

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

MELODIE HUGHES,
Plaintiff,
v.
COUNTY OF MENDOCINO, et al.,
Defendants.

Case No. [15-cv-01794-NJV](#)

ORDER ON MOTION TO DISMISS
Re: Dkt. No. 13

Plaintiff Melodie Hughes (“Plaintiff”) proceeds pro se in this action filed against the County of Mendocino and Sherriff Thomas Allen (together “the County Defendants”), California Forensic Medical Group, and Dr. Taylor Fithian. Defendants California Forensic Medical Group, and Dr. Taylor Fithian filed an answer to the Complaint, while the County Defendants filed a Motion to Dismiss (Doc. 13) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff filed a Response to the Motion (Doc. 29), to which the County Defendants filed a Reply (Doc. 33). The court took the matter under submission on the papers. (Doc. 35). For the reasons that follow the court will grant the motion in part and deny the motion in part. Additionally, Plaintiff will be given time to file a first amended complaint.

BACKGROUND

The Complaint is predicated on the events surrounding the death of Plaintiff’s son, Ivan Slater (“Slater”). Slater was arrested on March 22, 2014 and taken to the Mendocino County Jail. Comp. (Doc. 1) at ¶15. When Slater was arrested, he was suffering “heroin withdrawals.” *Id.* at ¶16. Slater requested medical attention, but did not receive it until March 24, 2014. *Id.* at ¶¶17-19. Slater was also not given sufficient time “to receive his meals for three days.” *Id.* at ¶20.

1 that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at
2 555.

3 Dismissal of a complaint can be based on either the lack of a cognizable legal theory or the
4 lack of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dept.*,
5 901 F.2d 696, 699 (9th Cir. 1990). In considering whether the complaint is sufficient to state a
6 claim, the court will take all material allegations as true and construe them in the light most
7 favorable to the plaintiff. *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

8 **DISCUSSION**

9 **A. *The Complaint Generally***

10 County Defendants assert generally that the Complaint fails to adequately state any causes
11 of action. Specifically, the County Defendants argue that the facts in support of the Complaint are
12 insufficient. Each claim is discussed individually below. However, as to the general assertion that
13 the Complaint fails to sufficiently plead facts to state a cause of action, the court finds that the
14 Complaint does contain “sufficient allegations of underlying facts to give fair notice and to enable
15 the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir.
16 2011).

17 **B. *The First Claim***

18 Plaintiff’s first cause of action is brought pursuant to 42 U.S.C. § 1983 for a “deliberate
19 indifference to serious medical needs and failure to protect from harm in violation of the Eighth
20 and Fourteenth Amendments.” Comp. (Doc. 1) at 6. County Defendants move for dismissal on
21 the basis that Plaintiff has failed to state a claim for deliberate indifference and because Plaintiff
22 has failed to establish standing. Plaintiff’s Response does not directly address the deliberate
23 indifference argument as to this claim and, more importantly, Plaintiff does not address the issue
24 of standing.

25 County Defendants point out that Plaintiff brings this action “suing individually,” Comp.
26 (Doc. 1) at 3, and the allegations in the First Claim are related to injuries sustained by Plaintiff’s
27 son. Therefore, County Defendants are challenging Plaintiff’s Article III standing; that is, whether
28 Plaintiff has suffered an injury in fact. *See e.g. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–

1 61 (1992). “Article III standing is a threshold jurisdictional question.” *Pirozzi v. Apple, Inc.*, 966
2 F. Supp. 2d 909, 917 (N.D. Cal. 2013). Accepting the allegation in the Complaint as true and
3 liberally construing those allegations, Plaintiff has not established standing, because she has not
4 shown that she has personally suffered the injury of deliberate indifference of medical care while
5 in custody.

6 Accordingly, the First Claim is DISMISSED without prejudice for lack of standing, as to
7 all Defendants.

8 **C. The Second Claim**

9 County Defendants seek to dismiss the Second Claim for deprivation of “liberty interests
10 in the parent-child relationship” on the basis that the facts pled in the Complaint do not allege
11 causation between an alleged failure to provide medical care and Slater’s death. County
12 Defendants state that the facts in the Complaint allege that:

13 Slater was arrested on March 22, 2014. (Complaint, 4) Slater was not given
14 adequate medical care while he was in jail related to withdrawal symptoms.
15 (Complaint, 4). Then, Slater was released from jail on March 26, 2014 and then
16 died on March 27, 2014. (Complaint, 4). Plaintiff alleges that Slater died as a
17 proximate result of defendant’s conduct while Slater was in jail. (Complaint, 6).
18 However, in the documents attached to the Complaint, in a letter written by
19 Plaintiff, she states that the death certificate indicates that Slater’s cause of death
20 was heroin intoxication and a disseminated fungal infection. (Complaint,
21 Attachment 2, p.2). Slater’s death certificate corroborates this statement, listing
22 Slater’s cause of death as “Heroin Intoxication with other significant conditions
23 being Disseminated Fungal Infection.” Request For Judicial Notice In Support Of
24 Defendants’ Motion To Dismiss Pursuant to F.R.C.P. 12(b)(6).

25 Cnty. Defs.’ Mot. (Doc. 13) at 12. The court does not agree with County Defendants’ assessment.

26 “The fact that [Slater] did not die until several hours after he [was released] neither
27 precludes liability by the [County] Defendants nor undermines Plaintiff[’s] causation allegations
28 against them.” *Estate of Prasad ex rel. Prasad v. Cnty. of Sutter*, 958 F. Supp. 2d 1101, 1111
(E.D. Cal. 2013) (citing *Ortiz v. City of Imperial*, 884 F.2d 1312, 1313–14 (9th Cir. 1989) (per
curiam) (reversing grant of summary judgment for jail nurses and doctor where inmate died ten
days after he was transported from jail to the hospital); *see generally Estelle v. Gamble*, 429 U.S.
97, 103, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (contemplating § 1983 liability where lack of

1 medical care produces prisoner’s “‘lingering death’”) (quoting *In re Kemmler*, 136 U.S. 436, 447,
2 10 S.Ct. 930, 34 L.Ed. 519 (1890)). Accordingly, County Defendants’ request that the Second
3 Claim be dismissed for failure to allege causation is DENIED.

4 County Defendants also seek dismissal of Plaintiff’s § 1983 claims on the basis that
5 Plaintiff has not stated a *Monell* Cause of Action against the County. Relying on the *Monell v.*
6 *N.Y. City Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978), holding that “a public entity cannot be
7 held liable under section 1983 on a respondeat superior theory,” County Defendants state that:

8 Even under the liberal pleading practice followed in federal courts, to maintain a
9 section 1983 action against a governmental entity, plaintiff must first plead facts
10 that there was a constitutional violation and that the allegedly unconstitutional
11 activities of the entity’s official were pursuant to a “policy statement, ordinance,
12 regulation, or decision officially adopted and promulgated by [the entity’s] officer”.
13 Cnty. Defs.’ Mot (Doc. 13) at 15 (quoting *Monell*, 436 U.S. at 690.). While this is true, “[a]
14 plaintiff can allege that through its omissions the municipality is responsible for a constitutional
15 violation committed by one of its employees, even though the municipality’s policies were facially
16 constitutional, the municipality did not direct the employee to take the unconstitutional action, and the
17 municipality did not have the state of mind required to prove the underlying violation.” *Gibson v.*
18 *Cnty. of Washoe, Nev.*, 290 F.3d 1175, 1186 (9th Cir. 2002) (emphasis in original). “However, because
19 *Monell* held that a municipality may not be held liable under a theory of respondeat superior, a plaintiff
20 must show that the municipality’s deliberate indifference led to its omission and that the omission
21 caused the employee to commit the constitutional violation.” *Id.* The Second Claim specifically
22 alleges “omissions of Defendants in being deliberately indifferent” to “Slater’s serious medical needs”
23 and that Plaintiff suffered injury “[a]s a direct and proximate result of the aforementioned acts and/or
24 omissions of Defendants.” Compl. (Doc. 1) at 8. Moreover, the Complaint describes the County of
25 Mendocino as “responsible for ensuring the provision of emergency and medical and mental health
26 services” and that Defendant Sherriff Allen “is and was responsible for the promulgation of the
27 policies and procedures and allowance of the practices/customs to which the acts of the Mendocino
28 County Sherriff’s Office alleged herein were committed.” *Id.* at 2. Further, the Complaint alleges that
the County was on notice that “their provision of medical care to inmates” was “inadequate,” thus,
pleading “an actual or constructive notice that [the municipalities] omission would likely result in a

1 constitutional violation.” *Gibson*, 290 F.3d at 1186. Accordingly, the court finds that the claim is
2 sufficiently pled and the request for dismissal on the basis that Plaintiff has failed to properly plead a
3 *Monell* cause of action is DENIED.

4 **D. The Fourth & Fifth Claims**

5 County Defendants seek to dismiss the Fourth and Fifth Claims as they are “common law
6 negligence claims” and California “Government Code section 815 abolishes all common law or
7 judicially declared forms of liability for public entities.” Cnty. Defs.’ Mot. (Doc. 13) at 13.
8 Additionally, County Defendants seek the dismissal of these claims for failure to comply with the
9 California Government Claims filing requirement. *Id.* at 14.

10 As to the common law claims, Sherriff Allman is “not immune under section 815 because
11 that section affords immunity only to public entities and does not affect a public employee’s
12 liability for common law claims.” *Via v. City of Fairfield*, 833 F. Supp. 2d 1189, 1200 (E.D. Cal.
13 2011). As for the County of Mendocino, “[e]xcept as otherwise provided by statute, a public
14 entity is not liable for an injury, whether such injury arises out of an act or omission of the public
15 entity or public employee or any other person.” Cal. Gov’t Code § 815. “All government tort
16 liability must be based on statute.” *Hoff v. Vacaville Unified Sch. Dist.*, 19 Cal.4th 925, 932
17 (1998). The Complaint does not identify a statute on which these two claims rely. However, it
18 appears from the Complaint that Plaintiff is attempting to allege *respondeat superior* liability
19 against the County of Mendocino.¹ Both claims allege that negligence was the direct or proximate
20 cause of the injuries. California Government Code § 815.2(a) states that a “public entity is liable
21 for injury proximately caused by an act or omission of an employee of the public entity within the
22 scope of his employment if the act or omission would, apart from this section, have given rise to a
23 cause of action against that employee or his personal representative.” Cal. Gov’t Code § 815.2(a).
24 Thus, § 815.2(a) “expressly makes the doctrine of *respondeat superior* applicable to public
25 employers.” *Hoff*, 19 Cal.4th at 932. However, the Complaint neither identifies § 815.2(a), nor
26 pleads that Sherriff Allman acted within the scope of his employment as a municipal employee.

27 _____
28 ¹ The Fourth and Fifth Claims both allege negligent hiring, supervision, training and failure to properly hire, supervise and train.

1 Thus, this claim is violative of § 815 and insufficiently pled. *See e.g. Young v. City of Visalia*, 687
2 F. Supp. 2d 1155, 1165 (E.D. Cal. 2010) (“Further, there are no allegations under the Fourth cause
3 of action that the individual officers were acting within the course and scope of their employment
4 as municipal employees. In the absence of either citation to Government Code § 815.2(a) or
5 allegations that the Visalia Officers acted in the course and scope of their employment with the
6 City, Plaintiffs have failed to properly plead vicarious liability against the City.”). Accordingly,
7 these claims are DISMISSED as to the County of Mendocino. However, because these
8 deficiencies can be cured, they are dismissed without prejudice.

9 As to County Defendants’ arguments that Plaintiff failed to exhaust under the Tort Claims
10 Act, the court finds these to be without merit. Plaintiff did file a tort claim pursuant to the Act.
11 County Defendants point the court to *Castaneda v. Dep’t of Corr. & Rehab.*, 212 Cal. App. 4th
12 1051, 1062 (2013) to argue that Plaintiff’s tort claims filing against the County contained no
13 negligence claims, while the Fourth and Fifth Claims of the present Complaint allege negligent
14 supervision, training, and retention. County Defendants argue that because Plaintiff did not
15 specifically allege negligence in the tort claims filing, any negligence claims are barred for failure
16 to comply with the Government Claims Act, which requires a claim to be filed with the
17 government entity prior to suit for money or damages. *See* Cal. Gov’t Code § 945.4.

18 *Castaneda*, the case upon which County Defendants rely, addressed and rejected a very
19 similar argument. In *Castaneda*, the plaintiff pled a cause of action for failure to summon medical
20 care, a claim not specifically raised in the plaintiff’s government tort claim filing. In upholding
21 the lower court’s denial of the state’s motion, the *Castaneda* court agreed that the “tort claim
22 provided the State with adequate information to investigate [the plaintiff’s] charges.” *Castaneda*,
23 212 Cal. App. 4th at 1062. Explaining further, the court stated:

24 “[A] claim need not contain the detail and specificity required of a pleading, but
25 need only ‘fairly describe what [the] entity is alleged to have done.’ [Citations.] As
26 the purpose of the claim is to give the government entity notice sufficient for it to
27 investigate and evaluate the claim, not to eliminate meritorious actions [citation],
28 the claims statute ‘should not be applied to snare the unwary where its purpose has
been satisfied’ [citation].” (*Stockett*, supra, 34 Cal.4th at p. 446, 20 Cal.Rptr.3d
176, 99 P.3d 500.) To be fortified against a demurrer, the complaint should allege
the factual basis for recovery that fairly reflects the written claim. (*Id.* at p. 447, 20
Cal.Rptr.3d 176, 99 P.3d 500.)

1 *Id. See also, Young v. City of Visalia*, 687 F. Supp. 2d 1141, 1152 (E.D. Cal. 2009) (“The factual
2 allegation that *a claim based on the events alleged in the complaint* was presented to and rejected
3 by [the government entity] gives muscle to the skeletal assertion that all prerequisites of the Tort
4 Claims Act have been fulfilled.”) (emphasis added). Similarly, in the present case, the facts pled
5 in Plaintiff’s tort claim filing provided the County Defendants notice to investigate and evaluate
6 Plaintiff’s claims, regardless of the filings specific mention of the term “negligence.”

7 Accordingly, the request to dismiss the Fourth and Fifth Claims on this basis is DENIED.

8 ***E. The Sixth Claim***

9 County Defendants move for dismissal of Plaintiff’s wrongful death cause of action on the
10 basis that “Plaintiff’s Complaint fails to adequately plead causation. *See supra* pp. 7-8.” Cnty.
11 Defs.’ Mot. (Doc. 13) at 15. However, as discussed *supra*, the court rejected Defendants’
12 causation arguments and, therefore, the request to dismiss the Sixth Claim is DENIED.

13 ***D. Sherriff Allman***

14 ***1. Individual Capacity***

15 County Defendants seek to dismiss the claims against Defendant Sherriff Allman in his
16 individual capacity. Defendants base this on the argument that there are no allegations against
17 Sherriff Allman that he individually participated in unlawful conduct. Defendants specifically
18 point this court to *Tandel v. Cnty. of Sacramento*, 2015 WL 1291377, at *9 (E.D. Cal. Mar. 20,
19 2015), and its holding that “a plaintiff cannot demonstrate the liability of a particular officer
20 ‘without a showing of individual participation in the unlawful conduct.’ *Jones v. Williams*, 297
21 F.3d 930, 935 (9th Cir. 2002). Plaintiff must ‘establish the integral participation of the officers in
22 the alleged constitutional violation,’ which requires ‘some fundamental involvement in the
23 conduct that allegedly caused the violation.’” Cnty. Defs.’ Mot. (Doc. 13) at 16. However, the
24 Complaint does not allege that Sherriff Allman was simply a police officer. Instead, the
25 Complaint alleges that Sherriff Allen is in the “highest position” in the Sherriff’s Office. Indeed,
26 County Defendants assert that there is “no doubt that the Sheriff has ‘final policymaking
27 authority’ in operating the Mendocino County jail.” *Id.* at 17. Thus, for purposes of § 1983,
28 Sherriff Allman is a supervisor. “A supervisor can be liable in his individual capacity ‘for his own

1 culpable action or inaction in the training, supervision, or control of his subordinates; for his
2 acquiescence in the constitutional deprivation ...; or for conduct that showed a reckless or callous
3 indifference to the rights of others.” *Watkins v. City of Oakland, Cal.*, 145 F.3d 1087, 1093 (9th
4 Cir. 1998) (internal quotations, citations and corrections omitted).

5 As our sister court in *Tandel v. Cnty. of Sacramento* thoroughly explained:

6 Under § 1983, government officials acting as supervisors may be liable under
7 certain circumstances. “[W]hen a supervisor is found liable based on deliberate
8 indifference, the supervisor is being held liable for his or her own culpable action
9 or inaction, not held vicariously liable for the culpable action or inaction of his or
10 her subordinates.” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir.2011). A defendant
11 may be held liable as a supervisor under § 1983 if there exists “either (1) his or her
12 personal involvement in the constitutional deprivation; or (2) a sufficient causal
13 connection between the supervisor's wrongful conduct and the constitutional
14 violation.” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir.1989); *Starr*, 652 F.3d at
15 1207.

16 A supervisor’s physical presence is not required for supervisory liability. *Starr*, 652
17 F.3d at 1205. Rather, the requisite causal connection between a supervisor's
18 wrongful conduct and the violation of the prisoner's Constitutional rights can be
19 established in a number of ways. The plaintiff may show that the supervisor set in
20 motion a series of acts by others, or knowingly refused to terminate a series of acts
21 by others, which the supervisor knew or reasonably should have known would
22 cause others to inflict a constitutional injury. *Dubner v. City & County of San
23 Francisco*, 266 F.3d 959, 968 (9th Cir.2001); *Larez v. City of Los Angeles*, 946
24 F.2d 630, 646 (9th Cir.1991). Similarly, a supervisor's own culpable action or
25 inaction in the training, supervision, or control of his subordinates may establish
26 supervisory liability. *Starr*, 652 F.3d at 1208; *Larez*, 946 F.2d at 646. Finally, a
27 supervisor's acquiescence in the alleged constitutional deprivation or conduct
28 showing deliberate indifference toward the possibility that deficient performance of
the task may violate the rights of others, may establish the requisite causal
connection. *Starr*, 652 F.3d at 1208; *Menotti v. City of Seattle*, 409 F.3d 1113, 1149
(9th Cir.2005).

Tandel, 2015 WL 1291377 at *9-10. The Complaint sufficiently sets forth claims against Sherriff
Allman in his individual capacity and the request for his dismissal in his individual capacity is
DENIED.

2. *Official Capacity*

Finally, County Defendants seek dismissal of the claims against Sherriff Allman in his
official capacity as duplicative of the claims against the County of Mendocino. “[I]f individuals
are being sued in their official capacity as municipal officials and the municipal entity itself is also
being sued, then the claims against the individuals are duplicative and should be dismissed.” *Roy*

1 v. *Contra Costa Cnty.*, No. 15-CV-02672-TEH, 2015 WL 5698743, at *4 (N.D. Cal. Sept. 29,
2 2015) (quoting *Vance v. Cnty. of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996)).

3 All of the claims within the Complaint are against all Defendants. As such, each claim is
4 against both the County of Mendocino and Sherriff Allman in his official capacity and therefor
5 duplicative. Accordingly, the request to dismiss Sherriff Allman in his official capacity is
6 GRANTED as duplicative.

7 **CONCLUSION**

8 For the reasons stated above, it is ORDERED that the motion to Dismiss (Doc. 13) is
9 GRANTED in part and DENIED in part as follows:

10 1). The First Claim is DISMISSED for lack of standing, without prejudice as to all
11 Defendants;

12 2). The request to dismiss the Second Claim is DENIED;

13 3). The Fourth and Fifth Claims are DISMISSED without prejudice as to Defendant
14 County of Mendocino.

15 4). The request to dismiss the Sixth Claim is DENIED;

16 5) The request to dismiss Sherriff Allman in his individual capacity is DENIED, and
17 the request to dismiss Sherriff Allman in his official capacity is GRANTED.

18 Plaintiff shall have until on or before November 16, 2015, in which to file a first amended
19 complaint. A Case Management Conference in this case is set for January 26, 2015. As per the
20 Scheduling Order (Doc. 3) all deadlines are continued accordingly.

21 **IT IS SO ORDERED.**

22 Dated: October 27, 2015



23
24 NANDOR J. VADAS
25 United States Magistrate Judge
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

MELODIE HUGHES,
Plaintiff,
v.
COUNTY OF MENDOCINO, et al.,
Defendants.

Case No. [15-cv-01794-NJV](#)

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee of U.S. District Court, Northern District of California.

That on October 26, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Melodie Hughes
P.O. Box 207
Willits, CA 95490

Dated: October 26, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
Robert Illman, Law Clerk to the
Honorable NANDOR J. VADAS