

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID CAVAGNA, et al.,
Plaintiffs,
v.
CLEARLAKE POLICE DEPARTMENT, et
al.,
Defendants.

Case No. 23-cv-01686-KAW

**ORDER GRANTING MOTIONS TO
DISMISS AND MOTION FOR
JUDGMENT ON THE PLEADINGS**

Re: Dkt. Nos. 9, 17, 25, 33

On April 7, 2023, Plaintiffs David and Kimberly Cavagna brought the instant lawsuit against Defendants Clearlake Police Department, Officer Brittany Shores, City of Clearlake, Lake County, Lake County Behavioral Health, California Highway Patrol (“CHP”), and Officer Joel Skeen, alleging that Defendants failed to protect the death of Plaintiffs’ son. (Compl. ¶ 1, Dkt. No. 1.) Pending before the Court are: (1) Defendant CHP’s motion to dismiss for lack of jurisdiction, (2) Defendant City of Clearlake and Shores’s motion to dismiss, (3) Defendant Skeen’s motion to dismiss, and (4) Defendant Lake County and Lake County Behavioral Health’s motion for judgment on the pleadings. (CHP Mot. to Dismiss, Dkt. No. 9; Clearlake Mot. to Dismiss, Dkt. No. 17; Skeen Mot. to Dismiss, Dkt. No. 25; Lake Mot. for Judgment, Dkt. No. 33.)

Having considered the parties’ filings, the relevant legal authorities, and the arguments made at the October 19, 2023 hearing, the Court GRANTS the motions to dismiss and for judgment on the pleadings.

I. BACKGROUND

This case concerns the death of Jesse Cavagna (“Decedent”), who suffered from schizophrenia. (Compl. ¶¶ 1, 4.) On September 15, 2022, Plaintiff Kimberly learned that Decedent had left the trailer he lived in and had not been home in several days. (Compl. ¶ 15.)

1 She called Defendant Clearlake Police Department and verbally filed a missing person report.
2 (Compl. ¶ 15.) The following day, Defendant Shores met Plaintiff Kimberly at Decedent’s
3 residence, and Plaintiff Kimberly explained that Decedent was mentally disabled. (Compl. ¶ 16.)
4 Plaintiff Kimberly also mentioned the possibility that Decedent could be visiting other RV parks
5 and that Decedent’s neighbor said he might be getting drugs. (Compl. ¶ 17.) Plaintiff Kimberly
6 believes Defendant Shores was biased about Decedent’s whereabouts and limited her search to
7 other RV parks rather than taking “reasonable steps” to locate a person with mental health
8 conditions. (Compl. ¶ 18.) Defendant Shores later called Plaintiff Kimberly and stated that
9 Plaintiff Kimberly needed to file a written missing person’s report, and that Defendant Shores had
10 been actively searching for Decedent in nearby RV parks. (Compl. ¶ 19.)

11 Between September 15, 2022 and September 23, 2022, Plaintiff David called Defendant
12 Lake County Behavioral Health. (Compl. ¶ 21.) He was told by a receptionist that they had no
13 information about Decedent or his whereabouts. (Compl. ¶ 21.) Around September 13, 2022,
14 however, Defendant Lake County Behavioral Health had received a photo of Decedent from
15 Defendant Skeen. (Compl. ¶¶ 22, 49.) Specifically, Defendant Skeen had investigated an
16 unidentified person walking on a road without shoes, wearing pajamas, who turned out to be
17 Decedent. (Compl. ¶ 22.) Based on their interaction, Defendant Skeen knew Decedent was
18 suffering from mental illness; Defendant Skeen took a photo of Decedent and sent it to Defendant
19 Lake County Behavioral Health but made no effort to hold or take Decedent into custody.
20 (Compl. ¶ 22, 48, 49.) Instead, Defendant Skeen permitted Decedent to leave, making no attempt
21 to stop him or call for assistance. (Compl. ¶¶ 22, 49.)

22 Between September 21 and 28, 2022, Detective Flores from Defendant Clearlake Police
23 Department informed Plaintiff Kimberly that he was the lead investigator, but “only asked for
24 vague general information” about Decedent. (Compl. ¶ 23.) Plaintiff David made multiple calls
25 to Detective Flores and Defendant Shores for updates, but neither answered their phones. (Compl.
26 ¶ 24.) At an unknown point, an unidentified sergeant contacted Plaintiff David and expressed his
27 belief that Decedent was probably in a drug house. (Compl. ¶ 25.) When Plaintiff David
28 explained Decedent was too mentally ill to be in a drug house and that his communication skills

1 were poor due to his schizophrenia, the sergeant was unsympathetic. (Compl. ¶ 25.)

2 Plaintiff Kimberly also made multiple calls to Detective Flores. (Compl. ¶ 26.) When
3 Detective Flores responded, he only asked for dental records, and made no effort to profile
4 Decedent correctly. (Compl. ¶ 26.) In another call, Detective Flores told Plaintiff Kimberly that
5 he had other cases he was working on, including a homicide. (Compl. ¶ 27.)

6 On September 28, 2022, Defendant Clearlake Police Department posted a missing person
7 poster for Decedent. (Compl. ¶ 31.) Between October 2 and 24, 2022, Detective Flores provided
8 no updates, phone calls, or check ins. (Compl. ¶ 34.)

9 On October 24, 2022, Decedent's sister received an anonymous tip from Defendant Lake
10 County Behavioral Health that they had information about Decedent's whereabouts. (Compl. ¶
11 35.) Plaintiff David called Defendant Lake County Behavioral Health, and learned about
12 Defendant Skeen's September 13, 2022 interaction with Decedent. (Compl. ¶ 36.) The social
13 worker speaking to Plaintiff David stated that he had turned down the request to assist Decedent
14 because of lack of cell phone service in that area. (Compl. ¶ 36.) Plaintiff David called Detective
15 Flores and left a message about this new information. (Compl. ¶ 37.) Plaintiff David also
16 contacted Defendant DHP to speak to Defendant Skeen but was told Defendant Skeen was on
17 vacation. (Compl. ¶ 38.)

18 Based on this information, Plaintiff Kimberly searched Sulphur Bank, where Decedent was
19 last seen. (Compl. ¶¶ 39-40.) Plaintiff Kimberly saw Detective Flores driving around the area,
20 looking for Decedent. (Compl. ¶ 40.) As Detective Flores was only looking through the window
21 of his vehicle while driving the area, Plaintiff Kimberly told him he needed a search and rescue
22 party. (Compl. ¶ 40.) Between October 25 and 27, 2022, Plaintiff David also spoke with
23 Detective Flores, stressing the urgency of locating Decedent. (Compl. ¶ 41.) Detective Flores
24 responded that Decedent was probably visiting shelters or with friends and appeared unmotivated
25 to find Decedent quickly. (Compl. ¶ 41.) While Detective Flores interviewed residents living at
26 the bottom of the Sulphur Bank Drive area, he never requested a search and rescue party. (Compl.
27 ¶ 43.)

28 On October 25, 2022, Plaintiffs drove to the lower Sulphur Bank to search for Decedent.

1 (Compl. ¶ 44.) A resident told them that Decedent had been seen in the area, but the residents had
2 driven him away because they thought he was a squatter. (Compl. ¶ 44.)

3 On October 29, 2022, Decedent’s body was found on the lake at Sulphur Bank. (Compl. ¶
4 45.) On November 1, 2022, Plaintiffs were notified of Decedent’s death. (Compl. ¶ 46.)

5 On April 7, 2023, Plaintiffs filed the instant lawsuit, alleging the following claims: (1) 42
6 U.S.C. § 1983 violation of due process and equal protection; (2) violation of Title III of the
7 Americans with Disabilities Act (“ADA”); (3) violation of the Unruh Civil Rights Act as to
8 Defendants Clearlake Police Department, City of Clearlake, Lake County, Lake County
9 Behavioral Health, and CHP; and (4) wrongful death and survival.¹ (Compl. at 13-18.)

10 On May 22, 2023, Defendant CHP filed a motion to dismiss for lack of jurisdiction, on the
11 ground that Plaintiffs could not state a claim against it. On June 9, 2023, Plaintiffs filed their
12 opposition. (Pls.’ Opp’n to CHP Mot. to Dismiss, Dkt. No. 14.) On June 16, 2023, Defendant
13 CHP filed its reply. (CHP Reply, Dkt. No. 15.)

14 On June 20, 2023, Defendants City of Clearlake and Shores (collectively, “Clearlake
15 Defendants”) filed their motion to dismiss. On September 1, 2023, Plaintiffs filed their
16 opposition. (Pls.’ Opp’n to Clearlake Mot. to Dismiss, Dkt. No. 37.) On September 15, 2023, the
17 Clearlake Defendants filed their reply. (Clearlake Reply, Dkt. No. 44.)

18 On June 26, 2023, Defendant Skeen filed his motion to dismiss. On September 1, 2023,
19 Plaintiffs filed their opposition. (Pls.’ Opp’n to Skeen Mot. to Dismiss, Dkt. No. 40.) On
20 September 11, 2023, Defendant Skeen filed his reply. (Skeen Reply, Dkt. No. 42.)

21 On August 15, 2023, Defendants Lake County and Lake County Behavioral Health
22 (collectively, “Lake County Defendants”) filed a motion for judgment on the pleadings. On
23 September 19, 2023, Plaintiffs filed their opposition. (Pls.’ Opp’n to Lake Mot. for Judgment,
24 Dkt. No. 45.) On September 26, 2023, Defendant Lake County filed its reply. (Lake Reply, Dkt.
25 No. 46.)

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28 ¹ The complaint cover page also lists claims based on negligence and failure to protect a citizen
with special needs, but the complaint does not assert such claims. (See Compl. at 1.)

1 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citations
2 omitted).

3 **B. Motion for Judgment on the Pleadings**

4 Federal Rule of Civil Procedure 12(c) allows a party to move for judgment on the
5 pleadings after the pleadings are closed but early enough not to delay trial. “[T]he same standard
6 of review applicable to a Rule 12(b) motion applies to its Rule 12(c) analog,” because the motions
7 are “functionally identical.” *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir.
8 1989). Thus, a Rule 12(c) motion may be predicated on either (1) the lack of a cognizable legal
9 theory or (2) insufficient facts to support a cognizable legal claim. *See Balistreri v. Pacifica Police*
10 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). When considering a motion to dismiss under Rule 12(c),
11 the court “must accept all factual allegations in the complaint as true and construe them in the light
12 most favorable to the non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

13 **III. DISCUSSION**

14 **A. Request for Judicial Notice**

15 In opposition to Defendant Skeen’s motion to dismiss, Plaintiffs request judicial notice of:
16 (1) Chapter 14 of the 2020 CHP Manual, (2) a July 17, 2023 San Francisco Chronicle article
17 regarding Decedent’s death, and (3) a November 23, 2023 autopsy report of Decedent. (Pls.’ RJN,
18 Dkt. No. 38-1.) Defendant Skeen opposes. (Skeen Opp’n to RJN, Dkt. No. 43.)

19 As an initial matter, Plaintiffs rely on California Evidence Code § 453, but fail to explain
20 why the California Evidence Code would apply in federal court. (Pls.’ RJN at 2.) Accordingly,
21 the Court relies on the Federal Rules of Evidence. Federal Rule of Evidence 201 permits a court
22 to take judicial notice of facts that are “not subject to reasonable dispute because it: (1) is
23 generally known within the trial court’s jurisdiction; or (2) can be accurately and readily
24 determined from sources whose accuracy cannot reasonably be questioned.”

25 The Court GRANTS Plaintiffs’ request for judicial notice as to Chapter 14 of the CHP
26 Manual. This chapter is not reasonably subject to dispute and is a matter of public record
27 available on the CHP’s website. *See Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 139 n.2
28 (N.D. Cal. 2015) (taking judicial notice of agency manuals, rules, and policies).

1 The Court DENIES Plaintiffs’ request for judicial notice of the SF Chronicle article.
2 Plaintiffs rely on the SF Chronicle article for the facts stated therein. (*See* Pl.’s Opp’n to Skeen
3 Mot. to Dismiss at 8.) Courts, however, “do not take judicial notice of newspaper articles for the
4 truth of the contents of the articles.” *Ali v. Intel Corp.*, No. 18-CV-03981-LHK, 2018 U.S. Dist.
5 LEXIS 186696, at *9 (N.D. Cal. Oct. 31, 2018). “This is because often, the accuracy of
6 information in newspaper articles . . . cannot be readily determined and/or can be reasonably
7 questioned.” *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1028 (C.D. Cal. 2015).

8 The Court DENIES Plaintiffs’ request for judicial notice of the November 23, 2023
9 autopsy. It is unclear what basis there is to take judicial notice of what appears to be a private
10 autopsy, nor is it clear what relevance the autopsy has as to the instant motions. At most,
11 Plaintiffs cite the autopsy to state what the cause of death was, but the cause of death is not at
12 issue in this case.

13 **B. Claim 1: § 1983 Claim**

14 Plaintiffs bring a § 1983 claim against all Defendants based on violations of due process
15 and equal protection. (Compl. at 13.)

16 **i. CHP**

17 Defendant CHP argues that it “is not a ‘person’ subject to suit under 42 U.S.C. section
18 1983.” (CHP Mot. to Dismiss at 5.) The Supreme Court has found that “neither a State nor its
19 officials acting in their official capacities are ‘persons’ under § 1983.” *Will v. Mich. Dep’t of State*
20 *Police*, 491 U.S. 58, 71 (1989). Applying *Will*, courts have found that Defendant CHP, a state
21 agency, “is neither a ‘person’ within the meaning of § 1983, nor amenable to suit under *Monell*.”
22 *Gardner v. Cal. Highway Patrol*, No. 2:14-cv-02730 JAM CMK, 2015 U.S. Dist. LEXIS 94242,
23 at *10 (E.D. Cal. July 20, 2015); *see also Collins v. California*, No. CV 15-0710-R-JC, 2015 U.S.
24 Dist. LEXIS 199774, at *7 (C.D. Cal. Apr. 8, 2015) (“Plaintiff cannot sue the State of California
25 or the CHP . . . as a *Monell* claim cannot be brought against the state agency itself.”).

26 Plaintiffs cite no authority to the contrary. Instead, Plaintiffs appear to concede that
27 Defendant CHP is not a “person” under § 1983, but simply asserts that “Agent Skeen is a ‘person’
28 who has been named.” (Pls.’ Opp’n to CHP Mot. to Dismiss at 6.) Plaintiffs provide no authority

1 or explanation for how this means Defendant CHP may be held liable under § 1983. Indeed, the
2 Supreme Court has found that to the extent a § 1983 claim is brought against a state official in his
3 or her official capacity, such a suit “is no different from a suit against the State itself” and
4 therefore not viable. *Will*, 491 U.S. at 71. Further, to the extent Plaintiffs are suggesting that
5 Defendant CHP is liable as Defendant Skeen’s employer, “[t]here is no respondeat superior
6 liability under section 1983.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *see also Monell*
7 *v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978) (“a municipality cannot be held liable *solely*
8 because it employs a tortfeasor -- or, in other words, a municipality cannot be held liable under §
9 1983 on a *respondeat superior* theory”).

10 Accordingly, Plaintiffs cannot state a claim against Defendant CHP under § 1983, and thus
11 § 1983 cannot serve as a basis for federal jurisdiction as to Defendant CHP.

12 **ii. Clearlake Defendants**

13 a. Due Process Violation

14 The Clearlake Defendants argue that Plaintiffs’ due process violation fails because to the
15 extent it is based on the Clearlake Defendants’ failure to adequately investigate and locate
16 Decedent, “the Due Process Clauses generally confer no affirmative right to governmental aid,
17 even where such aid may be necessary to secure life, liberty, or property interests of which the
18 government itself may not deprive the individual.” *Deshaney v. Winnebago Cty. Dep’t of Soc.*
19 *Servs.*, 489 U.S. 189, 196 (1989). In other words, “[t]he police have no affirmative obligation to
20 investigate a crime in a particular way or to protect one citizen from another even when one
21 citizen deprives the other of liberty o[r] property.” *Gini v. Las Vegas Metro. Police Dep’t*, 40 F.3d
22 1041, 1045 (9th Cir. 1994).

23 Plaintiffs provide no contrary authority, nor do they argue that one of the limited
24 exceptions creating an affirmative right to governmental aid -- *e.g.*, the special relationship
25 exception or state-created danger exception -- apply in this case. Indeed, Plaintiffs do not respond
26 to the Clearlake Defendants’ argument regarding the due process violation at all, instead focusing
27 solely on the equal protection claim. (*See* Pls.’ Opp’n to Clearlake Mot. to Dismiss at 8-11.)

28 Accordingly, Plaintiffs have waived any argument as to the due process claim, and the due process

1 claim against the Clearlake Defendants is dismissed with prejudice.

2 b. Equal Protection Claim

3 As to the equal protection claim, the Clearlake Defendants argue that Plaintiffs have failed
4 to state sufficient facts in support. (Clearlake Mot. to Dismiss at 9.) To state an equal protection
5 claim, “a plaintiff must show that the defendants acted with an intent or purpose to discriminate
6 against the plaintiff based upon membership in a protected class.” *Barren v. Harrington*, 152 F.3d
7 1193, 1194 (9th Cir. 1998).

8 As an initial matter, the Clearlake Defendants correctly point out that neither Plaintiff
9 suggests they belong to a protected class or that they were treated differently because of their
10 membership in a protected class. (Clearlake Mot. to Dismiss at 10.) Plaintiffs do not appear to
11 dispute this point, and instead argue that they “can present a viable claim on behalf of
12 [Decedent]’s estate showing that [Decedent] was denied Equal Protection.” (Pls.’ Opp’n to
13 Clearlake Mot. to Dismiss at 11.) Thus, the Court construes the equal protection claim as being
14 limited solely to Decedent.

15 The parties dispute whether Plaintiffs have identified any facts suggesting Defendant
16 Shores failed to take any particular actions because of Decedent’s mental condition. (Clearlake
17 Mot. to Dismiss at 9; Pls.’ Opp’n to Clearlake Mot. to Dismiss at 10.) There is no dispute that
18 Plaintiffs have alleged that Defendant Shores knew Decedent was mentally disabled. (*See* Compl.
19 ¶ 16.) This, however, is insufficient to demonstrate that Defendant Shores took (or failed to take)
20 actions *because* she intended to discriminate against Decedent based on his mental condition. *See*
21 *Jones v. City of Oakland*, No. 19-cv-00789-HSG, 2019 U.S. Dist. LEXIS 125205, at *8 (N.D. Cal.
22 July 26, 2019) (dismissing equal protection claim where the plaintiffs did not suggest that the
23 officer more thoroughly investigated similar crimes that were not racially motivated, or that the
24 officer “took any action or chose not to take any action due to Plaintiffs’ race”). At most,
25 Plaintiffs allege that Plaintiff Kimberly “suspected that [Defendant Shores] was biased about
26 [Decedent’s] whereabouts, only limiting her search to other parks and suspecting he was visiting
27 drug houses.” (Compl. ¶ 18.) As the Clearlake Defendants point out, Plaintiffs do not explain the
28 basis of Plaintiff Kimberly’s suspicion. (Clearlake Mot. to Dismiss at 9.) Moreover, it is not even

1 clear that Plaintiff Kimberly believed Defendant Shores was biased about Decedent *because* of his
2 mental condition. Indeed, Defendant Shores’s allegedly limited search was made after Plaintiff
3 Kimberly mentioned the possibility that Decedent could be visiting other parks and that his
4 neighbor said he might be getting drugs. (Compl. ¶ 17.)

5 Plaintiffs, in turn, assert that the Clearlake Defendants had “a regular custom of
6 discriminating against persons with mental illness by disregarding them as drug addicts.” (Pls.’
7 Opp’n to Clearlake Mot. to Dismiss at 10.) Instead, the Clearlake Defendants failed to follow
8 various procedures for investigating missing persons that they took in other investigations. (*Id.* at
9 10-11.) Plaintiffs further assert that Defendant Shores recklessly and carelessly reported
10 misinformation to other officers, namely that Decedent was a drug addict. (*Id.* at 11.) Plaintiffs,
11 however, do not point to any such facts *in the complaint*. Nor is it clear that even if Defendant
12 Shores wrongfully reported that Decedent was a drug addict, she did so because of bias based on
13 Decedent’s mental condition. Thus, Plaintiffs have failed to state an equal protection claim as to
14 Decedent, necessitating dismissal.

15 The next question is whether Plaintiffs should be given leave to amend. With respect to
16 Defendant Shores, the Clearlake Defendants have argued that she is entitled to qualified immunity.
17 “The doctrine of qualified immunity protects government officials from liability for civil damages
18 insofar as their conduct does not violate clearly established statutory or constitutional rights of
19 which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)
20 (internal quotation omitted). “In evaluating a grant of qualified immunity, a court considers
21 whether (1) the state actor’s conduct violated a constitutional right and (2) the right was clearly
22 established at the time of the alleged misconduct.” *Gordon v. Cnty. of Orange*, 6 F.4th 961, 967-
23 68 (9th Cir. 2021). Importantly, “[f]or a constitutional right to be clearly established, a court must
24 define the right at issue with specificity and not at a high level of generality.” *Id.* at 968 (internal
25 quotation omitted). Thus, “qualified immunity is not meant to be analyzed in terms of a general
26 constitutional guarantee, but rather the application of general constitutional principles in a
27 particular context.” *Id.* at 969 (internal quotation omitted). The burden is on the plaintiff to
28 “identify a case that put[s the defendant] on notice that his *specific* conduct was unlawful.” *Rivas-*

1 *Villegas v. Cortesluna*, 142 S. Ct. 4, 8 (2021) (emphasis added).

2 Plaintiffs have not done so. Even if Plaintiffs had established an equal protection violation
3 based on Defendant Shores not taking certain actions required by statute or falsely reporting to
4 other officers that Decedent was a drug addict, Plaintiffs cite **no** case showing that such actions
5 would constitute a constitutional violation. Instead, Plaintiffs cite various cases explaining how
6 qualified immunity works, none of which have facts like those in this case. *See Siegert v. Gilley*,
7 500 U.S. 226, 232 (1991) (alleging Fifth Amendment violation based on the loss of employment);
8 *Harlow v. Fitzgerald*, 457 U.S. 800, 802-03 (1982) (concerning a conspiracy by presidential aides
9 and advisors to affect the plaintiff's wrongful discharge); *Elder v. Holloway*, 510 U.S. 510, 512
10 (1994) (alleging a warrantless arrest). At the hearing, Plaintiffs acknowledged they had no such
11 case law. Instead, Plaintiffs pointed to "rules and regulations," but cited no authority that this is
12 sufficient to establish a constitutional violation or provide the notice required to defeat qualified
13 immunity. In short, Plaintiffs have failed to identify any factually similar case authority that
14 would put Defendant Shores on notice that her specific actions or failure to act violated
15 Decedent's equal protection rights. *See Rivas-Villegas*, 142 S. Ct. at 8 (finding that qualified
16 immunity applied where the plaintiff failed to identify any binding authority "that addresses facts
17 like the ones at issue here"). Thus, qualified immunity applies, and the equal protection claim
18 against Defendant Shores is dismissed with prejudice.

19 As to Defendant City of Clearlake, Plaintiffs argue that they have alleged that Defendant
20 City of Clearlake maintained a widespread practice and custom discriminating against persons
21 with mental illness, as demonstrated by Defendant Shores and her peers viewing mental illness in
22 the same light as drug addiction. (Pls.' Opp'n to Clearlake Mot. to Dismiss at 12.) Plaintiffs do
23 not cite where these allegations are in the complaint, and the Court has not been able to identify
24 any such allegations. Plaintiffs also do not explain or provide any case authority for how this
25 establishes *municipal* liability or identify instances other than Decedent's specific case to
26 demonstrate a longstanding practice or custom. The Ninth Circuit has been clear that "[l]iability
27 for improper custom may not be predicated on isolated or sporadic incidents; it must be founded
28 upon practices of sufficient duration, frequency and consistency that the conduct has become a

1 traditional method of carrying out policy.” *Gordon*, 6 F.4th at 974 (finding that the *Monell* claim
2 failed where the plaintiff failed to identify any other instance of similar conduct); *see also City of*
3 *Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985) (“Proof of a single incident of unconstitutional
4 activity is not sufficient to impose liability under *Monell*”). Additionally, while Plaintiffs briefly
5 refer to the failure to train, they cite no facts in the complaint and provide no argument for how
6 this applies in the instant case. (Pls.’ Opp’n to Clearlake Mot. to Dismiss at 12.)

7 That said, Plaintiffs have suggested that they could amend the complaint to allege that
8 officers took mandatory steps such as releasing a BOLO (Be on the Lookout) bulletin and
9 coordinating with law enforcement in other missing person investigations, in contrast to those
10 involving missing persons with mental illness. (Pls.’ Opp’n to Clearlake Mot. to Dismiss at 10-
11 11.) Moreover, given that this is the first complaint, the Court cannot definitively find that
12 amendment would be futile. Accordingly, the equal protection claim against Defendant City of
13 Clearlake is dismissed without prejudice; Plaintiffs will be given leave to amend the complaint to
14 allege a *Monell* claim as to the equal protection claim only. In so amending, Plaintiffs must allege
15 *specific* facts demonstrating that there was a “policy, custom, or practice that was the ‘moving
16 force’ behind the constitutional violation[.]” *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1096
17 (9th Cir. 2013). Plaintiffs are also reminded of their Rule 11 obligations in amending, including
18 that any “factual contentions have evidentiary support or, if specifically so identified, will likely
19 have evidentiary support after a reasonable opportunity for further investigation or discovery[.]”
20 Fed. R. Civ. P. 11(b)(3).

21 **iii. Defendant Skeen**

22 a. Due Process Violation

23 Much like the Clearlake Defendants, Defendant Skeen argues that there is no due process
24 claim because Defendant Skeen had no duty to protect Decedent. (Skeen Mot. to Dismiss at 4.)
25 Plaintiffs respond that Defendant Skeen owed a special relationship with Decedent. (Pls.’ Opp’n
26 to Skeen Mot. to Dismiss at 9.) In support, Plaintiffs rely on California state court cases
27 concerning negligence law. (*Id.* at 9-12.) Plaintiffs, however, cite no authority that such
28 California negligence cases set the standard for establishing a special relationship sufficient to

1 impose liability for the violation of a constitutional right under § 1983. Rather, the Supreme Court
2 has found a special relationship in § 1983 due process cases in very limited circumstances, namely
3 “when the State takes a person into its custody and holds him there against his will[.]” *Deshaney v.*
4 *Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200, 109 S. Ct. 998, 1005 (1989). “Under this
5 exception, the state’s constitutional duty arises not from the State’s knowledge of the individual’s
6 predicament or from its expression of intent to help him, but from the limitation which the State
7 has imposed on his freedom.” *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 972 (9th Cir. 2011). Thus,
8 “[t]he special-relationship exception does not apply when a state fails to protect a person who is
9 not in custody.” *Id.*

10 Here, Plaintiffs do not allege that Defendant Skeen had Decedent in custody. Rather,
11 Plaintiffs argue the opposite: Plaintiffs contend that Defendant Skeen *failed* to take Decedent into
12 custody. (*See* Pls.’ Opp’n to Skeen Mot. to Dismiss at 14.) This is insufficient to create a special
13 relationship for purposes of § 1983, even if Plaintiffs could establish liability under a California
14 negligence law.

15 At the hearing, however, Plaintiffs for the first time raised the new theory that Defendant
16 Skeen had Decedent in custody when he stopped Decedent from walking down the road.
17 Plaintiffs further suggest that this put Decedent in a more dangerous circumstance because
18 Decedent then left by jumping over the ravine, rather than continuing down the road. The Court
19 notes that this new theory is not alleged in the complaint or Plaintiffs’ filings. Indeed, it is
20 arguably contradictory to the complaint, which complains that the road included non-visible and
21 dangerous twists, such that allowing Decedent to continue walking on it “presented a serious risk
22 of injury and/or death to himself and oncoming traffic.” (Compl. ¶ 48.) Likewise, the complaint
23 complains that Defendant Skeen “did nothing to detain” Decedent. (Compl. ¶ 49.) In short, there
24 is no apparent basis in the complaint for Plaintiffs’ new theory and certainly insufficient notice to
25 Defendant Skeen as to the theory of liability.

26 Given that this is the first complaint and motion to dismiss, however, the Court --
27 reluctantly -- will allow Plaintiffs to amend the complaint to allege this new theory. In so doing,
28 Plaintiffs must allege sufficient facts, and be prepared to cite on-point case authority which

1 demonstrates that Defendant Skeen legally had Decedent in custody, such that a special
2 relationship or duty was created. Thus, the due process claim against Defendant Skeen is
3 dismissed with leave to amend.

4 b. Equal Protection Claim

5 Defendant Skeen argues that the equal protection claim must be dismissed because there
6 are no factual allegations that Defendant Skeen intended to discriminate against Decedent based
7 on his protected class. (Skeen Mot. to Dismiss at 5-6.) In response, Plaintiffs’ entire argument is:
8 “Moving Party is incorrect in its assertion. However, if the Court rules in favor of Moving Party
9 on this issue, it should grant Plaintiff leave to amend.” (Pls.’ Opp’n to Skeen Mot. to Dismiss at
10 14.) In short, Plaintiffs point to no facts demonstrating an intent to discriminate, nor do Plaintiffs
11 cite to any facts that they could add. For this reason alone, dismissal with prejudice is arguably
12 warranted.

13 In any case, the Court finds that qualified immunity applies. Defendant Skeen contends
14 there is no authority in which an officer acting under similar circumstances as Defendant Skeen
15 was found to have violated a plaintiff’s equal protection rights. Plaintiffs respond by relying on an
16 excessive force and unreasonable search and seizure case, in which force was used against a
17 mentally unstable individual. (Pls.’ Opp’n to Skeen Mot. to Dismiss at 14-15 (citing *City & Cty.*
18 *of S.F. v. Sheehan*, 575 U.S. 600, 612-14 (2015).) There is no suggestion that Defendant Skeen
19 used *any* force against Decedent, and Plaintiffs admitted at the hearing that they have no case with
20 similar facts that would put Defendant Skeen on notice that their theory of liability would give rise
21 to a constitutional violation. Accordingly, the Court finds that qualified immunity applies, and the
22 equal protection claim against Defendant Skeen is dismissed with prejudice.

23 **iv. Lake County Defendants**

24 a. Due Process Violation

25 In their motion to dismiss, the Lake County Defendants argue that Plaintiffs have failed to
26 allege a due process claim based on an alleged violation of the ADA or by failing to adequately
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1 investigate Decedent’s disappearance.² (Lake Mot. for Judgment at 13-14.) In response, Plaintiffs
2 for the first time assert in their opposition that the due process claim is based on Defendant Lake
3 County Behavioral Health denying Plaintiffs the “substantive right of access” to Decedent’s file,
4 as Decedent received services from Defendant Lake County Behavioral Health and Plaintiffs were
5 authorized to receive information about Decedent to administer care. (Pls.’ Opp’n to Lake Mot.
6 for Judgment at 6-7.) Thus, Plaintiffs suggest the Lake County Defendants “denied this right
7 without having a formal hearing or process supporting the denial.” (*Id.* at 7.) A review of the
8 complaint fails to give notice that this is the basis of Plaintiffs’ due process claim; instead, the
9 complaint focuses on the prohibition of discrimination against persons with disabilities. (*See*
10 Compl. ¶¶ 56-66.) Thus, Plaintiffs have failed to adequately put the Lake County Defendants on
11 notice of this basis for the due process claim.

12 Additionally, Plaintiffs assert a due process claim based on Decedent’s denial of mental
13 health services to Decedent based on their refusal to search for Decedent, even though Decedent
14 was entitled to receive state-funded services for his mental illness. (Pls.’ Opp’n to Lake Mot. for
15 Judgment at 7.) Again, it is unclear from the complaint that this is the basis for Decedent’s due
16 process claim. Plaintiffs also cite no authority that this is sufficient to support a due process
17 violation, and it is not the Court’s obligation to search for such authority.

18 Accordingly, the due process claim against the Lake County Defendants is dismissed. The
19 Court will, however, permit Plaintiffs leave to amend the due process claim to make clear the
20 specific actions that are the basis for this claim. Should the Lake County Defendants file a future
21 motion to dismiss or motion for judgment on the pleadings, however, Plaintiffs must identify case
22 law that demonstrates these are viable bases for a due process claim.

23 b. Equal Protection Claim
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25 ² The Lake County Defendants also suggest they are entitled to qualified immunity but cite no
26 authority applying qualified immunity to municipalities (as opposed to individuals). (Lake Mot.
27 for Judgment at 23-24.) The Supreme Court, however, has “reject[ed] a construction of § 1983
28 that would accord municipalities a qualified immunity for their good-faith constitutional
violations[.]” *Owen v. Independence*, 445 U.S. 622, 650 (1980); *see also Allen v. Santa Clara*
Cnty. Corr. Peace Officers Ass’n, 38 F.4th 68, 73 (9th Cir. 2022) (explaining that “*Owen* closed
the door on municipal qualified immunity”).

1 Next, the Lake County Defendants argue that Plaintiffs fail to allege an equal protection
2 claim because there are no allegations that Defendants acted with intent to discriminate against
3 Decedent based on his protected class. (Lake Mot. for Judgment at 14.) In response, Plaintiffs
4 admit that they have no such allegations and no “adequate information regarding whether
5 [Defendant Lake County Behavioral Health] treated other participants in this manner.” (Pls.’
6 Opp’n to Lake Mot. for Judgment at 7.) Instead, Plaintiffs suggest that the motion for judgment
7 on the pleadings should be stayed so that Plaintiffs can “complete discovery in the form of witness
8 depositions,” on the ground that “the evidence will likely support Plaintiff’s claims.” (*Id.*) This is
9 not how pleadings work. Plaintiffs have an obligation to plead *sufficient facts* at the pleading
10 stage before proceedings to depositions; “conclusory allegations without more are insufficient to
11 defeat a [Rule 12(c)] motion to dismiss for failure to state a claim.” *McGlinchy v. Shell Chem.*
12 *Co.*, 845 F.2d 802, 810 (9th Cir. 1988). Plaintiffs cite no authority that the Court can simply stay a
13 motion for judgment on the pleadings to allow plaintiffs to obtain discovery because they are
14 unable to plead sufficient facts in the complaint. As Plaintiffs have admitted that they lack facts,
15 the equal protection claim against the Lake County Defendants is dismissed. The Court, however,
16 will allow Plaintiffs to amend to allege facts demonstrating that Defendant Lake County
17 Behavioral Health acted “because [Decedent] had a severe mental health condition the agency did
18 not want to manage.” (Pls.’ Opp’n to Lake Mot. for Judgment at 7.) Again, in so amending,
19 Plaintiffs are reminded of their Rule 11 obligations.

20 **C. Claim 2: ADA Claim**

21 Second, Plaintiffs bring a claim for violation of Title III of the ADA. Title III of the ADA,
22 however, “relates to public accommodations and services operated by **private** entities.” *Enyart v.*
23 *Nat’l Conference of Bar Exam’rs, Inc., Inc.*, 630 F.3d 1153, 1160 (9th Cir. 2011) (emphasis
24 added). The ADA defines a “private entity” as “any entity other than a public entity,” while a
25 “public entity” is defined as “any State or local government [or] any department, agency, . . . or
26 other instrumentality of a State or States or local government.” 42 U.S.C. §§ 12131(1), 12181(6).

27 Defendants argue that Plaintiffs’ Title III claims fail as a matter of law because they are not
28 “private entities” that operate public accommodations and services. (*See* CHP Mot. to Dismiss at

1 4; Clearlake Mot. to Dismiss at 17; Skeen Mot. to Dismiss at 8; Lake Mot. for Judgment at 15.)
2 Defendants Clearlake Police Department, City of Clearlake, Lake County, Lake County
3 Behavioral Health, and California Highway Patrol are government entities. Defendants Shores
4 and Skeen are private individuals who work for government entities.

5 Significantly, Plaintiffs cite **no** authority that suggests Title III of the ADA applies to such
6 government entities or their employees. Instead, in response to Defendant CHP’s motion to
7 dismiss, Plaintiffs rely on Title II of the ADA and the Rehabilitation Act; Plaintiff, however, is not
8 bringing claims against Defendant CHP under either Title II or the Rehabilitation Act. (Pls.’
9 Opp’n to CHP Mot. to Dismiss at 4.) Similarly, Plaintiffs argue they can bring an ADA claim
10 against Defendant Skeen under 42 U.S.C. § 12132, but this pertains to *Title II*, not Title III. (Pls.’
11 Opp’n to Skeen Mot. to Dismiss at 10.) Plaintiffs do not respond to the Clearlake Defendants’
12 motion to dismiss the Title III claim at all.

13 As to the Lake County Defendants’ motion for judgment, Plaintiffs for the first time
14 concede that they incorrectly cited Title III of the ADA. (Pls.’ Opp’n to Lake Mot. for Judgment
15 at 9.) In response, the Lake County Defendants argue that Plaintiffs cannot state a claim for relief
16 because they cannot demonstrate discrimination by reason of his disability. (Lake Reply at 4.)
17 Again, as this is the first complaint, it is premature to find that Plaintiffs cannot adequately allege
18 discrimination by reason of disability. Accordingly, Plaintiffs’ Title III claim is dismissed with
19 prejudice, but the Court will allow Plaintiffs to plead a Title II claim except against Defendants
20 Skeen and Shores. In so pleading, Plaintiffs must plead specific facts demonstrating
21 discrimination by reason of disability as to each Defendant.

22 As to Defendants Skeen and Shores, courts have found that as a general matter, individuals
23 “cannot be liable as a ‘public entity’ for any alleged violations of Title II” in their individual
24 capacity. *Constantin v. Navarrete*, No. 22-cv-07075-VKD, 2023 U.S. Dist. LEXIS 156626, at *17
25 (N.D. Cal. Sep. 5, 2023); *Roberts v. Cal. Dep’t of Corr. & Rehab.*, No. EDCV 16-1929 CJC(JC),
26 2017 U.S. Dist. LEXIS 135459, at *25 (C.D. Cal. Aug. 22, 2017) (collecting cases). While a
27 plaintiff may bring a Title II claim against a state official in their official capacity, this is permitted
28 only under very limited circumstances, namely “where the underlying authorization upon which

1 the named official acts is asserted to be illegal, the alleged violation of federal law is ongoing, and
 2 the violation would be ended by affording the relief sought.” *Espino v. Regents of the Univ. of*
 3 *Cal.*, No. 2:22-cv-05880-SPG-JPR, 2023 U.S. Dist. LEXIS 58626, at *34-35 (C.D. Cal. Mar. 31,
 4 2023) (citing *Papasan v. Allain*, 478 U.S. 265, 277-78). Moreover, the state official ““must have
 5 some connection with the enforcement of the act.”” *Id.* (quoting *Ass’n des Eleveurs de Canards et*
 6 *d’Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013). None of these circumstances are
 7 present here, where Plaintiffs are challenging past actions unrelated to the enforcement of a
 8 challenged law. Thus, there is no basis for bringing a Title II claim against Defendants Skeen or
 9 Shores.

10 **D. Claim 3: Unruh Claim**

11 Third, Plaintiffs bring a claim under the Unruh Act against Defendants Clearlake Police
 12 Department, City of Clearlake, Lake County, Lake County Behavioral Health, and CHP. (Compl.
 13 at 16.) Defendants argue this claim must be dismissed because the Unruh Act only applies to
 14 business establishments, not governmental entities. (CHP Mot. to Dismiss at 5-6; Clearlake Mot.
 15 to Dismiss at 18; Lake Mot. for Judgment at 16.)

16 “The purpose and legislative history of the Unruh Civil Rights Act . . . make clear that the
 17 focus of the Act is the conduct of *private business establishments*.” *Brennon B. v. Superior Court*,
 18 13 Cal. 5th 662, 675 (2022). In contrast, “the actions of state actors were not the focus of the . . .
 19 Unruh Civil Rights Act.” *Id.* In *Brennon B.*, the California Supreme Court found that school
 20 districts are not business establishments for the purposes of the Unruh Act when educating
 21 students, explaining that “[w]hile the phrase ‘all business establishments of every kind
 22 whatsoever’ must be interpreted as broadly as reasonably possible, its scope remains limited to
 23 entities acting as private business establishments.” *Id.* at 678. Thus, while attributes such as
 24 “performing business functions, protecting economic value, operating as the functional equivalent
 25 of a commercial enterprise, etc.” could demonstrate a public entity was working as a business
 26 establishment, a public school “acting in their core educational capacity . . . do[es] not perform
 27 ‘customary business functions,’ nor is their *overall function* to protect and enhance economic
 28 value.” *Id.* at 681 (cleaned up).

1 Here, there is no suggestion Defendants were engaged in business functions, such as
 2 “conducting business transactions with the public” or “enhance[ing] economic value” of a
 3 commercial enterprise, when they failed to search for Decedent or take him into custody.
 4 *Compare with Frazier v. City of Fresno*, No. 1:20-cv-01069-ADA-SAB, 2023 U.S. Dist. LEXIS
 5 107702, at *221 (E.D. Cal. June 21, 2023) (finding that the city was not engaged in business
 6 functions based on its lease of a portion of a park). Rather, the instant case concerns Defendants’
 7 traditional government functions, namely police work and/or assisting in the search of a missing
 8 person. *See White v. City & Cty. of W. Sacramento*, No. 2:20-cv-02383-MCE-AC, 2021 U.S. Dist.
 9 LEXIS 169427, at *11 (E.D. Cal. Sep. 7, 2021) (finding the Unruh Act did not apply to police
 10 departments); *Sandoval v. City of Nat’l City*, No. 22CV1657-GPC(AGS), 2023 U.S. Dist. LEXIS
 11 17268, at *26 (S.D. Cal. Feb. 1, 2023) (finding no authority where the Unruh Act applied to police
 12 departments and no explanation of how the police were engaged in businesslike activity during an
 13 incident where the police allegedly used a police dog and shot the decedent rather than fully
 14 assessing and de-escalating the situation); *Raiser v. City of Murrieta*, No. EDCV 19-183-DSF
 15 (KK), 2021 U.S. Dist. LEXIS 176795, at *22 (C.D. Cal. June 7, 2021) (finding that the plaintiff
 16 failed to explain how the police officer was engaged in commercial activity when he detained the
 17 plaintiff).

18 Plaintiffs cite **no** authority that the type of actions at issue in this case have been found to
 19 be business functions subject to the Unruh Act and confirmed at the hearing that they have no such
 20 authority. Plaintiffs also provide no analysis of why the actions at issue are akin to business
 21 functions. Instead, in opposition to Defendant CHP’s motion to dismiss, Plaintiffs argue that
 22 *Brennon B.* is limited to school districts; this, however, ignores the general reasoning of *Brennon*
 23 *B.* and its distinction between traditional government functions and business functions. (Pl.’s
 24 Opp’n to CHP Mot. to Dismiss at 6.) In opposition to the Clearlake Defendants’ motion to
 25 dismiss, Plaintiff cites to non-binding cases that precede *Brennon B.* *See Nicole M. v. Martinez*
 26 *Unified Sch. Dist.*, 964 F. Supp. 1369, 1388 (N.D. Cal. 1997) (finding that a school district was a
 27 business establishment without considering whether it was performing a government or business
 28 function); *Burgess v. Alameda Hous. Auth.*, 98 F. App’x 603, 607 (9th Cir. 2004) (providing no

1 analysis of whether the government entity was a business establishment or engaged in business
2 functions). As to the Lake County Defendants’ motion, Plaintiffs argue that because they have
3 alleged discrimination, “the fact that Defendant is a public entity does not preclude it from being
4 deemed a business establishment under Unruh.” (Pls.’ Opp’n to Lake Mot. for Judgment at 9.)
5 Plaintiffs cite no authority that allegations of discrimination automatically make a public entity a
6 business establishment, and this is contrary to the legal authority discussed above.

7 Accordingly, the Unruh Act claim is dismissed with prejudice.

8 **E. Claim 4: Wrongful Death and Survivorship**

9 Finally, Plaintiffs bring a “Wrongful Death/Survival” claim against Defendants. It is
10 entirely unclear from the complaint if this is a negligence claim, or an acknowledgment that
11 Decedent’s claims are being enforced by his personal representatives or successor in interest. *See*
12 *Quoiroz v. Seventh Ave. Ctr.*, 140 Cal. App. 4th 1256, 1264 (2006). Thus, Defendant CHP does
13 not discuss the claim, the Clearlake Defendants and Defendant Skeen³ equate it to a negligence
14 claim, and the Lake County Defendants treat it as dependent on the viability of the prior claims.
15 (*See* Clearlake Mot. to Dismiss at 18-21; Skeen Mot. to Dismiss at 8-9; Lake Mot. for Judgment at
16 20-21.) Plaintiffs, in turn, do not respond to any of the arguments raised by these Defendants or
17 otherwise suggest that this claim is meant to be a negligence claim. Rather, as Plaintiffs explained
18 at the hearing, it is an action for the harm suffered by Decedent. In any case, because Plaintiffs
19 have failed to adequately allege any of their other claims, this claim must also be dismissed.

20 **F. Additional Procedural Matters**

21 First, the Clearlake Defendants argue that Plaintiffs’ request for declaratory and injunctive
22 relief is improper, as Plaintiffs have not alleged any facts suggesting that they have standing to
23 seek equitable relief, that they are likely to suffer future harm, or that remedies at law are
24 inadequate. (Clearlake Mot. to Dismiss at 15-16.) Plaintiffs do not respond. This relief is
25 dismissed with prejudice as to the Clearlake Defendants.

26

27 _____
28 ³ Defendant Skeen argues that he is immune from a negligence claim under California
Government Code §§ 855.6 and 856; as there is no suggestion Plaintiffs are attempting to bring a
negligence claim, the Court does not decide this issue. (Skeen Mot. to Dismiss at 11-12.)

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Plaintiffs shall file their amended complaint within **21 days** of the date of this order.
Except as specified above, no new claims may be added.

IT IS SO ORDERED.

Dated: November 6, 2023


KANDIS A. WESTMORE
United States Magistrate Judge