UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 19-793-MWF (JEMx) **Date: February 26, 2021**
Title: Joseph Evans et al. v. County of Los Angeles et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [107]

Before the Court is Defendants County of Los Angeles (the "County"), Ezequiel Gallegos, Joe Araujo, Joe Sevilla, and Pamela Hardin's Motion for Summary Judgment (the "Motion"), filed on December 14, 2020. (Docket No. 107). Plaintiffs Tony Joseph Evans, through his successor in interest Joseph Charles Evans, Joseph Charles Evans, Tony Joseph Evans, Jr., L.C.E., a minor, through his guardian ad litem Janice Cantu, and Janice Cantu filed an opposition on January 4, 2021. (Docket No. 116). Defendants filed a reply on January 13, 2021. (Docket No. 120).

The Court has read and considered the papers filed in connection with the Motion and held a telephonic hearing on February 1, 2021, pursuant to General Order 20-09 arising from the COVID-19 pandemic.

For the reasons set forth below, the Motion is **DENIED** with respect to the standing issue, the state law negligence claim, and the Fourteenth Amendment failure to protect claim. The Motion is **GRANTED** with respect to the supervisory liability claim and *Monell* claims.

I. BACKGROUND

Plaintiffs commenced this action on February 1, 2019. (Complaint (Docket No. 1)). Plaintiffs bring five claims for relief against Defendants: (1) violation of the Eighth Amendment under 42 U.S.C. § 1983; (2) violation of the Fourteenth Amendment under 42 U.S.C. § 1983; (3) violation of constitutional rights under 42

U.S.C. § 1983 pursuant to *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978); (4) failure to train and supervise employees under 42 U.S.C. § 1983 pursuant to *Monell*; and (5) state law negligence causing wrongful death. (Fourth Amended Complaint ¶¶ 52-102 (Docket No. 91)).

The following facts are based on the evidence, as viewed in the light most favorable to the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (acknowledging that on a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [the non-movant's] favor."). The Court notes any relevant putative disputes below.

A. The Physical Attack in LASD Custody

On January 17, 2018, Tony Joseph Evans, Sr. ("Evans") and Franklin Reveter were in the custody of the Los Angeles Sheriff's Department ("LASD") at the Inmate Reception Center ("IRC"), the control center where incoming male arrestees are processed and assigned out to a housing location maintained by LASD. (Plaintiffs' Statement of Disputed Facts ("PSDF") ¶¶ 2-7 (Docket No. 116-1)). IRC is not itself a housing location. (*Id.*).

That evening, Evans and Reveter had a verbal altercation while sitting in the Clinic Waiting Area (the "Clinic") of the IRC. (Video Exhibit 2 (*See* Docket No. 111)). The interaction drew the attention of LASD custody staff, including Defendants Gallegos and Sevilla. (Defendants' Response to Plaintiffs' Additional Material Facts ("DAMF") ¶¶ 149-151 (Docket No. 121)). Gallegos and Sevilla approached Reveter and spoke with him for approximately fifty seconds. (*Id.* ¶ 151). Gallegos did not check Reveter's booking information — as is LASD practice whenever inmates are involved in a verbal argument — or separate Reveter from Evans. (*Id.* ¶¶ 153, 155-156). Defendants dispute that Gallegos and Sevilla could have separated Reveter from Evans. (*Id.* ¶ 156).

Less than a minute after the verbal altercation in the Clinic, Sevilla directed the inmates to the rear holding cell. (*Id.* ¶ 158). LASD custody staff could see into the holding cell through the windows of the room in which they were located. (*Id.* ¶ 159).

While in the rear cage, Reveter confronted Evans for the second time. (*Id.* ¶ 161). Defendants dispute that Reveter confronted Evans. (*Id.*). Gallegos could see that Reveter and Evans were posturing and arguing. (*Id.* ¶ 161). The argument then turned physical. (Video Exhibit 2 at 00:10-00:30). Gallegos did not enter or order any LASD custody staff to enter the holding to break up the fight. (*Id.* ¶ 162). Gallegos instead responded by giving a verbal command to stop fighting, pounding on the windows of the holding cell, and flickering the lights in the command room on and off. (*Id.* ¶¶ 161, 164; PSDF ¶ 30). A video captured the physical altercation between Reveter and Evans, and the parties disagree about who first made contact. (PSDF ¶ 32; Video Exhibit 2).

After Reveter and Evans struggled for a few seconds while standing, Reveter punched Evans in the head, and Evans fell to the ground, unconscious. (Video Exhibit 2 at 00:22-:0034); (PSDF ¶¶ 34-35). Once Evans was on the ground, Reveter continued to throw a series of punches at Evans from above. (Video Exhibit 2 at 00:35-00:50). Defendants contend that Evans hit his head on a metal bench as he fell to the floor, while Plaintiffs assert that no evidence supports this claim. (PSDF ¶ 34). No metal bench can be seen in the video. (Video Exhibit 2 at 00:35-00:45). The physical altercation lasted about thirty seconds. (*Id.* at 00:20-00:50). In response to LASD's verbal commands, Reveter then walked away from Evans's unconscious body. (*Id.* at 00:50). Nearly twenty seconds later, LASD custody staff entered the large holding cell and approached Evans, still lying unconscious on the floor. (*Id.* at 01:07).

Evans was thereafter transported to a hospital, where he remained for two months while he underwent numerous surgeries and procedures to address his injuries. (PSDF ¶¶ 40-42). Evans died on August 15, 2018. (*Id.* ¶ 43).

B. LASD's Inmate Classification Policy and Treatment of Reveter

On January 18, 2018, LASD had in place an inmate classification policy (the "Policy") for the safety of all inmates, requiring LASD classification officers to review an incoming inmate's past and present criminal history, prior jail classifications,

current and past mental history, threat to jail security, and tendency to manifest violent behavior to determine whether the inmate must be classified for "Special Handling," a designation that the inmate poses a high security risk and must segregated from the general population. (DAMF ¶¶ 67-70). Depending on the inmate's history, the classification officer will temporarily designate the incoming inmate for Special Handling to keep the inmate in isolation during processing, pending further investigation. (*Id.* ¶ 72). Inmates classified for Special Handling are given a red wristband to alert custody staff that the inmate must be separated from other inmates. (*Id.* ¶ 74). An inmate with a red wristband is not allowed into the large holding cell at the IRC, the area where Evans was beaten by Reveter. (*Id.* ¶ 77).

It is undisputed that Reveter did not have a red wristband. (*Id.* ¶ 78). It is also undisputed that Defendant Hardin classified Reveter as a maximum-security risk (level 9). (PSDF ¶ 57). Plaintiffs contend that Reveter should have been classified as a temporary "keep away" 10 ("K10"), given a red wristband, and segregated from other inmates because of Reveter's lengthy and violent criminal history (including a prior assault on an inmate), past LASD classifications, and history of mental illness. (DAMF ¶¶ 99-107). Plaintiffs point to evidence showing that Defendant Hardin had no discretion under LASD's classification policy to designate Reveter as a temporary K10. (PSDF ¶ 57). Defendants dispute Plaintiffs' characterization of Reveter's past classifications and contend that Reveter did not meet the requirements for a temporary K10 Special Handling. (DAMF ¶¶ 100, 102, 121).

II. EVIDENTIARY OBJECTIONS

Both parties advance various objections to the evidence submitted in connection with the Motion. (Docket Nos. 116-1, 121).

Many of the objections are garden variety evidentiary objections based on lack of foundation, lack of personal knowledge, mischaracterization of evidence, vagueness, relevance, and hearsay. While these objections may be cognizable at trial, on a motion for summary judgment, the Court is concerned only with the ***admissibility*** of the relevant ***facts*** at trial, and not the ***form*** of these facts as presented in the Motions. *See Burch v. Regents of Univ. of California*, 433 F. Supp. 2d 1110, 1119-20 (E.D. Cal.

2006) (making this distinction between facts and evidence, Rule 56(e), and overruling objections that evidence was irrelevant, speculative and/or argumentative). "If the contents of the evidence could be presented in an admissible form at trial, those contents may be considered on summary judgment even if the evidence itself is hearsay." *O'Banion v. Select Portfolio Servs., Inc.*, No. 1:09-cv-00249-EJL, 2012 WL 4793442, at *5 (D. Idaho Aug. 22, 2012) (citing *Fraser v. Goodale*, 342 F.3d 1032, 1036-37 (9th Cir. 2003)).

Accordingly, the parties' objections are **OVERRULED**.

III. LEGAL STANDARD

In deciding a motion for summary judgment under Rule 56, the Court applies *Anderson*, *Celotex*, and their Ninth Circuit progeny. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The Ninth Circuit has defined the shifting burden of proof governing motions for summary judgment where the non-moving party bears the burden of proof at trial:

> The moving party initially bears the burden of proving the absence of a genuine issue of material fact. Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial. This burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence. The non-moving party must do more than show there is some "metaphysical doubt" as to the material facts at issue. In fact, the non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor.

Coomes v. Edmonds Sch. Dist. No. 15, 816 F.3d 1255, 1259 n.2 (9th Cir. 2016) (quoting *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010)). "A motion for summary judgment may not be defeated, however, by evidence that is 'merely colorable' or 'is not significantly probative.'" *Anderson*, 477 U.S. at 249-50.

IV. DISCUSSION

A. California Tort Claims Act

Defendants Araujo, Gallegos, Hardin, and Sevilla assert that they are entitled to summary adjudication on Plaintiffs' negligence claim because Plaintiffs failed to present their claim against these Defendants to the County, in violation of the California Tort Claims Act. (Motion at 16-18).

As this Court previously determined, Plaintiffs satisfied the presentation requirement by timely presenting their claim to the County; they were not also required to submit claims against later-identified public employees who carried out the allegedly tortious acts underlying the presented claim. (*See* Order granting Plaintiffs leave to file Third Amended Complaint (the "TAC Order") at 9-10 (Docket No. 79)) (citing *Sanders v. City of Fresno*, No. 10:5-CV-00469-AWI (SMS), 2006 WL 8458551, at *5 (E.D. Cal. Dec. 13, 2006) (presentation requirement satisfied where "claim against the public entity employer (a county) was timely presented and rejected; the claim stated that the names of the public employees responsible were unknown at that time"); *Julian v. City of San Diego*, 183 Cal. App. 3d 169, 175, 229 Cal. Rptr. 664 (1986) (party's "assertion [that] a separate claim for damages against the City employees for his personal injuries was required to be presented to the City is without merit")).

Accordingly, the Motion with respect to the claim presentation is **DENIED**.

B. Standing for Violation of Evans's Rights

Defendants assert that Plaintiffs Joseph Evans, Tony Evans Jr., and L.C.E. lack standing to pursue claims based on alleged violations of Evans's constitutional rights. (Motion at 16). Plaintiffs clarify that Joseph Evans, Tony Evans Jr., and L.C.E. bring claims for Defendants' alleged violations of their own Fourteenth Amendment rights to familial association. (Opposition at 12-13).

Plaintiffs Joseph Evans, Tony Evans Jr., and L.C.E. have standing to bring claims under the Fourteenth Amendment for Defendants' alleged violations of Evans's constitutional rights. *See Estate of Gonzales v. Hickman*, No. EDCV 05-660 MMM (Crux), 2007 WL 3237727, at *12 (C.D. Cal. May 30, 2007) (The "Ninth Circuit has recognized — in the context of § 1983 claims asserting a Fourth Amendment violation of a decedent's constitutional rights — that the decedent's family members have independent standing to sue for violation of their Fourteenth Amendment substantive due process right to familial association.").

Accordingly, the Motion with respect to standing is **DENIED**.

C. Fourteenth Amendment Claim for Failure to Protect

Defendants argue that they were not deliberately indifferent to a substantial risk of harm to Evans's safety because Defendants acted reasonably under the circumstances and, in essence, because it was Evans's own fault that Reveter beat him to death. (Motion at 19-23). These factual arguments are inappropriate for resolution on a motion for summary judgment.

The standard for a Fourteenth Amendment failure-to-protect claim is whether there was "a substantial risk of serious harm to the plaintiff that could have been eliminated through reasonable and available measures that the officer did not take, thus causing the injury that the plaintiff suffered." *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602 (9th Cir. 2019) (quoting *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016)) (internal quotation marks omitted). "[T]he defendant's conduct must be objectively unreasonable, a test that will necessarily 'turn on the facts and circumstances of each particular case.'" *Id.* (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)) (internal alterations omitted).

Plaintiffs present evidence that Defendant Hardin failed to designate Reveter as needing Special Handling and segregation, despite being aware of Reveter's lengthy and violent criminal history which included assaulting an inmate while in custody, his prior Special Handling classifications, and his mental disorder. (DAMF ¶¶ 129-131, 139-140). Plaintiffs point to evidence showing that Defendants Gallegos and Sevilla observed the initial verbal altercation between Reveter and Evans but failed to investigate the root cause, review Reveter's classification status, or separate Reveter (who was much taller and larger than Evans) from Evans before sending them both to a large holding cell to eat. (*Id.* ¶¶ 143-148, 151-155). Plaintiffs also produce evidence that Defendant Sevilla observed a physical altercation between Reveter and Evans in the large holding cell, but merely issued a verbal command to stop fighting and flickered the lights on and off in response, instead of entering the cell to intervene. (Video Exhibit 2 at 00:00-01:07).

Plaintiffs also cite to the opinions of their expert, Richard Lichten, a thirty-year law enforcement veteran who worked for twenty years in supervisory and management positions within the LASD jail system. (*See* Plaintiffs' Exhibit U, Declaration of Richard Lichten ("Lichten Decl.") ¶ 1). According to Lichten, Reveter should have been issued a red wristband and segregated from the general population because of his history of Special Handling assignments in the County and his mental illness classification. (*Id.* ¶ 8). According to Lichten, after responding to the verbal exchange between Reveter and Evans, a reasonable deputy would have checked Reveter and Evans's classifications or held back one of them instead of letting both of them into the large holding cell together, particularly given that they were of different races and Reveter was much larger than Evans. (*Id.* ¶¶ 12-17).

Viewing this evidence in the light most favorable to Plaintiffs, a jury could find that Defendant Hardin misclassified Reveter's level of security risk, which, given Reveter's mental illness and history of violence, created a substantial risk of harm to Evans. A jury could find that this risk could have been abated by temporarily classifying Reveter as K10 and segregating him from other inmates. By failing to do so, a jury could find that Defendant Hardin caused Evans's harm.

A jury could also find that Defendants Gallegos and Sevilla made the intentional decision not to investigate the verbal confrontation between Reveter and Evans and not to physically separate them, options that were reasonably available to them at the time. A jury could find that those decisions put Evans at substantial risk of suffering serious harm by Reveter, and by failing to separate Reveter and Evans, Defendants Gallegos and Sevilla caused Evans's harm.

Accordingly, disputed facts prevent summary adjudication of Plaintiffs' Fourteenth Amendment claim. A jury must decide whether Defendants' conduct exhibited deliberate indifference to a substantial risk of serious harm to Evans.

Defendants also assert that they are entitled to qualified immunity. (Motion at 23). They are not.

"Qualified immunity shields government actors from civil liability under 42 U.S.C. § 1983 if 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Castro*, 833 F.3d at 1066 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

"To determine whether an officer is entitled to qualified immunity, a court must evaluate two independent questions: (1) whether the officer's conduct violated a constitutional right, and (2) whether that right was clearly established at the time of the incident." *Id.* at 1066-67 (citing *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). "[A] right is clearly established when the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* at 1067.

The Supreme Court made clear in *Farmer v. Brennan* 511 U.S. 825, 833 (1994) that "prison officials have a duty to protect prisoners from violence at the hands of other prisoners" because the officials have "stripped [inmates] of virtually every means of self-protection and foreclosed their access to outside aid." Accordingly, Evans had a due process right to be free from violence from Reveter while in Defendants' custody. *See Castro*, 833 F.3d at 1067.

Although Defendants acknowledge that this due process right exists, they assert that no existing precedent establishes the right under similar circumstances to those present here. (Motion at 23-25). The Ninth Circuit rejected this very argument in *Castro*, a § 1983 action against jail officials for their failure to protect the plaintiff from a violent attack by another inmate. 833 F.3d at 1067 (Defendants "argue that such a broad description of [the] duty [to protect inmates from violence] is too general to guide our analysis. . . . We disagree[.]"). The Ninth Circuit held that the defendants were not entitled to qualified immunity because it was sufficiently clear from existing law that they were required "to take reasonable measures to mitigate the substantial risk to [the plaintiff]" from harm caused by other inmates. *Id.*

So too here. At the time of the incident, it was clearly established that Defendants had a duty to take reasonable and available steps to protect Evans from a substantial risk of harm by Reveter. A jury must decide whether Defendants abdicated this duty. Because the Court cannot determine as a matter of law that Defendants took all reasonable and available steps to protect Evans, it also cannot determine that Defendants are entitled to qualified immunity as a matter of law. *See Munger v. City of Glasgow Police Dept.*, 227 F.3d 1082, 1087 (9th Cir. 2000) ("Summary judgment on qualified immunity is not proper unless the evidence permits only one reasonable conclusion.").

Accordingly, the Motion with respect to Plaintiffs' Fourteenth Amendment failure to protect claim is **DENIED**.

D. Supervisory Liability

Plaintiffs allege that the County, the former sheriff, the former assistant sheriff, and Defendant Araujo failed to train and supervise their subordinates adequately, which led to Defendants Hardin, Gallegos and Sevilla's alleged unconstitutional conduct. (*See* Opposition at 28). Specifically, Plaintiffs assert that (1) Defendant Hardin had inadequate supervision when she misclassified Reveter, and (2) Defendants Gallegos and Sevilla had inadequate training on how to respond to verbal altercations between inmates. (*Id.* at 28-30). The Court will address the County's alleged supervisory liability in the *Monell* section.

Supervisorial liability under § 1983 exists where the supervisor "was personally involved in the constitutional deprivation or a sufficient causal connection exists between the supervisor's unlawful conduct and the constitutional violation." *Edgerly v. City and County of San Francisco*, 599 F.3d 946, 961 (9th Cir. 2010) (citation and internal quotation marks omitted). Therefore, "supervisors can be liable for: 1) their own culpable action or inaction in the training, supervision or control of subordinates; 2) their acquiescence in the constitutional deprivation of which a complaint is made; or 3) for conduct that showed a reckless or callous indifference to the rights of others." *Id.* (citation and internal quotation marks omitted).

With respect to Defendant Araujo, Plaintiffs made no factual showing as to his specific involvement in the alleged constitutional violations. (*See* PSDF ¶¶ 58-59) (Plaintiffs do not dispute that Araujo "played no role" in the classification of Reveter or that Araujo "had no involvement" in either the verbal argument or physical fight between Reveter and Evans).

Plaintiffs did not show that Araujo "had any personal involvement in the incident," that he was "responsible for station policy," that he "provided any training to [Defendants Hardin, Gallegos and Sevilla] in particular, or that he was responsible for providing formal training to any officers." *Edgerly*, 599 F.3d at 961-62 (affirming the district court's dismissal of the plaintiff's § 1983 supervisory liability claim against police sergeant who was responsible for day-to-day operations but provided only informal training to his subordinates and was not responsible for setting policy). In sum, Plaintiffs have failed to establish a sufficient causal connection between Araujo and the conduct of Defendants Hardin, Gallegos and Sevilla.

Accordingly, the Motion with respect to Defendant Araujo's supervisory liability is **GRANTED**.

E. ***Monell* Liability**

Plaintiffs' *Monell* claims rest on two theories. The first is that the County failed to supervise custody employees' classifications of inmates and failed to train custody

employees on how to handle verbal altercations between inmates. (Opposition at 28-30). The second is that the County adopted an inmate classification policy that failed to create a process by which custody staff could easily and quickly identify inmates who pose the highest security risk. (*Id.* at 25-28).

"Under *Monell*, municipalities are subject to damages under § 1983 in three situations: when the plaintiff was injured pursuant to an expressly adopted official policy, a long-standing practice or custom, or the decision of a 'final policymaker.'" *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013). "In order to establish liability for governmental entities under *Monell*, a plaintiff must prove "(1) that [the plaintiff] 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." *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citation omitted).

1. Failure to train and supervise

"[A] municipal defendant can be held liable because of a failure to properly train [or supervise] its employees only if the failure reflects a 'conscious' choice by the government. In other words, the government's omission must amount to a 'policy' of deliberate indifference to constitutional rights." *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 793 (9th Cir. 2016) (en banc) (citing *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)) (internal citations omitted). "A plaintiff can satisfy this requirement by showing that the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers can reasonably be said to have been deliberately indifferent to the need." *Id.* (citing *Canton*, 489 U.S. at 390). This is a "stringent standard of fault." *Id.* at 794 (quoting *Connick v. Thompson*, 563 U.S. 51, 62 (2011)). It requires the plaintiff to produce evidence that the municipality had "actual or constructive notice that a particular

omission in their training program will cause municipal employees to violate citizens' constitutional rights." *Id.* (quoting *Connick*, 563 U.S. at 62) (internal quotation marks and alterations omitted).

To make this showing, it is "ordinarily necessary" for a plaintiff to demonstrate a "pattern of similar constitutional violations by untrained employees." *Id.* (quoting *Connick*, 563 U.S. at 62). However, "in a narrow range of circumstances," evidence of a single unconstitutional incident can establish municipal culpability where "the unconstitutional consequences of failing to train" are "patently obvious" and the violation of a protected right is a "highly predictable consequence" of the decision not to train. *Connick*, 563 U.S. at 62. "Mere negligence in training or supervision, however, does not give rise to a *Monell* claim." *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citation omitted). Rather, the claim's "focus must be on adequacy of the training program in relation to the tasks the particular officers must perform. That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city." *Canton*, 489 U.S. at 390. "A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick*, 563 U.S. at 61.

The Ninth Circuit has applied the same failure to train standards to failure to supervise claims. *See Dougherty*, 654 F.3d at 900 (citing *Davis v. City of Ellensburg*, 869 F.2d 1230, 1235 (9th Cir. 1989) ("*Canton* dealt specifically with inadequate training. We see no principled reason to apply a different standard to inadequate supervision.")).

No evidence in the record suggests that there is a pattern of similar constitutional violations by untrained or unsupervised County employees. Plaintiffs' failure to train and failure to supervise claims thus turn on whether this case presents the "rare" situation in which evidence of a single unconstitutional incident can establish municipal culpability. *See Connick*, 563 U.S. at 63.

Plaintiffs make no persuasive argument as to why the need for supervision of the classification process or additional training as to how to handle inmates in a verbal argument was so obvious, and the inadequacies so likely to result in the violation of

inmates' constitutional rights, that the County can reasonably be said to have been deliberately indifferent to these needs. Had the County lacked any classification process by which to separate high security risk inmates from low security risk inmates, or any training on how to deescalate conflict between inmates, it might reasonably be said that the County exhibited deliberate indifference to inmate safety. But here, Plaintiffs' accusations that the County should have required a supervisor to double check an inmate's classification or scheduled an additional training course on how to handle verbal conflicts between inmates amount to a charge of negligence at best. Such claims are insufficient to support a *Monell* claim. *See Dougherty*, 654 F.3d at 900 ("Mere negligence in training or supervision, however, does not give rise to a *Monell* claim.").

Accordingly, the Motion with respect to the failure to train and failure to supervise claims is **GRANTED**.

2. Inmate uniform policy

Plaintiffs assert that the County's current process for determining an inmate's security risk — entering the inmate's booking number into the computer — is too time-consuming and exposes inmates to an unreasonable risk of harm. (Opposition at 28). Plaintiffs point to evidence showing that in 2006, Sheriff Baca recommended that inmates who posed a high security risk — inmates like Reveter — should be dressed in a different uniform than the rest of the inmates to alert custody staff to their potential dangerousness. (*Id.* at 27) (citing DAMF ¶¶ 111, 116, 117, 138). Plaintiffs contend that the County was deliberately indifferent to inmate safety by failing to adopt Sheriff Baca's uniform recommendation, despite being on notice of the dangers that high-risk inmates posed to low risk inmates. (*Id.* at 28).

The Court is dubious that failure to adopt best uniform practices in the corrections context could render a municipality deliberately indifferent to inmate safety. But even assuming that Plaintiffs could prove that the County was deliberately

indifferent in failing to adopt Sheriff Baca's uniform proposal, Plaintiffs' claim fails for another reason.

Defendants argue that Plaintiffs failed to explain how Defendants' classification policy was the "moving force" behind the violation of Evans's constitutional rights. (Reply at 12) (citing *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992)). Plaintiffs assert that had Reveter's classification as a maximum-level security risk been immediately identifiable to Defendants Gallegos and Sevilla, they would have "more likely than not" separated him from Evans. (Opposition at 27).

The Court agrees with Defendants that no evidence in the record supports Plaintiffs' assertion that Defendants Gallegos and Sevilla "more likely than not" would have separated Reveter from Evans had Reveter been wearing a different uniform. Absent some showing that the County also had a policy requiring deputies to immediately segregate inmates with a high security risk classification when they are involved in verbal altercations, it would be pure speculation to conclude that the County's failure to enact Sheriff Baca's uniform policy was the "moving force" behind the violation of Evans's constitutional rights. *See Kirkpatrick*, 843 F.3d at 797 ("A municipality can be liable under § 1983 only where its policies are the moving force behind the constitutional violation.") (citation and internal alterations omitted).

Accordingly, the Motion with respect to the inmate uniform policy is **GRANTED**.

V. CONCLUSION

For the reasons stated above, the Motion is **DENIED** with respect to the standing issue, the state law negligence claim, and the Fourteenth Amendment failure to protect claim. The Motion is **GRANTED** with respect to the supervisory liability claim and *Monell* claims.

IT IS SO ORDERED.