

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Jose Murguia, for himself and for the Estates of Mason and Maddox
Murguia v. Heather Langdon, et al.**

Murguia v. Langdon · No. 1:19-cv-00942-KES-BAM · Decided November 25, 2025

OPINION

1 2 3 4 5 6 7 8 9 10 UNITED STATES DISTRICT COURT 11 EASTERN DISTRICT OF
CALIFORNIA 12 13 JOSE MURGUIA, for himself and for the No. 1:19-cv-00942-KES-BAM
Estates of Mason and Maddox Murguia, 14 Plaintiff, 15 ORDER GRANTING IN PART AND v.
DENYING IN PART MOTIONS TO DISMISS 16 HEATHER LANGDON, et al., (Docs. 97, 98)
17 Defendants. 18 19 20 21 Defendants City of Tulare, Sergeant Garcia, County of Tulare,
Sergeant Ricardo Cerda, 22 Deputy Jeffrey Lewis, and Roxanna Torres move to dismiss plaintiffs’
second amended 23 complaint (“SAC”).

Docs. 97, 98. This matter is suitable for resolution without a hearing 24 pursuant to Local Rule
230(g). For the reasons set forth below, the motions to dismiss are 25 granted in part and denied in
part. 26 /// 27 /// 28 1 I. BACKGROUND 2 A. Factual Background1 3 Plaintiff Jose Murguia and
defendant Heather Langdon married in 2004 and had three 4 children prior to the birth of their
twins.

2 SAC, Doc. 96 ¶ 38. Langdon had a history of mental 5 illness and violence towards her family.
SAC, Doc. 96 ¶ 39. In 2014, Langdon admitted to a 6 social worker that she had hit her oldest son.
Id. The state court issued a temporary restraining 7 order against Langdon on January 5, 2015, and
initially awarded sole physical and legal custody 8 of the three older children to Murguia, with
monitored visits and a mental health evaluation for 9 Langdon.

Id. ¶ 39. Murguia and Langdon terminated their marriage in April 2015, and the state 10 court
awarded sole physical and legal custody of the three children to Murguia with monitored 11 visits
for Langdon. Id. ¶ 40. 12 In 2016, Langdon pleaded guilty to drunk driving and later also pleaded
guilty to willful 13 cruelty to her child and inflicting injury to her child.

Id. ¶ 41. The state court “awarded sole legal 14 and physical custody” of the three older children
to Murguia with no visitation to Langdon. Id. 15 Tulare County Child Welfare Services (“CWS”)
opened a case against Langdon for child abuse 16 of her oldest child and still had at least one open
case against Langdon on October 4, 2017.3 17 Langdon was convicted of battery against Murguia
in August 2017.

Id. ¶ 43. 18 In the Spring of 2017, Murguia and Langdon started seeing each other again and Langdon 19 become pregnant with twins. Id. ¶ 42. In January 2018, Langdon gave birth to twins, Mason and 20 Maddox. Id. ¶ 44.

Although there was no formal custody order for the twins, Murguia visited 21 Langdon and the twins frequently and helped pay for the twins' expenses. Id. ¶ 45. In February 22 1 The facts below are set forth in the SAC.

The factual allegations in the SAC are presumed to be 23 true for purposes of the motions to dismiss. See *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023). 24 2 As plaintiff Jose Murguia is bringing this action both on behalf of himself and on behalf of the 25 estates of his deceased children, Mason and Maddox Murguia, this Order refers to Jose Murguia individually as "Murguia," and refers to Jose Murguia and the decedents' estates collectively as 26 "plaintiffs." 27 3 The SAC alleges that CWS had at least one open case against Langdon, but it is not clear from 28 the SAC what the open case involved.

1 2018, Murguia reported to CWS that he observed Langdon drunk while in charge of the twins in 2 her apartment. Id. The following month, two of Langdon's friends reported to CWS that they 3 saw Langdon drunk while she was with the twins. Id. In May 2018, Langdon told Murguia that 4 the twins were too much work for her and asked him to take custody of all five children.

Id. ¶ 46. 5 Murguia agreed to take the twins and let Langdon move into his home. Id. ¶ 46. 6 By late 2018, Langdon was experiencing an ongoing and escalating mental health crisis. 7 Id. ¶¶ 47–49. In November 2018, Langdon told her oldest son, then 14 years old, that they were 8 special in the eyes of God, that these were "End Times" because a fire had destroyed the town of 9 Paradise, and that she was "thinking at a higher power." Id. ¶ 47.

On December 3 or 4, Langdon 10 called her church, First Assembly, and falsely stated that her oldest son had threatened to "shoot 11 up" an elementary school. Id. ¶ 48. The church reported the call to the Tulare County Sheriff's 12 Department ("TCSD"), which investigated the threat and concluded that the threat was false. Id. 13 1. TCSD deputies respond to Murguia's home 14 In early December 2018, Langdon and Murguia lived together with all five children at 15 Murguia's home.

On December 4, 2018, Langdon was erratic and repeatedly shouting "I refute 16 you Satan" and told Murguia to get ready to go to jail. Id. ¶ 49. Murguia called 911, described 17 Langdon's behavior, and requested mental health services for Langdon. Id. TCSD Deputy Lewis 18 and another TCSD deputy⁴ were dispatched to Murguia's home. Id. ¶ 50. Murguia asked the 19 deputies to get professional help for Langdon, but the deputies refused to facilitate mental health 20 services or call the Psychiatric Emergency Team.

Id. ¶ 51. Instead, the TCSD deputies told 21 Murguia to call back if Langdon threatened herself or the twins and they would put Langdon on 22 an involuntary psychiatric hold. Id. 23 The next morning, December 5, 2018, Langdon woke up at 4:00 a.m. and lifted one of the 24 twins up high, shouting “haneeshewa.” Id. ¶ 52. She then bathed and put on makeup three 25 consecutive times.

Id. Around 11:00 a.m., she told Murguia that Jesus told her to drink bleach 26 and vinegar to cleanse the demons in her soul and that she had already drunk some bleach. Id. 27 4 The SAC does not identify the other TCSD deputy who was dispatched to Murguia’s home. 28 SAC ¶ 50. 1 ¶ 54. Murguia saw her drink vinegar. Id. Murguia called 911, reported the repeated bathing and 2 what Langdon said about drinking bleach and vinegar, and urgently requested psychological 3 services for Langdon.

Id. 4 Defendants Lewis, Cerda, and at least one EMT arrived at Murguia’s home. Id. ¶ 55. 5 Before arriving at Murguia’s home, Lewis and Cerda knew that Langdon had lost custody of 6 several of the children due to her violence towards the children, that she had a history of mental 7 problems and convictions for cruelly abusing her older children, that she had made a false report 8 of a school shooting two days earlier, and that Lewis had conditionally recommended an 9 involuntary hold.

Id. ¶ 56. 10 Upon arrival and with the approval of Cerda, Lewis ordered Murguia to exit his home 11 without the twins. Id. ¶ 58. Lewis and Cerda saw Langdon behave erratically. Id. ¶ 61. 12 Langdon told Lewis and Cerda that she saw dead people and demons, that she talks to God and 13 she was going to another realm, that Murguia was a devil worshipper, and that she had another 14 husband waiting for her.

Id. Langdon showed rage, anger, and agitation. Id. Murguia told the 15 TCSD deputies about Langdon’s bizarre behavior, told them that Langdon needed to be 16 professionally evaluated, and reminded the deputies of the previous night’s call and of Lewis’s 17 promise to get Langdon a psychiatric evaluation.⁵ Id. ¶ 62. Murguia said he wanted to take 18 Langdon to the hospital or a clinic for a mental health evaluation, but the TCSD deputies said 19 they would not permit it.

Id. Langdon told a paramedic, in the presence of the TCSD deputies, 20 that she was crazy, had been awake for days, and wanted to see a doctor. Id. ¶ 66. The deputies 21 did not assess Langdon or consult with any mental health expert. Id. ¶ 65. 22 After being separated from his twins, Murguia asked his neighbor Rosa for help. Id. ¶ 68. 23 When Rosa arrived at Murguia’s home, there were three TCSD deputies present.

Id. A TCSD 24 deputy allowed Rosa to enter the house, but with Cerda’s approval, barred Murguia from entering 25 the house. Id. A TCSD deputy told Rosa that Langdon had voluntarily agreed to go to the 26 27 5 The SAC at times refers to the “TCSD deputies” and at other times refers specifically to Lewis and Cerda. 28 1 hospital and was waiting for Rosa to take her.

Id. ¶ 69. Neither Rosa nor the TCSD deputies 2 believed the babies were safe if left alone with Langdon. Id. The TCSD deputies told Rosa that 3 she, and not the deputies, should take Langdon to the hospital and that Rosa should thereafter take 4 custody of the twins. Id. The TCSD deputies knew that Rosa had no legal authority over 5 Langdon or the twins, and that Rosa had not agreed to stay with the twins.

Id. Rosa then 6 communicated to Langdon that they were going to the hospital, but Langdon insisted she wanted 7 to take the twins to church, and the TCSD deputies, though surprised, agreed to let Langdon do 8 so. Id. ¶¶ 70-71. Rosa told the TCSD deputies that Langdon had no food or water for the babies, 9 and Langdon's son provided Rosa with water, diapers, and cans of milk.

Id. ¶ 71. 10 Outside the house, Murguia begged the TCSD deputies not to let Langdon leave with the 11 twins and asked that he be allowed to have custody of them. Id. ¶ 72. Murguia told the TCSD 12 deputies the twins were not safe with Langdon and asked the deputies to stop Langdon from 13 taking the twins. Id. The FAC alleges that Rosa had no authority to take custody of the twins or 14 challenge Langdon for control of the twins.

Id. at 75. Rosa had her own children to care for and 15 at no time agreed to be a full-time guardian for the twins. Id. Rosa could have been legally 16 separated from the twins at any time. Id. 17 The TCSD deputies ordered Murguia to stay at the house and, after Langdon left with the 18 twins and Rosa, the TCSD deputies stayed parked outside Murguia's house for 30 minutes 19 watching him and "affirmatively showing their authority over him and restricting" his movement.

20 Id. at 72. Murguia believed that he was not free to leave because he had been ordered by the 21 TCSD deputies to stay and feared that he would be arrested if he left his house, even if he left in a 22 different direction. Id. Cerda was a TCSD supervisor and observed the events, he did not restore 23 custody of the twins to Murguia, and he approved the TCSD deputies' order to restrain Murguia 24 from protecting the twins.

Id. at 76. Murguia alleges that the TCSD deputies' actions placed the 25 twins in greater danger than if Murguia had never called 911. Id. ¶ 77. 26 2. Langdon arrives at First Assembly Church 27 Rosa took Langdon and the twins to the First Assembly church. Id. ¶ 78. No TCSD or 28 other deputies were present when Rosa, Langdon, and the twins arrived at the church.

Id. Rosa 1 told the church's receptionists that the twins were in danger and asked the church to help Rosa get 2 the twins away from Langdon. Id. Rosa also told them that she was a friend and neighbor and 3 that she and the twins' father were worried about the twins and Langdon's mental state. Id. Rosa 4 was told that the pastor would take good care of Langdon and not to worry because the twins 5 were in good hands, and Rosa then left.

Id. The pastor called 911 and the City of Visalia Police 6 Department responded to the church. Id. ¶ 79. An unspecified City of Visalia police officer then 7 arranged for someone to drive Langdon and the twins to Lighthouse Shelter, a women's shelter in 8 Tulare. Id. 9 3. Langdon arrives at Lighthouse Shelter 10 At the shelter, the director and officer manager conducted an interview of Langdon and 11 thought Langdon was "crazy." Id. ¶ 80.

Langdon alarmed the staff with abusive screaming and 12 bizarre delusions. Id. Langdon was argumentative and told staff that she controlled the 13 manager's computer and told the interviewer that she did not like their "spirit." Id. Langdon also 14 told the interviewer that she had been raped the night before and needed to go to the hospital for 15 an emergency abortion.

Id. ¶ 81. The shelter called an ambulance. Id. EMTs arrived and 16 informed Langdon that they could transport her, but not the twins, to the hospital. Id. Langdon 17 got angry and the shelter called the Tulare Police Department ("TPD"). Id. TPD dismissed the 18 EMTs and ambulance without anyone performing an assessment of Langdon's mental state. Id. 19 TPD officers observed Langdon's bizarre behavior at the shelter.

Id. ¶ 83. Langdon yelled 20 at the TPD officers, and the officers described Langdon as "loud and belligerent." Id. Langdon 21 said she "felt" pregnant, and an officer asked her if she had taken a pregnancy test. Id. Langdon 22 became angrier and yelled at the officer and told him that he needed to read the Bible. Id. 23 Langdon shouted that the officer was not in charge and that God was.

Id. The shelter manager 24 told Langdon that if she did not stop the disturbance, she would be forced to leave. Id. ¶ 84. 25 Langdon calmed down, but after the TPD officers left, she continued to yell at the shelter 26 personnel. Id. 27 The same TPD officers were again dispatched to the shelter about forty minutes after they 28 had left. Id. The shelter staff told the officers that Langdon was being uncooperative, loud, 1 disruptive, and was talking "crazy." Id. The shelter staff also informed TPD that the twins 2 looked like they had not been fed, and that Langdon did not have a diaper bag, diapers, changes 3 of clothing, or baby bottles.

Id. 4 Langdon tried to go outside and pray but was told by a TPD officer that she had to remain 5 in the dining area. Id. ¶ 85. Langdon collapsed on the floor, yelling that she was having 6 contractions, and repeating "Yeshua, Yeshua, Yeshua!" Id. She also tried to scoot towards the 7 door while sitting down and claimed that something was "sucking her out" of the door.

Id. 8 Langdon then again collapsed on the floor and stated she was going into labor. Id. at ¶ 86. 9 Langdon then got up a few minutes later, began sifting through her makeup bag, and started 10 talking to another woman in the shelter. Id. 11 A TPD officer called defendant Garcia, TPD's Crisis Intervention Officer, to respond and 12 informed Garcia about the events at the shelter.

Id. ¶ 87. The TPD officers and Garcia saw that 13 Langdon was unable to properly care for the twins. Id. ¶ 89. Garcia knew that the twins were 14 functionally unattended, and that Langdon was gravely disabled. Id. ¶ 88. Langdon did not have 15 baby food, diapers, or other baby supplies and her behavior “presented an immediate threat to the 16 children’s health and safety because the twins were functionally unattended.” Id. ¶ 89.

17 Garcia’s initial instinct was to arrest Langdon for disturbing the peace so he called CWS 18 and spoke with defendant Torres, an Emergency Response social worker, and discussed where the 19 twins should go. Id. ¶¶ 90-91. Garcia and Torres each provided the other with false information. 20 Garcia asked Torres whether Langdon had any history with CWS. Id. at 90. “Torres falsely 21 stated that Langdon had no history of child abuse, even though Torres knew of prior criminal 22 convictions for child cruelty, prior CWS cases against Langdon, and Langdon had lost custody of 23 her older children.” Id. Torres also falsely reported to Garcia that Langdon was homeless.

24 Torres told Garcia that if TPD took Langdon into custody, CWS would take custody of the twins, 25 and Garcia told Torres repeatedly that he did not want to take the twins from Langdon. Id. ¶¶ 91- 26 92. Garcia falsely told Torres that Langdon had been evaluated at a hospital and did not meet the 27 criteria for an involuntary commitment. Id. ¶ 91. Garcia also falsely told Torres that Langdon 28 had everything she needed to take care of the twins, meaning food, diapers, and other baby 1 supplies.

Id. Torres initially concluded that Langdon was not a danger to the twins and set the 2 CWS’s Emergency Investigative Response for ten days later. Id. Neither Torres nor Garcia 3 attempted to contact Murguia. 4 Torres and her supervisor later conducted a “further risk assessment because the mother 5 sounded delusional and might be a threat to the children.”⁶ Id. ¶ 98 (internal quotation marks 6 omitted).

The matter was then reclassified for immediate in-person investigation because 7 Langdon’s behavior was bizarre and dangerous to the emotional health of the children. Id. 8 Although this situation met all the criteria for an immediate in person investigation because 9 Langdon was mentally unstable, was gravely disabled, and had a history of child abuse, no 10 immediate in person investigation occurred.

Id. No CWS investigator was assigned to Langdon 11 and the twins prior to the twins’ death. Id. ¶ 99. 12 After Garcia’s call with Torres, Garcia decided not to arrest Langdon or get psychiatric 13 help for her. Id. ¶ 100. Instead, Garcia arranged for Langdon and the twins to stay overnight at a 14 motel. Id. Garcia put the twins and Langdon in a police cruiser for transport to a motel.

Id. At 15 TPD’s request, the motel agreed to provide Langdon with free accommodation for the night. Id. 16 Garcia left the twins alone with Langdon even though he had been briefed by TPD

officers about 17 Langdon's behavior and had witnessed Langdon's delusional state and inability to communicate 18 and saw that Langdon did not have any diapers or bottles. Id. 19 Early the next morning, on December 6, 2018, Langdon screamed for someone to call 20 911.

Id. ¶ 102. Langdon had drowned the twins and the twins' bodies were found on the bed in 21 the motel room. Id. Langdon was subsequently prosecuted for murder and was found not guilty 22 by reason of insanity. Id. ¶ 103.

As of the date of the filing of the SAC, neither Tulare County 23 nor the City of Tulare had investigated or disciplined any officers or social workers in connection 24 with this incident. Id. 25 /// 26 /// 27 6 The SAC is unclear as to when the further risk assessment occurred or what prompted the 28 further assessment. 1 B. Procedural Background 2 This Court dismissed plaintiffs' original complaint with leave to amend; it subsequently 3 dismissed plaintiffs' first amended complaint ("FAC") without leave to amend.

Docs. 35, 57. In 4 dismissing the FAC, the Court found that plaintiffs failed to state section 1983 claims against the 5 individual defendants and that, therefore, plaintiffs also failed to state Monell claims against the 6 City and County. Doc. 57.

The Court declined to exercise supplemental jurisdiction over the 7 remaining state law claims. Id. Plaintiffs appealed the dismissal of the case. Doc. 59. 8 On March 14, 2023, the Ninth Circuit reversed the dismissal order in part, vacated in part, 9 and remanded this action with instructions to grant plaintiffs leave to amend. *Murguia v. 10 Langdon*, 61 F.4th 1096, 1120 (9th Cir.

2023).⁷ As to plaintiffs' claims under the Due Process 11 Clause of the Fourteenth Amendment, the Ninth Circuit considered whether plaintiffs had stated a 12 claim under the state-created danger exception to the general rule that a failure to act does not 13 raise a Due Process claim.⁸ Id. at 1112-17. 14 The Ninth Circuit held that the allegations that Lewis and Cerda allowed Langdon to 15 remove the twins from their home, prevented Murguia from following Langdon and the twins to 16 the church, ignored Langdon's request for mental health help, and separated the twins from their 17 father and allowed Langdon to leave with them were insufficient to state a claim under the state- 18 created danger exception, because Lewis and Cerda did not entrust the twins to Langdon alone as 19 they also entrusted them to the care of Rosa.

Id. at 1112. As Lewis and Cerda replaced one 20 competent adult (Murguia) with another (Rosa), the FAC did not sufficiently allege that Lewis 21 and Cerda placed the twins in a more dangerous situation than the one in which they found them. 22 Id. at 1113.

The Court noted that "the FAC [did] not include any factual allegations from which 23 [the Court] could conclude that Rosa was incapable of supplementing Langdon's care of the twins 24 7 This case was subsequently reassigned to the undersigned in March 2024. Doc. 95. 25 8 The Ninth

Circuit also considered the special-relationship exception but found it did not apply 26 because defendants did not have custody of the twins.

Murguia, 61 F.4th at 1109. While the 27 Court noted that defendants Lewis and Cerda temporarily physically separated Murguia from the twins, it found that Murguia (and Langdon), not defendants, retained long-term responsibility for 28 the twins and long-term control over the decisions regarding the twins. Id. at 1110. 1 or was likely to separate from Langdon and the twins after leaving the Murguia home.” Id. The 2 Court found “it is unclear given the vague allegations in the [FAC] that Lewis’s and Cerda’s 3 conduct enhanced the twins’ vulnerability to physical harm.” Id. Given the vague allegations in 4 the FAC and because the dismissal order applied the incorrect standard in analyzing the state- 5 created danger exception, the Ninth Circuit vacated the dismissal order with an instruction to 6 allow plaintiffs leave to amend these claims.9 Id. 7 With regard to defendant Garcia, the Ninth Circuit held that plaintiffs adequately stated a 8 claim under the state-created danger exception.

Id. at 1112. The Court held that when Garcia left 9 Langdon alone with the twins at the motel, he removed them from the supervision of the shelter 10 staff and rendered the twins more vulnerable. Id. As Garcia was aware that Langdon was 11 undergoing a mental health crisis, and given the “extreme vulnerability” of the ten-month-old 12 twins, Garcia was deliberately indifferent to the risk that Langdon would physically harm the 13 twins.

Id. at 1113-14. 14 The Ninth Circuit also held that plaintiffs adequately alleged a claim against Torres under 15 the state-created danger exception. Id. at 1115. The Court held that Torres rendered the twins 16 more vulnerable to physical injury when she provided Garcia with false information and removed 17 the option of the twins being returned to Murguia’s custody.

Id. As Torres is alleged to have 18 been aware of Langdon’s criminal convictions and prior CWS cases, and it could be inferred that 19 Torres knew that Langdon was experiencing a mental health crisis at the shelter, Torres was 20 deliberately indifferent to the risk to the twins. Id. at 1116. 21 As the Court reversed the dismissal of the section 1983 claims as to Garcia and Torres and 22 granted leave to amend with respect to the section 1983 claims against Lewis and Cerda, the 23 Court also reversed the dismissal of the Monell claims and the state law claims and remanded for 24 9 As to plaintiffs’ other theories on their section 1983 claims, the Court held that Lewis and 25 Cerda’s physical separation of Murguia from the twins when they let Langdon and Rosa leave with the twins to go to the church was a “relatively minor infringement” on Murguia’s right to 26 familial association.

Id. at 1118–19. The Court also held that Murgia did not state a separate 27 claim based on a Fourth Amendment right to be free from unreasonable seizure with respect to Lewis and Cerda’s preventing him from following Langdon and the twins. Id. at 1119. 28 1 further proceedings. Id. at

1120. 2 Plaintiffs assert claims in the SAC against defendants Lewis, Cerda, Torres, the County of 3 Tulare, Garcia, the City of Tulare, and Heather Langdon.10 Doc.

96. The SAC sets forth 10 4 federal claims pursuant to 42 U.S.C. § 1983. Id. The SAC also sets forth 14 claims under state 5 law, four of which are solely against defendant Langdon.11 Id. 6 Defendants City of Tulare and Sergeant Garcia (collectively referred to as “City 7 defendants”) filed a motion to dismiss the SAC under Rules 8 and 12(b)(6). Motion to Dismiss 8 (“City’s Motion”), Doc.

97. Defendants County of Tulare, Sergeant Cerda, Deputy Jeffrey 9 Lewis, and Roxanna Torres (collectively referred to “County defendants”) also filed a motion to 10 dismiss under Rules 8 and 12(b)(6). County defendants’ Motion to Dismiss (“County’s 11 Motion”), Doc. 98.

After receiving leave to file untimely oppositions, plaintiffs filed their 12 oppositions to the motions to dismiss. Docs. 109, 110. The moving defendants timely replied. 13 Docs. 111, 113. 14 II. LEGAL STANDARD 15 Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. 16 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “Dismissal can be based on the lack of a 17 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” 18 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.

1990). In evaluating a motion to 19 dismiss under Rule 12(b)(6), the Court presumes the factual allegations within the complaint to be 20 true and draws all reasonable inferences in favor of the nonmoving party. *Murguia*, 61 F.4th at 21 10 The SAC incorrectly lists in the case caption certain defendants that plaintiff previously voluntarily dismissed from this action.

See Docs. 63, 64, 96. The case caption also lists First 22 Assembly of God of Visalia as a defendant. However, the SAC does not state any causes of 23 action against First Assembly of God of Visalia, nor does it include this entity in the “Parties” section of the SAC. See SAC. At the February 20, 2024, status conference before the assigned 24 magistrate judge, plaintiffs’ counsel represented that First Assembly of God of Visalia was no longer a defendant in this action.

Doc. 92. Accordingly, First Assembly of God of Visalia is 25 dismissed from this action and the Clerk of Court is directed to update the docket to reflect that it is no longer a defendant in this action. 26 27 11 As defendant Langdon has not filed a motion to dismiss or otherwise responded to the SAC, this Order does not address whether the SAC adequately pleads the state law claims against 28 Langdon.

1 1106 (citing *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987)). 2 Rule 8(a) requires that a pleading contain “a short and plain statement of the claim 3 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a); see also *Ashcroft v. Iqbal*, 556 4 U.S. 662, 677–78 (2009).

Under federal notice pleading standards, the complaint must “give the 5 defendant fair notice of what the... claim is and the grounds upon which it rests.” *Bell Atlantic 6 v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and quotations omitted). “This simplified 7 notice pleading standard relies on liberal discovery rules and summary judgment motions to 8 define disputed facts and issues and to dispose of unmeritorious claims.” *Swierkiewicz v. Sorema 9 N.A.*, 534 U.S. 506, 512 (2002).

Though Rule 8(a) does not require detailed factual allegations, a 10 plaintiff is required to allege “enough facts to state a claim to relief that is plausible on its face.” 11 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Iqbal*, 556 U.S. at 677–78. “[I]t demands 12 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 13 678. “[B]are assertions... amount[ing] to nothing more than a formulaic recitation of the 14 elements... are not entitled to be assumed true.” *Id.* at 681. “A claim has facial plausibility 15 when the plaintiff pleads factual content that allows the court to draw the reasonable inference 16 that the defendant is liable for the misconduct alleged.” *Id.* at 678.

The complaint must contain 17 facts that “nudge[] [the plaintiffs] claims across the line from conceivable to plausible.” 18 *Twombly*, 550 U.S. at 570. 19 If a court dismisses a complaint for failure to state a claim, it should “freely give leave” to 20 amend “when justice so requires.” *Fed. R. Civ. P.* 15(a)(2).

The “underlying purpose of Rule 15 21 [is] to facilitate decision on the merits, rather than on the pleadings or technicalities.” *Lopez v. 22 Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (cleaned up). However, a court has 23 discretion to deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of 24 the movant, repeated failure to cure deficiencies by amendments previously allowed, undue 25 prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of 26 amendment.” *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir.

2008). 27 /// 28 /// 1 III. DISCUSSION 2 The City defendants argue that (i) plaintiffs fail to comply with Rule 8, (ii) plaintiffs’ state 3 law claims must be dismissed as plaintiffs fail to allege compliance with the California Tort 4 Claims Act, (iii) the City of Tulare has immunity under Government Code § 818.2, and (iv) the 5 SAC fails to state a claim that Garcia breached mandatory duties as asserted in claims 7, 8, 9, 10, 6 17, 18, and 19.

City’s Motion, Doc. 97-1 at 4–5. 7 The County defendants argue that (i) plaintiffs fail to comply with Rule 8, (ii) plaintiffs 8 fail to state a due process violation under the state-created danger exception as to defendants 9 Cerda, Lewis, and Torres, (iii) Cerda, Lewis, and Torres are entitled to qualified immunity, 10 (iv) plaintiffs fail to adequately plead their Monell claims against the County of Tulare, 11 (v) plaintiffs’ state law claims must be dismissed as plaintiffs fail to allege compliance with the 12 California Torts Claims Act, (vi) plaintiffs fail to establish standing for

Murguia to file suit on 13 behalf of the estates of the twins or as the children's successor in interest, and (vii) the County 14 defendants are immune from liability on the state law claims.

See generally, County's Motion, 15 Doc. 98. The County defendants seek dismissal of the claims against Lewis, Cerda, and Torres 16 (claims 1-3), of two of the three Monell claims against the County (claims 4-5), and of the state 17 law causes of action against the County defendants (claims 11-16).¹² Id. 18 A. Rule 8 19 The City and County defendants move to dismiss the SAC pursuant to Rule 8.

The City 20 defendants argue that the SAC violates Rule 8 because of its length and because it is "replete with 21 unnecessary" and redundant details. City's Motion, Doc. 97-1 at 2-3. The City defendants 22 further argue that a defendant should not be required to specifically admit or deny pages of non- 23 materials facts. Id. at 3.

The County defendants similarly argue that the SAC is ambiguous, that 24 they have no notice of what claims plaintiffs allege against the County defendants, and that 25 dismissal is proper under Rule 41(b). County's Motion, Doc. 98 at 2.

The County defendants 26 argue that plaintiffs "once again burden their adversaries" with combing through a large 27 12 In their motion, the County defendants move to dismiss only two of the three Monell claims 28 against the County; they do not move to dismiss claim 6. See Doc. 98. 1 complaint to determine which allegations must be defended. County's Motion, Doc.

98-1 at 15. 2 County defendants also argue that, despite the two prior dismissal orders cautioning plaintiffs 3 regarding potential Rule 8 violations, plaintiffs' SAC grew to more than 100 pages. Id. at 15-16. 4 The County defendants urge the Court to dismiss the SAC for failure to comply with Rule 8 and 5 to deny leave to amend. Id. at 16. Plaintiffs argue that, although the SAC is long, it is not 6 unnecessarily long and that its length reflects the complexity of the matter and the number of 7 claims and parties involved.

Opposition to County's Motion, Doc. 109 at 14; Opposition to 8 City's Motion, Doc. 110 at 13-14. 9 "While 'the proper length and level of clarity for a pleading cannot be defined with any 10 great precision,' Rule 8(a) has 'been held to be violated by a pleading that was needlessly long, or 11 a complaint that was highly repetitious, or confused, or consisted of incomprehensible 12 rambling.'" Cafasso, U.S. ex rel. v. Gen.

Dynamics C4 Sys., Inc., 637 F.3d 1047, 1059 (9th Cir. 13 2011) (quoting 5 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1217 (3d 14 ed.2010)). However, a complaint does not violate Rule 8(a) solely because it is excessive in 15 length. Hearn v. San Bernardino Police Dep't, 530 F.3d 1124, 1131 (9th Cir. 2008). Rather, the 16 issue is whether the complaint is written with sufficient clarity and organization such that the 17 defendants can respond to the claims.

Id. 18 Although the SAC is more than 100 pages in length and contains more than 438 19 paragraphs and could perhaps be better organized and contain less detail, it is not so lengthy and 20 unclear that the defendants would be prejudiced by having to respond to it.

Moreover, the Ninth 21 Circuit has held that the FAC, which contained these same factual allegations, sufficiently stated 22 certain claims. *Murguia*, 61 F.4th at 1113–18. That is the law of the case. *Askins v. U.S. Dep’t 23 of Homeland Sec.*, 899 F.3d 1035, 1042 (9th Cir. 2018) (the law of the case “doctrine applies 24 most clearly where an issue has been decided by a higher court; in that case, the lower court is 25 precluded from reconsidering the issue and abuses its discretion in doing so” except in limited 26 circumstances).

Defendants’ motions to dismiss the case for failure to comply with Rule 8 are 27 denied. 28 1 B. Federal Claims 2 The SAC sets forth ten federal claims pursuant to 42 U.S.C. § 1983. See SAC. Plaintiffs’ 3 assert section 1983 claims against both the individual defendants and, pursuant to *Monell v. Dept. 4 of Social Services*, 436 U.S. 658, 691 (1978), against the City and County.

As the *Monell* claims 5 require an underlying constitutional violation as an essential element of the claims, the Court first 6 addresses whether the SAC sufficiently states section 1983 claims against the individual 7 defendants. 8 1. Claims Against Individual Defendants 9 The Ninth Circuit found that plaintiffs had sufficiently pleaded their section 1983 claims 10 as to defendants *Garcia* and *Torres* under the state-created danger exception.

Murguia, 61 F.4th 11 at 1113–16. That holding is the law of the case. The remaining issue is whether plaintiffs’ SAC 12 now sufficiently pleads section 1983 claims against defendants *Lewis* and *Cerda* under the state- 13 created danger exception. 14 To state a claim under 42 U.S.C. § 1983, plaintiffs must allege that “(1) the conduct 15 complained of was committed by a person acting under color of state law; and (2) the conduct 16 deprived the plaintiff of a federal constitutional or statutory right.” *Murguia*, 61 F.4th at 1106 17 (internal quotation and citation omitted).

Plaintiffs allege, and defendants do not dispute, that the 18 individual defendants were acting under color of state law. Plaintiffs’ federal claims are “rooted 19 in the substantive component of the Due Process Clause of the Fourteenth Amendment.” 20 *Murguia*, 61 F.4th at 1106. “The Due Process Clause is a limitation on state action rather than a 21 guarantee of minimum levels of state protections, so the state’s failure to prevent acts of private 22 parties is typically insufficient to establish liability under the Due Process Clause.” *Id.* (citing 23 *Martinez v. City of Clovis*, 943 F.3d 1260, 1271 (9th Cir.

2019)). However, there are two 24 exceptions to this rule: “(1) when the state affirmatively places the plaintiff in danger by acting 25 with deliberate indifference to a known or obvious danger (the state-created danger exception); 26 and (2) when a special relationship exists between the plaintiff

and the state (the special- 27 relationship exception).” Id. (internal quotation marks and citation omitted).

The Ninth Circuit 28 held that the special-relationship exception did not apply based on plaintiffs’ allegations. Id. at 1 1110. 2 The Ninth Circuit found plaintiffs’ allegations in the FAC failed to state a claim as to 3 defendant Lewis and Cerda under the state-created danger exception but granted plaintiffs leave 4 to amend as to those claims. Id. at 1112–13.

The state-created danger exception has two 5 requirements: (1) there must be “affirmative conduct on the part of the state in placing the 6 plaintiff in danger” and (2) the state must act “with deliberate indifference to a known or obvious 7 danger.” Id. at 1111 (internal quotation marks and citation omitted).

To satisfy the first 8 requirement, plaintiffs must show that the state actor’s affirmative actions “created or exposed” 9 them to “an actual, particularized danger” that they “would not otherwise have faced.” Id. 10 (quoting *Martinez*, 943 F.3d at 1271).

The central inquiry is whether the state actors left the 11 plaintiffs in a situation that was more dangerous than the one in which they found them. Id. The 12 ultimate injury must have been foreseeable to the defendant given the circumstances, although the 13 exact injury need not have been foreseeable. Id. To satisfy the second requirement, plaintiff must 14 show that the state actor acted with deliberate indifference to a known or obvious consequence of 15 their action.

Id. For non-detainee failure to protect claims, a subjective deliberate indifference 16 test applies. Id. 17 The Ninth Circuit found that plaintiffs’ FAC failed to state section 1983 claims against 18 Lewis and Cerda under the state-created danger exception because it was “unclear given the 19 vague allegations in the complaint that Lewis and Cerda’s conduct enhanced the twins’ 20 vulnerability to physical harm.” *Murguia*, 61 F.4th at 1113.

Specifically, the Ninth Circuit 21 found: “Given that Lewis and Cerda merely replaced one competent adult—[*Murguia*]—with 22 another competent adult—*Rosa*, we are not convinced that the officers left the twins in a situation 23 that was more dangerous than the one in which they found them.” Id. (citation omitted). 24 Plaintiffs now allege in the SAC that Lewis and Cerda knew “that *Rosa* had no legal 25 authority over *Langdon* or the twins,” and that they effectively increased the twins’ risk of danger 26 “by placing the twins in *Langdon*’s sole and unsupervised custody,” while, somewhat 27 inconsistently, also asserting that “the deputies directed *Rosa* to take *Langdon* to the hospital, 28 then take custody of the twins.” SAC ¶ 74.

The SAC further alleges: 1 *Rosa* was not a safe or adequate replacement for [*Murguia*] in 2 protecting the twins. *Rosa* had no authority to take custody of the twins or challenge *Langdon* for control of the twins.... *Rosa* had 3 no right or duty to supplement *Langdon*’s care of the twins. *Rosa* had her own children to care for and at no time agreed to be a full- 4 time guardian for the

twins whereas [Murgia's] greatest interest was his children's health and safety, which TCSD deputies 5 completely ignored.

Lewis and Cerda could have foreseen that Rosa could have been legally separated from the twins at any time 6 and that the Church could, and did tell Rosa to leave the twins, which she did. However, [Murguia] was a member of the Church 7 and likely would have been allowed to stay with the twins at the Church. 8 9 SAC ¶ 75. 10 County defendants move to dismiss the section 1983 claims against defendants Lewis and 11 Cerda, arguing that although plaintiffs have added additional "embellishing and entirely 12 conclusory allegations," the additional allegations are insufficient to state a due process claim 13 under the state-created danger exception.

County's Motion, Doc. 98-1 at 19. The County 14 defendants argue that there are no factual allegations to suggest that Rosa was "incapable of 15 supplementing Langdon's care of the twins" or that that she was likely to separate from the twins 16 and Langdon after leaving the Murguia home. Id. at 19–20. County defendants argue that 17 plaintiffs' "conclusory allegations" do not show that Lewis and Cerda's actions rendered the 18 twins more vulnerable.

Id. at 20. Plaintiffs respond that "Rosa was not a safe or adequate 19 replacement" for Murguia, as Rosa had no authority to take custody or to challenge Langdon's 20 control of the twins. Opposition to County's Motion, Doc. 109 at 17-18. 21 The SAC's additional allegations are insufficient to show that it was reasonably 22 foreseeable to Lewis and Cerda that their actions would place the twins in an actual, 23 particularized danger that they would not otherwise have faced.

The additional allegations do not 24 change the fact that the officers did not leave Langdon alone with the children; the officers left 25 the twins and Langdon with Rosa, who was a "competent adult." Although plaintiffs argue that 26 Rosa was not the legal guardian of the twins and could therefore be "legally separated" from 27 them, the SAC does not allege that Rosa ever indicated to Lewis or Cerda that she would 28 accompany Langdon and the twins only briefly, or that she had other family obligations that 1 would require her to leave them by themselves.

2 While Lewis and Cerda would have known that Rosa had no legal authority over the 3 children, and it would have been reasonably foreseeable to them that Rosa would not remain 4 permanently with the children, there are no allegations in the SAC showing that it was reasonably 5 foreseeable to Lewis and Cerda that Rosa was likely to leave Langdon and the twins alone after 6 leaving Murguia's home.

Moreover, Rosa did not leave the twins alone with Langdon. The SAC 7 alleges that Rosa alerted others at the church of Langdon's mental health state, that she was 8 concerned about the safety of the twins, and that she left Langdon and the twins at the church 9 with the pastor, another presumably competent adult. See SAC ¶ 78.

The pastor then contacted 10 the Visalia police department, which responded to the church. A Visalia police officer, who is 11 not a party to this case, then responded to the church and made the decision to transport Langdon 12 and the twins to a women's shelter. Thereafter, the women's shelter contacted the Tulare Police 13 Department in response to Langdon's behavior, and TPD officers responded to that location.

14 After various TPD officers interacted with Langdon, defendants Torres and Garcia then 15 responded to the shelter. Finally, after conferring with Torres, Garcia ultimately transported 16 Langdon and the twins to a motel, where he left them by themselves. 17 While this chain of events ended tragically with the death of the twins, the extended series 18 of events that ultimately culminated in the twins being left alone with Langdon was not 19 reasonably foreseeable when Rosa, Langdon, and the twins left the house together.

A series of 20 competent adults was present with Langdon and the twins over an extended period—including 21 police officers such as Garcia, and Torres, a CWS worker—long after defendants Lewis and 22 Cerda let Langdon and the twins leave with Rosa to go to the church. Given the series of events 23 that occurred thereafter, it was not reasonably foreseeable to Lewis and Cerda that Langdon and 24 the twins would ultimately be left alone overnight, without a competent adult present, following 25 decisions by a CWS worker (Torres) and another law enforcement officer (Garcia).

Accordingly, 26 the SAC fails to plead claims against Lewis and Cerda under the state-created danger exception. 27 The Ninth Circuit also held that plaintiffs' FAC did not establish that defendants deprived 28 plaintiffs of their right to familial association by temporarily separating Murguia and the twins, 1 and did not establish that defendants unreasonably seized Murguia in violation of the Fourth 2 Amendment.

Murguia, 61 F.4th at 1117–19. In finding that plaintiffs had not adequately pleaded 3 a section 1983 claim related to the seizure of Murguia, the Court reasoned: “[Murguia] alleged 4 that the Deputies' show of authority prevented him from following the twins. He did not allege 5 that the Deputies prevented him from leaving his house for other purposes—he could have driven 6 off in another direction.

[Murguia's] gripe is not that he was seized, but that he was separated 7 from his children.” Id. at 1119. 8 Plaintiffs appear to argue that the SAC now states a claim against Lewis and Cerda based 9 on the allegation that defendants' “forced separation” of Murguia from the twins was “permanent, 10 not temporary and was more than a minor deprivation of [Murguia's] custody.” Opposition to 11 County's Motion, Doc.

109 at 17. The SAC also asserts that Murguia “feared that if he left the 12 property at all, even if he left in a different direction, Lewis and Cerda” would arrest him. SAC 13 ¶ 72. However, the

SAC also alleges that defendants remained outside his house for only thirty 14 minutes, SAC ¶ 72, leaving Murguia free to leave thereafter. Construing the SAC in the light 15 most favorable to the plaintiffs, the SAC alleges that Lewis and Cerda, by show of authority, 16 prevented Murguia from following Langdon and the twins or otherwise from leaving his house 17 for 30 minutes, for fear that he would be arrested if he left.

18 Plaintiffs' allegation appears intended to support their substantive due process claims and 19 is not clearly pleaded as a separate Fourth Amendment claim based on a brief seizure of Murguia. 20 Moreover, as the Ninth Circuit noted with respect to similar allegations in the FAC, Murguia's 21 complaint is not that he was seized for thirty minutes, but that he was separated from his children.

22 Murguia, 61 F.4th at 1119. The SAC's allegations on this issue are consistent with the FAC in 23 material respects. Given the Ninth Circuit's holding that plaintiffs failed to establish a Fourth 24 Amendment claim based on an allegedly unreasonable seizure of Murguia, any such claim in the 25 SAC is also precluded by the law of the case. See *Askins*, 899 F.3d at 1042.

26 As plaintiffs have been unable to state a section 1983 claim despite being provided an 27 opportunity to amend their complaint for this purpose, the County's motion to dismiss the section 28 1983 against Lewis and Cerda (claims 1–3) is granted without leave to amend. 1 2. Murguia's standing to sue on behalf of the twins' estates and as a 2 successor in interest 3 The County defendants argue that Murguia lacks standing to sue on behalf of the estates 4 of the twins and as the successor in interest.

County's Motion, Doc. 98-1 at 28-30. The County 5 defendants point out that, at the time of filing their motion, Murguia had not filed a declaration 6 containing the information required by California Code of Civil Procedure section 377.32. *Id.* at 7 29.

However, plaintiffs subsequently filed a declaration by Murguia that satisfies the 8 requirements of section 377.32. See Declaration of Jose Murguia, Doc. 108. Accordingly, the 9 motion to dismiss these claims against the County defendants based on Murguia's alleged lack of 10 standing is denied. 11 3. Qualified Immunity - County Defendants 12 The County defendants also move to dismiss the section 1983 claims against Lewis, 13 Cerda, and Torres based on qualified immunity.

As the Court is dismissing claims 1–3 as to 14 Lewis and Cerda based on plaintiffs' failure to state a claim, the Court need not reach the issue of 15 whether Lewis and Cerda would be entitled to qualified immunity. 16 Qualified immunity protects government officials from liability under section 1983 17 “unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of 18 their conduct was ‘clearly established at the time.’” *D.C. v. Wesby*, 583 U.S. 48, 62–63 (2018) 19 (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). “Qualified immunity balances two 20 important interests—the need to hold public officials accountable when

they exercise power 21 irresponsibly and the need to shield officials from harassment, distraction, and liability when they 22 perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

Courts may 23 consider qualified immunity at the pleadings stage. However, the Ninth Circuit has cautioned 24 that “[d]etermining claims of qualified immunity at the motion-to-dismiss stage raises special 25 problems for legal decision making.” *Keates v. Koile*, 883 F.3d 1228, 1234 (9th Cir. 2018) 26 (citing *Kwai Fun Wong v. United States*, 373 F.3d 952, 956-57 (9th Cir.

2004)) (by considering 27 qualified immunity at the pleadings stage, “the courts may be called upon to decide far-reaching 28 constitutional questions on a nonexistent factual record.”). 1 The County defendants argue that Torres is entitled to qualified immunity because 2 plaintiffs have failed to show that her actions violated a clearly established right. Doc.

98-1 at 22. 3 In particular, the County defendants argue that there are no factual allegations that Torres, or the 4 County, “had actual knowledge that Langdon posed an immediate risk of serious bodily injury to 5 the twins.” County’s Motion, Doc. 98-1 at 25.

However, it was clearly established at the time of 6 the incidents in the SAC that the state-created danger exception applied when (i) “there is 7 affirmative conduct on the part of the state in placing the plaintiff in danger,” and (ii) “the state 8 [actor] acts with deliberate indifference to a known or obvious danger.” *Patel v. Kent School 9 Dist.*, 648 F.3d 965, 974 (9th Cir.

2011). 10 Construing the SAC in the light most favorable to plaintiffs, the SAC sufficiently alleges 11 that Torres acted with deliberate indifference to a known and obvious risk to the twins. Torres 12 knew from Langdon’s history in the CWS system that Langdon had prior convictions for child 13 cruelty, had prior CWS cases, and had lost custody of her older children.

SAC ¶¶ 90-91, 97. 14 Torres also knew, and failed to mention to Garcia, that Murguia was a parent available to take the 15 twins. *Id.* at ¶ 90. Further, the SAC alleges that Torres and her supervisor conducted a “further 16 risk assessment because the mother sounded delusional and might be a threat to the children.” 17 SAC ¶ 98. It can thus reasonably be inferred from the SAC that Torres had knowledge that 18 Langdon posed an immediate threat to the children.

Plaintiffs also allege affirmative conduct by 19 Torres that placed the twins in danger: Torres falsely told Garcia that Langdon was homeless and 20 falsely stated that Langdon had no history of child abuse, when Garcia contacted Torres to 21 discuss where the twins should go. *Id.* at ¶ 90.

The Court cannot find based on the allegations in 22 the SAC, and the undeveloped factual record, that Torres is entitled to qualified immunity. 23 4. Monell Claims 24 Plaintiffs allege Monell claims against the City of Tulare and the County of Tulare based 25 on allegedly inadequate policies and failure to train. Claims for municipal liability are cognizable 26 under section 1983.

Duarte v. City of Stockton, 60 F.4th 566, 573 (9th Cir. 2023). A municipality “cannot be held liable solely because it employs a tortfeasor or, in other words, a municipality cannot be held liable under [42 U.S.C. § 1983] under a respondeat superior theory.” 1 *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Castro v. Cnty. of L.A.*, 797 F.3d 2 654, 670 (9th Cir.

2015). 3 To sustain a Monell claim based on policy, a plaintiff must show that the action that 4 caused their constitutional injury was part of an “official municipal policy of some nature.” 5 *Scanlon v. Cnty. of Los Angeles*, 92 F.4th 781, 811 (9th Cir. 2024) (quoting *Kirkpatrick v. Cnty. of Washoe*, 843 F.3d 784, 793 (9th Cir. 2016). “There are four criteria: “(1) [plaintiff] had a 7 constitutional right of which [they] were deprived; (2) the municipality had a policy; (3) the 8 policy amounts to deliberate indifference to [their] constitutional right; and (4) the policy is the 9 moving force behind the constitutional violation.” *Id.* (internal quotation omitted).

10 “In limited circumstances, a local government’s decision not to train certain employees 11 about their legal duty to avoid violating citizens’ rights may rise to the level of an official 12 government policy for purposes of § 1983.” *Perez v. City of Fresno*, 98 F.4th 919, 931 (9th Cir. 13 2024) (internal quotation marks and citation omitted). “Failure to train may constitute a basis for 14 Monell liability where the failure amounts to deliberate indifference to the rights of those who 15 deal with municipal employees.” *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1153 (9th Cir.

2021). “To allege a failure to train, a plaintiff must include sufficient facts to support a 17 reasonable inference (1) of a constitutional violation; (2) of a municipal training policy that 18 amounts to a deliberate indifference to constitutional rights; and (3) that the constitutional injury 19 would not have resulted if the municipality properly trained their employees.” *Id.* at 1153–54.

20 a. County of Tulare 21 The County defendants argue that claims 4 and 5 of the SAC fail to sufficiently allege 22 Monell claims.¹³ County’s Motion, Doc. 98-1 at 26. To the extent the Monell claims are based 23 on the underlying conduct of Lewis and Cerda, the claims fail as plaintiffs fail to establish an 24 underlying constitutional violation by Lewis and Cerda.

To the extent the Monell claims are 25 based on Torres’s conduct, they also fail to state a claim. 26 The County defendants correctly point out that the SAC does not allege that the County’s 27 13 The County defendants do not move to dismiss claim 6, which similarly asserts a Monell claim 28 against the County. 1 policies caused the deprivation of plaintiffs’ constitutional rights; rather, plaintiffs allege that 2 Torres failed to follow the policies as required.

Id. An employee’s failure to follow a 3 constitutionally valid policy does not establish a Monell claim. *Morrison v. City of Los Angeles*, 4 No. CV 19-1961-JGB (JPR), 2019 WL 3017762, at *5 (C.D. Cal. July 10, 2019) (collecting 5 cases) (“The failure of individual employees to follow municipal policies is insufficient to 6 establish Monell liability.”). 7 Plaintiffs also argue that the

County's CWS "failed to train Torres that when a social worker thinks a child is in imminent danger, she must investigate immediately[.]" Id. at 23.

9 However, the SAC's allegations are largely conclusory. Plaintiffs have alleged only a single 10 instance—Torres's conduct in this case—in which CWS allegedly failed to adequately train an 11 employee. "[G]enerally, a single instance of unlawful conduct is insufficient to state a claim for 12 municipal liability under section 1983." Benavidez, 993 F.3d at 1154.

While "[s]ingle acts may 13 trigger municipal liability where 'fault and causation' were clearly traceable to a municipality's 14 legislative body or some other authorized decisionmaker[.]" the SAC does not allege any such 15 circumstances. Id. (quoting Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 16 405 (1997)). 17 In Benavidez, minors were removed from their home and were subjected to a medical 18 examination without their parents' knowledge or consent and without the opportunity for the 19 parents to be present at the examination.

In those circumstances, the Court held the plaintiffs had 20 properly pleaded claims against the individual defendants for the unconstitutional medical 21 examinations. Id. at 1153. However, the Court held that the plaintiffs failed to state a claim 22 against the municipality based on a failure to train theory because the limited instance of such a 23 failure was insufficient to establish a failure to train.

Id. at 1154. The unsatisfactory training of 24 one officer "will not alone suffice to fasten liability on the [municipality], for the officer's 25 shortcomings may have resulted from factors other than a faulty training program." Id. (internal 26 quotation marks and citation omitted). Id. Plaintiffs fail to allege or argue how the single 27 instance of Torres' conduct would support a Monell claim.

28 Accordingly, claims 4 and 5 are dismissed without leave to amend. 1 b. City of Tulare 2 The City of Tulare appears to move to dismiss the Monell claims against it (claims 9-10) 3 on the ground that the SAC fails to allege that Garcia breached a mandatory duty and therefore 4 fails to state a section 1983 claim against either Garcia or the City. Doc. 97-1 at 4.

The City does 5 not otherwise argue that it may not be held liable under Monell. As the Ninth Circuit found that 6 plaintiffs adequately alleged section 1983 claims against Garcia, Murguia, 61 F.4th at 1113, the 7 City's argument that the section 1983 claims fail to state a claim against Garcia is precluded by 8 the law of the case.

Accordingly, the City's motion to dismiss claims 9 and 10 is denied. 9 C. State Law Claims 10 The City and County defendants move to dismiss the state law claims on the grounds that 11 plaintiffs failed to plead compliance with the California Tort Claims Act. City's Motion, Doc. 12 97-1 at 4; County's Motion, Doc. 98-1 at 30. Plaintiffs point out that defendants did not 13 previously raise, in their prior motions to dismiss, the failure to plead compliance with the 14 California Tort Claims Act.

Opposition to City's Motion, Doc. 110 at 10–11. Compliance with 15 the California Tort Claims Act is an essential element of a cause of action against a public entity, 16 and plaintiffs must allege facts in their complaint demonstrating or excusing compliance with the 17 Act. *State of California v. Superior Ct.*, 32 Cal. 4th 1234, 1243 (2004).

The SAC is devoid of 18 any mention that plaintiffs complied with the California Government Tort Claims Act. In their 19 opposition, plaintiffs represent that they did timely file a claim, and they request leave to remedy 20 the defect in pleading through amendment. Opposition to City's Motion, Doc. 110 at 14-15.

The 21 state law claims against the City and County defendants are therefore dismissed with leave to 22 amend.¹⁴ 23 D. Breach of Mandatory Duties 24 The City defendants also argue that in claims 7, 8, 9, 10, 17, 18, and 19 the SAC fails to 25 state a claim that Garcia breached a mandatory duty. See City's Motion, Doc. 97-1.

As to the 26 14 As the state law claims against the City defendants and the County defendants are dismissed 27 with leave to amend, the Court does not reach defendants' immunity arguments as to the state law claims. 28 1 federal claims (claims 7-10), the Ninth Circuit confirmed that plaintiffs could not pursue their 2 section 1983 claims based on a "legal requirement exception" theory as to the individual 3 defendants' alleged failures to act.

Murguia, 61 F.4th at 1107 (holding that the only two 4 exceptions to the general rule against failure-to-act liability for section 1983 claims are the 5 special-relationship exception and the state-created danger exception).

To the extent that the 6 section 1983 claims (claims 7–10) are based in part on the legal theory that the individual 7 defendants are liable under section 1983 simply for failure to do an act they were legally required 8 under state law to perform, any such theory is foreclosed by the Ninth Circuit's decision. 9 As to the state law claims, the City defendants argue that there is no mandatory duty for 10 Garcia to conduct a California Welfare and Institution Code ("WIC") § 5150 assessment, and that 11 the other statutes or policies cited by plaintiffs throughout their complaint also fail to impose 12 mandatory duties.¹⁵ City's Motion, Doc.

97-1 at 4. The City defendants also argue that the Court 13 has previously held that there is no mandatory duty under WIC § 5150 and that plaintiffs are 14 realleging legal arguments already settled as the law of the case. Opposition to City's Motion, 15 Doc. 97-1 at 4. They argue that none of the other underlying policies "contain any language 16 plainly evidencing a mandatory duty to conduct such an assessment." City's Motion, Doc.

97-1 17 at 4. Plaintiffs do not meaningfully address the City defendants' arguments and instead repeat 18 that the duties are "clearly" mandatory. Opposition to City's Motion, Doc. 110 at 116. 19 As noted in a prior order in this action, there is no mandatory duty to conduct a § 5150 20

assessment. Doc. 35 at 13 n.6. WIC § 5150 provides that “[w]hen a person, as a result of a 21 mental health disorder, is a danger to others, or to themselves, or gravely disabled, a peace officer 22... may, upon probable cause, take, or cause to be taken, the person into custody for a period of 23 up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and 24 treatment in a facility designated by the county for evaluation and treatment and approved by the 25 15 The City defendants point to SAC ¶¶ 13-37, 236, 239-240, 252-258, 267, 288, 363, 381, 398.

In the SAC ¶¶ 13-37, plaintiffs set out the “framework for welfare checks” that are alleged 26 throughout their complaint, which include Welfare and Institution Code §§ 5150, 5150(b), 27 5150.4, 5150.05, the Commission on Peace Officer Standards and Training (“POST”) training and standards, and City of Tulare Police Department and Tulare County Sheriff’s Department 28 policies.

1 State Department of Health Care Services.” Cal. Welf. & Inst. Code § 5150(a) (emphasis added). 2 As the statute uses the permissive word “may,” it does not impose a mandatory duty. 3 As the state law claims are dismissed with leave to amend, the Court does not otherwise 4 reach the arguments raised with respect to the state law claims. 5 E. Leave to Amend 6 Plaintiffs’ section 1983 claims against Lewis and Cerda, and the Monell claims against the 7 County of Tulare at claims 4 and 5, are dismissed without leave to amend as plaintiffs have failed 8 to establish a constitutional violation despite previously having been granted leave to amend.

9 As to plaintiffs’ state law claims, the Court finds that granting further leave to amend 10 would not be futile. Accordingly, plaintiffs will be granted thirty days from the date of service of 11 this order in which to file a third amended complaint consistent with this Order. 12 IV. CONCLUSION 13 Based upon the foregoing, it is ORDERED that: 14 1. Defendants’ motion to dismiss, Docs.

97, 98, are granted in part and denied in part as 15 follows: 16 a. The City and County defendants’ motions to dismiss the SAC under Rule 8 are 17 denied; 18 b. The County defendants’ motion to dismiss the individual section 1983 claims 19 (claims 1-3) is denied as to Torres, and granted as to Lewis and Cerda without 20 leave to amend; 21 c. Defendants Lewis and Cerda are dismissed from this action; 22 d. The County defendants’ motion to dismiss claims 4 and 5, which are Monell 23 claims against the County, is granted without leave to amend; 24 e. The City and County defendants’ motions to dismiss the state law claims 25 against them (claims 11 to 20), for failure to plead compliance with the 26 Government Tort Claims Act, is granted with leave to amend; 27 /// 28 1 f. The City defendants’ motion to dismiss the section 1983 claims (claims 7-10) 2 is denied.

3 2. Within thirty (30) days of the date of this order, plaintiffs may file a third amended 4 complaint consistent with this Order. If plaintiffs elect not to file a third amended 5 complaint, this

action shall proceed on their second amended complaint as to the 6 remaining claims only. 7 3.

The Clerk of Court is also directed to update the docket to reflect that First Assembly 8 of God is not a defendant in this action. 9 10 11 | TPIS SO ORDERED. _ 12 Dated: _ November 24, 2025 4h 3 UNITED STATES DISTRICT JUDGE 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 27

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