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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CYNDIE DENNY BOCK, et al.,
Plaintiffs,
v.
COUNTY OF SUTTER, et al.,
Defendants.

No. 2:11-cv-00536-MCE-GGH
MEMORANDUM AND ORDER

This action for damages was initiated by the estate and surviving family members of Rodney Louis Bock (“Decedent”). Plaintiffs Estate of Rodney Louis Bock, by and through Cyndie Denny Bock, as Administrator, Kimberly Bock, Kelly Bock, Hillary Bock, M.B., a minor through her guardian ad litem Cyndie Denny Bock, Laura Lynn Bock, and the Estate of Robert Bock (collectively “Plaintiffs”) seek to recover from Defendants County of Sutter; County of Yuba; J. Paul Parker, Sutter County Sheriff’s Department Sheriff (“Parker”); David Samson, Sutter County Jail Division Commander (“Samson”); Norman Bidwell, Sutter County Jail Corrections Lieutenant (“Bidwell”); John S. Zil (“Zil”); Christopher Barnett (“Barnett”); Bobby Joe Little (“Little”); David Calapini (“Calapini”); Shaun Fliehman (“Fliehman”); R.C.; Katy Mullin (“Mullin”); Denise McGinnis (“McGinnis”); and the Sutter County Jail Facility Manager (“Facility Manager”)
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1 (collectively, "Defendants") for injuries sustained as a result of Decedent's suicide while
2 incarcerated at Sutter County Jail ("Jail"). Presently before the Court is Defendants'
3 Motion to Dismiss ("Motion") Plaintiffs' Third Amended Complaint ("TAC").¹ For the
4 following reasons, Defendants' Motion is GRANTED in part and DENIED in part.²

5
6 **BACKGROUND**³
7

8 Decedent was a self-employed farmer in Marysville, California, for over 30 years.
9 In late 2009, he began experiencing mental health issues and required psychiatric
10 treatment. On several occasions from 2009 through 2010, Decedent was involuntarily
11 hospitalized pursuant to California Welfare & Institutions Code § 5150 ("Section 5150")
12 at the Sutter-Yuba Mental Health Services facility ("SYMHS"),⁴ which was operated and
13 managed by Defendants County of Sutter and County of Yuba.

14 SYMHS provides a variety of mental health care services both to adults residing
15 in Sutter and Yuba counties and to inmates at the Jail. Because SYMHS has only
16 roughly sixteen inpatient beds, nine to eleven of which are typically filled at any one time,
17 Plaintiffs believe SYMHS staff members personally know, or should know, all patients.

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22 ¹ Within the Motion, Defendants also seek to strike Plaintiffs' punitive damages
23 allegations and move alternatively for a more definite statement. Despite the potentially
24 different standards governing these requests, the Court will for convenience refer to
25 Defendants' Motion generally as a Motion to Dismiss.

26 ² Because oral argument will not be of material assistance, the Court ordered this
27 matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

28 ³ The following facts are derived from Plaintiffs' TAC.

⁴ On two occasions, Decedent was involuntarily held for additional periods
pursuant to California Welfare & Institutions Code § 5250 ("Section 5250").

1 Decedent was first hospitalized at SYMHS on approximately November 30, 2009.
2 During that time, he was documented as psychotic, delusional and grandiose.
3 Defendant Barnett, a psychiatrist employed by SYMHS, and other staff evaluated and
4 treated Decedent and diagnosed him with, among other things, "Bipolar I Disorder, Most
5 Recent Episode Manic, Severe with Psychotic Features."

6 On various occasions, Decedent did indeed exhibit delusional and paranoid
7 behavior, and, eventually, on or around January 14, 2010, Decedent was arrested as a
8 result of an incident at an Applebee's restaurant. Criminal charges were filed against
9 him, and he was taken to the Jail. According to Plaintiffs, the Jail has the capacity to
10 house approximately two-hundred prisoners, and, given its relatively small size, Jail staff
11 and supervisors must therefore have, or reasonably should have, personal knowledge of
12 all inmates, especially those exhibiting psychotic behaviors.

13 On January 15, 2010, while still housed at the Jail, Decedent was referred to
14 SYMHS for a psychiatric evaluation, at which time SYMHS staff again documented his
15 psychiatric history, which included his history of delusions. In addition, later in January,
16 after Decedent had been released from the Jail, he was again treated at SYMHS,
17 pursuant to one of the above-mentioned involuntary holds, by Barnett and other staff,
18 some of whom confirmed Decedent's serious psychiatric diagnoses and recommended
19 15-minute safety checks and daily treatment.

20 In the meantime, on or around January 27, 2010, the Sutter County Superior
21 Court judge presiding over Decedent's then-pending criminal case ordered Decedent to
22 undergo a separate psychological evaluation to determine whether he was competent to
23 stand trial. The physician conducting that evaluation concluded that Decedent's highly
24 unstable psychiatric condition rendered him incompetent to be tried.

25 Just over one month later, on March 1, 2010, another Sutter County Superior
26 Court judge ordered a placement evaluation of Decedent. A different physician than the
27 one who evaluated Decedent's competency confirmed Decedent's psychiatric history
28 and recommended that Decedent receive outpatient treatment.

1 Subsequently, in late March, Decedent, who still continued to experience
2 paranoia and delusions, began to believe he was being “direct[ed]” to drive to his
3 nephew’s home in Idaho. Decedent eventually followed that “direction,” but was
4 returned to California by his nephew. In the interim, however, Decedent had missed a
5 court date and, as a result, a warrant had been issued for his arrest.

6 On April 1, 2010, Decedent was again taken by his family to SYMHS for
7 evaluation and treatment. Barnett confirmed Decedent’s prior diagnosis of Bipolar I
8 Disorder, Manic with Severe Psychotic Features, and identified his need for inpatient
9 hospitalization or “state hospital placement.” The next day, Barnett determined that
10 Decedent needed at least an additional two weeks of involuntary psychiatric
11 hospitalization pursuant to Section 5150. Decedent was thereafter required pursuant to
12 Section 5150 to remain hospitalized for a 72-hour period of treatment and evaluation
13 unless his psychiatrist believed after personal observation that he could leave earlier.

14 Notwithstanding these observations, that same day, Barnett discharged and
15 transferred Decedent, pursuant to the pending warrant, to the custody of Sutter County
16 Sheriff’s Department, and he was again placed at the Jail. According to Plaintiffs,
17 Defendants transferred Decedent to the Jail in contravention of Welfare & Institutions
18 Code § 5152 (“Section 5152”) and despite their knowledge of Decedent’s urgent need
19 for inpatient care. Plaintiffs also allege that, at the time of Decedent’s discharge,
20 Defendant Barnett and SYMHS staff provided a wholly inadequate treatment plan for
21 Decedent. In addition, Plaintiffs allege that Defendant Fliehman, as Deputy Officer of
22 Sutter County Jail, improperly booked Decedent into the Jail without conducting an
23 adequate assessment of his suicide risk and thus erroneously placed Decedent in a
24 general population jail cell. Decedent was held in custody at Sutter County Jail as a
25 pretrial detainee from April 2, 2010, until April 29, 2010.

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1 During that time, Defendant Zil, who actually authored a Sutter County Jail
2 Suicide Prevention Handbook in which he identified signs of suicide risk among jail
3 inmates (e.g., visual or auditory hallucinations, severe paranoia, delusions and ideas of
4 grandeur), was assigned as Decedent's treating physician. Zil was informed of
5 Decedent's condition and prescribed him psychiatric medication. In total, Zil had one
6 clinical contact with Decedent. Given these facts, Plaintiffs allege that Zil knew or should
7 have known that Decedent was refusing to take his prescribed psychiatric medications.

8 In the meantime, the physician who had conducted Decedent's original court-
9 ordered placement evaluation sent a letter to the court retracting his outpatient treatment
10 recommendation. Shortly thereafter, on April 19, the judge who had ordered Decedent's
11 placement evaluation found Decedent incompetent to stand trial, suspended all pending
12 proceedings, and ordered that Decedent be transferred to Napa State Hospital for
13 treatment. Plaintiffs allege that Defendants Parker in his role as Sutter County Sheriff,
14 Samson as Jail Commander, Bidwell as Jail Lieutenant, and the Sutter County Jail
15 Facility Manager knew or should have known about this order, but nonetheless failed to
16 transfer him, despite the fact the State Hospital was prepared to accept Decedent for
17 treatment and had transmitted notice of its acceptance to these Defendants.

18 Plaintiffs further allege that Defendants Little and Calapini as officers assigned to
19 Decedent's general housing pod, R.C. who was responsible for providing mental health
20 and/or medical services at the Jail, and Sutter County Jail Nurses Mullin and McGinnis
21 each had interactions with and observations of Decedent in the days prior to his death.
22 It is alleged that each Defendant observed and documented one or more indicators that
23 Decedent required further treatment.

24 By April 24, Decedent was unstable and unkempt, was talking to himself and to
25 inanimate objects and was refusing his medication. According to Plaintiffs, no further
26 evaluation of Decedent was conducted, however, nor was any further treatment
27 undertaken.

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1 Plaintiffs thus allege Defendants failed to appropriately assess and medicate
2 Decedent upon his incarceration at the Jail. More specifically, Plaintiffs allege
3 Defendants failed to appropriately assess Decedent's suicide risk. In addition, Plaintiffs
4 contend that, on April 29, 2010, Defendants Little and Calapini were responsible for
5 conducting hourly safety checks of Decedent. They failed, however, to conduct the 8:00
6 p.m. check and, consequently, using items that Plaintiffs allege should not have been
7 permitted in Decedent's cell due to his psychiatric condition, Decedent fashioned a
8 noose and hanged himself from the upper bunk. When he was found, there were large
9 amounts of blood covering the cell floor and walls, apparently a result of Decedent
10 banging his head against the wall in a very violent manner. Defendants Little, Calapini,
11 Flieman and McGinnis purportedly failed to timely respond or provide life-saving
12 intervention or treatment to Decedent. Decedent died in his cell.

13 Since that time, the Sutter County Grand Jury issued a report finding, among
14 other things, that the Jail has known deficiencies with relation to its provision of mental
15 health care and medical treatment to inmates. For example, the Grand Jury found
16 deficiencies such as inadequate medical staffing, lack of required training on suicide
17 prevention and other medical treatment, non-compliant medical policies and procedures
18 and a non-compliant medical program. According to the Grand Jury, those deficiencies
19 were "unacceptable." Plaintiffs also allege that, since Decedent's death, several other
20 inmates have also passed away from preventable causes.

21 By this suit, Plaintiffs now assert eleven causes of action against Defendants
22 arising out of Decedent's death. Defendants move to dismiss each claim and/or for a
23 more definitive statement and move to strike Plaintiffs' prayer for punitive damages. For
24 the foregoing reasons, Defendants' Motion is GRANTED in part and DENIED in part.

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1 **STANDARD**

2 **A. Motion to Dismiss for Failure to State a Claim.**

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4 On a motion to dismiss for failure to state a claim under Federal Rule of Civil
5 Procedure 12(b)(6)⁵, all allegations of material fact must be accepted as true and
6 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.
7 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) “requires only ‘a short and plain
8 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
9 defendant fair notice of what the...claim is and the grounds upon which it rests.’” Bell.
10 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,
11 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require
12 detailed factual allegations. Id. However, “a plaintiff’s obligation to provide the grounds
13 of his entitlement to relief requires more than labels and conclusions, and a formulaic
14 recitation of the elements of a cause of action will not do.” Id. (internal citations and
15 quotations omitted). A court is not required to accept as true a “legal conclusion
16 couched as a factual allegation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
17 Twombly, 550 U.S. at 555). The Court also is not required “to accept as true allegations
18 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”
19 In re Gilead Sciences Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (internal citations
20 and quotations omitted). “Factual allegations must be enough to raise a right to relief
21 above the speculative level.” Twombly, 550 U.S. at 555.

22 Furthermore, “Rule 8(a)(2)...requires a ‘showing,’ rather than a blanket assertion,
23 of entitlement to relief.” Id. at 556 n.3 (internal citations and quotations omitted).
24 “Without some factual allegation in the complaint, it is hard to see how a claimant could
25 satisfy the requirements of providing not only ‘fair notice’ of the nature of the claim, but
26 also ‘grounds’ on which the claim rests.” Id. (citation omitted).

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28 ⁵ All further references to “Rule” or “Rules” are to the Federal Rules of Civil
Procedure unless otherwise noted.

1 A pleading must contain “only enough facts to state a claim to relief that is plausible on
2 its face.” Id. at 570. If the “plaintiffs...have not nudged their claims across the line from
3 conceivable to plausible, their complaint must be dismissed.” Id. However, “a well-
4 pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those
5 facts is improbable, and ‘that a recovery is very remote and unlikely.’” Id. at 556 (quoting
6 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

7 A court granting a motion to dismiss a complaint must then decide whether to
8 grant leave to amend. Leave to amend should be “freely given” where there is no
9 “undue delay, bad faith or dilatory motive on the part of the movant,...undue prejudice to
10 the opposing party by virtue of allowance of the amendment, [or] futility of the
11 amendment...” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
12 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to
13 be considered when deciding whether to grant leave to amend). Dismissal without leave
14 to amend is proper only if it is clear that “the complaint could not be saved by any
15 amendment.” Intri-Plex Techs., Inc. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir.
16 2007) (internal citations and quotations omitted).

17
18 **B. Motion for More Definite Statement.**

19
20 Before interposing a responsive pleading, a defendant may move for a more
21 definitive statement if “a pleading...is so vague or ambiguous that the party cannot
22 reasonably prepare a response.” Fed. R. Civ. P. 12(e). A Rule 12(e) motion is proper
23 when the plaintiff’s complaint is so indefinite that the defendant cannot ascertain the
24 nature of the claim being asserted. Gay-Straight Alliance Network v. Visalia Unified Sch.
25 Dist., 262 F. Supp. 2d 1088, 1099 (E.D. Cal. 2001).

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1 Due to the liberal pleading standards in the federal courts embodied in Rule 8(e)
2 and the availability of extensive discovery, courts should not freely grant motions for
3 more definitive statements. Famolare, Inc. v. Edison Bros. Stores, Inc., 525 F. Supp.
4 940, 949 (E.D. Cal. 1981). Indeed, a motion for a more definitive statement should be
5 denied unless the information sought by the moving party is not available or is not
6 ascertainable through discovery. Id.

8 ANALYSIS

9 **A. Plaintiffs' first claim for relief against the individual Defendants for their 10 deliberate indifference to Decedent's serious medical needs.**

11
12 In their first through third causes of action, Plaintiffs seek relief under the
13 Fourteenth Amendment for the individual Defendants' alleged deliberate indifference to
14 Decedent's serious medical needs. As opposed to prisoner claims under the Eighth
15 Amendment, a pretrial detainee is entitled to be free of cruel and unusual punishment
16 under the due process clause of the Fourteenth Amendment. Bell v. Wolfish, 441 U.S.
17 520, 537 n.16 (1979); Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017-18 (9th Cir.
18 2010). A pretrial detainee's due process right in this regard is violated when a defendant
19 fails to promptly and reasonably procure competent medical aid when the pretrial
20 detainee suffers a serious illness or injury while confined. Estelle v. Gamble, 429 U.S.
21 97, 104-05 (1976). In order to establish a plausible claim for failure to provide medical
22 treatment, a plaintiff must plead sufficient facts to permit the Court to infer that:
23 (1) Decedent had a "serious medical need"; and (2) a Defendant was "deliberately
24 indifferent" to that need. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); cf. Farmer
25 v. Brennan, 511 U.S. 825, 834 (1994). A serious medical need exists when "failure to
26 treat a prisoner's condition could result in further significant injury or the unnecessary
27 and wanton infliction of pain." Jett, 439 F.3d at 1096 (internal citations and quotations
28 omitted).

1 The deliberate indifference standard has been specifically applied to inmates' suicide
2 prevention. Clouthier v. County of Contra Costa, 591 F.3d 1232, 1241 (9th Cir. 2010).

3 The Supreme Court, in Farmer, explained in detail the contours of the "deliberate
4 indifference" standard. Specifically, a Defendant is not liable under the Fourteenth
5 Amendment for his part in allegedly denying necessary medical care unless he knew "of
6 and disregard[ed] an excessive risk to [Decedent's] health or safety." 511 U.S. at 837.
7 Deliberate indifference lies "somewhere between the poles of negligence at one end and
8 purpose or knowledge at the other." Id. at 836. Deliberate indifference contains both an
9 objective and subjective component: "the official must both be aware of facts from which
10 the inference could be drawn that a substantial risk of serious harm exists, and he must
11 also draw that inference." Id. Plaintiffs "need not show that a prison official acted or
12 failed to act believing that harm actually would befall an inmate; it is enough that the
13 official acted or failed to act despite his knowledge of a substantial risk of serious harm."
14 Id. at 842.

15 With regard to the subjective "knowledge" component, the Supreme Court
16 held that: [Whether a defendant] had the requisite knowledge of a
17 substantial risk is a question of fact subject to demonstration in the usual
18 ways, including inference from circumstantial evidence ... and a fact finder
may conclude that a prison official knew of a substantial risk from the very
fact that the risk was obvious.

19 Id. (emphasis added). However, it is not enough to demonstrate that a reasonable
20 person should have known of the risk. A reasonable trier of fact must be able to properly
21 infer that the particular Defendant did in fact know of the risk. Id. at 842-843; see also
22 Wilson v. Seiter, 501 U.S. 294, 299 (1991). The threshold for inaction to constitute
23 deliberate indifference is high. See Conn v. City of Reno, 591 F.3d 1081, 1097 (9th Cir.
24 2009) (holding that the magnitude of the risk must be "so obvious that [the defendant]
25 must have been subjectively aware of it").

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1 The crux of the individual Defendants’ motion to dismiss Plaintiffs’ first cause of
2 action is that “Plaintiffs admit [Decedent] was seen by mental health providers, and was
3 prescribed medications, but fall short of alleging any Defendant was aware of any
4 suicidal ideation for which they failed to reasonably act.” Motion, 1:20-2:1. Defendants
5 are correct that the TAC contains no allegation indicating Decedent ever stated he was
6 suicidal. The Court nonetheless finds Plaintiffs’ remaining allegations sufficient to state a
7 deliberate indifference claim against each of the individual Defendants for, as explained
8 below: 1) improper transfer of Decedent from SYMHS to the Jail; 2) failure to provide
9 medical care at the Jail; and 3) failure to transfer Decedent from the Jail to the State
10 Hospital.

11
12 **1. Improper transfer from SYMHS to the Jail (against Defendants
13 Barnett and Flieman).**

14 Plaintiffs’ deliberate indifference cause of action arising out of Decedent’s
15 purportedly improper discharge from SYMHS for transfer to the Jail is directed at
16 Defendants Barnett and Flieman. As to Barnett, Plaintiffs contend he failed to properly
17 complete a suicide assessment when Decedent was discharged to the Jail, despite
18 having been held for less than the 72-hours mandated by state law. See Cal. Welf. &
19 Inst. Code § 5152(a). Barnett purportedly confirmed Decedent’s diagnosis of Bipolar I
20 disorder, Manic with Severe Psychotic Features, and recommended interventions,
21 including provision of a “safe and structured milieu” and “redirection as required [and]
22 observ[ation] for safety” to protect Decedent. TAC, ¶ 83. In addition, Barnett determined
23 that Decedent required at least two additional weeks of involuntary psychiatric
24 hospitalization pursuant to Section 5250. Barnett nonetheless discharged Decedent just
25 one day into his involuntary hold, despite having the subjective knowledge that the Jail
26 “could not, and would not, provide the necessary hospital-level treatment” Decedent
27 required. Id., ¶¶ 88-89.

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1 Given Plaintiffs' allegations that Barnett was subjectively aware that Decedent's
2 condition posed safety concerns, and that Barnett disregarded those concerns in
3 discharging Decedent, Plaintiffs have adequately stated a claim against this Defendant.

4 Plaintiffs similarly aver that Fliehman improperly booked Decedent into the Jail
5 without conducting an adequate assessment of his suicide risk and that Fliehman thus
6 erroneously placed Decedent in a general population jail cell. According to Plaintiffs,
7 Fliehman had access to and reviewed Decedent's discharge documentation and other
8 SYMHS materials indicating that he had been committed due to his grave disability, that
9 he was psychotic, grandiose and delusional, with markedly impaired insight and
10 judgment and that he had been further diagnosed as described above. Despite this
11 knowledge, Fliehman allegedly placed Decedent in a general population single cell
12 without providing for appropriate safety observations. These allegations are sufficient
13 under Rule 8 to support an inference that Fliehman knew Decedent suffered from a
14 serious mental illness that could result in his self-harm and that Fliehman was
15 deliberately indifferent to that risk. Accordingly, Defendants' Motion to Dismiss is
16 DENIED as to both Barnett and Fliehman.

17
18 **2. Failure to provide medical care at the Jail (against Defendants Zil,**
19 **Little, Calapini, R.C., Mullin and McGinnis).**

20
21 First, as to Defendant Zil, Decedent's treating physician at the Jail, Plaintiffs
22 allege he prescribed Decedent lithium, a drug used to treat bipolar disorder and to
23 reduce the risk of self-harm. Plaintiffs further aver that Zil knew that Decedent had been
24 involuntarily hospitalized, that he was delusional, that he was diagnosed with psychosis,
25 that he was expressing grandiose ideas and that he was refusing to take his prescribed
26 medication. Finally, Plaintiffs allege that Zil authored a Sutter County Jail Suicide
27 Prevention Handbook, in which he listed many of Decedent's symptoms as "well-known
28 signs of suicide risk among jail inmates." TAC, ¶ 104.

1 Based on these facts, Plaintiffs have sufficiently alleged that Zil knew Plaintiff had a
2 serious mental illness that could result in his own self-harm and that Zil was deliberately
3 indifferent to that risk. Zil's Motion to Dismiss Plaintiffs' first cause of action is thus
4 DENIED.

5 Plaintiffs' allegations as to Defendants Calapini, Little, Mullin, McGinnis and R.C.
6 are sufficient as well. According to Plaintiffs, each of these Defendants was aware that
7 Decedent: 1) had been transferred to the Jail from SYMHS where he was being
8 involuntarily hospitalized pursuant to Section 5150; 2) was still delusional, suffering from
9 hallucinations or was psychotic; 3) was engaging in acts of self-harm in his cell; and 4)
10 was refusing psychiatric medications, which placed Decedent at increased risk of self-
11 harm and suicide. These allegations, taken together, support the inference that each
12 Defendant, "knowing of Decedent's need for a different treatment, disregarded
13 Decedent's serious medical needs and therefore deliberately denied, delayed or
14 interfered with that treatment, thus exhibiting deliberate indifference." Smith v. County of
15 San Diego, 2012 WL 628307, *5 (S.D. Cal. Feb. 27, 2012). Defendants' Motion to
16 Dismiss Plaintiffs' first cause of action as to Calapini, Little, Mullin, McGinnis and R.C. is
17 thus DENIED.

18
19 **3. Failure to transfer Decedent from the Jail to the State Hospital**
20 **(against Defendants Parker, Samson, Bidwell and Facility**
21 **Manager).**

22 Plaintiffs' deliberate indifference claim against Defendants Parker, Samson,
23 Bidwell and the Jail Facility Manager is based on their failure to timely transfer Plaintiff to
24 the Napa State Hospital. According to Plaintiffs, on April 19, 2010, Decedent was
25 ordered to be promptly transferred to that psychiatric facility. That order was placed in a
26 county file that was available to SYMHS and Jail staff. Plaintiffs aver that Defendant
27 Parker knew or should have known of this order and that he failed to timely effect
28 Decedent's transfer.

1 Plaintiffs likewise contend that Defendant Samson, who was responsible for inmate
2 admissions and discharges, and Defendant Bidwell, who was also responsible for
3 transfer of mentally or medically ill inmates, were both informed or should have been
4 informed of that order and that the Facility Manager reviewed the April 19 transfer order
5 as well. Finally, Plaintiffs contend that Napa State Hospital had notified Sutter County
6 that Decedent was approved for admission and that each Defendant had been informed
7 of such approval. These Defendants nonetheless failed to timely effectuate Decedent's
8 transfer. Accordingly, despite their knowledge of Decedent's psychiatric history already
9 detailed above, Defendants were deliberately indifferent to Decedent's need for inpatient
10 treatment. Plaintiffs have thus adequately stated a claim here, and Defendants' Motion
11 to Dismiss is DENIED as to Parker, Samson, Bidwell and Facility Manager.

12
13 **B. Plaintiffs' first and second claims for relief against the County of Sutter
14 and County of Yuba for deliberate indifference to Decedent's serious
15 medical needs.**

16 A municipality may be liable for violating a party's constitutional rights resulting
17 from a policy, ordinance, or regulation pursuant to a governmental custom. Monell v.
18 Dep't of Social Servs., 436 U.S. 658 (1978). The policy must be the "moving force"
19 behind the constitutional violation. Villegas v. Gilroy Garlic Festival Ass'n, 541 F.3d 950,
20 957 (9th Cir. 2008). Section 1983 requires that there is an actual connection or link
21 between the actions of a defendant and the deprivation alleged to have been suffered by
22 the plaintiff. Id. In sum, to survive Defendants' Motion to Dismiss, then, Plaintiffs must
23 allege sufficient facts to permit the court to infer the plausibility of each of the following
24 elements: (1) an employee violated the Plaintiffs' constitutional rights; (2) the municipality
25 has customs or policies that amount to deliberate indifference to those rights; and (3)
26 those customs or policies were the moving force behind the violation of the employee's
27 constitutional rights. Gibson v. County of Washoe, 290 F.3d 1175, 1193-94 (9th Cir.
28 2002).

1 By way of their Motion to Dismiss, Defendants contend first that Plaintiffs have
2 failed to allege an underlying constitutional violation as required under Monell. Second,
3 Defendants point out a distinction between a one-time occurrence and a more
4 comprehensive or ongoing policy. Lastly, Defendants argue that Plaintiffs fail to allege a
5 causal connection between any policy and the resulting constitutional violations. In other
6 words, Defendants argue that Plaintiffs have not demonstrated that Defendants'
7 omissions directly caused Decedent's suicide.

8 First, as detailed above, Plaintiffs' TAC adequately alleges constitutional
9 violations by employees of both the County of Sutter and the County of Yuba. In
10 addition, Plaintiffs specifically allege the existence of a number of the entity Defendants'
11 policies, customs or practices that purportedly contributed to Decedent's death. Namely,
12 Plaintiffs allege that those policies and practices include, but are not limited to, the
13 following:

14 Failure to conduct appropriate and complete suicide assessments;

15 Failure to create and implement appropriate mental health treatment
16 plans;

17 Failure to follow clinical judgments and recommendations;

18 Failure to promptly evaluate and transfer inmates to a psychiatric hospital
19 who are gravely disabled and at risk of serious harm;

20 Failure to take precautions to prevent suicide among high risk and
21 mentally ill inmates;

22 Failure to implement appropriate emergency treatment policies;

23 Failure to provide appropriate staffing and training at the Jail to provide
24 minimally adequate treatment for seriously ill inmates.

25 TAC, ¶ 159. Given the early stage of this litigation, in which the facts are not fully
26 developed, the Court declines to hold that Plaintiffs cannot plausibly show that the above
27 policies, procedures or customs amount to deliberate indifference.

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1 Finally, any of these policies could likewise plausibly be found to be the “moving
2 force” behind the constitutional violation alleged here. “[F]or liability to attach in this
3 circumstance the identified deficiency in a city's training program must be closely related
4 to the ultimate injury.” City of Canton, Ohio v. Harris, 489 U.S. 378, 391 (1989). In other
5 words, there must be a causal link between the municipal policy or custom and the
6 claimed constitutional violation. Id. The “closely related” or “moving force” requirement
7 is akin to the tort law causation standard of proximate cause. See Harper v. City of Los
8 Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008). “[P]roximate cause, although derived
9 from tort law, fairly describes a Plaintiffs’ causation burden with respect to a municipal
10 liability claim under § 1983.” Cash v. County of Erie, 654 F.3d 324, 342 (2d Cir. 2011)
11 (internal citations omitted). Specifically, the court must determine whether the
12 constitutional deprivation was a foreseeable result of the alleged inadequate training.
13 Cf. Arnold v. International Business Machines Corp., 637 F.2d 1350, 1355 (9th Cir.
14 1981) (explaining that causation in the context of certain Section 1983 cases “closely
15 resembles the standard ‘foreseeability’ formulation of proximate cause”). Again based
16 on the early stage at which this question is presented here, and drawing all inferences in
17 Plaintiffs’ favor, the Court cannot hold as a matter of law that the entity Defendants’
18 policies were not the moving force behind the deprivation of Decedent’s constitutional
19 rights.⁶ Defendants’ Motion to Dismiss the first and second causes of action as to the
20 County of Sutter and the County of Yuba is thus DENIED.

21 ⁶ The Court’s decision is not changed by the existence of an express policy
22 requiring that “[i]nmates with suspected mental disorders, who are a potential danger to
23 themselves or others or appear to be gravely disabled shall be promptly evaluated and,
24 if clinically indicated, transferred to an appropriate psychiatric treatment
25 facility....Regardless of the time of presentation, significantly disordered behavior should
26 be evaluated promptly, within twenty-four hours at the latest. The Jail Lieutenant or Jail
27 Facility Manager will be contacted and will make every effort to transfer mentally
28 disordered inmates to appropriate treatment facilities. All attempts and efforts to
implement the transfer of such inmates, whether successful or not, shall be
documented.” TAC, ¶ 127. Rather, if, as alleged in the TAC, a valid policy is either
unconstitutionally applied or not applied, “the city is liable if the employee has not been
adequately trained and the constitutional wrong has been caused by that failure to train.”
City of Canton, 489 U.S. at 387.

1 **C. Plaintiffs’ first and third claims for relief against the Supervisory**
2 **Defendants for deliberate indifference to Decedent’s serious medical**
3 **needs.**

4 Defendants move to dismiss claims against Defendants Parker, Samson and
5 Bidwell on “supervisory liability” grounds. Plaintiffs argue that each of said Defendants
6 knew that Decedent was prematurely and improperly transferred to Sutter County Jail
7 and that Defendants improperly created an environment in which credentialed custody
8 staff did not possess the authority to determine who could be sent to the hospital.
9 Plaintiffs assert that Defendants Parker, Samson and Bidwell “tacitly encouraged, ratified
10 and/or approved of the acts and/or omissions” which allegedly violated Decedent’s
11 constitutional rights. TAC, ¶ 166. Plaintiffs argue that the Court should infer that
12 ignoring inmates’ serious medical needs was customary and wrongfully condoned by
13 said Defendants. For their part, Defendants contend that Plaintiffs’ allegations are too
14 vague and inchoate because they lack specific facts regarding each supervisory
15 Defendant’s role in the alleged constitutional violations.

16 “In order for a person acting under color of state law to be liable under section
17 1983 there must be a showing of personal participation in the alleged rights deprivation:
18 there is no respondeat superior liability under section 1983.” Jones v. Williams, 297 F.3d
19 930, 934 (9th Cir. 2002). “Supervisory liability is imposed against a supervisory official in
20 his individual capacity for his own culpable action or inaction in the training, supervision,
21 or control of his subordinates, for his acquiescence in the constitutional deprivations of
22 which the complaint is made, or for conduct that showed a reckless or callous
23 indifference to the rights of others.” Menotti v. City of Seattle, 409 F.3d 1113, 1149 (9th
24 Cir. 2005) (quoting Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)). In
25 other words, each government official may only be held liable for his own misconduct.
26 Bowell v. Cal. Substance Abuse Treatment Facility, 2011 WL 2224817, at *4 (E.D. Cal.
27 June 7, 2011).

28 ///

1 However, government officials acting as supervisors may be liable under § 1983
2 under certain circumstances. A defendant may be held liable as a supervisor under §
3 1983 if there exists either: “(1) his or her personal involvement in the Constitutional
4 deprivation, or (2) a sufficient causal connection between the supervisor’s wrongful
5 conduct and the constitutional violation.” Hansen v. Black, 885 F.2d 642, 646 (9th Cir.
6 1989). Thus, Section 1983 actions against supervisors are proper “as long as a
7 sufficient causal connection is present and the plaintiff was deprived under color of law
8 of a federally secured right.” Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting
9 Redman v. County of San Diego, 942 F.2d 1435, 1447 (9th Cir. 1991)).

10 The requisite causal connection between a supervisor’s wrongful conduct and the
11 violation of the prisoner’s constitutional rights can be established in a number of ways.
12 Plaintiffs may show that a supervisor set in motion a series of acts by others, or
13 knowingly refused to terminate a series of acts by others, which the supervisor knew or
14 reasonably should have known would cause others to inflict a Constitutional injury.
15 Dubner v. City of San Francisco, 266 F.3d 959, 968 (9th Cir. 2001). Similarly, a
16 supervisor’s own culpable action or inaction in the training, supervision, or control of his
17 subordinates may establish supervisory liability. Starr, 652 F.3d at 1208. Finally, a
18 supervisor’s acquiescence in the alleged constitutional deprivation, or conduct showing
19 deliberate indifference toward the possibility that deficient performance of the task may
20 violate the rights of others, may establish the requisite causal connection. Id.; Menotti,
21 409 F.3d at 1149.

22 The Court dismissed Plaintiffs’ supervisory liability claim in their First Amended
23 Complaint on the basis that it did not sufficiently plead facts demonstrating each
24 supervisory Defendant’s role in any alleged deprivation. However, the additional facts
25 pled in Plaintiffs’ TAC allow the Court to infer that a reasonable trier of fact, after
26 discovery, could reasonably find that the supervisory Defendants were aware of and
27 failed to act on constitutional violations regularly practiced by the Sutter County Jail.

28 ///

1 The very fact that, as alleged, Decedent's court-ordered transfer, which could have
2 saved his life, was purportedly disregarded implicates the supervisors because the type
3 of error alleged suggests that the mistake was a result of flawed measures which were
4 likely implemented by employees in managerial roles. Defendants' Motion to Dismiss
5 Plaintiffs' Supervisory Liability claim against Defendants Parker, Samson and Bidwell is
6 therefore DENIED.

7
8 **D. Plaintiffs fourth claim for relief for loss of parent/child relationship.**

9
10 Plaintiffs' fourth cause of action asserts that all Defendants violated the First and
11 Fourteenth Amendments by depriving Plaintiffs of their liberty interest in the parent-child
12 relationship. Defendants attack those allegations on the basis that Plaintiffs' allegations
13 are so overly broad that they fail to state a claim.

14 The due process claim protects the right to familial relations between family
15 members. See, e.g., Stanley v. Illinois, 405 U.S. 645, 651 (1972) ("The integrity of the
16 family unit has found protection in the Due Process Clause of the Fourteenth
17 Amendment....") (citing Meyer v. Nebraska, 262 U.S. 390, 399 (1923)). However, only
18 official conduct that "shocks the conscience" is cognizable as a due process violation.
19 County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998) (citing Rochin v. Cal., 342
20 U.S. 165, 172-73 (1952)). The threshold question in such cases is "whether the
21 behavior of the governmental officer is so egregious, so outrageous, that it may fairly be
22 said to shock the contemporary conscience." Lewis, 523 U.S. at 847 n. 8. The type of
23 conduct which is most likely to rise to the "conscience-shocking level" is "conduct
24 intended to injure in some way unjustifiable by any government interest." Id. at 849.
25 Conduct which was not intentional, but rather was deliberately indifferent, may
26 nevertheless rise to the conscience-shocking level in some circumstances. Id. at 849–
27 50.

28 ///

1 Plaintiffs' instant claim is predicated on the allegations set forth in Plaintiffs' first,
2 second, and third causes of action. More specifically, Plaintiffs allege that the
3 "aforementioned acts and/or omissions of Defendants in being deliberately indifferent
4 to [Decedent]," through their direct actions or failure to take measures to prevent
5 Decedent's suicide, amount to a violation of the Plaintiffs' rights under the substantive
6 due process clauses of the First and Fourteenth Amendments. TAC, ¶ 171. For the
7 same reasons already discussed in the preceding sections, Plaintiffs' allegations that
8 Defendants were deliberately indifferent to Decedent's serious medical needs are
9 likewise sufficient to demonstrate that any Defendant's conduct "shocks the conscience."
10 Indeed, Plaintiffs have pled adequate facts demonstrating that Defendants' conduct
11 meets the requisite standard to establish a substantive due process violation.
12 Accordingly, Defendants' Motion to Dismiss Plaintiffs' fourth claim for relief is DENIED.

13
14 **E. Plaintiffs' fifth claim for relief for violation of Title II of the Americans**
15 **with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.**

16
17 In their fifth cause of action, Plaintiffs allege that Defendants County of Sutter and
18 County of Yuba discriminated against Decedent in violation of the Americans with
19 Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., and Section 504 of the
20 Rehabilitation Act, 29 U.S.C. § 794, et seq., "based on the denial of appropriate
21 placement, services, and setting that were necessary to reasonably accommodate his
22 mental disability needs" at the Jail. TAC, ¶ 180. Plaintiffs further allege that Defendants
23 failed to provide accommodations for Decedent's disability, "resulting in the denial of the
24 benefits of the Jail's services, programs, and/or activities that included the care and
25 custody necessary for an inmate to survive his pre-trial detention without serious injury."
26 Id., ¶ 132.

27 ///

28 ///

1 Defendants argue that Plaintiffs' claims under the ADA and Section 504 of the
2 Rehabilitation Act must be dismissed because Plaintiffs fail to present facts identifying
3 how Decedent was denied treatment, or which particular programs Decedent was denied
4 access to, because of his disability. In their Opposition, Plaintiffs argue that their claims
5 are based on Defendants' total withholding of treatment for Decedent and aver that
6 Decedent was "unable to access the care available to non-disabled inmates."
7 Opposition, 20:15-16.

8 Both the ADA and Rehabilitation Act prohibit disability discrimination. Specifically,
9 Title II of the ADA provides that "no qualified individual with a disability shall, by reason
10 of such disability, be excluded from participation in or be denied the benefits of the
11 services, programs, or activities of a public entity, or be subject to discrimination by such
12 entity." 42 U.S.C. § 12132. The ADA defines "public entity" in relevant part as "any
13 State or local government" or "any department, agency, special purpose district, or other
14 instrumentality of a State or States or local government," 42 U.S.C. § 12131(1)(A)-(B),
15 and the Supreme Court has found that "[s]tate prisons fall squarely within the [statute's]
16 definition of public entity." Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S. 206,
17 210 (1952) (internal quotations and citations omitted). Section 504 of the Rehabilitation
18 Act states that "[n]o otherwise qualified handicapped individual in the United States . . .
19 shall, solely by reason of his handicap, be excluded from the participation in, be denied
20 the benefits of, or be subjected to discrimination under any program or activity receiving
21 Federal financial assistance." 29 U.S.C. § 794. Both the ADA and the Rehabilitation Act
22 have been found to apply to services, programs and activities for detainees. See, e.g.,
23 Pierce v. County of Orange, 526 F.3d 1190, 1214-1215 (9th Cir. 2008).

24 Although Plaintiffs allege Decedent did not receive adequate medical treatment,
25 there are no facts in the TAC demonstrating that Defendants did not provide treatment to
26 Decedent because he was disabled. See Alexander v. Tilton, 2009 WL 464486, at *7
27 (E.D. Cal. Feb. 24, 2009) (finding plaintiff's allegations that he didn't receive proper
28 medical treatment did not state a claim under the ADA or Rehabilitation Act).

1 Put differently, Plaintiffs have not pled that Decedent was treated differently than other
2 inmates who did not suffer from a disability. Peacock v. Terhune, 2002 WL 459928, at
3 *2 (E.D. Cal. Jan. 23, 2002) (finding a plaintiff stated a claim under the ADA because he
4 alleged he was treated differently as a paraplegic than other inmates who did not suffer
5 from the same or a similar disability). While Plaintiffs continue to allege that Decedent
6 had a greater risk of harm than other inmates, they fail to show that Decedent was
7 denied benefits that others were offered. Indeed, Plaintiffs do not allege that any other
8 inmates were offered mental health services or in-house clinical visits that Decedent was
9 denied.

10 Therefore, because the pleadings do not adequately demonstrate that the other
11 inmates were offered any services that Decedent was denied as a result of his disability,
12 this Court finds that Plaintiffs have failed to plead facts sufficient to allege that the
13 Defendants discriminated against Decedent because of his disability. Defendants'
14 Motion to Dismiss Plaintiffs' fifth cause of action is thus GRANTED with leave to amend.

15
16 **F. Plaintiffs' sixth claim for relief for violation of California's Unruh Civil**
17 **Rights Act.**

18
19 Plaintiffs allege that Defendants County of Sutter and County of Yuba violated
20 California Civil Code §§ 51 and 52 ("Unruh Act") by failing to reasonably accommodate
21 Decedent's disability and treatment needs. Defendants argue Plaintiffs' claim must be
22 dismissed because SYMHS and Sutter County Jail are not "business establishments"
23 subject to the Unruh Act.

24 The Unruh Act prohibits "business establishments" from engaging in intentional
25 discrimination. Cal. Civ. Code § 51(b). Although the California Supreme Court has
26 found that "the Legislature intended the phrase 'business establishment' be interpreted
27 'in the broadest sense reasonably possible,'" the Unruh Act has yet to be applied to
28 claims against correctional facilities.

1 Isbister v. Boys' Club of Santa Cruz, Inc., 40 Cal. 3d 72, 78 (1985) (internal citations
2 omitted). Instead, several district courts have explicitly found that prisons are not
3 business establishments under the Unruh Act. See, e.g., Taormina v. Cal. Dep't of
4 Corr., 946 F. Supp. 829, 834 (S.D. Cal. 1996); Wilkins-Jones v. County of Alameda,
5 2010 WL 4780291, at *9 (N.D. Cal. Nov. 16, 2010). The Court finds this authority
6 persuasive and holds that Sutter County Jail is not a business establishment under the
7 Unruh Act. Accordingly, Plaintiffs claim under the Unruh Act arising out of Decedent's
8 treatment at Sutter County Jail fails.

9 Plaintiffs nonetheless correctly argue that SYMHS is subject to the Unruh Act
10 because it is a public health facility. Numerous courts have considered medical facilities
11 to be business facilities. See, e.g., North Coast Women's Care Med. Group, Inc. v. San
12 Diego County Superior Court, 44 Cal. 4th 1145, 1153 (2008) ("A medical group providing
13 medical services to the public has been held to be a business establishment for
14 purposes of the [Unruh] Act.") (hereafter, "North Coast"); Washington v. Blampin, 226
15 Cal. App. 2d 604 (Cal. App. 1964) ("There is nothing novel in referring to the practice of
16 medicine as a business."). Defendants contend that the case Plaintiffs rely on, North
17 Coast, is distinguishable because it concerns a private medical group and SYMHS is a
18 public medical facility. This argument is unpersuasive because the Unruh Act prohibits
19 discrimination in places of public accommodation and covers "all business
20 establishments of every kind whatsoever." Warfield v. Peninsula Golf & Country Club,
21 10 Cal. 4th 594, 599-615 (1995); Isbister, 40 Cal. 3d at 75. This Court therefore now
22 holds that a public medical facility is a "business establishment" for purposes of the
23 Unruh Act. See Isbister, 40 Cal. 3d at 75.

24 That being said, the Unruh Act provides that "[a]ll persons within the jurisdiction of
25 this state are free and equal, and...are entitled to the full and equal accommodations,
26 advantages, facilities, privileges, or services in all business establishments of every kind
27 whatsoever." Cal. Civ. Code § 51(b).

28 ///

1 The purpose of the Unruh Act “is to compel a recognition of the equality of citizens in the
2 right to the peculiar service afforded” by the entities covered by the acts. Marina Point,
3 Ltd. v. Wolfson, 30 Cal. 3d 721, 738 (1982) (quoting Piluso v. Spencer, 36 Cal. App.
4 416, 419 (Cal. Ct. App. 1918)). In addition, the Unruh Civil Rights Act protects only
5 against intentional discrimination. Pack v. Fort Washington II, 689 F. Supp. 2d 1237,
6 1249 (E.D. Cal. 2009). Nowhere in Plaintiffs’ TAC do they adequately suggest SYMHS
7 engaged in intentional discrimination against Decedent, as prohibited by Cal. Civ. Code
8 § 51(b). Thus, Plaintiffs do not adequately allege SYMHS discriminated against
9 Decedent. Accordingly, because Plaintiffs cannot establish that Sutter County Jail is a
10 “business establishment,” or that SYMHS intentionally discriminated against Decedent,
11 Defendants’ Motion to Dismiss Plaintiffs’ Unruh Act claim is GRANTED with leave to
12 amend.

13
14 **G. Plaintiffs’ seventh claim for relief for professional negligence/medical**
15 **malpractice.**

16
17 Plaintiffs allege Zil and Barnett were negligent in their failure to properly assess
18 and treat Decedent’s serious mental illness, to prescribe necessary psychiatric
19 medication, to ensure compliance with that medication, and to ensure proper treatment.
20 Plaintiffs further allege that Defendant Barnett was negligent in discharging Decedent
21 from SYMHS to Sutter County Jail in early April 2010.

22 These Defendants argue to the contrary that they are immune from liability under
23 California Government Code §§ 855.6 and 855.8. Section 855.6 shields a public
24 employee from liability “for injury caused by the failure to make a[n] examination, or to
25 make an adequate [] examination,...for the purpose of determining whether [a] person
26 has a...mental condition that would constitute a hazard to the health and safety of
27 himself or others.”

28 ///

1 Similarly, Section 855.8 provides that a public employee is not liable “for injury resulting
2 from diagnosing or failing to diagnose that a person is afflicted with mental illness [] or
3 from failing to prescribe for mental illness....” Cal. Gov. Code § 855.8(a). Defendants
4 argue that Plaintiffs’ allegations regarding their alleged failure to properly assess and
5 evaluate Decedent, as well as their alleged failure to prescribe appropriate medications,
6 fall squarely within Sections 855.6 and 855.8, and therefore, they are immune from
7 liability on that basis.

8 Plaintiffs nonetheless argue that the immunity granted under Section 855.6 does
9 not apply in “situation[s] where the defendant fails to provide medical care for a prisoner
10 in obvious need of such care,” as set forth in Lum v. City of San Joaquin, 756 F. Supp.
11 2d 1243 (E.D. Cal. 2010). Plaintiffs contend that Decedent was obviously in need of
12 medical care, pointing to Decedent’s serious mental illnesses and visible symptoms
13 stemming from those illnesses. They argue that Zil knew of these symptoms and yet he
14 wrongfully failed to order further evaluations or direct observation therapy. They further
15 allege that Barnett stated that Decedent needed at least two additional weeks of
16 hospitalization given his symptoms and instead inappropriately (and illegally) approved
17 Decedent’s transfer to the jail in a negligent manner. Plaintiffs allege sufficient facts to
18 survive dismissal with respect to claims arising out of Zil’s alleged failure to properly
19 evaluate Decedent or prescribe medication for Decedent’s mental condition and
20 Barnett’s failure to properly evaluate Decedent or prescribe medications and negligent
21 discharge. Moreover, determining whether or not Decedent’s illnesses and symptoms
22 made it “obvious” to Defendants Zil and Barnett that Decedent was suicidal requires a
23 heavy fact-finding process, which is best left to a jury. Accordingly, Defendants’ Motion
24 to Dismiss Plaintiffs’ professional negligence/medical malpractice claim is DENIED.

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1 **H. Plaintiffs' eighth claim for relief for negligence/negligence per se**
2 **(against Defendants Barnett and Fliehman).**

3
4 Plaintiffs allege that Defendants Barnett and Fliehman acted negligently and
5 improperly, breached their respective duties, and as a direct and proximate result,
6 Decedent and Plaintiffs suffered injuries and damages. Accordingly to Plaintiffs, as
7 already stated, Barnett was responsible for completing multiple psychiatric evaluations of
8 Decedent, as well as for planning his treatment and placement. In fact, Barnett allegedly
9 ordered the involuntary emergency psychiatric hospitalization of Decedent for at least 72
10 hours of treatment pursuant to Section 5150, after which he determined that Decedent
11 likely required two weeks of involuntary psychiatric hospitalization. Yet, Barnett
12 nonetheless discharged Decedent from the psychiatric hospital after only 24 hours, in
13 violation of Section 5152. In opposition, Defendants argue that, despite these facts,
14 Plaintiffs do not adequately allege Decedent was placed on an involuntary 72-hour hold
15 because a family member voluntarily turned him over to SYMHS so Section 5152 should
16 not apply. In addition, according to Defendants, the transfer did not cause Decedent's
17 later death, and Section 5152 was not designed to prevent this later-occurring suicide.

18 As to Fliehman, Plaintiffs allege he violated Section 5150 when he booked
19 Decedent in the Sutter County Jail and placed him in a general population single cell
20 "with no direct observation for safety, although he knew or should have known that
21 [Decedent] required at least two (2) weeks of additional involuntary psychiatric
22 hospitalization given his psychotic condition and inability to provide for his own needs."
23 TAC, ¶¶ 6-7 (emphasis in original). In opposition here, however, Defendants argue that
24 the booking at the jail was pursuant to the outstanding warrant, not Section 5150.
25 Defendants further argue that the transfer did not cause Decedent's later death and that
26 Section 5150 was not designed to prevent this later-occurring suicide.

27 ///

28 ///

1 To allege a sufficient claim for negligence per se, Plaintiffs must identify a specific
2 statute, ordinance, or regulation in support of their claim. See Cal. Evid. Code § 669(a)
3 (“The failure of a person to exercise due care is presumed if: (1) He violated a statute,
4 ordinance, or regulation of a public entity; (2) The violation proximately caused death or
5 injury to a person or property; (3) The death or injury resulted from an occurrence of the
6 nature which the statute, ordinance, or regulation was designed to prevent; and (4) The
7 person suffering the death or the injury to his person or property was one of the class of
8 persons for whose protection the statute, ordinance, or regulation was adopted.”);
9 accord Lorbeer v. American Tel. & Tel. Co., 958 F.2d 377 (9th Cir. 1992) (finding a
10 plaintiff’s negligence per se claim failed “because he [did] not identif[y] a specific,
11 relevant statutory violation...”). In light of the above arguments, the Court finds that
12 Plaintiffs adequately allege facts that Barnett violated Section 5152 by allegedly
13 discharging Decedent before the required 72-hour time and before finding that Decedent
14 no longer needed treatment. Moreover, the Court finds that Plaintiffs adequately allege
15 facts that Fliehman violated Section 5150 when he purportedly knowingly placed
16 Decedent into an unapproved facility incapable of providing adequate support.
17 Accordingly, Defendants’ Motion to Dismiss Plaintiffs’ claim for negligence per se is
18 DENIED.

19
20 **I. Plaintiffs’ ninth claim for relief for failure to furnish/summon medical**
21 **care (against Defendants Little, Calapini, Fliehman, R.C., Mullin and**
22 **McGinnis).**

23 Plaintiffs allege that Defendants Little, Calapini, Fliehman, R.C., Mullin, and
24 McGinnis knew, or had reason to know, that Decedent was in need of immediate
25 medical and mental health care, yet they failed to take action to summon or provide care,
26 resulting in Decedent’s death, thereby violating California Government Code §§ 844.6
27 and 845.6.

28 ///

1 Plaintiffs further allege that Defendants failed to timely respond to Decedent’s “psychotic
2 episode” when “he engaged in numerous acts of self-harm before hanging himself....”
3 TAC, ¶ 205. Defendants nonetheless argue that Plaintiffs do not allege that these
4 Defendants had actual or constructive knowledge that Decedent was in need of
5 immediate medical care.

6 A claim for failure to furnish medical care is based on a violation of California
7 Government Code § 845.6, which states in pertinent part:

8 Neither a public entity nor a public employee is liable for injury proximately
9 caused by the failure of the employee to furnish or obtain medical care for
10 a prisoner in his custody; but... a public employee, and the public entity
11 where the employee is acting within the scope of his employment, is liable
if the employee knows or has reason to know that the prisoner is in need
of immediate medical care and he fails to take reasonable action to
summon such medical care...

12 Plaintiffs allege that Little “observed [Decedent] banging himself against his cell door,
13 yelling about or at people who did not exist, describing various hallucinations, and
14 refusing his psychiatric medication.” TAC, ¶ 114. Plaintiffs also allege that Officer
15 Calapini had significant interaction with Decedent in April 2010 and that he “observed
16 [Decedent] engaging in acts of self-harm in his cell, having delusions and hallucinations,
17 and refusing his psychiatric medication.” Id., ¶ 115. Moreover, Plaintiffs allege that
18 Fliehman was in contact with Decedent at the time he was placed and booked in the
19 Sutter County Jail, and that Fliehman was on notice of Decedent’s psychotic condition
20 and need for emergency treatment. Plaintiffs further contend that Defendant R.C. “was
21 informed on or about April 24, 2010 that [Decedent’s] condition had deteriorated to an
22 alarming level; that he was unstable and talking to himself and to inanimate objects; and
23 that he was refusing his medications.” Id., ¶ 116. They also allege that R.C. observed
24 and documented that Decedent “was experiencing delusions and hallucinations, and
25 was making alarming statements suggesting suicidal thoughts.” Id., ¶ 117.

26 ///

27 ///

28 ///

1 As to Nurses Mullin and McGinnis, Plaintiffs allege that they observed and recorded
2 Decedent's refusal to take his psychiatric medications, observed him engaging in acts of
3 self-harm and having delusions and hallucinations. Id., ¶¶ 118-19.

4 The Court finds that Plaintiffs allege sufficient facts as to each Defendant to
5 support the claim that each had actual or constructive knowledge that Decedent was in
6 need of immediate medical care and that each failed to summon care. See, e.g., Jett,
7 439 F.3d 1091 (finding disputed issues of fact precluded summary judgment on the
8 inmate-plaintiff's failure to summon medical care claim because a doctor ordered follow-
9 up visits for plaintiff following a fracture to his thumb and plaintiff filed repeated requests
10 to be seen by a health care provider, which were ignored by defendants); see also
11 Twombly, 550 U.S. at 555. Accordingly, Defendants' Motion to Dismiss Plaintiffs' claim
12 for failure to summon medical care is DENIED.

13
14 **J. Plaintiffs' tenth claim for relief for negligent supervision, training, hiring
15 and retention.**

16
17 Plaintiffs allege Defendant County of Sutter was negligent in hiring, supervising,
18 training, and retaining employees and thus caused Decedent's injuries. According to
19 Plaintiffs, Defendant's failure resulted in the violation of three statutes that establish a
20 specific duty of care and/or basis for liability, including violation of Sections 5150 and
21 5152 and of California Government Code § 845.6. Defendants argue that Plaintiffs'
22 claim must be dismissed because Defendant is immune under California Government
23 Code § 815 and because "California does not recognize a common law tort claim of
24 negligence against a public entity for the negligent 'selection, training, retention,
25 supervision, and discipline' of its employees." Motion, 20:5-12. However, as stated in
26 the Court's previous Order, pursuant to California Government Code § 815, a public
27 entity can be held directly liable in tort as specifically provided by statute. Caldwell v.
28 Montoya, 10 Cal. 4th 972, 980 (1995).

1 The Court must thus determine whether each of the alleged violated statutes
2 imposes a mandatory duty on the County of Sutter. Haggis v. City of Los Angeles, 22
3 Cal. 4th 490, 498 (2000) (“First and foremost, application of section 815.6 requires that
4 the enactment at issue be obligatory, rather than merely discretionary or permissive, in
5 its directions to the public entity; it must require, rather than merely authorize or permit,
6 that a particular action be taken or not taken.”). Courts apply the mandatory duty
7 element “rather strictly, and generally find a mandatory duty only if the enactment
8 imposes the duty and provides implementing measures or requires specific conduct.” All
9 Angels Preschool/Daycare v. County of Merced, 197 Cal. App. 4th 394, 402 n.8 (Cal.
10 App. 2011). The mandatory duty requires that the statute not be merely discretionary or
11 permissive, “it must require, rather than merely authorize or permit, that a particular
12 action be taken or not taken” by the public entity. Haggis, 22 Cal.4th at 498.

13 California Government Code § 845.6 imposes such a mandatory duty. It states
14 that a public entity “is liable if the employee knows or has reason to know that the
15 prisoner is in need of immediate medical care and he fails to take reasonable action to
16 summon such medical care.” Cal. Gov. Code § 845.6 (emphasis added). Section 5152
17 similarly requires that a person admitted pursuant to Section 5150 “shall be released
18 before 72 hours have elapsed only if the psychiatrist directly responsible for the person's
19 treatment believes, as a result of the psychiatrist's personal observations, that the
20 person no longer requires evaluation or treatment.” Cal. Welf. & Inst. Code § 5152
21 (emphasis added). The Court determines that Section 5152, in its entirety, especially
22 given its use of the phrase “only if,” imposes a mandatory duty.

23 To the contrary, however, Section 5150 states that a person “may” be taken into
24 custody and placed in a facility for treatment and evaluation if, as a result of mental
25 disorder, he is a danger to others, or to himself or herself, or gravely disabled. Use of
26 the word “may” is permissive, and, therefore, Section 5150 does not impose a
27 mandatory duty.

28 ///

1 Accordingly, the Defendants' Motion to Dismiss Plaintiffs' negligent supervision
2 cause of action as it pertains to Government Code § 845.6 and Section 5152 is DENIED.
3 The Defendants' Motion to Dismiss Plaintiffs' negligent supervision cause of action as it
4 pertains to Section 5150 is GRANTED with leave to amend.

5
6 **K. Plaintiffs' eleventh claim for relief for wrongful death.**

7
8 Plaintiffs allege that Decedent's injuries in this case are a result of the "wrongful
9 and/or negligent acts and/or omissions of Defendants" and, therefore, Defendants are
10 liable under California Code of Civil Procedure § 377.60 for wrongful death. Defendants
11 argue that Plaintiffs fail to allege a duty or what duty was breached, and that Plaintiffs'
12 allegations regarding causation are conclusory.

13 In order to adequately allege a wrongful death claim, Plaintiffs must allege a
14 wrongful act or neglect on the part of one or more persons that caused the death of
15 another person. Garcia v. County of Fresno, 2005 WL 3143429, *6 (E.D. Cal. Nov. 21,
16 2005). For the reasons already stated, Plaintiffs meet this standard. Plaintiffs have
17 alleged facts sufficient to demonstrate that Defendants' negligence caused Decedent's
18 death. Accordingly, Defendants' Motion to Dismiss Plaintiffs' eleventh cause of action is
19 DENIED.

20
21 **L. Plaintiffs' prayer for punitive damages.**

22
23 Defendants' move to strike Plaintiffs' request for punitive damages. Rule 12(f),
24 however, is the improper vehicle by which to attack damages allegations. Whittlestone,
25 Inc. v. Handi-Craft Co., 618 F.3d 970, 974-75 (9th Cir. 2010). Such attacks should
26 instead be made pursuant to Rule 12(b)(6). Id. Accordingly, the Court now construes
27 Defendants' instant Motion as a motion to dismiss pursuant to Rule 12(b)(6).

28 ///

1 Defendants first attack Plaintiffs' prayer for punitive damages against the medical
2 Defendants (Zil, Barnett, Mullin, and McGinnis) because, prior to initiating this litigation,
3 Plaintiffs did not petition the Court in compliance with California Code of Civil Procedure
4 § 425.13. To adequately plead a prayer for punitive damages against medical providers
5 under California state law, Plaintiffs must petition the court for punitive damages
6 pursuant to Section 425.13. Cal. Code Civ. Proc. § 425.13; Thomas v. Hickman, 2006
7 WL 2868967, at *39-41 (E.D.Ca., Oct. 6, 2006). Defendants correctly point out that
8 Plaintiffs have neither requested nor obtained an order from the Court allowing for
9 recovery of punitive damages against medical defendants for the state claims in
10 accordance with Section 425.13. Id. Thus, Plaintiffs' prayer for punitive damages
11 against medical defendants (i.e., Zil, Barnett, Mullins, and McGinnis) for state claims is
12 dismissed with leave to amend.

13 The Court must still nonetheless address Plaintiffs' prayer for punitive damages
14 for state claims against non-medical Defendants and for federal claims against all
15 Defendants. Punitive damages are appropriate in an action brought under 42 U.S.C.
16 § 1983. Punitive damages are available "when the defendant's conduct is shown to be
17 motivated by evil motive or intent, or when it involves reckless or callous indifference to
18 the federally protected rights of others." Kennedy v. Los Angeles Police Dept., 901 F.2d
19 702, 707 (9th Cir. 1989) (quoting Smith v. Wade, 461 U.S. 30, 56 (1971)). Under
20 California law, "where it is proven by clear and convincing evidence that the defendant
21 has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual
22 damages, may recover damages for the sake of example and by way of punishing the
23 defendant." Cal. Civil Code § 3294(a). Malice is defined as despicable conduct done
24 with a willful and conscious disregard of the rights or safety of others and oppression is
25 defined as despicable conduct that subjects a person to cruel and unjust hardship in
26 conscious disregard of that person's rights. Id., § 3294(c).

27 This Court has already determined that Defendants' actions shock the
28 conscience. Therefore, Plaintiffs have also adequately alleged Defendants' "conduct

1 is...motivated by evil motive or intent” and that Defendants’ acts were malicious and
2 oppressive. Smith, 461 U.S. at 56; Cal. Civil Code § 3294. Accordingly, Defendants’
3 Motion to Strike Plaintiffs’ Prayer for Punitive Damages, construed as a motion to
4 dismiss, as it relates to Plaintiffs’ federal claims against the Individual Defendants and to
5 state claims against Defendants’ Bidwell, Facility Manager, Parker, Samson, Little,
6 Calapini, R.C. and Fliehman is DENIED.

7
8 **M. Defendants’ Motion for More Definite Statement.**


9
10 Defendants’ Motion for More Definite Statement is DENIED. Plaintiffs have
11 provided sufficient facts to survive a 12(e) motion because the pleading is not so vague
12 or ambiguous that Defendants cannot frame a responsive pleading. Fed. R. Civ. P. 12(e).

13
14 **CONCLUSION**

15
16 For the reasons stated above, County Defendants’ Motion (ECF No. 36) is
17 GRANTED in part and DENIED in part, consistent with the foregoing. Not later than
18 twenty (20) days following the date this Memorandum and Order is electronically filed,
19 Plaintiffs may (but are not required to) file an amended complaint on those issues as to
20 which the motion to dismiss was granted.. If no amended complaint is filed within said
21 twenty (20) day period, without further notice to the parties, the causes of action
22 dismissed by virtue of this Memorandum and Order will be dismissed with prejudice.

23 IT IS SO ORDERED.

24 Dated: August 30, 2012

25
26 
27 MORRISON C. ENGLAND, JR.
28 UNITED STATES DISTRICT JUDGE