

**TENTATIVE Order Regarding Motion to Dismiss**

Defendants County of Orange, Deputy Renzi, Deputy Faour, and Deputy Kocher<sup>1</sup> (collectively– “Defendants”) filed a motion to dismiss. Mot., Dkt. No. 16. Plaintiffs Xavier Hermosillo and Olga Hermosillo Quinones (together–“Plaintiffs”) opposed the motion. Opp’n. Dkt. No. 18. Defendants replied. Reply, Dkt. No. 19.

For the following reasons, the Court **GRANTS in part and DENIES in part** the motion.

**I. BACKGROUND**

A. Factual Background

The following facts are alleged in Plaintiffs’ First Amended Complaint (“FAC”).

On or about the evening of August 21, 2019, Luis Hermosillo (“Decedent”) was in the backyard of his home in Stanton, California. FAC ¶ 15. Decedent lived at this home with his mother, Olga Hermosillo Quinones, and his brother, Xavier Hermosillo. Id. ¶¶ 16, 9. Olga Hermosillo Quinones thought Decedent “was acting abnormal” and called the police for assistance, informing dispatch that Decedent suffered from bipolar disorder and other mental illnesses. Id. ¶ 15.

Orange County Sheriffs’ Department officers, consisting of Defendants Deputy Renzi, Deputy Faour, Deputy Kocher, and Does 1–10 (the “Deputies”), arrived at the home and entered the backyard. Id. ¶ 16. At the time the Deputies arrived, Decedent posed no threat to the life or safety of the Deputies or anyone else. Id. The Deputies fired a taser at Decedent without any verbal warnings. Id. Then, Decedent attempted to cut the taser wires with a small knife, upon which time the Deputies “took out their guns and began to fire at Decedent, again without

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<sup>1</sup> Neither Plaintiffs’ Complaint nor Defendants’ Motion to Dismiss include the first names of any defendant Deputy. Accordingly, for consistency, this Order refers to the individual Deputies by title and last name only.

warning, shooting him dead.” Id.

Plaintiff Xavier Hermosillo personally observed the OCSD Deputies shoot his brother and suffered severe emotional harm as a result. Id. ¶ 17.

The Deputies utilized negligent tactics, failed to appropriately warn of use of force and violated County of Orange and the Orange County Sheriffs’ Department’s policies and procedures for use of deadly force and other policies and procedures. Id. ¶ 18. At no time did Decedent present a risk of “imminent threat of death or great bodily injury” to any of the Deputies or anyone else to justify the use of lethal deadly force. Id. ¶ 19. At the time of the shooting, Decedent was not engaged in the commission of a crime and “had rights including a liberty interest to be free in one’s person from unlawful search and seizure of one’s person in his home, and a right not to be subjected to the use of unreasonable and/or excessive force by police officers against him within the confines of his home.” Id. ¶ 20.

The Deputies each “discharged their firearms recklessly, intentionally, tortuously [sic], with deliberate indifference and/or negligently, with the intent to kill and/or commit serious bodily injury upon” Decedent. Id. ¶ 21. As a direct and proximate result of the aforementioned acts of the Deputies, Plaintiffs suffered injuries and damages. Id. ¶ 22.

Plaintiffs bring six causes of action against Defendants: (1) a claim for violation of civil rights under color of law under 42 U.S.C. § 1983 (by Olga Hermosillo Quinones individually and on behalf of Decedent against all Defendants ); (2) a claim for violation of substantive due process under U.S.C. § 1983 (by Olga Hermosillo Quinones individually and on behalf of Decedent against all Defendants); (3) a claim for assault and battery (by Olga Hermosillo Quinones individually and on behalf of Decedent against all Defendants); (4) a claim for wrongful death based on negligence including negligent tactics (by Olga Hermosillo Quinones individually and on behalf of Decedent against all Defendants); (5) a claim for Negligent Infliction of Emotional Distress (by Olga Hermosillo Quinones and Xavier Hermosillo against only the Deputies); and (6) a claim for violation of California Civil Code § 52.1 (Bane Act Violations) (by Olga Hermosillo Quinones individually against all Defendants). Id. ¶¶ 23–65.

## B. Procedural Background

On or about March 4, 2020, Plaintiffs commenced this action in the Superior Court of the State of California for the County of Orange. See Notice, Dkt. No. 1, Exh. A. Defendants removed the action to the United States District Court for the Central District of California, Southern Division. Id. Defendants filed a motion to dismiss, a motion for a more definite statement, and a motion to strike Plaintiffs' complaint. See Mot., Dkt. No. 8; Mot., Dkt. No. 9. Subsequently, the parties stipulated that Plaintiffs would amend their complaint, and the Court confirmed the stipulation. See Mot., Dkt. No. 11; Mot., Dkt. No. 12. Plaintiffs then filed their FAC. See FAC, Dkt. No. 14. Accordingly, the Court vacated the Defendants' motions to dismiss and strike pursuant to the filing of the amended complaint. See Order, Dkt. No. 15. Defendants filed the present motion to dismiss and strike portions of the FAC and/ or for a more definite statement. See Mot., Dkt. No. 16. Plaintiffs filed an opposition. See Opp'n, Dkt. No. 18. Defendants filed a reply. See Reply, Dkt. No. 19.

## II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Nor must the Court "accept as true a legal conclusion couched as a factual allegation." Id. at 678–80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

### III. DISCUSSION

#### A. Standing

Defendants first argue that Olga Hermosillo Quinones lacks standing to assert her First, Second, Third, Fourth, and Sixth Claims for Relief as a successor in interest to Decedent. See Mot., Dkt. No. 16, at 4. Specifically, Defendants argue that Olga Hermosillo Quinones “has not executed and filed the required statutory declaration that gives her standing to pursue” these claims as a successor in interest. Id. at 5.

Under California law, any person seeking to commence an action as a decedent’s successor in interest must execute and file an affidavit declaring their qualifications as successor in interest. Cal. Code Civ. P. § 377.32(a). “While few courts have directly addressed whether Section 377.32 is a procedural or substantive state law, [t]hose that have done so conclude that it is a substantive state law rule.” Abrego v. City of Los Angeles, No. CV 15-00039- BRO (JEMx), 2016 WL 9450679, at \*7 (C.D. Cal. Sept. 23, 2016) (citing Lopez v. Cnty. of Los Angeles, 2015 WL 3913263, at \*6 (C.D. Cal. June 25, 2015)). Thus, Olga Hermosillo Quinones must comply with the affidavit requirement in order to pursue her survivor claims. However, while an affidavit is required, “the Section 377.32 affidavit requirement is not a condition precedent to Plaintiffs’ action.” See Abrego, 2016 WL 9450679, \*6.

Three days after Defendants filed this motion to dismiss, Plaintiffs filed a declaration of Olga Hermosillo Quinones that attests to the fact that she is the natural mother and successor in interest of Decedent. See Declaration, Dkt. No. 17 ¶¶ 5,6. As such, Olga Hermosillo Quinones has met her burden of demonstrating that she meets the requirements for bringing a survival action on behalf of Decedent in California.

Accordingly, the Court **DENIES** the motion to dismiss Plaintiffs’ survival claims on the ground that Plaintiffs failed to file a corresponding affidavit demonstrating compliance with the requirements to bring a survival action.<sup>2</sup>

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<sup>2</sup> The Court acknowledges that Defendants withdrew their lack of standing argument after Olga Hermosillo Quinones filed her declaration for the same reasons that the Court denies the motion to dismiss on this ground. See Reply, Dkt. No. 19, at 1.

## B. Violation of Civil Rights under Color of Law under 42 U.S.C. § 1983

### i. Individual Claim

Defendants argue that Plaintiffs can only sue under § 1983 on behalf of Decedent because § 1983 does not allow for wrongful death claims, only survivor actions. See Mot, Dkt. No. 16, at 5. Accordingly, Defendants argue that Olga Hermosillo Quinones' individual claim under § 1983 must fail.

The Court agrees that there is no wrongful death claim under the statute. See Hernandez v. County of Santa Clara, 2020 WL 3101041, at \*3 (N.D. Cal. 2020) (“[T]here is no wrongful death claim under § 1983.” (Internal quotation marks omitted)). Accordingly, the Court **GRANTS** Defendants' motion to dismiss Plaintiffs' individual claim for a violation of civil rights under color of state law pursuant to 42 U.S.C § 1983, with leave to amend.

Defendants next argue that Plaintiffs' survival claim of a civil rights violation under § 1983 fails with respect to both the County of Orange and the Deputies. See Mot, Dkt. No. 16, at 7.

### ii. The County of Orange

Defendants argue that Plaintiffs' § 1983 claim must fail as applied to the County of Orange because “[a] municipality, such as the County, is not a proper party to this claim.” Id. Specifically, Defendants argue that a municipality cannot be held liable solely under a respondeat superior theory, and that instead “only a longstanding practice or custom which constitutes the ‘standard operating procedure’ of the local government entity’ will support the imposition of municipal liability.” Id. (quoting Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005)).

“Pursuant to 42 U.S.C. § 1983, a local government may be liable for constitutional torts committed by its officials according to municipal policy, practice, or custom.” Weiner v. San Diego Cnty., 210 F.3d 1025, 1028 (9th Cir. 2000) (citing Monell v. Dep’t of Social Servs. of N.Y., 436 U.S. 658, 690–91 (1978)). The Ninth Circuit has delineated this standard into four requirements that a plaintiff must show to impose municipal liability under § 1983: “(1) that the plaintiff possessed a constitutional right of which she was deprived; (2) that the

municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional right; and, (4) that the policy is the moving force behind the constitutional violation.” Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997) (alterations and internal quotation marks omitted); see also City of Canton v. Harris, 489 U.S. 378, 388–89 (1989). Under a ratification theory “the plaintiff may prove that an official with final policy-making authority ratified a subordinate’s unconstitutional decision or action and the basis for it.” Gillette v. Delmore, 979 F.2d 1342, 1346–47 (9th Cir. 1992) (per curiam) (citing City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988)). Alternatively, liability may be based on a policy, practice or custom of omission amounting to deliberate indifference. Gibson v. Cnty. of Washoe, Nev., 290 F.3d 1175 (9th Cir. 2002).

Existence of a custom or policy may be established through allegations of (1) a formal policy or practice that constitutes the standard operating procedure of the governmental entity; (2) the individual who committed the constitutional tort was an official with final policy-making authority; or (3) an official with final policy-making authority ratified a subordinate’s unconstitutional action and the basis for it. Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996).

To survive a motion to dismiss, a Monell claim must: (1) “contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively;” and (2) “plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.” A.E. ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012).

Defendants contend that Plaintiffs have failed to identify any custom or policy that deprived Plaintiffs of their constitutional rights. See Mot., Dkt. No. 16, at 7–8. The Court agrees. Plaintiffs’ FAC is devoid of any allegations regarding what specific policies, practices, or customs contributed to alleged constitutional violations and what specific constitutional violations occurred. Instead, the Complaint sets forth conclusory statements that the Deputies and Does “violated Defendant County of Orange and OCS D’s Policies and Procedures for use of deadly force, and other policies and procedures.” See FAC ¶ 18. These allegations lack sufficient factual content regarding the specific nature and deficiencies of the alleged policy and fail to connect the alleged policy as the cause of the purported harm. See, e.g., Mong Kim Tran v. City of Garden Grove, 2012 WL 405088, at \*4

(C.D. Cal. Feb. 7, 2012) (finding conclusory allegation of inadequate police training insufficient to state Monell claim where plaintiff did not plead specific allegations regarding what the trainings were, how they were deficient, or how they caused plaintiff harm); Chavez v. San Bernardino Cnty., 2008 WL 638150, at \*4 (C.D. Cal. Feb. 27, 2008) (finding conclusory allegation that employees of County and Sheriff’s Department provided deficient medical care in accordance with policy insufficient to state Monell claim). Thus, Plaintiffs have failed to include any underlying facts sufficient to give fair notice to Defendants of the alleged policies or customs and constitutional violations.

Moreover, “[l]iability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency, and consistency that the conduct has become a traditional method of carrying out policy.” Trevino, 99 F.3d at 918. Here, Plaintiffs do not include specific allegations outside of their individual case. This single incident involving the Decedent is insufficient to establish the existence of a policy or custom by the County.

Thus, Plaintiffs have not pleaded enough to adequately state a Monell claim. Accordingly, the Court **GRANTS** Defendant’s motion to dismiss Plaintiffs’ first cause of action as it pertains to the County of Orange, with leave to amend.

### *iii. The Deputies*

Defendants next argue that Plaintiffs’ § 1983 claim must fail as applied to the Deputies because the FAC does not “assert any *facts* that speak to the governing standard on an ‘excessive force’ claim: reasonableness under the circumstances,” and because “Plaintiff fails to specify, with *facts*, what each individual defendant supposedly did wrong and . . . [i]nstead, she repeatedly refers to the deputies as a group, and thereby deprives each of fair notice and the ability to defend himself effectively.” See Mot., Dkt. No. 16, at 8–9 (emphasis in original).

The Court disagrees. Plaintiffs have alleged that the OCSC deputies “fired a taser at Decedent without any warnings” and then proceeded to shoot him without any warnings at a time when Decedent “posed no threat to the life or safety of Defendants or anyone else.” See FAC ¶ 16. These allegations speak to the reasonableness of the shooting in question. Moreover, as Plaintiffs note in their

opposition, because discovery has yet to be exchanged in this case, Plaintiffs are unable to identify which specific individual defendant fired at which time or how many times. For this reason, Plaintiff has to refer to the shooting of the decedent as being done by each of the individual defendants and Does 1-10.” See Opp’n, Dkt. No. 18, at 5.

Accordingly, the Court **DENIES** Defendants’ motion to dismiss Plaintiffs’ civil rights claim under § 1983 as applied to the Deputies.

### C. Violation of Substantive Due Process under 42 U.S.C. § 1983

#### i. Survival Action

Defendants first argue that Plaintiffs’ survival action as a substantive due process claim under 42 U.S.C § 1983 must fail because “[p]rior to dying, Decedent Luis Hermsillo did not have a ‘substantive due process’ claim for alleged interference with his familial relationship with Plaintiff Olga, *as a prerequisite to such a claim was Decedent’s death.*” See Mot., Dkt. No. 16, at 9 (emphasis in original). However, as Defendants point out, Plaintiffs’ FAC does plead facts plausible to state a claim that Decedent’s fourth amendment rights were violated due to the use of excessive force. See Id., at 10.

The Court agrees that prior to his death, Decedent could not have had a cognizable claim for interference with familial relations. Accordingly, the Court **GRANTS** Defendant’s motion with respect to Plaintiffs’ survival action for a substantive due process violation, and grants leave to amend the complaint to allege a cause of action for a survival claim under the Fourth Amendment instead of the Fourteenth Amendment.

#### i. Individual Action

Defendants next argue that Plaintiffs’ individual substantive due process claim under § 1983 fails with respect to both the County of Orange and the Deputies. See Mot, Dkt. No. 16, at 10.

#### 1. County of Orange

Defendants argue that Plaintiffs’ claim of a violation of substantive due

process under § 1983 fails with respect the County of Orange for the same reasons that they argue that Plaintiffs’ claim for a violation of civil rights under § 1983 fails with respect the County of Orange. See Mot, Dkt. No. 16, at 10.

The Court agrees for the same reasons that it grants the motion to dismiss the civil rights claim under § 1983: Plaintiffs’ FAC is devoid of any allegations regarding what policies, practices, or customs contributed to alleged constitutional violations and what specific constitutional violations occurred. Accordingly, the Court **GRANTS** Defendants’ motion to dismiss Plaintiffs’ claim for a violation of substantive due process under color of state law pursuant to 42 U.S.C § 1983 with leave to amend.

## 2. Deputies

Defendants argue that Plaintiffs’ claim for violation of substantive due process under § 1983 fails with respect the Deputies for the same reasons that they argue the civil rights claim fails under § 1983 with respect to the Deputies. See Mot, Dkt. No. 16, at 10. The Court disagrees with Defendants on this front for the same reasons it disagreed with Defendants’ assertion that plaintiffs argument failed on the previous § 1983 claim. The facts that Plaintiffs alleged were sufficient to plausibly state a claim for a civil rights violation under § 1983 are equally sufficient to plausibly state a claim for relief for a substantive due process violation under § 1983.

Accordingly, the Court **DENIES** the motion to dismiss the individual claim for a substantive due process violation under § 1983.

### D. Wrongful Death/ Survival Based on Negligence and Negligent Infliction of Emotional Distress Claims

Defendants next argue that Plaintiffs’ claim for wrongful death/ survival based on negligence, as well as Plaintiffs’ claim for Negligent Infliction of Emotional Distress (NIED), must fail because to Plaintiffs were required and failed to plead a statutory basis that authorizes this suit against Defendants. See Mot., Dkt. No. 16, at 12–16. The Court agrees.

In California, under the Government Claims Act, a government entity and, accordingly, government employees, “can only be sued in tort pursuant to an

authorizing statute or enactment.” Van Ort v. Estate of Stanewich, 92 F.3d 831, 840 (9th Cir. 1996) (citation omitted). The statute or enactment claimed to establish a governmental entity’s duty must be identified in the complaint itself. Searcy v. Hemet Unified School Dist., 177 Cal. App. 3d 782, 802. Additionally, “every fact essential to the existence of a statutory liability must be pleaded with particularity, including the existence of a statutory duty.” Id.

Rather than allege a statutory basis for suit, Plaintiffs cite to “California Peace Officers Standard Training, national standards for use of force and [the deputies] own police departments’ training mandated for tactical firearms training”; “accepted national standards”; and “OCSD Policies and Procedures manual and training including in regards to use of force and the use of deadly force.” See FAC ¶¶ 47, 48. These standards and procedures do not amount to statutory authorization for suit against Defendants on this state law claim.

Accordingly, the court **GRANTS** the motion to dismiss Plaintiffs’ Wrongful Death/ Survival claim based on negligence and Plaintiffs’ NIED claim, with leave to amend.

#### E. Bane Act

Defendants next argue that Plaintiffs’ Bane Act claim must fail because Olga Hermosillo Quinones cannot pursue a wrongful death claim under the Bane Act, which does not have a wrongful death provision. See Mot., Dkt. No. 16, at 16. As such, they argue, Plaintiffs’ only plausible claim under the Bane Act is for a violation of Olga Hermosillo Quinones’ own rights (i.e., an individual claim). Id.

The Court agrees that Plaintiffs cannot pursue a Bane Act claim under a wrongful death theory because “[t]he Bane Act is simply not a wrongful death provision.” See Bay Area Rapid Transit Dist. v. Superior Court, 38 Cal.App.4th 141, 144 (1995). Accordingly, the Court **GRANTS** the motion to dismiss Plaintiffs’ wrongful death claim under the Bane Act.

Defendants proceed to argue that Olga Hermosillo Quinones is left only with the option of pursuing a Bane Act claim “as an individual based on interference with *her rights* by ‘threat, intimidation, or coercion.’” See Mot., Dkt. No. 16, at 16 (quoting Bay Area at 144) (emphasis in original). Accordingly, Defendants argue, Plaintiffs’ claim must fail because the FAC fails to allege any facts to support a

claim that excessive force was used on Olga Hermosillo Quinones herself. Id.

The Court agrees. Plaintiffs' FAC contains no factual allegations that Defendants deprived Olga Hermosillo Quinones of any rights which are not derivative of the rights allegedly deprived of Decedent. The Bane Act is "limited to plaintiffs who themselves have been the subject of violence or threats" in violation of their rights. Bresaz v. Cty. of Santa Clara, 136 F. Supp. 3d 1125, 1138 (N.D. Cal. 2015) (quoting Bay Area at 144).

In Bresaz, relatives of a decedent who was shot and killed during a confrontation with police brought a claim under the Bane Act. Id. at 1128–29. The court dismissed the relatives' Bane Act claim for lack of standing because they had not *personally* been deprived of their rights; rather, they "were deprived of their substantive due process rights because of the acts of violence or threats of violence committed by Defendants against the Decedent . . . [,] the exact sort of 'derivative liability' claim that is not supposed to be actionable under the Bane Act." Id. at 1138 (quoting Bay Area at 144–45).

The same is true here. Olga Hermosillo Quinones does not allege that she was personally subjected to any action by Defendants. Therefore, her harm is purely derivative, and as Bresaz makes clear, such a derivative claim is not actionable under the Bane Act.

Accordingly, the Court **GRANTS** Defendants' motion to dismiss Plaintiffs' Bane Act claim, with leave to amend.

#### G. More Definite Statement

Defendants move for a more definite statement because Plaintiffs' FAC incorporates each and every paragraph into each and every claim against each and every Defendant. See Mot., Dkt. No. 16, at 17.

A party may "move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). The motion "must point out the defects complained of and the details desired." Id. Such motions generally are disfavored and are "proper only where the complaint is so indefinite that the defendant cannot ascertain the nature of the claim being asserted." Sagan v.

Apple Computer, Inc., 874 F. Supp. 1072, 1077 (C.D. Cal. 1994).

“A motion for a more definite statement is used to attack unintelligibility, not mere lack of detail, and a complaint is sufficient if it is specific enough to apprise the defendant of the substance of the claim asserted against him or her.” San Bernardino Pub. Employees Ass’n v. Stout, 946 F. Supp. 790, 804 (C.D. Cal. 1996). A motion for a more definite statement must be considered in light of Rule 8’s liberal pleading standards in federal court. See, e.g., Bureerong v. Uvawas, 922 F. Supp. 1450, 1461 (C.D. Cal. 1996). Rule 8 requires only that the complaint provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Hence, “[m]otions for a more definite statement are viewed with disfavor and are rarely granted because of the minimal pleading requirements of the Federal Rules.” Sagan v. Apple Computer, Inc., 874 F. Supp. 1072, 1077 (C.D. Cal. 1994).

The Court finds that Plaintiffs have met the pleading standards and have sufficiently provided Defendants with notice. Moreover, the Court has granted Defendants’ motion to dismiss a number of Plaintiffs’ claims, which should further clarify for Defendants which claims they need to defend against. The claims that remain, as alleged in Plaintiffs’ FAC, are neither too vague nor ambiguous to meet the plausibility pleading requirements. Accordingly, the court **DENIES** Defendants’ motion for a more definite statement.

#### H. Motion to Strike

Finally, Defendants argue that various items in Plaintiffs’ FAC should be stricken. See Mot, Dkt. No. 16 at 20–25. Plaintiffs’ opposition did not respond to Defendants’ motion to strike.

Under Rule 12(f), a party may move to strike any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. 12(f). A motion to strike is appropriate when a defense is insufficient as a matter of law. Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc., 677 F.2d 1045, 1057 (5th Cir. 1982). The grounds for a motion to strike must appear on the face of the pleading under attack, or from matters of which the Court may take judicial notice. SEC v. Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995).

The essential function of a Rule 12(f) motion is to “avoid the expenditure of

time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial.” Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev’d on other grounds by Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994). “As a general proposition, motions to strike are regarded with disfavor because [they] are often used as delaying tactics, and because of the limited importance of pleadings in federal practice.” Sands, 902 F. Supp. at 1165–66 (alteration in original) (internal quotation marks omitted).

Therefore, courts frequently require the moving party to demonstrate prejudice “before granting the requested relief, and ‘ultimately whether to grant a motion to strike falls on the sound discretion of the district court.’” Greenwich Ins. Co. v. Rodgers, 729 F. Supp. 2d 1158, 1162 (C.D. Cal. 2010) (quoting Cal. Dep’t of Toxic Substances Control v. Alco Pac., Inc., 217 F.Supp.2d 1028, 1033 (C.D.Cal.2002)).

Defendants move to strike various references to damages and to the 14th Amendment in Plaintiffs’ FAC. See Mot., Dkt. No. 16 at 20, 24. While Defendants argue that Plaintiffs’ reference to damages in a “survivorship” capacity for “pain suffering, anxiety, fear of impending death and severe emotional distress that Decedent LUIS HERMOSILLO suffered before his death...” should be stricken because such damages are not recoverable in a survival action, they have not alleged that they have been prejudiced in any way by these references to damages. See, Mot., Dkt. No. 16, at 20; see also FAC, ¶ 29. Defendants also argue that references in FAC ¶ 29 to “loss of value of life” damages” as well as “damages for funeral and burial expenses” must be stricken, but again, Defendants do not allege that the inclusion of such language damages them in any way.

Nowhere in the motion to strike is any indication that the material Defendants seek to have stricken scandalous or prejudicial in any way. As such, Defendants’ arguments that the alleged damages are unrecoverable and that the references to the Fourteenth Amendment are irrelevant to Plaintiffs’ Forth Amendment claim can be addressed as arguments on the merits at a later stage. Accordingly, the court **DENIES** Defendants’ motion to strike.

#### IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS in part and DENIES in part** the motion. Plaintiffs have 30 days to amend their complaint with respect to

the dismissed claims.

**IT IS SO ORDERED.**

**Effective immediately all oral arguments are VACATED. The Court will continue to post tentatives in the afternoon of the Court day prior to the scheduled hearing (e.g., Friday afternoon for Monday hearings). Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. the day following the scheduled hearing (e.g., Tuesday 5:00 p.m. for a Monday hearing) stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted. The Court asks for the parties' understanding and patience in these difficult times.**