

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

JESSE VANG, et al,  
Plaintiffs,  
v.  
SHERIFF JON LOPEY, et al,  
Defendants.

No. 2:16-cv-2172-JAM-CMK

**ORDER GRANTING DEFENDANT  
SISKIYOU COUNTY'S MOTION TO  
DISMISS**

Defendant Siskiyou County ("the County") moves to dismiss Plaintiffs' Second Amended Complaint ("SAC"). ECF No. 59.<sup>1</sup> Plaintiffs oppose the motion. ECF No. 61. For the reasons set forth below, the Court GRANTS the County's motion to dismiss.<sup>2</sup>

///

///

---

<sup>1</sup> The County submitted a Request for Judicial Notice along with its Motion to Dismiss, asking the Court to take judicial notice of thirteen documents on this case's docket. ECF No. 59-2. The Court does not need to take judicial notice of documents on its own docket.

<sup>2</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for April 4, 2017.

1 I. FACTS

2 The Court takes the facts alleged by Plaintiffs—several  
3 Hmong individuals who own property in the County—as true for  
4 purposes of this motion.

5 After an increase in the County’s Hmong population, the  
6 County “launched an attack” against Plaintiffs. SAC ¶ 5. The  
7 Board of Supervisors passed two ordinances placing restrictions  
8 on growing medical marijuana. SAC ¶ 6. The County  
9 discriminatorily enforced these ordinances against Asian  
10 individuals. SAC ¶ 11.

11 In early 2016, Plaintiffs “began registering to vote in  
12 Siskiyou County, using the County-assigned parcel numbers of  
13 their legally owned property as their residential address.” SAC  
14 ¶ 18. The County Clerk flagged these voter registration forms  
15 for possible voter fraud. SAC ¶ 19.

16 On two days in June 2016, County officers visited  
17 Plaintiffs’ properties, and at least one officer carried an  
18 assault rifle with him. SAC ¶ 32. These visits scared at least  
19 five plaintiffs out of voting in the June or November 2016  
20 elections. SAC ¶¶ 54, 70, 82, 88, 108.

21 The restrictions on marijuana cultivation passed as Measures  
22 T and U in the June election. SAC ¶ 36. Since then, “notices of  
23 nuisance violations have been issued overwhelmingly to Asian  
24 property owners as opposed to white property owners.” Id.

25 In September 2016, the County “executed a series of search  
26 warrants” on at least some Plaintiffs’ properties. SAC ¶ 42.  
27 The searching officers “handcuffed and held at gunpoint”  
28 individuals who were present during the searches and “ransacked”

1 the properties of those who were not present. SAC ¶ 43.

2 Plaintiffs bring four claims against the County in their  
3 SAC: (1) unreasonable search and seizure, (2) violation of the  
4 Fourteenth Amendment, (3) municipal liability on a failure-to-  
5 train theory, and (4) employer liability. SAC at 29-35.

6 The Court dismissed Plaintiffs' fourth claim for "employer  
7 liability" against the County with prejudice in its January 13,  
8 2017 Order ("1/13/17 Order"). 1/13/17 Order at 7. Accordingly,  
9 the Court strikes the fourth claim from the SAC.

10  
11 II. OPINION

12 A. First Cause of Action: § 1983 Unlawful Search and  
13 Seizure Claim

14 A local government cannot be held liable pursuant to § 1983  
15 under a theory of "respondeat superior." Christie v. Iopa, 176  
16 F.3d 1231, 1234-35 (9th Cir. 1999). Instead, municipalities are  
17 liable only when action pursuant to official municipal policy  
18 causes a constitutional violation. Id. at 1235. The "official  
19 policy" requirement "distinguish[es] acts of the *municipality*  
20 from acts of *employees* of the municipality," and thereby limits  
21 liability to actions for which the municipality is actually  
22 responsible. Id. (emphasis in original).

23 Plaintiffs do not identify a specific unconstitutional  
24 municipal policy or custom which caused this alleged  
25 constitutional violation in their first § 1983 claim. Plaintiffs  
26 "kitchen-sink" approach to alleging a custom or policy on which  
27 to base this claim is insufficient. Conclusory allegations do  
28 not constitute specifically identified County policies as

1 required.

2 The Court has already dismissed this claim as brought against  
3 the County once with leave to amend. 1/13/17 Order at 7. The  
4 Court finds that any further attempt by Plaintiffs to properly  
5 plead plead this claim would be futile. The Court therefore  
6 dismisses Plaintiffs' first § 1983 claim against the County with  
7 prejudice.

8 B. Second Cause of Action: § 1983 Fourteenth Amendment  
9 Claim

10 Plaintiffs attempt to bring a Fourteenth Amendment claim  
11 against the County. SAC at 31. Plaintiffs allege the County  
12 had a "practice or custom of targeting Asian residents"  
13 beginning in 2015. SAC ¶ 132. Plaintiffs allege this targeting  
14 has denied Plaintiffs the "right to the quiet enjoyment and use  
15 of property." SAC ¶ 133.

16 Plaintiffs do not clarify in their SAC under which  
17 Fourteenth Amendment clause they purport to bring their second  
18 cause of action. The SAC alleges that the County was  
19 "deliberately indifferent" to the health and safety of  
20 Plaintiffs, which suggests a due process claim. SAC ¶ 130.  
21 Plaintiffs' opposition brief, however, argues the County "began  
22 enforcing the local ordinance disproportionately against Asian  
23 American property owners," which suggests an equal protection  
24 claim. Opp'n at 12.

25 The allegations in the SAC regarding Plaintiffs' Fourteenth  
26 Amendment claim do not sufficiently put the County on notice of  
27 what type of claim it must defend against. See Nicolescu v.  
28 Faith & Freedom Coal., 21 F.3d 1114 (9th Cir. 1994) ("Rule 8

1 requires sufficient allegations to put defendants fairly on  
2 notice of the claims against them.") The Court therefore  
3 dismisses the second claim brought against the County. Because  
4 Plaintiffs could potentially assert an equal protection claim  
5 based on the alleged facts, the Court grants Plaintiffs one last  
6 opportunity to amend its Fourteenth Amendment claim against the  
7 County.

8 C. Third Cause of Action: § 1983 Municipal Liability

9 Plaintiffs make the same allegations of municipal liability  
10 in their SAC as they did in their original complaint. In both,  
11 Plaintiffs allege the County's training policies "were not  
12 adequate to train its sheriff's deputies and police officers to  
13 handle voter fraud investigations and building safety code  
14 enforcement." Compl. ¶ 115, SAC ¶ 135.

15 In the Court's 1/13/17 Order, it outlined the elements of a  
16 failure-to-train claim. 1/13/17 Order at 8. Yet Plaintiffs  
17 still failed to "identify any specific training that was  
18 deficient, or how the policy amounted to deliberate  
19 indifference" in their SAC. See id. at 7-8 (citing Molina v.  
20 City of Visalia, 2014 WL 1117005, at \*4 (E.D. Cal. Mar. 14,  
21 2014)). Because the Court has already given Plaintiffs the  
22 opportunity to amend this claim, the Court dismisses Plaintiffs'  
23 third cause of action with prejudice.


24 III. ORDER

25 For the reasons set forth above, the Court GRANTS the  
26 County's motion to dismiss. The first, third, and fourth claims  
27 are dismissed with prejudice. The second claim is dismissed with  
28

1 leave to amend. Plaintiffs shall file their Third Amended  
2 Complaint within twenty days of this Order. The County shall  
3 file its responsive pleading twenty days thereafter.

4 IT IS SO ORDERED.

5 Dated: April 27, 2017

6  
7   
8 JOHN A. MENDEZ,  
9 UNITED STATES DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28