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

**RICHARD PHILLIPS, in his capacity as the  
administrator of the ESTATE OF TROY  
PHILLIPS; TIFFANY PHILLIPS,**

**Plaintiffs,**

**vs.**

**COUNTY OF FRESNO; MARGARET  
MIMS; TOM GATTIE; RICK HILL;  
CORRECTIONAL OFFICER L. HER #  
9899; CORRECTIONAL OFFICER K.  
YANG; CORRECTIONAL OFFICER C.  
DIAZ; CORRECTIONAL OFFICER  
CASTRO; JOHN DOE AND RICHARD  
ROE, individually and in their official  
capacities as correctional and classification  
officers of the Fresno County Sheriff's  
Department; EDWARD MORENO, M.D.;  
GEORGE LAIRD; PRATAP NARAYAN;  
NANCY POE and CARL COE, individually  
and in their official capacities as health care  
workers in the Fresno County jail system;  
and DOES 1-50,**

**Defendants.**

**1:13-cv-0538 AWI BAM**

**MEMORANDUM OPINION AND  
ORDER ON DEFENDANTS' MOTION  
TO DISMISS PORTIONS OF  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

**Doc. # 92**

This is an action for damages by plaintiffs Tiffany Phillips and Richard Phillips in his capacity as administrator of the Estate of Troy Phillips ("Plaintiffs") against defendants County of Fresno ("County"), various officials and officers of the Fresno County Sheriff's Department

1 and various healthcare workers employed by the Fresno County (collectively, “Defendants”).  
2 This action arises out of the death of Troy Phillips (“Decedent”) as a result of injuries he  
3 sustained at the hands of a cell-mate while in the custody of the Fresno County Sheriff’s  
4 Department as a pre-trial detainee. Currently before the court is Defendants’ motion to dismiss  
5 portions of Plaintiffs’ Second Amended Complaint (“SAC”) pursuant to Rule 12(b)(6) of the  
6 Federal Rules of Civil Procedure. Federal subject matter jurisdiction exists pursuant to 28  
7 U.S.C. § 1331. Venue is proper in this court.  
8

9 **PROCEDURAL HISTORY – CLAIMS FOR RELIEF**

10 The original complaint in this action was filed on April 15, 2013. On December 3, 2013,  
11 the court partially granted Defendant’s motion to dismiss with leave to amend. Doc. # 34. A  
12 first amended complaint was filed on December 31, 2013, and again the court partially granted  
13 Defendants’ motion to dismiss. Doc. # 49. As a result of the partial granting of the prior  
14 motions to dismiss, Plaintiff’s original ten claims for relief have been narrowed to five.  
15 Plaintiff’s SAC alleges three claims for relief for violation of rights under the Due Process  
16 Clause of the Fourteenth Amendment in violation of 42 U.S.C. § 1983, and two claims under  
17 California statute. As will be discussed *infra*, the court construes Plaintiffs’ first claim for relief  
18 to allege violation of Fourteenth Amendment rights against non-supervisory individuals who  
19 directly acted or failed to act to protect Plaintiff from harm at the hands of another inmate and  
20 acted or failed to act to provide timely provide needed medical assistance. Plaintiffs’ second and  
21 third claims for relief are also alleged pursuant to section 1983 for violation of rights under the  
22 Fourteenth Amendment. In Plaintiffs’ second and third claims, liability is alleged against the  
23 County of Fresno and against named supervisory personnel for failure to enact or enforce  
24 policies and procedures leading to Plaintiff’s harm and for failure to adequately train and  
25 supervise, respectively. Plaintiff’s fourth and fifth claims for relief allege claims against all  
26 Defendants for wrongful death and breach of mandatory duty, respectively.

27 The currently-operative SAC was filed on April 22, 2015, following the court’s order  
28 granting leave to amend and granting leave to substitute Classification Officer Cinthya Diaz for

1 one of the Doe Defendants. Doc. # 85. The instant motion to dismiss was filed on May 13,  
2 2015. Plaintiff's opposition was filed on June 15, 2015, and Defendants' reply was filed on June  
3 19, 2015. The matter was taken under submission without oral argument on June 22, 2015.

#### 4 **FACTUAL ALLEGATIONS**

5 The facts alleged in Plaintiff's SAC are nearly identical to those alleged in his First  
6 Amended Complaint ("FAC") and only the few additions to the allegations will be mentioned  
7 here. Very briefly, Troy Phillips ("Decedent") was arrested on December 15, 2011, on suspicion  
8 of second degree burglary and was held as a pretrial detainee from that date until he was killed  
9 on February 14, 2012. During the final portion of his incarceration Decedent was housed in the  
10 same cell as Jose Cuevas, an individual who Plaintiffs allege was known to jail personnel as  
11 being mentally disturbed and violent. Decedent was attacked and stabbed in the neck repeatedly  
12 by Cuevas using a "grievance" (or golf) pencil on February 14, 2011. Decedent died that day as  
13 a result of wounds sustained.

14 There are three new facts alleged in the SAC that are worth noting. First, Plaintiff's SAC  
15 adds a paragraph specifying prior conduct of Cuevas that would reasonably have put jail  
16 personnel on notice that Cuevas was a mentally unstable and potentially violent individual. See  
17 Doc. # 85 at ¶ 33. In addition, the SAC alleges one new paragraph alleging facts to show that  
18 Decedent was known to jail authorities to be vulnerable and therefore subject to attacks by other  
19 inmates because of his "learning disability." Id. at ¶ 39. An additional three paragraphs have  
20 been added to the SAC to allege facts specifying the role of new Defendant Diaz in classification  
21 decisions involving Decedent and in the ultimate decision to house Decedent with Cuevas. See  
22 Id. at ¶¶ 40-42. Finally, Plaintiffs' FAC adds a paragraph alleging acknowledgement by  
23 Defendant Mims in an official statement predating the events complained of in the SAC opining  
24 that the jail lacks the ability to provide treatment for inmates with mental health issues or to  
25 adequately protect prisoners from such inmates. Id. at ¶ 58. In all other respects relevant to the  
26 discussion that follows, the allegations set forth in Plaintiffs duplicate word-for-word those set  
27 forth in the FAC.  
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3 **LEGAL STANDARD**

4 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure  
5 can be based on the failure to allege a cognizable legal theory or the failure to allege sufficient  
6 facts under a cognizable legal theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530,  
7 533-34 (9th Cir.1984). To withstand a motion to dismiss pursuant to Rule 12(b)(6), a complaint  
8 must set forth factual allegations sufficient “to raise a right to relief above the speculative level.”  
9 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (“Twombly”). While a court  
10 considering a motion to dismiss must accept as true the allegations of the complaint in question,  
11 Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), and must construe the  
12 pleading in the light most favorable to the party opposing the motion, and resolve factual  
13 disputes in the pleader's favor, Jenkins v. McKeithen, 395 U.S. 411, 421, reh'g denied, 396 U.S.  
14 869 (1969), the allegations must be factual in nature. See Twombly, 550 U.S. at 555 (“a  
15 Plaintiffs’ obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than  
16 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
17 do”). The pleading standard set by Rule 8 of the Federal Rules of Civil Procedure “does not  
18 require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-  
19 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (“Iqbal”).

20 The Ninth Circuit follows the methodological approach set forth in Iqbal for the  
21 assessment of a Plaintiffs’ complaint:

22 “[A] court considering a motion to dismiss can choose to begin by identifying  
23 pleadings that, because they are no more than conclusions, are not entitled to the  
24 assumption of truth. While legal conclusions can provide the framework of a  
25 complaint, they must be supported by factual allegations. When there are well-  
26 pleaded factual allegations, a court should assume their veracity and then  
27 determine whether they plausibly give rise to an entitlement to relief.”

28 Moss v. U.S. Secret Service, 572 F.3d 962, 970 (9th Cir. 2009) (quoting Iqbal, 129 S.Ct. at  
1950).

1 **DISCUSSION**

2 Defendants’ motion to dismiss sets forth a total of five grounds for dismissal of all or  
3 portions of Plaintiff’s five claims for relief. First, Defendants contend Plaintiff’s SAC alleges  
4 official capacity claims against the supervisory Defendants (Mims, Gattie, Hill, Moreno, Laird,  
5 and Narayan) that are duplicative of the civil rights claims alleged against County of Fresno.  
6 Second, Defendants contend Plaintiffs have failed to allege direct participation by the  
7 supervisory Defendants in the acts causing harm to Plaintiffs in claims three and four of the  
8 SAC. Third, Defendants contend Plaintiffs have failed to allege specific “Mandatory Duties”  
9 owed by the supervisory Defendants to Decedent. Fourth, Defendants contend Plaintiffs have  
10 failed to state any claim against individual Defendants Castro, Yang and Her; and fifth,  
11 Defendants contend that Defendant Diaz is entitled to qualified immunity. The court will  
12 consider each contention in turn.

13 **I. Entity Defendants Are Construed to be Sued In Their Official Capacities**

14 The issue of whether Plaintiff’s claims against the supervisory Defendants in their  
15 *official* capacities is duplicative of claims against County of Fresno was addressed in the court’s  
16 order of May 14, 2014, granting in part Defendant’s motion to dismiss portions of the FAC.  
17 Doc. # 49 at 5:23-6:11. There, the court determined the issue was one of construal and the court  
18 construed Plaintiff’s claims against the supervisory Defendants in their official capacities to be  
19 claims against Defendant County of Fresno. For reasons unknown, Plaintiff’s SAC continues to  
20 allege claims against the supervisory Defendants in their individual *and official* capacities;  
21 however, Plaintiffs admit that the claims alleged to be against the supervisory Defendants in  
22 their official capacities are properly construed to be against Defendant County of Fresno. Since  
23 there is no real dispute on the issue, the court will continue to construe Plaintiff’s claims against  
24 the supervisory Defendants in their official capacities to be against Defendant County of Fresno.  
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1 **II. Plaintiffs Have Adequately Alleged Integral Participation**

2 Defendant’s argument for dismissal of the supervisory Defendants in their individual  
3 capacities is predicated on the contention that Plaintiffs’ SAC fails to allege the “direct  
4 participation” of Defendants Mims, Gattie, Hill, Moreno, Laird and Narayan in the conduct that  
5 harmed Decedent. Plaintiffs’ second claim for relief alleges violation of Decedent’s rights under  
6 the Fourteenth Amendment on a theory that the supervisory Defendants promulgated  
7 constitutionally deficient policies and procedures or established constitutionally deficient  
8 customs or ratified constitutionally deficient practices. Plaintiffs’ third claim alleges the same  
9 liability on a theory of failure to adequately train and supervise.  
10

11 The court’s Order of December 3, 2013, discussed the issue of *entity* liability under  
12 Monell v. Dep’t of Soc. Services, 436 U.S. 658 (1978), but the closely related issue of liability of  
13 the supervisory Defendants has not been addressed to this point. The legal standard for the  
14 assessment of liability by a supervisory defendant in his or her individual capacity has been  
15 stated thus:  
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18 We have found supervisory liability under § 1983 where the supervisor  
19 “was personally involved in the constitutional deprivation or a sufficient  
20 causal connection exists between the supervisor’s unlawful conduct and  
21 the constitutional violation.” *Lolli v. County of Orange*, 351 F.3d 410,  
22 418 (9th Cir. 2003) (quoting *Jackson v. City of Bremerton*, 268 F.3d 646,  
23 653 (9th Cir. 2001)). Thus, supervisors “can be held liable for: 1) their  
24 own culpable action or inaction in the training, supervision or control of  
25 subordinates; 2) their acquiescence in the constitutional deprivation of  
26 which a complaint is made; or 3) for conduct that showed a reckless or  
27 callous indifference to the rights of others.” *Cunningham v. Gates*, 229  
28 F.3d 1271, 1292 (9th Cir. 2000).

29 Edgerly v. City and County of San Francisco, 599 F.3d 946, 961 (9th Cir. 2010).

30 Defendants contend that Plaintiffs “have stated no facts alleging that [the supervisory]  
31 Defendants in any way personally participated in the alleged Constitutional [sic] violations  
32 against their decedent.” Doc. # 88-1 at 6:20-21. The court simply disagrees. Read as a whole,  
33

1 the SAC describes the responsibilities of each of the supervisory Defendants with regard to  
2 staffing, training, monitoring, disciplining and developing policy for both the jail facility and its  
3 medical services component. The second and third claims for relief allege in rather general  
4 terms that these functions were carried out with deliberate disregard for the consequences to  
5 inmates, such as Decedent, whose constitutional rights were violated owing in substantial part to  
6 deficiencies in staffing, training, monitoring and policy development. The court's order of  
7 December 3, 2013, held that Plaintiffs' pleadings with regard to *entity liability* were sufficient  
8 notwithstanding having been alleged in rather general terms because evidence of the particulars  
9 of training, policy and custom could reasonably be expected to be in the possession of  
10 Defendants and not available to Plaintiffs for purposes of pleading. See Doc. # 34 at 16:22-  
11 17:11 (citing Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1439 (9th Cir. 1987 ) for the  
12 proposition that "standards of particularity of pleading 'may be relaxed as to matters particularly  
13 within the opposing party's knowledge.'").  
14

15  
16 The court rejects Defendants' argument for dismissal of the supervisory Defendants for  
17 essentially the same reason as was expressed in the December 3, 2014, order. The court notes  
18 that Defendants' reply to Plaintiff's opposition contends that a good deal of discovery has been  
19 delivered to Plaintiffs since the court's partial grant of Defendants' motion to dismiss Plaintiffs'  
20 FAC. Defendants contend without any citation to authority that Plaintiff's SAC should be held  
21 to reflect the state of Plaintiff's knowledge of the facts supporting the claims against the  
22 supervisory Defendants as of the receipt of discovery at the time the complaint was amended.  
23 The court rejects this argument for two reasons. First, the court cannot find any authority for the  
24 proposition that discovery modifies the requirement for particularity of pleading under Rule 8 or  
25 under recent cases interpreting that rule. Second, Plaintiffs allege they have adequately  
26 responded during discovery with all information pertinent to Plaintiffs' claims against the  
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1 supervisory Defendants. The fact that Defendants are able to contend that they have provided all  
2 information in their possession pertaining to Plaintiffs' claims undercuts any argument that they  
3 are prejudiced by any lack of specificity in Plaintiffs' SAC. The basic test of the adequacy of a  
4 complaint under Rule 8 is the extent to which it permits the Defendants to understand what is  
5 alleged against them and to adequately respond. Since Defendants contend they have been able  
6 to adequately respond to Plaintiff's claims they cannot now contend those claims are pled with  
7 insufficient particularity.  
8

9 The court will deny Defendants' motion to dismiss the supervisory Defendants in their  
10 individual capacities.  
11

### 12 **III. Defendants' Issue Regarding "Mandatory Duties" is a Misunderstanding**

13 Defendants' third argument for grounds to dismiss is based on what the court perceives is  
14 an erroneous reading of Plaintiffs' third claim for relief. Plaintiffs' third claim for relief alleges  
15 failure of the supervisory Defendants to train, monitor and discipline pursuant to section 1983.  
16 Defendants argue that California Government Code § 815.6 provides liability against an *entity*  
17 that fails to discharge a "mandatory duty" (that is, a duty specifically imposed by statute) that  
18 proximately causes an injury that the mandatory duty was enacted to prevent. Defendants  
19 correctly note that any claim to recover damages under the statute requires that the plaintiff  
20 specifically identify the "mandatory duty" that was breached and the statute or regulation that  
21 imposed the duty. However, Plaintiffs' third claim for relief does not attempt to invoke liability  
22 under California law nor does it rely on section 815.6. The "duties" that are mentioned at  
23 paragraphs 80 and 81 of Plaintiffs' SAC are not alleged to be specific "mandatory duties"  
24 imposed by statute, they are simply the general duties of training and monitoring that may be  
25 presumed to be imposed by job description on most supervisory personnel, including those  
26 being sued in this action.  
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1           It is true that Plaintiffs' SAC does not allege a one-to-one correlation between specific  
2 duties to train and monitor and specific Defendants. However, this lack of specificity is covered  
3 by the court's previous discussion regarding the claims against the supervisory Defendants in  
4 their individual capacities and the court has determined that those claims are sufficiently alleged.  
5

6           The court finds Defendants are not entitled to dismissal of any parties or claims based on  
7 failure to identify "mandatory duties" within the meaning of California Government Code §  
8 815.6.

### 9 **III. Defendants Castro, Yang and Her**

10           Plaintiffs' SAC refers to Defendants Castro, Yang and Her collectively as the "Officers."  
11 Defendants move to dismiss the claims against Officers on the ground that Plaintiffs' SAC fails  
12 "to identify any legal duty these Defendants owed to the Plaintiffs, what actions or inactions of  
13 theirs (independently or collectively) breached that duty, and the rights of Plaintiffs that were  
14 violated." Doc. # 88-1 at 7:22-24. Again, the court disagrees. The court agrees with  
15 Defendants to the extent Defendants may contend that the SAC does not state facts sufficient to  
16 support a claim that Officers (excluding Diaz) violated Decedent's Fourteenth Amendment  
17 rights by co-housing Decedent and Cuevas. This is in part because Plaintiffs' SAC alleges for  
18 the first time that Defendant Diaz is the Defendant responsible for the decision to change  
19 Decedent's classification and to house him with Cuevas.  
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22           However, to the extent that Defendants contend that Officers are entitled to dismissal of  
23 Plaintiffs' fourth claim for relief because the SAC identifies no duties owed to Plaintiff or breach  
24 of those duties, the court must disagree. Plaintiffs' SAC clearly states in the Factual Background  
25 portion of the SAC that Officers were notified of Cuevas's assault on Decedent, that they did not  
26 respond timely, and that when they did arrive on the scene, they failed to timely summon or  
27 render medical assistance despite the obvious need. The duties alleged to have been breached  
28

1 are set forth in Plaintiffs' first claim for relief at paragraph 71. While not all Officers may be  
2 implicated in the violation of all the duties alleged in association with the violation of  
3 Decedent's Fourteenth Amendment rights, the list clearly refers to the failure of Officers to  
4 secure prompt medical attention and to protect Plaintiffs and Decedent from the harms he  
5 suffered. As above, the court finds the current formulation of Plaintiffs' claims against the  
6 Officer Defendants to be adequate for purposes of the pleading standards required under Rule  
7 8(a).

9 The court concludes that Defendants are not entitled to dismissal of Defendants Castro,  
10 Yang and Her.

#### 11 **V. Qualified Immunity**

12 Defendants' motion to dismiss Defendant Diaz on the ground of qualified immunity  
13 adequately sets forth the legal requirements for determination of qualified immunity.

14 Defendants' argument is quite brief:

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16  
17 Officer Diaz's conduct, as currently pled, does not rise to the level of a  
18 constitutional violation. Even if Decedent's estate were able to properly  
19 plead facts supporting a constitutional violation, Officer Diaz would be  
entitled to qualified immunity since it would not have been clear to a  
reasonable officer that the classification of [Decedent] created a  
substantial risk of harm to him.

20 Doc. # 88-1 at 8:11-14. Defendants clarify their argument in their reply somewhat by alleging:

21 Plaintiffs' SAC does not allege that officer Diaz housed [Decedent] and  
22 Mr. Cuevas together. In fact, the SAC does not allege Officer Diaz had  
23 anything to do with Mr. Cuevas' housing assignment. Without allegation  
24 that Officer Diaz made the decision to house [Decedent] and Mr. Cuevas  
together, the constitutional right of [Decedent] to be free from violence at  
the hands of Mr. Cuevas does not arise.

25 Doc. # 92 at 3:15-19.

26 Plaintiffs' factual allegations with regard to Cruz's role in the decision to co-house  
27 Decedent and Cuevas are set forth at paragraphs 41 and 42 of the SAC. Basically, Plaintiffs  
28 allege that Decedent was "involved in a series of altercations" due to the perception of his

1 mental vulnerability by other prisoners and was therefore classified as requiring isolated housing  
2 on January 22, 2012. Doc. # 85 at ¶39. At paragraph 41, Plaintiffs allege that the following day  
3 Diaz reclassified Decedent as qualified for medical lockdown housing “due to having a  
4 compatible cellmate.” Id. at ¶41. Decedent was attacked and killed by Cuevas on February 14,  
5 2012.  
6

7 The legal requirements for qualified immunity are well established. To determine  
8 whether qualified immunity applies, the threshold question is whether, in the light most  
9 favorable to the party asserting injury, the facts show an officer’s conduct violated a  
10 constitutional right. Saucier [v. Katz], 533 U.S. 194, 201 (2001)]; Robinson v. Solano County,  
11 278 F.3d 1007, 1012 (9th Cir. 2002) (en banc). If no constitutional right was violated, immunity  
12 attaches and the inquiry ends. Saucier, 533 U.S. at 201. If a constitutional right would have  
13 been violated were a plaintiff’s allegations established, the next step is to ask whether the right  
14 was clearly established in light of the context of the case. Id. Finally, the contours of the right  
15 must be clear enough that a reasonable officer would understand whether this or her acts violate  
16 that right. Id. at 202.  
17

18 Plaintiffs’ SAC alleges that Officers had at least constructive notice that the housing of  
19 Decedent whose vulnerabilities or disabilities were likely to provoke violent altercation with  
20 Cuevas, an inmate who had a demonstrated propensity toward violence, constituted deliberate  
21 indifference toward Plaintiff’s Fourteenth Amendment right against harm at the hands of other  
22 inmates. While Plaintiffs’ SAC does not directly allege that Diaz made the decision to house  
23 Decedent with Cuevas, Plaintiff’s did allege that Decedent was housed with Cuevas following a  
24 determination that they would be compatible because they were both awaiting examination to  
25 determine whether mental problems were present. It is reasonable to infer that the “compatible  
26 cellmate” mentioned by Diaz in her reclassification of Decedent is, in fact, a reference to  
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1 Cuevas. Since at this stage of the proceedings the court must make all reasonable inferences in  
2 favor of the non-moving party, the court finds that the SAC alleges that Diaz made the decision  
3 that resulted in the placement of Decedent and Cuevas in the same cell.  
4

5 The court must conclude that Defendants have not adequately supported their motion for  
6 dismissal of Diaz on a theory of qualified immunity. Defendants do not dispute that a decision  
7 that houses two prisoners together in conscious disregard for the safety of one of the prisoners  
8 may constitute a Fourteenth Amendment violation. The court has found that Defendants'  
9 contention that Plaintiffs have failed to allege facts connecting Diaz with the decision to house  
10 Cuevas and Defendant together is simply contrary to a fair reading of the facts alleged in the  
11 SAC. The court also finds Defendants' contention that "it would not have been clear to a  
12 reasonable officer that the classification of [Decedent] created a substantial risk of harm to him"  
13 is unsupported by argument, facts or law. In short, the court finds it cannot grant Defendants'  
14 motion to dismiss Defendant Diaz at this point in the proceedings because evidence that would  
15 permit such dismissal is has not been made available to the court.  
16

17  
18 THEREFORE, for the reasons discussed above, it is hereby ORDERED that Defendants'  
19 motion for partial dismissal of parties and/or claims is DENIED.  
20

21  
22 IT IS SO ORDERED.

23 Dated: July 30, 2015

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25 \_\_\_\_\_  
26 SENIOR DISTRICT JUDGE  
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28