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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUCY ATAYDE, individually and as
successor in interest of decedent
RICHARD MICHAEL RAMIREZ,

Plaintiff,

v.

NAPA STATE HOSPITAL, STATE OF
CALIFORNIA DEPARTMENT OF
STATE HOSPITALS, a public entity,
DOLLY MATTEUCCI, individually,
DANA WHITE, R.N., individually,
CALIFORNIA FORENSIC MEDICAL
GROUP, INC., TAYLOR FITHIAN, M.D.,
HEATHER GOODE, M.D., SEAN RYAN
R.N., DEBORAH MANDUJANO, R.N.,
CORINA DENNING, R.N., COUNTY OF
MERCED, a municipal corporation, former
Sheriff TOM CAVALLERO, in his
individual and official capacities,
Undersheriff JASON GOINS, and DOES 1
THROUGH 10, jointly and severally,

Defendants.

No. 1:16-cv-00398-DAD-SAB

ORDER GRANTING STATE DEFENDANTS’
MOTION TO DISMISS

ORDER GRANTING IN PART AND
DENYING IN PART COUNTY
DEFENDANTS’ MOTION TO DISMISS

(Doc Nos. 45, 49)

On January 5, 2016, Lucy Atayde (“plaintiff”)—the mother of Richard Michael Ramirez (“decedent”)—filed suit in the U.S. District Court for the Northern District of California against Napa State Hospital (“NSH”), California Forensic Medical Group, Inc. (“CFMG”), and Merced County (“County”)—as well as individual employees and officers of each organization—after her

1 son committed suicide while in the custody of the Merced County Sheriff’s Department. (Doc.
2 No. 1.). On February 2, 2016, NSH and its employees (the “state defendants”) filed a motion to
3 dismiss the complaint for lack of jurisdiction, or alternatively, to transfer venue to the Eastern
4 District of California. (Doc. No. 12.) On February 8, 2016, the County, CFMG, and their
5 officers and employees (the “county defendants”) also filed a motion to dismiss. (Doc. No. 25.)
6 On March 21, 2016, the case was transferred to this district. (Doc. No. 40.)

7 On April 6, 2016, the county defendants again filed a motion to dismiss pursuant to
8 Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 45.) On April 12, 2016, the state defendants
9 filed a motion to dismiss as well. (Doc. No. 49.) Plaintiff filed oppositions to both motions on
10 May 3, 2016. (Doc. Nos. 50, 51.) The county defendants filed a reply on May 7, 2016. (Doc.
11 No. 52.) The state defendants filed a reply on May 10, 2016. (Doc. No. 54.) On May 17, 2016,
12 the court heard oral argument on the pending motions. (Doc. No. 56.) Attorney Michael Haddad
13 appeared telephonically at that hearing on behalf of plaintiff; Deputy Attorney General Jennifer
14 Marquez appeared telephonically on behalf of the state defendants; and attorney Jerome Varanini
15 appeared telephonically on behalf of the county defendants. (Doc. No. 56.)

16 **I. Background**

17 *a. Parties*

18 Defendants are divided into two primary groups, with each group having filed its own
19 motion to dismiss. The county defendants include Merced County; the former sheriff of Merced
20 County, Tom Cavallero; and Jason Goins, a Lieutenant and commander in charge of the Merced
21 County jail at the time decedent was confined there. The county defendants also include CFMG
22 and specific CFMG employees. According to plaintiff, CFMG provides health care—including
23 mental health care—to pre-trial and post-conviction detainees and prisoners held in Merced
24 County jails pursuant to a contract with the County. The CFMG employees named in the
25 complaint include Taylor Fithian, M.D., a policy-making officer for CFMG; Heather Goode,
26 M.D., a treating psychiatrist; and Sean Ryan, R.N., Deborah Mandujano, R.N., and Corina
27 Deering, R.N., all psychiatric nurses. The other group of defendants consists of the state
28 defendants including NSH; Dana White, R.N., an employee of NSH responsible for screening and

1 admitting patients; and Dolly Matteucci, the executive director and highest policy making official
2 of NSH.

3 *b. The Allegations of the Complaint*

4 In the complaint plaintiff alleges as follows. On December 15, 2014, decedent—a 27-
5 year-old man suffering from severe psychosis—killed himself while in the custody of the Merced
6 County Sheriff’s Department. (Doc. No. 1, Complaint (“Compl.”) at ¶ 101.) Decedent
7 committed suicide after being held in pre-trial detention for nearly four months. According to the
8 complaint, the following events led to decedent’s suicide.

9 Decedent first arrived at Merced County Jail on August 23, 2014. (*Id.* at ¶ 26.) On
10 August 29, 2014, the Merced County Superior Court suspended the criminal proceedings against
11 decedent due to concerns that he was not mentally competent to stand trial. (*Id.* at ¶ 28.) The
12 court referred decedent to Dr. Phillip Hamm, Ph.D., for an evaluation pursuant to California Penal
13 Code § 1368. (*Id.*) In a report completed on September 22, 2016 and adopted by the Merced
14 County Superior Court on September 26, 2016, Dr. Hamm declared decedent incompetent to
15 stand trial on the grounds he was likely suffering Psychotic Disorder NOS (not otherwise
16 specified). (*Id.* at ¶¶ 53, 60.)

17 According to plaintiff, the county defendants knew of decedent’s severe mental illness
18 prior to the court adopting Dr. Hamm’s report. The decedent’s mental illness was readily evident
19 through his erratic behavior and bizarre comments, including telling defendant Goode, decedent
20 was “hearing voices and having major mood changes.” (*Id.* at ¶ 38.) In response, defendant
21 Goode wrote decedent a prescription for Haldol—an antipsychotic medication—but failed to draft
22 a treatment plan or diagnose decedent as suffering from psychosis. (*Id.*) Moreover, decedent was
23 twice placed in, and twice released from, a safety cell because of his behavior; nonetheless, the
24 county defendants still failed to implement a treatment plan. (*Id.* at ¶¶ 39–42.) Furthermore,
25 decedent refused to take his prescribed antipsychotic medications, and, in response, CMFG
26 employees and agents simply signed release of liability forms for refusal to take medications. (*Id.*
27 at ¶ 56.) Decedent never signed these release forms himself. (*Id.*)

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1 In response to Dr. Hamm’s report and its adoption, the Merced County Superior Court
2 ordered a placement report to be submitted by October 15, 2014 and scheduled a report hearing
3 for October 17, 2014. (*Id.* at ¶ 60.) In the period leading up to the report hearing, decedent
4 engaged in a series of self-harming behaviors. On September 27, 2014, while housed in
5 segregated lockdown, decedent repeatedly struck the walls and door of his cell, causing his hand
6 to become swollen and bruised. (*Id.* at ¶ 61.) On September 29, 2014, decedent attempted to
7 commit suicide by hanging himself with a t-shirt. (*Id.* at ¶ 64.) On October 5, 2014, decedent
8 again attempted to commit suicide by choking himself with his own hands. (*Id.* at ¶ 70.) In
9 response to each suicide attempt, decedent was placed in a safety cell—generally for a period of
10 two days—and given an updated prescription. (*Id.* at ¶¶ 67, 69, 73, 75.) However, after each
11 incident of this kind, CMFG staff allegedly failed to develop a proper treatment plan in response
12 thereto. (*Id.* at ¶¶ 63, 69, 75.)

13 On October 24, 2014, the Merced County Superior Court ordered decedent to be
14 committed to the trial competency program at defendant NSH or another appropriate facility.
15 (*Id.* at ¶ 78.) In its order, the court noted “[decedent’s] condition would deteriorate without
16 treatment with medication and serious harm to physical and mental health would result.” (*Id.*)
17 NSH allegedly completed a pre-admission evaluation of decedent and approved decedent for
18 admission. (*Id.* at ¶ 74.) Defendant Dana White, R.N., an employee of defendant NSH, allegedly
19 stated in a letter dated October 9, 2016 that decedent would be admitted upon receipt of seven
20 specific court documents. (*Id.*) According to plaintiff, defendant NSH received these documents
21 before October 31, 2014. (*Id.*) However, decedent was never transferred to NSH. Instead,
22 decedent continued to be confined at the Merced County Jail and continued to engage in a course
23 of conduct replicative of his earlier behavior, including making irrational, suicidal comments and
24 engaging in self-harm. (*Id.* at ¶¶ 87–100.) Finally, decedent committed suicide on December 15,
25 2014 by hanging himself with a sweatshirt from his bunk. (*Id.* at ¶ 101.)

26 *c. Causes of Action*

27 Plaintiff—both in her individual capacity and as successor in interest to decedent—alleges
28 multiple causes of action against defendants. In her first cause of action, brought pursuant to 42

1 U.S.C. § 1983, plaintiff claims defendants White, Fithian, Goode, Ryan, Mandujano, Denning,
2 and Goins deprived decedent of his Fourth and Fourteenth Amendment rights through their
3 deliberate indifference to his serious need for mental health treatment. Plaintiff also claims these
4 same defendants deprived her of her First Amendment right to familial association. In her second
5 cause of action, plaintiff seeks to extend liability for these constitutional deprivations to the
6 County, CFMG, and the policy-making officials of each organization through *Monell* and
7 supervisory liability. In her third cause of action, plaintiff claims the county defendants are liable
8 for the above referenced constitutional violations pursuant to California’s Bane Act, codified at
9 California Civil Code § 52.1. In her fourth cause of action, plaintiff alleges the County, NSH,
10 and CFMG violated the Americans with Disabilities Act and the Rehabilitation Act of 1973. In
11 her fifth cause of action, plaintiff alleges defendants White, NSH, the County, and Goins violated
12 California Government Code § 845.6. In her sixth cause of action, plaintiff brings a state law
13 negligence claim against, Cavallero, Goins, and the County. In her seventh, and final, cause of
14 action, plaintiff brings a state law negligence *per se* claim against Cavallero, Goins, and the
15 County.

16 **II. Legal Standard**

17 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
18 sufficiency of the complaint. *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir.
19 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of
20 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901
21 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to
22 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A
23 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
24 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
25 *Iqbal*, 556 U.S. 662, 678 (2009).

26 In determining whether a complaint states a claim on which relief may be granted, the
27 court accepts as true the allegations in the complaint and construes the allegations in the light
28 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v.*

1 *United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). It is inappropriate to assume that the plaintiff
2 “can prove facts which it has not alleged or that the defendants have violated the . . . laws in ways
3 that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of*
4 *Carpenters*, 459 U.S. 519, 526 (1983).

5 In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is permitted
6 to consider material which is properly submitted as part of the complaint, documents that are not
7 physically attached to the complaint if their authenticity is not contested and the plaintiff’s
8 complaint necessarily relies on them, and matters of public record. *Lee v. City of Los Angeles*,
9 250 F.3d 668, 688–89 (9th Cir. 2001).

10 **III. Analysis**

11 *a. State Defendants’ Motion to Dismiss*

12 *i. First Cause of Action: Violation of 42 U.S.C. § 1983*

13 To bring a claim under § 1983, a plaintiff must show “a person acting under color of state
14 law . . . [engaged in] conduct [that] deprived the [plaintiff] of some right, privilege, or immunity
15 protected by the Constitution or laws of the United States.” *Leer v. Murphy*, 844 F.2d 628, 632–
16 33 (9th Cir. 1988); *see also Thornton v. City of St. Helena*, 425 F.3d 1158, 1164 (9th Cir. 2005);
17 *Redman v. Cnty. of San Diego*, 942 F.2d 1435, 1439 (9th Cir.1991). The statute does not serve as
18 an independent source of substantive rights, rather it provides “a method for vindicating federal
19 rights elsewhere conferred.” *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979); *see also Tatum v.*
20 *Moody*, 768 F.3d 806, 814 (9th Cir. 2014).

21 The state defendants argue plaintiff has failed to plead any nonconclusory facts which, if
22 proven, would show that they denied decedent a constitutional right, privilege, or immunity. In
23 response, plaintiff contends that her complaint adequately pleads two constitutional harms: (1)
24 White was deliberately indifferent to decedent’s serious medical needs while decedent was held
25 in custody as a pretrial detainee, and (2) White violated decedent’s constitutional right to be free
26 from incarceration and to timely receive restorative treatment.

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1 commitment order issued pursuant to California Penal Code § 1370 triggered a duty on the part of
2 the state defendants to provide decedent with appropriate medical care. But neither Ninth Circuit
3 case law nor the plain language of § 1370—which doesn’t even support the existence of a
4 custodial relationship between a state hospital and a pretrial detainee upon issuance of a
5 commitment order—warrant such an expansion. *See* Cal. Penal Code § 1370(a)(1)(B)(i) (“the
6 court shall order that the mentally incompetent defendant *be delivered by the sheriff* to a state
7 hospital for the care and treatment of the mentally disordered”) (emphasis added).

8 Accordingly, the state defendants’ motion to dismiss plaintiff’s deliberate indifference
9 claim will be granted. However, plaintiff will be granted leave to amend in order to attempt to
10 cure this deficiency.

11 *2. The State Defendants Did Not Owe Decedent a Duty to Provide*
12 *Him With Timely Restorative Treatment*

13 Plaintiff also alleges the state defendants violated decedent’s substantive due process
14 rights by failing to provide him with timely restorative treatment. Plaintiff relies primarily on the
15 decision in *Oregon Advocacy Center v. Mink*, 322 F.3d 1101 (9th Cir. 2003), in advancing this
16 claim. In *Mink*, an advocacy group representing the rights of mentally ill individuals sued the
17 Oregon State Hospital—the state mental hospital charged with evaluating and treating mentally
18 incapacitated defendants—and its administrators, alleging undue delays in admitting detained
19 defendants amounted to a deprivation of substantive due process rights. *Id.* at 1105–07. The
20 district court held months-long admittance delays resulted in mentally ill detainees being denied
21 their right to timely restorative treatment, and issued an injunction ordering all such individuals to
22 be admitted to the state hospital within seven days of their being certified as incompetent to stand
23 trial. *Id.* at 1119. On appeal, the Ninth Circuit affirmed the injunction.

24 The Ninth Circuit’s holding in *Mink* establishes that “[incapacitated criminal defendants]
25 have a liberty interest in receiving restorative treatment,” and that a defendant is deprived of this
26 liberty interest when *admittance* to a treatment facility is unreasonable delayed. *Id.* at 1121.
27 However, in the complaint plaintiff has failed to allege facts showing the state defendants actively
28 denied decedent’s admission to NSH. The only nonconclusory allegations contained in plaintiff’s

1 complaint posit that the state defendants processed decedent’s paperwork and authorized his
2 admission to NSH by October 31, 2014. Thus, it appears from the allegations of the complaint
3 that it was not a failure to admit that denied decedent the restorative treatment he was owed, but
4 rather, a failure to transfer. (Compl. at ¶ 74.) Plaintiff has not brought to the court’s attention any
5 law—nor has the court found any in its own research—suggesting that, in California, a state
6 mental hospital has an affirmative duty to guarantee the timely transfer of a pretrial detainee
7 deemed incompetent to stand trial to its facility. Nor has plaintiff pled any facts showing that the
8 state defendants assumed such a duty. Accordingly, the state defendants’ motion to dismiss will
9 be granted in this regard as well. However, the court will grant plaintiff leave to amend.

10 Furthermore, because both of plaintiff’s underlying §1983 claims are dismissed, defendant
11 Matteucci cannot be held liable under a theory of supervisory liability. *See Hansen v. Black*, 885
12 F.2d 642, 646 (9th Cir. 1989) (“A supervisor may be liable if there exists either (1) his or her
13 personal involvement in the constitutional deprivation, or (2) a sufficient casual connection
14 between the supervisor’s wrongful conduct and the constitutional violation.”). Nonetheless,
15 plaintiff is granted leave to amend as to this claim as well in order to attempt to cure this
16 deficiency.

17 *ii. Fourth Cause of Action: Violation of ADA and Rehabilitation Act*

18 Title II of the ADA prohibits public entities from both discriminating against qualified
19 individuals with a disability and from excluding such individuals from benefiting from or
20 participating in a public program because of their disability. 42 U.S.C. § 12132. Section 504 of
21 the Rehabilitation Act (RA) extends these protections to “any program or activity receiving
22 Federal financial assistance.” 29 U.S.C. § 794.

23 “To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a
24 qualified individual with a disability; (2) [he] was excluded from participation in or otherwise
25 discriminated against with regard to a public entity’s services, programs, or activities; and (3)
26 such exclusion or discrimination was by reason of [his] disability.” *Lovell v. Chandler*, 303 F.3d
27 1039, 1052 (9th Cir. 2002). “To establish a violation of § 504 of the RA, a plaintiff must show
28 that (1) [he] is handicapped within the meaning of the RA; (2) [he] is otherwise qualified for the

1 benefit or services sought; (3) [he] was denied the benefit or services solely by reason of [his]
2 handicap; and (4) the program providing the benefit or services receives federal financial
3 assistance.” *Id.*

4 Defendant NSH does not challenge that it—as a state run mental health hospital—or
5 decedent—as an individual suffering from psychosis—fall within the purview of the ADA or RA.
6 Rather, defendant NSH contends that plaintiff has failed to plead facts showing it failed to
7 provide, or discriminated in the provision of, treatment to decedent because of his disability. The
8 court finds this argument to be persuasive.

9 First, as discussed above, it has not been alleged that the state defendants acted in any
10 affirmative manner to deny medical treatment to decedent. Rather, as plaintiff indicates in the
11 allegations of her complaint, decedent’s lack of treatment by the state facilities was not due to a
12 denial of his admittance for treatment but a failure to transfer him to NSH. (Compl. at ¶ 74.)
13 There are no facts alleged in the complaint before the court showing the state defendants are
14 responsible for the apparent transfer debacle. Rather, based on California case law and the order
15 issued by the Merced County Superior Court, it appears the county defendants were responsible
16 for ensuring the timely transfer of decedent to the state facility. *See* Cal. Pen. Code §
17 1370(a)(1)(B)(i); (Doc. No. 1-1 at 3) (“It is further ordered and decreed that the Sheriff of Merced
18 County take, convey and deliver [decedent] to the custody of Napa State Hospital . . .”).

19 Accordingly, plaintiff’s fourth cause of action against the state defendants will also be
20 dismissed with leave to amend.

21 *iii. Fifth Cause of Action: Violation of California Government Code § 845.6*

22 California Government Code § 845.6 provides, in relevant part:

23 Neither a public entity nor a public employee is liable for injury
24 proximately caused by the failure of the employee to furnish or
25 obtain medical care for a prisoner in his custody; but, . . . a public
26 employee . . . is liable if the employee knows or has reason to know
that the prisoner is in need of immediate medical care and he fails
to take reasonable action to summon such medical care.

27 The plain language of § 845.6 requires a prisoner or detainee to be in the custody of a public
28 entity or employee before a duty to summon immediate medical care arises. Because it is not

1 alleged that the state defendants ever took custody of decedent, they cannot face § 845.6 liability.
2 Plaintiff's fifth cause of action as to the state defendants will also be dismissed with leave to
3 amend.

4 *b. County Defendants' Motion to Dismiss*

5 *i. Injunctive Relief*

6 The county defendants challenge plaintiff's standing to seek injunctive relief. A plaintiff
7 who seeks "to invoke the jurisdiction of the federal courts must satisfy the threshold requirement
8 imposed by Article III of the Constitution by alleging an actual case or controversy." *City of Los*
9 *Angeles v. Lyons*, 461 U.S. 95, 101 (1983); *see also City of Oakland v. Lynch*, 798 F.3d 1159,
10 1163 (9th Cir. 2015). This requires demonstrating an injury-in-fact traceable to the acts of the
11 defendant and capable of being redressed through a favorable decision. *Chapman v. Pier 1*
12 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (citing *Fortyune v. American Multi-*
13 *Cinema, Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004)). Furthermore, to establish standing to seek
14 injunctive relief, a plaintiff must show "a sufficient likelihood that [he or she] will again be
15 wronged in a similar way[.]" *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir.
16 2007) (en banc) (quoting *Lyons*, 461 U.S. at 101).

17 Here, the county defendants argue plaintiff is incapable of alleging facts showing she or
18 any member of her family is suffering an immediate and actual threat of future harm as a result of
19 the county defendants' challenged practices. Plaintiff counters with two arguments. First, she
20 argues injunctive relief has been deemed appropriate where defendants have engaged in a pattern
21 of unlawful conduct. Second, she argues that dismissal at this point would be premature because
22 she has not been permitted to conduct discovery with respect to this issue.

23 Plaintiff's arguments are unpersuasive. The court does not doubt injunctive relief is an
24 appropriate remedy for halting a pattern or practice of injurious behavior. But to satisfy Article
25 III standing, a plaintiff must allege facts showing that the sought after injunctive relief targets a
26 pattern or practice presenting a "real and immediate" threat of future injury. *Lyons*, 461 U.S. at
27 103; *see also O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). Past wrongs do not by themselves
28 amount to real and immediate threats of injury. *See San Diego Cnty. Gun Rights Comm. v. Reno*,

1 98 F.3d 1121, 1126 (9th Cir. 1996); *see also O'Shea*, 414 U.S. at 495–96 (“Past exposure to
2 illegal conduct does not in itself show a present case or controversy regarding injunctive relief ...
3 if unaccompanied by any continuing, present adverse effect.”). Because decedent has
4 unfortunately passed away, he is incapable of suffering future injuries of the type alleged here.
5 Furthermore, plaintiff “does not seek to represent a class of . . . individuals [similarly situated to
6 decedent], and [her] complaint contains no factual allegations showing that [defendants] had
7 previously subjected [her] to unlawful conduct.” *Bass v. City of Fremont*, No. C12-4945 TEH,
8 2013 WL 891090, at *8 (N.D. Cal. Mar. 8, 2013); *cf. Rodriquez v. California Highway Patrol*, 89
9 F. Supp. 2d 1131, 1135–36 (N.D. Cal. 2000) (allowing for associational standing).

10 For these reasons, plaintiff’s claim for injunctive relief against the county defendants will
11 be dismissed without leave to amend granted at this time.

12 *ii. Claims Against Defendant Cavallero In His Official Capacity*

13 The parties dispute whether plaintiff can sue both the County and defendant Cavallero in
14 his official capacity. The court concludes that plaintiff cannot do so.

15 “[L]ocal government officials sued in their official capacities are ‘persons’ under § 1983
16 in those cases in which . . . a local government would be suable in its own name.” *Monell v.*
17 *Dep’t of Soc. Serv. of New York*, 436 U.S. 658, 690 n.55 (1978). Thus, “[a]n official capacity suit
18 against a municipal officer is equivalent to a suit against the entity[,]” and naming both in a
19 complaint creates a redundancy. *Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cty. Sheriff*
20 *Dep’t*, 533 F.3d 780, 799 (9th Cir. 2008) (citing *Kentucky v. Graham*, 473 U.S. 159, 165–66
21 (1985)). “For this reason, when both an officer and the local government entity are named in a
22 lawsuit and the officer is named in official capacity only, the officer is a redundant defendant and
23 may be dismissed.” *Megargee v. Wittman*, 550 F. Supp. 2d 1190, 1206 (E.D. Cal. 2008) (quoting
24 *Luke v. Abbott*, 954 F. Supp. 202, 203 (C.D. Cal. 1997) (citation omitted)); *see also Ctr. for Bio-*
25 *Ethical Reform, Inc.*, 533 F.3d at 799; *Santana v. County of Yuba*, No. 2:15-cv-00794 KJM –
26 EFB, 2016 WL 1268107, at *12 (E.D. Cal. Mar. 31, 2016).

27 Plaintiff’s contention to otherwise must be rejected. Nonetheless, defendant Cavallero is
28 not dismissed from this action because plaintiff may still pursue her claims against him in his

1 individual capacity. See *Santana*, 2016 WL 1268107, at *15 (arriving at same conclusion);
2 *Rendon v. City of Fresno*, No. 1:06-cv-01851, 2007 WL 2302340, at *6 (E.D. Cal. Aug. 8, 2007)
3 (same).

4 *iii. Third Cause of Action: California's Bane Act, Cal. Civ. Code § 52.1*

5 The county defendants argue plaintiff's Bane Act claim must be dismissed because her
6 complaint is devoid of any factual allegation of threats, intimidation, or coercion levied at
7 decedent.

8 The Bane Act provides a cause of action for interference "by threats, intimidation, or
9 coercion" or attempted interference "with the exercise or enjoyment by any individual or
10 individuals of rights secured by the Constitution or laws of the United States, or of the rights
11 secured by the Constitution or laws of [California]." Cal. Civ. Code § 52.1(a); *Venegas v. Cty. of*
12 *Los Angeles*, 32 Cal. 4th 820, 843 (2004). The Bane Act "does not extend to all ordinary tort
13 actions because its provisions are limited to threats, intimidation, or coercion that interferes with a
14 constitutional or statutory right." *Venegas*, 32 Cal. 4th at 843. Thus, where the interference with
15 a constitutional right is the result of a defendant's mere negligence, as opposed to "deliberate or
16 spiteful" conduct, a plaintiff cannot claim violation of § 52.1. *Shoyoye v. Cty. of Los Angeles*,
17 203 Cal. App. 4th 947, 957–59 (2012).

18 For certain constitutional violations, a plaintiff does not need to make independent
19 allegations concerning the defendant's coercive or threatening conduct in order to bring a § 52.1
20 claim. For example, "[w]here Fourth Amendment unreasonable seizure or excessive force claims
21 are raised and intentional conduct is at issue, there is no need for a plaintiff to allege a showing of
22 coercion independent from the coercion inherent in the seizure or use of force." *Johnson v.*
23 *Shasta Cty.*, 83 F. Supp. 3d 918, 934 (E.D. Cal. 2015) (quoting *Dillman v. Tuolumne Cty.*, No.
24 13-00404, 2013 WL 1907379, at *21 (E.D. Cal. May 7, 2013)). However, district courts in
25 California have yet to reach a consensus as to whether a plaintiff, when bringing Bane Act claim
26 for deliberate indifference to serious medical needs, must plead threats and coercion independent
27 of the constitutional violation. Compare *M.H. v. Cty. of Alameda*, 90 F. Supp. 3d 889, 899 (N.D.
28 Cal. 2013) ("Because deliberate indifference claims necessarily require more than 'mere

1 negligence,’ a prisoner who successfully proves that prison officials acted or failed to act with
2 deliberate indifference to his medical needs . . . adequately states a claim for relief under the Bane
3 Act.”) with *Moreno v. Los Angeles Cty. Sheriff’s Dep’t*, No. 2:13-cv-07570-CAS(MANx), 2015
4 WL 4652637, at *18 (C.D. Cal. Aug. 3, 2015) (granting county’s motion for summary judgment
5 because “plaintiffs ha[d] not proffered evidence creating a triable issue of fact as to the existence
6 of threats, intimidation, or coercion by defendants in connection with the alleged deprivation of
7 [the] decedent’s right to medical care . . .”).

8 The court finds the reasoning of the decision in *M.H.* to be more persuasive, adopts that
9 analysis and finds that threats, coercion, and intimidation are inherent in a deliberate indifference
10 claim. See *Martinez v. County of Sonoma*, Case No. 15-cv-01953-JST, 2015 WL 5354071, at * 9
11 (N.D. Cal. Sept. 14, 2015); *D.V. v. City of Sunnyvale*, 65 F.Supp.3d 782, 789 (N.D. Cal. 2014)
12 (“This court therefore follows the substantial and growing authority that restricts *Shoyoye* to cases
13 where the defendant’s actions were negligent [and holds that] Section 52.1 does not require
14 threats, coercion, or intimidation independent from the threats, coercion, or intimidation inherent
15 in the alleged constitutional or statutory violation.”). The court premises this conclusion on the
16 fact that “[m]ere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support” a claim
17 for deliberate indifference. *Lemire v. California Dep’t of Corrections and Rehabilitation*, 726
18 F.3d 1062, 1082 (9th Cir. 2013). Rather, a plaintiff must allege and show “a purposeful act or
19 failure to respond to a prisoner’s pain or possible medical need” *Jett*, 439 F.3d at 1096.
20 This conscious disregard of a plaintiff’s suffering due to an untreated medical condition extends a
21 deliberate indifference claim “far beyond [an] ordinary tort claim[].” *Venegas*, 32 Cal. 4th at
22 843. Furthermore, because a plaintiff alleging a Bane Act violation based upon deliberate
23 indifference is required to allege and show affirmatively culpable conduct on the part of prison
24 officials, such a plaintiff does not rely solely on the inherently coercive nature of detention in
25 establishing his claim. Cf. *Shoyoye*, 203 Cal. App. 4th at 959 (holding “[t]he statute requires a
26 showing of coercion independent from the coercion inherent in . . . wrongful detention itself.”).

27 Ultimately, a plaintiff advancing a Bane Act claim for deliberate indifference to his
28 serious medical needs is doing more than using his status as a prisoner to mutate a tort claim into

1 a constitutional claim; he is alleging prison officials knowingly deprived him of a constitutional
2 right or protection through acts that are inherently coercive and threatening.¹ For these reasons,
3 defendants' motion to dismiss plaintiff's Bane Act claim will be denied

4 *iv. Third, Fifth, Sixth, and Seventh Cause of Action: Failure to Adhere to the*
5 *California Government Claims Act*

6 California's Government Claims Act provides "no suit for money or damages may be
7 brought against a public entity on a cause of action for which a claim is required to be presented
8 . . . until a written claim therefor has been presented to the public entity and has been acted upon
9 by the board[.]" Cal. Gov't Code § 945.4. Such a claim must be filed within six months of the
10 conduct alleged in the cause of action. Cal. Gov't Code § 911.2(a) (citing Cal. Gov't Code §§
11 945.4 & 950.2).

12 The county defendants argue plaintiff failed to timely file an administrative claim with
13 respect to any cause of action accruing prior to December 13, 2014. In support of this argument,
14 the county defendants refer to a letter from the County of Merced's Risk Management Division
15 barring plaintiff from pursuing pre-December 13, 2014 claims against the County. (Doc. No. 45-
16 2 at 2.) They also note that plaintiff did not challenge this letter by filing a written application for
17 leave to present an untimely claim pursuant to California Government Code § 911.4.

18 Nonetheless, plaintiff is not barred from pursuing state law causes of action stemming
19 from decedent's suicide. "Accrual of the cause of action for purposes of the government claims
20 statute is the date of accrual that would pertain under the statute of limitations applicable to a
21 dispute between private litigants." *General Sec. Servs. Corp. v. Cty. of Fresno*, 815 F. Supp. 2d
22 1123, 1132 (E.D. Cal. 2011) (quoting *Shirk v. Vista Unified Sch. Dist.*, 42 Cal. 4th 201, 208–09

23 ¹ Moreover, the court notes that plaintiff's complaint includes allegations that the county
24 defendants intentionally and with deliberate indifference: continued to house the decedent in
25 segregated housing after it was determined that he was mentally ill and was refusing to take his
26 prescribed medications; did not have decedent seen by a psychiatrist after his first suicide attempt
27 while incarcerated or thereafter; never provided a treatment plan for decedent; failed to refer
28 decedent to any state hospital or psychiatric facility and failed to provide decedent with constant
observation but rather left him alone and unsupervised. (Doc. No. 1 at 16-18, 20, 23, 26, 37-38.)
Such allegations go far beyond mere reliance on the inherently coercive nature of detention in
order to state a Bane Act claim.

1 (2007)). Moreover, California recognizes the “continuing violation” doctrine, which “aggregates
2 a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations
3 period as accruing for all of them upon commission or sufferance of the last of them.” *See Aryeh*
4 *v. Canon Business Solutions, Inc.*, 55 Cal.4th 1185, 1192 (2013). Here, all of plaintiff’s state law
5 claims stem from decedent’s suicide which took place on December 15, 2014, a mere two days
6 after the erroneous time barrier imposed according to the Risk Management Division’s letter.

7 Accordingly, the county defendant’s motion to dismiss plaintiff’s third, fifth, sixth and
8 seventh causes of action will be denied.

9 *v. First and Second Causes of Action: Iqbal/Twombly Pleading Standard²*

10 Under Federal Rule of Civil Procedure 8(a)(2), a plaintiff is required to provide “a short
11 and plain statement of the claim showing that the pleader is entitled to relief” in order to “give the
12 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl.*
13 *Corp. v. Twombly*, 550 U.S. 544, 554–55 (2007) (internal quotations and citations omitted). A
14 complaint must contain more than “labels and conclusion, and a formulaic recitation of a cause of
15 action will not do.” *Id.* at 555. The complaint must contain enough facts to “nudge [] [a
16 plaintiff’s] claims across the line from conceivable to plausible[.]” *Id.* at 570. If a complaint
17 “raise[s] a right to relief above the speculative level[.]” it will survive a motion to dismiss.
18 *Occupy Sacramento v. City of Sacramento*, 878 F. Supp. 2d 1110, 1115 (E.D. Cal. 2012).

19 Here, plaintiff alleges both direct and supervisory liability pursuant to § 1983 against
20 defendant Goins. Regarding the direct liability claim, plaintiff alleges Goins acted with deliberate
21 indifference in failing to provide decedent with timely, restorative treatment for a serious medical

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23 ² In the title of Section VIII of their brief in support of their motion to dismiss, the county
24 defendants imply they will argue the County, Cavallero and Goins are entitled to qualified
25 immunity. However, despite using this phrase in the heading, the county defendants do not make
26 any arguments concerning qualified immunity. (County MTD at 11–13.) Thus, for the purposes
27 of this motion, the county defendants’ qualified immunity argument is waived. *See Sahymus v.*
28 *Tulare County*, No. 1:14-cv-01633-MCE-GSA, 2015 WL 3466942, at *14 (E.D. Cal. June 1,
2015) (“Failure to adequately brief an argument amounts to a waiver of that argument.”) (citing
Aramark Facility Servs. v. SEIU Local 1877, 530 F.3d 817, 924 n.2 (9th Cir. 2008)). Rather, the
county defendants appear only to be arguing in this section of their brief that plaintiff’s complaint
fails to satisfy the *Iqbal/Twombly* standard of Federal Rule of Civil Procedure Rule 8.

1 condition. (Compl. at ¶ 115.) A claim of deliberate indifference requires the plaintiff to allege
2 and ultimately show he suffered from a serious medical condition that would result in significant
3 injury—or pain and suffering—if left untreated; that the defendant engaged in a purposeful act or
4 failure to respond to the plaintiff’s pain or possible need; and that the defendant’s indifference
5 resulted in harm. *Jett*, 439 F.3d at 1096. However, plaintiff’s complaint alleges no facts that, if
6 proven, would show Goins engaged in any such conduct. Indeed, Goins is mentioned only twice
7 in the body of plaintiff’s complaint, and in neither instance are any facts alleged which would
8 allow the court to reasonably infer he was directly involved in depriving decedent of his
9 constitutional rights. (*See* Compl. at ¶¶ 15, 102.)

10 Plaintiff’s supervisory liability allegations as to defendant Goins suffer the same
11 deficiency. “A defendant may be held liable as a supervisor under § 1983 ‘if there exists (1) his
12 or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection
13 between the supervisor’s wrongful conduct and the constitutional violation.’” *Starr v. Baca*, 652
14 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)).
15 “The requisite causal connection can be established . . . by setting in motion a series of acts by
16 others, or by knowingly refusing to terminate a series of acts by others, which the supervisor
17 knew or reasonably should have known would cause others to inflict a constitutional injury.” *Id.*
18 at 1207–08 (internal quotation marks and citations omitted). “[W]hen a supervisor is found liable
19 based on deliberate indifference, the supervisor is being held liable for his or her own culpable
20 action or inaction, not held vicariously liable for the culpable action or inaction of his or her
21 subordinates.” *Id.* at 1207.

22 In the complaint plaintiff alleges Goins was responsible for implementing and directing
23 policies that resulted in CMFG and Merced County Jail employees acting with deliberate
24 difference to decedent’s medical needs. However, plaintiff does not allege any facts in the
25 complaint even suggesting that Goins engaged in wrongful conduct. Moreover, the complaint
26 fails to allege any specific policies implemented by Goins that lead to decedent’s death. *Cf.*
27 *Estate of Prasad ex rel. Prasad v. Cty. of Sutter*, 958 F. Supp. 2d 1101, 1113–14 (E.D. Cal. 2013)
28 (supervisory liability established where jail officials implemented dual policies limiting the

1 presence of medical staff to 20 hours a day and prohibiting non-medical staff from obtaining care
2 for inmates, leading to death of inmate). Rather, in the complaint plaintiff appears to rely solely
3 on Goins's position as the commander of the jail in which decedent died in order to attach
4 liability to him. But supervisory liability is distinct from vicarious liability. *Starr*, 652 F.3d at
5 1207. Therefore, plaintiff's second cause of action for supervisory liability against defendant
6 Goins will also be dismissed without prejudice.

7 However, the same is not true for defendant Cavallero. Plaintiff's complaint adequately
8 alleges that defendant Cavallero engaged in supervisory conduct that deprived decedent of a
9 constitutional right by pointing to the transfer order issued by the Merced County Superior Court.
10 The transfer order indicated defendant Cavallero had knowledge of decedent's condition and his
11 need for mental health treatment. Furthermore, plaintiff adequately alleges that defendant
12 Cavallero took no steps, as sheriff, to secure treatment for decedent despite his knowledge of
13 decedent's precarious mental condition. Accordingly, defendant's motion to dismiss the second
14 cause of action as to defendant Cavallero will be denied.

15 *vi. Second Cause of Action: Monell Liability*

16 To state a *Monell* claim against the County, plaintiff "must demonstrate that an 'official
17 policy, custom, or pattern' on the part of [the County] was 'the actionable cause of the claimed
18 injury.'" *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128 (9th Cir. 2012) (quoting *Harper v. City of*
19 *Los Angeles*, 533 F.3d 1010, 1022 (9th Cir. 2008)). A "policy" can be established in one of three
20 ways. *See Clouthier*, 591 F.3d at 1249–50. "First, a local government may be held liable 'when
21 implementation of its official policies or established customs inflicts the constitutional injury.'" *Id.*
22 *at 1249* (quoting *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 708 (1979)
23 (Powell, J. concurring)). Second, a public entity may be held liable for a policy of inaction or
24 omission, such as when a public entity "fail[s] to implement procedural safeguards to prevent
25 constitutional violations" or when it fails to adequately train its employees. *Tsao*, 698 F.3d at
26 1143 (citing *Oviatt v. Pearce*, 954 F.2d 1470, 1477 (9th Cir. 1992)); *see also Clouthier*, 591 F.3d
27 at 1249 (noting that a failure to train claim requires a plaintiff to show that "the need for more or
28 different training [was] so obvious, and the inadequacy so likely to result in the violation of

1 constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately
2 indifferent to the need.”) (quoting *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)). “Third, a
3 local government may be held liable under § 1983 when ‘the individual who committed the
4 constitutional tort was an official with final policy-making authority’ or such an official ‘ratified a
5 subordinate’s unconstitutional decision or action and the basis for it.’” *Clouthier*, 591 F.3d at
6 1250 (quoting *Gillette v. Delmore*, 979 F.2d 1342, 1346–47 (9th Cir. 1992)).

7 The county defendants argue plaintiff’s boilerplate recitations in her complaint fail to
8 adequately allege *Monell* liability under any of the three branches discussed above. The court
9 finds this argument to be persuasive. While “Rule 8 . . . does not require ‘detailed factual
10 allegations,’ . . . it demands more than an unadorned, the defendant-unlawfully-harmed-me
11 accusation.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). In the context of a *Monell*
12 claim, the *Iqbal/Twombly* standard requires a plaintiff to, at a minimum, “identif[y] the
13 challenged policy/custom, explain[] how the policy/custom was deficient, explain[] how the
14 policy/custom caused the plaintiff harm, and reflect[] how the policy/custom amounted to
15 deliberate indifference[.]” *Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1149 (E.D. Cal. 2009).
16 Instructive in this regard is the decision in *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir.
17 2001). There, the Ninth Circuit held a plaintiff had adequately pled an omission-based *Monell*
18 claim against the Los Angeles Police Department by alleging the police routinely misidentified
19 homeless people, the practice resulted in him being extradited to New York where he was
20 imprisoned for two years, and such harm could have easily been avoided by implementing routine
21 identification measures such as fingerprinting. *Id.* at 682.

22 Here, plaintiff argues that in the complaint she has included a litany of policies (and
23 omissions) that harmed decedent. (Opp. at 23–25 (citing Compl. at ¶ 127)). However, a reading
24 of the allegations of plaintiff’s complaint reveals the cited language contains only threadbare
25 recitals of the elements of a *Monell* claim. For example, plaintiff claims the County and CFMG
26 had a policy “to deny inmates at the COUNTY’S jail access to appropriate, competent, and
27 necessary care for serious medical and psychiatric needs[.]” (Compl. at ¶ 127). Another such
28 example is the allegation that decedent was harmed because the county defendants failed to

1 “provide appropriate and adequate medical or mental health care for inmates with serious medical
2 needs.” (*Id.*) Such generic language does not survive an *Iqbal/Twombly* challenge. To conclude
3 otherwise would essentially create *Monell* liability for public entities anytime a public employee’s
4 conduct gave rise to a § 1983 claim. In other words, *Monell* liability would revert to *respondeat*
5 *superior* liability, something expressly rejected by the Supreme Court. *Monell*, 436 U.S. at 691.

6 Plaintiff also claims policy-making officials for the county defendants—specifically
7 defendants Cavallero and Fithian—ratified the acts of their subordinates. But these allegations
8 are also threadbare. For example, plaintiff alleges “that such policymakers ha[d] direct
9 knowledge of the fact that [decedent] was unlawfully denied necessary care for his serious
10 medical needs, and denied timely restorative treatment, among other rights and
11 accommodations,” and “. . . the authorized policymakers . . . have approved of the individually
12 named Defendants’ . . . conduct and decisions in this matter . . . and . . . made a deliberate choice
13 to endorse such conduct and decisions[.]” (Compl. at ¶ 131) Plaintiff also alleges facts indicating
14 that both defendants Cavallero and Fithian had knowledge of decedent’s severe mental illness and
15 need for treatment. (Compl. at ¶¶ 25, 69, 79). However, a policymaker’s “knowledge of an
16 unconstitutional act does not, by itself, constitute ratification.” *Weisbuch v. Cty. of Los Angeles*,
17 119 F.3d 778, 781 (9th Cir. 1997). Also, “a policymaker’s mere refusal to overrule a
18 subordinate’s completed act does not constitute approval.” *Christie v. Iopa*, 176 F.3d 1231, 1239
19 (9th Cir. 1999). Rather, “[t]he policymaker must have knowledge of the constitutional violation
20 and must make a ‘conscious, affirmative choice’ to ratify the conduct at issue.” *Garcia v. City of*
21 *Imperial*, No. 08CV2357 BTM(PCL), 2010 WL 3911457, at *1 (S.D. Cal. Oct. 4, 2010) (citing
22 *Lytle v. Carl*, 382 F.3d 978, 987 (9th Cir. 2004)). For example, ratification can be shown by a
23 superior officer’s decision to exculpate alleged misconduct based on the findings of a noticeably
24 flawed investigation. *Larez v. City of Los Angeles*, 946 F.2d 630, 647 (9th Cir. 1991).

25 Here, plaintiff’s complaint provides nothing more than conclusory allegations that
26 defendants Cavallero and Fithian ratified the unconstitutional conduct of their subordinates. That
27 is not sufficient. Accordingly, plaintiff’s *Monell* claim against the county defendants will be
28 dismissed with leave to amend granted.

1 **IV. Amendment**

2 With respect to any amended complaint plaintiff elects to file in an attempt to cure the
3 deficiencies noted above, she is reminded of the following. Local Rule 220 requires that an
4 amended complaint be complete in itself without reference to any prior pleading. This is because,
5 as a general rule, an amended complaint supersedes the original complaint. *See Loux v. Rhay*,
6 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading
7 no longer serves any function in the case. Therefore, in any amended complaint plaintiff elects to
8 file, as in an original complaint, each claim and the involvement of each defendant must be
9 sufficiently alleged. The court will order that any amended complaint be filed within 21 days of
10 the date of the service of this order.

11 **V. Conclusion**

12 For the reasons stated above reasons:

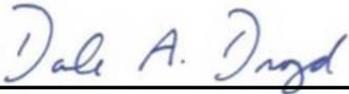
- 13 1. The state defendants' motion to dismiss (Doc. No. 49) is granted; and
 - 14 a. plaintiff's first cause of action for violation of 42 U.S.C. § 1983 against defendant
15 White is dismissed with leave to amend;
 - 16 b. plaintiff's second cause of action based upon supervisory liability for violation of
17 42 U.S.C. § 1983 against defendant Matteucci is dismissed with leave to amend;
 - 18 c. plaintiff's fourth cause of action for violation of the ADA and the RA against
19 defendant NSH is dismissed with leave to amend;
 - 20 d. plaintiff's fifth cause of action for violation of California Government Code
21 § 845.6 against defendants NSH and White is dismissed with leave to amend;
- 22 2. The county defendants' motion to dismiss (Doc. No. 45) is granted in part; and
 - 23 a. plaintiff's prayer for relief for injunction relief is dismissed without leave to
24 amend.
 - 25 b. plaintiff's claims against defendant Cavallero in his official capacity only are
26 dismissed without leave to amend;
 - 27 c. plaintiff's second cause of action for supervisory liability against defendant Goins
28 is dismissed with leave to amend;

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- d. plaintiff's second cause of action for *Monell* liability against the county defendants is dismissed with leave to amend; and
- e. the county defendants' motion to dismiss is denied in all other respects.

IT IS SO ORDERED.

Dated: September 15, 2016



UNITED STATES DISTRICT JUDGE