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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEMAJ S. HOWARD,  
  
                    Plaintiff,  
  
          v.  
  
COUNTY OF SACRAMENTO,  
  
                    Defendant.

No. 2:16-cv-02400-JAM-DB

ORDER GRANTING SUMMARY JUDGMENT  
TO COUNTY OF SACRAMENTO

Semaj S. Howard ("Plaintiff" or "Howard") sued the County of Sacramento ("Defendant" or the "County") for civil rights violations resulting from the water being shut off during his confinement at Sacramento County Jail.

The parties stipulated to dismiss individual defendants, ECF No. 13, leaving a single Monell claim against the County. The County now moves for summary judgment, Mot. Summ. J. ("MSJ"), ECF No. 15, which Howard opposes, Opp'n, ECF No. 16. For the reasons explained below, the Court grants the County's motion.<sup>1</sup>

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<sup>1</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 March 27, 2018.

1 I. FACTUAL BACKGROUND

2 A. Main Jail Practices

3 Sacramento County Main Jail ("Main Jail") contains a Total  
4 Separation Unit on the eighth floor. The Unit is reserved for  
5 inmates that present a high security risk, such as inmates  
6 accused of notorious crimes, inmates who have demonstrated an  
7 unwillingness to follow facility rules, inmates that have been  
8 violent with others, and inmates that may be targets of violence  
9 by other inmates. Harlan Decl., ECF No. 15-3, p. 2. Inmates in  
10 the Total Separation Unit are housed in a cell alone and  
11 separated from all other inmates. Id.

12 Cells in the jail are equipped with a toilet and sink.  
13 Black Decl., ECF No. 15-3, p. 2. The water supplied to each cell  
14 may be shut off by valves in an exterior closet adjacent to the  
15 cell. Id. Showers are located in the dayroom, which inmates use  
16 during out-of-cell time. Harlan Decl. at 2.

17 While there is no written policy regarding the shut off of  
18 water in a cell, the default practice is that water remains on  
19 unless something requires it to be turned off. Id. at 3. Two  
20 issues result in a cell's water being shut off: intentional  
21 flooding and "toilet talking." Id. Intentional flooding occurs  
22 when an inmate repeatedly flushes a clogged toilet or plugs a  
23 sink and runs the water to flood the cell and housing unit. Id.  
24 Flooding generates health and safety problems because human waste  
25 may be spread throughout the housing unit. Id. "Toilet talking"  
26 is when an inmate communicates through the plumbing pipes with  
27 inmates on another floor. Id.

28 After flooding or "toilet talking" have ceased, running

1 water access is restored to the inmate's cell within a matter of  
2 hours. Id. Water is off only as long as is necessary to prevent  
3 health, safety, and security risks to the facility. Id.

4 **B. Plaintiff's Incarceration**

5 In March 2015, Howard was detained at Sacramento County Main  
6 jail following an arrest for a probation violation and drug  
7 possession. MSJ Exs. 7-8, ECF No. 15-3, pp. 42-52. The  
8 following month, Howard moved from the Main Jail to Rio Cosumnes  
9 Correctional Center ("RCCC"). MSJ Ex. 8.

10 Following the addition of a murder charge against Howard,  
11 MSJ Ex. 7, the Sacramento Police Department requested that Howard  
12 be reclassified as a "total separation" inmate. MSJ Ex. 9, pp.  
13 53-56. The police department based this request on allegations  
14 that Howard was using phone calls to threaten witnesses and  
15 trying to convince other inmates to harm witnesses in exchange  
16 for money. Id. Because RCCC lacked a total separation unit,  
17 Howard transferred back to the unit at the Main Jail in late July  
18 2015. Id.

19 After several months in the Total Separation Unit, deputies  
20 turned off the running water in Howard's cell and did not turn it  
21 back on for thirteen days following an allegation that Howard had  
22 been "toilet talking." See Howard Decl., ECF No. 15-3, p. 55.  
23 While his water was turned off, Howard alleged that the deputies  
24 taunted and teased him about feces in his toilet as they walked  
25 by his cell. Id. at 69. Howard states that he was unable to  
26 file grievances about his cell water being off. Id. at 68. He  
27 did not tell medical staff that his water was off because he was  
28 afraid. Id. at 68-69, 71. Howard further alleges that he was

1 denied dayroom access during this period and was thus unable to  
2 shower or make phone calls. Id. at 63.

3 There are two accounts of how Howard's water was turned back  
4 on.<sup>2</sup> Howard alleges that when he told "Officer Hardy" his water  
5 was off, Hardy immediately turned it back on and asked why Howard  
6 did not say anything earlier about it. Id. at 71.

7 Sergeant Harlan alleges that he received a complaint from  
8 Howard's criminal defense attorney about the water being off in  
9 Howard's cell. Harlan Dep., ECF No. 15-3, p. 13. Harlan went to  
10 Howard's unit to investigate the complaint and asked the three  
11 deputies working whether Howard's water was off for eight days.  
12 Id. at 13-14. Harlan recalls the deputies looking surprised and  
13 saying that was not possible because Howard had not told them his  
14 water was off. Id. at 14. Harlan spoke to Howard through the  
15 intercom in his cell and asked if the water was on. Id. at 14-  
16 15. Howard told Harlan the water was not on. Id. The deputies  
17 then asked Howard why he did not say anything and Harlan directed  
18 them to immediately turn Howard's water back on. Id. Harlan  
19 recalls Howard saying his water was turned off for "toilet  
20 talking." Id.

21 Once the toilet was turned back on, it was inoperable.  
22 Howard Dep. at 71. Maintenance staff came and examined the  
23 toilet, but told Howard they would have come back after  
24 submitting a work order. Id. Rather than wait for a work order  
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26 <sup>2</sup> It is possible that the "Officer Hardy" referred to in Howard's  
27 deposition is Sergeant Harlan; however, neither party made any  
28 mention or correction of this in briefing. The Court notes this  
factual dispute, but does not find it to be material in the  
resolution of this motion.

1 to be submitted, Howard requested to clean the toilet himself  
2 with garbage bags and gloves. Id.

## 3 4 **II. LEGAL STANDARDS**

### 5 **A. Monell Liability**

6 Municipalities and other local government entities may be  
7 sued directly under Section 1983 when their policies or customs  
8 are the moving force behind a constitutional violation. Monell  
9 v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 690  
10 (1978). A local government entity may not, however, be held  
11 liable under a respondeat superior theory for the actions of its  
12 subordinates. Id. "In order to establish liability for  
13 governmental entities under Monell, a plaintiff must prove  
14 '(1) that the plaintiff possessed a constitutional right of which  
15 [he was deprived; (2) that the municipality had a policy;  
16 (3) that this policy amounts to deliberate indifference to the  
17 plaintiff's constitutional right; and, (4) that the policy is the  
18 moving force behind the constitutional violation.' " Dougherty  
19 v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011) (quoting  
20 Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill, 130 F.3d 432, 438  
21 (9th Cir. 1997)).

22 Absent a written law or express policy, Howard must "prove  
23 the existence of a widespread practice that, although not  
24 authorized by written law or express municipal policy, is 'so  
25 permanent and well settled as to constitute a 'custom or usage'  
26 with the force of law.'" City of St. Louis v. Praprotnik, 485  
27 U.S. 112, 127 (1988) (quoting Adickes v. S.H. Kress & Co., 398  
28 U.S. 144, 167-68 (1970)). A plaintiff may prove the existence of

1 an informal policy or custom by showing "evidence of repeated  
2 constitutional violations for which the errant municipal  
3 officials were not discharged or reprimanded." Gillette v.  
4 Delmore, 979 F.2d 1342, 1348-49 (9th Cir. 1992). Municipal  
5 liability "may not be predicated on isolated or sporadic  
6 incidents; it must be founded upon practices of sufficient  
7 duration, frequency and consistency that the conduct has become a  
8 traditional method of carrying out policy." Trevino v. Gates, 99  
9 F.3d 911, 918 (9th Cir. 1996).

10 **B. Pretrial Detainee Rights Under the Fourteenth Amendment**

11 When a pretrial detainee challenges conditions of his  
12 confinement "the proper inquiry is whether those conditions  
13 amount to punishment," because the Fourteenth Amendment prohibits  
14 punishment of detainees "prior to an adjudication of guilt in  
15 accordance with due process of law." Bell v. Wolfish, 441 U.S.  
16 520, 535 (1979). To determine "whether particular restrictions  
17 and conditions accompanying pretrial detention amount to  
18 punishment in the constitutional sense of that word," the court  
19 must decide whether those conditions are "imposed for the purpose  
20 of punishment or whether [they are] but an incident of some other  
21 legitimate governmental purpose." Id. at 538.

22 Unless detention facility officials expressed intent to  
23 punish, the determination hinges on whether the conditions are  
24 reasonably related to a legitimate government purpose, or whether  
25 the conditions appear excessive in relation to that purpose. Id.  
26 at 538-39 (citing Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-  
27 69 (1963)) (instructing that a court may infer an action is  
28 punitive "if it is arbitrary or purposeless"). See also Demery

1 v. Arpaio, 378 F.3d 1020, 1029 (9th Cir. 2004) (specifying that  
2 an action is punitive when "(1) that action must cause the  
3 detainee to suffer some harm or 'disability,' and (2) the purpose  
4 of the governmental action must be to punish the detainee.").

5 In Bell, the Supreme Court recognized that the government  
6 "has legitimate interests that stem from its need to manage the  
7 facility in which the individual is detained." 441 U.S. at 540.  
8 Examples of those legitimate interests include the need to  
9 maintain security and order within the correctional facility and  
10 the need to ensure no weapons or drugs reach detainees. Id.

### 11 12 **III. ANALYSIS**

13 Viewing the evidence in the light most favorable to Howard  
14 and assuming that the County has a Monell-qualifying policy of  
15 shutting off the water in response to intentional flooding or  
16 "toilet talking," Howard has not presented any evidence that this  
17 policy is illegitimate, excessive, or intended to serve solely as  
18 a punishment.

19 First, shutting off an individual cell's running water  
20 following intentional flooding serves a legitimate governmental  
21 purpose by preventing the flow of wastewater within the cell and  
22 housing area. In the Eighth Amendment context, there is clear  
23 precedent that shutting off a cell's water to curb intentional  
24 flooding is not a constitutional violation. See, e.g., Wilson v.  
25 Timko, 972 F.2d 1348, 1992 WL 185446, at \*3 (9th Cir. 1992)  
26 (unpublished) ("This temporary restriction of amenities was not  
27 cruel and unusual punishment, especially given that turning off  
28 the water related specifically to Wilson's disruptions."); Dennis

1 v. Thurman, 959 F. Supp. 1253, 1261-62 (C.D. Cal. 1997) (granting  
2 summary judgment on Eighth Amendment claim for 36-hour denial of  
3 water because use of water to flood the cell block was a  
4 "legitimate" reason to temporarily turn off water). That is  
5 because shutting off water in response to intentional flooding is  
6 not so completely without justification that it results in  
7 gratuitous suffering. See Wilson, 972 F.2d 1348, at \*3 (noting  
8 that when an inmate was already in administrative segregation,  
9 "there was no alternative sanction to encourage disciplined  
10 behavior"). Cell block flooding creates "a dangerous condition  
11 for both prison officials and other inmates," Dennis, 959 F.  
12 Supp. at 1262, and it is permissible for the County to  
13 temporarily deny sanitation in order to rectify the situation.

14       Second, shutting off running water to prevent "toilet  
15 talking" serves a legitimate governmental interest in preventing  
16 individuals in the Total Separation Unit from inter-cell  
17 communication. The parties agree that "toilet talking" enables  
18 an inmate to communicate with other inmates. Accordingly, where  
19 an inmate is in the Total Separation Unit to prevent  
20 communication with others, allowing the continuance of "toilet  
21 talking" would hinder the efficacy of the inmate's separation.  
22 If temporarily suspending running water disables the ability to  
23 "toilet talk," then it is reasonably related to the County's  
24 legitimate interest in preventing communication that endangers  
25 facility security.

26       Thus, the goal of shutting off the water under these two  
27 circumstances is neither arbitrary nor purposeless. The  
28 temporary suspension of running water after flooding or "toilet



1 talking" serves the legitimate goal of maintaining safety,  
2 security, and order within the jail. Furthermore, Howard has not  
3 presented any evidence—other than his isolated experience—that  
4 disproves the County's assertion that running water is restored  
5 soon after flooding or "toilet talking" have ceased. Viewing the  
6 evidence in the light most favorable to Howard, he has failed to  
7 show that the County had a policy or practice of violating  
8 detainees' constitutional rights.

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#### IV. CONCLUSION

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For the above reasons, the County's Motion for Summary  
Judgment is GRANTED.

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Dated: March 28, 2018.

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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