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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JANETTE RAMIREZ, individually
and as a representative of
the Estate of ROBERTO
BALDIZON, Deceased; ANA
JUSCAMAITA, individually and
as a representative of the
Estate of ROBERTO BALDIZON,
Deceased; and THE ESTATE of
ROBERTO BALDIZON,

Plaintiffs,

v.

JEFFREY MACOMBER,
individually and in his
official capacity as Former
Warden of California State
Prison-Sacramento and DOES 1
through 100, inclusive, in
their official and
personal/individual
capacities,

Defendants.

CIV. NO. 2:17-00228 WBS AC

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS

Plaintiffs Janette Ramirez and Ana Juscamaita,
individually and as representatives of the Estate of Roberto
Baldizon (collectively "plaintiffs"), brought this action against
defendants Jeffrey Macomber and Does 1-100 ("defendants") for

1 money damages alleging violations of federal law arising out of
2 the death of Roberto Baldizon ("decedent"), who was killed by his
3 cellmate at California State Prison-Sacramento ("Sacramento
4 Prison"). The matter is now before the court on defendant
5 Jeffrey Macomber's Motion to dismiss the Third Amended Complaint
6 for failure to state a claim upon which relief can be granted
7 pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket
8 No. 24.)

9 I. Procedural and Factual Background

10 Plaintiff Janette Ramirez is Baldizon's sibling, and
11 plaintiff Ana Juscamaita is Baldizon's mother. (Third Am. Compl.
12 ("TAC") ¶ 5 (Docket No. 29).) Defendant Jeffrey Macomber was
13 employed by the California Department of Corrections and
14 Rehabilitation ("Department of Corrections"), acting as Warden of
15 the Sacramento Prison, a state run prison under the Department of
16 Corrections. (TAC ¶ 6.) As Warden, plaintiffs assert defendant
17 was responsible for the oversight, maintenance, and policy making
18 decisions of the Sacramento Prison as well as the supervision,
19 training, and hiring of employees. (TAC ¶ 8.)

20 From around December 2014 to February 2015, Baldizon
21 was an inmate at the Sacramento Prison. (See TAC ¶¶ 14, 16.)
22 Baldizon suffered from severe mental health issues, including
23 bipolar disorder, schizophrenia, and agoraphobia. (TAC ¶ 13.)
24 Sometime in January 2015, Baldizon was physically attacked by an
25 unnamed cellmate. (TAC ¶ 13.) After the attack, Baldizon was
26 assigned a new cellmate, Antolin Cepeda. (TAC ¶ 16.) Plaintiffs
27 allege that Baldizon complained both to his family and defendants
28 that he was unsafe and feared for his life at the Sacramento

1 Prison. (TAC ¶ 17.) Plaintiffs allege that despite his
2 complaints and the previous attack by a Sacramento Prison
3 cellmate, defendants did not address his concerns. (See id.)

4 On February 3, 2015, Baldizon was stabbed and killed by
5 Antolin Cepeda. (TAC ¶ 18.) Plaintiffs allege other inmates
6 attempted to notify Doe defendants of the assault to procure
7 their assistance. (TAC ¶ 19) Plaintiffs allege that during the
8 time the assault went undiscovered, Baldizon could have received
9 lifesaving treatment. (Id.)

10 On September 28, 2018, plaintiffs filed a Third Amended
11 Complaint against defendants pursuant to 42 U.S.C. § 1983 for:
12 (1) violation of Baldizon's constitutional rights to reasonable
13 security and access to medical care and treatment under the
14 Eighth Amendment's prohibition against cruel and unusual
15 punishment; (2) violation of decedent's civil rights--a survival
16 claim, alleging decedent was forced to endure great pain and
17 suffering before his death; and (3) violation of the right to
18 familial relationship under the Fourteenth Amendment of the
19 United States Constitution.¹ (TAC ¶¶ 21-36.) Plaintiffs sue
20 defendant Macomber in both his individual and official capacities
21 for his own allegedly culpable action or inaction in the
22 training, supervision or control of his subordinates, or for the
23 acquiescence in the constitutional deprivations alleged, or for

24
25 ¹ Plaintiff states that she does not allege any counts
26 under California law and that the language in the Third Amended
27 Complaint, namely "Article I, Section 7(a) and 17 of the
28 California Constitution, and under the common law of the State of
California . . ." can be struck. (Pls.' Opp'n at 11 (Docket No.
37).) Thus, the court will strike this allegation.

1 conduct that showed a reckless or callous indifference to the
2 rights of others. (TAC ¶ 8.) As a result of defendant's alleged
3 conduct, plaintiffs seek money damages, including punitive
4 damages, as well as reasonable attorney's fees. (TAC Prayer for
5 Relief at 10-11.)

6 II. Discussion

7 To survive a motion to dismiss, a plaintiff must plead
8 "only enough facts to state a claim to relief that is plausible
9 on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570
10 (2007). This "plausibility standard," however, "asks for more
11 than a sheer possibility that a defendant has acted unlawfully,"
12 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and "[w]here a
13 complaint pleads facts that are 'merely consistent with' a
14 defendant's liability, it 'stops short of the line between
15 possibility and plausibility of entitlement to relief.'" Id.
16 (quoting Twombly, 550 U.S. at 557). In deciding whether a
17 plaintiff has stated a claim, the court must accept the
18 allegations in the complaint as true and draw all reasonable
19 inferences in favor of the plaintiff. See Resnick v. Hayes, 213
20 F.3d 443, 447 (9th Cir.2000).

21 A. Official Capacity Liability

22 As an initial matter, plaintiffs seek damages against
23 defendant in both his official and individual capacity. (TAC ¶
24 8.) Generally when a plaintiff seeks damages against an officer,
25 the suit is against the officer in his individual capacity; if
26 the plaintiff seeks an injunction, the suit is generally against
27 the officer in his official capacity. As the Supreme Court has
28 explained "[o]fficial-capacity suits . . . generally represent

1 only another way of pleading an action against an entity of which
2 an officer is an agent Thus, while an award of damages
3 against an official in his personal capacity can be executed only
4 against the official's personal assets, a plaintiff seeking to
5 recover on a damages judgment in an official-capacity suit must
6 look to the government entity itself." Kentucky v. Graham, 473
7 U.S. 159, 166 (1985). Moreover, "state officers named in their
8 official capacities are immune from suits for damages in federal
9 court (for federal or state law claims) under the doctrine of
10 state sovereign immunity and the Eleventh Amendment, and are not
11 'persons' subject to suit under 42 U.S.C. § 1983 (in federal or
12 state court)." Silverbrand v. Woodford, Civ. No. 06-3253-R(CW),
13 2010 WL 3635780, at *4 (C.D. Cal. Aug. 18, 2010) (citations
14 omitted). Therefore, defendant is not liable and the court
15 dismisses the § 1983 claims against him in his official capacity.
16 The court proceeds with plaintiffs' claims against defendant in
17 his individual capacity.

18 B. Individual Capacity Liability

19 1. Supervisory Liability

20 Plaintiffs purport to hold defendant liable in his
21 individual capacity as a supervisor at the Sacramento Prison.
22 (See TAC ¶ 9.) A supervisor may be held liable under § 1983 "if
23 there exists either (1) his or her personal involvement in the
24 constitutional deprivation, or (2) a sufficient causal connection
25 between the supervisor's wrongful conduct and the constitutional
26 violation." Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011)
27 (quoting Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)).

28 Furthermore, "[a] plaintiff must show the supervisor

1 breached a duty to plaintiff which was the proximate cause of the
2 injury." Starr, 652 F.3d at 1207. To be liable, a supervisor
3 does not have to be physically present when the constitutional
4 injury was inflicted; rather, the supervisor's participation
5 could include his "own culpable action or inaction in the
6 training, supervision, or control of his subordinates, his
7 acquiescence in the constitutional deprivations of which the
8 complaint is made, or conduct that showed a reckless or callous
9 indifference to the rights of others." Id. at 1205-06 (citing
10 Larez v. City of Los Angeles, 946 F.2d 630 (9th Cir. 1991)).
11 Additionally, "[t]he sufficient causal connection may be shown by
12 evidence that the supervisor implemented a policy so deficient
13 that the policy itself is a repudiation of constitutional rights
14 and is the moving force of the constitutional violation." Wesley
15 v. Davis, 333 F.Supp.2d 888, 892 (C.D. Cal. 2004) (quoting
16 Hansen, 885 F.2d at 646). Whether plaintiffs state a claim
17 against defendant in his individual capacity will be considered
18 in the context of supervisory liability.

19 2. Cruel and Unusual Punishment under the Eighth Amendment

20 a. Right to Reasonable Security

21 Prison officials have a duty to protect prisoners from
22 violence at the hands of other inmates. Hearns v. Terhune, 413
23 F.3d 1036, 1040 (9th Cir. 2005) (citations and quotations
24 omitted). "The failure of prison officials to protect inmates
25 from attacks by other inmates may rise to the level of an Eighth
26 Amendment violation when: (1) the deprivation alleged is
27 objectively, sufficiently serious and (2) the prison officials
28 had a sufficiently culpable state of mind, acting with deliberate

1 indifference.” Id. (quoting Farmer v. Brennan, 511 U.S. 825, 834
2 (1994)). “Deliberate indifference is a high legal standard.”
3 Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). To be
4 liable, the official must “know[] of and disregard[] an excessive
5 risk to inmate health or safety: the official must be aware of
6 facts from which the inference could be drawn that a substantial
7 risk of serious harm exists, and he must also draw the
8 inference.” Farmer, 511 U.S. at 587. See also Leer v. Murphy,
9 844 F.2d 628, 633 (9th Cir. 1988) (stating “deliberate
10 indifference” standard requires proving some degree of
11 “individual culpability”).²

12 Plaintiffs appear to have two different theories as to
13 why defendant is liable for failure to protect Baldizon. First,
14 plaintiffs allege that it was against Department of Corrections
15 and Sacramento Prison policy for Baldizon to be housed with
16 Antolin Cepeda. (Compl. ¶ 16.) Specifically, plaintiffs argue
17 that under these policies prison officials are supposed to place
18 the victim of an assault on single cell status, investigate the
19 assault, make informed decisions about whether the victim is at
20 risk for future assaults, and, if so, determine how best to
21 protect the individual within the prison setting. (Pls.’ Opp’n
22 at 7.) Thus, plaintiffs allege that defendant’s affirmative
23 conduct involves his failure to ensure enforcement of policies,

24
25 ² In plaintiffs’ opposition, plaintiffs cite Castro v.
26 County of Los Angeles, 833 F.3d 1060 (9th Cir. 2016), for the
27 elements of a failure-to-protect claim. However, Castro sets the
28 standard for failure-to-protect for a pretrial detainee. Here,
defendant was not a pretrial detainee and thus the Castro
standard does not apply.

1 rules, or directives that set in motion a series of acts by
2 others which he knew or reasonably should have known would cause
3 others to inflict constitutional injury.³ (TAC ¶ 8.) However,
4 plaintiffs have not alleged sufficient factual allegations from
5 which the court may infer defendant acted either intentionally or
6 with deliberate indifference. See Leer, 844 F.2d at 634.
7 Plaintiffs do not plead sufficient factual allegations to
8 establish that defendant was aware of previous incidents of
9 violence, the need to enforce prison policies, or that prison
10 officials were endangering inmates. See Hydrick v. Hunter, 669
11 F.3d 937 (9th 2012) (citing Starr, 652 F.3d at 1206-07) ("Even
12 under a 'deliberate indifference' theory of individual liability,
13 the Plaintiffs must still allege sufficient facts to plausibly
14 establish the defendant's 'knowledge of' and 'acquiescence in'
15 the unconstitutional conduct of his subordinates."); Henry A. v.
16 Willden, 678 F.3d 991, 1004 (9th Cir. 2012) (finding allegation
17 of supervisory liability insufficient where complaint "does not
18 allege . . . any personal knowledge of the specific
19 constitutional violations that led to Plaintiffs' injuries.")
20 Compare Starr, 652 F.3d at 1208-12 (finding complaint sufficient
21 to allege supervisory liability against Sheriff, where Sheriff
22 was given notice of previous incidents of violence and did not

23
24 ³ Furthermore, a failure to follow a state regulation or
25 prison policy itself does not amount to a constitutional
26 violation. See Cousins v. Lockyer, 568 F.3d 1063, 1070 (9th Cir.
27 2009) ("[S]tate departmental regulations do not establish a
28 federal constitutional violation") (citation omitted); Gardner v.
Howard, 109 F.3d 427, 430 (8th Cir. 1997) ("[T]here is no § 1983
liability for violating prison policy. [Plaintiff] must prove
that [defendant] violated his constitutional right . . .").

1 take action to protect inmates despite the dangers created by the
2 action of his subordinates of which he had been made aware).⁴

3 Under plaintiffs' alternate theory, plaintiffs state
4 defendant was responsible for the "supervision, training and
5 hiring of persons and employees working" within the Sacramento
6 Prison. (Compl. ¶ 8.) Here, plaintiffs allege that defendant
7 maintained customs or practices that posed a substantial risk of
8 harm to inmates including: (a) improper classification of
9 inmates; improper housing of inmates; (b) inadequate staffing of
10 custody positions to provide reasonable security to inmates; (c)
11 failure to provide reasonable security and/or prevent the abuse
12 of inmates by other inmates; (d) failure to supervise,
13 investigate and take corrective actions in incidents of failure
14 to provide reasonable security and/or prevent abuse resulting in
15 inmate on inmate violence; (e) condoning lax supervision by
16 prison officials who fail to report or investigate reports of
17 inmate on inmate violence; (f) ratifying wrongful conduct of and
18 by prison officials that result in serious injury or death in
19 inmates, civil litigation, judgments and settlements by failing
20 to implement corrective action to prevent repetition of the
21 wrongful conduct. (Compl. ¶ 25.) These alleged policies and
22

23 ⁴ Plaintiff alleges no facts showing defendant was aware
24 that Baldizon was concerned for his safety. Plaintiffs allege
25 that decedent "complained both to his family and [d]efendants
26 [that] he was unsafe and feared for life" at the Sacramento
27 Prison. (TAC ¶ 17.) However, "[P]laintiffs may not attribute
28 liability to a group of defendants, but must "set forth specific
facts as to each individual defendant's" deprivation of his
rights. Williams v. Fresno Cty. Dist. Attorney's Office, No.
1:16-00734 DAD MJS, 2016 WL 5158943, at *3 (E.D. Cal. Sept. 20,
2016) (Seng, J.) (citing Leer, 844 F.2d at 634).

1 customs maintained by defendant are unsupported by factual
2 allegations as plaintiffs do not specify how the defendant's
3 training, supervision, or hiring was deficient. See Moss v. U.S.
4 Secret Servs., 711 F.3d 941, 968 (9th Cir. 2013) (finding
5 plaintiffs' supervisory claim conclusory where "[t]he protestors
6 claim that 'the use of overwhelming and constitutionally
7 excessive force against them' was 'the result of inadequate and
8 improper training, supervision, instruction and discipline ...
9 under the personal direction . . . of the . . . Police Defendants
10 The protestors allege no facts whatsoever about the
11 officers' training or supervision, nor do they specify in what
12 way any such training was deficient.")

13 For the above stated reasons, the court grants
14 defendant's Motion to dismiss plaintiffs' claim that defendant
15 violated Baldizon's constitutional right to reasonable security
16 protected under the Eighth Amendment's prohibition against cruel
17 and unusual punishment

18 b. Right to Adequate Medical Care and Treatment

19 The Eighth Amendment imposes a duty on prison officials
20 to ensure inmates receive adequate medical care. Farmer, 511
21 U.S. at 832 (citations omitted). To state a claim under 42
22 U.S.C. § 1983 for a violation of the Eight Amendment based on
23 inadequate medical care, "a prisoner must allege acts or
24 omissions sufficiently harmful to evidence deliberate
25 indifference to serious medical needs." Estelle v. Gamble, 429
26 U.S. 97, 106 (1976) (internal quotations omitted). A plaintiff
27 may show a serious medical need by demonstrating that "the
28 failure to treat a prisoner's condition could result in further

1 significant injury or the unnecessary and wanton infliction of
2 pain".⁵ McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992),
3 overruled on other grounds by WMX Techs., Inc. v. Miller, 104
4 F.3d 1133 (9th Cir. 1997) (citation and quotations omitted). To
5 be deliberately indifferent, "a defendant must purposefully
6 ignore or fail to respond to a prisoner's pain or possible
7 medical need." Id. at 1060.

8 Here, plaintiffs allege that after the assault, other
9 inmates attempted to notify prison officials to come to the
10 assistance of Baldizon. (TAC ¶ 19.) However, plaintiffs do not
11 allege that defendant was actually notified by inmates about the
12 assault or had any knowledge that Baldizon was stabbed, left in
13 his cell, and awaiting medical treatment. See Baldhosky v.
14 Hubbard, et. al., Civ. No. 1:12-01200 LJO MJS PC, 2017 WL
15 5998198, at *7 (E.D. Cal. Dec. 4, 2017) (Seng, J.) ("Under §
16 1983, Plaintiff must demonstrate that each named Defendant
17 personally participated in the deprivation of his rights.");
18 Henry A. v. Willden, 678 F.3d 991, 1005 (9th Cir. 2012) (stating
19 "the complaint falls short in some places [] tying its factual
20 allegations to particular defendants."). Moreover, plaintiffs'
21 assertion that defendant's failure to train or supervise his
22 subordinates caused the delay in response to the incident is
23 conclusory and fails to allege either personal involvement or a
24 sufficient causal connection between defendant's conduct, failure
25 to train or supervise, and the constitutional deprivation--

26
27 ⁵ Here, the parties do not dispute that plaintiffs
28 sufficiently allege a serious medical need.

1 inadequate medical care. (Pls.' Opp'n at 11.)

2 Because the Third Amended Complaint relies on
3 conclusory allegations and lacks sufficient factual content, the
4 court grants defendant's Motion to dismiss plaintiffs' claim that
5 he violated Baldizon's constitutional right to access medical
6 care and treatment protected under the Eighth Amendment's
7 prohibition against cruel and unusual punishment. See Ivey v.
8 Bd. of Regents of Univ. of Alaska, 673 F.2d 266, 268 (9th Cir.
9 1982) ("Vague and conclusory allegations of official
10 participation in civil rights violations are not sufficient to
11 withstand a motion to dismiss.")

12 3. Survival Action

13 Plaintiffs also bring a § 1983 survival claim stating
14 Baldizon "was forced to endure great conscious pain and suffering
15 before his death." (TAC ¶ 31.) Plaintiffs seek to recover
16 damages pursuant to Baldizon's right of survivorship for the pain
17 and suffering he endured as a result of the defendant's alleged
18 deliberate indifference and violation of his civil rights. (TAC
19 ¶ 39.) Because the court determined that plaintiffs have not
20 stated a claim for an underlying constitutional violation, the
21 court dismisses this cause of action.

22 4. Familial Relationship

23 To bring a claim under § 1983, a plaintiff must allege
24 a violation of a right secured by the Constitution and laws of
25 the United States. See West v. Atkins, 487 U.S. 42, 58 (1988)
26 (citations omitted). However, plaintiffs' Fourteenth Amendment
27 rights to the companionship of Baldizon, derive from Baldizon's
28 constitutional rights. See Estate of Torres v. Terhune, Civ. No.

1 98-2211 WBS GGH, 2002 WL 32107951, at *8 (E.D. Cal. Jan. 9,
2 2002). Because the court has determined that plaintiffs have not
3 stated a claim for an underlying constitutional violation, the
4 court will dismiss plaintiffs' Fourteenth Amendment right to
5 familial association claim.


6 5. Punitive Damages

7 In a § 1983 case, punitive damages are permitted "when
8 the defendant's conduct is shown to be motivated by evil motive
9 or intent, or when it involves reckless or callous indifference
10 to the federally protected rights of others." Smith v. Wade, 461
11 U.S. 30, 56 (1983). Here, plaintiff has neither stated a claim
12 that defendant violated the plaintiffs' right nor properly
13 alleged that defendant acted with "evil motive or intent," nor
14 pled sufficient facts to establish "reckless or callous
15 indifference to the federally protected rights of others." Thus,
16 plaintiffs have not stated a claim sufficient to recover punitive
17 damages.

18 IT IS THEREFORE ORDERED that defendant Macomber's
19 motion to dismiss be (Docket No. 24), and the same hereby is,
20 GRANTED.

21 Plaintiffs have twenty days from the date this Order is
22 signed to file a First Amended Complaint, if they can do so
23 consistent with this Order.

24 Dated: December 18, 2017


25 **WILLIAM B. SHUBB**
26 **UNITED STATES DISTRICT JUDGE**