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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARK VASQUEZ PAJAS, et al.,  
Plaintiffs,  
v.  
COUNTY OF MONTEREY, et al.,  
Defendants.

Case No. 16-CV-00945-LHK

**ORDER GRANTING MOTION TO  
DISMISS WITH PREJUDICE**

Re: Dkt. No. 66

Plaintiffs Rosemary Lopez, individually and as Administrator of the Estate of Mark Vasquez Pajas, Sr.; Yvette Pajas; Mark Pajas, Jr.; Janel Pajas; and Xavier Pajas (collectively, “Plaintiffs”), successors in interest to Mark Vasquez Pajas, Sr. (“Decedent”), allege that Defendants County of Monterey, Steve Bernal, King City, King City Police Department, Steve Orozco, California Forensic Medical Group, Inc. (“CFMG”), and Christina Kaupp are liable under federal and state law for the death of Decedent. Before the Court is Defendants CFMG and Christina Kaupp’s (the “CFMG Defendants”) Motion to Dismiss Plaintiffs’ Sixth and Tenth Claims of the First Amended Complaint. ECF No. 68 (“Mot.”). Having considered the parties’ briefing, the relevant law, and the record in this case, the Court hereby GRANTS the CFMG Defendants’ Motion to Dismiss with prejudice.



1 chain link fence. *Id.* ¶ 45. Orozco’s arrest report states that “Pajas was not hurt but he did have a  
2 medical problem which had caused his legs to swell up.” *Id.* ¶ 48. Orozco arrested Decedent at  
3 12:12 p.m. and transported Decedent to the King City Police Department for booking. *Id.* ¶ 49.

4 Decedent was initially placed in a holding cell at the King City Police Department. *Id.*  
5 ¶ 50. Approximately four hours after Decedent’s arrest, Orozco took Decedent to the Natividad  
6 Medical Center (“Natividad”). *Id.* ¶ 51. At Natividad, Decedent was evaluated by Dr. Daniel  
7 Wasserman. *Id.* Decedent informed Dr. Wasserman and a triage nurse that Decedent was  
8 addicted to heroin and that Decedent “would need help for the withdrawal symptoms he expected  
9 during his incarceration.” *Id.* Dr. Wasserman diagnosed Decedent with cellulitis, leg swelling,  
10 and shortness of breath, and noted that Decedent suffered “[c]ongestive heart failure with not  
11 elevated BNP.” *Id.* Dr. Wasserman medically cleared Decedent for jail at 6:30 p.m. with the  
12 instruction that if Decedent “develop[s] chest pain or shortness of breath return to the ER  
13 immediately.” *Id.*

14 Orozco then took Decedent to the Monterey County Jail. *Id.* ¶ 52. During the “Intake  
15 Health Screening” performed by the Monterey County Sheriff’s Office at 6:55 p.m., Decedent  
16 reported that he had used heroin earlier that day. *Id.* ¶ 53. During the “Intake Triage Assessment”  
17 performed by Defendant CFMG at 7 p.m., Decedent again reported that Decedent had used “‘a lot’  
18 of heroin ‘earlier today’ and stated, ‘he is coming down and needs meds to help him.’” *Id.* ¶ 54.  
19 CFMG staff noted that Decedent should be placed on “opiate detox,” with a specified series of  
20 medications to be taken throughout the following days and with instructions to check Decedent’s  
21 vital signs throughout the day. *Id.* Notwithstanding the note that Decedent was to be placed on  
22 “opiate detox,” Plaintiffs allege that CFMG does not have a separate treatment protocol for opiate  
23 withdrawal but instead uses a protocol for alcohol detoxification. *Id.* ¶ 55. Plaintiffs allege that,  
24 pursuant to CFMG’s alcohol detoxification protocol, Decedent was not seen by a doctor at the jail  
25 but was instead to have a “Sick Call in 72 hours for re-evaluation.” *Id.* ¶ 56.

26 CFMG placed Decedent in a sobering cell at 4:17 a.m. on January 20, 2016. *Id.* ¶ 57. At  
27 4:45 a.m., CFMG nursing staff assessed Decedent and reported that Decedent had vomited in his

1 cell but did not take Decedent’s vitals. *Id.* ¶ 58. CFMG nursing staff next checked on Decedent at  
2 8:30 a.m. and found that Decedent was “laying on the cell floor” and “wants Gatorade.” *Id.*  
3 CFMG nursing staff did not take Decedent’s vitals during the 8:30 a.m. check. *Id.* The next  
4 check-in by CFMG nursing staff was at 1:00 p.m. when Defendant Kaupp checked on Decedent.  
5 *Id.* ¶ 59. Kaupp noted that Decedent was still lying on the floor and “stated he can’t move,” but  
6 Kaupp did not believe Decedent because several unidentified deputies had “witnessed [Decedent]  
7 walking around cell moments prior.” *Id.* Kaupp did not take Decedent’s vitals. *Id.*

8 A little over an hour later, at 2:12 p.m., two Monterey County Sheriff’s Office deputies  
9 went to place a second inmate in Decedent’s sobering cell and found Decedent “face down and  
10 unconscious in a pool of his own vomit.” *Id.* ¶ 61. The deputies first escorted the second inmate  
11 to a separate sobering cell while calling out to Decedent to solicit a response. *Id.* ¶¶ 62–63. At  
12 2:16 p.m., another deputy arrived at Decedent’s cell and attempted to provide emergency aid to  
13 Decedent. *Id.* ¶ 64. Emergency medical personnel arrived at 2:21 p.m. *Id.*

14 At 2:37 p.m., Decedent was transported in “grave condition” to Natividad. *Id.* ¶ 65. At  
15 2:53 p.m., Decedent was pronounced dead. *Id.* Plaintiffs allege that “[a]s a result of Defendants’  
16 actions and omissions, [Decedent] died a wholly preventable death.” *Id.* ¶ 67.

17 **3. Allegations against the County and CFMG**

18 Plaintiffs further allege that the County and CFMG “have a policy and practice of failing to  
19 provide adequate medical care to inmates at Monterey County Jail, and are deliberately indifferent  
20 to the fact that their failure to do so subjects inmates to substantial risk of unnecessary suffering,  
21 serious injury and death.” *Id.* ¶ 31. Plaintiffs allege that the County and CFMG “have been on  
22 notice that their provision of medical care to inmates is inadequate and results in needless harm  
23 since at least 2007, when the Monterey County Sheriff’s Office and the Monterey County Board  
24 of Supervisors hired an outside consulting firm to perform a needs assessment” for the Monterey  
25 County Jail. *Id.* ¶ 32. Plaintiffs allege that the needs assessment was updated in December 2011.  
26 *Id.* ¶ 33 & Ex. 1. The needs assessment found that the Monterey County Jail was chronically  
27 understaffed, and that chronic understaffing hinders the ability to provide adequate medical care.

1 *Id.* ¶ 34. Specifically, Plaintiffs allege that the “available health care staff [at the Monterey  
2 County Jail] is insufficient to provide medical evaluations, monitoring, and follow-up care to  
3 inmates who are suffering from serious and chronic illnesses, or to treat inmates on an emergency  
4 basis.” *Id.* ¶ 35.

5 In addition to the needs assessment, Plaintiffs allege that “the County of Monterey was  
6 again specifically put on notice of serious problems with detoxification and sobering treatment in  
7 the jail” via a class action lawsuit, *Hernandez v. Cty. of Monterey*, No. 5:13-CV-02354-BLF (N.D.  
8 Cal.), filed against the County of Monterey in 2013. *Id.* ¶ 36. Plaintiffs allege that class counsel  
9 in *Hernandez* “specifically objected to the fact that defendants’ agents and staff were employing a  
10 dangerous and punitive ‘detox protocol,’ refusing medications to inmates who then suffered from  
11 intense, untreated pain as well as powerful, dangerous and unnecessary withdrawal symptoms.”  
12 *Id.* ¶ 36. Then, in 2014 and 2015, the Monterey County Civil Grand Jury undertook an audit of  
13 the Monterey County Jail. *Id.* ¶ 37. In January 2015—the same month in which Decedent died—  
14 the Monterey County Civil Grand Jury’s audit found that “inmate health and welfare (safety  
15 checks) are frequently missed or skipped or not adequately documented.” *Id.* ¶ 37.

16 **B. Procedural History**

17 Plaintiffs filed their complaint on February 25, 2016. ECF No. 1. The complaint alleged  
18 eleven causes of action against Defendants. *Id.* Although not all claims were brought against all  
19 Defendants, the claims were as follows: (1) 42 U.S.C. § 1983—excessive force in violation of the  
20 Fourth Amendment, (2) 42 U.S.C. § 1983—deliberate indifference to serious medical needs in  
21 violation of the Fourteenth Amendment, (3) 42 U.S.C. § 1983—failure to protect in violation of  
22 the Fourteenth Amendment, (4) 42 U.S.C. § 1983—deprivation of substantive due process rights  
23 in violation of the First and Fourteenth Amendments, (5) medical malpractice, (6) failure to  
24 summon medical care in violation of California Government Code § 845.6, (7) negligent  
25 supervision, training, hiring, and retention, (8) violation of California Civil Code § 52.1, (9)  
26 battery, (10) wrongful death, and (11) negligence. *Id.* ¶¶ 69–139. The two claims most relevant to  
27 the instant motion are Claims 7 and 11. Plaintiffs brought Claim 7 for negligent supervision,  
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1 training, hiring, and retention against CFMG, among others, and Claim 11 for negligence against  
2 both CFMG Defendants, CFMG and Christina Kaupp. *Id.*

3 In April 2016, Defendants filed multiple motions to dismiss. ECF Nos. 23, 32, 34. The  
4 County Defendants filed a motion to dismiss on April 5, 2016. ECF No. 23. Plaintiffs filed an  
5 opposition on April 19, 2016. ECF No. 30. The County Defendants filed a reply on April 26,  
6 2016. ECF No. 33.

7 The CFMG Defendants filed a motion to dismiss on April 13, 2016. ECF No. 28.  
8 Plaintiffs filed an opposition on April 27, 2016. ECF No. 34. The CFMG Defendants filed a  
9 reply on May 4, 2016. ECF No. 35.

10 The King City Defendants filed a motion to dismiss on April 21, 2016. ECF No. 32.  
11 Plaintiffs filed an opposition on May 5, 2016. ECF No. 36. The King City Defendants filed a  
12 reply on May 12, 2016. ECF No. 46.

13 On July 8, 2016, the Court granted in part and denied in part each of Defendants’  
14 Motions. ECF No. 60 (“First Order”), *available as Pajas v. Cty. of Monterey*, 2016 WL 3648686  
15 (N.D. Cal. July 8, 2016). Specifically, among other rulings, the Court dismissed Claim 7 for  
16 negligent supervision, training, hiring, and retention as to CFMG and Claim 11 for negligence as  
17 to both CFMG Defendants. *Id.* at 32. Both claims were dismissed because Plaintiffs failed to  
18 allege compensable damages against those defendants. *Id.*

19 On August 5, 2016, Plaintiffs filed a First Amended Complaint (“FAC”) containing ten  
20 causes of action. ECF No. 63. Claim 6 of the FAC is an allegation of negligent supervision,  
21 training, hiring, and retention against, among others, CFMG. FAC ¶¶ 108–11. Claim 10 is an  
22 allegation of negligence against, among others, both CFMG Defendants. FAC ¶¶ 127–33. Claim  
23 6 and Claim 10 are brought as “survival” causes of action, FAC ¶¶ 108–11, 127–33, that is,  
24 Decedent’s successors in interest are suing on causes of action that “belonged to the decedent  
25 before death but, by statute, survive[] that event.” *Quiroz v. Seventh Ave. Ctr.*, 140 Cal. App. 4th  
26 1256, 1264 (2006).

27 On August 19, 2016, the CFMG Defendants brought the instant motion to dismiss Claim 6  
28

1 of the FAC for negligent supervision, training, hiring, and retention as to CFMG and Claim 10 of  
2 the FAC for negligence as to both CFMG Defendants. On September 2, 2016, Plaintiffs filed a  
3 response, ECF No. 68 (“Resp.”), and on September 9, 2016, the CFMG Defendants filed a reply,  
4 ECF No. 69 (“Reply”).

5 **II. LEGAL STANDARD**

6 **A. Motion to Dismiss Under Rule 12(b)(6)**

7 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include “a  
8 short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint  
9 that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure  
10 12(b)(6). The U.S. Supreme Court has held that Rule 8(a) requires a plaintiff to plead “enough  
11 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
12 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that  
13 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
14 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a  
15 probability requirement, but it asks for more than a sheer possibility that a defendant has acted  
16 unlawfully.” *Id.* (internal quotation marks omitted). For purposes of ruling on a Rule 12(b)(6)  
17 motion, a court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings  
18 in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*,  
19 519 F.3d 1025, 1031 (9th Cir. 2008).

20 However, a court need not accept as true allegations contradicted by judicially noticeable  
21 facts, *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and the “[C]ourt may look  
22 beyond the plaintiff’s complaint to matters of public record” without converting the Rule 12(b)(6)  
23 motion into one for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995).  
24 Nor is the court required to “assume the truth of legal conclusions merely because they are cast in  
25 the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per  
26 curiam) (quoting *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Mere  
27 “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to

1 dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004); accord *Iqbal*, 556 U.S. at 678.  
2 Furthermore, “a plaintiff may plead herself out of court” if she “plead[s] facts which establish that  
3 [s]he cannot prevail on h[er] . . . claim.” *Weisbuch v. Cty. of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir.  
4 1997).

5 **B. Leave to Amend**

6 If the Court determines that the complaint should be dismissed, it must then decide  
7 whether to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave  
8 to amend “should be freely granted when justice so requires,” bearing in mind that “the underlying  
9 purpose of Rule 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or  
10 technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). When dismissing  
11 a complaint for failure to state a claim, “a district court should grant leave to amend even if no  
12 request to amend the pleading was made, unless it determines that the pleading could not possibly  
13 be cured by the allegation of other facts.” *Id.* at 1130 (quoting *Doe v. United States*, 58 F.3d 494,  
14 497 (9th Cir. 1995)). Nonetheless, a court “may exercise its discretion to deny leave to amend due  
15 to ‘undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure  
16 deficiencies by amendments previously allowed, undue prejudice to the opposing party. . . , [and]  
17 futility of amendment.’” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892–93 (9th Cir.  
18 2010) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

19 **III. DISCUSSION**

20 The CFMG Defendants move to dismiss Claim 6 for negligent supervision, training,  
21 hiring, and retention, and Claim 10 for negligence because the FAC does not allege “any actual or  
22 compensatory damages to these survival claims.” Mot. at 2. Under California law, claims for  
23 negligent supervision, training, hiring, and retention and claims for negligence require a plaintiff  
24 to allege compensable damages to state a claim for relief. See *C.A. v. William S. Hart Union High*  
25 *Sch. Dist.*, 53 Cal. 4th 861, 876 (2012) (the elements of a claim for negligent supervision include  
26 damages caused by the allegedly negligent supervision); *Scott v. C.R. Bard, Inc.*, 231 Cal. App.  
27 4th 763, 775 (2014) (the elements of a negligence action and negligent training action are duty,



1 damages as required to plead a claim for relief under California law.”); *Estate of Sandra Vela v.*  
2 *Cty. of Monterey*, 2016 WL 4678300, at \*6 (N.D. Cal. Sept. 7, 2016) (reaching same result).

3 Accordingly, to state claims for relief for negligent supervision, training, hiring, and  
4 retention and negligence as survival causes of action, a decedent’s successor in interest must  
5 allege compensatory damages, even if nominal, that involve pre-death economic losses. Cal. Civ.  
6 Proc. Code § 377.34; *William S. Hart*, 53 Cal. 4th at 876 (requiring allegation of damages for  
7 claim of negligent supervision); *Scott*, 231 Cal. App. 4th at 775 (requiring allegation of damages  
8 for claim of negligence and negligent training).

9 Previously, the Court dismissed Plaintiffs’ claims for negligent supervision, training,  
10 hiring, and retention and for negligence in Plaintiffs’ initial complaint because, even though  
11 Plaintiffs alleged punitive damages, “Plaintiffs fail[ed] to identify any actual or compensatory  
12 damages, even if nominal, that could serve as a predicate for the award of punitive damages.”  
13 First Order at 21, 27, 31. In the FAC, Plaintiffs add a new paragraph alleging damages under the  
14 negligent supervision, training, hiring, and retention claim:

15 As a direct and proximate result of Defendants’ failures, Mr. Pajas  
16 endured pain, suffering, physical injury, and emotional distress prior  
17 to his death as alleged herein. He also suffered a wholly preventable  
18 death, and his wife and children incurred funeral and burial expenses  
19 presently calculated at \$7,975.55. His wife and children have also  
20 suffered and will continue to suffer emotional distress, pain,  
21 suffering, costs of psychological treatment, past and future loss of  
22 earnings and benefits, loss of familial relations, loss of society,  
23 financial support and care to the extent recoverable and in an  
24 amount presently estimated to exceed \$6,000,000.

25 FAC ¶ 111. On the negligence claim, Plaintiffs allege identical facts, FAC ¶ 132, and also bring  
26 an allegation of punitive damages, FAC ¶ 133.

27 Plaintiffs concede that the alleged pre-death harm for “pain, suffering, . . . and emotional  
28 distress” is not compensable in a survival action. Resp. at 4. Similarly, Plaintiffs concede that the  
alleged harm suffered by decedent’s family after his death are not compensable in a survival  
action. *Id.* (citing *Quiroz*, 140 Cal. App. 4th at 1264 (requiring pre-death injury to the *decedent* in  
a survival action)).

1           However, Plaintiffs argue that compensatory damages have been sufficiently pled because  
2 Plaintiffs allege that Decedent “endured . . . physical injury . . . prior to his death.” FAC ¶ 111,  
3 132. The Court disagrees. As an initial matter, the Court notes that the original complaint alleged  
4 that Decedent “suffered injuries and damages as alleged herein.” ECF No. 1 ¶ 118. Plaintiffs have  
5 not altered the factual basis of their claims. *Compare* ECF No. 1 ¶¶ 53–68 (describing the events  
6 leading to Decedent’s death), *with* FAC ¶¶ 52–67 (alleging identical facts). Therefore, Plaintiffs’  
7 new allegation of “physical injury” in the FAC does not cure the virtually identical previous  
8 allegation of “injuries and damages.”

9           Moreover, Plaintiffs have not alleged any economic loss arising from the physical injury  
10 suffered by Decedent such as nominal damages, medical costs, property damage, or loss of wages.  
11 *See Chaudhry*, 751 F.3d at 1104 (“Section 377.34 limits damages in survival actions to the  
12 victim’s pre-death economic losses.”). In its response, Plaintiffs argue that the physical injury  
13 “would have resulted and/or did result in economic loss to Mr. Pajas,” Resp. at 4, but the  
14 complaint does not contain a corresponding allegation of such an economic loss or of facts that  
15 would support finding such a loss. The only damages tied to the physical injury in the complaint  
16 are Decedent’s “pain, suffering, . . . and emotional distress,” which are not compensable under  
17 § 377.34.

18           Plaintiffs argue, however, that the complaint does allege that Decedent suffered  
19 “\$6,000,000” of damages. Resp. at 5. However, the FAC does *not* allege that Decedent suffered  
20 \$6,000,000 in damages. The FAC plainly states that “[Decedent’s] wife and children have also  
21 suffered and will continue to suffer emotional distress, pain, suffering, costs of psychological  
22 treatment, past and future loss of earnings and benefits, loss of familial relations, loss of society,  
23 financial support and care to the extent recoverable and in an amount presently estimated to exceed  
24 \$6,000,000.” FAC ¶¶ 111, 132. The FAC contains no allegation that Decedent suffered an  
25 economic loss from his physical injuries.

26           Finally, Plaintiffs cite numerous cases where negligence claims have not been dismissed in  
27 survival actions. *See, e.g., Bock v. Cty. of Sutter*, 2012 WL 3778953, at \*16 (E.D. Cal. Aug. 31,

1 2012). However, these cases are inapposite because they do not discuss whether damages are  
2 adequately alleged under the relevant cause of action and § 377.34. In *Bock*, for example, the case  
3 on which Plaintiffs primarily rely, the Eastern District of California court did not discuss whether  
4 damages were adequately alleged under § 377.34 on a negligence and negligence per se claim at  
5 all when denying a motion to dismiss. *Id.* Instead, the *Bock* court limited its discussion to those  
6 issues actually raised by the parties: whether the defendants had violated California statutes by  
7 transferring an inmate without a proper psychiatric evaluation. *Id.* Therefore, *Bock* does not  
8 support Plaintiffs’ position.

9 The other cases cited by Plaintiffs are similar. *See Lum v. Cty. of San Joaquin*, 756 F.  
10 Supp. 2d 1243 (E.D. Cal. 2010) (not addressing whether damages were adequately alleged in a  
11 negligence action involving a failure to order a psychiatric evaluation); *Estate of Claypole v. Cty.*  
12 *of Monterey*, 2016 U.S. Dist. LEXIS 21369, at \*40–42 (N.D. Cal. Feb. 22, 2016) (not addressing  
13 whether there was sufficient evidence of damages to survive summary judgment in an action  
14 concerning whether the defendants negligently placed a mentally ill patient in a cell with suicide  
15 hazards); *Frary v. Cty. of Marin*, 81 F. Supp. 3d 811, 846 (N.D. Cal. 2015) (not addressing  
16 whether there was sufficient evidence of damages to survive summary judgment in an action  
17 concerning the negligence of jail staff). Therefore, these cases do not stand for the proposition that  
18 a simple allegation of “physical injury” without an accompanying economic loss states a claim for  
19 negligent supervision, training, hiring, and retention and negligence.

20 Accordingly, because Plaintiffs have failed to allege a pre-death economic loss suffered by  
21 Decedent as a result of Defendant CFMG’s negligent supervision, training, hiring, and retention  
22 and the CFMG Defendants’ negligence, the motion to dismiss is GRANTED. The Court denies  
23 leave to amend because this Court previously dismissed Plaintiffs’ original complaint due to  
24 Plaintiffs’ failure to allege a compensable injury for the claim of negligent supervision, training,  
25 hiring, and retention and negligence as to the CFMG Defendants. First Order at 27, 30–31. As  
26 Plaintiffs concede in their opposition to the instant motion, “This Court has already addressed and  
27 ruled on the exact objections Defendants [CFMG] and Christina Kaupp, RN, raise to Plaintiffs’

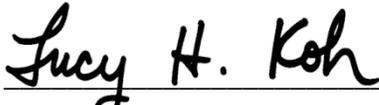
1 First Amended Complaint, in this second motion to dismiss.” Resp. at 1. Despite litigating this  
2 deficiency in the previous motion to dismiss, Plaintiffs still have failed to cure the same deficiency.  
3 Therefore, the Court finds that further amendment would be futile and concludes that dismissal  
4 with prejudice is warranted. *See Lopez*, 203 F.3d at 1127–28 (allowing dismissal with prejudice  
5 where the Court finds that further amendment would be futile).

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court GRANTS the CFMG Defendants’ Motion to Dismiss  
8 with prejudice.

9 **IT IS SO ORDERED.**

10  
11 Dated: November 4, 2016



\_\_\_\_\_  
LUCY H. KOH  
United States District Judge