

1 In its prior order the court dismissed plaintiffs’ first amended complaint with leave
2 to amend. Prior Order. Plaintiffs filed an amended complaint on July 31, 2019. Second Am.
3 Compl. (“SAC”), ECF No. 23. In their SAC, plaintiffs added as a defendant Shaun Smith, the
4 Support Services Division Captain at the animal shelter run by the Yuba County Sheriff’s
5 Department; Mr. Smith was allegedly the supervisor of defendant Deneen Barnhill. SAC ¶ 4.
6 Plaintiffs also now allege several other instances in which agents of the Yuba County animal
7 shelter, including Smith and Barnhill, summarily euthanized animals or refused to provide them
8 veterinary care. *Id.* ¶¶ 22–26.

9 II. LEGAL STANDARD

10 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a party may move to
11 dismiss a complaint for “failure to state a claim upon which relief can be granted.” A court may
12 dismiss “based on the lack of cognizable legal theory or the absence of sufficient facts alleged
13 under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
14 1990).

15 Although a complaint need contain only “a short and plain statement of the claim
16 showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), in order to survive a motion
17 to dismiss this short and plain statement “must contain sufficient factual matter . . . to ‘state a
18 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
19 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must include something
20 more than “an unadorned, the-defendant-unlawfully-harmed-me accusation” or “‘labels and
21 conclusions’ or ‘a formulaic recitation of the elements of a cause of action.’” *Id.* (quoting
22 *Twombly*, 550 U.S. at 555). Determining whether a complaint will survive a motion to dismiss
23 for failure to state a claim is a “context-specific task that requires the reviewing court to draw on
24 its judicial experience and common sense.” *Id.* at 679. Ultimately, the inquiry focuses on the
25 interplay between the factual allegations of the complaint and the dispositive issues of law in the
26 action. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

27 In making this context-specific evaluation, this court must construe the complaint
28 in the light most favorable to the plaintiff and accept as true the factual allegations of the

1 complaint. *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007). This rule does not apply to “a legal
2 conclusion couched as a factual allegation,” *Papasan v. Allain*, 478 U.S. 265, 286 (1986) *quoted*
3 *in Twombly*, 550 U.S. at 555, nor to “allegations that contradict matters properly subject to
4 judicial notice” or to material attached to or incorporated by reference into the complaint.
5 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988-89 (9th Cir. 2001). A court’s
6 consideration of documents attached to a complaint or incorporated by reference or matter of
7 judicial notice will not convert a motion to dismiss into a motion for summary judgment. *United*
8 *States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003); *Parks Sch. of Bus. v. Symington*, 51 F.3d
9 1480, 1484 (9th Cir. 1995); *compare Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977,
10 980 (9th Cir. 2002) (noting that even though court may look beyond pleadings on motion to
11 dismiss, generally court is limited to face of the complaint on 12(b)(6) motion).

12 III. DISCUSSION

13 The court addresses only the arguments essential to the resolution of the pending
14 motion. Plaintiffs assert mandatory duty and negligence claims arising under state law. *See* SAC
15 ¶¶ 28–33, 45–52. The court resolves the motion by addressing the federal claims alone, as
16 discussed more fully below. Plaintiffs claim defendants violated California Food & Agriculture
17 Code section 31752(b)(1) by euthanizing Pizza within approximately 24 hours of Pizza’s retrieval
18 by Yuba County animal control officers. That provision of law reads : “Except as provided in
19 Sections 17006 and 31752.5 and paragraph (2), stray cats shall be held for owner redemption
20 during the first three days of the holding period, not including the day of impoundment, and shall
21 be available for owner redemption or adoption for the remainder of the holding period.” Section
22 17006 provides, in relevant part, “Animals that are irremediably suffering from a serious illness
23 or severe injury shall not be held for owner redemption or adoption.” Cal. Food & Agric. Code §
24 17006.

25 a. Monell Claim

26 To state a claim for municipal liability under § 1983, plaintiffs must show the local
27 government had a policy or custom that amounted to deliberate indifference to plaintiffs’
28 constitutional rights, and the policy or custom was a moving force behind the constitutional

1 violation of which plaintiffs complain. *Cairns v. County of El Dorado*, 694 F. App'x 534, 536
2 (9th Cir. 2017) (citation omitted). Defendants argue the Second Amended Complaint fails to
3 plead facts establishing that Yuba County Sheriff's Department had a specific custom or policy
4 "so persistent and widespread that it constitutes a permanent and well settled policy." Mot. at 8
5 (quoting *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996)).

6 A policy or custom must be a "deliberate choice to follow a course of action . . .
7 made from among various alternatives by the official or officials responsible for establishing final
8 policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S.
9 469, 483 (1986) (plurality opinion). "[A] local governmental entity may be liable if it has a
10 policy of inaction and such inaction amounts to a failure to protect constitutional rights." *Lee v.*
11 *City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001) (citation, internal quotation marks
12 omitted). "Liability for improper custom may not be predicated on isolated or sporadic incidents;
13 it must be founded on practices of sufficient duration, frequency and consistency that the conduct
14 has become a traditional method of carrying out policy." *Trevino*, 99 F.3d at 918. *Monell* does
15 not turn § 1983 into "a federal good government act" for municipalities. *City of Canton, Ohio v.*
16 *Harris*, 489 U.S. 378, 396 (1989) (O'Connor, J., concurring in part).

17 Plaintiffs' Second Amended Complaint only identifies the alleged policy once, as
18 one "of euthanizing animals prior to the statutorily-mandated hold[.]" SAC ¶ 37.
19 As noted, plaintiffs expressly reference California Food & Agriculture Code section 31752
20 elsewhere in the complaint. Plaintiffs added general allegations to their Second Amended
21 Complaint about incidents in which (1) a cat was nearly euthanized despite a treatable abscess, *id.*
22 ¶ 22; (2) a dog was picked up by Yuba County animal control officers and "euthanized at the
23 shelter shortly afterwards," despite not being irremediably suffering, *id.* ¶ 23; (3) a dog named
24 Tank became defensive while being inspected by a veterinarian while being adopted and was
25 summarily euthanized as aggressive, *id.* ¶ 24; and (4) a dog named Boogie was euthanized
26 "within a few days" of being brought to the shelter despite being in good health and friendly, *id.*
27 ¶ 25. Only the first instance, in which a cat would have been euthanized prior to the expiration of
28 the statutory hold period but for the intervention of a volunteer, could have been motivated by the

1 purported policy or custom here. Although the balance of the allegations may suggest a cavalier
2 attitude toward the euthanasia of animals at the Yuba County Sheriff’s Department, the
3 allegations do not support the existence of a policy or custom of euthanizing animals before the
4 statutorily mandated hold period runs. Even taking these allegations as true, as required under
5 Rule 12(b)(6), they do not make out a case that premature euthanasia, the specific custom
6 identified, “has become a traditional method of carrying out policy.” *Trevino, supra*.

7 Accordingly, plaintiffs’ *Monell* claim is dismissed. Courts may deny leave to
8 amend where “any amendment would be futile.” *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d
9 522, 532 (9th Cir. 2008). Because plaintiffs have already included additional factual allegations
10 in an amended complaint, in an effort to support their *Monell* claim after the court’s prior order,
11 and those factual allegations are insufficient to state a claim, the court concludes further leave to
12 amend this claim would be futile.

13 b. Section 1983 Claim Against Barnhill and Smith

14 Defendants assert Barnhill and Smith are entitled to qualified immunity from the
15 individual § 1983 claims against them. Qualified immunity is extended to state officials unless
16 (1) the official violated plaintiff’s constitutional or federal statutory right, and (2) the right was
17 clearly established at the time of the alleged violation. *C.V. by and through Villegas v. City of*
18 *Anaheim*, 823 F.3d 1252, 1255 (9th Cir. 2016). District courts have discretion in deciding which
19 prong to address first. *Id.*; *see also Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

20 Given the record here, the court first addresses whether the rights allegedly
21 violated were clearly established.¹ Qualified immunity is intended to “give[] government
22 officials breathing room to make reasonable but mistaken judgments by protecting all but the
23 plainly incompetent or those who knowingly violate the law.” *City & Cty. of San Francisco v.*

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25 ¹ While the court addresses the second prong first, mindful of the Supreme Court’s admonition
26 that “[c]ourts should think carefully before expending scarce judicial resources to resolve difficult
27 and novel questions of constitutional or statutory interpretation that will have no effect on the
28 outcome of the case,” *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011), the court exercises its
discretion in doing so and will continue to do so on a case by case basis. Here, plaintiffs spend
little time arguing how a violation of the Hayden Act has a constitutional dimension, and it is not
for the court to do their work for them.

1 *Sheehan*, 135 S. Ct. 1765, 1774 (2015) (citation omitted). If the law was clear enough that every
2 reasonable official in Barnhill and Smith’s shoes would have understood their specific conduct
3 was unlawful, the right violated is clearly established and qualified immunity does not apply. *See*
4 *Taylor v. Barkes*, 135 S. Ct. 2042, 2044 (2015). Although there need not be a case directly on
5 point, a right is only clearly established if existing precedent “ha[s] placed the statutory or
6 constitutional question beyond debate.” *al-Kidd*, 563 U.S. at 741. Although courts have
7 regularly called on plaintiffs to “identify a case where an officer acting under similar
8 circumstances . . . was held to have violated the [right at issue],” *Sharp v. County of Orange*, 871
9 F.3d 901, 911 (9th Cir. 2017) (quoting *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam)),
10 plaintiffs here assert the Hayden Act,² not case law, put Barnhill and Smith on notice of a clearly
11 established right.

12 Plaintiffs’ argument fails for two reasons. Section 1983, by its terms, allows for
13 the protection of “rights, privileges, or immunities secured by the Constitution and laws,” in other
14 words, federal rights. 42 U.S.C. § 1983; *see also Kidder v. County of Los Angeles*, No. CV 14-
15 06218-SVW-E, 2015 WL 13439812, at *5 n.3 (C.D. Cal. Mar. 9, 2015) (violations of California
16 Constitution not actionable under § 1983). On its face, it not clear how the Hayden Act, a
17 California statute, could serve as the source of a federal right. Plaintiffs identify no further
18 caselaw providing that the Hayden Act protects a federal substantive right, and suggest
19 incorrectly they need not. Opp’n at 10. Nor is there caselaw for the proposition that the pre-
20 euthanasia process established under the Hayden Act is required by federal procedural due
21 process. In sum, nothing suggests the Hayden Act, standing alone, put defendants on notice that a
22 violation constitutes the violation of a federal right.

23 Second, as discussed above, the duty imposed by California Food & Agricultural
24 Code section 31752 allows an exception for animals that are “irremediably suffering,” set forth in
25 Food & Agricultural Code section 17006. Plaintiffs claim Pizza did not meet this exception and
26 thus the duty to hold him was not excused. Despite plaintiffs’ oblique reference to a case they say

27 ² The section of California Food & Agricultural Code § 31752 at issue here was enacted in the
28 Act known as the Hayden Act, S.B. 1785, 1997–98 Reg. Sess. (Cal. 1998).

1 establishes a more granular standard of irremediable suffering, plaintiffs have not provided that
2 case, nor is the court able to locate such a case.³ Therefore, even if defendants were mistaken in
3 deeming Pizza to be “irremediably suffering,” they would not have been on notice that such
4 determination was violative of clearly established law.

5 Because the purported constitutional violation pled here did not violate clearly
6 established law, the court need not reach a conclusion about whether a violation actually
7 occurred. Accordingly, defendants Barnhill and Smith are entitled to qualified immunity, and the
8 court will dismiss plaintiffs’ third claim with prejudice.

9 c. Remand

10 Although defendants originally removed from state court based on federal question
11 jurisdiction, the court’s dismissal of the federal claims extinguishes that jurisdiction. Under 28
12 U.S.C. § 1447(c), “[i]f at any time before final judgment it appears that the district court lacks
13 subject matter jurisdiction, the case shall be remanded.” However, as another court in this district
14 has noted, in this situation “the district court should not mechanically remand the lawsuit pursuant
15 to 28 U.S.C. § 1447(c)” and should instead determine “whether the state-law claims should be
16 resolved in federal court’ pursuant to the court’s supplemental jurisdiction under 28 U.S.C.
17 § 1367.” *Null v. Leprino Foods Co.*, No. 1:19-cv-00525-AWI-BAM, 2020 WL 359213, at *2
18 (E.D. Cal. Jan. 22, 2020) (quoting *Anderson v. Aon Corp.*, 614 F.3d 361, 365 (7th Cir. 2010)).
19 The reason for this is that jurisdiction is analyzed based on the pleadings at the time of removal;
20 mechanically applying the mandatory standard of § 1447(b) would allow plaintiffs to compel
21 remand by amending a complaint to remove the federal question on which removal was based.
22 *Id.* (citing *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th
23 Cir. 1998)).

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25 ³ “The question of what constitutes irremediable suffering has been determined by at least one
26 California court to be ‘an animal with a medical condition who has a poor or grave prognosis for
27 being able to live without severe, unremitting pain despite necessary veterinary care.’” Opp’n at 6
28 (citing Ex. A to Pls.’ SAC). The court has already declined to judicially notice Exhibit A to
plaintiffs’ Second Amended Complaint before, *see* Prior Order at 4, and in any event the exhibit
does not provide a case citation for this proposition.

1 Title 28 U.S.C. § 1367(c) provides two particularly salient grounds for the court to
2 exercise its discretion to remand here: 28 U.S.C. § 1367(c)(1) provides remand is warranted
3 where “the claim raises a novel or complex issue of State law,” and § 1367(c)(3) weighs in favor
4 of remand where “the district court has dismissed all claims over which it has original
5 jurisdiction[.]”

6 Both circumstances are present here. Plaintiffs’ mandatory duty claim presents a
7 novel question of statutory interpretation, in which California courts surely have the greatest
8 interest. In addition, the court’s dismissal of the claims over which it has original jurisdiction
9 leaves only the state claims, as noted above.

10 IV. CONCLUSION

11 For the foregoing reasons, defendants’ motion to dismiss is GRANTED as to
12 plaintiffs’ Second and Third Causes of Action for municipal liability and individual liability
13 under § 1983, respectively. Defendants’ motion to dismiss is DENIED without prejudice as to
14 plaintiffs’ First and Fourth Causes of Action, for breach of mandatory duty and negligence,
15 respectively. The state law claims remain live for the state court to address. The case is hereby
16 REMANDED to Yuba County Superior Court for further proceedings consistent with this order.
17 The Clerk of Court is directed to close the case. This order resolves ECF No. 25.

18 IT IS SO ORDERED.

19 DATED: September 10, 2020.

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22 CHIEF UNITED STATES DISTRICT JUDGE
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