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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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HARRY VELEZ, MARIA LAZADA,  
and ANDRE O'HARA,

CIV NO 2:17-CV-00960 WBS KJN.

Plaintiffs,

v.

MEMORANDUM AND ORDER RE:  
DEFENDANTS' MOTION FOR MORE  
DEFINITE STATEMENT

THE STATE OF CALIFORNIA; THE  
CITY OF DAIRYVILLE; TEHAMA  
COUNTY; THE TEHAMA COUNTY  
SHERIFF DEPARTMENT; DAVE  
HENCRRATT; STEVE HOAG; ROBERT  
BAKKEN; and DUSTIN MARIA,

Defendants.

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Plaintiffs Harry Velez (deceased), Maria Lazada,  
(decedent's mother), and Andre O'Hara (decedent's son)  
(collectively "plaintiffs") filed this action against Sheriff  
Dave Hencratt, Sergeant Steve Hoag, Deputy Robert Bakken, Deputy  
Dustin Maria, the State of California, the City of Dairyville,  
Tehama County, and the Tehama County Sheriff Department, alleging  
that Deputies Robert Bakken and Dustin Maria used excessive force

1 while arresting Harry Velez, causing his death. Plaintiffs'  
2 complaint asserts six claims: 1) a § 1983 claim for violations of  
3 plaintiffs' First, Fourth, Fifth, Eighth, and Fourteenth  
4 Amendments rights<sup>1</sup>; 2) an assault/battery claim; 3) a false  
5 arrest/imprisonment claim; 4) an intentional infliction of  
6 emotional distress claim; 5) a negligent hiring, training,  
7 supervision and/or retention of employees claim; and 6) a  
8 negligence claim. (Compl. 3 (Docket No. 1).)<sup>2</sup> Pursuant to  
9 Federal Rule of Civil Procedure 12(e), Tehama County, Tehama  
10 County Sheriff Department, Dave Hencratt, Steve Hoag, Robert  
11 Bakken, and Dustin Maria (collectively "defendants") have filed a  
12 Motion for a more definite statement.

13 I. Background

14 On September 21, 2016, the Tehama County Sheriff  
15 Department responded to a 911 call at 11725 Hwy 99E made by Harry  
16 Velez ("Velez"), who claimed he had been drugged by his  
17 girlfriend Natasha Finck ("Finck"). (Compl. 10.) Deputy Robert  
18 Bakken and Deputy Dustin Maria responded to the call. (Id.)  
19 After speaking with Velez and Finck, Deputy Bakken handcuffed  
20 Velez, purportedly for his own safety. (Id. at 11.) According  
21 to the complaint, Velez was not armed and did not initiate  
22 contact with either deputy. (Id.) Plaintiffs allege that Velez  
23 stepped away from Deputy Bakken and, in retaliation, the deputies

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24  
25 <sup>1</sup> The complaint seems to assert these five separate  
26 constitutional claims as a single claim under "Violation of Civil  
Rights - 42 U.S.C. § 1983."

27 <sup>2</sup> The complaint does not contain numbered paragraphs.  
28 Therefore, citations will reference page numbers rather than  
paragraphs.

1 repeatedly tased and punched Velez. (Id.) During the attack,  
2 plaintiffs purport that Velez yelled for help. (Id.)

3 Velez was transported to the hospital where he died  
4 from Hypoxic Encephalopathy (lack of oxygen to the brain) with  
5 Multisystem Organ Failure. (Id.) According to the autopsy,  
6 Velez was tased at least ten times. (Id. at 15.) The autopsy  
7 also reports that Velez had abrasions on his face, forearms,  
8 knee, toes, and wrists, and had contusions on his fingers, chest,  
9 and abdominal walls. (Id.)

10 Plaintiffs filed their complaint on May 5, 2017,  
11 seeking damages for injuries to the decedent and to compensate  
12 the family members for mental anguish and pecuniary injuries.

## 13 II. Legal Standard

14 Rule 12(e) provides that “[a] party may move for a more  
15 definite statement of a pleading to which a responsive pleading  
16 is allowed but which is so vague or ambiguous that the party  
17 cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e).  
18 The motion “must point out the defects complained of and the  
19 details desired.” (Id.) “[M]otions for a more definite  
20 statement are disfavored, and ordinarily restricted to situations  
21 where a pleading suffers from unintelligibility rather than want  
22 of detail.” Medrano v. Kern Cnty. Sheriff’s Officer, 921 F.  
23 Supp. 2d 1009, 1013 (E.D. Cal. 2013). A motion for a more  
24 definite statement should generally be denied if the complaint  
25 “is specific enough to apprise the defendant of the substance of  
26 the claim asserted against him or her.” Craigslist, Inc. v.  
27 Autoposterpro, Inc., Civ. No. 08-05069 SBA, 2009 WL 890896, at \*4  
28 (N.D. Cal. Mar. 31, 2009).

1     III. Discussion

2             Under Rule 8(a)(2), "a claim for relief must contain a  
3 short and plain statement of the claim showing that the pleader  
4 is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Each  
5 allegation must be simple, concise, and direct." Fed. R. Civ. P.  
6 8(d)(1). Moreover, "a complaint must not contain lengthy  
7 preambles, introductions, argument, speeches, explanations,  
8 stories, griping, evidence, attempts to negate possible defenses,  
9 summaries, and the like." Todd v. Ellis, Civ. No. 2:13-1016 TLN  
10 KJN, 2013 WL 3242229, at \*2 (E.D. Cal. June 25, 2015), citing  
11 McHenry v. Renee, 84 F. 3d 1172, 1179 (9th Cir. 1996).

12             Here, the complaint is 74 pages, contains 106  
13 footnotes, cites over 150 cases, and does not include numbered  
14 paragraphs. Throughout the entire 74 pages, plaintiffs mix  
15 allegations of facts with legal arguments. The complaint  
16 contains a four page section devoted to attempting to negate  
17 potential defenses. (Compl. 42-46.) Plaintiffs make allegations  
18 against the city and government employees without specifying  
19 which claims are brought against which defendants and in which  
20 capacities. Although it is "labeled a complaint [it is] written  
21 more as a press release, prolix in evidentiary detail, yet  
22 without simplicity, conciseness and clarity as to whom plaintiffs  
23 are suing for what wrongs." McHenry, 84 F. 3d at 1180.

24             The complaint makes it very difficult to determine  
25 which defendants are allegedly liable for which wrongs. "The  
26 court [and defendants] should be able to read and understand  
27 plaintiff's pleading within minutes." Todd, 2013 WL 3242229, at  
28 \*2, citing McHenry, 84 F. 3d at 1177. That is not possible here.

1 Defendants argue this makes it excessively difficult for the  
2 individual defendants to formulate proper defenses, thus placing  
3 an unnecessary burden on the defendants and the court. As in  
4 McHenry, “[a]s a practical matter, the judge and opposing  
5 counsel, in order to perform their responsibilities, cannot use a  
6 complaint such as the one plaintiffs filed, and must prepare  
7 outlines to determine who is being sued for what.” (Id.)  
8 Requiring defendants to file a responsive pleading to this  
9 complaint would create an unnecessary burden likely to lead to  
10 confusion regarding which allegations have been admitted and  
11 which have been denied.

12 Plaintiffs counter that had the complaint not been pled  
13 with this level of particularity, they would have risked  
14 dismissal under Federal Rule of Civil Procedure 12(b)(6). (Resp.  
15 in Opp’n to Defs.’ Mot. for More Definite Statement 5 (Docket No.  
16 9).) However, the McHenry court clearly stated that even “[a]  
17 heightened pleading standard is not an invitation to disregard  
18 Rule 8’s requirement of simplicity, directness, and clarity.” 84  
19 F. 3d at 1178. The court went on to explain that “[i]f the  
20 pleading contains prolix evidentiary averments. . . rather than  
21 clear and concise averments stating which defendants are liable  
22 to plaintiffs for which wrongs, based on the evidence,” then the  
23 purpose of Rule 8 is defeated. (Id.)

24 Plaintiffs further argue that defendants’ Motion did  
25 not point out any specific details desired, as required by Rule  
26 12(e). Fed. R. Civ. P. 12(e). However, the court is not  
27 convinced by this argument. Throughout their Motion, defendants  
28 ask that plaintiffs make it clear who is bringing each of the

1 claims, in which capacity, and against which of the multiple  
2 defendants. (Defs.' Mem. of P. & A. in Supp. of Mot. for More  
3 Definite Statement 4 (Docket No. 5-1).) These are important  
4 details, and defendants clearly articulated their desire for  
5 these details to be included in plaintiffs' complaint.

6 Moreover, a complaint "must state its claims in  
7 numbered paragraphs, each limited as far as practical to a single  
8 set of circumstances." Fed. R. Civ. P. 10(b). This complaint  
9 has no numbered paragraphs and is instead written like a motion.  
10 As such, it will be very difficult for defendants to clearly  
11 identify in an answer which allegations they are responding to.

12 IT IS THEREFORE ORDERED that defendants' Motion for a  
13 more definite statement be, and the same hereby is, GRANTED.

14 Plaintiffs have twenty days to file an amended complaint  
15 that complies with Federal Rules of Civil Procedure 8(a) and  
16 10(b) and clearly identifies which plaintiffs are bringing which  
17 claims and against which defendants.

18 Dated: October 11, 2017

19   
20 **WILLIAM B. SHUBB**  
21 **UNITED STATES DISTRICT JUDGE**