serve an amended complaint; and
5. VACATES the June 10, 2010 hearing on this motion.

IT IS SO ORDERED.

**Dated: June 1, 2010**

**/s/ Lawrence J. O'Neill**  
**UNITED STATES DISTRICT JUDGE**