

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Hightower v. County of San Diego

Hightower · No. 24-cv-1152-RSH-MSB · Decided March 14, 2025

SUMMARY

The United States District Court for the Southern District of California grants the County of San Diego’s motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The court concludes that the complaint does not adequately plead deliberate indifference claims against the Doe defendants or the County under 42 U.S.C. § 1983, including a Monell claim based on policy, custom, or inadequate training. The order also addresses the factual and pleading deficiencies relevant to the plaintiffs’ medical-care allegations.

OPINION

Hightower v. County of San Diego

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 CLARENCE HIGHTOWER, et al., Case No.: 24-cv-1152-RSH-MSB 12 Plaintiffs,

ORDER GRANTING DEFENDANT

13 v. COUNTY OF SAN DIEGO’S

MOTION TO DISMISS

14 COUNTY OF SAN DIEGO, et al., 15 Defendants. [ECF No. 9] 16 17 18 19 Before the Court is a motion to dismiss filed by defendant County of San Diego (the 20 “County”). ECF No. 9. Pursuant to Local Civil Rule 7.1(d)(1) the Court finds the motion 21 presented appropriate for resolution without oral argument. For the reasons below, the 22 Court grants the County’s motion.

23 I. BACKGROUND

24 A. Factual Background 25 Plaintiffs Clarence Hightower (“Mr. Hightower”) and Danielle Hightower (“Ms. 26 Hightower”) (collectively “Plaintiffs”) filed a complaint on July 3, 2024 against the County 27 of San Diego and Does 1-30. ECF No. 1. The Complaint alleges the following. 28 // 1 1. Lung Surgery 2 In May 2022, a medical scan of Mr. Hightower’s back revealed a 2-by-3-centimeter 3 mass in his right lung. ECF No. 1 ¶ 15. In July 2022, a bronchoscopy and biopsy revealed 4 the mass was cancerous and blocking 80-90% of the main airway to Mr. Hightower’s right 5 lower lung. Id. ¶ 16. 6 On December 8, 2022, Mr. Hightower was sentenced to one year in the San Diego 7 County jail and was taken into custody on that same

day. Id. ¶ 17. At the end of December 8 2022, Mr. Hightower’s primary care physician stated that “[h]e needs the surgery as soon 9 as possible due to the tumor affecting his breathing,” and that “Mr. Hightower has shortness 10 of breath due to [the] location of [the] tumor.” Id. ¶ 19. 11 On or about December 11, 2022, Ms. Hightower called the County jail medical staff 12 to discuss Mr. Hightower’s medical condition and needs and dropped off a set of medical 13 records for the jail staff. Id. ¶ 20. Shortly thereafter, Mr. Hightower was transferred to the 14 George Bailey Detention Facility, and Ms. Hightower again informed the jail staff of Mr. 15 Hightower’s medical needs, including the need for surgery. Id. at ¶ 21. 16 In early January 2023, Mr. Hightower developed a wheeze. Id. ¶ 22. Around the 17 same time, Mr. Hightower filed a request in state court to be temporarily released from 18 County jail to get tumor-removal surgery. Id. ¶ 23. In support of his request, Mr. Hightower 19 submitted a letter from a thoracic surgeon stating that “the surgery is medically necessary 20 as his malignancy will progress and would be life-threatening if left untreated. Surgery is 21 the only potentially curative option for this disease.” Id. After multiple court hearings in

22 January 2023, the state court denied Mr. Hightower’s request for temporary release and 23 stated it was leaving the treatment of Mr. Hightower’s tumor up to the Sheriff’s 24 Department. Id. ¶ 25. 25 On April 9, 2023, a medical scan detected that the tumor in Mr. Hightower’s lung 26 had grown a half centimeter in each direction and detected smaller nodules around the main 27 mass as well as growth on Mr. Hightower’s adrenal glands. Id. ¶ 27. 28 // 1 On July 25, 2023, County jail staff transported Mr. Hightower to UCSD hospital for 2 surgery to remove the tumor in his lung. Id. ¶ 29. The excised tumor measured 10-by-10- 3 centimeters at the time of removal. Id. ¶ 30. The doctors also removed both the lower and 4 mid lobes of Mr. Hightower’s right lung. Id. ¶ 33. 5 Mr. Hightower spent ten days at UCSD hospital and five days at Paradise Valley 6 Hospital recovering from surgery before returning to County Jail on or around August 9, 7 2023. Id. ¶¶ 34 – 35. 8 In August 2023, Mr. Hightower filed a request in state court for early release from 9 jail to recover from the July surgery. Id. ¶ 37. In October 2023, the state court granted Mr. 10 Hightower’s request, and he was released from jail. Id. 11 2. Shoulder and Back Injuries 12 Shortly after being taken into custody in December 2022, Mr. Hightower fell from 13 a top bunk bed and suffered shoulder and back injuries. Id. ¶ 40. Mr. Hightower reported 14 his back pain to jail staff and requested treatment. Id. ¶ 41. In April 2023, a scan of Mr. 15 Hightower’s back revealed fractured vertebrae. Id. Mr. Hightower alleges that he 16 repeatedly reported shoulder pain to jail staff and requested treatment, but that none was 17 provided. Id. ¶ 41. In October 2023, following his release from jail, doctors confirmed that 18 Mr. Hightower had suffered a broken clavicle and a torn rotator cuff. Id. ¶ 42. 19 Mr. Hightower alleges that “[t]he delay in treatment of these injuries made them 20 dramatically worse than if they had been treated from the outset.” Id. ¶44. 21 B. Procedural Background 22 On July 3, 2024, Plaintiffs filed this action against the County and two categories of 23 Doe defendants. ECF No. 1. The Complaint asserts five causes of action, including federal 24 civil rights claims under 42 U.S.C. § 1983 against Does

1-30 and the County, state law 25 claims for a violation of California's Bane Act against all Defendants, a claim for 26 negligence against Does 1-14 and the County, and a claim for loss of consortium against 27 all Defendants. Id. ¶¶ 13–19. On October 3, 2024, the County filed the instant motion to 28 dismiss for failure to state a claim under Rule 12(b)(6). ECF No. 9-1. On October 24, 2024 1 and October 31, 2024, respectively, the Parties filed their opposition and reply briefs. ECF

2 Nos. 11, 12.

3 II. LEGAL STANDARD

4 A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of a claim.” 5 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “To survive a motion to dismiss, a 6 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief 7 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. 8 Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[T]he non-conclusory ‘factual content,’ 9 and reasonable inferences from that content, must be plausibly suggestive of a claim 10 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). 11 The plausibility review is a “context-specific task that requires the reviewing court to draw 12 on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679. 13 Pleading facts “‘merely consistent with’ a defendant’s liability” fall short of a 14 plausible entitlement to relief. Id. at 678 (quoting *Twombly*, 550 U.S. at 557). “[W]here the 15 well-pleaded facts do not permit the court to infer more than the mere possibility of 16 misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled 17 to relief.” Id. (internal quotation marks omitted). A court “accept[s] factual allegations in 18 the complaint as true and construe[s] the pleadings in the light most favorable to the 19 nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th 20 Cir. 2008). On the other hand, a court is “not bound to accept as true a legal conclusion 21 couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted).

22 III. ANALYSIS

23 A. Doe Defendants 24 The County seeks to dismiss Plaintiffs’ claims against the Doe defendants. Plaintiffs 25 argue that the County does not have the authority to seek dismissal of the claims against 26 unidentified Doe defendants. 27 Here, the Court agrees there is no indication that the County represents the Doe 28 defendants or has any authority to advance arguments on their behalf. Nevertheless, the 1 Court has the authority to dismiss claims against the Doe defendants sua sponte. *Tabi v. 2 Doe No. 1*, No. EDCV 18-714 DMG(JC), 2019 WL 4013444, at *5 (C.D. Cal. Aug. 26, 3 2019); see *Staggs v. Doctor’s Hosp. of Manteca, Inc.*, No. 2:11-cv-00414-MCE-KJN, 2012 4 WL 5012268, at *11 (E.D. Cal. Oct. 16, 2012) (sua sponte dismissing claim against Doe 5 defendants with leave to amend). 6 The Court therefore considers whether Plaintiffs’ claims against the Doe defendants 7 meet federal pleading standards. See *Lomeli v. Cty. of San Diego*, 637 F. Supp. 3d 1046, 8 1058 (S.D. Cal. 2022) (“[W]hen a plaintiff has claims against an unknown defendant [in 9 federal court], the plaintiff must still meet federal pleading

standards when alleging facts 10 against such defendants.”). Specifically, plaintiffs must “allege ‘specific facts showing 11 how each particular [Doe] defendant violated [the plaintiff’s] rights.’” *Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 941 (S.D. Cal. 2022) (quoting *Keavney v. Cty. of San Diego*,

13 No. 3:19-cv-01947-AJB-BGS, 2020 U.S. Dist. LEXIS 128512, at *9 (S.D. Cal. July 20, 14 2020)); see *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (“A plaintiff must 15 allege facts, not simply conclusions, that show that an individual was personally involved 16 in the deprivation of his civil rights.”). Here, Plaintiffs do not reference any specific fact as 17 to any particular Doe, and thus do not state a claim against any Doe defendant. See *Segura*, 18 647 F. Supp. 3d at 941. 19 B. Section 1983 Claims

20 Section 1983 authorizes civil actions for the “deprivation of any rights . . . secured 21 by the Constitution and laws” against a party acting under color of state law. 42 U.S.C. § 22 1983. The statute “provides a federal cause of action against any person who, acting under 23 color of state law, deprives another of his federal rights[,]” *Conn v. Gabbert*, 526 U.S. 286, 24 290 (1999), and therefore “serves as the procedural device for enforcing substantive 25 provisions of the Constitution and federal statutes.” *Crumpton v. Almy*, 947 F.2d 1418, 26 1420 (9th Cir. 1991). Claims under section 1983 require a plaintiff to allege (1) the 27 violation of a federally protected right by (2) a person or official acting under the color of 28 state law. *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006). Further, to prevail on 1 a § 1983 claim, the plaintiff must establish each of the elements required to prove an 2 infringement of the underlying constitutional or statutory right. 3 1. Eighth Amendment Deliberate Indifference 4 Defendant argues that Plaintiffs fail to allege sufficient facts to sustain a claim for 5 deliberate indifference. ECF No 9-1 at 3. 6 The Eighth Amendment prohibits the imposition of cruel and unusual punishment 7 by state actors. *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (internal quotation omitted). 8 The Eighth Amendment’s proscription against the “unnecessary and wanton infliction of 9 pain” encompasses deliberate indifference by state officials to the medical needs of 10 prisoners. *Estelle*, 429 U.S. at 104 (internal quotation omitted). It is thus well established 11 that “deliberate indifference to a prisoner’s serious illness or injury states a cause of action 12 under § 1983.” *Id.* at 105. 13 To establish an Eighth Amendment violation, a plaintiff must satisfy “both an 14 objective standard—that the deprivation was serious enough to constitute cruel and unusual 15 punishment—and a subjective standard—deliberate indifference.” *Colwell v. Bannister*, 16 763 F.3d 1060, 1066 (9th Cir. 2014) (internal quotation omitted). 17 First, the objective component examines whether the plaintiff has a “serious medical 18 need,” such that the state’s failure to provide treatment could result in further injury or 19 cause unnecessary and wanton infliction of pain. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th

20 Cir. 2006). Serious medical needs include those “that a reasonable doctor or patient would 21 find important and worthy of comment or treatment; the presence of a medical condition 22 that significantly affects an individual’s daily activities; or the existence of chronic and 23

substantial pain.” Colwell, 763 F.3d at 1066 (internal quotation omitted). 24 Second, the subjective element considers the defendant’s state of mind, the extent of 25 care provided, and whether the plaintiff was harmed. “Prison officials are deliberately 26 indifferent to a prisoner’s serious medical needs when they ‘deny, delay, or intentionally 27 interfere with medical treatment.’” Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002) 28 (internal quotation omitted). However, a prison official may only be held liable if he or she 1 “knows of and disregards an excessive risk to inmate health and safety.” Toguchi v. Chung, 2 391 F.3d 1051, 1057 (9th Cir. 2004). The defendant prison official must therefore have 3 actual knowledge from which he or she can infer that a substantial risk of harm exists, and 4 also make that inference. Colwell, 763 F.3d at 1066. While the “failure to give advance 5 notice is not dispositive,” prison officials must have “actual knowledge” that a substantial 6 risk of harm exists. Farmer v. Brennan, 511 U.S. 825, 844 (1994); Hooker v. Gomez, No. 7 16-7019 HSG, 2019 WL 3973750, at *7 (N.D. Cal. Aug. 22, 2019). Thus, an accidental or 8 inadvertent failure to provide adequate care is not enough to impose liability. Estelle, 429 9 U.S. at 105–06. Accordingly, the defendants’ conduct must consist of “more than ordinary 10 lack of due care.” Id. at 835 (internal quotation omitted); see Wood v. Housewright, 900 11 F.2d 1332, 1334 (9th Cir. 1990) (stating “mere malpractice, or even gross negligence” in 12 the provision of care fails to state a deliberate indifference claim). 13 A difference of opinion between a physician and a prisoner—or between medical 14 professionals—concerning what medical care is appropriate does not amount to deliberate 15 indifference. Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (citing Jackson v. 16 McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Instead, the prisoner “must show that the 17 course of treatment the doctors chose was medically unacceptable under the circumstances 18 and that the defendants chose this course in conscious disregard of an excessive risk to 19 [his] health.” Snow v. McDaniel, 681 F.3d 978, 988 (9th Cir. 2012) (overruled, in part, on 20 other grounds by Peralta v. Dillard, 744 F.3d 1076 (9th Cir. 2014)) (quoting Jackson, 90 21 F.3d at 332). When a prisoner alleges that delay of medical treatment evinces deliberate 22 indifference, the prisoner must show that the delay led to further harm. See Shapley v. Nev. 23 Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985). A “mere delay of surgery, 24 without more, is insufficient to state a claim of deliberate medical indifference.” Shapley, 25 766 F.2d at 406-07 (finding that the failure of prison authorities to respond to cumulative, 26 repeated demands for surgery did not itself constitute deliberate indifference). 27 Here, as to the first component of a deliberate ignorance claim, Plaintiffs’ allegations 28 regarding the cancerous tumor in his lung, taken as true, are sufficient to state a serious 1 medical need satisfying the first prong of the analysis. See McGuckin, 974 F.2d 1050, 2 1059–60 (9th Cir. 1992) overruled on other grounds by WMX Techs., Inc. v. Miller, 104 3 F.3d 1133 (9th Cir. 1997) (“[T]he existence of an injury that a reasonable doctor or patient 4 would find important and worthy of comment or treatment; the presence of a medical 5 condition that significantly affects an individual’s daily activities; or the existence of 6 chronic and substantial pain are examples of indications that a prisoner has a

‘serious’ need 7 for medical treatment.”). 8 As to the second prong, however, Plaintiffs do not adequately allege that Defendants 9 had actual knowledge of a substantial risk of harm to Mr. Hightower sufficient to show 10 deliberate indifference. Plaintiffs repeatedly allege that Defendants “delayed” Mr. 11 Hightower’s surgery. But delay is a relative term. Plaintiffs are not alleging that Defendants 12 postponed Mr. Hightower’s surgery, but rather that Defendants should have arranged for 13 his surgery earlier—although they do not say when. According to Plaintiffs, Mr. Hightower 14 had been diagnosed with a cancerous mass months before he was taken into custody. It is 15 not clear whether Plaintiffs are alleging that Defendants were obligated to take Mr. 16 Hightower to surgery immediately upon taking him into custody, such that every day he 17 spent in custody before receiving surgery was a “delay” of surgery. Plaintiffs do not allege 18 when surgery became medically necessary or constitutionally required. Having failed to do 19 this, they also have not properly alleged a basis for concluding that it was the unlawful 20 delay—as opposed to the cancerous tumor that preceded his incarceration—that resulted 21 in removal of the “lower and mid lobes of Mr. Hightower’s right lung.” Id. 1 ¶ 32, 33. 22 Additionally, Plaintiffs fail to allege facts establishing knowledge on the part of 23 Defendants sufficient to rise to the level of deliberate indifference. Plaintiffs allege that 24 Mr. Hightower’s primary care physician stated that Mr. Hightower “needs the surgery as 25 soon as possible due to the tumor affecting his breathing,” id. ¶ 19, but are silent regarding 26 whether or how this was communicated to Defendants. Plaintiffs allege that Ms. Hightower 27 “called jail medical staff to discuss her husband’s medical needs, including the need for 28 tumor-removal surgery,” id. ¶ 20, but do not allege what she said. Plaintiffs similarly allege 1 that Ms. Hightower “dropped off a set of medical records for jail staff to review,” id., but 2 do not indicate what those records contained. Plaintiffs also allege that in early January 3 2023, Mr. Hightower filed a request in state court for temporary release from jail in order 4 to get surgery, and included a letter from a surgeon stating that “the surgery is medically 5 necessary as his malignancy will progress and would be life threatening if left untreated. 6 Surgery is the only potentially curative option for this disease.” Id. ¶ 23. Plaintiffs do not 7 allege that the letter, apparently attached to a court filing, provided a timeframe for needed 8 surgery. Plaintiffs further allege that “a representative of the Sheriff’s Department 9 expressly acknowledged that . . . Mr. Hightower had a serious medical need, namely, a 10 cancerous tumor that needed to be surgically removed from Mr. Hightower’s right lung,” 11 id. ¶ 24, but do not allege that this representative discussed, or was asked about, the timing 12 of needed surgery. 13 Plaintiffs also allege that Does 15-30 knew that Mr. Hightower had serious shoulder 14 and back injuries caused from his fall and were deliberately indifferent “by largely ignoring 15 Mr. Hightower’s shoulder and back injuries.” Id. ¶ 61. Plaintiffs do not allege any facts 16 sufficient to show that Defendants ignored Mr. Hightower’s shoulder and back injuries nor 17 that they believed he needed attention or treatment that he did not receive. Plaintiffs’ own 18 opinion as to the appropriate course of care does not set forth a plausible claim for 19 deliberate indifference. See *Fleming v. Lefevere*, 423 F. Supp. 2d 1064, 1070 (C.D. Cal. 20 2006)

(“Plaintiff’s own opinion as to the appropriate course of care does not create a triable 21 issue of fact because he has not shown that he has any medical training or expertise upon 22 which to base such an opinion.”). 23 Finally, Plaintiffs do not allege any specific facts showing how each particular Doe 24 defendant violated Mr. Hightower’s rights. See Segura, 647 F. Supp. 3d at 941. Plaintiffs 25 fail to state an Eighth Amendment claim and the Court therefore dismisses the Eighth 26 Amendment claims without prejudice. 27 2. Monell 28 The City seeks dismissal pursuant to Rule 12(b)(6) of Plaintiffs’ Monell claim 1 against it “because Plaintiffs have not alleged facts to show a plausibility that a County 2 policy, custom, or practice delayed Hightower’s surgery or otherwise harmed him” and 3 because Plaintiffs do not allege sufficient facts regarding inadequate training and 4 supervision. ECF No. 1 ¶¶ 65–74. 5 “The Supreme Court in Monell held that municipalities may only be held liable 6 under section 1983 for constitutional violations resulting from official county policy or 7 custom.” Benavidez v. Cty. Of San Diego, 993 F.3d 1134, 1153 (9th Cir. 2021) (quoting 8 Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 694 (1978)). “In order to establish liability 9 for governmental entities under Monell, a plaintiff must prove ‘(1) that [the plaintiff] 10 possessed a constitutional right of which [s]he was deprived; (2) that the municipality had 11 a policy; (3) that this policy amounts to deliberate indifference to the plaintiff’s 12 constitutional right; and (4) that the policy is the moving force behind the constitutional 13 violation.’” Dougherty v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011) (quoting 14 Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997)). 15 a. Policy 16 Plaintiffs allege that “the County, Sheriff’s Department, and Sheriff’s Department 17 personnel” had a pattern and practice of “ignoring serious medical needs, ignoring 18 information critical to the health and safety of incarcerated people, and failing to protect 19 people in the County’s custody and care.” ECF No. 1 ¶ 67. 20 “A plaintiff can establish the second element—policy—in three ways: (1) where a 21 public entity acts ‘pursuant to an expressly adopted policy’; (2) where a public entity has a 22 ‘longstanding practice or custom,’ which may arise when the public entity ‘fail[s] to 23 implement procedural safeguards to prevent constitutional violations’ or when it fails to 24 adequately train its employees; or (3) where ‘the individual who committed the 25 constitutional tort was an official with ‘final policy-making authority,’ or such an official 26 ‘ratified a subordinate’s unconstitutional decision or action and the basis for it.’ Sanders 27 v. City of Nat’l City, No. 20-CV-00085-AJB-BLM, 2020 WL 6361932, at *2 (S.D. Cal. 28 1 Oct. 29, 2020) (internal citations omitted); see Benavidez, 993 F.3d at 1153 (citing City of 2 Canton v. Harris, 489 U.S. 378, 387 (1989)). 3 “Liability for improper custom . . . must be founded upon practices of sufficient 4 duration, frequency and consistency that the conduct has become a traditional method of 5 carrying out policy.” Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996); see also Oyenik 6 v. Corizon Health Inc., 696 F. App’x 792, 794 (9th Cir. 2017) (“While one or two incidents 7 are insufficient to establish a custom or policy, we have not established what number of 8 similar incidents would be sufficient to constitute a custom or policy.”) (internal citations 9 omitted); see AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d 631, 636 (9th Cir.

2012); 10 *McDade v. West*, 223 F.3d 1135, 1141 (9th Cir. 2000) (“A plaintiff cannot demonstrate the 11 existence of a municipal policy or custom based solely on a single occurrence of 12 unconstitutional action by a non-policymaking employee.”). A plaintiff may sufficiently 13 plead a Monell custom or practice claim by showing a history of prior similar incidents 14 which are “of sufficient duration, frequency and consistency that the conduct has become 15 a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 16 1996); *Seever v. City of Modesto*, No. 1:21-cv-01373-JLT-EPG, 2022 WL 17418355, at *3 17 (E.D. Cal. Dec. 2, 2022); see also *Ochoa v. City of San Jose*, 2021 WL 7627630, at *6 18 (N.D. Cal. Nov. 17, 2021). To evaluate whether a sufficient pattern of unconstitutional 19 conduct exists, courts typically consider the number of incidents, the factual similarity of 20 those incidents, their timing, and any subsequent action by the defendant. *Seever*, 2022 WL 21 17418355, at *3; *Turner v. City of Sacramento*, 2022 WL 1608031, at *5 (E.D. Cal. May 22 20, 2022). The prior incidents of repeated constitutional violations must be substantially 23 similar in character to establish a Monell claim. See *McCoy v. City of Vallejo*, No. 24 219CV001191, 2020 WL 374356, at *4 (E.D. Cal. Jan. 23, 2020). *Seever*, 2022 WL 25 17418355, at *3; see *Raudelunas v. City of Vallejo*, 2022 WL 329200, at *8 (E.D. Cal. Feb. 26 3, 2020). 27 Here, Plaintiffs’ broad articulations of an informal policy or practice fail to meet the 28 standard to establish liability under the Monell framework. See *AE ex rel. Hernandez*, 666 1 F.3d at 637; see *Herd v. County of San Bernardino*, 311 F. Supp. 3d 1157, 1168 (C.D. Cal. 2 2018) (dismissing Monell claim based on vague ‘customs, practices, or policies’ because 3 plaintiffs “fail[ed] to allege any facts showing that any of the[] claimed policies or customs 4 actually exist[ed]”). Plaintiffs cite sixteen incidents between 2011 and 2021. ECF No. 1 ¶ 5 51. These incidents involve, among other things, drug overdoses, suicides, falls from beds, 6 and head trauma. None of the incidents appear to involve a surgery or other medical 7 procedure that were ultimately performed but that alleged should have been performed 8 earlier. In the Court’s view, Plaintiffs do not cite any incidents with sufficient “factual 9 similarity” to Mr. Hightower’s case, and thus do not show a practice “of sufficient duration, 10 frequency and consistency that the conduct has become a traditional method of carrying 11 out policy.” *Trevino*, 99 F.3d at 918; *Seever*, 2022 WL 17418355, at *3). Plaintiffs fail 12 show a “custom [that is] so ‘persistent and widespread’ that it constitutes a ‘permanent and 13 well settled city policy,” as opposed to “[i]solated or sporadic incidents, [which] will not 14 support Monell liability against a municipality.” See *id.*; *Cf. Leon*, 2017 WL 3232486, at 15 *3 (granting motion to dismiss Monell claim). Plaintiffs’ assertion of a broad policy or 16 practice, without more, does not suffice to state a claim for relief. See *AE ex rel. Hernandez*, 17 666 F.3d at 636 (it is not enough that a plaintiff plead a “bare allegation that the individual 18 officers’ conduct conformed to official policy, custom, or practice”). 19 b. Training 20 Plaintiffs allege that the County “failed to provide adequate training, supervision, 21 and resources for its jail staff.” ECF No. 1 ¶ 69. 22 “To allege a failure to train, a plaintiff must include sufficient facts to support a 23 reasonable inference (1) of a constitutional violation; (2) of a municipal training policy that 24 amounts to a

deliberate indifference to constitutional rights; and (3) that the constitutional injury would not have resulted if the municipality properly trained their [sic] employees.” 26 *Benavidez*, 993 F.3d at 1153–54 (citing *Blankenhorn v. City of Orange*, 485 F.3d 463, 484 27 (9th Cir. 2007)); see *City of Canton*, 489 U.S. at 388 (1989)). “A municipality’s culpability 28 for a deprivation of rights is at its most tenuous where a claim turns on a failure to train.” 1 *Connick v. Thompson*, 563 U.S. 51, 61 (2011). “A pattern of similar constitutional 2 violations by untrained employees is ordinarily necessary to demonstrate deliberate 3 indifference for purposes of failure to train, though there exists a narrow range of 4 circumstances [in which] a pattern of similar violations might not be necessary to show 5 deliberate indifference.” *Flores v. Cty. of L.A.*, 758 F.3d 1154, 1159 (9th Cir. 2014) 6 (internal quotation marks omitted); see *Estate of Mendez*, 390 F. Supp. 3d 1189, No. 1:18- 7 cv-01677-LJO-BAM, 2019 WL 2715615, at *13 (E.D. Cal 2019) (“‘[T]he identified 8 deficiency in a local governmental entity’s training program must be closely related to the 9 ultimate injury.’”) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001)). 10 Plaintiffs fail to adequately allege a pattern of similar constitutional violations to 11 plausibly support a claim for failure to train. As discussed above, the examples Plaintiffs 12 cite show incidents not sufficiently similar to the allegation at issue. See ECF No. 1 ¶ 51; 13 see *Connick*, 563 U.S. at 63 (holding district attorney could not have been put on notice 14 that “specific training was necessary” to avoid a constitutional violation based on incidents 15 that were not similar to the violation at issue); *Estate of Davis v. City of N. Richland Hills*, 16 406 F.3d 375, 383 (5th Cir. 2005) (“Prior indications cannot simply be for any and all ‘bad’ 17 or unwise acts, but rather must point to the specific violation in question. That is, notice of 18 a pattern of similar violations is required.”). 19 Plaintiffs have not set forth sufficient facts to support the contention that the County 20 has a policy, custom, or practice of “sufficient duration, frequency and consistency that the 21 conduct has become a traditional method of carrying out policy.” See *Trevino*, 99 F.3d at 22 918; *Monell*, 436 U.S. at 694; *Iqbal*, 556 U.S. at 678. 23 C. Bane Act 24 Defendant next argues that Plaintiffs’ Bane Act claim against the Defendants for 25 deliberate indifference to Mr. Hightower’s health and safety fails because “Plaintiffs have 26 not alleged sufficient facts to show a violation of Plaintiff[s]’ rights.” ECF No. 9-1 at 8. 27 The Thomas Bane Civil Rights Act (“Bane Act”) is codified in California Civil Code 28 § 52.1. “The essence of a Bane Act claim is that the defendant, by the specified improper 1 means (i.e., “threats, intimidation or coercion”), tried to or did prevent the plaintiff from 2 doing something he or she had the right to do under the law or to force the plaintiff to do 3 something that he or she was not required to do under the law.”” *Cornell v. City and County 4 of San Francisco*, 17 Cal. App. 5th 766, 791-92 (Ct. App. 2017) (quoting Cal. Civ. Code § 5 52.1). Violations of the federal and California Constitution are all Bane Act violations. See 6 Cal. Civ. Code § 52.1(b). “The elements of a Bane Act claim are essentially identical to 7 the elements of a § 1983 claim, with the added requirement that the government official 8 had a ‘specific intent to violate’ a constitutional right.” *Hughes v. Rodriguez*, 31 F.4th 1211, 9 1224 (9th Cir. 2022). 10 The Ninth Circuit has held that

“the Bane Act does not require the ‘threat, 11 intimidation[,] or coercion’ element of the claim to be transactionally independent from the 12 constitutional violation alleged” so long as the claimant shows the defendant had a 13 “specific intent” to commit the constitutional violation. *Reese v. Cty. of Sacramento*, 888 14 F.3d 1030, 1043 (9th Cir. 2018). 15 Plaintiffs contend that their Bane Act claim should proceed because they have 16 adequately alleged a violation of Mr. Hightower’s “‘clearly delineated and plainly 17 applicable’ right to be free from deliberate indifference to serious medical needs.” ECF

18 No. 11 at 15. However, as set forth above, the Court has concluded the Complaint fails to 19 sufficiently state a plausible § 1983 deliberate indifference claim against the Defendants. 20 Accordingly, Plaintiffs’ alleged Bane Act violation against Defendants is dismissed. See 21 *Reese*, 888 F.3d at 1044 (quoting *Cameron v. Craig*, 713 F.3d 1012, 1023 (9th Cir. 2013)) 22 (“Section 52.1 does not provide any substantive protections; instead, it enables individuals 23 to sue for damages as a result of constitutional violations.”). 24 D. Negligence and Loss of Consortium 25 Plaintiffs’ fourth and fifth claims are for negligence against Does 1-14 and the 26 County and loss of consortium against all Defendants. While Defendant initially argued 27 that Plaintiffs’ negligence and loss of consortium claims fail because Plaintiffs have not 28 alleged a special relationship between Mr. Hightower and the Defendants, it withdrew this 1 argument in its Reply in Support of its Motion to Dismiss. ECF No. 12 at 2 n. 1. The Court 2 therefore considers whether Plaintiffs have plausibly pleaded a negligence and loss of 3 consortium claim against the Doe defendants only. 4 “In order to establish negligence under California law, a plaintiff must show that 5 the defendant had a legal duty to use due care, that the defendant breached that duty, and 6 that the breach was a legal or proximate cause of plaintiff’s injury.” *USAir v. United States* 7 Dep’t of the Navy, 14 F.3d 1410, 1412 (9th Cir. 1994). By statute, California imposes a 8 duty on government employees who have custody of prisoners to provide medical care to 9 the prisoners when needed. Cal. Gov’t Code § 845.6. A government employee breaches 10 that duty when a prisoner “is in need of immediate medical care and [the employee] fails 11 to take reasonable action to summon such medical care.” *Id.* 12 Here, Plaintiffs allege Does 1-14 breached their duty of care “by failing to take 13 reasonable action to summon the medical care necessary to promptly treat the cancerous 14 tumor growing in Mr. Hightower’s lung.” ECF No. 1 ¶ 87. Plaintiffs’ negligence claim 15 against Does 1-14 suffers from the same issue as the deliberate indifference claim—it is 16 too conclusory to plausibly state a claim. Plaintiffs fail to provide any information about 17 when or how much earlier Mr. Hightower should have received surgery. Further, Plaintiff 18 has not alleged sufficient facts to state a claim that Defendants had actual knowledge from 19 which to infer that a substantial risk of harm existed due to a delay in surgery and that this 20 delay led to harm. As the Court found that Plaintiffs do not plausibly allege Section 1983 21 or Bane Act claims against the Defendants, Plaintiffs similarly fail to state a negligence 22 claim against Does 1-14. 23 The elements of a loss of consortium claim are (1) a valid and lawful marriage 24 between the plaintiff and the person injured at the time of the injury;

(2) a tortious injury to the plaintiff's spouse; (3) loss of consortium suffered by the plaintiff; and (4) the loss was proximately caused by the defendant's act. *LeFiell Mfg. Co. v. Superior Ct.*, 55 Cal. 2d 475, 284–85 (1962). As a loss of consortium claim requires a tortious injury, the claim is “unquestionably derivative” of Plaintiffs’ negligence claims. See *id.* at 284. Because Plaintiffs’ negligence claim fails, there is no tortious injury, and Plaintiffs’ loss of consortium claim fails. See *id.* at 284. Plaintiffs fail to state claims for negligence against Does 1-14 and loss of consortium against Does 1-30.

IV. LEAVE TO AMEND

Plaintiffs request leave to amend if the Court grants the County's motion to dismiss. ECF No. 11 at 19. District courts should “freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Leave to amend should be granted unless the district court determines that the pleading could not possibly be cured by the allegation of other facts.” *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (internal quotation marks omitted). The deficiencies identified in the claims above are susceptible to being cured by the allegation of additional facts. Accordingly, the Court grants Plaintiffs leave to file a second amended complaint. The Court cautions Plaintiffs that if a viable federal claim is not set forth in their amended complaint, the Court may decline supplemental jurisdiction over any remaining claims. *Herman Family Revocable Tr. v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001). (“[S]upplemental jurisdiction may only be invoked when the district court has a hook of original jurisdiction on which to hang it.”) (citing 28 U.S.C. § 1367(a)).

CONCLUSION

For the above reasons, the Court GRANTS the County's motion to dismiss Claims 1, 2, and 3 of Plaintiffs' Complaint. The Court DISMISSES Claim 4 as to Does 1-14 and Claim 5 as to Does 1-30. Plaintiffs' amended complaint must be filed within fourteen (14) days of the date of this Order. IT IS SO ORDERED. Dated: March 14, 2025
Hon. Robert S. Huie United States District Judge