

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

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

E.S., a minor, by and through her guardian ad litem, VALINE GONZALEZ; J.F., a minor, by and through his guardian ad litem, BRIDGET FLORES; and MARIA MORENO, in each case individually and as successor in interest to Armando Santibanez, deceased,

Plaintiffs,

v.

CITY OF VISALIA and DOES 1-10, inclusive

Defendants.

1:13-cv-01697-LJO-BAM

**ORDER ON MOTION TO DISMISS
FIRST AMENDED COMPLAINT
(Doc. 21)**

I. PRELIMINARY STATEMENT TO PARTIES AND COUNSEL

Judges in the Eastern District of California carry the heaviest caseloads in the nation, and this Court is unable to devote inordinate time and resources to individual cases and matters. Given the shortage of district judges and staff, this Court addresses only the arguments, evidence, and matters necessary to reach the decision in this order. The parties and counsel are encouraged to contact the offices of United States Senators Diane Feinstein and Barbara Boxer to address this Court's inability to accommodate the parties and this action. The parties are required to reconsider consent to conduct all further proceedings before a Magistrate Judge, whose schedules are far more realistic and accommodating to parties than that of U.S. District Judge Lawrence J. O'Neill, who must prioritize criminal and older civil cases.

Civil trials set before Judge O'Neill trail until he becomes available and are subject to

1 suspension mid-trial to accommodate criminal matters. Civil trials are no longer reset to a later date if
2 Judge O'Neill is unavailable on the original date set for trial. Moreover, this Court's Fresno Division
3 randomly and without advance notice reassigns civil actions to U.S. District Judges throughout the
4 nation to serve as visiting judges. In the absence of Magistrate Judge consent, this action is subject to
5 reassignment to a U.S. District Judge from outside the Eastern District of California.

6 **II. INTRODUCTION**

7 This civil rights lawsuit arises from a fatal shooting involving members of the City of Visalia's
8 Police Department and decedent Armando Santibanez ("Mr. Santibanez"). Maria Moreno ("Ms.
9 Moreno"), Mr. Santibanez's mother, and his children, minors E.S. and J.F., filed suit in this court
10 against the City of Visalia ("City") and Does 1-10. Plaintiffs allege civil rights, false arrest/false
11 imprisonment, and wrongful death claims. Pending before the Court is the City's motion to dismiss for
12 failure to state a claim. For the reasons discussed below, this Court GRANTS the City's motion to
13 dismiss with leave to amend.

14 **III. BACKGROUND**

15 **A. Facts¹**

16 Plaintiffs allege that on Friday, February 8, 2013, at approximately 3:55 p.m. police officers for
17 the City initiated a traffic stop of Mr. Santibanez's vehicle. The traffic stop occurred on South
18 Pinkham Street and Beech Avenue. Plaintiffs allege that after an officer stopped Mr. Santibanez's, the
19 officer fired five shots through the window of Mr. Santibanez's vehicle which resulted in his death. At
20 the time of the shooting Mr. Santibanez did not pose an immediate threat of death or serious bodily
21 injury to anyone. Plaintiffs further allege that after Mr. Santibanez was shot defendants did not
22 summon medical care in a timely manner or permit medical personnel to administer treatment despite
23 the fact that Mr. Santibanez was immobile, bleeding profusely, and in obvious need of emergency
24 medical care and treatment.

25 **B. Procedural Background**

26 On October 21, 2013, Mr. Santibanez's mother and two minor children filed this civil rights
27

28 ¹ The background facts are derived from the complaint. (Doc. 16). The Court accepts the factual allegations in the
complaint as true for purposes of this motion. *See Lazy Y Ranch LTD. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

1 action against the City and Does 1-10. Does 1-5 are identified as police officers for the City, Does 6-8
2 are identified as supervisory officers for the City's police department, and Does 9-10 are identified as
3 managerial, supervisory, and policymaking employees of the City's police department.

4 On December 27, 2013, plaintiffs filed a first amended complaint in which they allege the
5 following eight claims: (1) Fourth Amendment wrongful detention and arrest; (2) Fourth Amendment
6 excessive force; (3) Fourth Amendment denial of medical care; (4) substantive due process; (5)
7 *Monell*² liability; (6) false arrest/false imprisonment; (7) battery (wrongful death); and (8) negligence
8 (wrongful death). Pending before the Court is the City's motion to dismiss plaintiffs' fifth, sixth, and
9 eighth causes of action for failure to state a claim.³ The City also moves to dismiss Ms. Moreno from
10 the complaint. On February 27, 2014, this Court found the motion suitable for a decision without oral
11 argument, pursuant to Local Rule 230(g), and vacated the March 4, 2014, hearing date.

12 IV. LEGAL STANDARD

13 A motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6) is a challenge to the sufficiency of
14 the allegations set forth in the complaint. A FED. R. CIV. P. 12(b)(6) dismissal is proper where there is
15 either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a
16 cognizable legal theory." *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). In
17 considering a motion to dismiss for failure to state a claim, the court generally accepts as true the
18 allegations in the complaint, construes the pleading in the light most favorable to the party opposing
19 the motion, and resolves all doubts in the pleader's favor. *Lazy Y. Ranch LTD v. Behrens*, 546 F.3d
20 580, 588 (9th Cir. 2008).

21 To survive a FED. R. CIV. P. 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts
22 to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
23 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court
24 to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v.*
25 *Iqbal*, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability
26 requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

27 _____
28 ² *Monell v. Dept. of Soc. Serv. of City of New York*, 436 U.S. 658 (1978).

³ In the City's reply brief, it withdrew its request to dismiss plaintiffs' seventh cause of action.

1 (quoting *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’
2 a defendant’s liability, it ‘stops short of the line between possibility and plausibility for entitlement to
3 relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

4 “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed
5 factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’
6 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of
7 action will not do.” *Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). Thus, “bare
8 assertions . . . amount[ing] to nothing more than a ‘formulaic recitation of the elements’ . . . are not
9 entitled to be assumed true.” *Iqbal*, 129 S. Ct. at 1951. A court is “free to ignore legal conclusions,
10 unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of
11 factual allegations.” *Farm Credit Serv. v. Am. State Bank*, 339 F.3d 764, 767 (8th Cir. 2003) (citation
12 omitted). Moreover, a court “will dismiss any claim that, even when construed in the light most
13 favorable to plaintiff, fails to plead sufficiently all required elements of a cause of action.” *Student*
14 *Loan Mktg. Ass’n v. Hanes*, 181 F.R.D. 629, 634 (S.D. Cal. 1998). In practice, “a complaint . . . must
15 contain either direct or inferential allegations respecting all the material elements necessary to sustain
16 recovery under some viable legal theory.” *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v.*
17 *Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)). To the extent that the pleadings can be cured
18 by the allegation of additional facts, the plaintiff should be afforded leave to amend. *Cook, Perkiss*
19 *and Liehe, Inc. v. N. California Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990) (citations
20 omitted).

21 V. DISCUSSION

22 A. Ms. Moreno

23 The City contends that Mr. Santibanez’s mother, Ms. Moreno, should be dismissed from the
24 complaint because she lacks standing to assert her claims.

25 1. State Law Claims

26 In California, parents may sue for the wrongful death of their child, regardless of their status as
27 heirs, “ ‘if they were dependent on the decedent.’” *Chavez v. Carpenter*, 91 Cal. App. 4th 1433, 1445
28 (2001) (quoting Cal. Code Civ. Proc. § 377.60(b)). “[D]ependence refers to financial support.” *Id.*

1 “To demonstrate financial dependence, a parent ‘must show that they were actually dependent, to some
2 extent, upon the decedent for the necessities of life.’” *Foster v. City of Fresno*, 392 F. Supp. 2d 1140,
3 1146 (E.D. Cal. 2005) (quoting *Perry v. Medina*, 192 Cal. App. 3d 603, 610 (1987)).

4 Plaintiffs allege that Ms. Moreno was financially dependent on decedent. However, the
5 complaint does not contain facts to support this allegation. Plaintiffs allege facts to support this
6 allegation in their opposition; however, these facts need to be alleged in the complaint.

7 **2. Funeral Expenses**

8 “In an action for wrongful death the beneficiaries may recover burial expenses which have been
9 paid by them or for which they are liable.” *Adams v. Southern Pac. Co.*, 4 Cal. 2d 731, 743 (1935).
10 Under California Health and Safety Code § 7100 liability for the reasonable cost of disposition of the
11 decedent’s remains devolves upon the following in the order named: “(1) An agent under a power of
12 attorney for health care who has the right and duty of disposition . . . (2) The competent surviving
13 spouse. (3) . . . surviving competent adult children . . . [or] (4) The surviving competent parent or
14 parents of the decedent . . .” *Id.*

15 In plaintiffs’ complaint they seek funeral and burial expenses but fail to allege why they are
16 entitled to these expenses. Plaintiffs fail to allege that Ms. Moreno paid for these expenses or that Ms.
17 Moreno was liable for these expenses pursuant to California Health and Safety Code § 7100.

18 The City’s motion to dismiss Ms. Moreno’s state law claims and request for funeral expenses is
19 GRANTED with leave to amend.

20 **B. Fifth Claim for Relief: *Monell* Liability**

21 The City asserts that plaintiffs’ *Monell* claim is factually insufficient.

22 To establish municipal liability under *Monell*, a plaintiff must first establish that the officer
23 deprived him of a constitutional right. *Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). Next, plaintiff
24 must show that an official city policy, custom, or practice was the moving force behind the
25 constitutional injury. *Monell*, 436 U.S. at 694. A failure to train or supervise can amount to a “policy
26 or custom” sufficient to impose liability. *City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989).

27 Plaintiffs allege that the unjustified shooting of Mr. Santibanez “was found to be within the . . .
28 City of Visalia Police Department policy” and ratified by supervisorial officers. (Doc. 16 ¶¶ 67, 68).

1 Plaintiffs further allege that the City “knowingly maintained, enforced and applied an official
2 recognized custom, policy, and practice of:” (a) employing police officers with dangerous propensities;
3 (b) inadequately supervising, training, controlling, assigning, and disciplining its officers; (c)
4 maintaining inadequate procedures for reporting, supervising, investigating, disciplining, and
5 controlling the intentional misconduct of its police officers; (d) failing to discipline its officers; (e)
6 ratifying the intentional misconduct of its officers; (f) detaining and arresting individuals without
7 probable cause or reasonable suspicion and using excessive force; and (g) failing to investigate
8 properly claims of unlawful detention and excessive force.

9 Plaintiffs’ *Monell* claim is factually insufficient because it is devoid of any facts establishing
10 the existence of the policy, custom, or practice alleged. Conclusory “threadbare” allegations that
11 merely recite the elements of a cause of action will not withstand a motion to dismiss. *Iqbal*, 129 S.
12 Ct. at 1949-50. Accordingly, plaintiffs fail to state a *Monell* claim.

13 The City’s motion to dismiss plaintiffs’ fifth claim for relief is GRANTED with leave to
14 amend.

15 **C. Sixth Claim for Relief: False Arrest/False Imprisonment**

16 The City maintains that plaintiffs’ false arrest/false imprisonment claim should be dismissed
17 because plaintiffs fail to allege facts which indicate that an appreciable length of time passed between
18 decedent’s confinement and passing. The City also contends that plaintiffs fail to allege facts to
19 support their allegation that the officers acted without privilege.

20 “In California, false arrest and false imprisonment are not separate torts.” *George v. City of*
21 *Long Beach*, 973 F.2d 706, 710 (9th Cir. 1992). “False arrest is but one way of committing a false
22 imprisonment.” *Id.* (internal quotation marks and citations omitted). In order to state a claim for false
23 imprisonment, the plaintiff must allege: “(1) the nonconsensual, intentional confinement of a person,
24 (2) without lawful privilege, and (3) for an appreciable period of time, however brief.” *Easton v.*
25 *Sutter Coast Hosp.*, 80 Cal. App. 4th 485, 496 (2000).

26 Plaintiffs allege that Does 1-5 intentionally deprived decedent of his freedom of movement
27 when they detained him without reasonable suspicion and arrested him without probable cause. This
28 allegation satisfies the requirement that the officers acted without lawful privilege. Absent from

1 plaintiffs' complaint is an allegation that Mr. Santibanez was confined for an appreciable period of
2 time.

3 Accordingly, the City's motion to dismiss plaintiffs' sixth claim for relief is GRANTED with
4 leave to amend.

5 **D. Eighth Claim for Relief: Negligence**

6 **1. Allegations against the City**

7 The City contends that plaintiffs' negligence claim against it should be dismissed because as a
8 public entity the City is immune from direct liability for negligence.

9 There is no common law tort liability for public entities in California. *Miklosy v. Regents of*
10 *Univ. of Cal.*, 44 Cal. 4th 876, 899 (2008). Such liability must be based on statute. *Id.* (quoting Cal.
11 Govt. Code § 815(a)).

12 Plaintiffs cite to two statutes in support of their negligence claim. Cal. Govt. Code § 820 and
13 Cal. Govt. Code § 815.2(a). § 820 pertains to a public employee's liability for injuries generally and §
14 815.2(a) relates to a public entity's vicarious liability for the acts of its employees. Neither statute
15 provides for direct liability of a public entity. Accordingly, to the extent plaintiffs attempt to allege a
16 negligence claim against the City for direct liability, they have failed to do so.

17 **2. Allegations against the City's Employees**

18 The City contends that plaintiffs' negligence claim against the City's employees should be
19 dismissed because it is factually insufficient and fails to allege a duty.

20 "The elements of a cause of action for negligence are (1) a legal duty to use reasonable care,
21 (2) breach of that duty, and (3) proximate cause between the breach and (4) the plaintiff's injury."
22 *Mendoza v. City of Los Angeles*, 66 Cal. App. 4th 1333, 1339 (1998).

23 Plaintiffs' negligence claim contains a list of "actions and inactions" defendants are allegedly
24 responsible for. (Doc. 16 ¶ 98). The actions and inactions are not supported by factual allegations. In
25 addition, plaintiffs fail to allege a duty. Therefore, plaintiffs fail to state a negligence claim against the
26 City's employees.

27 The City's motion to dismiss plaintiffs' eighth claim for relief is GRANTED with leave to
28 amend.

1 **VI. CONCLUSION AND ORDER**

2 For the reasons discussed above, this Court:

- 3 1. GRANTS the City’s motion to dismiss with leave to amend and
4 2. ORDERS plaintiffs to file and serve a second amended complaint, if any, no later than
5 March 24, 2014. The Court gives plaintiffs one, and only one, opportunity to amend
6 their complaint. If plaintiffs elect to amend their complaint, they are admonished to
7 pursue only legally tenable claims based on sufficient facts.
8 3. ORDERS the City, no later than April 14, 2014, to file and serve a response to
9 plaintiffs’ amended complaint, if filed.
10

11 IT IS SO ORDERED.

12 Dated: March 3, 2014

/s/ Lawrence J. O’Neill
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28