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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RIANA BUFFIN and CRYSTAL PATTERSON, et al.,

Plaintiffs,

vs.

THE CITY AND COUNTY OF SAN FRANCISCO, VICKI HENNESSY in her official capacity as the San Francisco Sheriff, and KAMALA HARRIS, in her official capacity as the California Attorney General,

Defendants.

Case No. C15-04959 YGR

NOTICE AND MOTION TO DISMISS THIRD AMENDED COMPLAINT BY DEFENDANTS SAN FRANCISCO AND SHERIFF HENNESSY; MEMORANDUM OF POINTS AND AUTHORITIES

Hearing Date: August 16, 2016
Time: 2:00 p.m.
Place: Courtroom 1, Fourth Floor
Judge: Hon. Yvonne Gonzalez Rogers

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NOTICE AND MOTION

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD: Please take notice that, at 2:00 p.m. on August 16, 2016, or as soon thereafter as the motion may be heard, before the Hon. Yvonne Gonzalez Rogers, in the United States District Court for the Northern District of California, Oakland Division, Courtroom 1, Fourth Floor, Defendants City and County of San Francisco ("the City") and Sheriff Vicki Hennessy ("the Sheriff") will and hereby do move to dismiss Plaintiffs' third amended complaint ("TAC") under Fed. R. Civ. Proc. 12(b)(6) for failure to state a claim. The motion is based on the TAC, this memorandum of points and authorities, previously filed records and orders in this action, the arguments of counsel at the hearing, if any, and any such further matters as the Court deems appropriate.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Sheriff acts on behalf of the State when detaining a person pretrial who does not pay the bail amount established by the superior court, requiring dismissal of the Sheriff because she is protected by Eleventh Amendment immunity, and dismissal of the City because the State, not the City, is the relevant actor.

2. Whether the TAC must be dismissed because pretrial detention that is compelled by state law or court order is not a ***municipal*** "policy or practice" under the doctrine set forth in *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), and its progeny.

INTRODUCTION

In its motion to dismiss the Second Amended Complaint, the City argued that dismissal was warranted because acts that are compelled by state law or court order do not constitute a municipal "policy or practice" under *Monell*, and because the Sheriff acts on behalf of the State, not the City, when detaining a person pretrial. ECF No. 63 at 7-11; ECF No. 67 at 2-13. Plaintiffs' opposition invoked the *Ex Parte Young* doctrine, pursuant to which an action that seeks ***only*** prospective injunctive relief may seek an order against a government official's enforcement of an unconstitutional law—a claim that, as the City pointed out in its reply, the Second Amended Complaint did not plead. Noting that the City's motion raised "valid concerns," the Court accepted Plaintiffs' offer to file a further amended complaint and accordingly denied the motion to dismiss as moot. ECF No. 70 at 2.

The TAC, however, does not avoid the problems of its predecessor. First, while it adds the Sheriff as a defendant and requests a declaration of the invalidity of state law, it does not fall within the *Ex Parte Young* exception to Eleventh Amendment immunity because it seeks an award of damages. Second, it continues to name the City as a defendant, and expressly seeks relief (again including an award of damages) under the *Monell* doctrine. Accordingly, the TAC must be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

This case is a putative class action contending that the pretrial detention of people who are unable to afford the bail amounts established by the superior court violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment by discriminating impermissibly on the basis of wealth. The proposed class representatives, Plaintiffs Riana Buffin and Crystal Patterson, were booked and held in the San Francisco jail following their arrest on state charges. ECF No. 71 ¶¶ 27-28, 33-34. Jail officials informed each of them of the applicable bail based on the bail schedule established by the superior court. *Id.* ¶¶ 28, 34, 44. The TAC alleges that neither Ms. Buffin nor Ms. Patterson was able to pay the required bail, although Ms. Patterson was released after approximately 31 hours when she obtained a bail bond from a private company. *Id.* ¶¶ 30, 29, 37. Ms. Buffin was released after approximately 46 hours, when the District Attorney's Office decided not to file formal charges against her. *Id.* ¶ 31. Ultimately the District Attorney's Office decided not to file formal charges against Ms. Patterson as well. *Id.* ¶ 38.

This is the fourth iteration of the complaint. The original complaint named the State and the City as defendants. ECF No. 1. The State moved to dismiss pursuant to the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971), and on the ground that the Eleventh Amendment barred suit directly against the State. ECF No. 20. The City joined the motion with respect to *Younger* abstention, and moved in the alternative for a more a definite statement under Rule 12(e), arguing that the complaint was unclear in significant ways. ECF Nos. 26, 39.

The Court dismissed the complaint against the State, agreeing that the State was immune from suit under the Eleventh Amendment and noting that Plaintiffs at least implicitly conceded as much.

ECF No. 55 at 3.[1] With respect to *Younger*, the Court concluded that abstention was inappropriate because Plaintiffs were never arraigned and thus were not challenging any judicial act. *Id.* at 3-8. On the other hand, the Court agreed with the City that the complaint was fundamentally unclear with respect both to the nature of the claim and to the requested relief, and accordingly granted its motion for a more definite statement. *Id.* at 8-9.

Plaintiffs filed an amended complaint on February 25, 2016, now naming only the City as a defendant. ECF No. 58. Plaintiffs' counsel thereafter advised the City that Plaintiffs intended to further amend their pleading as a matter of course under Rule 15(a)(1). The Second Amended Complaint was filed on March 17, 2016. ECF No. 62. The allegations were essentially identical to those in the amended complaint, but numerous affidavits were appended to the pleading and referenced at various points.

The City moved to dismiss, arguing that Plaintiffs were impermissibly seeking to impose *Monell* liability on the City for actions that state law or court orders required it to take—not for any actions taken pursuant to a municipal policy or practice. The City also pointed out that the Sheriff acts on behalf of the State, not the City, when detaining a person who does not pay the bail amount established by the Superior Court. ECF No. 63 at 7-11; ECF No. 67 at 2-13. Although Plaintiffs' opposition invoked the *Ex Parte Young* doctrine as an alternative to *Monell*, the City pointed out that the SAC failed in numerous ways to plead such a claim, including because the lawsuit was not limited to a request for prospective relief and because the Sheriff acts on behalf of the State when detaining a person pretrial. ECF No. 67 at 1-6. The City also moved in the alternative for a more definite statement on the ground that Plaintiffs had failed to provide the information required by this Court's order granting the City's first such motion. ECF No. 63 at 16-19. After the briefing was complete, Plaintiffs moved for leave to file a sur-reply memorandum, which they appended to the motion. ECF No. 69. The Court granted the motion only as to the last paragraph of the sur-reply, in which Plaintiffs

[1] Shortly after the hearing on the motions (at which the Court announced its rulings), Plaintiffs' counsel filed a new lawsuit in the Eastern District of California, this time against the County of Sacramento and naming the Attorney General as a defendant rather than the State. *See* ECF No. 56; *Gary Wayne Welchen v. Kamala Harris & County of Sacramento*, No. 2:16-cv-00185-TLN-KJN (E.D. Cal. Jan. 29, 2016).

argued that any dismissal should be with leave to amend because they could cure the deficiencies identified by the City's motion. The Court noted that the City's motion raised "valid concerns," and treated the last paragraph of Plaintiffs' sur-reply as an offer to file a further amended complaint addressing them. It accordingly ordered Plaintiffs to file an amended complaint and denied the motion to dismiss as moot, in the hope of avoiding a waste of judicial resources. ECF No. 70 at 2.

Plaintiffs, however, have chosen a different course. The TAC expressly asserts the same *Monell* claim that was the subject of the City's prior motion. And notwithstanding the rule that the *Ex Parte Young* exception to Eleventh Amendment immunity is limited to suits that seek only prospective injunctive relief, the TAC continues to seek an award of damages. Because the TAC does not cure the deficiencies identified in the City's prior motion, the City and the Sheriff bring the instant motion to dismiss.

ARGUMENT

On a motion to dismiss, a court accepts the material facts alleged in the complaint, together with reasonable inferences to be drawn from those facts, as true. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). However, this tenet "is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Likewise, a court does not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks and citation omitted). The complaint must contain sufficient factual allegations, accepted as true, "'to state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'" *Id.* (quoting *Twombly*, 550 U.S. at 557). "A complaint will not survive a motion to dismiss if it 'tenders naked assertions devoid of further factual enhancement.'" *Blantz v. California Dep't of Corr. & Rehab., Div. of Corr. Health Care Servs.*, 727 F.3d 917, 927 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678).

I. THE THIRD AMENDED COMPLAINT MUST BE DISMISSED BECAUSE THE SHERIFF ACTS ON BEHALF OF THE STATE WHEN DETAINING A PERSON WHO DOES NOT PAY THE BAIL AMOUNT ESTABLISHED BY THE SUPERIOR COURT

In this section, we argue that: (1) the Sheriff acts on behalf of the State when detaining a person pretrial; (2) the Sheriff is accordingly protected against suit by Eleventh Amendment immunity and the TAC does not fall within the *Ex Parte Young* exception because it seeks an award of damages; and (3) the City is not a proper defendant because the State is the relevant actor (or the City possesses Eleventh Amendment immunity for acts of the Sheriff as a state official to the extent they are deemed to be acts of the City).

A. The Sheriff Acts on Behalf of the State When She Detains a Person Who Does Not Pay the Bail Established by the Superior Court

The analysis of whether a government official acts on behalf of the State or the County is not a "categorical, 'all or nothing'" one, but requires a function-by-function approach. *McMillian v. Monroe Cty., Ala.*, 502 U.S. 781, 785 (1997);[2] *Goldstein v. City of Long Beach*, 715 F.3d 750 (9th Cir 2013). Thus, the same official may act on behalf of the State in some functions, and on behalf of the County in others, a duality that is most commonly associated with district attorneys and sheriffs. So, for example, the Ninth Circuit has held that a district attorney acts on behalf of the State when deciding whether to proceed with a criminal prosecution, *Weiner v. San Diego County*, 210 F.3d 1025, 1031 (9th Cir. 2000), but on behalf of the County when adopting and implementing internal policies and procedures related to the use of jailhouse informants, *Goldstein*, 715 F.3d at 755.

Plaintiffs rely on Ninth Circuit case law holding that California sheriffs act on behalf of the County in their function of administering the jail under Government Code § 26605. *See* ECF No. 71 ¶ 13; *Streit v. County of Los Angeles*, 236 F.3d 552 (9th Cir. 2001); *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1190 (9th Cir. 2002).[3] That administrative function, however, concerns sheriffs'

[2] In *McMillian*, which involved a claim that an Alabama sheriff had intimidated a witness into making false statements and suppressed exculpatory evidence, the Supreme Court held that, as to the actions at issue, the sheriff represented the State rather than the County. 520 U.S. at 783-84.

[3] The Ninth Circuit has also found that sheriffs act as county officials is in their investigation of crime. *Brewster v. Shasta Cnty.*, 275 F.3d 803, 805 (9th Cir. 2001). Although the Ninth Circuit has not deviated from that view, the California Supreme Court has reached the opposite conclusion. *Venegas v. Cty. of Los Angeles*, 32 Cal.4th 820, 839 (2004). *McMillian*—as well as *Streit*, *Cortez*, and *Brewster*—all involved matters about which the sheriffs had policymaking discretion, *i.e.*, it was

discretion and authority to set operating policies for the local jail. *See Streit*, 236 F.3d at 561 (referring to "administering local prison policy"). *Cortez*, for example, concerned a local jail policy of housing gang members separately from other inmates. 294 F.3d at 1190. Other cases finding that the sheriff was acting in this administrative capacity have likewise concerned day-to-day prison operating procedures over which the sheriff had policymaking authority and discretion—procedures that were established and alterable by the sheriff.[4] The same cannot be said for pretrial detention, where sheriffs' actions are controlled by state law and court orders.

In *Streit*, the Ninth Circuit expressly drew the distinction between sheriffs' responsibility for developing local jail policies, and their detention of a person legally required to be held in custody. Like *Cortez*, the case involved an administrative decision by the sheriff about local jail policy—a decision to implement a records check procedure that had the effect of extending inmates' incarceration one or two days beyond their release date. 236 F.3d at 556. In concluding that the sheriff acted as a county official in making that decision, the court distinguished a California Court of Appeal case holding that the Los Angeles County Sheriff's Department ("LASD") acted on behalf of the State, not the County, when it detained the plaintiff after she had posted bail based on a facially-valid outstanding arrest warrant that was subsequently found to have been issued for another person. *Id.* at 563 (discussing *County of Los Angeles v. Superior Court (Peters*), 68 Cal.App.4th 1166 (1998)). The Ninth Circuit explained the difference:

> Although the general issue of overdetention was presented in both *Peters* and the cases at hand, the factual scenarios are quite distinct. In *Peters*, the LASD acted upon a facially-valid warrant in its detention of the plaintiff, whereas here, in conducting AJIS checks, the LASD is conducting its own administrative search for outstanding warrants,

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within their authority to adopt a different policy should they wish. Thus, in those cases, there was no dispute that the sheriffs were policymaking officials for the actions at issue; the only question was whether they were policymaking officials for the county (in which case the county was subject to suit under *Monell*) or for the state (in which case it was not). *See McMillian*, 520 U.S. at 785; *Brewster*, 275 F.3d at 805; *Cortez*, 294 F.3d at 1189; *Streit*, 236 F.3d at 559. Here, by contrast, the Sheriff is not a policymaker at all; with respect to the conditions of pretrial release, the relevant policymakers are the state legislature and the superior court. That issue is addressed in the next section.

[4] *See, e.g.*, *Lopez v. Youngblood*, 609 F.Supp.2d 1125, 1147 (E.D. Cal. 2009) (strip search policy); *Elfand v. Freitas*, No. C 11-0863 WHA PR, 2012 WL 850737, at *1 (N.D. Cal. Mar. 13, 2012) (prison mail policy prohibiting publications depicting sexually oriented material); *Elfand v. Sonoma Cty. Men's Adult Det. Facility*, No. C 10-5692 WHA PR, 2011 WL 2445862, at *3 (N.D. Cal. June 16, 2011) (kosher meal policy); *Leon v. Cty. of San Diego*, 115 F.Supp.2d 1197, 1203 (S.D. Cal. 2000) (policy concerning treatment of prisoners needing medical attention).

> wants, or holds upon which it would be required to act, if they existed. Although this distinction may be perceived as subtle, ***for purposes of our analysis, it is critical***. Acting upon a warrant is a law enforcement function with which the LASD is tasked under California state law. *See* Cal. Gov. Code § 12560. Searching for wants and holds that may or may not have been issued for persons whom the state has no legal right to detain is an administrative function of jail operations for which the LASD answers to the County. *See* Cal. Gov. Code §§ 25303, 26605.

Streit, 236 F.3d at 564 (emphasis added).

The Sheriff's authority to administer the county jail does not include the power to decide whether, or subject to what conditions, a pretrial detainee may be released from custody. There are three types of pretrial release available under California law: "(1) citation (Pen. Code, §§ 853.5, 853.6); (2) bail (Pen. Code, § 1268 et seq.); or (3) own recognizance release (Pen. Code, § 1318 et seq.)." *Van Atta v. Scott*, 27 Cal.3d 424, 430 (1980). Of these three, only the first is a decision made by law enforcement officials. Their authority to cite and release arrestees extends only to infractions and misdemeanors, and is subject to a variety of exceptions. *See* Cal. Penal Code §§ 853.5, 853.6. It is categorically unavailable for felony offenses. *Id.* § 853.85. Citation release is not at issue in this case.[5]

California law assigns decisions about bail and own recognizance ("OR") release to the superior court, as this Court has already explained. ECF No. 55 at 9:6-7 ("The terms of bail and other conditions of pre-trial release are determined by superior courts—not the City—under California law."); *see also* Cal. Const. art. I, § 12; Cal. Penal Code §§ 1268, 1270. Bail may be set in three different ways: (1) in the warrant of arrest (if there is one); (2) by the bail schedule established by the judges of the superior court as required by state law (this amount applies in the absence of a warrant and before the defendant has appeared in court); and (3) individually by the court (once the defendant has appeared). Cal. Penal Code § 1269b(b). Before the initial appearance, and depending on the offense, a person in custody may also apply to the court for release on bail in an amount below that set by the bail schedule, or for OR release. *Id.* § 1269c. In all cases, the amount of bail (or any other release condition) is established by the superior court.

[5] The TAC does not allege that Defendants have a policy of imposing pretrial confinement on individuals who are eligible for citation release, and Plaintiffs have no standing to make such a claim in any event, because neither of them was eligible for citation release.

The Sheriff—who has no authority to determine under what conditions a pretrial detainee may be released—is obliged by state law to detain individuals in the absence of an order for their discharge. Cal. Penal Code § 4004 ("A prisoner committed to the county jail for examination, or upon conviction for a public offense, must be actually confined in the jail until legally discharged."). In challenges to the fact of detention required by state law or court orders, courts have found that sheriffs act as representatives of the State, not the County. *See McNeely v. Cty. of Sacramento*, No. 205-CV-1401-MCE-DAD, 2008 WL 489893, at *4 (E.D. Cal. Feb. 20, 2008) ("While the Ninth Circuit has treated the sheriff as a county actor where his administrative or investigative responsibilities are under scrutiny, those cases are distinguishable from the present case, which concerns conduct arising from simply detaining Plaintiff in jail pending the outcome of ongoing criminal proceedings in Sacramento and Placer Counties."); *Munoz v. Kolender*, 208 F.Supp.2d 1125, 1152 n.31 (S.D. Cal. 2002) (distinguishing *Streit*'s finding that the sheriff was county actor on the ground that the sheriff was required to detain the plaintiff by state law); *Smith v. Cty. of San Mateo*, No. C 99-00519 CRB, 1999 WL 672318, at *7 (N.D. Cal. Aug. 20, 1999) (sheriff was a State rather than County official when detaining the plaintiff pursuant to an outstanding bench warrant).

As the holdings in these cases indicate, where the challenged conduct is required by state law, it supports the conclusion that the Sheriff acts as a state official. For example, in *Goldstein*—where the court concluded that the district attorney acted as a county official in adopting policies for the use of jailhouse informants—the court cited the fact that those policies "have been addressed by individual offices rather than by the state." 715 F.3d at 759. Here, by contrast, the relevant function is uniform across the state: California law requires a sheriff to detain a person who does not pay the applicable bail as established by the superior court. *Cf. Scocca v. Smith*, 912 F.Supp.2d 875, 883 (N.D. Cal. 2012) (finding that the sheriff acted on behalf of the State in granting or denying applications to carry a concealed weapon because California law provides for a uniform system throughout the state and controls the sheriffs' actions).[6] Plaintiffs themselves allege in the TAC that the Sheriff's acts are

[6] *See also, e.g., Echols v. Parker*, 909 F.2d 795, 801 (5th Cir. 1990) ("when a state statute directs the actions of an official, as here, the officer, be he state or local, is acting as a state official."); *Carter v. City of Philadelphia*, 181 F.3d 339, 351-53 (3d Cir. 1999) ("The recurring theme that emerges from these cases is that county or municipal law enforcement officials may be State officials

controlled by the Attorney General: "In her official capacity as the California Attorney General, she requires the Sheriff to impose bail pursuant to a bail schedule, thereby creating a wealth-based scheme." ECF No. 71 ¶ 23; *see also id.* ¶ 24 (alleging that the Attorney General has supervisory power over county sheriffs). A board of supervisors has no authority to direct a sheriff to release a pretrial detainee from custody whom state law and/or court order require the Sheriff to detain, or to ignore the standards and procedures for pretrial release established by state law. *See Cortez*, 294 F.3d at 1189 ("we seek to ascertain to what degree the municipality has control over the official's performance ***of the particular function***") (emphasis added); *cf. Gottfried v. Med. Planning Servs., Inc.*, 280 F.3d 684, 692-93 (6th Cir. 2002); *Scott v. O'Grady*, 975 F.2d 366, 371-72 (7th Cir. 1992) (both finding that sheriffs act on behalf of the State when carrying out court orders, notwithstanding that they are county officials in other functions).[7]

The conclusion that the Sheriff acts as a state official when detaining a person pretrial is also supported by Ninth Circuit authority regarding immunity for jail officials. In *Engebretson v. Mahoney*, 724 F.3d 1034 (9th Cir. 2013), the court held that "prison officials charged with executing facially valid court orders enjoy absolute immunity from § 1983 liability for conduct prescribed by those orders." *Id.* at 1039. Similar to *Streit*, the court distinguished between "the *fact* of a prisoner's incarceration pursuant to a facially valid court order," on the one hand, and "the *manner* in which prison officials executed court orders" or other conduct "not prescribed in such an order," on the other, deciding only that immunity applies to the fact of incarceration. *Id.* at 1041-42 (emphasis in original). The court's reason for concluding that immunity applies to the fact of incarceration is important here: It noted that such immunity is properly characterized as "quasi-judicial," and explained that "prison officials enforcing court orders are performing functions necessary to the judicial process." *Id.* at 1039

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when they prosecute crimes or otherwise carry out policies established by the State, but serve as local policy makers when they manage or administer their own offices.").

[7] Government Code §§ 25303 (providing that the board of supervisors shall supervise the conduct of all county officers, particularly as they relate to the assessing, collecting, safekeeping, management, or disbursement of public funds) and 23013 (providing that the board of supervisors may establish a department of corrections) are of limited significance here because the relevant function is controlled by state law and court orders, and, according to the TAC, required by the Attorney General.

(internal quotation marks and citation omitted) (emphasis added).[8] For this reason too, the Sheriff is properly considered a state actor when detaining those whom state law and/or court orders require to be detained.

Finally, other factors on which courts have relied in concluding that sheriffs act as county officials are not controlling. Because the analysis is functional rather than categorical, the designation of sheriffs (as well as district attorneys) as county officials in the California Constitution and Government Code, Cal. Const., art. XI, § 1(b); Cal. Gov't Code § 24000(b), is not dispositive. *Weiner*, 210 F.3d at 1030 (noting that the function rather than the label is the issue); *Goldstein*, 715 F.3d at 755 ("The state's label of the district attorney as a county official informs but of course cannot determine the result of our functional inquiry."). Indeed, sheriffs share other features with district attorneys, including that the board of supervisors sets their salary, Gov. Code § 25300, that they may be removed in the same fashion as other county officers, *id.* § 3060, or that they must be registered to vote in their respective counties, *id.* § 24001.[9] None of these factors have prevented courts from concluding that district attorneys and sheriffs alike act on behalf of the State in performing certain functions. Were such factors decisive, they would apply categorically to everything that sheriffs and district attorneys do, in violation of the functional approach required by the Supreme Court and the Ninth Circuit.

For the foregoing reasons—and as other courts have already expressly held—the Sheriff acts on behalf of the State, not the City, when detaining a person who fails to pay the bail established by the superior court.

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[8] *See also People v. Thomas*, 52 Cal.2d 521, 531-32 (1959) (citing Penal Code § 4000, subdivision 2, and explaining that the sheriff acts as "a ministerial officer of the court" when a person is detained prior to imposition of sentence).

[9] The same is true for Government Code § 315.2, regarding the vicarious liability of governmental agencies for their employees' torts. Moreover, as the California Supreme Court pointed out, subdivision (a) of Section 315.2 creates vicarious liability for "both the state and counties," and subdivision (b) "immunizes both the state and county from torts that are committed by employees who are themselves immune." *Venegas*, 32 Cal.4th at 835. "So, we dispute the present relevance of section 815.2, as it fails to answer the questions whether the sheriff was indeed acting as a county, not state, employee during the events in question, and whether he lacked immunity from federal civil rights actions—the very questions we are attempting to answer here." *Id.* While the ultimate question of whether a government official acts on behalf of the state or the county is one of federal law, the construction of Section 315.2 is a matter of state law on which the California Supreme Court's decision is authoritative.

B. The Sheriff Possesses Eleventh Amendment Immunity from Suit

The Eleventh Amendment bars any federal court action for damages against a state official acting in her official capacity. *Pena v. Gardner*, 976 F.2d 469, 472 (9th Cir. 1992); *see also Goldstein*, 715 F.3d at 753. Under the doctrine set forth in *Ex Parte Young*, 209 U.S. 123, 154 (1908), there is an exception to Eleventh Amendment immunity for suits that seek "only prospective injunctive relief." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 73 (1996); *see also San Francisco Cty. Democratic Cent. Comm. v. Eu*, 826 F.2d 814, 825 (9th Cir. 1987) (*Ex Parte Young* applies where "plaintiffs do not seek damages, but only declaratory and injunctive relief"). In the TAC, however, Plaintiffs seek damages. ECF No. 71 at 21 (Request for Relief g.). Their claim against the Sheriff (because and insofar as it seeks damages) is accordingly barred by the Eleventh Amendment, and must be dismissed. *See, e.g., Del Campo v. Kennedy*, 517 F.3d 1070, 1073 (9th Cir. 2008) (explaining the district attorneys possess Eleventh Amendment immunity when acting as state officials); *Walker v. Cty. of Santa Clara*, No. C 04-02211 RMW, 2005 WL 2437037, at *6 (N.D. Cal. Sept. 30, 2005) ("As the sheriff and district attorney are both held to be state actors, they are entitled to sovereign immunity under the Eleventh Amendment."); *Scocca*, 912 F.Supp.2d at 884 (dismissing damages claim against Sheriff on Eleventh Amendment grounds); *cf. Veasey v. Wilkins*, No. 5:14-CV-369-BO, 2015 WL 4622694, at *4 (E.D.N.C. July 31, 2015) (concluding that sheriff acted on behalf of the state in processing concealed carry permits but denying sheriff's motion to dismiss on Eleventh Amendment grounds because plaintiffs sought ***only*** prospective injunctive relief, not damages).

C. The City Must Be Dismissed

In *Weiner*, the Ninth Circuit explained that, because the district attorney was acting on behalf of the State, the County was entitled to dismissal from the suit: "In the present case … the San Diego County district attorney was acting as a state official in deciding to proceed with Weiner's criminal prosecution. Weiner's § 1983 claim against the County, therefore, fails. The County was not the actor; the state was." 210 F.3d at 1031; *see also, e.g., Eggar v. City of Livingston*, 40 F.3d 312, 315 (9th Cir. 1994) (affirming grant of summary judgment for city because Montana municipal judge acted on behalf of the state, not the city). The same, of course, is true where a county is sued for the actions of the sheriff as a state official. *See, e.g.*, *McNeely*, 2008 WL 489893, at *4-5 (dismissing claims

against counties because sheriffs act as state officials when detaining individuals pretrial or on a warrant); *Smith*, 1999 WL 672318, at *8 (same); *Scocca*, 912 F.Supp.2d at 879-84 (dismissing claim against county because sheriff was state official when granting or denying licenses to carry concealed weapons); *Rojas v. Sonoma Cty.*, No. C-11-1358 EMC, 2011 WL 5024551, at *4 (N.D. Cal. Oct. 21, 2011) (dismissing claim against county because sheriffs are representatives of the State when providing courtroom security services). Alternatively, to the extent the acts of the Sheriff, in performing functions as a state official, are deemed acts of the City, then the City itself must be regarded as a state actor protected by the Eleventh Amendment. *See Hibbs v. Dep't of Human Res.*, 273 F.3d 844, 851 n.2 (9th Cir. 2001) (citing *Streit* for the proposition that a county can act as an arm of the state and explaining that the county would possess Eleventh Amendment immunity in that context). Accordingly, the claim against the City must be dismissed.

II. THE THIRD AMENDED COMPLAINT DOES NOT ESTABLISH THE EXISTENCE OF ANY MUNICIPAL POLICY AND PRACTICE WITH RESPECT TO PRETRIAL DETENTION

The argument in the previous section is sufficient to require dismissal. However, Plaintiffs have also failed to state a claim because the challenged actions are required by state law and/or court orders, not by any ***municipal*** policy or practice. *See Monell*, 436 U.S. at 691 ("Congress did not intend municipalities to be held liable unless action pursuant to official ***municipal*** policy of some nature caused a constitutional tort.") (emphasis added); *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988) ("municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, 'that is, acts which the municipality has officially sanctioned or ordered'"); *Los Angeles Cty., Cal. v. Humphries*, 562 U.S. 29, 37 (2010); ("The *Monell* Court thought that Congress intended potential § 1983 liability where a municipality's ***own*** violations were at issue but not where only the violations of ***others*** were at issue.") (emphasis in original); *Kentucky v. Graham*, 473 U.S. 159, 165-68 (1985) ("[A] governmental entity is liable under § 1983 only when the entity itself is a '"moving force"' behind the deprivation; thus, in an official-capacity suit the entity's 'policy or custom' must have played a part in the violation of federal law.") (citations omitted). Here, the true objects of Plaintiffs' lawsuit are the allegedly unconstitutional actions of others—the State, which enacted the law requiring a bail schedule and other laws that allow the imposition of secured

bail; the Attorney General, whom Plaintiffs allege "requires the Sheriff to impose bail pursuant to a bail schedule," ECF No. 71 ¶ 23; and the superior court, which establishes the amounts in the schedule and sets bail in arrest warrants and bail orders issued in individual criminal proceedings. None of those decisions are made by the City or its officials.

Simply labeling the City's mandatory compliance with state law and court orders a "policy and practice" is insufficient to establish municipal liability, because the "policy or practice" requirement means that the municipality must actually have a choice in the matter. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986) ("We hold that municipal liability under § 1983 attaches where—and only where—***a deliberate choice to follow a course of action is made from among various alternatives*** by the official or officials responsible for establishing final policy with respect to the subject matter in question.") (emphasis added); *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 821-23 (1985) (explaining that *Monell*'s "policy or custom" requirement "was intended to prevent the imposition of municipal liability under circumstances where no wrong could be ascribed to municipal decisionmakers," and noting that "the word 'policy' generally implies a course of action ***consciously chosen from among various alternatives***") (emphasis added); *Brass v. Cty. of Los Angeles*, 328 F.3d 1192, 1199 (9th Cir. 2003) ("We have defined broadly 'policy' for purposes of a *Monell* claim as 'a deliberate choice to follow a course of action ... made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.'") (quoting *Fairley v. Luman*, 281 F.3d 913, 918 (9th Cir. 2002));[10] *Scott*, 975 F.2d at 371 n.3 ("The Scotts' allegation that O'Grady had a 'policy and practice' of following state law, however, cannot magically transform that state law into a county policy actionable under *Monell*."). The "policy or practice" requirement applies regardless of whether the plaintiff seeks damages or prospective injunctive relief. *Humphries*, 562 U.S. at 39.

[10] The Sheriff is thus not a policymaker at all, let alone the final policymaker, with respect to pretrial detention and release decisions. *See Weiner*, 210 F.3d at 1028 ("To hold a government liable for an official's conduct, a plaintiff must first establish that the official (1) had final policymaking authority 'concerning the action alleged to have caused the particular constitutional or statutory violation at issue' and (2) was the policymaker for the local governing body for the purposes of the particular act.") (quoting *McMillian*, 520 U.S. at 785). The TAC alleges that the Attorney General "requires the Sheriff to impose bail pursuant to a bail schedule," ECF No. 71 ¶ 23, negating the contention that the Sheriff is the final policymaker.

Since the Supreme Court's decisions in *Pembaur* and *Tuttle*, the Ninth Circuit has repeatedly recognized that *Monell* liability requires a choice, and that municipalities are not the "moving force" behind an alleged constitutional injury when they do only what state law requires them to do. For example, in *Estate of Brooks ex rel. Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999), the plaintiff was arrested by the U.S. Marshals Service and taken to the Alameda County jail, where he was detained for twelve days pursuant to Cal. Penal Code § 4005(a), a provision that (analogously to Section 4004) requires county sheriffs to "receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he or she is discharged according to law." The plaintiff sued the county under *Monell* based on the allegedly unlawful detention, but the court held that the claim was properly dismissed:

> In the circumstances, the County's policies, whatever they may have been, could not have altered what happened to Brooks. The County was without authority either to bring Brooks before a federal magistrate judge itself, because it cannot act for the United States, or to release him, because it cannot ignore the state statute. Therefore, the only causes of Brooks' prolonged detention were the actions of the United States (which settled with Brooks) and the state statute (which goes unchallenged). Causation is, of course, a required element of a § 1983 claim.

Id. at 1248; *see also Snyder v. King*, 745 F.3d 242, 249 (7th Cir. 2014) ("When state law unequivocally instructs a municipal entity to produce binary outcome X if condition Y occurs, we cannot say that the municipal entity's 'decision' to follow that directive involves the exercise of any meaningful independent discretion, let alone final policymaking authority. It is the statutory directive, not the follow-through, which causes the harm of which the plaintiff complains.") (footnote omitted). The *Brooks* court distinguished *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470 (9th Cir. 1992)—a case permitting *Monell* liability—on the ground that in that case the sheriff could have adopted procedures to avoid the claimed injury, whereas the Alameda County Sheriff had no authority under state law to release Brooks. 197 F.3d 1245 at 1248.[11] *See also Eggar*, 40 F.3d at 316 (finding

[11] In *Oviatt*, the plaintiff brought suit against the county because he was held in jail for 114 days without an arraignment, bail hearing, or trial after a court clerk inadvertently failed to place his name on the docket for arraignment. Although the clerk's error was certainly a cause of the extended confinement, the plaintiff claimed that the county was liable because the Sheriff was "aware that 'from time to time' individuals were not arraigned because of mistakes made by the court or the jail," yet "had no internal procedures for keeping track of whether inmates had received an arraignment," and indeed, the Sheriff "had discussed the problem with colleagues occasionally, but took no steps to alleviate it." 954 F.2d at 1473. The Ninth Circuit expressly pointed out that the Sheriff admitted there

that judicial conduct could not constitute a municipal policy or practice because "[a] municipality cannot be liable for judicial conduct it lacks the power to require, control, or remedy."); *James v. Hayward Police Dep't*, No. C 10-4009 SI PR, 2012 WL 1895952, at *12 (N.D. Cal. May 23, 2012). ("Local government does not cause the alleged violation, and therefore is not liable under § 1983, if it does not have the power to remedy the alleged violation.").

In *Humphries*, the Supreme Court explained that *Monell*'s "policy or custom" requirement rests on the distinction between a municipality's own violations (for which it may be held liable) and those of others (for which it may not), and "embodies it in law." 562 U.S. 29, 37 (2010). That case involved a state law that required local law enforcement and state agencies to report to the California Department of Justice all instances of reported child abuse that they determined were "not unfounded," for inclusion in a Child Abuse Central Index. The issue was that the statute did not include procedures for reviewing whether a previously filed report was unfounded, and neither the State nor Los Angeles County had adopted any such procedures. 562 U.S. at 31. The plaintiffs—parents whom the LASD had reported pursuant to the statute—were later exonerated, but were unable to convince the LASD to remove their names. *Id.* at 31-32. They sued the Attorney General, the county, and various county officials. *See Humphries v. Cty. of Los Angeles*, 554 F.3d 1170 (9th Cir. 2008). The Ninth Circuit found that the plaintiffs were entitled to declaratory relief, concluding that the Fourteenth Amendment required that people included on the list receive notice and some kind of hearing. It also indicated that on remand the plaintiffs might be able to prove damages as well. 562 U.S. at 32, *citing* 554 F.3d at 1201. On the basis of the prospective declaratory relief (which, under prior circuit precedent, did not

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were procedures the jail could have implemented to discover inmates who have not received an arraignment. *Id.* at 1476. Citing both *Pembaur* and *Tuttle*, the court thus concluded that the Sheriff had made a "deliberate choice … from among various alternatives" by choosing not to adopt any internal procedures notwithstanding his awareness of at least 19 incidents in which individuals sat in jail for indeterminate periods after they missed arraignments. *Id.* at 1477-78. Other cases permitting municipal liability for detention in the county jail are the same: They involve claims based on jail policies that could have been otherwise. *See, e.g.*, *Berry v. Baca*, 379 F.3d 764, 773 (9th Cir. 2004) (challenge to jail's administrative policies that resulted in delayed release after judicial determinations of innocence); *Fairley v. Luman*, 281 F.3d 913, 918 (9th Cir. 2002) (failure to instigate any procedures to alleviate the problem of detaining individuals on the wrong warrant where police chief knew it was "not uncommon" that individuals were arrested on the wrong warrant, especially in cases involving twins).

have to satisfy *Monell*'s "policy or custom" requirement),[12] the Ninth Circuit awarded attorneys' fees, ten percent of which were assessed against the county. *Id.*

The Supreme Court explained that the county had argued it was not liable under *Monell* because such liability is limited to situations in which municipal policy or custom deprived the plaintiffs of a federal right, and "it was *state* policy, not *county* policy, that brought about any deprivation here." 562 U.S. at 33 (emphasis in original). The Court also summarized the Ninth Circuit's response:

> First, it said that county policy *might* be responsible for the deprivation. It "is possible," the Ninth Circuit said, that the county, "[b]y failing to" "creat[e] an independent procedure that would allow" the plaintiffs "to challenge their listing[,] ... adopted a custom and policy that violated" the plaintiffs' "constitutional rights." 554 F.3d, at 1202. Second, it said that "because this issue is not clear based on the record before us on appeal ... we remand to the district court to determine the County's liability under *Monell*." *Ibid.* Third, it saw no reason to remand in respect to the county's obligation to pay $60,000 in attorney's fees. That, it wrote, is because "in our circuit ... *the limitations to liability established in Monell do not apply to claims for prospective relief*," such as the declaratory judgment that the Circuit had ordered entered.

Id. (emphasis in original). The Ninth Circuit's approach to traditional *Monell* liability in *Humphries* thus recognized that the county must make a deliberate choice. The court wrote: "CANRA itself did not create a sufficient procedure by which the Humphries could challenge their listing on the Index. ***Nothing in CANRA, however, prevented the LASD from creating an independent procedure*** that would allow the Humphries to challenge their listing on the Index." *Humphries*, 554 F.3d at 1202 (emphasis added). That explanation of potential *Monell* liability is inconsistent with Plaintiffs' position that counties are subject to *Monell* liability simply because and insofar as they do what state law requires of them.

In prior briefing, Plaintiffs have relied on *Evers v. Custer County*, 745 F.2d 1196, 1203 (9th Cir. 1984), in which the court held that a county could be sued under *Monell* where its Commissioners

[12] *See Chaloux v. Killeen*, 886 F.2d 247, 250 (9th Cir. 1989). *Chaloux* involved a constitutional challenge to Idaho's postjudgment garnishment procedures, which were enforced by county sheriffs. The district court held that the plaintiffs could not assert a *Monell* claim against the counties because they could not show that the alleged constitutional violations "were inflicted pursuant to an official county policy." *Id.* While the Ninth Circuit found that the plaintiffs could challenge the constitutionality of the state's garnishment procedures in a suit against the counties, that holding was based on its conclusion, later rejected in *Humphries*, that *Monell*'s "policy or custom" requirement did not apply in an action seeking only injunctive relief. *Id.* at 250-51.

issued a "Declaration of Public Road" regarding a road that passed through the plaintiff's property, notwithstanding that such action was taken pursuant to state law. In that case, however, the court pointed out that there was an official decision of the county's governing body, and that, in addition to issuing the declaration, it instigated a criminal action against the plaintiff. *Id.* Even putting those differences aside, to the extent *Evers* could have been read to mean more generally that a county may be liable for acts under state law not deliberately chosen by the county, it has been superseded by the Supreme Court's decisions in *Pembaur* and *Tuttle*; the Ninth Circuit's own subsequent decisions in *Brooks*, *Humphries*, and other authorities discussed above recognize that the existence of a municipal policy presupposes the municipality's ability to choose from among different possible courses of action—*i.e.*, where the challenged acts are not dictated by state law. A municipality that does merely what state law requires of it is not liable under *Monell*. *See also, e.g.*, *Nichols v. Brown*, 859 F.Supp.2d 1118, 1136 (C.D. Cal. 2012) ("a 'policy' of enforcing state law is an insufficient ground for municipal liability under section 1983"); *Wong v. City & Cty. of Honolulu*, 333 F.Supp.2d 942, 951 (D. Haw. 2004) ("mere enforcement of a state statute is not a sufficient basis for imposing § 1983 municipal liability"); *Laurie Q. v. Contra Costa Cty.*, 304 F.Supp.2d 1185, 1201-02 (N.D. Cal. 2004) ("When the County *accurately* applies the state's mandatory foster care payment schedule (or when a law enforcement officer serves a warrant pursuant to a mandate from a state court) … a plaintiff may seek recourse only against the state for establishing the policy.").[13] Other circuits have reached the same conclusion. *See, e.g.*, *Snyder* 745 F.3d at 249 (Indiana law concerning the removal of prisoners from voting rolls left no room for the county to make "an independent choice from among various alternatives authorized by state law"); *Vives v. City of New York*, 524 F.3d 346, 352-53 (2d Cir. 2008) ("[W]e agree with all circuits to address state laws mandating enforcement by municipal police officers that a municipality's decision to honor this obligation is not a conscious choice."); *Doby v. DeCrescenzo*, 171 F.3d 858, 868 (3d Cir. 1999); *Whitesel v. Sengenberger*, 222 F.3d 861, 872 (10th

[13] Two recent decisions illustrate the same principle in reverse, finding that municipal liability could be imposed only because the challenged county actions were ***not*** in fact dictated by state or federal law. *See Sandoval v. Cty. of Sonoma*, No. 11-CV-05817-TEH, 2016 WL 612905, at *4-5 (N.D. Cal. Feb. 16, 2016); *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *4-5 (D. Or. Apr. 11, 2014).

Cir. 2000); *Bockes v. Fields*, 999 F.2d 788, 791 (4th Cir. 1993); *Surplus Store & Exch., Inc. v. City of Delphi*, 928 F.2d 788, 791 (7th Cir. 1991); *Familias Unidas v. Briscoe*, 619 F.2d 391, 404 (5th Cir. 1980).[14]

In the context of pretrial detention specifically, numerous courts have, like *Brooks*, dismissed Section 1983 claims against counties where such confinement was required by state law or court order. For example, in a recent case from this district, the court dismissed a claim against Sonoma County that challenged the plaintiff's pretrial detention based on the existence of an invalid parole hold. *Chavez v. City of Petaluma*, No. 14-CV-05038-MEJ, 2015 WL 3766460 (N.D. Cal. June 16, 2015). Noting that the Sheriff does not decide who is on parole, and that there were no allegations that the County is otherwise responsible for such a determination, the court concluded that the plaintiff had failed to establish a county policy or practice responsible for his detention pursuant to the parole hold. *Id.* at *7. In *Taylor v. Multnomah County Sheriff's Office*, the court dismissed the claim because the plaintiff was held in pretrial custody pursuant to court order, and nothing in the applicable state law gave the Sheriff's Office "the power to release a prisoner ordered by the court to be held in custody." No. CV 03-488-HA, 2004 WL 1970142, at *2 (D. Or. Sept. 7, 2004). Similarly, in *Munoz*, the court concluded that there was no *Monell* claim against the Sheriff in his official capacity—which the court noted was equivalent to a suit against the county itself—because the plaintiff had been transferred to county jail (for purposes of availability for civil judicial proceedings) pursuant to court orders, and thus his custody "was not the result of a Sheriff's Department policy or custom." 208 F.Supp.2d at 1152; *see also, e.g., Tene v. City & Cty. of San Francisco*, No. C 00-03868 WHA, 2004 WL 1465726, at *4 (N.D. Cal. May 12, 2004) (in constitutional challenge to conditions in order for pretrial release, "plaintiff cannot seek to impose liability upon [county] defendants herein pursuant to the actions of a state-court judge.").

Eighth Amendment excessive bail claims also provide an instructive analogy. On Plaintiffs' theory, counties would be liable to suit under *Monell* because they have a "policy and practice" of

[14] Some courts draw a distinction between acts that are merely authorized by state law and acts that are required by it, concluding that municipal liability may exist in the former situation. This case, however, involves actions that are required by state law. *See Snyder*, 745 F.3d at 249.

detaining people on excessive bail by complying with all court orders setting such bail. But a county may not be held liable merely because jail officials comply with allegedly excessive bail orders issued by the court. *See Wyatt v. County of Butte*, No. 2:06-CV-1003-GEB-DAD, 2007 WL 1100504, at *3 (E.D. Cal. Apr. 11, 2007) (dismissing claim and noting that the bail schedule is prepared by judges rather than county officials); *Harvey v. City of S. Lake Tahoe*, No. CIV S-10-1653 KJM, 2011 WL 3501687, at *3 (E.D. Cal. Aug. 9, 2011) report and recommendation adopted, No. CIV S-10-1653 KJM, 2011 WL 4543195 (E.D. Cal. Sept. 27, 2011) (plaintiff's claim that "El Dorado County jail employees violated the Eighth Amendment by accepting excessive bail from him" did not allege a county policy under *Monell*); *see also Kohl v. Casson*, 5 F.3d 1141, 1149 (8th Cir. 1993) (no municipal liability for excessive bail where bail was not set by city and county defendants); *Kirby v. Roberts*, No. CIV-14-906-M, 2016 WL 1296190, at *1-3 (W.D. Okla. Mar. 31, 2016) (granting judgment for county defendants where bail was set pursuant to the court's bail schedule).

Finally, the TAC does not establish any basis for *Monell* liability other than the actions the Sheriff takes pursuant to state law and court orders. The TAC alleges both that both the Attorney General and state law require the Sheriff to use money bail after arrest. ECF No. 71 ¶¶ 23, 18. While it also offers the naked assertion that "state law does not expressly bind the decision-making authority of the Sheriff and Sheriff's Department with regard to release and detention decisions," *id.* ¶ 18, it is devoid of any explanation how the Sheriff retains discretion under state law to release a person who does not pay the required bail amount, and it does not identify any "policy and practice" that is different from what state law requires, *see id.* ¶ 55 (alleging that the treatment of the proposed class is caused both by California law and the City's policy and practice).[15] These conclusory allegations would be insufficient to survive a motion to dismiss even if they were not wrong as a matter of law. *See Blantz*, 727 F.3d at 927. But they are wrong, as discussed at length above, and as this Court has already held. ECF No. 55 at 9:6-7 ("The terms of bail and other conditions of pre-trial release are

[15] The Second Amended Complaint elliptically asserted a theory, based on a "negative implication" Plaintiffs read into Penal Code sections 1319 and 1319.5, that the Sheriff was free to release a person accused of any offense other than a violent felony. *See* ECF No. 62 ¶ 18. The City's motion to dismiss explained why this theory was meritless, ECF No. 63 at 11-15, and Plaintiffs were unable to offer any defense of it in their opposition, ECF No. 66 at 19. They have abandoned that theory in the TAC, and now repeat the same bald assertion without alleging any basis for it at all.

determined by superior courts—not the City—under California law."). As such, they cannot give rise to a claim under *Monell*.

Nor is anything added by Plaintiffs' assertion that, under the Supremacy Clause, all government officials must uphold the Constitution "regardless of contrary instructions" from state officials and judges. ECF No. 71 ¶ 17. The proposition is untrue if Plaintiffs mean by it that all government officials are required to ignore any and all state laws they deem inconsistent with the Constitution, ***before*** any court has ruled on their validity (or, for that matter, after a court has upheld them). *See Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944); *Lockyer v. City & Cty. of San Francisco*, 33 Cal.4th 1055, 1119-20 (2004). The Ninth Circuit has held that jail officials cannot be required to second-guess facially valid judicial orders. *Engebretson*, 724 F.3d at 1042 ("Prison officials who simply enforce facially valid court orders are performing functions necessary to the judicial process. They must not be required to second-guess the courts if that process is to work fairly and efficiently."); *see also id.* at 1042 ("Officials such as the defendants must not be required to act as pseudo-appellate courts scrutinizing the orders of judges.") (quoting *Valdez v. City & Cnty. of Denver*, 878 F.2d 1285, 1289 (10th Cir.1989)). Plaintiffs cannot impose *Monell* liability on the City based on the Sheriff's failure to disregard what state law and court orders require of her. *See Brooks*, 197 F.3d at 1248; *Rivera v. Cty. of Los Angeles*, 745 F.3d 384, 392 (9th Cir. 2014) (upholding dismissal of *Monell* claim, explaining that "[i]f a suspect is held according to court order, county officials are not required to investigate whether that court order is proper.").

Accordingly, because the TAC fails to establish that any municipal policy or practice is responsible for the alleged constitutional violation, the claim must be dismissed.

CONCLUSION

For the reasons set forth above, the claims against the Sheriff and the City should be dismissed.

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