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

KATHY CROSBY, et al.,
Plaintiffs,
v.
WELLPATH, INC., et al.,
Defendants.

Case No. [20-cv-08529-MMC](#)

**ORDER GRANTING DEFENDANT
WELLPATH, INC.'S MOTION TO
DISMISS; AFFORDING PLAINTIFFS
LEAVE TO AMEND; CONTINUING
CASE MANAGEMENT CONFERENCE**

United States District Court
Northern District of California

Before the Court is defendant Wellpath, Inc.'s ("Wellpath") Motion, filed June 1, 2021, "to Dismiss Plaintiffs' First Amended Complaint" pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiffs have filed opposition, to which Wellpath has replied. Having read and considered the papers submitted in support of and in opposition to the motion, the Court rules as follows.¹

BACKGROUND

The instant action arises out of the death of Christopher Crosby on December 4, 2019, while he was incarcerated at Santa Rita Jail in Alameda County. (See First Am. Compl. ¶¶ 14-15.) Plaintiff Kathy Crosby is the mother of Christopher Crosby, and plaintiff C.C. is the daughter of Christopher Crosby. (See *id.* ¶¶ 8-9.) In their First Amended Complaint ("FAC"), plaintiffs allege Christopher Crosby was admitted to Santa Rita Jail in February 2018 and classified as a suicide risk by County of Alameda ("County") correctional officers and by staff from Wellpath, a company that "provides medical services for inmates at Santa Rita Jail." (See *id.* ¶ 15.) According to plaintiffs,

¹ By order filed July 6, 2021, the Court took the matter under submission.

1 County staff and Wellpath staff “failed to properly monitor [Christopher] Crosby” and
 2 “failed to prevent [him] from possessing a plastic bag,” which, plaintiffs allege, he “placed
 3 . . . over his head,” causing him to “suffocate[] and die[.]” (See id.)

4 Based on the above allegations, plaintiffs assert claims against Wellpath and two
 5 sets of Doe defendants, specifically, Does 1-25, who, plaintiffs allege, were at all relevant
 6 times employees of the County, and Does 26-50, who, plaintiffs allege, were at all
 7 relevant times employees of Wellpath. (See FAC ¶¶ 10-11.) In particular, plaintiffs
 8 assert the following four Causes of Action: (1) “Fourteenth Amendment, 42 U.S.C.
 9 § 1983[;] Violation of Christopher Crosby’s Substantive Due Process Rights,” alleged
 10 against Wellpath and all Doe defendants; (2) “Fourteenth Amendment, 42 U.S.C.
 11 § 1983[;] Violation of P[la]intiffs’ Right to a Familial Relationship,” alleged against
 12 Wellpath and all Doe defendants; (3) “Violation of California Government Code § 845.6,”
 13 alleged against Wellpath and Does 26-50; and (4) “Wrongful Death– Negligence,” alleged
 14 against Wellpath and Does 26-50.

15 By order filed May 5, 2021, the Court approved the parties’ stipulation to dismiss,
 16 with prejudice, plaintiffs’ Third Cause of Action. Consequently, only the First, Second,
 17 and Fourth Causes of Action remain.

18 **LEGAL STANDARD**

19 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure “can be
 20 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged
 21 under a cognizable legal theory.” See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696,
 22 699 (9th Cir. 1990). Rule 8(a)(2), however, “requires only ‘a short and plain statement of
 23 the claim showing that the pleader is entitled to relief.’” See Bell Atlantic Corp. v.
 24 Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Consequently, “a
 25 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
 26 allegations.” See id. Nonetheless, “a plaintiff’s obligation to provide the grounds of his
 27 entitlement to relief requires more than labels and conclusions, and a formulaic recitation
 28 of the elements of a cause of action will not do.” See id. (internal quotation, citation, and

1 alteration omitted).

2 In analyzing a motion to dismiss, a district court must accept as true all material
3 allegations in the complaint and construe them in the light most favorable to the
4 nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). "To
5 survive a motion to dismiss, a complaint must contain sufficient factual material, accepted
6 as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S.
7 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "Factual allegations must be
8 enough to raise a right to relief above the speculative level[.]" Twombly, 550 U.S. at 555.
9 Courts "are not bound to accept as true a legal conclusion couched as a factual
10 allegation." See Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

11 DISCUSSION

12 By the instant motion, Wellpath contends plaintiffs' remaining claims, to the extent
13 alleged against it, are subject to dismissal for failure to state a claim. The Court
14 addresses each claim in turn.

15 A. First Cause of Action

16 To the extent alleged against Wellpath, the First Cause of Action, titled
17 "Fourteenth Amendment, 42 U.S.C. § 1983[;] Violation of Christopher Crosby's
18 Substantive Due Process Rights," is based on a theory that Wellpath is liable for the
19 alleged failure of its staff to "ensure [Christopher Crosby] did not possess the instruments
20 of suicidality" and to "properly monitor" him. (See FAC ¶ 20.)

21 Wellpath, in arguing such claim is subject to dismissal, contends plaintiffs have
22 failed to allege facts sufficient to show the asserted deprivation of constitutional rights
23 occurred as a result of a Wellpath policy or custom. The Court, as set forth below,
24 agrees.

25 Under Monell v. Department of Social Services, 436 U.S. 658 (1978), a
26 municipality is subject to liability under § 1983 where the alleged constitutional violation is
27 the result of such municipality's "policy or custom," see id. at 694, and the Ninth Circuit
28 has held "Monell . . . appl[ies] to suits against private entities under § 1983," see Tsao v.

1 Desert Palace, Inc., 698 F.3d 1128, 1139 (9th Cir. 2012). Thus, to state a § 1983 claim
 2 against a private entity, a plaintiff must show the private entity “acted under color of state
 3 law” and that the alleged constitutional violation “was caused by an official policy or
 4 custom of [said entity].” See Tsao, 698 F.3d at 1139.

5 Here, although plaintiffs contend the alleged violation of constitutional rights was
 6 caused by “Wellpath’s failure to train [its] employees” (see Opp. at 6:3), a failure to train
 7 constitutes an actionable policy or custom “only where [such] failure . . . amounts to
 8 deliberate indifference to the rights of persons with whom the [employees] come into
 9 contact,” see City of Canton, Ohio v. Harris, 489 U.S. 378, 388 (1989), and plaintiffs have
 10 failed to allege facts sufficient to support such a finding.

11 In particular, as Wellpath points out, plaintiffs’ allegations concern only one
 12 incident of purportedly unlawful conduct, and, with one exception, which plaintiffs do not
 13 contend is applicable here, “a single incident of unlawful conduct is insufficient to state a
 14 claim for . . . liability under section 1983” under Monell. See Benavidez v. Cnty. of San
 15 Diego, 993 F.3d 1134, 1154 (9th Cir. 2021) (affirming dismissal of Monell claim alleging
 16 failure to train, where claim supported “only with a single incident”; noting “[t]hat a
 17 particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on
 18 the city, for the officer’s shortcomings may have resulted from factors other than a faulty
 19 training program” (internal citation omitted)). Indeed, plaintiffs do not dispute the
 20 foregoing, but, rather, in their Opposition, state they “believe discovery will reveal details
 21 about prior instances of inmates dying from suicide while under the care of Wellpath
 22 staff.” (See Opp. at 5:12-14.) Plaintiffs, however, may not proceed on their claims solely
 23 on the basis of such speculation. See Twombly, 550 U.S. at 570 (holding plaintiff must
 24 plead “enough facts to state a claim to relief that is plausible on its face”).²

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 27 ² To the extent plaintiffs, in arguing to the contrary, may be relying on Phillips v.
 28 County of Fresno, No. 1:13-cv-0538, 2013 WL 6243278 (E.D. Cal. Dec. 3, 2013), and
Estate of Duran v. Chavez, No. 2:14-cv-02048, 2015 WL 8011685 (E.D. Cal. Dec. 7,
 2015), such reliance is misplaced, as the plaintiffs in those cases had pled “more
 concrete and specific facts to support a Monell claim” than plaintiffs have pled here.
Compare Wilson v. Town of Danville, No. 17-CV-00863-DMR, 2017 WL 2335545, at *3

1 Moreover, even assuming, arguendo, plaintiffs have sufficiently identified a
2 Wellpath policy or custom, they have failed to allege facts sufficient to support a finding
3 that any constitutional violation was committed pursuant thereto. In that regard, as
4 discussed below, plaintiffs have not alleged facts sufficient to show that one or more
5 Wellpath employees were “deliberately indifferent to Christopher Crosby’s suicidal
6 ideations.” (See Opp. at 8:1-2.)

7 A § 1983 claim brought by a pretrial detainee for a violation of his/her right to
8 adequate medical care, including suicide prevention measures, “must be evaluated under
9 an objective deliberate indifference standard.” See Gordon v. Cnty. of Orange, 888 F.3d
10 1118, 1124-25 (9th Cir. 2018). Under such standard, a plaintiff must show:

11 (i) the defendant made an intentional decision with respect to the conditions
12 under which the plaintiff was confined; (ii) those conditions put the plaintiff
13 at substantial risk of suffering serious harm; (iii) the defendant did not take
14 reasonable available measures to abate that risk, even though a
15 reasonable official in the circumstances would have appreciated the high
16 degree of risk involved—making the consequences of the defendant's
17 conduct obvious; and (iv) by not taking such measures, the defendant
18 caused the plaintiff's injuries.

16 See id. at 1125. Further, with respect to the third of the above-listed elements, “the
17 plaintiff must prove more than negligence but less than subjective intent—something akin
18 to reckless disregard.” See id. (internal quotation and citation omitted).

19 Here, as Wellpath points out, plaintiffs’ allegations, specifically, that Christopher
20 Crosby, almost two years after being admitted to Santa Rita Jail and placed on suicide
21 watch, obtained, in an unspecified manner and at an unspecified time, a plastic bag that

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23 (N.D. Cal. May 30, 2017) (dismissing Monell claim based on failure to train; finding
24 plaintiff, in contrast to plaintiffs in Phillips and Estate of Duran, had pled “no specific facts
25 or allegations to support his [Monell] claim”), with Estate of Duran, 2015 WL 8011685, at
26 *9 (denying request to dismiss plaintiffs’ claims for supervisory liability; finding “there are
27 enough facts pled as to [the supervisor’s] actions and failures in supervising his
28 subordinates, including his personal observations of [the decedent’s] distress and his
subordinates’ failure to acquire medical treatment for [the decedent]”), and Phillips, 2013
WL 6243278, at *9-10 (denying request to dismiss plaintiffs’ claim for entity and
supervisory liability; noting plaintiffs “have pointed to newspaper articles acknowledging”
problems similar to alleged unlawful conduct at issue, “as well as a class action suit that
alleges substantially similar problems”).

1 he used to commit suicide, are insufficient to support a finding that Wellpath staff acted
 2 with “something akin to reckless disregard.” See Gordon, 888 F.3d at 1125. In
 3 particular, such allegations are insufficient to support a finding that Wellpath staff knew,
 4 or had reason to know, Christopher Crosby was “in imminent danger of harming
 5 [himself],” let alone that Wellpath staff failed to take reasonable measures to abate such
 6 risk. See Bremer v. Cnty. of Contra Costa, No. 15-CV-01895-JSC, 2016 WL 6822011, at
 7 *9 (N.D. Cal. Nov. 18, 2016) (finding, under § 1983, placement of pretrial detainee on
 8 suicide watch insufficient to support finding of either subjective or objective awareness of
 9 imminent danger) (citing Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1018 (9th Cir.
 10 2010)).

11 Accordingly, the First Cause of Action, to the extent asserted against Wellpath, is
 12 subject to dismissal. Moreover, as plaintiffs’ failure to allege sufficient facts to support a
 13 finding of deliberate indifference is equally applicable to the non-moving Doe defendants,
 14 the First Cause of Action is subject to dismissal as asserted against said additional
 15 defendants as well. See Silverton v. Dep’t of Treasury, 644 F.2d 1341, 1345 (9th Cir.
 16 1981) (holding, where court grants motion to dismiss complaint as to one defendant,
 17 court may dismiss complaint against non-moving defendant “in a position similar to that of
 18 moving defendants”).³

19 **B. Second Cause of Action**

20 To the extent alleged against Wellpath, the Second Cause of Action, titled
 21 “Fourteenth Amendment, 42 U.S.C. § 1983[;] Violation of P[aintiffs’] Right to a Familial
 22 Relationship,” is based on a theory that “Wellpath’s failure to train [its] employees . . .
 23 violated [p]laintiffs’ rights to a familial relationship with [d]ecedent Christopher Crosby.”
 24 (See Opp. at 7:3-5.)

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 27 ³ As noted, plaintiffs bring their First and Second Causes of Action against all Doe
 28 defendants, i.e., County Does and Wellpath Does. In both the initial Complaint and FAC,
 plaintiffs make no distinction between the two groups of Does in alleging facts in support
 of those claims. (See, e.g., Compl. ¶¶ 15-16, 22, 26; FAC ¶¶ 14-15, 20, 24.)

1 As discussed above, however, plaintiffs have failed to allege facts sufficient to
 2 identify a Wellpath policy or custom that caused any alleged violation of constitutional
 3 rights, and, consequently, the Second Cause of Action, as asserted against Wellpath, is
 4 subject to dismissal.

5 Moreover, even assuming, arguendo, plaintiffs have sufficiently identified a
 6 Wellpath policy or custom, they have not alleged facts sufficient to support a finding that
 7 the constitutional violation occurred, specifically, that any conduct on the part of Wellpath
 8 staff “prevented [plaintiffs] from exercising their right to a familial relationship with
 9 C[hristopher] C[rosby].” (See FAC ¶ 24.)

10 In particular, to state a § 1983 claim for a violation of the “substantive due process
 11 right to family integrity or to familial association,” the alleged harmful conduct “must shock
 12 [] the conscience or offend the community’s sense of fair play and decency.” See
 13 Rosenbaum v. Washoe Cnty., 663 F.3d 1071, 1079 (9th Cir. 2011) (alteration in original)
 14 (internal quotations and citation omitted). Although an individual’s “deliberately indifferent
 15 conduct will generally ‘shock the conscience’ so as long as [he/she] had time to
 16 deliberate before acting or failing to act in a deliberately indifferent manner,” see Lemire
 17 v. Cal. Dep’t of Corr. & Rehab., 726 F.3d 1062, 1075 (9th Cir. 2013), a showing of
 18 deliberate indifference must, of course, be made.

19 Here, as Wellpath points out, plaintiffs’ allegations are, as discussed above,
 20 insufficient to support a finding of deliberate indifference, and thus those allegations are
 21 insufficient to support a finding of indifference that “rise[s] to the conscience-shocking
 22 level.” See Lemire, 726 F.3d at 1075. Consequently, the Second Cause of Action, as
 23 asserted against Wellpath, is subject to dismissal for this additional reason, and, as such
 24 deficiency is equally applicable to the non-moving Doe defendants, the Second Cause of
 25 Action is subject to dismissal as asserted against said additional defendants as well. See
 26 Silverton, 644 F.2d at 1345.

27 **C. Fourth Cause of Action**

28 To the extent alleged against Wellpath, the Fourth Cause of Action, titled

1 “Wrongful Death– Negligence,” is based on a theory that “Wellpath is vicariously liable for
2 the torts committed by Wellpath staff during the scope of their employment,” and that
3 Wellpath staff acted negligently by breaching the duty of care they owed Christopher
4 Crosby “when they failed to restrict [his] access to instruments of suicidality.” (See Opp.
5 at 9:23-25, 9:26-28.)

6 Under section 377.60 of the California Code of Civil Procedure, the elements of a
7 wrongful death claim are “(1) a ‘wrongful act or neglect’ on the part of one or more
8 persons that (2) ‘cause[s]’ (3) the ‘death of [another] person.’” See Norgart v. Upjohn
9 Co., 21 Cal. 4th 383, 390 (1999) (alterations in original) (quoting Cal. Civ. Proc. Code
10 § 377.60). Where, like here, the wrongful death is alleged to have resulted from
11 negligence, the operative complaint must also “contain allegations as to all the elements
12 of actionable negligence,” i.e., “the violation of a legal duty imposed by statute, contract
13 or otherwise, by the defendant to the person injured.” See Jacoves v. United Merch.
14 Corp., 9 Cal. App. 4th 88, 105 (1992).

15 Wellpath does not dispute plaintiffs’ contention that it may be held vicariously liable
16 for the negligence of its staff, or that its staff owed a duty of care to Christopher Crosby.
17 Rather, Wellpath argues, plaintiffs have failed to allege facts supporting a finding that its
18 staff breached such duty. (See Reply at 11:1-3; see also Mem. in Supp. of Mot. to
19 Dismiss at 8:1-4.) The Court, as set forth below, agrees.

20 Although plaintiffs allege Wellpath staff breached their duty of care to Christopher
21 Crosby “by failing to properly monitor” him and “by allowing [him] access to instruments of
22 suicidality” (see FAC ¶ 31), specifically, a plastic bag, plaintiffs fail to allege sufficient
23 facts from which the Court may reasonably infer “more than the mere possibility of
24 misconduct,” see Iqbal, 556 U.S. at 678 (internal citation omitted), such as how or when
25 Christopher Crosby obtained a plastic bag and how Wellpath staff’s monitoring was
26 inadequate, see Hernandez v. Cnty. of Santa Clara, No. 19-cv-07888-EJD, 2020 WL
27 3101041, at *8 (N.D. Cal. June 11, 2020) (dismissing wrongful death claim based on
28 defendants’ alleged negligence in failing to address pretrial detainee’s suicidality, where

1 detainee “committed suicide using a towel”; noting, “the FAC contains no allegations
2 explaining how [d]efendants’ monitoring was inadequate” or “how or when [the detainee]
3 obtained the towel”).

4 Accordingly, plaintiffs’ Fourth Cause of Action, to the extent asserted against
5 Wellpath, is subject to dismissal, and, as the above-described deficiency is equally
6 applicable to the non-moving Wellpath Doe defendants, the Fourth Cause of Action is
7 likewise subject to dismissal as asserted against those additional defendants. See
8 Silverton, 644 F.2d at 1345.

9 **D. Leave to Amend**

10 Having determined plaintiffs’ claims are subject to dismissal, the Court next
11 considers whether such dismissal should be with leave to amend.

12 Although the above-described deficiencies were previously identified by defendant
13 County and defendant County of Alameda Officer Henderson (“Henderson”) in their
14 motion to dismiss plaintiffs’ claims as asserted against them in the initial Complaint, and
15 although the Court granted the motion with leave to amend (see Order, filed Feb. 26,
16 2021),⁴ Wellpath did not file a joinder in that motion, nor did the County and Henderson
17 purport to move on behalf of any of the Doe defendants.

18 Under such circumstances, and because the above-described deficiencies are
19 potentially curable, the Court will afford plaintiffs leave to amend, for the sole purpose of
20 curing, if they can do so, any one or more of those deficiencies. See Cook, Perkiss &
21 Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 247 (9th Cir. 1990) (holding “a
22 district court should grant leave to amend even if no request to amend the pleading was
23 made, unless it determines that the pleading could not possibly be cured by the allegation
24 of other facts”).

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27 ⁴ Plaintiffs then filed the FAC, naming as defendants the County, Wellpath, and
28 Does 1-50, after which the Court granted the County’s second motion to dismiss and
dismissed, without further leave to amend, plaintiffs’ claims as asserted against the
County. (See Order, filed May 18, 2021.)

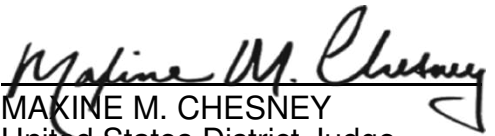
CONCLUSION

For the reasons stated above, the Motion to Dismiss is hereby GRANTED, and plaintiffs' claims are hereby DISMISSED with leave to amend to cure the above-described deficiencies. Plaintiffs' Second Amended Complaint, if any, shall be filed no later than August 13, 2021.

In light of the foregoing, the Initial Case Management Conference is hereby CONTINUED from July 30, 2021, to October 29, 2021, at 10:30 a.m. A Joint Case Management Statement shall be filed no later than October 22, 2021.

IT IS SO ORDERED.

Dated: July 20, 2021


MAKINE M. CHESNEY
United States District Judge

United States District Court
Northern District of California

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