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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY MONTE; PHIL MONTE;  
and PATRICIA MONTE,

Plaintiffs,

v.

CITY OF LODI; LODI POLICE  
DEPARTMENT; OFFICER B.  
FREEMAN, badge 14; OFFICER J.  
LADO, badge 101; AUSTIN BLYTHE,  
badge 36; and DOES 1 through 25,  
inclusive,

Defendants.

No. 2:17-cv-00411 MCE DB

**MEMORANDUM AND ORDER**

On February 23, 2017, Plaintiffs Anthony Monte, Phil Monte, and Patricia Monte filed a complaint alleging violations of 42 U.S.C. § 1983 and containing pendent state-law claims, arising from Anthony Monte's February 26, 2016, arrest for violating California Vehicle Code § 23152 (DUI), and California Penal Code § 834a (resisting arrest). Compl., ECF No. 1. Defendants City of Lodi, also sued as Lodi Police Department, and Officers Brian Freeman, Jordan Lado, and Austin Blythe moved to dismiss Plaintiffs' complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Mot. Dismiss, ECF No. 11. The Court granted in part and denied in part that Motion, but permitted Plaintiffs leave to amend and directed that Plaintiffs simultaneously file a motion to substitute a proper Plaintiff in Patricia's stead. ECF No. 20.

1 Plaintiffs timely filed both documents, but the Motion to Substitute Plaintiff was  
2 deficient as filed, and they were directed that it must be renoticed. ECF No. 24.  
3 Plaintiffs failed to renotify that Motion, however, and Defendants Freeman and Lado  
4 subsequently filed a Motion to Dismiss Phil's causes of action against them.<sup>1</sup> ECF  
5 No. 28. Plaintiffs have not filed an opposition or statement of opposition to that Motion.<sup>2</sup>

6 Plaintiffs' Motion for Substitution as Plaintiff (ECF No. 23) is DENIED without  
7 prejudice to refile in compliance with the applicable rules and orders of the Court. Not  
8 later than five (5) days following the date this Order is electronically filed, Plaintiffs are  
9 directed to refile that Motion, should they choose to do so, in compliance with the  
10 applicable rules and orders of the Court. If no such Motion is timely filed, the causes of  
11 action brought on behalf of Patricia will be dismissed without leave to amend upon no  
12 further notice to the parties.

13 Defendants' Motion to Dismiss (ECF No. 28), which again Plaintiffs have not  
14 opposed, is GRANTED for the same reasons articulated in the Court's original  
15 Memorandum and Order (ECF No. 20). Plaintiffs have not added any material facts to  
16 their amended complaint that compel a different result. Because the Court has no doubt  
17 Plaintiffs would have included any such facts if they could, Phil's causes of actions  
18 against Defendants Lado and Freeman (the Third and Fourth causes of action in the  
19 operative complaint) are DISMISSED without leave to amend.

20 IT IS SO ORDERED.

21 Dated: July 5, 2018

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24 MORRISON C. ENGLAND, JR.  
25 UNITED STATES DISTRICT JUDGE

26 <sup>1</sup> Because oral argument would not have been of material assistance, the Court ordered this  
27 matter submitted on the briefs pursuant to E.D. Cal. Local Rule 230(g).

28 <sup>2</sup> This is not Plaintiff's first time failing to comply with the Local Rules requiring a response to a  
noticed motion. See ECF No. 12. Any future failure by Plaintiffs will result in the imposition of sanctions  
upon no further notice to the parties.