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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SUKHWINDER KAUR, individually
and as the successor in
interest for the Decedent
PARMINDER SINGH SHERGILL;
KULBINDER KAUR SOHOTA;
SARABJIT SINGH SHERGILL,

Plaintiffs,

v.

CITY OF LODI; CITY OF LODI
POLICE DEPARTMENT; MARK
HELMS, in his individual
capacity as the Chief of
Police for the City of Lodi;
SCOTT BRATTON, in his
individual capacity as a City
of Lodi Police Officer; ADAM
LOCKIE, in his individual
capacity as a City of Lodi
Police Officer; and DOES 1
through 50, inclusive,

Defendants.

No. 2:14-cv-00828-GEB-AC

**ORDER GRANTING ENTITY
DEFENDANTS' MOTION TO DISMISS**

On August 25, 2014, Defendants City of Lodi and the
City of Lodi Police Department (collectively, "the entity
Defendants"), and Police Chief Mark Helms, filed a motion under
Federal Rule of Civil Procedure ("Rule") 12(b)(6) in which
dismissal is sought of the portion of the fifth claim in the

1 First Amended Complaint ("FAC") alleged against the entity
2 Defendants, and dismissal of the seventh claim.

3 In the fifth claim, Plaintiff Sukhwinder Kaur, as
4 successor in interest for decedent Parminder Singh Shergill
5 ("Parminder"), alleges that "[t]he inadequacy" of the entity
6 Defendants' "custom or policy" of "training, supervising and/or
7 disciplining its police officers responsible for contacting
8 persons suffering from mental illness" was "the moving force
9 behind [City of Lodi Police Officers] B[ratton] and L[ockie's]
10 ['Officer Defendants'] use of excessive and deadly force against
11 P[arminder]." (FAC ¶ 81 (emphasis added), ECF No. 32.) This
12 portion of the claim is alleged under the Supreme Court's
13 decision in Monell v. Department of Social Services of New York,
14 436 U.S. 658 (1978), which allows a municipality to be sued under
15 42 U.S.C. § 1983 for a constitutional violation stemming from
16 "inadequate training or supervision [that] was the moving force
17 behind [a constitutional] deprivation." Sandoval v. Las Vegas
18 Metro. Police Dep't, 756 F.3d 1154, 1168 (9th Cir. 2014) (citing
19 City of Canton v. Harris, 489 U.S. 378, 387-90 (1989)). "For a
20 policy to be the moving force behind the deprivation of a
21 constitutional right, the identified deficiency in the policy
22 must be closely related to the ultimate injury." Long v. County
23 of Los Angeles, 442 F.3d 1178, 1190 (9th Cir. 2006) (citation
24 omitted) (internal quotation marks omitted). Thus, to allege a
25 viable Monell claim, Plaintiff must demonstrate in the complaint
26 "that the [entity Defendants'] policy deficiencies were the
27 moving force behind the deprivation of [Parminder's]
28 constitutional rights . . . [and] that the injury to [Parminder]

1 would have been avoided had the [entity Defendants] adequately
2 trained [the Officer Defendants] and/or instituted adequate
3 general policies to guide [each Officer Defendant's] exercise of
4 [his] professionally-informed discretion" when interacting with
5 Parminder. Id. However, "Monell does not concern liability of
6 individuals." Guillory v. County of Orange, 731 F.2d 1379, 1382
7 (9th Cir. 1984). Therefore, Police Chief Mark Helms cannot
8 challenge the Monell claim. Although Police Chief Mark Helms has
9 filed a reply brief that contains an untimely challenge to the
10 supervisory claim alleged against him in his individual capacity,
11 that challenge is ignored because it was not timely noticed under
12 the applicable federal rule.

13 In the seventh claim, the same Plaintiff alleges in the
14 same capacity that the entity Defendants violated Parminder's
15 rights under Title II of the Americans with Disabilities Act
16 ("ADA") by failing to "adequately train[] [the Officer
17 Defendants] to deal with persons suffering from mental illness,"
18 and to train the Officer Defendants "to provide reasonable
19 accommodation to P[arminder] before employing deadly and
20 unreasonable force." (Id. ¶¶ 33, 93.) Plaintiff's allegations
21 further indicate that had the Officer Defendants been trained to
22 make modifications to the entity Defendants' "policies and
23 practices," the Officer Defendants could have "avoid[ed] a
24 violent confrontation with P[arminder] because of his
25 disability." (Id. ¶ 92.) This ADA claim is not alleged against
26 Police Chief Mark Helms; therefore, he is not an appropriate
27 movant and is ignored.

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1 The entity Defendants' dismissal motion is premised on
2 the argument that Plaintiff has not pled factual allegations from
3 which a reasonable inference could be drawn that any alleged
4 training deficiency in the entity Defendants' training policy was
5 causally connected to either officer's decision to shoot
6 Parminder. (See Defs.' Reply Pl.'s Opp'n ("Defs.' Reply") 2:3-5,
7 ECF No. 38 ("Defendants seek to dismiss the ADA claim and the
8 [Monell] claims for the same fundamental reason: these claims
9 fail to plead a link between the alleged violation and the harm
10 suffered."))

11 I. LEGAL STANDARD

12 "In reviewing . . . [a motion to] dismiss[] . . . a
13 complaint, we inquire whether the complaint's factual
14 allegations, together with all reasonable inferences, state a
15 plausible claim for relief." United States ex rel. Cafasso v.
16 Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1054 (9th Cir. 2011)
17 (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). Further,

18 We accept factual allegations in the
19 complaint as true and construe the pleadings
20 in the light most favorable to the non-moving
21 party. Although factual allegations are taken
22 as true, we do not assume the truth of legal
23 conclusions merely because they are cast in
the form of factual allegations. Therefore,
conclusory allegations of law and unwarranted
inferences are insufficient to defeat a
motion to dismiss.

24 Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (citations
25 omitted) (internal quotation marks omitted); see also Sprewell v.
26 Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001) ("Nor is
27 the court required to accept as true allegations that are merely
28 conclusory, unwarranted deductions of fact, or unreasonable

1 inferences.”). “A claim has facial plausibility when the
2 plaintiff pleads factual content that allows the court to draw
3 the reasonable inference that the defendant is liable for the
4 misconduct alleged.” Iqbal, 556 U.S. at 678 (citing Bell Atl.
5 Corp. v. Twombly, 550 U.S. 544, 556 (2007)).

6 **II. FACTUAL ALLEGATIONS**

7 The following factual allegations pertain to the entity
8 Defendants’ motion. On January 25, 2014, Parminder’s “sister-in-
9 law . . . called 9-1-1 to request assistance in transporting
10 [him] to the Veteran’s Clinic” because his family had “concluded
11 that [he] was in need of psychiatric care and treatment.” (FAC ¶
12 21.) When the Officer Defendants “arrived . . . at . . . the
13 [f]amily [h]ome,” Parminder’s sister-in-law informed them “that
14 P[arminder] was presently suffering from mental illness and
15 needed to be transported to the Veteran’s Clinic for care and
16 treatment.” (Id. ¶¶ 25-26.) The Officer Defendants “told the
17 family that there was nothing [the Officer Defendants] could do
18 because P[arminder] was not home and had not threatened violence
19 to himself or others.” (Id. ¶ 27.) The Officer Defendants then
20 asked Parminder’s sister-in-law “if P[arminder] was in the area,”
21 and she responded “that [he] may be in the area” since
22 “P[arminder] routinely walked to the [p]ark in the morning.”
23 (Id.) The Officer Defendants replied “that if they saw
24 P[arminder,] they would try to talk with him.” (Id. ¶ 28.) The
25 Officer Defendants then “drove to the [p]ark.” (Id.)

26 The Officer Defendants “saw P[arminder] while he was
27 walking through the [p]ark and attempted to detain him.” (Id. ¶
28 30.) “When the [Officer Defendants] confronted P[arminder,] he

1 walked away from the officers . . . towards his [f]amily [h]ome.”
2 (Id. ¶ 32.) The Officer Defendants then “followed closely behind
3 P[arminder] and repeatedly yelled at [him], demanding that [he]
4 submit to their questioning.” (Id. ¶ 34.) The Officer Defendants
5 “drew their police-issued firearms and trained them on
6 P[arminder], as he was facing away from the officers and
7 continued to walk towards his [f]amily [h]ome.” (Id.)

8 The Officer Defendants then “yelled at P[arminder] to
9 ‘Stop!’ P[arminder] responded . . . by turning around to face
10 them.” (Id. ¶ 37.) “Approximately 20 feet separated P[arminder]
11 from [the Officer Defendants] when [he] turned around to face
12 [them]. P[arminder] had his hands up and yelled ‘Don’t shoot!’”
13 (Id. ¶ 38.) The Officer Defendants “opened fire . . . , killing
14 P[arminder],” who “was unarmed.” (Id. 2:20-22.) Two “eye-
15 witnesses stated that P[arminder] did not charge at [the Officer
16 Defendants], and did not present a threat to the officers,
17 immediately before the shooting.” (Id. ¶ 48.)

18 **III. DISCUSSION**

19 The entity Defendants argue the Monell claim “is
20 insufficient” since “the FAC fails to state a connection between”
21 the alleged “inadequate policy related to the training and
22 supervision of [the entity Defendants’ police] officers regarding
23 contacts with person[s] suffering from mental illness” and the
24 Officer Defendants’ shooting of Parminder when “he was unarmed
25 and not threatening the officers.” (Defs.’ Mem. P.&.A. Supp. Mot.
26 Dismiss Pl.’s FAC (“Defs.’ Mot.”) 8:10-13, 8:22-23, 10:5, ECF No.
27 33.)

1 Plaintiff counters, *inter alia*, that the entity
2 Defendants "maintained deficient customs or policies" by
3 "fail[ing] to train" Lodi Police Officers in the "necessary
4 skills" related to "how to interact with persons suffering from
5 mental illness." (Pl.'s Mem. P.&A. Opp'n Defs.' Mot. ("Pl.'s
6 Opp'n") 7:28, 6:1-6 (citing FAC ¶ 57), ECF No. 35.) Plaintiff
7 argues that by maintaining these "deficient customs or policies,"
8 the entity Defendants "subjected Parminder to a deadly encounter
9 with the Officer Defendants[] who were ill-prepared [to]
10 appropriately . . . contact Parminder, as demonstrated by the
11 Officer Defendants' decision to kill Parminder without an
12 adequate justification." (*Id.* 7:28-8:2 (emphasis added).)

13 The entity Defendants make a similar argument regarding
14 the ADA claim, contending: "The allegations in the FAC do not
15 plead how the failure to accommodate [Parminder's alleged
16 disability as required by the ADA] caused [him] to suffer," which
17 "results in a failure to state a claim." (Defs.' Mot. 7:13-17.)
18 Specifically, the entity Defendants argue: "There is no
19 allegation that the [alleged] injury—shooting—flows from a
20 failure to accommodate [Parminder's] alleged disability." (*Id.*
21 7:7-8.)

22 Plaintiff counters, *inter alia*: "Parminder's death was
23 causally related to the Officer Defendants' failure to
24 accommodate his disability, because, had the Officer Defendants
25 been properly trained when contacting person[s] suffering from
26 mental illness and employed those skills when contacting
27 Parminder, his death would not have resulted when he encountered
28 Officer Defendants." (Pl.'s Opp'n 11:17-21.) Plaintiff also

1 argues: "Had the Officer Defendants accommodated Parminder
2 because of his mental illness, they would not have found
3 justification for shooting him and would have employed other,
4 more appropriate techniques for responding to persons suffering
5 from mental illness." (Id. 13:25-28 (emphasis added).)

6 The entity Defendants reply that "[t]he FAC fails to
7 state how accommodating [Parminder's] mental illness would have
8 changed the officer's decision to shoot him . . . [and] fails to
9 allege why if the officers had done the things the FAC alleges
10 they should have done . . . they would have not shot him. (Defs.'
11 Reply 4:5-9.)

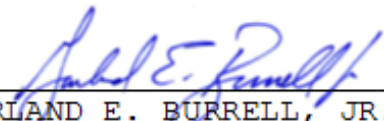
12 Plaintiff's factual allegations in the FAC are
13 insufficient to support drawing a reasonable inference that a
14 causal nexus exists between any alleged deficiency of the entity
15 Defendants' training regarding interacting with mentally ill
16 individuals and the shooting of Parminder, and therefore do not
17 allege the causation component of the Monell and ADA claims. See
18 Sandoval, 756 F.3d at 1168 (stating that a municipality's
19 liability under Monell requires "prov[ing] that inadequate
20 training or supervision was the moving force behind the
21 deprivation"); Head v. Glacier Nw. Inc., 413 F.3d 1053, 1065 (9th
22 Cir. 2005) (stating "that a motivating factor standard is the
23 appropriate standard for causation in the ADA context").
24 Plaintiff's factual allegations in the FAC establish that the
25 officers shot unarmed and non-threatening Parminder without
26 justification, but fail to connect the shooting with Parminder's
27 mental illness.

28 Therefore, the entity Defendants' dismissal motion is

1 granted. However, Plaintiffs are granted fourteen (14) days from
2 the date on which this order is filed to file an amended
3 complaint addressing the referenced deficiencies in the dismissed
4 claims.

5 Dated: October 14, 2014

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GARIAND E. BURRELL, JR.
Senior United States District Judge