

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNETTE FRARY, Individually and as  
Administrator of the Estate of Anthony Brandon  
Carmignani, Deceased, JAMIE BALL, as  
Natural Guardian of Amaya Carmignani, a  
minor, and HEATHER HOWARD,

No. C 12-3928 MEJ

**ORDER DENYING PLAINTIFFS’  
MOTION FOR LEAVE TO FILE  
MOTION FOR RECONSIDERATION**

Plaintiffs,

**Re: Docket No. 26**

vs.

COUNTY OF MARIN; CITY OF NOVATO;  
SHERIFF ROBERT T. DOYLE, CHIEF  
JOSEPH KREINS, DEPUTY RACHEL  
HAMMER, OFFICER THOMAS  
MACKENZIE, OFFICER MICHAEL DUNN,  
OFFICER STEPHANIE COMMISTO, and  
DOES 1 to 50, Inclusive,

Defendants.

On December 13, 2012, the Court granted Defendants’ motions to dismiss Plaintiffs’ sixth and seventh causes of action for negligence as to the public entity Defendants. Dkt. No. 25. Plaintiffs have now filed a Motion for Leave to File Motion for Reconsideration, arguing that they should be permitted to amend their complaint to state common law negligence claims against the City of Novato based on its vicarious liability for the negligence of its officers. However, Plaintiffs’ complaint asserted negligence claims against the City of Novato directly, and not merely vicariously. Thus, Plaintiffs’ motion is improper as no such allegations were before the Court at the time of its Order. Accordingly, Plaintiffs’ motion is DENIED. So that the case may proceed on the merits, if Plaintiffs maintain that they are permitted to bring a cause of action for vicarious liability

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against the City of Novato, they shall include the claim in their amended complaint. Plaintiffs shall file their amended complaint by January 17, 2013.

**IT IS SO ORDERED.**

Dated: January 3, 2013



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MARIA-ELENA JAMES  
United States Magistrate Judge