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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

A.B., a minor, by and through his
Guardian Ad Litem, Cheyana Brown,
Individually and as Successor in
Interest to Mathew R. Baker,

Plaintiffs,

v.

COUNTY OF SISKIYOU, a public
entity; et al.,

Defendants.

No. 2:16-cv-01752-MCE-EFB

MEMORANDUM AND ORDER

A.H., a minor, by and through his
Guardian Ad Litem, Kendra Howard;
LISA INMAN,

Plaintiffs,

v.

COUNTY OF SISKIYOU, a public
entity; et al.,

Defendants.

No. 2:17-cv-01078-MCE-EFB

By way of these actions, Plaintiffs A.B. ("A.B.") and A.H. ("A.H."), both minors, by
and through their Guardians ad Litem, and Plaintiff Lisa Inman ("Inman") (collectively
with A.B. and A.H., "Plaintiffs") seek redress from the County of Siskiyou ("County"),

1 Sheriff Jon Lopey (“Lopey”), Deputy Jeff Huston (“Huston”), and Deputy Christopher
2 Miller (“Miller”) (collectively “Defendants”) for alleged constitutional violations arising out
3 of the suicide of Mathew R. Baker (“Decedent”) when he was in Defendants’ custody.
4 According to Plaintiffs, who are Decedent’s children and mother respectively,
5 Defendants are liable for various injuries sustained as a result of his death. Presently
6 before the Court are Defendants’ Motions for Summary Judgment (ECF No. 25 filed in
7 Case No. 2:17-cv-01078 and ECF No. 36 filed in Case No. 2:16-cv-01752¹), which for
8 the reasons outlined below, are GRANTED in part and DENIED in part.²

10 BACKGROUND

11
12 On March 2, 2015, Mathew R. Baker, Decedent, was arrested and processed into
13 the Siskiyou County Jail (“Jail”) as a pre-trial detainee. Pls.’ Compl., ECF No. 1, ¶ 9. At
14 the time Decedent was booked into the Jail, he went through an intake procedure in
15 which he was screened for medical and behavioral issues that might affect his stay. Pls.’
16 Resp. to Defs.’ UMF (“Pls.’ Resp.”), ECF No. 53, ¶ 8. Decedent was evaluated by
17 mental health professionals, including Dr. William E. Lofthouse, a psychiatrist providing
18 mental health services in the jail, who diagnosed him with “schizoaffective disorder.”
19 Pls.’ Resp. ¶¶ 8, 23. Decedent’s medical records, psychological records, and family
20 history documents show a long and extensive history of mental illness prior to
21 incarceration, and he was appropriately identified as an at-risk inmate. Id. ¶ 21. In
22 addition, Dr. Lofthouse conducted 14 individual therapy sessions with Decedent.
23 Id. ¶ 24.

24 According to Plaintiffs, on approximately July 30, 2015, Decedent called his
25 mother and allegedly indicated there was a “cord” in his cell that he could use to hang

27 ¹ The Court will cite to documents filed in Case No. 2:16-cv-01752 only throughout the Order.

28 ² Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

1 himself. Id. ¶ 14. Upon notification to the Jail, a “Deputy Hudson” searched the
2 Decedent’s “cell,” but did not discover any cord. Id. ¶ 17; Ex. 8, ECF 55-8.

3 Just over a month later, on September 3, 2015, Decedent attended an individual
4 therapy session with Dr. Lofthouse. Id. ¶ 35. Upon leaving his session, Decedent
5 returned to the F-1 unit where he was being housed sharing day room space with
6 another inmate, one Mr. Lawrence, who informed Decedent that he intended to go into
7 his own cell to use the bathroom. Id. ¶ 40. Shortly thereafter, Decedent attempted to
8 commit suicide using an improvised ligature to hang and or asphyxiate himself thereby
9 inducing hypoxia and cardiac arrest. Said improvised ligature was fashioned from a
10 coaxial television cable that had been located in the day room area of F-1 unit. Pls.’ First
11 Am. Compl. (“FAC”), ECF No. 28, ¶ 13.

12 When Mr. Lawrence emerged from his cell into the day room he observed
13 Decedent hanging from a cable underneath the TV. Pls.’ Resp. ¶ 41. Mr. Lawrence
14 then used the intercom to contact Central Control. Id. Resp. ¶ 41. Deputy Miller, who
15 was located in a room next to the F-1 unit, spoke with Mr. Lawrence and then contacted
16 medical staff and emergency services, who transported Decedent to Fairfield Medical
17 Center. Id. ¶¶ 42-44; Defs.’ Reply ISO MSJ, ECF No. 57, ¶ 27. Decedent died
18 secondary to the self-inflicted injuries he sustained on September 3, 2015.

20 STANDARD

21
22 The Federal Rules of Civil Procedure provide for summary judgment when “the
23 movant shows that there is no genuine dispute as to any material fact and the movant is
24 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v.
25 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to
26 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

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1 Rule 56 also allows a court to grant summary judgment on part of a claim or
2 defense, known as partial summary judgment. See Fed. R. Civ. P. 56(a) (“A party may
3 move for summary judgment, identifying each claim or defense—or the part of each
4 claim or defense—on which summary judgment is sought.”); see also Allstate Ins. Co. v.
5 Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995). The standard that applies to a
6 motion for partial summary judgment is the same as that which applies to a motion for
7 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep’t of Toxic
8 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
9 judgment standard to motion for summary adjudication).

10 In a summary judgment motion, the moving party always bears the initial
11 responsibility of informing the court of the basis for the motion and identifying the
12 portions in the record “which it believes demonstrate the absence of a genuine issue of
13 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial
14 responsibility, the burden then shifts to the opposing party to establish that a genuine
15 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith
16 Radio Corp., 475 U.S. 574, 586-87 (1986); First Nat’l Bank v. Cities Serv. Co., 391 U.S.
17 253, 288-89 (1968).

18 In attempting to establish the existence or non-existence of a genuine factual
19 dispute, the party must support its assertion by “citing to particular parts of materials in
20 the record, including depositions, documents, electronically stored information,
21 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do
22 not establish the absence or presence of a genuine dispute, or that an adverse party
23 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The
24 opposing party must demonstrate that the fact in contention is material, i.e., a fact that
25 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,
26 Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and
27 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). The opposing party must also
28 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is

1 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
2 477 U.S. at 248. In other words, the judge needs to answer the preliminary question
3 before the evidence is left to the jury of “not whether there is literally no evidence, but
4 whether there is any upon which a jury could properly proceed to find a verdict for the
5 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251
6 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original).
7 As the Supreme Court explained, “[w]hen the moving party has carried its burden under
8 Rule [56(a)], its opponent must do more than simply show that there is some
9 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
10 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
11 nonmoving party, there is no ‘genuine issue for trial.’” Id. 87.

12 In resolving a summary judgment motion, the evidence of the opposing party is to
13 be believed, and all reasonable inferences that may be drawn from the facts placed
14 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at
15 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
16 obligation to produce a factual predicate from which the inference may be drawn.
17 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d,
18 810 F.2d 898 (9th Cir. 1987).

20 ANALYSIS

21
22 Plaintiff A.B. seeks relief by way of four state and federal causes of action:
23 (1) 42 U.S.C. Section 1983 (“§ 1983”) survival claim based on the deprivation of life and
24 liberty without due process of law and failure to protect against unreasonable and cruel
25 and unusual punishment under the Fourteenth Amendment; (2) § 1983 wrongful death
26 claim due to the interference in and deprivation of the familial relationship; (3) survival
27 claim based on negligence, pursuant to California Civil Procedure Code § 377.30; and
28 (4) wrongful death claim based on negligence, pursuant to California Civil Procedure

1 Code § 377.60. Because the causes of action set forth in the action filed by A.H. and
2 Lisa Inman seek the same relief as A.B. in the Second Cause of Action, the Court
3 addresses all Plaintiffs jointly in that regard.

4 **A. First Cause Of Action Pursuant To 42 U.S.C. § 1983**

5 Under 42 U.S.C. § 1983, an individual may sue “[e]very person who, under color
6 of [law] subjects” him “to the deprivation of any rights, privileges, or immunities secured
7 by the Constitution and laws.” As opposed to prisoner claims, which are governed by
8 the Eighth Amendment, a pretrial detainee is entitled to be free from cruel and unusual
9 punishment under the due process clause of the Fourteenth Amendment.

10 **1. Individual Defendants: Huston, Lopey and Miller**

11 Plaintiff A.B., as successor in interest to Decedent’s estate, alleges that individual
12 Defendants Huston, Lopey, and Miller deprived Decedent of his civil rights by failing to
13 monitor, supervise, and protect him as a pre-trial detainee. A.B. also alleges Defendants
14 failed to provide custodial and medical care to Decedent, which amounts to cruel and
15 unusual punishment and a deprivation of his life without due process in violation of the
16 Fourteenth Amendment. Pls.’ FAC ¶¶ 24, 32.

17 The Due Process Clause requires that “persons in custody ha[ve] the established
18 right to not have officials remain deliberately indifferent to their serious medical needs.”
19 Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir. 1996). To establish a claim for the violation
20 of this right, a pretrial detainee must first show a “serious medical need.” Id. A pretrial
21 detainee may establish this element by showing he suffered from a serious injury while
22 confined or maintained a heightened risk of suicide. See Clouthier v. Cnty. of Contra
23 Costa, 591 F.3d 1232, 1240 (9th Cir. 2010), overruled on other grounds by Castro v.
24 Cnty. of Los Angeles, 833 F.3d 1060 (9th Cir. 2016) (“We have long analyzed claims that
25 correction facility officials violated pretrial detainees’ constitutional rights by failing to
26 address their medical needs (including suicide prevention) . . .”).

27 Second, a pretrial detainee must show the defendant officials were deliberately
28 indifferent to that serious medical need. Conn v. City of Reno, 591 F.3d 1081, 1095 (9th

1 Cir. 2010), cert. granted, judgment vacated sub nom. City of Reno, Nev. v. Conn.,
2 563 U.S. 915 (2011), and opinion reinstated, 658 F.3d 897 (9th Cir. 2011). In Castro v.
3 County of Los Angeles, the Ninth Circuit held that an objective deliberate indifference
4 standard applies to pretrial detainees' Fourteenth Amendment failure to protect claims,
5 instead of the partially subjective standard applied in prior caselaw. 833 F.3d 1060
6 (9th Cir. 2016) (overruling Clouthier v. County of Contra Costa and implying a failure to
7 prevent suicide case should be analyzed under an objective deliberate indifference
8 standard); see also Gordon v. Cnty. of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018)
9 (applying the objective deliberate indifference standard to claims for violations of the
10 right to adequate medical care and stating the "Supreme Court has treated medical care
11 claims substantially the same as other conditions of confinement violations including
12 failure-to-protect claims"); Horton by Horton v. City of Santa Maria, 915 F.3d 592, 599-
13 603 (9th Cir. 2019) (stating the objective standard would apply because the case
14 involved a pretrial detainee's Fourteenth Amendment claim for violation of the right to
15 adequate medical care, but finding the case law at the time too sparse to "establish a
16 reasonable officer would [have] perceive[d] a substantial risk" that the decedent would
17 attempt suicide).

18 In sum, in order show deliberate indifference, a pretrial detainee must show:
19 "(1) [t]he defendant made an intentional decision with respect to the conditions under
20 which the plaintiff was confined; (2) [t]hose conditions put the plaintiff at substantial risk
21 of suffering serious harm; (3) [t]he defendant did not take reasonable available
22 measures to abate that risk, even though a reasonable officer in the circumstances
23 would have appreciated the high degree of risk involved—making the consequences of
24 the defendant's conduct obvious; and (4) [b]y not taking such measures, the defendant
25 caused the plaintiff's injuries. Castro, 833 F.3d at 1071. "With respect to the third
26 element, the defendant's conduct must be objectively unreasonable, a test that will
27 necessarily turn[] on the facts and circumstances of each particular case." Id. (internal
28 citations and quotation marks omitted).

1 Both supervisors and non-supervisor officials may be liable for acting or failing to
2 act in a manner that is deliberately indifferent. “A supervisor may be held liable under
3 § 1983 if he or she was personally involved in the constitutional deprivation or a
4 sufficient causal connection exists between the supervisor’s unlawful conduct and the
5 constitutional violation.” Cunningham v. Gates, 229 F.3d 1271, 1292 (9th Cir. 2000), as
6 amended (Oct. 31, 2000). “The requisite causal connection can be established . . . by
7 setting in motion a series of acts by others . . . or by knowingly refus[ing] to terminate a
8 series of acts by others, which [the supervisor] knew or reasonably should have known
9 would cause others to inflict a constitutional injury.” Starr v. Baca, 652 F.3d 1202, 1207-
10 08 (9th Cir. 2011) (internal quotation marks omitted). For example, supervisors may be
11 held liable for: “their own culpable action or inaction in the training, supervision, or
12 control of subordinates; 2) their acquiescence in the constitutional deprivation of which a
13 complaint is made; or 3) for conduct that showed a reckless . . . indifference to the rights
14 of others.” Id.

15 A.B. first contends that Huston, as the officer responsible for “day to day operation
16 of the jail,” was personally responsible for the placement of the television and coaxial
17 cables and subsequent failure of their removal, and for failing to create Jail policies that
18 would minimize the risk of suicide. Pls.’ Resp. ¶ 2; Pls.’ Mem. Opp’n Defs.’ Summ. J.,
19 ECF No. 49, 18:9-21. In addition, A.B. argues that Lopey acquiesced in the omissions of
20 Huston and failed to review policies or procedures that violated the Fourteenth
21 Amendment rights of pretrial detainees. Pls.’ Mem. Opp’n Defs.’ Summ. J. at 18:22-
22 19:4. Finally, as to the individual Defendants, A.B. contends that at the time of
23 Decedent’s death, Miller was located in a room within view of Decedent and thus could
24 purportedly have prevented or responded more quickly to the cell. Pls.’ Mem. Opp’n
25 Defs.’ Summ. J. at 19:5-11.

26 Factual disputes remain precluding entry of summary judgment as to each of
27 these claims. Although Defendants disagree that the failure to remove the cable from
28 the day room of the F-1 unit resulted in deliberate indifference, the parties agree that:

1 (1) the Jail was notified of Decedent’s potential ability to kill himself with a “cord,” and
2 (2) a subsequent search did not turn up that item. Pls.’ Resp. ¶ 17. It is unclear to the
3 Court, by way of example, how thoroughly the search was conducted (e.g., whether it
4 encompassed the entire F-1 unit, including the day room where the cord was located, or
5 only Decedent’s cell). Id. Resp. ¶ 17. Based on this evidence, summary judgment as to
6 the individual Defendants would be inappropriate.

7 **2. Entity Defendant: County of Siskiyou**

8 A.B. also seeks to hold the County accountable under Monell v. Dep’t of Soc.
9 Servs. of City of New York, which provides that “[l]ocal governing bodies . . . can be sued
10 directly under § 1983 for monetary, declaratory, or injunctive relief.” 436 U.S. 658, 690
11 (1978). To establish municipal liability, the plaintiff must show that a policy or custom led
12 to the plaintiff’s injuries and the policy or custom “reflects deliberate indifference to the
13 constitutional rights of its inhabitants.” City of Canton, Ohio v. Harris, 489 U.S. 378, 385-
14 92 (1989). The case law, however, carefully delineates so called Monell liability, which
15 makes such an entity responsible for its own illegal acts, from vicarious liability for the
16 conduct of its employees under § 1983, which does not attach. Connick v. Thompson,
17 563 U.S. 51, 60-61 (2011) (quoting Pembaur v. Cincinnati, 475 U.S. 469, 479 (1986)).
18 To constitute deliberate indifference, the County’s shortcomings must be “obvious,” with
19 inadequacy “so likely to result in violation of constitutional rights that the policymakers . .
20 . can reasonably be said to have been deliberately indifferent . . .” City of Canton, 489
21 U.S. at 390. Even if no explicit policy is identified, a plaintiff may still establish municipal
22 liability upon a showing of a permanent and well-settled practice by the municipality that
23 gave rise to the alleged constitutional violation. See City of St. Louis v. Praprotnik, 485
24 U.S. 112, 127 (1988).

25 Here, A.B contends there was a demonstrated practice of failing to comply with
26 Title 15 safety check requirements and the County’s policies designed to protect inmates
27 because: (1) the County failed to implement direct visual observations on irregular
28 schedules as required under Title 15, and (2) failed to conduct irregular safety checks as

1 required by Jail policies. Pls.’ Further Disp. Facts Opp’n Defs.’ Mot. Summ. J. (“Pls.’
2 Disp. Facts”), ECF 54, ¶¶ 5, 8; Defs.’ Reply Supp. Summ. J. ¶ 10. Although the
3 Defendants disagree that there is a causal relationship between the security checks and
4 Decedent’s injuries, A.B. argues that the County created a situation in which Decedent
5 could reasonably conclude he had enough time to commit suicide because he knew
6 security checks were conducted at the half hour mark, rather than being staggered. Pls.’
7 Disp. Facts ¶ 10. In viewing the facts in the light most favorable to A.B., this Court finds
8 that he has identified a triable issue of fact with respect to the County’s custom and
9 practice liability. Therefore, Defendants’ Motion for Summary Judgment under the First
10 Cause of Action is DENIED.

11 **B. Second Cause Of Action Pursuant To 42 U.S.C. § 1983**

12 “Parents and children may assert Fourteenth Amendment substantive due
13 process claims if they are deprived of their liberty interest in the companionship and
14 society of their child or parent through official conduct.” Lemire v. Cal. Dep’t of Corr. &
15 Rehab., 726 F.3d 1062, 1075 (9th Cir. 2013). Because both the First and Second
16 Causes of Action are based on Fourteenth Amendment violations, the same standard
17 discussed above applies to this cause of action.

18 Here, Plaintiffs base their claims on the alleged constitutional violations discussed
19 in the First Cause of Action. While Defendants contend the officers’ actions do not rise
20 to the level that they shock the conscience, and further claim that the Monell doctrine
21 limits the County’s liability, this Court has found, as discussed above, that triable issues
22 of material fact preclude summary judgment of the First Cause of Action. Defs.’ Mem.
23 Supp. Summ. J., ECF No. 37, 13:5-14:19; see infra § A. In light of that conclusion, the
24 Court also finds the Defendants have failed to establish that they are entitled to summary
25 judgment on this Fourteenth Amendment claim related to the violation of the right to
26 familial association. See Estate of Joshua Claypole v. Cnty. of San Mateo, No. 14-CV-
27 02730-BLF, 2016 WL 127450, at *12 (N.D. Cal. Jan. 12, 2016) (denying summary
28 judgment as to the familial deprivation claim when triable issues of material fact

1 precluded the granting of summary judgment as to plaintiff's deliberate indifference
2 claim); see also Campos, 2017 WL 915294 at *9. Therefore, Defendants' Motions for
3 Summary Judgment as to A.B.'s Second Cause of Action (and A.H. and Inman's related
4 claims) are DENIED as well.

5 **C. Qualified Immunity**

6 Even if summary judgment is precluded on the merits of the above claims,
7 Defendants argue the individual Defendants are entitled to qualified immunity. Defs.'
8 Mem. Supp. Summ. J. at 14:25-16:24. The qualified immunity analysis has two prongs:
9 (1) whether "[t]aken in the light most favorable to the party asserting the injury, . . . the
10 facts alleged show the officer's conduct violated a constitutional right," and (2) "whether
11 the right was clearly established." Saucier v. Katz, 533 U.S. 194, 201-02 (2001).
12 However, courts may "bypass[] the constitutional question in the qualified immunity
13 analysis," i.e., the first prong, and address only the second prong when "it will
14 'satisfactorily resolve' the . . . issue without having 'unnecessarily to decide difficult
15 constitutional questions.'" Ramirez v. City of Buena Park, 560 F.3d 1012, 1023 (9th Cir.
16 2009) (quoting Brosseau v. Haugen, 543 U.S. 194, 201-02 (2004) (Breyer, J.,
17 concurring)).

18 The same disputed material facts discussed above prevent the Court from
19 determining whether the individual Defendants are entitled to qualified immunity. See
20 Sinaloa Lake Owners Ass'n v. City of Simi Valley, 70 F.3d 1095, 1099 (9th Cir. 1995) ("If
21 there are genuine issues of material fact in issue relating to the historical facts of what
22 the official knew or what he did, it is clear that these are questions of fact for the jury to
23 determine."). If all factual disputes are resolved in Plaintiffs' favor, the jury could find that
24 Huston placed and failed to remove the television cord from Decedent's unit and failed to
25 implement policies that would address suicide prevention, even though he knew of
26 Decedent's heightened risk of suicide. The jury could also find Lopey acquiesced in
27 Huston's actions, and Miller failed to seek timely medical attention while he maintained a
28 clear view of Decedent. A jury may find such conduct would be contrary to clearly

1 established law providing pretrial detainees a right to not have officials deliberately
2 indifferent to their serious medical needs. Therefore, dispute of material facts preclude a
3 finding that the Defendants are entitled to qualified immunity.

4 **D. Third Cause Of Action: Survival Claim Based On Negligence**

5 A.B.'s Third Cause of Action, a survival negligence claim, is advanced under
6 California Civil Procedure Code § 377.30, which allows a Decedent's successor in
7 interest to bring a negligence claim after Decedent's death. In California, a plaintiff must
8 prove the following elements for a negligence claim: (1) a legal duty to use due care;
9 (2) a breach of that duty; (3) causation; and (4) damages. A negligent act "is not the
10 proximate cause of [a decedent's] alleged injuries if another cause intervenes and
11 supersedes . . . liability for the subsequent events." Campos, 2017 WL 915294 at *14
12 (internal citations omitted). Moreover, California limits damages in cases such as this
13 one as follows:

14 In an action or proceeding by a decedent's personal
15 representative or successor in interest on the decedent's
16 cause of action, the damages recoverable are limited to the
17 loss or damage that the decedent sustained or incurred before
18 death, including any penalties or punitive or exemplary
19 damages that the decedent would have been entitled to
20 recover had the decedent lived, and do not include damages
21 for pain, suffering, or disfigurement.

22 Cal. Code Civ. P. § 377.30 (emphasis added).

23 Here, A.B. alleges all Defendants were negligent in monitoring and supervising
24 the incarceration of Decedent. However, Defendants argue summary judgment is
25 appropriate because Plaintiffs failed to show a triable issue of fact as to an essential
26 element of his claim, namely pre-death economic damages. Defs.' Mem. Supp. Summ.
27 J. at 17:21-26. This Court agrees. The language of the statute is clear that pain and
28 suffering are not allowable damages. Given Defendants' evidence that Decedent was
incarcerated, did not lose wages or incur medical expenses or other pecuniary losses,
A.B. cannot show any damages sustained by Decedent under

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1 California law. Accordingly, Defendants' Motion for Summary Judgment as to Plaintiffs'
2 Third Cause of Action is GRANTED.

3 **E. Fourth Cause Of Action: Wrongful Death Claim Based On Negligence**

4 A.B.'s Fourth Cause of Action, a wrongful death negligence claim, is advanced
5 under California Code of Civil Procedure § 377.60, "which is simply the statutorily
6 created right of an heir to recover for damages resulting from a tortious act which results
7 in decedent's death." Gilmore v. Superior Court, 230 Cal. App. 3d 416, 420 (1991)
8 (citations omitted). To establish a negligence claim, a plaintiff must prove the same
9 negligence elements as stated above.³ And once again, the same factual issues that
10 preclude summary judgment on A.B.'s § 1983 claim, also preclude summary judgment
11 on this negligence claim as to the individual Defendants.

12 Special rules and exceptions nonetheless apply in negligence lawsuits involving
13 public employees and public entities where prisoners were injured. While "[a] public
14 entity is liable for injury proximately caused by an act or omission of an employee of the
15 public entity within the scope of his employment . . .", Cal. Gov't. Code § 815.2, that rule
16 does not apply in the case of injuries to prisoners, see Cal. Gov't. Code § 844.6
17 (providing "a public entity is not liable for . . . an injury to any state prisoner."). Further
18 exceptions to the exception apply however.

19 For example, § 845.6 provides that both a public employee and a public entity are
20 liable "for injury proximately caused by the failure of the employee to furnish or obtain
21 medical care for a prisoner in his custody" if, the employee, while acting in the scope of
22 his employment, "[knew] or [had] reason to know that the prisoner [was] in need of
23 immediate medical care and he fail[ed] to take reasonable action to summon such
24 medical care." As indicated above, factual disputes preclude granting summary
25 judgment in favor of Miller for failure to timely respond to Mr. Lawrence's distress call.

26 ///

27 ³ Unlike with the foregoing cause of action, the damages here go to remedy injuries to A.B., not to
28 Decedent.

1 Accordingly, based on the interplay between §§ 844.6 and 845.6, the County
2 cannot be liable for any injury to a prisoner, unless, while acting in the scope of his
3 employment, one of its public employees knew or had reason to know that a prisoner
4 was in need of immediate medical care and failed to take reasonable action to summon
5 medical care. Cal. Gov't. Code § 844.6; Cal. Gov't. Code § 845.6; see also Shaymus,
6 2015 WL 3466942 at *9-*10 (E.D. Cal. June 1, 2015). Therefore, the County may only
7 be liable for this state claim based on the analysis above regarding Miller's failure to
8 summon medical care. Because there is a genuine dispute of material fact regarding
9 that claim, summary judgment cannot be granted on that theory.⁴ In conclusion,
10 Defendants' Motion for Summary Judgment for A.B.'s Fourth Cause of Action is DENIED
11 as to the individual Defendants and as to the County's liability for the conduct of Miller
12 and GRANTED as to the remaining claims against the County.

13 14 CONCLUSION

15
16 For the reasons just stated, Defendants' Motions for Summary Judgment (ECF
17 No. 25 filed in Case No. 2:17-cv-01078 and ECF No. 36 filed in Case No. 2:16-cv-01752)
18 are GRANTED in part and DENIED in part as follows:

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24 ⁴ Defendants' remaining immunity arguments are also not well taken. Section 845.2 does not
25 apply to limit their liability for negligence because A.B. does not allege liability for failure to provide
26 sufficient equipment, personnel or facilities therein. Nor have Defendants Lopey and Huston met their
27 burden in demonstrating they "consciously balanced the risks and benefits required to make a showing
28 that discretionary immunity applies" under § 820.2. See AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d
631, 640 (9th Cir. 2012) "[T]he burden rests with government defendants to demonstrate that they are
entitled to § 820.2 immunity for a specific policy decision made by an employee who consciously balanced
the decision's risks and benefits."); Caldwell v. Montoya, 10 Cal. 4th 972, 982 (1995); Brown v. Cnty. of
Mariposa, No. 1-18-CV-01541-LJO-SAB, 2019 WL 1993990, at *13 (E.D. Cal. May 6, 2019); Defs.' Mot.
Summ. Judg. ECF No. 37 19:5-16.

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As to the First Cause of Action, Defendants' Motion for Summary Judgment is DENIED. As to A.B.'s Second Cause of Action (and A.H. and Inman's related claims), Defendants' Motions for Summary Judgment are DENIED. As to the Third Cause of Action, Defendants' Motion for Summary Judgment is GRANTED. Lastly, as to the Fourth Cause of Action, Defendants' Motion for Summary Judgment is GRANTED in part and DENIED in part.

IT IS SO ORDERED.

Dated: September 30, 2019


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE