Tentative Decision re Motion to Dismiss [23]

Arthur James et al v. County of San Bernardino et al

Case No.: 5:25-cv-00140-WLH-SHK

HRG: May 9, 2025

NOTE: If both parties submit on the tentative ruling, please advise the Courtroom Deputy (WLH_Chambers@cacd.uscourts.gov) and no appearance will be required.

Before the Court is Defendants County of San Bernardino, Sheriff Shannon D. Dicus, Desert Valley Hospital, LLC and Does 1–20's ("Defendants") Motion to Dismiss ("Motion") the First Amended Complaint filed by Plaintiffs Arthur James and Stacey M. Abbott ("Plaintiffs"). (Mot., Docket No. 23). No party filed a written request for oral argument stating that an attorney with five years or less of experience would be arguing the matter. (*See* Standing Order, Docket No. 11 at 16). For the reasons set forth below, the Court **GRANTS** in part and **DENIES** in part Defendants' Motion to Dismiss.

I. BACKGROUND

A. Factual Background

This action arises out of the fatal shooting of 17-year-old Aaron James by San Bernardino County Sheriff's Department ("SBCSD") deputies on April 2, 2024. Plaintiffs Arthur James and Stacey M. Abbott ("Plaintiffs"), the decedent's parents, bring claims under 42 U.S.C. § 1983 ("§ 1983") and California law against Defendants County of San Bernardino ("County"), Sheriff Shannon D. Dicus ("Sheriff Dicus") and Desert Valley Hospital LLC ("DVH").

According to the First Amended Complaint ("FAC"), on March 30, 2024, Aaron James was placed on a 72-hour involuntary psychiatric hold (a "5150 hold") at DVH in Victorville, California. (FAC ¶ 28). On April 2, 2024, he was

scheduled to be transferred from the hospital to a mental health facility for further care. (*Id*. ¶ 29). During that transport, while in the custody of DVH and the County, Aaron James allegedly escaped due to Defendants' failure to supervise and secure the transport vehicle. (*Id*. ¶¶ 29–31).

After escaping, Aaron James returned to his home on Forest Hills Drive in Victorville. (*Id*. ¶ 32). Plaintiffs allege that the SBCSD received a call for service reporting James's presence at the residence. (*Id*. ¶ 33). Deputies from SBCSD, referred to in the FAC as sheriff's deputies DOES 1–5, responded to the scene and were allegedly informed that James was a 17-year-old minor previously held on a mental health hold. (*Id*. ¶¶ 33–34). At the time deputies arrived, James had reportedly not threatened or harmed anyone in the home. (*Id*.).

At some point, James locked himself alone in a small bathroom. (*Id*. ¶ 35). After approximately 30 minutes, he allegedly made a statement suggesting self-harm. Deputies then forcibly entered the bathroom using a protective shield and weapons drawn. (*Id*. ¶¶ 35–36). Plaintiffs allege that James stood in a corner next to the bathtub and posed no imminent threat. Deputies then allegedly rushed and tackled James into the bathtub. Seconds later, deputies shot him in the side or back, fatally wounding him. (*Id*. ¶¶ 36–37). Plaintiffs allege no commands were issued before force was used and that the deputies failed to de-escalate or consider less-lethal alternatives. (*Id*. ¶¶ 38–39). James was transported to a nearby hospital, where he was pronounced dead from gunshot wounds. (*Id*. ¶ 37).

Plaintiffs allege that the deputies' conduct was excessive and unreasonable, particularly given their knowledge that James was a minor in the midst of a mental health crisis. (*Id*. ¶¶ 39–40). They further contend that the County and Sheriff Dicus failed to summon a mobile crisis response team, failed to provide appropriate training, and allowed a pattern of excessive force to persist within the department. (*Id*. ¶¶ 40–42).

B. Procedural Background

Plaintiffs filed the original Complaint on January 17, 2025. (Dkt. 1). Plaintiffs served Defendants on February 3, 2025. (Dkts. 12–13). After obtaining a stipulated extension, Defendants filed a stipulation allowing Plaintiffs to amend. (Dkt. 17). The Court granted the stipulation on March 10, 2025, allowing Plaintiffs to file a First Amended Complaint within 14 days. (Dkt. 18). Plaintiffs filed the FAC on March 20, 2025, naming DVH as an additional defendant. (Dkt. 19). Summons was issued on March 26, 2025, and service on DVH was completed on April 9, 2025. (Dkts. 21–22).

On April 10, 2025, Defendants County and Sheriff Dicus filed the instant Motion to Dismiss the FAC. (Mot., Dkt. 23). On the same day, the parties submitted a stipulation to strike Sheriff Dicus's name from paragraphs 101 and 102 of the FAC, which the Court granted on April 21, 2025. (Dkts. 24, 27).

Plaintiffs filed their Opposition to the Motion on April 18, 2025. (Oppn'n, Dkt. 26). Defendants filed their Reply on April 25, 2025. (Reply, Dkt. 28). The matter is fully briefed and submitted for decision.

II. DISCUSSION

In seeking to dismiss Plaintiffs' FAC, Defendants County and Sheriff Dicus argue that (1) Plaintiffs fail to state a Monell claim under § 1983 because the allegations are conclusory and unsupported by specific facts; (2) the individual claims against Sheriff Dicus should be dismissed as redundant or otherwise legally deficient; (3) Plaintiffs' state law tort claims are barred by statutory immunities under the California Government Code; and (4) Plaintiffs' claim for negligent hiring and supervision is not cognizable against a public entity. The Court addresses each in turn.

A. Failure to State a Claim Under Rule 12(b)(6)

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint may be dismissed for failure to state a claim for one of two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Mendiondo v. Centinela Hosp. Med. Ctr*., 521 F.3d 1097, 1104 (9th Cir. 2008). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557). The court must construe the complaint in the light most favorable to the plaintiff, accept all allegations of material fact as true, and draw all reasonable inferences from well-pleaded factual allegations. *Gompper v. VISX, Inc*., 298 F.3d 893, 896 (9th Cir. 2002). The court, however, is not required to accept as true legal conclusions couched as factual allegations. *See Iqbal*, 556 U.S. at 678. A claim is considered to have "facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. In deciding a Rule 12(b)(6) motion, a court "may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007).

B. *Monell* Claim Against the County (Fourth Claim)

Plaintiffs bring a claim under § 1983 against the County, alleging that the County maintained unconstitutional policies, customs or practices that caused the deprivation of Aaron James's constitutional rights. (FAC ¶¶ 75–89). To impose *Monell* entity liability under § 1983 for a violation of constitutional rights, a plaintiff must show that (1) the plaintiff possessed a constitutional right and was

deprived of that right, (2) the municipality had a policy, (3) the policy amounted to deliberate indifference to the plaintiff's constitutional rights, and (4) the policy was the moving force behind the constitutional violation. *Plumeau v. Sch. Dist. # 40 Cnty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997).

Local governments may only be sued under § 1983 for their own actions, i.e., when the alleged unconstitutional conduct results from the entity's official custom, policy, pattern, or practice. *Id*. at 690-91. "[M]unicipalities are subject to damages under § 1983 in three situations: when the plaintiff was injured pursuant to an expressly adopted official policy, a longstanding practice or custom, or the decision of a 'final policymaker.'" *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013).

The Ninth Circuit has used a two-part rule to evaluate whether factual allegations supporting a *Monell* claim are adequately pled:

> "First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must 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. Cty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012) (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)).

i. Official Policy

A plaintiff can establish *Monell* liability based on an official municipal policy by identifying a formal rule or decision that itself causes a constitutional violation. When a municipality expressly adopts such a policy, the plaintiff need not demonstrate a pattern of repeated violations; a single instance of enforcement is sufficient. *See Calhoun v. Ramsey*, 408 F.3d 375, 379–80 (7th Cir. 2005) (under the express policy theory, "one application of the offensive policy resulting in a

constitutional violation is sufficient to establish municipal liability."); *Felton v. Bd. of Comm'rs*, 5 F.3d 198, 203 (7th Cir. 1993). The Supreme Court's decision in *Monell* illustrates this point. There, the Court held that a city policy requiring pregnant employees to take unpaid leave violated the Equal Protection Clause, and that a single enforcement of that policy could give rise to municipal liability under § 1983. *Id*. at 661–62 (citing *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 651 (1974)). An official policy for *Monell* purposes may take many forms. It can include formally adopted rules or directives, such as written policies, ordinances, or regulations. *Monell*, 436 U.S. at 690. For example, a police department's internal rules or regulations may suffice. *See Garner v. Memphis Police Dep't*, 8 F.3d 358, 364 (6th Cir. 1993).

Federal courts routinely reject *Monell* claims at the pleading stage where the complaint fails to identify a specific policy or allege facts showing its content or connection to the constitutional harm. *See, e.g.*, *Maldonado v. County of Orange*, 2019 WL 6139937, at *2 (C.D. Cal. Nov. 19, 2019); *Moore v. City of Orange*, 2017 WL 10518114, at *3–4 (C.D. Cal. Oct. 10, 2017); *Lowrie v. Cnty. of Riverside*, 2021 WL 470611, at *3 (C.D. Cal. July 19, 2021); *DeClue v. Cnty. of Alameda*, 2020 WL 6381356, at *7 (N.D. Cal. Oct. 30, 2020) (collecting cases). As these decisions make clear, generalized references to "policy and custom," unsupported by factual allegations identifying the policy's existence or how it caused the constitutional violation, are insufficient.

The FAC here does not identify any such formally adopted policy or directive that caused the alleged violation of the Fourth and Fourteenth Amendments. Instead, the allegations refer generally to failures in supervision, training, and discipline, and broadly label them as "official" customs, policies or practices. (FAC ¶ 76)("…enforced and applied an official recognized custom, policy, and practice of…"). But absent factual allegations identifying the existence

and substance of a formal policy—such as a written directive or standing order from a final policymaker—these statements fail to meet the threshold for alleging *Monell* liability based on an express policy. The Motion to Dismiss the *Monell* claim for official policy is **GRANTED.**

ii. Custom or Practice

Even in the absence of a formal unconstitutional policy, a municipality may be liable under *Monell* if a plaintiff can show that a widespread custom or practice of unconstitutional conduct exists and that the municipality had actual or constructive knowledge of it. *See Thompson v. City of Los Angeles*, 885 F.2d 1439, 1444 (9th Cir. 1989); *Depew v. City of St. Marys, Ga.*, 787 F.2d 1496, 1499 (11th Cir. 1986).

There are several ways a plaintiff may demonstrate such a custom. For instance, courts have found *Monell* liability where municipal officials knowingly failed to discipline officers after repeated misconduct. *See Spell v. McDaniel*, 824 F.2d 1380, 1392 (4th Cir. 1987) (evidence that officials tacitly approved repeated police brutality established a city "custom"). The conduct of a high-ranking official, even without formal policy adoption, may also be attributed to the municipality. *See Abasiekong v. Shelby*, 744 F.2d 1055, 1058 (4th Cir. 1984) (holding that discriminatory conduct by high-ranking city officials, including disparate discipline and use of racial slurs, supported a finding of an unconstitutional municipal custom under § 1983, even though the conduct had not been formally approved by the city's decisionmakers). A custom may also be inferred from a pattern of unconstitutional decisions by municipal employees that reflect "an impermissible way of operating." *Calhoun v. Ramsey*, 408 F.3d 375, 381 (7th Cir. 2005) (holding that plaintiff's evidence of systemic delays in medical care, though not tied to a formal policy, could establish a de facto custom attributable to the county).

Courts have made clear that establishing a municipal custom is a demanding standard. "[R]andom acts or isolated incidents are insufficient," and, instead, plaintiffs must allege a "persistent and wide-spread practice." *Depew*, 787 F.2d at 1499. Custom "must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996); *see also Mitchell v. County of Contra Costa*, 600 F. Supp. 3d 1018, 1030–31 (N.D. Cal. 2022) (finding amended *Monell* allegations sufficient where plaintiff identified 15 prior lawsuits involving similar misconduct to support inference of a widespread custom or practice); *Meehan v. Los Angeles County*, 856 F.2d 102 (9th Cir.1988) (two unconstitutional assaults occurring three months apart were insufficient); *Davis v. Ellensburg*, 869 F.2d 1230 (9th Cir.1989) (manner of one arrest insufficient to establish policy); *Menotti v. City of Seattle*, 409 F.3d 1113, 1148 (9th Cir. 2005) (five incidents of suppression of political speech on the same day was sufficient). Whether a municipality had adequate notice of constitutional violations depends heavily on the specific facts of the case; there is no fixed number of prior incidents required to establish notice. *Gonzalez v. Cnty. of Merced*, 289 F. Supp. 3d 1094, 1103 (E.D. Cal. 2017).

Courts have held that prior lawsuits or incidents may support a *Monell* claim if they are alleged with sufficient factual detail and similarity to the present case. *See Mitchell*, 600 F. Supp. 3d at 1031 (denying motion to dismiss where the complaint identified 15 prior lawsuits involving similar misconduct, including factual descriptions and allegations that officers used excessive force or falsified reports); *Owens v. Baltimore City State's Att'ys Off.*, 767 F.3d 379, 401–04 (4th Cir. 2014) (reversing dismissal where plaintiff supported *Monell* claim with allegations of numerous reported and unreported cases and successful motions reflecting a pattern of similar constitutional violations, which plausibly suggested a

municipal custom and deliberate indifference). In contrast, courts have rejected *Monell* claims based on conclusory references to prior cases that lack detail about what occurred, who was involved, when the events happened, or how the incidents were factually similar. *See Brown v. County of San Bernardino*, 2021 WL 99722, at *5 (C.D. Cal. Jan. 8, 2021); *Galban v. City of Fontana*, 2021 WL 1307722, at *2 (C.D. Cal. Apr. 6, 2021) (declining to credit "unproven allegations in other pending cases concerning violations of unrelated civil rights" as support for a *Monell* claim).

Plaintiffs here do more than recite boilerplate *Monell* elements. They allege a pattern of specific, analogous incidents over a 13-year period involving similar uses of force, followed by consistent failures to discipline. (FAC ¶¶ 76–78, 80–84). Plaintiffs cite nine prior incidents between 2011 and 2024 in which San Bernardino County deputies allegedly used deadly force in non-threatening situations. Of these, at least three involved individuals experiencing a mental health or developmental disability crisis, including the fatal shootings of a man displaying signs of mental illness (¶ 77(a)), a mentally disabled man (¶ 77(b)) and 15-year-old Ryan Gainer, an autistic teen killed after his family called for help (¶ 77(i)).

The incidents Plaintiffs identify—factually specific and spanning more than a decade—more closely resemble the allegations in *Mitchell* and *Owens*. *Mitchell* 600 F. Supp. 3d at 1030–31; Owens, 767 F.3d 401–04. These allegations plausibly support an inference that San Bernardino County had actual or constructive notice of a persistent practice of unconstitutional force and chose not to intervene—thereby supporting *Monell* liability under a custom or practice theory. The Motion to Dismiss the *Monell* claim for custom or practice is **DENIED**.

iii. Failure to Train and Supervise

A municipality may also be held liable under *Monell* where the failure to

train or supervise employees amounts to "deliberate indifference to the rights of persons with whom the [untrained employees] come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Deliberate indifference is a stringent standard. It requires proof that the municipality was on actual or constructive notice that its training or supervision was so deficient that it was likely to result in constitutional violations, and that it chose to disregard the risk. *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Ordinarily, this notice requirement is satisfied through a pattern of similar constitutional violations by untrained employees. *Id.* at 62.

Here, Plaintiffs allege that the County failed to provide deputies with adequate training in responding to individuals experiencing mental health crises and in avoiding excessive use of force. (FAC ¶¶ 76(a), 82–83). They allege that the County had a policy or custom of "failing to provide adequate training and supervision to deputy sheriffs with respect to constitutional limits on the use of deadly force," (FAC ¶ 76(a)), and that its deputies were not trained "to handle the usual and recurring situations with which they must deal, including the use of less than lethal and lethal force." (FAC ¶ 82). To support deliberate indifference, Plaintiffs point to the same encounters involving excessive force previously discussed above. (See FAC ¶¶ 77(a), (b), (e), (i), (j)). They allege these incidents demonstrate a longstanding failure to train deputies in how to safely and constitutionally respond to mental health crises.

At this stage, these allegations are sufficient to state a plausible claim that the County had notice of its deputies' recurring misuse of force in mental health contexts and was deliberately indifferent in failing to train its personnel to avoid foreseeable constitutional harm. The Motion to Dismiss the *Monell* claim for failure to train is **DENIED**.

iv. Ratification

To show ratification, a plaintiff must prove that the "authorized policymakers approve a subordinate's decision and the basis for it." *Praprotnik*, 485 U.S. at 127, 108 S.Ct. 915. The policymaker must have knowledge of the constitutional violation and actually approve of it. A mere failure to overrule a subordinate's actions, without more, is insufficient to support a *Monell* claim. *Lytle v. Carl*, 382 F.3d 978, 987 (9th Cir. 2004); *Gillette v. Delmore*, 979 F.2d 1342, 1348 (9th Cir. 1992) (rejecting Monell liability where city manager failed to overrule a subordinate's disciplinary decision, holding that failure to overrule without more does not amount to ratification and cautioning that such a theory would improperly reintroduce respondeat superior into § 1983 jurisprudence). Similarly, the mere failure to discipline a subordinate does not amount to ratification of the subordinate's allegedly unconstitutional actions. *See Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1253-1254 (9th Cir. 2010).

Plaintiffs allege that Sheriff Dicus, acting as a final policymaker, ratified the deputies' conduct by approving an internal investigation that deemed the shooting consistent with County policy and by failing to impose discipline. (FAC ¶¶ 83–84). They further assert that Dicus's actions reflect a broader pattern of condoning unconstitutional practices within the department. (FAC ¶ 85; Opp'n at 12–13). While courts have held that a mere failure to overrule or discipline subordinates is insufficient to establish ratification, *Lytle*, 382 F.3d at 987, Plaintiffs here allege more than passive inaction. Specifically, they allege that Sheriff Dicus was granted access to the internal investigation following the shooting and affirmatively signed off on its conclusion that the deputies' use of force complied with County policy. At the pleading stage, these allegations plausibly support the inference that Sheriff Dicus made a conscious, affirmative decision to approve both the deputies' conduct and its legal basis. The Motion to Dismiss the *Monell* claim for ratification is therefore **DENIED**.

C. *Monell* Claim Against Sheriff Dicus (Fourth Claim)

Defendants move to dismiss the Fourth Cause of Action against Sheriff Dicus, arguing that it is brought solely against him in his official capacity, which is duplicative of the *Monell* claim asserted against the County. (Mot. at 4–5). An official-capacity suit is "in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985); *see also Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978) ("official capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent").

Here, the caption of the Fourth Cause of Action identifies the claim as brought against "the COUNTY, Sheriff Dicus in his official capacity and DOES 1–15." (FAC at 14). As such, an official-capacity claim against Sheriff Dicus is entirely redundant of the *Monell* claim against the County and must be dismissed. *See, e.g., Graham*, 473 U.S. at 166.[1] The Motion to Dismiss the Fourth Cause of Action against Sheriff Dicus is **GRANTED with leave to amend**. Plaintiffs may replead a supervisory liability claim against Sheriff Dicus in his individual capacity.

D. State Law Claims and Government Code Immunity (Fifth, Sixth and Seventh Claims)

i. Fifth, Sixth and Seventh Claims as to the County

Plaintiffs assert three state law tort claims against the County: (1) wrongful death; (2) assault and battery; and (3) negligence. (FAC ¶¶ 91–111). Defendants

[1] Plaintiffs do not dispute that the official capacity claim should be dismissed, but seek to recharacterize the claim as one brought against Sheriff Dicus in his *individual* capacity for supervisory liability. (Opp'n at 10-11). The FAC contains no such designation. (FAC ¶¶ 75-89). "[S]ummary judgment is not a procedural second chance to flesh out inadequate pleadings." *Wasco Prods., Inc. v. Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006).

argue that these claims are barred by statutory immunities under the California Government Code, including §§ 815 and 856.2. (Mot. at 12–14).

Under the Government Claims Act, neither a public entity nor a public employee is liable for (1) an injury caused by an escaping or escaped person who has been confined for mental illness or addiction, or (2) an injury to, or the wrongful death of, an escaping or escaped person who has been confined for mental illness or addiction. Gov. Code, § 856.2, subd. (a). The scope of this immunity extends not only to the final determination to confine or not to confine the person, but also to all determinations involved in the process of commitment. *Johnson v. County of Ventura*, 29 Cal. App. 4th 1400, 35 Cal. Rptr. 2d 150 (1994). Nothing in the statute exonerates a public employee from liability (1) if he or she acted or failed to act because of actual fraud, corruption, or actual malice; or (2) for injuries inflicted as a result of his or her own negligent or wrongful act or omission on an escaping or escaped mental patient in recapturing him or her. Gov. Code, § 856.2, subd. (b).

Here, the FAC plausibly alleges that the deputies' use of force occurred during a recapture effort, as Aaron James had escaped County custody while being transported under a 5150 psychiatric hold to a mental health facility for further confinement and treatment. (FAC ¶¶ 28–29, 33–40). According to the complaint, deputies knew of Aaron's mental health crisis and that he had not harmed anyone before they forcibly entered a bathroom, tackled him and fatally shot him. (FAC ¶¶ 35–38).

Defendants acknowledge that § 856.2(b)(2) removes immunity for public employees but correctly state that the statute does not extend the exception to public entities. (Reply at 7–8) ("What Plaintiffs cannot do—and they have offered no case law indicating otherwise—is bring claims against the County of San Bernardino."). Defendants further point to Government Code § 845.6, where the Legislature expressly created an exception that applies to both a "public employee and the

public entity." The Legislature's decision to exclude public entities from the language of § 856.2(b) supports the conclusion that no exception was intended for entity immunity. (Reply at 8).[2] The Court agrees with Defendants' interpretation. Section 856.2(a) expressly immunizes public entities from claims arising out of the injury or death of an escaped mental health patient, and subdivision (b) provides a limited exception for employees only. The Legislature's omission of public entities from the exception is presumed intentional. Applying the canon expressio unius, the Court concludes that where the Legislature chooses to include one class (employees) and exclude another (entities), that exclusion must be given effect. *See* Scalia & Garner, *Reading Law*; cited in William N. Eskridge, Jr., 113 Colum. L. Rev. 531, 558–59 (2013).

Accordingly, the motion to dismiss the Fifth, Sixth, and Seventh Causes of Action against the County is **GRANTED** to the extent Plaintiffs' claims are based on the fact pattern covered by Government Code § 856.2(a)[3]—namely, that the decedent was a person who had been confined for mental illness and sustained injury or death after escaping County custody.

ii. Seventh Claim as to Sheriff Dicus

Although the Seventh Cause of Action is pled against all Defendants, and Sheriff Dicus is specifically named in ¶¶ 105(k) and 106, the FAC does not allege facts that bring his conduct within either exception to immunity under Government

[2] Plaintiffs argue that even if § 856.2(b) applies only to public employees, the County may still be held vicariously liable under Government Code § 815.2(a) for acts committed within the scope of employment. (Opp'n at 21–23). Here, § 856.2(a) expressly immunizes public entities from liability for injuries to or caused by an escaping or escaped person confined for mental illness. Interpreting § 815.2 to allow respondeat superior liability in this context would nullify the Legislature's deliberate extension of immunity to public entities. Plaintiffs cite no case law holding that § 815.2 can override entity immunity under § 856.2(a), and the Court declines to adopt such a reading.

Code § 856.2(b). Subdivision (b)(1) preserves liability only where a public employee acted or failed to act because of "actual fraud, corruption, or actual malice." § 856.2(b)(1). Subdivision (b)(2) applies only where the injury was "inflicted as a result of [the employee's] own negligent or wrongful act or omission" in recapturing an escaped mental patient. *Forde v. County of Los Angeles*, 64 Cal. App. 3d 477, 481 (1976) ("[P]laintiff's suggestion that section 856.2, subdivision (b)(2), applies to negligence in failing to try to recapture an escaped patient—rather than to negligence resulting in injuries inflicted in the process of recapturing the patient—would, of course, negate the immunity conferred in subdivision (a)."). This language requires that the public employee personally cause or contribute to the injury during the recapture effort.[4] Plaintiffs make no such allegation as to Sheriff Dicus. Dicus is not alleged to have been present during the incident or to have taken any action that directly caused the use of force. (Mot. at 26; Reply at 7–8). There is no factual basis to infer that either exception under § 856.2(b) applies to Sheriff Dicus. The motion to dismiss the Seventh Cause of Action is **GRANTED** in its entirety as to Sheriff Dicus.

a. Motion to Strike (¶¶ 105(e), (g), (i)–(k), and 106)

1. ¶¶ 105(e) and (g)

Defendants move to strike paragraphs 105(e) and 105(g) from the negligence claim of the FAC, which allege that the County is directly liable for (e) failing to properly train, supervise, and discipline employees and (g) negligently hiring, retaining, and assigning its employees, including the individual deputies. (FAC ¶ 105(e), (g)); (Mot. at 24-26). Defendants contend that these allegations are not

[4] Plaintiffs contend that Sheriff Dicus may be held liable for preshooting tactical decisions under *Hayes v. County of San Diego*, 57 Cal. 4th 622 (2013), which recognizes that such conduct may be relevant in assessing negligence. (Opp'n at 24). But *Hayes* did not interpret § 856.2 or address its statutory immunities.

legally cognizable under California Government Code § 815, which bars public entity liability unless expressly authorized by statute. The Court agrees.

Section 815(a) provides that "[e]xcept as otherwise provided by statute, a public entity is not liable for an injury." The California Supreme Court has interpreted this provision to preclude common law tort claims against public entities unless grounded in a specific statute. *See Eastburn v. Reg'l Fire Prot. Auth.*, 31 Cal. 4th 1175, 1183 (2003) ("direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, and not on the general tort provisions of Civil Code section 1714."); *Zelig v. County of Los Angeles*, 27 Cal. 4th 1112, 1132 (2002) ("The Tort Claims Act draws a clear distinction between the liability of a public entity based on its own conduct, and the liability arising from the conduct of a public employee…. [T]he Act contains no provision similarly providing that a public entity generally is liable for its own conduct or omission to the same extent as a private person or entity."); *Brown v. Poway Unified Sch. Dist.*, 4 Cal. 4th 820, 843 P.2d 624, 829 (1993) ("[T]he intent of the [Tort Claims Act] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances...."). Consistent with this rule, courts have rejected attempts to hold public entities directly liable for negligent hiring and supervision without a statutory foundation. In *de Villers v. County of San Diego*, the court stated: "A direct claim against a governmental entity asserting negligent hiring and supervision, when not grounded in the breach of a statutorily imposed duty owed by the entity to the injured party, may not be maintained." 156 Cal. App. 4th 238, 256 (2007).

Here, Plaintiffs do not identify any statute authorizing direct liability for the County's hiring, training, supervision, or retention practices as alleged in ¶¶ 105(e) and (g). Instead, they argue that Government Code § 815.2 supplies the necessary

statutory basis, asserting that the County may be held liable under a respondeat superior theory. (Opp'n at 23). But § 815.2 permits vicarious liability for torts committed by public employees acting within the scope of employment; it does not create a statutory duty or affirmative basis for holding a public entity directly liable for its own independent acts or omissions. *See Eastburn* 31 Cal. 4th at 1183; *de Villers*, 156 Cal. App. 4th at 256. Because ¶¶ 105(e) and (g) assert direct liability against the County, they fall within the scope of § 815(a)'s bar. The motion to strike ¶¶ 105(e) and 105(g) is **GRANTED**.

2. ¶¶ 105(i)–(k), 106

Because the Court has already dismissed the Seventh Cause of Action against the County and Sheriff Dicus under Government Code § 856.2, the motion to strike ¶¶ 105(i)–(k) and 106 is **DENIED** as moot.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED** in part and **DENIED** in part as follows: (1) the motion to dismiss the *Monell* claim based on an official policy is **GRANTED without prejudice**; (2) the motion to dismiss the *Monell* claim based on a custom or practice is **DENIED**; (3) the motion to dismiss the *Monell* claim for failure to train or supervise is **DENIED**; (4) the motion to dismiss the *Monell* claim based on ratification is **DENIED**; (5) the motion to dismiss the Fourth Cause of Action against Sheriff Dicus in his official capacity is **GRANTED without prejudice**; (6) the motion to dismiss the Fifth, Sixth, and Seventh Causes of Action against the County is **GRANTED with prejudice**; (7) the motion to dismiss the Seventh Cause of Action against Sheriff Dicus is **GRANTED without prejudice**; (8) the motion to strike ¶¶ 105(e) and 105(g) is **GRANTED with prejudice**; and (9) the motion to strike ¶¶ 105(i)–(k) and 106 is **DENIED**. Plaintiff shall file an amended complaint consistent with this Order within 21 days of its issuance.