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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MICHELLE MORIARTY,
12 Plaintiff,
13 v.
14 COUNTY OF SAN DIEGO, et al.,
15 Defendants.
16

Case No.: 17cv1154-LAB (AGS)

**ORDER GRANTING IN PART
MOTION TO DISMISS; AND**

**ORDER GRANTING IN PART
MOTION TO STRIKE**

[DOCKET NUMBERS 27, 28.]

17
18 Heron Moriarty (“Moriarty”) was arrested on May 25, 2016, showing signs of being
19 mentally unbalanced, and was kept in custody at the Vista Detention Facility (“VDF”). Six
20 days later, he committed suicide in his cell. His widow, Plaintiff Michelle Moriarty
21 (“Plaintiff”), through counsel, filed this action, bringing claims against the County of San
22 Diego and several individual Defendants under 42 U.S.C. § 1983 and under several state
23 law causes of action. Moriarty voluntarily amended once, filing her first amended
24 complaint (“FAC”) on March 21, 2018. Because the parties are not diverse, Moriarty relies
25 on federal question jurisdiction for the § 1983 claims, and supplemental jurisdiction for the
26 state law claims.

27 Six Defendants, all employees of the County—Deputy Escobar, Deputy Dwyer,
28 Nurse Preechar, Dr. Joshua, Captain Schroeder, and Lt. Mitchell— moved to dismiss for

1 failure to state a claim (Docket no. 27), and to strike certain portions of the FAC. (Docket
2 no. 28.) But Schroeder and Mitchell have since settled with Plaintiff and have been
3 dismissed (Docket no. 48), and the motion is moot as to them. For purposes of convenience,
4 this order refers to the four as the “Defendants.”

5 **I. Motion to Dismiss**

6 **A. Legal Standards**

7 **1. Rule 12(b)(6) Motions**

8 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *Navarro v.*
9 *Block*, 250 F.3d 729, 732 (9th Cir. 2001). The pleading standard is governed by *Bell*
10 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 554–55 (2007); and *Ashcroft v. Iqbal*, 556 U.S.
11 662, 679 (2009). Under Fed. R. Civ. P. 8(a)(2), “a short and plain statement of the claim
12 showing that the pleader is entitled to relief,” is required, in order to “give the defendant
13 fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Twombly*,
14 550 U.S. at 554–55. “Factual allegations must be enough to raise a right to relief above the
15 speculative level” *Id.* at 555. “[S]ome threshold of plausibility must be crossed at the
16 outset” before a case is permitted to proceed. *Id.* at 558 (citation omitted). The well-pleaded
17 facts must do more than permit the Court to infer “the mere possibility of conduct”; they
18 must show that the pleader is entitled to relief. *Iqbal*, 556 U.S. at 679.

19 When determining whether a complaint states a claim, the Court accepts all
20 allegations of material fact in the complaint as true and construes them in the light most
21 favorable to the non-moving party. *Cedars-Sinai Medical Center v. National League of*
22 *Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007) (citation omitted). “Conclusory
23 allegations and unreasonable inferences, however, are insufficient to defeat a motion to
24 dismiss.” *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). Nor does the Court “assume
25 the truth of legal conclusions merely because they are cast in the form of factual allegations
26” *Navajo Nation v. Dept. of Interior*, 876 F.3d 1144, 1163 (9th Cir. 2017) (citation and
27 quotation marks omitted).

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1 **2. § 1983 Claims**

2 The FAC identifies the Eighth and Fourteenth Amendments to the U.S. Constitution
3 as the basis for Moriarty’s § 1983 claims. Because it appears Moriarty was not a prisoner
4 but rather a pretrial detainee, the Court will analyze the claims under the Fourteenth
5 Amendment’s Due Process clause only. *See Castro v. City of Los Angeles*, 833 F.3d 1060,
6 1067–68 (9th Cir. 2016) (en banc). Under either clause, Moriarty must show that officials
7 acted with “deliberate indifference.” *Id.* And even though the Court is analyzing the claims
8 under the Fourteenth Amendment, Eighth Amendment standards can show a minimum
9 standard of care. *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1122 (9th Cir. 2018).

10 In a case such as this, where the claim is based on failure to protect a detainee,¹ the
11 elements of a claim are:

- 12 (1) The defendant made an intentional decision with respect to the conditions
13 under which the [detainee] was confined;
- 14 (2) Those conditions put the plaintiff at substantial risk of suffering serious
15 harm;
- 16 (3) The defendant did not take reasonable available measures to abate that
17 risk, even though a reasonable officer in the circumstances would have
18 appreciated the high degree of risk involved—making the consequences
19 of the defendant's conduct obvious; and
- 20 (4) By not taking such measures, the defendant caused the plaintiff’s injuries.

21 *Castro*, 833 F.3d at 1071 (citation omitted).

22 In the failure-to-protect context, the “deliberate indifference” standard is an
23 objective one; the defendant’s conduct must be objectively unreasonable. *Gordon*, 888
24 F.3d at 1124–25. Merely showing that a defendant failed to exercise due care does not
25 establish a Fourteenth Amendment violation. *Id.* at 1125.

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28 ¹ Failure-to-protect claims include failure to prevent a detainee’s suicide. *See Castro*, 833 F.3d at 1068
(citing *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1236 (9th Cir. 2010)).

1 The fourth element, causation, requires actual and proximate cause. *Leer v. Murphy*,
2 844 F.2d 628, 634 (9th Cir. 1988). Even in analyzing § 1983 claims, the Court looks to
3 traditional tort law to determine causation, including whether intervening causes have
4 broken the chain of proximate causation. *See Van Ort v. Estate of Stanewich*, 92 F.3d 831,
5 837 (9th Cir. 1996).

6 “In order for a person acting under color of state law to be liable under section 1983
7 there must be a showing of personal participation in the alleged rights deprivation: there is
8 no respondeat superior liability under section 1983.” *Jones v. Williams*, 297 F.3d 930, 934
9 (9th Cir. 2001).

10 **B. Factual Allegations**

11 The following allegations are taken from the FAC, and the Court accepts them as
12 true for purposes of ruling on Defendants’ motion.

13 In the weeks leading up to his death, Moriarty began to exhibit signs of mental
14 illness, and had two psychiatric hospitalizations. After the first, he was placed on a “5150”
15 hold for three days.² After the second, he was put on a 14-day hold. During these episodes,
16 he made threats to harm himself and others.

17 On May 23, 2016, during a conversation with his business partner, Moriarty
18 threatened the life of his wife and family. The business partner’s wife called authorities.
19 The next evening, sheriffs visited Moriarty but determined he was normal.

20 At 7:52 p.m. on May 25, 2016, Deputy Lelevier and Deputy Escobar were
21 dispatched to an address in Jamul in response to a report of vandalism, which they learned
22 had been committed by Moriarty; he reportedly threw a chair through his brother’s patio
23 door and drove away. A short while later, the deputies were sent to another address two
24 miles away, in response to a report of a man threatening suicide. En route to that call, they
25 heard a call requesting assistance; a man had crashed into several parked cars and was
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28 ² A 5150 hold is indicated for someone who has a severe mental disorder, who is a danger to himself or
others, or who is “gravely disabled.” (FAC, ¶ 21.) *See also* Cal. Welf. & Inst. Code § 5150.

1 standing in the street, attempting to get hit by passing cars. When they arrived and
2 compared descriptions of the suspects, they realized Moriarty was involved in all three
3 incidents.

4 The Deputies heard Moriarty making delusional statements, and saying he had just
5 been released from a psychiatric hospital, though he appeared “normal,” because he was
6 well-groomed and dressed in clean clothes. Moriarty also made remarks suggesting he
7 would provoke the Deputies to shoot him. They took him to the Rancho San Diego holding
8 station, where he made more remarks about provoking the Deputies to kill him, and
9 violently kicked his cell door. The Deputies realized Moriarty was having a mental
10 breakdown, put him in restraints, and transferred him to Central Jail. Because of a
11 temporary policy then in place (known as the Pilot Program), they did not take him for
12 psychological clearance.

13 At Central Jail, Moriarty was asked if he was suicidal. He answered “no,” then “yes.”
14 The sergeant on duty, Sgt. Sawyer, refused to accept him, because the Central Jail did not
15 have a safety cell available. Instead, the Deputies transported Moriarty to VDF. Because
16 of the policy then in place, he was not taken for psychological evaluation and clearance
17 before being transferred. The sergeant confirmed that a safety cell was available at VDF,
18 and told “various VDF Deputies that Moriarty was en route and required a safety cell.”
19 (FAC, ¶ 61.) The FAC identifies one of these as Sgt. Banks. (*Id.*, ¶ 11.)

20 The FAC alleges that if the Deputies had “followed policy” and taken Moriarty for
21 psychological evaluation and clearance, they would have learned about his two earlier 5150
22 holds. (FAC, ¶¶ 62, 134.) But, allegedly because of a lack of training, they did not realize
23 what the policy for VDF was, and incorrectly thought it was the same as for Central Jail.
24 (*Id.*, ¶¶ 62, 131.) Even assuming they had learned about Moriarty’s earlier 5150 holds, the
25 FAC does not adequately allege what the Deputies would have learned. A 5150 hold is
26 used for someone who is a danger to himself or a danger to others; he need not be both, as
27 the FAC later argues. (*See* FAC, ¶¶ 43, 44 (alleging that someone may be subject to a 5150
28 hold only if they have a severe mental disorder, and are “a danger to self and others”).)

1 Knowing that Moriarty had been subject to a 5150 hold, without more, would only have
2 told the Deputies that he was either a danger to himself or a danger to others, not necessarily
3 that he was both. Moriarty, however, was both threatening towards others, and suicidal.

4 When the two Deputies arrived, they were contacted by Deputy Dwyer. Escobar did
5 not mention the possibility that Moriarty was suicidal, but Lelevier did, telling Deputy
6 Dwyer about it as soon as they arrived. (FAC, ¶¶ 63–64.) Dwyer did not tell the intake
7 nurse, Nurse Jamie Preechar that Moriarty was suicidal, however.

8 The restraints were removed, and Deputies Lelevier and Escobar took Moriarty to
9 Nurse Preechar. Escobar did not mention to her that Moriarty was suicidal, but Lelevier
10 did, telling her that Moriarty had been turned away from Central Jail because it had no
11 available safety cell. The FAC alleges that before being accepted into county jail, every
12 inmate must be asked whether they are suicidal. When Nurse Preechar asked Moriarty this,
13 he answered “no.” The FAC alleges that, based on this response, she disregarded Lelevier’s
14 warning about Moriarty being suicidal. She did not flag him as a suicide risk, and sent him
15 through the ordinary booking process.

16 That same afternoon, for unknown reasons Moriarty was being transferred back to
17 Central Jail when his behavior became too bizarre and threatening. He was put on a “‘psych
18 hold’ to be evaluated on a priority basis.” (FAC, ¶ 66.) He was then put into an ad-seg cell
19 in VDF by himself.

20 In the days that followed, Plaintiff called VDF staff repeatedly, telling them that
21 Moriarty was suicidal and mentally unstable, and needed to be transported to a psychiatric
22 hospital, and supplying them with Moriarty’s psychiatric and medical information. On
23 May 28, Moriarty was finally evaluated by a psychiatrist, Dr. Lissaur, who noted
24 Moriarty’s obvious mental problems, but sent him back to his ad-seg cell. Moriarty’s
25 behavior continued to be unstable and violent, and he was refusing to take medications.

26 On May 30, Dr. Lissaur evaluated Moriarty again, and determined he was
27 experiencing a bipolar/manic episode. Dr. Lissaur recommended that if he were released
28 the next day, he should be taken to a hospital and a 5150 hold put on him. Dr. Lissaur sent

1 Moriarty back to his ad-seg cell. The next morning, a psychiatric nurse, Defendant Daniels,
2 evaluated Moriarty. He told her that he might become violent and kill anyone who entered
3 his cell. Daniels initially sent him back to his ad-seg cell, then changed her mind and
4 recommended that he be placed in a safety cell. However, Defendant Weidnthal, the
5 sergeant on duty, refused.

6 An hour later, VDF staff had a “multi-disciplinary meeting” Nurse Daniels, Captain
7 Schroeder, Lt. Mitchell, and Dr. Goldstein all discussed Moriarty. Dr. Goldstein
8 recommended sending him to the psychiatric security unit in Central Jail, but the group
9 decided to keep him in ad-seg and arrange for a 5150 hold on his release.

10 About twelve hours later, Moriarty was found dead in his cell, having used two T-
11 shirts to choke himself.

12 Although the FAC includes other allegations, they do not directly concern
13 Defendants. The only allegations that identify Dr. Joshua’s involvement are a very
14 generalized claim that he was responsible for creating and implementing the medical
15 policies for San Diego county jails, and his actions or inactions were responsible for
16 violating Moriarty’s rights. (FAC, ¶¶ 36, 157, 162, 166.) The FAC alleges that because of
17 scathing news reports and other warnings, Dr. Joshua was aware of the need to change the
18 jails’ suicide prevention policy. (FAC, ¶¶ 157, 162, 166.)

19 **C. Request for Judicial Notice**

20 In support of their motion to dismiss, Defendants ask the Court to take judicial notice
21 of the tort claim Plaintiff filed as required by Cal. Govt. Code § 911.2. Plaintiff has not
22 questioned the authenticity of this document, and notice is proper under Fed. R. Evid. 201.
23 *See D.K. ex rel. G.M. v. Solano Cnty. Office of Educ.*, 667 F. Supp. 2d 1184, 1189–90 (E.D.
24 Cal., 2009). The request is **GRANTED**.

25 **D. Analysis of Motion to Dismiss**

26 The motion to dismiss correctly points out that the FAC fails to identify a
27 constitutional violation by any of the Defendants. Although the Court has not discussed all
28 the pleading deficiencies at length, Defendants’ arguments are well-taken and identify

1 reasons why the claims must be dismissed. This analysis focuses on problems that prevent
2 Plaintiff from successfully amending, at least as to three of the four Defendants.

3 **1. Causation**

4 The FAC's allegations point to two errors that, if corrected, could have saved
5 Moriarty's life. First, it argues he should have been forced to take medication, or otherwise
6 treated. (FAC, ¶ 82, 90, 156.) It argues he should have been kept under more constant
7 observation or at least given a cellmate. (*Id.*, ¶ 26, 80, 82, 84, 90, 156.) It also argues that
8 because he was known to be suicidal, he should not have been given regular shirts. (*Id.*,
9 ¶ 82, 156.) Although the FAC points to other errors (*e.g.*, allowing him to have regular
10 bedding, putting him a cell with tie-off points), those did not lead to Moriarty's death.

11 Three of the Defendants—Deputy Escobar, Deputy Dwyer, and Nurse Preechar—
12 are only alleged to have had any involvement with Moriarty on May 25, six days before he
13 died. Their liability, if any, must arise from whatever they did or failed to do that day. The
14 FAC faults them for failing to recognize that Moriarty was suicidal or communicate that
15 fact to others at VDF, failing to send him for a psychiatric evaluation, and failing to make
16 sure he was confined in a safe cell. But none of these acts or failures to act proximately
17 caused Moriarty's death six days later.

18 Any failure to recognize that Moriarty was suicidal or to communicate to VDF staff
19 the danger Moriarty was in when he arrived was soon corrected. Well before Moriarty's
20 death, VDF staff knew he was mentally unbalanced and a suicide risk. Any failure to have
21 him evaluated before he arrived at VDF was corrected when, in the six days following his
22 arrest, he was evaluated twice by a psychiatrist and once by a nurse. Nor are any of the
23 three Defendants alleged to have had any involvement in the decision to leave him
24 unmonitored on the day he died. Of the three, only Nurse Preechar had anything to do with
25 where he was placed. But she is not alleged to have been responsible for keeping him there.
26 He was removed from his ad-seg cell several times, and each time someone else had him
27 sent back to ad-seg. (FAC, ¶¶ 16 (placed in an ad-seg cell alone, by an unidentified person);
28 18, 21, 68, 71 (sent back to ad-seg twice by Dr. Lissaur); 22, 44, 72 (Nurse Daniels'

1 recommendation to house him in a safety cell instead of ad-seg overruled by Sgt.
2 Weidnthal.) Finally, a multi-disciplinary committee that included a doctor and a nurse
3 also discussed how to handle his case, and decided to leave him in ad-seg. (*Id.*, ¶¶ 23, 73.)

4 Whatever these three Defendants may have done or failed to do on May 25 was not
5 a proximate cause of Moriarty's death on May 31. For this reason, they cannot be liable
6 for either negligence or a § 1983 violation.

7 **2. Deputy Escobar**

8 The FAC repeatedly faults Deputy Escobar for assuming that staff at VDF knew that
9 Moriarty was suicidal, and failing to tell them so himself. (FAC, ¶¶ 13, 37,63.) In fact,
10 Escobar had every reason to believe VDF staff did know this. He was present when Sgt.
11 Sawyer called VDF and informed Sgt. Banks that Moriarty was on his way and would need
12 a safety cell. (FAC, ¶ 11.) He was also present when Deputy Lelevier told both Deputy
13 Dwyer and Nurse Preechar that Moriarty was suicidal. (*Id.*, ¶¶14, 15, 64, 65.) Even
14 accepting, *arguendo*, that he did not hear what Sgt. Sawyer or Deputy Levier said, his
15 assumption turned out to be right anyway—VDF staff were told Moriarty was suicidal.

16 In short, nothing in the FAC plausibly suggests Deputy Escobar was either
17 deliberately indifferent or negligent, or that he did or failed to do anything that led to
18 Moriarty's death.

19 **3. Deputy Dwyer**

20 The FAC alleges that Deputy Lelevier told Deputy Dwyer that Moriarty was
21 suicidal, but that Dwyer then failed to communicate that fact to the intake nurse, Nurse
22 Preechar. Dwyer allegedly had been told to expect a suicidal inmate, but did not think it
23 was Moriarty, because Moriarty was in a type of restraints used for assaultive inmates, not
24 suicidal inmates. (FAC at 7 n.1.)

25 The FAC's allegations about Dwyer point to a mistake, misunderstanding, or
26 miscommunication, rather than indifference. Errors based on unreasonable mistakes or
27 misunderstandings could support a negligence claim, but not a deliberate indifference
28 Fourteenth Amendment claim. *See Davidson v. Cannon*, 474 U.S. 344, 347–48 (1986).

1 Dwyer allegedly said he heard something about Moriarty being suicidal, but that his
2 responsibility was limited to getting Moriarty to the intake nurse, and did not include
3 communicating that information to medical staff or commanding officers. (FAC, ¶ 14.)
4 The FAC does not allege that Dwyer was wrong about this, but even assuming that he was,
5 his mistake was harmless, because Deputy Lelevier told Nurse Preechar the same thing. If
6 Deputy Dwyer had said anything, he would have merely been repeating what Lelevier had
7 just said to both him and Nurse Preechar.

8 Nothing in the FAC plausibly suggests that anything Deputy Dwyer did or failed to
9 do amounted to deliberate indifference or led to Moriarty's death.

10 **4. Nurse Preechar**

11 Nurse Preechar was allegedly told that Moriarty was suicidal, but based on his
12 answer to her question, she rejected this, determining that he was not suicidal and did not
13 need to be in a safety cell. A mistake about whether he was suicidal does not amount to
14 deliberate indifference, *Davidson*, 474 U.S. at 347–48, although it presents a closer
15 question about negligence. And if Moriarty had died the first day he was admitted, the
16 Court would be faced with a harder question. But because, as noted, he died six days later,
17 after many changes of circumstance, her action or inaction cannot be the proximate cause
18 of his death.

19 Well before Moriarty's death, VDF staff had recognized that he was suicidal and
20 had arranged for him to be evaluated multiple times. Even if Nurse Preechar's negligence
21 or deliberate indifference had led her to classify him as not suicidal and to fail to have him
22 evaluated, that was corrected well before he died.

23 With regard to Moriarty's cell assignment, during the intervening six days others
24 had also moved him into and out of an ad-seg cell. Even if the chain of causation had not
25 been broken before then, two events on May 31 conclusively broke it. First, Sgt.
26 Weidenthaler overruled a different nurse's recommendation that Moriarty be placed in a
27 safety cell. Then a multi-disciplinary committee that included a doctor and nurse made the
28 determination to place him in ad-seg. Nothing in the FAC suggests she would have had the

1 authority to overrule Sgt. Weidnthal or the committee. Even if there were some question
2 about causation before, this constitutes a superseding intervening cause. In light of the
3 many developments in the intervening days, the fact that Nurse Preechar failed to flag him
4 as a suicide risk or place him in a safety cell on his first day at VDF cannot be said to be a
5 proximate cause of his death six days later.

6 **5. Dr. Joshua**

7 The FAC's claims against Dr. Joshua arise solely under state law; no claims are
8 brought against him under § 1983.

9 The allegations against him are almost wholly conclusory. The FAC identifies only
10 two policies that Dr. Joshua might have had anything to do with: a temporary policy, under
11 which arrestees were taken directly to Central Jail without first being evaluated, and a
12 policy requiring that detainees who say they are not suicidal are not to be placed in safety
13 cells. For reasons discussed above, neither of these led to Moriarty's death. Furthermore,
14 the FAC alleges that because of poor training, personnel were actually unaware of the
15 details of the temporary policy and mistakenly thought it also applied at VDF.

16 The FAC brings a medical malpractice claim against Dr. Joshua, but this is pled in
17 even less detail. The FAC does not allege that he treated Moriarty or had any role in treating
18 him, or that he was even at VDF.

19 Even if Plaintiff had pled a medical malpractice claim against Dr. Joshua, the state
20 law claims appear to be barred by Cal. Govt. Code § 945.4. The motion to dismiss points
21 out that the FAC has failed to plead compliance with Cal. Govt. Code § 911.2(a), which
22 requires that litigants suing a public employee to first file a claim with the public entity
23 within six months of the claim's accrual. Unless a written claim is presented and acted on
24 by the relevant agency, Cal. Govt. Code § 945.4 provides that no suit may be brought
25 against the employee. *See State of Calif. v. Superior Ct.*, 32 Cal.4th 1234, 1239, 1243 (2004)
26 (holding that compliance with this requirement is an element of plaintiff's claim and must
27 be alleged); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 454 (1974) (holding that
28 government claims procedures are mandatory and failure to file the required claim means

1 the action must be dismissed). *See also Karim-Panahi v. Los Angeles Police Dept.*, 839
2 F.2d 621, 627 (9th Cir. 1988) (affirming dismissal of supplemental state claims, for failure
3 to allege compliance with California tort claims procedures).

4 The Court has taken judicial notice of the tort claim, and it does not include a claim
5 for medical malpractice based on anything Dr. Joshua did or failed to do. Plaintiff's
6 opposition brief does not dispute that Plaintiff failed to file a timely tort claim for medical
7 malpractice, and does not address the motion's argument that this means the claim is
8 barred.

9 The Court concludes that medical malpractice claims against Dr. Joshua are barred
10 because Plaintiff failed to comply with Cal. Govt. Code § 911.2. His other state law claims
11 are inadequately pled. This does not mean that Plaintiff could not successfully amend to
12 state a § 1983 claim against him. But Dr. Joshua has also filed a motion for summary
13 judgment. (Docket no. 73.) That motion is not yet fully briefed, so it is too early at this
14 stage to say whether Plaintiff will be given an opportunity to amend to bring claims against
15 him.

16 **II. Motion to Strike**

17 Defendants move to strike four general groups of allegations: 1) contentions that
18 Moriarty was never evaluated by a psychiatrist; 2) allegations regarding the temporary
19 policy in place at Central Jail (the Pilot Program); 3) details of newspaper articles; and 4)
20 details of a 2017 grand jury report.

21 Under Fed. R. Civ. P. 12(f), the Court may strike from the FAC "any redundant,
22 immaterial, impertinent, or scandalous matter." Motions to strike under this rule are
23 generally disfavored and "should not be granted unless it is clear that the matter to be
24 stricken could have no possible bearing on the subject matter of the litigation." *Neuveu v.*
25 *City of Fresno*, 392 F. Supp. 2d 1159, 1170 (E.D. Cal. 2005).

26 Plaintiffs have agreed that allegations to the effect that Moriarty was never examined
27 by a psychiatrist are inaccurate, and they do not oppose striking those.

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1 The remainder of the allegations appear to be only marginally helpful to Plaintiff's
2 case. There is no reason to believe, for example, that Dr. Joshua or the County knew what
3 was going to be in the 2017 grand jury report. It is not likely that the grand jury report or
4 newspaper articles can be admitted in this case. The report and articles can, at best, serve
5 as background that puts Plaintiff's allegations in perspective and makes them generally
6 more plausible. Furthermore, they are both already public materials, and there is no harm
7 in leaving them in the complaint. Though the Pilot Program did not cause Moriarty's death,
8 it too can serve as background.

9 **III. Conclusion and Order**

10 For these reasons, the motion to dismiss is **GRANTED**. The FAC's claims against
11 Defendants Escobar, Dwyer, and Preechar are **DISMISSED WITH PREJUDICE**. The
12 medical malpractice claim against Dr. Joshua is **DISMISSED WITHOUT LEAVE TO**
13 **AMEND**, because Plaintiff failed to comply with California's tort claim procedures as to
14 this claim. The claims for negligence and wrongful death against Dr. Joshua are
15 **DISMISSED WITHOUT PREJUDICE**. As to Defendants Schroeder and Mitchell, the
16 motion is **DENIED AS MOOT**.

17 This order does not prevent Plaintiff from pursuing § 1983 claims against Dr. Joshua,
18 if the facts warrant it, and it does not prevent from amending her negligence and wrongful
19 death claims against Dr. Joshua. This order does not prevent Plaintiff from raising claims
20 against Defendants Escobar, Dwyer, or Preechar based on different facts, although the
21 history and posture of this case suggest it is unlikely she can do so.

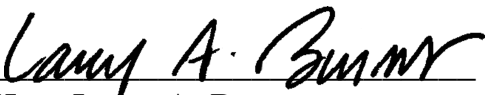
22 The motion to strike is **GRANTED** as to statements that Moriarty was never
23 evaluated by a psychiatrist and **DENIED** as to the other matters. Because a number of
24 motions are pending, the Court will not require Plaintiff to file a third amended complaint
25 at this time. Instead, the allegations that Moriarty was never evaluated by a psychiatrist are
26 **DEEMED STRICKEN**, and should not be considered part of the FAC.

27 Plaintiff has filed a motion for leave to amend the complaint to add new claims, and
28 this motion is still pending. If she wishes to amend in light of this order, she must promptly

1 seek leave to do so. If and when she amends the complaint, she must omit the stricken
2 allegations.

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4 **IT IS SO ORDERED.**

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6 Date: March 20, 2019

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8 Hon. Larry A. Burns
9 Chief United States District Judge

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