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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

M.H., et al.,
Plaintiffs,
v.
COUNTY OF ALAMEDA, et al.,
Defendants.

Case No. 11-cv-02868-JST

**AMENDED ORDER GRANTING
IN PART, DENYING IN PART
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT**

Re: ECF Nos. 121, 133, 134

Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. Introduction 1

II. Procedural History..... 1

III. Jurisdiction 1

IV. Facts 2

 A. Arrest and Medical Screening 2

 B. Transfer to Santa Rita Jail 7

 C. Transfer to Isolation Cell..... 8

 D. Policies and Training Applicable to Deputy Ahlf Concerning Medical Care..... 9

 E. Referral to CJMH 11

 F. Altercation with Deputy Ahlf..... 14

 G. Arrival of the Remaining Sheriff’s Deputies 17

 H. Transfer to Hospital and Death 21

 I. Coroner’s Report 22

 J. Expert Opinions..... 23

V. Evidentiary Objections 29

VI. Legal Standard..... 29

VII. Analysis 30

 A. Deliberate Indifference to Serious Medical Needs — Individual Defendants 30

 B. Monell Claims 37

 C. Supervisory Liability — Dr. Orr 49

 D. Excessive Force 50

 E. Loss of Familial Association 58

 F. Bane Act, California Civil Code Section 52.1 60

 G. Negligence, Assault, and Battery as to the County Defendants 61

 H. Negligence as to Nurse Sancho and the Corizon Defendants 62

 I. California Government Code Section 845.6 63

VIII. Conclusion..... 65

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
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I. INTRODUCTION

This case arises out of the death of Martin Harrison while he was in the custody of the Alameda County Sheriff’s Office. Plaintiffs Joseph, Krystle, Martin, Jr., and Tiffany Harrison are Mr. Harrison’s adult children. They assert claims for violation of Mr. Harrison’s civil rights pursuant to 42 U.S.C. § 1983 and California’s Bane Act, Cal. Civ. Code § 52.1, as well as common law claims against: the County of Alameda; Sheriff Gregory J. Ahern in his official capacity; Sheriff’s Deputies Matthew Ahlf, Alejandro Valverde, Joshua Swetnam, Roberto Martinez, Zachary Litvinchuk, Ryan Madigan, Michael Bareno, Fernando Rojas-Castaneda, Shawn Sobrero, and Solomon Unubun; Megan Hast, A.S.W., a social worker employed by Criminal Justice Mental Health (“CJMH”), an Alameda County employer; Corizon Health, Inc. (formerly Prison Health Services, Inc.); Corizon Health’s Regional Medical Director Dr. Harold Orr; and Corizon Health employee Nurse Zelda Sancho.

Before the Court are motions for summary judgment filed by the County Defendants, County MSJ, ECF No. 121, Nurse Sancho, Sancho MSJ, ECF No. 133, and the remaining Corizon Health Defendants, Corizon MSJ, ECF No. 134.

II. PROCEDURAL HISTORY

Harrison’s minor son, M.H., filed this action on June 10, 2011. Through two amendments, M.H. added Harrison’s two adult sons and two adult daughters as Plaintiffs, as well as Corizon Health, Dr. Orr, and Nurse Sancho as Defendants. The operative Second Amended Complaint was filed November 19, 2012. Second Am. Compl. (“SAC”), ECF No. 46. M.H. settled his claims against all Defendants, and the Court approved the minor’s compromise on October 4, 2013. ECF No. 109. On November 7, 2013, all remaining Plaintiffs voluntarily dismissed their claims against Sheriff Ahern in his individual capacity pursuant to Federal Rule of Civil Procedure 41(a)(1)(a)(ii). ECF No. 117.

III. JURISDICTION

This Court has federal question jurisdiction over Plaintiffs’ claims arising under 42 U.S.C. § 1983 and 1988, and supplemental jurisdiction over Plaintiffs’ state law claims.

1 **IV. FACTS**

2 Many of the facts in this case are disputed by the parties. In reviewing the facts here, the
3 Court will note where facts are disputed. In all other instances, the facts contained herein are
4 undisputed.

5 **A. Arrest and Medical Screening**

6 Decedent Martin Harrison was stopped on August 13, 2010, at 3:55 p.m. for jaywalking by
7 the Oakland Police Department. The officer arrested Harrison pursuant to a bench warrant for
8 failure to appear at trial for violation of California Vehicular Code § 23152(a) (driving under the
9 influence of alcohol). Ly Decl. ISO County MSJ, ECF No. 125, Ex. A at 4. The arrest report
10 states Harrison weighed 140 pounds and was 6’0” tall. Id. He was one day shy of his fiftieth
11 birthday. Id.

12 **1. Medical Screening by Nurse Sancho**

13 Harrison was taken to the Glenn Dyer Detention Facility in Oakland, California.
14 Defendant Sancho, a licensed vocational nurse employed by Defendant Corizon Health (then
15 known as Prison Health Services, Inc.), performed a medical intake assessment, which she
16 memorialized on a standardized intake assessment form. Sherwin Decl. ISO County MSJ Opp.,
17 ECF No. 149, Ex. 9, Sancho Dep., 54:10–12; Ly Decl., Ex. A at 2. The form was completed at
18 5:00 p.m. on August 13. The form contained a standardized set of questions followed by space for
19 a narrative description of the inmate’s condition. Harrison’s form indicated that his weight was
20 142 pounds, and that he was between 5’4” and 5’6” tall. Sancho recorded those measurements
21 after weighing Harrison, although she did not measure his height. Sancho Dep. 67:10–24. Sancho
22 described Harrison as a “medium-sized guy.” Id. She recorded his vital signs as “within normal
23 levels.” Sancho Dep. 66:7–11.

24 Sancho testified that when she examined Harrison, his demeanor and outward physical
25 symptoms were unremarkable. He walked with a “steady gait,” stood straight, was coherent, alert,
26 and oriented, and calm and quiet. Id. 69:15–23.

27 Sancho testified that Harrison told her he had two bottles of beer that afternoon, and that
28 Harrison told her “three to four times” that he did not have problems with alcohol withdrawal in

1 the past. Id. 70:1–6. Sancho testified that she asked Harrison what size the bottles were, but
2 forgot to record it on the form. Id. 71:5–7. She also testified that she understood Harrison to have
3 told her he drank two bottles of beer every day. Id. 72:14–15. When she examined Harrison, he
4 smelled of alcohol and his face was “maybe red, but not puffy.” Id. 73:22–24.

5 Sancho wrote on the form that Harrison drinks every day, and that his last drink was on the
6 day he was arrested. Id. 58:20–22. The form does not state that Harrison smelled of alcohol, what
7 type of alcohol Harrison drank, the amount of daily consumption, the time or amount of
8 Harrison’s last drink, or how many years Harrison had been drinking. Id. 58:24–59:12.

9 Sancho also wrote on the form “w/hx of ETOH w/d,” which means “with history of
10 alcohol withdrawal.” Id. 79:23–80:3. Finally, she wrote “CIWA,” which stands for “Clinical
11 Institute Withdrawal Assessment,” a protocol used to evaluate and treat those at risk for severe
12 alcohol withdrawal. Id. 79:23–80:3; 86:5–87:5. Sancho testified that she wrote both phrases in
13 anticipation because Harrison told her he drank every day, and that she then crossed them out
14 when he assured her he did not have a history of alcohol withdrawal. Id. 80:12–16. Above the
15 CIWA notation is the word “error,” which Sancho testified she wrote pursuant to Corizon Health
16 training to indicate she crossed the notation out on purpose. Id. 82:13–83:17. Sancho testified
17 that she did not alter the form after her initial screening. Id. 61:9–11.

18 Sancho spent “three to 10 minutes, or less than 10 minutes” with Harrison. Id. 60:14. She
19 classified Harrison as medical level 3, which means he would not receive any medical follow-up
20 because the nurse found “no medical problem.” Id. 65:5–22. Harrison was assigned to the general
21 jail population. Id. Had Sancho concluded instead that Harrison was at risk of alcohol
22 withdrawal, she would have classified him as level 1, which would have resulted in “prompt
23 attention within 24 hours.” Id. 66:1–4. The CIWA protocol called for an examination by a
24 physician within twenty-four hours, and examinations by nurses every eight hours. Id. 87:3–6. If
25 a patient on CIWA protocol became symptomatic, the patient might also receive fluids and one or
26 more medications as appropriate, including thiamine, benzodiazepines, opioids, and multivitamins
27 as part of the treatment protocol. Sherwin Decl., Ex. 15, Orr. PMK Dep. 43:9–44:7; Sherwin
28 Decl., Ex. 17 (CIWA Form and Orders).

1 In a declaration attached to her motion for summary judgment, Nurse Sancho states that
2 she explained to Harrison that he could obtain a “slip/sick call form” and notify a deputy once
3 transferred to general population if he needed any medical attention. Sancho Decl. ISO Sancho
4 MSJ, ECF No. 133-1 ¶ 4. The declaration also states that Sancho had already crossed out the
5 notations for “with history of alcohol withdrawal” and “CIWA,” and written the word “error”
6 above the notations at the time that Sancho and Harrison signed the intake form. Id. ¶ 11. Sancho
7 declares that she communicated her crossing out of the notations orally to Harrison as well. Id.
8 Sancho also declares: “I have used a CIWA form for a number of arrestees, but they had exhibited
9 many signs and symptoms of intoxication. Because Mr. Harrison was not intoxicated when I
10 performed his intake and showed no indicators of being at risk of alcohol withdrawal, I did not
11 initiate the CIWA protocol.” Id. ¶ 14. In particular, Sancho declares that she believed Harrison
12 was truthful with her when he told her he did not have a history of problems with alcohol
13 withdrawal. Id. ¶ 15.

14 2. Alcohol Withdrawal Training

15 Sancho had been trained to identify the risk factors for alcohol withdrawal, including in
16 January 2010. Sancho Dep. 11:5–13:20. The manual accompanying the January 2010 training, a
17 one-hour continuing education program, states that Stage I of alcohol withdrawal begins six to
18 eight hours after the last drink, with “tremulousness.” Sherwin Decl., Ex. 24 at COR 1967.
19 Nausea, anxiety, and insomnia may also accompany Stage I. Most inmates recover without
20 additional incident within twenty-four to thirty-six hours. Id. at COR 1968. However, according
21 to the training manual, approximately twenty-five percent of Stage I patients progress to more
22 significant stages. Stage II begins eight to forty-eight hours after the last drink. Stage II involves
23 hallucinations that may last one to six days. Id. Stage III begins twelve to forty-eight hours after
24 the last drink, and involves seizures. Stage IV begins forty-eight to seventy-two hours after the
25 last drink. Stage IV is the most serious manifestation of alcohol withdrawal, and is known as
26 Delirium Tremens (DTs). DTs “is a true medical emergency” that presents in one to five percent
27 of patients. Id. The onset of DTs usually occurs three to ten days after the last drink. Symptoms
28 include hypertension, tachycardia, diaphoresis, fever, dilated pupils, and tremulousness. Id. The

1 “hallmark” of DTs is “profound confusion and disorientation.” Id. at COR 1968–69. The
2 hallucinations tend to be “persecutory,” and patients “may think that members of the medical staff
3 are assailants.” Id. at COR 1969. The training goes on to explain how and why nurses should
4 institute a CIWA protocol. The training document states:

5 Inmate patients should be evaluated for use and/or dependence on
6 alcohol and other drugs during the intake receiving screening
7 process. Inmate patients should be questioned on current use and
8 problems associated with alcohol/drug abuse in the past. Anyone
9 with a previous history of serious complications from alcohol
10 withdrawal . . . should have the withdrawal protocol initiated.

11 * * *

12 Specific information should be obtained regarding: Type of
13 substance(s) used; Frequency and amount of usage; How long the
14 inmate patient has been using; Time of last use; Side effects
15 experienced when ceasing use in the past If alcohol withdrawal
16 or the potential for alcohol withdrawal is suspected, the CIWA-Ar
17 form should be initiated to quantify symptoms

18 Id. At her deposition, Nurse Sancho testified that she understood this training, including the fact
19 that Stage I symptoms do not present until six to eight hours after cessation. Sancho Dep. 41:9–
20 43:24.

21 3. Disciplinary Action

22 On August 17, 2010, at approximately 3:15 p.m., Corizon’s Assistant Health Services
23 Administrator, Lenore Gilbert, interviewed Sancho regarding the Harrison case. Gilbert
24 memorialized the meeting in a memorandum to Corizon’s Bill Wilson. Sherwin Decl., Ex. 14.
25 The document states Sancho was represented at the meeting by a licensed vocational nurse and
26 union representative, Barbara Ralls.

27 Gilbert noted that “the documentation on the inmate’s screener was not satisfactory or
28 complete.” Id. at 1. In particular, Gilbert and Corizon’s Joel Smith told Sancho that the intake
form “has very limited information regarding any drug/alcohol history. The type and amount of
alcohol used was not documented. The history of ETOH and CIWA statement was crossed out.
Why was that?” Id. According to Gilbert, Sancho responded: “He denied having any drinking
problems. He said over and over, ‘No problems, no withdrawal.’ She stated that she asked him
this same question 4 times and his response was the same.” Id. Gilbert then told Sancho that she

1 failed to document how much Harrison drank daily, and that she failed to document what type of
2 alcohol Harrison drank. Sancho told Gilbert that Harrison said he drank “2 bottles of beer.” Id. at
3 2. Per the memorandum, Sancho said she forgot to document that information, and also
4 volunteered that she forgot to document that Harrison smelled of alcohol, “a mild smell,” and that
5 he had a red, flushed face. Id. Gilbert noted that Sancho said she did not initiate a CIWA protocol
6 because she “didn’t think to. He had no alcohol problems, he said.” Id. Gilbert noted that she
7 then told Sancho that her failures to document accurately and initiate a CIWA protocol constituted
8 “unsatisfactory performance by you as the nurse [D]ocumenting your complete observations,
9 asking and documenting the screening questions in their entirety, and starting inmates who drink
10 alcohol regularly on a CIWA is critical for the safety of the inmate.” Id.

11 According to another, similar memorandum prepared by Gilbert, Sancho also failed to
12 document the amount and type of alcohol a different inmate consumed. Sherwin Decl., Ex. 32 at
13 1–2. At a counseling session with Sancho, Gilbert discussed the second inmate’s case. Sancho
14 was represented by union representative and licensed vocational nurse Blaire Behrens. Id. at 1.
15 According to the memorandum, in response to a question about incomplete documentation,
16 Sancho indicated she had no reason for the failure to document. Sancho stated that she referred
17 the patient to “psych,” but Gilbert did not find any such referral. Id. at 2. When asked why she
18 didn’t document completely, Sancho did not offer an explanation, but asked “Does this mean that I
19 don’t have to work there (ITR) anymore?,” at which point Sancho’s union representative “puts her
20 hand out to stop Zelda from talking” Id. at 2. In the conclusions section of the
21 memorandum, Gilbert wrote: “Zelda’s question about working in booking leads me to believe that
22 she may be looking for a way out of working where she is assigned. Is that why she was doing an
23 inadequate job?” Id.

24 The second memorandum also discusses an altercation Sancho had with a physician, in
25 which Sancho refused to comply with the physician’s request that she put a Q-tip to the eye of the
26 patient, forcing the physician to send the patient to the hospital for further testing. Id.

27 At his deposition, Bill Wilson, Corizon’s Health Services Administrator, confirmed that
28 Corizon Health believed Sancho should have placed Harrison on CIWA. Sherwin Decl., Ex. 11,

1 Wilson Dep. 49:15–18. He also testified that he determined Sancho should be terminated based
2 on Sancho’s intake of Harrison, the intake of the patient discussed in Gilbert’s second
3 memorandum, and Sancho’s refusal to follow a physician’s order in a third case. Id. 59:1–5.
4 Wilson testified that in his forty years in the health care field, he had faced few disciplinary
5 situations as serious as Sancho’s. Id. 60:10–15. Wilson confirmed that he felt Sancho jeopardized
6 patient safety. Id. 60:20–22.

7 On September 15, 2010, Corizon Health reported Sancho to the Board of Vocational
8 Nursing and Psychiatric Technicians. Sherwin Decl., Ex. 33 at 1. On the “Employer Mandatory
9 Reporting Form,” Corizon Health indicated Sancho was terminated for “Gross negligence or
10 incompetence” and “Failure to follow procedure + policy.” Id. at 2.

11 **4. Evidence Regarding “Mutilation” of the Intake Form**

12 Plaintiffs maintain Nurse Sancho crossed out the alcohol withdrawal and CIWA notations
13 on the intake form after the fact. As discussed below, Megan Hast, a CJMH social worker,
14 testified that she believed Harrison had been placed on CIWA, which Plaintiffs argue is evidence
15 that, at the time Hast reviewed the intake form, the notations had not been crossed out and the
16 word “error” had not yet been written. In addition, Plaintiffs point to Corizon policy, which
17 requires that an “error” notation be accompanied by an explanation in the margin. Sherwin Decl.,
18 Ex. 35, Granlund PMK Dep. 40:7–11. According to Corizon, the strike-out also constitutes
19 impermissible “mutilation” of the medical record that contravenes Corizon policy and training. Id.
20 40:12–19.

21 Plaintiffs also submit the report of a forensic document examiner, Patricia Fisher, who
22 examined the original medical record and determined that the “cross-out was written at a later time
23 and the word, ‘error’ was not written simultaneously with the paper in the same position as the
24 ‘CIWA’ letters.” Fisher Decl., ECF No. 155, Ex. A at 2. In her declaration, Sancho states: “When
25 I was filling out the form on August 13, 2010, I moved the paper around a bit as I wrote and also
26 when I turned the form over to Mr. Harrison for his signature.” Sancho Decl., ¶ 17.

27 **B. Transfer to Santa Rita Jail**

28 Harrison was transported to Santa Rita Jail on the night of August 13, arriving at 11:51

1 p.m. Ly Decl., Ex A at 5. On August 15, at approximately 6:00 p.m., Deputy Ahlf first
 2 encountered Harrison in Housing Unit 33, during “evening pill call,” when Harrison “came up
 3 asking for medications.” Sherwin Decl., Ex. 30, Ahlf Dep. 51:5–7. At that time, Deputy Ahlf did
 4 not know Harrison was an alcoholic, nor did he learn that information prior to Harrison’s death.
 5 Id. 52:9–18. Ahlf testified that he could typically find out about an inmate’s medical history by
 6 “calling the charge nurse and having his file pulled.” Id. 52:23–25. During this encounter,
 7 Harrison asked for medications, and the pill call nurse did not find that any were prescribed for
 8 him. Deputy Ahlf issued Harrison a sick call slip and told Harrison he could fill it out and provide
 9 it to the nurse for follow-up. Id. 53:8–15. Harrison did so. His sick call slip states only “I was
 10 told to” as the reason for a visit. Sherwin Decl., Ex. 19 at PLF 303. His appointment arising out
 11 of the sick call slip was set for August 17, two days later. Id. at PLF 294.

12 Deputy Ahlf next encountered Harrison the following day, August 16, at 3:30 a.m, during
 13 morning pill call. Harrison again asked for medication. Deputy Ahlf told him he would have to
 14 fill out a slip. Ahlf Dep. 54:9–56:2. Deputy Ahlf did not ask him what type of medication he
 15 needed. Id. 56:3–5. Sometime soon after the morning pill call, Deputy Ahlf was called to Lower
 16 D Pod to check on an inmate. Id. 56:17–21. The inmate was Harrison; several inmates told
 17 Deputy Ahlf that Harrison was “acting bizarrely; that he needed to be moved out of the pod.” Id.
 18 57:1–7. Harrison asked Deputy Ahlf “why there was a bunch of women in his house.” Id. 57:9–
 19 10. Deputy Ahlf determined that Harrison should be moved out of minimum security “[f]or his
 20 safety and the safety of the other inmates” because “[h]e was displaying actions that were bizarre
 21 . . . verbal statements that were bizarre, out of the ordinary.” Id. 58:7–15. Later, Deputy Ahlf told
 22 his supervisor that he had concluded Harrison did not know where he was. Id. 60:19–23.

23 **C. Transfer to Isolation Cell**

24 Deputy Ahlf transferred Harrison to the East Isolation Center. He began an “Intensive
 25 Observation Log” which bears the date and time as August 16 at 4:15 a.m. Sherwin Decl., Ex. 53.
 26 Deputy Ahlf logged the reason for the transfer as “Bizarre Behavior / CJMH Referral.” Id.

27 Deputy Ahlf testified that he let his sergeant know that Harrison needed a mental health
 28 referral, but he did not complete one himself because there was no one in the mental health office

1 at the time. Ahlf Dep. 50:22–23; 70:4–10. Deputy Ahlf also testified he called the daytime
2 sergeant — Sergeant Camara — and told him Harrison needed a mental health referral, and that
3 Sergeant Camara told him he would follow up with the mental health office. Id. 70:4–10.
4 Sergeant Shepard testified that he did not recall being notified of Harrison’s need for a mental
5 health referral. Sherwin Decl., Ex. 60, Shepard Dep. 49:1–18. Sergeant Camara has not been
6 deposed in this case. Deputy Ahlf did not notify a nurse or physician of Harrison’s behavior,
7 complete a mental health referral form, or notify CJMH that Harrison was in an isolation cell.
8 Ahlf Dep. 50:22–23.

9 The Intensive Observation Log is a log used to document “direct visual observations” of an
10 inmate every fifteen minutes. Sherwin Decl., Ex. 60. The purpose of the log is for use by mental
11 health professionals and jail staff, so “they can see what the person is doing in the course of the
12 day, in the course of the hours, minutes.” Ahlf Dep. 65:2–5. Plaintiffs do not contend that the log
13 lacks entries within the specified time limits. However, the parties agree that Deputy Ahlf failed
14 to make any observations accompanying the entries at 4:20 a.m., 4:38 a.m., and 4:45 a.m., prior to
15 the end of his shift at 5:00 a.m. on the morning of August 16. Sherwin Decl., Ex. 53.

16 Alameda County policy also requires that observations be recorded “only as they occur.”
17 Sherwin Decl., Ex. 60 at 5. Sergeant Dudek interviewed Deputy Ahlf after Harrison was
18 transferred to the hospital, and noted that the log lacked observations for the last two entries as
19 well, at 6:32 p.m. and 6:48 p.m. Sergeant Dudek ordered Deputy Ahlf to complete the log, which
20 he admitted was contrary to County policy, of which he was unaware at the time. Sherwin Decl.,
21 Ex. 62, Dudek Dep. 62–69. The log entries Deputy Ahlf filled out after the fact indicate Harrison
22 was awake in bed at those times, which contradicts the County Defendants’ claims regarding when
23 Deputy Ahlf observed that Harrison had flooded his cell and was screaming and standing with a
24 mattress over his head, as discussed below. Finally, the form contains space for entries regarding
25 when medical and psychiatric staff are notified. Those entries are blank. Sherwin Decl., Ex. 53.

26 **D. Policies and Training Applicable to Deputy Ahlf Concerning Medical Care**

27 Plaintiffs point to several Alameda County policies and procedures that Plaintiffs argue
28 Deputy Ahlf violated with respect to Harrison’s medical needs.

1 Alameda County Sheriff’s Office General Order 5.29 provides: “*Staff* must become
2 familiar with the causes and nature of mental disorders to determine if an individual is a danger to
3 him/herself, others, or is gravely disabled *Staff* must be able to recognize general indicators
4 of mental disorders so that appropriate actions can be taken during contacts on the street, during
5 interviews and interrogations *or while interacting with the public.*” Sherwin Decl., Ex. 54 at
6 ACSO 463 (emphasis in original). “Deputy Sheriffs should be aware that substance abuse (drugs
7 and/or alcohol) can also cause delusions, hallucinations, and violent mood swings in an
8 individual.” Id. at ACSO 464. General Order 5.29 requires: “Once the Deputy Sheriff has taken
9 control of a situation, he/she should assess the need for medical attention and summon medical
10 personnel if required.” Id. at ACSO 466. Policy and Procedure 9.04 states: “Inmates who have
11 mental/emotional disorders or psychotropic problems identified at receiving, screening, or after
12 admission, must be followed up by the medical staff.” Sherwin Decl., Ex. 55 at ACSO 459. That
13 policy provides for the initiation of an observation log when an inmate is identified as “mentally
14 disordered.” Id. In addition, “[m]edical staff will be notified and perform an immediate initial
15 evaluation.” Id. Policy and Procedure 13.12 governs the referral of inmates to psychiatric
16 services. Sherwin Decl., Ex. 56 at ACSO 454. The policy provides that “[w]hen a deputy comes
17 into contact with an inmate they suspect is suffering from a mental disorder, PHS or CJMH will be
18 contacted to examine the inmate.” Id. “It is the responsibility of staff who suspect a disorder to
19 complete and submit the Mental Health Referral Form.” Id. “A nurse or physician must
20 immediately be notified of the inmate’s behavior” through a referral made by the sheriff’s deputy.
21 Id.

22 A bulletin distributed by CJMH to Alameda County and Corizon Health staff requires in
23 large lettering: “Whenever an inmate is placed in a Safety Cell or there is a possible WI 5150
24 situation, CJMH must be notified immediately. CJMH is now on-site 7 days/wk, 15 hours/day.
25 From 0800–2300 contact the ITR Screener at x.46905. From 2300–0800 contact the On-Call
26 Clinician at x.53200, enter pager #5098, followed by your full phone number with area code.”
27 Sherwin Decl., Ex. 58. Even though there were no CJMH personnel in the mental health office at
28 the time, it is undisputed that Deputy Ahlf could have called the on-call clinician at 4:00 a.m. on

1 August 16 when he transferred Harrison to the isolation cell.

2 The County’s Rule 30(b)(6) person most knowledgeable regarding the handling of
3 mentally disordered inmates confirmed that, absent an emergency, County policy required a
4 “prompt referral” to CJMH. Sherwin Decl., Ex. 57, Back PMK Dep. 21:6–9. At the top of the
5 referral form was the admonition: “Rule out drug toxicity, alcohol withdrawal, head injury, et
6 cetera, before making a psych referral.” Id. 22:1–4; Sherwin Decl., Ex. 59. Sergeant Back also
7 testified that Deputy Ahlf was required by Policy and Procedure 13.12 to fill out a Mental Health
8 Referral Form. Back PMK Dep. 29:6–10.

9 **E. Referral to CJMH**

10 Defendant Hast, an Associate Social Worker with CJMH, began her shift in the CJMH
11 Intake, Transfer, and Release office (“ITR”) at 3:30 p.m. Sherwin Decl., Ex. 31, Hast Dep. 13:1–
12 14:2. In ITR, Hast would see clients referred by the jail to do crisis interventions, brief therapy,
13 and referrals for medication stabilization. Id.

14 Hast was aware that Delirium Tremens “is a medical emergency when somebody is
15 withdrawing from alcohol.” Id. at 14:24–15:6. She was familiar with many or even most of the
16 symptoms of alcohol withdrawal. Id. at 17:22–20:10. She testified that she knew that “when
17 somebody is having alcohol withdrawal . . . it’s important that medical personnel be dealing with
18 it” because “it’s a medical issue that needs to be addressed by medical personnel.” Id. at 20:11–
19 19.

20 Twelve hours after Harrison was transferred to an isolation cell, at approximately 3:30 p.m.
21 on August 16, the sheriff’s deputy observing Harrison called CJMH and left a voicemail message
22 requesting an evaluation. The message indicated Harrison was mumbling incoherently, that he
23 had seen a nurse but had no medications, and that he had been put on intensive observation in an
24 isolation cell that morning. Id. 35:18–25; 49:16–20.

25 Hast retrieved the message at 4:00 p.m. Id. 49:16–20. In addition to reviewing other
26 referrals during the next thirty minutes, she reviewed Harrison’s intake screening form — the form
27 Nurse Sancho had filled out at Glenn Dyer — and noted on her own chart that Harrison reported
28 alcohol use and that he was placed on CIWA. Id. 35:18–36:11. Plaintiffs point to Hast’s chart

1 note as evidence that at the time she reviewed the intake form, the CIWA notation had not yet
2 been crossed out, and that it was crossed out only after the events that led to this action took place.
3 Hast testified that she understood the CIWA notation to mean that Harrison had been placed under
4 the observation of Corizon Health nursing staff to monitor for alcohol withdrawal. Id. 33:1–3.
5 Hast testified that she did not have specific knowledge concerning how the CIWA protocol is
6 implemented because it is undertaken by medical staff, not mental health professionals. Id. 33:20–
7 34:6.

8 At approximately 4:30 p.m., Hast called the housing unit, and she was informed the
9 sheriff’s deputy monitoring Harrison would be leaving in thirty minutes. Id. 52:11–14. Hast was
10 aware that she might miss the deputy if she waited to visit Harrison. She was also aware that the
11 deputy’s phone message, combined with the intake form Hast reviewed, indicated it was possible
12 that Harrison was suffering from severe alcohol withdrawal, requiring immediate attention. Hast
13 testified that she did not go immediately because “I would imagine that I was looking at all of the
14 referrals that I had and triaging. And so in my process of triaging, I made that decision.” Id.
15 53:1–3. At the time of her deposition, Hast testified that she could not recall whether any other
16 inmate had a medical emergency at the same time that she called the housing unit. Id. 54:4–9.

17 Hast arrived at the housing unit an hour-and-a-half after the referral voicemail message had
18 been left, and one hour after she retrieved the message, at 5:00 p.m. By then, the deputy had left
19 and she was not able to evaluate Harrison. Id. 54:24–55:1. Hast did not request another deputy to
20 come to the housing unit, though she was aware that she could have done so. Id. 55:2–18.
21 Instead, she looked through the window of Harrison’s cell, saw that Harrison was standing at the
22 toilet, and left. Id. 58:5–59:6. Hast testified that, had she evaluated Harrison and concluded he
23 exhibited signs of severe alcohol withdrawal, she “probably” would have contacted a nurse. Id.
24 59:9–13.

25 Hast called the housing unit at 6:00 p.m. By then, Deputy Ahlf had just begun another
26 shift and was once again monitoring Harrison. Deputy Ahlf was surprised that no one from CJMH
27 had evaluated Harrison by then, because he considered Harrison’s situation severe enough to
28 warrant attention sooner. Ahlf Dep. 82:20–83:2. Deputy Ahlf told Hast that he had placed

1 Harrison in the isolation cell at 4:00 a.m. that day due to bizarre behavior, disorientation to time
2 and place, and incoherent mumbling, and that he was not receiving any medication. Hast Dep.
3 60:1–12. Hast testified that she knew at the time those symptoms were consistent with severe
4 alcohol withdrawal. Id. 60:13–16. Hast was also aware that Harrison’s medical records did not
5 include any records indicating he had been placed on a treatment plan to manage his withdrawal.
6 Id. 62:18–63:5. Hast did not notify a medical professional of Harrison’s condition, or tell Deputy
7 Ahlf to do so.

8 Hast did not go to the housing unit after speaking with Deputy Ahlf at 6:00 p.m. because “I
9 would imagine I was triaging the — all of the people that I was seeing, which I do throughout my
10 shift. And seeing these people and then getting there as soon as I could.” Id. 65:7–10. Deputy
11 Ahlf testified that Hast told him she “hadn’t gotten around to it” because she had to see other
12 patients. Ahlf Dep. 83:17–21. Hast did not return to the housing unit until 7:00 p.m., after the
13 events described below had already occurred.

14 Attached to the County Defendants’ motion for summary judgment is the declaration of
15 Megan Hast. ECF No. 121-2. In it, Hast provides a more detailed description of the time between
16 5:00 p.m. and 7:00 p.m. on the night of August 16. She could not recall those details at the time of
17 her deposition. Hast states that when she returned to her office after visiting the housing unit at
18 5:00 p.m., she had three referral forms in her inbox for three different patients. She states that she:
19 saw “Client 1” at 5:00 p.m., and spent forty-five minutes preparing for and evaluating Client 1;
20 saw “Client 2” at 5:15 p.m., and spent a total of forty-five minutes on Client 2; and saw “Client 3”
21 at 5:30 p.m., and spent a total of twenty minutes on Client 3. She also states: “Thus, the meeting
22 with Client 3 probably ended at about 5:35 p.m.” Hast Decl. ¶¶ 9–12. Hast next states she: saw
23 “Client 4” at 6:40 p.m., and spent a total of forty-five minutes with Client 4; and saw “Client 5” at
24 7:05 p.m., and spent a total of forty-five minutes with Client 5. Id. ¶¶ 14–15. The declaration also
25 states that Hast returned to the housing unit “sometime after 7:00 p.m.,” and that after returning
26 from the housing unit, she wrote her progress note for Harrison and proceeded to “manage the
27 remaining nine clients I had that evening.” Id. ¶ 16. None of Clients 1–5 were experiencing a
28 medical emergency. Plaintiffs point out that Hast’s declaration accounts for three hours and

1 twenty minutes of time spent either with patients or preparing to evaluate them in a space of just
2 over two hours.

3 **F. Altercation with Deputy Ahlf**

4 At some point around 6:30 p.m. on August 16, Deputy Ahlf observed Harrison yelling and
5 screaming, claiming someone was pointing a gun at him and shooting him. Ahlf Dep. 73:1–3.
6 Harrison had a mattress over his head, the cell was flooded, and there were broken shards of food
7 tray on the floor of the cell. Id. 73:5–10. Harrison was not actively flooding the cell; Deputy Ahlf
8 did not know how he had flooded it. Id. 73:19–24. Harrison was wearing pants and sandals, and a
9 tan shirt, but not his blue uniform shirt, so Deputy Ahlf suspected perhaps he had clogged the
10 toilet with his uniform shirt. Id.

11 Harrison was standing in one to one-and-a-half inches of water. Id. 74:12–19. At the time
12 Deputy Ahlf was interviewed, after the incident, Deputy Ahlf claimed Harrison had been holding a
13 piece of food tray. At the time of his deposition, Deputy Ahlf could not recall if that was the case.
14 Id. 74:20–75:6. Deputy Ahlf asked Harrison why he had flooded his cell and broken his food tray.
15 According to Deputy Ahlf, Harrison responded “I’ve been in here all day. You guys put me here.
16 What’s going on?” Id. 77:1–3.

17 Deputy Ahlf next asked if Harrison had been seen by anyone that day. Harrison responded
18 no. Id. 77:10–15. Deputy Ahlf “absolutely” expected that someone should have gone to see
19 Harrison by then because a mental health referral should have been made. Id. 77:16–24. Deputy
20 Ahlf told Harrison “Let me try to call mental health and see if there’s anybody in the office to try
21 to find out why.” Id. 83:6–8. At that point, Deputy Ahlf had the conversation with Defendant
22 Hast described above.

23 Deputy Ahlf testified that he could have called an additional deputy for backup at this
24 time. Id. 86:22–87:1. Instead, he determined that he should move Harrison to the other isolation
25 cell since Harrison’s cell was flooded and dangerous. He told Harrison that he was going to move
26 him, and Deputy Ahlf testified that Harrison responded: “Okay, Deputy Ahlf.” Id. 87:7–89:6.
27 Although he had the option of handcuffing Harrison through the port on the cell door prior to
28 moving him, Deputy Ahlf decided to handcuff Harrison after opening the cell door because he did

1 not consider Harrison a threat. He asked Harrison to turn around, put his hands on his head, and
2 walk toward his voice. Id. 87:21–89:1. Deputy Ahlf testified that he did not consider Harrison
3 dangerous at that moment because Harrison was compliant — “not a threat at that point.” Id.
4 Nevertheless, Deputy Ahlf was holding a Taser in one hand “[j]ust in case something were to
5 happen.” Id. 89:16. Deputy Ahlf’s supervisor at the time, Sergeant Joseph Bricker, wrote in
6 Deputy Ahlf’s performance review after the incident that Deputy Ahlf “had a lapse in judgment”
7 when he opted to move Harrison without additional assistance. Sherwin Decl., Ex. 66, Bricker
8 Dep. 31:3–7. At his deposition, Sergeant Bricker confirmed: “I believe Deputy Ahlf should have
9 tried to get assistance in the event that something happened. I think he should have waited for
10 assistance, that was my opinion.” Id. 31:14–16.

11 Once Harrison reached the doorway, Deputy Ahlf asked Harrison to put his right hand
12 behind his back. As he was applying one handcuff, Deputy Ahlf testified, Harrison turned his
13 head and gave him “an unsettling, just blank stare. And it wasn’t until that point that I felt that –
14 not that he was going to do something, but something just wasn’t right.” Ahlf Dep. 91:7–92:1.
15 Deputy Ahlf cannot recall whether he had already put his Taser away at that point, but at his
16 deposition, he believed that he had. Id. 93:3–14. Deputy Ahlf testified that he next put away the
17 handcuffs and “gently nudged” Harrison back into his cell and instructed him to sit on the bench
18 inside the cell. Id. 94:4–6. Harrison moved four to five feet as a result of the “nudge.” Id. 94:12–
19 14. Harrison did not sit, and Deputy Ahlf removed his Taser from its holster. Id. 95:11–14.
20 Harrison “proceed[ed] to take a — I don’t want to call it running towards me, but he proceeded to
21 take a couple of steps towards me in which I took that as a direct threat and I deployed my Taser.”
22 Id. 95:16–22. Though Deputy Ahlf cannot be sure he would call it running or sprinting, he
23 testified that Harrison was moving “a lot faster than just taking a step.” Id. 96:21–24. Deputy
24 Ahlf also told his sergeant at the time that Harrison said “I’m going to kick your ass,” or
25 something similar, as he was moving. Id. 101:1–2; 103:2–9. Sergeant Scott Dudek also testified
26 that “obviously [Deputy Ahlf] made a mistake” in moving Harrison without assistance, though
27 Dudek understood why, given Deputy Ahlf’s prior contact with Harrison, Deputy Ahlf would have
28 opted to proceed alone. Sherwin Decl., Ex. 62, Dudek Dep. 45:20–46:9.

1 After Deputy Ahlf deployed his Taser, Harrison “kind of stepped backwards a little bit and
2 ended up falling down onto the corner of the bench and got right back up and proceeded to run out
3 the door.” Id. 99:23–25. Deputy Ahlf testified that, at that moment, he deployed one dart-mode¹
4 Taser cycle. Id. 101:5–6. The Taser deployment log shows, however, that two seconds later,
5 Deputy Ahlf deployed his Taser in dart-mode for a second five-second cycle. Deputy Ahlf does
6 not have an explanation for this log record entry, and does not recall the second firing in dart
7 mode. Id. 101:20–102:3.

8 After the tasing ended, Deputy Ahlf testified that Harrison stood up and charged him.
9 Deputy Ahlf stepped to the side, Harrison slipped on the water, and slid out of his cell on his back,
10 feet first. Id. 104:13–105:6. As Harrison slid, he grabbed hold of Deputy Ahlf’s leg, and Deputy
11 Ahlf slipped and fell as well. Id. 105:14–19. Deputy Ahlf got on top of Harrison and a struggle
12 ensued. Deputy Ahlf told Harrison to stop resisting as Harrison thrashed, attempted to kick and
13 free his arms, and spit. Id. 106:13–107:16. Deputy Ahlf testified that he next delivered two open-
14 palm strikes to the back of Harrison’s head. Id. 107:18–20. At some point, Harrison had switched
15 from a supine position to a prone position. Id. 107:24–108:4. Deputy Ahlf also delivered closed-
16 fist strikes to Harrison’s back and knee strikes to his torso. Id. 108:9–10. Deputy Ahlf testified
17 that Harrison never attempted to punch, kick, or strike him, because deputy Ahlf never gave him
18 the opportunity to do so. Id. 112:9–18.

19 At some point during this struggle, Deputy Ahlf radioed for backup, and accidentally
20 called backup to housing unit 34 before correcting it to 33. Id. 116:24–117:1. Deputy Ahlf began
21 to become tired and backup did not come immediately, so he held Harrison’s arms and held down
22 Harrison’s body with his body weight until backup came. Id. 118:16–19. Deputy Ahlf testified
23 that he never held Harrison in a headlock, and that he never applied force to Harrison’s neck. Id.
24 119–120. At this time, Deputy Ahlf testified, other officers first arrived.

25

26 ¹ The parties explain that dart mode involves the deployment of two darts along wires. The Taser
27 sends an electric signal between the probes, resulting in a loss of neuromuscular control. By
28 contrast, drive stun mode is deployed with the Taser directly against the target’s body. Two
electrodes deliver an electric shock, which causes pain, but does not result in loss of
neuromuscular control.

G. Arrival of the Remaining Sheriff’s Deputies

1 The evidence in the record concerning what happened next is a mass of contradictory
2 testimony and reflects, at a minimum, the chaotic nature of the events that ensued.²

3 Deputy Valverde arrived first. Id. 122:21–22; Sherwin Decl., Ex. 67, Valverde Dep.
4 26:10–12. Deputy Valverde testified that Harrison was thrashing about on his stomach, and that
5 Deputy Ahlf was on top of him. Id. 26:10–27:13. When asked whether he saw Deputy Ahlf strike
6 Harrison, Deputy Valverde testified “I do not know.” Id. 28:14–18. Deputy Valverde did not
7 provide any further detail concerning what Deputy Ahlf was doing to gain control of Harrison.
8 Deputy Valverde testified that he went to Harrison and placed his knee on Harrison’s upper back
9 and tried to grab Harrison’s right arm with his left hand. Id. 29:5–11. He testified also that he
10 avoided putting pressure on Harrison’s neck or head because it can “cause damage.” Id. 29:19–
11 30:3. He also testified that Harrison displayed “extreme strength,” as he was able to lift Deputy
12 Ahlf and Deputy Valverde from a prone position. Id. 32:12–14.

13 Deputy Swetnam arrived next, “just a step or two” behind Deputy Valverde. Sherwin
14 Decl., Ex. 68, Swetnam Dep. 19:10–13. Deputy Swetnam testified that he thought Harrison was
15 on his back, not his stomach. Id. 19:8–9. He recalled that Deputy Valverde took a position on
16 Harrison’s left side, and Deputy Swetnam went to Harrison’s legs, to attempt to take control of
17 them. He noticed Taser wires on the floor. Id. 20:16–20. Deputy Swetnam attempted to pick up
18 Harrison’s legs, but Harrison’s left leg went stiff and he let out a groan. Id. 20–21:3. Deputy
19 Swetnam believed that a Taser had just been deployed in dart mode. Id. 21:22–23:12.

20 Deputy Swetnam continued to grip Harrison’s legs, but was unable to keep control of
21 them. He then delivered a downward kick to Harrison’s lower abdomen, just below the navel. Id.
22 25:7–20. Deputy Swetnam believed Harrison had just had the “wind knocked out of him.” Id.
23 26:9–10. The three deputies then turned Harrison over, into a supine position. Id. 27:5–15. At
24 some point during this maneuver, other deputies arrived. He does not recall who. Shortly
25

26 _____
27 ² As discussed more fully below, Plaintiffs also argue, through their police practices expert, that
28 the Defendant Sheriff’s Deputies in this case employed a “Code of Silence” in failing to recall any
details concerning what they saw each other do during the struggle. See Blair v. City of Pomona,
223 F.3d 1074, 1081 (9th Cir. 2000).

1 thereafter, Deputy Swetnam heard someone say “He’s got the Taser.” Id. 28:19–20. Deputy
2 Swetnam took some weight off Harrison’s legs and punched him three times in the lower
3 abdomen; he believes Harrison was on his side at this point. Id. 29:1–7. He never saw Harrison
4 with a Taser. Shortly thereafter, Deputy Swetnam believes he saw another deputy — he does not
5 remember who — deliver further strikes to Harrison’s torso. Shortly thereafter, he heard someone
6 say: “Okay. I’ve got it, I’ve got it” or “I’ve got the Taser.” Id. 31:24–25. Deputy Swetnam did
7 not witness Harrison strike anyone, though at his deposition he quibbled with the definition of
8 “strike,” as Harrison was violently “thrashing,” “wrestling,” and attempting to free his legs. Id.
9 42–49.

10 Deputy Valverde testified that he noticed the Taser for the first time when he saw Harrison
11 grab the Taser in his right hand. Valverde Dep. 34:10–21. Deputy Valverde attempted to “get it
12 out of his hand” by punching Harrison on the wrist repeatedly, but Harrison would not let go. Id.
13 35:14–19. Deputy Valverde testified that he “advised everybody that there was a Taser” Id.
14 36:2–4. He could not recall whether there were any deputies there at that moment other than he
15 and Deputy Ahlf. Id. 36:10–18. He believes “somebody got control of the Taser” after that,
16 though he did not see it. Id. 36:19–23. Deputy Valverde testified that the deputies were then able
17 to handcuff Harrison. Id. 37:14–15. Deputy Valverde testified that he did not witness any other
18 deputy strike Harrison, that he did not see who handcuffed Harrison or how it was accomplished.
19 Id. 37:5–38:22. The next thing Deputy Valverde remembered was the deputies moving Harrison
20 to an isolation cell. Id. 39:2–6. During that process, Harrison alternately threatened to kill the
21 deputies and yelled that he loved them. Id. 40:1–5.

22 Deputy Ahlf testified that prior to Harrison’s grabbing the Taser, a deputy lifted him off of
23 Harrison. Ahlf Dep. 124:15–20. Deputy Ahlf then heard someone say “He’s got the Taser.” Id.
24 125:4–7. Deputy Ahlf went to Harrison’s arms and saw he was holding the Taser. Deputy Ahlf
25 testified that he used his foot to grab hold of the Taser and slide it away from Harrison. Id.
26 126:14–23. Deputy Ahlf did not recall seeing anyone hit Harrison’s hands. Id. 127:13–14.
27 Deputy Ahlf next picked up the Taser and told Harrison to stop resisting; he then tased Harrison in
28 drive stun mode on the upper back. Id. 129:24–130:19. He is not sure whether the probes were

1 still attached to Harrison — he testified that the drive stun “didn’t seem to have any effect on
2 him,” though Harrison tensed and his legs straightened. Id. 131:2–14. Deputy Ahlf testified that
3 he did not recall seeing what precisely any other deputy was doing during this time, though he
4 “saw Mr. Harrison get struck” by deputies. Id. 132:11–23.

5 Deputies Litvinchuk, Madigan, Martinez, Unubun, and Rojas arrived at some point around
6 the time Harrison had picked up the Taser. Sherwin Decl., Ex. 70, Martinez Dep. 53:14–15; Ex.
7 71, Litvinchuk Dep. 25:16–17; Ex. 72, Madigan Dep. 22:1–2; Ex. 74, Rojas Dep. 31:18–21; Ex.
8 75, Unubun Dep. 30:2–2. Deputies Sobrero and Bareno arrived sometime after that. Sherwin
9 Decl., Ex. 76, Sobrero Dep. 30–33; Ex. 77, Bareno Dep. 23:2–24:23.

10 Deputy Martinez heard someone say “He’s got ahold of my Taser,” so he pulled out his
11 Taser, removed the frontal cartridge, and delivered a drive stun to Harrison’s back, between the
12 shoulder blades. Martinez Dep. 53:14–20. County-issued Tasers deliver a five-second cycle
13 unless the trigger is depressed for longer. Deputy Martinez delivered a seven-second drive stun.
14 Id. 56:12–57:7. Deputy Martinez determined that the Taser had not had an effect on Harrison, so
15 he delivered a second drive stun to Harrison between the shoulder blades. He does not dispute
16 that three seconds went by between stun cycles. Id. 57:15–59:3. The second time “seemed to be
17 more effective because we were able to get his arms from underneath him and secure him in
18 handcuffs.” Id. 59:6–10. Deputy Martinez testified that he never struck Harrison, and he never
19 saw Harrison strike a deputy. Id. 69–70. Prior to delivering the first stun, Deputy Martinez yelled
20 “Taser, Taser, Taser,” but otherwise did not warn Harrison prior to delivering the stuns. Id.
21 70:21–71:16.

22 The remaining deputies testified as to the use of force as follows.

23 Deputy Litvinchuk testified that he grabbed Harrison’s right arm with his left hand and
24 delivered “three or four closed fist strikes to the right upper torso.” Litvinchuk Dep. 28:9–29:5.
25 He testified that he did not see any other deputy strike Harrison. Id. 30:6–18.

26 Deputy Madigan testified that he stepped on Harrison’s right hand, pinning the Taser to the
27 ground for less than a minute. Madigan Dep. 24:6–18. He also placed his right knee on
28 Harrison’s back after the Taser was secured “to stop him from being able to get up” for

1 approximately three minutes. Id. 26:17–28:15. Deputy Madigan testified that the struggle “went
2 on for a while.” Id. 28:14–15. Deputy Madigan also placed Harrison’s right arm in a wrist lock to
3 handcuff him. Id. 28:18–21.

4 Deputy Bareno testified that when he arrived, he determined that he did not need to
5 intervene because Harrison was not trying to get up and was not trying to injure a deputy. Bareno
6 Dep. 23:25–24:12. Deputy Bareno never saw Harrison strike, punch, or slap a deputy; he testified
7 that Harrison did attempt to kick deputies several times. Id. 27:4–22. He also testified that he saw
8 several deputies attempt to strike Harrison, but could not tell who attempted which strike. Id. 29–
9 30.

10 Deputy Sobrero testified that when he arrived there were “enough people to deal with the
11 situation.” Sobrero Dep. 40:9–12. He was going to leave, but the deputy with control of
12 Harrison’s left arm “gave up and got up and left Deputy Unubun by himself trying to control those
13 arms, and so I took his place.” Id. 40:22–41:1. Deputy Sobrero was otherwise unable to describe
14 the other deputies’ actions. Id. 41:6–7. Deputy Sobrero testified that he did not feel he needed to
15 strike or kick Harrison, put him in a headlock, place his body weight on him, or deliver knee
16 strikes because he was “able to overcome the resistance by using compliance techniques.” Id.
17 44:11–45:5.

18 Deputy Rojas testified that he never struck Harrison, and that he never saw another deputy
19 strike him, either. Rojas Dep. 27:14–15. He also testified he never saw any deputy use a Taser on
20 Harrison. Id. 31:2–3. He also testified that he took hold of Harrison’s right wrist and brought his
21 arm to the small of his back, “which kind of forced his body to lay flat on his stomach.” Id.
22 30:10–13.

23 Like Deputy Rojas, Deputy Unubun testified that he grabbed Harrison’s right hand and
24 used a joint manipulation technique to rotate Harrison’s right wrist around to the small of
25 Harrison’s back. Unubun Dep. 32:10–34:8. The technique worked sufficiently that Deputy
26 Unubun was able to handcuff Harrison. Id. Another deputy handed Deputy Unubun Harrison’s
27 left arm, and he handcuffed that wrist as well. Id. 37:8–16.

28 Once the deputies gained control of Harrison, Deputies Rojas and Sobrero moved Harrison

1 to the other isolation cell, fifty to sixty feet away, and placed him on the floor, handcuffed, face
2 down. Sobrero Dep., 59–61; Rojas Dep. 38–40. Deputy Sobrero testified that Harrison remained
3 on the floor of the isolation cell for eight to ten minutes, including the time the deputies spent
4 waiting for a waist chain and leg shackles to be brought to the cell. Sobrero Dep. 76:1–2. Deputy
5 Rojas had asked for a spit mask — a hood to prevent spitting. Rojas Dep. 39:8–20. Deputy
6 Bareno knelt on Harrison’s legs, locking them in a “figure four leg lock” for three minutes or
7 “maybe a little longer.” Bareno Dep. 65–68. Deputies Rojas and Litvinchuk then put the spit
8 mask on Harrison. Litvinchuk Dep. 44:14–21. Deputy Sobrero and others also applied waist
9 chains and leg irons. Sobrero Dep. 73:16–23.

10 The County does not point to any evidence that Harrison struck or kicked any deputy
11 throughout this encounter, although every deputy testified to Harrison’s violent thrashing.

12 A nurse arrived after the chains, spit mask, and leg irons were applied. The nurse asked
13 the deputies to move Harrison into the hallway for evaluation. Sobrero Dep. 76:3–20. At some
14 point when Harrison was moved into the hallway, Deputy Ahlf took a close-up photograph of
15 Harrison wearing the spit mask. Sherwin Decl., Ex. 87 (photo). Sergeant Dudek testified that
16 Deputy Ahlf told him “I got a great photo of him in the -- with his spit mask on.” Dudek Dep.
17 59:20–60:1. Sergeant Dudek testified: “I didn’t want to know what he meant by that” because “it
18 just leaves too many doors open. Was it a great photo because the light was good? Was it a great
19 photo for inappropriate purposes? I didn’t want to know.” Id. 60:2–8.

20 **H. Transfer to Hospital and Death**

21 The nurse who examined Harrison in the hallway testified that Harrison’s saturation rate
22 was 97%, which indicated adequate oxygen levels, and that his pulse was 57 beats per minute. Ly
23 Decl., Ex. O, Imperio Dep. 16–17. She recorded the time she examined Harrison as 7:10 p.m. on
24 August 16. Id. She was unable, however, to measure Harrison’s blood pressure, because he
25 resisted. Id. At some point in the next three minutes, Harrison became unresponsive to verbal or
26 tactile stimuli. Id. 19:21–20:6. Harrison was wheeled to the trauma room in the jail at around
27 7:13 p.m. He arrived unresponsive, so the nurses there used an automatic external defibrillator
28 (“AED”) to get a reading on his heart rhythm. Ly Decl., Ex. P, Blyakherova Dep. 28–29. No

1 reading was detected. Nurse Blyakherova and Nurse Anderson performed chest compressions,
2 alternating thirty-two compressions and two blasts of air from an “ambu bag.” Id. 30. Harrison
3 remained unresponsive. He was transported to Valley Care Hospital. He remained unresponsive,
4 and died two days later on August 18, 2010.

5 **I. Coroner’s Report**

6 County Coroner Thomas Wayne Rogers, M.D. performed the autopsy. Sherwin Decl., Ex.
7 78 (autopsy report). The coroner determined Harrison’s cause of death as: “Anoxic
8 Encephalopathy due to cardiac arrest following excessive physical exertion, multiple blunt injuries
9 and Taser.” Id. at 1.³

10 The coroner found blood on: the right and left sides of Harrison’s head and neck that
11 appeared to have come from his nose and mouth; his right and left arms; his torso, in small
12 amounts; and a 6-inch streak over his left ribs. The report describes the following blunt injuries: a
13 16x9-inch contusion over Harrison’s right lateral neck extending down to the upper lumbar area;
14 two quarter-inch abrasions on the right side of his lower lip; a 3/8-inch contusion on the inner
15 surface of the left side of his upper lip; a 5/8-inch abrasion under his chin; and a 4x2.5-inch
16 contusion on the right side of his neck.

17 On the right arm, the coroner found: a 12x7-inch contusion on Harrison’s arm; four
18 abrasions on his wrist; two half-inch contusions over his hand; a 1.75-inch contusion on the palm
19 of his hand; another 2.5xhalf-inch contusion on the palm of his hand; a half-inch contusion on the
20 front of his thumb; an eighth-inch abrasion on the tip of his third finger; a half-inch contusion on
21 his upper arm; and three other smaller contusions on his upper arm. On the left arm, the coroner
22 found: a one-inch contusion on his upper arm; a 1.25-inch contusion on his upper arm; two small
23 abrasions on his upper arm; a 12x5-inch contusion over his upper arm and elbow; black abrading
24 over his elbow; a 10x4-inch contusion on his forearm; a small abrasion on the elbow; a small
25 abrasion on his wrist; a 3x1.5-inch contusion and a 2-inch contusion on the palm of his hand; and
26 another 2.25-inch contusion over his second metacarpal.

27 _____
28 ³ Strangely, the report begins by identifying the body as a white male, 6’3” long and weighing 199
pounds. Id. at 2.

1 On Harrison’s right leg, the coroner found: a 6x3.5-inch contusion on his thigh, a 1x1-inch
2 contusion on his lower leg; two small open areas of skin on his thigh; and a small abrasion on his
3 lower leg. On Harrison’s left leg, the coroner found: three to four contusions on his thigh,
4 covering a 1.5-inch area; a 2-inch contusion on his thigh; a 5/8-inch contusion on his knee; a 1.5-
5 inch abrasion on his lower leg; a small abrasion over his lower leg; a 1.5-inch contusion over his
6 knee; abrading of the skin around his knee; a 2xhalf-inch contusion on his thigh; a small contusion
7 on his thigh; a 1xquarter-inch contusion on his thigh; and a small contusion on his lower leg.

8 On Harrison’ torso, the coroner found a 4x3.5-inch contusion on his right shoulder; a 5x4-
9 inch contusion on his right side; abrading on the right side of his back; a 3-inch contusion on his
10 right gluteal area; a 6x4-inch contusion on the left side of his back; a 5x4-inch contusion on the
11 back of his left shoulder with hemorrhaging underneath; a 5-inch contusion over his right clavicle;
12 a 2.25x3/16-inch abrasion over his right shoulder; and other abrasions.

13 The coroner also found: fluid in the space around the lungs and in the abdominal cavity; a
14 two-inch hemorrhage in the left pleural cavity between ribs 4 and 5; a 6xhalf-inch hemorrhage
15 over left rib 7; and hemorrhage in the right pleural cavity covering an interrupted 8x2-inch space,
16 from ribs 5 to 12. Harrison’s heart was enlarged, weighing 470 grams. His right and left knuckles
17 and right wrist were incised and there was hemorrhage beneath some of the knuckles and in his
18 wrist. In the strap muscles of his neck, the coroner found several areas of hemorrhage as well.
19 The coroner found further hemorrhaging in his cranium.

20 **J. Expert Opinions**

21 **1. Police Practices Expert John J. Ryan**

22 Plaintiffs’ “police practices expert,” John J. Ryan, was an active police officer for twenty
23 years prior to retiring as a Captain of the Providence, Rhode Island Police Department in June of
24 2002. Ryan Decl., ECF No. 156 ¶ 1. He is now a consultant in police and law enforcement
25 practices. As part of his work, he has authored law enforcement guides; spoken numerous times
26 to conferences on law enforcement practices; conducted training sessions for public employees,
27 including law enforcement officers, attorneys, and judges; and taught courses on police policy and
28 procedure, arrest, and the use of force. Among the materials Ryan reviewed in preparing his

1 expert report are jail records, the deposition transcripts of jail personnel and sheriff’s deputies,
2 audio recordings of interviews with sheriff’s deputies recorded by the County; transcripts of
3 interviews with eyewitnesses, and the personnel files of the Sheriff’s Deputies.

4 After carefully cataloguing the events of August 13–16, 2010, Ryan reached several
5 conclusions concerning the adequacy of the jail staff’s response to Harrison’s condition.

6 First, Ryan states that he is familiar with the California POST Learning Domains with
7 respect to officer training applicable to the Sheriff’s Deputies in this case, and that it is his opinion
8 that “the action of the deputies throughout this case was inconsistent with such training.” Id. ¶ 94.
9 In particular, Ryan states that Deputy Ahlf’s decision to deal with Harrison without backup
10 breached training “well known in law enforcement and emphasized in California Post training that
11 when dealing with someone with a mental impairment, backup should [be] requested.” Id.

12 Second, Ryan concludes, based on the record in this case, including the autopsy report,
13 “that the use of force used by the deputies involved in the event with Mr. Harrison was
14 inconsistent with generally accepted policies, practices, training, and legal mandates with respect
15 to use of force.” Id. ¶ 96. Ryan also concludes that any officer present “had a recognized
16 obligation . . . to intervene in the force which was taking place.” Id.

17 Ryan states that, in his opinion, Harrison’s injuries “were not explained by the materials to
18 include reports, interviews, or depositions of the officers.” Id. ¶ 97. While Ryan explicitly avoids
19 assessing the credibility of the officers, “it must be recognized that the varying descriptions
20 provided by the deputies of both what each individual deputy did to control Harrison, as well as
21 allegations that Harrison was in possession of the TASER are not consistent.” Id. ¶ 97.

22 In discussing the excessive force analysis set forth by the Supreme Court in Graham v.
23 Connor, 490 U.S. 386 (1989), Ryan states that “hard hand strikes such as punches and kicks are
24 considered significant force options and TASER is considered a significant intermediate weapon.”
25 Id. ¶ 99. Ryan also confirms the Court’s review of the facts above — “at no time did Mr. Harrison
26 land a strike or kick on any involved officer. In fact, his actions were described as flailing;
27 attempting to break free; and verbal threats.” Id. ¶ 100. “It is noted that no deputy testified that
28 Mr. Harrison’s resistance ever placed a deputy at risk.” Id. ¶ 108.

1 Ryan also concludes that “[t]he seriousness of the event was largely the decision of Deputy
2 Ahlf to move him to a different cell Ahlf considered Harrison such an insignificant threat
3 that he decided to open the cell without backup and move him to a different cell on his own.” Id.
4 Ryan states that, in reviewing the evidence, he concludes nine deputies used force to control
5 Harrison, and that Deputy Bareno indicated there was no need for him to intervene to assist the
6 other deputies. Id. ¶ 102. “Here the correctional officers used force that from a proportionality
7 scale far outweighed the need which was simply to move Harrison to the other isolation cell. It is
8 of note that Deputy Ahlf testified that he was able to maintain control of Harrison by himself
9 between the time he called for assistance and other deputies arrived.” Id. ¶ 105.

10 With respect to Harrison’s possession of the Taser, Ryan’s report states: “Even by a review
11 of the contrasting testimony by the deputies with regard to Harrison’s alleged possession of the
12 TASER, it is clear that he was never in a position to use the TASER even if he was in purposeful
13 possession of it.” Id. ¶ 109.

14 Finally, Ryan concludes: “It is my opinion . . . that the deposition testimony of the
15 involved officers provides evidence of the Code of Silence among the involved deputies in this
16 case.” Id. ¶ 117. Ryan has written about and conducted trainings regarding the Code of Silence.
17 Ryan points to the “consistent inability to recall what other deputies were doing or a complete
18 denial that actions of other deputies were witnessed” as evidence in this case of the Code of
19 Silence. Id. ¶ 122. “The code of silence may also explain why not a single officer can offer any
20 explanation for injuries to Mr. Harrison’s neck and head.” Id.

21 **2. Plaintiffs’ Medical Experts**

22 **a. Michael M. Baden, M.D.**

23 Plaintiffs retained Dr. Michael Baden as an expert. Dr. Baden is a board-certified forensic
24 pathologist and the former Chief Medical Examiner of New York City. He reviewed the autopsy
25 report, coroner’s report, death certificate, jail records, medical records, and several deposition
26 transcripts in this case. Dr. Baden concludes: “It is my opinion that Mr. Harrison died because
27 prison personnel failed to properly diagnose and treat his severe alcohol withdrawal symptoms
28 that developed into Delirium Tremens; because he was not properly examined by a physician for

1 his obvious medical problems; and because he was struck many times by Sheriff’s officers,
2 Tasered multiple times, and physically restrained so that his breathing was compromised causing
3 his brain to be deprived of oxygen with resulting anoxic encephalopathy.” Baden Report, ECF
4 No. 152-1.

5 **b. Kathryn Burns, M.D.**

6 Plaintiffs also retained Dr. Kathryn Burns. Dr. Burns is a board-certified psychiatrist. In
7 preparing her expert report, Dr. Burns reviewed the medical records in this case and the Sancho,
8 Ahlf, Hast, Orr, Granlund, Sass, and Magat deposition transcripts. Burns Report, ECF No. 154.
9 Dr. Burns states that Harrison had a serious medical need that was increasingly apparent from the
10 time of his arrest and booking to the altercation with the Sheriff’s Deputies. Id. at 2. Dr. Burns
11 concludes that Corizon and Dr. Orr failed to implement an appropriate screening procedure,
12 leading to a “cursory, inaccurate, and incomplete” medical screening at the Glenn Dyer detention
13 facility. Id. at 3. In addition, she concludes Corizon and Dr. Orr failed to ensure adequate
14 supervision and oversight of the screening process. Id.

15 In addition, Dr. Burns concludes Deputy Ahlf’s inadequate training at the jail resulted in
16 his failure to summon medical or mental health staff, and that the County failed to train jail staff to
17 detect the signs and symptoms of alcohol withdrawal. Id. Dr. Burns also concludes that the
18 County failed adequately to train CJMH staff, including Hast, in triaging and responding to
19 emergency referrals. Dr. Burns concludes Corizon Health was deliberately indifferent through its
20 employees by allowing Nurse Sancho to screen Harrison without clinical supervision, failing to
21 ensure accurate screening information, failing to ensure proper screening after Harrison was
22 transferred to Santa Rita Jail, failing to train employees and/or to ensure compliance with alcohol
23 withdrawal protocols, and failing to ensure Harrison was assessed and monitored for alcohol
24 withdrawal. Id. at 4.

25 Finally, Dr. Burns concludes the substandard care provided by Corizon Health and Hast
26 was a substantial and contributing cause of Harrison’s death. Id.

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3. Defendants' Medical Experts

a. Robert Wetli, M.D.

Dr. Robert Wetli is a board-certified forensic pathologist. He was retained by the County. In preparing his expert report, Dr. Wetli reviewed Harrison's medical records and certain jail records. Wetli Report, ECF No. 123. Dr. Wetli concludes that "[t]he autopsy did not identify any injury or disease process that could account for [Harrison's] death." Id., Ex. B at 2. Dr. Wetli notes that Delirium Tremens has a mortality rate of approximately thirty percent. Id. Dr. Wetli states that, had the use of Tasers produced Harrison's cardiac arrest, he would have exhibited a fatal cardiac rhythm disturbance within fifteen seconds of the discharge, which did not occur. Id. at 3. He also notes that "the extensive bleeding into soft tissues and around the neck area are in large part markedly exaggerated" post-mortem. Dr. Wetli further concludes that nothing suggests there was an asphyxia component to Harrison's death. Instead, Dr. Wetli is of the opinion that Harrison died from "metabolic complications of agitated delirium due to Delirium Tremens that was a consequence of his alcoholism." Id. at 4.

b. Vincent J. M. Di Maio, M.D.

Dr. Vincent DiMaio is a board-certified forensic pathologist and was the Chief Medical Examiner of San Antonio, Texas until 2006, when he retired. He was retained by the County. Dr. DiMaio reviewed Harrison's medical records and relevant deposition transcripts in preparing his expert report. DiMaio Report, ECF No. 122, Ex. B. Dr. DiMaio broadly agrees with Dr. Wetli, and concludes that Harrison died of Delirium Tremens. Id. at 5. He also concludes the deputies' conduct did not contribute to Harrison's death. Id.

c. James A. Rael, M.D.

Dr. James Rael is a board-certified internist and was the Medical Director for the Contra Costa County detention facilities for ten years. He was retained by the County. He reviewed Harrison's medical records and certain deposition transcripts. Rael Report, ECF No. 121-3, Ex. B. He concludes Megan Hast's conduct was "well within the standard of care." Id. at 1. He states Hast's attempt to visit Harrison was timely. Dr. Rael does not consider Hast's decision to return to the housing unit later after her initial visit a delay in care. Id. at 2. He also concludes Hast's

1 conduct with respect to the remaining patients that day was within the standard of care. Id.

2 **d. Robert Jones, M.D.**

3 Dr. Robert Jones is a board-certified family practitioner with experience in correctional
4 healthcare. He was retained by the County. In his declaration, Dr. Jones expresses the following
5 opinions based on his expertise and his review of the medical records in this case: the healthcare
6 system in place at Glenn Dyer and Santa Rita Jail was “thoughtful, reasonable, and rational”;
7 Corizon’s policies and procedures were “thoughtful, reasonable and rational” and “[t]hey met or
8 exceeded the standard of care”; Corizon’s training program for nurses met the standard of care;
9 Corizon’s hiring and retention of Nurse Sancho, and its response to her handling of Harrison’s
10 intake screening, were reasonable; Corizon met the standard of care in approving the medical
11 training of sheriff’s deputies; Corizon’s inmate transfer policy met the standard of care; and the
12 standard of care did not require that Harrison be re-screened at Santa Rita, nor that the initial
13 screening be audited for completeness or correctness. In addition, Dr. Jones concluded that,
14 “[h]ad Mr. Harrison received medical treatment at any time up until the time he was tazed, he
15 would not have died from alcohol withdrawal in relation to his incarceration.”

16 **e. Kathryn Wild, R.N.**

17 Kathryn Wild is a registered nurse in the state of California and has worked in the
18 correctional healthcare field for the past twenty-eight years. She was retained by Nurse Sancho.
19 Nurse Wild reviewed Harrison’s jail records, medical records, and several deposition transcripts.
20 Wild Report, ECF No. 133-3. Nurse Wild concludes that the care Nurse Sancho delivered to
21 Harrison during his screening at Glenn Dyer “was within the scope of her practice as a licensed
22 vocational nurse and met the established standard of care expected in an adult correctional facility
23 in California.” Id. at 2. Nurse Wild takes the position that the screening performed by Nurse
24 Sancho was only meant to identify and meet urgent health needs, none of which Harrison
25 presented at the time.

26 **f. Eugene Schoenfeld, M.D.**

27 Dr. Eugene Schoenfeld is a psychiatrist with a specialty in psychopharmacology. He was
28 retained by Nurse Sancho. Dr. Schoenfeld states that it was “highly unlikely” that Harrison would

1 have consumed more than three ounces of alcohol if he had two beers on August 13, 2010.

2 **V. EVIDENTIARY OBJECTIONS**

3 Civil Local Rules 7-3(a) and (c) prohibit the filing of separate evidentiary objections to a
4 motion or opposition to a motion filed pursuant to Civil Local Rule 7-1. Accordingly, the Court
5 strikes as improper, and will not consider, the evidentiary objections filed by the parties at ECF
6 Nos. 161-1 (Sancho), 163-1 (Corizon Health & Dr. Orr), and 164 (Plaintiffs).

7 The County objects to the Plaintiffs’ use of portions of their own depositions as
8 inadmissible hearsay. County MSJ Reply, ECF No. 159 at 1. That objection is overruled as moot,
9 as the Court does not rely on those portions of the depositions in its ruling.

10 **VI. LEGAL STANDARD**

11 Summary judgment is proper when a “movant shows that there is no genuine dispute as to
12 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
13 “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by”
14 citing to depositions, documents, affidavits, or other materials. Fed. R. Civ. P. 56(c)(1)(A). A
15 party also may show that such materials “do not establish the absence or presence of a genuine
16 dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R.
17 Civ. P. 56(c)(1)(B). An issue is “genuine” only if there is sufficient evidence for a reasonable
18 fact-finder to find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248–
19 49 (1986). A fact is “material” if the fact may affect the outcome of the case. Id. at 248. “In
20 considering a motion for summary judgment, the court may not weigh the evidence or make
21 credibility determinations, and is required to draw all inferences in a light most favorable to the
22 non-moving party.” Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997).

23 Where the party moving for summary judgment would bear the burden of proof at trial,
24 that party bears the initial burden of producing evidence that would entitle it to a directed verdict if
25 uncontroverted at trial. See C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474,
26 480 (9th Cir. 2000). Where the party moving for summary judgment would not bear the burden of
27 proof at trial, that party bears the initial burden of either producing evidence that negates an
28 essential element of the non-moving party’s claim, or showing that the non-moving party does not

1 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial. If
2 the moving party satisfies its initial burden of production, then the non-moving party must produce
3 admissible evidence to show that a genuine issue of material fact exists. See Nissan Fire &
4 Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102–03 (9th Cir. 2000).

5 The non-moving party must “identify with reasonable particularity the evidence that
6 precludes summary judgment.” Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996). Indeed, it is
7 not the duty of the district court to “to scour the record in search of a genuine issue of triable fact.”
8 Id. “A mere scintilla of evidence will not be sufficient to defeat a properly supported motion for
9 summary judgment; rather, the nonmoving party must introduce some significant probative
10 evidence tending to support the complaint.” Summers v. Teichert & Son, Inc., 127 F.3d 1150,
11 1152 (9th Cir. 1997) (citation and internal quotation marks omitted). If the non-moving party fails
12 to make this showing, the moving party is entitled to summary judgment. Celotex Corp. v.
13 Catrett, 477 U.S. 317, 323 (1986).

14 **VII. ANALYSIS**

15 Plaintiffs assert claims against Defendants for violation of Harrison’s federal
16 constitutional rights; for the violation of Plaintiffs’ rights to familial association guaranteed by the
17 Fourteenth Amendment; for violation of California’s Bane Act, Cal. Civil Code § 52.1; and for
18 common law negligence, assault, and battery, and violation of California Government Code
19 section 845.6. Defendants have moved for summary judgment on all of Plaintiffs’ claims.

20 **A. Deliberate Indifference to Serious Medical Needs — Individual Defendants**

21 As a pre-trial detainee, Harrison’s rights while in custody of the County derived from the
22 Due Process clause rather than the Eight Amendment’s protection against cruel and unusual
23 punishment. Gibson v. Cnty. of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002). “[T]he due
24 process clause imposes, at a minimum, the same duty the Eighth Amendment imposes: ‘persons in
25 custody ha[ve] the established right to not have officials remain deliberately indifferent to their
26 serious medical needs.’” Id. (quoting Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir.1996)).

27 In order to establish a violation of that right, Plaintiffs must establish a “serious medical
28 need” such that “failure to treat a prisoner's condition could result in further significant injury or

1 the unnecessary and wanton infliction of pain.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.
2 2006). Next, Plaintiffs must show that Defendants' response to the serious medical need was
3 deliberately indifferent. Id. Deliberate indifference may be established by evidence of “(a) a
4 purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm
5 caused by the indifference.” Id. Deliberate indifference may be shown where prison officials or
6 practitioners “deny, delay or intentionally interfere with medical treatment.” Hutchinson v. United
7 States, 838 F.2d 390, 394 (9th Cir. 1988). In contrast, “mere negligence in diagnosing or treating
8 a medical condition, without more, does not violate a prisoner's Eighth Amendment rights.” Id.
9 See Hunt v. Dental Dept., 865 F.2d 198, 200 (9th Cir. 1989) (prisoner's deliberate indifference
10 allegations were sufficient where he alleged “prison officials were aware of his bleeding gums,
11 breaking teeth, and his inability to eat properly, yet failed to take any action to relieve his pain or
12 to prescribe a soft food diet until new dentures could be fitted.”); Baker v. County of Sonoma, No.
13 08-cv-03433-EDL, 2009 WL 330937, at *4 (N.D. Cal. Feb. 10, 2009) (allegations of prison
14 officials denying prisoner his pain medication were sufficient to state deliberate indifference
15 claim).

16 “The state of mind for deliberate indifference is subjective recklessness.” Snow v.
17 McDaniel, 681 F.3d 978, 985–86 (9th Cir. 2012). However, the standard is “less stringent in cases
18 involving a prisoner's medical needs . . . because ‘the State's responsibility to provide inmates with
19 medical care ordinarily does not conflict with competing administrative concerns.’” McGuckin v.
20 Smith, 974 F.2d 1050, 1060 (9th Cir. 1992) (partially overruled on other grounds) (quoting
21 Hudson v. McMillian, 503 U.S. 1, 6 (1992)) (alterations omitted) (quoted approvingly in Snow,
22 681 F.3d at 985). “Similarly, ‘[i]n deciding whether there has been deliberate indifference to an
23 inmate's serious medical needs, [courts] need not defer to the judgment of prison doctors or
24 administrators.’” Snow, 681 F.3d at 985 (quoting Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th
25 Cir. 1989)). “Although the deliberate indifference doctrine contains a heightened foreseeability
26 requirement, this requirement differs from the traditional negligence foreseeability requirement
27 only insofar as deliberate indifference requires the defendant to be *subjectively* aware that *serious*
28 harm is likely to result from a failure to provide medical care.” Gibson, 290 F.3d at 1193.

1 The parties do not dispute that alcohol withdrawal and Delirium Tremens constitute a
2 serious medical need. Instead, Defendants address the second prong, and contend that the
3 evidence taken as a whole and construed in the light most favorable to Plaintiffs does not
4 constitute deliberate indifference to Harrison’s serious medical needs.

5 **1. Nurse Sancho**

6 The Ninth Circuit has held that failure to medically screen new inmates may constitute
7 deliberate indifference to medical needs. Gibson, 290 F.3d at 1189–93 (applying same deliberate
8 indifference standard to municipality that applies to individuals under the Eight Amendment).

9 Nurse Sancho argues that she could not have been deliberately indifferent to Harrison’s
10 medical needs because there was no information from which she could have concluded that
11 Harrison was at risk of alcohol withdrawal, and because Sancho never reached the subjective
12 conclusion that Harrison, in fact, was at risk of alcohol withdrawal.

13 It is true that to be deliberately indifferent, a detention official must both be aware of the
14 facts from which the inference of a serious medical need could be drawn, and must also draw that
15 inference. Farmer v. Brennan, 511 U.S. 825, 837 (1994). However, “deliberate indifference to
16 medical needs may be shown by circumstantial evidence when the facts are sufficient to
17 demonstrate that a defendant actually knew of a risk of harm.” Lolli v. Cnty. of Orange, 351 F.3d
18 410, 421 (9th Cir. 2003). “Whether a prison official had the requisite knowledge of a substantial
19 risk is a question of fact subject to demonstration in the usual ways, including inference from
20 circumstantial evidence, . . . and a factfinder may conclude that a prison official knew of a
21 substantial risk from the very fact that the risk was obvious.” Farmer, 511 U.S. at 842.

22 In Gibson, the Ninth Circuit held that the plaintiff had presented sufficient evidence for a
23 jury to conclude that a nurse with appropriate medical training who knew an inmate was
24 exhibiting signs of medical illness and possessed psychotropic medication that would have
25 addressed the manic state that led to his heart attack had acted with deliberate indifference to the
26 inmate’s needs. Gibson, 290 F.3d at 1194. “If the nurse knew that a substantial risk to Gibson’s
27 health existed and she declined to act upon this knowledge, she was deliberately indifferent to
28 Gibson’s constitutional right to receive medical care.” Id.

1 Likewise, here, the Court concludes that a reasonable jury could find Sancho was
2 deliberately indifferent to the risk of severe alcohol withdrawal when she failed to initiate a CIWA
3 protocol or otherwise ensure Harrison’s medical needs would be addressed. Sancho testified that
4 she knew Harrison was an alcoholic, that his last drink was earlier the day of his incarceration, that
5 he drank every day, that he smelled of alcohol, that his face was red, and that alcohol withdrawal
6 does not set in for six to eight hours after the patient’s last drink. Sancho also suspected a risk of
7 withdrawal, as she noted on the intake form “with history of alcohol withdrawal” and “CIWA.”
8 The evidence is in dispute as to whether Sancho crossed out those notations contemporaneously,
9 or after Harrison actually suffered withdrawal, but even if the strike-out was contemporaneous, the
10 fact that Sancho wrote the notations at all could lead a reasonable jury to conclude that Sancho
11 was subjectively aware of the risk of withdrawal, and nevertheless did nothing. Of course, there is
12 also sufficient evidence for a reasonable jury to conclude the strike-out was not contemporaneous.
13 Such a finding by the jury would mean that Sancho made a CIWA notation on Harrison’s intake
14 form, but failed to initiate the protocol.

15 Sancho also argues that “an isolated incident of neglect does not rise to the level of
16 deliberate indifference,” citing Jett v. Penner, 439 F.3d at 1096. ECF No. 133 at 14-15. What Jett
17 actually says is that “[i]f the harm is an ‘isolated exception’ to the defendant’s ‘overall treatment of
18 the prisoner [it] ordinarily militates against a finding of deliberate indifference.” 439 F.3d 1091
19 at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1991), overruled on other
20 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997)). Viewing the evidence in
21 the light most favorable to Plaintiffs, Sancho’s conduct was not an “isolated exception” to an
22 overall course of treatment that was otherwise adequate, but rather the beginning of a lengthy
23 chain of medical indifference that culminated in Harrison’s death.

24 Sancho relies on two decisions in arguing that her conduct does not rise to the level of
25 deliberate indifference. In Wereb v. Maui Cnty., 727 F. Supp. 2d 898, 915 (D. Haw. 2010), on
26 reconsideration in part, 830 F. Supp. 2d 1026 (D. Haw. 2011), the court held that prison officials’
27 complete lack of awareness of the inmate’s alcoholism that led to his death while in custody
28 precluded a finding of deliberate indifference. The Wereb case is inapposite because Sancho was

1 aware of Harrison’s alcoholism.

2 In Kellogg v. Kitsap Cnty., No. 12-cv-5717-RJB, 2013 WL 4507087, at *5–6 (W.D. Wash.
3 Aug. 22, 2013), a medical provider formed the subjective conclusion that an inmate was an
4 alcoholic at risk of withdrawal, and monitored him. However, because the provider knew the
5 inmate was being transported to a detoxification facility before severe withdrawal would set in, the
6 provider did not initiate a detoxification protocol. The inmate suffered a seizure, fell, and suffered
7 an injury to his shoulder. Although there was evidence suggesting the provider’s treatment plan
8 fell below the professional standard of care, the court nonetheless granted summary judgment to
9 the provider because his quality of care did not rise to the level of deliberate indifference.

10 Here, there is sufficient evidence for a jury to conclude that Sancho was subjectively aware
11 of the risk of alcohol withdrawal, but failed nevertheless to fill out a CIWA form, initiate the
12 CIWA protocol, or otherwise ensure Harrison would receive medical help. Unlike the provider in
13 Kellogg, Sancho did nothing to address Harrison’s apparent risk of alcohol withdrawal. A
14 reasonable jury would be justified in finding that she was deliberately indifferent.

15 **2. Deputy Ahlf**

16 Unlike Nurse Sancho, Deputy Ahlf was unaware that Harrison was an alcoholic, or that he
17 was at risk of alcohol withdrawal. The County argues this lack of awareness precludes Plaintiffs’
18 deliberate indifference claim against Deputy Ahlf.

19 Although Deputy Ahlf was unaware of Harrison’s specific medical condition, Harrison did
20 request medication from him twice, on two separate occasions. Subsequently, based on Harrison’s
21 bizarre behavior, Deputy Ahlf decided to move Harrison to an isolation cell for his safety and the
22 safety of others. Although he started an intensive observation log, Deputy Ahlf admits he did not
23 notify any medical professional or CJMH concerning Harrison’s behavior. Instead, he testified
24 that he notified two of his supervisors that they needed to make the referral when someone
25 returned to the mental health office. Sergeant Shepard does not recall being notified by Deputy
26 Ahlf, and Sergeant Camara has not been deposed in this case.

27 Deputy Ahlf’s failure to refer Harrison to CJMH or Corizon Health appears to have
28 contravened several County policies and practices, and the County’s Rule 30(b)(6) witness

1 testified that Harrison’s behavior should have led to a “prompt referral” to CJMH. Had Deputy
2 Ahlf filled out a mental health referral, he would have seen the admonition at the top of the form:
3 “Rule out drug toxicity, alcohol withdrawal, head injury, et cetera, before making a psych
4 referral.” The responsibility to fill out the form was his. Nevertheless, Deputy Ahlf left his shift
5 without having referred Harrison. When Deputy Ahlf returned twelve hours later, Harrison still
6 had not been seen by a medical professional or CJMH.

7 Although it appears that Deputy Ahlf violated a County policy that was in place to deal
8 with Harrison’s precise set of circumstances, Deputy Ahlf’s failures cannot constitute deliberate
9 indifference because he was not subjectively aware that Harrison’s apparent mental illness
10 constituted a serious medical need that could lead to substantial harm. Notably, Harrison
11 displayed only bizarre behavior, not other symptoms of alcohol withdrawal that could have put
12 Deputy Ahlf on notice of the severity of his situation.

13 In Gibson, the Ninth Circuit held that a deputy’s awareness of an inmate’s mental
14 condition based on observations of the inmate’s behavior was insufficient to rise to the level of
15 deliberate indifference where the deputy lacked the medical training to diagnose and treat the
16 illness, even though the deputies remarked on the inmate’s “peculiar mood swings” and “dramatic
17 shifts from combativeness to compliance.” The Ninth Circuit noted: “The lapses in
18 communication at the jail are hardly commendable, but the deputies who, because of these lapses,
19 remained unaware of Gibson’s mental condition cannot be held liable for having been ‘deliberately
20 indifferent’ to it.” Gibson, 290 F.3d at 1197.

21 The Court could say the same of Deputy Ahlf’s conduct here. After he was screened,
22 Harrison fell through the cracks. Even after he was transferred to an isolation cell, and subject to
23 constant monitoring, no staff member ensured that Harrison had been referred for appropriate care.
24 He remained in an isolation cell for twelve hours without the attention of a medical professional
25 — medical attention he clearly needed. The result of this failure in communication was tragic and
26 unnecessary. Nevertheless, Plaintiffs have failed to adduce sufficient evidence from which a
27 reasonable jury could conclude that Deputy Ahlf himself was deliberately indifferent to a serious
28 medical need of which he was subjectively aware. Consequently, the Court will grant summary

1 judgment in favor of Deputy Ahlf with respect to Plaintiffs’ deliberate indifference claim.

2 **3. Remaining Deputies**

3 Plaintiffs no longer assert a deliberate indifference claim against the remaining deputies
4 named in this suit. Consequently, the Court grants summary judgment in their favor with respect
5 to Plaintiffs’ deliberate indifference claims.

6 **4. Megan Hast**

7 The crux of Plaintiffs’ claim against Hast is that her delay in evaluating Harrison despite
8 knowing of his serious medical needs went beyond mere negligence.

9 Like Nurse Sancho, and unlike Deputy Ahlf, Megan Hast was aware of Harrison’s risk of
10 withdrawal. Hast learned at 4:00 p.m. on August 16 that Harrison was acting bizarrely, and
11 hallucinating. She reviewed Harrison’s intake form and learned that he was an alcoholic, and
12 formed the subjective belief that Harrison had been initiated on a CIWA protocol. She waited
13 until 4:30 p.m. to call the housing unit, learned that the deputy was leaving at 5:00 p.m., and
14 arrived at the unit after the deputy had left. Instead of calling another deputy so she could
15 examine Harrison, she decided Harrison was stable and returned to her office — a conclusion for
16 which there appears to have been no objective basis. She did not call the housing unit again until
17 6:00 p.m., at which time she learned in more detail the nature of Harrison’s medical condition
18 from Deputy Ahlf. She did not notify any medical professional of Harrison’s condition, and did
19 not visit the housing unit again until after Harrison had been transferred to the hospital.

20 At the time of her deposition, Hast was unable to account for how she spent her time
21 between 4:00 p.m. and 7:00 p.m., testifying that she “imagined” she was triaging other patients.
22 Though she provides a more detailed account in her declaration in support of the County’s motion
23 for summary judgment, it is undisputed that no other patient presented an emergency in the hours
24 between 4:00 p.m. and 7:00 p.m. other than Harrison. Hast testified, however, that she believed
25 Harrison was already subject to medical care due to the CIWA notation on his intake form, though
26 she did not find any medical records associated with the protocol, as she would have expected to
27 find had the protocol been initiated, and there is no other evidence in the record that would have
28 made her belief objectively reasonable.

1 On this evidence, the Court concludes that a reasonable jury could find that Hast was
2 deliberately indifferent to Harrison’s medical needs. She knew that Harrison was at risk for severe
3 alcohol withdrawal, she knew that the condition requires immediate medical attention, and she
4 knew that Harrison was displaying the symptoms of severe alcohol withdrawal. Yet she did not
5 notify a medical professional of Harrison’s condition, or instruct a deputy to do so, or see him
6 herself. Moreover, Plaintiffs have identified inconsistencies in Hast’s testimony, such as her
7 claiming to have spent more time attending to other inmates than actually elapsed, such that a jury
8 might discount or disregard Hast’s explanation of events. Even crediting her version, however,
9 she purposefully chose to see other inmates instead of Harrison, even though she was aware of
10 evidence that Harrison’s situation had become emergent, and even though no other inmate Hast
11 chose to see was at similar medical risk. A reasonable jury would be entitled to conclude that Hast
12 displayed a purposeful failure to respond to a prisoner’s possible medical need, rising to the level
13 of subjective recklessness. Accordingly, the Court will deny summary judgment with regard to
14 Plaintiffs’ deliberate indifference claim against Defendant Hast.

15 **5. Qualified Immunity**

16 Both Hast and Nurse Sancho argue that they are entitled to qualified immunity on
17 Plaintiffs’ deliberate indifference to medical needs claims. However, neither defendant argues that
18 Harrison’s right to be free from deliberate indifference to his serious medical needs was not
19 clearly established at the time of his death. See Pearson v. Callahan, 555 U.S. 223, 244 (2009).
20 Rather, they argue that Harrison’s constitutional rights were not violated in the first instance.
21 Because the Court has already concluded above that the question of whether there was a violation
22 of Harrison’s rights that that is a question of fact for the jury, the Court will deny Hast and
23 Sancho’s request for qualified immunity.

24 **B. Monell Claims**

25 A municipality may be held liable under a claim brought under § 1983 only when the
26 municipality inflicts an injury; it may not be held liable under a respondeat superior theory.
27 Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 (1978).

28 There are two types of official policies, customs, or patterns that may lead to Monell

1 liability: “policies of action and inaction.” Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1143 (9th
2 Cir. 2012). Policies of action are “those that result in the municipality itself violating someone's
3 constitutional rights or instructing its employees to do so.” Id. By contrast, policies of inaction
4 are those that result, through omission, in the municipality’s responsibility “for a constitutional
5 violation committed by one of its employees, even though the municipality's policies were facially
6 constitutional, the municipality did not direct the employee to take the unconstitutional action, and
7 the municipality did not have the state of mind required to prove the underlying violation.”
8 Gibson, 290 F.3d at 1186 (emphasis omitted).

9 “To establish that there is a policy based on a failure to preserve constitutional rights, a
10 plaintiff must show, in addition to a constitutional violation,” that the policy amounts to deliberate
11 indifference to the plaintiff’s constitutional rights. Tsao, 698 F.3d at 1143. To prove deliberate
12 indifference on the part of a municipality, the plaintiff must show that the municipality was on
13 actual or constructive notice that its omission would likely result in a constitutional violation.
14 Farmer, 511 U.S. at 841.

15 Finally, “[u]nder Monell, a plaintiff must also show that the policy at issue was the
16 ‘actionable cause’ of the constitutional violation, which requires showing both but for and
17 proximate causation.” Tsao, 698 F.3d at 1146. The “identified deficiency” in the municipality’s
18 policies must be “closely related to the ultimate injury.” City of Canton v. Harris, 489 U.S. 378,
19 391 (1989).

20 1. Alameda County

21 Plaintiffs assert a Monell claim against Alameda County on the basis of the County’s
22 alleged failure to train Deputy Ahlf and Megan Hast in detecting and treating alcohol withdrawal.
23 To the extent Plaintiffs asserted a Monell claim against the County on the basis of the Sheriff’s
24 Deputies’ use of force, Plaintiffs have abandoned that theory.

25 “In limited circumstances, a local government's decision not to train certain employees
26 about their legal duty to avoid violating citizens' rights may rise to the level of an official
27 government policy for purposes of § 1983. A municipality's culpability for a deprivation of rights
28 is at its most tenuous where a claim turns on a failure to train.” Connick v. Thompson, 131 S. Ct.

1 1350, 1359 (2011). Nevertheless, “[i]n order to comply with their duty not to engage in acts
2 evidencing deliberate indifference to inmates’ medical and psychiatric needs, jails must provide
3 medical staff who are ‘competent to deal with prisoners’ problems.’” Gibson, 290 F.3d 1175,
4 1187 (9th Cir. 2002) (quoting Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982)). A failure to
5 train jail staff and police officers may serve as the basis for liability “where the failure to train
6 amounts to deliberate indifference to the rights of persons with whom the police come into
7 contact.” Id. (quotation omitted). “The issue is whether the training program is adequate and, if it
8 is not, whether such inadequate training can justifiably be said to represent municipal policy.”
9 Long v. Cnty. of Los Angeles, 442 F.3d 1178, 1186 (9th Cir. 2006).

10 “Without notice that a course of training is deficient in a particular respect, decisionmakers
11 can hardly be said to have deliberately chosen a training program that will cause violations of
12 constitutional rights.” Connick, 131 S. Ct. at 1360. Consequently, “[a] pattern of similar
13 constitutional violations by untrained employees is ‘ordinarily necessary’ to demonstrate
14 deliberate indifference for purposes of failure to train,” id. (citation omitted), though “[a] plaintiff
15 also might succeed in proving a failure-to-train claim without showing a pattern of constitutional
16 violations where ‘a violation of federal rights may be a highly predictable consequence of a failure
17 to equip law enforcement officers with specific tools to handle recurring situations,’” Long, 442
18 F.3d at 1186 (quoting Board of County Commissioners v. Brown, 520 U.S. 397, 409 (1997)). In
19 Long, the Ninth Circuit, quoting Brown, observed:

20 The likelihood that the situation will recur and the predictability that
21 an officer lacking specific tools to handle that situation will violate
22 citizens' rights could justify a finding that policymakers' decision not
23 to train the officer reflected “deliberate indifference” to the obvious
consequence of the policymakers' choice — namely, a violation of a
specific constitutional or statutory right.

24 Id. (quoting Brown, 520 U.S. at 409). More recently, the Supreme Court has observed that
25 “single-incident” liability will be appropriate only in “a narrow range of circumstances.” Connick,
26 131 S. Ct. at 1361.

27 The Court has already concluded Deputy Ahlf was not deliberately indifferent to
28 Harrison’s serious medical needs. However, that conclusion does not end the inquiry. In Fairley

1 v. Luman, 281 F.3d 913, 915 (9th Cir. 2002), the plaintiff was detained for twelve days because he
2 was mistaken for his twin brother. The jury returned a verdict in favor of the officer defendants,
3 but awarded damages to the plaintiff on his Monell claim against the City of Long Beach. The
4 Ninth Circuit affirmed the trial court's denial of the city's motion for a new trial because "a city
5 could be liable under § 1983 for improper training or improper procedure even if the individual
6 officer charged with violating the plaintiff's constitutional rights was exonerated." Id. at 917
7 (citing Hopkins v. Andaya, 958 F.2d 881, 888 (9th Cir. 1992)). "If a plaintiff establishes he
8 suffered a constitutional injury *by the City*, the fact that individual officers are exonerated is
9 immaterial to liability under § 1983." Id. (emphasis in original). The Ninth Circuit held that the
10 plaintiff had suffered the requisite "constitutional injury" because he "had a liberty interest in
11 being free from a twelve-day incarceration without any procedural safeguard in place to verify the
12 warrant he was detained on was his and in the face of his repeated protests of innocence." Id. at
13 918. With respect to the city's culpability, the Ninth Circuit focused on the police chief's
14 "decision not to instigate any procedures to alleviate the problem of detaining individuals on the
15 wrong warrant," concluding that it "could constitute a policy in light of his testimony he knew it
16 was 'not uncommon' that individuals were arrested on the wrong warrant, and that the problem
17 was particularly acute where twins were involved." Id. at 919. See Ostling v. City of Bainbridge
18 Island, No. 11-cv-5219-RBL, 2012 WL 4480550 (W.D. Wash. Sept. 28, 2012) (where officers
19 were exonerated of excessive force claim after fatally shooting schizophrenic, municipality could
20 be liable for failure to train officers in dealing with mentally ill suspects).

21 Alameda County's "Custody Staff Education" training states that "[a]t least 80% of
22 inmates generally have problems with alcohol and/or other drugs." Sherwin Decl., Ex. 83 at COR
23 3846. Accordingly, the National Commission on Correctional Health Care's ("NCCHC")
24 "Standards for Health Services in Jails" requires that correctional officers who work with inmates
25 receive health-related training biennially, including training in recognizing the signs and
26 symptoms of mental illness. The correctional facility must keep a certificate or other evidence of
27 attendance "on site for each employee." Sherwin Decl., Ex. 43 at 37. Standard J-G-06, regarding
28 intoxication and withdrawal, outlines the dangers of alcohol withdrawal while in custody. The

1 standard explains: “Deaths from acute intoxication or severe withdrawal have occurred in
2 correctional institutions Training for correctional officers includes recognizing the signs and
3 symptoms of intoxication and withdrawal” Id. at 105.

4 The County’s policies appear to adopt some of these standards. Corizon policy J-G-08,
5 which references NCCHC standard J-G-08 and other standards promulgated by the American
6 Correctional Association (“ACA”), discusses “Inmates with Alcohol and other Drug Problems.”
7 Sherwin Decl., Ex. 45. It states that “[t]he custody staff is trained in recognizing AOD problems
8 in inmates” and that “[t]here is communication and coordination between medical, mental health,
9 and opioid treatment program (NTP) staff regarding AOD care.” Id. The County’s Policy and
10 Procedure 13.01 likewise provides for the training of correctional officers by Corizon in
11 recognizing the signs and symptoms of emotional disturbances and chemical dependency.
12 Sherwin Decl., Ex. 46.

13 Plaintiffs argue that the County failed adequately to implement these training policies, and
14 they have submitted significant evidence supporting those claims.

15 Dr. Orr testified that “Corizon doesn’t provide a direct training with the -- for the Alameda
16 County Sheriff’s Office,” and its Regional Medical Director is “not certain of what the content of
17 their health care instruction is for the custody staff.” Sherwin Decl., Ex. 15, Orr PMK Dep.
18 101:15–19. Corizon’s Nurse Terri Granlund, who has worked for Corizon for 24 years, testified
19 that she was not aware of any training provided to sheriff’s deputies by Corizon concerning
20 alcohol withdrawal, mental illness, or alcohol dependency. Sherwin Decl., Ex. 35, Granlund Dep.
21 10:2–12:18.

22 Sergeant Cynthia Sass was designated the County’s person most knowledgeable
23 “regarding the training policies and procedures, from 2007 to the present, concerning assessing,
24 examining, treating, or providing care to inmates with possible alcohol withdrawal, detoxification
25 of inmates who are alcohol dependent, preventing alcohol withdrawal in inmates, and handling
26 inmates who are experiencing alcohol withdrawal.” Sherwin Decl., Ex. 48, Sass PMK Dep. 8:3–
27 13. Sergeant Sass characterized the County’s level of training of deputies regarding alcohol
28 withdrawal as “very little.” Id. 17:7. According to Sergeant Sass, the “information is rather

1 cursory.” Id. 17:18. The training block dealing with chemical dependency “would last maybe 20
2 minutes,” so Sergeant Sass had difficulty remembering the details of what is covered in the
3 training. Id. 22:14–15. She could not, at her deposition, specifically recall any training deputies
4 receive from Corizon that helps them recognize the signs and symptoms of chemical dependency.
5 Id. 22:20–21. She testified that the County trains deputies in recognizing the signs and symptoms
6 of alcohol withdrawal “cursorily.” Id. 28:20. Sergeant Sass also testified that, though County
7 policy states officers are trained to respond to health-related situations within four minutes, “I
8 don’t know that the four minutes is something that is a training point.” Id. 19:18–19.

9 At her deposition, Megan Hast, who is employed by the County’s Criminal Justice Mental
10 Health office, testified that, since graduate school, she had not received any training regarding
11 recognizing the signs and symptoms of alcohol withdrawal.⁴ Hast Dep. 14:3–23. Hast was able to
12 recall what Delirium Tremens is from knowledge she gained in her graduate school classes.⁵ Id.
13 15:9–12.

14 Additionally, Sergeant Sass was unable to recall any policy, procedure, guideline, or
15 training bulletin providing for medical or mental health staff to inform sheriff’s deputies when a
16 person is at risk of alcohol withdrawal. Sass PMK Dep. 34:6–21. Nurse Granlund also testified
17 that there is no mechanism at Santa Rita Jail for informing custody staff that a particular inmate is
18 at risk of going into alcohol withdrawal. Granlund Dep. 21:2–18.

19 This testimony led Plaintiffs’ expert, Dr. Burns, to conclude that Deputy Ahlf’s inadequate
20 training at the jail resulted in his failure to summon medical or mental health staff, and that the
21 County failed to train jail staff to detect the signs and symptoms of alcohol withdrawal. Dr. Burns
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23 ⁴ At her deposition, Hast testified that the symptoms of alcohol withdrawal were discussed at staff
24 meetings; she was equivocal about whether the meetings constituted “training.” Hast Depo. 17:1-
25 21. Viewing the facts in the light most favorable to Plaintiffs, a reasonable jury could find that
these informal staff meetings did not constitute “training” in alcohol withdrawal.

26 ⁵ The Court previously described Hast’s personal knowledge of the symptoms of alcohol
27 withdrawal and the need for immediate medical attention. The extent of Hast’s personal
28 knowledge, which came from a variety of sources, is a separate question from the adequacy of her
training by the County. Also, to the extent that either the facts or Plaintiffs’ theories are in
conflict, these conflicts are better resolved by a jury.

1 also concluded that the County failed adequately to train CJMH staff, including Hast, in triaging
2 and responding to emergency referrals.

3 The County argues that Deputy Ahlf’s training log demonstrates that he completed several
4 training courses, including an eighty-hour “Jail Operations Core Course” in 2006 and “Continued
5 Professional Training” courses in 2007 and 2009. Deputy Ahlf’s training log confirms that he
6 received these trainings, but does not describe their content. Sherwin Decl., Ex. 44. The outline
7 for the 2009 Continued Professional Training produced by the County includes a section regarding
8 the signs and symptoms of “medical emergencies / sudden illness.” It does not appear to discuss
9 alcohol withdrawal in particular. Ly Decl. ISO County MSJ Reply, ECF No. 159, Ex. V at ACSO
10 1587. A training outline for the “Emergency Action Plan” training Deputy Ahlf received in 2009
11 includes a section on “[s]igns and symptoms of mental illness, violent behavior, and acute
12 chemical intoxication and withdrawal.” Ly Decl., Ex. W at ACSO 1671. Finally, an exam
13 Deputy Ahlf took as part of the eighty-hour course he took in 2006 includes questions about
14 substance abuse and withdrawal. Ly Decl., Ex. X.⁶

15 The County also characterizes the same portions of Sergeant Sass’ testimony as evidence
16 that the training she described as “cursory” occurred, but Plaintiffs do not dispute that these
17 trainings occurred; they argue the trainings were inadequate.

18 The only other evidence in the record the County points to regarding this issue is the
19 deposition transcript of Deputy Rojas, who testified that he was trained in recognizing the signs of
20 alcohol withdrawal prior to August 16, 2010. Rojas Dep. 56–57. His testimony on this point is
21 superficial.

22 Taking the evidence in the record as a whole, and construing all disputed facts in favor of
23 Plaintiffs, the Court finds that a triable issue remains with respect to the County’s liability for
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25 ⁶ Plaintiffs object to the County’s reliance on this evidence, submitted in conjunction with the
26 County’s reply brief, because it was not submitted with the County’s opening brief. The Court
27 overrules the objection; the evidence is within the scope of the issues raised by Plaintiffs’
28 opposition brief and was available to Plaintiffs prior to the filing of the brief. In any case, because
the Court will deny summary judgment with respect to Plaintiffs’ Monell claims against the
County, the objection is moot.

1 failure adequately to train Deputy Ahlf and Megan Hast, and for failure to adopt or implement
2 policies regarding the communication of medical information between medical and custodial staff.

3 As in Gibson, “a jury could conclude that County policymakers knew that inevitably some
4 prisoners arrive at the jail with urgent health problems requiring hospitalization.” Gibson, 290
5 F.3d at 1190. Here, the County was on notice of the dangers of alcohol withdrawal in inmates, a
6 recurring problem in correctional facilities. Indeed, its own policies appear to provide for training
7 that, a reasonable jury could find, was never provided, or was not provided adequately. See Long,
8 442 F.3d at 1186 (“The issue is whether the training program is adequate and, if it is not, whether
9 such inadequate training can justifiably be said to represent municipal policy.”); Munger v. City of
10 Glasgow Police Dep’t, 227 F.3d 1082, 1088 (9th Cir. 2000) (holding city may be liable for “the
11 failure to train officers regarding appropriate assistance and treatment of intoxicated persons”).

12 Plaintiffs may prevail at trial on their failure to train claim without showing a pattern of
13 constitutional violations because a jury may find that the failure to provide Harrison adequate
14 medical care — a constitutional right held by pre-trial detainees — was a “highly predictable
15 consequence of a failure to equip law enforcement officers with specific tools to handle recurring
16 situations,” Long, 442 F.3d at 1186 (quoting Board of County Commissioners v. Brown, 520 U.S.
17 397, 409 (1997)).

18 Finally, a reasonable jury could conclude that the County’s policy and practice failures
19 were the “actionable cause” of, or “moving force” behind, the County’s failure to provide
20 adequate medical care to Harrison. Tsao, 698 F.3d at 1146. As discussed above, there were
21 several opportunities for County personnel to prevent the onset of Delirium Tremens, or, at a
22 minimum, to detect its onset, provide adequate treatment, and transfer Harrison to a hospital in
23 compliance with national and County standards.

24 For these reasons, the Court will deny the County’s motion for summary judgment with
25 respect to Plaintiffs’ Monell claims against it arising out of its training concerning alcohol
26 withdrawal. Because Plaintiffs have abandoned the theory, the Court will grant summary
27 judgment to the extent Plaintiffs assert a Monell claim against the County premised on the use of
28 force by the Sheriff’s Deputies against Harrison.

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2. Corizon Health

A plaintiff may assert Monell claims against a private entity contracting with a municipality provided the private entity (1) “acted under color of state law, [] (2) [] a constitutional violation occurred, [and (3)] the violation was caused by an official policy or custom” Tsao, 698 F.3d 1128, 1139 (9th Cir. 2012). Corizon Health does not dispute the first element, but argues that Plaintiffs have failed to adduce sufficient evidence concerning constitutional violations and policies or customs that led to the alleged violations.

Plaintiffs point to a number of national standards and Corizon policies that Plaintiffs maintain were not implemented, or were implemented in an unsatisfactory manner, by Corizon, as the basis of their Monell claim.

As discussed above, NCCHC and ACA standards require that correctional officers who work with inmates receive health-related training biennially, including training in recognizing the signs and symptoms of mental illness. Sherwin Decl., Ex. 43 at 37. The County appears to have attempted to implement some of these standards through the adoption of certain policies. Corizon policy J-G-08, which references NCCHC standard J-G-08 and other standards promulgated by the American Correctional Association (“ACA”), discusses “Inmates with Alcohol and other Drug Problems.” Sherwin Decl., Ex. 45. It states that “[t]he custody staff is trained in recognizing AOD problems in inmates” and that “[t]here is communication and coordination between medical, mental health, and opioid treatment program (NTP) staff regarding AOD care.” Id. The County’s Policy and Procedure 13.01 likewise provides for the training of correctional officers by Corizon in recognizing the signs and symptoms of emotional disturbances and chemical dependency. Sherwin Decl., Ex. 46.

As previously noted, Dr. Orr testified that “Corizon doesn’t provide a direct training with the -- for the Alameda County Sheriff’s Office” and is “not certain of what the content of their health care instruction is for the custody staff,” and Nurse Granlund testified that she was not aware of any training provided to Sheriff’s deputies by Corizon concerning alcohol withdrawal, mental illness, or alcohol dependency. See Part VII.B.1., supra. Nurse Granlund also testified that she was not aware of any Corizon policy or mechanism for informing custody staff to check

1 for signs and symptoms of alcohol withdrawal. Id. 21:9–13.

2 The same NCCHC standards also require the screening of inmates on all intra-system
3 transfers by a qualified healthcare professional within twelve hours of arrival to ensure continuity
4 of care. Sherwin Decl., Ex. 43 at 63 (Standard J-E-03). The relevant standard states that it is
5 “intended to ensure that inmates continue to receive appropriate health services for health needs
6 already identified” Id. at 64. Corizon Policy J-E-03 implements this standard, though it
7 provides that if an inmate is transferred “within a short timeframe from the date of initial
8 screening” the initial screening will suffice. Sherwin Decl., Ex. 50. There is no evidence that
9 Harrison received such a screening after his transfer to Santa Rita Jail. Nurse Sancho’s supervisor,
10 Lenore Gilbert, testified that the exception in the Corizon policy for transfer shortly after initial
11 screening would have applied to Harrison. Gilbert PMK Dep. 107:11–25. She also testified that
12 post-transfer review is generally limited to a review for the physical presence of the required
13 forms in the medical file. Id. 105:19–106:13.

14 NCCHC Standard J-G-06 sets out protocols for inmates undergoing alcohol withdrawal. It
15 provides that detoxification is “done only under physician supervision” There is no evidence
16 that Harrison’s withdrawal was monitored by a physician.

17 The Standard further requires that “[i]nmates experiencing severe, life-threatening
18 intoxication (overdose) or withdrawal are transferred immediately to a licensed acute care
19 facility.” Inmates at risk for progression to more severe levels of withdrawal must be “kept under
20 constant observation by qualified health care professionals or health-trained correctional staff, and
21 whenever severe withdrawal symptoms are observed, a physician is consulted promptly.” In the
22 discussion section, Standard J-G-06 states: “As a precaution, severe withdrawal syndromes must
23 never be managed outside of a hospital.” Corizon Policy No. 153 provides that detoxification
24 shall be carried out on site, and that all inmates demonstrating signs and symptoms of alcohol
25 withdrawal be seen by a physician. Sherwin Decl., Ex. 44. The policy provides that patients with
26 severe, life-threatening alcohol withdrawal be transferred to a hospital immediately. Id.

27 Dr. Orr’s testimony on this point is contradictory. He testified that severe alcohol
28 withdrawal is managed in the jail. Orr PMK Dep. 70:15–19. However, he also testified that

1 Corizon would transfer an inmate with Delirium Tremens to a hospital, but that the management
2 would continue in the jail if the patient is eating and taking medication. Id. 71–73. Such an
3 inmate would be monitored for improvement. Dr. Orr also testified that he may have transferred
4 Harrison to a hospital when he was exhibiting severe alcohol withdrawal, but that Corizon policy
5 does not require it. Id. 74–75. Nurse Granlund testified that an inmate in severe alcohol
6 withdrawal or Delirium Tremens would “not necessarily” be transferred to a hospital. Granlund
7 Dep. 27:1–4. She testified that inmates in the past suffering from severe alcohol withdrawal or
8 Delirium Tremens have not been transferred to a hospital. Id. 27:10–13.

9 The Corizon policy also requires that inmates undergoing alcohol withdrawal be kept
10 under “constant observation.” Dr. Orr testified that Corizon complies with this policy because
11 inmates undergoing alcohol withdrawal are seen by a nurse once in every eight-hour shift, or three
12 times a day. Orr PMK Dep. 162:9–15.

13 Finally, Corizon’s contract with the County requires that screenings be performed for all
14 inmates “by a licensed registered nurse (RN) or a licensed vocational nurse under the supervision
15 of an RN” Sherwin Decl., Ex. 39 (original emphasis). The County’s NCCHC accreditation
16 report from June 2008 states that “[t]rained registered nurses complete receiving screening.”
17 Sherwin Decl., Ex. 41 at COR 4333. Nurse Sancho is a licensed vocational nurse, but not a
18 registered nurse; she failed the registered nurse’s examination twice. Sancho Dep. 17:12–21:19.
19 Ms. Gilbert testified that “it could be possible that [at] Glenn Dyer an LVN would be working in
20 booking. It could be possible on another Friday night that an RN is working. It just depends on
21 the specific scheduling of the supervisor at that time.” Gilbert PMK Dep. 146:4–9. However,
22 “there was an RN present in the facility that was available to work with that LVN as needed at all
23 times.” Id. 146:12–19. That RN, the charge nurse, may be responsible for over a dozen staff in
24 the entire facility, and may never enter the booking area during a given shift. Id. 147:11–148:21.

25 Corizon’s responses to Plaintiffs’ allegations provide merely a different gloss on the same
26 evidence. For example, Corizon argues that the charge nurse supervision is medically adequate.
27 Corizon also argues that Plaintiffs cannot prove causation because, for example, had Sancho been
28 supervised directly by a registered nurse, Plaintiffs cannot prove that the screening would have

1 resulted in a different outcome, and that Plaintiffs cannot prove that a chart review after Harrison
2 was transferred to Santa Rita Jail would have resulted in identification of Sancho’s errors.

3 These arguments overstate Plaintiffs’ burden on summary judgment, which Plaintiffs have
4 met.

5 First, it is not clear that any affirmative causation evidence is even required — in this case,
6 Corizon’s own policies, as reflected in its contract with the County and the County’s NCCHC
7 accreditation report, were obviously designed to guard against exactly the chain of events that
8 transpired here. As the Ninth Circuit has said on similar facts, “[a]n evaluation by a trained
9 medical staff member surely would have revealed [the decedent’s] condition.” Gibson, 290 F.3d
10 at 1189–90.

11 Second, Corizon’s own witnesses have provided sufficient evidence from which a jury
12 could reasonably conclude that Corizon’s failure to supervise Sancho was a substantial factor in
13 causing Harrison’s death. Bill Wilson, Corizon’s Health Services Administrator, described
14 Sancho’s intake as “an egregious breach of medical care,” Sherwin Decl., Ex. 34 at 178, that “the
15 intake screening is a minimum data set of what every professional is expected to gather,” id., and
16 that Sancho’s failure to perform an adequate screening “without a doubt” jeopardized Harrison’s
17 safety. Id. at 181. A reasonable jury could conclude that supervision by a properly trained
18 registered nurse would more probably than not have avoided the lack of diagnosis and failure to
19 provide medical care that Plaintiffs contend led to Harrison’s death.

20 For these reasons, and construing the record in the light most favorable to Plaintiffs, the
21 Court will deny summary judgment on Plaintiffs’ Monell claim against Corizon based on
22 Corizon’s allegedly deliberately indifferent policies and practices.⁷

23 _____
24 ⁷ By contrast, Plaintiffs’ Monell claim against Corizon for its hiring and retention of Nurse Sancho
25 does not present a triable issue of fact for the jury. A hiring and retention claim, or “inadequate
26 screening” claim, must be subjected to “rigorous standards of culpability and causation . . . to
27 ensure that the municipality is not held liable solely for the actions of its employee.” Bd. of Cnty.
28 Comm’rs of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 405 (1997). In Brown, the Supreme Court
rejected the equivalent treatment of inadequate screening cases and failure to train cases. There,
even a failure to inquire into the prior misdemeanor charges against an officer who ultimately used
excessive force could not constitute deliberate indifference absent further facts linking the city’s
inadequate screening to the injury. A finding of deliberate indifference in an inadequate screening

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C. Supervisory Liability — Dr. Orr

The Ninth Circuit has “long permitted plaintiffs to hold supervisors individually liable in § 1983 suits when culpable action, or inaction, is directly attributed to them.” Starr v. Baca, 652 F.3d 1202, 1205 (9th Cir. 2011), cert. den’d, 132 S. Ct. 2102 (2012). The supervisor need not be “physically present when the injury occurred.” Id. Supervisory liability may attach based on the supervisor’s “own culpable action or inaction in the training, supervision, or control of his subordinates,” “his acquiescence in the constitutional deprivations of which the complaint is made,” or “conduct that showed a reckless or callous indifference to the rights of others.” Id. at 1205–06 (quoting Larez v. City of Los Angeles, 946 F.2d 630 (9th Cir. 1991)).

At the time of Harrison’s death, Dr. Orr was Corizon’s Regional Medical Director; he oversaw Corizon’s operations at all Alameda County jails. Orr PMK Dep. 14:19–16:18. He was responsible for policymaking at Corizon. He testified that he was responsible for ensuring that Corizon’s policies were followed, and making changes in Corizon policy. Id. at 21:11–21. Dr. Orr testified there is no Corizon Health employee more senior than he is with respect to policymaking in Alameda County jails, though the Alameda County Public Health Department has authority to implement policy changes as well, over his objections. Id. at 23.

In light of the factual basis for Plaintiffs’ Monell claim against Corizon, discussed above, Dr. Orr seeks summary judgment for the same reasons Corizon does. Those arguments are unavailing. As Corizon’s Regional Medical Director, and given his responsibilities to ensure that Corizon’s existing policies were followed and that changes in those policies were made when necessary, Dr. Orr had ultimate responsibility for avoiding the failures which Plaintiffs allege occurred at Glenn Dyer Detention Facility and Santa Rita Jail. Dr. Orr was on actual notice of the

case “must depend on a finding that *this* officer was highly likely to inflict the *particular* injury suffered by the plaintiff.” Id. at 412.

Here, Plaintiffs’ inadequate screening claim is premised almost exclusively on Sancho’s conduct toward Harrison and the fact that she had previously failed the registered nurse’s exam twice. Pursuant to Brown, that evidence is insufficient to present the claim to a jury.

However, the Court must nevertheless deny summary judgment with respect to Plaintiffs’ Monell claim against Corizon for the reasons stated above.

1 dangers associated with improper screening, lack of training, and lack of adequate medical care for
2 inmates suffering from severe alcohol withdrawal, as the national standards and Corizon policies
3 evidence. And Corizon’s alleged failures to alter the policies or their implementation are
4 attributable to him. A reasonable jury may find that Dr. Orr was aware of the failure to implement
5 policies Corizon and the NCCHC adopted, that he ratified or caused the failure, and that his
6 inaction and omissions amounted to deliberate indifference to the serious medical needs of
7 inmates in Harrison’s circumstances. See, e.g., Clement v. Gomez, 298 F.3d 898, 905 (9th Cir.
8 2002) (denial of summary judgment on supervisory liability claim was appropriate where
9 supervisors “failed to institute adequate prison policies for minimizing the effects of pepper spray
10 on bystander inmates”).

11 The Court will deny the motion to grant summary judgment in Dr. Orr’s favor with respect
12 to the supervisory liability claims.

13 **D. Excessive Force**

14 The Constitution protects pre-trial detainees from use of force that amounts to punishment.
15 Gibson, 290 F.3d at 1197 (citing Graham v. Connor, 490 U.S. 386, 395 n.10 (1989)). Determining
16 whether an officer’s use of force was reasonable “requires a careful balancing of the nature and
17 quality of the intrusion on the individual’s interests against the countervailing government interests
18 at stake.” Id. (quoting Graham, 490 U.S. at 396). The analysis requires “careful attention to the
19 facts and circumstances in each particular case, including [1] the severity of the crime at issue, [2]
20 whether the suspect poses an immediate threat to the safety of the officers or others, and [3]
21 whether he is actively resisting arrest or attempting to evade arrest by flight.” Graham, 490 U.S.
22 at 396. In Graham, the Supreme Court advised courts to examine the circumstances underlying an
23 excessive force claim from the viewpoint of a reasonable⁸ officer on the scene “rather than with
24 the 20/20 vision of hindsight.” Id. Police officers “are not required to use the least intrusive
25

26 ⁸ At oral argument, the County urged the Court to take into account the Sheriff’s Deputies’ intent
27 in this case with respect to Plaintiffs’ excessive force claims, but “the question is whether the
28 officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting
them, without regard to their underlying intent or motivation.” Lolli, 351 F.3d at 415 (citing
Graham, 490 U.S. at 397).

1 degree of force possible.” Rather, “the inquiry is whether the force that was used to effect a
2 particular seizure was reasonable.” Forrester v. City of San Diego, 25 F.3d 804, 807 (9th Cir.
3 1994).

4 Because it is so dependent on determinations of fact and credibility, whether excessive
5 force has been used is ordinarily a question of fact reserved for the jury. Santos v. Gates, 287 F.3d
6 846, 853 (9th Cir. 2002) (“Because [the excessive force inquiry] nearly always requires a jury to
7 sift through disputed factual contentions, and to draw inferences therefrom, we have held on many
8 occasions that summary judgment or judgment as a matter of law in excessive force cases should
9 be granted sparingly.”); Smith v. City of Hemet, 394 F.3d 689, 701 (9th Cir. 2005) (“This is
10 because such cases almost always turn on a jury's credibility determinations.”)

11 **1. Deputy Ahlf**

12 The County relies heavily on Gibson v. Cnty. of Washoe, supra, in arguing that the
13 evidence in this case is insufficient to permit a reasonable jury to conclude that any deputy used
14 excessive force. In Gibson, a manic inmate fought violently with officers as he was transferred to
15 a special watch cell. “[O]nce the deputies began to restrain Gibson and move him to the special
16 watch cell, he fought back vigorously. No more than three minutes passed from the time the
17 deputies brought Gibson into the special watch cell and his death. During that time, Gibson was
18 fighting hard against the deputies’ efforts to restrain him, creating precisely the kind of situation in
19 which officers must make split-second decisions.” Gibson, 290 F.3d at 1198.

20 During the struggle, the inmate “assumed a fighting stance with his fists up and shouted
21 obscenities” at the officers. Id. at 1182. The officers decided to move the inmate to the special
22 watch cell. One officer pepper-sprayed the inmate while others attempted to control him and hold
23 him down. In one officer’s words:

24 We put him on his stomach. And he was still at this point kicking
25 and screaming and fighting and everything and yelling at us and he
26 was, for being pepper sprayed twice . . . this guy had an incredible
27 amount of fight in him. I mean just huge amount of fight ‘cause
28 here were are, at this time, I don't remember how many deputies
were on him, but I was trying to control his head, his left shoulder
blade, his left forearm, and I remember Deputy Cloud was right to
my right on his back and he like jumped, I mean lifted himself off
the bed . . . I mean, this guy was fighting.

1 Id. at 1183. Although Gibson ultimately died of a heart attack related to this manic episode and
2 struggle, the Ninth Circuit concluded that, “[u]nder all the circumstances, the deputies’ decisions
3 under these difficult circumstances resulted in restraining Gibson no more forcefully than was
4 reasonably necessary.” Id. at 1198.

5 The present case is distinguishable from Gibson in several important respects.

6 First, “where there is no need for force, *any* force used is constitutionally unreasonable.”
7 Lolli v. Cnty. of Orange, 351 F.3d 410, 417 (9th Cir. 2003) (emphasis added) (quoting Headwaters
8 Forest Def. v. County of Humboldt, 211 F.3d 1121, 1132 n.5 (9th Cir. 2000)). “[I]t is the need for
9 force which is at the heart of the consideration of the Graham factors.” Alexander v. City & Cnty.
10 of San Francisco, 29 F.3d 1355, 1367 (9th Cir. 1994). Here, Harrison was secure in his cell at the
11 time Deputy Ahlf decided to move him. Unlike the inmate in Gibson, Harrison was not
12 attempting to harm an officer or otherwise committing a crime. Though Harrison had flooded his
13 cell and broken a food tray, he did not, at the time Deputy Ahlf opened the cell door, pose “an
14 immediate threat to the safety of the officers or others.” Graham, 490 U.S. at 396. Nor was he
15 “actively resisting arrest or attempting to evade arrest by flight.” Id.

16 Given these facts, Deputy Ahlf’s supervisors questioned his “lapse in judgment” in
17 attempting to move Harrison, who was obviously mentally ill, without backup, and without
18 handcuffing Harrison through the port in the cell door. While attempting to handcuff Harrison,
19 Deputy Ahlf pushed Harrison into the cell based on Harrison’s “unsettling, blank stare.” As
20 Harrison moved back toward Deputy Ahlf, the deputy discharged his Taser. Viewed in the light
21 most favorable to Plaintiffs, the evidence suggests that even then, Harrison may not have been
22 attempting to hurt the deputy, but rather ran out of the cell and slipped, falling to the ground. The
23 evidence also suggests Deputy Ahlf deployed his Taser a second time. Deputy Ahlf cannot
24 account for the Taser log, and cannot explain what happened in the intervening seconds that
25 caused him to fire his Taser a second time. Plaintiffs’ police practices expert concludes that
26 Deputy Ahlf’s conduct was the cause of the ensuing injuries Harrison suffered.

27 Taken as a whole, Plaintiffs’ evidence undermines Deputy Ahlf’s account of how the
28

1 altercation began. Thus, unlike the inmate in Gibson, a jury could conclude Deputy Ahlf was at
2 fault for the succeeding events, and that Harrison did not initiate the altercation. In addition,
3 Harrison had a second opportunity to avoid the encounter by closing the cell door after pushing
4 Harrison into the cell and calling for backup. No such opportunity presented itself in Gibson.

5 Second, unlike with the inmate in Gibson, no evidence in this case suggests that Harrison
6 actually fought, though he apparently resisted vigorously. Nor is there evidence of any harm to
7 any of the officers caused by Harrison. The need for force in such a situation is necessarily lower
8 than the need in a situation where the inmate is actively and violently fighting an officer.

9 Third, “[t]he problems posed by, and thus the tactics to be employed against, an unarmed,
10 emotionally distraught individual who is creating a disturbance or resisting arrest are ordinarily
11 different from those involved in law enforcement efforts to subdue an armed and dangerous
12 criminal who has recently committed a serious offense. In the former instance, increasing the use
13 of force may, in some circumstances at least, exacerbate the situation; in the latter, a heightened
14 use of less-than-lethal force will usually be helpful in bringing a dangerous situation to a swift
15 end.” Deorle v. Rutherford, 272 F.3d 1272, 1282–83 (9th Cir. 2001). For this reason, the Ninth
16 Circuit “emphasize[s] that where it is or should be apparent to the officers that the individual
17 involved is emotionally disturbed, that is a factor that must be considered in determining,
18 under Graham, the reasonableness of the force employed.” Id. Deputy Ahlf had already been
19 acquainted with Harrison, knew he was mentally ill, and discussed his mental state with Hast prior
20 to the altercation.⁹ These facts weigh against granting summary judgment.

21 Fourth, the quantum of force used was not at issue in Gibson. The Ninth Circuit’s Gibson
22 decision does not indicate that any deputy struck the inmate, much less used the level of force at
23 issue here. In this case, there is significant contradictory evidence concerning which deputies
24

25 ⁹ Like Harrison, Gibson was also unarmed and mentally ill when he was taken into custody.
26 Unlike Harrison, however, he not only fought with officers both during and after his arrest, but he
27 had been pointing a gun and twirling a large knife in the events before his arrest, and he had
28 threatened his wife. Gibson, 290 F.3d at 1180–81.

1 struck Harrison, how many times, and how hard. Indeed, Plaintiffs maintain that the deputies’
2 testimony does not account for all the injuries contained in Harrison’s autopsy report. Plaintiffs’
3 expert, John Ryan, concluded that Deputy Ahlf used excessive force even before other deputies
4 arrived because the use of the Taser and “hard hand” blows exceeded the amount of force Deputy
5 Ahlf needed to use to control Harrison.

6 The County also argues that the deputies could not have caused Harrison’s death, and
7 therefore Harrison did not suffer damages from the deputies’ use of force. Force is not required to
8 be lethal to qualify as excessive. If Plaintiffs can establish at trial that the deputies used excessive
9 force, the question of whether the force led to Harrison’s death or merely to some of his injuries
10 will be a question of fact for the jury.

11 For these reasons, the Court concludes that summary judgment must be denied with
12 respect to Plaintiffs’ excessive force claims against Deputy Ahlf. A reasonable jury could
13 conclude that the quantum of force used was objectively unreasonable and that the force was
14 unnecessary, and therefore unconstitutional.

15 2. The Remaining Deputies

16 The County argues that none of the remaining Sheriff’s Deputies can be liable for
17 excessive force because no deputy can be liable for the force used by another, and no single
18 deputy employed objectively unreasonable force. Taken to its logical conclusion, the County’s
19 argument suggests that, no matter the quantum of the total force used against Harrison, no single
20 deputy could ever be liable for it.

21 It is true that an officer must be an “integral participant” in the violation. Boyd v. Benton
22 Cnty., 374 F.3d 773, 780 (9th Cir. 2004) (officers were integral participants in use of excessive
23 force where they provided armed backup to officer who unconstitutionally deployed flash-bang,
24 were “aware of the decision to use the flash-bang, did not object to it, and participated in the
25 search operation knowing the flash-bang was to be deployed”). But Plaintiffs are not required to
26 allocate evidence of each individual deputy’s participation in the manner Defendants claim.

27 The Lolli decision, supra, is instructive. In that case, the plaintiff was beaten by several
28 officers. The Ninth Circuit held that the plaintiff did not need to identify “precisely which officer

1 delivered which alleged blow or use of force” because the plaintiff had “developed and presented
2 sufficient evidence from which a jury could infer that the individual officers who had physical
3 contact with Lolli participated in the alleged beating.” Lolli, 351 F.3d at 417.

4 The same rule applies here. As in Lolli, Plaintiffs have “developed and presented
5 sufficient evidence from which a jury could infer that the individual officers who had physical
6 contact with [Harrison] participated in the alleged beating.” Id. Nothing more is required for
7 summary judgment to be denied.

8 On this record, Plaintiffs are also entitled to argue that deputies who were present had a
9 duty to intervene to prevent the use of excessive force against Harrison, even if not all of them
10 integrally participated in the application of force. “[P]olice officers have a duty to intercede when
11 their fellow officers violate the constitutional rights of a suspect or other citizen.” United States v.
12 Koon, 34 F.3d 1416, 1447 n.25 (9th Cir. 1994), rev'd on other grounds, 518 U.S. 81 (1996).
13 “[O]fficers can be held liable for failing to intercede only if they had an opportunity to intercede.”
14 Cunningham v. Gates, 229 F.3d 1271, 1289 (9th Cir. 2000) (holding officers did not have a
15 “realistic opportunity” to intervene because they were not present at the time of the shooting).
16 Liability for failure to intervene may extend to officers who did not take any affirmative action to
17 contribute to the excessive force. See Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995).
18 For example, in Lolli, a sergeant “admitted that he observed the deputies struggling with Lolli, but
19 he did not become involved or give orders.” 351 F.3d at 418. The Ninth Circuit held that the
20 sergeant was not entitled to summary judgment because the evidence could support a claim that he
21 failed to intervene.

22 Here, the County argues only that no deputy testified to seeing any force that was
23 unreasonable or excessive, and that certain deputies used less force than could amount to
24 excessive force; therefore, argues the County, a failure to intervene claim cannot survive. These
25 arguments must be decided by a jury. Each deputy was present at some point during the
26 altercation, and each deputy admits, at a minimum, to participating in the effort to control Harrison
27 by touching him in some way, though with different amounts of force or compliance techniques.
28 Thus, Plaintiffs’ failure to intervene claim with respect to each deputy is sufficient to survive

1 summary judgment. The questions of when each deputy arrived, what each deputy witnessed,
2 whether there was a violation of Harrison’s constitutional rights, and whether each deputy either
3 failed to intervene in, or was an integral participant in the violation of Harrison’s rights are
4 questions for the trier of fact.

5 **3. Qualified Immunity**

6 Qualified immunity is an affirmative defense that “shield[s] an officer from personal
7 liability when an officer reasonably believes that his or her conduct complies with the law.”
8 Pearson v. Callahan, 555 U.S. 223, 244 (2009). Courts utilize a two-step analysis to determine
9 whether officers are entitled to qualified immunity. “First, a court must decide whether the facts
10 that a plaintiff has alleged . . . or shown . . . make out a violation of a constitutional right.” Id. at
11 232. The Court has already determined, as discussed above, that, taking Plaintiffs’ allegations and
12 facts in the light most favorable to Plaintiffs, they have established the violation of a constitutional
13 right.

14 “Second, if the plaintiff has satisfied this first step, the court must decide whether the right
15 at issue was ‘clearly established’ at the time of defendant’s alleged misconduct.” Id. To be a
16 clearly established constitutional right, a right must be sufficiently clear “that every reasonable
17 official would [have understood] that what he is doing violates that right.” Reichle v. Howards,
18 132 S. Ct. 2088, 2093 (2012) (citation and internal quotation marks omitted). Plaintiffs “bear[] the
19 burden of proving that the right allegedly violated was clearly established at the time of the
20 official’s allegedly impermissible conduct.” Camarillo v. McCarthy, 998 F.2d 638, 640 (9th Cir.
21 1993).

22 The Court finds that the Sheriff’s Deputies are not entitled to qualified immunity in this
23 case for their alleged use of excessive force. The Ninth Circuit’s decision in Lolli is again,
24 instructive. There, after concluding that the plaintiff had presented sufficient evidence to show
25 that the extent of force used was excessive, the Ninth Circuit rejected the officers’ qualified
26 immunity argument “[b]ecause of the factual disputes that Lolli has identified.” Lolli, 351 F.3d at
27 421. Like in Lolli, the core issue for Plaintiffs’ excessive force claim is a factual determination of
28 the extent of force that was used, and whether that amount of force was excessive given the

1 circumstances. In such situations, a determination on qualified immunity will rarely be
 2 appropriate at summary judgment, particularly where the force involved traditional forms of force,
 3 *i.e.* striking and compliance techniques. See Santos v. Gates, 287 F.3d 846, 855 (9th Cir. 2002)
 4 (quoting Saucier v. Katz, 533 U.S. 194, 205 (2001)) (“[W]hether the officers may be said to have
 5 made a ‘reasonable mistake’ of fact or law, may depend on the jury’s resolution of disputed facts
 6 and the inferences it draws therefrom. Until the jury makes those decisions, we cannot know, for
 7 example, how much force was used, and, thus, whether a reasonable officer could have mistakenly
 8 believed that the use of that degree of force was lawful.”); Walker v. Jones, No. 08-cv-0757-CRB,
 9 2010 WL 3702659 (N.D. Cal. Sept. 16, 2010) (“Viewing the facts in the light most favorable to
 10 plaintiff, it cannot be said that a reasonable officer in defendants’ position would have believed
 11 that hitting, kicking and stepping on plaintiff’s face after he was handcuffed was reasonably
 12 necessary to maintain discipline and order.”); Rosenblatt v. City of Hillsborough, No. 12-cv-
 13 05210-LB, 2013 WL 6001346, at *15 (N.D. Cal. Nov. 12, 2013) (officers were not entitled to
 14 qualified immunity for use of excessive force because “the issues of disputed fact preclude a
 15 determination at this point” on qualified immunity, and “Defendants’ argument relies on their
 16 version of the facts”); McCloskey v. Courtnier, No. 05-cv-4641-MMC, 2012 WL 646219, at *3
 17 (N.D. Cal. Feb. 28, 2012) (“[B]ecause the facts relevant to the issue of qualified immunity are
 18 inextricably intertwined with the disputed facts relevant to the issue of excessive force, defendants
 19 are not entitled to summary adjudication on the issue of qualified immunity. “).

20 The County’s reliance on Ninth Circuit decisions finding qualified immunity for the use of
 21 a Taser is unavailing. The County’s argument depends on separating the use of Tasers from the
 22 rest of the altercation. But Plaintiffs premise their excessive force claim here on the combination
 23 of the different types of force used in this case, not simply the use of Tasers, and it is the “totality
 24 of force” that must be evaluated in an excessive force case. Smith v. City of Hemet, 394 F.3d at
 25 703. The County’s authorities are therefore inapposite.

26 For these reasons, the Court cannot conclude at this juncture that the Sheriff’s Deputies are
 27 entitled to qualified immunity on Plaintiffs’ excessive force claim.
 28

1 **E. Loss of Familial Association**

2 **1. Excessive Force**

3 Plaintiffs assert against each Sheriff’s Deputy a claim for violation of their Fourteenth
4 Amendment right to be free from interference with their relationship with their father. That claim
5 is premised on the same facts as Plaintiffs’ excessive force claim.¹⁰ Despite the County’s
6 arguments to the contrary, “the law in this circuit is quite clear: a child has a substantive due
7 process right in her relationship with her parents which may be vindicated through a Section 1983
8 action.” Ovando v. City of Los Angeles, 92 F. Supp. 2d 1011, 1018 (C.D. Cal. 2000) (citing
9 Smith v. City of Fontana, 818 F.2d 1411, 1420 (9th Cir. 1987) overruled on other grounds by
10 Hodgers-Durgin v. de la Vina, 199 F.3d 1037 (9th Cir. 1999)).

11 However, the Fourteenth Amendment inquiry is distinct from a Fourth Amendment
12 excessive force claim. Under the Fourteenth Amendment, “only official conduct that ‘shocks the
13 conscience’ is cognizable as a due process violation.” Porter v. Osborn, 546 F.3d 1131, 1137 (9th
14 Cir. 2008). “Where actual deliberation is practical, then an officer’s ‘deliberate indifference’ may
15 suffice to shock the conscience.” Wilkinson v. Torres, 610 F.3d 546, 554 (9th Cir. 2010). “On the
16 other hand, where a law enforcement officer makes a snap judgment because of an escalating
17 situation, his conduct may only be found to shock the conscience if he acts with a purpose to harm
18 unrelated to legitimate law enforcement objectives.” Id.

19 Here, the parties agree the “purpose to harm” standard applies with respect to the force
20 used by the Sheriff’s Deputies. In an excessive force case, a purpose to harm is “‘the intent to
21 inflict force beyond that which is required by a legitimate law enforcement objective.’” Porter,
22 546 F.3d at 1140. Here, because the facts are in dispute regarding the events of August 16, 2013,
23 the Court cannot conclude as a matter of law that the Sheriff’s Deputies did not act with a
24 “purpose to harm.” Based on the material disputes of fact concerning the extent of force used, the
25 credibility of the Sheriff’s Deputies’ testimony, the nature of Harrison’s injuries, the degree to

26 _____
27 ¹⁰ The Court does not address Plaintiffs’ deliberate indifference to serious medical needs claim
28 against the Sheriff’s Deputies as a basis for their Fourteenth Amendment familial association
claim, as the Court has already concluded as a matter of law that judgment must enter in favor of
Defendants on that claim.

1 which the force was necessary, and the degree to which Deputy Ahlf was responsible for the
2 unnecessary use of force, and construing the evidence in the light most favorable to Plaintiffs, the
3 Court concludes that a trier of fact could find that the use of force was both constitutionally
4 excessive and inflicted with a purpose to harm. See, e.g., Dorger v. City of Napa, No. 12-cv-
5 00440-WHO, 2013 WL 5804544, at *9 (N.D. Cal. Oct. 24, 2013).

6 Further, the same disputes of material fact preclude the Court from finding that the
7 Sheriff's Deputies are entitled to qualified immunity, as the "intent to inflict force beyond that
8 which is required by a legitimate law enforcement objective" would constitute a clearly
9 established violation of Plaintiffs' constitutional rights.

10 2. Deliberate Indifference

11 The standard that applies to Plaintiffs' familial association claim against the Sheriff's
12 Deputies for their use of force is different than that which applies to Plaintiffs' claim against Hast
13 and Nurse Sancho premised on their alleged deliberate indifference to Harrison's serious medical
14 needs. Unlike the "purpose to harm" standard that governs Fourteenth Amendment claims where
15 an official "makes a snap judgment because of an escalating situation," Wilkinson, 610 F.3d at
16 554, where "actual deliberation is practical," deliberate indifference is sufficient to support a
17 Fourteenth Amendment claim. Id. The Supreme Court has contrasted, for example, an officer's
18 decision to give chase to a fleeing suspect with "the luxury enjoyed by prison officials of having
19 time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated
20 by the pulls of competing obligations." Cnty. of Sacramento v. Lewis, 523 U.S. 833, 853 (1998)
21 (holding "purpose to harm" standard applied to high-speed police chase); see also Porter, 546 F.3d
22 at 1139 (citing Lee v. City of Los Angeles, 250 F.3d 668, 684 (9th Cir. 2001) (noting "where
23 officers have ample time to correct their obviously mistaken detention of the wrong individual, but
24 nonetheless fail to do so, the suspect's family members need only plead deliberate indifference to
25 state a claim under the due process right to familial association").

26 The Court concludes that the "deliberate indifference" standard applies to Plaintiffs'
27 familial association claims against Defendants Hast and Sancho. Because the Court has already
28 concluded that Plaintiffs have adduced sufficient evidence to deny summary judgment on their

1 deliberate indifference claims, the Court will deny summary judgment as to their familial
2 association claim as well.

3 **3. Qualified Immunity**

4 Defendants' arguments concerning qualified immunity on Plaintiffs' familial association
5 claim echo their arguments concerning the underlying conduct challenged by Plaintiffs. No
6 Defendant makes a distinct argument concerning whether the alleged violation of Plaintiffs' rights
7 was prohibited by clearly established law. For this reason, the Court will deny qualified immunity
8 with respect to Plaintiffs' familial association claims against the Sheriff's Deputies arising out of
9 the use of force and against Hast and Sancho arising out of deliberate indifference to Harrison's
10 serious medical needs.

11 **F. Bane Act, California Civil Code Section 52.1**

12 Each Defendant moves for summary judgment on Plaintiffs' claim for violation of
13 California's Bane Act, Cal. Civ. Code § 52.1. The Bane Act provides a private right of action for
14 damages against any person, whether acting under color of law or not, who interferes or attempts
15 to interfere "by threats, intimidation, or coercion, with the exercise or enjoyment by any individual
16 or individuals of rights secured by the Constitution or laws of the United States, or of the rights
17 secured by the Constitution or laws" of California.

18 The County argues that Plaintiffs have not adduced sufficient evidence to establish an
19 excessive force claim, and therefore no Bane Act violation may follow. As the Court has already
20 discussed, Plaintiffs have established a triable issue of fact with respect to the excessive force
21 claims against each of the Sheriff's Deputies. The Court will deny the County's motion for
22 summary judgment on that ground.¹¹

23 _____
24 ¹¹ The County also suggests that Plaintiffs lack standing to assert a Bane Act claim because the
25 Bane Act "is simply not a wrongful death provision." County MSJ at 41 (quoting Bay Area Rapid
26 Transit Dist. v. Super. Ct., 38 Cal. App. 4th 141 (1995)). The Court does not understand Plaintiffs
27 to have asserted a Bane Act claim for injuries they sustained, but rather, for the injuries sustained
28 by the decedent Harrison as his heirs, pursuant to California's survival statute. See Cal. Code Civ.
P. § 377.20. A survival Bane Act claim, unlike a wrongful death Bane Act claim, is permissible.
Dela Torre v. City of Salinas, No. 09-cv-00626-RMW, 2010 WL 3743762, at *7 (N.D. Cal. Sept.
17, 2010); Medrano v. Kern Cnty. Sheriff's Officer, 921 F. Supp. 2d 1009, 1016 (E.D. Cal. 2013)
(citing cases).

1 The Corizon Defendants and Sancho argue that none of them interfered or attempted to
2 interfere with Mr. Harrison’s rights “by threats, intimidation or coercion” as required by the Bane
3 Act.¹² Sancho’s motion appears to disregard this Court’s prior ruling that deliberate indifference
4 to an inmate’s medical needs is adequate to satisfy the “threats, intimidation, or coercion”
5 requirement of the Bane Act. ECF No. 76. Corizon acknowledges the Court’s prior ruling, ECF
6 No. 134 at 9, but argues that Plaintiffs have failed to introduce adequate evidence of deliberate
7 indifference. Id.

8 Because the Court has already concluded that Plaintiffs are entitled to present their
9 deliberate indifference claims to a jury, and for the reasons set forth in its prior order, ECF No. 76,
10 the Court will deny the Corizon Defendants’ and Sancho’s motions for summary judgment as to
11 Plaintiffs’ Bane Act claims.¹³ For the same reasons, the Court will deny summary judgment on
12 Plaintiffs’ Bane Act claim against Defendant Hast.

13 **G. Negligence, Assault, and Battery as to the County Defendants**

14 In their opposition to the County’s motion for summary judgment, Plaintiffs premise their
15 negligence claim against the County Defendants solely on the allegedly excessive force used by
16 the Sheriff’s Deputies.

17 To establish the negligence of a police officer under California law, a plaintiff must
18 demonstrate that (1) the officer owed the plaintiff a duty of care, (2) the officer breached the duty
19 by failing to use such skill, prudence, and diligence as other members of the profession commonly
20

21 ¹² The Corizon Defendants make the additional argument that Plaintiffs’ Bane Act claim is
22 untimely, because it was brought more than two years after Harrison’s injury. Judge Wilken
23 rejected Defendants’ arguments that Plaintiffs’ claims are barred by the statute of limitations when she
24 granted Plaintiffs’ Motion to Amend on November 12, 2012. ECF No. 45. The Court declines to
revisit its prior ruling on this point.

25 ¹³ Defendants point to the Court’s order granting summary judgment on the plaintiff’s Bane Act
26 claim in Ashley v. Cnty. of San Francisco, No. 12-cv-00045-JST, 2013 WL 6185523, at *11 (N.D.
27 Cal. Nov. 26, 2013), as support for the proposition that deliberate indifference to serious medical
28 needs does not constitute a violation of the Bane Act. The portion of the decision Defendants rely
upon has been superseded. See Ashley v. Cnty. of San Francisco, No. 12-cv-00045-JST, ECF No.
132 (N.D. Cal. Feb. 4, 2014) (Amended Order Granting in Part and Denying in Part Motion for
Summary Judgment).

1 possess and exercise, (3) there was a proximate causal connection between the officer’s negligent
2 conduct and the resulting injury to the plaintiff, and (4) the officer’s negligence resulted in actual
3 loss or damage to the plaintiff. Harris v. Smith, 157 Cal. App. 3d 100, 104 (1984). The question
4 of whether a duty has been breached is normally a question of fact. Hernandez v. KWPH
5 Enterprises, 116 Cal. App. 4th 170, 175 (2004).

6 Here, the parties agree that the negligence and excessive force analyses merge. Because
7 the Court denies summary judgment with respect to Plaintiffs’ excessive force claim against the
8 Sheriff’s Deputies, it will also deny summary judgment on Plaintiffs’ negligence claim against the
9 officers. See, e.g., Knapps v. City of Oakland, 647 F. Supp. 2d 1129, 1165 (N.D. Cal. 2009).

10 The parties also agree that a viable excessive force claim precludes summary judgment
11 with respect to Plaintiffs’ assault and battery claims against the Sheriff’s Deputies. For the same
12 reason, the Court will deny summary judgment on those claims. See, e.g., id. at 1166–67;

13 The County also argues that it is immune from vicarious liability for the Sheriff’s
14 Deputies’ conduct. That is not the case. Under the California Tort Claims Act, Cal. Gov’t Code,
15 § 810 *et seq.*, a public entity is not liable for injury arising from an act or omission except as
16 provided by statute. Section 815.2(a) provides that “[a] public entity is liable for injury
17 proximately caused by an act or omission of an employee of the public entity within the scope of
18 his employment if the act or omission would, apart from this section, have given rise to a cause of
19 action against that employee[.]” Cal. Gov’t Code § 815.2. “This provision clearly allows for
20 vicarious liability of a public entity when one of its police officers uses excessive force in making
21 an arrest.” Blankenhorn v. City of Orange, 485 F.3d 463, 488 (9th Cir. 2007).

22 Finally, the Court notes that Plaintiffs do not attempt to support their negligence claim
23 against Ms. Hast in opposition to the County’s motion for summary judgment. Accordingly, the
24 Court will enter summary judgment for defendant Hast on that claim.

25 **H. Negligence as to Nurse Sancho and the Corizon Defendants**

26 In opposition to the motion for summary judgment filed by Nurse Sancho, Plaintiffs agreed
27 to dismiss their negligence claim against her. Accordingly, the Court will grant summary
28 judgment in Nurse Sancho’s favor on that claim.

1 In a letter brief concerning whether Plaintiffs’ counsel will be required to testify at trial
2 with respect to the statute of limitations, Plaintiffs agreed to dismiss their negligence claims
3 against the Corizon Defendants as well. ECF No. 290 at 3. Accordingly, the Court will grant
4 summary judgment in the Corizon Defendants’ favor on that claim as well.

5 **I. California Government Code Section 845.6**

6 Plaintiffs assert a claim for violation of California Government Code section 845.6 against
7 Deputy Ahlf, Defendant Hast, and the County.¹⁴ The statute provides in relevant part,

8 Neither a public entity nor a public employee is liable for injury
9 proximately caused by the failure of the employee to furnish or
10 obtain medical care for a prisoner in his custody; but, except as
11 otherwise provided by Sections 855.8 and 856, a public employee,
12 and the public entity where the employee is acting within the scope
13 of his employment, is liable if the employee knows or has reason to
14 know that the prisoner is in need of immediate medical care and he
15 fails to take reasonable action to summon such medical care.

16 Cal. Gov’t Code § 845.6. The County Defendants first argue that they are immune from liability
17 for a violation of section 845.6 by virtue of the immunity provision at Government Code sections
18 855.6, which, *inter alia*, confers immunity on public employees and entities for injury caused by
19 “the failure to make a physical or mental examination.” But on its face, section 855.6 does not
20 apply to Plaintiffs’ claims arising out of the failure to “summon medical care”; only to the failure
21 to “make a physical or mental examination.” The statute is therefore inapplicable to Plaintiffs’
22 section 845.6 claim.¹⁵ See, e.g., Lum v. Cnty. of San Joaquin, 756 F. Supp. 2d 1243, 1257 (E.D.
23 Cal. 2010) (holding section 855.6 inapplicable where plaintiff alleged a “failure to refer decedent
24 for evaluation rather than a failure as a result of diagnosis or treatment”).

25 Turning to the merits of Plaintiffs’ section 845.6 claim, “[i]n order to state a claim under §

26 _____
27 ¹⁴ The Court previously dismissed Plaintiffs’ claim against Corizon for violation of California
28 Government Code section 845.6. ECF No. 76 at 12.

¹⁵ Moreover, the Law Revision Commission notes to section 855.6 state that the statute is meant to
confer “immunity for failure to perform adequately public health examinations, such as public
tuberculosis examinations, physical examinations to determine the qualifications of boxers and
other athletes, and eye examinations for vehicle operator applicants. It does not apply to
examinations for the purpose of treatment such as are made in doctors’ offices and public
hospitals. In those situations, the ordinary rules of liability would apply.”

1 845.6, a prisoner must establish three elements: (1) the public employee knew or had reason to
 2 know of the need (2) for immediate medical care, and (3) failed to reasonably summon such care.”
 3 Jett, 439 F.3d at 1099. In this manner, section 845.6 imposes “a statutory duty to summon
 4 medical care.” Watson v. State of California, 21 Cal. App. 4th 836, 841 (1993). However,
 5 liability is “limited” to the failure to summon care for “serious and obvious medical conditions
 6 requiring immediate care” of which the defendant has “actual or constructive knowledge.” Id.
 7 California courts consider section 845.6 “a broad general immunity,” id., and the statute “does not
 8 impose a duty to monitor the quality of care provided,” Jett, 439 F.3d at 1099. Nor does the
 9 statute impose liability for any failure in diagnosis or treatment. Watson, 21 Cal. App. 4th at 842.

10 In connection with Plaintiffs’ deliberate indifference claim, the Court previously found that
 11 Deputy Ahlf’s failure to summon medical care for Harrison may have violated several County
 12 policies and procedures, but that there is no evidence in the record that Deputy Ahlf was
 13 subjectively aware of Harrison’s medical condition. While Deputy Ahlf was aware that Harrison
 14 was acting bizarrely, he did not know that Harrison was an alcoholic, nor is there any evidence
 15 from which a jury could conclude that Deputy Ahlf knew Harrison was suffering from withdrawal.
 16 For these reasons, Deputy Ahlf is entitled to summary judgment on his deliberate indifference
 17 claim. See Gibson, 290 F.3d at 1193 (“Although the deliberate indifference doctrine contains a
 18 heightened foreseeability requirement, this requirement differs from the traditional negligence
 19 foreseeability requirement only insofar as deliberate indifference requires the defendant to be
 20 *subjectively* aware that *serious* harm is likely to result from a failure to provide medical care.”).

21 However, section 845.6 imposes liability for a failure to reasonably summon medical care
 22 for a serious medical need of which the defendant has actual *or constructive* knowledge. See, e.g.,
 23 Watson, 21 Cal. App. 4th at 841; Zeilman v. Cnty. of Kern, 168 Cal. App. 3d 1174, 1184 (1985)
 24 (“[Q]uestions about jail personnel’s actual *or constructive* knowledge of a prisoner’s need for
 25 immediate medical care as well as the reasonableness of actions taken to meet this need are factual
 26 questions.”) (emphasis added); Johnson v. Cnty. of Los Angeles, 143 Cal. App. 3d 298, 317
 27 (1983) (“[T]he questions of Sheriffs’ actual or constructive knowledge of Decedent’s need for
 28 immediate care, and of Sheriffs’ reasonable action to summon or not to summon such care, are

1 questions of fact to be determined at trial.”). The objective knowledge standard under the state
2 law claim therefore reaches conduct that Plaintiffs’ federal claim does not. See Lucas v. Cnty. of
3 Los Angeles, 47 Cal. App. 4th 277, 288 (1996) (holding federal court’s dismissal of deliberate
4 indifference claim did not constitute res judicata for plaintiff’s section 845.6 claim, in part,
5 because of differing knowledge requirements).

6 The Court finds, viewing the evidence in the light most favorable to Plaintiffs, that a
7 reasonable jury could conclude that Deputy Ahlf should have known that Harrison was suffering
8 from a “serious and obvious medical condition[] requiring immediate care,” Watson, 21 Cal. App.
9 4th at 841, both when he first placed Harrison in the isolation cell and when he failed to summon
10 medical care rather than enter Harrison’s cell twelve hours later. The Court also concludes that a
11 reasonable jury could find that Deputy Ahlf’s failure to do so was unreasonable, and, as the Court
12 has already concluded, genuine issues of material fact remain with respect to Harrison’s cause of
13 death, rendering the question of causation appropriate for the jury.

14 With respect to Defendant Hast, however, summary judgment is appropriate. Section
15 845.6 simply does not extend to a failure to diagnose or treat, which is Plaintiffs’ only complaint
16 arising out of Hast’s conduct.

17 **VIII. CONCLUSION**

18 For the foregoing reasons, the Court hereby GRANTS IN PART Defendants’ motions for
19 summary judgment. Judgment will be entered in Defendants’ favor as to the following claims:

20 1. Plaintiffs’ First Cause of Action — 42 U.S.C. § 1983 — as against the Sheriff’s
21 Deputies for deliberate indifference to Harrison’s serious medical needs and for loss of familial
22 association stemming from deliberate indifference to Harrison’s serious medical needs;

23 2. Plaintiffs’ Second Cause of Action — Monell liability — as against the County in
24 connection with the use of force against Harrison, and as against Corizon and Dr. Orr in
25 connection with the hiring and retention of Nurse Sancho;

26 3. Plaintiffs’ Third Cause of Action — Cal. Civil Code § 52.1 — as against the
27 Sheriff’s Deputies for violation of Harrison’s civil rights concerning medical care;

28 4. Plaintiffs’ Fourth Cause of Action — Negligence — as against Defendants Hast,

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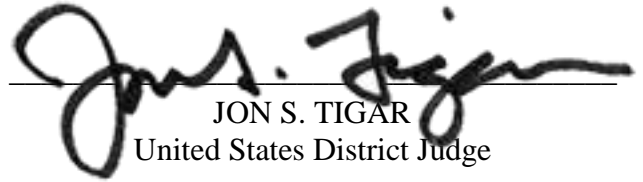
Sancho, Corizon Health, and Dr. Orr; and

5. Plaintiffs' Sixth Cause of Action — Cal. Gov't Code § 845.6 — as against Defendant Hast in connection with Harrison's medical care.

In all other respects, the motions for summary judgment are hereby DENIED.

IT IS SO ORDERED.

Dated: April 11, 2014


JON S. TIGAR
United States District Judge