



Lea v. City of San Diego et al

2024 | Cited 0 times | S.D. California | March 6, 2024

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

KIMBERLINA ALEXA LEA,

Plaintiff, v. CITY OF SAN DIEGO, et al.,

Defendants.

Case No.: 3:22-cv-01581-RBM-VET

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS COMPLAINT

[Doc. 30]

Presently before the Court is Defendants City of San Diego, Ace Ybanez, Joshua Clabough, Jason Gonzalez, Joshua Leiber, David Burns, Kevin Cummings, and Miles McCarde , Motion to Dismiss Plaintiff Kimberlina Alexa First Amended Complaint to Dismiss (Doc. 30-1.) Plaintiff, appearing pro se, filed a response Motion to Dismiss Response . (Doc. 32.) Defendants did not file a reply.

The Court finds the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, Motion to Dismiss is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND Plaintiff filed this action on October 13, 2022 against the City of San Diego and certain officers related to the death of her father, Richard Price. (Doc. 1.) Defendants filed (Doc. 22.) The Court granted Plaintiff leave to amend. (Id. at 5, 7.) 1

alleges that on July 9, 2020, Price was in an altercation with an individual who pulled a gun on him. (Id. at 2, 9.) Price then picked up his legal airsoft pellet gun for self-protection. (Id.) At the time of the incident, Price was under the influence of phencyclidine (PCP), methamphetamine, and amphetamine, which impaired his mental faculties and prevented him from fully comprehending the situation. (Id. at 2, 8.) arrival at the scene, Defendant Sergeant Woodward, ID 6287, failed to properly identify

[Price] and neglected to recognize his impaired state, choosing not to deescalate the situ Id. at 9.)



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Defendants then discharged over 40 rounds, causing a fatal gunshot (Id. at 2, 9.) 2

Plaintiff filed this lawsuit Id. at 3, 6.) Plaintiff brings five claims against Defendants: (1) use of excessive force in violation of 42 U.S.C. § 1983 (Count 1); (2) a § 1983 claim against the City of San Diego pursuant to Monell v. Department of Social Services, 436 U.S. 658 (1978) (Count 2); 3

(3) battery (Count 3); (4) intentional infliction of emotional distress (Count 4); and (5) negligence/wrongful death (Count 5). (Id. at 1, 10 24.)

contributed to the unco Id. at 3.)

1 The Court cites the CM/ECF pagination unless otherwise noted. 2 The Court notes that on page two of the FAC, Plaintiff states that Price was shot 40 times; however, on page nine of the FAC, Plaintiff states that Defendants discharged over 40 rounds. This 3 This claim is commonly referred to as a Monell claim. inadequately investigating and addressing complaints of officer misconduct, including

those filed agai Id. at 14.) Plaintiff Id.)

adequately train and supervise their provide -escalation

techniques, and appropriate force appli (Id. at 3, 15.) Specifically, Plaintiff alleges he City of San Diego maintains policies and training procedures governing the use of force by its law enforcement officers delineate the circumstances in which force may be employed and the appropriate levels of force based on the exigency of the situation. Id. at 13.) y

of San Diego, failed to de- Id. at 12.) Plaintiffs also alleges that

the situation and further emphasizes the need for proper training and de-escalation techniques (Id.)

pattern of misconduct and deliberate indifference to the constitutional rights of citizens[,

n the San Diego Police (Id. at 4, 13, 15, 16.)

II. LEGAL STANDARD failure to state a claim upon which relief can be granted Fed.

R. Civ. P. 12(b)(6). At the motion to dismiss stage, all material factual allegations in the complaint are accepted as true and are construed in the light most favorable to the non- moving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337 38 (9th Cir. 1996).

To avoid dismissal under Rule 12(b)(6), a complaint need not contain detailed



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Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). court to draw the reasonable inference that the defendant is liable for the misconduct

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556). I - Moss v.

U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (citing Iqbal, 556 U.S. at 678). Id. (quoting Twombly, 550 U.S. at 557).

even if no request to amend the pleading was made, unless it determines that the pleading

could not possibly be cured by the alleged Cook, Perkiss & Liehe v. N. Cal. Collection Serv., 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted).

III. DISCUSSION A. Statute of Limitations

Defendants contend that FAC is barred by the applicable statute of limitations. (Doc. 30-1 at 9 11.) Defendants argue that to a two-year statute of limitations, on July 9, 2020, and that her initial complaint was not filed until October 13, 2022, more

than two years later. (Id. at 9 10.) Defendants also argue that even with the additional time to file her complaint granted still time-barred. (Id. at 10 11.)

In response, Plaintiff contends that 7, 2022, well within the statute of limitations, and assigned case number 22-cv-1003-RBM-

WVG by the Honorable Judge Montenegro. , 8 10.) Case number 22-cv- 1003-RBM-WVG, filed on July 11, 2020, also concerns the wrongful death of father, who was fatally shot by police on July 9, 2020. (Doc. 32-2 at 6 8.) Defendants did not file a reply brief statute of limitations arguments.

provides a federal cause of action, but in several respects relevant here federal law looks to the law of the State in which the cause of action arose. This is so for the length of the statute of limitations: It is that which the State provides for personal- Wallace v. Kato, 549 U.S. 384, 387 (2007) (citations omitted); see also Colony Cove Props., LLC v. City of Carson, 640 F.3d 948, 956 (9th Cir. 2011) California's statute of limitations for personal injury actions governs claims brought pursuant to 42 U.S.C. § 1983. (citations omitted); Canatella v. Van De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007) (holding California's In California assault, battery, or injury to, or for the death of, an individual caused by the wrongful act

or neglect of another, including claims for intentional infliction of emotional distress, must be filed within two years. Cal. Civ. Proc. Code § 335.1; see also Moss v. Provident Life & Acc. Ins. Co., No.



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09cv0674 DMS (WVG), 2009 WL 4043065, at *2 (S.D. Cal. Nov. 20, 2009) (claims for intentional infliction of emotional distress are governed by Cal. Civ. P. Code § 335.1). Thus, all of claims are subject to a two-year statute of limitations.

Wallace, 549 [A]ccrual occurs when

the plaintiff has a complete and present cause of action, that is, when the plaintiff can file Id. (finding that the petitioner could have filed suit as soon as the wrongful arrest occurred) (internal citations and quotation marks omitted). Therefore, the on July 9, 2022, the date the wrongful death allegedly occurred. Likewise, the statute of limitations for Plaintiff death began running on July 9, 2020, the date of injury. Mariscal v. Innovasis, Inc., No. 2:18-cv-08285-SVW-SK, 2019 WL 2970833, at *1 (C.D. Cal. May 17, 2019) (an action accrues on the date of injury) (citing Jolly v. Eli Lilly & Co., 44 Cal. 3d 1103, 1109 (1988)).

also See Nares v. City & Cnty. of San Francisco, Case No. 22-cv-07497-AGT, 2023 WL 3102554, at *1 (N.D. Cal. Apr. § 1983 claims). Under Emergency Rule exceed[ed] 180 days [were] tolled from April 6, 2020, until October 1, 2020. Id. (quoting

Cal. Rules of Court, App. I, Emergency Rule 9(a)). Thus, the statute of limitations for Plaintiff s claims did not begin to run until October 1, 2020 and must have been filed on or before October 1, 2022. Id. cannot benefit from tolling that predated his accrual date. Tolling pauses a statute of limitations that would otherwise be running. see also Lantzy v. Centex Homes, 31 Cal. 4th 363, 370 (2003) ations period stops running during the tolling event, and begins to run again .

Here, Plaintiff explains that well within the statute of limitations, and assigned case number 22-cv-1003-RBM-WVG

Although this complaint does not specify any causes of action and was filed under a different case number, this complaint also concerns the allegedly wrongful death of her father and was filed on July 11, 2020. (Doc. 32-2 at 6 8.) Walton v. Guinn, 187 however, the commencement of the action relates back to the filing of the original

Further, limitations arguments barred by the statute of limitations.

B. Monell Claim

Defendants argue that Monell claim is appropriate because Plaintiff adds only conclusory statements to the FAC which appear to be addressed to a custom and practice of racial profiling and discrimination and inadequate training [] without any factual support for the allegations. (Doc. 30-1 at 11 12.) Defendants also contend that he official policy and failure to train allegations are entirely conclusions Plaintiff has still not alleged any facts supporting her contention that the City has



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policies, customs, usages, and practices regarding unlawful arrests, use of excessive force, and covering up such conduct. *Id.*)

In response, Plaintiff argues that she has alleged that the City of San Diego adheres to a policy or custom of racial profiling and bias and fail[s] to provide adequate training and supervision that these allegations are consistent with the guidance (Doc. 32 at 3.) Plaintiff asserts that over 300 American citizens, including my late father,

Richard Price, were deprived of due process at the hands of San Diego Police officers and in the past two decades, 217 individuals have tragically lost their lives following encounters with San Diego-area law enforcement *Id.* at 9.) Likewise, Plaintiff asserts that in the United States there were 1,200 killings by police in 2022. (*Id.* at 9, 11.) Plaintiff he statistics and reports [she] ha[s] cited serve to underline the existence of systemic issues and provide substantial support for my allegations of unconstitutional policies and practices within the San Diego Police Department *id.* people would be alive today had the officers been trained[] and held accountable *id.* at 11). The Court notes, however, that Plaintiff did not allege these statistics in her FAC.

Municipalities cannot be held vicariously liable under 42 U.S.C. § 1983 for the actions of their employees. *Monell*, 436 U.S. at 694. Instead, it is when execution of a government policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983. *Id.* To prevail in a civil action against a local (1) that he possessed a constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional right; and (4) that the policy is the moving force behind the constitutional violation. *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting *City of Canton v. Harris*, 489 U.S. 378, 389-91 (1989)).

A plaintiff may establish municipal liability under 42 U.S.C. § 1983 in one of three constitutional violation pursuant to a formal governmental policy or a longstanding practice

or custom which constitutes the standard operating procedure of the local governmental *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992) (internal quotation marks omitted) (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)). Second, the - *Id.* at 1346-47 (citations omitted). 4

Third, a municipality may be held liable for inadequate training of its employees where in the violation of constitutional rights, that the policymakers of the city can reasonably be

said to have been deliberately indifferent *t City of Canton*, 489 U.S. at 390.

Here, as set forth below, *Monell* [s] any factual allegations that would separate [it] recitation of a cause of action elements deemed insufficient by *Twombly*. *Dougherty v. City of Covina*, 654 F.3d 892,



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900 (9th Cir. 2011) (quoting Twombly, 550 U.S. at 555).

1. Governmental Policies, Practices, and Customs A decision to adopt a particular course of action by the government's authorized In other words, a policy is a deliberate choice to follow a course of action made from among various alternatives by the official or officials responsible for establishing final policy with respect Oviatt By & Through Waugh, 954 F.2d at 1477 (internal quotation marks and citations 4

This second avenue for liability is not at issue in the present case. not authorized by written law or express municipal policy, is so permanent and well-settled City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (internal quotation marks and citation omitted).

Plaintiff alleges in the FAC that City of San Diego maintains policies governing the use of force by law enforcement officers, which delineate the circumstances in which force may be employed and the appropriate levels of force based on the exigency of the situation. (Doc. 23 at 13.) Plaintiff then Id. at

3.) However, Plaintiff does not support this conclusory allegation with any specific factual allegations regarding which policy, custom, and/ and how. Plaintiff also inadequately investigating and addressing compla at 14.) However, Plaintiff does not support this conclusory statement with any specific

factual allegations regarding how the City of San Diego treats complaints of officer misconduct. Plaintiff also does not allege how the City of San Diego failure to investigate or address complaints of officer misconduct .

demonstrated in the targeting of Richard Lewis Price solely

Id.) However, Plaintiff does not allege that an official policy of racial profiling and bias decisionmak allegations regarding the treatment of one individual

longstanding practice or custom, Gillette, 979 F.2d at 1346, that is so -settled as to constitute a custom City of St. Louis, 485 U.S. at 127 (internal quotation marks and citation omitted).

2. Inadequate Training To state a Monell claim for failure to train, a plaintiff must allege: (1) inadequate training and (2) deliberate indifference to the rights of persons with whom the untrained employees come into contact. Connick v. Thompson, 563 U.S. 51, 61 (2011) (citation omitted). municipal actor disregarded a known or obvious consequence of his action. Id. A less

stringent standard of fault for a failure-to-train claim would result in de facto respondeat superior liability on municipalities Id. at 62 (internal quotation marks and citation omitted). constitutional



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rights, the city may be deemed deliberately indifferent if the policymakers

Id. at 61 (internal quotation marks and citation omitted). Typically, by untrained employees is Id. at 62 (internal quotation marks and citation omitted).

Here, pervise their officers played a crucial role in the tragic [death] , specifically, that Defendants rights, de- (Doc. 23 at 3, 15.)

Plaintiff also he City of San Diego maintains training procedures governing the use of force by its law enforcement officers delineate the circumstances in which force may be employed and the appropriate levels of force based on the exigency of the situation. Id. at 13.) Plaintiff then on the scene, instead of utilizing their training and negotiation skills, which should have

d to de- Id. at 12.) potential mishandling of the situation and further emphasizes the need for proper training

and de-escalation tec Id.)

Plaintiff does not support these conclusory allegations with factual allegations regarding the training procedures currently in place, their deficiencies, and how the th. Plaintiff s allegations are also inconsistent. On one hand, Plaintiff seems to allege that Defendants were trained in the appropriate use of force but failed to comply with the training. On the other hand, Plaintiff seems to allege that, had Defendants been trained properly, they would have known to de-escalate the situation rather than using excessive force. Thus, the need for more or different training is constitutional rights, that the policymakers of the city can reasonably be said to have been

City of Canton, 489 U.S. at 390. 5

Additionally, Plaintiff does not allege pattern of similar constitutional violations resulting from the same inadequate training and cannot show that the City of San Diego not to rectify. See Connick, 563 U.S. at 61 62. Thus, Plaintiff has not alleged deliberate

indifference to the rights of persons with whom the untrained employees come into contact. Id. at 61.

Accordingly, the Court GRANTS Defendant Motion as to Monell claim and DISMISSES Monell claim without prejudice. However, the Court GRANTS Plaintiff leave to amend her FAC. Cook, Perkiss & Liehe, 911 F.2d at 247. C. Government Claims Act

Defendants argue that emotional distress, and wrongful death should be dismissed because she did not comply



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with Government Claims Act . (Doc. 30-1 at 12.) Specifically, Defendants argue that Plaintiff did not file a timely claim with the City of San Diego pursuant to California Government Code Sections 911.2(a) and 945.4 (id. at 13) and is not permitted to rely on (id. at 14 16). Finally, Defendants argue that

5 The Court is also hesitant to infer inadequate training in the present case. Here, Plaintiff alleges that her father was under the influence of several drugs and carrying an airsoft gun at the time of the incident. Therefore, it is not immediately apparent that conduct may have constituted excessive force. Plaintiff should not be granted leave to amend these three claims because Plaintiff is not able remedy her failure to comply with the Claims Act. (Id. at 16.)

In response, Plaintiff acknowledges that the original claim in this matter was filed in the name of her fat invalid. (Doc. 32 at 3.) Response is dated January

8, 2021, identifies Price as the claimant, and states:

On Thursday, July 9, 2020, in the 4200 block of Menlo Avenue in the San Diego neighborhood of City Heights, San Diego Police Department officers fatally shot Richard Lewis Price. The officers that opened fire on Mr. Price have been identified as David Burns, Joshua Clabough, Kevin Cummins, J San Diego Police Officers used excessive deadly force resulting in the wrongful death of Mr. Price. (Doc. 32-3 at 2.) Plaintiff argues that Probate Sections 9620, 9630, and 8400. (Id. at 3 4.) Likewise, in the FAC, Plaintiff

alleges that is of his e 6

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented not later than six months after the accrual of the cause of action. Cal. Gov t Code § 911.2(a). o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board . 6

The Court notes that, after filing her FAC, Plaintiff also Claim Against the City of San Diego and her correspondence with her former counsel . (Doc. 25.) However, this correspondence (id. at 5 Id. § 945.4 he filing of a claim is a condition precedent to the maintenance of any cause of action against the public entity and is therefore an element that a plaintiff is required to prove in order to prevail. DiCampli-Mintz v. Cnty. of Santa Clara, 55 Cal. 4th 983, 990 (2012) (quotation mark and citation omitted) (emphasis omitted). Each theory of recovery against the public entity must have been reflected in a timely claim. , 212 Cal. App. 4th 1051, 1060 (2013) (quotation and citation omitted). a plaintiff must allege facts demonstrating or excusing compliance with the claim presentation requirement. Otherwise, his complaint is subject to a general demurrer for failure to state facts sufficient to constitute a cause of action. State of California v. Superior Ct., 32 Cal. 4th 1234, 1243



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(2004).

Where two or more persons suffer separate and distinct injuries from the same act or omission, each person must submit a claim, and one cannot rely on a claim presented by another. *Nelson v. Cnty. of Los Angeles*, 113 Cal. App. 4th 783, 796 (2003); see also *Nguyen v. Los Angeles Cnty. Harbor/UCLA Med. Ctr.*, 8 Cal. App. 4th 729, 732 734 (1992) (claim filed for injured child does not permit parents to sue for negligent infliction of emotional distress without filing their own claim for their separate and distinct injury); *Lewis v. City and County of San Francisco*, 21 Cal. App. 3d 339, 341 (1971) (wrongful death plaintiffs could not rely on decedent's pre-death tort claim for her personal injuries); *Castaneda*, 212 Cal. App. 4th at 1062 63 (finding trial court abused its discretion in denying state's motion for judgment on the pleadings with respect to wrongful death cause of action because she never complied with Claims Act). Because this rule is based on the purpose of the claim statutes which is to provide sufficient information to enable the entity to adequately investigate claims and to settlement, if appropriate, without the expense of litigation the statutory requirements have not been met by the person who has not filed a claim, and the doctrine of substantial compliance does not apply. *Nelson*, 113 Cal. App. 4th at 797 (internal citation omitted). The Court addresses each claim separately.

1. Battery As stated above, [w]here two or more persons suffer separate and distinct injuries from the same act or omission, each person must submit a claim, and one cannot rely on a *Nelson*, 113 Cal. App. 4th at 796. In the FAC, Plaintiff states alleges that the [p]laintiff suffered severe damages, including physical pain, suffering, and emotional distress. 16 17.) Plaintiff also alleges that [t]he [p]laintiff incurred economic damages, including but not Id. at 17.) As pled, it is unclear whether Plaintiff is stating a claim for battery on behalf of herself or on behalf of her father. In this section of the FAC, Plaintiff seems to use the word both herself and her deceased father. While any claim for battery capacity on behalf of herself must be dismissed due to her failure to comply with the Claims Act, Plaintiff may pursue a battery claim on behalf of her father. See *Deen v. City of Redding*, Civ. No. S-13-1569 KJM CMK, 2014 WL 1513353, at *6 (E.D. Cal. Apr. 11, 2014) he injuries from the excessive force, battery, and negligence ve rise to wrongful death damages [for an (emphasis added); see also *Quiroz v. Seventh Ave. Ctr.*, 140 Cal. App. 4th 1256, 1276 79 (2006) (finding that that several survivor causes of action, e.g., negligence, on behalf of the decedent were not).

2. Intentional Infliction of Emotional Distress In *Nguyen*, a minor child filed a claim against a county hospital alleging that she sustained injuries because of negligent medical treatment. 8 Cal. App. 4th at 731. he plaintiff parents, appeal from a nonsuit order as to their causes of action for negligent infliction of severe emotional distress. Id. The parents did not file a claim naming themselves as claimants. Id. at 731 32. On appeal, t parents argue[d] their claim was derivative of their daughter's claim and therefore they were entitled to rely upon the tort claim filed by their daughter. Id. at 733. The California Court of Appeal disagreed and held:

The plaintiff parents causes of action for negligent infliction of severe emotional distress arose out of



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the same transaction as their daughter's medical malpractice claim. However, the injuries allegedly suffered by the plaintiff parents were separate and distinct from those suffered by their daughter. The plaintiff parents claims were for emotional injuries as witnesses to their daughter s injuries and for emotional injuries and economic damages as direct victims of the County s negligence. The alleged emotional injuries and economic damages were personal to the plaintiff parents. Therefore, the plaintiff parents could not rely on their daughter s tort claim.

Id. at 734. Here, like the parent plaintiffs in Nguyen, Plaintiff has filed a claim for the intentional infliction of emotional distress arising claims but based on her own separate and distinct emotional, physical, and economic

injuries. (See Doc. 23 at 1, 19 22.) 7

These injuries are personal to Plaintiff, meaning she Claims Act claim to assert her own claim for intentional infliction of emotional distress. See Nguyen, 8 Cal. App. 4th at 734. Therefore, the Court finds that plaintiff has not complied with the Claims Act and dismisses her claim for intentional infliction of emotional distress.

3. Wrongful Death Negligence In Castaneda, a decedent was in custody from approximately October 2004 to February 2007. 212 Cal. App. 4th at 1057 59. Nine days after his release, the decedent was diagnosed with invasive squamous cell carcinoma, which had already spread to his lymph nodes. Id. at 1059. He died a year later. Id. While still alive, the decedent presented a timely government tort claim and filed a single cause of action for violations of California Government Code Section 845.6 regarding inadequate medical care in custody. Id. The laint to Id. However, the daughter never filed a government tort claim. Id. The court It has long been the

7 on this claim. tentional infliction of emotional distress as brought in her individual capacity on behalf of herself only. law in California, that an action for wrongful death is wholly distinct from an action by the Id. at 1063 (quotation and citation omitted). The court held wrongful death claim. Id.

Here, Plaintiff alleges that s a direct and proximate result of [the City of San negligence, [Price] suffered severe injuries, pain, and emotional distress, ultimately resulting in his t of negligence, [she] Id.) Thus, as

pled, Plaintiff appears to be bringing a claim for wrongful death/negligence on behalf of both herself and her father. Under Castaneda, Plaintiff Act claim as a substitute for her own wrongful death/negligence claim, and her personal

claim for wrongful death/negligence must be dismissed. However, Plaintiff may bring a negligence claim on behalf of her father. See Deen, 2014 WL 1513353, at *6; Quiroz, 140 Cal. App. 4th at 1276 79.



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4. Conclusion [are] jurisdictional and the failure to satisfy such preconditions [is] California State Univ., Fresno Assn., Inc. v. Cnty. of Fresno, 9 Cal. App. 5th 250, 265 (2017). Additionally, the time to file a late-claim application has long passed. See Munoz v. State of California, 33 Cal. App. 4th 1767, 1779 When the underlying application to file a late claim is filed more than one year after the accrual of the cause of action, the court is without jurisdiction to grant relief Therefore, the Court finds that amendment would be futile and DISMISSES individual claims for battery, intentional infliction of emotional distress, and wrongful death/negligence brought on behalf of herself with prejudice. However, Plaintiff may pursue claims for battery and/or wrongful death/negligence on behalf of her father. See Deen, 2014 WL 1513353, at *6; Quiroz, 140 Cal. App. 4th at 1276 79. D. Federal Rule of Civil Procedure 12(f) Motion to Strike

charged, redundant to the point of unnecessarily repeating other averments already set

-1 at 18.) Therefore, Defendants request that the Court strike page 3, paragraph 5 and all references to punitive damages; page 4, paragraph 8 as conclusory; page 4, paragraphs 9 and 10 as duplicative and irrelevant; page 8, paragraph 7 as irrelevant; page 10, paragraphs 14/15 as irrelevant and inflammatory; page 12, paragraph 7 as conclusory; page 12, paragraph 8 as irrelevant and inflammatory; page 13, paragraphs 3 and 4 as irrelevant and inflammatory; page 14, paragraphs 6 and 7 as irrelevant and inflammatory; page 15, paragraphs 9 and 10 as irrelevant and inflammatory; page 16, paragraph 11; page 20, paragraph 31 as inflammatory and irrelevant; page 20, paragraph 32 as irrelevant; page 21, paragraphs 33 and 34 as irrelevant; and page 22, paragraph 36 as inflammatory. (Id.)

immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on

motion made by a party either before responding to the pleading or, if a response is not

could have no possible bearing on the subject matter of LeDuc v. Kentucky

Cent. Life Ins. Co. background or historical material or other matter of an evidentiary nature will not be

stricken unless unduly prejudicial to Id.

As a preliminary matter, the Court DENIES s to strike page 4, paragraph 5 and page 12, paragraph 7 as conclusory. Conclusory allegations are not subject to a motion to strike under Rule 12(f), which only permits motion DENIES motion to strike page 16, paragraph 11 as Defendants have not provided any basis in their motion. The Court also DENIES trike page 3, paragraph 5 and all references to punitive damages because Fitch v. Galland, No. 1:16-CV-00489-JLT,

2017 WL 1231869, at *6 (E.D. Cal. Jan. 6, 2017) (citing Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d



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970, 974 (9th Cir. 2010)).

Defendants move to strike all of the remaining claims as irrelevant or inflammatory; however, as stated above, [m]otions to strike are generally not granted unless the matter could have no possible bearing on the litigation, and background or historical material or other matter of an evidentiary nature will not be

stricken unless unduly prejudicial to defendant. LeDuc, 814 F. Supp. at 830. None of the claims identified by Defendants are irrelevant or inflammatory to the point of being prejudicial. Thus, the Court DENIES in its entirety.

IV. CONCLUSION For the reasons set forth above, the Court GRANTS IN PART and DENIES IN PART

1) GRANTS Monell claim, DISMISSES

the claim without prejudice, and GRANTS Plaintiff leave to amend her Monell claim; 2) GRANTS battery, intentional infliction of emotional distress, and wrongful

death/negligence brought on behalf of herself and DISMISSES those claims with prejudice; and 3) DENIES to Strike pursuant to Federal Rule of Civil

Procedure 12(f). Plaintiff may file an amended complaint on or before Tuesday, March 19, 2024 which cures the Monell claim deficiencies noted above. Plaintiff is cautioned that conclusory allegations unsupported by specific factual allegations are insufficient to properly comply with the Federal Rules of Civil Procedure. If Plaintiff fails to file an amended complaint on or before March 19, 2024, the case will proceed on Plaintiff's remaining claim for excessive force in violation of 42 U.S.C. § 1983 (not specifically addressed by the Defendants in their Motion to Dismiss) and any claim for battery or negligence .

IT IS SO ORDERED. DATE: March 6, 2024

STATES DISTRICT JUDGE HON. RUTH BERMUDEZ MONTENEGRO UNITED

