

1 (the "County") which operates the SCSO and Shasta County Sheriff-
2 Coroner Eric Magrini ("Magrini"). Id. ¶¶ 8-9.

3 Before the Court is the County's Motion to dismiss
4 Plaintiffs' second claim for municipal liability under 42 U.S.C.
5 § 1983 for failure to state a claim and to dismiss Plaintiffs'
6 fourth, fifth, sixth, and seventh state law claims for failure to
7 differentiate the allegations against the County from the other
8 Defendants. Mot. to Dismiss ("Mot."), ECF No. 8. Plaintiffs
9 filed an opposition, Opp'n, ECF No. 15, to which the County
10 replied, Reply, ECF No. 17. For the reasons set forth below, the
11 Court GRANTS WITH LEAVE TO AMEND the County's Motion to Dismiss.¹

12 I. BACKGROUND

13 Around 12:38 p.m. on February 4, 2020, Lupita Barbosa called
14 911 to request a welfare check for her husband, Thomas Barbosa,
15 whom she reported was breaking things around the house and
16 appeared to be hallucinating. Compl. ¶ 22. Mr. Barbosa, a 41-
17 year-old veteran, suffered from PTSD. Id. ¶ 20. Lupita told the
18 911 operator her husband needed help for his PTSD and
19 specifically requested that an ambulance, not SCSO deputies, be
20 sent. Id. ¶ 22. After placing the 911 call, Lupita and her two
21 minor children left the house and got into a car. Id. ¶ 23. Mr.
22 Barbosa followed them out of the house, telling Lupita he would
23 drive behind them in his truck because he was concerned for her
24 and the children's safety. Id. As Lupita was driving away,
25 someone from the SCSO called her and instructed her to lead Mr.

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for April 6, 2021.

1 Barbosa to a nearby auction yard where SCSO deputies would
2 intercept him. Id. Lupita agreed to follow this plan, however,
3 when she eventually pulled over at the auction yard, Mr. Barbosa
4 noticed the SCSO deputies and drove away. Id.

5 A pursuit ensued. Id. ¶ 24. SCSO deputies along with a CHP
6 helicopter tracked Mr. Barbosa as he drove down a rural highway
7 and eventually drove up a small embankment to a steep cliff. Id.
8 ¶ 25. He paused for a few minutes then drove off the cliff. Id.
9 His truck rolled over a few times before stopping against a tree.
10 Id. SCSO deputies found Mr. Barbosa alive and conscious but
11 trapped in the truck. Id. The deputies believed Mr. Barbosa had
12 a knife and that "jaws of life" would be needed to extract him
13 from the truck. Id. Around 2:28 p.m., an unidentified deputy
14 shot and killed Mr. Barbosa with a single round to the chest from
15 a .223-caliber rifle. Id.

16 In response, Plaintiffs filed this civil rights, wrongful
17 death, and survival action against Defendants. See generally
18 Compl. While the complaint contains eight counts, the present
19 Motion concerns only certain claims against the County Defendant:
20 the second count for municipal liability under 42 U.S.C. § 1983,
21 and the fourth, fifth, six, and seventh state law counts. Compl
22 ¶¶ 40-46, 56-81. The County moves to dismiss these claims under
23 Federal Rule of Civil Procedure 12(b)(6). Mot. at 4-15.

24 II. OPINION

25 A. Legal Standard

26 A Rule 12(b)(6) motion challenges the complaint as not
27 alleging sufficient facts to state a claim for relief. Fed. R.
28 Civ. P. 12(b)(6). "To survive a motion to dismiss [under

1 12(b)(6)], a complaint must contain sufficient factual matter,
2 accepted as true, to state a claim for relief that is plausible
3 on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
4 (internal quotation marks and citation omitted). While
5 “detailed factual allegations” are unnecessary, the complaint
6 must allege more than “[t]hreadbare recitals of the elements of
7 a cause of action, supported by mere conclusory statements.”
8 Id. “In sum, for a complaint to survive a motion to dismiss,
9 the non-conclusory ‘factual content,’ and reasonable inferences
10 from that content, must be plausibly suggestive of a claim
11 entitling the plaintiff to relief.” Moss v. U.S. Secret Serv.,
12 572 F.3d 962, 969 (9th Cir. 2009).

13 B. Analysis

14 1. Second Count: Monell Claim

15 The County first moves to dismiss Plaintiffs’ second count -
16 a Monell claim against the County based on (1) unconstitutional
17 customs, policies, and practices, (2) failure to train, and
18 (3) ratification - contending Plaintiffs’ allegations as to this
19 count are conclusory and lack sufficient factual matter to state
20 a claim. Mot. at 4-10; Reply at 1-3.

21 Municipalities may be held liable under Section 1983 for
22 constitutional injuries inflicted through a municipal policy or
23 custom. Monell v. Dep’t of Soc. Servs. of City of New York, 436
24 U.S. 658, 694 (1978). Among the ways a plaintiff may establish
25 municipal liability is by demonstrating that: (1) the
26 constitutional tort was the result of a longstanding practice or
27 custom that constitutes the standard operating procedure of the
28 local government entity; (2) an official with final policy-making

1 authority delegated that authority to, or ratified the decision
2 of, a subordinate; or (3) the municipality failed to adequately
3 train the tortfeasors. Price v. Sery, 513 F.3d 962, 966 (9th
4 Cir. 2008) (internal quotation marks and citation omitted). To
5 properly plead a Monell claim, plaintiff "may not simply recite
6 the elements of a cause of action, but must contain sufficient
7 allegations of underlying facts to give fair notice and to enable
8 the opposing party to defend itself effectively." AE ex rel.
9 Hernandez v. Cty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012)
10 (internal citations omitted).

11 As an initial matter, Plaintiffs' counsel insists their
12 method of pleading has been "repeatedly approved by judges in the
13 Eastern and Northern Districts." Opp'n at 6. Yet, the authority
14 Plaintiffs' counsel cites to and the legal standards applied
15 therein, which counsel insists have also been met here, are not
16 the applicable ones. For instance, Plaintiffs cite to
17 Swierkiewicz v. Sorema, N.A., 534 U.S. 506 (2002) (applying the
18 Conley notice pleading standard). Opp'n at 4. But, as the
19 County points out, the notice pleading standard applied in
20 Swierkiewicz was abrogated by the Supreme Court in Twombly and
21 Iqbal and replaced by a stricter plausibility standard. Reply at
22 1. The Ninth Circuit too has been clear that the Twombly-Iqbal
23 plausibility standard governs Monell claims. AE ex rel.
24 Hernandez, 666 F.3d at 637. In short, the authority Plaintiffs
25 rely on do not provide the relevant legal standard under which
26 Monell claims are assessed. Rather, Plaintiffs' allegations must
27 meet the applicable plausibility standard.

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1 a. Custom, Policy, or Practice

2 Plaintiffs' allegations regarding the County's
3 unconstitutional customs, practices and procedures are set forth
4 in paragraph 41 of the complaint. Compl. ¶ 41; see also Opp'n at
5 7-8 (referring the Court to ¶ 41(a-h)). The County argues these
6 allegations are conclusory and lack sufficient factual content to
7 state a claim. Mot. at 4-6.

8 When asserting a Monell claim based on an unconstitutional
9 custom, policy, or practice, plaintiffs must set forth "more than
10 a bare allegation that government officials' conduct conformed to
11 some unidentified government policy or custom." AE ex rel.
12 Hernandez, 666 F.3d at 637. As another Eastern District of
13 California court has explained, conclusory statements
14 "unsupported by any factual allegations as to what that 'policy,
15 custom and practice' consists of, who established it, when, or
16 for what purpose, [do] not sufficiently allege a basis for Monell
17 liability." Lutz v. Delano U.S.D., No. 1:08-cv-01787, 2009 WL
18 2525760 at *5 (E.D. Cal. Aug. 7, 2009) (internal citations
19 omitted).

20 Here, the Court finds the allegations contained in paragraph
21 41 of the complaint are improperly pled conclusory statements.
22 See Iqbal, 556 U.S. at 679. Because Plaintiffs' "grab bag of
23 allegations" regarding the County's customs, policies, and
24 practices is unsupported with facts, Plaintiffs have not stated a
25 plausible Monell claim. Kollin v. City of Tehachapi, No. 1:18-
26 cv-00617, 2018 WL 4057491 at *5 (E.D. Cal. Aug. 24, 2018)
27 (dismissing plaintiffs' Monell claim because the "grab bag of
28 allegations concerning the City's policies" were not "supported

1 with facts”).

2 b. Failure to Train

3 Plaintiffs’ allegations regarding the County’s failure to
4 properly train SCSO deputies on how to engage with mentally ill
5 individuals are principally set forth in paragraphs 23-26, 41(c-
6 e), and 41(j) of the complaint. Compl. ¶¶ 23-26, 41; see also
7 Opp’n at 10-11 (referring the Court to these paragraphs). The
8 County again contends these allegations are conclusory and lack
9 sufficient factual content to state a claim. Mot. at 6-7.

10 When asserting a Monell claim predicated on inadequate
11 training, a plaintiff must allege the: (1) decedent was deprived
12 of a constitutional right; (2) the policy amounts to deliberate
13 indifference to constitutional rights of persons whom officers
14 are likely to interact with; and (3) the constitutional injury
15 would have been avoided had the officers been properly trained.
16 Flores v. County of Los Angeles, 758 F.3d 1154, 1158-59 (9th Cir.
17 2014). Further, an Eastern District of California court has
18 required plaintiffs to allege what the training practices were,
19 how those practices were deficient, and how the training
20 practices caused plaintiff’s harm. Young v. City of Visalia, 687
21 F.Supp.2d 1141, 1149-1150 (E.D. Cal. 2009) (explaining that
22 “without identifying the training . . . practices, how those
23 practices were deficient . . . the Court cannot determine if a
24 plausible claim is made for deliberately indifferent conduct.”)

25 Here, Plaintiffs do not sufficiently describe what training
26 SCSO deputies did or did not receive or how these practices were
27 deficient, nor do they causally connect deficiencies in the
28 training to Mr. Barbosa’s death. Nor do Plaintiffs save their

1 failure to train claim by arguing that "sometimes a
2 municipality's failure to supervise is self-evident by the facts
3 of a single incident." Opp'n at 9. Indeed, the County has
4 brought forward authority to the contrary, that courts can and do
5 dismiss such claims "where a plaintiff alleged a single incident
6 of unconstitutional conduct as the basis for their Monell claim."
7 Reply at 2 (citing to Cain v. City of Sacramento, No. 2:17-cv-
8 00848 2017 WL 4410116 at *3 (E.D. Cal. Oct. 3, 2017)). The
9 single incident alleged here, namely the events leading to Mr.
10 Barbosa's death, is insufficient to support Plaintiffs' failure
11 to train claim. Accordingly, this claim is dismissed.

12 c. Ratification

13 Plaintiffs' allegations regarding the County's ratification
14 of unconstitutional actions by SCSO deputies are set forth in
15 paragraph 43 of the complaint. Compl. ¶ 43; see also Opp'n at 12
16 (referring the Court to ¶ 43). The County contends these
17 allegations are conclusory and lack sufficient factual content to
18 state a ratification claim. Mot. at 8-10.

19 When asserting a Monell claim based on ratification, a
20 plaintiff "must allege facts that show that the authorized
21 policymakers approve a subordinate's decision and the basis for
22 it." Petre v. City of San Leandro, No. 15-cv-03344, 2016 WL
23 31637 at *7 (N.D. Cal. Jan. 4, 2016) (internal quotation marks
24 and citations omitted). Alleging "a mere failure to overrule a
25 subordinate's actions, without more, is insufficient." Lytle v.
26 Carl, 382 F.3d 978, 987 (9th Cir. 2004). Likewise, alleging a
27 "mere failure to discipline does not amount to ratification."
28 Adomako v. City of Fremont, No. 17-cv-06386, 2018 WL 2234179 at

1 *3 (N.D. Cal. May 16, 2018).

2 Here, Plaintiffs' allegations do not contain facts showing
3 the County approved of the unidentified SCSO deputies' actions
4 and decisions. Rather, they merely state in conclusory terms
5 that "authorized policy makers within Shasta County" "approved of
6 the conduct and decisions of DOE Defendant" and "have made a
7 deliberate choice to endorse such conduct and decisions, and the
8 basis for them." Compl. ¶ 43. Contrary to Plaintiffs'
9 insistence that these allegations are sufficient, the Court finds
10 they are not.

11 In sum, because Plaintiffs have only alleged
12 unsupported conclusory statements, they have not plausibly
13 stated a Monell claim under any of the three theories they
14 advance: unconstitutional customs, policies, and practices,
15 failure to train, and ratification. Accordingly, their
16 second count against the County is dismissed.

17 2. Fourth, Fifth, Sixth, and Seventh Counts

18 The County also moves to dismiss Plaintiffs' fourth through
19 seventh state law counts as to any direct liability claim. Mot.
20 at 10-15; Reply at 4-5. The County's leading argument is that
21 for each of these counts, Plaintiffs have impermissibly lumped
22 all Defendants together, failing to identify and differentiate
23 the allegations of the County's wrongdoing from allegations
24 against the other Defendants. Mot. at 10-12.² According to the

25 ² The County raises two other arguments as to why any direct
26 liability portion of these four counts should be dismissed. Mot.
27 at 12-15. First, Defendant argues that with respect to the fifth
28 count for negligence, sixth count for assault and battery, and
seventh count for false arrest and imprisonment, Plaintiffs
failed to allege which enactment imposes a mandatory duty upon

1 County, Plaintiffs "cannot simply group all defendants together
2 in a count without some specification as to which defendant is
3 responsible for which wrong." Mot. at 11. The Court agrees.

4 It is well-settled that "undifferentiated pleading against
5 multiple defendants is improper." Corazon v. Aurora Loan Servs.,
6 LLC, No. 11-cv-00542, 2011 WL 1740099 at *4 (N.D. Cal. May 5,
7 2011) (internal citation and quotation marks omitted); see also
8 Mot. at 11-12 (collecting cases). Rather, the complaint "must
9 differentiate between each of the defendants and clearly state
10 the factual basis for each cause of action as to each specific
11 defendant." Fagbohunge v. Caltrans, No. 13-cv-03801, 2014 WL
12 644008 at *6, n. 4 (N.D. Cal. Feb. 19, 2014).

13 Notwithstanding the ample authority the County brings
14 forward in its Motion establishing the rule that undifferentiated
15 pleading is improper, Plaintiffs again respond with inapposite
16 authority. Opp'n at 13. Specifically, Plaintiffs cite to Conley
17 v. Gibson, 355 U.S. 41 (1957), for the proposition that
18 plaintiffs need only "give the defendant fair notice of what the
19 plaintiff's claim is and the grounds upon which it rests." Id.
20 As discussed above, however, the Supreme Court has overruled
21 Conley and set aside Conley's less strict notice pleading

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23 the County as required to state a direct liability claim against
24 the County. Mot. at 12-14. Second, Defendant argues that with
25 respect to Plaintiffs' fourth count for violation of Cal. Civ.
26 Code § 52.1, any direct liability claim against the County fails
27 as a matter of law. Mot. at 14-15 (citing to Gonzalez v. County
28 of Los Angeles, 2008 U.S. Dist. LEXIS 73003 (C.D. Cal. July 28,
2008)). The Court does not reach these additional arguments
because it finds dismissal is warranted based upon Plaintiffs'
failure to differentiate allegations of wrongdoing against the
multiple Defendants.

1 standard, replacing it with plausibility standard set forth in
2 Twombly and Iqbal.

3 Further, Plaintiffs' attempt to distinguish the present case
4 from the County's long list of authority, see Mot. at 11-12, in
5 which courts dismissed complaints for failure to identify each
6 defendant's culpable conduct when pleading multiple claims
7 against multiple defendants, fails. According to Plaintiffs,
8 their complaint is distinct from Canales and the County's other
9 cited authority because they have not lumped Defendants together
10 under one broad allegation; rather, they have pled specific
11 allegations of vicarious liability, see Compl. ¶¶ 62, 70, 74, 80.
12 Opp'n at 13. Plaintiffs insist these vicarious liability
13 allegations "resolve any possible confusion." Id.

14 This argument, however, mistakes the particular aim of the
15 County's 12(b)(6) challenge: in the Motion itself, the County
16 clearly states it "does not dispute that plaintiffs have
17 sufficiently alleged a claim for the County's vicarious liability
18 claim" and that it is only challenging any direct liability
19 portion of these counts. Mot. at 14, fn.14; see also Reply at 4.
20 Thus, the Court agrees with the County that Plaintiffs' vicarious
21 liability allegations do not resolve the issue of whether
22 plaintiffs' other allegations broadly lumping together
23 "Defendants" are pleading direct liability claims against the
24 County too. Reply at 4. Indeed, because Plaintiffs do not
25 differentiate between each of the defendants and do not clearly
26 state the factual basis for each claim as to each specific
27 defendant, the Court cannot determine if a direct liability claim
28 against the County has been asserted in counts four through seven

1 or if Plaintiffs are only bringing vicarious liability claims
2 with respect to these counts. Because this kind of
3 undifferentiated pleading against multiple Defendants is
4 improper, any direct liability portion of counts four through
5 seven as to the County must be dismissed.

6 Plaintiffs' additional arguments do not change this
7 analysis. First, Plaintiffs contend that they are unable to
8 further differentiate their allegations of wrongdoing because the
9 County has not provided them with information about the
10 identities of involved officers or agents. Opp'n at 13. But as
11 the County points out, Plaintiffs need only separate the County
12 from the individual defendants as they did in their federal
13 claims. Reply at 5. Second, Plaintiffs argue that requiring
14 amendment "would be an exercise in pure formalism without any
15 practical purpose." Opp'n at 15. The Court disagrees. As
16 currently pled, neither this Court nor the County can determine
17 whether counts four through seven include a direct liability
18 claim against the County in addition to a vicarious liability
19 claim. Thus, amendment would serve at least two practical
20 purposes: providing notice to the County of whether they must
21 defend against direct liability claims and facilitating this
22 Court's ability to determine whether a plausible direct liability
23 claim has been stated.

24 C. Leave to Amend

25 Courts dismissing claims under Federal Rule of Civil
26 Procedure 12(b)(6) have discretion to permit amendment, and there
27 is a strong presumption in favor of leave to amend. Eminence
28 Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1051-52 (9th Cir.

1 2003). "Dismissal with prejudice and without leave to amend is
2 not appropriate unless it is clear . . . that the complaint could
3 not be saved by amendment." Id. at 1052 (internal citation
4 omitted).

5 Here, Plaintiffs seek leave to amend the complaint. See
6 Opp'n at 15. Since it may be possible for Plaintiffs to cure the
7 above-described deficiencies, the Court will grant them an
8 opportunity to rectify the errors in their dismissed claims and
9 file a First Amended Complaint. Any amended complaint, however,
10 should contain facts that sufficiently show plausible causes of
11 action.

12 III. ORDER

13 For the reasons set forth above, the Court GRANTS WITH
14 LEAVE TO AMEND Defendant Shasta County's Motion to Dismiss. If
15 Plaintiffs elect to amend their complaint, they shall file a
16 First Amended Complaint within twenty days (20) of this order.
17 The County's responsive pleading is due twenty days thereafter.

18 IT IS SO ORDERED.

19 Dated: April 26, 2021

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21 JOHN A. MENDEZ,
22 UNITED STATES DISTRICT JUDGE
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