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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VERONICA LEAL RUIZ; STEPHANIE
LEAL; ALEX LEAL; MARIA LEAL, BY
AND THROUGH THEIR GUARDIAN
AD LITEM ALMA CHAVEZ

Plaintiffs,

v.

COUNTY OF SAN DIEGO; and DOES 1
to 20,

Defendants.

Case No.: 20-CV-1921 TWR (NLS)

**ORDER GRANTING DEFENDANT
COUNTY OF SAN DIEGO'S
MOTION TO DISMISS WITHOUT
PREJUDICE**

(ECF No. 5)

Presently before the Court is Defendant County of San Diego's ("County") Motion to Dismiss Plaintiffs' First Amended Complaint ("Mot.," ECF No. 5). The Court held a hearing on December 2, 2020. Having carefully considered Plaintiffs' First Amended Complaint ("FAC," ECF No. 1-3), the Parties' arguments, and the law, the Court **GRANTS** Defendant's Motion to Dismiss and **DISMISSES WITHOUT PREJUDICE** Plaintiffs' First Amended Complaint.

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1 **BACKGROUND¹**

2 On February 28, 2018, Deputy Sheriffs from the San Diego Sheriff’s Department
3 responded to a 911 call concerning Decedent Oscar Leal (“Decedent”), who was acting
4 mentally unstable and was under the influence of methamphetamine. (*See* FAC at 3.) The
5 Deputy Sheriffs used excessive and unreasonable physical force to subdue Decedent,
6 which caused Decedent’s death on February 28, 2018. (*Id.*)

7 On January 4, 2019, the surviving wife and dependent of Decedent, Plaintiff
8 Veronica Leal Ruiz, and the surviving children of Decedent, Plaintiffs Stephanie, Alex,
9 and Maria Leal, through their guardian ad litem, Alma Chavez, filed their initial Complaint
10 in state court. (*See generally* ECF No. 1.) On August 27, 2020, Plaintiffs filed the FAC
11 in state court alleging two causes of action for: (1) violation of federal civil rights under 42
12 U.S.C. § 1983 and (2) *Monell* Municipal Liability under 42 U.S.C. § 1983. (*See generally*
13 ECF No. 1-3.) On September 25, 2020, the case was removed. Defendant filed the instant
14 Motion on October 5, 2020. (*See generally* Mot.)

15 **LEGAL STANDARD**

16 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to
17 state a claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’”
18 *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro*
19 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). “A district court’s dismissal for failure to
20 state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper if there is a ‘lack of
21 a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
22 theory.’” *Id.* at 1242 (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
23 Cir. 1988)).

24 “Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a ‘short and
25 plain statement of the claim showing that the pleader is entitled to relief.’” *Ashcroft v.*
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27 ¹ The facts alleged in Plaintiff’s FAC are accepted as true for purposes of Defendant’s Motion. *See*
28 *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007) (holding that, in ruling on a motion to
dismiss, the Court must “accept all material allegations of fact as true”).

1 *Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). “[T]he pleading
2 standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands
3 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678
4 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “[a]
5 pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a
6 cause of action will not do.’” *Id.* (quoting *Twombly*, 550 U.S. at 555).

7 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
8 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
9 *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads
10 factual content that allows the court to draw the reasonable inference that the defendant is
11 liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “[W]here the
12 well-pleaded facts do not permit the court to infer more than the mere possibility of
13 misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is
14 entitled to relief.” *Id.* at 679 (second alteration in original) (quoting Fed. R. Civ. P.
15 8(a)(2)).

16 “If a complaint is dismissed for failure to state a claim, leave to amend should be
17 granted ‘unless the court determines that the allegation of other facts consistent with the
18 challenged pleading could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight*
19 *Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well*
20 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). “A district court does not err in
21 denying leave to amend where the amendment would be futile.” *Id.* (citing *Reddy v. Litton*
22 *Indus.*, 912 F.2d 291, 296 (9th Cir. 1990), *cert. denied*, 502 U.S. 921 (1991)).

23 ANALYSIS

24 I. Plaintiffs’ Standing

25 As an initial matter, the Court must consider whether Plaintiffs have standing to
26 bring § 1983 claims on behalf of Decedent. In § 1983 actions, a decedent’s survivors may
27 bring a claim for the violation of their or decedent’s substantive constitutional rights. *Cotta*
28 *v. Cty. of Kings*, 79 F. Supp. 3d 1148, 1158 (E.D. Cal. 2015). “The party seeking to bring

1 a survival action bears the burden of demonstrating that a particular state's law authorizes
2 a survival action and that the plaintiff meets that state's requirements for bringing a survival
3 action.” *Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 369 (9th Cir. 1998).

4 California law provides that a survival action “may be commenced by the decedent's
5 personal representative or, if none, by the decedent's successor in interest.” Cal. Civ. Code
6 § 377.30. In California, a person who seeks to commence an action as the decedent's
7 successor in interest is required to “execute and file an affidavit or declaration” under
8 penalty of perjury, stating (1) the decedent's name; (2) the date and place of decedent's
9 death; (3) that no proceedings are pending in California for the administration of the
10 decedent's estate; (4) either that the declarant is the decedent's successor in interest or is
11 authorized to act on behalf of the decedent's successor in interest; and (5) that no other
12 person has a superior right to commence the action or proceeding for the decedent. Cal.
13 Civ. Code § 377.32(a). Further, if the decedent's estate was administered, the declarant
14 must produce a copy of the final order showing distribution of the decedent's cause of
15 action to the successor in interest. Cal. Civ. Code 377.32(a)(4).

16 The Court finds that Plaintiffs have not filed any declaration or affidavit as required
17 by Cal. Civ. Code § 377.32 with their FAC. (*See generally* FAC.) Further, there are no
18 allegations in the FAC that show Plaintiffs met the requirements for bringing a survival
19 action.² (*Id.*) Accordingly, the Court **GRANTS** the Motion on the basis that Plaintiffs
20 lack standing to pursue their § 1983 claims on behalf of Decedent.

21 **II. Violation of Federal Civil Rights Under 42 U.S.C. § 1983**

22 Defendant contends that the first cause of action should be dismissed, because the
23 claim was brought against County alone and a local government cannot be held vicariously
24 liable for the wrongful acts of their employees. (*See* Mot. at 6.) Plaintiffs' Opposition is
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27 ² Plaintiffs attach a successor in interest declaration in their Opposition. However, in determining the
28 propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint. *See Schneider v. California Dep't of Corr.*, 151 F.3d 1194, 1197 (9th Cir. 1998).

1 silent as to their cause of action against County for violation of Decedent’s federal civil
2 rights, and, only discusses the *Monell* cause of action.

3 “A local government entity . . . can only be liable under 42 U.S.C. § 1983 for its
4 official *policies* (or its unofficial, but well-entrenched, *practices*) that violate the
5 Constitution.” *Shaw v. Baca*, No. CV 13-8873 R (RZ), 2013 WL 12333478, at *3 (C.D.
6 Cal. Dec. 19, 2013). A local government entity cannot be vicariously liable in a § 1983
7 action for the wrongful acts or omissions of its employees. *Id.* Plaintiffs brought their first
8 cause of action for violation of federal civil rights under § 1983 against County based on
9 the Deputy Sheriffs’ unreasonable and excessive use of force against Decedent.³ Plaintiffs
10 allege that “Decedent had constitutional interests and rights under the Fourth and
11 Fourteenth Amendments . . . to be free from an unreasonable or excessive use of force by
12 peace officers.” (*See* FAC at 6.) County, as a local government entity, cannot be liable for
13 the unreasonable and excessive use of force by the Deputy Sheriffs in a § 1983 action.
14 Accordingly, the Court **GRANTS** the Motion as to Plaintiffs’ first cause of action.

15 **III. *Monell* Liability Under § 1983**

16 Defendant argues that Plaintiffs fail to sufficiently allege an underlying
17 constitutional deprivation, and therefore, County cannot be held liable for *Monell*
18 Municipal Liability under 42 U.S.C. § 1983. (*See* Mot. at 6). Defendant contends that “the
19 FAC is devoid of any factual allegations showing that the [D]ecedent . . . was subjected to
20 excessive force by any Sheriff’s deputy.” (*Id.*) In their Opposition, Plaintiffs do not
21 directly respond to Defendant’s argument. Instead, Plaintiffs state that they “have alleged
22 . . . deputy sheriffs violated [Decedent’s] constitutional rights by using excessive and
23 unreasonable physical force to subdue him [while he was acting mentally unstable and was
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27 ³ Although Plaintiffs’ counsel represented during the hearing that Plaintiffs did not allege a vicarious
28 liability claim against County, the first cause of action in the FAC alleges violation of federal civil rights
under § 1983 against County, for the unreasonable and excessive use of force by the County Deputy
Sheriffs. (*See* FAC at 5.)

1 under the influence of methamphetamine] that caused his death on February 28, 2018.”
2 (See Opposition at 6).

3 To establish *Monell* Municipal Liability under § 1983, a plaintiff must show (1) that
4 the plaintiff “possessed a constitutional right of which [he or she] was deprived; (2) that
5 the municipality had a policy; (3) that this policy amounts to deliberate indifference to the
6 plaintiff’s constitutional right; and, (4) that the policy is the moving force behind the
7 constitutional violation.” *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 438
8 (9th Cir.1997) (internal quotation marks omitted). *Monell* claims require a plaintiff to show
9 an underlying constitutional violation. *Lockett v. Cty. of Los Angeles*, 977 F.3d 737, 741
10 (9th Cir. 2020) (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (holding
11 that a jury’s determination that an individual officer did not use excessive force precluded
12 § 1983 on that ground). In an excessive force context, a plaintiff cannot succeed on a
13 *Monell* claim without first establishing the deprivation of a federal right by an officer.
14 *Lockett*, 977 F.3d at 741.

15 The only facts Plaintiffs allege in their FAC regarding constitutional violations are
16 that on February 28, 2018, the Deputy Sheriffs responded to a 911 call concerning
17 Decedent who was acting mentally unstable and was under the influence of
18 methamphetamine and that the Deputy Sheriffs used excessive and unreasonable physical
19 force to subdue Decedent. (See FAC at 5). These facts are insufficient to establish that
20 violations of Decedent’s Fourth Amendment and Fourteenth Amendment rights occurred.
21 Accordingly, because Plaintiffs fail to show an underlying constitutional violation, they
22 cannot establish *Monell* Municipal Liability under § 1983. *Patel v. Maricopa County*, 585
23 Fed.Appx. 452, 452 (9th Cir. 2014) (holding that plaintiff’s “*Monell* and supervisory
24 liability claims fail as there was no underlying constitutional violation”). Therefore, the
25 Court **GRANTS** the Motion as to Plaintiffs’ second cause of action.


26 CONCLUSION

27 In light of the foregoing, the Court **GRANTS** Defendant’s Motion to Dismiss (ECF
28 No. 5) and **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ First Amended Complaint

1 (ECF No. 1-3) in its entirety. Plaintiffs **MAY FILE** an amended complaint on or before
2 twenty-one (21) days of the electronic docketing of the Order.

3 **IT IS SO ORDERED.**

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5 Dated: December 3, 2020



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7 Honorable Todd W. Robinson
8 United States District Court
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