

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
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF RODNEY LOUIS BOCK,
deceased, by and through
CYNDIE DENNY BOCK, as
Administrator; KIMBERLY BOCK;
KELLIE BOCK; HILLARY BOCK;
M.B., minor through her mother
and guardian ad litem Cyndie
Denny Bock; LAURA LYNN BOCK;
and ROBERT BOCK,

No. 2:11-cv-00536-MCE-GGH

Plaintiffs,

v.

MEMORANDUM AND ORDER

COUNTY OF SUTTER; COUNTY OF
YUBA; J. PAUL PARKER, Sutter
County Sheriff's Department
Sheriff; TOM SHERRY, Director
of Human Services of Sutter
and Yuba Counties; AMERJIT
BHATTAL, Assistant Director of
Human Services-Mental Health
of Sutter and Yuba Counties;
JOHN S. ZIL; CHRISTOPHER
BARNETT; SADOUTOUNNISSA MEER;
and Does I through XL,
inclusive,

Defendants.

-----oo0oo-----

///
///
///
///

1 This action for damages was initiated by the estate and
2 surviving family members of Rodney Louis Bock ("Decedent").
3 Plaintiffs Estate of Rodney Louis Bock, by and through Cyndie
4 Denny Bock, as administrator, Kimberly Bock, Kelly Bock, Hillary
5 Bock, M.B., a minor through her guardian ad litem Cyndie Denny
6 Bock, Laura Lynn Bock, and Robert Bock (collectively
7 "Plaintiffs") seek to recover from Defendants County of Sutter;
8 County of Yuba; J. Paul Parker, Sutter County Sheriff; Tom
9 Sherry, Director of Human Services of Sutter and Yuba Counties;
10 Amerjit Bhattal, Assistant Director of Human Services-Health
11 Division of Sutter and Yuba Counties; Brad Luz, Assistant
12 Director of Human Services-Mental Health of Sutter and Yuba
13 Counties; John S. Zil; Christopher Barnett; and Sadoutounnissa
14 Meer (collectively "Defendants") for injuries sustained as a
15 result of Decedent's suicide while incarcerated at Sutter County
16 Jail ("Jail"). Presently before the Court is Defendants' Motion
17 to Dismiss Plaintiffs' First Amended Complaint. For the
18 following reasons, Defendants' Motion is GRANTED.¹

19
20 **BACKGROUND²**

21
22 Decedent was a self-employed farmer in Marysville, California,
23 for over 30 years. In late 2009, he began experiencing mental
24 health issues and required psychiatric treatment.

25
26 ¹ Because oral argument will not be of material assistance, the
27 Court ordered this matter submitted on the briefs. E.D. Cal.
Local Rule 230(g).

28 ² The following facts are derived from Plaintiffs' First Amended
Complaint ("FAC").

1 On several occasions from 2009 through 2010, Decedent was
2 involuntarily hospitalized pursuant to California Welfare &
3 Institutions Code § 5150 at the Sutter-Yuba Mental Health
4 Services facility ("SYMHS"),³ which was operated and managed by
5 Defendants County of Sutter and County of Yuba.

6 SYMHS provides a variety of mental health care services to
7 adults residing in Sutter and Yuba counties and to inmates of the
8 Jail. Because SYMHS has only roughly sixteen inpatient beds,
9 nine to eleven of which are typically filled at any one time,
10 Plaintiffs believe SYMHS staff members personally know, or should
11 know, all patients.

12 Decedent was first hospitalized at SYMHS on approximately
13 November 30, 2009. During that time, he was documented as
14 psychotic, delusional and grandiose. Defendant Barnett and other
15 staff evaluated and treated Decedent and diagnosed him with,
16 among other things, "Bipolar I Disorder, Most Recent Episode
17 Manic, Severe with Psychotic Features."

18 On various occasions, Decedent did indeed exhibit delusional
19 and paranoid behavior, and, eventually, on or around January 14,
20 2010, Decedent entered a restaurant with a gun and began making
21 erratic statements. As a result of that incident, Decedent was
22 arrested, criminal charges were filed against him, and he was
23 taken to the Jail.

24 ///

25 ///

27 ³ On two occasions, Decedent was involuntarily held for
28 additional periods pursuant to California Welfare & Institutions
Code § 5250.

1 According to Plaintiffs, the Jail has the capacity to house
2 approximately two-hundred prisoners, and, given its relatively
3 small size, Jail staff and supervisors must therefore have, or
4 reasonably should have, personal knowledge of all prisoners,
5 especially those exhibiting psychotic behaviors.

6 On January 15, 2010, while still housed at the Jail,
7 Decedent was referred to SYMHS for a psychiatric evaluation, at
8 which time SYMHS staff again documented his psychiatric history,
9 which included his history of delusions. In addition, later in
10 January, after Decedent had been released from the Jail, he was
11 again treated at SYMHS, pursuant to one of the above-mentioned
12 involuntary holds, by Defendants Barnett and Meer and other
13 staff, some of whom confirmed Decedent's serious psychiatric
14 diagnoses and recommended 15-minute safety checks and daily
15 treatment.

16 Subsequently, on or around January 27, 2010, the Sutter
17 County Superior Court judge presiding over Decedent's then-
18 pending criminal case ordered Decedent to undergo a separate
19 psychological evaluation to determine whether he was competent to
20 stand trial. The physician conducting that evaluation concluded
21 that Decedent's highly unstable psychiatric condition rendered
22 him incompetent to be tried.

23 Approximately one month later, on March 1, 2010, another
24 Sutter County Superior Court judge ordered a placement evaluation
25 of Decedent. A different physician than the one who evaluated
26 Decedent's competency confirmed Decedent's psychiatric history
27 and recommended that Decedent receive outpatient treatment.

28 ///

1 Later, on March 25, 2010, Decedent attended a psychiatric
2 appointment with Defendant Meer, who documented that Decedent
3 remained delusional.

4 Sometime after this last appointment, Decedent, who still
5 continued to experience paranoia and delusions, began to believe
6 he was being "direct[ed]" to drive to his nephew's home in Idaho.
7 Decedent eventually followed that "direction" but was returned to
8 California by his nephew. In the meantime, however, Decedent had
9 missed a court date and, as a result, a warrant had been issued
10 for his arrest.

11 Upon his return to California, Decedent was again taken to
12 SYMHS for evaluation and treatment. SYMHS staff confirmed
13 Decedent's prior diagnosis of Bipolar I Disorder, Manic with
14 Severe Psychotic Features, and identified his need for inpatient
15 hospitalization or "state hospital placement." Defendant Barnett
16 also documented that Decedent was sharing delusions of "end
17 times."

18 Notwithstanding these observations, on April 2, Defendants
19 discharged and transferred Decedent, pursuant to the pending
20 warrant, to the custody of Sutter County Sheriff's Department,
21 and he was again placed at the Jail. According to Plaintiffs,
22 Defendants transferred Decedent to the Jail in contravention of
23 California Welfare & Institutions Code § 5152(a) and despite
24 their knowledge of Decedent's urgent need for inpatient care.
25 Plaintiffs also generally allege that, at the time of Decedent's
26 discharge, Defendant Barnett and SYMHS staff provided a wholly
27 inadequate treatment plan for Decedent.

28 ///

1 Plaintiffs nonetheless further aver that, on the day of
2 Decedent's transfer, Defendant Zil advised a Jail nurse that
3 Decedent was to continue taking his current medications. Two
4 days later, SYMHS and/or Sutter County Sheriff's Department staff
5 documented Decedent's "continued delusions" and need for further
6 psychiatric review, and, on April 8, Defendant Zil personally met
7 with Decedent.

8 Also at around this same time, the physician who had
9 conducted Decedent's original court-ordered placement evaluation
10 sent a letter to the court retracting his outpatient treatment
11 recommendation. Shortly thereafter, on April 19, the judge who
12 had ordered Decedent's placement evaluation found Decedent
13 incompetent to stand trial, suspended all pending proceedings,
14 and ordered that Decedent be transferred to Napa State Hospital
15 for treatment. Defendant Parker, who as Sheriff was under a
16 statutory duty to ensure Decedent was transferred in accordance
17 with the Court's order, and all other Defendants, nonetheless
18 failed to transfer Decedent in accordance with that order.

19 By April 24, Decedent was unstable and unkempt, was talking
20 to himself and to inanimate objects and was refusing his
21 medication. According to Plaintiffs, no further evaluation of
22 Decedent was conducted, however, nor was any further treatment
23 undertaken. To the contrary, Defendant Meer, who was scheduled
24 to follow up with Decedent on April 28, failed to attend that
25 appointment.

26 ///

27 ///

28 ///

1 Plaintiffs thus allege Defendants failed to appropriately
2 assess and medicate Decedent upon his incarceration at the Jail.
3 More specifically, Plaintiffs allege Defendants failed to
4 appropriately assess Decedent's suicide risk. Consequently, on
5 April 29, using items that Plaintiffs allege should not have been
6 permitted in Decedent's cell due to his psychiatric condition,
7 Decedent fashioned a noose and hanged himself from the upper
8 bunk. When he was found, there were large amounts of blood
9 covering the cell floor and walls, apparently a result of
10 Decedent banging his head against the wall in a very violent
11 manner. Decedent died in his cell.

12 By this suit, Plaintiffs now assert eleven causes of action
13 against Defendants arising out of Decedent's death. Defendants
14 moved to dismiss each claim and to strike Plaintiffs' request for
15 punitive damages. For the following reasons, Defendants' Motion
16 to Dismiss is GRANTED and Defendants' request to strike
17 Plaintiffs' prayer for punitive damages is DENIED as moot.

18

19 **STANDARD**

20

21 Pursuant to Federal Rule of Civil Procedure 12(b)(6),⁴ all
22 allegations of material fact must be accepted as true and
23 construed in the light most favorable to the nonmoving party.
24 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir.
25 1996).

26 ///

27

28 ⁴ All further references to "Rule" or "Rules" are to the Federal
Rules of Civil Procedure unless otherwise noted.

1 Rule 8(a)(2) "requires only 'a short and plain statement of the
2 claim showing that the pleader is entitled to relief,' in order
3 to 'give the defendant fair notice of what the [...] claim is and
4 the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*,
5 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41,
6 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to
7 dismiss does not require detailed factual allegations. However,
8 "a plaintiff's obligation to provide the grounds of his
9 entitlement to relief requires more than labels and conclusions,
10 and a formulaic recitation of the elements of a cause of action
11 will not do." *Id.* (internal citations and quotations omitted).
12 A court is not required to accept as true a "legal conclusion
13 couched as a factual allegation." *Ashcroft v. Iqbal*, 556 U.S.
14 662, ___, 129 S. Ct. 1937, 1950 (2009) (quoting *Twombly*, 550 U.S.
15 at 555). "Factual allegations must be enough to raise a right to
16 relief above the speculative level." *Twombly*, 550 U.S. at 555
17 (citing 5 Charles Alan Wright & Arthur R. Miller, *Federal*
18 *Practice and Procedure* § 1216 (3d ed. 2004) (stating that the
19 pleading must contain something more than "a statement of facts
20 that merely creates a suspicion [of] a legally cognizable right
21 of action.")).

22 Furthermore, "Rule 8(a)(2)... requires a 'showing,' rather
23 than a blanket assertion, of entitlement to relief." *Twombly*,
24 550 U.S. at 556 n.3 (internal citations and quotations omitted).
25 Thus, "[w]ithout some factual allegation in the complaint, it is
26 hard to see how a claimant could satisfy the requirements of
27 providing not only 'fair notice' of the nature of the claim, but
28 also 'grounds' on which the claim rests."

1 Id. (citing 5 Charles Alan Wright & Arthur R. Miller, *supra*, at
2 § 1202). A pleading must contain "only enough facts to state a
3 claim to relief that is plausible on its face." Id. at 570. If
4 the "plaintiffs ... have not nudged their claims across the line
5 from conceivable to plausible, their complaint must be
6 dismissed." Id. However, "[a] well-pleaded complaint may
7 proceed even if it strikes a savvy judge that actual proof of
8 those facts is improbable, and 'that a recovery is very remote
9 and unlikely.'" Id. at 556 (quoting *Scheuer v. Rhodes*, 416 U.S.
10 232, 236 (1974)).

11 A court granting a motion to dismiss a complaint must then
12 decide whether to grant leave to amend. Leave to amend should be
13 "freely given" where there is no "undue delay, bad faith or
14 dilatory motive on the part of the movant, ... undue prejudice to
15 the opposing party by virtue of allowance of the amendment, [or]
16 futility of the amendment" *Foman v. Davis*, 371 U.S. 178,
17 182 (1962); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,
18 1052 (9th Cir. 2003) (listing the *Foman* factors as those to be
19 considered when deciding whether to grant leave to amend). Not
20 all of these factors merit equal weight. Rather, "the
21 consideration of prejudice to the opposing party ... carries the
22 greatest weight." *Eminence Capital*, 316 F.3d at 1052 (citing *DCD*
23 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 185 (9th Cir. 1987)).
24 Dismissal without leave to amend is proper only if it is clear
25 that "the complaint could not be saved by any amendment."
26 *Intri-Plex Techs. v. Crest Group, Inc.*, 499 F.3d 1048, 1056
27 (9th Cir. 2007) (internal citations and quotations omitted).
28 ///

1 **ANALYSIS**
2

3 At the outset, the Court notes that Plaintiffs seek relief
4 for the events that transpired from April 1 to April 29, 2010.
5 See Plaintiffs' Opposition to Defendants' Motion to Dismiss
6 ("Plt. Opp.") (ECF No. 16) at pg. 1. In viewing the facts in the
7 light most favorable to the non-moving party, however, Decedent's
8 treatment at SYMHS prior to April 1, 2010, as well as other
9 events leading up his detention in April 2010, are relevant to
10 Plaintiffs' claims and will be considered herein.

11 **A. Plaintiffs' First Through Third Causes of Action for**
12 **Deliberate Indifference to Decedent's Serious Medical**
13 **Needs.**

14 In their first through third causes of action, Plaintiffs
15 seek relief under the Fourteenth Amendment for Defendants'
16 alleged deliberate indifference to Decedent's serious medical
17 needs. The first cause of action is directed at all Defendants,
18 while the second and third causes of action are asserted against
19 the municipal and supervisory defendants, respectively. The
20 Court now addresses Plaintiffs' claims by category of Defendant.

21
22 **1. Plaintiffs' First Cause of Action Alleged Against**
23 **the Individual Defendants.**

24 According to Plaintiffs, Defendants Zil, Barnett, and Meer
25 "knew there was a strong likelihood that [Decedent] was in danger
26 of serious personal harm...", and their failure to provide mental
27 health care to him thus constituted deliberate indifference in
28 violation of the Fourteenth Amendment.

1 Defendants argue that Plaintiffs failed to plead facts sufficient
2 to demonstrate Defendants Zil, Barnett and Meer's actions
3 violated Decedent's constitutional rights.

4 As opposed to prisoner claims under the Eighth Amendment, a
5 pretrial detainee is entitled to be free of cruel and unusual
6 punishment under the due process clause of the Fourteenth
7 Amendment. Bell v. Wolfish, 441 U.S. 520, 537 n.16 (1979);
8 Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017-18 (9th Cir.
9 2010). A pretrial detainee's due process right in this regard is
10 violated when a defendant fails to promptly and reasonably
11 procure competent medical aid when the pretrial detainee suffers
12 a serious illness or injury while confined. Estelle v. Gamble,
13 429 U.S. 97, 104-05 (1976). In order to establish a plausible
14 claim for failure to provide medical treatment, a plaintiff must
15 plead sufficient facts to permit the Court to infer that:

16 (1) Decedent had a "serious medical need"; and (2) a Defendant
17 was "deliberately indifferent" to that need. Jett v. Penner,
18 439 F.3d 1091, 1096 (9th Cir. 2006); cf. Farmer v. Brennan,
19 511 U.S. 825, 834 (1994). A serious medical need exists when
20 "failure to treat a prisoner's condition could result in further
21 significant injury or the unnecessary and wanton infliction of
22 pain." Jett, 439 F.3d at 1096 (internal citations and quotations
23 omitted).

24 ///

25 ///

26 ///

27 ///

28 ///

1 The Supreme Court, in Farmer, explained in detail the
2 contours of the "deliberate indifference" standard.
3 Specifically, a Defendant is not liable under the Fourteenth
4 Amendment for his part in allegedly denying necessary medical
5 care unless he knew "of and disregard[ed] an excessive risk to
6 [Decedent's] health or safety." 511 U.S. at 837. Deliberate
7 indifference contains both an objective and subjective component:
8 "the official must both be aware of facts from which the
9 inference could be drawn that a substantial risk of serious harm
10 exists, and he must also draw that inference." Id. Plaintiffs
11 "need not show that a prison official acted or failed to act
12 believing that harm actually would befall an inmate; it is enough
13 that the official acted or failed to act despite his knowledge of
14 a substantial risk of serious harm." Id. at 842.

15 Negligence in diagnosing or treating a medical condition
16 does not, however, give rise to a claim under the Eighth
17 Amendment. See Estelle, 429 U.S. at 106. Moreover, a difference
18 of opinion between the prisoner and medical providers concerning
19 the appropriate course of treatment does not give rise to an
20 Eighth Amendment claim. See Jackson v. McIntosh, 90 F.3d 330,
21 332 (9th Cir. 1996).

22 In the FAC, Plaintiffs allege that Defendant Zil, a
23 psychiatrist contracted to provide care to SYMHS patients and
24 Sutter County Jail inmates, treated Decedent in November and
25 December of 2009, as well as in April 2010. On April 2, 2010,
26 Defendant Zil allegedly communicated with a nurse at SYMHS and
27 ordered that Decedent continue taking his currently prescribed
28 medications.

1 In addition, on April 8, Defendant Zil personally met with
2 Decedent.⁵ While Plaintiffs nonetheless claim that Defendant Zil
3 failed to adequately assess and treat Decedent, those conclusory
4 allegations are insufficient to state a claim for deliberate
5 indifference. Indeed, Plaintiffs have directed most of their
6 allegations at "Defendants" generally, making it impossible to
7 discern which Defendants were responsible for which actions.

8 More to the point, Plaintiffs have not alleged any facts
9 indicating Defendant Zil, or any other Defendant for that matter,
10 actually had any indication Decedent might intend to cause harm
11 to himself. For example, while Plaintiffs allege that Defendants
12 Barnett and Meer, both psychiatrists employed by SYHMS, evaluated
13 and treated Decedent prior to his April incarceration, Plaintiffs
14 fail to allege that either Defendant had contact with Decedent
15 during anytime in April 2010. In addition, although Plaintiffs
16 allege that Defendant Meer missed an April 28, 2010, appointment
17 with Decedent, there are no facts pled demonstrating that
18 Defendant Meer had a "sufficiently culpable mind" in doing so.
19 See Farmer, 511 U.S. at 834. Accordingly, while a failure to
20 treat Decedent's condition could potentially give rise to a
21 constitutional violation, Plaintiffs have not pled the requisite
22 facts relating to the individual Defendants. Plaintiffs' first
23 cause of action directed at Defendants Zil, Barnett and Meer is
24 thus dismissed with leave to amend.

25 ///

26
27 ⁵ Plaintiffs have advised in their Opposition that they intend to
28 amend their pleading based on newly discovered facts indicating
Defendant Zil never visited Decedent or provided any treatment at
the jail. Pls. Opp. 9 n.5.

1 **2. Plaintiffs' First and Third Causes of Action**
2 **Alleged Against the Supervisory Defendants.**

3 In their first and third claims for relief, Plaintiffs
4 allege that Defendants Parker, Sherry, Bhattal and Luz are liable
5 for the deliberate indifference of other named Defendants because
6 the other Defendants' acts were a direct and proximate result of
7 customs, practices, and policies of these supervisory Defendants.
8 Defendants argue that Plaintiffs' claims against the supervisory
9 Defendants must be dismissed because Plaintiffs failed to
10 identify any pertinent policies or practices attributable to
11 Defendants Parker, Sherry, Bhattal and Luz and because Plaintiffs
12 improperly ascribe all purported failures very generally to the
13 Defendants as a group.

14 "In order for a person acting under color of state law to be
15 liable under section 1983 there must be a showing of personal
16 participation in the alleged rights deprivation: there is no
17 respondeat superior liability under section 1983." Jones v.
18 Williams, 297 F.3d 930, 934 (9th Cir. 2002). "Supervisory
19 liability is imposed against a supervisory official in his
20 individual capacity for his own culpable action or inaction in
21 the training, supervision, or control of his subordinates, for
22 his acquiescence in the constitutional deprivations of which the
23 complaint is made, or for conduct that showed a reckless or
24 callous indifference to the rights of others." Menotti v. City
25 of Seattle, 409 F.3d 1113, 1149 (9th Cir. 2005) (quoting Larez v.
26 City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)).

27 ///

28 ///

1 In other words, each government official may only be held liable
2 for his own misconduct. Bowell v. Cal. Substance Abuse Treatment
3 Facility, 2011 WL 2224817, at *4 (E.D. Cal. June 7, 2011).

4 However, government officials acting as supervisors may be
5 liable under § 1983 under certain circumstances. A defendant may
6 be held liable as a supervisor under § 1983 if there exists
7 either: "(1) his or her personal involvement in the
8 Constitutional deprivation, or (2) a sufficient causal connection
9 between the supervisor's wrongful conduct and the constitutional
10 violation." Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989).
11 Thus, Section 1983 actions against supervisors are proper as long
12 as a sufficient causal connection exists and the plaintiff was
13 deprived under color of law of a federally secured right.
14 Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting
15 Redman v. Cnty. of San Diego, 942 F.2d 1435, 1447 (9th Cir.
16 1991)).

17 The requisite causal connection between a supervisor's
18 wrongful conduct and the violation of the prisoner's
19 constitutional rights can be established in a number of ways.
20 Plaintiffs may show that a supervisor set in motion a series of
21 acts by others, or knowingly refused to terminate a series of
22 acts by others, which the supervisor knew or reasonably should
23 have known would cause others to inflict a Constitutional injury.
24 Dubner v. City of S.F., 266 F.3d 959, 968 (9th Cir. 2001).
25 Similarly, a supervisor's own culpable action or inaction in the
26 training, supervision, or control of his subordinates may
27 establish supervisory liability. Starr, 652 F.3d at 1208.

28 ///

1 Finally, a supervisor's acquiescence in the alleged
2 constitutional deprivation, or conduct showing deliberate
3 indifference toward the possibility that deficient performance of
4 the task may violate the rights of others, may establish the
5 requisite causal connection. Id.; Menotti, 409 F.3d at 1149.

6 Defendants correctly argue that, as with the individual
7 Defendants, Plaintiffs have failed to plead facts demonstrating
8 each supervisory Defendant's role in any alleged deprivation.⁶
9 Without some specific allegations against each named Defendant,
10 Plaintiffs' claims cannot withstand Defendants' Motion to
11 Dismiss.

12
13 **3. Plaintiff's First and Second Causes of Action**
14 **Alleged Against the Municipal Defendants.**

15 In their first and second claims for relief, Plaintiffs
16 allege that Defendants County of Sutter and County of Yuba
17 violated the Fourteenth Amendment because the individually named
18 Defendants' deliberate indifference toward Decedent was a direct
19 and proximate result of County of Sutter and County of Yuba's
20 policies, customs or practices.

21 ///

22 ///

23 ///

24 _____
25 ⁶ The Court is cognizant that Plaintiffs have attempted to allege
26 Defendant Parker failed to comply with the superior court order
27 to transfer Decedent to Napa State Hospital. While such a
28 failure would certainly be significant, Plaintiffs have alleged
no facts indicating Sheriff Parker had or should have had any
indication the court order had been issued or that Defendant
Parker failed to act on any such information.

1 Defendants argue that because there was an actual policy in place
2 regarding the identification and treatment of mental disorders,
3 Plaintiffs' claims dependent on other policies regarding the
4 treatment of inmates are inconsistent and must fail. Defendants
5 also argue that the policies identified by Plaintiffs were not
6 the moving force behind any alleged constitutional violations.

7 A municipality may be liable for violating a party's
8 constitutional rights resulting from a policy, ordinance, or
9 regulation pursuant to a governmental custom. Monell v. Dep't of
10 Social Servs., 436 U.S. 658 (1978). The policy must be the
11 "moving force" behind the constitutional violation. Villegas v.
12 Gilroy Garlic Festival Ass'n, 541 F.3d 950 (9th Cir. 2008).
13 Section 1983 requires that there is an actual connection or link
14 between the actions of a defendant and the deprivation alleged to
15 have been suffered by the plaintiff. Id.

16 In order to survive Defendants' Motion to Dismiss, then,
17 Plaintiffs must allege sufficient facts to permit the court to
18 infer the plausibility of each of the following elements: (1) an
19 employee violated the Plaintiffs' constitutional rights; (2) the
20 municipality has customs or policies that amount to deliberate
21 indifference to those rights; and (3) those customs or policies
22 were the moving force behind the violation of the employee's
23 constitutional rights. Gibson v. County of Washoe, 290 F.3d
24 1175, 1193-94 (9th Cir. 2002). As set forth in the preceding
25 sections, Plaintiffs have failed to plead facts sufficient to
26 demonstrate any employee violated Plaintiffs' constitutional
27 rights. Accordingly, Plaintiffs' claims against Defendants
28 County of Sutter and County of Yuba must fail.

1 **B. Plaintiffs' Fourth Cause of Action for Loss of**
2 **Parent/child Relationship.**

3 Plaintiffs' fourth cause of action asserts that all
4 Defendants violated the First and Fourteenth Amendments by
5 depriving Plaintiffs of their liberty interest in the parent-
6 child relationship. The due process claim protects the right to
7 familial relations between family members. See, e.g., Stanley v.
8 Illinois, 405 U.S. 645, 651 (1972) ("The integrity of the family
9 unit has found protection in the Due Process Clause of the
10 Fourteenth Amendment....") (citing Meyer v. Nebraska, 262 U.S.
11 390, 399 (1923)). However, only official conduct that "shocks
12 the conscience" is cognizable as a due process violation. County
13 of Sacramento v. Lewis, 523 U.S. 833, 846 (1998) (citing
14 Rochin v. Cal., 342 U.S. 165, 172-73 (1952)). The threshold
15 question in such cases is "whether the behavior of the
16 governmental officer is so egregious, so outrageous, that it may
17 fairly be said to shock the contemporary conscience." Lewis,
18 523 U.S. at 847 n. 8. The type of conduct which is most likely
19 to rise to the "conscience-shocking level" is "conduct intended
20 to injure in some way unjustifiable by any government interest."
21 Id. at 849. Conduct which was not intentional, but rather was
22 deliberately indifferent, may nevertheless rise to the
23 conscience-shocking level in some circumstances. Id. at 849-50.

24 ///

25 ///

26 ///

27 ///

28 ///

1 Plaintiffs' instant claim is predicated on the allegations
2 set forth in Plaintiffs' first, second, and third causes of
3 action. More specifically, Plaintiffs allege that the
4 "aforementioned acts and/or omissions of Defendants in being
5 deliberately indifferent to [Decedent]," through their direct
6 actions or failure to take measures to prevent Decedent's
7 suicide, amount to a violation of the Plaintiffs' rights under
8 the substantive due process clauses of the first and fourteenth
9 amendments. For the same reasons already discussed in the
10 preceding section, Plaintiffs' general allegations that
11 Defendants were deliberately indifferent to Decedent's serious
12 medical needs are likewise insufficient to demonstrate that any
13 Defendant's conduct "shocks the conscience." Indeed, Plaintiffs
14 did not plead facts demonstrating any Defendant's conduct meets
15 the requisite standard to establish a substantive due process
16 violation. Accordingly, Plaintiffs' fourth claim for relief is
17 dismissed with leave to amend.

18
19 **C. Plaintiffs' Fifth Cause of Action for Violation of**
20 **Title II of the Americans with Disabilities Act and**
21 **Section 504 of the Rehabilitation Act.**

22 In their fifth cause of action, Plaintiffs allege that
23 Defendants County of Sutter and County of Yuba discriminated
24 against Decedent in violation of the Americans with Disabilities
25 Act ("ADA"), 42 U.S.C. §§ 12131, et seq., and the Rehabilitation
26 Act, 29 U.S.C. §§ 701, et seq., because "he was not placed in a
27 setting, or provided appropriate services, to reasonably
28 accommodate his disability and treatment needs."

1 Defendants argue that Plaintiffs' claims under the ADA and
2 Section 504 of the Rehabilitation Act must be dismissed because
3 Plaintiffs fail to present facts identifying how Decedent was
4 denied treatment, or which particular programs Decedent was
5 denied access to, because of his disability. In their
6 Opposition, Plaintiffs argue that their claims are based on
7 Defendants' total withholding of treatment for Decedent and aver
8 that Decedent "had no way to access services available to
9 non-disabled inmates."

10 Both the ADA and Rehabilitation Act prohibit disability
11 discrimination. Specifically, Title II of the ADA provides that
12 "no qualified individual with a disability shall, by reason of
13 such disability, be excluded from participation in or be denied
14 the benefits of the services, programs, or activities of a public
15 entity, or be subject to discrimination by such entity."
16 42 U.S.C. § 12132. The ADA defines "public entity" in relevant
17 part as "any State or local government" or "any department,
18 agency, special purpose district, or other instrumentality of a
19 State or States or local government," 42 U.S.C.
20 § 12131(1)(A)-(B), and the Supreme Court has found that "[s]tate
21 prisons fall squarely within the [statute's] definition of public
22 entity." Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S.
23 206, 210 (1952) (internal quotations and citations omitted).

24 ///

25 ///

26 ///

27 ///

28 ///

1 Section 504 of the Rehabilitation Act states that “[n]o otherwise
2 qualified handicapped individual in the United States...shall,
3 solely by reason of his handicap, be excluded from the
4 participation in, be denied the benefits of, or be subjected to
5 discrimination under any program or activity receiving Federal
6 financial assistance.” 29 U.S.C. § 794. Both the ADA and the
7 Rehabilitation Act have been found to apply to services,
8 programs, and activities for detainees. See, e.g., Pierce v.
9 County of Orange, 526 F.3d 1190, 1214-1215 (9th Cir. 2008).

10 Although Plaintiffs allege Decedent did not receive adequate
11 medical treatment, there are no facts in the FAC demonstrating
12 that Defendants did not provide treatment to Decedent because he
13 was disabled. See Alexander v. Tilton, 2009 WL 464486 at *7
14 (E.D. Cal. Feb. 24, 2009) (finding plaintiff’s allegations that
15 he did not receive proper medical treatment did not state a claim
16 under the ADA or Rehabilitation Act). Put differently,
17 Plaintiffs have not pled that Decedent was treated differently
18 than other inmates who did not suffer from a disability. Compare
19 Peacock v. Terhune, 2002 WL 459928 at *2 (E.D. Cal. Jan. 23,
20 2002) (finding a plaintiff stated a claim under the ADA because
21 he alleged he was treated differently, as a paraplegic, than
22 other inmates who did not suffer from the same, or a similar,
23 disability). Although Plaintiffs argue in their opposition that
24 Decedent did not have access to services that were made available
25 to non-disabled inmates, Plaintiffs do not cite to any part of
26 their FAC to substantiate their position.

27 ///

28 ///

1 Plaintiffs do cite a case from the Northern District to
2 support their argument that "'outright denial of medical
3 services'...may be 'so unreasonable as to demonstrate that
4 [defendants] were discriminating against [plaintiff] because of
5 his disability.'" Anderson v. County of Siskiyou, 2010 WL 3619821
6 at *5 (N.D. Cal. Sept. 13, 2010) (quoting Kiman v. New Hampshire
7 Dep't of Corr., 451 F.3d 274, 285 (1st Cir. 2006)). However,
8 that case has not been cited by any court for that proposition,
9 and other courts within this circuit have, to the contrary,
10 required plaintiffs to plead facts demonstrating they were
11 treated differently because of their disabilities. See Peacock,
12 2002 WL 4599928 at *2; Alexander, 2009 WL 464486 at *7. More
13 importantly, the Ninth Circuit has made clear that "[t]he ADA
14 prohibits discrimination because of disability, not inadequate
15 treatment for disability." Simmons v. Navajo County, Ariz.,
16 609 F.3d 1011, 1022 (9th Cir. 2010). Accordingly, this Court
17 declines to follow Anderson and finds that Plaintiffs have failed
18 to plead facts sufficient to allege that the Defendants
19 discriminated against Decedent because of his disability.
20 Defendants' Motion to Dismiss Plaintiffs' fifth cause of action
21 is GRANTED with leave to amend.

22
23 **D. Plaintiffs' Sixth Cause of Action for Violation of**
24 **California's Unruh Civil Rights Act.**

25 Plaintiffs allege that Defendants County of Sutter and
26 County of Yuba violated California Civil Code §§ 51 and 52
27 ("Unruh Act") by failing to reasonably accommodate Decedent's
28 disability and treatment needs.

1 Defendants argue Plaintiffs' claim must be dismissed because
2 SYMHS and Sutter County Jail are not "business establishments"
3 subject to the Unruh Act.

4 The Unruh Act provides that "[a]ll persons within the
5 jurisdiction of this state are free and equal, and...are entitled
6 to the full and equal accommodations, advantages, facilities,
7 privileges, or services in all business establishments of every
8 kind whatsoever." Cal. Civ. Code § 51(b). Although the
9 California Supreme Court has found that the Legislature intended
10 the term "business establishment" be interpreted "in the broadest
11 sense reasonably possible," Isbister v. Boys' Club of Santa
12 Cruz, Inc., 40 Cal. 3d 72, 78 (1985), the Unruh Act has yet to be
13 applied to claims against correctional facilities, see Lee v.
14 Wilkinson, 2009 WL 2824758 at *7 (E.D. Cal. 2009). Instead,
15 several district courts have explicitly found that prisons are
16 not business establishments under the Unruh Act. See Taormina v.
17 Cal. Dep't of Corr., 946 F. Supp. 829, 834 (S.D. Cal. 1996);
18 Wilkins-Jones v. County of Alameda, 2010 WL 4780291 at *9 (N.D.
19 Cal. 2010) (finding defendant County of Alameda was not liable
20 under Unruh Act). The Court finds this authority persuasive and
21 holds that Sutter County Jail is not a business establishment
22 under the Unruh Act.⁷ Accordingly, Plaintiffs claim under the
23 Unruh Act arising out of Decedent's treatment at Sutter County
24 Jail fails.

25
26 ⁷ Plaintiffs' analogy to public school districts is unpersuasive,
27 as it has been well established that public school districts are
28 business establishments subject to the Unruh Act. See, e.g.,
D.K. ex rel. G.M. v. Solano County Office of Educ., 2008 WL
5114965 at *6 (E.D. Cal. Dec. 2, 2008).

1 Notably, Plaintiffs do not distinguish between SYMHS and
2 Sutter County Jail in their FAC or Opposition. Without deciding
3 whether SYHMS is subject to the Unruh Act at this point, the
4 Court finds it also appropriate to dismiss Plaintiffs' claims
5 relating to Decedent's treatment at SYMHS because Plaintiffs have
6 not alleged facts substantiating their conclusory allegation that
7 Decedent was discriminated against in violation of the Unruh Act
8 while at SYMHS.

9
10 **E. Plaintiffs' Seventh Cause of Action for Professional**
11 **Negligence/medical Malpractice.**

12 Plaintiffs allege Defendants County of Sutter, County of
13 Yuba, Zil, Barnett and Meer were negligent in their failure to
14 properly assess and treat Decedent's serious mental illness.

15 First and foremost, the entity Defendants move to dismiss
16 this claim on the ground that they are immune from liability
17 because Plaintiffs failed to provide a statutory basis for the
18 cause of action. Under California Government Code section 815,
19 "a public entity is not liable for an injury, whether such injury
20 arises out of an act or omission of the public entity or a public
21 employee or any other person, except as provided by statute."
22 Cal. Gov. Code § 815(a). Plaintiffs concede that Defendants'
23 Motion to Dismiss should be granted as to the County of Sutter
24 and County of Yuba in light of Section 815. Accordingly, this
25 claim against Defendants County of Sutter and County of Yuba is
26 dismissed without leave to amend.

27 ///

28 ///

1 Turning to the individually named Defendants, Plaintiffs
2 generally allege that Defendants Zil, Barnett and Meer were
3 negligent in their failure to appropriately assess and evaluate
4 Decedent, to prescribe necessary psychiatric medication, to
5 ensure compliance with that medication and to ensure proper
6 treatment. Plaintiffs further allege that Defendant Barnett was
7 negligent in discharging Decedent from SYMHS to Sutter County
8 Jail in early April 2010.

9 These Defendants argue that they are immune from liability
10 under California Government Code sections 855.6 and 855.8.
11 Section 855.6 shields a public employee from liability "for
12 injury caused by the failure to make a[n] examination, or to make
13 an adequate [] examination,...for the purpose of determining
14 whether [a] person has a...mental condition that would constitute
15 a hazard to the health and safety of himself or others."
16 Similarly, Section 855.8 provides that a public employee is not
17 liable "for injury resulting from diagnosing or failing to
18 diagnose that a person is afflicted with mental illness [] or
19 from failing to prescribe for mental illness...." Cal. Gov. Code
20 § 855.8(a). Defendants correctly argue that Plaintiffs'
21 allegations regarding their alleged failure to properly assess
22 and evaluate Decedent, as well as their alleged failure to
23 prescribe appropriate medications, fall squarely within sections
24 855.6 and 855.8, and therefore, they are immune from liability on
25 that basis.

26 ///

27 ///

28 ///

1 Plaintiffs nonetheless argue that the immunity granted under
2 section 855.6 does not apply in "situation[s] where the defendant
3 fails to provide medical care for a prisoner in obvious need of
4 such care," as set forth in Lum v. City of San Joaquin,
5 756 F. Supp. 2d 1243 (E.D. Cal. 2010). However, Plaintiffs do
6 not cite to any facts pled in their FAC demonstrating that it was
7 "obvious" to Defendants Zil, Barnett and Meer that Decedent
8 needed any care that they failed to provide. Accordingly,
9 Defendants' Motion to Dismiss is granted with respect to
10 Plaintiffs' negligence claims arising out of Defendants' alleged
11 failure to properly evaluate Decedent or prescribe medication for
12 any mental condition.

13 Plaintiffs' allegations regarding Defendants' alleged
14 failure to ensure Decedent complied with his prescriptions and
15 received appropriate treatment arguably fall within an exception
16 to immunity codified in Section 855.8(d). See Cal. Gov. Code
17 § 855.8(d) (employee not shielded from liability for an injury
18 "caused by his negligent or wrongful act or omission in
19 administering any treatment prescribed for mental illness....").
20 Defendants, however, correctly point out that Plaintiffs' FAC
21 does not contain facts relating to each individually named
22 Defendant's failure to ensure compliance with prescriptions or
23 proper treatment. Indeed, Plaintiffs only allege that Defendant
24 Zil and other Defendants provided "grossly inadequate treatment"
25 and that Defendant Meer failed to keep an appointment with
26 Decedent. These allegations alone do not demonstrate that any
27 Defendant failed to properly administer any prescribed treatment,
28 consequently causing Decedent's death.

1 Accordingly, Defendants' Motion to Dismiss Plaintiffs' seventh
2 claim for relief is granted as to this theory as well.

3 Finally, although Plaintiffs allege Defendant Barnett
4 negligently discharged Decedent on April 2, 2010, there are no
5 facts in the FAC to support this allegation. See FAC at ¶¶ 79-85
6 (alleging, generally, that Defendants should not have discharged
7 Decedent). Plaintiffs allege that Decedent was seen by Defendant
8 Barnett, but they do not plead any facts relating to a decision
9 made by Defendant Barnett regarding Decedent's transfer from
10 SYHMS to Sutter County Jail. Id. Accordingly, without factual
11 support, Plaintiffs' claim that Defendant Barnett negligently
12 discharged Decedent must be disregarded, see Twombly, 550 U.S. at
13 555, and Defendants' Motion to Dismiss Plaintiffs' seventh claim
14 for relief relating to Defendant Barnett's allegedly negligent
15 discharge of Decedent is granted. Plaintiffs' seventh cause of
16 action is thus dismissed with leave to amend.

17
18 **F. Plaintiffs' Eight Cause of Action for Negligence/
19 Negligence Per Se.**

20 Plaintiffs allege that all individually named Defendants had
21 a duty to operate and manage SYMHS and Sutter County Jail, as
22 defined by various laws, standards and regulations, and
23 Defendants' breach of those duties caused Decedent's injuries.
24 Defendants correctly argue that Plaintiffs have failed to
25 identify any specific statute, ordinance or regulation in support
26 of their claim, and for this reason, Plaintiffs' claim for
27 negligence per se is dismissed with leave to amend.

28 ///

1 See Twombly, 550 U.S. at 555; Cal. Evid. Code § 669 (1967);
2 accord Lorbeer v. American Tel. & Tel. Co., 958 F.2d 377 (9th
3 Cir. 1992) (finding a plaintiff's negligence per se claim failed
4 "because he [did] not identif[y] a specific, relevant statutory
5 violation...").

6
7 **G. Plaintiffs' Ninth Cause of Action for Negligent**
8 **Supervision, Training, Hiring and Retention.**

9 Plaintiffs allege Defendants Parker, Sherry, Bhattal and
10 Luz were negligent in hiring, supervising, training and retaining
11 employees and thus caused Decedent's injuries. Defendants
12 correctly argue that Plaintiffs' claim must be dismissed because
13 Plaintiffs have failed to provide a statutory basis for their
14 cause of action.

15 Plaintiffs' ninth claim is really a claim against the
16 entities and not the employees. See, e.g., Sanders v. City of
17 Fresno, 2006 WL 1883394, *11 ("Failure to train...is a "direct"
18 act on the part of the entity, not on the part of the
19 employee.'") (quoting Reinhardt v. Santa Clara County, 2006 WL
20 662741 (N.D. Cal. Mar. 15, 2006)); see also Megargee ex rel.
21 Lopez v. Wittman, 2006 WL 2988945, *10 n.2 (E.D. Cal.). Pursuant
22 to California Government Code § 815, however, public entities
23 cannot be held directly liable in tort except as specifically
24 provided by statute. Caldwell v. Montoya, 10 Cal. 4th 972, 980
25 (1995). Neither the parties nor the Court has identified a
26 statutory basis for the entities' liability in this case. See,
27 e.g., Megargee, 2006 WL 2988945 at *10. Accordingly, Plaintiffs'
28 ninth cause of action must be dismissed.

1 **H. Plaintiffs' Tenth Cause of Action for Failure to**
2 **Furnish/Summon Medical Care.**

3 Plaintiffs allege that Defendants Parker, Sherry, Bhattal,
4 Luz, Zil, Barnett and Meer knew, or had reason to know, that
5 Decedent was in need of immediate medical and mental health care,
6 yet they failed to take action to summon or provide care.
7 Plaintiffs further allege that Defendants failed to timely
8 respond to Decedent's "psychotic episode" on April 29 when "he
9 engaged in numerous acts of self-harm before hanging himself...."
10 Defendants argue that because Plaintiffs' FAC does not contain
11 any facts relating to each individual Defendants' actual or
12 constructive knowledge of an immediate need for care for a
13 serious or obvious medical condition, however, Plaintiffs' tenth
14 cause of action must be dismissed.

15 A claim for failure to furnish medical care is based on a
16 violation of California Government Code § 845.6, which states in
17 pertinent part:

18 Neither a public entity nor a public employee is liable
19 for injury proximately caused by the failure of the
20 employee to furnish or obtain medical care for a
21 prisoner in his custody; but... a public employee, and
22 the public entity where the employee is acting within
the scope of his employment, 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..."

23 In their FAC, Plaintiffs only refer to one Defendant
24 specifically that had contact with Decedent at Sutter County Jail
25 between April 2 and April 29, 2010: Defendant Zil. Specifically,
26 Plaintiffs allege that on April 8, Zil had an in-person
27 psychiatric meeting with Decedent.

28 ///

1 There are no further allegations, however, regarding Zil's
2 knowledge of Decedent's immediate need for medical care and his
3 subsequent failure to summon care. Although Plaintiffs pled that
4 Defendants generally knew, or should have known, about Decedent's
5 need for further psychiatric treatment, the facts presented by
6 Plaintiffs in their FAC are not sufficient to demonstrate that
7 each named Defendant had actual or constructive knowledge of
8 Decedent's immediate need for care. Compare, e.g., Jett,
9 439 F.3d 1091 (finding disputed issues of fact precluded summary
10 judgment on the inmate-plaintiff's failure to summon medical care
11 claim because a doctor ordered follow-up visits for plaintiff
12 following a fracture to his thumb and plaintiff filed repeated
13 requests to be seen by a health care provider, which were ignored
14 by defendants); see also Twombly, 550 U.S. at 555. Accordingly,
15 Plaintiffs' claim for failure to summon medical care is dismissed
16 with leave to amend.

17
18 **I. Plaintiffs' Eleventh Cause of Action for Wrongful**
19 **Death.**

20 Plaintiffs allege that Decedent's injuries in this case are
21 a result of the negligence of all Defendants, and therefore,
22 Defendants are liable under California Code of Civil Procedure
23 377.60 for the funeral and burial expenses incurred by
24 Plaintiffs. Defendants argue that this claim is duplicative of
25 Plaintiffs' negligence claim as to Defendants Zil, Barnett, and
26 Meer. Defendants further argue that Plaintiffs fail to allege
27 facts sufficient to state a claim against the remaining
28 Defendants for negligence.

1 Plaintiffs correctly argue that a claim for wrongful death
2 is a separate cause of action. See Ruiz v. Podolsky, 50 Cal. 4th
3 838, 844 (Cal. 2010). Indeed, “[u]nlike some jurisdictions
4 where wrongful death actions are derivative, [section] 377.60
5 creates a new cause of action in favor of the heirs as
6 beneficiaries, based upon their own independent pecuniary injury
7 suffered by loss of a relative, and distinct from any the
8 deceased might have maintained had he survived.” Id. (quoting
9 Horwich v. Superior Court, 21 Cal. 4th 272, 283 (Cal. 1999)).
10 However, Plaintiffs have failed to allege facts sufficient to
11 demonstrate that Defendants’ negligence caused Decedent’s death.
12 See supra at 5-8. Accordingly, Defendants’ Motion to Dismiss
13 Plaintiffs’ eleventh cause of action is granted with leave to
14 amend.

15 16 **CONCLUSION**

17
18 For the reasons set forth above, Defendants’ Motion to
19 Dismiss (ECF No. 11) is GRANTED without leave to amend as to
20 Plaintiffs’ seventh cause of action against Defendants County of
21 Sutter and County of Yuba, and GRANTED with leave to amend as to
22 all of Plaintiffs’ remaining claims.⁸ Not later than thirty (30)
23 days following the date this Memorandum and Order is
24 electronically filed, Plaintiff may (but is not required to) file
25 a Second Amended Complaint.

26
27 ⁸ Given that this Court has dismissed Plaintiffs’ entire FAC,
28 Defendants’ additional request to strike Plaintiffs’ prayer for
punitive damages is DENIED as moot.

1 If no amended complaint is filed within said thirty-day
2 period, without further notice to the parties, those causes of
3 action dismissed by virtue of this Order will be deemed dismissed
4 with prejudice.

5 IT IS SO ORDERED.

6 Dated: February 7, 2012

7
8 

9 MORRISON C. ENGLAND, JR.
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28